

VOL 47 | NO. : 11 | Pg. 1-132 | NOVEMBER 2017 | ₹100/- (Single Copy)

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

दलपदवदरान्द
national
दुवदरनान्द



सत्यं वद। धर्मं चर।
"वदतः तेन त्वात्ते बोधते भु त्ते त्ते।"

THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

www.icsi.edu

**MOVE TO
DIGITAL BOARD
AND COMMITTEE
MEETINGS WITH EASE.**



“ We are delighted to go digital. It has been a trouble-free and pleasant transformation and our directors and secretarial team find Dess Digital Meetings to be very easy to use. ”

CS Ramesh Periasamy, Company Secretary
MANAPPURAM FINANCE LIMITED

Please contact:

Dess Digital Meetings

The Trusted Meetings Solution Used By The Leading Boards

+91 97029 28562 | info@dess.net

President

- Shyam Agrawal (Dr.)

Vice President

- Makarand Lele

Members

(in alphabetical order)

- Ahalada Rao V.
- Amardeep Singh Bhatia
- Ashish C. Doshi
- Ashish Garg
- Atul H Mehta
- Gopalakrishna Hegde
- Gopal Krishan Agarwal
- Mahavir Lunawat
- Mamta Binani
- Rajesh Sharma
- Rajiv Bajaj
- Ramasubramaniam C.
- Ranjeet Kumar Pandey
- S. K. Agrawala
- Satwinder Singh
- Vijay Kumar Jhalani
- Vineet K. Chaudhary
- Yamal Ashwinkumar Vyas

Secretary

- Dinesh C. Arora

Editorial Advisory Board

Chairman

- S K Agrawala

Members

(in alphabetical order)

- Atma Ram Gupta
- D.K. Jain (Dr.)
- G. R. Bhatia
- Gopal Jiwarajka
- H. M. Choraria
- J.K. Mittal
- K Narayana Swamy
- N.K. Jain
- Nirmala Rawat (Ms.)
- P.K. Mittal
- Prithvi Haldea
- R. C. Gupta
- Udai Parnami
- Vinod K. Singhanian (Dr.)

Editor & Publisher

- S.K. Dixit (Dr.)

Legal Correspondent

- T. K. A. Padmanabhan



ISSN 0972-1983

CHARTERED SECRETARY

[Registered under Trade Marks Act, 1999]

Vol. : XLVII ■ No. 11 ■ Pg 1-132 ■ November-2017

From the President	08
ICSI Golden Jubilee Events	15
Articles	37
Legal World	83
From the Government	93
News from the Institute	117

QR Code/Weblink of Chartered Secretary Journal
<https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx>



Annual Subscription

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

Edited, Printed & Published by

Dr. S.K.Dixit for The Institute of Company Secretaries of India,
 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi- 110 003.
 Phones : 41504444, 45341000, Grams : 'COMPSEC'
 Fax : 91-11-24626727
 E-Mail : info@icsi.edu
 Website : <http://www.icsi.edu>

Mode of Citation: CSJ (2017)(11/--- (Page No.)

Design & Printed at

M. P. Printers
 B-220, Phase II, Noida-201305
 Gautam Budh Nagar, U. P. - India
www.mpprinters.co.in





1. Golden Jubilee Celebrations of the ICSI – On the dais from Left: CS Dinesh C Arora, CS (Dr.) Shyam Agrawal, P. P. Chaudhary (Hon'ble Union Minister of State for Law and Justice & Corporate Affairs) and CS Makarand Lele.
- 2 & 3. Address on the occasion by CS (Dr.) Shyam Agrawal and P. P. Chaudhary (Hon'ble Union Minister of State for Law and Justice & Corporate Affairs).
4. Video message on the occasion by Arun Jaitley (Hon'ble Union Minister of Finance and Corporate Affairs).
5. Release of ICSI Publications - P. P. Chaudhary (Hon'ble Union Minister of State for Law and Justice & Corporate Affairs) releasing various ICSI publications. Others standing from Left: CS Dinesh C Arora, CS (Dr.) Shyam Agrawal, Gopal Krishna Agarwal and CS Makarand Lele.
6. A glimpse of the "Swachh Bharat" oath taking ceremony conducted during the celebrations.



7. Narendra Modi (Hon'ble Prime Minister of India) being welcomed by CS (Dr.) Shyam Agrawal in the Golden Jubilee Celebrations of the ICSI.
8. ICSI welcoming the Hon'ble Guests on the dais: Standing from Left: P. P. Chaudhary (Hon'ble Union Minister of State for Law and Justice & Corporate Affairs), Narendra Modi (Hon'ble Prime Minister of India) and CS (Dr.) Shyam Agrawal.
9. CS (Dr.) Shyam Agrawal in conversation with Narendra Modi (Hon'ble Prime Minister of India).
10. CS (Dr.) Shyam Agrawal presenting to Narendra Modi (Hon'ble Prime Minister of India) the first certificate of 'ICSI - Shaheed Ki Beti' initiative which aims to fund the education of the daughters of India's martyrs.
11. Narendra Modi (Hon'ble Prime Minister of India) releasing the Special Cover issued by Department of Posts commemorating ICSI's Golden Jubilee Year.
12. Address by Hon'ble Prime Minister at the Golden Jubilee Year Celebrations of the Institute.
13. Group Photo - Hon'ble Prime Minister with the Council Members, Secretary of the Institute.



14



15



16



17



18

IRAPANTH PROFESSIONAL FORUM



19

14. ICSI President CS (Dr.) Shyam Agrawal at a function organised by Institute of Cost Accountants of India along with Arjun Ram Meghwal (Hon'ble Union Minister of Water Resources, River Development and Ganga Rejuvenation and Parliamentary Affairs) & P. P. Chaudhary (Hon'ble Union Minister of State for Law and Justice & Corporate Affairs).
15. ICSI Signs MOU with the National Skill Development Corporation, (Ministry of Skill Development and Entrepreneurship) to equip over 1,00,000 students particularly CS dropout students and public at large on GST. From Left: Manish Kumar (MD & CEO NSDC), CS Gopalakrishna Hegde, Anant Kumar Hegde (Hon'ble Minister of State for Skill Development and Entrepreneurship), CS Satwinder Singh and CS (Dr.) Shyam Agrawal.
16. ICSI President CS (Dr.) Shyam Agrawal with Injeti Srinivas (IAS, Secretary, Ministry of Corporate Affairs) and other dignitaries.
17. 18th All India Students Conference of ICSI at Jaipur - address by CS (Dr.) Shyam Agrawal.
18. 2nd TPF National Conference of Corporate Professionals held at Kolkata – A view of the dais.
19. Meeting of ICSI Delegation with Anju Ranjan (Consul General of India, Scotland).



20. Address by CS (Dr.) Shyam Agrawal at Institute of Directors, London Global Convention 2017 on The Board: Emerging Issues of Corporate Governance and Sustainability Challenges.
21. Meeting of ICSI delegation with David Kerr (CEO, Insolvency Practitioners Association) and Claire Broughton (CEO, INSOL International).
22. Meeting of ICSI Task Force on Audit/Due Diligence/ Compliance of SEBI – Group Photo of the Members.
23. WIRC – Annual Regional Conference – Chief Guest Manohar Parikkar (Hon'ble Chief Minister of Goa) addressing the gathering during the inaugural session of the conference.
24. Group photo of Members of the SEBI Committee on Corporate Governance with the Report submitted to SEBI.



Dear Valued Members,

At the outset, I would like to take this opportunity to congratulate all my fellow members, Team ICSI and all the stakeholders of the Institute who have stood strong with us, through our thick and thin in the past half century, on the completion of this historic journey and embarking upon the 50th golden year in the presence of Hon'ble Prime Minister, Shri Narendra Modi along with other dignitaries on October 4, 2017. The occasion could not be considered any less than remarkably outstanding whereat the address of Hon'ble Prime Minister which served as a prodigious token of appreciation for our dedication in serving the nation at par and paving the way for advancing our skills for efficaciously contributing towards a New India, 2022.

It has been almost a month since the celebrations of the inaugural ceremony of the golden jubilee year of the Institute culminated and marked the beginning of a new era and a new ICSI; an ICSI with greater local and global presence, an ICSI with plentiful responsibilities, an ICSI with heightened expectations and an ICSI with goals and objectives serving an even larger number of stakeholders. The a-bit-longer-than-an-hour address of Hon'ble Prime Minister at the inaugural ceremony brought with it noteworthy illuminations and enlightenments; enlightenment that the Institute had created a strong yet positive image with its years of effort and grit; that the designation Company Secretary was not an invisible one; that Hon'ble Prime Minister himself held the work done by the Institute through its members in high regard and more so that the times ahead shall be more demanding than ever. The acknowledgement that the Company Secretaries guided the corporate culture of the country or that their advice steered the governance scenario of the economy was more than gratifying for every single member, every single stakeholder of the Institute.

As President of an Institute which has a legacy half a century strong and plenty more milestones to achieve, I feel immensely privileged for having witnessed the presence of the nation giving their blessings to the initiatives of the Institute on countable occasions. The inauguration of the Centre of Excellence by Hon'ble Vice President of India, Shri Venkaiah Naidu at Hyderabad, the inauguration of Golden Jubilee year by Hon'ble Prime Minister of India, Shri Narendra Modi, point directly towards the persona of the Institute as it stands today in the eyes of the government as well as the expectations as regards its future.

Governance, a term which forms the life and blood of ICSI, has gained prominence quite significantly and not just in the Indian land but globally; the only differentiating factor between Indian sub-continent and rest of the world is that we have been carrying it in our heart and soul for the past 50 centuries or even more. So, for a concept which is more of a legacy and still alive and growing, more like a banyan tree; it is more than pertinent to not just take care but provide it with ample water and sunlight in the form of better regulatory mechanism and their effective follow-up to witness lush green leaves and many more roots flourishing which shall be visible in the form of inclusive growth and development and not to forget greater global presence.

यथा भूमिस्तथा तोयं, यथा बीजं तथाऽङ्कुरः ।
यथा देशस्तथा भाषा, यथा राजा तथा प्रजा ॥

As the land so the [ground] water, as the
seed so the sprout
As the region [country] so the language,
as the king so the people

The above shloka can be easily understood with a small story that I would like to share with you. A king was on a hunting trip and stopped for rest and food. With him was the whole entourage. They found that they forgot to bring salt. As the soldier was being sent to nearest village to get some salt, the king said – “please make sure you pay for the salt”. The words stunned the soldier; the fact that the king wanted to pay for measly salt from a lowly village of his own kingdom intrigued him. Sensing his helplessness, the king explained – “If I take the salt for free, all my soldiers might follow the lead. It is imperative that I don’t end up setting a bad example for my soldiers.” It is evidently clear from the story that governance and more so good governance follows a trickle down approach not just in a company but in the economy at large. In a corporation, it is for the Board guided by professionals to lead by example and the same stands true for all those holding similar designations in the modern day scenario.

Governance in a nation, in an economy, in a country is like more than a million small pieces forming one complete whole. Howsoever, small a piece maybe, its size doesn’t reduce its significance. ICSI fully and completely understands this and it is this understanding which makes for the perfect *raison d’être* for rolling out publications of the league of the Model Governance Code on Meetings of Gram Panchayats and Governance Pearls from Ancient Wisdom. The inaugural ceremony of Golden Jubilee Year of ICSI served as a perfect podium to not just highlight the wide-ranging initiatives of the Institute but also hand out the Vision, starting from that very moment to five years hence. The Vision New ICSI 2022 has lined up a series of lamp posts on the path ahead to be the guiding light for all the stakeholders keeping in sight the age old saying, “for people may come and people may go, but Institutions such as these ones stay forever”.

For ICSI, the date, 4th October, 2017 marked the beginning of a yearlong celebrations and a lifelong commitment towards all the stakeholders and yet the month that followed was filled with quite a list of eventful moments. The Team ICSI has been on its toes since and it gives me immense pleasure to share some of the achievements with all of you:

Pan-India Presence

The Institute of Company Secretaries of India has always been proud of the last ‘I’ in ICSI. However, even after a span of nearly half a century of existence what we lacked was a presence which ran across the length and breadth of the country. The north-eastern states and various UTs were still seemingly untouched by the Institute’s presence. I feel a sense of great pride while sharing the fact that in the past ten months or so we have been able to make the dream of pan-India presence of the Institute a beautiful reality, one which gives us an edge over other professional bodies.

MOU with the Institute of Cost Accountants of India

While we can proudly boast of Pan-India presence, the same is yet to become a reality across the globe. However, the members of the Institute have been spread out far and wide as far as the world map is concerned. Understanding the gap in between, the ICSI, at the inaugural ceremony of Golden Jubilee Year on 4th of October, 2017 signed a Memorandum of Understanding with the Institute of Cost Accountants of India which shall facilitate the Institute and its members in availing infrastructural facilities of overseas centres of the latter at Bahrain, Botswana, Canada, Dubai, Kathmandu, Muscat, Tanzania, Washington, and Zambia. While allowing members of both the Institutes to participate in the professional development and other continuing education programmes, the intent behind this arrangement is to provide benefit to the members of both the Institutes in equal measure by building synergies, promoting mutual relationship and strengthening collective competencies.

Report of SEBI Committee on Corporate Governance

The very next day of the Inaugural of Golden Jubilee year brought with it the achievement of another milestone for the Institute, when the Report of SEBI Committee on Corporate Governance headed by Shri Uday Kotak was submitted to the SEBI. Apart from the fact that the Committee comprised representatives of the Institute as well, the report submitted on the 5th of October, 2017 has rolled out certain profession-centric recommendations. Recognizing the criticality of secretarial functions in efficient board functioning, the Committee recommended the extension of Secretarial Audit to all material unlisted Indian subsidiaries. Another recommendation calls for a certificate from a Company Secretary in Practice, to the effect that none of the directors on the board had been debarred or disqualified from being appointed or continuing as directors, by SEBI/MCA or any statutory authority. The Committee also recommended redefining the term ‘senior management’ to specifically include Company Secretary.

MOU with National Skill Development Corporation

Hon’ble Prime Minister, too, while touching upon New India 2022 underlined a 5-point Agenda to look up to as a significant part of Institute’s responsibility towards its multifarious stakeholders. The agenda was an invitation for the Institute to collaborate in developing an honest tax compliant culture, making India a high tax compliant and honest society, developing an honest business culture across the ecosystem, putting an end to the shell companies and equipping over 1,00,000 students on the GST Front. I feel extremely happy to share that the Institute has taken its first amongst many steps to achieve the goals of the agenda by signing an MOU

with the National Skill Development Corporation, Ministry of Skill Development and Entrepreneurship, for equipping over 1,00,000 student focusing on CS students who dropped out midway without completing the course. Furthermore, the Placement of the successful candidates will be made as per the norms of the BFSI SSC/NSDC.

Model Code of Governance for Charitable Entities

In its attempt to constantly empower national governance, the Institute continuously explores areas wherein dedicated governance structures are yet to be put in place. In light of recent course of events involving dedicated efforts by the government in curbing misuse of corporate vehicles for siphoning of funds, it becomes imperative that other forms of businesses which serve the similar purposes may also be guided towards the path of good governance. Understanding these aspects of governance, the Institute has formed a Core group to develop a Model Code of Governance for Charitable entities. We are hopeful that such a Code shall set appropriate benchmarks for various aspects of governance in charitable entities in the Indian scenario, which shall be their guiding light in the times to come.

Notification of Section 247 & Companies (Registered Valuers and Valuation) Rules, 2017

The notification of both, the section pertaining to Registered Valuers as well as the Rules have opened up new avenues of growth for the members. It is heartening to note the eligibility of the members of the Institute with the relevant years of experience to be registered as Valuers and take up activities of registered valuation for the Securities and Financial Assets. This new opportunity has urged me to share the following shloka with all of you:

न चोर हार्यं न च राज हार्यं न भानू भाज्यं न च भारकारि ।
व्ययं कृते वर्धत एव नित्यं विद्याधनं सर्वधनप्रधानम् ॥

(Cannot be snatched away by thief, cannot be snatched away by king; cannot be divided among brothers, not heavy either. If spent daily, it always keeps growing. The wealth of knowledge is the precious of wealth of all)

The words of Hon'ble Prime Minister, Shri Narendra Modi wrapped up in his expectations have raised the

bar both for the Institute as well as all its members, to an all time new high. While the world is open to be conquered, it is very much important for each and every member to not consider his present job, position or designation in finality. Accumulate as much wealth as you can, and not of materialistic things but of knowledge. Every opportunity, of the likes such as these ones should be utilized and exploited to the fullest but with the right expertise and knowledge. I urge upon all the members to gear themselves and gain ample knowledge and experience before treading forward.

Holding back some of my thoughts, until the third in the Golden Jubilee Series of this Journal, which I hold close to my heart, I would like to put forth a small message for all the members of the Institute through the following shloka:

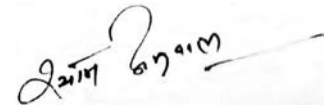
अस्माकं कार्याणि अस्मान्सावधीकरिष्यति

The shloka above is small and simple, yet its message herculean, "Only actions will define us". The governance of a nation is very much dependent on the mission of Sabka Saath Sabka Vikas. Any and every initiative of the Institute can be declared a success if it receives wholehearted support and timely actions of all the members and stakeholders. Step outside your pre-defined roles, look for what challenges you, intrigues you. Conquer your fears, conquer the world, and make the nation the best governed one!!

Happy Reading!!

Best wishes.

Yours Sincerely



November 04, 2017
New Delhi

सी एस (डॉ.) श्याम अग्रवाल
अध्यक्ष, भारतीय कंपनी सचिव संस्थान

RECENT INITIATIVES TAKEN BY ICSI

In furtherance to our earlier communications, we are pleased to share the following initiatives taken by the Institute during the month of October, 2017:

1. Meetings with Dignitaries

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

- Shri Arjun Ram Meghwal, Hon'ble Union Minister of State for Water Resources, River Development & Ganga Rejuvenation and Parliamentary Affairs
- Shri P.P. Chaudhary, Hon'ble Union Minister of State for Law and Justice; and Corporate Affairs
- Smt. Anju Ranjan, Hon'ble Consulate General of India, Edinburgh (UK)
- Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs
- Shri David Kerr, Chief Executive, Insolvency Practitioners Association, UK (IPA-UK)

2. Inauguration of ICSI Golden Jubilee Year, 2017

Cataloguing a step forward in the momentous journey of the Institute while serving the nation with the highest standards of professional excellence in compliance and governance, the Institute recently beheld the inauguration of its Golden Jubilee Year at the gracious hands of Hon'ble Prime Minister, Shri Narendra Modi in the presence of other dignitaries on October 4, 2017 at Vigyan Bhawan, New Delhi. On this historic occasion, the Hon'ble Prime Minister addressed the entire professional commune, dignitaries, students, stakeholders and officials of the Institute pan India and deliberated the role of corporate sector in the growth of the nation along with the role of Company Secretaries in the robust corporate sector and corporate compliance mechanism. This indeed serves a prodigious token of appreciation for our dedication in serving the nation at par and paves the way for advancing our skills for efficaciously contributing towards a New India, 2022.

3. Felicitations of Dignitaries at ICSI Golden Jubilee, 2017

Success is the sum of united efforts, repeated day in and day out. Indeed, the celebration of the glorious 50 years of the Institute in beholding the legacy for serving profession excellence in governance at par with global parameters is a sum total of dedicated efforts of its members, office bearers, regulatory authorities and related stakeholders. Henceforth, to commend the whole-hearted support and efforts of the dedicated stakeholders, the Institute felicitated renowned Company Secretaries, Past Presidents and Past Secretaries of ICSI for their valuable contribution to profession on the occasion of the celebration of Institute's inaugural of ICSI Golden Jubilee on October 4, 2017 at Vigyan Bhawan, New Delhi.

4. Publications and Releases at ICSI Golden Jubilee, 2017

In order to commemorate the significant 50 years in our

journey towards establishing, promoting and subsuming the best practices of compliance and governance at par, the Institute initiated various publications and releases including the following:

(* In Alphabetical Order)

- *Insolvency and Bankruptcy Code, 2016: Resolving Insolvency (A Simplified Guide)*: The booklet is an attempt to popularise the Code amongst all stakeholders covering the broad structure of the code, circumstances under which one can invoke the code, process of insolvency resolution, benefits available. ICSI IPA has attempted to cover the critical aspects of the entire code and present it in a simple language that helps all the stakeholders including corporate (big and small), individuals, small traders, farmers to understand the code and make use of the same at right time.
- *Chartered Secretary: A Special Golden Jubilee Edition*: To venerate the historic celebration of ICSI Golden Jubilee, a Special Golden Jubilee Edition of the Chartered Secretary was released at the event.
- *Corporate Anti-Bribery Code*: Company Secretaries, known as Governance Professionals have a substantial role to play in establishing, promoting and sustaining the transparent and accountable governance in the country and further extend their contribution to New India of 2022. Keeping this in mind, the Institute has come up with a well-researched "Corporate Anti Bribery Code". This Code is to be adopted voluntarily by the Corporate. The code would supplement the government's initiative towards building a corruption free New India by 2022.
- *Financial Literacy Campaign*: The Institute is actively engaged in activities relating to Financial Literacy and Investor Education since 2005. The Institute is pleased to launch financial literacy campaign across India educating elected public representatives, i.e. Members of Rajya Sabha, Members of Lok Sabha, Members of Legislative Assembly in every state, Municipal Committee Councillors and Sarpanches at Rural Levels.
- *Golden Years of ICSI Journey*: With a view to enable the stakeholders to revisit and rejoice the honored prospects, landmark achievements and feats in 49 years of the glorious journey of the Institute, the candid and momentous initiatives of the Institute was made available by the Institute as a ready reference with the release of Golden Years of ICSI Journey.
- *ICSI Motto Song*: A Song, imbedding the cinematic version of Institute's motto of "Satyam Vada Dharmam Chara" was also released on this momentous day of the Institute.
- *Misuse of Corporate Structure: Prevention and Remedies*: This Publication is a compilation of the recent regulatory actions taken against corporate misfeasance with an intent to deliberate upon the finer nuances of this issue, the entailing consequences, the remedies, the global scenario and the ultimate takeaway of avoiding this route in whatsoever circumstances.
- *Model Governance Code for Meetings of Gram Panchayats*: The Code seeks to prescribe a set of principles for convening and conducting Meetings of Gram Panchayats and matters related thereto. The principles enunciated in

this Code for Meetings of the Gram Panchayats are equally applicable to meetings of Standing Committees, unless otherwise stated or stipulated by any other applicable laws, Guidelines, Rules or Regulations.

- *The Insolvency and Bankruptcy Code, 2016 – A Boon for Bankers*: ICSI IPA has prepared a brochure for bankers for sensitizing them on the Code.
- *Vision New ICSI, 2022*: To be persistent in serving the nation by developing governance professionals par excellence, the Institute has come forward in revisiting its vision and adopting Vision ICSI 2022 under the perspective of transformations taking place under Vision New India 2022 towards public policy, legal and regulatory environment and the culture of good governance throughout the nation.

5. Shaheed Ki Beti

With a thought to help the daughters of Martyrs who laid down their lives for protecting the sovereignty of the country with the best of the education and training, the Institute has launched a novel initiative known as “Shaheed ki Beti”. Under this initiative, the Institute has discontinued the practice of giving mementoes, etc. to the dignitaries/speakers invited for various programmes of the Institute and the said amount will be transferred to the dedicated corpus to be utilized for the education/ welfare of the daughters of martyrs. The first certificate under this initiative was presented to Shri Narendra Modi, Hon’ble Prime Minister of India who was the Chief Guest on the launch of ICSI Golden Jubilee Year on October 4, 2017.

6. Memorandum submitted to Hon’ble Parliamentary Committee on Public Undertakings

A Committee on Public Undertakings for Horizontal Study on Corporate Governance in CPSUs had invited Institute’s views on Corporate Governance in CPSUs. Accordingly, a Memorandum containing ICSI’s views was submitted to Hon’ble Parliamentary Committee during the month.

7. Golden Jubilee Year - National Convention of Company Secretaries (45th National Convention)

As you are aware that the 45th National Convention of Company Secretaries is scheduled to be held at Al Saj Convention Centre, Thiruvananthapuram (Trivandrum), Kerala during November 22-24, 2017 on the theme, “Company Secretary: Shaping New India 2022 Through Good Governance”. We are extremely contented to receive the overwhelming response of the delegates for registering in the Golden Jubilee Year – National Convention of Company Secretaries. The convention is set to serve as an intellectual platform for the delegates on the contemporary areas of professional interest wherein a galaxy of speakers have been roped in for deliberating at various technical sessions.

8. The Integrity Pledge at ICSI

To encourage all stakeholders to collectively participate in the prevention of and to fight against corruption and raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption, the Central Vigilance Commission has decided to observe the “Vigilance Awareness Week” from 30th October to 4th

November, 2017 with the theme “My Vision- Corruption Free India”. In our out and out support to fight the menace of corruption, the Institute arranged to administer the Integrity Pledge to all the ICSI Staff on October 30, 2017 in the offices at New Delhi and Noida respectively.

9. The Rashtriya Ekta Diwas Pledge at ICSI

As the nation observed the birth anniversary of Sardar Vallabhbhai Patel as “Rashtriya Ekta Diwas (National Unity Day)” on October 31, 2017, on this occasion, taking this opportunity to re-affirm the inherent strength and resilience of our nation to withstand the actual and potential threats to the unity, integrity and security of our country, the Institute arranged to administer the Rashtriya Ekta Diwas Pledge to all the ICSI Staff on October 31, 2017 in the offices at New Delhi and Noida respectively.

10. OECD Asian Roundtable on Corporate Governance, 2017

The OECD Asian Roundtable on Corporate Governance, duly initiated in year 1999, is a unique platform for engagement by senior officials, regulators, and practitioners including international and regional institutions and academician committed to advance the culture of Corporate Governance throughout Asia. The Roundtable for this year was held on October 19-20, 2017 at Tokyo, Japan, duly attended by CS (Dr.) Shyam Agrawal, President, ICSI and CS Dinesh Chandra Arora, Secretary, ICSI ensuring the marking of our greater global acclaim than ever.

11. 17th International Conference on Corporate Governance & Sustainability and Golden Peacock Awards

The 17th International Conference on Corporate Governance & Sustainability along with the presentation of Golden Peacock Awards & Global Business Meet organized by Institute of Directors was held on October 25 - 27, 2017 at London (UK). The event was based on the theme of “The Board: Emerging Issues of Corporate Governance and Sustainability Challenges”, which deliberated in detail the current corporate scenario. The Institute participated in the conference along with the delivery of a presentation by CS Dr. Shyam Agrawal on the “Role of Company Secretary as a Governance Professional” which was well appreciated.

12. International Meetings

- ICSI delegation met H.E. Ms. Anju Ranjan, Consul General of India, Edinburgh requesting her to place the link of ICSI website at Consulate General’s website.
- ICSI delegation led by President, ICSI met Mr. David Kerr, Chief Executive, Insolvency Practitioners Association, UK (IPA-UK) in relation to convening the proposed International Conference on the Insolvency and Bankruptcy Code, 2016.

13. Report of the SEBI Committee on Corporate Governance

In a robust move to strengthen the principles of Corporate Governance, India witnessed a landmark moment, when the Report of the SEBI Committee on Corporate Governance under the chairmanship of Shri Uday Kotak was submitted to the Securities and Exchange Board of India. The Report containing a total of 11 chapters,

significantly enlists recommendations pertaining to almost all areas impacting the structure of corporate governance of a company. Three of these recommendations have specific relevance for the members of the Institute:

- The Committee recognizing the significance of secretarial functions in efficient board functioning recommended the extension of Secretarial Audit to all material unlisted Indian subsidiaries.
- The second recommendation called for a certificate from a company secretary in practice providing that none of the directors on the board had been debarred or disqualified from being appointed or continuing as directors by SEBI/MCA or any statutory authority.
- Also, the Committee while defining senior management recommended that the term 'senior management' shall specifically include Company Secretary.

14. Round Table Deliberation on Shell Companies and Recent Regulatory Actions

The Institute in furtherance of its dedicated support towards the governments' revolution against Shell companies, organized a meeting of professionals at ICSI headquarters on September 29, 2017, to deliberate upon the regulatory actions against disqualified directors, striking off of companies, etc. Further, the role of professionals in identification of shell companies, strengthening of due diligence and KYC norms, and suggestive initiatives to be undertaken by the ICSI were also discussed at length.

15. ICSI Competition Law Month

In the wake of pressing need of the Competition Law to ensure the competitiveness of the market along with ensuring the equitable growth of the businesses, a clear understanding is necessary with the relevant rules and regulations of competition law. Henceforth in order to apprise the advance understanding and acumen of members, students, professionals and related stakeholders in Competition Law, the Institute in association with Competition Commission of India is celebrating "Competition Law Month", wherein programmes on the relevant Themes and Sub-Themes would be organized on pan India basis.

16. ICSI IPA Certification Course on Insolvency and Bankruptcy Code, 2016

ICSI Insolvency Professionals (ICSI-IPA) in its constant endeavour to educate and train the Insolvency Professionals (IPs), has started organising intensive training programmes in the form of 3 days Certification Course on Insolvency and Bankruptcy Code, 2016 (Code) on PAN India basis. The pilot Certification Course was organized at Delhi from October 5-7, 2017, along with the release of its publication titled "Practical Aspects of Insolvency Law" at the hands of CS Dr. M S Sahoo, Chairperson, IBBI and CS (Dr.) Shyam Agrawal, President, ICSI.

17. 4th Meeting of ICSI Task Force on SEBI Laws

With an objective to ensure comprehensive check and balances of compliances under SEBI law, periodically with the duly supported observations on compliance level and

the reasons for lapses, if any along with the action plan to prevent recurrence of lapses, the Institute had constituted an Expert Task Force on Audit/ Due Diligence/Compliance of SEBI Laws with eminent experts in the related field. Consequent with the three successful meetings, the 4th Meeting of the Task Force was held on October 25, 2017 at Grand Hyatt, Mumbai.

18. Meeting of the Secretarial Standards Board

Following the recently honoured glory of the podium accorded to both SS-1 and SS-2 by Malaysian Association of Company Secretaries by adopting them as their own secretarial standards, the Institute is in the process of rolling out Secretarial Standards on Report of Board of Directors duly deliberated in the 110th Meeting of the Secretarial Standards Board held on October 28-29, 2017. The draft of the related standards was duly considered at the 110th meeting of the board. Further, the views and comments of the Board members were also solicited on the proposed new syllabus.

19. Meeting of the Auditing Standards Board

The Institute has established Auditing Standards Board with the intent of proposing auditing standards for the members undertaking auditing functions whether secretarial or any other audit, as provided under the laws in force. To strengthen the related auditing standards, comments and suggestions from the stakeholders and public at large had been solicited and the same were tabled at the recently culminated meeting of the Board held on October 27- 28, 2017.

20. Guidance Notes on revised SS-1 & SS-2

To facilitate the compliance and smooth implementation of revised Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2), the updated Guidance Notes on revised SS-1 & SS-2 have been published and placed at the Institute's website. These Guidance Notes elucidate the basis for setting the particular Standard, explain the procedural & practical aspects thereof, give illustrative examples and also integrate the responses to issues/queries raised by the stakeholders. It is expected that the notes shall be of great help to all the stakeholders.

21. Notification of Section 247 and Companies (Registered Valuers and Valuation) Rules, 2017

Ministry of Corporate Affairs, recently notified Section 247 pertaining to Registered Valuers as well as the Companies (Registered Valuers and Valuation) Rules, 2017. The section along with the relevant rule upheld the eligibility of the members of the Institute with the relevant years of experience qualifying to be registered as Valuers and take up activities of registered valuation for the Securities and Financial Assets.

22. GST Educational Series – 100 Issues

With a view to build the capacities of its members, students, and also to advance the knowledge of the public at large about the fact and facets of GST, the Institute initiated the GST Educational Series, scheduled to be published on daily basis. The series has been well

received and academically successful. This is evident with the fact that the Institute has brought out 100 issues of GST Educational Series till date. The electronic version of all the issues of the series is also available at Institute's website, duly accessed at <https://www.icsi.edu/GSTEducationalSeries.aspx>.

23. GST Point

To thoroughly assist in the successful implementation of GST, the Institute has launched a GST Point, a consolidated platform to reply to the queries, difficulties and challenges faced by consumers, manufacturers, traders, MSMEs, public at large, professionals, etc. in understanding and effectively executing the Goods and Services Tax Law. So far, thirty five (35) sessions have successfully been completed under GST Point. The queries received and answered by the experts cover wide range of topics including registration, filing, and input tax credit along with other GST modalities.

24. Crash Course on Goods and Services Tax

Keeping in line with the changing regulatory environment the Institute has introduced Goods and Services Tax to replace selected topics of Indirect Tax in the syllabus of Papers related to Tax Laws and Practices. In furtherance to advance the vibrant understanding of the students in the topics related to GST, a detailed supplement is uploaded at the website of the Institute and Crash Courses on GST are also launched through various Regional Offices and Chapters to provide hand in hand information and enhanced knowledge in GST.

25. ICSI GST App

In view to augment the fortified understanding and easing out the successful implementation of GST, the Institute launched GST App for public at large which enables users to get latest news, articles, regulations and various publications on GST by ICSI. The App, which is available on android as well as iOS has been downloaded by more than 16000 users.

26. National Conference on Insolvency and Bankruptcy Code and Real Estate Regulation Act

The Institute through its Insolvency Professionals Agency (ICSI - IPA) collaborated with the Associated Chambers of Commerce and Industry of India (ASSOCHAM) in organizing a National Conference on Insolvency and Bankruptcy Code and Real Estate Regulation Act on October 25, 2017 at New Delhi.

27. Training Programme to empanel Peer Reviewers

In furtherance to advance the objectives of the Peer Review in its true letter and spirit, Institute is persistent in conducting the training programmes for the Peer Reviewers ensuring that they are duly equipped with the thorough understanding and indulgence of the procedure, manner, prescriptions, guidelines and other related aspects of conducting Peer Review. Continuing with the series of training programmes to empanel more Peer Reviewers with the Institute, Training Programme in the month of

October, 2017 was conducted on October 13, 2017 at Kanpur. Many such Training Programmes are scheduled in the coming months too.

28. Webcast by President ICSI and Senior Officials of the Institute for Students on December 2017

A webcast for the students appearing in December 2017 examinations was organized on October 11, 2017 addressed by the President ICSI and Senior Officials of the Institute to resolve the queries pertaining to the various initiatives taken by the Institute, examination process, computer based examination, open book examination, generation of admit card, eLearning, training and other related academic queries. During the webcast, many queries were received from the stakeholders who were duly responded. The webcast received an encouraging response from the students.

29. ICSI Study Centre Scheme

As you are aware that the Study Centre Scheme was launched by the Institute in order to break the distance barrier for students belonging to cities / locations in which the representative offices of the Institute are not in existence. So far, 56 Study Centers have been established in collaboration with reputed colleges in different locations. Another centre at Ananda College, Ananda Nagar, Devakottai Extension, Sivagangoi District has been established in the month of October, 2017.

The details of all the Study Centers established so far by the Institute is available at the website of the Institute at the link https://www.icsi.edu/docs/Webmodules/Study_Centre.pdf

30. Girisagar Vidyarthi Vikas Yojana – Opening of Study Centres

To create clear visibility and presence of the Institute among the students, schools and colleges pan India, initially with a focus on Hilly and Coastal Cities endorsing the huge potential for the growth of the profession, the Institute came up with ICSI Giri Sagar Vidhyarthi Vikas Yojana duly launched on July 1, 2017 at Vadodara. Taking an increase in the number of the study centres, nine (09) study centres have been established under the scheme till the month of October, 2017.

31. Result of PMQ Course in Corporate Governance, June 2017

The Result of the examination for PMQ Course in Corporate Governance, held in June 2017 has been declared and duly uploaded on the Institute's website at the link https://www.icsi.edu/webmodules/PMQ_RESULT_June_2017.pdf

32. Admit cards for students appearing in December 2017 examination

The admit cards for the students appearing in December 2017 examination will be duly uploaded on the website of the Institute around 10-12 days prior to the commencement of examination. Students can download the same from the website of the Institute.



मंत्रिमंडल के मेरे सहयोगी कॉरपोरेट अफेयर्स राज्यमंत्री श्री पी पी चौधरी जी, Institute of Company Secretaries of India के अध्यक्ष डॉक्टर श्याम अग्रवाल जी, युवा अध्यक्ष और इस कार्यक्रम में उपस्थित अन्य महानुभाव आज ICSI अपने 50वें वर्ष में प्रवेश कर रहा है। इस अवसर पर मैं इस संस्था से जुड़े सभी लोगों को बहुत-बहुत बधाई देता हूँ। आज मुझे बहुत खुशी है कि मैं ऐसे विद्वानों के बीच आया हूँ जो इस बात के लिए जिम्मेदार हैं कि देश में मौजूद प्रत्येक कंपनी - कानून का पालन करे, अपने बही-खातों में गड़बड़ी ना करे, पूरी पारदर्शिता रखे। आप अपनी जिम्मेदारी जिस तरह से निभाते हैं, उसी से देश का corporate culture तय होता है। आपकी संस्था का motto भी है- 'सत्यम वद्, धर्म चर' यानि सत्य बोलो और नियम-कानून का पालन करो। आपकी दी हुई सही या गलत सलाह देश के corporate governance को प्रभावित करती है।

साथियों, कई बार ऐसा भी होता है, जब शिक्षा एक दी गई हो, लेकिन उसे ग्रहण करने वालों का आचरण भिन्न रहता है। जैसे एक ही शिक्षा युद्धिष्ठिर ने भी ली थी, दुर्योधन ने भी ली थी। लेकिन बर्ताव दोनों का बिल्कुल अलग रहा। महाभारत में दुर्योधन ने कहा है- जानामि धर्मम न च मे प्रवृत्तिः जानामि अधर्मम न च मे निवृत्तिः यानि 'ऐसा नहीं है की मैं धर्म और अधर्म के बारे में नहीं जानता था। लेकिन धर्म के मार्ग पर चलना मेरी प्रवृत्ति नहीं बन पाई और अधर्म के मार्ग से मैं निर्वर्ति नहीं हो सका'। ऐसे ही लोगों को आपका संस्थान 'सत्यम वद्, धर्म चर' का पाठ याद दिलाता है। देश में ईमानदारी को, पारदर्शिता को institutionalise करने में आपके संस्थान की बहुत बड़ी भूमिका है। भाइयों और बहनों, आचार्य चाणक्य ने कहा है- एकेन शुष्क वृक्षेण, दह्य मानेन वह्नि ना।

दह्यते तत वनम सर्वम कुपुत्रेण कुलम यथा।। यानि जैसे पूरे वन में अगर एक ही सूखे वृक्ष में आग लग जाए तो पूरा वन जल जाता है। उसी प्रकार परिवार

में कोई एक भी गलत काम करे तो पूरे परिवार की मान-मर्यादा, इज्जत, प्रतिष्ठा सब धूल में मिल जाती है।

साथियों, ये बात देश के लिए भी शत-प्रतिशत लागू होती है। हमारे देश में भी मुझे भर लोग ऐसे हैं, जो देश की प्रतिष्ठा को, हमारी ईमानदार सामाजिक संरचना को कमजोर करने का काम करते रहे हैं। इन लोगों को सिस्टम और संस्थाओं से हटाने के लिए सरकार ने पहले दिन से स्वच्छता अभियान शुरू किया हुआ है। • इसी स्वच्छता अभियान के तहत सरकार बनते ही Special Investigation Team – SIT बनाई गई। • विदेश में जमा काले धन के लिए Black Money Act बनाया गया। • कई नए देशों के साथ टैक्स ट्रीटीज की गई और पुराने टैक्स समझौतों में बदलाव किया गया। • Insolvency और Bankruptcy Code बनाया गया। • 28 साल से अटका हुआ बेनामी संपत्ति कानून लागू किया गया। • कई वर्षों से लटका हुआ Good And Simple Tax- GST लागू किया गया। • Demontisation का फैसला लेने की हिम्मत भी इसी सरकार ने दिखाई। भाइयों और बहनों, इस सरकार ने देश में संस्थागत ईमानदारी को मजबूत करने का काम किया है। ये सरकार के अथक परिश्रम का ही परिणाम है कि आज देश की अर्थव्यवस्था कम Cash के साथ चल रही है। Demontisation के बाद Cash to GDP Ratio अब 9 प्रतिशत पर आ गया है। 8 नवंबर 2016 से पहले ये 12 प्रतिशत से ज्यादा हुआ करता था। अगर देश में, देश की अर्थव्यवस्था में ईमानदारी का नया दौर शुरू नहीं हुआ होता तो क्या ऐसा संभव था? आपसे अच्छा इसे कौन जानता है कि पहले जिस तरह आसानी से black money का लेन-देन होता था, अब वैसा करने से पहले लोग 50 बार सोचते हैं !

साथियों, महाभारत में ही एक और किरदार थे- शल्य। शल्य कर्ण के सारथी थे, और युद्ध के मैदान में जो दिखता था, उसे वो हतोत्साहित करते रहते थे, निराशा का वातावरण फैलाते रहते थे। शल्य महाभारत में थे, लेकिन शल्यवृत्ति आज भी है। कुछ लोगों को निराशा फैलाने में आनंद आता है। ऐसी वृत्ति के लोगों के लिए आजकल एक क्वार्टर की ग्रोथ कम होना ही सबसे बड़ी खबर हो गई है।

साथियों, ऐसे लोगों के लिए जब Data अनुकूल होता, तो उन्हें Institute और Process सही लगता है। लेकिन जैसे ही ये data उनके प्रतिकूल होता है तो ये संस्थान और उसकी प्रक्रिया पर सवाल खड़े करने लगते हैं। किसी भी नतीजे पर पहुंचने से पहले इन्हें पहचानना बहुत जरूरी है।

भाइयों और बहनों, क्या आपको लगता है कि ऐसा पहली बार हुआ है कि देश में जीडीपी की ग्रोथ किसी तिमाही में 5.7 प्रतिशत तक पहुंची है? नहीं। पिछली सरकार के 6 साल में 8 बार ऐसे मौके आए जब विकास दर 5.7 प्रतिशत या उससे नीचे गिरी। देश की अर्थव्यवस्था ने ऐसे क्वार्टर्स भी देखे हैं, जब विकास दर 0.2 प्रतिशत, 1.5 प्रतिशत तक गिरी। ऐसी गिरावट अर्थव्यवस्था के लिए और ज्यादा खतरनाक थी, क्योंकि इन वर्षों में भारत Higher Inflation, Higher Current Account Deficit और Higher Fiscal Deficit से जूझ रहा था।

साथियों, अगर 2014 के पहले के दो वर्षों को यानि साल 2012-13 और 13-14 को देखें, तो औसत वृद्धि 6 प्रतिशत के आसपास थी। अब कुछ लोग ये कह सकते हैं कि आपने दो ही साल क्यों लिए?

साथियों, दो साल का संदर्भ मैंने इसलिए लिया क्योंकि इस सरकार के तीन साल और पिछली सरकार के आखिरी दो सालों में GDP Data तय करने का तरीका एक ही रहा है। जब सेंट्रल स्टेटिस्टिक्स ऑफिस –CSO- ने

इस सरकार के दौरान GDP में 7.4 प्रतिशत की वृद्धि का data रिलीज किया था, तो कुछ लोगो ने इसे खारिज कर दिया था। उनका कहना था कि Ground reality का उनका अपना जो अनुमान है, उससे ये data मैच नहीं करता। ऐसे लोग कहते थे कि उन्हें ये Feel ही नहीं हो रहा कि अर्थव्यवस्था इतनी तेजी से आगे बढ़ रही है। इसलिए इन चंद लोगो ने ये प्रचार करना शुरू कर दिया कि GDP तय करने के नए तरीके में कुछ गड़बड़ है। तब ये लोग data के आधार पर नहीं अपनी Feeling के आधार पर बातें कर रहे थे और इसलिए उन्हें अर्थव्यवस्था में विकास होता नहीं दिख रहा था। भाइयों और बहनों, लेकिन जैसे ही पिछले दो क्वार्टर में विकास दर 6.1 प्रतिशत और 5.7 प्रतिशत हुई, उन्हीं अर्थशास्त्रियों को ये data सही लगने लगा। भाइयों और बहनों, मैं ना कोई अर्थशास्त्री हूँ और ना ही कभी मैंने ऐसा claim किया है, लेकिन आज जब अर्थव्यवस्था पर इतनी चर्चा हो रही है, तो मैं आपको flash-back में भी लेकर जाना जाता हूँ।

भाइयों और बहनों, एक दौर वो था जब अंतरराष्ट्रीय अर्थव्यवस्था के संदर्भ में भारत को एक नए गुप का हिस्सा बनाया गया था। ये गुप जी-7, जी-8, जी-20 जैसा गुप नहीं था। इस गुप का नाम था- Fragile Five इसे ऐसा Dangerous गुप माना गया था जिसकी खुद की अर्थव्यवस्था तो एक समस्या थी ही, बल्कि ये वैश्विक अर्थव्यवस्था की Recovery में भी बाधा बन रहे थे।

मेरे जैसे अर्थशास्त्र के कम जानकार को अब भी ये समझ नहीं आता कि उस समय बड़े-बड़े अर्थशास्त्रियों के रहते ऐसा कैसे हो गया था। आपको अवश्य याद होगा कि:-

- हमारे देश में उस समय GDP ग्रोथ से ज्यादा Inflation में ग्रोथ की चर्चा होती थी
- Fiscal Deficit और Current Account Deficit में ग्रोथ पर बातें होती थीं।
- रुपए के मुकाबले डॉलर की कीमत में ग्रोथ होने पर हेडलाइन खबरें बनती थीं।
- यहां तक की Interest Rate में ग्रोथ भी सभी की चर्चा में शामिल थी। देश के विकास को विपरीत दिशा में ले जाने वाले ये सभी पैरामीटर्स तब कुछ लोगो को पसंद आते थे। अब जब वही पैरामीटर्स सुधरे हैं, विकास को सही दिशा मिली है तो ऐसे अर्थशास्त्रियों ने आंखों पर पर्दा डाल लिया है। इस पर्दे के कारण उन्हें दीवार पर स्पष्ट लिखी चीजें भी नहीं दिखाई दे रहीं। जैसे:
- 10 प्रतिशत से ज्यादा की Inflation कम होकर अब इस साल औसतन 2.5 प्रतिशत पर आ गई है।
- लगभग 4 प्रतिशत का Current Account Deficit, औसतन 1 प्रतिशत के आसपास ले आया गया है।
- इन सारे पैरामीटर्स को सुधारते समय, केंद्र सरकार अपना Fiscal Deficit पिछली सरकार के साढ़े 4 प्रतिशत से घटाकर साढ़े 3 प्रतिशत पर ले आई है।
- आज विदेशी Investors भारत में रिकॉर्ड निवेश कर रहे हैं। भारत का Foreign Exchange Reserve लगभग 30 हजार करोड़ डॉलर से बढ़कर 40 हजार करोड़ डॉलर के पार पहुंच गया है। अर्थव्यवस्था में ये सुधार, ये विश्वास, ये सफलताएं शायद उनकी नजर में कोई मायने नहीं रखतीं। इसलिए देश के लिए अभी ये सोचने का समय है कि कुछ अर्थशास्त्री देशहित साध रहे हैं या किसी का राजनीतिक हित।

साथियों, ये बात सही है कि पिछले तीन वर्षों में 7.5 प्रतिशत की औसत ग्रोथ हासिल करने के बाद इस वर्ष अप्रैल-जून की तिमाही में GDP ग्रोथ में कमी दर्ज की गई। लेकिन ये बात भी उतनी ही सही है कि सरकार इस ट्रेंड को रिवर्स करने के लिए पूरी तरह से प्रतिबद्ध हैं।

भाइयों और बहनों, कई जानकारों ने इस बात पर सहमति जताई है कि देश की अर्थव्यवस्था के fundamentals strong हैं। हमने reform से जुड़े कई महत्वपूर्ण फैसले लिए हैं और ये प्रक्रिया लगातार जारी रहेगी। देश की financial stability को भी maintain रखा जाएगा। निवेश बढ़ाने और आर्थिक विकास को गति देने के लिए हम हर आवश्यक कदम उठाते

रहेंगे। मैं आश्वस्त करना चाहता हूँ कि सरकार द्वारा लिए गए कदम देश को आने वाले वर्षों में विकास की एक नई league में रखने वाले हैं। वर्तमान में अगर इन structural reform की वजह से किसी सेक्टर को तत्काल सहायता की आवश्यकता है, तो सरकार उसके प्रति भी सजग है। वो चाहे MSME सेक्टर हो, या Export सेक्टर हो या हमारी Non-Formal Economy का हिस्सा हो। आज इस मंच पर मैं अपनी एक बात फिर दोहराना चाहूंगा कि बदलती हुई देश की इस अर्थव्यवस्था में अब ईमानदारी को प्रीमियम मिलेगा, ईमानदारों के हितों की सुरक्षा की जाएगी। मुझे ये पता है कि मुख्यधारा में लौट रहे कुछ व्यापारियों को डर लग रहा है कि कहीं उनके पुराने रिकॉर्ड ना खंगाले जाएं।

साथियों, जो कोई वर्ग ईमानदारी से देश के विकास में शामिल हो रहा है, मुख्यधारा में आ रहा है, उसे मैं ये पूरा भरोसा दिलाना चाहता हूँ कि उन्हें परेशान नहीं होने दिया जाएगा।

GST व्यवस्था में जैसे-जैसे बदलाव की आवश्यकता होगी, हम परिवर्तन और सुधार करते रहेंगे। छोटे व्यापारियों के हित में हमने कुछ बदलाव किए हैं और आगे भी देशहित में बदलाव करने के लिए हम बिना संकोच हर पल तैयार हैं।

भाइयों और बहनों, वर्तमान आर्थिक स्थिति की चर्चा करते हुए मैं कुछ जानकारियां आपके सामने रख रहा हूँ। इन जानकारियों से क्या मतलब निकलता है, उसका निर्णय आप पर, देशवासियों पर छोड़ रहा हूँ।

साथियों, मुझे पक्का यकीन है कि जब आपने अपनी पहली गाड़ी खरीदी थी, तो मजबूरी में नहीं खरीदी होगी। गाड़ी खरीदने से पहले आपने रसोई का बजट देखा होगा, बच्चों की पढ़ाई का खर्च देखा होगा, बड़े-बुजुगों की दवाई का खर्च देखा होगा। इसके बाद कुछ पैसे बचते हैं, तब जाकर घर या गाड़ी के बारे में सोचते हैं।

- ये हमारे समाज की बहुत basic सोच है और ऐसे में अगर देश में जून के बाद पैसेंजर कारों की बिक्री में लगभग 12 प्रतिशत की वृद्धि हुई हो, तो आप क्या कहेंगे?
- आप क्या कहेंगे जब आपको पता चलेगा कि जून के बाद कमर्शियल गाड़ियों की बिक्री में भी 23 प्रतिशत से ज्यादा की वृद्धि हुई है?
- आप क्या कहेंगे जब देश में दो पहिया वाहनों की बिक्री में 14 प्रतिशत से ज्यादा की वृद्धि हुई है।
- आप क्या कहेंगे जब Domestic Air Traffic यानि हवाई जहाज से यात्रा करने वाले लोगों की संख्या में भी पिछले दो महीने में 14 प्रतिशत की बढ़ोतरी हुई है।
- आप क्या कहेंगे जब अंतरराष्ट्रीय Air freight (फ्रेट) Traffic यानि हवाई जहाज के जरिए माल ढुलाई में लगभग 16 प्रतिशत की वृद्धि हुई है।
- आप क्या कहेंगे जब देश में टेलीफोन सब्सक्राइबर्स में भी 14 प्रतिशत से ज्यादा की वृद्धि हुई है।

भाइयों और बहनों, ये वृद्धि संकेत दे रही है कि लोग गाड़ियां खरीद रहे हैं, फोन कनेक्शन ले रहे हैं, हवाई यात्राएं कर रहे हैं। ये Indicators शहरी क्षेत्रों में Demand की ग्रोथ को दर्शाते हैं।

- अब अगर ग्रामीण Demand से जुड़े Indicators को देखें तो हाल के महीनों में ट्रैक्टर की बिक्री में 34 प्रतिशत से ज्यादा की वृद्धि हुई है।
- FMCG के क्षेत्र में भी Demand ग्रोथ का ट्रेंड सितंबर महीने में बढ़ा हुआ दिख रहा है।

साथियों, ऐसा तब होता है जब देश के लोगों का विश्वास बढ़ता है। जब देश के लोगों को लगता है कि हां, अर्थव्यवस्था मजबूत है।

- अभी रिलीज हुआ PMI का Manufacturing Index Expansion Mode को दर्शा रहा है। और Future Output Index तो 60 का आंकड़ा पार कर चुका है।
- हाल में आए आंकड़ों को देखें तो कोयले, बिजली, स्टील और नैचुरल गैस से production में भी काफी अच्छी वृद्धि दर्ज की गई है।
- साथियों, पर्सनल लोन के डिस्बर्सल में भी तेज वृद्धि देखी जा रही है।
- Housing Finance Companies और Non-Banking

Finance Companies के द्वारा दिए गए लोन में भी काफी वृद्धि हुई है। • इतना ही नहीं, कैपिटल मार्केट में अब म्यूचुअल फंड और इश्योरेंस में अधिक निवेश हो रहा है।

• कंपनियों ने IPO's के द्वारा इस साल पहले 6 महीने में ही 25 हजार करोड़ रुपए से ज्यादा की राशि mobilise की है। पिछले साल पूरे वर्ष में ये राशि 29 हजार करोड़ रुपए थी। • Non-Financial Entities में कॉरपोरेट बॉन्ड और Private Placement के द्वारा सिर्फ चार महीने में ही 45 हजार करोड़ रुपए का निवेश किया गया है। ये सारे आंकड़े देश में Financing के broad base को दर्शाते हैं, यानि भारत में अब financing केवल बैंकों के लोन तक ही सीमित नहीं रह गई है।

साथियों, इस सरकार ने समय और संसाधन, दोनों के सही इस्तेमाल पर लगातार जोर दिया है। पिछली सरकार के तीन साल के काम की रफ्तार और हमारी सरकार के तीन साल के काम की रफ्तार में फर्क साफ नजर आता है। • पिछली सरकार के आखिरी तीन सालों में गांवों में 80 हजार किलोमीटर सड़क बनी थी। • हमारी सरकार के तीन सालों में 1 लाख 20 हजार किलोमीटर सड़क बनी है। यानि 50 प्रतिशत से ज्यादा ग्रामीण सड़कों का निर्माण हुआ है। • पिछली सरकार ने अपने आखिरी के तीन साल में 15 हजार किलोमीटर नेशनल हाईवे बनाने के काम अर्वाड किया था। • हमारी सरकार ने अपने तीन साल में 34 हजार किलोमीटर से ज्यादा नेशनल हाईवे बनाने का काम अर्वाड किया है। • अगर इसी सेक्टर में Investment की बात की जाए, तो पिछली सरकार ने अपने आखिरी के तीन वर्षों में भूमि लेने और सड़कों के निर्माण पर 93 हजार करोड़ की राशि खर्च किए थे। इस सरकार में ये राशि बढ़कर 1 लाख 83 हजार करोड़ रुपए से ज्यादा हो गई है। यानि लगभग दोगुना investment इस सरकार ने किया है। आपको भी पता होगा कि Highways के निर्माण में सरकार को कितने प्रशासनिक और वित्तीय कदम उठाने पड़ते हैं। ये आंकड़े दिखाते हैं कि कैसे सरकार ने Policy Paralysis से निकलकर Policy Maker और Policy Implementor का रोल अदा किया है।

इसी तरह रेलवे सेक्टर की बात करें तो: • पिछली सरकार के आखिरी तीन वर्षों में लगभग 1100 किलोमीटर नई रेल लाइन का निर्माण हुआ था। इस सरकार के तीन वर्षों में ये 2100 किलोमीटर से ज्यादा तक पहुंच गया। यानि हमने लगभग दोगुनी गति से नई रेलवे लाइन बिछाई है। • पिछली सरकार के आखिरी तीन सालों में 1300 किलोमीटर रेल लाइनों का दोहरीकरण हुआ था। इस सरकार के तीन सालों में 2600 किलोमीटर रेल लाइन का दोहरीकरण हुआ है। यानि हमने दोगुनी रफ्तार से रेल लाइनों का दोहरीकरण भी किया है।

साथियों, पिछली सरकार के आखिरी के तीन वर्षों में लगभग 1 लाख 49 हजार करोड़ का capital expenditure किया गया था। इस सरकार के तीन वर्षों में लगभग 2 लाख 64 हजार करोड़ रुपए का capital expenditure किया गया है। यानि ये भी 75 प्रतिशत से ज्यादा है। अगर अब मैं Renewable Energy सेक्टर में हो रहे विकास की बात करूं तो: • पिछली सरकार के आखिरी के तीन वर्षों में कुल 12 हजार मेगावॉट की Renewable Energy की नई क्षमता जोड़ी गई थी। अगर इस सरकार के तीन सालों की बात करें, तो 22 हजार मेगावॉट से ज्यादा Renewable Energy की नई क्षमता को ग्रिड पावर से जोड़ा गया है। यानि यहां भी सरकार का Performance लगभग दोगुना अच्छा है। • पिछली सरकार ने अपने आखिरी के तीन सालों में Renewable Energy पर 4 हजार करोड़ रुपए खर्च किए थे। हमारी सरकार ने अपने तीन साल में इस सेक्टर पर 10 हजार 600 करोड़ रुपए से भी अधिक खर्च किए हैं। • पिछली सरकार की तुलना में शिपिंग इंडस्ट्री में विकास की बात करें तो पहले जहां कार्गो हैंडलिंग की ग्रोथ Negative थी, वहीं इस सरकार के तीन सालों में

11 प्रतिशत से ज्यादा की वृद्धि हुई है।

साथियों, देश के फिजिकल इंफ्रास्ट्रक्चर से जुड़े रेल-सड़क-बिजली जैसे महत्वपूर्ण सेक्टरों के साथ-साथ, सरकार सोशल इंफ्रास्ट्रक्चर को मजबूत करने पर भी पूरा ध्यान दे रही है। हमने affordable Housing के क्षेत्र में ऐसे-ऐसे नीतिगत निर्णय लिए हैं, वित्तीय सुधार किए हैं, जो इस क्षेत्र के लिए अभूतपूर्व हैं।

भाइयों और बहनों, पिछली सरकार ने अपने पहले के तीन वर्षों में सिर्फ 15 हजार करोड़ रुपए के प्रोजेक्ट्स को मंजूरी दी थी। इस सरकार ने अपने पहले के तीन वर्षों में 1 लाख 53 हजार करोड़ रुपए की परियोजनाओं को मंजूरी दी है। ये गरीबों को, मध्यम वर्ग को घर देने के हमारे कमिटमेंट को दर्शाता है।

भाइयों और बहनों, देश में हो रहे इन चौराहा विकास कार्यों के लिए अधिक पूंजी निवेश की भी आवश्यकता है। ज्यादा से ज्यादा विदेशी पूंजी कैसे भारत आए, इस पर भी सरकार बल दे रही है। मुझे उम्मीद है कि आप में से कुछ को याद होगा कि जब देश में इश्योरेंस सेक्टर में Reform की चर्चा शुरू हुई थी, तो अखबारों की हेडलाइन बनती थी, कि अगर ऐसा हो गया तो बहुत बड़ा आर्थिक फैसला होगा। ये पिछली सरकार के समय की बात है। वो सरकार चली गई, लेकिन इश्योरेंस सेक्टर में Reform हो नहीं पाया। ये रीफॉर्म हमने किया, इस सरकार में हुआ। लेकिन कुछ लोगो की मानसिकता ऐसी है कि क्योंकि ये Reform उस दौर में नहीं हुआ, उनकी पसंद की सरकार ने नहीं किया, इसलिए उन्हें ये Reform भी बड़ा नहीं लगता। Reform-Reform के गीत गाने वालों को मैं बताना चाहता हूं कि पिछले तीन वर्षों में 21 सेक्टरों से जुड़े 87 छोटे-बड़े Reform किए गए हैं। Defence सेक्टर, Construction सेक्टर, Financial Services, Food Processing, जैसे कितने ही सेक्टरों में निवेश के नियमों में बड़े बदलाव हुए हैं। देश के आर्थिक क्षेत्र को खोलने के बाद से लेकर अब तक जितना विदेशी निवेश भारत में हुआ है, उसकी तुलना अगर पिछले तीन वर्षों में हुए निवेश से करें, तो आपको पता चलेगा कि हमारी सरकार जो Reform कर रही है, उसका नतीजा क्या मिल रहा है।

भाइयों और बहनों, • कंस्ट्रक्शन सेक्टर में अब तक के Total विदेशी पूंजी निवेश का 75 प्रतिशत पिछले तीन वर्षों में हुआ है। • एयर ट्रांसपोर्ट सेक्टर में भी अब तक के Total विदेशी पूंजी निवेश का 69 प्रतिशत, पिछले तीन वर्षों में ही हुआ है। • माइनिंग सेक्टर में अब तक के Total विदेशी पूंजी निवेश का 56 प्रतिशत, पिछले तीन सालों में ही हुआ है। • कंप्यूटर सॉफ्टवेयर और हार्डवेयर में भी अब तक के Total विदेशी पूंजी निवेश का 53 प्रतिशत पिछले तीन वर्षों में ही हुआ है। • इलेक्ट्रिकल इक्विपमेंट्स में भी अब तक के Total विदेशी पूंजी निवेश का 52 प्रतिशत, इसी सरकार के तीन वर्षों में हुआ है। • Renewable Energy सेक्टर में भी अब तक के कुल विदेशी पूंजी निवेश का 49 प्रतिशत, इसी सरकार के तीन सालों में आया है। • टेक्सटाइल्स सेक्टर में अब तक के कुल विदेशी पूंजी निवेश का 45 प्रतिशत, पिछले तीन वर्षों में ही हुआ है। • आपके लिए ये भी चौंकने का विषय हो सकता है कि ऑटोमोबिल इंडस्ट्री, जिसमें पहले से ही काफी विदेशी पूंजी निवेश हो चुका है, उस सेक्टर में भी अब तक के कुल विदेशी पूंजी निवेश का 44 प्रतिशत पिछले तीन सालों में हुआ है। भारत में FDI inflow का बढ़ना इस बात का सबूत है कि विदेशी निवेशक देश की अर्थव्यवस्था पर कितना भरोसा कर रहे हैं। ये सारे निवेश देश के विकास की गति को तेज करने और Job Creation में बड़ी भूमिका निभा रहे हैं।

भाइयों और बहनों, मेहनत से कमाए गए आपके एक एक पैसे की कीमत ये सरकार समझती है। इसलिए सरकार की नीतियों और योजनाओं में इस बात का भी ध्यान रखा जा रहा है कि वो गरीबों और मध्यम वर्ग की जिंदगी तो आसान बनाएं हीं, उनके पैसों की भी बचत कराएं।

साथियों, ये सरकार की लगातार कोशिश का ही नतीजा है कि पिछली सरकार के समय जो LED बल्ब 350 रुपए तक का मिला करता था, अब उसकी कीमत ये सरकार उजाला स्कीम के तहत 40 से 45 रुपए पर ले आई है।

- अब तक देश में 26 करोड़ से ज्यादा LED बल्ब बांटे गए हैं। अगर एक बल्ब की कीमत में औसतन 250 रुपए की भी कमी मानें तो देश के मध्यम वर्ग को इससे लगभग साढ़े 6 हजार करोड़ रुपए की बचत हुई है। इतना ही नहीं, ये बल्ब हर घर में बिजली की खपत कम कर रहे हैं, बिजली बिल कम कर रहे हैं। इससे भी देश के मध्यम वर्ग की सिर्फ एक साल में 13 हजार 800 करोड़ रुपए से ज्यादा की अनुमानित बचत हुई है।
- सरकार की कोशिश की वजह से अब जहां-जहां local bodies अपनी स्ट्रीट लाइटों को LED बल्ब से बदल रही हैं, वहां पर भी उन्हें आर्थिक फायदा हो रहा है। अनुमान है कि एक टायर-टू सिटी में नगर निगम को औसतन 10 से 15 करोड़ रुपए की बचत इससे हो रही है। ये पैसे अब शहर के विकास में खर्च किए जा रहे हैं।
- सरकार ने मध्यम वर्ग को घर बनाने के लिए पहली बार ब्याज दर में राहत भी दी है।

भाइयों और बहनों, मध्यम वर्ग का बोझ कम करने, निम्न मध्यम वर्ग को अवसर प्रदान करने, और गरीबों का सशक्तिकरण करने के लिए ठोस कदम उठाने होते हैं, नीतियां बनानी होती हैं, और उसे समयबद्ध तरीके से लागू करना होता है। इस मकसद को पूरा करने के लिए हम हर कदम उठाते रहे हैं। मैं जानता हूँ कि रेवड़ी बांटने के बजाय, लोगों और देश को Empower करने के काम में, कई बार मुझे आलोचना का भी सामना करना पड़ेगा, लेकिन मैं अपने वर्तमान की चिंता में, देश के भविष्य को दांव पर नहीं लगा सकता।

साथियों, इस सरकार ने Private Sector और Public Sector के साथ Personal Sector पर भी जोर दिया है। Personal Sector, जो लोगों की Personal Aspiration से जुड़ा हुआ है। इसलिए ये सरकार ऐसे नौजवानों को हर संभव मदद दे रही है, जो अपने दम पर कुछ करना चाहते हैं, अपने सपने पूरे करना चाहते हैं।

- मुद्रा योजना के तहत, बिना बैंक गारंटी 9 करोड़ से ज्यादा खाता धारकों को पौने चार लाख करोड़ रुपए से ज्यादा कर्ज दिया गया है।
- इन 9 करोड़ में से 2 करोड़ 63 लाख नौजवान ऐसे हैं जो first timers हैं, यानि जिन्होंने पहली बार अपना कारोबार करने के लिए मुद्रा योजना के तहत कर्ज लिया है। सरकार, स्किल इंडिया मिशन, स्टैंड अप इंडिया-स्टार्ट अप इंडिया जैसी योजनाओं के माध्यम से भी स्वरोजगार को बढ़ावा दे रही है। ज्यादा से ज्यादा लोगों को Formal सेक्टर में लाने के लिए कंपनियों को आर्थिक प्रोत्साहन भी दिया जा रहा है।

भाइयों और बहनों, Formal सेक्टर में Employment के कुछ indicators को देखें, तो

- मार्च 2014 के अंत में ऐसे 3 करोड़ 26 लाख कर्मचारी थे जो सक्रिय रूप से Employees Provident Fund Organisation में हर महीने PF का पैसा जमा करा रहे थे। पिछले तीन साल में ये संख्या बढ़कर 4 करोड़ 80 लाख पहुंच गई है। कुछ लोग यहां भी ये भूल जाते हैं कि बिना रोजगार बढ़े ये संख्या नहीं बढ़ सकती।

साथियों, हम सारी योजनाओं को उस दिशा की तरफ ले जा रहे हैं जो गरीब, निम्न मध्यम वर्ग और मध्यम वर्ग की जिंदगी में Qualitative Change लाए। जनधन योजना के तहत अब तक 30 करोड़ से ज्यादा गरीबों के बैंक

अकाउंट खोले जा चुके हैं, उज्ज्वला योजना के तहत 3 करोड़ से ज्यादा महिलाओं को मुफ्त गैस कनेक्शन दिया जा चुका है, लगभग 15 करोड़ गरीबों को सरकार की बीमा योजनाओं के दायरे में लाया गया है। कुछ दिन पहले ही हर गरीब को मुफ्त बिजली कनेक्शन देने के लिए सौभाग्य योजना की शुरुआत की गई है। सरकार की ऐसी योजनाएं गरीबों को सशक्त कर रही हैं। लेकिन उन्हें सबसे ज्यादा नुकसान अगर किसी चीज से होता है, तो वो है भ्रष्टाचार, वो है कालाधन। भ्रष्टाचार और कालेधन पर रोक लगाने में आपके संस्थान और देश के कंपनी सेक्रेटरीज की बहुत बड़ी भूमिका है। नोटबंदी के बाद जिन तीन लाख संदिग्ध कंपनियों के बारे में पता चला था, जिनके माध्यम से कालेधन का लेन-देन किए जाने की आशंका है, उनमें से 2 लाख 10 हजार कंपनियों का रजिस्ट्रेशन रद्द किया जा चुका है। मुझे उम्मीद है कि Shell कंपनियों के खिलाफ इस सफाई अभियान के बाद डायरेक्टरों में भी जागरूकता बढ़ेगी और इसके असर से कंपनियों में पारदर्शिता भी आएगी।

साथियों, देश के इतिहास में ये कालखंड बहुत बड़े परिवर्तन का है, बहुत बड़े बदलाव का है। देश में ईमानदार और पारदर्शी शासन का महत्व समझा जाने लगा है। Corporate Governance Framework के निर्धारण के समय ICSI Recommendations की काफी सकारात्मक भूमिका रही थी। अब समय की मांग है कि आप एक नया बिजनेस कल्चर पैदा करने में भी सक्रिय भूमिका निभाएं। जीएसटी लागू होने के बाद Indirect Tax के दायरे में लगभग 19 लाख नए नागरिक आए हैं। छोटा व्यापारी हो या बड़ा, जीएसटी में समाहित ईमानदार व्यवस्था को अपनाए, इसके लिए व्यापारी वर्ग को प्रेरित करते रहना भी आपका काम है। आपके संस्थान से लाखों छात्र जुड़े हुए हैं।

क्या आपका संस्थान ये बीड़ा उठा सकता है कि वो एक लाख नौजवानों को GST से जुड़ी छोटी-छोटी जानकारियों की भी ट्रेनिंग देगा। हफ्ते-दस दिन की ट्रेनिंग के बाद ये छात्र अपने-अपने इलाकों में छोटे दुकानदारों को मदद कर सकते हैं, उन्हें GST नेटवर्क से जोड़ने और रिटर्न फाइल करने में मदद कर सकते हैं।

साथियों, 2022 में जब देश अपनी स्वतंत्रता के 75 वर्ष का पर्व मनाएगा, तब के लिए मैं ICSI से कुछ वायदे चाहता हूँ। इन वायदों में आपके संकल्प होंगे और उन संकल्पों को आपको सिद्ध करना होगा।

- क्या आप 2022 तक देश को एक हाई tax complaint सोसाइटी बनाने का बीड़ा उठा सकते हैं?
- क्या आप ये सुनिश्चित कर सकते हैं कि 2022 तक देश में एक भी Shell कंपनी नहीं रहेगी?
- क्या आप ये सुनिश्चित कर सकते हैं कि 2022 तक देश में हर कंपनी ईमानदारी से टैक्स भरेगी?
- क्या आप अपनी मदद का दायरा बढ़ाकर 2022 तक देश में एक ईमानदार business culture स्थापित कर सकते हैं?

मैं उम्मीद करता हूँ कि अपने गोल्डन जुबली वर्ष की शुरुआत में ICSI इन लक्ष्यों की प्राप्ति के लिए अलग से कुछ दिशा-निर्देश तय करेगा और उन्हें अपनी कार्य संस्कृति में भी शामिल करेगा।

एक बार फिर आप सभी लोगों को बहुत-बहुत बधाई।

Commencement of ICSI Golden Jubilee Year Celebrations

The imagination along with the willpower to turn it into reality is the golden pathway to every corner of success



Introduction

Life is a journey. The path we take, what we look back on, and what we look forward to is up to us. We determine our destination. Though we determine the destination, it is our well-timed dedication, hard work, expertise, commitment, skill and perseverance in roping the seeds for the holistic development and welfare of the society, which decides successful tracks of our successive destination. John Milton once quoted that time would surely run fast, but if channelized with hard work and dedication, it would fetch the age of gold. This stands true in case the momentous journey of our alma mater, the Institute of Company Secretaries of India, which has recently celebrated the commencement of its Golden Jubilee year on October 4, 2017 through the gracious hands of our Hon'ble Prime Minister, Shri Narendra Modi.

If we say that a Jubilee is a carnival in the life of any organization, as it keep making the entire commune to look back on significant milestones of their hard work, dedication and good work, and also to look forward on building celebrative milestones in the upcoming journey of their vision, then the celebration of marking the beginning of Golden Jubilee of the organization like the Institute Company Secretaries of India is of much public importance and joy as it calls for successful implantation of good governance, transparency, accountability and directed reforms towards the larger good of larger masses. Recently, the Institute along with the entire professional commune and its stakeholders witnessed one of the proud moment in the glorious journey of the institute entering into the 50th year of its existence with professional excellence and commitment towards establishing, preserving and promoting the standards of governance with the global presence.



The Institute of Company Secretaries of India, as a premier professional body with a vision "To be a global leader in promoting Good Corporate Governance", is persistently playing significant role in advancing the adherence to laws and regulations in related fields, along with associating proficiencies towards the directed operation of laws, rules and regulations in ensuring greatest happiness to the greatest people. In the last five decades of its existence, the pioneering support and association for building the culture of good governance throughout the nation has certainly contributed for the inclusive growth of the nation as a step ahead. The hard-work, dedication and commitment of the Institute towards the effective accomplishment of its vision and mission with precision, has undoubtedly witnessed the climbing of various landmark stairs year by year and decade by decade.

ICSI Golden Jubilee: A Celebration Pan India



With the record of our glorious 50 years of serving, in establishing, advancing and preserving the standards of governance, the Institute today proudly possess repute of being one of the largest body of Company Secretaries in the world with over 50000 members and around 4 lakh students whose needs are being catered through a Central Council, 4 Regional Councils and 69 Chapters and a research and training institute named as CCGRT in Navi Mumbai, and, new Centre of Excellence at Hyderabad.

When the Institute boasts of a pan-India presence, why should the celebrations of such a gigantic moment be limited to a city or two. With this thought in mind, the inaugural of the Golden Jubilee year was celebrated across the length and breadth of ICSI presence. The events were marked by the presence of the who's who of the city or state, the felicitation of past presidents, so on and so forth. In a unique attempt to bind all the members in one pearl string, the pledge for members receiving certificates at the convocation (who had received membership long ago) which was administered by the P. P. Chaudhary (Hon'ble Union Minister of State for Law and Justice & Corporate Affairs), was taken simultaneously at all the locations celebrating this momentous day. The Swachhta Pledge by members, students and employees administered by the President, ICSI was also held in a similar manner.

Glimpses of the celebrations are shared with you herein below:









Felicitations of Dignitaries at ICSI Golden Jubilee, 2017

Success is the sum of united efforts, repeated day in and day out. Indeed, the celebration of the glorious 50 years of the Institute in beholding the legacy for serving professional excellence in governance at par with global parameters is a sum total of dedicated efforts of its members, office bearers, regulatory authorities and related stakeholders.

To commend the whole-hearted support and efforts of the dedicated stakeholders, the Institute felicitated distinguished dignitaries, eminent Company Secretaries, Past Presidents and Past Secretaries of ICSI for their on the celebration of Institute's Golden Jubilee on October 4, 2017 at Vigyan Bhawan, New Delhi.

ICSI At 50: A Journey Beyond

With the Institute entering into its fifty years in year 2017, it has a special mention to state that our country has also completed 75th year of our Quit India movement and recently, in a move towards the holistic growth and development of our nation, the government in order to commemorate 75 years of the Quit India Movement led the nation under a pledge to create a New India that is strong, prosperous and all-encompassing along with a freedom from poverty, corruption, terrorism, filth, casteism and communalism.

In the Vision 2022, sustainable governance is recognized as one out of the seven focused areas. Under the P2G2 Mantra upholding the principles of 'Pro-People, Pro-Active and Good Governance'

(P2G2), the government is taking a long leap towards 2022, and bring about socio-economic changes in the country in order to make it the world's leading economic power. Further, in order to attain the implementation of this vision of New India, the "Sankalp se Siddhi" (Attainment through Resolve) scheme, which aims at good governance.

In the contemporary regime under vision New India 2022, the Institute of Company Secretaries of India is streamlining all its efforts and determination to go hand in hand with the government's initiatives for prosperous, progressive and flourishing India at the global platform. Institute's out and out association towards the flagship initiatives of the government including Ease of Doing Business, Skill India, Make in India, Swachhta Pakhwada, International Yoga Day and alike is a vibrant sign of its professional excellence being served towards the inclusive growth of the nation.

It goes without saying that all the initiatives of the Institute and its professional commune have been through a wide consultative and participative process to assure that ICSI committed to work with the government as partners and facilitators to enhance the potential of corporate regulation in India. At the same time, a very high priority is attached to our obligation serving transparency, governance, compliance to empower all the stakeholders of corporate growth and welfare. With these illustrious moments of embarking upon 50 years of professional excellence, the Institute and all the members of professional commune have served, are serving and would keep serving the nation with dedicated innovative, constructive, meaningful and effective initiatives to spread best practices of governance and compliance culture worldwide.

सत्यं वद! धर्मं चर!

From taking these words of *Taittiriya Upanishad* as our motto to developing a complete song and more so getting it released by the Hon'ble Prime Minister, Shri Narendra Modi at the inaugural ceremony of the Golden Jubilee Year on the 4th of October, 2017, the Institute of Company Secretaries of India has imbibed सत्यं वद! धर्मं चर! in its heart and soul. The motivating lyrics of the song accompanied by the high-spirited music fills the heart of each member and stakeholder with pride of being connected with such an organization and a new zeal to pave an illuminated way forward.



गायक : बाबुल सुप्रियो और शान
संगीत : ललित पंडित
गीत : निरंजन आयंगर
निर्देशन : प्रीति कौशिक बनर्जी

मुखड़ा

उम्मीद के अंबर में हम... बनके खिले जो रोशनी...
कह देंगे हम संसार को, कोई लक्ष्य ना-मुमकिन नहीं...
ज्ञान के और न्याय के हर, राह को थामे हुए...
चल पड़े हैं झूम कर, बस गीत ये गाते हुए...

कोरस : सत्यं वद! धर्मं चर !

कदमों की हर इक गुंज में, बस जीत का एहसास हो
राष्ट्र प्रगति पथ पे हो... और आत्म-बल की आस हो
जब भी चले इस भाव से... खुलते गये हैं रास्ते...
आवाज़ हमने दिल से दी है... गीत ये गाते हुए...

कोरस : सत्यं वद! धर्मं चर !

अंतरा-2

हर उन्नति के रंग में... हर भारतीय हाथ हो...
उद्यम हो या उद्योग हो... हर ओर अपना साथ हो...
जाना शिखर तक है हमें... सच की कलाई थाम कर...
हम जीत के सुर छेड़ेंगे... गीत ये गाते हुए...

कोरस : सत्यं वद! धर्मं चर !

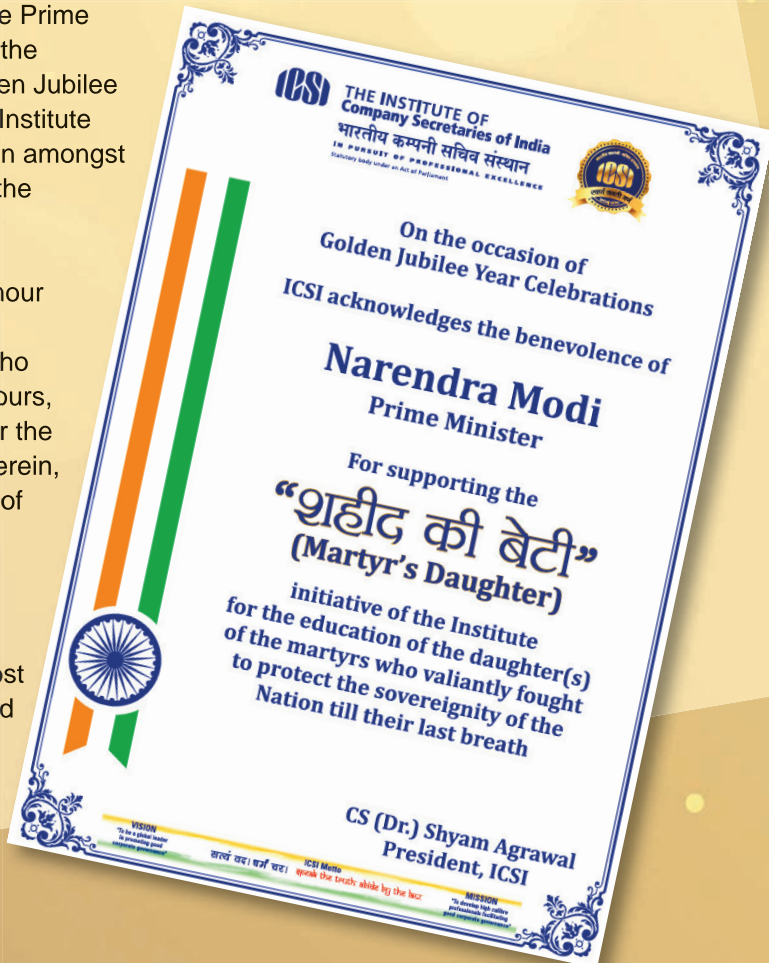


The song which reiterates the spirit of "Speak the truth and Abide by the law" talks not just about the present but how ICSI sees itself and each of its member as a key role player in the dawn of a new India which is not just highly transparent but which is the best governed in the world!!!



With the presentation of the first Certificate to the Hon'ble Prime Minister, Shri Narendra Modi at the inaugural ceremony of the Golden Jubilee Year on 4th October, 2017, the Institute illuminated the hope of education amongst the daughters of the Martyrs of the country.

Understanding the need of the hour and with an intent to honour the members of the armed forces who lose their lives while protecting ours, ICSI launched an initiative under the flagship of 'Shaheed ki Beti' wherein, while discontinuing the practice of presenting flower bouquets and mementos at various events to dignitaries, a certificate shall be issued acknowledging their benevolence for donating the cost of the memento towards the fund under the same title.



HIS THOUGHTS....

The Inaugural Ceremony of the Golden Jubilee Year of the Institute of Company Secretaries of India on the 4th of October, 2017 was a landmark in the history of quite as much the nation as of the Institute; for reasons more than one.

While on one hand the event witnessed, the Institute applauding the efforts of its stakeholders, past presidents, people of eminence, so on and so forth, moments later, the heart of each member and each stakeholder was filled with pride as the Hon'ble Prime Minister, Shri Narendra Modi, recognized and commended the efforts made and the role played by the members of the Institute in shaping the corporate culture and governance scenario in the nation which is striding on the path of development.

Even though each and every word of the Hon'ble Prime Minister has been etched in our hearts, excerpts of the speech are being shared with you herein below:

"I am honoured to be with the experts who ensure that every Company in the country follows the law of the land, maintain complete transparency. The onus is on you to see to it what should be the corporate culture of the country."

"The motto of ICSI is Satyam Vada, Dharmam Chara. It implies that one should speak the truth and follow rules and regulation. Your advice – right or wrong has an impact on the corporate Governance of the country."

"Your institution plays an important role in institutionalising the transparency and honesty in the country. Let us march ahead for building a New India with a renewed vigour, zeal and confidence."

"The importance of a transparent and honest administration is now understood in the country. The recommendations made by the ICSI played a positive role in formulating the Corporate Governance Framework."



HIS EXPECTATIONS....

While the Hon'ble Prime Minister praised and applauded the Institute for partnering in the growth and development of the nation by way of their advice to the corporate he reiterated that the importance of a transparent and honest administration is now understood in the country.

As the government rolled out Vision New India 2022; ICSI, too, while understanding the need and significance developed a Vision New ICSI 2022 to support the government as it treads on the path of growth and development in a sustainable manner, keeping good governance in sight.

Acknowledging the role of Company Secretaries in defining the business culture and of ICSI in institutionalizing the transparency and honesty in the country, Hon'ble Prime Minister pinned his expectations and hopes with the Institute and its members on 4th October, 2017; expectations which would require wholehearted and dedicated efforts on the part of each and every member of the Institute alongwith the Institute in totality.



Can you take the responsibility of making the nation a high tax compliant society by 2022?

Can you ensure that there will not be a single shell company left in the country by 2022?

Can you ensure that by 2022 every company in the country will honestly pay the taxes?

Can you establish an honest business culture in the country by 2022 by expanding the scope of your help?

Apart from these, significant questions, the Prime Minister while having a sensitive view towards the students who have not been able to accomplish their goals of becoming professionals, urged the Institute to provide them with alternate options in the form of GST advisors.

Understanding the need of the hour, ICSI has steadfastly taken forth the mission and signed a Memorandum of Understanding with the National Skills Development Corporation (Ministry of Skill Development and Entrepreneurship) to train over One Lakh particularly CS dropout students, ICSI stakeholders and public at large as "GST Account Assistants.

In 2022, the 75th year of Independence shall in true sense of the world, mark the beginning of a New India, one as envisioned by Hon'ble Prime Minister himself and ICSI shall partner in providing all the necessary support to make this vision a reality.

Skilling is building a better India. If we have to move India towards development then Skill Development should be our mission

Narendra Modi
Prime Minister



In his address at the inaugural ceremony of the Golden Jubilee Year of the Institute of Company Secretaries of India on the 4th of October, 2017, Hon'ble Prime Minister, Shri Narendra Modi considering the ICSI students a valuable resource to the society by virtue of rigorous training undergone and rich exposure gained by them in the process – especially those who chose to drop out midway; suggested that such resources should be developed as GST professionals to enable them to take the benefit of emerging employment and other opportunities and to contribute for this major reform to benefit the society at large.

Reposing his confidence and expressing his concern for the students, who though had treaded on the professional journey but somehow couldn't reach finality, he desired the development of a 1,00,000 strong GST workforce.

Taking steadfast steps in this matter, ICSI has entered into a Memorandum of Understanding (MoU) with the National Skill Development Corporation, Ministry of Skill Development and Entrepreneurship, Government of India.

KEY FEATURES:

- Students, particularly CS dropout students to be trained as GST Accounts Assistants
- Eligible to provide their services as GST Accounts Assistants after the training
- 100 hour course
 - 10 – 15 working days (full time)
 - 4 hours for 25 working days (part time)
- Training Centres / Training Partners of NSDC / BFSI Sector Skill Council ICSI Chapters and Study Centres
- Candidates to receive all benefits of PMKVY (Pradhan Mantri Kaushal Vikas Yojana) Scheme
- Placement of successful candidates as per norms of BFSI SSC/NSDC
- Possibility for Members of the ICSI to become Trainers for various related Professional Development Programmes organized by NSDC
- ICSI Students eligible to provide services as Auditors for auditing the 7,500 and more TCs/TPs under NSDC
- **No Fee is required to be paid by the candidates for the training.**

Corporate Anti-Bribery Code

India is a land of legislators and more so there has never been a dearth of legislations, rules, and regulations as well. However, being a governance centric institute, ICSI is constantly on a look out to enhance the standards of good governance. One such area, rather an area of constant contention has been corruption and bribery. The corporate, forming a significant part of the growth and development of the nation has not been left untouched by this stigma. Realising this issue and its nuances, the Institute has developed a Corporate Anti-Bribery Code to provide for adequate check on the supply side of corruption, propagating model policy for gifting, etc. The purpose of the Code is to ensure that neither the company, nor any of its employees, directors or authorised representatives indulge in bribery in any of their actions taken for and on behalf of the company. Compliance with the code as of now is voluntary, but shall go a long way in enhancing good corporate governance culture in India.

While according definitions to terms such as 'Bribery' and 'Facilitation payments', the Code gives a set of clauses pertaining to different areas enlisted below:

Adherence to Anti-Corruption Laws

Bribery in Private Sector

Facilitation Payments

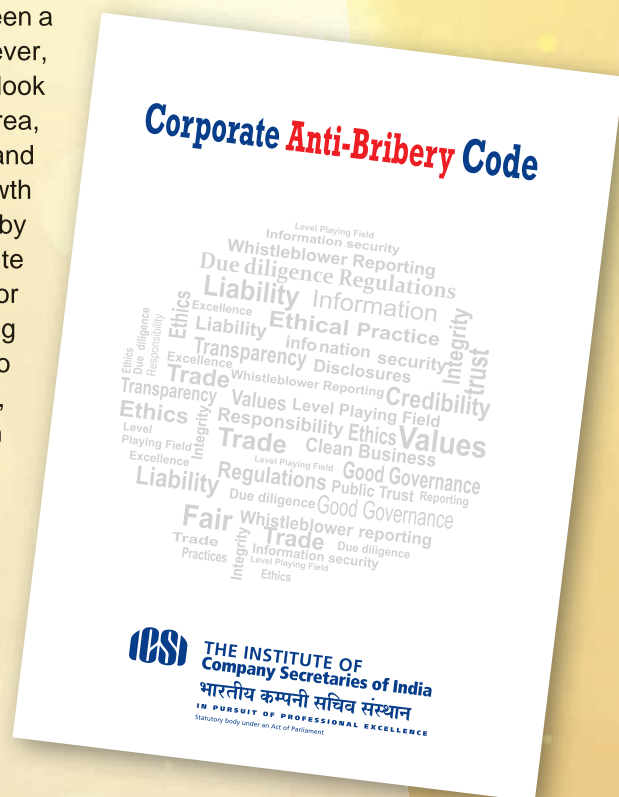
Bribery to Foreign Public Officials

Policy for Gifts, Hospitality and Expenses

Anti-Bribery Training and Awareness Programmes

Monitoring Mechanism for Anti-Bribery Code

Sanctions for non-compliance



Model Governance Code on Meetings of Gram Panchayats

Transparency and Governance are the keys to success for any Institution. The same holds true for local bodies of the nation as well. For a country which boasts of more than 6,00,000 villages, the effective decision making at Panchayat meetings is a key facilitator in achieving the good governance mission of the government and needless to say that principles of good governance must be imbibed in the decision making process followed by the Panchayats in India.

In view of above, the “Model Governance Code for Meetings of Gram Panchayats” fills in the gap by propagating Standard Practices facilitating the convening and conducting of meetings of Panchayats.

The fundamental principles with respect to Governance of Gram Panchayat Meetings are laid down in the respective State laws. In addition thereto, this Governance code intends to supplement such laws for promoting better governance in the functioning of Gram Panchayats.

The Code touches upon the following areas pertaining to the Meetings of Gram Panchayats:

Convening a Meeting

Frequency of Meeting

Quorum

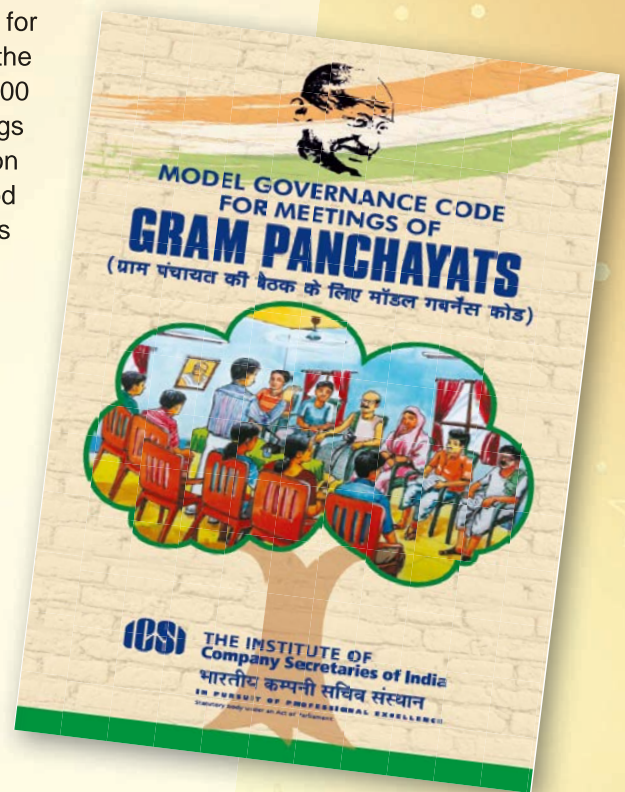
Attendance at the Meeting

Reading of Agenda at the Meeting

Minutes of the Meeting

Maintenance of Records

Functions of the Secretary



Pan India Presence

Though the name proudly read The Institute of Company Secretaries of 'India', presence across the country still was a distant dream. Ten months and 16 centres is all that took to achieve this herculean feat.

Talking of the current score, the Institute boasts of 69 Chapter Offices and 56 Study Centres in collaboration with colleges and universities of repute, and government administration; all of which sum up to what can aptly be referred to as Pan-India Presence. The achievement came just in time, i.e., a month before the big day, the inaugural ceremony of the Golden Jubilee Year by the dedicated efforts towards opening these 16 centres during the period of February-September, 2017. An interesting fact worth mentioning is that by the time you are reading this three more centres would have been added to the list. By establishing Study Centres in all States of North Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands, the Institute is making its humble efforts to support the Government initiatives in helping the people of these areas as well as the regions in totality to come to the main stream.

Special focus is being placed in establishing Study Centres in coastal and hilly regions of India as well as in all Smart Cities proposed by the Government of India.



Map Not to scale. The Map is showing various Chapters and Study Centres of ICSI.



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

www.icsi.edu

Dear Professional Colleagues,

The Council of the ICSI approved the Vision New ICSI 2022 and it was released on the day of inauguration of ICSI Golden Jubilee Celebrations on 4th Oct, 2017.

With a view to create New ICSI by 2022, we need to develop a cadre of competent Company Secretaries through quality curriculum including robust training structure.

Accordingly, the Institute is now in the process of implementation of the Vision New ICSI 2022 to achieve its goals.

The Vision New ICSI 2022 envisages constitution of an Academic Board, introduction of CS Executive Entrance Test (CSEET), New Syllabus with focus on Core, Ancillary and Hybrid areas of the CS Profession, on-line Pre-examination Test, New Training Structure and Certification and PMQ Courses with wider choice for the members, the detailed document of Proposed ICSI Curriculum is available at the link:

https://www.icsi.edu/webmodules/Proposed_ICSI_Curriculum_FINAL.pdf

The Institute seeks your valuable views and suggestions on the aforesaid areas for implementing the Vision New ICSI 2022 effectively to achieve its goals by November 17,2017 at the following link:

<https://goo.gl/forms/HHtcpqLr89KUw0b03>

With best wishes,
CS (Dr.) Shyam Agrawal
President

VISION

"To be a global leader
in promoting good
corporate governance"

ICSI Motto

सत्यं वद। धर्मं चर। इष्टकारे कृते नृपतेः कर्तव्ये ह्यु कृते व्रतः

MISSION

"To develop high calibre
professionals facilitating
good corporate governance"

FOLLOW US...



<https://www.facebook.com/ICSI>



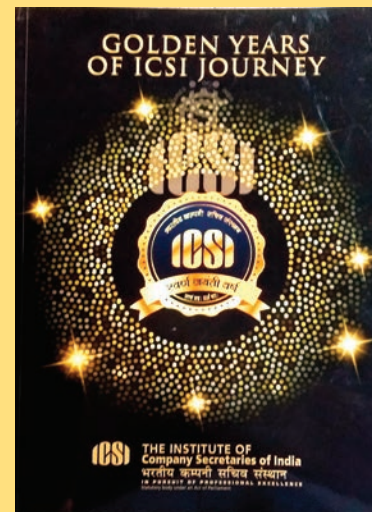
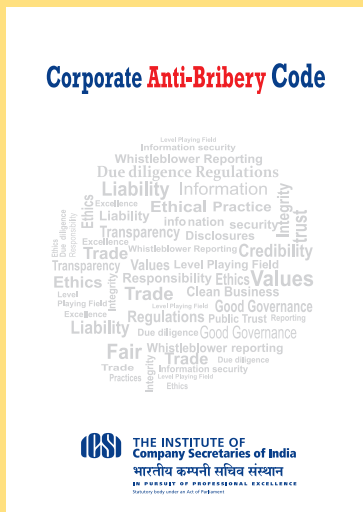
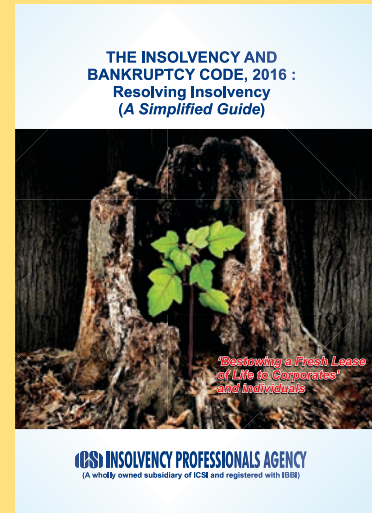
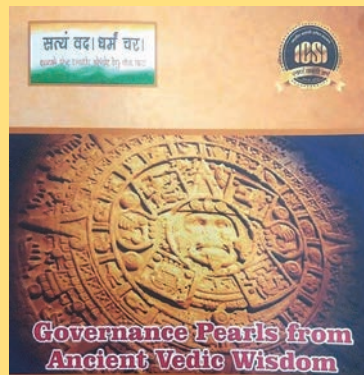
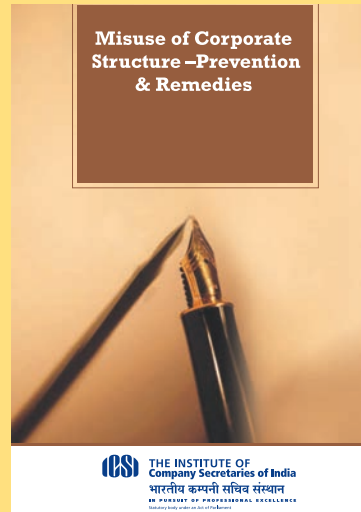
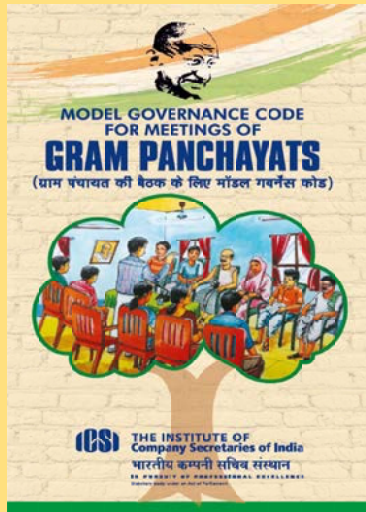
https://twitter.com/ICSI_CS



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>



Publications Released in Golden Jubilee Celebrations of ICSI



ARTICLES

P-37

PART I
ARTICLES ON GOVERNANCE

Financial Reforms for Municipal Governance ➤ P-38
– A Critical Assessment and Roadmap

Madhusudan Sharma

Cities contain about one third of India's population and provide more than half of India's GDP and thus hold tremendous potential as engines of economic growth, job creation and poverty reduction. Central Government has been pushing for financial reforms in (Urban Local Bodies)ULBs to enhance transparency, accountability and efficiency. Under the ambitious Smart City and AMRUT Missions, ULBs are expected to be self-sustaining viable entities by improving their internal resource mobilisation and raising additional resources. Financial reform implementation process in ULBs so far has resulted in a mixed bag of successes, failures and sub-optimal results depending on the approach, institutional mechanism, manpower, software, and other resources deployed. Financial reforms, if implemented effectively, will save huge costs and generate additional resources. There is a need to have tough measures for improving the governance at the third tier of government.

Local Governance ➤ P-43
Neetu Aggarwal

Since Independence, India has experienced a precipitous learning curve with regard to the institutional design and Local Governance in particular. When transition to the democracy took place, India inherited a dysfunctional Local Governance system, based on inappropriate jurisdictions, structure and programs. In past Sixty-Seven years, great progress has been made in designing municipal system and governmental principle intended to promote a sustainable development. Further consideration is also given to the way in which local government is placed within the total system of Government. This article highlights some accomplishments which had provided the building blocks for a development oriented Local administration and replicate the short and long term interferences that will need to be made so that the Local Governmental System can deliver the anticipated outcomes.

Centralisation and Decentralisation: ➤ P-49
The Role of Government

Om Prakash Dani & M.S.Srinivasan

The present trend of thinking in the progressive mind of our age is towards autonomy, decentralization and self-Government. This thinking is in the right direction. But there is also a need and truth behind decentralization. We have to arrive at a synthesis in which the advantages of both can be combined in an optimum proportion. However, future lies not in centralization but decentralization and local autonomy. This means the political power and initiative will pass more and more from the Central Government, administration and bureaucracy to the local people. We have to examine what are the minimum powers which the centre has to retain and what is the role of the Government in bringing local autonomy. This article examines these problems and issues of Government in a holistic perspective.

Democracy, Development and Good ➤ P-52
Governance: The inseparable links in India

Riddhi Thakkar

In recent years, there has been a revolution in governance. Policymakers have argued that decentralised governance enhances democracy, accountability, and transparency. Democratic ideals represent various aspects of the broad idea of "government of the people, by the people and for the people." This article aims to make the individual understand the different aspects of democracy and its implications for the overall development of the country through good governance. Governance to become good governance

needs the participation of people at each stage through which ideas of the same can be achieved for a better welfare of people.

The Digital Footprint: Impacting ➤ P-55
Governance

Shweta Mohanty

The wave of digital technology has gradually encompassed all sectors of the economy. 'E-government' or 'e-governance' involves using information technology, especially the Internet, to improve the delivery of government services to citizens, businesses, and other government agencies. The government's Digital India vision has been designed around three core areas: 1. setting up a robust digital infrastructure that would help in e-governance and m-governance. 2. To ensure digital literacy for citizen empowerment, by developing skills and capacities of not only the citizens but also of the government agencies and employees at large. 3. Efficient and timely delivery of high priority citizen services through multiple modes, as also to focus on re-engineering of such government processes and services to simplify governance. The digital environment offers opportunities for more collaborative and participatory relationships across stakeholders to actively shape political priorities. The cost and operational feasibility of digitization also promotes financial inclusion. Needless to say, in the wake of a revolution like Digital India, and the ever changing advancements in technology, it also becomes imperative to address security concerns arising from increased, multi-modal access to digital interface and co-creation of viable and transformative technologies (Block chain, digital currency, etc.).

Catalyzing Panchayat Governance for ➤ P-60
Spurring Inclusive Growth

CS (Dr.) S K Gupta

Mahatma Gandhi, Father of the Nation, dreamt of 'Gram Swaraj' or village self-governance. Today in the Constitution of India there is a legal framework for democratically constituted Panchayat. Being the closest and most accessible institution of local governance and service delivery for the rural population the role of Panchayat remains most crucial and relevant. Empowered and active Panchayats have the potential to become effective vehicle for achieving the cherished objective of inclusive growth. Panchayats can become effective if they are aware of local citizens' needs, function in a democratic way, adopt an inclusive approach, execute social schemes effectively giving priority to the poor and vulnerable while remaining accountable to the people.

PART II
GST AND OTHER ARTICLES

Taxation of Goods Transport Agency Service ➤ P-65
Under GST

Gurinder Singh

Goods Transport Agency Service is one of the key sectors of service industry which shoulders an important responsibility for the core, manufacturing and agricultural sectors by moving the freight from one corner of the country to another. The Governments of the day, therefore, have always been careful in determining the taxation scheme for this sector. GST is no exception to the said philosophy with the Government bringing in reduced tax rates both under reverse charge and forward charge options giving flexibility to the sector to do a bit of tax planning. The clarity given by the Government in GST law on ancillary support services will surely avoid litigation. The exemptions earlier enjoyed by the sector in service tax regime have been maintained in the GST regime. However, the sector continues to seek extension of GST to the petroleum products that would bring the whole set of inputs used by them in the credit chain and avoid cascading effect of taxes. The article on the taxation of "Goods Transport Agency Service" under GST regime deals with various scenarios in the transportation sector especially the changes made by the Government vis a vis the scheme prevalent in pre-GST regime.

Section 236 of Companies Act 2013: Does it Contemplate Forced Buyout of Minority Shareholders' Shares? » P-69

Dr K R Chandratre

Section 236 of the Companies Act 2013, entitled 'Purchase of minority shareholding' seeks to provide a mechanism for acquisition of minority shareholding of a company by the majority, inasmuch as it provides that in the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of 90% or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming owner of 90% of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, shall notify the company of their intention to buy the remaining equity shares. However, as the article concludes, it seems clear that section 236 does not provide for a forced buyout of the minority shareholders' shares, and hence the minority shareholder is entitled to refuse to sell his shares in response to the offer made by the majority shareholder.

Registration of Valuers Rules Require Revamp » P-72

G M Ramamurthy

Simultaneously with the bringing into force of section 247 of the Companies Act, 2013 relating to registration of valuers, the Central Government has notified on 18-10-2017 the Companies (Registered Valuers and Valuation) Rules, 2017. The Rules are intended to regulate the registration of valuers for diverse kinds of assets, compulsory membership of the intended applicant with a registered valuers organisation, eligibility and conditions of registration of valuers, providing a model Code of Conduct for the registered valuers, etc. The Rules will apply to the regulations framed under the Insolvency and Bankruptcy Code. At present, a transitory period up to 31.03.2018 has been built in the Rules. There are some areas in the Rules which require a fresh look and revamping. This should be done with utmost priority so that the process of registration will be quite smooth.

RESEARCH CORNER P-77

ICSI – CCGRT ANNOUNCES Unique Competition on Analysis of the ICSI-Premier on Company Law (Vol.-1) » P-78

ICSI – CCGRT ANNOUNCES Unique Critical Research Analysis of Indian Companies Act, 2013 on Nidhi Company » P-80

LEGAL WORLD P-83

- LMJ 25:11:2017 The decision of the Directors was a commercial decision made in the interest of the Management of the Company. It is also significant to note that the appellants have only 100 shares which are only insignificant as compared to the total shares and the contention that the relevant articles were amended only to defeat the rights of the appellants in respect of those 100 shares, is wholly untenable.[SC]
- LW 79:11:2017 SEBI can recover interest on penalty. [SC]
- LW 80:11:2017 Supreme Court lays down guidelines for compounding of offence of cheque dishonour.
- LW 81:11:2017 The land belongs to State of Maharashtra or Port Trust. In such a situation where the Government is the owner of the site, obviously Government could not have acquired the land and in the case of its own ownership, there was no necessity for

- the acquisition of land. [SC]
- LW 82:11:2017 All five different Packages as well as the Corporate Guarantee have separate arbitration clauses and they do not depend on the terms and conditions of the Original Package No.4 TD nor on the MoU. [SC]
- LW 83:11:2017 The Delhi Rent Act contains a provision by virtue of it, the provisions of the Act do not apply to certain premises but that does not mean that the Arbitration Act, ipso facto, would be applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes.[SC]
- LW 84:11:2017 The interim relief paid by the respondent to its employees is not a "gift" or "inam", but is a part of wages, as defined under Section 2(22) of the ESI Act.[SC]
- LW 85:11:2017 The allegations in the instant matter appear to be a case of deficiency in after sales services which is a case of an individual consumer dispute and there is no competition issue involved in the matter. [CCI]
- LW 86:11:2017 The Informant has to avail its remedies in respect of its grievances highlighted herein in respect of the tendering process elsewhere and no case of contravention of the provisions of the Act is made out against the Opposite Party. [CCI]

FROM THE GOVERNMENT P-93

- Relaxation of additional fees and extension of last date of filing AOC-4 and AOC-4 (XBRL non-IndAS) under the Companies Act, 2013-reg.
- The Companies (Removal of Difficulties) Second Order, 2017.
- Delegation of powers and functions by Central Government to IBBI.
- 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.
- The Companies (Registered Valuers and Valuation) Rules, 2017.
- Date of coming into force of provisions of section 247 of the Companies Act.
- Transfer of Shares to IEPF Authority
- Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.
- Clarification regarding the timelines for making applicable/available new Form DPT-3 issued vide the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 -reg.
- Date of coming into force of provision to clause (87) of section 2 of the Companies Act, 2013.
- the Companies (Restriction on number of layers) Rules, 2017.
- the Companies (Acceptance of Deposits) Second Amendment Rules, 2017.
- Review of Block Deal Window Mechanism.
- Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015-Amendments
- Criteria for Settlement Mode of Commodity Derivative Contracts
- Non-compliance with the Minimum Public Shareholding (MPS) requirements
- Categorization and Rationalization of Mutual Fund Schemes
- Investments by FPIs in Government Securities
- Foreign Portfolio Investment in Corporate debt securities
- Review of norms for participation in derivatives by Mutual Funds
- Participation of Foreign Portfolio Investors (FPIs) in Commodity Derivatives in IFSC
- Prevention of Unauthorised Trading by Stock Brokers
- Clarification to Enhanced Supervision Circular
- Change in reporting norms for Category III Alternative Investment Funds ("AIFs") regarding investment in commodity derivatives market.

OTHER HIGHLIGHTS P-117

- Members Restored
- Certificate of Practice cancelled
- Ethics & Sustainability Corner
- GST Corner
- CG Corner

Articles in Chartered Secretary

Guidelines for Authors

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

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Professor..... declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
 - a. the article titled "....." is my original contribution and no portion of it has been adopted from any other source;
 - b. this article is an exclusive contribution for Chartered Secretary and has not been / nor would be sent elsewhere for publication; and
 - c. the copyright in respect of this article, if published in Chartered Secretary, shall vest with the Institute.
 - d. the views expressed in this article are not necessarily those of the Institute or the Editor of the Journal.
3. I undertake that I:
 - a. comply with the guidelines for authors,
 - b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing.
 - c. shall be liable for any breach of this 'Declaration-cum-Undertaking'.

(Signature)

1

ARTICLES



- FINANCIAL REFORMS FOR MUNICIPAL GOVERNANCE – A CRITICAL ASSESSMENT AND ROADMAP
- LOCAL GOVERNANCE
- CENTRALISATION AND DECENTRALISATION: THE ROLE OF GOVERNMENT
- DEMOCRACY, DEVELOPMENT AND GOOD GOVERNANCE: THE INSEPARABLE LINKS IN INDIA
- THE DIGITAL FOOTPRINT: IMPACTING GOVERNANCE
- CATALYZING PANCHAYAT GOVERNANCE FOR SPURRING INCLUSIVE GROWTH
- TAXATION OF GOODS TRANSPORT AGENCY SERVICE UNDER GST
- SECTION 236 OF COMPANIES ACT 2013: DOES IT CONTEMPLATE FORCED BUYOUT OF MINORITY SHAREHOLDER'S SHARES?
- REGISTRATION OF VALUERS RULES REQUIRE REVAMP

Financial Reforms for Municipal Governance – A Critical Assessment and Roadmap



Madhusudan Sharma, FCS
Advocate, Insolvency Professional and
Urban Finance Specialist, Delhi
iamalert.net@gmail.com

BACKGROUND AND ECONOMIC IMPORTANCE OF MUNICIPALITIES

Cities contain about one third of India's population,¹ and provide more than half of India's GDP and thus hold tremendous potential as engines of economic growth, job creation and poverty reduction. Provision of urban services and infrastructure for such a large segment of concentrated population is a big challenge and raising the required resources for the same is an equally daunting task for the Municipalities. Both of these require substantial improvement in the governance at municipal level, which is at a very abysmally low level. By the 74th Constitutional Amendment Act of 1992, Local Bodies were conferred with the

Cities contain about one third of India's population and provide more than half of India's GDP and thus hold tremendous potential as engines of economic growth, job creation and poverty reduction. Central Government has been pushing for financial reforms in Urban Local Bodies (ULBs) to enhance transparency, accountability and efficiency. Under the ambitious Smart City and AMRUT Missions, ULBs are expected to be self-sustaining viable entities by improving their internal resource mobilisation and raising additional resources. Financial reform implementation process in ULBs so far has resulted in a mixed bag of successes, failures and sub-optimal results depending on the approach, institutional mechanism, manpower, software, and other resources deployed. Financial reforms, if implemented effectively, will save huge costs and generate additional resources. There is a need to have tough measures for improving the governance at the third tier of government.

status of the third tier of government after the Union and State Governments.

Terms used for Local Bodies

"Local Bodies" means both Panchayat and Municipality

"Panchayat" means an institution of self-government for the rural areas.

"Municipality" (also known as Urban Local Body) means an institution of self-government for urban area and includes:

"Nagar Panchayat" for an area in transition from a rural area to an urban area;

"Municipal Council" for a smaller urban area; and

"Municipal Corporation" for a larger urban area,

Thereafter, successive Union Governments have launched a number of ambitious programmes for resource mobilisation and reforms to strengthen these local governments and improve their governance level. Some of the major flagship programmes launched for municipalities and funded by the Central Governments are:

- a. Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT), 2005 with outlay Rs. 1 lakh crore
- b. Smart Cities Mission, 2015 to create 100 smart cities. Estimated investment for 60 cities Rs. 1.34 lakh crore.
- c. Atal Mission for Rejuvenation and Urban Transformation (AMRUT), 2015 to cover 500 cities.

¹As per Census 2011 India's urban population was 37.7 crore, i.e. 31.16% of total population

Apart from these programmes, Tenth Central Finance Commission (CFC) for the first time recommended a grant of Rs. 1,000 crore for the municipalities. Successive CFCs increased the grant amount and Fourteenth CFC recommended a grant of Rs. 87,144 crore for a five year period².

Grants CFCs for Municipalities

CFC	Period	Creore Rs.
X	1995-2000	1,000
XI	2000-2005	2,000
XII	2005-2010	5,000
XIII	2010-2015	23,111
XIV	2015-2020	87,144

The High Powered Expert Committee (HPEC) appointed by the Ministry of Urban Development (MoUD), estimated the investment required for urban infrastructure over the next 20 years at Rs. 39.2 lakh crore.³

EVOLUTION OF FINANCIAL REFORMS FOR MUNICIPAL GOVERNANCE

Considering the importance of financial reforms, successive CFCs recommended measures to be adopted and allocated additional resources for it. Tenth CFC recommended that the Comptroller and Auditor General of India (C&AG) should prescribe formats for the preparation of budgets and for keeping of accounts for the local bodies. Expressing serious concerns over non-availability of data on the finances of the local bodies, it also recommended for creation of a database on the finances of the panchayats and municipalities at the District, State and Central Government levels.⁴ Eleventh CFC stipulated that the first charge on the grants should be maintenance of accounts and audit, followed by the development of a financial database. Twelfth CFC recommended that a proper accounting system be put in place at the grass root level to facilitate realistic assessment of the needs of the panchayats and municipalities for basic civic and developmental functions.⁵

Thirteenth CFC brought in an element of performance based grant to speed up reforms. 20% of the grants were linked to progress achieved in identified reforms which included improvement in accounting system and tax collections.

In 2001 Supreme Court issued directions for accounting reforms in local bodies.⁶ Thereafter, the Task Force constituted by the C&AG of India recommended for introduction of accrual basis of accounting system for the Urban Local Bodies (ULBs) and suggested model budgeting and accounting formats for that purpose. In January 2005 MoUD circulated to all States/UTs a National Municipal Accounting Manual (NMAM).

In 2005 with the launch of JNNURM and UIDSSMT following major financial reforms were made mandatory for ULBs:

- Budgeting - Earmarking Funds for Urban Poor, revised formats and uniform chart of accounts
- Accounting - Migration to Accrual Based Double Entry Accounting System (DEAS)
- Property Tax - Enhancing coverage and Collection using GIS base
- User charges - Rationalisation and phased recovery of

operations & maintenance cost (O&M) and full cost In 2015 as part of Smart City and AMRUT Mission, these reforms were further fine-tuned with well-defined activities and results to be achieved in the given timeframe. Credit Rating was added to reform agenda. Under Smart City and AMRUT Missions, ULBs are expected to be self-sustaining viable entities by improving their internal resource mobilisation and raising additional resources through issue of municipal bonds.⁷ Financial Reforms are thus at the core of improving governance in Municipalities.

Financial reforms primarily aim at four fundamental issues:

- Tax revenue by improving coverage and collection;
- Non-tax revenue by levy of user charges and recovery of cost of services
- Expenditure management for economy and efficiency
- Asset-liability management to leverage additional resources for urban services.

These targets can be achieved through the process of improving budgeting and accounting, financial management, and integration of all municipal functions with costing and financial accounting modules in an e-governance framework.⁸

Core Financial Reforms for Municipalities under AMRUT Mission

Sl.	Reform	Milestone	Timeline
3	Augmenting double entry accounting	Complete migration to double entry accounting system and obtaining an audit certificate to the effect from FY2012-13 onwards.	12 months
		Appointment of internal auditor	24 months
		Publication of annual financial statement on website	Every year
8a	Municipal tax and fees improvement	1. At least 90% coverage, 2. At least 90% collection, 3. Make a policy to, periodically revise property tax, levy charges and other fees, 4. Post Demand Collection Book (DCB) of tax details on the website, 5. Achieve full potential of advertisement revenue by making a policy for destination specific potential having dynamic pricing module.	12 months
8b	Improvement in levy and collection of user charges	1 Adopt a policy on user charges for individual and institutional assessments in which a differential rate is charged for water use and adequate safeguards are included to take care of the interests of the vulnerable, 2. Make action plan to reduce water losses to less than 20% and publish on the website, 3. Separate accounts for user charges, 4. At least 90% billing 5. At least 90% collection.	12 months
9	Credit Rating	Complete the credit ratings of the ULBs	18 months

CRITICAL ASSESSMENT OF REFORM IMPLEMENTATION - KEY ISSUES AND LESSONS

Reform implementation process through several decades has

² Report of the Fourteenth CFC.

³ In its report of 2011, prices at 2009-2010.

⁴ Report of the Tenth CFC, Para 8.19 and 8.21.

⁵ Report of the Twelfth CFC, Para 8.43.

⁶ Almitra H. Patel and Ors. v. Union of India and Ors.

⁷ AMRUT Mission Statement & Guidelines, June 2015, MOUD, Govt. of India.

⁸ Abraham, CT (2013) Municipal Accounting Reforms in India An Implementation Guide, ADB South Asia Working Paper Series No. 20, October 2013.

resulted in a mixed bag of successes, failures and sub-optimal results in various cities and states depending on the approach, institutional mechanism, manpower, software, and other resources deployed. Desired outcome in the form of reliable financial data for planning and resource allocation is still deficient. Lack of financial data and its poor quality, are the key concerns expressed by the successive Central and State Finance Commissions.

Observations of 14th CFC on Implementation of Reforms

Successive Finance Commissions have expressed concern on the near absence of financial data and its poor quality, wherever it is available.

While most States had self-certified the adoption of the accounting framework, the C&AG informed that the actual maintenance of accounts still needed improvement. Financial recommendations get acted upon while those dealing with systemic improvements are seldom addressed.

In most States where property tax is being levied, the rates have not been revised periodically. The list of taxable properties is not being updated and a large number of properties remain outside the tax net.

INSTITUTIONAL FRAMEWORK AND MONITORING

Implementation of financial reforms in ULBs was initiated mainly through projects funded and supported by a number of multi-lateral and bi-lateral agencies like World Bank (WB), Asian Development Bank (ADB), Japan International Co-operation Agency, Department for International Development, UK (DFID), USAID etc. The reform agenda was part of their overall funding mechanism which had to be implemented as a mandatory covenant. NMAM was prepared with the support of USAID–FIRE (D) project. External agencies also supported States in preparing State Municipal Accounting Manuals (SMAM). Since the funds and technical assistance teams for reforms were also provided by these agencies, MoUD, States or ULBs did not develop the required institutional framework to sustain the reforms.

NMAM envisaged setting up of a Committee in MoUD with the authority to make additions in prescribed mandatory codes.⁹ But such a committee has not been constituted so far. There is no review by MoUD of the State Manuals to check if they are in line with the principles prescribed in NMAM. However, separate Project Management Units (PMUs) are functional in MoUD for various missions – Smart City, AMRUT, Swaccha Bharat etc.

POLICY ISSUES WITH REFORM AGENDA

Migration to accrual based DEAS, was considered as one of the important tools to reinforce transparency and accountability in utilisation of public funds by ULBs. Accordingly, it was made a mandatory reform under JNNURM and UIDSSMT in 2005. SEBI Regulations also require the municipalities to prepare accounts in accordance with NMAM or similar SMAM of respective State (i.e. accrual based accounting), to become eligible for issue of Bonds.¹⁰ But in the reform agenda of Smart City and AMRUT Missions launched in 2015, the words ‘accrual based’ have been dropped. But each ULB is required to get the credit rating done for bond issue, which is governed by SEBI guidelines that require accounts to be prepared on accrual basis. Smart City and AMRUT guidelines also require ULBs to have an appropriate cost recovery mechanism

“ Reform implementation process through several decades has resulted in a mixed bag of successes, failures and sub-optimal results in various cities and states depending on the approach, institutional mechanism, manpower, software, and other resources deployed. Desired outcome in the form of reliable financial data for planning and resource allocation is still deficient. Lack of financial data and its poor quality, are the key concerns expressed by the successive Central and State Finance Commissions.

in order to make them self-reliant and cost-effective. This again is not feasible without accrual based accounting. This intended or unintended dropping of words ‘accrual based’ from the reform agenda has sent confusing signals to ULBs.

Accrual based DEAS is the back bone of all financial reforms. It is a tool to ascertain the actual financial health of ULBs and to provide accurate accounting information for financial management, cost management, recovery of user charges, and efficient planning of municipal services. After decades of efforts to migrate to accrual based accounting, suddenly the key reform is dropped from the reform agenda. Migration to accrual based accounting is a difficult task for the ULBs given the quality of manpower and resource constraints they have. But instead of dropping the required reform on that ground, challenges in its implementation should have been addressed.

Another policy issue is that budget is to be prepared on cash basis but accounting is to be done on accrual basis. Budget reporting, therefore, is based on receipts and payments and does not match with accounts prepared on accrual basis. To overcome this, ULBs have resorted to change in prescribed budget formats defeating the intended uniformity across all ULBs.

REFORM OWNERSHIP

Financial reforms aiming at enhanced transparency and accountability are generally viewed with suspicion and hindered by the elected representatives and municipal staff, whose vested interests are at stake. They are more interested in infrastructure development projects where contracts can be awarded and physical



⁹ National Municipal Accounts Manual, MoUD, November 2004.

¹⁰ SEBI Regulations for Issue and Listing of Debt Securities by Municipalities, 15th July 2015.

progress can be demonstrated to the electorate. They also avoid taking decisions to increase property and other taxes and user charges fearing impact on their vote banks. Reform implementation has been successful where ULBs took ownership for the reforms.

PROPERTY TAX COLLECTION IMPROVEMENTS

Most of the States have adopted self-assessment system for property tax. But very few States/ULBs could actually complete the full cycle of improvement plan involving GIS mapping, door-to-door property survey, validation, reconciliation, demand register updation and collection drive. Key challenges in the process are coordination between GIS mapping and survey teams and municipal officials. Municipal officials resist, drag and delay the process of validation and updating demand registers. Efforts for tax revenue improvement have proved to be cyclical in absence of a robust monitoring mechanism. Recovery drives by active Commissioners are abandoned once they are transferred or due to political interference. 14th CFC observed that “In most States where property tax is being levied, the rates have not been revised periodically. The list of taxable properties is not being updated and a large number of properties remain outside the tax net”. Even in the capital city of Delhi Municipal Corporations have not raised property tax since 2004 although huge investment has been made in urban infrastructure for metro network, elevated corridors, flyovers etc.

CREDIT RATING, MUNICIPAL BONDS AND POOLED FINANCE

Ever since Ahmedabad Municipal Corporation become the first ULB to receive credit rating in 1996 and then issued municipal bonds worth Rs. 100 crore in 1998, credit rating, municipal bonds and pooled finance are being pushed as part of financial reform agenda. But the actual performance of bond issue has been very dismal. Till 2010 only 25 municipal bonds worth Rs. 1549.14 crore were issued. In 2012-13 bonds worth Rs. 845 crore were issued.¹¹ This is a very tiny sum as compared to the total investment being made and planned for urban infrastructure. Only two pooled finance schemes have been successfully implemented so far-Tamil Nadu Urban Development Fund (TNUDF), 2003 and Karnataka Water and Sanitation Pooled Fund (KWSPF), 2005. TNUDF is the only pooled fund which issues bonds regularly. Despite such a dismal performance, AMRUT Mission requires all the ULBs to get a credit rating. Unless financial health of ULBs is improved by reforms, resource mobilisation through municipal bonds will not work.

UNIFORM SOFTWARE FOR ULBs

Reforms like migration to accrual accounting, improving tax coverage and collection, cost recovery of services should ideally start with a centrally controlled integrated software covering various operational areas like basic accounting, costing, budgeting, property tax, licence fee, user charges, inventory and fixed assets.

MoUD had plans to develop uniform software for ULBs when NMAM was being prepared, but it did not take off. Migration to accrual accounting would have been much easier and faster with a uniform accounting software and it would have also facilitated comparison across ULBs, consolidated reporting and monitoring at state and national level. GIS supported module for property tax would have helped improving coverage and collection efficiency. ULBs also need integrated modules to facilitate realistic budget projections, budget monitoring and control, procurement management, tracking contract commitments and unpaid bills. Lack of uniform software to support financial reforms had been a



major constraint to sustainability of financial reforms. Most of the ULBs tried to manage with standard applications like Tally and software from local vendors. Local vendors with political patronage have often dictated and exploited ULBs leading to loss of data and manipulations due to poor security features. In Andhra Pradesh, Telangana, Karnataka, and Kerala uniform state level accounting software is operational for all ULBs of the state, but integration with other modules is yet to be achieved. Attempt to implement uniform accounting software in Chhattisgarh did not succeed. Madhya Pradesh had a very ambitious plan for introducing SAP based integrated ERP software. Pilot project for Bhopal Municipal Corporation with the assistance of DFID initiated in 2009 took more than six years to become functional. In the meantime another project to implement SAP based ERP in all the 350 ULBs was initiated in 2015, it is yet to be operational even in a few large municipal corporations.

ACCRUAL BASED DEAS

Migration from single entry accounting system to accrual based DEAS, is generally slow in the initial stage as it requires setting up a system for flow of information by re-engineering the business processes. Since migration to DEAS was a mandatory reform and external funds were available, the process started with the appointment of external consultants. ULBs being under staffed, and with high resistance to learn and adopt new methods, incomplete records, and poor accountability the responsibility was conveniently assigned to consultants. For quick compliance, focus was on preparation of opening balance sheet and annual financial statements (AFS) without improving on the required processes. ULBs thus worked on single entry cash basis system and consultants converted the data to prepare AFS on accrual basis. This process continued till the support of funding agencies, after their exit most of the ULBs found it very difficult to continue and sustain the reforms. Which were either abandoned or scaled down and revived with next phase of external support.

Generally the task of migration to DEAS is considered as the job of Accounts department alone. But the key details like financial year wise segregation of demand and outstanding amounts for various items of tax and non-tax revenue, outstanding work orders and bills for constructions works and supplies, inventory and fixed assets etc. are either not available or inaccurate data is provided to Accounts department. The resultant AFS are incomplete and inaccurate to that extent and this defeats the purpose of migration to DEAS for

¹¹ Financing Urban Infrastructure through Municipal Bond, JNNURM, 2012

Accrual based DEAS is the back bone of all financial reforms. It is a tool to ascertain the actual financial health of ULBs and to provide accurate accounting information for financial management, cost management, recovery of user charges, and efficient planning of municipal services. After decades of efforts to migrate to accrual based accounting, suddenly the key reform is dropped from the reform agenda. Migration to accrual based accounting is a difficult task for the ULBs given the quality of manpower and resource constraints they have. But instead of dropping the required reform on that ground, challenges in its implementation should have been addressed.

accurate aggregation of period costs and revenue. Since the use of cost centre and services codes is not mandatory as per NMAM, most of the ULBs are not using these codes. As a result, reliable cost details for municipal services are generally not available. Thus moving towards full cost recovery as envisaged under financial reforms, may be delayed in absence of reliable cost data.

RECOMMENDED ROAD MAP FOR SUSTAINING FINANCIAL REFORMS

Though there has been progress in financial reform implementation, some of the Cities and State have achieved excellent results. But in the overall assessment results achieved fall short of the targets despite a longer time span and higher costs incurred than envisaged. It requires a change in approach to plan and implement reforms with a commitment and stringent monitoring mechanism. Financial reforms, specially cost and financial accounting system, if implemented effectively, will save huge costs and generate additional resources in the same manner as Aadhar linking has done for subsidy. After the bold and tough reform initiatives of demonetisation and GST, there is a need to have tough measures for the third tier of government to improve governance. The suggested roadmap for effective and time bound implementation of reforms:-

Monitoring Cell at MoUD and State Level

ULBs' working environment requires regular review, monitoring and follow up to push for achieving reform targets. Centralised monitoring Cell at MoUD, will make the States more vigilant and speed up the pace of implementation of reforms. The Cell may also provide technical guidance to the States. Similar State level Cells to coordinate with and guide State ULBs need to be established.

Dedicated implementing agency at State Level with a Core Team to support ULBs

A dedicated State level agency with pool of technical and support manpower is necessary to sustain reforms. Such an agency can provide technical guidance, capacity building and hand holding support to the ULBs. In Andhra Pradesh, Centre for Good Governance was entrusted with this task and has managed it very well.

Accountability of Elected Representatives

Elected representatives and ULB's top management should be made accountable for delay in implementation of reforms.

Development of Uniform web-based Software

Development of a uniform municipal software, centrally monitored at the national/state level, like the one for Birth and Death registration and Panchayat Accounting Software, with secure data and real-time availability, will ensure greater transparency, accountability and efficiency at ULBs.

Review, Revision and Consolidation of Manuals

NMAM was prepared 12 years ago in 2004, thereafter Training

Manual and Asset Valuation Manual were prepared in 2007 and 2009 respectively. Consistency review of NMAM, Training and Asset Manuals prepared at different points of time, is required. The accounting code structure based on manual system needs to be fine-tuned to facilitate seamless inter-linkages among various modules of municipal system being developed on ERP platform in some States.

A framework for analysis of cost of various municipal services needs to be developed for planning cost recovery through user charges. This will help in revenue enhancement through a two pronged approach of cost management and timely revision of user charges. Therefore, review, revision and consolidation of NMAM to incorporate contemporary requirements for financial and cost accounting and to facilitate computerisation are required.

Budget Reforms

Budget is the basis for accounting and financial controls, budget reforms should precede accounting reforms. Structure and content of budget should be in line with the proposed accounting reforms. ULBs should be supported to improve the Budget preparation process, develop and establish budget monitoring and control system.


Transition planning for phased implementation

Complete migration to DEAS in one go is very difficult to achieve in ULB's operating environment. This requires a careful phased migration planning, achievable target setting, regular monitoring and timely corrective action. One solution for all ULBs does not work due to variation in staff, operating procedures and quality of manual records. Detailed As-Is assessment should be done before transition planning. Piloting in a few ULBs is necessary before roll out for full scale implementation in a large number of ULBs at a time. In the first phase, accrual accounting should be done at period ends-annual, half yearly or quarterly. Real time accrual accounting may be initiated after realigning processes, establishment of regular flow of information, building capacity of ULB staff.

Capacity Building of ULBs and exit plan for Consultants

Hand holding support should, to the extent possible, be provided by the consultants who have been adequately guided by the Central Monitoring team to ensure uniformity across all ULBs in the State. Except for study visits, training of ULB staff should be carried out at their workplace on-the-job, on-the-software. Active involvement of ULB staff at all levels is necessary for sustaining reforms. Continuity of staff trained for reform activities should be ensured.

Municipal Cadre for Finance and Accounts

A cadre for Revenue, Finance and Accounts personnel should be established at State level to ensure availability and continuity of trained personnel for carrying out reform activities. Some States including Madhya Pradesh have taken lead in creating specialised cadre of engineers, revenue and finance officials. 

Local Governance



Neetu Aggarwal, ACS

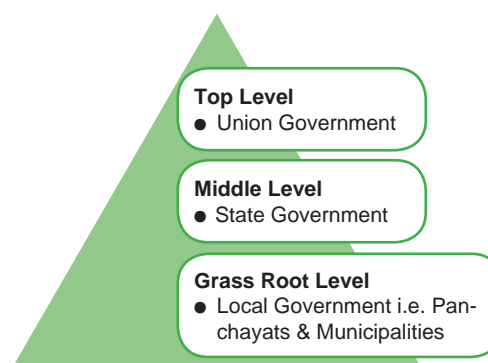
Compliance Officer – DP Division and
GRO (Grievance Redressal Officer)
Religare Finvest Limited, NOIDA
Neetu68430@gmail.com

INTRODUCTION

India has the peculiarity of being a unique Federal Country. Generally, federalism comprises a two tier system– Central/Union Government at the First level and the

The article gives an overview of the studies of Local Governance particularly various facets of developments including social and economic factors which influence the operation of Local Government. It is only within such a holistic view that the future development path of Municipalities and local areas can be understood and promoted.

State/Provincial Government at the Second level but the Indian Constitution provides three tier Federal Structure i.e.:-



India is known to be the world's Largest Democracy. In Constitutional sense, Democracy is the system of Government, in the administration of which, every adult citizen of the country enjoys some direct or indirect share, keeping in view the real spirit and high ideas of democracy, Local Government forms an indispensable part of Governance and Administration in India. The Local Government's jurisdiction is limited to a specific area and its functions relate to the provision of civic amenities to the population being within its jurisdiction. A Local Government functions within the provisions of the statute which has created and subordinate to the state or provincial government which exercises control and supervision over it but the activities of the Local Government are not less numerous. It has been undertaking new activities which either regulated the conduct of the citizens or in the nature of service such as provision of mass transport, construction of houses for the poor, supply of electricity, health centers, parks, play grounds etc. In fact, Local Government is today much more important in the daily life of a citizen than the State or Central Government.

The importance of Local government can hardly be over emphasized when we consider the range, the character and the impact upon the daily life of the citizen of the functions which local authorities carry out. It provides public amenities and services which are necessary for the convenience, healthful living and welfare of individual and the community. Breaking-down of municipal services means the entire dislocation of social and economic life of the community. If these services get suddenly to cease, we would decline into chaos. The Constitution of India aims at the establishment of a welfare state and strengthening of Local Government may ensure its proper achievement. In urban and rural areas it has thus manifold and complex responsibilities. A Central Council of Local Self-Government was established in 1954 to consider and recommend broadlines of policy and draw up a common programme of action to promote Local

“ A Central Council of Local Self-Government was established in 1954 to consider and recommend broadlines of policy and draw up a common programme of action to promote Local Self-Governance throughout India. The council has also set up a committee on Augmentation of Financial Resources of Urban Local bodies in 1965.

Self-Governance throughout India. The council has also set up a committee on Augmentation of Financial Resources of Urban Local bodies in 1965.

Town and villages are two distinct entities in India. They have different needs and problems. The main requirements of towns are the provisions of housing, transport, communications, water supply, sanitary conditions, community centers, slum clearance and town planning while main emphasis in the village has to be on improvement of agriculture, irrigation facilities, animal husbandry, village industries and the like. The personnel of Urban Local Government and Panchayati Raj institutions would thus require specialized training to cater the specific needs of urban and rural areas respectively. The study therefore, emphasizes the need for two distinct set of personnel requirement for the urban and rural local bodies.

LOCAL GOVERNMENT

It is not easy to answer the question “what is local government”? Local Government may be described as government by popularly elected bodies charged with administrative and executive duties in matters concerning the inhabitants of a particular district or place and vested with powers to make bye-laws for their guidance. Local Government has been defined from various angles. It has been defined as “an authority to determine and execute measures with in restricted area inside and smaller than the whole state.” The term “Local Government” literally means management of the local affairs by the people of the locality. It is based on the principle that the local problems and needs can be looked by the people of the locality better than by Central or State governments. The administration of local affair is entrusted to the representatives elected by the people of the locality on regular intervals.

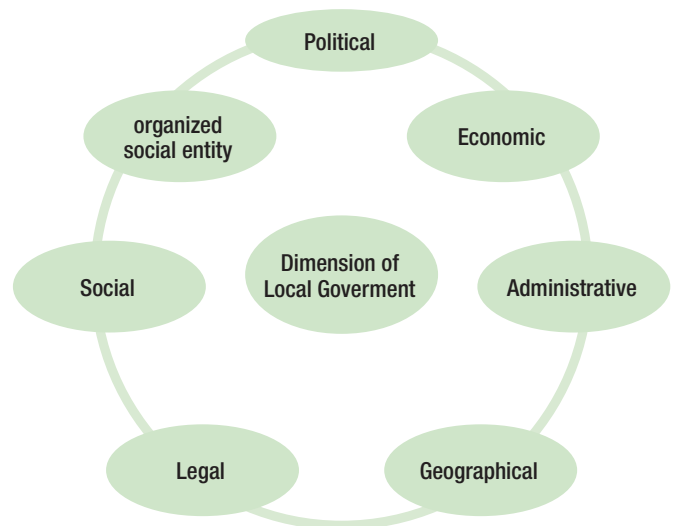
An analysis of above mentioned definitions of local government reflects that there are two aspects of local government:

- the relation of the local bodies to the Central/State Governments
- their relation to the local community which is determined by the following principles:-
 - (i) It is desirable to aim at the smallest possible unit that can perform a particular task efficiently so as to being local government as nearer as possible to the people.
 - (ii) If a unit is so large that members of Local Government cannot regularly attend its meetings, Local Government will tend to lose its representative character.
 - (iii) Wherever possible that unit should be based on natural local loyalties, though this principle will often have to be sacrificed to efficiency or alternatively we will have to abandon the idea of progress.

Thus, the essential characteristics of Local Government are

- Its statutory status
- Its power to raise finance by taxation in the area under its jurisdiction
- Participation of local community in decision making in specified subjects and their administration
- The freedom to act independently of central control and
- Its general purpose, in contrast to single purpose, character.

Thus analysis or examination of various definitions of Local Government given above reveals that local government is a combination of various elements and no single definition includes all of them. These elements include a local statutory body, local inhabitants electing and controlling that body, limited autonomy in the sense that state governments in a federation and central government in unitary system give them a limited freedom to perform their functions prescribed by law, a recognition of distinction between local and non-local services, and power to levy local taxes. Thus, a local government has many attributes and is multi-dimensional.



The Entry 5 of list II (State list) of the seventh schedule reads: “Local Government that is to say, the constitution & powers of municipal corporations, improvement trusts, Distt. Boards, mining settlements authorities and other local authorities for the purpose of local self-Government or village administration.

Article 12 of the Constitution of India defines the term state for the purpose of Fundamental Rights contained in part-III of the Constitution which says that local authority includes a state. The said constitutional provision has been upheld by the Supreme Court in the case of Rashid Ahmed v. Municipality Board, Khairana and Ajit Singh v. State of Punjab whereby it has been said that Municipality and Gram Panchayats are Local Authorities respectively against whom Fundamental Rights can be enforced. SC has further laid down the distinctive attributes and characteristics of Local Authority in UOI v. RC Jain. These are:

- The authority must have separate legal existence as corporate bodies.
- It must function in a defined area and must ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the area.
- It must enjoy a certain degree of autonomy, with freedom

to decide for itself, questions of policy affecting the area administered by it. It must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies. It must have the power to raise funds for furtherance of its activities and fulfillment of its projects by levying taxes, rates, charges and fees.

Under Article 14 of the Constitution of India, a reference to the above question assumes significance in view of the full bench decision in *Moti Lal v. state of U.P.*, *Kesho Prashad v. State*, *Shiv Prashad v. State of Punjab* and *Amraotic Electric Supply Co. v. District & Session Judge, Amraotic*. Though, none of them raised the question whether in relation to impugned law of one state, other states affected by that law could be treated as persons within the meaning of Article 14 of constitution of India but, these cases made a distinction between the trading activities of a state and its governmental activities, apparently holding that as regards governmental activities, a state was not a person. It is submitted that the powers, rights, duties and obligations of a state are unlike those of any other person, natural or legal is not relevant to the question whether the state is a person, just as the fact that the one corporation possesses extensive and another limited powers is not relevant to the question whether they are both corporations. Considering above analogy, it is submitted that Local bodies like Corporations, Municipalities and Panchayats constitute a unique person and that for the purpose of Article 14 in most situations if not in all, the local bodies, will be a class in itself.

The following table shows the various forms of urban government.

Municipal Corporations
Municipal Councils
Notified Area Committees
Town Area Committees
Cantonment Boards
Townships

The discussion regarding meaning of local government makes it clear that there are certain characteristics on which the systems of local government are based are as follows:

- (i) **Local Areas:** A Local Government unit as far as its jurisdiction is concerned has a well-defined area which is fixed by the concerned state government. This area can be termed as a city, a town or a village. The territorial limits of a local body unit are fixed by the state government subject to changes from time to time through legislation.
- (ii) **Local Authority:** The administration of a particular locality is run by an authority or body of persons who are elected directly by the people residing in that particular area. The authority which includes the elected representatives of the people is responsible for management of local affairs in

“The term “Local Government” literally means management of the local affairs by the people of the locality. It is based on the principle that the local problems and needs can be looked by the people of the locality better than by Central or State governments. The administration of local affair is entrusted to the representatives elected by the people of the locality on regular intervals.

that area.

- (iii) **Civil Amenities for Local Inhabitants:** The Primary objective of Local Government is to provide certain civic amenities to the people at their door-steps. The provision of these civic amenities ensures the healthy living of local community. These services are specifically meant for those inhabitants who are living in that restricted area for which the local government unit has been created.
- (iv) **Local Finance:** In order to perform its functions effectively, it is necessary that every local government unit is provided with adequate finances. It is the authority of local government. However, unlike other levels of government that accords it a unique position among corporate bodies, this authority has legal & constitutional basis. In fact, the local government possesses revenue raising and spending authority only to the extent that the state/central government grants it to them.
- (v) **Local Autonomy:** Local Autonomy means the freedom of the local government to decide and act in the sphere of activities and functions allotted to them by the statute under which they are created. Among other things, it implies the legal right of the inhabitants of a local area to choose their representatives to govern the locality concerned, according to the laws framed by the local council and to adopt the budget.
- (vi) **Local Participation:** The success or failure of developmental plans at the local level depends upon the active participation of local people for whom these plans are made. It is a local government which provides an opportunity to the local people to participate in administration. If the goals of development have to be achieved, people’s participation is a pre-requisite for it.
- (vii) **Local Leadership:** People who come under the purview of local government, especially those living in rural areas, are generally illiterate, inexperienced, non-professional and unaware about the functioning of local bodies. Strong leadership therefore needs to be provided to those people.
- (viii) **Local Accountability:** Local Government units which are created to provide civic amenities to the people are accountable to the local people. The residents of a local

area keep a watch on local authorities to ensure effective performance of their functions. If a local body becomes inefficient and is not in a position to provide satisfactory services to the people, it faces severe criticism of local residents.

- (ix) **Local Development:** Local Government is concerned with the overall development of the people living within its area. Every activity of local government is therefore aimed at development. To sum up, it can be pointed out that in spite of the legal authority given to the local governments; the impoverished state of the finances of most authorities in the developing countries is a severe handicap to responsible local government since the backbone of local government is financial autonomy. That is why in India since independence, the local finance has been critical in local government reforms.

When the British government decided to associate Indians in administering local affairs, it meant a slice of self-government for the people. But now the word 'self' has become superfluous or redundant because the country has self-rule at all levels. Moreover, local bodies like Delhi Municipal Corporation and Urban Improvement Trusts are not representative in character, the use of the term local self-government will not be proper. Despite this distinction, both the terms are continued to be used interchangeably in our country. That is why the term local government and not local self-government is used in entry 5 of the list II of the seventh schedule of constitution of India.

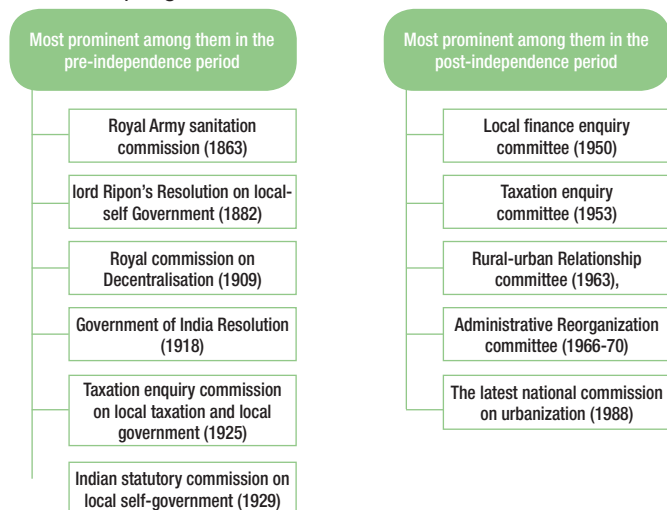
The following areas can be easily discerned which constitute the subject matter of its study.

- (i) **Urbanisation and Urban Problems:** The process of urbanization in India is going on at an accelerated pace due to industrialization, migration from rural areas and the natural increase in population due to population explosion with the result that the urban population which constituted million at the time of independence had reached 350 millions by the end of last century.
- (ii) **Structure of Urban Governments:** The local affairs of cities/towns are to be administered by local institution of various forms such as Nagar Panchayats, Municipal Committees, Municipal corporations and cantonment Boards, each urban areas to be assigned the form of local government it deserves by virtue of the criteria laid down in terms of its population, territorial dimensions and revenue resources, depending on the size of their population and the financial viability as provided in the Constitution (74th Amendment) Act, 1992.
- (iii) **Municipal Legislation:** Being a state subject is created by the concerned State Legislature, which enacts appropriate laws determining its status and providing for the constitution of the elected councils, co-option and nomination of members, procedure of election, term of the council, election and removal of office bearers, their powers and functions, finances, state control etc. The various Acts are also amended from time to time in the light of the changing need, of the urban government.
- (iv) **Municipal Personnel Management:** The urban governments with their enlarged responsibilities and complicated financial, technical and administrative problems require efficient and well qualified personnel to

various positions. They can be attracted to municipal services only when they are selected on merit, given salaries, avenues of promotion and other conditions of service comparable to those available to their counterparts in other government departments, the provincialisation of municipal services in various states has no doubt, improved matters to great extent but it would be desirable to merge the state cadres of municipal services in corresponding state cadres.

- (v) **Municipal Finance Administration:** In order to be viable require Finances commensurate with their responsibilities and obligation but unfortunately they suffer from acute paucity of funds. The urban governments have not shown much aptitude for efficient financial management and control there is wastage, there are leakages of revenues, there is extensive under assessment, several source of income have not been tapped, inability has been shown to impose new taxes or increase the existing ones. The state finance commission provided in the Constitution (74th Amendment) Act, 1992 will ensure the financial viability of the urban local bodies on their recommendation being accepted by state government.
- (vi) **State Control over Urban Governments:** The state governments exercise supervision and control over urban governments to ensure minimum standard of services and proper performance of their functions through legislative, administrative and financial control. The urban governments are subject to judicial control, also for their acts or omission and commission. Urban centers contribute immensely to national prosperity. The central and state governments should therefore act in harmony.
- (vii) **Special Purpose Agencies:** The state governments on the pretext of inadequacies of financial resources, Lack of technical expertise and inefficiency in the performance of the obligatory function by urban local governments, create certain special uni-purpose or multi-purpose agencies to perform function which legitimately belong to the domain of urban local governments. These agencies include improvement trusts, water supply and sewage Boards, Housing Boards, Pollution Control Boards etc.
- (viii) **Urban Town Planning:** The phenomenon of urban growth has resulted, in unplanned, haphazard and ugly urban settlements. Planning is therefore necessary to combat the menace of urbanization and its resultant problems. An important function of planning in purely physical terms is the judicious use of land a scarce commodity in most urban areas, and its rational and timely reservation for future use. Roads have to be widened, new ones built, sites are required for schools, hospitals, parks and play grounds, housing, industry, shopping, community facilities and a number of other uses land planning is thus a very essential need.
- (ix) **Ministry of Urban Development and its Attached and Subordinate Offices:** The Central Ministry of urban development set up in 1985 now known as ministry of urban affairs and employment has the responsibility of broad formulation and monitoring of programmes in the area of urban development, housing, urban poverty alleviation and urban water supply. These are essentially state subjects but the Govt. of India plays a coordinating and monitoring role and also supports these programmes through central sector schemes, institutional finance and expertise.

- (x) **Reports of Commission and Committees:** The government of India has been constituting commissions and committees from time to time for studying various urban issues and for making recommendation for their solution and passing number of resolution in respect of municipal governments.



Similarly, State Governments have also been appointing committees to look into their urban affairs. The study of these reports would constitute an integrated part of the scope of urban local governments.

- (xi) **Seminars and Conferences:** The central council of local Self-Government has been organizing a number of conferences and seminars most notable of which are the Annual Conferences of State Ministers of local Self-Government and town and country planning of mayors and corporation members. The erstwhile Ministry of urban development convened conference of municipal executive officers and Nagar Palika Sammelan on the eve of the formulation of Nagarpalika Bill in, 1989. Similarly the State Government also hold conferences of presidents and councilors of municipal bodies and of their executive authorities.
- (xii) **Municipal Reforms:** The central government and state governments in their concern to improve urban governments have been considering the recommendations made by various commissions and committees in their respective reports and taking appropriate action in accepting and implementing them by enacting required legislation with a view to incorporate the necessary changes for the improvement of the constitution and functioning of urban local bodies. Among the numerous such attempts made as a sequence of the reports of the commissions and committees referred above the introduction of Nagarpalika Bill (1989) in the Parliament which included provisions of great significance for restructuring and revamping urban local governments is of greater importance. The Bill was since rejected by Rajya Sabha, it had again been presented in 1991 and was passed as the constitution (74th Amendment) Act, 1992 ushered in an era of substantial reforms in urban Local Government.
- (xiii) **Municipal Bureaucracy:** The State Bureaucracy is endowed with vast power in the administration of urban

local bodies. Deputy Commissioners despite the creation of Directorate of local Bodies and the office of Regional Deputy Directors still play a predominant role in the management of urban affairs. The municipal bureaucracy especially the municipal commissioner in Municipal Corporation is key figure in their administration and enjoys greater authority in comparison to the elected Mayor who represents the elected body of the city.

- (xiv) **Associations and Unions of Municipal Employees:** They organize themselves in union at the Local, State and National levels for the furtherance of their interests and hold protest meetings and demonstrations to put forth their demands in a forceful way and to get these accepted by the concerned municipal and state authorities by resorting to strikes causing unavoidable inconveniences to the public. The agitation approach has proved to be successful, many a time in getting their demands accepted the latest ones being the grant of pensioner benefits and gratuity to them.
- (xv) **Role of Political Parties:** Despite the fact that local issues should not be decided on partisan basis, political parties participate in urban governments by putting up their candidates in election and party symbols are allotted to them by the election authorities, for elections as to municipal corporations and municipal committees in some states and the winning political parties elect their own mayors and chairman of municipal corporation/committee.
- (xvi) **Research and Evaluation:** Research and evaluation of urban policies, strategies and programme is of vital importance in the study of urban governments. The central and state governments make provisions for these activities. Various universities conduct research of different problems of urbanization and management of urban areas.

Their findings can be utilized in the formulation of urban policies such as national urbanization policy, National Housing Policy etc.

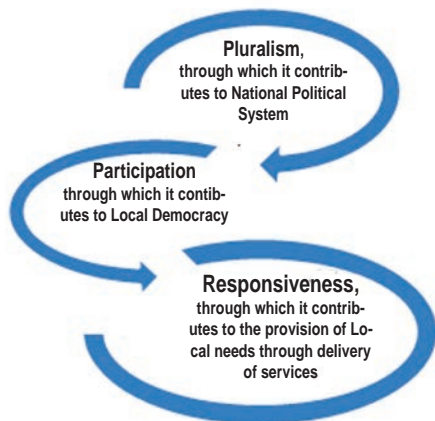
- (xvii) **Comparative Urban Local Government:** This makes it possible to examine the extent to which solution adopted abroad may be taken advantage of at home. In this context, the Local Government System of England (maximum autonomy to local governments) USA (decentralisation) and France (which was once over centralized is since in the process of decentralisation) are of significant importance to the study of urban local government in a country.

The importance of local government lies in sustaining the democracy. If democracy functions properly as many citizens as possible should be encouraged and provided with opportunities to take a continuing interest in its activities and problems. Our First Prime Minister Pt. Nehru, while inaugurating the first local self-government Ministers, conference in 1948, had said that "local self-government is and must be the basis of any true systems of democracy. The importance of local government may be discussed under the following heads:

- 1) **School of Democracy:** The Success of national democracy largely depends upon the success of democracy at the grass-root level. The proposition that self-governing localities are the citadels and schools of democracy, has been stressed by an advisory committee

of the commission on Inter governmental Relations (U.S.A):- "Local governments are to total government what basic tissues are to human body without the government would have no vitality. The countries, cities, towns, villages and boroughs serve as training schools for the leaders of government, and in the affairs of local government are tried those who aspire to state and national offices. "Jawaharlal Nehru's address to the conference of provincial Local Government Symbolizing democracy by local Govt. points out: "Democracy is nothing unless it means, in the last report, letting the people have their own way, not only in the mass, by means of an aggregate vote in a nation-wide scale, but also in their lesser groups and societies of which the grater societies are made up and through which it is made articulate in such a way that the less clamorous voices can be heard". ii) Platform for Political and Popular Education Lord Ripon's Resolution of 1882 emphasized the need of political and popular education through local government.

The value of local government stems from its three attributes of:



- 2) **Training Ground for Emerging Leaders:** It is also an invaluable training ground for emerging leaders, who after acquiring experience in the art of politics and Government at the local level rise as such to the state and national level and produced many leaders of National Eminence and stature like Ferozeshah Mehta Motilal Nehru, Jawaharlal Nehru, Subhash Chandra Bose, Vallabh Bhai Patel, Lal Lajpat Rai etc., who are shining examples of sober and healthy local politics and restored to these local institutions, the authority and dignity they deserved.
- 3) **Efficient and Effective Management of Local Affairs:** It is concerned generally with the welfare of the people deals mainly with these functions contribute to socio-economic development and concerned with the local problems as compared to the Government in the capital, can manage local affairs more efficiently and effectively.
- 4) **Channel of Communication between the State Government and the Community:** It serves as a channel of communication between state government and

the community. The demands made by the local community are on the one hand transmitted to the state government the creator of local government and on the other hand, people living in far flung areas come to know about the government policies and programmes through local bodies. This, local government, ensures close relationship between the people and the higher level of governments through the device of communication.

- 5) **Mitigation of the Evils of Party System:** Political parties have always influenced the democracy not only at the state and national level, but at the local level as well because it is not possible for democracy to function without the political parties. Local government in urban areas in England has been operating on party lines. But we in India advocate the avoidance of participation of political parties in local bodies as they bring in the management of local affairs, the evils usually attributed to them such as functionalism, groupism, favoritism and nepotism.

CONCLUSION

Local Governance means the administration of the affairs of a locality in urban and rural areas by the people through their elected representatives. It may be described as Government by popularly elected bodies charged with the administration and executive duties in matters concerning the inhabitants of the particular district or place and vested with powers to make bye laws for their guidance. The scope of urban Local Government extends to the study of the phenomenon of urbanization and its problem, urban planning, structure of urban governments and their classification, municipal legislation, personnel management, financial administration, state local relations, special purpose agencies, organization and function of the union Ministry of urban Affairs and Employment and its subordinate and attached offices, as also that of the State departments of urban local government; In the case of *Mathra Dass Setia v. State of Punjab*, it was held that lack of financial resource was one of the main reasons for the 74th amendment of the Constitution. It was made to provide for the sound finance of municipalities by securing authorization from state legislatures for grant-in-aid from the consolidated fund as also assignment to or appropriation by the municipalities of the revenues of designated taxes, tolls and fees. The legislature has to make laws to endow them with power and authority so as to be able to prepare plans for economic development and social justice and to implement schemes. Even the finance commission as constituted under Article 243-Y of Constitution of India has to review the financial position of the municipalities and make recommendations regarding the measures needed to improve the financial position. It has further been held by SC that the Constitution has specifically amended in the year 1992 to empower the states to make laws so as to ensure that the Municipalities become effective instruments of local Self-Government. Part IX-A of Constitution of India clearly visualizes the municipalities as institution for economic development and social justice, Schedule 12 enumerates the function that can be entrusted to the municipalities. The significance or importance of urban local governments in India has considerably increased in the post-independence era with the inauguration of the Constitution embodying the principles of democracy and Welfare State and emphasizing upon the governments in urban areas to promote social and economic development. CS

Centralisation and Decentralisation: The Role of Government



Om Prakash Dani*, FCS

Member Executive Committee
Sri Aurobindo Society & Vice Chairman
Sri Aurobindo Foundation for Integral
Management, Puducherry
omdani@gmail.com



M.S. Srinivasan

Research Associate
Sri Aurobindo Society
Puducherry
srinivasan@aurosociety.org

The business of the State is to provide all possible facilities for co-operative action.

Sri Aurobindo

CENTRAL AUTHORITY AND LOCAL AUTONOMY

How much the Central Government can decentralise? In trying to find the right answer to this question we must avoid the tendency of the average mind to float enthusiastically with the new fad and swing dogmatically towards massive decentralisation and autonomy. There is a need and truth behind centralisation. The purpose of centralisation or Central Government is to enforce unity, order, stability and continuity of administration. But there are two ways of achieving this propose. The first method is to create a psychological and cultural solidarity which unites the consciousness of the people through shared vision, values and ideals and a common purpose and allows each subgroup within the nation or

The present trend of thinking in the progressive mind of our age is towards autonomy, decentralization and self-government. This thinking is in the right direction because in the future world, the creative progress lies not in more and more external government but in greater self-government. This brings us to the question what then is the role of Central Government? This article examines this question in the light of an integral vision.

state to organise their life according to their unique economic, social and cultural characteristics. The main advantage of this method is that it promotes a free and rich diversity which is conducive to a creative flowering of the collective life. The main drawback of this method is that if the political consciousness of the community is not sufficiently mature and developed the psychological and cultural solidarity of the community remains only a vague and weak sentiment without much power to weld the community into strong and enduring external unity which can safeguard it against external aggression or internal strife.

The other method is to create a strong economic, social and political unity through a centralised administrative organisation and patriotic sentiment. The main advantage here is that it ensures peace, stability and security of the outer collective life. But the main drawback of this method is that it tends towards uniformity and mechanisation of life and the concentration of power in the ruling elite and the upper classes and prevents the flowering of a free, rich and creative diversity of communal life diffused throughout the collective life. Now the problem is how to find the optimum balance which will minimise the disadvantages and maximise the advantages of both these methods.

THE BALANCING ACT

The emerging new breed of political, social and organisational thinkers with their ardent enthusiasm for autonomy, empowerment and decentralised functioning tend to ignore the need to retain the capacity for centralised function. In fact there is no real dichotomy between a strong centre and autonomous states, if by strong we mean the capacity to impose unity and order over the nation -- sometimes even by force if necessary - and ensure the sovereignty and solidarity of the nation under external aggression or internal conflict. As long as the spiritual and cultural unity of the nation or the state has not become a concretely conscious feeling in the consciousness of her people and remains only a vague subconscious sentiment, the outer unity of the nation cannot be entirely sound and secure. This is all the more true for a country like India with a wide variety of ethnic and linguistic and cultural groups. Centrifugal and divisive tendencies can any

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

moment gain the upper hand and jeopardise the unity of the nation. In such situations of internal or external emergency, a strong centre with sufficient power and capacity for centralised decision-making and action may be crucial for keeping the integrity of the nation. Instances of gross misuse of such emergency powers in modern India have provoked much controversy regarding whether such emergency provision is necessary in the Indian constitution. We believe that an emergency provision should be there in the constitution but with sufficient safe guards against misuse of such powers. A day may come when humanity as a whole will rise to a higher level of consciousness beyond mind where it feels its unity and solidarity as a concrete fact of experience and human life no more needs any external controls like constitutions and laws and government. Until that diamond moment of fulfilment arrives for humanity, some form of external organisation and controls for maintaining unity and order may be necessary.

So the problem here is not centralisation as opposed to decentralisation as an either-or issue. The problem is how the advantages of both can be combined in an optimum proportion which is appropriate to the present and future evolutionary needs of humanity. The studies of futurist thinkers like Alvin Toffler indicate that modern society is moving towards an increasing complexity and diversity. And the past experiences of the political history of India and humanity as a whole indicate that a free diversity is essential for the power, richness and creative vitality of the collective life. So the decentralisation and local autonomy will be the dominant trends of the future. This means the political power and initiative will pass more and more from the Central Government, administration and the bureaucracy to the state and the local people. We have to examine what are the minimum powers which the Centre has to retain, and the principles which must govern the relations between the central and the local authority.

What are the minimum powers which the Central Government should retain? In the political field, foreign relation and national security - internal and external - can be under the Central Government. In economics some amount of central taxation which helps in funding the Government is acceptable. In all other activities the Central Government should assume the role of the coordinator, facilitator and promoter. The functions of the Central Government would be co-ordination, promotion and monitoring the progress of the states and the nation as a whole; minimizing conflict and maximizing, co-operation between states; generating synergy by linking the unique strength and

“As long as the spiritual and cultural unity of the nation or the state has not become a concretely conscious feeling in the consciousness of her people and remains only a vague subconscious sentiment, the outer unity of the nation cannot be entirely sound and secure. This is all the more true for a country like India with a wide variety of ethnic and linguistic and cultural groups.

competence and genius of all states in a mutually complementing harmony; evolving a national consensus and vision on the long-term policy, goals, values, purpose and mission of the nation as a whole and in every department of national life. Finally keeping an overall eye on the material, social, and moral and spiritual well-being and progress of the nation as a whole with enough powers, resources and the capacity - under sufficient safe guards against misuse - to ensure unity, order and stability of the nation and a balanced development of all the organs of the society.

In short as the Nation's polity matures, the Central Government will become less and less a controlling and regulating authority and more of a coordinating and facilitating organ. All the rest of the Nation's life will come under the jurisdiction of the states, management of private enterprise and the self-government of the local people. Let us now examine how these tasks can be accomplished in the new and emerging world, where values like democracy, diversity, autonomy are gaining increasing acceptance.

NATIONAL INTEGRATION

Let us now examine briefly some of the important functions of Government which need to be centralized. First is the task of national integration. Integrating the diverse steams of national life into a coordinated whole is an important function of Central Government. The first task here is to make each sub-group of the nation-the state, city, district and village - arid each department of national life conscious of itself as part of a larger whole and an interdependent and interrelated organ of the organic unity of the nation. In the socialistic countries this was done by enforcing a uniform, mechanised and standardised pattern of life based on a single dogmatic ideology on the whole of the nation through centralised organisation and a brain-washing propaganda. But such methods are now becoming out-of-date in the new and emerging social order which is moving towards a predominantly democratic, decentralised and highly diversified society. In such a free and diversified society the only durable path towards national integration is through education—not propaganda—which educes a free inner growth towards a conscious realisation of the inner brotherhood and solidarity of the people or in other words to the realization of the psychological and spiritual solidarity which unites the heart and mind of the people. This fact is beginning to be recognised by the educated intelligentsia in India and all over the world. For example, the National Integration Conference Report of 1961





“A day may come when humanity as a whole will rise to a higher level of consciousness beyond mind where it feels its unity and solidarity as a concrete fact of experience and human life no more needs any external controls like constitutions and laws and government. Until that diamond moment of fulfilment arrives for humanity, some form of external organisation and controls for maintaining unity and order may be necessary.

mentioned that “national integration is a psychological and educational process involving the development of a feeling of unity, solidarity and cohesion in the hearts of the people.”

But this inner solidarity cannot be achieved by mere intellectual education or by sermons and lectures or by group-singing. This does not mean as some excessively “spiritual” people say that these things are “useless”. Man is at present essentially a mental being and any inner change has to begin with the change in the “thought-process”. So anything which can give the true and the right idea and set the intellectual being in man thinking in the right direction is good and helpful for the inner change. But changing the “thought-process” is not enough. What we need is a new system of education which can make the Idea inwardly concrete, real, and living to the consciousness of the people and galvanise the thinking, feeling and active faculties of the consciousness towards a harmonious and spontaneous realisation of the idea in their inner as well as the outer life. An intellectual environment permeated with the right thought and idea, powerful technological instruments for the communication and diffusion of the idea, and an appropriate outer environment, organisations and institutions favorable to this task-----all these are very helpful aids in this challenging task. But none of these can bring any lasting and permanent

change without a system of education which leads to a psychological transmutation in the consciousness of the people. Such a psychological transformation can be achieved only through a system of education based on the principles of Indian Yoga.

EVOLVING A NATIONAL VISION

The other function of Government which requires to be centralized is building a national vision and purpose, which means to evolve a long-term national vision which can instill in the national consciousness a sense of direction, mission and purpose. This national vision should be based on a deep understanding of the history of our culture and civilisation, the inherent genius of the mind and soul of our nation and her evolutionary destiny; it should provide to the nation a moral and spiritual cause which can at once transcend and reconcile the economic, social, political, religious and ethnic interests of the various groups within the nation. But this national vision should not be narrowly nationalistic and chauvinistic, concentrated exclusively on national self-realisation. There has to be a much greater emphasis than that given by the ancients on the special contribution of India to the progress and solidarity of the international community and humanity as a whole.

Such a unifying national vision requires a long process of dialogue, discussion and debate to evolve and establish itself in the consciousness of the Nation. In a democratic and “secular” society which permits freedom of thought and expression and with a bewildering diversity, this process of evolving a national consensus will be a long, slow and difficult process. But the time taken and the difficulties on the way do not matter. For once such a unifying vision becomes a conscious and integral part of our national mind, then it will create an enduring spiritual and cultural unity on the foundations of which any amount of free local diversity can be permitted to flourish.

Fortunately for us in India, we already have such a regenerating and unifying vision in the ancient ideal of Sanatana Dharma, in the all-embracing spiritual vision of our ancient Vedic sages, expanded and reinterpreted to suit the present conditions by our modern Rishis like Sri Aurobindo and Vivekananda. We have to explore further how to translate this spiritual vision into the economic, social and political life. CS

Democracy, Development and Good Governance: The Inseparable Links in India



Riddhi Thakkar, ACS

Manager - Legal and Corporate Secretarial
Times Global Broadcasting Company
Limited (Times of India Group)
thakkar.riddhi@gmail.com

“The punishment suffered by the wise who refuse to take part in the government, is to suffer under the government of bad men” - Plato

In Greek ‘demos’ means ‘the community’ and ‘kratos’ means ‘sovereign power’ i.e. government by the people usually through elected representatives. In the modern world, democracy has developed from the American and French revolutions. A political system can properly be called democratic only if the government in power can be peacefully removed by a majority decision of the people, through fair and open elections. There are few nation states today that do not claim to be democratic, but not all would qualify on the basis of this criterion.

The article aims to make one understand the different aspects of democracy and its implications for the overall development of the country through good governance. Governance to become good governance needs the participation of people at each stage through which ideas of the same can be achieved for a better welfare of people.

The word democracy is one of the most used terms of the political vocabulary. This vital concept, through its transcultural dimension and because it touches the very fundamentals of the life of human beings in society, has given rise to much written comment and reflection; nevertheless, until now there has not been any text adopted at the world-wide level by politicians which defined its parameters or established its scope. This concept was probably in some way frozen by the opposition between plain or “formal” democracy and “popular” democracy which was current until recently in worldwide multilateral circles. These times are past; democracy, now unqualified, seems to be the subject of broad consensus and its promotion is high on the agenda of international bodies.

Governance is an all-inclusive term covering various aspects of the organization and structure of government, which have an impact on the efficiency of government and the delivery of public services, and incorporates accountability, transparency, financial devolution, political/administrative decentralization and administrative vigilance to check corruption. Good governance can be related to the basic goals of a society as enshrined in its constitution and other policy and plan documents. A faceless citizen is now blessed with a tool with the help of which he can now demand from the high and mighty in the government to know the details of every action they take professedly on behalf of the people. The major characteristics of good governance are participation, rule of law, transparency, responsiveness, equity and inclusiveness, effectiveness, efficiency, accountability, strategic vision and consensus-orientation.

Recently the terms “governance” and “good governance” are being increasingly used in the development literature. Bad governance is being increasingly regarded as one of the root causes of all evil within our societies. Major donors and international financial institutions, including the World Bank and IMF are increasingly basing their aid and loans on the condition that reforms that ensure “good governance” are undertaken.

Democratic governance, the term recently added to the vocabulary of politics, signifies more than what the two words signify separately. Democratic governance is a condition in which the promise of justice, liberty and equality is realized in a democratic political framework, where the government is sensitive to the people’s identities, aspirations and needs and where people feel secure and content.

E-governance deploys information technology (ICT) for improving information and service deliv-

“ India has everything, a nation needs for its development – like tremendous amount of skilled and unskilled manpower, all kinds of raw materials in abundance, a good legal system, a huge market and potential to export virtually everything, provided cost of its inputs are kept at international levels. Still success is far away and still much more is required to be done to achieve its desired goals.

ery to citizens (consumers) by enabling them to participate in the decision making process through a wider network of private and civil society organisations. Therefore, the government becomes more transparent, accountable and efficient and hence fits perfectly into the agenda of good governance. Not surprisingly, 'E-governance for Development' has been a prominent slogan in India in recent times. There are many core projects both at the national level and regional level such as smart card, national ID card, computerisation of revenue departments, generic office management system. Some of the well known state initiatives have been *Gyandoot* of Madhya Pradesh Government, *Friends of Kerala Government* and *Bhoomi* of the Karnataka Government. However, most of these national and state government projects fail to remain sustainable even after a successful pilot phase.

India is proud to be the largest democracy in the world. For almost seventy years now, we have witnessed the conduct of successful elections, peaceful changes of government at the Centre and in the States, people exercising freedom of expression, movement and religion. At the same time, we quite often experience rampant inequalities, injustice or nonfulfillment of social expectations.

Today, people believe that their government is not keeping pace with their expectations. In the last two years, India has seen a few groundswells of popular protests in which crowds largely composed of middle-class urbanites have taken to the streets to demand a more accountable and responsive government. The moral outrage is entirely justified, and the factors linked to India's governance woes are well known – a rise in corruption, cronyism, and criminalising among the ranks of elected officials, and a crushing government bureaucracy. India's governance challenges come against these backgrounds of dramatic economic and political transformation.

Good governance, to be effective and sustainable, must be anchored in a vigorous working democracy which respects the rule of law, a free press, energetic civil society organizations and effective and independent public bodies such as the Commission for Human Rights and Good Governance, Prevention of Corruption Bureau and the Fair Trade Commission. The Commission is important in ensuring the promotion and protection of human rights, but also in ensuring both transparency and accountability on the part of the government. At the political level, democratic practice, including transparency in policy making and administration, are important aspects of good governance. This is signified by a pluralistic political system that allows the existence of diversity in political and

ideological opinions. No wonder that good governance is said to be more easily achieved and guaranteed in a multi-party system than in a mono-party system.

Good governance deals with the nature and limits of state power. The doctrine of the separation of power is, therefore, relevant in the establishment of whether or not a country has a political system that is responsive to good governance. The doctrine of the separation of powers is based on the acceptance that there are three main categories of government functions: legislative, executive, and judicial. Corresponding to these are the three main organs of government in a state - the Legislature, the Executive and the Judiciary. The doctrine insists that these three powers and functions of government in a free democracy must be kept separate and exercised by separate organs of the State.

Today, the doctrine should be taken to mean checks and balance based on a constitutional scheme. It is one of the functions of the Parliament to check the Executive. This is done by various means, including the authorization of the budget, the scrutiny of government expenditure and the questioning of the government in parliament to account for its actions. It is the duty of the judiciary to protect the constitution by seeing to it that the laws of the country are not contrary to the constitution. The judiciary stands between the citizens and the state as a balance against executive excesses or abuse of power, the transgression of constitutional or legal limitations by the Executive as well as the Legislature.

Good governance consists of several dimensions. One is the *capacity* of the state to function in the service of the public good. Effective functioning requires knowledge of the policies and rules that best serve the public good, and hence training of state officials in their various professional realms. It requires a professional civil service with a set of norms and structures that promote fidelity to public rules and duties, in part by rewarding those who perform well in their roles.

Democracy and good governance promote economic development. Real democracy—that is competitive, open, participatory, and responsive—provides a means for citizens to monitor and evaluate the performance of government, and to remove officials and representatives who do not serve the public interest. By generating and defending broad commitment to the public welfare, increases the likelihood that public resources will be used to generate public goods that stimulate investment and commerce and raise the quality of life. A manifest commitment to the public welfare on the part of government also breeds a civic spirit in society, including a willingness to pay taxes and obey the law. More capable and knowledgeable government also generates the capacity to enforce the law, mediate disputes, keep order, collect taxes, promote trade, maintain fiscal stability, attract investment, and so foster economic growth. In defending human rights and property rights, in promoting equal access to opportunity based on talent and effort rather than power, and in providing a fair means for the resolution of disputes, the rule of law generates an enabling environment for economic growth.

By contrast, bad governance, and most specifically rampant corruption, constitute the bane of development. Extensive corruption discourages private investment, distorts resource allocations, deforms policies, proliferates regulations, swells budget deficits, enervates institutions, diverts resources from productive (wealth-generating) activity, and squanders large amounts of

resources. Funds that could go to educate and inoculate children, pave roads, build markets, dig wells, generate electricity, and otherwise provide an overall enabling environment for growth instead wind up in overseas bank accounts and real estate, or financing the importation of expensive cars and other luxury goods for already wealthy individuals. Worse still, officials often waste even more money purchasing weapons and building structures the country doesn't need (and likely will never use) in order to generate an opportunity for kickbacks.

The greatest threat that democracy is facing in India today is the scourge of corruption. Despite having a vigilant press, an outspoken civil society and an impartial Judiciary, the most disheartening fact of Indian democracy is corruption. Corruption in public life has been a major concern in India. Corruption continues to exist in covert and overt ways at all three levels political, bureaucratic and corporate sector. The high level of corruption in India has been widely perceived as a major obstacle in improving the quality of governance. In fact, corruption is a sign of political instability, and institutional decay, challenging seriously the validity and propriety of governance.

Criminalization is a fact of Indian electoral politics today. Criminalization of politics means to use politics or political power for immoral gains. Criminalization of politics is the very negation of democratic values and has no place in a democratic set up. The voters, political parties and the law and order machinery of the state are all equally responsible for this. India is in the efficacy of the democratic process in actually delivering good governance. The unholy nexus between politicians, civil servants, and business houses have a baneful influence on public policy formulation and governance.

The crisis of governance in India today is a consequence of the breakdown of democratic institutions and the emergence of an unholy nexus between inefficient, corrupt civil servants and vote-hungry politicians. The basic fabric of good governance does not occur by chance. Good governance is associated with responsible political leadership, enlightened policy-making and a civil service imbued with a professional ethos. The presence of a strong civil society including a free press and independent judiciary are the pre-conditions for such good governance. It must be demanded by citizens and nourished explicitly and consciously by the nation-state.

Development and improved governance have tended to go hand in hand. But, contrary to popular belief, there is little evidence that success in implementing governance reforms leads to more rapid and inclusive economic and social development. In fact, it may be the other way around. To be sure, governance that is effective, legitimate, and responsive provides untold benefits, especially when compared to the alternative: inefficient governance, cronyism, and corruption. But the focus on governance reform has not proved nearly as effective as promised in fostering development. The conclusion is clear: the development agenda should not be



overloaded with governance reform. As Harvard's Merilee Grindle has put it, we should be aiming for "good enough" governance, selecting a few imperatives from a long list of possibilities.

India has everything, a nation needs for its development – like tremendous amount of skilled and unskilled manpower, all kinds of raw materials in abundance, a good legal system, a huge market and potential to export virtually everything, provided cost of its inputs are kept at international levels. Still success is far away and still much more is required to be done to achieve its desired goals. Everything depends on how those in the realm of authority perceive and handle them. In India, there are many factors, which have made good governance difficult. As a developing nation, it is reeling between many internal contradictions like between prosperity-poverty, between plenty of resource endowments-scarcity of their management, between its culture of peace and tolerance-its tendency of sliding towards violence, intolerance and discrimination. Corruption and pursuance of sectional interests over national interests putting hurdles on its way to development.

India is in the throes of a fierce passion for governance. Not just any governance but 'maximum governance'; preferably in a combo with 'minimum government'. We are the only country in the world that officially celebrates Christmas as 'Good Governance Day'. Nobody speaks of the need for a good government anymore – only good governance.

Recognizing that governance improves with development, the international community would be better served by pursuing reforms that directly advance development, instead of a broad agenda that may have, at best, a small indirect impact. Such a pragmatic approach to improving governance would be neither dogmatic nor pretend to universality. Instead, the major constraints would be identified, analyzed, and addressed, perhaps sequentially.

Many of the good-governance agenda's key goals – empowerment, inclusion, participation, integrity, transparency, and accountability – can be built into workable solutions, not because outsiders demand them, but because effective solutions require them. Such solutions should draw from relevant experiences, with the understanding that they do not amount to "best practices."

Good governance presents us with a normative frame loaded with liberal values which clearly neglects the context of changing societies and local cultures. As coded in strong moralistic language it hardly addresses the real issues of governance experiences by actors who are part of the context. It lacks legitimacy in the same way modernisation theories did once. Moreover, good governance agenda persuaded by international agencies reflects a particular ideology commensurate with the Western neoliberal philosophy and hence used as an instrument to leverage aid policies.

To sum up, good governance is today a major discursive tool enabling the global transition of democracies to a form of government that some academics have labelled "soft authoritarianism", a more accurate description would be "authoritarianism with a democratic face". Good Governance entails the substitution of politics – which is what democracy is all about – with management. It seeks to insulate policy-making from the chaotic pressures of democracy.

The blind pursuit of good governance has guided development efforts for too long. It is time to acknowledge what works – and disregard what does not. CS

The Digital Footprint: Impacting Governance



Shweta Mohanty, ACS

Bhubaneswar

shweta.mohanty23@gmail.com

India is making rapid strides towards becoming a digital economy and the element of e-governance significantly contributes to economic and social growth. The use of ICT and other digital technologies in e-governance is key for cost-effective maintenance and timely dissemination of information. The concept of the digital economy gained importance, as world economies were looking at a paradigm shift from a largely manufacturing based economy towards a knowledge driven economy, one that would suitably rely on breakthrough digital technologies for effective achievement of economic and social objectives. Increased interdependence among nations is a necessary component of globalization and the digital revolution with its ability to make use of a vast database of information would play a major role in resource utilization globalization. Virtually every type of cross-border transaction now has a digital component.

Economies have largely become knowledge driven and the digitization process has improved the global competitiveness of nations, besides acting as a major contributor to GDP growth, innovation and facilitating employment opportunities. The cost and operational feasibility of digitization also promotes financial inclusion. The article explores some of the key areas in which digital technology has influenced the Indian governance framework.

The process of digitization started some five decades back with the advent of computing technologies and digital electronics. The digital transformation in governance is an offshoot of the digital revolution and has paved the way for 'e-government' or 'e-governance'. E-governance has been successfully implemented in most countries and has played a key role in the transformation of several economies across the world, with the presence of Cloud, Big Data Analytics, etc.

DEFINITIONS OF E-GOVERNMENT

According to the United Nations (www.unpan.org) definition (AOEMA report): "E-government is defined as utilizing the Internet and the world-wide-web for delivering government information and services to citizens."

According to the Global Business Dialogue on Electronic Commerce – GBDe (www.gbde.org) definition (AOEMA report): "Electronic government (hereafter e-Government) refers to a situation in which administrative, legislative and judicial agencies (including both central and local governments) digitize their internal and external operations and utilize networked systems efficiently to realize better quality in the provision of public services."

TYPES OF E-GOVERNMENT INTERACTIONS

- **G2C – Government to Citizen**

G2C are those activities in which the government provides one-stop, on-line access to information and services to citizens. In addition, government may disseminate information on the web; provide downloadable forms online; conduct training, etc.

- **G2B – Government to Business**

In G2B, the government deals with businesses such as suppliers using the Internet and other ICTs. Two key G2B areas are e-procurement and auctioning of government surpluses.

- **G2G – Government to Government**

G2G deals with those activities that take place between different government organizations/agencies. Many of these activities are aimed at improving the efficiency and effectiveness of overall government operations.

- **Government to Constituents (E-Democracy)**

E-democracy refers to online activities of governments, elected representatives, political parties and citizens for democratic processes. E-democracy involves 'electronic engagement' (e-engagement): engaging public in the policy process via electronic networks; 'electronic consultation' (e-consultation) which refers to interaction between public servants and interest groups; and 'electronic controllership' (e-controllership) consisting of the capability to manage

the cost, performance, and services of an organization via digitization.

E- GOVERNMENT INDICES

- **Web Measures Index:** - Web Measure Index 2005 is based upon a five stage model of e-government framework. These five stages are; emerging, enhanced presence, interactive presence, transactional presence and networked presence.
- **E-Participation Index:** The E-Participation Index is developed by the UNPAP and is used to assess the quality and usefulness of information and services provided by a country's government for the purpose of engaging its citizens in public policy issues. This index is indicative of both the capacity and the willingness of the country's government in encouraging the citizens' deliberative and participatory decision-making and of the reach of its own socially inclusive governance program.

Table 3.2. Top 50 performers in e-participation in 2016

Rank	Country	Rank	Country
1	United Kingdom	27	Germany
2	Japan	27	Norway
2	Australia	27	India
4	Republic of Korea	27	Sweden
5	Netherlands	32	Chile
5	New Zealand	32	United Arab Emirates
7	Spain	32	Bahrain
8	Singapore	32	Ukraine
8	Canada	34	Russian Federation
8	Italy	37	Brazil
8	Finland	37	Slovenia
12	France	39	Uruguay
12	United States of America	39	Mongolia
14	Austria	39	Ireland
14	Mexico	39	Saudi Arabia
14	Poland	43	Tunisia

Source: United Nations E-government Survey, 2016

E-Government Development Index (EGDI)

The E-Government Development Index (EGDI) is a weighted average of normalized scores on the three most important dimensions of e-government, such as:

- Scope and quality of online services (Online Service Index, OSI),
- Status of the development of telecommunication infrastructure (Telecommunication Infrastructure Index, TII) and
- Inherent human capital (Human Capital Index, HCI). - The data for the Human Capital

Index relies on the UNDP 'education index' which is a composite of the *adult literacy rate and the combined primary, secondary and tertiary gross enrollment ratio* with two third weight given to adult literacy and one third to gross enrollment ratio, the other components being *estimated years of schooling and mean years of schooling*.

Telecommunications Infrastructure Index: The Telecommunication Infrastructure Index is a composite weighted average index of five primary measures of a country's ICT infrastructure capacity. These are: (i) *estimated internet users per 100 inhabitants*; (ii) *number of main fixed telephone lines per 100 inhabitants*; (iii) *number of mobile*

FinTech or Financial Technology is a fast evolving sector of the financial services market and has contributed to cashless transactions and financial inclusion in the wake of structural reforms like demonetization. The Indian fintech landscape is segmented as follows – 34% in payment processing, followed by 32% in banking and 12% in the trading, public and private markets. It facilitates the digital payments by the use of 'banking and wallet' services, and sometimes act as financial product aggregators.

subscribers per 100 inhabitants; (iv) *number of wireless broadband subscriptions per 100 inhabitants*; and (v) *number of fixed broadband subscriptions per 100 inhabitants*.

As per the United Nations E-government Survey 2016, India has an EGDI of 0.46 and a high online Service Index of 0.74.

INDIA'S DIGITAL TRANSFORMATION AS THE KEY TO INCLUSIVE GROWTH

Some of the key areas of digital transformation are highlighted below.

➤ Digitizing government-to-citizen (G2C) services

A UID (Aadhaar) not only helps in proper identification of the intended beneficiaries of State and Central government sponsored schemes, but also obviates the need for multiple identification mechanisms across Government departments. Aadhaar based services like biometric based authentication for citizens and Direct Benefit Transfer of LPG subsidies, scholarships and Public Distribution System are a few examples of G2C services.

Other Aadhaar-based services are *Digital Locker* and *E-sign*. Digital Locker services provide the online facilities for government and other agencies to send the electronic documents of citizens, storing legacy government certificates / documents. E-sign is a cost-effective model which aims to achieve large scale adoption of digital signature and hence paperless transactions.

➤ Promoting Digital Literacy and Infrastructure: The 'Digital India' campaign

The 'Digital India' campaign has been launched by the Government of India on 02 July 2015 in order to promote citizen empowerment by ensuring access to digital services, digital literacy and setting up of proper utility infrastructure. The Ministry of Communications and IT is the nodal agency to implement the programme. It includes various schemes worth over Rs 1 lakh crore like Digital Locker, e-education, e-health, and national scholarship portal. BharatNet in Gram Panchayats and Next Generation Network (NGN), are also a part of Digital India campaign. The various apps for Digital India are the Digital India Portal, MyGov mobile app, Swachh Bharat Mission app and Aadhaar.

Other policy initiatives by the Department of Electronics and Information Technology(DeitY) in the e- Governance domain like e-Kranti Framework, Policy on Open Application Programming

Interfaces (APIs) for Government of India, E-mail Policy of Government of India, Policy on Use of IT Resources of Government of India, Application Development & Re-Engineering Guidelines for Cloud Ready Applications. In addition to the above, the following projects are also in progress.

India BPO Promotion Scheme - The India BPO Promotion Scheme (IBPS) has been approved under Digital India Programme, to incentivize BPO/ITES Operations across the country [excluding certain Cities and the States in North East Region (NER)], for creation of employment opportunities for the youths and growth of IT-ITES Industry.

Electronics Development Fund (EDF) - The policy aims to promote innovation, R&D, and Product Development, towards creation of an Electronics System Design and Manufacturing (ESDM) sector, with the active development of the Industry to achieve 'Net Zero' Imports by 2020. Hence, the Electronics Development Fund was established. Further, it aims to have a resource pool of IT within the country to create a self-sustaining eco-system of Venture Funds.

National Centre for Flexible Electronics (NCFlexE) is an initiative of Government of India to promote research and innovation in the emerging area of Flexible Electronics.

Centre of Excellence on Internet of Things (IoT) is a joint initiative of Department of Electronics & Information Technology (DeitY), Education and Research Network (ERNET) and NASSCOM.

➤ **Financial Inclusion (FinTech and Digital Payments Eco space)**

At present, India has over 450 million smartphone users and also a significant number of users of phones with the minimum basic features. The mobile technology can be appropriately leveraged by the government, to act as potential tech-based digital payment solutions.

FinTech or Financial Technology is a fast evolving sector of the financial services market and has contributed to cashless transactions and financial inclusion in the wake of structural reforms like demonetization. The Indian fintech landscape is segmented as follows – 34% in payment processing, followed by 32% in banking and 12% in the trading, public and private markets. It facilitates the digital payments by the use of 'banking and wallet' services, and sometimes act as financial product aggregators. The sector is based on recent IT developments –technology intelligence, machine learning and Big Data, which is gradually overcoming traditional financial practices. FinTech has impacted cross border e-commerce by providing alternative payment systems.

The regulatory environment for FinTech companies and cashless payment scenario is conducive and they have forayed into banking operations. In a recent development, RBI released draft norms that proposed some changes in the transaction charge structure, in order to make such transactions cheaper and more popular among smaller merchants. The Merchant discount rate (MDR) is proposed to be linked to the annual revenue of the merchant based on the recent classification of four different classes of merchants.-a) smaller merchants that have an annual turnover of up to 20 lakhs, b) government transactions, c) special category merchants related to utilities, agriculture, etc., and d) all other merchants who have an annual turnover of over Rs 20 lakhs.

The **Unified Payments Interface (UPI)** is another initiative towards

“ The e-Biz initiative, being piloted by the Department of Industrial Policy and Promotion, seeks to provide comprehensive Government-to-Business (G2B) services to business entities with transparency, speed, and certainty. It aims at reducing the points of contact between business entities and Government agencies, standardizing “requirement information”, establishing single-window services, and reducing the burden of compliance, thereby benefitting stakeholders such as entrepreneurs, industries and businesses, industry associations, regulatory agencies, industrial promotional agencies, banks and financial institutions, and taxation authorities.

a 'cashless India' and it facilitates a real-time **payment/settlement** platform in India for inter-bank transactions through mobile devices. Each Bank provides its own UPI App for Android, Windows and iOS mobile platform(s).

➤ **SMART Services through NeGP: e-Kranti (Mission Mode Projects)**

The vision of e-Kranti is “Transforming e-Governance for Transforming Governance” and its mission is “To ensure a Government-wide transformation by delivering Government services electronically to the citizens through integrated and interoperable systems via multiple modes, while ensuring efficiency, transparency and reliability of such services at affordable costs.”

Under this initiative, a number of mission mode projects are being implemented country-wide and in individual states for effective e-delivery of high priority citizen services, and ensure simpler and good governance. CSCs, e-Districts, Income Tax, MCA21, e-Biz, Road Transport, e-Courts etc., are a few examples.

Key Principles of the E-Kranti Programme:

1. Transformation and not Translation - All project proposals in e-Kranti must involve substantial transformation in the quality, quantity and manner of delivery of services and significant enhancement in productivity and competitiveness.
2. Integrated Services and not Individual Services - A common middleware and integration of the back end processes and processing systems is required to facilitate integrated service delivery to citizens.
3. Government Process Reengineering (GPR) to be mandatory in every MMP - To mandate GPR as the essential first step in all new MMPs without which a project may not be sanctioned. The degree of GPR should be assessed and enhanced for the existing MMPs.



4. ICT Infrastructure on Demand – Government departments should be provided with ICT infrastructure, such as connectivity, cloud and mobile platform on demand. In this regard, National Information Infrastructure (NII), which is at an advanced stage of project formulation, would be fast-tracked by the DeitY.
5. Cloud by Default – The flexibility, agility and cost effectiveness offered by cloud technologies would be fully leveraged while designing and hosting applications. Government Cloud shall be the default cloud for Government Departments. All sensitive information of Government Departments shall be stored in a Government Cloud only. Any Government Department may use a private cloud only after obtaining permission from Department of Electronics and Information Technology which shall do so after assessing the security and privacy aspects of the proposed cloud.
6. Mobile First - All applications are designed/ redesigned to enable delivery of services through mobile.
7. Fast Tracking Approvals – To establish a fast-track approval mechanism for MMPs, once the Detailed Project Report (DPR) of a project is approved by the Competent Authority, Empowered Committees may be constituted with delegated powers to take all subsequent decisions.
8. Mandating Standards and Protocols – Use of e-Governance standards and protocols as notified by DeitY be mandated in all e-governance projects.
9. Language Localization - It is imperative that all information and services in e-Governance projects are available in Indian languages as well.
10. National GIS (Geo-Spatial Information System) - NGIS to be leveraged as a platform and as a service in e-Governance projects.
11. Security and Electronic Data Preservation - All online applications and e-services to adhere to prescribed security measures including cyber security. The National Cyber Security Policy 2013 notified by DeitY must be followed.

A few of the Mission Mode Projects are briefly described below.

1. *MCA21*: The Ministry of Corporate Affairs (MCA), Government of India, has initiated the MCA21 project, which enables easy and secure access to MCA services in an assisted manner for corporate entities, professionals, and general public. The IT-enabled MCA process aims at secure electronic filing for MCA transactions, while making the scrutiny of forms easier and thereby reducing errors. It also facilitates the use of digital signatures to ensure the security of electronic forms and documents.
2. *e-Biz*: The e-Biz initiative, being piloted by the Department of Industrial Policy and Promotion, seeks to provide comprehensive Government-to-Business (G2B) services to business entities with transparency, speed, and certainty. It aims at reducing the points of contact between business entities and Government agencies, standardizing “requirement information”, establishing single-window services, and reducing the burden of compliance, thereby benefitting stakeholders such as entrepreneurs, industries and businesses, industry associations, regulatory agencies, industrial promotional agencies, banks and financial institutions, and taxation authorities. Many of these reforms have focused on technology- implementing electronic business registration, e- filing for taxes, an electronic collateral registry, and online submission of customs forms and payments.
3. *E-procurement*: This project is aimed at making the process of procurement easier and transparent, and at the same time, ensure efficient vendor management and contract management through e-auctions. It aims to simplify the process of government procurement and consequently reduce cycle time and cost overruns.
4. *CSC (Common Service Centres)* - The Scheme creates a conducive environment for the private sector and NGOs to play

an active role in implementation of the CSC Scheme, thereby becoming a partner of the government in development of rural India. The PPP model of the CSC scheme envisages a 3-tier structure consisting of the CSC operator (called Village Level Entrepreneur or VLE); the Service Centre Agency (SCA), that will be responsible for covering a group of districts in a state; and a State Designated Agency (SDA) identified by the State Government responsible for managing the implementation over the entire State. Under the scheme, over one lakh internet enabled kiosks are being set up in the rural areas spread across more than 600,000 villages. One Kiosk is intended to serve a cluster of five to six villages. The CSC Monitoring tool has the four online applications- CSC SMART Solutions, CSC Online Monitoring Solution, CSC Online Dashboard and CSC Connect.

5. *Agriculture*: The Department of Agriculture and Cooperation (DAC) has over the years undertaken several IT initiatives such as AGMARKNET, SEEDNET, DACNET etc. Agriculture Mission Mode Project proposes to integrate these IT initiatives with the new applications / modules being developed as a part of the Project. The objective of the project is to provide timely and relevant information and services through multiple delivery channels such as the Internet, government offices, touch screens, Krishi Vigyan Kendras, electronic media, and mobile connectivity. Further, private sector participation is encouraged to benefit farmers by providing value added services like marketing, post-harvest facilities and storage.
6. *E-panchayat*: Computerization of PRIs will fulfil the objective of effective local governance by participation of the ordinary public. IT enabled processes would help in the improvement of internal management processes and decision making in the Panchayats. Implementation of the e-Panchayat MMP in all states/UTs is proposed to be done on a Service Procurement Model (SPM).

Apart from the initiatives mentioned above, the government aims at leveraging technology to achieve desired outcomes in areas like healthcare, education, justice, disaster management, emergency services, finance, cyber security etc.

➤ **M-governance and 'trickle-up' approach to banking and financial services**

M-Governance aims at providing fast and easy access of public services to citizens through mobile applications. Delivering timely and accurate information to citizens, as also an established system of two-way communication between the government and the public is one of the keys to strengthening democracy by facilitating enhanced utilization of public services, participation and empowerment of citizens. A mobile applications (m-apps) store has been created to facilitate the process of development and deployment of suitable applications for delivery of public services through mobile devices.

The use of mobile technology is also prevalent in 'trickle-up' banking and involves the innovative use of automated push SMSes that provide customers with reminders and encourage them to save or pay a loan on time.

➤ **Transformative Technologies: The Days Ahead Blockchain**

In a nascent stage, this is the new wave of digital technology that could bring about major governance changes. A blockchain is defined as an encoded digital ledger that is stored on multiple computers in a public or private network. It comprises data records, or "blocks." Once these blocks are collected in a chain, they cannot be changed or

deleted by a single actor; instead, they are verified and managed using automation and shared governance protocols.

Blockchain has been experimented in the areas of trade finance, cross-border payments, bill discounting, supply chain financing, loyalty and digital identity. Some of the Indian banks, business conglomerates, and one stock exchange are among the pioneers for exploring blockchain in India.

The disruptive technology could well be applied in areas of voting and land reforms, and have been experimented in some Indian States as well. It provides for low cost and real time settlement of internal as well as external remittances. 'Smart contracts' are automatically executed on fulfillment of criteria and within established protocols.

DIGITAL CURRENCY


Bitcoins are the first decentralized digital currency and uses public key cryptography, peer-to-peer networking, and proof-of-work to process and verify payments.

While it is not a regulated currency, one of the positive aspects of digital currency is that it can be used as a tool for financial inclusion, by progressively reducing the developing world's dependence on banking agent networks for last-mile cash distribution. Digital currency could enter the mainstream, given the advancements in mobile technology. However, it needs careful consideration.

CHALLENGES

- **Customer adoption**: Resistance to change is a mindset and hence gradual adoption of digitization is required for the successful implementation of various initiatives. Structural reforms like demonetization have provided a major fillip to digitization and a surge in cashless transactions. However, mass acceptance through promotion of digital literacy needs to be effected.
- **Content development**: There is a need to reconcile and scrutinize transactions and update content so that information can be useful.
- **Security challenges**: The key element of a digital economy is access to a large information database and hence calls for appropriate security infrastructure and data empowerment laws, in order to protect misuse of public data and ensure that citizens' interest is protected.

CONCLUSION

The penetration of Internet, telecommunication services in India has increased in the last decade and this can be utilized for making lives easier and 'smarter'. Proper security standards need to be put in place to prevent possible misuse of sensitive data and protect sensitive personal information. Such transformation sets the stage for progress. 

REFERENCES

1. Retrieved from www.digitalindia.gov.in, Oct 2017
2. Retrieved from www.india.gov.in/central/department-electronics-and-information-technology-deity, Oct 2017
3. Retrieved from www.publicadministration.un.org, Oct 2017
4. Retrieved from www.mckinsey.com, Oct 2017
5. Retrieved from www.adb.org, Oct 2017

Catalyzing Panchayat Governance for Spurring Inclusive Growth



Dr. S K Gupta, FCS
Group CEO – AIHP, Gurgaon
cbst.skgupta@gmail.com

THE PERSPECTIVE

“Just as the whole universe is contained in the self so is India contained in the villages. My idea of village Swaraj is that it is a complete republic, independent of its neighbors for its own vital wants and yet interdependent for many others in which dependence is necessary”.

–Mahatma Gandhi

Panchayats have an important role in shaping socio-economic development and addressing the diverse needs of rural community. Improving governance of Panchayats can be instrumental in facilitating achievement of the cherished objective of inclusive growth.

The Panchayati Raj is a South Asian Political system operating mainly in India, Pakistan, Bangladesh and Nepal. The word “panchayat” literally means “assembly” of five wise and respected elders chosen and accepted by the local community. Panchayati Raj is a system of governance in which panchayats are the basic units of administration. Though the term ‘Panchayati Raj’ was coined by Jawaharlal Nehru, it was the idea and the dream of Gandhi’s ‘Gram Swaraj’ (village autonomy), who visualised these autonomous villages as a self-sufficient, self-reliant and little republic. He portrayed the ‘panchayat’ as the ideal unit to uphold India’s democracy. He observed that ‘I have not pictured a poverty stricken India containing ignorant millions. Establish Gram Swaraj make each village self-governing and self-contained as regards to the essential needs of its inhabitants for food and cloth’. It is the oldest system of local government in the Indian sub-continent. This system was adopted by state governments during the 1950s and 60s as laws were passed to establish panchayats in various states. It also found backing in Indian constitution with the 73rd Amendment in 1992 to accommodate the idea.

PANCHAYAT - THE THREE-TIER SYSTEM

The states of Goa, Jammu and Kashmir, Mizoram, Meghalaya, Nagaland and Sikkim have two-tier panchayats - one at the village level and the second at the Zila or District level. In Jammu and Kashmir, block is the second level. In all other states Panchayati Raj is a three-tier system - village as first level, block or janapad as second level and zila or district as the third level.

Village Level: Village is the basic unit of Panchayati Raj Institutions. It is generally a revenue unit. The unit of local government here is called village panchayat. In the structure of the Panchayati Raj, the village panchayat is the lowest unit.

Block Level: Block or Union is the second or intermediate level of local self-government in rural India. It has been named differently in different states.

District Level: Except in the State of Jammu and Kashmir, the District/Zila Panchayat constitutes the apex body of the three-tier structure of the Panchayati Raj system. The Panchayat at the district level is called Zila Parishad in most of the States.

WHY PANCHAYATI RAJ?

Rural India is where ¾ of our countrymen live. The Nation can, therefore, be strong and prosperous only when all villages are fixed from backwardness and poverty. Panchayats have been the backbone of Indian villages. Rural development is not a mechanical development. It is a human process. It requires hard work, dedication, responsiveness and accountability of both official and non-officials to make rural development a success. In recent times, the emphasis in regard to development has shifted to rural development for bringing about an appreciable improvement either in the living conditions of the weaker sections of the rural population or in reducing the poverty and unemployment. Panchayat

“ Good governance is of great significance in making panchayats functional and efficient. There is no other way to include the aspirations of all our people to guide our collective destiny other than to develop a strong local government system. Inclusive growth, which is the motto of the 12th five year plan, can be achieved only through inclusive governance and the key to this is an effective, well-functioning Panchayat system.

is an instrument to carry out the programs of rural development. Good governance is of great significance in making panchayats functional and efficient. There is no other way to include the aspirations of all our people to guide our collective destiny other than to develop a strong local government system. Inclusive growth, which is the motto of the 12th five year plan, can be achieved only through inclusive governance and the key to this is an effective, well-functioning Panchayat system.

EVOLUTION OF PANCHAYATS

The evolution of Local Governance in India can be traced as under

Pre-British Local Governance: India's old sacred books and historical sources mention village communities (councils or assemblies) across the sub-continent that were self-governing over millennia, serving as the main interface between the predominantly agrarian village economies and the higher authorities. Custom and tradition elevated these earlier councils to the form of the Panchayat which became the pivot of administration, the focus of social solidarity and the principal forum for dispensation of justice and resolution of local disputes.

Pre-Independence Panchayats: Several steps were taken during British rule in India towards setting-up formal local bodies. In urban areas, a municipal corporation came to be formed in Madras – on the British model of a town council – as early as 1687.

Post-Independence Panchayats: Panchayat system was adopted by state governments during the 1950s and 60s as laws were passed to establish panchayats in various states. It also found backing in Indian constitution with the 73rd Amendment in 1992 to accommodate the idea. In the history of Panchayati Raj in India, on 24th April, 1993, the constitutional (73rd Amendment) Act 1992 came into force to provide constitutional status to the Panchayati Raj institutions. Currently, the Panchayati Raj system exists in all the states except Nagaland, Meghalaya and Mizoram and all the Union Territories except Delhi.

The idea of Panchayati Raj in India is based on community participation and collective decision-making at the local level, or in other words, self-governance. Panchayats as local governments have a critical role in ensuring the participation and inclusion of the poor, the marginalized, and vulnerable groups in

decision-making. As local people know their area, resources and problems the best, Panchayat can plan for local economic development and address the problems of their area. Hence, the role of Panchayat is critical for overall inclusive development as well as for deepening democracy through participatory governance.

RATIONALE OF GOOD GOVERNANCE IN PANCHAYATS

Good governance is an essential ingredient for socio-economic development of the country. The concept of governance is simple “The way those with power use that power”. It centers around the responsibility of government and governing bodies to meet the needs of the masses as opposed to select groups in society. It is seen as a set of values, policies and institutions through which the society manages economic, political as well as social process at different levels. The issue of good governance in recent time, emerged at the forefront of the agenda for sustainable human development. Any form of Government to rule effectively and in a citizen-friendly manner has to ensure good governance. It is recognized that “governance is about how an organization steers itself and the processes and structures that are used to achieve its set goals. Good governance is a condition that ensures the maximum happiness and welfare of all the people in a society through a legitimate and citizen-oriented political system. Good Governance is a dynamic concept - It encompasses fast changing political, social and economic milieu along with international environment and conditions of operational governance. Good governance is key to enabling Panchayats to achieve their objectives of inclusive growth.

WHY PANCHAYATS ARE NOT EFFECTIVE?

The Panchayats in India, barring a few exceptions, are growing in size and scale but without the roots. What we witness today is a miasma of cynicism, disillusionment and disappointment. Panchayati Raj has not brought relief to the weaker section of the community. In short, the Panchayat system has hitherto failed to realize the dreams of its architects. There has been no perceptible increase in the flow of benefits of development to the economically and socially weaker sections of the village community due mainly to the following reasons.

Grossly inadequate devolution: Panchayati raj is not followed by structured, scientific, consistent and sustained process of devolution which is leading to poverty and inequalities. Many States have not taken effective steps to devolve Funds, Functions, Functionaries (3Fs) to the Panchayats to enable them to discharge their constitutionally stipulated function.

Parallel systems: Parallel systems and organizations set up under various Central/State developmental programs have further sapped strength of the Panchayats, pared away their legitimate functional space and even encroached upon their political space.

Excessive control by bureaucracy: In some States, the Panchayats have been placed in a position of subordination: Panchayat Sarpanches have to spend extraordinary amount of time visiting Block Offices for funds and/or technical approval. These interactions with the Block staff /office distort the role of a Sarpanch as elected representative.

Tied nature of funds: Activities permitted under the schemes

are not always appropriate for all parts of the district. This results in unsuitable activities being promoted or an under-spend of the funds.

Reluctance to use fiscal powers: Studies have revealed that nearly 40% of Panchayats are economically unviable. They are created because required number of voters is available to constitute a village Panchayat. An important power devolved to GP is the right to levy tax on property, business, markets, fairs and also for services provided, like street lighting or public toilets, etc. Very few Panchayats use their fiscal power to levy & collect taxes. The argument pushed by Panchayat-heads is that it is difficult to levy tax on your own constituency.

Status of the Gram Sabha: Empowering the Gram Sabhas could have been a powerful weapon for transparency, accountability and for involvement of the marginalized sections. However, a number of the State Acts have not spelt the powers of the Gram Sabhas nor have any procedures been laid down for the functioning of these bodies.

IMPROVING GOVERNANCE OF PANCHAYATS

Despite steady urbanization, over 70% of India's population continues to live in its villages and about 60% of the nation's workforce draws its sustenance from agriculture and related activities. Improved Panchayat governance based on the following tenets is therefore inexorably linked to efficient functioning of Panchayati raj institutions and achievement of the cherished objective of inclusive growth.

Appropriate Structure and Size: States should ensure that as far as possible Panchayats should be of an appropriate size which would make them viable units of self-governance and also enable effective popular participation. This exercise will need to take into account local geographical and demographic conditions. There is need for States to re-examine Panchayat delimitation so as to aim for greater efficiency of scale in delivery of services. Though gains can be expected when small villages are clustered, the trade-off could be in terms of larger Gram Sabhas. The participation of the people is inversely proportional to the size of the Gram Sabha. The factors that would have to be taken into consideration for determining the minimum size of a Panchayat are: (a) potentiality for resource generation, (b) sustainability of the staff structure, (c) suitability as a unit of planning for core functions, (d) geographical cohesiveness, (e) terrain conditions and (f) communication facility within the Panchayat area.

Leveraging Information Technology: Steps should be taken to set up Information and Communication Technology (ICT) and Space Technology enabled Resource Centres at the Village and Intermediate Panchayat levels for local resource mapping and generation of local information base.

Adoption of Performance Indicators: For all services provided by local governments there is need to develop a set of performance indicators. The concerned Ministry should lay down broad guidelines for this purpose. Thereafter, the State Governments could lay down norms for this purpose. The concerned Ministry should maintain a State-wise database about the performance of various service delivery systems. Similarly, the State should have a database for such services covering all municipal bodies.



Transparency: A key to success of the Panchayati Raj system is transparency in the way these bodies function. Being closer to the people, the Panchayats' right to information -- and accessibility to the Panchayats -- must be ensured. Panchayats, should display all vital information about development projects (especially receipt of funds and how they are being spent) in the Panchayat Offices or on a prominent board outside the village school for the information of the public, all relevant records should be open to inspection and members of public should also be able to obtain photocopies of documents related to development projects as also matters of general public interest by paying a nominal charge.

Empowerment: Empowered Gram Sabha has significant development potential and can play multiple roles to transform subsistence village economy into a vibrant one facilitating village to emerge as an organized unit managing its administration and development affairs. As a powerful institutional mechanism it can keep a close vigilance on the implementation of development programs and virtually eliminate inefficiencies and misuse of development funds. Empowerment of Gram Sabhas would require efforts at mobilisation of the village community for mass participation in meetings of the Gram Sabha. Further, a massive awareness generation programme needs to be taken up to inform Gram Sabhas about their rights in planning, implementation and audit of development programmes and in control over natural resources, land records and conflict resolution.

Peoples' Active Involvement and meaningful participation in planning and implementation of socio-economic development programs meant for them are necessary to yield better results. People in their villages are the best to identify their development needs including infrastructure, programs and beneficiaries under Government sponsored programs. Besides, their collective decision has much significance as to how to plan and implement programs based on local resources and how much money would be required for local projects.

Accountability: To what extent are the village panchayats accountable to the common people and looking after public interest? Do the ordinary masses feel involved and participate? Accountability involves the existence of mechanisms that ensure public officials and political leaders answerable for their actions and use of public resources.



Attitudinal and Behavioral Changes: The style of functioning of Panchayats needs to be change-oriented, result-oriented and people-oriented to enable the PRIs to flourish as self-governing units. The same applies to political masters as they are expected to play the role of big brothers and faithful guides so as to allow these bodies to function as effective units of participatory democracy.

Vision and Strategy: There must be a Roadmap which lists issues and Action points for nurturing the Panchayats into the institutions of self-government in a multi-level democracy and a common platform for all line departments, people etc. for realizing the objective of sustainable inclusive growth.

The Need for Capacity Building: Capacity building should be attempted at the local level by shifting the currently available post school generalistic education to a skill and technology based system. Systematic training of the elected representatives of the PRIs is critical for effective functioning of Panchayats. The first time elected representatives, especially from reserved categories have no experience of performing the functions of the PRIs. Moreover, they also feel handicapped in exercising their powers and performing their duties due to lack of education and poor social & economic status.

Implementing and Supervising Schemes Effectively: The effective implementation of social schemes will bring a positive change in the lives of members of the Panchayat. For effective implementation of these schemes, the functionaries must fully inform themselves about the schemes and any changes by seeking information from the block level officials.

The various steps that the Panchayat can take for the effective implementation and supervision of schemes are: • Disseminate information about the scheme in the Gram Sabha • Ensure that locally relevant works are taken up under the schemes • Ensure that Gram Sabha approvals are obtained as required, especially for beneficiary selection • If funds are transferred to the GP under the scheme, maintain accounts scrupulously • Review the implementation of the scheme from time to time • Organize social audit of the scheme • In case there is a major problem in the implementation of the scheme, inform the block office in writing, after passing a resolution in the Panchayat.

Social Audit Committee (SAC): The Social Audit Committee is

set up to strengthen the process of constructive engagement between the citizens and the Panchayat and to improve the use of public resources to deliver goods and services. The SAC is formed at the Ward or Panchayat Levels. The Committee comprises 10 members, 50% whom must be women. Typically the SAC should comprise local respectable persons like members of support organizations/NGOs, retired school teachers, retired government officers, coordinator of the local National Social Service Chapter, woman members of SHGs etc. The Chairperson and 5 members form the quorum for a SAC meeting.

The SAC is responsible for: 1. Creating awareness amongst beneficiaries and providers of local social, productive and infrastructure services. 2. Procurement monitoring i.e. bringing in greater transparency through active involvement at critical stages — needs identification, monitoring of contract award. 3. Improving efficiency, productivity and quality in the delivery of goods and services through community oversight. 4. The SAC or member/s of SAC remains present during bid openings. 5. At the end of the financial year, the SAC shall present its consolidated findings in the Gram Sabha wherein all the officers of the Panchayat should remain present to clear any doubts with relevant documentation.

Proactive Disclosure: Proactive disclosure means sharing of information on a person's or institution's own initiative, without having been asked to do so. The Panchayat is a public institution and has to function in transparent, accountable and responsive manner. This means that all the important information related to functioning of Panchayats must be shared with the villagers. The Panchayat President, Secretary and other office bearers must respond to demands of villagers and reply to their queries. They must also explain their actions or reasons for lack of action, to villagers individually.

Grievance Redressal: Despite the best intentions to reach the poorest of the poor, there may be discontent and complaints with regard to implementation of programs, particularly with regard to selection of beneficiaries, timely release of grants/entitlement, irregularities with regard to procurements and disbursements etc. Timely redressal of people's grievances to their satisfaction not only reduces discontent, but also helps Panchayat improve its functioning.

Many a time, grievances arise due to poor communication or lack of access to concerned authorities. Citizens' expression of grievances should not be perceived as threats or as irritants, but as suggestions/feedback to improve program outcomes and functioning of Panchayat. If many complaints are received, this can be a positive indicator of villagers being aware, and the Panchayat being accessible and responsive. If a grievance registered at the Panchayat level cannot be redressed to the satisfaction of the complainant, Panchayat should develop a mechanism to forward it to the higher level. Every Panchayat should maintain a complaint register. Every complaint registered must be assigned a registration number and a dated acknowledgement of complaint registration must be given to the complainant. The Panchayat President must review the progress of redressal of all complaints registered in the meeting of the Panchayat. This may become a permanent agenda of the Panchayat meeting. The Panchayat must inform the complainant of the action taken within 15 days of the date of registration of complaint. Various Departments have their own help lines for registration and redressal of grievances. It is the duty of

Panchayat to display these helpline numbers on the walls of Panchayat office and also at other public places.

Perspective and Annual Plans: Primarily, the Panchayats may prepare two types of plans • Perspective Plan for the long term, which should include the goals, strategy and activities for the next five years. • Annual Plan, to be made every year. The annual plan should contain activities to be taken up during the year, and has to be detailed with specifics about the funds required, the time at which various activities will be undertaken, etc.

Participatory Planning: The planning exercise should be participatory, or, in other words, involve the people of the village. It is important that real needs and problems of local citizens, especially the poor and vulnerable ones, are given top priority and get reflected in the GP plan. This can only be ensured if all the sections of the local population, especially the poorest, women and other vulnerable groups, are consulted during GP plan preparation.

Conducting Panchayat Meetings: The meetings of the Panchayat and its Standing Committees are important for decision-making. These meetings have to be conducted in a participatory and democratic manner, so that views of all the members are heard and collective decisions are made in the interest of poor and vulnerable groups. Key decisions should be taken after discussions in the Panchayat meeting, where all the Elected Representatives have the opportunity to remain present.

The important topics that may be discussed in Panchayat meetings are: • Needs of different wards and people of the Panchayat regarding drinking water, sanitation, housing, livelihoods, health and education etc. • Strategies to meet the needs of local people and solve their problems • Approval of Annual Plan and Budget • Ways to raise the income/resources of the Panchayat • Concurrent review of Annual Plan, Budget and its implementation and utilization • Monthly income-expenditure reports • Progress of ongoing schemes • The functioning of the village institutions such as schools, *Anganwadis*, health centres, Public Distribution System (PDS) shops, etc. • Approval of new works/schemes • Issues raised or resolutions passed in Gram Sabhas • Complaints and grievances of Gram Sabha members • Compliance of inspection and audit reports • Issues raised by Standing Committees • Any other important issues. The meetings should be structured and conducted as per the guidance note for conduct of Panchayat meetings issued by the ICSI.

Smart Panchayat: Government spends huge amount in rural development and reaching out to the rural people. Many government departments are targeting the villages through PRI in some way or other to deliver their services through various schemes. From an in-depth analysis of these schemes it has been found that the benefits are not reaching the common people, the reasons being the complexity in the Govt. delivery process and lack of information to the public. It results in the creation of touts/brokers who are responsible for the pilferage and corruptions as citizen have to spend a lot of time and money to avail the services, which they end up not getting. Some of the State Governments have started using a Project Accounting and Monitoring system (PAMS) specifically tailored for use in Panchayats. The system has revenue streams in the form of grants from the Government for schemes implementation, taxes of various forms, income from own assets of Panchayat. The

“ Good governance is a condition that ensures the maximum happiness and welfare of all the people in a society through a legitimate and citizen-oriented political system. Good Governance is a dynamic concept - It encompasses fast changing political, social and economic milieu along with international environment and conditions of operational governance. Good governance is key to enabling Panchayats to achieve their objectives of inclusive growth.



Revenue management system helps in managing tax collection and other revenue streams. Organizational and Governance module helps the recording of all information relating to Organization structure of the Panchayat and the Governance system such as Gram Sabha. Scheme Services Monitoring Tool looks after automation of the services related to the scheme. The package also provides administrative Services Monitoring Tool and Grievance Redressal System.

CONCLUSION

For inclusive growth, we need to hitch the horse of accelerated growth to the wagon of participative development. It is the effective empowerment of the disadvantaged through the effective devolution of Functions, Finances and Functionaries to representative institutions of local self-government such as Panchayats that will pave the way for effective implementation of various measures of inclusive growth. The two decades of inspiring journey into a brighter future for the hitherto neglected sections of the society is a promise that the future of Panchayats will be brighter. Panchayats will become effective and efficient through good governance encompassing timely implementation and close monitoring of various schemes, and adherence to transparency & accountability in the process. CS

Taxation of Goods Transport Agency Service Under GST



Gurinder Singh, ACS

Head Indirect Taxes

L&T Power, Vadodara

Gurinder.Singh@Intpower.com

The taxation of Goods Transport Agency business has always been a bone of contention between the transporters and the Government. The battle, to tax this sector first started long back in the year 1997. However, initiative of the Government could not materialize due to the strong opposition shown by the transporters lobby. In 2004, the Government finally succeeded in bringing this sector into the service tax net with the introduction of Notification Nos. 32 to 35/2004 – ST all dated 03-12-2004 levying tax on the Transport of Goods by Road with effect from 01-01-2005. The settlement was

GST regime has made an effort to bring Goods Transport Agencies in the mainstream by providing them an option to pay tax under forward charge while keeping the reverse charge option alive. This change has added an element of tax planning in the operations of Goods Transport Agencies. The determining factor in choosing the tax scheme shall be the quantum of taxable input services and goods received by them for use in providing the output service and of course their willingness to enter into the compliance box.

achieved mainly on the ground that the transporters shall not be made liable to pay tax. Instead, the recipient of their service, consigner or consignee be made liable to pay taxes under reverse charge and ensure compliances. Over the years, the scheme has undergone some changes particularly in the areas of exemptions and abatements but the fundamental aspect of such levy i.e. reverse charge mechanism remain unchanged.

Well, the service tax levy is a talk of bygone era and GST has taken firm position w.e.f 1.7.2017, this note will discuss the scheme of taxation adopted by the Government under GST in respect of Goods Transport Agency service.

MEANING OF GOODS TRANSPORT AGENCY [GTA]

As per the Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017, “Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note by whatever name called”.

Thus, the business firms which are engaged in the transportation of goods by road and issue consignment note / LR, etc. shall be called as GTA for the purpose of above notification.

Any entity though engaged in the transportation of goods but does not issue consignment note/ LR shall be out of the purview of GTA. It may be noted that road transportation services provided by a person other than GTA are in any manner exempt from the payment of tax by virtue of Notification No. 9/2017 – Integrated Tax (Rate).

MECHANISM AND THE RATES OF TAX

Let us recall the prime reason which delayed the levy of service tax on Goods Transport by road until 2004. As said above, it was the burden of compliance which deterred the road transporters to accept such levy. In that perspective, the liability to pay service tax was shifted away from the transporter and imposed on the consignor or consignee whosoever was liable to pay freight to the transporter. The said reverse charge mechanism continued for years together, grandfathered, and we entered in GST regime on 1.7.2017 with almost the same philosophy.

A little later i.e. on 22.8.2017, the Government diluted the original scheme and provided

Any entity though engaged in the transportation of goods but does not issue consignment note/ LR shall be out of the purview of GTA. It may be noted that road transportation services provided by a person other than GTA are in any manner exempt from the payment of tax by virtue of Notification No. 9/2017 – Integrated Tax (Rate).

an option to the transporters to pay GST/ tax under forward charge mechanism.

Let us now understand the scheme of taxation for GTA under the GST regime;

OPTION 1 - Payment of tax under Forward Charge [by GTA]:

- a. Notification No. 20/2017 – IT (Rate) dated 22/08/2017 provides an option to GTA to pay tax @ 12% (IGST or CGST+SGST) under forward charge.
- b. In case, the GTA opts for tax payment under forward charge, it will issue a tax invoice with charge of tax @ 12% and make payment to the Government on its own account. In short, the responsibility to make such tax payment to the Government lies with GTA.
- c. In other words, there will be no liability on the recipient of service to pay tax to the Government [under RCM].
- d. The recipient shall be eligible to avail credit of tax paid by GTA provided it is otherwise entitled thereto under Section 16 and Section 17 of the CGST Act.
- e. **GTA entitled to Input Tax Credit** - The incentive given to GTA under this option is that it shall be eligible to avail Input Tax Credit on input services and goods used for providing such service. Repair and maintenance of motor vehicles, motor insurance, renting of office space, manpower, etc. are the key services whereon GTA can avail Input Tax Credit. Similarly, tax paid on purchase of motor vehicle and spares are also eligible for Input tax credit. Since, petroleum is not yet subsumed in GST, credit of tax charged thereon shall not be available to the Good Transport Agency.
- f. It may be relevant to note that since petroleum continues to be outside the GST net, tax paid on the purchase of fuel by the transporters shall not be eligible for input tax credit.
- g. Needless to mention that GTA shall also be required to obtain registration under GST and obtain GSTIN in case it chose to pay tax under forward charge.

OPTION 2 - Payment of tax under reverse charge [by the recipient]:

- a. Where GTA does not opt for payment of tax under forward charge and the service recipient is either of the following category of persons;
 - any factory registered under or governed by the Factories Act, 1948
 - any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
 - any co-operative society established by or under any law; or
 - any person registered under any GST legislation
 - any body corporate established, by or under any law; or
 - any partnership firm
 - any casual taxable person.
 tax shall be paid under reverse charge mechanism by the consignor or consignee whoever is liable to pay freight to GTA.

- b. Tax rate under this option is **5%**.

- c. GTA shall not be eligible to avail Input Tax Credit on input services or goods used in providing such service.

- d. The recipient shall, however, be eligible to avail credit of tax paid under reverse charge provided it is otherwise entitled thereto under Section 16 and Section 17 of the CGST Act.

PLACE OF SUPPLY

As we know the taxability of any transaction in GST regime depends on the place of supply. We also know that in order to tax a transaction in GST regime, the place of supply should fall in the taxable territory. The place of supply is also relevant to determine whether the transaction is inter-state or intra-state.

The specific provisions have been inserted in IGST Act to determine the place of supply for services rendered by way of transportation of goods. The various scenarios considered are tabulated as below;

	Service provided to a registered person	Service provided to an unregistered person
Where the location of supplier of services and the location of the recipient of services is in India	Location of the recipient	Location at which the goods are handed over for their transportation.
Where the location of the supplier of services or the location of the recipient of services is outside India	Place of destination of such goods	Place of destination of such goods

Refer Section 12 and 13 of the IGST Act, 2017

ILLUSTRATIONS:

- a. Vimal Enterprises located in Bangalore issued a service order to a goods transporter namely Raj & Sons located in Delhi for the transportation of goods from Patna to its customer in Jalandhar. Raj & Sons provided the requisite services and would like to know the place of supply and tax liability in the given transaction.

The place of supply shall be the location of the recipient i.e. KARNATAKA. Since the location of the supplier i.e. Raj & Sons is outside Karnataka, it will charge IGST in its bill for the aforesaid services [if it has opted to pay tax under forward charge]. Else, Raj & Sons will pay the tax under reverse charge.

- b. Vimal Enterprises located in Bangalore issued a service order to a goods transporter namely LITCO PTE located in Myanmar for the transportation of goods from Myanmar to its customer in Bangladesh. LITCO PTE provided the requisite services. Vimal Enterprises would like to know the place of supply and tax liability in the given transaction. Since the location of the supplier is outside India, the place of supply shall be the place of destination of goods i.e. BANGLADESH. Considering that the place of supply is in the non-taxable territory, Vimal Enterprises shall not pay any tax [under reverse charge] on the services availed from LITCO PTE.
- c. Vimal Enterprises located in Bangalore issued a service order to a goods transporter namely Raj & Sons located in Delhi for the transportation of goods from Myanmar to its

customer in Bangladesh. Raj & Sons provided the requisite services. Raj & Sons and Vimal Enterprises would like to know the place of supply and their tax liability in the given transaction.

Since the location of the supplier and location of the recipient are in India, the place of supply shall be the location of the recipient i.e. KARNATAKA. Raj & Sons will charge IGST in its bill for the aforesaid services [if it has opted to pay tax under forward charge]. Else, Vimal Enterprises can pay the tax under reverse charge.

- d. Mr Yasin, shopkeeper, not registered under GST, located in Bangalore, issued a service order to a goods transporter namely ABC Ltd located in Delhi for the transportation of goods from a location in Delhi to another location in Delhi itself. ABC Ltd provided the requisite services and would like to know the place of supply in the given transaction. The place of supply shall be the place where the goods are handed over to the transporter for transportation. Here, the goods have been handed over in Delhi, the place of supply shall be Delhi. Since the location of the supplier i.e. ABC Ltd is in Delhi and the place of supply is also in Delhi, ABC Ltd will charge CGST_SGST in its bill for the aforesaid services.



“ The scheme of taxation as applicable to GTA services shall be applicable to support services provided by the GTA. In other words, support services shall be eligible for concessional rate of tax @ 6% without ITC under reverse charge mechanism and 12% with ITC under forward charge mechanism.

HSN CODE

HSN in respect of services provided by way of transport of goods by the Goods Transport Agency is 996511.

SUPPORT SERVICES

In pre-GST regime, there were issues concerning the taxability of certain ancillary services like loading, unloading, handling, transit warehousing, etc. provided by the Goods Transport Agency. The issue was clarified by the CBEC in a manner that the ancillary services provided by the GTA in the course of providing mainstream transportation services shall be taxed as a part of transportation services and be eligible for the abated rate of tax.

In GST regime, the aforesaid position has been maintained and explicitly recognized in the provisions. A separate HSN i.e. 996791 has been assigned to tax such services under the heading 'Other supporting transportation services' where the rate of tax and reverse charge applicability has been prescribed similar to the one prescribed for mainstream GTA services under 996511.

Thus, the scheme of taxation as applicable to GTA services shall be applicable to support services provided by the GTA. In other words, support services shall be eligible for concessional rate of tax @ 6% without ITC under reverse charge mechanism and 12% with ITC under forward charge mechanism.

ILLUSTRATION:

An order is placed by XYZ Ltd located in Vadodara on a transporter namely ABC Ltd also located in Vadodara for transport of a Steam Turbine weighing 100 tonnes from Vadodara to Chandigarh. In order to ensure smooth transportation, the transporter needs to repair/ widen a stretch of road. The charges for transportation were mentioned as Rs. 10,00,000 as freight and Rs 2,00,000 for necessary civil works on route.

In the give facts, the charges towards *on route* civil works shall be treated as support services and be charged to tax @ the rates as applicable to mainstream freight charges.

EXEMPTIONS TO GTA SERVICES

The Government has granted the following exemptions from the payment of tax on GTA services.

a. Services provided by GTA towards transportation of following goods are exempted from the payment of tax;

- i agricultural produce;
- ii milk, salt and food grain including flour, pulses and rice;
- iii organic manure;
- iv newspaper or magazines registered with the Registrar of Newspapers;
- v relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- vi defence or military equipment.

b. The exemption from payment of tax shall further be granted in the following situations;

- i where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- ii where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;

ILLUSTRATIONS

- a. ABC Ltd ordered XYZ Ltd, a transporter, to transport certain goods from Delhi to Karnal. Goods of ABC Ltd were exclusively transported in a particular vehicle carriage. ABC Ltd pays freight of Rs. 1500/- to XYZ Ltd. The above transaction is exempted from tax as the freight amount in a single carriage does not exceed Rs. 1500.
- b. ABC Ltd ordered XYZ Ltd, a transporter, to transport 5 boxes of goods from Delhi to Panipat. The transporter loaded goods of one more company namely LMN Ltd in the same carriage. It charged Rs. 650 from ABC Ltd and Rs. 1000 from LMN Ltd. The freight charged from ABC Ltd is exempted from tax [as not exceeding Rs. 750]. The freight charged from LMN Ltd is chargeable to tax [as it exceeds the limit of Rs. 750 and overall limit of Rs. 1500 is also breached].
- c. **The exemption from the payment of tax is further granted in case of services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely: -**
 - i any factory registered under or governed by the Factories Act, 1948(63 of 1948); or
 - ii any Society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part

of India; or

- iii any Co-operative Society established by or under any law for the time being in force; or
- iv any body corporate established, by or under any law for the time being in force; or
- v any partnership firm whether registered or not under any law including association of persons;
- vi any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

In short, the service provided by a GTA to an unregistered person who is not falling in any of the above listed category of persons shall be exempted from the payment of tax. This particular exemption is applicable w.e.f 13.10.2017.

ILLUSTRATION

Mr Ajay [a Government Employee] has engaged XYZ Ltd, a GTA, for the transport of his household goods from Chennai to Delhi. Whether the transaction is chargeable to tax?


The aforesaid transaction is not chargeable to tax as specially exempted by the Government.

EXEMPTION TO GTAs ON SPECIFIED INPUT SERVICES

Apart from the exemption granted to specified output services provided by GTAs, the following input services shall also be eligible for exemption when provided to GTAs.

- a. Services by way of giving on hire to a goods transport agency, a means of transportation of goods. [It may include hiring of motor vehicle or other transportation equipment such as containers, etc.]
- b. Service by way of access to a road or a bridge on payment of toll charges.

TAX PLANNING

- a. GTAs need to undertake an exhaustive exercise at their end to know the taxable quantum of goods and input services received by them for use in providing the output service. This exercise will help them to decide the method of tax payment i.e. forward charge or reverse charge.
- b. The recipient of GTA service also need to be careful especially where the GTA is intending to change the method of tax payment from reverse charge to forward charge. In such cases, the recipient need to ensure that the gains of input tax credit that will accrue to GTA must be passed on to the recipient by way of reduction in the basic rate of service.
- c. The parties should also ensure that the support services, if any, to be captured as a part of mainstream transportation service so as to secure reduced rate of tax for the same. 

Section 236 of Companies Act 2013: Does it Contemplate Forced Buyout of Minority Shareholders Shares?



Dr. K R Chandratre*, FCS
Practising Company Secretary
Pune
krchandratre@gmail.com

PRINCIPAL CANONS OF INTERPRETATION OF STATUTES

Before proceeding further, let us take note of the principal rules of interpretation of statutory provisions which are relevant in the present case: Firstly, 'literal rule' (called the 'golden rule of interpretation') is the basic and cardinal rule of interpretation of statutes, according to which words that are reasonably capable of only one meaning must be given that meaning whatever may be the result. If the words used are

Section 236 of the Companies Act 2013, entitled 'Purchase of Minority Shareholding' seeks to provide a mechanism for acquisition of minority shareholding of a company by the majority----. However, from the discussion in the article it seems clear that section 236 does not provide for a forced buyout of the minority shareholders' shares, and hence the minority shareholder is entitled to refuse to sell his shares in response to the offer made by the majority shareholder.

capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.¹ The intention of the Legislature must be gathered from the words used by the Legislature, for the words declare best the intention. The Legislature might have intended to do a certain thing, but if the words employed do not express that intention, it is not for the courts to assume the role of legislators and give effect to the unexpressed intention. No confusion must be made ... between what the draftsman might have intended to do and the effect of the language which in fact was employed by him. If the words, which are a medium of expressing intention, fall short of declaring the intention, it is for the Legislature to amend the language of the section. So far as the courts are concerned, where the words are clear and precise, they must be given their natural meaning.² Secondly, it is against the principle of statutory interpretation to insert any words in a statute. No words can be added in, or deducted from, a statute. It is a corollary to the general rule of literal construction that nothing is to be added to or taken out from a statute unless there are adequate grounds to justify the inference the legislature intended something which it omitted to express.³ The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results in rejection of words as meaningless has to be avoided.⁴ Thirdly, an interpretation which would leave without effect any part of the language of a statute will normally be rejected. Every word and expression used by the legislature has to be given its proper and effective meaning as the legislature uses no expression without a purpose or meaning; a meaning must be given if possible, to every word of a statute, for a statute is never supposed to use words without a meaning,⁵ and no word should be considered as redundant.

THE STATUTORY FRAMEWORK

Section 236 of the Companies Act 2013 (the Act) is entitled "**Purchase of minority share-**

1 *Kanailal Sur v. Paramnidhi Sadhu Khan*, AIR 1957 SC 907; *State of Maharashtra v. Nanded Parbhani Z.L.B.M.V. Operator Sangh* 2000 AIR SCW 261.

2 *Madanlal Fakirchand Dudhediya v Shree Changdeo Sugar Milla Ltd* [1958] 28 Comp Cas 312 (Bom).

3 *Maxwell on the Interpretation of Statutes*, 12th edn, page 33

4 *State of Maharashtra v. Nanded Parbhani Z.L.B.M.V. Operator Sangh* 2000 AIR SCW 261.

5 *Aucltlerarder of Presbytery v Lord Kinnoull* 6 Cl & F 646, 686.

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

holding". Subsection (1) of this section reads as follows:

"(1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent majority or holding ninety per cent of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares."

MEANING OF TWO EXPRESSIONS

According to the Explanation appearing below subsection (8), for the purposes of this section, the expressions "acquirer" and "person acting in concert" shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

These expressions were defined in regulations 2(1) (b) and (e) of regulation 2(1) of the 1997 Regulations respectively. The expression "acquirer" was defined as follows:

"acquirer means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer."

As will be noticed below, section 236 stipulates as a condition precedent for invoking the section, registration of transfer of shares in the name of the acquirer or any person acting in concert with the acquirer, and hence the definition given in the Takeover Regulations is inappropriate.

CONDITIONS FOR INVOKING SECTION 236

The first condition for invoking this section, according to subsection (1), is that an acquirer, or any person acting in concert with the acquirer, must have become a registered holder of ninety per cent or more of the issued equity share capital of a company.

If the abovementioned condition is satisfied, such acquirer, person or group of persons, shall notify the company of their intention to buy the remaining equity shares. For this purpose, the majority shareholder has to notify the company of their intention to buy the remaining equity shares.

According to subsection (2), the acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

According to subsection (3), without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).

DOES THE SECTION FORCE A SHAREHOLDER TO TRANSFER HIS SHARES TO THE ACQUIRER?

These three subsections of section 236 do not contemplate a forced buyout of the minority shareholders' shares by the majority shareholder. The section only enables the majority shareholder

(who has acquired or holds 90% of the share capital of the company) to acquire the shares of the minority shareholders and provides for a mechanism for that purpose.

The words "shall notify the company of their intention to buy the remaining equity shares" in subsection (1) would seem to create an obligation on the majority shareholder (who intends to acquire the minority shareholders' shares) to give a notice of that intention to the company, but they do not create a corresponding mandate for the minority shareholder(s) to sell their shares to the majority shareholder(s). There is nothing in the language of subsection (1) (or any other subsection) compelling the minority shareholder to sell the shares.

The words "shall offer to the minority shareholders" in subsection (2), have been used only with reference to the following words, namely "at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed." What they provide is that the shares held by the minority shareholder intended to be acquired by the majority shareholder shall be acquired at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed. Thus, subsection (2) does not create a legal obligation on the minority shareholder to sell his shares to the majority shareholder when a notice of intention under subsection (1) is received by the minority shareholder from the company.

Subsection (3) is an independent section and has nothing to do with subsections (1) and (2). It provides for voluntarily offering shares by the minority shareholder to the majority shareholder. This is clear from the words "Without prejudice to the provisions of sub-sections (1) and (2)". The use of "may" indicates that it is an optional or discretionary provision and facilitates a minority shareholder to sell his shares to the majority shareholder.

WHETHER STATUTORY REQUIREMENTS AS TO TRANSFER OF SHARES WOULD APPLY UNDER SECTION 236

Acquisition of shares under section 236, when the majority shareholder invokes this section, involves transfer of shares from the registered members of the company to the acquirer, and hence the provisions of section 56(1) of the Act and the of the articles of association of the company would apply to such transfer, as section 236 does not dispense with the compliance with section 56(1). Therefore, the company will not be entitled to register the transfer of shares in favour of the majority shareholder.

Accordingly, the company cannot register a transfer of shares unless the requirements under section 56(1) are complied with by the majority as well the minority shareholder.

According to section 56(1), (corresponding to section 108 of the Companies Act 1956), a company shall not register a transfer of shares unless a proper instrument of transfer in the prescribed form, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to shares to be transferred.

It was held by the Supreme Court in *Mannalal Khetan v Kedar Nath Khetan* (1977) 47 Comp Cas 185 (SC): (1977) 2 SCC 424, that the provision contained in section 108 is mandatory in character and a registration of transfer of shares contrary to the mandatory provisions of the section would be illegal. The words "shall not ..." are mandatory in character. Negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is

mandatory. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative.

It should be noted that the provisions of section 56 are as much applicable to the transfers of shares of private companies as they apply to public companies. Furthermore, the articles laying down the manner of transfers are equally binding upon the members and the company as well.

A share in a company is property and can be owned, acquired, sold, transferred or inherited. Section 44 of the 2013 Act provides that "The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company." It has, however, been consistently held by the courts that subject to the restrictions imposed by the articles, a shareholder is free to transfer his shares to a person of his choice and that the articles cannot put a complete ban or unreasonable restrictions on the right to transfer. While shares in a private company are not freely transferable and are subject to the restrictions imposed by the articles of the company, shares in a public company are freely transferable. A private company is obliged to restrict the transfer, but to what extent and in what manner a private company can restrict it, has not been spelled out by the Companies Act.

In *Re Smith & Fawcett Ltd* [1942] 1 All ER 542, it was held that, in construing the relevant provisions in the articles, it is to be borne in mind that one of the normal rights of a shareholder is the right to deal freely with his property and to transfer it to whomsoever he pleases. When it is said, as it has been said more than once, that regard must be had to this last consideration, it means, I apprehend, nothing more than this: that the shareholder has such a *prima facie* right, and that right is not to be cut down by uncertain language or doubtful implications. *The right, if it is to be cut down, must be cut down with satisfactory clarity. It certainly does not mean that articles, if appropriately framed, cannot be allowed to cut down the right of transfer to any extent which the articles on their true construction permit.* [emphasis supplied]

Under clause (i) of the definition of 'private company' under the Act, the articles of a private company must restrict the right to transfer its shares. Although, conventionally, certain commonly-worded restrictive provisions are found in the articles of most private companies, there is no unanimity inasmuch as private companies have unbridled freedom to decide as to what restrictions the articles may contain and there is seen extreme variation in this regard. There is however nothing to limit the restrictions which a company's articles may place on the right of transfer.

Although private companies are free to impose any restrictions, however in character, on the rights of transfer and prescribe any manner in which the shares can be transferred, yet the mandatory restrictions imposed by section 56 of the 2013 Act must be complied with.

DOES SECTION 236 CREATE A LEGAL OBLIGATION FOR MINORITY SHAREHOLDER?

Section 236 does not create a legal obligation on the minority shareholder to transfer his shares to the majority shareholder when a notice of intention under subsection (1) is received by the minority shareholder from the company, is evident by one more factor. The section does not provide for any mechanism to oblige the minority shareholder when he does not wish to sell his shares. The section does not empower Court or NCLT to pass an order forcing the minority shareholder to sell his shares to the majority shareholder.

In the absence any provision explicitly providing for a legal



obligation on a minority shareholder to transfer his shares to the majority shareholder in pursuance of notice of intention under subsection (1), we cannot read any words into the section imposing such obligation. The intention of the Legislature is primarily to be gathered from the language used, which means that the attention should be paid to what has been said as also what has not been said. As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. This rule like all other rules is subject to exceptions." [Principles of Statutory Interpretation by Justice G P Singh, 9th edition, page 58]. "We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." [Per Lord Loreburn L C in *Vickers Sons and Maxim Ltd v. Evans* (1910) AC 444]. In *Union of India v. Hansoli Devi* AIR 2002 SC 3240, the Supreme Court observed:

"It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning which would adhere to the purpose of the statute. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the Court to reject the surplus words so as to make the statute effective."

CONCLUSION

In view of the above discussion, it seems clear that section 236 does not provide for a forced buyout of the minority shareholders' shares, and hence the minority shareholder is entitled to refuse to sell his shares in response to the offer made by the majority shareholder. CS

Registration of Valuers Rules Require Revamp



G M Ramamurthy, ACS

Advocate and Legal Consultant, Chennai
gm.ramamurthy@gmail.com

INTRODUCTION

Section 247 of the Companies Act, 2013 (“2013 Act”) mandates that valuation of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under 2013 Act shall be carried out by a person having such qualifications and experience and registered as a valuer in such manner as may be prescribed. Such valuer shall be appointed by the Audit Committee or in its absence by the Board of Directors of that company.

Simultaneously with the bringing into force of section 247 of the Companies Act, 2013 relating to registration of valuers, the Central Government has notified on 18-10-2017 the Companies (Registered Valuers and Valuation) Rules, 2017. The Rules are intended to regulate the registration of valuers for diverse kinds of assets, compulsory membership of the intended applicant with a registered valuers organisation, eligibility and conditions of registration of valuers, providing a model Code of Conduct for the registered valuers, etc. The Rules will apply to the regulations framed under the Insolvency and Bankruptcy Code. At present, a transitory period up to 31.03.2018 has been built in the Rules. The present article discusses the areas in the Rules which require a fresh look and revamping, to be done with utmost priority, so that the process of registration will be quite smooth.

By a notification dated 18-10-2017, the Central Government brought into force section 247 of the Companies Act, 2013 (“2013 Act”) dealing with registered valuers with effect from that date. Simultaneously, the Central Government notified Companies (Registered Valuers and Valuation) Rules, 2017 (“Rules”) and the same also became effective from the date aforesaid. The Rules have also relevance to the Insolvency and Bankruptcy Code, 2016 (the Code). The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, framed under the Code, contain a definition of “registered valuer” in terms of which “registered valuer” means a person registered as such in accordance with 2013 Act and rules made thereunder.

Vide notification dated 23-10-2017, the Central Government has delegated the powers and functions vested in it under section 247 of the 2013 Act to the Insolvency and Bankruptcy Board of India keeping an option to revoke such delegation in public interest.

The Rules prescribe eligibility, qualifications and registration of valuers, recognition of registered valuers organisations, make provisions with regard to valuation standards and other matters relating to registration of valuers and valuer organisations.

GROUPING OF ASSETS

The assets requiring valuation are divided into homogeneous groups so that they can be valued by persons having special skills for their valuation. The specified qualifications and experience will help in getting near accurate valuation of the asset concerned; though actual disposal of the specified assets may not fetch that price.

The Rules broadly group the assets into land and building, plant and machinery and securities and financial assets for the ease of valuation. The Rules empower the Authority

to include any other asset class. Further classification is necessary as there are assets like intellectual property rights, brand names, trade mark and patents etc.

QUALIFICATION AND EXPERIENCE OF THE VALUER

An individual to be eligible for registration as a valuer shall possess either of the following qualification and experience, namely: - (a) a post-graduate degree or post-graduate diploma in the specified discipline from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or (b) a bachelor's degree or equivalent, in the specified discipline from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of profession with at least three years' experience after such membership and having qualification mentioned in (a) and (b) above.

The qualification and experience mentioned in (c) is not in tune with the other provisions of the Rules. The qualification contemplated in clause (c) appears to be an equivalent qualification of those specified in clauses (a) and (b) and not the very same qualification. Equating post-graduate degree or diploma with a bachelor's degree in the specified discipline is not desirable. It will dissuade persons from pursuing post-graduate degree or diploma course in the specified discipline.

In addition to Rule 4 prescribing qualifications and experience expected of an individual aspiring to be registered as a valuer, Annexure IV of the Rules contain an indicative matrix of the further requirements for diverse asset classes. According to this annexure the following persons are eligible to value land and building, namely: -(a) a graduate in Civil Engineering, Architecture or town planning with five years of experience in the discipline after completing graduation; (b) a post-graduate in Civil Engineering, Architecture or town planning with three years of experience after completing post-graduation; (c) graduate in a discipline specified by the Authority for registered valuers organisation or a post-graduate in valuation of land and building or real estate from a recognised university with five years of experience in the discipline after completing post-graduation; [Discrepancy is visible even in this prescription. If the experience is to be reckoned after post-graduate degree, it is not clear why the Rules should make a mention of graduate in a discipline]; (d) any other graduate level qualification as may be specified by the Authority for a registered valuers organisation or any other post-graduate level qualification as may be specified by the Authority for a registered valuers organisation with at least five years of experience for graduates and three years of experience in the case of post-graduate level degree.

The requisite qualification and experience for valuation of plant and machinery are almost identical as in the case of land and building except that the person should have obtained his graduation or post-graduation degree in Mechanical Engineering. In the case of graduate in valuation of machinery and plant from a recognised university or post-graduate degree in valuation of machinery and plant from a recognised university (column II row C), the experience required is only three years after post-graduation. There is omission to mention the period of experience in the case of a person having only graduate level qualification in

Mechanical Engineering. The linkage of experience to the post-graduate nullifies the educational qualification to bachelor's degree mentioned in column II row C. The Rules prescribe more experience for valuation of land and building than for the valuation of machinery and plant. It should normally be the reverse, as the valuer has to value different types of machinery and plant used in the industry. Valuation of machinery and plant will be difficult in a closed plant where the power had been disconnected.

The indicative matrix on requisite qualifications/ experience for valuation of securities or financial assets is graduate level in any stream with three years of experience in the discipline after completing graduation. Member of the Institute of Chartered Accountants or the Institute of Cost Accountants of India or the Institute of Company Secretaries of India; or MBA/PGDBM specialisation in finance or post-graduate degree in finance can be appointed as valuer of securities and financial assets. No experience has been specified for these persons. In the case of any other graduate level qualification or post-graduate level qualification he must have five years of experience in case he is a graduate and three years of experience in case he is a post-graduate.

The indicative matrix on qualifications and experience have not been properly stated. It appears column II row B for both land and building and plant and machinery seems to be unintended repetition of the contents of row A.

On an overall assessment of the indicative matrix, it is felt that it need not have been included in the Rules; but could have been made a part of guidelines for evaluating the application for registration by the Authority.

VALUATION EXAMINATION

As per the eligibility criteria, the eligible person shall have passed the valuation examination under Rule 5 within three years preceding the date of making an application for registration. This examination will be conducted by the Authority or through designated agency for one or more classes of assets. The individuals who possess the qualifications and experience as specified in Rule 4 and have completed their educational courses as member of a registered valuers organisation are entitled to appear for the examination. The examination is aimed to test the professional knowledge, skills, values and ethics in respect of valuation. The Authority may recognise an educational course conducted by a registered valuers organisation before its recognition as adequate for the purpose of appearing for valuation examination. The Authority may recognise an examination conducted as part of a master's or post-graduate degree course conducted by a university which is equivalent to valuation examination.

The syllabus for the examination for various valuation specific subjects or assets classes will be determined by the Authority on the recommendation of one or more committee of experts constituted by it. The syllabus, format and frequency of the valuation examination including qualifying marks will be published on the website of the Authority at least three months before the examination. The individual passing the examination will receive acknowledgement of passing the examination. There is no limitation on the number of appearances in the valuation examination by an individual.



ELIGIBILITY CRITERIA

A) For individuals

A person desiring to apply for registration as a valuer shall possess all the following eleven eligibility criteria, namely: -

- (1) he shall be a valuer member of a registered valuers organisation;
- (2) valuers organisation shall recommend his registration as a valuer;
- (3) he shall have passed the valuation examination within three years preceding the date of making an application for registration;
- (4) he shall possess the prescribed qualifications and experience;
- (5) he is not a minor; [An individual to qualify as a graduate and clock five/three years of experience would definitely have attained majority]
- (6) he has not been declared to be of unsound mind;
- (7) he is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- (8) he is resident in India;
- (9) he shall not have been convicted for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence. A person convicted for any offence and sentenced to imprisonment for a period of seven years or more is not eligible to apply for registration;
- (10) he has not been levied a penalty under section 271J of Income-tax Act, 1961 and the time limit for filing appeal has either expired or such penalty has been confirmed by Income-tax Appellate Tribunal and five years have not elapsed after levy of such penalty; and
- (11) he is a fit and proper person.

A) For Partnership entity or company

"Partnership entity" covers both partnership firm registered under the Indian Partnership Act, 1932 and a limited liability partnership registered under the Limited

Liability Partnership Act, 2008. Partnership entity or a company is eligible to apply for registration under the Rules if it satisfies the following conditions: -

- (a) the Partnership entity or the company has been set up exclusively for objects for rendering professional or financial services, including valuation services. In the case of a company, it shall not be a subsidiary, joint venture or associate of another company or body corporate;
- (b) the partnership entity or the company is not undergoing insolvency resolution process or is an undischarged bankrupt;
- (c) none of the partners or directors are ineligible under the criteria (3), (4), (5), (7), (8), (9), (10) and (11) mentioned for the individuals;
- (d) three or all the partners or directors, whichever is lower, of the partnership entity or company are registered valuers; or
- (e) any of its partners or directors is a registered valuer for the asset class for the valuation of which it seeks to be registered.

APPLICATION FOR REGISTRATION

The Rules prescribe separate application form for individuals and partnership entity and a company. An individual has to remit a non-refundable application fee of Rs. 5,000/- along with the application. In the case of a partnership entity or a company the fee payable on application is Rs. 10,000/-. The manner of payment of fee is not stated in the Rules. As the application can be submitted in electronic or manual form, online payment or payment by demand draft can be made. The Rules could have prescribed the mode of payment of fees.

Application for registration shall be made to the Authority. The application by an individual shall be made in Form-A of Annexure-II to the Rules. In the case of a partnership entity or a company, the application shall be made in Form-B of Annexure-II.

PROCESSING THE APPLICATION

The Authority may require the applicant to submit additional documents or clarifications within 21 days (of the receipt of the application). The Authority may also require the applicant to

appear before him within 21 days either in person or through its authorised representative for providing explanation or clarifications required for processing the application. The Rules do not mention who can act as an authorised representative of the applicant. In the absence of a specific mention any person who can be appointed as an agent under the Indian Contract Act, 1872 can be the authorised representative.

The Authority, after satisfying itself that the applicant is eligible under the Rules, grant a certificate of registration to him to carry on the activities of registered valuer for the relevant class or classes of assets in Form-C of the Annexure-II within sixty days of receipt of application excluding the time given by the Authority for presenting additional documents or clarifications, or appearing before it in person or through an authorised representative.

In case the Authority reaches a *prima facie* opinion that the registration ought not to be granted, he shall communicate the reasons for forming the opinion to the applicant within 45 days of receipt of the application, excluding the time given by the Authority for presenting additional documents or clarifications, or appearing in person or through authorised representative. The applicant may provide explanation for acceptance of his application within 15 days of the receipt of the communication to the Authority for forming a final opinion. On consideration of the explanation, the Authority may accept or reject the application. If the application is accepted, the Authority shall grant a certificate of registration to the applicant. On rejection of the application, the Authority shall furnish reasons for the rejection. The decision shall be communicated within 30 days of receipt of explanation from the applicant for the *prima facie* opinion for rejection of the application.

CONDITIONS OF REGISTRATION

The grant of certificate of registration is subject to certain conditions (numbering 13). These conditions are that the valuer shall: -

- 1) at all times possess the eligibility and qualification and experience criteria. [The rationale behind specifying continued qualification and experience is not clear as these are irreversible phenomenon. Once the applicant is found to possess the requisite qualification and experience, a situation that he would not continue to possess them later does not arise. If the applicant had misrepresented his qualifications and experience, action can be taken for cancellation of the registration granted to him];
- 2) comply with the provisions of 2013 Act, the Rules and the bye-laws or internal regulations of the respective registered valuers organisations; [It is not comprehensible why compliance of the bye-laws or internal regulations of the registered valuers association need to be specified in the Rules as condition for grant of certificate of registration, as it is a matter between the member and the organisation concerned. The organisation can take appropriate action against the member for breach of the bye-laws or internal regulations. This is a retrograde step when self-regulation is encouraged. Excessive oversight by the Authority is neither desirable nor practicable. It defeats the stipulation that the applicant should be a member of a registered valuers organisation];
- 3) not conduct valuation of other class or classes of assets other than for which he has been registered by the

- Authority;
- 4) take prior permission of the Authority for shifting his membership from one registered valuers organisation to another;
- 5) take adequate steps for redressal of grievances;
- 6) maintain records of each assignment undertaken by him for a period of at least 3 years from the completion of the assignment; [Model code of conduct for registered valuers specify that in the event of a pending case before the Tribunal or Appellate Tribunal, the record shall be maintained till the disposal of the case. These two time periods need to be aligned];
- 7) comply with the code of conduct of the registered valuers organisation; [It is intriguing why the Rules should traverse into the domain of the registered valuers organisation. It can easily supervise the functioning of the organisation than its individual members. A free hand may be given to the organisation to ensure its members comply with the code of conduct by getting the same signed at the time of admission with an annual confirmation];
- 8) ensure that in the case of a partnership entity or a company being a registered valuer, only that partner or director who is a registered valuer for the asset class signs the report and act on behalf of the partnership entity or a company;
- 9) in the case of a partnership entity or a company being a registered valuer, disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, who would sign and act in respect of relevant valuation assignment for the company; [The purpose of this condition is unclear. Does this condition mean that only when the registered valuer has contributed substantially to the capital or corpus, the partnership entity or a company can be entrusted with the assignment? Such stipulation is not included in any of other enactment, rule or regulation];
- 10) in the case of a partnership entity is a registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of the valuation assignment on behalf of the partnership entity; [Is a partner absolved of his liability to a partnership debt?];
- 11) in case a company is a registered valuer, be liable along with the director who signs and acts in respect of the valuation assignment on behalf of the company;
- 12) in the case of a partnership entity or a company being a registered valuer, inform the Authority on the removal of a partner or a director who is a registered valuer along with detailed reasons for such removal; and
- 13) comply with such other conditions as may be imposed by the Authority.

Some of the conditions amount to intrusion by the Authority in the actual conduct of the business of valuation by the registered valuer or partnership entity or company. Such sweeping powers to the Authority is not warranted. The Model Code of Conduct empowers the Authority and the registered valuers organisation to carry out inspections and investigations. The valuer is also subject to peer review. Conditions numbered 9, 10 and 11 are already covered by the existing legislations.

TEMPORARY SURRENDER OF REGISTRATION

A registered valuer is permitted to temporarily surrender his

registration in accordance with the bye-laws or regulations of the registered valuers organisation. Upon surrender, the valuer is required to inform the Authority for taking such information on record. Such a valuer can also revive his membership. The Rules do not explicitly provide for informing the Authority on revival of registration by the valuer concerned. The registered valuers organisation shall inform the Authority within seven days of surrender or revival of the membership of a registered valuer. The registered valuers organisation shall host in its website the names and details of its valuer members who have surrendered or revived their memberships.

When power is conferred on the Authority to issue the registration certificate, temporary surrender of registration or revival of it should only be accomplished through the Authority. It is not in order to allow the registered valuers organisation to exercise this power of authorising temporary surrender and revival of the registration certificate of a member.

TRANSITIONAL ARRANGEMENT

Persons rendering valuation services under 2013 Act as on 18-10-2017 may continue to render valuation services without a certificate of registration issued to him under the Rules till 31-03-2018.

If a company has appointed a valuer before 31-03-2018 and valuation or any part of it has not been completed before 31-03-2018, the valuer is allowed to complete such valuation or such part of it as had not been completed within three months thereafter, i.e. by 30-06-2018.

The Rules are applicable in the case of valuation under 2013 Act (as also the Code). Valuation by any person for other purposes is not affected by the Rules unless the other relevant laws or other regulatory bodies require valuation by a person in accordance with the Rules.

CANCELLATION OR SUSPENSION OF CERTIFICATE OF REGISTRATION

The Authority is empowered to cancel or suspend the registration of a valuer for violation of the provisions of 2013 Act or any other law allowing him to perform valuation, the Rules or any condition or registration after following the procedure set out in Rule 17.

FORM-A AND FORM-B

An individual seeking registration as a valuer has to file Form-A with the Authority and a partnership entity or a company shall file Form-B for obtaining registration certificate. The applicant is required to furnish information about the marks and percentage of the marks along with his educational qualification. Registration is not contingent upon the applicant securing certain cut off marks or percentage. Rejection of application on the ground of marks obtained is not envisaged in the Rules. This requirement is redundant and serves no purpose.

Requirement relating to additional information can be used only for exceptional reporting and not for confirmative compliance. Confirmative compliance is given in the application itself (see Part G of Form-A and Form-B). If the applicant has been convicted for an offence for more than six months imprisonment, he could mention about the expiry of the period after completion of his term of imprisonment. Likewise, the information relating to offence under section 271J of the Income-tax Act, 1961.



CONCLUSION

The Rules seek to regulate valuers and the registered valuers organisation. One of the pre-conditions for registration of an individual as a registered valuer relates to experience post his qualifications. The kind of experience e.g. an apprentice, employee, or trainee etc., have not been explicitly stated. The type of experience a person should have to be specified. It may be difficult for a fresh graduate or a post-graduate to get an assignment. To qualify for making an application for registration as a valuer he should possess certain number of years of experience. The Authority may consider establishing institutes or authorising registered valuers (in all forms) for imparting training to the graduates and post-graduates who intend to pursue their avocation as registered valuers.

Rule 4 (c), equates the persons possessing graduation and post-graduation qualifications in the relevant field. Rule 4 (a) and the indicative matrix in certain places prescribe five years of experience for graduates. In order to ensure uniformity and to encourage persons securing higher qualification, the experience for graduates in Rule 4 (c) may be increased to five years.

The conditions of registration need a fresh look. The Authority may find it difficult to supervise the functioning of all registered valuers. To carry out this function the Authority should take up capacity building. The Rules give unnecessary thrust to the liability of the partner or the valuer who carries out valuation on behalf of the company. Valuation is a less risky business. Valuation exercise is only an estimation of the value of the asset. It does not guarantee the realisable value. The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations contemplate two valuations. There, thus, exists a check on over or under valuation. The liability on any account can be taken care under the existing laws.

Just as the fees of the liquidators are fixed under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, the Rules or the Authority should fix the fees. As the number of valuers may outweigh the number of assignments, it should not lead to unhealthy competition among the registered valuers in securing the assignment.

The Rules, if cleaned up, would facilitate the smooth functioning of the objects for which they are framed. CS

2

RESEARCH CORNER



ICSI – CCGRT ANNOUNCES UNIQUE COMPETITION ON ANALYSIS OF THE ICSI-PREMIER ON COMPANY LAW (VOL.-1)

ICSI – CCGRT ANNOUNCES UNIQUE CRITICAL RESEARCH ANALYSIS OF INDIAN COMPANIES ACT, 2013 ON NIDHI COMPANY

objectives in mind.

Prologue

The Companies Act, 2013 is like a holy book for the companies as well as the professionals associated with the companies. The Act itself is not complete unless it is read with the relevant rules, the precedents in form of industry practices and judgements and corresponding corporate laws. *The ICSI Premier on Company Law (Vol.-1) from Chapter 1 to Chapter 10* is a sincere endeavor towards the transformation of provisions to wisdom and offering the Company Secretaries, doyens from industry.

It is true that the passage of Companies Act, 2013 has ushered in both challenges and opportunities for governance professionals i.e., Company Secretaries. In view of this, it is essential that Company Secretaries in practice and employment must be fully and completely conversant with the new Companies Act, rules, regulations, codes, notifications, circulars, orders etc. Thus, to address the academic and professional demands of our CS fraternity, ICSI has come out in November 2016 with an Innovative and unique publication on Companies Act, 2013, known as *ICSI Premier on Company Law (Vol-1)*.

The Company Law Premier book has an innovative approach in presenting the contents in a 'reader friendly' manner. It deals with sections covered in various chapters along with commentaries, relevant case laws and other pertinent information which are definitely assisting the readers to have a comprehensive understanding of the new Companies Act, 2013. The takeaways from this book will be a treasure forever, as it not only helps a person in gaining understanding on the subject, it will also provide deep insights after reading the commentaries and case laws.

In light of this, it generates substantial interest to delve deep into the critical dimensions of the book. These critical research analyses will help the members and others in identifying the gaps that is existing and also be a tool for providing the solutions to the industry and regulators etc.

Objectives:

- a) To comprehend the implications of critical aspects covered in the book under Companies Act, 2013.
- b) To accept the views on various issues covered under various section and sub sections of the book.
- c) To find out probable solution based on National / International Practices, Principles, procedures and Judicial Pronouncements.
- d) To understand the probable hurdles that are being witnessed

by corporate houses in embracing the sections covered under Companies Act, 2013.

Pedagogy:

- (a) Interested members are requested to review the contents and send their suggestions in the following format:

Sl. No	Name of the chapter	Page No of the title	Suggestion/ Improvement (Error or Interpretation issues or lack of adequate commentary) /Additional Juridical pronouncements precedents	Suitable commentary & illustration(s), if required
--------	---------------------	----------------------	---	--

- (b) Top three responses from Members whose submissions are found to be valid and appropriate will be rewarded and all members sending deserving responses will be credited 04 PCH.
- (c) Participants are requested to send their valuable suggestions latest by 15th November, 2017.
- (d) Participants should email their research papers on the following email id: prasant.sarangi@icsi.edu and ccgrt@icsi.edu

Further Information for Participants

- ❖ The decision of the Reviewing Committee will be final and binding on the participants.
- ❖ The Institute of Company Secretaries of India reserves the right to publish or refer the selected materials for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI.
- ❖ The suggestions will be scrutinized by an Expert Committee.
- ❖ For any query / assistance, kindly contact at: prasant.sarangi@icsi.edu and ccgrt@icsi.edu
- ❖ ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The participants are not entitled for any remuneration or compensation or royalty. The participants shall submit the Declaration Form to the institute at the time of submission of paper. The format of the Declaration may be requested by posting an email to the above stated email id.
- ❖ ICSI reserve all the rights for finalization and selection of papers and awarding rewards, credit hours.

CS (Dr.) Shyam Agrawal
President, ICSI

CS Ahalada Rao V
Chairman
ICSI-Research Committee

CS Ashish Garg
Chairman
ICSI-CCGRT Management Committee



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

www.icsi.edu

CENTRE FOR
CORPORATE
GOVERNANCE,
RESEARCH
& TRAINING
(CCGRT)

ICSI – CCGRT

ANNOUNCES

Unique

Critical Research Analysis of Indian Companies Act, 2013 on Nidhi Company



ICSI-CCGRT is pleased to announce **unique Critical Research Analysis of Companies Act, 2013** with an objective of creating knowledge reserve among its Members, both in employment and practice, students pursuing Company Secretary and other professional courses, academicians, corporate professionals and other interested folk in order to make them as epitome of knowledge and useful to corporate world

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

Prologue

Indian Company Law is a procedural law, emerging out with various critical issues in its implementation and operation. Since 01-04-2014, being the notification date for various sections, industry professionals, corporates have been facing various critical issues which are of utmost importance in the field of law as well as in the execution. Further, the Companies Act, 2013 have provided robust base to Corporate Governance. As it can be observed from the corporate history, that there have been lot of financial fiascos which have taken place, and in turn have

created the need for effective corporate governance. The Companies Act, 2013 has espoused the tenets of corporate governance, thereby, played a pivotal role in protecting the interest of stakeholders. Embracing the concepts like, Independent Director, Woman Director, Secretarial Audit, Internal Audit, CSR, Class Action Suit, Related Party Transaction etc. all goes a long way in ensuring the best governance practices on the part of the management of corporate houses. In light of this, it generates substantial interest to delve deep into the critical dimensions of Indian Companies Act, 2013. These critical research analyses will help the members and others in identifying the gaps and also providing the solutions to the industry and regulators etc.

Objectives:

- To comprehend the implications of critical aspects covered under Companies Act, 2013.
- To analyze the different school of thoughts on the critical issues.
- To find out probable solution based on National / International Practices, Principles, procedures and Judicial Pronouncements.
- To understand the probable hurdles that are being witnessed

by corporate houses in embracing the sections covered under Companies Act, 2013.

Coverage:

Section 406 of the Companies Act, 2013 provides the definition of Nidhi Company and the delegation of powers to the central government for notify, exception, modifications and adaptations in the Nidhi Laws. The Nidhi Company is regulating by the Nidhi Rules, 2014 which was came in force w.e.f 01st of April, 2014

Precursor to the Problem

Under Rule 5(1) of the Nidhi Rules, 2014 mandates every Nidhi to ensure to fulfill all four conditions from (a) to (d) within one year from the date of commencement of these rules.

The Problem

1. Whether Nidhi company incorporated under 1956 Act or any previous law need to file Form NDH-1?
2. If answer to question 1 is yes, then please clarify the due to filing the Form NDH 1?
3. If answer to question 1 is No, what will be the consequences?

Precursor to the Problem

Under Rule 6 of the Nidhi Rules, 2014 certain restrictions or prohibitions are imposed on Body corporate, Trust and persons other individual to become a member of the Nidhi Company.

1. Can a Non Resident Indian (NRI), Foreigner or Person Origin to India (POI) be a member of Nidhi Company?

Precursor to the Problem

Under Rule 10 of the Nidhi Rules, 2014 it restricts Nidhi Company to open its branch or branch offices outside the state where the Nidhi is registered.

1. Can a Nidhi Company shift its registered office from one state to another state?

Views Invited on the following

1. What is the meaning of 'Object' in the proviso? Is it same or different from 'voting against'?
2. Can a shareholder vote against the resolution if he holds less than 10% of the shareholding?
3. Can a creditor vote against the resolution if he holds less than 5% of total outstanding debt?

How to present the Significant Aspects

Answers of the critical issues needs to be presented in the format appended below-

- S.NO.
- Issue (heads)
- Details of issue with justification
- Different School of Thoughts
- Interpretation issues
- Relevant Sections of Indian Companies Act, 2013 as well as Indian Companies Act, 1956.
- Relevant provisions of any other Indian Corporate Laws and international Corporate Laws.

Research Paper / Manuscript Guidelines

- ❖ Original papers are invited from Company Secretaries in employment & practice, Chartered Accountants, Advocates, Academicians, merchant bankers, doyens from industry and interested folk.
- ❖ The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/

fax number along with the title of the paper on the front page and membership details of professional bodies, if any.

- ❖ Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- ❖ The text should be typed in MS-Word.
- ❖ The author/s' name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- ❖ Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- ❖ All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- ❖ The following should also accompany the manuscripts on separate sheets: (i) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI, if any, and other membership on editorial boards and companies, etc.
- ❖ The research papers should reach the Competition Committee on or before 30th of November 2017 by 12 noon (IST).
- ❖ Participants should email their research papers on the following email id: Prasant.Sarangi@icsi.edu and ccgrt@icsi.edu
- ❖ The paper may be presented either in single section of any chapter or multiple sections after chapters.
- ❖ There is no restriction on number of entries. One participant can submit more than one entries.

Further Information for Authors / Participants

- ❖ The decision of the Reviewing Committee will be final and binding on the participants.
- ❖ The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI.
- ❖ The papers will be scrutinized by an Expert Committee.
- ❖ For any query / assistance, kindly contact at: prasant.Sarangi@icsi.edu and ccgrt@icsi.edu
- ❖ Participants will be rewarded with suitable prizes.
- ❖ Further participants who are the members of the ICSI will be conferred with credit hours of ICSI based on the content and quality of the research paper and as recommended by screening committee.
- ❖ ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
- ❖ ICSI reserve all the rights for finalization and selection of papers and awarding rewards, credit hours.

CS (Dr.) Shyam Agrawal
President, ICSI

CS Ahalada Rao V
Chairman
ICSI-Research Committee

CS Ashish Garg
Chairman
ICSI-CCGRT Management Committee

COMPANY SECRETARIES BENEVOLENT FUND



Saathi Haath Badhana साथी हाथ बढ़ाना

The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

CSBF

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

Eligibility

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

How to join

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

Benefits

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

Contact

For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.011-45341088.

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

3

LEGAL WORLD



- SHAILESH PRABHUDAS MEHTA V. CALICO DYEING & PRINTING MILLS LTD [SC]
- DUSHYANT N DALAL V. SEBI [SC]
- METERS AND INSTRUMENTS PVT. LTD & ANR V. KANCHAN MEHTA [SC]
- STATE OF MAHARASHTRA V. RELIANCE INDUSTRIES LTD. & ORS [SC]
- M/S DURO FELGUERA S.A V. GANGAVARAM PORT LIMITED [SC]
- HIMANGNI ENTERPRISES V. KAMALJEET SINGH AHLUWALIA [SC]
- EMPLOYEES STATE INSURANCE CORPORATION V. MANGALAM PUBLICATIONS (INDIA) PVT. LTD [SC]
- AKHIL R. BHANSALI V. SKODA AUTO INDIA PVT. LTD. & ANR [CCI]
- MAHARASHTRA ELECTRICAL ENGINEERS ASSOCIATION V. MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION & ANR [CCI]



Corporate Laws

LMJ 25:11:2017

SHAILESH PRABHUDAS MEHTA v. CALICO DYEING & PRINTING MILLS LTD [SC]

Civil Appeal No.854 of 1994 (Arising out of SLP (C) No.9345 of 1990)

K. Jayachandra Reddy & G.N.Ray, JJ. [Decided on 15/02/1994]

Equivalent citations: 1994 SCC (3) 339; JT 1994 (1) 671; (1994) 80 Comp Cas 64.

Companies Act, 1956- section 111- refusal to register transmission of shares- action of directors- whether correct- Held, Yes.

Brief facts:

The directors of the respondent company refused to register the transmission of 100 shares to the appellant. The appellant had a long standing disputes with the company. The appellant alleged mala fide intention on the part of the directors.

Decision: Appeal dismissed.

Reason:

We find that the language of Section 78 of the English Companies Act is not the same as Section 111 of our Companies Act and Section 78 does not provide for any penalty or for any appeal. It is necessary to note that if the right to refuse was to come to an end, as contended by the learned counsel, after the expiry of two months and that an absolute right was created in favour of transferee then the Legislature would have so categorically provided. But, on the other hand, the section provides for penalty if there is failure on the part of the Company to send such an intimation within two months and that itself shows that no absolute right was to be created in favour of the transferee. Further Section 111 of the Act provides for a right of appeal to the Central Government and if as contended by the learned counsel that on a mere failure to send an intimation within two months an absolute right came to be vested in transferee then the question of transferee filing an appeal would not arise at all. Thus this section mainly deals with right to receive a notice and the consequence of non-sending of such a notice results in penalty. These provisions would go to show that what was intended was to provide for a notice of refusal to be sent and that failure thereof only resulting in levying penalty.

The submission that the Company had no power to refuse registration of transmission of shares in the absence of a specific provision in the Articles of Association is also

untenable. According to the learned counsel, the Articles of Association at the time of death of deceased did not provide for such a refusal and that even if there is an amendment later the same cannot empower the Board to refuse the registration of the shares. In our view particularly in view of the facts of this case, the Board had such power when the registration and transfer was sought in 1984. Even otherwise the facts show that the registration and transmission was sought only in 1984 as mentioned above. By then the articles were amended and the Board was given power to refuse registration or transmission. Therefore we are not able to see any irregularity or lack of bona fide action, as contended, in bringing about those amendments. However we notice that before the learned Single Judge as well as before the Division Bench of the High Court, the main question urged was that of limitation of two months and for the aforesaid reasons, we are of the view that the High Court has rightly held that the right to refuse is not lost.

At this stage we may refer to the factual background in the instant case. Initially the company petition was dismissed by the Company Judge on April 17, 1985 on the preliminary ground. As against that the appellants went in appeal and in that appeal the order of dismissal of the company petition was set aside and a remand was ordered for disposal on merits and that the appellate court also permitted for filing further affidavits and they were in fact filed before the matter came up for rehearing before the Company Judge on remand. It must further be remembered that the appellants moved the High Court even before the expiry of the period of two months and from the dates mentioned above it can be seen that the appellants complied with the requirements namely sending the heirship certificate etc. only after 6 or 7 years from the date of their letter to the Company seeking transmission. Therefore it has to be concluded that sometime after November 21, 1984 when the appellants' letter with necessary enclosures was received by the Company, necessary formalities to become heirs had been completed. The appellants without waiting for the expiry of period of two months filed the company petition on January 14, 1985 for rectifying the shares register by bringing them on record. From these facts it can broadly be accepted that the power or discretion vests in the Board of Directors for two months after submission of the proper application supported by the necessary documents. However, that does not mean that right would be lost after the expiry of two months and what all that is necessary to see is whether the Board has acted in a *bona fide* manner in rejecting the transmission of the shares.

We shall now therefore deal with the other submission namely whether the action of the Board of Directors was *mala fide*. In *Bajaj Auto Ltd. v. N.K. Firodia* (1970) 2 SCC 550, it was laid down that the Court can consider whether the Directors acted in the interest of the Company. This case was cited in *Life Insurance Corporation of India v. Escorts Ltd* (1986) 1 SCC 264; (1986) 59 Comp Cas 548 with approval and in that case the nature of the power of the Directors and scope of scrutiny by the court were explained and it was observed as under: (SCC pp. 554-55, para 12) "Discretion implies just and proper consideration of the proposal in the facts and circumstances of the case. In the exercise of that discretion the Directors will act for the paramount interest of the company and for the general interest of the shareholders because the Directors are in a fiduciary position both towards the company and towards every shareholder. The Directors are therefore required to act

bona fide and not arbitrarily and not for any collateral motive.” Keeping these principles in mind we shall examine the reasons that weighed with the Board of Directors for refusing transmission. The Board of Directors have stated in the affidavits and also appended the copies of the earlier correspondence including the proceedings of the mediator and the history of the disputes originally between late Shri Prabhudas V. Mehta and the Management of the Company and subsequently between the heirs of Shri Prabhudas V. Mehta and the Management of the Company. The learned Single Judge as well as the Division Bench have exhaustively examined the correspondence and the affidavits and have given a concurrent finding that there is animosity between the parties and that the decision of the Management was a proper and commercial decision keeping in view the interest of the Management of the Company. Therefore it cannot be said that there was dishonest intention. In any event this is a concurrent finding of fact based on the affidavits and records in which we need not interfere.

We have already held that the decision of the Directors was a commercial decision made in the interest of the Management of the Company. It is also significant to note that the appellants have only 100 shares which are only insignificant as compared to the total shares and the contention that the relevant articles were amended only to defeat the rights of the appellants in respect of those 100 shares, is wholly untenable. For all these reasons, the appeal is dismissed.

LW 79:11:2017

DUSHYANT N DALAL v. SEBI [SC]

Civil Appeal No. 5677 of 2017 with batch of appeals

R.F. Nariman & S.K.Kaul, JJ. [Decided on 04/10/2017]

SEBI Act, 1992- section 28A- recovery of interest on penalty and disgorgement of unlawful gains cases - whether interest could be recovered – Held, Yes.

Brief facts:

The present appeals raise an interesting question under Section 28A of the Securities and Exchange Board of India Act, 1992 (SEBI Act), namely, as to whether interest can be recovered on orders of penalty issued under the Act and/or orders of disgorgement of unlawful gains, when the said amounts have remained unpaid. In the penalty cases, it is SEBI who is before us as appellant, whereas in the disgorgement case, it is private individuals who are before us.

C.A. 5677 of 2017 is the disgorgement case. In this case while awarding interest for the years 2005 to 2009, WTM had not expressly awarded any future interest and that this was done deliberately inasmuch as if the amount of Rs. 6 crores was not paid within 45 days from the date of the order, the consequence was specified as being debarment for a further period of 7 years which was so severe that further future interest was deliberately not found necessary to be awarded. SAT upheld that interest is payable. Aggrieved broker appealed against this order.

Insofar as the penalty orders are concerned, the delinquent

persons paid the penalty but did not pay the interest charged under section 28A. SAT held that the imposition of interest has to operate prospectively and set aside that portion of the order levying interest. It is against this part of the order that SEBI has appealed.

Decision: Appeals allowed.

Reason:

We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings.

It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Deprivation of the use of such money would, therefore, sound in equity. This being the case, it is clear that, despite the fact that Section 28A belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest would be chargeable under Section 28A read with Section 220(2) of the Income Tax Act only prospectively. However, since it has not the same 2014 Amendment which introduced Section 28A, with effect from 18.7.2013, also introduced Section 15JB retrospectively, with effect from 20.4.2007. This is a positive indication that Section 28A was intended only to have prospective application. It must be taken into account the Interest Act, 1978 at all, we set aside the Tribunal's findings that no interest could be charged from the date on which penalty became due. The Civil Appeals 10410- 10412 of 2017 are allowed insofar as the penalty cases are concerned.

However, going to the facts in Civil Appeal No. 5677 of 2017, we observe that the same whole time member of SEBI has passed similar orders in other cases where all the aforesaid orders show that the said whole-time member was fully cognizant of his power to grant future interest which he did in all the aforesaid cases. In fact, in the last mentioned case, whose facts are very similar to the facts of the present case, the order was passed “without prejudice to SEBI’s right to enforce disgorgement along with further interest till actual payment is made.” The words “along with further interest till actual payment is made” are conspicuous by their absence in the order dated 21.7.2009. In the circumstances, if there is default in payment of Rs. 6 crores within the stipulated time, no future interest is payable inasmuch as a much severer penalty of being debarred from the market for 7 years was instead imposed. We have noticed how the appellant has, in fact, suffered the aforesaid debarment and how he made payment of Rs. 6 crores on 6.1.2014 from the sale of shares. The SAT was incorrect in stating that the order dated 21.7.2009 contained an obligation to pay interest at the rate of 12% per annum on the unlawful gain of Rs.4.05 crores till payment. We, therefore, allow C.A. 5677 of 2017 and set aside the SAT’s judgment in this appeal as well.



General Laws

LW 80:11:2017

METERS AND INSTRUMENTS PVT. LTD & ANR v.
KANCHAN MEHTA [SC]

Criminal Appeal No. 1731-33 of 2017

A.K. Goel & U.U.Lalit, JJ. [Decided on 05/10/2017]

Negotiable Instruments Act- section 138- dishonour of cheque-
compounding of offence- principles explained and guidelines laid down.

Brief facts:

These appeals have been preferred against the order of the High Court of Punjab and Haryana where the High Court rejected the prayer of the appellants for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881 (the Act) on payment of the cheque amount and in the alternative for exemption from personal appearance.

Decision: Appeal disposed of.

Reason:

The Supreme Court elaborately examined the scheme of the Act and held as under. From the above discussion following aspects emerge:

- i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.
- ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.
- iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being *prima facie* evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore

the possibility of settlement. It will also be open to the Court to consider the provisions of plea bargaining. Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court. The appeals are disposed of. It will be open to the appellants to move the Trial Court afresh for any further order in the light of this judgment.

LW 81:11:2017

STATE OF MAHARASHTRA v. RELIANCE INDUSTRIES LTD. & ORS [SC]

Civil Appeal No.1699 of 2007

Arun Mishra & M.M. Shantanagoudar, JJ. [Decided on 15/09/2017]

Land Acquisition Act, 1894- land belonged to the State government- private building standing thereon- State acquired the building- challenged that without acquiring the land under the building, building *per se* could not be acquired- whether the challenge tenable- Held, No.

Brief facts:

The State of Maharashtra has come up in appeal against the common judgment dated 10.3.2006 passed by the High Court in two writ petitions being W.P. No.1956/1994 filed by Reliance Industries Ltd. & another and W.P. No.1384/1997 filed by Express Newspapers and another against State of Maharashtra and others. In both the cases, part of the building had been sought to be acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). In both the cases the owners of building do not own the land. In Express Newspapers the land belongs to the Government and in the case of Reliance Industries, the ownership of the land is with the Port Trust. The question which arises for consideration is whether, under the Act, acquisition of part of the building can be made without acquiring land underneath to such building. The High Court has quashed the acquisition, sans the land, as unsustainable.

Decision: Appeal allowed.

Reason:

In our opinion, provisions of Section 49 of the Act make it clear besides the inclusive definition under Section 3(a), that there can be acquisition of part of building or house and owner has the option to express his desire that the whole of it should be acquired and not the part, as the case may be. The court has the power to decide on a question being referred under the second proviso, whether land proposed to be taken forms part of the house, manufactory or building. The court has to take into consideration the question whether land proposed to be taken is reasonably required for the full and unimpaired use of

the house, manufactory or building. If the court holds otherwise, obviously the possession of the land shall not be taken. There can be acquisition of the house or building or manufactory under the provisions of Section 49(1) or acquisition of part. It is not a case where any of the owners of the building has desired that whole of building be acquired. In case such intention would have been expressed, it would have been incumbent to acquire the whole of the building.

The instant matters are of dual ownership. In both the cases owners of the building are not the owners of the land. The land belongs to State of Maharashtra or Port Trust. In such a situation where the Government is the owner of the site, obviously Government could not have acquired the land and in the case of its own ownership, there was no necessity for the acquisition of land.

It was further submitted that Section 49 of the Act does not empower the acquisition of any building or part thereof *de hors* the underlying land. The submission to that effect to be accepted would require ownership of the land with owner of the building and owner has required by expressing desire that the whole of the building with land be acquired is not the factual scenario in the instant case. The land upon which the building is standing need not be acquired and there is no necessity to acquire it. There can be acquisition of part of the building or the house or manufactory as the owners have not exercised their option to insist for acquisition for whole of the building as such only the rights which they have in the particular floors are being acquired. No doubt about it that under proviso to Section 49(1) there can be acquisition of land beside the part of the building, house or manufactory and when the land is proposed to be taken, the dispute as to whether it does or does not form part of the house, manufactory or building, the Collector shall refer the determination of such question to the Court.

It was also contended on behalf of respondents that when the State acquires building or portion thereof without acquiring the underlying land, the State is depriving the owner not only of his property in the building but also its property in the underlying land. The owner of the land will not be able to exercise his right to use the land to the extent the building on which it is acquired. Further, if the building has been compulsorily acquired, the underlying land will be rendered valueless, as no person would want to buy the underlying land from the owner. Thus, the owner of the land will be deprived of his right to obtain a fair value or income from the land upon its alienation or transfer. Thus, upon acquisition of a building, the State also deprives the land owner of his rights in the land. However, by not acquiring the underlying land, the State is seeking to evade its obligation to compensate the owner of land for his loss. The provisions would become confiscatory.

We find no merit in the aforesaid submission. Firstly, it presupposes ownership of land also is with owner of building, if that be so, the owner can exercise the option for acquisition of the entire building and land which is available under Section 49 of the Act and besides that the owner can be compensated also in case he is having any interest in the land and in case his land is rendered of less utility obviously he can claim compensation under the provisions of the Land Acquisition Act. If the land is rendered value less then also adequate compensation can be claimed under the provisions of Section

23 in accordance with law. In case right is affected in land which is not acquired by severance, for that also compensation can be claimed. Thus, the submission so placed is factually incorrect and legally unsustainable. Accordingly, the appeal is allowed and the impugned judgment and order passed by the High Court is set aside.

LW 82:11:2017

M/S DURO FELGUERA S.A v. GANGAVARAM PORT LIMITED [SC]

Arbitration Petition No.30 of 2016 with Arbitration Petition No.31 of 2016 and T.C. (C) NOS.25/2017, 26/2017, 27/2017 & 28/2017

R. Banumathi & Kurian Joseph, JJ. [Decided on 10/10/2017]]

Arbitration and Conciliation Act, 1996- five different contracts and one MoU- each contract contained arbitration clause- whether single arbitration tribunal could be appointed to resolve all the disputes arose in these six contracts- Held, No.

Brief Facts:

The Respondent GPL intended to expand its facilities in the Port with respect to Bulk Material Handling Systems. This included Engineering, Design, Procurement of Materials, Manufacturing, Supply, Erection, Testing and Commissioning of Bulk Material Handling Systems, as well as all other associated works and integration of the same with the existing coal handling systems etc. After post-bid negotiations, the petitioner Duro Felguera and its subsidiary (FGI) were considered by GPL and Duro Felguera and FGI were selected as “the Contractors” for the work.

After discussion between the parties, the main contract i.e. Original Package No. 4 TD was divided into five different and separate Packages. Separate Letters of Award for five different Packages were issued to M/s Duro Felguera, S.A. and the Indian Subsidiary-FGI for the above said work respectively.

Each of the Packages has special conditions of contract as well as general conditions of contract. Each one of the Contract/ Agreement for works under split-up Packages contains an arbitration clause namely sub-clause 20.6. Duro Felguera had also entered into a Corporate Guarantee dated 17.03.2012 guaranteeing due performance of all the works awarded to Duro Felguera and FGI. The said Corporate Guarantee had its own arbitration clause namely clause (8).

In addition, Duro Felguera and FGI have executed a tripartite Memorandum of Understanding with GPL. In the said MoU, Duro Felguera and FGI have agreed to carry out the works as per the priority of documents listed therein.

Dispute arose between the parties. GPL contended that all the five contracts are composite contract and one arbitration tribunal should be appointed. On the other hand, Petitioner contended that all five contracts are separate contracts and different arbitration tribunals should be appointed.

Decision: Different arbitration tribunals appointed.

Reason:

The learned Senior Counsel for GPL relied upon Chloro Controls India Private Ltd. v. Severn Trent Water Purification Inc. & Ors (2013) 1 SCC 641, to contend that where various agreements constitute a composite transaction, court can refer disputes to arbitration if all ancillary agreements are relatable to principal agreement and performance of one agreement is so intrinsically interlinked with other agreements. Even though Chloro Controls has considered the doctrine of “composite reference”, “composite performance” etc., ratio of Chloro Controls may not be applicable to the case in hand. In Chloro Controls, the arbitration clause in the principal agreement i.e. clause (30) required that any dispute or difference arising under or in connection with the principal (mother) agreement, which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration conducted in accordance with Rules of ICC. The words thereon “under and in connection with” in the principal agreement was very wide to make it more comprehensive. In that background, the performance of all other agreements by respective parties including third parties/non-signatories had to fall in line with the principal agreement. In such factual background, it was held that all agreements pertaining to the entire disputes are to be settled by a “composite reference”.

The case in hand stands entirely on different footing. As discussed earlier, all five different Packages as well as the Corporate Guarantee have separate arbitration clauses and they do not depend on the terms and conditions of the Original Package No.4 TD nor on the MoU, which is intended to have clarity in execution of the work.

Duro Felguera being a foreign company, for each of the disputes arising under New Package No.4 and Corporate Guarantee, International Commercial Arbitration Tribunal are to be constituted. M/s. Duro Felguera has nominated Mr. Justice D.R. Deshmukh (Former Judge of Chhattisgarh High Court) as their arbitrator. Gangavaram Port Limited (GPL) has nominated Mr. Justice M.N. Rao (Former Chief Justice of Himachal Pradesh High Court). Along with the above two arbitrators Mr. Justice R.M. Lodha, Former Chief Justice of India is appointed as the Presiding Arbitrator of the International Commercial Arbitral Tribunal.

Package No.6 (Rs.208,66,53,657/-); Package No.7 (Rs.59,14,65,706/-); Package No.8 (Rs.9,94,38,635/-); and Package No.9 (Rs.29,52,85,558/-) have been awarded to the Indian company-FGI. Since the issues arising between the parties are inter-related, the same arbitral tribunal, Justice R.M. Lodha, Former Chief Justice of India, Justice D.R. Deshmukh, Former Judge of Chhattisgarh High Court and Justice M. N. Rao, Former Chief Justice of Himachal Pradesh High Court, shall separately constitute Domestic Arbitral Tribunals for resolving each of the disputes pertaining to Packages No.6, 7, 8 and 9.

LW 83:11:2017

HIMANGNI ENTERPRISES v. KAMALJEET SINGH AHLUWALIA [SC]

Civil Appeal No. 16850 OF 2017 arising out of S.L.P. (C) No.27722/2017)

R.K.Aggarwal & A.M.Sapre, JJ. [Decided on 12/10/2017]

Arbitration and conciliation Act, 1996- section 8- tenancy contract- arbitration clause in the contract- landlord initiated civil proceedings for eviction- civil court refused to refer the parties to arbitration- whether correct- Held, Yes.

Brief facts:

The appellant is the defendant whereas the respondent is the plaintiff in a civil suit out of which this appeal arises. The respondent has filed a civil suit against the appellant in the district Court for eviction and for recovery of unpaid arrears of rent and grant of permanent injunction.

The appellant, on being served with the notice of the civil suit, filed an application under Section 8 of the Arbitration and conciliation Act, 1996[the Act] on the ground that the suit was founded on the lease deed, which contained an arbitration clause for resolving the dispute arising out of the lease deed between the parties, and when admittedly the disputes had arisen in relation to the suit premises, the same were governed by the terms of the lease deed. The trial court rejected the application. On appeal High Court also dismissed the appeal. Hence the present appeal.

Decision: Appeal dismissed.

Reason:

In our considered opinion, the question involved in the appeal remains no longer *res integra* and stands answered by two decisions of this Court in *Natraj Studios (P) Ltd. v. Navrang Studios & Anr*, 1981(1) SCC 523 and *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors.*, (2011) 5 SCC 532 against the appellant and in favour of the respondent.

So far as *Natraj Studio's* case (*supra*) is concerned there also, the landlord had filed a civil suit against the tenant in the Small Causes Court, Bombay claiming therein the tenant's eviction from the leased premises. There also, the tenant was inducted pursuant to "leave and license" agreement executed between the landlord and the tenant. This Court (Three Judge Bench) speaking through Justice O. Chinnappa Reddy rejected the application filed by the tenant under Section 8 of the Act and held, *inter alia*, that the civil suit filed by the landlord was maintainable. It was held that the disputes of such nature cannot be referred to the arbitrator.

Yet in another case of *Booz Allen & Hamilton Inc.* (*supra*), this Court (two Judge Bench) speaking through R.V.Raveendran J. laid down the following proposition of law after examining the question as to which cases are arbitrable and which are non-arbitrable:

"36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes." (emphasis supplied) Keeping in view the law laid down by this Court in aforementioned two decisions and applying the same to the facts of this case,

we have no hesitation to hold that both the Courts below were right in dismissing the appellant's application filed under Section 8 of the Act and thereby were justified in holding that the civil suit filed by the respondent was maintainable for grant of reliefs claimed in the plaint despite parties agreeing to get the disputes arising therefrom to be decided by the arbitrator.

The Delhi Rent Act, which deals with the cases relating to rent and eviction of the premises, is a special Act. Though it contains a provision (Section 3) by virtue of it, the provisions of the Act do not apply to certain premises but that does not mean that the Arbitration Act, ipso facto, would be applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. In such a situation, the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator. In other words, though by virtue of Section 3 of the Act, the provisions of the Act are not applicable to certain premises but no sooner the exemption is withdrawn or ceased to have its application to a particular premises, the Act becomes applicable to such premises. In this view of the matter, it cannot be contended that the provisions of the Arbitration Act would, therefore, apply to such premises. In view of foregoing discussion, we find no merit in the appeal, which fails and is accordingly dismissed.



LW 84:11:2017

EMPLOYEES STATE INSURANCE CORPORATION v.
MANGALAM PUBLICATIONS (INDIA) PVT. LTD [SC]

Civil Appeal No. 4681 of 2009

Arun Mishra & M M Shantanagoudar, JJ. [Decided on 21/09/2017]

1

ESI Act- wages- interim wages paid to employees- no contribution was made on this – whether interim wages included in the term 'wages' under the Act- Held, Yes.

Brief facts:

The respondent is an establishment covered by the provisions of the ESI Act, engaged in the business of printing and publishing of a daily Malayalam newspaper called "Mangalam". The premises of the respondent-company was inspected by the Insurance Inspector of the appellant-Corporation on 13.06.2000, wherein it was found that the respondent had not paid any contribution on the interim wages paid by it to its employees during the period from 01.04.1996 to 31.03.2000. The contention of the respondent was that it was not required to pay any contribution

on the interim relief paid by it to its employees in view of Central Government's office memorandum dated 19.08.1998. Since the contribution was not paid by the respondent, as mentioned supra, a notice dated 18.07.2000 was issued by the appellant to the respondent to pay contribution of the afore-mentioned amount for the afore-mentioned period.

The demand was unsuccessfully challenged before the ESI court, and was carried on to the High Court, which allowed the appeal of the respondent. Hence the present appeal by the corporation.

Decision: Appeal allowed.

Reason:

A plain reading of the definition of Section 2(22) of the ESI Act makes it amply clear that "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of the employment, expressed or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months. But payments made on certain contingencies under Clauses (a) to (d) of Section 2(22) of the ESI Act, do not fall within the definition of "wages". The interim relief paid to the employees of the respondent in the matter on hand, as mentioned supra, will definitely not fall within the excluded part of clauses (a) to (d) of Section 2(22) of the ESI Act, inasmuch as such payment is not travelling allowance or the value of any travelling concession, contribution paid by the employer to any pension fund or provident fund; sum paid to an employee to defray special expenses entailed on him by the nature of his employment; or any gratuity payable on discharge.

The inclusive part and exclusive portion of the definition of "wages" clearly indicate that the expression "wages" has been given wider meaning. As mentioned supra, under the definition, firstly whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, expressed or implied, is "wages". Secondly, whatever payment is made to an employee in respect of any period of authorized leave, lock-out etc. is "wages". Thirdly, other additional remuneration, if any, paid at intervals not exceeding two months is also "wages". Any ambiguous expression, according to us, should be given a beneficent construction in favour of employees by the Court. If the definition of "wages" is read in its entirety including the inclusive part as well as the exclusive portion, it appears that inclusive portion is not intended to be limited only of items mentioned therein, particularly, having regard to the objects and reasons for which the Employees' State Insurance Act is enacted.

The High Court while allowing the appeal filed by the respondent has mainly relied upon the office memorandum dated 19.08.1998 issued by the Department of Public Enterprises, Ministry of Industry, New Delhi, which is not applicable to the facts of this case. The said notification makes it abundantly clear that the instructions contained in the said office memorandum are applicable to Central Public Sector Enterprises (PSES) only. Admittedly, the respondent is a private limited company and hence the instructions contained in office memorandum dated 19.08.1998 are not applicable to the respondent company. In the matter on hand, the appellant claimed ESI contribution only on the amount paid by the respondent as interim relief to its employees, treating the same as "wages" as per Section 2(22) of the ESI Act. The amount paid as interim relief by the respondent to its employees definitely falls within the definition

of "wages" as per Section 2(22) of the ESI Act. On the other hand, the High Court has strangely observed that the interim relief paid for the period from 01.04.1996 to 31.03.2000 can only be treated as "ex-gratia payment" paid by the employer to its employees and cannot be treated as "wages" for the purpose of ESI contribution. In our considered opinion, the High Court has ignored to appreciate that the effect of ESI Act enacted by the Parliament cannot be circumvented by the department office memorandum. The High Court has also failed to appreciate that the payment of interim relief/wages emanates from the provisions contained in terms of the settlement, which forms part of the contract of employment and forms the ingredients of "wages" as defined under Section 2(22) of the ESI Act and that the respondent paid interim relief, as per a scheme voluntarily promulgated by it as per the notification dated 20.04.1996, issued by the Government of India, in view of the recommendations of "Manisana' Wage Board, pending revision of rates of wages. It was not an ex-gratia payment.

The interim relief paid by the respondent to its employees is not a "gift" or "inam", but is a part of wages, as defined under Section 2(22) of the ESI Act. In view of the above, we hold that the payment made by way of interim relief to the employees by the respondent for the period from 1.04.1996 to 31.03.2000 comes within the definition of "wages", as contained in Section 2(22) of the ESI Act, and hence the respondent is liable to pay ESI contribution.



LW 85:11:2017

AKHIL R. BHANSALI v. SKODA AUTO INDIA PVT. LTD.
& ANR [CCI]

Case No. 44 of 2017

D.K.Sikri, S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta & G. P. Mittal. [Decided on 03/10/2017]

Competition Act, 2002- section 4- car manufacturer having its own authorised service centre- deficiency in car servicing- whether constitutes abuse of dominance- Held, No.

Brief facts:

The Informant has alleged abuse of dominant position by the OPs in terms of Section 4(2) (b) of the Act for limiting and restricting provision of services by appointing only limited number of dealers, making spare parts available only at select and exclusive dealership, etc. However, on careful perusal of the facts and allegations in the matter, it is observed that the primary grievance of the Informant relates to the quality of service

being provided by the authorised dealer of OP-1 in Chennai i.e. Gurudev Motors Pvt. Ltd.

Decision: Dismissed.

Reason:

The Commission has perused the information and the material available on record. The allegations pertaining to abuse of dominance appear to have been made by the Informant to project an issue of consumer grievance as competition issue. The Informant has filed no substantive evidence to support its contentions of contravention of the provisions of the Act by the OPs. In case the services provided by the dealer had been to the satisfaction of the Informant, the Informant would not have had any reason to file this information with the Commission. In any event, the allegations pertaining to abuse of dominance against the OPs have already been dealt with and decided upon by the Commission in Case No. 03 of 2011 (In Re: Shri Shamsher Kataria and Honda Siel Cars India Ltd. and Ors.).

Thus, based on the facts and circumstances of the case, the Commission observes that the allegations in the instant matter appear to be a case of deficiency in after sales services by the authorised dealer of OP-1 at Chennai which is a case of an individual consumer dispute and there is no competition issue involved in the matter. It may be noted that similar issues have arisen in various other cases before the Commission wherein it has been observed that the consumer disputes such as deficiency in services would fall under the Consumer Protection Act, 1986. In Case No. 32 of 2012, filed by Subhash Yadav against Force Motor Limited and Ors., the Commission has held that:

“It may be noted that the aim and object of the Act, is to prevent the practices having adverse effect on the competition, to promote competition and thereby to protect the interest of the customers. In a nutshell, the purpose of this Act is to protect and promote fair competition in the markets in India. However, for the protection of individual consumer interest, there is another statute already in existence known as Consumer Protection Act, 1986 (‘the Act of 1986’) which mainly deals with protection of consumer interest against the deficiencies in services or goods being purchased by the consumers from sellers.”

In light of the above analysis, the Commission is of the view that the allegations of the Informant do not give rise to any competition concern. Accordingly, the Commission finds that no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against the OPs in the instant case and the matter is closed forthwith in terms of the provisions of Section 26(2) of the Act.

LW 86:11:2017

MAHARASHTRA ELECTRICAL ENGINEERS
ASSOCIATION v. MAHARASHTRA INDUSTRIAL
DEVELOPMENT CORPORATION & ANR [CC]

Case No. 52 of 2017

Sudhir Mital, Augustine Peter, U. C. Nahta & G. P. Mittal. [Decided on 09/10/2017]

Competition Act, 2002- section 3- anti competition agreement- awarding tenders- members of the association were excluded- whether constitutes anti competition practice - Held, No

Brief facts:

The Informant which is an association of electrical contractors has filed the instant information against MIDC (OP-1) alleging that it is favouring OP-2 in award of tenders to the exclusion of the members of the association. The Informant has alleged that OP-1 is not adhering to its own circular which provided for the qualification of the contractors and also the laid down conditions for the tender.

In support of the allegations, the Informant has pointed out a few instances where tenders have been awarded by OP-1 to OP-2 even though OP-2 was not allegedly eligible as detailed in the information. The Informant has alleged that such conduct of OP-1 is in contravention of the provisions of Section 3 and 4 of the Act. The Informant has also sought an interim relief in terms of the provisions of Section 33 of the Act by way of an ad interim ex parte stay to restrain OP-1 from allotting/ awarding any further tender in favour of OP-2 till the adjudication of the instant information.

Decision: Dismissed.

Reason:

The Commission has perused the information and the documents filed therewith.

On a careful perusal of the information and the documents filed therewith, the Commission is of opinion that the instant information does not disclose any material which may attract the provisions of Section 3 or Section 4 of the Act.

It may be observed that under the scheme of the Act, the Commission may examine the agreements which cause or are likely to cause appreciable adverse effect on competition within India in terms of the provisions contained in Section 3 of the Act. Similarly, the Commission may also examine the abusive conduct indulged in by a dominant enterprise in the relevant market as provided under Section 4 of the Act.

As narrated earlier, the allegations made by the Informant at best indicate non- observance of the tender conditions/ circulars by OP-1 in award of its contracts in favour of OP-2. The Informant has not placed any agreement which can be examined under Section 3 of the Act. Similarly, no term of any tender has been pointed out which can be examined under Section 4 of the Act. Rather, the grievance of the Informant emanates out of the alleged non- adherence to tender conditions and circulars by OP-1. The information has been filed making generalized allegations against MIDC in respect of award of contracts in favour of OP-2. The Informant has to avail its remedies in respect of its grievances highlighted herein in respect of the tendering process elsewhere. Without commenting upon the merits of such allegations, the Commission is of opinion that the entire thrust of the information does not reveal any competition issue whatsoever.

In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the Opposite Party and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



Leaders Run Diligent

More than 140,000 leaders across approximately 4,700 organisations in 70 countries use Diligent Boards™, making it the most successful and most popular board portal solution in the world.

Many of the world's leading, most efficient and security-minded organisations run their board meetings on Diligent Boards, the world's No. 1 board communication and collaboration tool.

Join the Leaders. Get Diligent.

FIND OUT MORE

- ▶ Singapore +65 3158 2545
- ▶ Malaysia +60 (3) 9212 1714
- ▶ India +91 96869 02287
- ▶ Hong Kong +852 3018 4025
- ▶ info@diligent.com
- ▶ diligent.com/ICSI



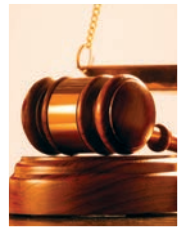
Diligent is a trademark of Diligent Corporation, registered in the United States. All third-party trademarks are the property of their respective owners. © 2017 Diligent Corporation. All rights reserved.

4

FROM THE GOVERNMENT



- RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING AOC-4 AND AOC-4 (XBRL NON-INDAS) UNDER THE COMPANIES ACT, 2013-REG.
- THE COMPANIES (REMOVAL OF DIFFICULTIES) SECOND ORDER, 2017.
- DELEGATION OF POWERS AND FUNCTIONS BY CENTRAL GOVERNMENT TO IBBI.
- 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.
- THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017.
- DATE OF COMING INTO FORCE OF PROVISIONS OF SECTION 247 OF THE COMPANIES ACT, 2013
- TRANSFER OF SHARES TO IEPF AUTHORITY
- INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) RULES, 2016.
- CLARIFICATION REGARDING THE TIMELINES FOR MAKING APPLICABLE/AVAILABLE NEW FORM DPT-3 ISSUED VIDE THE COMPANIES (ACCEPTANCE OF DEPOSITS) SECOND AMENDMENT RULES, 2017 -REG.
- DATE OF COMING INTO FORCE OF PROVISION TO CLAUSE (87) OF SECTION 2 OF THE COMPANIES ACT, 2013.
- THE COMPANIES (RESTRICTION ON NUMBER OF LAYERS) RULES, 2017.
- THE COMPANIES (ACCEPTANCE OF DEPOSITS) SECOND AMENDMENT RULES, 2017.
- REVIEW OF BLOCK DEAL WINDOW MECHANISM.
- SECURITIES AND EXCHANGE BOARD OF INDIA (INTERNATIONAL FINANCIAL SERVICES CENTRES) GUIDELINES, 2015-AMENDMENTS
- CRITERIA FOR SETTLEMENT MODE OF COMMODITY DERIVATIVE CONTRACTS
- NON-COMPLIANCE WITH THE MINIMUM PUBLIC SHAREHOLDING (MPS) REQUIREMENTS
- CATEGORIZATION AND RATIONALIZATION OF MUTUAL FUND SCHEMES
- INVESTMENTS BY FPIs IN GOVERNMENT SECURITIES
- FOREIGN PORTFOLIO INVESTMENT IN CORPORATE DEBT SECURITIES
- REVIEW OF NORMS FOR PARTICIPATION IN DERIVATIVES BY MUTUAL FUNDS
- PARTICIPATION OF FOREIGN PORTFOLIO INVESTORS (FPIs) IN COMMODITY DERIVATIVES IN IFSC
- PREVENTION OF UNAUTHORISED TRADING BY STOCK BROKERS
- CLARIFICATION TO ENHANCED SUPERVISION CIRCULAR
- CHANGE IN REPORTING NORMS FOR CATEGORY III ALTERNATIVE INVESTMENT FUNDS ("AIFS") REGARDING INVESTMENT IN COMMODITY DERIVATIVES MARKET.



Corporate Laws

01 Relaxation of additional fees and extension of last date of filing AOC-4 and AOC-4 (XBRL non-IndAS) under the Companies Act, 2013-reg.

[Issued by the Ministry of Corporate Affairs vide [General Circular No.14-2017] dated 27.10.2017.

1. The Ministry of Corporate Affairs has extended the date for filing of **AOC-4 (XBRL E-forms using Ind AS)** for the financial year 2016-2017 without additional fee till 31.03.2018 vide General Circular No.13/2017 dt 26.10.2017. Keeping in view the requests received from various stakeholders, for allowing extension of time for filing of financial statements for the financial year ended 31.03.2017 on account of various factors, it has been decided to extend the time for filing e-forms **AOC-4 and AOC-4 (XBRL non-IndAS) and the corresponding AOC-4 CFS e-forms upto 28.11.2017** without levying additional fee.
2. This issues with the approval of the competent authority.

K. M. S. NARAYANAN
Assistant Director

02 The Companies (Removal of Difficulties) Second Order, 2017.

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/27/2013-CL-V] dated 23.10.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

Whereas, sub-section (1) of section 247 of the Companies Act, 2013 (18 of 2013) (hereafter referred to as the said Act) provides that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company. Sub-section (2) of section 247 provides for the functions and duties of registered valuers. Sub-sections (3) and (4) of said section provide for the punishment and the liability of the valuers;

And, whereas, a difficulty has arisen in view of the fact that there are a number of different organisations dealing with various, distinct group of assets, such as land and building, machinery

and equipment, having separate set of valuers for valuation;

And, whereas, unless these different organisations are recognised, it would be difficult to ensure the required level of regulation for the valuers by registering them directly with the Central Government and further, it is necessary to recognise the varying standards of internal procedures and conduct practiced in these organisations to improve the standards in valuations in order to register the valuers under the said section;

And, whereas, although the said section provides for valuation to be made by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed, there is a need to provide clarity and remove the difficulty of having no reference to an organisation to which the valuer may belong;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the above said difficulties, namely:-

1. **Short title and commencement.-** (1) This Order may be called the Companies (Removal of Difficulties) Second Order, 2017.

(2) It shall come into force from the 23rd day of October, 2017.
2. In the Companies Act, 2013, in section 247, in sub-section (1), for the words "a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed", the words "a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed" shall be substituted.

AMARDEEP SINGH BHATIA
Joint Secretary

03 Delegation of powers and functions by Central Government to IBBI.

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/27/2013-CL-V(Part-1)] dated 23.10.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

1. In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates the powers and functions vested in it under section 247 of the said Act to the Insolvency and Bankruptcy Board of India, subject to the condition that the Central Government may revoke such delegation of powers or it may exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest.
2. This notification shall come into force with effect from the date of its publication in the Official Gazette.

AMARDEEP SINGH BHATIA
Joint Secretary

04 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.13-2017] dated 26.10.2017.

- All companies required to prepare or voluntarily preparing their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015 for financial year 2016-2017 are required to file their statements only in XBRL format. The draft taxonomy for Ind AS has been uploaded since 30.06.2017 in order to enable the stakeholders to familiarize themselves with the new requirements. The development of tools necessary for deployment of the taxonomy for XBRL filing is expected to be completed by 28.02.2018. It has, therefore, been decided to extend the last date for filing of AOC-4 XBRL for such companies for the financial year 2016-17 without additional fee till 31st March, 2018. The filing should be made by these companies accordingly when the Ind AS based XBRL taxonomy is deployed, for which a separate intimation would be given to all the stakeholders.
- This issues with the approval of competent authority.

SUDHIR KAPOOR
Deputy Director

05 The Companies (Registered Valuers and Valuation) Rules, 2017.

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/27/2013-CL-V] dated 18.10.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

In exercise of the powers conferred by section 247 read with sections 458, 459 and 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

CHAPTER I PRELIMINARY

- Short title and commencement.**— (1) These rules may be called the Companies (Registered Valuers and Valuation) Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.
- Definitions.**— (1) In these rules, unless the context otherwise requires –
 - “Act” means the Companies Act, 2013 (18 of 2013);
 - “authority” means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;
 - “asset class” means a distinct group of assets, such as land and building, machinery and equipment, displaying

similar characteristics, that can be classified and requires separate set of valuers for valuation;

- “certificate of recognition” means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term “recognition” shall be construed accordingly;
- “certificate of registration” means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term “registration” shall be construed accordingly;
- “partnership entity” means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
- “Annexure” means an annexure to these rules
- “registered valuers organisation” means a registered valuers organisation recognised under sub-rule (5) of rule 13;
- “valuation standards” means the standards on valuation referred to in rule 18; and
- “valuer” means a person registered with the authority in accordance with these rules and the term “registered valuer” shall be construed accordingly.

(2) Words and expressions used but not defined in these rules, and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

CHAPTER II ELIGIBILITY, QUALIFICATIONS AND REGISTRATION OF VALUERS

- Eligibility for registered valuers.**— (1) A person shall be eligible to be a registered valuer if he-
 - is a valuer member of a registered valuers organisation; Explanation.— For the purposes of this clause, “a valuer member” is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;
 - is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;
 - has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;
 - possesses the qualifications and experience as specified in rule 4;
 - is not a minor;
 - has not been declared to be of unsound mind;
 - is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

- (h) is a person resident in India;

Explanation.— For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

- (i) has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (j) has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

- (k) is a fit and proper person:

Explanation.— For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) integrity, reputation and character,
- (ii) absence of convictions and restraint orders, and
- (iii) competence and financial solvency.

- (2) No partnership entity or company shall be eligible to be a registered valuer if—

- (a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;

- (b) it is undergoing an insolvency resolution or is an undischarged bankrupt;

- (c) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);

- (d) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

- (e) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. **Qualifications and experience.**— An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

- (a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or

- (b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I.— For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.— Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in **Annexure-IV** of these rules.

5. **Valuation Examination.**— (1) The authority shall, either on its own or through a designated agency, conduct valuation examination for one or more asset classes, for individuals, who possess the qualifications and experience as specified in rule 4, and have completed their educational courses as member of a registered valuers organisation, to test their professional knowledge, skills, values and ethics in respect of valuation:

Provided that the authority may recognise an educational course conducted by a registered valuers organisation before its recognition as adequate for the purpose of appearing for valuation examination:

Provided also that the authority may recognise an examination conducted as part of a master's or post graduate degree course conducted by a University which is equivalent to the valuation examination.

- (2) The authority shall determine the syllabus for various valuation specific subjects or assets classes for the valuation examination on the recommendation of one or more Committee of experts constituted by the authority in this regard.

- (3) The syllabus, format and frequency of the valuation examination, including qualifying marks, shall be published on the website of the authority at least three months before the examination.

- (4) An individual who passes the valuation examination, shall receive acknowledgement of passing the examination.

- (5) An individual may appear for the valuation examination any number of times.
- 6. Application for certificate of registration.**– (1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in **Form-A of Annexure-II** along with a non-refundable application fee of five thousand rupees in favour of the authority.
- (2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in **Form-B of Annexure-II** along with a nonrefundable application fee of ten thousand rupees in favour of the authority.
- (3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.
- (4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- (5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in **Form-C of the Annexure-II** within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- (7) If, after considering an application made under this rule, the authority is of the *prima facie* opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.
- (8) The applicant shall submit an explanation as to why his/ its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.
- (9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -
- accept the application and grant the certificate of registration; or
 - reject the application by an order, giving reasons thereof.
- (10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.
- 7. Conditions of Registration.**– The registration granted under rule 6 shall be subject to the conditions that the valuer shall –
- at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
 - at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;
 - in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
 - take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
 - take adequate steps for redressal of grievances;
 - maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
 - comply with the Code of Conduct (as per **Annexure-I** of these rules) of the registered valuers organisation of which he is a member;
 - in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
 - in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
 - in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
 - in case a company is the registered valuer, be liable alongwith director who signs and acts in respect of a valuation assignment on behalf of the company;
 - in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
 - comply with such other conditions as may be imposed by the authority.
- 8. Conduct of Valuation.**– (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

- (a) Internationally accepted valuation standards;
- (b) valuation standards adopted by any registered valuers organisation.
- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
- (3) The valuer shall, in his report, state the following:-
 - (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;
 - (k) conclusion; and
 - (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.
- 9. Temporary surrender.**— (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- (2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the

application for temporary surrender or revival, as the case may be.

- (3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

10. Functions of a Valuer.— A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

11. Transitional Arrangement.— Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 31st March, 2018:

Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st March, 2018, the valuer shall complete such valuation or such part within three months thereafter.

Explanation.— It is hereby clarified that conduct of valuation by any person under any law other than the Act, or these rules shall not be effected by virtue of coming into effect of these rules unless the relevant other laws or other regulatory bodies require valuation by such person in accordance with these rules in which case these rules shall apply for such valuation also from the date specified under the laws or by the regulatory bodies.

CHAPTER III RECOGNITION OF REGISTERED VALUERS ORGANISATIONS

12. Eligibility for registered valuers organisations.— (1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if –

- (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;
- (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;

- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).
- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
 - grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;
 - conducts training for the individual members before a certificate of practice is issued to them;
 - lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
 - provides for continuing education of individuals who are its members;
 - monitors and reviews the functioning, including quality of service, of valuers who are its members; and
 - has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013 (18 of 2013), and include in its bye laws the requirements specified in **Annexure- III**, within one year from the date of commencement of these rules.
- 13. Application for recognition.**– (1) An eligible organisation which meets the conditions specified in rule 12 may make an application for recognition as a registered valuers organisation for asset class or classes to the authority in **Form-D** of the **Annexure-II** alongwith a non-refundable application fee of rupees one lakh in favour of the authority.
- The authority shall examine the application, and may grant twenty-one days to the applicant to remove the deficiencies, if any, in the application.
 - The authority may require the applicant to submit additional documents or clarification within twenty-one days.
 - The authority may require the applicant to appear, within twenty-one days, before the Authority through its authorised representative for explanation or clarifications required for processing the application.
 - If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary that the applicant is eligible under these rules, it may grant a certificate of recognition as a registered valuers organisation in **Form-E** of **Annexure-II**.
- (6) If, after considering an application made under sub-rule (1), the authority is of the prima facie opinion that recognition ought not to be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing through authorised representative, as the case may be.
- (7) The applicant shall submit an explanation as to why its application should be accepted within fifteen days of the receipt of the communication under sub- rule (6), to enable the authority to form a final opinion.
- (8) After considering the explanation, if any, given by the applicant under sub- rule (7), the authority shall either -
- accept the application and grant the certificate of recognition; or
 - reject the application by an order, giving reasons thereof.
- (9) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.
- 14. Conditions of Recognition.**– The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-
- at all times continue to satisfy the eligibility requirements specified under rule 12;
 - maintain a register of members who are registered valuers, which shall be publicly available;
 - admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
 - make such reports to the authority as may be required by it;
 - comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;
 - be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
 - shall have the governance structure and incorporate in its bye laws the requirements specified in **Annexure-III** within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement

of these rules;

- (h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- (i) comply with such other conditions as may be specified by authority.

CHAPTER IV

CANCELLATION OR SUSPENSION OF CERTIFICATE OF REGISTRATION OR RECOGNITION

15. Cancellation or suspension of certificate of registration or recognition.- The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation.- A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

17. Procedure to be followed for cancellation or suspension of registration or recognition certificate.- (1) Based on the findings of an inspection or investigation, or a complaint received or on material otherwise available on record, if the authorised officer is of the *prima facie* opinion that sufficient cause exists to cancel or suspend the registration of a valuer or cancel or suspend the recognition of a registered valuers organisation, it shall issue a show-cause notice to the valuer or registered valuers organisation,:

Provided that in case of an organisation referred to in clause (ii) of sub-rule (1) of rule 12 which has been granted recognition, the authorised officer shall, instead of carrying out inspection or investigation, seek the information required from the registered valuers organisation within the time specified therein and in the case of a default, give one more opportunity to provide the information within specified time failing which or in the absence of sufficient or satisfactory information provided, either initiate the process under this rule or refer the matter to the Central Government for appropriate directions.

- (2) The show-cause notice shall be in writing and shall state-
 - (a) the provisions of the Act and rules under which it has been issued;
 - (b) the details of the alleged facts;
 - (c) the details of the evidence in support of the alleged facts;

- (d) the provisions of the Act or rules or certificate of registration or recognition allegedly violated, or the manner in which the public interest has allegedly been affected;
 - (e) the actions or directions that the authority proposes to take or issue if the allegations are established;
 - (f) the manner in which the person is required to respond to the show-cause notice;
 - (g) consequences of failure to respond to the show-cause notice within the given time; and
 - (h) procedure to be followed for disposal of the show-cause notice.
- (3) The show-cause notice shall be served in the following manner by-
- (a) sending it to the valuer or registered valuers organisation at its registered address by registered post with acknowledgment due; or
 - (b) an appropriate electronic means to the email address provided by the valuer or registered valuers organisation to the authority.

- (4) The authorised officer shall dispose of the show-cause notice by reasoned order in adherence to the principles of natural justice.
- (5) The order in disposal of a show-cause notice may provide for-
 - (a) no action;
 - (b) warning; or
 - (c) suspension or cancellation of the registration or recognition; or
 - (d) change in any one or more partner or director or the governing board of the registered valuers organisation.
- (6) An order passed under sub-rule (5) cancelling the recognition of a registered valuers organisation, shall specify the time within which its members may take membership of another registered valuers organisation recognised for valuation of relevant asset class without prejudice to their registration.
- (7) The order passed under sub-rule (5) shall be issued to the concerned person immediately, and published on the website of the authority.
- (8) The order passed under sub-rule (5) shall not become effective until thirty days have elapsed from the date of issue of the order unless stated otherwise.
- (9) Any person aggrieved by an order of the authorised officer under sub-rule (5) may prefer an appeal before the authority. Explanation.- For the purposes of this rule, the authorised officer shall be an officer as may be specified by the authority.

CHAPTER V

VALUATION STANDARDS

18. Valuation Standards.- The Central Government shall notify

and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

19. Committee to advise on valuation matters.— (1) The Central Government may constitute a Committee to be known as “Committee to advise on valuation matters” to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.

- (2) The Committee shall comprise of-
- (a) a Chairperson who shall be a person of eminence and well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics;
 - (b) one member nominated by the Ministry of Corporate Affairs;
 - (c) one member nominated by the Insolvency and Bankruptcy Board of India;
 - (d) one member nominated by the Legislative Department;
 - (e) upto four members nominated by Central Government representing authorities which are allowing valuations by registered valuers;
 - (f) upto four members who are representatives of registered valuers organisations, nominated by Central Government.
 - (g) upto two members to represent industry and other stakeholder nominated by the Central Government in consultation with the authority;
- (3) The Chairperson and Members of the Committee shall have a tenure of three years and they shall not have more than two tenures.

**CHAPTER VI
MISCELLANEOUS**

20. Punishment for contravention.- Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement.— If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

AMARDEEP SINGH BHATIA
Joint Secretary

Annexures - I to IV are not published here for want of space. Readers may log on to mca.gov.in & then go to rules for the Annexures.

06 Date of coming into force of provisions of section 247 of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide [E. No. 1/27/2013-CL-V] dated 18.10.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii) dated 18.10.2017]

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 18th October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

AMARDEEP SINGH BHATIA
Joint Secretary

07 Transfer of Shares to IEPF Authority

[Issued by the Ministry of Corporate Affairs vide [General Circular No.12-2017] dated 16.10.2017.]

1. Pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 as amended time to time, wherein the seven years period provided under sub-section (5) of section 124 is completed for unpaid/unclaimed dividends during September 7, 2016 to **October 31, 2017**. the due date for transfer of such shares by companies is October 31st, 2017.
2. The IEPF Authority has opened demat accounts with National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL) through Punjab National Bank and SBICAP Securities Limited respectively, as Depository Participants. The details of said accounts are as under:

Particulars	PNB	SBICAP
DP ID	IN300708	12047200
Client ID	10656671	13676780

3. These demat accounts will have features and functionality to support IEPF operations using paperless. digital processes and facilitate record keeping of shares transferred to the IEPF Authority to meet the requirements of the Rules.
4. All companies which are required to transfer shares to IEPF Authority under the aforesaid Rules, shall transfer such shares, whether held in dematerialised form or physical form. to the demat accounts of IEPF Authority by way of corporate action. The Information related to the shareholders, whose shares are being transferred to IEPF’s demat accounts with PNB or SBICAP shall be provided by the companies to NSDL or CDSL respectively as per the prescribed format by the concerned depository.
5. The Ministry of Corporate Affairs has held separate discussions with NSDL and CDSL during which they have agreed to levy reduced charges for account maintenance and record keeping pertaining to shares transferred to the demat accounts of IEPF Authority. A Memorandum of

Understanding (MOU) to the effect is being finalized with the two depositories and the same will also be uploaded on website www.iepf.gov.in on finalization. NSDL and CDSL shall, based on these discussions, separately notify the charges, which shall not be more than those finalized in the MOU. NSDL and CDSL are required to allow the services with immediate effect.

6. Any cash benefit accruing on account of shares transferred to IEPF such as dividend, proceeds realised on account of delisting of equity shares of the company. amount entitled on behalf of security holder if the company is being wound up as per Rule 6, sub-rule (10), (11) and (12) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, shall be transferred by companies to bank account opened by the Authority with Punjab National Bank. sansad marg, New Delhi. which has been linked to demat accounts mentioned at para 2 above.
7. It is clarified that **Only** amounts mentioned in para 6 above are to be transferred to Bank account indicated above. Transfer of amount due to be transferred under section 125(2) of the Companies Act, 2013 or any other amount to aforesaid account is strictly prohibited.
8. This issues with the approval of the Competent Authority.

RAKESH TYAGI
Director

08 Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017.

[Issued by the Ministry of Corporate Affairs vide [F. No. 05/17/2017-IEPF] dated 13.10.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii) dated 13.10.2017.]

In exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125, sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, namely:—

1. (1) These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017.
(2) They shall come into force from the 13th October, 2017.
2. In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, (hereinafter referred to as the principle rules), in rule 6—
(I) in sub-rule (1),—

- (a) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st October, 2017, the due date of transfer of such

- (b) after the second proviso, the following proviso shall be inserted, namely:—

“Provided further that transfer of shares by the companies to the Fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the fund.”.

- (II) in sub-rule(3), for clause (d), the following clause shall be substituted, namely;—

‘(d) For the purposes of effecting the transfer shares held in physical form-

- (i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;

- (ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that “Issued in lieu of share certificate No..... for the purpose of transfer to IEPF” and the same be recorded in the register maintained for the purpose;

- (iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

- (iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.’;

- (III) after sub-rule (12), the following sub-rules shall be inserted, namely:—

“(13) Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank.

(14) Authority shall furnish its report to the Central Government as and when non-compliance of the rules by companies came to its knowledge.”.

3. In the principle rules, in rule 7—
(a) after sub-rule (2), the following sub-rule shall be inserted, namely:—

“(2A) Every company which has deposited the amount to the Fund shall nominate a Nodal Officer for the purpose of coordination with IEPF Authority and communicate the contact details of the Nodal Officer duly indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID to the IEPF Authority, within fifteen days from the date of publication of these rules and the company shall display the name

of Nodal Officer and his e-mail ID on its website.”;

- (b) after sub-rule (3), the following proviso shall be inserted, namely:—

“Provided that in case of non receipt of documents by the Authority after the expiry of ninety days from the date of filing of Form IEPF-5, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days.”;

- (c) after sub-rule (7), the following proviso shall be inserted, namely:—

“Provided that in case of non receipt of rectified documents by the Authority after the expiry of ninety days from the date of such communication, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days.”.

AMARDEEP SINGH BHATIA
Joint Secretary

09 Clarification regarding the timelines for making applicable/available new Form DPT-3 issued vide the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 -reg.

[Issued by the Ministry of Corporate Affairs vide [General Circular No. 11/2017 dated 27.09.2017.]

1. This Ministry, vide notification number G.S.R. 1172(E) dated 19th September, 2017 has issued the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 thereby amending the Companies (Acceptance of Deposits) Rules, 2014. The said amendment Rules *inter-alia* provide for substitution of existing Form DPT-3 with a new Form DPT-3. Stakeholders have sought clarifications w.r.t. timelines of the applicability/availability of the new Form DPT-3.
2. The matter has been examined and it is hereby clarified that new Form DPT-3 shall be made available for E-filing after the month of November, 2017 and till the time the new e-form is made available, the existing e-form can be used.
3. This issues with the approval of Competent Authority.

K. M. S. NARAYANAN
Assistant Director

10 Date of coming into force of provision to clause (87) of section 2 of the Companies Act, 2013.

[Issued by the Ministry of Corporate Affairs vide [F. No. 01/13/2013-CL-V] dated 20.09.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii) dated 20.09.2017.]

In exercise of the powers conferred by sub-section (3) of section 1

of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the **20th September, 2017** as the date on which proviso to clause (87) of section 2 of the said Act shall come into force.

AMARDEEP SINGH BHATIA
Joint Secretary

11 The Companies (Restriction on number of layers) Rules, 2017.

[Issued by the Ministry of Corporate Affairs vide [F. No. 01/13/2013 CL-V (Vol. III)] dated 20.09.2017. Published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i) dated 21.09.2017.]

In exercise of the powers conferred under proviso to clause (87) of section 2, section 450 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:—

1. **Short title and Commencement.**—(1) These rules may be called the Companies (Restriction on number of layers) Rules, 2017.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. **Restriction on number of layers for certain classes of holding companies.**—(1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2), shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

- (2) The provisions of this rule shall not apply to the following classes of companies, namely:—
 - (a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - (b) a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;
 - (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory Development Authority Act, 1999 (41 of 1999);
 - (d) a Government company referred to in clause (45) of section 2 of the Act.

- (3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.
- (4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) -
- (i) shall file, with the Registrar a return in Form CRL-1 disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;
- (ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and
- (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in subrule (1), whichever is more.
- (5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Annexure

Form CRL-1

Return regarding number of layers
(see clause (i) of sub-rule (4) of Rule 2)

- (a) Name of the company: _____
(b) CIN of the company: _____
- Number of layers of subsidiaries as on the date of commencement of these rules _____
- Layer wise details of subsidiary companies

SN	Name of subsidiary	CIN of subsidiary company	Name of holding company	CIN of holding company	Percentage of shares held by holding company
Layer 1					
1	SL1-1				
2	SL1-2				
3	SL1-3				
Layer 2					
..	SL2-1				
..	SL2-2				
..	SL2-3				
Layer 3					
..	SL3-1				
..	SL3-2				

..	SL3-3				
Layer 4				
..	SL4-1				
..	SL4-2				
..	SL4-3				
..upto last year

I (Name of director of the company signing the Form) am authorised by the Board of Directors of the company vide

resolution number _____ dated _____ (DD/MM/YYYY) to sign this form and declare that —

(1) the information of the subsidiaries and the layers as contained in the form is true, correct and complete and no information has been suppressed or concealed.

(2) I have read the provisions of section 448 and 449 of Companies Act, 2013 which provide for punishment for false statement and punishment for false evidence respectively.

To be digitally signed by

Director DSC
Director Identification Number of the Director

Date:
Place:

AMARDEEP SINGH BHATIA
Joint Secretary

12 the Companies (Acceptance of Deposits) Second Amendment Rules, 2017.

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/8/2013-CL-V] dated 19.09.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(i)]

In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) and sub-section (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 (Acceptance of Deposits) Rules, 2014, namely:—

- (1) These rules may be called the Companies (Acceptance of Deposits) Second Amendment Rules, 2017.
(2) They shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, in sub-rule (3), for the proviso, the following shall be substituted, namely:-

“Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Explanation.—For the purpose of this rule, a Specified

IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006:

Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:—

- (i) a private company which is a start-up, for five years from the date of its incorporation;
- (ii) a private company which fulfils all of the following conditions, namely:—
 - (a) which is not an associate or a subsidiary company of any other company;
 - (b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and
 - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.”.

3. In the principal rules, in the Annexure, for Form DPT–3, the following shall be substituted, namely:—

(ii)	Balance of deferred revenue expenditure	
(iii)	Accumulated unprovided depreciation	
(iv)	Miscellaneous expense and preliminary expenses	
(v)	Other intangible assets	
(c)	Net worth (a) – (b)	
(d)	Maximum limit of deposits (i.e. 35% of the above in case of all companies other than specified IFSC public companies and private companies)	

8. *Particulars of deposits (In Rupees)

- (a) Amount of existing deposits as on 1st April
 - (b) Amount of deposits renewed during the year
 - (c) Amount of new deposits accepted during the year
 - (i) Secured deposits
 - (ii) Unsecured deposits
 - (d) Amount of deposits repaid during the year
 - (e) Balance of deposits outstanding at the end of the year
9. (a) *Amount of deposits that have matured but not claimed
- (b) *Amount of deposits that have matured and claimed but not paid

10. *Particulars of liquid assets

- (a) Amount of deposits maturing before 31st March next year and following next year
- (b) Amount required to be invested in liquid assets
- (c) Details of liquid assets

Particulars	Amount
(a) Amount in current or other deposits account, free from charge or lien, with any scheduled bank	<input type="text"/>
(b) Unencumbered securities of Central/State Government	Face value <input type="text"/>
	Market Value <input type="text"/>
(c) Unencumbered trust securities	Face value <input type="text"/>
	Market value <input type="text"/>

11. Particulars of deposit insurance

- (a) Name of the insurer
- (b) Date of entering into deposit insurance contract
- (c) Premium payable
- (d) Premium paid up to
- (e) Maximum ceiling limit for every depositor

12. Particulars of charge

- (a) Date of entering into trust deed
- (b) Name of the trustee
- (c) Short particulars of the property on which charge is created for securing depositors
- (d) Value of the property

Attachments

- 1. Auditor's certificate;
- 2. Deposit Insurance contract;
- 3. Copy of trust deed;
- 4. Copy of instrument creating charge;
- 5. List of depositors;
- 6. Details of liquid assets;
- 7. Optional attachment, if any.

List of attachments


Declaration

I am authorized by the Board of Directors of the Company vide resolution number * dated * to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

FORM DPT-3

Return of deposits

[Pursuant to rules 3 and 16 of the Companies (Acceptance of Deposits) Rules, 2014]



सत्यमेव जयते

Form language English Hindi

Refer the instruction kit for filing the form.

1. (a) *Corporate Identity Number (CIN)

(b) Global Location Number (GLN)

2. (a) Name of the company

(b) Registered office address

(c) *email id

3. Whether the company is Public company Private company

4. *Whether the company is a government company Yes No

5. Objects of the company

6. (a) Date of issue of advertisement or circular

(b) *Date of last closing of accounts

(c) Date of expiry of validity of advertisement or circular

7. *Net Worth as per the latest audited balance sheet preceding the date of the return—

S. No.	Particulars	Amount (in Rupees)
(a)(i)	Paid up share capital	<input type="text"/>
(ii)	Free reserves	<input type="text"/>
(iii)	Securities Premium Account	<input type="text"/>
(b)(i)	Accumulated loss	<input type="text"/>

*To be digitally signed by

*Designation

*DIN of the director; or DIN or PAN of the manager or CEO or CFO; or membership number of the company secretary

Note: Attention is also drawn to provisions of Section 448 and 449 which provide for punishment for false statement and false evidence.

Modify Check Form Prescruling Submit

For office use only: Affix filing details

eForm Service request number (SRN) eForm filing date (DD/MM/YYYY)

This e-Form is hereby registered

Digital signature of the authorising officer Confirm submission

Date of signing (DD/MM/YYYY)

AMARDEEP SINGH BHATIA
Joint Secretary

13 Review of Block Deal Window Mechanism.

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DP/118/2017 dated 26.10.2017.]

- SEBI vide circular MRD/DoP/SE/Cir-19/2005 dated September 02, 2005 prescribed guidelines for execution of large size trades through a single transaction. In order to facilitate execution of such large trades, the stock exchanges were permitted to provide a separate trading window. A trade executed on this separate trading window was termed as 'block deal'.
- SEBI has been receiving suggestions from market participants to review the block deal framework. The suggestions received from market participants were examined and deliberated in the Secondary Market Advisory Committee ("SMAC").
- Based on the deliberations, it has been decided to revise the framework for block deals by providing two block deal windows as follows:
 - Morning Block Deal Window:** This window shall operate between 08:45 AM to 09:00 AM. The reference price for execution of block deals in this window shall be the previous day closing price of the stock. The stock exchanges shall set their trading hours between 08:45AM to 5:00 PM with a stipulation that between 08:45AM and 09:00AM, the stock exchanges shall operate only for executing trades in the block deal window
 - Afternoon Block Deal Window:** This window shall operate between 02:05 PM to 2:20 PM. The reference price for block deals in this window shall be the volume weighted average market price (VWAP) of the trades executed in the stock in the cash segment between 01:45 PM to 02:00 PM. Between the period 02:00 pm to 02:05 pm, the stock exchanges shall calculate and disseminate necessary information regarding the VWAP applicable for the execution of block deals in the Afternoon block deal window.
- The orders placed shall be within $\pm 1\%$ of the applicable reference price in the respective windows as stated above.
- The minimum order size for execution of trades in the Block

- deal window shall be Rs.10 Crore.
- Every trade executed in the block deal windows must result in delivery and shall not be squared off or reversed.
- The stock exchanges shall disseminate the information on block deals such as the name of the scrip, name of the client, quantity of shares bought/sold, traded price, etc. to the general public on the same day, after the market hours.
- The stock exchanges shall ensure that all appropriate trading and settlement practices as well as surveillance and risk containment measures, etc., as applicable to the normal trading segment are made applicable and implemented in respect of the block deal windows also.
- This circular shall come into force with effect from January 01, 2018. The SEBI circular no MRD/DoP/SE/Cir-19/05 dated September 2, 2005 shall stand withdrawn with effect from January 01, 2018. The circular no SEBI/DNPD/Cir- 47/2009 dated October 23, 2009 shall stand modified accordingly to enable opening of morning block deal window.
- Stock Exchanges are advised to:
 - take necessary steps and put in place necessary systems for implementation of the above.
 - make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website.
- This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

SUSANTA KUMAR DAS
Deputy General Manager

14 Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015-Amendments

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DSA/CIR/P/2017/117 dated 17.10.2017.]

- Kindly refer to SEBI (IFSC) Guidelines, 2015 notified by SEBI on March 27, 2015 and SEBI Circular SEBI/HO/CIR/P/2017/85 dated July 27, 2017 amending these guidelines.
- In order to further streamline the operations at IFSC, based on the internal discussions and consultations held with the stakeholders, it has been decided to further amend Guideline 8(2) which shall now read as follows: :
"8 (2) Any entity based in India or in a foreign jurisdiction may form a company in IFSC to act as a trading member of a stock exchange and/or a clearing member of a clearing corporation in IFSC."
- This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of and to regulate the securities market.

BITHIN MAHANTA
Deputy General Manager

15 Criteria for Settlement Mode of Commodity Derivative Contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2017/116 dated 16.10.2017.]

1. In order to effectively discharge their hedging function, commodity derivative contracts must be anchored to their respective underlying physical markets. An appropriate settlement mode and/or presence of other supporting conditions play a crucial role in ensuring convergence of prices between the derivatives market and the spot market.
2. In view of the above, in consultation with the Commodity Derivatives Advisory Committee (CDAC) the following broad guidelines are being specified for deciding appropriate settlement mode for commodity derivatives contracts:
 - 2.1. The first preference of settlement type shall always be by the way of **physical delivery**.
 - 2.2. Any exemption from the above i.e. cash settlement of commodity derivatives contract, may be considered only in following scenarios with a proper justification -
 - 2.2.1. Physical delivery is difficult to implement due to any reason, which may *inter-alia* include the following:
 - 2.2.1.1. commodity is intangible; or
 - 2.2.1.2. commodity is difficult to store may be due to low shelf life or inadequate storage infrastructure; or
 - 2.2.1.3. it is difficult to physically handle and transport the commodity due to inadequate logistics and transport infrastructure.
 - 2.2.2. There is availability of reliable benchmark price of the commodity which can be used as reference for settlement price. Exchanges shall satisfy themselves that the reference spot price is robust - fair indicator of prevailing prices and not susceptible to any distortion/manipulation.
 - 2.3. Subject to the above conditions, both cash settled and physically settled derivative contracts on the same commodity may also be considered for trading, in case basis of price discovery of the proposed contracts is different.
3. The provisions of this circular shall come into effect from the date of the circular.
4. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
5. The Exchanges are advised to:
 - i. make necessary amendments to the relevant bye-laws, rules and regulations, if any.
 - ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.
6. This circular is available on SEBI website at www.sebi.gov.in under the category "Circulars" and "Info for Commodity Derivatives".

VIKAS SUKHWAL
Deputy General Manager

16 Non-compliance with the Minimum Public Shareholding (MPS) requirements

[Issued by the Securities and Exchange Board of India vide Circular No. CFD/CMD/CIR/P/2017/115 dated 10.10.2017.]

1. Regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") mandates a listed entity to comply with the Minimum Public Shareholding ("MPS") requirements specified in rules 19(2) and 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time.
2. In terms of sub regulation (1) of regulation 97 of the Listing Regulations, recognized Stock Exchanges are mandated to monitor compliance by listed entities with the provisions of the Listing Regulations.
3. Sub regulations (1) and (2) of regulation 98 of Listing Regulations *inter-alia* specify the liability of a listed entity or any other person for contravention and action which can be taken by the respective recognized stock exchange and the revocation of such action, in the manner specified by the Board.
4. In order to maintain consistency and uniformity of approach in the enforcement of MPS norms mandated under regulation 38 of the Listing Regulations, the below mentioned procedure shall be followed by the recognised stock exchanges/depositories, as applicable, with respect to non-compliant listed entities, their promoters and directors:
 - 4.1 The recognized stock exchanges shall review compliance with MPS requirements based on shareholding pattern/ other filings made with them by the listed entities from time to time. Within 15 days from date of observation of non-compliance, the stock exchanges shall issue notices to such entities intimating all actions taken/ being taken as per this circular and advise the entities to ensure compliance.
 - 4.2. On observing non-compliance:
 - 4.2.1. The recognized stock exchange shall impose a fine of 5,000/- per day of non-compliance on the listed entity and such fine shall continue to be imposed till the date of compliance by such listed entity.
 - 4.2.2. The recognized stock exchange shall intimate the depositories to freeze the entire shareholding of the promoter and promoter group in such listed entity till the date of compliance by such entity. The above restriction shall not be an impediment for the entity for compliance with the minimum public shareholding norms through the methods specified/ approved by SEBI.
 - 4.2.3. The promoters, promoter group and directors of the listed entity shall not hold any new position as director in any other listed entity till the date of compliance by such entity. An intimation to this effect shall be provided to the listed entity by the recognized stock exchange and the listed entity shall subsequently intimate the same to its promoters, promoter group and directors.
 - 4.3. In cases where the listed entity continues to be non-compliant for a period more than one year:
 - 4.3.1. The recognized stock exchange shall impose

an increased fine of 10,000/- per day of non-compliance on the listed entity and such fine shall continue to be imposed till the date of compliance by such listed entity.

- 4.3.2. The recognized stock exchange shall intimate the depositories to freeze all the securities held in the Demat account of the promoter and promoter group till the date of compliance by such entity. The above restriction shall not be an impediment for the entity with respect to compliance with the minimum public shareholding norms through the methods specified/approved by SEBI.
- 4.3.3. Direction as per clause 4.2.3 above shall continue till the date of compliance by such entity.
5. The recognized stock exchange may also consider compulsory delisting of the non-compliant listed entity in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulation) Rules, 1957 and the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 as amended from time to time.
6. The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with MPS requirements under the Listing Regulations/ moratorium on enforcement proceedings has been provided under any Act, Court/Tribunal Orders etc.
7. In case it is observed that the listed entity has adopted a method for complying with MPS requirements which is not prescribed by SEBI under clauses (2)(i) to (vi) under SEBI circular No. CIR/CFD/CMD/14/2015 dated November 30, 2015 and approval for the same has not been obtained from SEBI under clause 2 (vii) of the said circular, the recognized stock exchanges shall refer such cases to SEBI.
8. With respect to the fines as stated above:
 - 8.1. The amount of fine realized as per the above structure shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange.
 - 8.2. If any non-compliant listed entity fails to pay the fine despite receipt of the notice as stated above, the recognized stock exchange may initiate appropriate action.
9. Upon intimation of compliance by the listed entity with the MPS requirements, the concerned recognized stock exchange shall, on being satisfied of such compliance:
 - 9.1. intimate the depositories to unfreeze the shares and other securities of the promoter and promoter group of the listed entity.
 - 9.2. intimate the listed entity that directions imposed in terms of clause 4.2.3 above shall not continue and the listed entity shall subsequently intimate the same to its promoters, promoter group and directors.
 - 9.3. disseminate the information in its website regarding the compliance achieved by the listed entity.
10. The recognized stock exchanges shall periodically disclose on their website the following-
 - 10.1. Names of non-compliant entities, amount of fine imposed, freezing of shares held by the promoters and promoter group and other actions taken against the entity;
 - 10.2. Status of compliance including details regarding fine paid by the entity.
11. The recognized stock exchanges may, having regard to the interests of investors and the securities market, take

appropriate action in line with the principles and procedures laid down in this Circular. Any deviation, therefore, should not dilute the spirit of the policy contained herein and may be made on reasonable grounds to be recorded in writing.

12. In order to ensure effective enforcement of the Listing Regulations, the depositories, on receipt of intimation from concerned recognized stock exchange shall freeze or unfreeze the shareholding of the promoter and promoter group in such entity and the other securities held by them, as applicable.
13. The actions specified in this Circular are without prejudice to the power of SEBI to take action under the securities laws for violation of the MPS requirements.
14. The Stock Exchanges are advised to bring the provisions of this Circular to the notice of listed entities and also to disseminate the same on its website.
15. This Circular shall come into force with immediate effect.
16. For entities which are non-compliant as on date of this circular:
 - 16.1. The stock exchanges shall undertake such action as prescribed under clause 4.2 or clause 4.3 of this circular depending on the period of non-compliance by the entity. However, the fines, as applicable, shall be imposed prospectively from the date of this circular.
 - 16.2. The provisions of this circular shall not apply to those entities where orders have already been passed by SEBI under provisions of Securities and Exchange Board of India Act, 1992/Securities Contracts (Regulation) Act, 1956 in relation to non-compliance with MPS requirements.
17. This Circular is issued under regulations 97, 98, 99 and 101 of Listing Regulations.
18. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Issues and Listing" and "Legal".

PRADEEP RAMAKRISHNAN
Deputy General Manager

17 Categorization and Rationalization of Mutual Fund Schemes

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated 06.10.2017.]

1. It is desirable that different schemes launched by a Mutual Fund are clearly distinct in terms of asset allocation, investment strategy etc. Further, there is a need to bring in uniformity in the characteristics of similar type of schemes launched by different Mutual Funds. This would ensure that an investor of Mutual Funds is able to evaluate the different options available, before taking an informed decision to invest in a scheme.
2. In order to bring the desired uniformity in the practice, across Mutual Funds and to standardize the scheme categories and characteristics of each category, the issue was discussed in Mutual Fund Advisory Committee (MFAC). Accordingly, it has been decided to categorize the MF schemes as given below:
 - I. **Categories of Schemes, Scheme Characteristics and Type of Scheme (Uniform Description of Schemes):**
 3. The Schemes would be broadly classified in the following

groups:

- a. Equity Schemes
- b. Debt Schemes
- c. Hybrid Schemes
- d. Solution Oriented Schemes
- e. Other Schemes

The details of the scheme categories under each of the aforesaid groups along with their characteristics and uniform description are given in the Annexure.

4. As per the annexure, the existing 'type of scheme' (presently mentioned below the scheme name in the offer documents/ advertisements/ marketing material/etc) would be replaced with the type of scheme (given in the third column of the tables in the Annexure) as applicable to each category of scheme. This will enhance the existing disclosure. Hence, for the purpose of alignment of the existing schemes with considered as a change in fundamental attribute.
5. In case of Solution oriented schemes, there will be specified period of lock in as stated in the Annexure. However, the said lock-in period would not be applicable to any existing investment by an investor, registered SIPs and incoming STPs in the existing solution oriented schemes as on the date on which such scheme is getting realigned with the provisions of this circular.
6. The investment objective, investment strategy and benchmark of each scheme shall be suitably modified (wherever applicable) to bring it in line with the categories of schemes listed above.

II. Definition of Large Cap, Mid Cap and Small Cap:

7. In order to ensure uniformity in respect of the investment universe for equity schemes, it has been decided to define large cap, mid cap and small cap as follows:
 - a. Large Cap: 1st -1001h company in terms of full market capitalization
 - b. Mid Cap: 101st -2501h company in terms of full market capitalization
 - c. Small Cap: 25151 company onwards in terms of full market capitalization
8. Mutual Funds would be required to adopt the list of stocks prepared by AMFI in this regard and AMFI would adhere to the following points while preparing the list:
 - a. If a stock is listed on more than one recognized stock exchange, an average of full market capitalization of the stock on all such stock exchanges, will be computed;
 - b. In case a stock is listed on only one of the recognized stock exchanges, the full market capitalization of that stock on such an exchange will be considered.
 - c. This list would be uploaded on the AMFI website and the same would be updated every six months based on the data as on the end of June and December of each year. The data shall be available on the AMFI website within 5 calendar days from the end of the 6 months period.
9. Subsequent to any updation in the list, Mutual Funds would have to rebalance their portfolios (if required) in line with updated list, within a period of one month.

III. Process to be followed for categorization and rationalization of schemes:

- a. Only one scheme per category would be permitted, except:
 - i. Index Funds/ ETFs replicating/ tracking different indices;
 - ii. Fund of Funds having different underlying schemes; and

iii. Sectoral/ thematic funds investing in different sectors/ themes

- b. Mutual Funds would be required to analyze each of their existing schemes in light of the list of categories stated herein and submit their proposals to SEBI after obtaining due approvals from their Trustees as early as possible but not later than 2 months from the date of this circular.
- c. The aforesaid proposal of mutual funds would also include the proposed course of action (viz.. winding up, merger fundamental attribute change etc.) in respect of the existing similar schemes as well as those that are not in alignment to the categories stated herein.
- d. Subsequent to the observations issued by SEBI on the proposals, Mutual Funds would have to carry out the necessary changes in all respects within a maximum period of 3 months from the date of such observation.
- e. Where there is a merger of schemes/change of fundamental attribute(s) of a scheme (as laid down under SEBI Circular No. IIMARP/MF/CIR/01/294/98 dated February 4, 1998), the AMC's would be required to comply with Regulation 18 (15A) of SEBI (Mutual Funds Regulation, 1996).
- f. Mutual Funds are advised to strictly adhere to the scheme characteristics stated herein as well as to the spirit of this circular. Mutual Funds must ensure that the schemes so devised should not result in duplication/ minor modifications of other schemes offered by them. The decision of SEBI in this regard shall be binding on all the mutual funds.

IV. Applicability of this circular:

- a. All existing open ended schemes of all Mutual Funds
- b. All such open ended schemes where SEBI has issued final observations but have not yet been launched.
- c. All open ended schemes in respect of which draft scheme documents have been filed with SEBI as on date
- d. All open ended schemes for which a mutual fund would file draft scheme document.

This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

RAJESH GUJJAR
Deputy General Manager

Annexure

A. Equity Schemes:

Sr. No.	Category of Schemes	Scheme Characteristics	Type of scheme (uniform description of scheme)
1	Multi Cap Fund	Minimum investment in equity & equity related instruments- 65% of total assets	Multi Cap Fund- An open ended equity scheme investing across large cap, mid cap, small cap stocks
2	Large Cap Fund	Minimum investment in equity & equity related instruments of large cap companies- 80% of total assets	Large Cap Fund- An open ended equity scheme predominantly investing in large cap stocks

3	Large & Mid Cap Fund	Minimum investment in equity & equity related instruments of large cap companies- 35% of total assets Minimum investment in equity & equity related instruments of mid cap stocks- 35% of total assets	Large & Mid Cap Fund- An open ended equity scheme investing in both large cap and mid cap stocks
4	Mid Cap Fund	Minimum investment in equity & equity related instruments of mid cap companies- 65% of total assets	Mid Cap Fund- An open ended equity scheme predominantly investing in mid cap stocks
5	Small cap Fund	Minimum investment in equity & equity related instruments of small cap companies- 65% of total assets	Small Cap Fund- An open ended equity scheme predominantly investing in small cap stocks
6	Dividend Yield Fund	Scheme should predominantly invest in dividend yielding stocks. Minimum investment in equity- 65% of total assets	An open ended equity scheme predominantly investing in dividend yielding stocks
7	Value Fund*	Scheme should follow a value investment strategy. Minimum investment in equity & equity related instruments - 65% of total assets	An open ended equity scheme following a value investment strategy
	Contra Fund*	Scheme should follow a contrarian investment strategy. Minimum investment in equity & equity related instruments - 65% of total assets	An open ended equity scheme following contrarian investment strategy
8	Focused Fund	A scheme focused on the number of stocks (maximum 30) Minimum investment in equity & equity related instruments - 65% of total assets	An open ended equity scheme investing in maximum 30 stocks (mention where the scheme intends to focus, viz., multi cap, large cap, mid cap, small cap)
9	Sectoral/ Thematic	Minimum investment in equity & equity related instruments of a particular sector/ particular theme- 80% of total assets	An open ended equity scheme investing in _ sector (mention the sector)/ An open ended equity scheme following _ theme (mention the theme)
10	ELSS	Minimum investment in equity & equity related instruments - 80% of total assets (in accordance with Equity Linked Saving Scheme, 2005 notified by Ministry of Finance)	An open ended equity linked saving scheme with a statutory lock in of 3 years and tax benefit

* Mutual Funds Will be permitted to offer either Value fund or Contra fund.

B. Debt Schemes

Sr. No.	Category of Schemes	Scheme Characteristics	Type of scheme (uniform description of scheme)
1	Overnight Fund**	Investment in overnight securities having maturity of 1 day	An open ended debt scheme investing in overnight securities
2	Liquid Fund \$ **	Investment in Debt and money market securities with maturity of upto 91 days only	An open ended liquid scheme
3	Ultra Short Duration Fund	Investment in Debt & short term debt scheme investing in instruments with Macaulay duration between 3 months and 6 months (please refer to page no._)#	An open ended ultra-Money Market instruments such that the Macaulay duration of the portfolio is between 3 months - 6 months
4	Low Duration Fund	Investment in Debt & Money Market instruments such that the Macaulay duration of the portfolio is between 6 months- 12 months	An open ended low duration debt scheme investing in instruments with Macaulay duration between 6 months and 12 months (please refer to page no._)#
5	Money Market Fund	Investment in Money Market instruments having maturity upto 1 year	An open ended debt scheme investing in money market instruments
6	Short Duration Fund	Investment in Debt & Money Market instruments such that the Macaulay duration of the portfolio is between 1 year - 3 years	An open ended short term debt scheme investing in instruments with Macaulay duration between 1 year and 3 years (please refer to page no._)#
7	Medium Duration Fund	Investment in Debt & Money Market instruments such that the Macaulay duration of the portfolio is between 3 years - 4 years	An open ended medium term debt scheme investing in instruments with Macaulay duration between 3 years and 4 years (please refer to page no._)#
8	Medium to Long Duration Fund	Investment in Debt & Money Market instruments such that the Macaulay duration of the portfolio is between 4 - 7 years	An open ended medium term debt scheme investing in instruments with Macaulay duration between 4 years and 7 years (please refer to page no._)#
9	Long Duration Fund	Investment in Debt & Money Market Instruments such that the Macaulay duration of the portfolio is greater than 7 years	An open ended debt scheme investing in instruments with Macaulay duration greater than 7 years (please refer to page no._)#
10	Dynamic Bond	Investment across duration	An open ended dynamic debt scheme investing across duration

11	Corporate Bond Fund	Minimum investment in corporate bonds- 80% of total assets (only in highest rated instruments)	An open ended debt scheme predominantly investing in highest rated corporate bonds
12	Credit Risk Fund [^]	Minimum investment in corporate bonds- 65% of total assets (investment in below highest rated instruments)	An open ended debt scheme investing in below highest rated corporate bonds
13	Banking and PSU Fund	Minimum investment in Debt instruments of banks, Public Sector Undertakings, Public Financial Institutions- 80% of total assets	An open ended debt scheme predominantly investing in Debt instruments of banks, Public Sector Undertakings, Public Financial Institutions
14	Gilt Fund	Minimum investment in Gsecs- 80% of total assets (across maturity)	An open ended debt scheme investing in government securities across maturity
15	Gilt Fund with 10 year constant duration	Minimum investment in Gsecs- 80% of total assets such that the Macaulay duration of the portfolio is equal to 10 years	An open ended debt scheme investing in government securities having a constant maturity of 10 years
16	Floater Fund	Minimum investment in floating rate instruments- 65% of total assets	An open ended debt scheme predominantly investing in floating rate instruments

**Provisions of SEBI Circular No SEBI/IMD/DF/19/2010 dated November 26, 2010 shall be followed for Uniform cut-off timings for applicability of Net Asset Value in respect of Liquid Fund and Overnight Fund.

[^] All provisions mentioned in SEBI circular SEBI/IMD/CIR No.13/150975/09 dated January 19, 2009 in respect of liquid schemes shall be applicable

Please refer to the page number of the Offer Document on which the concept of Macaulay's Duration has been explained

"Words/ phrases that highlight/ emphasize only the return aspect of the scheme shall not be used in the name of the scheme (for instance Credit Opportunities Fund, High Yield Fund, Credit Advantage etc.)

C. Hybrid Schemes

Sr. No.	Category of Schemes	Scheme Characteristics	Type of scheme (uniform description of scheme)
1	Conservative Hybrid Fund	Investment in equity & equity related instruments- between 10% and 25% of total assets; Investment in Debt instruments- between 75% and 90% of total assets	An open ended hybrid scheme investing predominantly in debt instruments
2	Balanced Hybrid Fund @	Equity & Equity related instruments- between 40% and 60% of total assets; Debt instruments- between 40% and 60% of total assets No Arbitrage would be permitted in this scheme	An open ended balanced scheme investing in equity and debt instruments
	Aggressive Hybrid Fund @	Equity & Equity related instruments- between 65% and 80% of total assets; Debt instruments- between 20% 35% of total assets	An open ended hybrid scheme investing predominantly in equity and equity related instruments

3	Dynamic Asset Allocation or Balanced Advantage managed dynamically	Investment in equity/ debt that is managed dynamically	An open ended dynamic asset allocation fund
4	Multi Asset Allocation ##	Invests in at least three asset classes with a minimum allocation of at least 10% each in all three asset classes	An open ended scheme investing in __, __, __ (mention the three different asset classes)
5	Arbitrage Fund	Scheme following arbitrage strategy. Minimum investment in equity & equity related instruments 65% of total assets	An open ended scheme investing in arbitrage - opportunities
6	Equity Savings	Minimum investment in equity & equity related instruments- 65% of total assets and minimum investment in debt- 10% of total assets Minimum hedged & unhedged to be stated in the SID. Asset Allocation under defensive considerations may also be stated in the Offer Document	An open ended scheme investing in equity, arbitrage and debt

@Mutual Funds will be permitted to offer either an Aggressive Hybrid fund or Balanced fund

Foreign securities will not be treated as a separate asset class

D. Solution Oriented Schemes:

Sr. No	Category of Schemes	Scheme Characteristics	Type of scheme (uniform description of scheme)
1	Retirement Fund	Scheme having a lock-in for at least 5 years or till retirement age whichever is earlier	An open ended retirement oriented scheme having a lock-in of 5 years or till retirement age (whichever is earlier)
2	Children's Fund	Scheme having a lock-in for at least 5 years or till the child attains age of majority whichever is earlier	An open ended fund for investment for children having a lock-in for at least 5 years or till the child attains age of majority (whichever is earlier)

A. Other Schemes:

Sr. No	Category of Schemes	Scheme Characteristics	Type of scheme (uniform description of scheme)
1	Index Funds/ ETFs	Minimum investment in securities of a particular index (which is being replicated/ tracked)- 95% of total assets	An open ended scheme replicating/ tracking __ index

2	FoFs (Overseas/ Domestic)	Minimum investment in the underlying fund- 95% of total assets	An open ended fund of fund scheme investing in _ fund (mention the underlying fund)
---	------------------------------	---	---

18 Investments by FPIs in Government Securities

[Issued by the Securities and Exchange Board of India vide Circular No. IMD/FPIC/CIR/ P/ 2017/113 dated 04.10.2017.]

- 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 and IMD/FPIC /CIR/P/ 2017/74 dated July 04, 2017 regarding the allocation and monitoring of FPI debt investment limits in Government securities.
- It has been decided to revise the limit for investment by FPIs in Government Securities, for the October - December 2017 quarter, as follows:
 - Limit for FPIs in Central Government securities shall be enhanced to INR 189,700 cr.
 - 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 revised to INR 60,300 cr.
 - The debt limit category of State Development Loans (SDL) shall be enhanced as follows:
 - SDL-General shall be enhanced to INR 30,000 cr
 - SDL-Long Term shall be enhanced to INR 9,300 cr
- Accordingly, the revised FPI debt limits would be as follows:

Type of Instrument	Upper Cap as on July 04, 2017 (INR cr)	Revised Upper Cap with effect from October 03, 2017 (INR cr)
Government Debt - General	187,700	189,700
Government Debt - Long Term	54,300	60,300
SDL - General	28,500	30,000
SDL - Long Term	4,600	9,300
Total	275,100	289,300

- All other existing conditions with regard to allocation and monitoring of debt limits shall continue to apply.
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. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

19 Foreign Portfolio Investment in Corporate debt securities

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI / HO / IMD/ FPIC/CIR/ P/ 2017/ 112 dated 29.09.2017.]

- SEBI, vide circular SEBI/ HO/IMD/FPIC/CIR/P/2016/67 dated August 04, 2016 had redefined the INR 244,323 cr Corporate debt limit for FPIs as the Combined Corporate Debt Limit (CCDL) for all foreign investments in Rupee denominated bonds issued both onshore and overseas by Indian corporates.
- RBI vide circular RBI/2017-18/64 A.P. (DIR Series) Circular No. 05 dated September 22, 2017 has decided to exclude foreign investment in rupee denominated bonds (ROB) issued overseas by Indian corporates, from the Combined Corporate Debt Limit (CCDL).
- Accordingly, in partial modification to Para 2 & 3 of the SEBI circular dated August 04, 2016, with effect from October 03, 2017, foreign investments in RDB shall no longer be reckoned against the CCDL. Further, the CCDL shall be renamed as the Corporate Debt Investment Limits (CDIL) for FPIs. The upper limit for CDIL shall, henceforth, be stated only in Rupee terms.
- As on September 22, 2017, foreign investments in RDB was INR 32,381 cr while the undrawn amount against RDB was INR 11,620 cr. Thus, a total of INR 44,001 cr has been reckoned against RDB within the CCDL of INR 244,323 cr. This amount shall be carved out of erstwhile CCDL and will be added to the new limit of CDIL as under:-

All figures are in INR cr

	October 02, 2017	October 03, 2017	January 01, 2018
CCDL*	244,323	0	0
CDIL	0	227,322	244,323
Sub-Limit for investment by Long Term FPIs in the infrastructure sector	NA	9,500	19,000

- A sub-limit exclusively for investments by Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in the infrastructure sector shall be created within the overall CDIL. The term 'Infrastructure' shall be as defined under the Master Direction on External

Commercial Borrowings issued by the Reserve Bank of India. However, Longterm FPIs will continue to be eligible to invest in sectors other than infrastructure, as hitherto.

6. This sub-limit for Long Term FPIs shall be INR 9,500 cr with effect from October 03, 2017 and shall be enhanced to INR 19,000 cr on January 01, 2018. This sub-limit shall be available for investment on tap.
 7. The sub-limit for Long Term FPIs shall include their investment in both listed and unlisted corporate debt issued by companies in the infrastructure sector. As prescribed in the SEBI circular SEBI/HO/IMD/FPIC/CIR/P/2017/16 dated February 28, 2017, investments by FPIs in the unlisted corporate debt securities and securitised debt instruments shall not exceed INR 35,000 cr within the extant CDIL.
 8. All other extant conditions with respect to FPI investments in corporate debt securities shall continue to apply.
- 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 links "Legal Framework-7 Circulars" and "Info for -7 F.P.I" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHALSINGH
Deputy General Manager

20 Change in reporting norms for Category III Alternative Investment Funds ("AIFs") regarding investment in commodity derivatives market.

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/110 dated 29.09.2017.]

1. In terms of circular no. SEBI/HO/CDMRD/DMP/CIR/P/2017/61 dated June 21, 2017, the Category III Alternative Investment Funds (AIFs) are allowed to participate in the commodity derivatives market, subject to certain conditions which inter-alia include the following:
 - i. Category III AIFs shall invest not more than ten percent of the investable funds in one underlying commodity.
 - ii. Category III AIF shall be subject to the reporting requirements as may be specified by SEBI.
2. In view of the above, it is decided to revise the reporting formats for Category III AIFs so as to capture the information pertaining to investment in commodity derivatives as per enclosed Annexure. Accordingly, circular no.CIR/IMD/DF/10/2013 dated July 29, 2013 issued for operational, prudential and reporting requirements for AIFs stands modified.
3. All Category III AIFs are advised to submit the monthly/quarterly report in the revised format for the period ended September 30, 2017 onwards.
4. 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.

5. This circular is available on SEBI website at www.sebi.gov.in under the categories "Circulars" and "Info for - Alternative Investment Funds".

NAVEEN SHARMA
Deputy General Manager

Annexure:

- i. **Reporting format for Category III AIFs which do not undertake leverage:**

Table 2- Cumulative net investments by the AIF as at the end of quarter (in Rs. Crore) (Scheme-wise)

Name of the scheme	In Unlisted equity shares/equity linked instruments/LLP interest	In listed equity (excluding in listed/ to be listed on SME exchange)	In Debt/ securitised debt instruments	In units of other AIFs	In liquid funds	In listed/ to be listed securities on SME exchange	In commodity derivatives	Others	Total

Table 8- Maximum Investment made in a single underlying commodity (Scheme-wise)

Name of the Scheme	Name of the underlying commodity	Amount invested (in Rs. Crore)	Amount of investment as a % of total investible funds

- ii. **Reporting format for Category III AIFs which undertake leverage:**

Table 2- Exposure by the AIF as at the end of month (in Rs. Crore) (Scheme-wise)

Name of the scheme	Long Futures				Short futures			Long calls			Short calls		
	In listed equity and ETFs	Equity	Commodity	Others*	Equity	Commodity	Others*	Equity	Commodity	Others*	Equity	Commodity	Others*

Long puts			Short puts			Cash & cash equivalents	Others*	Gross Total (Sum of all exposures)
Equity	Commodity	Others*	Equity	Commodity	Others*			

* Specific details to be provided.

Table 8- Maximum Investment made in a single underlying commodity (Scheme wise)

Name of the Scheme	Name of the underlying commodity	Amount invested (in Rs.Crore)	Amount of investment as a % of total investible funds

21 Review of norms for participation in derivatives by Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/

HO/IMD/DF2/CIR/P/2017/109 dated 27.09.2017.]

1. Please refer to SEBI circulars No.MFD/CIR/15/19133/2002 dated September 30, 2002, No.SEBI/MFD/CIR No.03/158/03 dated June 10, 2003, No.DNPD/CIR-29/2005 dated September 14, 2005 and No.IMD/DF/11/2010 dated August 18, 2010 on investment in derivatives by mutual funds and disclosures thereof.
2. In order to enable mutual funds to hedge the debt portfolio from interest rate volatility, SEBI held a series of meetings with various stakeholders of the mutual fund industry. Accordingly, it has been decided to implement the following:

Exposure Limits

3. In addition to the existing provisions of SEBI circular No.IMD/DF/11/2010 dated August 18, 2010, the following are prescribed:

- i. To reduce interest rate risk in a debt portfolio, mutual funds may hedge the portfolio or part of the portfolio (including one or more securities) on weighted average modified duration basis by using Interest Rate Futures (IRFs). The maximum extent of short position that may be taken in IRFs to hedge interest rate risk of the portfolio or part of the portfolio, is as per the formula given below:

$$\frac{\text{(Portfolio Modified Duration*Market Value of the Portfolio)}}{\text{(Futures Modified Duration*Futures Price/ PAR)}}$$

- ii in case the IRF used for hedging the interest rate risk has different underlying security(s) than the existing position being hedged, it would result in imperfect hedging.
- iii. Imperfect hedging using IRFs may be considered to be exempted from the gross exposure, upto maximum of 20% of the net assets of the scheme, subject to the following:
 - a) Exposure to IRFs is created **only for hedging** the interest rate risk based on the weighted average modified duration of the bond portfolio or part of the portfolio.
 - b) Mutual Funds are permitted to resort to imperfect hedging, without it being considered under the gross exposure limits, if and only if, the correlation between the portfolio or part of the portfolio (excluding the hedged portions, if any) and the IRF is atleast 0.9 at the time of initiation of hedge. In case of any subsequent deviation from the correlation criteria, the same may be rebalanced within 5 working days and if not rebalanced within the timeline, the derivative positions created for hedging shall be considered under the gross exposure computed in terms of Para 3 of SEBI circular dated August 18, 2010. The correlation should be calculated for a period of last 90 days.

Explanation: If the fund manager intends to do imperfect hedging upto 15% of the portfolio using IRFs on weighted average modified duration basis, either of the following conditions need to be complied with:

- i. The correlation for past 90 days between the portfolio and the IRF is at least 0.9 or
 - ii. The correlation for past 90 days between the part of the portfolio (excluding the hedged portions, if any) i.e. at least 15% of the net asset of the scheme (including one or more securities) and the IRF is at least 0.9.
- c) At no point of time, the net modified duration of part of the portfolio being hedged should be negative.
 - d) The portion of imperfect hedging in excess of 20% of the net assets of the scheme should be considered as creating exposure and shall be included in the computation of gross exposure in terms of Para 3 of SEBI circular dated August 18, 2010.
 - iv. The basic characteristics of the scheme should not be affected by hedging the portfolio or part of the portfolio (including one or more securities) based on the weighted average modified duration.

Explanation: In case of long term bond fund, after hedging the portfolio based on the modified duration of the portfolio, the net modified duration should not be less than the minimum modified duration of the portfolio as required to consider the fund as a long term bond fund.

- v. The interest rate hedging of the portfolio should be in the interest of the investors.
4. Mutual Fund schemes may imperfectly hedge their portfolio or part of their portfolio using IRFs, subject to the following conditions:
 - i. Prior to commencement of imperfect hedging, existing schemes shall comply with the provisions of Regulation 18 (15A) of SEBI (Mutual Funds) Regulations, 1996 and all unit holders shall be given a time period of at least 30 days to exercise the option to exit at prevailing NAV without charging of exit load. The risks associated with imperfect hedging shall be disclosed and explained by suitable numerical examples in the offer documents and also needs to be communicated to the investors through public notice or any other form of correspondence.
 - ii. In case of new schemes, the risks associated with imperfect hedging shall be disclosed and explained by suitable numerical examples in the offer documents.

Disclosure of Derivative Positions

5. In addition to the existing provisions, the mutual funds shall also make the following disclosures:
 - i. Separately disclose the hedging positions through IRF (both perfectly and imperfectly) in respective debt portfolios as per the format prescribed in para-13 of SEBI circular no.IMD/DF/11/2010 dated August 18, 2010
 - ii. Investment in interest rate derivatives (both IRS/IRF) shall also be disclosed in the monthly portfolio disclosure as per para-H of SEBI Circular No. CIR/IMD/DF/21/2012 dated September 13,2012 and
 - iii. Disclosure of the details of interest rate derivatives (both IRS/IRF) used for hedging along with debt and money market securities transacted on its website and also forwarded to AMFI as per para-8(3) of SEBI Circular No.Cir/IMD/DF/6/2012 dated February 28, 2012.

Applicability

6. The aforesaid circular stands modified to the said extent from the date of this circular and all other provisions of the above mentioned circulars remains unchanged.
7. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HARINI BALAJI
General Manager

22 Participation of Foreign Portfolio Investors (FPIs) in Commodity Derivatives in IFSC

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2017/106 dated 26.09.2017.]

1. SEBI (International Financial Services Centres) Guidelines, 2015 were issued on March 27, 2015. Subsequently, vide circular CIR/MRD/DSA/41/2016 dated March 17, 2016, SEBI has specified that 'Commodity Derivatives' shall be eligible as securities for trading and the stock exchanges operating in IFSC may permit dealing in commodity derivatives.
2. In this regard, based on the representations received from the exchanges operating in IFSC and after consultations with Government of India and RBI, it has been decided that FPIs shall be permitted to participate in commodity derivatives contracts traded in stock exchanges in IFSC subject to following conditions:-
 - 2.1.The participation would be limited to the derivatives contracts in non agricultural commodities only.
 - 2.2. Contracts would be cash settled on the settlement

price determined on overseas exchanges.

- 2.3. All the transactions shall be denominated in foreign currency only.
3. The provisions of this circular shall come into effect from the date of this Circular.
4. The Exchanges are advised to:
 - i. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same.
 - ii. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website.
5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
6. This circular is available on SEBI website at www.sebi.gov.in under the category "Circulars", "Info for Commodity Derivatives"

VIKAS SUKHWAL
Deputy General Manager

23 Prevention of Unauthorised Trading by Stock Brokers

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated 26.09.2017.]

- I. SEBI in the past has taken several steps to tackle the menace of "Unauthorized Trades" viz Periodic Running Account Settlement, Post transactions SMS/email by exchanges/Depositories, Ticker on broker/DP websites etc. It was observed that in spite of measures taken, a considerable proportion of investor complaints is of the nature of "Unauthorized Trades".
- II. The current regulatory requirements in commodity derivative markets require that "The members shall execute the trade of clients only after keeping evidence of the client placing such order; it could be, inter alia, in the form of sound recording." There are no such requirements in Equity, Equity Derivative and Currency Derivative Market side.
- III. To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of:
 - a. Physical record written & signed by client,
 - b. Telephone recording,
 - c. Email from authorized email id,

- d. Log for internet transactions,
 - e. Record of SMS messages,
 - f. Any other legally verifiable record.
- When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

- IV. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.
- V. This circular shall be effective with effect from 1st January 2018
- VI. The Stock Exchanges are directed to:
- a. bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.
 - b. make necessary amendments to the relevant bye laws, rules and regulations for the implementation of the above directions in coordination with one another to achieve uniformity in approach.
 - c. communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.
- VII. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of and to regulate the securities market.

DEBASHIS BANDYOPADHYAY
General Manager

24 Clarification to Enhanced Supervision Circular

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/HO/MIRSD/MIRSD2/CIR/PB/2017/107 dated 25.09.2017.]

1. SEBI vide circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, has issued guidelines covering broad areas for enhanced supervision based on the recommendation of the committee constituted by SEBI. Further SEBI issued certain clarification vide circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.
2. Subsequently, SEBI has received representations from the stock exchanges with respect to Clause 3.2 & 7 of the annexure to the aforesaid circular, expressing operational difficulties caused to the stock brokers on uploading data of

the clients. Accordingly, in view of the operational difficulties being faced by the stock brokers, Clause 3.2 & 7 to the annexure to the aforesaid circular are clarified as follows:

- i. With respect to clause 3.2, stock broker shall submit the data as on the last trading day of every month to the Stock Exchanges on or before the next three trading days till March 31, 2018. Thereafter, the uploading of that data by the stock broker to the Stock Exchanges shall be on weekly basis i.e. stock brokers shall submit the data as on last trading day of every week on or before the next three trading days. Further, the Stock Broker shall not be required to upload data with respect to custodian settled clients.
 - ii. Uploading of data as per clause 7 is hereby simplified and the stock broker shall not be required to upload the data for the following clients onto the stock exchange system:
 - a) Custodian settled clients
 - b) Client with zero funds and securities zero balances and also not traded in the last 12 months.
 - iii. With respect to clause 7.1.4, it is clarified that the stock brokers shall submit the data within seven calendar days of the last trading day of the month.
3. In furtherance to the above, after 4.6.1 an additional clause 4.6.2 is inserted, as:

Stock Exchanges shall ensure that, the Internal Auditors also monitor the corrective steps taken by the stock brokers to rectify the deficiencies observed in the inspection carried out by SEBI/Stock Exchanges and the compliance thereof. The compliance status shall be made as part of the internal audit report.

4. The Stock Exchanges are directed to:
 - a) bring the contents of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.
 - b) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above directions in co-ordination with one another to achieve uniformity in approach.
5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.
6. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework".

DEBASHIS BANDYOPADHYAY
General Manager

5

NEWS FROM THE INSTITUTE



- MEMBERS RESTORED FROM 1/09/2017 TO 30/09/2017
- CERTIFICATE OF PRACTICE CANCELLED DURING THE MONTH OF SEPTEMBER, 2017
- LIST OF PRACTISING MEMBERS REGISTERED FOR THE PURPOSE OF IMPARTING TRAINING DURING THE MONTH OF OCTOBER, 2017
- LIST OF COMPANIES REGISTERED FOR IMPARTING TRAINING DURING THE MONTH OF OCTOBER, 2017



Institute News

MEMBERS RESTORED FROM 1/09/2017 TO 30/09/2017

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	24557	MR. JAGAT SINGH	NIRC
2	A	28471	MR. HIMANSHU	NIRC
3	A	34476	MS. VARINDER KAUR SEERA	NIRC
4	A	33751	MS. MANSI GUPTA	NIRC
5	A	32078	MS. SWAPNA KHOPKAR	WIRC
6	A	35700	MS. AKSHITA KOTHARI	SIRC
7	A	29485	MR. DEEPAK NAUTIYAL	WIRC
8	A	27847	MS. BHAVIKA DHANSUKH GOHIL	WIRC
9	A	11264	MR. RAJU SUBRAMANYAM SURAPURAJU	SIRC
10	A	40337	MR. YODHVEER SINGH RATHORE	NIRC
11	A	16507	MS. KALPANA BATHULA	WIRC
12	A	29517	MS. KHUSHBOO MEHTA	NIRC
13	A	9996	MR. T V ANANTHA NARAYANAN	SIRC
14	A	23316	MS. MANISHA SARAF	EIRC
15	A	9019	MR. N R SRINIVASAN	WIRC
16	A	34670	MS. PUJA BIYANI	EIRC
17	A	29639	MS. GAURI SHASHIKANT PAWAR	WIRC
18	A	11089	MR. HIRANAND ASANDAS SAVLANI	WIRC
19	A	1932	MR. OM PRAKASH SHARMA	NIRC
20	A	11591	MR. RAJIV KUMAR AGARWAL	NIRC
21	A	15351	MR. G MADHUSUDHAN RAO	SIRC
22	F	3412	MR. SUMANTA NAYAK	NIRC
23	A	31282	MS. KOMAL AGRAWAL	NIRC
24	A	3641	MR. KEWAL KRISHAN GUPTA	NIRC
25	A	11748	MR. SIVAKUMAR KRISHNAMURTHY	WIRC
26	A	40542	MR. SURESH KUMAR R JAKHOTIYA	WIRC
27	A	11969	MR. NIKHIL V. SHAH	NIRC
28	A	2588	MR. R MUKUNDAN	SIRC
29	A	25658	MS. NISHA PATWARI	EIRC
30	A	39390	MR. JALPA SANJAY KUMAR SHAH	WIRC
31	A	36216	MS. RANJANA INDOLIA	NIRC
32	A	41155	MR. ANKIT PANDEY	NIRC
33	A	16725	MR. R HARIHARA SUBRAMANIAN	SIRC

34	A	38539	MS. HENA BHARAT JUTHANI	WIRC
35	A	13483	MR. RAJESH VASDEV HEMRAJANI	F/NIRC
36	A	19320	MS. MONIKA THAKUR	NIRC
37	A	20326	MS. RITIKA MANSINGHKA	WIRC
38	A	8219	MR. V KALYANARAMAN	SIRC

CERTIFICATE OF PRACTICE CANCELLED DURING THE MONTH OF SEPTEMBER 2017

SL. No	NAME	MEMB NO	COP NO	REGN
1	MS. BHAWNA AGARWAL	ACS 31001	18053	NIRC
2	MR. KRISHNA SHARMA	ACS 50762	19128	EIRC
3	MS. PUJAN NARAYANLAL RAVAL	ACS 49420	18539	WIRC
4	MS. SHALINI	ACS 40209	15415	NIRC
5	MRS. SEEMA KHANNA	FCS 6348	9649	NIRC
6	MR. SHANSHANK JAIN	ACS 45948	17931	WIRC
7	MS. SHIVANI KHURANA	ACS 40860	17224	NIRC
8	MS. EKTA PERIWAL	ACS 50850	18801	NIRC
9	MRS. BHARTEE SABHARWAL	ACS 29656	13552	NIRC
10.	MS. MINOO SIDDHARTH KUMAR NAIDU	ACS 33097	12132	WIRC
11	MS. BISHAKHA JALAN	ACS 47748	18748	EIRC
12	MS. NISHA	ACS 36244	13853	NIRC
13	MS. SISODIYA JANAKIBEN JAYDEERSINH	ACS 36702	13728	WIRC
14	MR. BAIKAMPADY SHRIDHARA RAO	ACS 678	2300	SIRC
15	MS. NIDHI AGARWAL	ACS 47010	17683	NIRC
16	MR. SANDEEP YADAV	ACS 36449	15325	NIRC
17	MS. EKTA JAIN	ACS 31960	17599	EIRC
18	MS. KANIKA	ACS 24226	15342	NIRC
19	MS. PRIYANKA GERA	ACS 48287	17907	NIRC
20	MR. AMIT LOONKER	ACS 25075	14097	NIRC
21	MS. KHUSHBOO ROUSTRAY	ACS 34377	13625	EIRC
22	MS. URVASHI HARSHIL SHAH	ACS 25112	11735	WIRC
23	MR. VARUN KWATRA	ACS 23077	9840	NIRC
24	MR. HASMUKH BHUDAR BHAI PRAJAPATI	ACS 48018	17544	WIRC
25	MR. ARUN AHUJA	ACS 50473	18257	NIRC
26	MR. MEHUL YOGESH SHAH	ACS 31043	11606	SIRC
27	MR. ANIL KUMAR NANDWANI	FCS 4754	3107	NIRC
28	MR. PRATHAM MALHOTRA	ACS 40039	15333	NIRC
29	MS. CHARU TYAGI	ACS 43741	17082	NIRC
30	MS. ALKA NEGI	ACS 49687	19075	NIRC
31	MS. ANJALI	ACS 46118	17124	NIRC
32	MS. ALKA JUNEJA	ACS 35859	13765	NIRC
33	MS RUCHI BANSAL	ACS 40595	15146	NIRC
34	MR. MANOJ MAHEHWARI	FCS 7878	14640	WIRC
35	MR. KAPIL KAUSHIK	ACS 40551	15236	NIRC

NOTICE

The last date for payment of annual membership fee was 31-08-2017 and for renewal of certificate of practice was 30-09-2017. The members who have not paid their annual membership fee and/or certificate of practice fee by the last date are required to restore their membership and/or certificate of practice by paying the requisite entrance and restoration fees alongwith the applicable annual membership fee and annual certificate of practice fee with GST@18% on the total fee payable. Members are required to submit Form-BB for restoration of membership and Form-D for restoration of certificate of practice duly filled and signed. For more clarification, may please write at jitendra.kumar@icsi.edu (for restoration of membership) and rajeshwar.singh@icsi.edu (for restoration of certificate of practice).

ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2017 is available in the Institute on payment of Rs. 280/-* for members and Rs. 560/-* for non-members (*including GST@12%). Request along with payment may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries if any, please contact on telephone no: 0120-4082133 or at email id rajeshwar.singh@icsi.edu

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link <http://www.icsi.edu/Member.aspx>



List of Practising Members Registered For The Purpose of Imparting Training During The Month of October, 2017

ABHISHEK KUMAR PANDEY

E-2/44, GROUND UPPER FLOOR, STREET 2, SHASTRI NAGAR NEW DELHI-110052

ADIL KHAN

421, 4TH FLOOR, STAR TOWER, SECTOR 30 - 122001

AMBER DURGESH KESHARWANI

1401, NEW NANDANVAN LAYOUT NEAR J L COLLEGE OF ENGINEERING, NAGPUR - 440009

ARUN KUMAR KOTHARI

D-146, SUNSEL BUSINESS PARK -6, DUDHESHWAR ROAD, SHAHIBAUG - 380004

ASHISH KHANDELWAL

267, 2ND FLOOR ORBIT MALL, A B ROAD, INDORE - 452001

BHARAT RAMAKANT UPADHYAY

507, SKYLINE WEALTH SPACE, 5TH FL, C2 WING, SKYLINE OASIS COMPLEX, PREMIER RD, NR. VIDYAVIHAR STATION, GHATKOPAR-W, MUMBAI - 400086

BHASKAR BHARAT UPADHYAY

507, SKYLINE WEALTH SPACE, 5TH FL, C-2 WING, SKYLINE OASIS COMPLEX, PREMIER ROAD, GHATKOPAR - WEST, MUMBAI - 400086

BHOOMIKA JAIN

FLAT NO. 804, KANAN APARTMENT, AMRUT NAGAR GHATKOPAR (W), MUMBAI - 400086

CHETAN KUMAR ASHOKA

48, 1ST FLOOR, RV ROAD, BASAVANGUDI, BANGALORE - 560004

DINESH LUNIA

502/B, SYNERGY TOWER, NEAR VODAFONE HOUSE CORPORATE ROAD, PRAHLADNAGAR, AHMEDABAD - 380015

DINESH NARAYAN KHANOLKAR

1138, E WARD BHVANI PRASAD, SYKES EXTENSION KOLHAPUR - 416005

DISHA VIPUL SHAH

A-203, PRATHMESH AVENUE, DUTTA MANDIR ROAD, OLD SANGEETA THEATRE, MALAD - EAST, MUMBAI - 400097

GARIMA GOYAL

S 68-69, 2ND FLOOR, MUKTANAND NAGAR, NEAR TRIVANI BRIDGE, GOPALPURA BY PASS, JAIPUR - 302018

GAURANG KASHINATH TAMBULWADKAR

FLAT NO.601, PLOT NO.182, AMAR HEIGHTS, SECTOR 13, NEAR RAGHUNATH VIHAR, KHARGHAR - 410210

GAURAV GOYALC/O JP ASSOCIATES,

320 TULSI VIHAR, BEHIND SBI ZONAL OFF., CITY CENTER - 474011

HANSRAJ JARIA TODI MANSION

UNIT 1104 & 1105, 1, LU SHUN SARANI, 11TH FLOOR
OPPOSITE PODDAR COURT, 700073

HIRENDRA RAJENDRA KATIRA

OFFICE NO. 106, FIRST FLOOR, H COMPLEX, 65A,
VIJAY BLOCK LAXMINAGAR, NEW DELHI - 110092

JYOTI VINODKUMAR AGARWAL

C/O DR. K S AGARWAL, CHANDRAKUNJ GROUND
FLOOR 367, CENTRE STREET, SHIMPI ALI 411001

LIYA ANTONY

KOMARAPPILLY HOUSE, PUTHIYA ROAD,
NORTH KALOOR, ERNAKULAM - 682017

MAHAVEER JAIN

NO. 6, BHOO P SANDRA MAIN ROAD,
SANJAY NAGAR 560094

MAMTA RAJENDRA KASAT

SHRINIWAS BUILDING, MOTI NAGAR,
LATUR - 413512

MANDAR KAMALAX SARAF

423, HINDRAJASTHAN BUILDING 95,
DADASAHEB PHALKE ROAD - 400014

MANISH JAIN

1ST FLOOR, NEAR DR. FARISTA

CIVIL LINES - 492001 **MEET DIMPALKUMAR**

JOGATAR

117, OSTWAL PARADISE, OPP. SHIVAR GARDEN
MIRA ROAD (EAST), MUMBAI - 401107

MILIND MANOHARRAO SATFALE

H.NO. 29/A, KHARBI ROAD, SHAKTIMATA NAGAR
NAGPUR - 440009

MURALEEDARAN GAURAV NAYAK

ANUGRAHAM, NO. 24, SRIRAM AVENUE, SECOND
MAIN, FOURTH CROSS, VADAVALLI - 641041

NEERAJ RAJ KUMAR PARWANI

PLOT NO. 8A/B, SUNDAR NAGAR, VARANGAON ROAD
BHUSAWAL - 425201, DIST. JALGAON

PRACHI MAHESHWARI

A-5, COMFORT GARDEN JANKI NAGAR,
CHUNABHATTI - 462016

PRADEEP GANSHYAM RATNANI

D-1, 1ST FLOOR, PLOT NO. 581, WARD 121C, G N
COMPLEX, POLICE STATION ROAD,
GANDHIDHAM - 370201, KUTCH

RAJEEV KUMAR JAIN

D-375, FIRST FLOOR, SECTOR-10, NOIDA - 201301 UP

RAJNI SHARMA

L-20, STREET NO.24, MAHENDRA PARK,
DELHI - 110033

RAKESH KHATRI CHAMBER

316A, RAJUL LANDMARK, OPPOSITE JBP,
HOSPITAL RUSSEL CHOWK - 482002

RAUNAK BANSAL

F 4/3, VYAS COLONY, SHASTRI NAGAR - 302016

RAVIKUMAR VIJAYKUMAR LODAYA

NR. KDO JAIN SOCIETY, BGTI ROAD, GOVIND NAGAR
MALKAPUR, BULDHANA DISTT - 443101

RIDDHI MEHUL PATEL

A/16, 403, CHINTAN C.H.S., YASHODHAM, A.K.V.
MARG, OPP. DINDOSHI DEPOT, GOREGAON EAST,
MUMBAI - 400063

ROHINI RAMESH KULKARNI

B/2, NIKHIL CO-OP SOC. 28/129, SAHAKAR NAGAR 2,
NEAR JANATA SAHAKARI BANK, PUNE - 41100

SANDEEP SINGH

JOHAL MARKET, JALANDHAR - 144008

SANGEETHA VIVEK

50, 1ST FLOOR, 3RD CROSS, VHBCS LAYOUT
VIJAYANAGAR - 560040

SAURABH JAIN

SHRIRAM PADMANABHA BHAT, HOUSE NO 257, 2ND
FLOOR A CROSS, 18TH MAIN ROAD MUNESHWARA
BANGALORE - 560026

SUNIT JAIN

39, PATNI CHAMBERS, C-BLOCK, HANS MARG,
MALVIYA NAGAR - 302017

SWATI JAIN

187, MUKTANAND NAGAR, GOPALPURA,
TONK ROAD - 302018

SWETHA SUBRAMANIAN

MNO COMPLEX NO. 81, GREAMS ROAD,
CHENNAI - 600006

THIRUVALLUVAN THULASIRAMAN

82/1, NARAYANAN ST PERAMANUR,
SALEM - 636007

VAISHALI DEORA

307, GOLD STAR BUILDING, REAL ESTATE CENTER,
OPP TREASURE, ISLAND MALL - 452001

VINEETH THOZHUR

36/4933, RAJ BHAVAN, OPP.IDBI BANK,
SHORANUR ROAD - 680022



List of Companies Registered
for Imparting
**Training during the
month of October, 2017**

ADVIK RENEWABLE ENERGY PRIVATE LIMITED

PLOT NO. 286 SECTOR 7 IMT MANESAR,
GURGAON, HARYANA

CEAT SPECIALTY TYRES LIMITED

RPG HOUSE,463, DR. ANNIE BESANT ROAD, WORLI,
MUMBAI - 400030

EICHER POLARIS PRIVATE LIMITED

3RD FLOOR, SELECT CITYWALK, A-3 DISTRICT
CENTRE, SAKET, NEW DELHI - 110017

HECTOR BEVERAGES PRIVATE LIMITED

330, FINCHLEY CASTLE, DODSWORTH LAYOUT,
OUTER CIRCLE, WHITEFIELD, BANGALORE

OASIS DISTILLERIES LIMITED

H- 102, METRO TOWER, B- 2, PU- 4, SCHEME NO. 54,
AB ROAD, INDORE

PRINCE PIPES AND FITTINGS LIMITED

THE RUBY, 8TH FLOOR, 29 SENAPATI BAPAT MARG
(TULSI PIPE ROAD), DADAR (WEST), MUMBAI 400 028

SAMUNNATI FINANCIAL INTERMEDIATION**& SERVICES PVT LTD**

MODULE 2-A, 6TH FLOOR, BLOCK A, PHASE II
IITM RESEARCH PARK, KANAGAM,

TARAMANI ROAD, CHENNAI

SEVEN ISLANDS SHIPPING LIMITED

SUITE 4, LEVEL 8, B WING, TIMES SQUARE, ANDHERI-
KURLA ROAD, ANDHERI (EAST),MUMBAI - 400059

6

MISCELLANEOUS CORNER



- COMPETITION LAW MONTH
- GOLDEN JUBILEE YEAR NATIONAL CONVENTION OF COMPANY SECRETARIES (45TH NATIONAL CONVENTION)
- GST CORNER
- ETHICS & SUSTAINABILITY CORNER
- CG CORNER
- VIEWS/SUGGESTIONS/ISSUES FOR PROPOSED GUIDANCE NOTES

COMPETITION LAW MONTH

Overview of Competition Law: Cartelisation and Leniency

November 01, 2017-November 30, 2017

Introduction

All businesses have a duty to act lawfully, but there are more practical reasons why compliance with competition law is particularly important. On a broader level, the main basic purpose of competition law is to ensure that markets remain competitive. Compliance ensures that this aim is achieved to the benefit of both businesses and consumers. The need for Compliance of Competition Law becomes more pressing where the risk of infringement is high. Compliance with competition law reduces the risk of the company being subjected to an investigation by the Competition authorities. In the event of violation of Competition Law, business can face significant financial penalties, third party actions and loss of reputation and goodwill. Voluntary compliance with competition law is becoming a global standard led by the world's most prominent international corporations, owing to the growing recognition that breach of competition law brings about managerial burdens rather than market benefits to individual companies.

In this backdrop, the **Institute of Company Secretaries of India** is celebrating the first ever '**Competition Law Month**' in association with **Competition Commission of India (CCI)**. The Theme and Sub-themes for the Competition Law Month under which programmes are being organised on PAN India basis are as follows:

Theme:
**Overview of
Competition Law:
Cartelisation and
Leniency**

Sub-themes:
**Cartelisation and Leniency
Abuse of Dominance
Competition Compliance Programme**

The programme will be of immense benefit to corporate executives, company secretaries, compliance officers from listed companies, law firms, market intermediaries, consumer associations and other professionals.

A number of activities will be undertaken during the month such as panel discussions, lectures, interactive meetings and awareness programmes by the respective Regional Councils and Chapters.

For details and updates regarding dates, time, venue and faculty of the mega programmes and other events during the Competition Law Week, please visit www.icsi.edu

PCH for the programmes would be awarded as per the guidelines of the Institute.

All are cordially invited to attend and participate in the Competition Law Month activities.

CS (Dr.) Shyam Agrawal
President, ICSI

CS Mahavir Lunawat
Council Member, ICSI &
Chairman, Financial Services Committee



Golden Jubilee Year National Convention of Company Secretaries (45th National Convention)

Al Saj Convention Centre, Thiruvananthapuram (Trivandrum), Kerala
 22-24 November, 2017 | Wednesday-Thursday-Friday

Company Secretary : Shaping New India 2022 Through Good Governance

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



Golden Jubilee Year National Convention of Company Secretaries (45th National Convention)

Company Secretary : Shaping New India 2022 Through Good Governance

November 22-23-24, 2017
Venue : Al Saj Convention Centre, Thiruvananthapuram (Trivandrum), Kerala

India is transforming, powered by the strength of each and every citizen of India; an India that is driven by innovation, hard work and creativity; an India characterized by peace, unity and brotherhood and an India free from corruption, terrorism, black money and dirt. Together, let us build the India of our dreams so that when we mark 75 years of freedom in 2022, we should have an India that will make Gandhi Ji, Sardar Patel and Babasaheb Ambedkar proud. Be the Part of New India!

The foundation of New India 2022 is grounded with various parameters including among others in sustainable governance. Good Governance plays significant role in creating, promoting and nourishing the path of sustainable development. Good Governance is not just a process about making the 'Right' decisions, rather it is structured process of decision making right for the people's welfare in entirety. When the governance directs the path of successful implementation of the policies and procedures meant for the growth of nation at large, at the same end, the principle of good governance ensures accountable, transparent, responsive, equitable, inclusive, effective and efficient, rule abiding governance paving the way for the sustainable growth of the country, aligning with Vision New India 2022 of Hon'ble Prime Minister that Good Governance with Good Intentions is the Hall

Mark of Government. The Company Secretaries as Governance Professionals are central to the implementation of the principles of good governance with integrity, reliability and uprightness. The important role being played by the Company Secretaries, both in employment and in practice, in ensuring the effective and efficient application and adherence to the rules of law not only makes the way forward for the self-sufficient and self-reliant India, rather it associates into the new and prosperous face of social, economic, technological, as well as environmental transformation of the country. Their professional expertise in compliance and governance is dedicated professional contribution in nation building and to realise Vision New India 2022. Company Secretaries as thought leaders in the arena of governance, are committed in shaping New India through good governance wherein transparent, accountable, effective and efficient parameters of governance would lead us to experience the sunniest face of inclusive India.

Sub-themes of the Convention are :

Opening Plenary

1. GST-Good and Simple Tax- A progressive reform towards Economic Growth
2. Insolvency and Bankruptcy Code -World of New Opportunities- Prepare to excel
3. Life Skills/Management Skills -Governance Professional-Driving your Business to Success
4. New India - New ICSI
5. NCLT- New Horizons of the Profession and Tasks Ahead
6. Governance from Ancient Indian Scriptures

Closing Plenary

Invitation

Dear Professional Colleagues,

We cordially invite you to attend and participate in the **Golden Jubilee Year National Convention of Company Secretaries (45th National Convention)**, which is being organized by the Institute of Company Secretaries of India from **Wednesday, November 22, 2017 to Friday, November 24, 2017** at **Al Saj Convention Centre, Thiruvananthapuram (Trivandrum), Kerala** on the **Theme "Company Secretary: Shaping New India 2022 Through Good Governance."** The Convention seeks to make an in-depth analysis of the theme by deliberating it in the following sub-themes as under:

Opening Plenary

1. GST-Good and Simple Tax- A progressive reform towards Economic Growth
2. Insolvency and Bankruptcy Code -World of New Opportunities- Prepare to excel
3. Life Skills/Management Skills -Governance Professional-Driving your Business to Success
4. New India - New ICSI
5. NCLT- New Horizons of the Profession and Tasks Ahead
6. Governance from Ancient Indian Scriptures

Closing Plenary

The Convention will begin with the Opening Plenary at 2:00 PM on November 22, 2017 and conclude with Interactive Session for ICSI Members from 3:00 PM onwards on November 24, 2017.

Eminent Persons and Experts in their respective fields from the Government, Regulators, Profession, Academia, Corporate Sector across the country as well as International speakers will address the participants.

In such a gathering focusing on the exchange of professional knowhow, your participation will surely contribute. Along with this, the participants will get hold of opportune opening for the mutual sharing of professional views and experience with their peers participating from all around India and overseas.

We are delighted to call upon you to register yourself along with other executives of your organization as delegate(s) for this Convention. Delegates may register online at the link: goo.gl/eGLiKx

You are also requested to register your spouse, children and other guests for attending the lunch, dinner, sight seeing, cultural programme and other attractions of the Convention.

A Souvenir containing theme articles, programme details, messages of good wishes and other interesting features will be brought out to commemorate this annual congregation. Kindly use your good offices in obtaining advertisement for the proposed Souvenir. We also look forward to your support by way of sponsorships.

Details about the registration procedure, participation fee along with the tentative programme schedule, advertisement/ sponsorship rates and list of hotels along with their tariffs are set out in this brochure.

We look forward to your nomination(s), advertisement and sponsorship support.

Looking forward to meet you at the 45th National Convention at Thiruvananthapuram.

Thanking you,

With kind regards,

Yours sincerely,

CS (Dr.) Shyam Agrawal
President, ICSI

CS Ramasubramaniam C.
Council Member, ICSI and
Chairman, 45th National
Convention Organizing

CS Gopalakrishna Hegde
Council Member, ICSI and
Co-Chairman, 45th National
Convention Organizing

CS Ahalada Rao V.
Council Member, ICSI and
Co-Chairman, 45th National
Convention Organizing

CS Dinesh C Arora
Secretary, ICSI

DEVELOPMENTS – OCTOBER 2017

INSTITUTE OF DIRECTORS RELEASED “THE 2017 GOOD GOVERNANCE REPORT” RANKING UK’S LARGE COMPANIES’ CORPORATE GOVERNANCE PERFORMANCE

The Institute of Directors published “The 2017 Good Governance Report” which ranks the UK’s largest listed companies based on their corporate governance performance. The report has been compiled by the Cass Business School, ranking each company according to an assessment of its corporate governance.

The report aims to stimulate debate about the importance of good governance and how it can be measured and improved by initiating the “Good Governance Index (GGI)” methodology to the 100 or so largest companies listed on the London Stock Exchange as of 31 March 2017, provided these companies are not investment trusts.

The Good Governance Index (GGI) was launched in 2015 and has since been published annually by the Institute of Directors. It seeks to assess the overall standard of governance at the largest UK-listed (Financial Times Stock Exchange - FTSE) companies.

The GGI is calculated by looking at 47 indicators of corporate governance, grouped under the following five broad categories:

- Board effectiveness (percentage of female directors on the board; number of board meetings held)
- Audit and risk/external accountability (percentage of independent directors on audit committee; years with current audit company)
- Remuneration and reward (chief executive salary compared to market capitalisation; size of compensation

committee)

- Shareholder relations (policy to facilitate shareholder engagement; dual class unequal voting rights)
- Stakeholder relations (whistleblower policy; signatory to prompt payment code)

A full copy of the report is available at:

[https://www.iod.com/Portals/0/PDFs/CampaignsandReports/Corporate Governance/GGI-report-2017-loD.pdf](https://www.iod.com/Portals/0/PDFs/CampaignsandReports/Corporate%20Governance/GGI-report-2017-loD.pdf)

Appointment

REQUIRED COMPANY SECRETARY

By a closely held public limited company with operations in Bhiwadi and New Delhi. The candidate should possess a valid certificate issued from the Institute of Company Secretaries of India, New Delhi and an experience of 0-2 years.

Contact:
gulshancareers@gmail.com

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following Members:

CS Rajendra Kumar Gupta, (07.12.1940 – 27.08.2016), a Fellow Member of the Institute from Kota.

CS Srinivasan Ragavan (03.01.1961 – 04.06.2017) an Associate Member of the Institute from Madurai.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

GST in NEWS

1. Recommendations made by the GST Council in its 22nd Meeting held on October 6, 2017 at New Delhi, chaired by Union Finance Minister:

A. Composition Scheme

- The composition scheme shall be made available to taxpayers having annual aggregate turnover of up to Rs. 1 crore as compared to the current turnover threshold of Rs. 75 lacs
- This threshold of turnover for special category States, except Jammu & Kashmir and Uttarakhand, shall be increased to Rs. 75 lacs from Rs. 50 lacs
- The turnover threshold for Jammu & Kashmir and Uttarakhand shall be Rs. 1 crore
- The facility of availing composition under the increased threshold shall be available to both migrated and new taxpayers up to 31.03.2018
- New entrants to this scheme shall have to file the return in FORM GSTR-4 only for that portion of the quarter from when the scheme becomes operational and shall file returns as a normal taxpayer for the preceding tax period
- Persons who are otherwise eligible for composition scheme but are providing any exempt service (such as extending deposits to banks for which interest is being received) which were being considered ineligible for the said scheme shall now be eligible for the composition scheme

B. Relief for Small and Medium Enterprises

- Presently, anyone making inter-state taxable supplies, except inter-State job worker, is compulsorily required to register, irrespective of turnover but it has now been decided to exempt those service providers whose annual aggregate turnover is less than Rs. 20 lacs (Rs. 10 lacs in special category states except J & K) from obtaining registration even if they are making inter-State taxable supplies of services
- To facilitate the ease of payment and return filing for small and medium businesses with annual aggregate turnover up to Rs. 1.5 crores, it has been decided that such taxpayers shall be required to file quarterly returns in FORM GSTR-1, 2 & 3 and pay taxes only on a quarterly basis, starting from the Third Quarter of this Financial Year i.e. October-December, 2017.
- The registered buyers from such small taxpayers would be eligible to avail ITC on a monthly basis. The due dates for filing the quarterly returns for such taxpayers shall be announced in due course
- Meanwhile, all taxpayers will be required to file FORM GSTR- 3B on a monthly basis till December, 2017
- All taxpayers are also required to file FORM GSTR-1, 2 & 3 for the months of July, August and September, 2017
- The reverse charge mechanism under sub-section (4) of section 9 of the CGST Act, 2017 and under sub-section (4) of section 5 of the IGST Act, 2017

shall be suspended till 31.03.2018 and will be reviewed by a committee of experts

- It has been decided that taxpayers having annual aggregate turnover up to Rs. 1.5 crores shall not be required to pay GST at the time of receipt of advances on account of supply of goods
- The services provided by a GTA to an unregistered person shall be exempted from GST

C. Other Facilitation Measures

- Registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018
- The e-way bill system shall be introduced in a staggered manner with effect from 01.01.2018 and shall be rolled out nationwide with effect from 01.04.2018
- The last date for filing the return in FORM GSTR-4 by a taxpayer under composition scheme for the quarter July-September, 2017 shall be extended to 15.11.2017
- Also, the last date for filing the return in FORM GSTR-6 by an input service distributor for the months of July, August and September, 2017 shall be extended to 15.11.2017
- Invoice Rules are being modified to provide relief to certain classes of registered persons.

The 23rd meeting of the GST Council, chaired by Union Finance Minister Arun Jaitley and comprising representatives of all states, will be held in Guwahati on November 10, 2017

2. GST Council forms GoM under Assam FM to decide on GST rates on restaurants, composition scheme for small tax payers

- Assam Finance Minister will head the group of ministers (GoM) of state finance ministers that have been set up to look into various issues pertaining to a scheme for small taxpayers under GST, also known as the composition scheme
- The GoM will also look into the proposal to reducing GST rates on air-conditioned restaurants from 18 percent to 12 percent
- Deputy Chief Minister of Bihar, Jammu & Kashmir Finance Minister, Punjab Finance Minister and Chattisgarh's Commercial Taxes Minister will be a part of the GoM

3. Common-use products in highest GST category: Government may reduce items in 28% slab

- The GST Council may reduce the number of products in the highest slab like bath fittings, cement, steel products such as rods used for construction are in the top bracket and do not belong there

4. GST Council adopts concept paper discouraging tinkering with rates

- A concept paper adopted by the Council says no manufactured goods should be given outright exemption as this would hinder the Make in India initiative
- States should opt for direct subsidy transfers if they want to reduce tax incidence on any item

5. **GSTR-1: Over 46 lakh taxpayers file final sales GST returns for July**
 - Over 45.99 lakh taxpayers filed their final sales GST returns or GSTR-1 returns for July till October 10, the last date for filing the sales returns
 - The GSTR-1 returns filed for July accounted for about 77 per cent of the total eligible 59.57 lakh taxpayers for the first month of the indirect tax regime
 - Around 54.78 lakh taxpayers filed GSTR-3B return or the summary return for July, while 47.13 lakh taxpayers filed GSTR-3B returns for August till October 10
 - GSTR-2 return for July to be filed from October 11-31 and GSTR-3 return for July has to be filed up to November 10
6. **Rs 8,000 cr released to states for GST related revenue shortfall; GST slabs will not be changed for now: Revenue Secretary**
 - More than Rs 8,000 crore has already been released to the states for their GST-related revenue shortfall for July-August period, as “almost all states except one or two” have sought the constitution-guaranteed succor
 - He also referred to the point that the GST Council has approved an approach paper for the Rates Fitment Committee to begin a rationalisation exercise on changing rates across all product categories
7. **Vodafone joins hands with HP, KPMG for GST solutions in India**
 - Vodafone India’s enterprise arm Vodafone Business Services (VBS) has teamed up with HP India and KPMG in India to offer ‘GST Ready Solutions’ for business
 - The “integrated” GST solution is in form of a suite of offerings that include hardware, GST e-filing and accounting software and connectivity, aimed at facilitating a smooth transition for Small and Medium Enterprises, startups and Small Offices Home Offices
8. **GSTN unveils offline option for GSTR-3B returns filing**
 - The Goods and Services Tax Network has released an offline facility that will allow taxpayers to finalise their GSTR-3B forms on their own computers before uploading it onto the portal
 - The deadline for the filing of the GSTR-3B form for September was October 20
 - Taxpayers have to file the summary GSTR-3B forms each month till January
9. **Over 3.9 million assessee file GST returns for September**
 - A little over 3.94 million assessee paid GST and filed returns for the month of September, slightly more than the 3.76 million returns received for the previous month
10. **GST: Anti-profiteering screening panel set up in MP, Chhattisgarh**
 - The Customs, Central Excise and Service Tax Commissionerate has constituted a state-level ‘anti-profiteering screening committee’ in Madhya Pradesh and Chhattisgarh to ensure that the benefits of GST reduction are passed on to the consumers
 - These committees are being constituted at the state/UTs level under section 171 of the CGST/SGST Act, which provides for the anti-profiteering measures
11. **More relief for SMEs as GST Council set to cut late filing penalties**
 - More respite could be on the way for small and medium enterprises (SMEs), with the Goods and Services Tax Council set to ease a string of procedures, including partial relief on penalties on late filing of GST returns
 - The tax department’s proposal, if approved by the GST Council in its next meeting on November 10 in Guwahati, will lessen the struggles of small businesses still grappling to understand the nuances of the new indirect tax system that was rolled out from July 1
12. **GST invoicing norms for retailers eased**
 - Retailers won’t have to issue long invoices detailing prices and taxes for each item under the goods and services tax regime, further easing the billing and compliance burden on them
 - They will also not have to issue separate invoices for exempted items taxed at 0% rate and can club all purchases in one bill
 - The GST Council has approved these changes based on the recommendations of the law committee set up to review demands by stakeholders
13. **Exporters can soon claim refund for GST paid in Aug, Sept: GSTN CEO**
 - Exporters can soon start claiming refunds for GST paid in August and September as GSTN will launch an online application for processing of refund - Chief Executive Officer
 - GSTN, the company handling IT infrastructure for the indirect tax regime, has from October 10 started issuing refunds to exporters for Integrated GST (IGST) they paid for the month of July, after matching GSTR-3B and GSTR-1
 - For August and September, while the initial return GSTR-3B has already been filed, the final return GSTR-1 has not yet been filed
14. **Government collects ₹ 92,150 crore revenue in September**
 - Revenue collection under GST remained robust with ₹ 92,150 crore collected for the month of September
 - This is marginally higher than the mop-up in August which was estimated at ₹ 90,669 crore
 - Data released by the Finance Ministry showed that the total Central GST revenue is ₹14,042 crore in September while the mop up from State GST is ₹ 21,172 crore
 - The government also collected ₹ 48,948 crore from Integrated GST last month of which the tax from imports is ₹ 23,951 crore
 - Receipts from compensation cess in September amounted to ₹7,988 crore of which ₹ 722 crore is from imports
 - The total number of GSTR 3B returns filed for the month of September is 42.91 lakhs by October 23
 - With taxpayers still facing difficulties in filing returns, the government has also decided to waive the late fee on filing of GSTR-3B for the months of August and September
15. **Karnataka CM seeks GST exemption on handmade goods**
 - Karnataka Chief Minister urged the central government to exempt handmade products from Goods and Sales Tax regime as handmade products are produced by millions of artisans across the country, imposition of GST on them is having an adverse effect on their livelihood



INVOKING THE POWER TO DISCERN IN ADMINISTRATION

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

Many attributes are fundamental to a successful administration such as being a visionary, a good communicator, optimistic, self-assured, encouraging, and empowering - and these attributes generally are visible in many successful administrators. One may or may not realize this, but there are certain powers in a successful administrator which bring about these attributes in him and one of the most important powers is— the power to discern or discriminate.

The word 'discern' has great value and depth. To discern is 'to separate,' 'to make a distinction', or 'to differentiate'. Thus, discernment is the ability to examine, test, try, judge, or prove something with the result of separating, or distinguishing the good from the bad or the truth from the false.

We all have read about the wise King Solomon who asked the Lord for wisdom, and that God, being pleased with this request, instantaneously blessed him with this gift. But in Solomon's words we see that he requests discernment, more than wisdom. He says, "O Lord my God, give me your servant therefore an understanding mind to govern your people, that I may discern between good and evil, for who is able to govern this your great people". This teaches us that God values discernment and honours those who seek it.

Importance of Power of Discernment & Right Decision-Making

Discernment communicates maturity, experience, and wisdom. Lacking the power to discern a person may not realize the true potential of himself or of others whereas with this power one can achieve wonders. There's no denying the fact that a diamond remains a worthless stone till a jeweller discerns its value. Similarly, a good and successful administrator is able to discern between good and bad situations or between right and wrong people and thereby create value for any organization. He is able to become non-judgmental or uncritical about people's behavior. Power to discern makes him analyze peoples' intentions and sanskars which triggered that behavior. This helps him to empathize and respond with inner peace and not react to their negativity. Based on this power to discern he is able to achieve success because it brings precision in his decisions and choices. Discernment is the power that helps us to step back from ourselves, any situations and influence of others and see a clear picture and choose how to act for the best.

At any given moment in life, one has to choose. It could be as hard or as simple as choosing between to get up in the morning when the alarm goes off or to press the 'snooze' button and turn sides to sleep for some more time before going to work. An administrator has to take several decisions at the workplace which means the act of choosing between two or more courses of action - passive or pro-active, positive or negative, indifferent or attentive etc. It also involves choosing between possible solutions to a problem or between benefit and loss. Some of the problems are more severe or complex than others and they demand right and accurate solutions. It's not always easy to choose a hard right way over an easy wrong one. Good administrators know the potential consequences of their unethical choices. Sometimes, the best route is to take no action at all. That is also a choice. Reactions mean being controlled by external stimuli and it is a state which usually disempowers oneself. Therefore, the power to discern is intrinsically connected to the power to decide (nirnaya lene ki shakti) which an administrator needs more than anyone else. You need to check which factors influence your decision making and push you either in one direction or the other. There are many factors that control and limit our power to make the right, and more importantly, free choices. These factors primarily include influences of people that dominate our ways of thinking, our beliefs, our attitudes, even our complete personalities, etc. Moreover, we are also limited by the influence of our own fears, attachments, desires, biases or other negative and waste thoughts, which result in a lack of focus.

How to Increase the Power to Discern

To opt for the right or to make good, better or best decisions, power to discern is fundamental. This power helps us to remain calm and choose the right response even if no one else is being that way. The answer to increasing this power lies in soul-consciousness. Clarity is needed to increase the power to discern. But what kind of clarity is needed? Clarity of mind or clarity of

To discern is 'to separate,' 'to make a distinction', or 'to differentiate'. Thus, discernment is the ability to examine, test, try, judge, or prove something with the result of separating, or distinguishing the good from the bad or the truth from the false.



Lacking the power to discern a person may not realize the true potential of himself or of others whereas with this power one can achieve wonders.

Discernment is the power that helps us to step back from ourselves, any situations and influence of others and see a clear picture and choose how to act for the best.



Clarity of mind or clarity of intellect is the pre-requisite for enhancing the discerning power. It means seeing things from the third eye of wisdom and not merely with two physical eyes. It means listening to the voice within or our intuition and not merely with two physical ears.



When we are able to discern ourselves, then we are able to use the power to discern with people and situations. We need to realize that we are not the physical bodies having a soul but we are 'a soul' driving the physical body.

intellect is the pre-requisite for enhancing the discerning power. It means seeing things from the third eye of wisdom and not merely with two physical eyes. It means listening to the voice within or our intuition and not merely with two physical ears. This power delivers a capacity to see three aspects of time: to look at the past, present and future implications of different options and possibilities in order to assess accurately the best avenue of action.

Awareness of the Self

Today, we are living in a world which is entangled in absolute body-consciousness. The world is divided on the basis of gender, nation, race, creed, and positions which all are created on a physical level. Unfortunately, like a spider we are caught in our self-created webs due to ignorance of the fundamentals of life. Awareness of the self is extremely important. When we are able to discern ourselves, then we are able to use the power to discern with people and situations. We need to realize that we are not the physical bodies having a soul but we are 'a soul' driving the physical body. Since 'mind' or 'intellect' is part of the soul and not of the body, we need to be soul-conscious first, for the cleansing of our minds.

Decluttering the Mind

If we understand the mechanism of the mind, although it is too complex to understand, yet knowing the fundamentals of its working, it becomes easy to control it. Just as a car mechanic knows how the car engine and its other parts work, he is able to control the functioning of the car according to his wishes.

It is well known fact that as the quantity increases, the quality decreases. If the mind is cluttered with too many thoughts, the quality of most of the thoughts will not be good. There are all sorts of thoughts – negative, unnecessary, unwanted and even toxic – which are stored in the mind in the form of memories, beliefs, opinions and impressions. Having too many thoughts, and that too which are not positive- is the reason people today feel themselves confused, puzzled and stressed. Living with fear, stress or any kind of tension has become a norm without an exception due to the widespread negativity all around.

The topmost area of the mind is the area of conscious thought or the conscious mind in which thoughts arise like bubbles. The conscious mind determines the actions while the subconscious mind determines the reactions. The subconscious mind remains in dormant state where all our memories, impressions and belief systems are stored from which our reactions or responses generate. Due to large number of thoughts that occupy an average mind, a person doesn't even realize that he himself is creating those thoughts. Most people think that thoughts come on their own which is not correct. How can thoughts generate themselves on their own unless the soul allows them to? Ideally, the thoughts that run in the mind should be exactly those which one wants or likes to create but since we do not pay any attention to our thoughts and nor do we exert any control over them, they go out of control and our lives move in an unfocused way. Consequently, our responses to a situation come out as reactions, unbridled and often hasty. As a result, things do not work out as desired. Then we develop a habit of blaming others and circumstances for everything that goes wrong.

Thoughts once created are followed by feelings. Feelings are clearly reflected in the form of physical changes in our body; mouth salivates with joy, heart beats faster with excitement or anxiety, stomach sinks with fear or goose pimples pop up due to nervousness. This is because the soul and body are interconnected and work in complementary ways, so that what goes on in the soul is definitely reflected in the body, and what goes on in the body is reflected in the soul. The degree to which both these processes happen in each individual is different. Therefore, thoughts as well as feelings are created in the soul. Understanding this, enables one to break free from the cycles of unwanted thoughts and feelings.

Rajyog Meditation Shows the Way

Rajyog meditation is the art of self-realization meaning to connect with our inner core (the soul). Then the soul connects with the Supreme Soul – Father of all souls - and through this connection starts receiving all His divine qualities and divine powers. It is a very easy and unique technique to get empowered with all the divine powers and virtues, and hence it is also called 'sahaj yog' meaning easy meditation. Just as we charge a mobile phone by plugging it to the electricity source, similarly the Soul gets charged with the powers when its consciousness is connected to the Supreme Consciousness- the source of all divine powers and virtues.

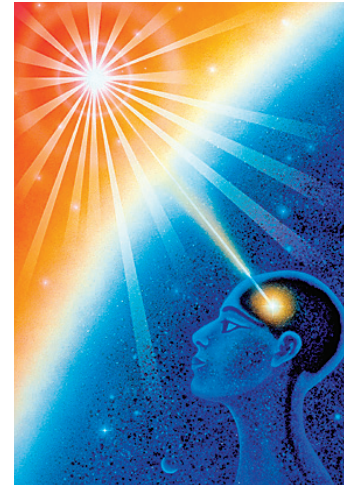
The first thing that Rajyog meditation teaches us is to cleanse (declutter) the mind. Let's say

Since Rajyog Meditation helps the mind to relax and control the thought patterns, one can reach the deeper and more subtle states of your inner potential for peace and purest love (the positive). One is also able to clean out unnecessary or negative memories. When we withdraw and experience inner silence, we connect to the sub-conscious or intuitive mind to discern.

that it separates the wheat from the chaff. Cleansing the mind is to get rid of the thoughts which are impure, negative and unnecessary and creating the thoughts which are pure and positive. God and nobody else has an unlimited stock of these positive energies which He bestows upon us, unconditionally. This Divine energy calms the mind and helps us create those 3Ps thoughts – pure, positive and powerful which consequently augments our capacity to focus and pay attention. By focusing we recognize the hidden and incognito opportunities, make better decisions and also have the power to sustain them.

Since Rajyog Meditation helps the mind to relax and control the thought patterns, one can reach the deeper and more subtle states of your inner potential for peace and purest love (the positive). One is also able to clean out unnecessary or negative memories. When we withdraw and experience inner silence, we connect to the sub-conscious or intuitive mind to discern. You invoke the spiritual power that allows you to transform habits that are not very healthy and the beliefs that sustain them. In deep silence one can hear the silent whispers of the Supreme Soul. Out of feeling love and peace you can purify and calm the turbulent (rough) waters that there are at times in the subconscious mind. While meditating, one reviews whether there is something that has influenced you and you try to clean it out, so that only the highest, the most positive, and the most beautiful, remains inside you and comes out of you, as well.

The more you practice relaxation, positive thinking and meditation, the more you rise above all the negativity and experience the positive qualities and powers. One has to remember that you are not avoiding life or the world around you. Instead, you are learning to take control of your awareness and involvement; you are able to (mentally) disconnect from the situation or people when you want; you can be mentally sharper in understanding (what is visible as well as subtle or non-visible) all that is happening around you and give yourself the time and the personal space to respond accurately and positively. With Rajyog Meditation the power of discernment increases and consequently the power of choosing accurately also enhances a great deal and you are able to exercise your choice with full confidence and total control.



While meditating, one reviews whether there is something that has influenced you and you try to clean it out, so that only the highest, the most positive, and the most beautiful, remains inside you and comes out of you, as well.

Views/Suggestions/issues for proposed Guidance Notes

The Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) is in the process of bringing out Guidance notes on the following topics:

- Related Party Transactions
- Independent Directors

Members are requested to send comments/suggestions/issues on the above stated topics to ssb@icsi.edu on or before Monday, 20th November, 2017, under the following heads:

- Grey areas in the law
- Contradictions between various provisions of the Act, Rules/Regulations and other applicable laws
- Multiple or diverse interpretations of law
- Best practices followed by the corporates
- Critical issues or special circumstances encountered by members
- Any other queries/doubts/issues on which the members feel that guidance is necessary
- Any other information, members would like to bring to SSB to consider while drafting the Guidance Notes

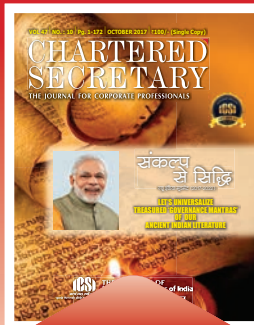
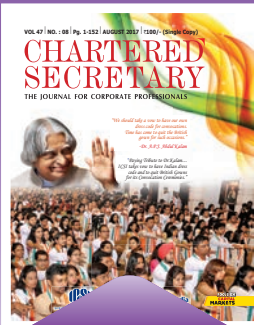
Members may also share any important judicial pronouncements on the topics, which may be incorporated in the Guidance Notes.

Comments/suggestions received from the Members under the above stated categories will be considered and deliberated by the SSB to bring out comprehensive Guidance Notes.

CHARTERED SECRETARY

Advertisement

Tariff



(With Effect from 1st April 2012)

BACK COVER (COLOURED)			COVER II/III (COLOURED)		
Non – Appointment			Non – Appointment		
Per Insertion	₹75,000		Per Insertion	₹ 50,000	
4 Insertions	₹2,70,000		4 Insertions	₹ 1,80,000	
6 Insertions	₹3,96,000		6 Insertions	₹ 2,64,000	
12 Insertions	₹7,65,000		12 Insertions	₹ 5,10,000	
FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 40,000	₹10,000	Per Insertion	₹ 20,000	₹ 5,000
4 Insertions	₹1,44,000	₹ 36,000	4 Insertions	₹72,000	₹18,000
6 Insertions	₹2,11,000	₹ 52,800	6 Insertions	₹1,05,600	₹26,400
12 Insertions	₹4,08,000	₹1,02,000	12 Insertions	₹2,04,000	₹51,000
PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES		
Per Insertion	₹ 10,000	₹ 3,000	For 'Situation Wanted' ads	₹ 50	
(Subject to availability of space)			For Others	₹ 100	
MECHANICAL DATA					
Full Page - 18X24 cm		Half Page - 9X24 cm or 18X12 cm		Quarter Page - 9X12 cm	

- ♦ The Institute reserves the right not to accept order for any particular advertisement.
- ♦ The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information
write to:
The Editor
CHARTERED SECRETARY



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

www.icsi.edu

Spl.
Attraction

30%

rebate on the total
billing for 36 insertions
in 3 years in any
category

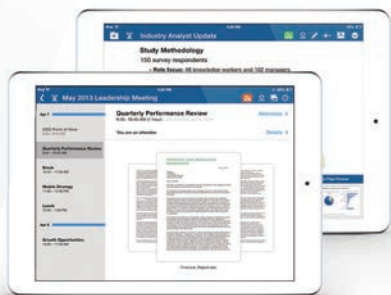
Regn. No. 21778/71
Posting Date : 10/11-11-2017
Date of Publication : 04-11-2017

Delhi Postal Regn. No. DL(S)-17/3197/2015-2017
Licenced to post without prepayment at Lodi Road P.O.
Licence No. U-(C)-80/2015-2017



Nasdaq Boardvantage®

Designed for Boards and Leadership Teams



Nasdaq Corporate Solutions is proud to partner with the Center for Board Excellence and demonstrate ongoing investment and commitment to providing all companies with leading technology solutions in the boardroom. Now offering Online D&O Questionnaires as a cost and resource effective alternative to paper-based questionnaires. Nasdaq Boardvantage helps streamline meeting process, accelerate decision-making and strengthen governance. Used by public, private and non-profit organizations worldwide, including over half of the Fortune 500, Nasdaq Boardvantage combines functionality with security, ease-of-use and mobility.

To learn more, visit us at business.nasdaq.com/Intel/board-leadership-solutions
or contact us at: corporatesolutions@nasdaq.com



@MyCorpSolutions



Nasdaq Corporate Solutions

©2017. Nasdaq, Inc. 1795-Q17