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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:
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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

Ashok Kumar 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
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Mode of Citation: CSJ (2018)(10/- (Page No.)
1. CS Makarand Lele addressing on the occasion of 50th Foundation Day held at Mumbai on 4th October, 2018.
2. CS Ashok Kumar Dixit addressing on the occasion of 50th Foundation Day held at Mumbai on 4th October, 2018.
3. CS Makarand Lele and CS Ashok Kumar Dixit launch Corporate Saviour Portal, highlighting the importance of the Champion Sectors and the opportunities for Company Secretaries on the occasion of 50th Foundation Day held at Mumbai.
5. CS Makarand Lele at the Press Conference on the occasion of 50th Foundation day held at Mumbai.
6. 50th Foundation day celebration of ICSI - Group photo of invitees along with CS Makarand Lele, CS Ashok Kumar Dixit and other officers of ICSI.
7. Donation to Kerala Chief Minister’s Distress Relief Fund (CMDRF) made by employees of ICSI - CS Ashok Kumar Dixit seen handing over the cheque.
8. SCOPE Training Program on ‘Practical Aspects of Corporate Governance under Companies Act, 2013 and SEBI (LODR) Regulations, 2015’ - Group Photo of Faculty with the programme delegates.
“If you want to make the world a better place, take a look at yourself and make that change.”

~Michael Jackson

Dear Professional Colleagues,

There are times when I look back and reminisce... my journey from being a student to opting for the Company Secretaryship course to becoming a Company Secretary... comprehending the ifs and buts of standing for elections and the long journey thereafter to this designation.

I would be lying if I say that I knew it all along; or the fact that I could take the credit for it all by myself. No, not at all... Just the way I did not know that I would be there to witness the 50th Foundation day of the Institute of Company Secretaries of India while sitting at the helm of its affairs. The pride, the pleasure, the honour and the happiness is way beyond measure; leave alone to be worded!

I guess, the moment seems perfect to not just thank, but extend our heartfelt gratitude towards each of the founding fathers, the past presidents, council members, students, members, each and every employee for their unflinching faith, their untiring efforts and their undying zeal, which has bestowed us with this opportunity to celebrate the 50th Foundation Day, to celebrate the 50 glorious years of consistent persistence to make ICSI the brand ambassador of not just good, but best governance.

The quote cited above, truly justifies and summarises the efforts of the Institute and all those connected to it. “If you want to make the world a better place, take a look at yourself and make that change.” The people before us have been the torchbearers of not just governance, but the guiding light of the extensive role expected of Company Secretaries and ICSI amongst our stakeholders, and the onus, the responsibility now rests on our shoulders to carry the legendary legacy forward... and it is with this thought in mind holding permanent room in our minds and hearts, we zealously move towards the achievement of our vision, our mission and our coveted motto on a daily basis.

Not a single day goes by when we at ICSI do not have anything to share with you and with this address I am given an opportunity to highlight the best of best and share them with you once again.

Liaising with MCA:

As an Institute which is well conversant with the needs and issues of the stakeholders through our members and by our own accord, we are constantly on our toes to amply represent them across the competent authorities. Facilitating, liaising, coordinating, providing the Ministry, an insight into the practical issues and difficulties faced by our members as professionals and corporates as stakeholders, is what stands at the topmost tier of our priority pyramid.

Recently, MCA had introduced the KYC process to be undertaken by directors in time bound manner. The process required a host of activities while filing the e-form DIR-3 KYC. Not only did we examine the entire process and identify the difficulties of stakeholders in undertaking the said compliances, but also represented the same to various officials of the Ministry. Not only this, an entire delegation of ICSI represented to the Hon’ble Minister of Finance and Corporate Affairs; Secretary, MCA; Office of the Minister of State for Corporate Affairs, Law & Justice and Joint Secretary, MCA and presented before them the difficulties faced by stakeholders and discussed about possible ways of resolution of the issues relating to KYC compliances.

It was for these consistent efforts of the Institute that the Ministry granted an extension of 15 days with reduced fee; and while the stakeholders heaved a sigh of relief, we at ICSI were lauded thoroughly, from not just members of our Institute but from the entire professional fraternity.

ICSI 50th Foundation Day:

Talking of the big event, while the balloons and streamers were missing, as they would be on a regular celebration of 50th birthday, but what we had with us was nothing less than that too!! The event
that was held on the 4th of October, 2018 to mark the entry into 51st year at Mumbai was a reiteration of our focus on knowledge enhancement and holistic development of our professional brigade. Each and every release, each and every launch; fitted perfectly well within these intended goals. Beginning from the Company Law Premier to the Secretarial Standard on Report of the Board of Directors; from signing of MoUs with insurance companies to the launch of Corporate Saviour portal; all of these had been some of the long drawn projects of ICSI, backed by the support of not just the Team ICSI but various other experts and professionals as well. There would have been no other day as momentous as the Foundation Day to give them the podium that each one of them deserves.

As a professional dealing with the finer nuances of Company Law myself, I am fully aware of the need for a comprehensive text which encompasses everything as far as the Companies Act, 2013 is concerned. It is with this intent that the publication titled Company Law Premier, was developed, taking on board a host of experts to add in not just the bare law, but feed it with adequate commentaries, making it a huge two-volume book. The Secretarial Standard (SS-4), too is an addition to the existing library of Secretarial Standards; another move forward to ensure transparency and good governance practices. I urge members to kindly take necessary steps to implement SS-4 in their constituent companies.

ICSI Certification Courses:
ICSI is India’s proud GST Partner; and while we are proud to be such a significant role player, the vision is to make the nation and all our stakeholders feel the same regarding this partnership. And with the words of Hon’ble Prime Minister, Shri Narendra Modi, from the Inaugural ceremony of Golden Jubilee Year still fresh in our minds, the ICSI on the auspicious occasion launched the Certificate Course in Goods and Services Tax. An advanced level course, it is intended at giving sufficient practical knowledge of various concepts of GST to the candidates. The course has been modelled with web based classes followed by an online examination.

Amongst the certificate courses launched at the 46th National Convention of Company Secretaries, at Bhubaneswar, I feel pleased to share that the admissions have been opened and invited for the Certificate Course on ‘Certified CSR Professionals’. CSR as an arena of occupation holds immense untapped opportunities; not only in employment but practice as well. It is for these that expert knowledge is needed, now more than ever, and hence a course dedicated to the core.

MoUs with various Insurance providers for ICSI Members and Students:
Professional and Personal safety of our Members, Students and Stakeholders have always been a matter of concern. It is to address this issue with utmost sensitivity that the Institute signed a host of MOUs with six insurance companies. These MOUs cover products ranging from Professional Indemnity, Office Package Policy, Medical Insurance, Motor Insurance, Cyber Insurance (for Individuals), Director’ and Official’s Liability Policy, Term Life Insurance and Other general products. Signed on the occasion of Foundation Day, these MOUs shall provide the much needed strength and stability to our stakeholders.

ICSI RVO Newsletter:
ICSI Registered Valuers Organisation, is definitely a fast growing child. Having conducted classes for its 50 Hour Educational Course at New Delhi, Chennai, and Hyderabad, ICSI RVO is definitely sprawling out. Each new day comes up with a new set of challenges and an even bigger set of opportunities and ICSI RVO is trying to match pace with each of them and more so meet up the expectations placed in front of us. A few months into the initiation of the Course and its training and we are achieving laurels by way of our achiever members who have made us proud by cracking the Examination conducted by the IBBI and becoming full-fledged Registered Valuers.

But then we all know that education, gaining knowledge and training is not event-based, limited to the books, course or examination; rather it is a continued commitment, commitment towards self-appreciation and development. And it is with this intent the ICSI RVO launched its newsletter titled RVO Connect which is indeed a step towards connecting with the members of ICSI, and shall definitely play the role of a game changer in strengthening the existing brigade of professionals and adding many more on the way.

The celebration of the 50th Foundation Day brought with it, along with moments of bliss and happiness, awakening; awakening of the fact that “Professionalism means consistency of quality”. And such consistency and thus, professionalism, cannot be brought out solely by the efforts of the Institute. It would definitely count as reiteration, but it is for each and every single member of the Institute to understand their responsibility; responsibility as a member, as a professional, and even more as a significant role player in the Indian ‘corporate culture’ and even further national development.

“We might seem like a molehill in a mountain, but we are a mountain each in ourselves.”

Yours Sincerely

October 04, 2018
New Delhi

CS Makarand Lele
President, ICSI
Recent Initiatives Taken by ICSI

Further to the details published in the Chartered Secretary, we are pleased to share the following recent initiatives taken by the Institute:

1. Meeting with Dignitaries

   • Shri Arun Jaitley, Hon’ble Union Minister of Finance and Corporate Affairs
   • Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs

2. Suggestions/Representations Submitted

   With a view to explore newer professional opportunities for our members and to actively participate in vivid initiatives of the Government in ensuring better governance, the Institute submitted its suggestions and representations as mentioned below:
   • Representation to Ministry of Corporate Affairs on Facilitation, Co-ordination and Knowledge Support relating to DIR 3, KYC Complications
   • Representation to Ministry of Law and Justice seeking recognition of Company Secretaries under the Qualifications and Experience of Arbitrator under The Arbitration and Conciliation (Amendment) Bill, 2018
   • Representation to Directorate General Labour Welfare seeking Authorization of Practising Company Secretaries for Conducting Social Audit and act as a Social Audit Unit (SAU) under Draft Framework for Social Audit on Implementation of BOCW Act
   • Suggestions with respect to certain issues in GST Laws to the Ministry of Finance

3. ICSI New Syllabus for Professional Programme

   As you are aware that pursuant upon the recommendations of the Syllabus Review Board, the Institute came up with the new curriculum for Executive as well as Professional Programme with an objective to provide a 360 degree of education and development to CS students.

   Accordingly, after successful launch of new syllabus as well as study material for Executive Programme, the Institute has now introduced the New Syllabus (Syllabus 2017) for the students of Professional Programme of Company Secretaryship Course, with effect from September 1, 2018. The new syllabus for the Professional Programme, shall consist of nine papers including one Paper to be opted by the students out of eight elective papers.

4. Extended Opportunity for the Pre-Term Test under Executive Programme (New Syllabus)

   A mandatory Pre-Examination Test has been introduced by the Institute as a pre-requisite for seeking enrolment in CS Executive (New Syllabus) Examinations. With the introduction of this test, the new syllabus students were required to take this test before enrolling themselves for December 2018 examination within the prescribed cut off dates, that is September 25, 2018 without late fee and October 10, 2018 with late fees.

   Per-Examination Test has received overwhelming response from the students. However, keeping in view the requests received from the students, the Institute has provided an extended opportunity to the Students of Executive Programme (New Syllabus) to appear in Online Pre-Exam Test till October 15, 2018. In this regard, it may be noted that the due dates of enrollment for examination remain intact, that is September 25, 2018 without late fee and October 10, 2018 with late fees.

5. Classroom Training for Educational Course on ‘Valuation of Securities or Financial Assets’

   Taking forward the capacity building initiatives of the Institute, the ICSI – Registered Valuers Organization (ICSI RVO) conducted Classroom Training for the Educational Course on ‘Valuation of Securities or Financial Assets’ at various places like New Delhi, Chennai, Hyderabad respectively. Post the successful conduct of these Classroom Training in the previous months, another session of this Classroom Training has been organized from September 18 – 26, 2018 at Noida.

6. Webinar on Process Re-engineering on Incorporation of Limited Liability Partnership (LLP)

   Pursuant to the enactment of Limited Liability Partnership (Second Amendment) Rules, 2018, the Institute under the aegis of Ministry of Corporate Affairs, organised a Webinar on ‘Process Re-engineering of Incorporation of Limited Liability Partnership (LLP)’ on September 28, 2018 at ICSI Headquarters, New Delhi. The Webinar was addressed by officials of MCA.

7. ICSI GST Educational Series

   In order to build the capacity of the stakeholders in the area of Goods and Service Tax, the Institute started a GST Educational Series, which is very well received by all the stakeholders as well as public at large. Being successful and academically useful, the ICSI has brought out Three Hundred and Twenty Nine (329) issues of GST Educational Series so far. All the issues are available on the GST Corner of the ICSI website at https://www.icsi.
8. ICSI GST Newsletter

Aligning our resilient assistance in upholding the ‘One Tax One Nation’ motto of the Government of India and enabling initiatives for building capacity under the new indirect tax regime, the Institute publishes a monthly Newsletter dedicated to the Goods & Services Tax (GST). The ICSI has published Seventeen (17) volumes of GST Newsletter so far, with September issue being the latest issue.

9. ICSI GST Point

In order to support the government in effective implementation of GST Laws and to advance various initiatives of the Institute while enlightening the public at large about the diverse facts and facets of Goods and Services Tax (GST), the Institute had launched a GST Point as a uniform platform to reply to the queries, difficulties and challenges faced by consumers, manufacturers, traders, MSMEs, public at large, professionals, etc. in understanding and implementation of the Goods and Services Tax Law. So far around One Hundred and Thirteen (113) sessions of GST Point have successfully been completed. The queries received and answered by experts cover a wide range of topics including registration, filing, and input tax credit along with other GST modalities.

10. ICSI GST App

You are aware that with a view to provide a ready reckoner and updates in latest news, articles, regulations and various publications of the Institute on GST, the Institute has launched an ICSI GST App for public at large. The App is available on android platform and can be downloaded from Play Store as well as iOS.

11. ICSI Study Centre Scheme

In order to break the distance barrier for students belonging to cities / locations, wherein the representative offices of the Institute are not in existence, the Institute has launched its Study Centre Scheme throughout the country. With 78 Study Centres, being established in collaboration with reputed colleges in different locations so far, an additional study centre was opened at S P U College, Bali Road, Falna, Rajasthan in the month of September 2018.

12. ICSI Signature Award Scheme

In view to felicitate the top rank holders in B.Com. Final Examinations of reputed universities and also specialised programmes/ papers of IITs / IIMs with the award of a Gold Medal and a Certificate, the Institute has come up with ICSI Signature Award Scheme in January, 2016. The ICSI Signature Award has been instituted in Twenty – Five (25) Universities with Seventeen (17) Gold Medals so far.

In the month of September 2018, one more agreement has been signed with Pondicherry University, Kalapet, Puducherry.

13. Certificate Course in GST

With a view to equip Company Secretaries with the skills and develop competency in the area of GST, ICSI and BSE Institute Limited (BIL) a wholly owned subsidiary of BSE Limited have joined hands to offer a Certificate course in GST. The certificate course in GST is an advanced level course and shall test a candidate’s knowledge of various concepts of GST.

14. Signing of MOUs for Insurance products

With a view to provide better Professional and Personal safety cover like Professional Indemnity Cover, Medical Insurance, Motor Insurance and others to its Members, Students and Stakeholders, the Institute has entered into MoUs of tie-ups with various Insurance Companies. The MoUs were signed by CS Makarand Lele, President, ICSI and respective signatories from various Insurance Companies on 4th of October 2018, at Mumbai for different Insurance Products as per the following details:

1. The Oriental Insurance Company
   a. Professional Indemnity
   b. Office Package Policy
   c. Medical Insurance
   d. Other general products

2. New India Insurance
   a. Professional Indemnity
   b. Medical Insurance
   c. Motor Insurance
   d. Other General Products

3. Bajaj Alliance General Insurance
   a. Cyber Insurance – for Individuals
   b. Director’ and Official’s Liability Policy

4. Aditya Birla Health Insurance
   a. Super Top up Health Insurance Policy

5. Tata AIG General Insurance Company
   a. Motor Insurance Policy

6. SBI Life Insurance
   a. Term Life Insurance

The FAQs related to Insurance Policies can be accessed at: https://www.icsi.edu/icsi-mous-various-insurance-providers/
The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

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

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

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

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

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

For more details please visit www.icsi.edu/csbf
“Charity, Philanthropy and CSR will always have their own places in the Social Development ecosystem. What we are witnessing is a faster pace of growth in the CSR pie compared to the other two.”

HEMANT GUPTA
MD & CEO, BSE Sammaan CSR Limited

In Conversation with CS (Dr.) Pooja Rahi, The ICSI

“Whenever you do charity giving, let not your left hand know what your right hand is doing”; gone are the days when this saying of Bible was held close to heart by charity givers. The Companies Act, 2013 with its section 135 mandating Corporate Social Responsibility has altered this thought in totality. Not only are corporates required to prepare a CSR Policy, make specified amount of expenditures, but make appropriate disclosures of the same as well. And who would be a better guide than the person who has been connected with NGOs on one hand and corporates on the other.

Sitting at the helm of affairs of BSE Sammaan CSR Limited, the man not just has a positive view regarding the law but is also optimistic about its future as a game-changer.

In a one-to-one with CS (Dr.) Pooja Rahi, ICSI, Shri Hemant Gupta, MD & CEO, BSE Sammaan CSR Limited talks of role of charitable entities, the budding law, the need for a CSR 2.0 and embedding sustainability in activities, a pro-active approach in outlook of the companies and more...

From charity and philanthropy to CSR, the scenario of doing good has changed drastically the world over. What is your take on this in the Indian mainland?

In fact, I had written an article on a similar topic in the ICSI Journal about a year ago, called “CSR in the Indian Context – the Past, Present and the Future”. The trend of Companies moving from Charity / Philanthropy to CSR was taking place slowly but surely, a confluence a three factors accelerated the trend multiple fold. These factors were –

• The acceleration in the entry of Multinational / Foreign companies into India, bringing with them a focus on CSR not just as a tool for social good, but as a business strategy
• Sharing of decision making powers by business “owners” with management, resulting in more relevant Social projects being adopted, with a lower bias towards “owners”
• By far the largest catalyst was Section 135 of Companies Act, 2013, that pushed Indian Corporates into CSR, initially only in letter, but increasingly in spirit also.

Additionally, Charity, Philanthropy and CSR will always have their own places in the Social Development ecosystem. What we are witnessing is a faster pace of growth in the CSR pie compared to the other two.

Also, my observation has been that the walls between Charity, Philanthropy and CSR are breaking down, with the focus shifting towards “Sustainable Development”, especially in alignment with UN’s SDGs. I think there will be a lot of action in this space in the months / years to come.

A voluntary act of benevolence, CSR was one of the major highlights of the Companies Act, 2013. The law, the rules framed thereunder have been ever-changing since. What according to you should be the alteration in the approach of the companies undertaking CSR?

Conceptually, a “good” law is like a living being; one that evolves with the times to remain relevant and effective, while retaining its fundamental tenets. Section 135 is no different. The initial version laid a good framework for CSR Compliance, including the CSR Policy, CSR Committee and Schedule VII. It was an excellent starting point and I think the Government made excellent use of their experience with the NVGs and implementing CSR in the PSUs.

Of course it has areas of improvement and I believe the Government is fully cognisant of the same. It has been 4 years since the law was passed and there is enough data available now to start looking at a CSR 2.0.

The recently formed High level Committee under the stewardship of the Secretary, MCA will assimilate this data and feedback it has received in making its recommendations. I was delighted to observe that the committee has excellent representation from the Corporate and the Social Development sphere. I was also happy to note that ICSI is also contributing to the same through its sub-committee of which I was honoured to be a part.

While I do not wish to speculate on the recommendations the
To me, CSR is just a facet of Social Development and for effective CSR that is how a Corporate needs to approach it. That is the kind of holistic approach which will enable the power of collaboration, impact focus, long term vision and non-intrusive development.

Committee, fundamentally, I believe, we need to ensure that the following guiding principles are kept in mind –

- CSR should not only be transactional/short term. A lot of Social development projects take time and need commitment. The legal framework needs to enable the same.
- Corporates should be held accountable for the impact their CSR projects are creating and not just for spending the money
- There is a need to align ourselves with UN’s SDGs and put processes in place that allow us to measure and report the progress we are making towards attaining the Goals by 2030.

Charitable entities including non-government organisation play a significant role in the dispensing with of the social responsibility of the corporate entities. With their varied organisation structures how do you think should good governance thereat be ensured?

Given that the charitable entities are more often than not responsible for Social development initiatives, they form the first line of defence in terms of the efficiency, effectiveness and transparency of the initiatives. Hence, it is very important that there is appropriate governance procedures in place for these entities.

Through the Code of Governance for Charitable Entities, ICSI has made an excellent beginning in stitching together a governance framework. I had the good fortune of being a part of the committee that created the code. I have shared the same with our family of NGOs. Overall feedback has been good with a request to translate the code into Hindi that is being processed by ICSI.

We also need to be cognisant of the fact that a lot of these entities are small and lean organisations, with little or no budgets for overheads and hence a fine balance needs to be maintained between governance and overheads.

I think we have a good starting point in the Code and it will evolve with time.

BSE Sammaan is a unique initiative wherein three institutions of the stature of CII, BSE and IICA have come together to ease the corporates in their social responsibility. What was the intent behind creating this entity?

BSE Sammaan was originally created to address one of the primary issues a Corporate faces when they wish to implement a CSR project – finding a trustworthy partner.

Today we have a database of 1,300 NGOs across India that have passed through our Due Diligence process. These NGOs have projects that span across all the causes in Schedule VII. We have till date helped over a dozen Corporates find projects that matched their requirements. Some very large Corporates have leveraged our family of NGOs for their grant RFP process. We are constantly adding to this family.

I joined BSE Sammaan in April 2016 and quickly realised that the support Corporates were looking for extended beyond just finding the right partner. Their requirements extended to all phases of a CSR lifecycle. So we are in the process of building an end-to-end CSR platform that will attempt to automate the entire process from matchmaking to monitoring to impact. I am very excited about this platform as I believe it will be a game-changer in the CSR ecosystem.

Professionals and corporates alike have found your name synonymous with BSE Sammaan. What has your journey been like prior to BSE? What motivated you to pick up this role?

I had been interested in the Social Development space right from childhood. I was a part of NSS and worked with Cheshire home in Dehradun. While I was growing up, this kind of work was very soul-satisfying, but not something I wanted to pursue on a full time basis.

Having had a mathematical and process-oriented bent of mind, I did my Engineering from IIT Chennai and MBA from IIM Kolkata and started working in the Information Technology space. I spent 26 years at Citibank, both in India and overseas working on everything from Systems to Audit to Operations to Product Management.

But, inside me, that Social Development bug was growing. I also felt that I had excellent experience in the Corporate world that I needed to leverage to make things better in the Social sector.

BSE Sammaan provided the perfect opportunity to me to make a meaningful contribution to the Indian Social Development sector at a reasonably large scale.

Now, as an independent member of the CSR Committee of some Corporates, am getting the opportunity to ensure their CSR investments are making the right social impact.

The vision and growth of an entity are guided by those sitting at their helm of affairs. What is your ideology regarding CSR and the role of BSE Sammaan in it?
To me, CSR is just a facet of Social Development and for effective CSR that is how a Corporate needs to approach it. That is the kind of holistic approach which will enable the power of collaboration, impact focus, long term vision and non-intrusive development.

BSE Sammaan has a critical role to play in helping Corporates pursue CSR using this approach. As I mentioned before, our motto is to make CSR effective, efficient and transparent.

Effective – By ensuring implementation through credible organisations, fostering collaboration, enabling impact measurement and capacity building of our NGOs. We are looking to further enhance a part of this process through automating match-making in Sammaan 2.0

Efficient – By ensuring that maximum resources reach the end beneficiary and the implementation process is as efficient as possible. This is made possible by ensuring support services are available at a reasonable cost, best practices are shared amongst our NGO family and benchmarks are defined early in the implementation process

Transparent – By ensuring that monitoring standards are defined at the start of a project and regular monitoring and reporting takes place. At BSE Sammaan, we actively encourage Corporates to also do their own monitoring of the project

Sammaan 2.0 is an initiative to automate the entire CSR project management process, thereby empowering Corporates and NGOs to have a more effective and transparent engagement. It will be a subscription-based model with minimal costs for the Corporate and NGO.

CSR and corporate governance have been studied and analysed as mutually exclusive concepts as well as in entirety. Can governance be enforced even while undertaking CSR?

I do not subscribe to the theory of CSR and CG being mutually exclusive. I believe that they overlap significantly and in some sense are actually two sides of the same coin.

I say this from two perspectives –

a. The first perspective is more conceptual. A company that has effective CG is a company that is internally well governed and externally responsible. This implies that unless a company practices good governance they are unlikely to have a social conscience and hence are unlikely to have an effective CSR program.

b. Secondly, typically, most scholars of company law will tell you that the intent of the regulations is that companies do have wider purposes than shareholder’s quarterly profits alone. Moreover, not all shareholders are motivated only by quarterly returns. Those with a long term focus recognize the company benefits from CSR investments, especially where there are social and environmental risks.

In fact, in Section 135, lays out the basics of good Corporate Governance in the form of mandating certain structures and practices, such as, CSR policy, CSR Committee etc. I think it’s a good start and needs to be fleshed out further as we gain more experience in CSR governance.

What role can professionals especially Company Secretaries play in effective CSR management?

Professionals, including Company Secretaries, have a very important role to play in effective CSR Management. This role is at two levels.

The first is the role relating to Corporate Governance of CSR (refer to the answer to the previous question also), where the professionals, especially the Company Secretaries have a critical role to play in ensuring that the Corporate’s CSR program is compliant in letter and spirit with the law and indicators such as social impact are embedded in the program. Company Secretaries, along with the Company’s management, need to ensure that there is a clearly defined CSR policy, and empowered CSR Committee and transparency in the CSR projects being undertaken.

Secondly, I believe that one of the intentions of the Government in including Corporates in the Social Development ecosystem of the country was to be able to leverage their technical and professional capabilities in project management, sourcing, contracts, production, employment etc. With the expectation that Corporates would be able to deliver “More bang for the buck” than the Government schemes.

Hence, professionals are critical for the success of the CSR programs and it should get attention at the topmost levels in the Company.

Rapid Fire:

| Best Possession: | The Bhagvad Gita |
| Hobbies: | Travelling and meeting new people |
| Inspirational Figure: | Dalai Lama |
REGISTERED VALUERS ORGANISATION
(A wholly owned subsidiary of ICSI and registered with IBBI)

Dear Professional Colleagues,

Subject: Registrations Open for Educational Course on 'Valuation of Securities or Financial Assets' at KOLKATA

We are pleased to inform you that ICSI Registered Valuers Organisation is planning to conduct Classroom training of its 50 hours educational course on Valuation of Securities or Financial Assets for its next batch at KOLKATA:

<table>
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<tr>
<th>Venue</th>
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<tr>
<td>ICSI EIRC House,</td>
<td>The 7 days (50 hours) course</td>
<td>15th to 17th November, 2018</td>
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<tr>
<td>3A, Ahripurker 1st</td>
<td>shall be spread over two weeks</td>
<td>21st to 24th November, 2018</td>
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<td>Lane, Beside Hotel Beck Bagan,</td>
<td>as follows:</td>
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Any individual willing to register for the Educational Course, which is a pre-requisite for appearing in the IBBI examination, may send an application in the form available at the link below with the requisite attachments:

For registration please send the Registration Form duly filled in.

Enrolment Fee: Rs.8,850/- (Rs.7,500 + GST @18%)

Educational Course Fee: Rs.26,550/- (Rs.22,500 + GST @18%)

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

The interested candidates may also fill the registration form physically and e-mail a scanned copy of the same to rvov@icsi.edu and deposit the fees.

For more details please visit the website www.icsirvo.in

Regards,

CS Samir Raheja
CEO (Designate)
Glimpses of 50th Foundation Day Programme held at Mumbai
After implementation of Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) issued by the ICSI under Section 118(10) of the Companies Act, 2013, the ICSI issued the Secretarial Standard on Dividend (SS-3) which is effective from 1st January, 2018 for voluntary adoption by the Companies.

In order to promote the adoption of standardised practices in preparation of Board’s Report, the ICSI has issued the Secretarial Standard on Report of the Board of Directors (SS-4) effective from 1st October, 2018 for voluntary adoption by the Companies.

Aimed at facilitating good corporate governance, the Secretarial Standards issued by the ICSI integrate, harmonise and standardise the diverse Secretarial practices followed by the corporates so as to promote uniformity and consistency and hence, the observance of these Standards by corporates is highly recommended.
“Life doesn’t require that we be the best, only that we try our best.”

Dear Professional Colleagues,

It seems like yesterday that the Institute of Company Secretaries of India was basking in the glory of having the Hon’ble Prime Minister of the Nation, Shri Narendra Modi ji, at the inaugural ceremony of the Golden Jubilee Year on 4th October, 2017. And while it was an honour for me to be a witness to the event as it made its way into the history of the Institute, the pleasure gets multiplied manifold as I am bestowed with the opportunity to stand at the helm of the Institute as we all celebrate the 50th Foundation Day.

We, at ICSI, have always lived by a vision and mission befitting our very purpose of existence and with the recent addition of the motto ‘Satyam Vada Dharmam Chara’ the focus on promoting good governance and creating the best of best governance professionals is reiterated. If I were to discuss the glorious 50 years gone by, the accomplishments made, the hurdles overcome, well... this speech of mine would go on to see the sunset of today but what I am pleased to share is that, the Institute, with all its members, student and stakeholders is treading on newer journeys, utilising every opportunity that comes our way and playing greater role than ever in not only spreading governance at a national level but spreading our wings across borders...

The Golden Jubilee Year, initiates entirely has given us moments to cherish, not only for a day or two but for years to follow. From the most recent recognition of ICSI CS Course by UK’s NARIC to the successfully concluded 46th National Convention; from introducing three varied professional certification courses to revamping the existing syllabi to match the dynamic corporate environment; from refurbishing existing infrastructures at some chapters to inaugurating new venues for other few; from connecting with foreign embassies with Embassy Connect to making our presence felt amongst Industrial Associations through Chamber Connect; the year and its each passing day has been nothing short of eventful...

The Convention at Bhubaneswar also witnessed the Roundtable of Afro-Asian Federation of Company Secretaries which had participation from countries like Malaysia, Bangladesh, Kenya and Australia. The intent was to bring together people from varied institutions on the common ground of promoting and propagating ease of doing business. Furthermore, the supplement to existing MOU between ICSI and ICSA, UK was also signed and exchanged.

Not only this, our representations on behalf of our stakeholders with the regulatory authorities have bore fruits and we have been lauded thoroughly by all of them for our liaisoning role played through and through... Our presence has been solicited and appreciated on a host of Committees and forums of corporate and governance significance...

And that said, it would be completely unjustifiable on my part to take away all the credit without acknowledging, appreciating and expressing my heartfelt gratitude towards the entire council of ICSI, the team of ICSI-Secretariat, our members, our students, the Ministry with its honourable heads and the various officials who have been very supportive at each and every moment... A Big, Big, Big thanks to each one of you...

And while most of you would be wondering what the celebration of today has brought along; for them I would like to say that this amazing day has rekindled our spirit of excelling as professionals which means keeping ourselves updated with the most recent developments in our field and that of governance. The launch of various publications today ranging from the Company Law Premier to SS-4 prescribing standards for report on Board of Directors, the Corporate Saviour portal to ICSI RVÖ newsletter; shall pave way for a stronger force of professionals...

In order to have adequate professional security, we are also launching some of the most beneficial insurance schemes for our members and students...

To each one of you and everyone at the ICSI, I would say, that the world is looking up to us, lauding us for what we do and yet expecting more and more with each passing day...

All of us need to gear up, stand together and live up to those expectations and portray our professionalism in truest sense of the world...

So coming back to the point from where we started, “Life doesn’t require that we be the best, but try to be the BEST version of ourselves”.

HAPPY FOUNDATION DAY!!!

CS Makarand Lele
President
The Institute of Company Secretaries of India

Vision
“Be a global leader in promoting good corporate governance.”

Motto
 Truth shall prevail

Mission
“To develop high calibre professionals facilitating good corporate governance.”

Follow us: Facebook, Twitter, YouTube, Instagram, LinkedIn
Dear Professional Colleagues,

**ICSI receives membership of the ‘International Valuation Standards Council’**

The Golden Jubilee Year of the Institute of Company Secretaries of India has given us far more moments to cherish and memories to look back to, than we all could possibly fathom. Towards the conclusion of this Golden Year another feather was added in the cap of the Institute when the Institute of Company Secretaries of India received membership of the coveted ‘International Valuation Standards Council’ (IVSC).

Headquartered at London, UK, IVSC is the global, not-for-profit organisation responsible for developing International Valuation Standards (IVS) and the valuation profession with a mission is to set and embed consistent, high-quality standards which support business and protect financial markets for the public good.

![Certificate](image)

The membership marks the entry of ICSI among the leading international organisations on valuation while reiterating our aspiration to improve transparency and stability of financial markets and contribute in the overall growth of the economy. I hope that we at ICSI shall be able to play a significant role in supporting international efforts to improve valuation consistency and quality.

Regards,

CS Makarand Lele  
President, The ICSI
Admission Announcement for
3 Months Certificate Course on
'Certified CSR Professionals'
(Approved by NSDA, Ministry of Skill Development and Entrepreneurship, Government of India)

The Institute of Company Secretaries of India, a Statutory Body under an Act of Parliament, equipped with state-of-the-art technology enabled teaching and a strong research based curriculum, announces Admission to its 3 months Certification Course, 'Certified CSR Professionals'. The first batch will commence from November 2018.

Opportunities and Job role in CSR domain
- Assisting the CSR committee of the Corporate and PSUs for developing CSR policies.
- Preparation of CSR Projects and its implementation.
- Assisting in CSR Audit and Standards.
- Assisting in CSR funding, governance and compliance.
- Practicing as independent consultant in CSR.
- Employment opportunities in Corporate, NGOs, Societies, Trusts & Section B Companies.

Certification
The candidates after completion of certification course and qualifying in the assessment shall be granted a certificate and will be registered as 'Certified CSR Professionals'.

Course Structure
Module I : The Concept of CSR in Indian Context.
Module II : Implementation, Governance & Monitoring of CSR activities.
Module III : Compliance and CSR Audit.

Eligibility
Graduation in any stream from a recognised University/Institute, Members of ICSI/ICAI/ICMAI/LLB/LLM/MBA etc.

Admission Procedure
The entire admission procedure is online. The eligible candidates can apply for registration online. After filling up the online registration form, the candidate has to upload/send the minimum eligibility certificate along with online payment of requisite fee.

After confirmation of the registration, the candidates shall be called for one day contact programme as per the venue decided by the Institute. All necessary instructions regarding the course shall be provided to the candidates in the contact programme.

For online Registration to the Course, click on the Link below: https://tinyurl.com/yc6aa52e

For further details contact: Dr. S.K. Jena, Director (Training & Placement), ICSI
Ph.: 0120-4082107 / 2148 e-mail: certificatecourses@icsi.edu

Vision
“ To be a global leader in promoting good corporate governance.”

Motto
“Sahar sadaa haraam hata” speak the truth, always by the heart.

Mission
“ To develop high calibre professionals facilitating good corporate governance.”

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
BEHROOPAN KAMNITI SAMVAD SARVASTHAI
IN PURSUIT OF PROFESSIONAL EXCELLENCE
FIGHTING THE FIGHT AGAINST CORRUPTION

Headquarter
ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003
tel: 011-4534 1000  fax: 011-2462 6737
e-mail: info@icsi.edu  website : www.icsi.edu

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CHARTERED SECRETARY | OCTOBER 2018
The Companies Act, 2013 comprising 470 sections and a host of schedules, as well as Rules framed thereunder stands strong as the most extensive and substantial law of the land governing the operations and functioning of companies in India. Since the date of its enforcement, the past five years have not only witnessed two major amendments in the form of Amendment Acts of 2015 and 2017 but the various amendments in the rules have rendered the law dynamic and ever evolving.

The Institute of Company Secretaries of India (ICSI) being the pioneer institution for promoting good governance in the Indian corporate arena by way of adherence to the laws in true letter and spirit understands the significance of ease of understanding law in ease of doing business.

It is with this intent in sight that the ICSI has undertaken the task of rolling out a variety of publications to provide comfort in the form of readily available information to the stakeholders. The publication titled ICSI Premier on Company Law (With Commentary on Companies Act, 2013) is one such attempt of the Institute to provide not only the law in all its exactness but supplement it with commentaries and case laws on the critical issues faced by the stakeholders including the professionals in practical application of the law.

The book while highlighting the conceptual aspects of the law contains lucid commentary on all possible facets provided by a team of experts in the area of Company Law. The Premier encompassing each and every aspect of the law and inculcating the most recent of developments shall prove to be a credible resource for reference as well as resolution in times of conflicting issues faced by professionals and corporates alike.
Appointement and Remuneration of Managerial Personnel: Impact of Amendments to Sections 196 and 197, Rules and Schedule V
Dr K R Chandratre

The Companies (Amendment) Act, 2017 amended sections 196 and 197 of the Companies Act, 2013, containing provisions concerning appointment of managing director and whole-time director and remuneration of directors (including remuneration of managing director and whole-time director). By a Notification issued by the MCA, the amended sections came into force on 12th September, 2018. By another Notification issued by the MCA on that date, the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 were amended. By yet another Notification issued by the MCA on that date, Schedule V to the Act was amended. These amendments have far-reaching impact on the remuneration of directors of public companies; in particular managing/whole-time directors and managers. This article deals with the amendments and discusses their impact.

Demystifying the IBC - Insight on Dissenting Financial Creditors
S. Badri Narayanan

The Insolvency and Bankruptcy Code, 2016 is riding high on expectations and is being expected to solve the stressed assets problem engulfing the economy in a short span of time, which is the result of accumulation of unscrupulous lending over a prolonged period. The Code, being a very recent legislation is evolving rapidly owing to the circumstances existing and due to the strong resolve of the Government to weed out bad loans from the system. The jurisprudence of the Code will evolve and crystallise with the judicial precedents on varied interpretational issues. The Code and the Regulations notified there under have already gone through multiple amendments in recent times, to fine tune the Code to suit the Indian economic context. However, still, the Code throws up multiple conundrums on interpretational aspects. Certain provisions of the Code pertain to protection of interest of operational and dissenting financial creditors. This article attempts to throw light on the intricacies with respect to priority of payments, particularly in relation to the operational and dissenting financial creditors, to be factored in a Resolution Plan and to provide clarity on the interpretation of the nuances of the relevant provisions pertaining to Corporate Insolvency Resolution Process. Additionally, this article provides a brief regarding the recent amendments with regard to the respective Regulations on payment of liquidation value to operational creditors and dissenting financial creditors.

Secretarial Standards – A Tool to Mitigate Litigation
G P Madaan

Secretarial Standards have gained regulatory recognition. Standards relating to Board Meetings (SS-1) and General Meetings (SS-2) have been made mandatory by the Act. Standards bring uniformity among varied processes and practices due to the rising need for Corporate Governance. These Standards while bringing uniformity in Indian Corporate Regime also reduces the scope for litigation. The present article depicts the role of Secretarial Standards in mitigating litigation.

Kotak Committee Recommendations on Corporate Governance: Evolutionary or Revolutionary?
Shinu Vig

In the globalised world today, good governance practices are an essential requirement for enhancing investor confidence and are an indicator of a safe and robust market conducive for investment. Although India has made several reforms in its corporate governance regime from time to time, yet new cases of governance lapses in the listed entities have highlighted the flaws or loopholes of the existing legislations. Such failures of the corporate governance systems across the globe along with increasing complexity of the regulatory environment have further accentuated the need to revisit the standards of good governance. In this line SEBI constituted the Kotak Committee in June 2017 to look into the existing SEBI regulations on corporate governance and suggest changes. The Committee submitted its report on 5th October 2017. This paper tries to examine the changes suggested by the Kotak Committee and the implications of these changes for the listed companies in India.

Process Re-engineering of LLP- Incorporation Related Forms – Precautions to be taken by Professionals and Users
Bhasker Subramanian, Gumpena Vijayalakshmi and Jasna P

The much awaited Limited Liability Partnership (Second Amendment) Rules, 2018 containing the relevant revised rules and incorporation related e-form layouts have been notified on 18th September 2018 which would come into effect from 02nd October 2018. The process reengineering of these forms is likely to bring down the processing time to D+1 Day akin to Companies’ Incorporation forms and thus spur the growth of business in our country.

Venture Capital – An Analysis in India
Mandar Karnik

Venture Capital is the form of finance for new and path breaking companies which work on projects or businesses where empirical basis of its business case doesn’t exist. Venture Capital is the capital invested in the equity and debt securities (Debt which can be later converted to equity) of young unproven companies which are run by professional technocrats and industry experts who do not have the capital required to scale up their dream projects. These professionally run young companies need to be incubated in their early stages and they have the capacity to provide extra ordinary returns for their investors which cannot be achieved by investing in legacy or old economy businesses. For example Tiger Global, an international investment firm provided one of the first rounds of funding for Flipkart in India and has seen its initial investment make 10 fold returns on investment through higher valuations.

Lifting of Corporate Veil of Government Companies
Hareesh Kumar Kolichala

Whether the veil of Government Companies - owned by Central or State Governments, could be lifted for challenging any of their arbitrary actions against the said companies in respect of employment, award of tenders, tax issues, etc. was a vexed issue before the High Court of Allahabad in the context of the Insolvency and Bankruptcy Code, 2016. The explanation of the provisions in the Insolvency and Bankruptcy Code, 2016 has been expanded further to conclude that the veil of Government Companies is inapplicable in the context of the Insolvency and Bankruptcy Code, 2016.
We have no doubt in stating that the filing of a case.

The Commission do not find that there is AAEC

Forecasting is also done in the formulated return series to find out a variety of financial variables accurately in order to develop proper strategies and avoid the risk of potential large losses. Forecasting is also done in the formulated return series to find out a suitable forecasting model for the return series. The result shows that GARCH (3, 2) specification of model proved to be best suitable model for measuring forecasting efficiencies whereas MSE observed as the best fit error measure for the estimated return series.

From the Government

Estimating Volatility and Forecasting Crude Oil Future Return with GARCH Models

Dr. Prasant Sarangi

This study is an extensive study that estimates crude oil future series with twenty various GARCH specifications of models. The overall exercise executes an idea on the suitability of a specific specification for estimating volatility among the twenty specifications formulated. The results reveal that among the GARCH types of specifications of models, GARCH models proved to be better for estimating volatility of the estimated return series. Further, in the business and economic environment, it is very important to predict various kinds of financial variables accurately in order to develop proper strategies and avoid the risk of potential large losses. Forecasting is also done in the formulated return series to find out a suitable forecasting model for the return series. The result shows that GARCH (3, 2) specification of model proved to be best suitable model for measuring forecasting efficiencies whereas MSE observed as the best fit error measure for the estimated return series.

ICSI – CCGRT Invites Manuscripts on Multidisciplinary Case Studies

Legal World

From the Government

- Date of Constitution of National Financial Reporting Authority
- Date of coming into force of the provisions of Section 132(1) and (12) of the Companies Act, 2013
- Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018
- Companies (Registration office and Fees) Fifth Amendment Rules, 2018
- Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018
- Companies (Indian Accounting Standards) Second Amendment Rules, 2018
- Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018
- Date of Coming into force of the provisions of Section 37 of the Companies (Amendment) Act, 2017
- Limited Liability Partnership(Second Amendment) Rules, 2018
- Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018
- Amendments to Schedule –V of the Companies Act, 2013
- Date of Coming into force of the provisions of Sections 66 to 70 of the Companies (Amendment) Act, 2017
- Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018
- Clarification in filing BEN-1 under the Companies Act, 2013- regarding.
- Relaxation of additional fees and extension of last date of filing of Form BEN-2 under the Companies Act, 2013- regarding
- Applicability of Circulars issued for Commodity Derivatives markets
- Know Your Client requirements for Foreign Portfolio Investors (FPIs)
- Eligibility conditions for Foreign Portfolio Investors (FPIs)
- Amendment to SEBI (Credit Rating Agencies) Regulations, 1999 and modification to SEBI Circular dated May 30, 2018
- Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018
- Securities and Exchange Board of India (Buy-Back Of Securities) Regulations, 2018

Other Highlights

- Members Restored During The Month Of September 2018
- Certificate of Practice Surrendered During The Month of August 2018
- List of Members whose removal of name from register of Members revoked w.e.f. 01-09-2018
- Ethics & Sustainability Corner
- GST Corner
- ICSI Election – 2018 : Addresses of Polling Booths
- Secretarial Standard on Report of the Board of Directors (SS-4)
- Global Connect
- Certificate Course In GST

We hold that after availing deduction for a period of 5 years @ 100% of such profits and gains from the 'units', the assessee would be entitled to deduction for remaining 5 Assessment Years @ 25% (or 30% where the assessee is a company), as the case may be, and not @ 100%. [SC]

CCI allows leniency petition in drycell battery cartel case.

The Commission do not find that there is AAEC as a result of the OP's denial to deal with the Informant, more so when the OP is apprehensive of dilution of its brand as a result of counterfeits being sold in the online market.[CCI]

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ARTICLES

- APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL: IMPACT OF AMENDMENTS TO SECTIONS 196 AND 197, RULES AND SCHEDULE V
- DEMYSTIFYING THE IBC - INSIGHT ON DISSenting FINANCIAL CREDITORS
- SECRETARIAL STANDARDS – A TOOL TO MITIGATE LITIGATION
- KOTAK COMMITTEE RECOMMENDATIONS ON CORPORATE GOVERNANCE: EVOLUTIONARY OR REVOLUTIONARY?
- PROCESS RE-ENGINEERING OF LLP-INCORPORATION RELATED FORMS – PRECAUTIONS TO BE TAKEN BY PROFESSIONALS AND USERS
- VENTURE CAPITAL – AN ANALYSIS IN INDIA
- LIFTING OF CORPORATE VEIL OF GOVERNMENT COMPANIES
1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
8. The copyright of the articles, if published in the Journal, shall vest with the Institute.
9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to nitin.jain@icsi.edu
11. The article shall be accompanied by a ‘Declaration-cum-Undertaking’ from the author(s) as under:

**Declaration-cum-Undertaking**

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

Signature
Appointment and Remuneration of Managerial Personnel: Impact of Amendments to Sections 196 and 197, Rules and Schedule V

The Companies (Amendment) Act, 2017 amended sections 196 and 197 of the Companies Act 2013, containing provisions concerning appointment of Managing Director and Whole-Time Director and remuneration of directors (including remuneration of Managing Director and Whole-time Director). By a Notification issued by the MCA, the amended sections came into force on 12.9.2018. On that date by another Notification issued by the MCA, the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 were amended. Further MCA issued one more Notification on that date amending Schedule V to the Act. These amendments have far-reaching impact on the remuneration of directors of public companies; in particular managing/whole-time directors and managers. This article deals with the amendments and discusses their impact.

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

INTRODUCTION

Sections 196 and 197 of the Companies Act 2013, containing provisions concerning appointment of Managing Director and Whole-Time Director and remuneration of directors (including remuneration of Managing Director and Whole-Time Director), were amended by the Companies (Amendment) Act 2017. By a Notification issued by the MCA, the amended sections came into force on 12th September 2018. By another Notification issued by the MCA on that date, the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 were amended. By another Notification issued by the MCA on that date, Schedule V to the Act was amended. These amendments are prospective and not retrospective in effect; hence, they would apply only to the remuneration payable to a managing director/whole-time director/manager of a public company, from 12 September 2018. The remuneration payable up to 12 September 2018 would be governed by the un-amended provisions of the Act and Schedule V.

There is, however, one exception to the proposition that the amendments are not retrospective in effect, namely the provision in sub-section (17) of section 197 (discussed in detail below). In the cases covered by sub-section (17), a company can get the approval of its shareholders (within one year from 12th September 2018 and pay remuneration for the period for which the approval of the Central Government had been sought in accordance with the provisions of section 197 and Schedule V as amended on 12

September 2018.

Appointment of Managing Director/Whole-Time Director/manager: Amendments to Section 196

Section 196 of the Act contains provisions regarding appointment of a managing director or whole-time director.

Appointment of a person who is over 70

The first proviso to section 196(3)(a) requires a special resolution to be passed for appointing as a managing director, whole-time director or manager of a company a person who has attained the age of seventy years.

In section 196 after clause (a) of sub-section 3, the following proviso was inserted by the Companies (Amendment) Act 2017:

“Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.”

As a result of this amendment, if a company is unable to get a special resolution passed, but has managed to pass an ordinary resolution, it may still be able to appoint a person who has attained the age of seventy years as its managing director, whole-time director or manager, provided the Central Government gives its approval on an application made by the Board of the company.

Appointment without Central Government approval

Sub-section (4) of section 196 provides that, “Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in

*Past President, The Institute of Company Secretaries of India.
It should be noted that, appointment of a managing director, whole-time director or manager of a public company, without the Central Government’s approval, must comply with the conditions specified in Part I of Schedule V. According to clause (a), a person who had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts mentioned in (i) to (xvi), may be appointed as a managing director, whole-time director or manager without the Central Government’s approval.

The concluding portion of this provision has been amended by substituting the words “specified in Part I of that Schedule” for the words “specified in that Schedule.”

It should be noted that, appointment of a managing director, whole-time director or manager of a public company, without the Central Government’s approval, must comply with the conditions specified in Part I of Schedule V. According to clause (a), a person who had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts mentioned in (i) to (xvi), may be appointed as a managing director, whole-time director or manager without the Central Government’s approval. By the Notification amending Schedule V, the following three Acts have been added in the list of Acts:

(xvii) the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
(xviii) the Goods and Services Tax Act, 2017 (12 of 2017)
(xix) the Fugitive Economic Offenders Act, 2018 (17 of 2018)

Remuneration of managing director/whole-time director/manager: Amendments Section 197

Government approval dispensed with
Under sub-section (1) of section 197, a company may pay its managing director/whole-time director/manager and its non-executive directors, remuneration in a financial year, not exceeding eleven percent of the net profits of that company for that financial year; and under the first proviso to sub-section (1), as it stood before the Companies (Amendment) Act 2017, a company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven percent of the net profits of the company, subject to the provisions of Schedule V.

By the Companies (Amendment) Act 2017, in sub-section (1), in the first proviso, the words with the approval of the Central Government have been omitted. As a result, the first proviso now reads as follows:

‘Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V.’

The effect of the omission of the words with the approval of the Central Government is that, a company in general meeting by an ordinary resolution may, without the approval of the Central Government, authorise the payment of remuneration exceeding 11% of the net profits of the company, to its directors (including managing director/whole-time director/manager) but subject to the provisions of Schedule V.

Excess remuneration to require special resolution
Under the second proviso to sub-section (1), as it stood before the Companies (Amendment) Act 2017, a company could pay remuneration in excess of the limits specified in clauses (i) and (ii) of the said proviso, with the approval of the company in general meeting by an ordinary resolution.

The Companies (Amendment) Act 2017 inserted the words by a special resolution in the second proviso to sub-section (1). Thus, the approval of the members for payment of remuneration to a managing director/whole-time director/manager in excess of 5% or 10% under the second proviso, must be by a special resolution.

It should be noted that, as against the requirement of a special resolution under the second proviso, as stated above, payment remuneration in excess of 11% would require authorisation from the shareholders by an ordinary resolution.

Bank and financial institution approval
The Companies (Amendment) Act 2017 has inserted the following proviso after the second proviso to sub-section (1):

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

The requirement under this proviso will have to be complied with by the company before starting payment of remuneration to its managing director/whole-time director/manager.

Remuneration to managing director/whole-time director/
manager in the financial year of loss or inadequate profit: Government approval dispensed with

Sub-section (3) of section 197 contains a provision that enables a company to pay remuneration in the financial year in which the company has a loss or inadequate profits.

Before the Companies (Amendment) Act 2017, it required, inter alia, previous approval of the Central Government, if a company could not comply with the requirements and conditions stipulated under Part II, Section II of Schedule V.

By the Companies (Amendment) Act 2017, in sub-section (3), the words and if it is not able to comply with such provisions, with the previous approval of the Central Government have been omitted, thereby dispensing with the requirement of approval of the Central Government for payment of remuneration to its managing director/whole-time director/manager for any financial year in which the company has a loss or inadequate profits. Sub-section (3) now reads as follows:

“(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.”

Consequential amendments to Schedule V

Section II of Part II of Schedule V, which contains provisions regarding payment of remuneration by a company to its managing director/whole-time director/manager for any financial year in which the company has a loss or inadequate profits.

The heading of Section II reads as follows:

“Section II — Remuneration payable by companies having no profit or inadequate profit without Central Government approval.”

By a Notification issued on 12 September 2018, the words without Central Government approval in the above heading have been omitted, as a result of the amendment to sub-section (3) of section 197 as noted earlier dispensing with the approval of the Central Government. Likewise, the words without Central Government approval in the first para of Section II of Part II have been omitted.

Item (A) of Section II of Part II specifies the limits up to which a company can pay remuneration to its managing director/whole-time director/manager for any financial year in which the company has a loss or inadequate profits, without obtaining approval of the Central Government.

Item (A) of Section II of Part II contained a proviso according to which the limits specified in item (A) could be doubled if it was approved by the shareholders by a special resolution. Now, by a Notification issued on 12 September 2018, the words the above limits shall be doubled have been replaced by the words the remuneration in excess of above limits may be paid. The effect of this amendment is that, a company can pay any remuneration in excess of the limits specified in item (A), if it was approved by the shareholders by a special resolution.

Thus, under item (A), a company will have two options:

- First, pay remuneration within the limits specified in the table in item (A), with the approval of shareholders by ordinary resolution;
- Second, pay remuneration in excess of the limits specified in the table in item (A), with the approval of shareholders by special resolution.

In either case, the company must comply with the conditions specified in the second proviso below item (B).

Remuneration to professional managing director/whole-time director/manager

Item (B) of Section II of Part II of Schedule V, provided for remuneration without any limit and without Central Government approval, payable to a managing director/whole-time director/manager who is a professional and fulfils certain conditions specified in item (B).

Now, according to the Notification amending Schedule V for the words “no approval of Central Government is required” the words remuneration as per item (A) may be paid have been substituted. The effect of this amendment is that, remuneration to a managing director/whole-time director/manager who is a professional and fulfils certain conditions specified in item (B), may be paid in the same way as the remuneration payable under item (A) discussed above.

Conditions in the second proviso to be complied with

As noted above, payment of remuneration to a managing director/whole-time director/manager under item (A) as well as under item (B) of Section II will be subject to compliance with the conditions specified in the second proviso below item (B). The condition in clause (ii) of the said proviso has been substituted which reads as follows:

“(ii) the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.”

The condition in clause (iii), in item (B), read as follows:

“(iii) an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per the limits laid down in item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.”

The words “the limits laid down in” have been omitted. This is because, henceforth there will be no limit for payment of remuneration payable under Section II of Part II in the financial year of loss or inadequate profit, when the shareholders approve the remuneration by special resolution.

Remuneration in certain special cases

Section III of Part II of Schedule V contains provisions regarding remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances. 
In this Section, some amendments have been made by the Notification of 12 September 2018.

Section IV omitted
Section IV of Part II contains provisions regarding certain perquisites not to be included in managerial remuneration. This was relevant only when a company paid remuneration according to the limits specified in Section II of Part II, i.e. in the financial year in which the company has a loss or inadequate profit.

Now, the entire Section IV has been omitted. Consequently, the value of the three perquisites specified in Section IV will have to be included in the total remuneration payable to a managing director/whole-time director/manager in the financial year in which the company has a loss or inadequate profit.

Recovery of excess remuneration
Sub-section (9) of section 197 has been substituted, which reads as follows:

“(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years of such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.”

This provision makes it mandatory for the company to recover the excess remuneration paid by the company to its managing/whole-time director or manager within two years of such lesser period as may be allowed by the company.

In sub-section (10), which provides that recovery of the excess remuneration paid cannot be waived by the company unless permitted by the Central Government, the words for the words “permitted by the Central Government”, have been replaced by the words “approved by the company by special resolution within two years from the date the sum becomes refundable”.

This amendment seeks to dispense with the requirement of the Central Government’s approval to waive the recovery of the excess remuneration paid and vests that power in the company which the company must exercise by special resolution.

In sub-section (10), the following proviso has been inserted:

“Provided that where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.”

According to sub-section (11) of section 197, when a company resorts to Schedule V for payment of remuneration to its managing director/whole-time director/manager in the financial year in which the company has a loss or inadequate profit, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company’s memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

Now, the words “and if such conditions are not being complied, the approval of the Central Government had been obtained”, in sub-section (11), have been omitted, with the result that the company will have to comply with the conditions stipulated in Schedule V only.

Auditor’s duty to report
The following new sub-section has been inserted in section 197:

“(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors (executive as well as non-executive) is in accordance with the provisions of section 197 and whether the remuneration paid to any director is in excess of the limit laid down in that section (and also in Schedule V), and give such other details as may be prescribed.”

The effect of sub-section (16) is that, the auditor of the company will have to state in his report under section 143, as to whether the remuneration paid by the company to its directors (executive as well as non-executive) is in accordance with the provisions of section 197 and whether the remuneration paid to any director is in excess of the limit laid down in that section (and also in Schedule V), and give such other details as may be prescribed.

Pending applications to abate
The following new sub-section has been inserted in section 197:

“(17) On and from the commencement of the Companies (Amendment) Act, 2016, any application made to the Central Government under the provisions of this section [as it stood
such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.”.

The effect of sub-section (17) is that, since the requirement of Central Government’s approval for various purposes under section 197 has been dispensed with, all applications made to the Central Government made to it for its approval for any purpose which is pending with the government shall abate (means to come to an end or extinguish). In such a case, the company shall, within one year of the commencement of the Amendment Act, obtain the approval in accordance with the provisions of this section, as so amended.

The words “in accordance with the provisions of this section” clearly indicate that the company which has made an application to the Central Government for it approval before the commencement of the Companies (Amendment) Act 2017, i.e. 12 September 2018, in accordance with the provisions of the unamended section 197 of the Companies Act 2013 shall be entitled to pay remuneration to its managing director/whole-time director/manager in accordance with the provisions of the amended section 197 by seeking shareholders’ approval by ordinary or special resolution, as the case may be, even if such remuneration is in excess of the limits stipulated in the unamended section 197.

Amendments to Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
After the Notification dated 12 September 2018, Rules 6 and 7 of the abovementioned read as follows:

“6. Parameters for consideration of remuneration”—The xxxxxxx company shall have regard to the following matters, namely:

(1) the Financial and operating performance of the company during the three preceding financial years.

(2) the relationship between remuneration and performance.

(3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.

(4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.

(5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

7. Fees.—(1) Every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. MR.2 and shall be accompanied by fee as may be specified for the purpose.

xxxxxxx

(3) Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.”

Form MR-2
Form MR-2 prescribed under rule 7(1) has been substituted.

This form is the “Form of application to the Central Government for approval to the appointment of managing director/whole-time director/manager” and is required to be submitted to the Central Government seeking its approval pursuant to section 196 and Schedule V of the Companies Act 2013.

It should be noted that Form MR-3 is relevant only when a company needs approval of the Central Government under section 196 of the Act if the company cannot comply with any of the conditions specified in Part I of Schedule V.

This form is not required to obtain Central Government’s approval for payment of remuneration because the requirement of such approval has been totally dispensed with in all the cases under section 197 and Section II of Part II of Schedule V.

Remuneration of non-executive directors
Non-executive directors of a company can be paid remuneration (besides sitting fees) in terms of clause (ii) of the second proviso to sub-section (1) of section 197, which reads as follows:

“(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent of the net profits in any other case.”

The Companies (Amendment) Act 2017 inserted the words by a special resolution in the second proviso to sub-section (1). Thus, the approval of the members for payment of remuneration to a managing director/whole-time director/manager in excess of 3% or 1% under the second proviso, must be by a special resolution.

It should be noted that, as against the requirement of a special resolution under the second proviso, as stated above, payment remuneration in excess of 11% would require authorisation from the shareholders by an ordinary resolution.

Remuneration to non-executive directors, within or in excess of limit of 3% or 1% may be paid either by way of commission or on monthly basis. But, needless to say, no remuneration can be paid to any non-executive director (except sitting fees) when a company has a loss. Schedule V does not apply in the case of remuneration payable to non-executive directors and hence the remuneration permissible in the case of managing director/whole-time director/manager in the financial year in which the company has a loss does not apply in the case of non-executive directors.

The Companies (Amendment) Act 2017 has inserted the following proviso after the second proviso to sub-section (1):

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

The requirement under this proviso will have to be complied with by the company before starting payment of remuneration in excess of 3% or 1% to its non-executive directors.

1 The heading of rule 6 has been substituted.
2 The words “Central Government or the” stand omitted.
3 Rule 7(2) has been omitted.
NEW SCHEDULE V

SCHEDULE V
(See sections 196 and 197)

PART I

CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

Appointments
No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) he had not been convicted or detained subsequent to such appointment.

(1) the Indian Stamp Act, 1899 (2 of 1899);
(2) the Central Excise Act, 1944 (1 of 1944);
(3) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
(4) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
(5) the Essential Commodities Act, 1955 (10 of 1955);
(6) the Companies Act, 2013 (18 of 2013) or any previous company law;
(7) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
(8) the Wealth-tax Act, 1957 (27 of 1957);
(9) the Income-tax Act, 1961 (43 of 1961);
(x) the Customs Act, 1962 (52 of 1962);
(xi) the Competition Act, 2002 (12 of 2003);
(xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
(xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
(xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
(xv) the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
(xvi) the Prevention of Money-Laundering Act, 2002 (15 of 2003);
(xvii) the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
(xviii) the Goods and Services Tax Act, 2017 (12 of 2017);
(xix) the Fugitive Economic Offenders Act, 2018 (17 of 2018);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years:

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

(i) for taking up employment in India; or
(ii) for carrying on a business or vocation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person’s appointment.

PART II

REMUNERATION

Section I — Remuneration payable by companies having profits:
Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Section II — Remuneration payable by companies having no profit or inadequate profit

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:—

(A):

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the effective capital is</td>
<td>Limit of yearly remuneration payable shall not exceed (Rupees)</td>
</tr>
<tr>
<td>(i) Negative or less than 5 crores</td>
<td>60 lakhs</td>
</tr>
<tr>
<td>(ii) 5 crores and above but less than 100 crores</td>
<td>84 lakhs</td>
</tr>
<tr>
<td>(iii) 100 crores and above but less than 250 crores</td>
<td>120 lakhs</td>
</tr>
<tr>
<td>(iv) 250 crores and above</td>
<td>120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores</td>
</tr>
</tbody>
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Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

Explanation.—It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In case of a managerial person who is functioning in a professional capacity, remuneration as per item (A) may be paid if such managerial person is not having any interest
in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company:

Provided further that the limits specified under items (A) and (B) of this section shall apply, if—
(i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
(ii) the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting;
(iii) an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per the item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.
(iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:—

I. General information:
(1) Nature of industry
(2) Date or expected date of commencement of commercial production
(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
(4) Financial performance based on given indicators
(5) Foreign investments or collaborations, if any.

II. Information about the appointee:
(1) Background details
(2) Past remuneration
(3) Recognition or awards
(4) Job profile and his suitability
(5) Remuneration proposed
(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:
(1) Reasons of loss or inadequate profits
(2) Steps taken or proposed to be taken for improvement
(3) Expected increase in productivity and profits in measurable terms

IV. Disclosures
The following disclosures shall be mentioned in the Board of Director’s report under the heading “Corporate Governance”, if any, attached to the financial statement:
(i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
(ii) details of fixed component and performance linked incentives along with the performance criteria;
(iii) service contracts, notice period, severance fees; and
(iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Explanation.—For the purposes of Section II of this part, “Statutory Structure” means any entity which is entitled to hold shares in any company formed under any statute.]

Section III — Remuneration payable by companies having no profit or inadequate profit in certain special circumstances:
In the following circumstances a company may, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company—
(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or
(iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—
Article 32

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III—

(a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
(b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
(c) encashment of leave at the end of the tenure.

2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—

(a) Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
(b) Holiday passage for children staying outside India or family staying abroad: Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
(c) Leave travel concession: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Explanation I.—For the purposes of Section II of this Part, “effective capital” means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Explanation II.—(a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;
(b) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Explanation III.—For the purposes of this Schedule, “family” means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.—The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—

(a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;
(b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation V.—For the purposes of this Schedule, “negative effective capital” means the effective capital which is calculated in accordance with the provisions contained in Explanation I of this Part less than zero.

Explanation VI.—For the purposes of this Schedule:

(B) “Remuneration” means remuneration as defined in clause 78 of section 2 and includes reimbursement of any direct taxes to the managerial person.

Section V — Remuneration payable to a managerial person in two companies:

Subject to the provisions of Sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III

PROVISIONS APPLICABLE TO PARTS I AND II OF THIS SCHEDULE

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the Secretary of the company or where the company is a sick company, the scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.”

(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival.

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.
Demystifying the IBC - Insight on Dissenting Financial Creditors

This article attempts to throw light on the yet unexplored interpretation of provisions relating to payment of liquidation value due to the operational creditor and the dissenting financial creditor in priority to other financial creditors as per Regulation 38(1). The permutations and combinations of diverse interpretation and recent legislative amendment and its impact are also covered for the benefit of readers.

INTRODUCTION

Insolvency and Bankruptcy Code, 2016 (“the Code”), was enacted to consolidate and amend the laws relating to re-organisation and insolvency resolution of Corporate Persons, Partnership Firms and Individuals, in a time bound manner for maximisation of value of assets, while balancing the interest of all stakeholders including financial and operational creditors.

The Code is riding high on expectations and is being expected to solve the stressed assets problem engulfing the economy in a short span of time, which is the result of accumulation of unscrupulous lending over a prolonged period. The Code, being a very recent legislation is evolving rapidly owing to the circumstances existing and due to the strong resolve of the Government to weed out bad loans from the system. The jurisprudence of the Code will evolve and crystallise with the judicial precedents on varied interpretational issues. The Code and the Regulations notified there under have already gone through multiple amendments in recent times, to fine tune the Code to suit the Indian economic context. However, still, the Code throws up multiple conundrums on interpretational aspects.

The premise of the Code is primarily founded upon the Bankruptcy Law Reforms Committee Report (“BLRC Report”), which was given under the Chairmanship of Dr. T.K. Viswanathan. The BLRC Report signified that the purpose for bringing in a new composite Code is to ensure development of corporate bond market along with placing the creditors in the driver’s seat for deciding the fate of an entity facing insolvency rather than giving the promoters or shareholders the control as has been witnessed traditionally. The BLRC Report envisages creation of a body called “Committee of Creditors” (“CoC”), including only financial creditors, that will have the power to decide the final solution by majority vote, i.e. 75% of the voting rights. The majority vote will also involve a cram down option on any dissenting financial creditors once the majority vote is obtained. The BLRC Report additionally laid down that there must be a counterbalance to operational creditors who are not having a vote on the CoC. Hence, the BLRC Report concluded that the dues of the operational creditors must have priority in being paid, within a reasonable period of time, as an explicit part of the proposed solution and this must be ensured by the RP before bringing it to the CoC. The BLRC thus envisaged an Insolvency Resolution Process which will cater to the interest of all stakeholders while achieving maximisation of value of assets in a time bound manner.

Against this background, the relevant provisions of the Code pertaining to protection of interest of operational and dissenting financial creditors were framed. This article attempts to throw light on the intricacies with respect to priority of payments, particularly in relation to the operational and dissenting financial creditors, to be factored in a Resolution Plan and to provide clarity on the interpretation of the nuances of the relevant provisions pertaining to Corporate Insolvency Resolution Process (“CIRP”).

BRIEF BACKGROUND OF CIRP

CIRP can be triggered by way of application, either by a Financial Creditor under Section 7 of the Code; or by an Operational Creditor under Section 9 of the Code; or by the Corporate Debtor itself under Section 10 of the Code. To maintain the essence of the subject to be dissected, the above mentioned provisions are not being taken up in depth. It is suffice to note that, all the three scenario’s trigger the CIRP and consequently lead to initiation of order of moratorium under Section 14 of the Code (“Calm Period”) and institution of a body called CoC, which will be the sole decision making authority as far as the business decisions, with respect to fate of the entity, are concerned. The Adjudicating Authority’s role, as per the BLRC Report, is to control the process of resolution but not to be burdened to make business decisions. The appointed Interim Resolution Professional (IRP)/Resolution Professional (RP) shall manage the entity undergoing CIRP as a going concern and take all measures to protect and preserve the value of the assets. The IRP and RP, as the case maybe, are also mandated to carry out certain specific duties under the Code, apart from the management of affairs of the Corporate Debtor. One such duty is to ensure that the Resolution Plans received from the Resolution Applicants contain the legally mandated contents, including but not limited to, ensuring priority payment of resolution process cost, payment of liquidation value due to the operational creditors and payment of liquidation value to the dissenting financial creditors.

RELEVANT PROVISIONS OF THE CODE

Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) speaks about the mandatory contents of the Resolution Plan which is as under:

...
Regulation 38(1): A Resolution Plan shall identify specific sources of funds that will be used to pay the -

a. insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
b. liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a Resolution Plan by the Adjudicating Authority; and
c. liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the Resolution Plan.

“Liquidation value” as referred in clauses (b) & (c) above, is defined under Regulation 2(1)(k) of the CIRP Regulations as “the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.”

“Operational Creditors” is defined in the Code under Section 5(20) as a “person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.”

“Dissenting Financial Creditors” is defined in the CIRP Regulations under Regulation 2(1) (f) meaning “a financial creditor who voted against the Resolution Plan or abstained from voting for the Resolution Plan, approved by the committee.”

Section 30(2) of the Code clearly casts a duty on the RP to examine that each Resolution Plan received by him conforms to certain parameters as mandated by the said Section, including provision for payment of liquidation value due to operational creditors in a manner specified by the Insolvency and Bankruptcy Board of India (“Board”). The said Regulation 38(1)(b) also states that such amount shall not be less than the amount paid to the operational creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code. This is a direct reference to the “waterfall mechanism” provided under the Code for defining priority of payment in a liquidation scenario.

As far as Regulation 38(1) (c) is concerned, liquidation value due to dissenting financial creditor is to be paid before any recoveries are made by the acceding financial creditors. This clause draws its legal mandate from Section 30(2) (f) of the Code, which requires the RP to ensure that the Resolution Plan conforms to other requirements as specified by the Board.

Thus, it is the responsibility of the RP to ensure that the dues of the operational creditors and the dissenting financial creditors are satisfied, in priority to others, as prescribed under the Code.

Now, the question arises as to the possible interpretations of what “liquidation value due” refers to with respect to satisfying the dues of the operational creditors and dissenting financial creditors.

On a plain reading of Regulation 38 in conjunction with Section 30(2) of the Code, it appears that an emphasis has been made such that the Resolution Plan ensures to satisfy the dues of operational creditor and dissenting financial creditor by providing them with what they would be entitled to, in a liquidation scenario. Hence, prima facie, a presumption may be formed in the mind of the interpreter, as to correlate the payment of “liquidation value due” referred under Regulation 38 with the provisions of Section 53 of the Code, which provides for the waterfall mechanism, in case of liquidation. As per this interpretation, the operational creditors and the dissenting financial creditors will be entitled to the recovery of liquidation value, as envisaged under Section 53 of the Code.

SECTION 53 – WATERFALL MECHANISM
Section 53, which specifies the order of priority for payment in case of liquidation scenario, reads as under:
“53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:

a. the insolvency resolution process costs and the liquidation costs paid in full;
b. the following debts which shall rank equally between and among the following:
   i. workmen’s dues for the period of twenty-four months preceding the liquidation commencement date; and
   ii. debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
c. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
d. financial debts owed to unsecured creditors;
e. the following dues shall rank equally between and among the following:
   i. any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
   ii. debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
f. any remaining debts and dues;
g. preference shareholders, if any; and
h. Equity shareholders or partners, as the case may be.”

It is the basic premise of the Code, to prioritise payment due to the secured creditors, and hence the same is reflected in Section 53. The claims of the secured creditors rank pari passu with that of the dues of workmen and stand at the 2nd Rank in the waterfall mechanism, subsequent only to the payment of insolvency resolution process costs/liquidation cost.

One may appreciate the nuances implicit in Section 53 of the Code. The secured creditors are provided with two alternatives in a liquidation scenario. Either, the secured creditors may relinquish their security interest and take position at the 2nd Rank in the waterfall mechanism or they may exercise their security interest and recover their dues to the extent possible and then be positioned at the 5th Rank in the waterfall mechanism in pari passu with Government Dues, with respect to the amount unpaid to them post-enforcement of their security interest. The Report has also provided that the secured creditors should be able to withdraw the asset against which they hold security interest. The beneficial option out of the two alternatives will be subject to the fact and circumstances of each case.

Let us understand by way of a practical illustration, the modus operandi of the above said interpretation which is to be implemented:

Assumptions:
(i) There are 2 Financial Creditors X & Y to whom company owes Rs. 170 Crores and Rs. 30 Crores respectively. X has charge over immovable properties and Fixed Assets whereas Y has charge over Stock and Book Debts. X & Y exercise 85% and 15% of the voting rights respectively in the CoC.

(ii) Settlement as per Resolution Plan is Rs. 102 Crores and Insolvency Resolution Process Cost is Rs. 2 Crores.

(iii) Total Liquidation Value is Rs. 92 Crores out of which Rs. 2 Crores is attributable towards Insolvency Resolution Process Cost, Rs. 80 Crores is attributable to assets secured to X and Rs. 10 Crores is attributable to assets secured to Y. Liquidation Value due to Operational Creditors under section 53 of the Code is Nil.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Scenario – 1 Unanimous Approval (No Dissent)</th>
<th>Scenario – 2 Y (15%) Dissent i.e. 85% Approval “Y” exercise Security Rights</th>
<th>Scenario – 3 Y (15%) Dissent i.e. 85% Approval “Y” does not exercise Security Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement Amount as per Resolution Plan/ Liquidation Value (A)</td>
<td>102.00</td>
<td>102.00</td>
<td>102.00</td>
</tr>
<tr>
<td>Insolvency Resolution Process Cost (B)</td>
<td>(2.00)</td>
<td>(2.00)</td>
<td>(2.00)</td>
</tr>
<tr>
<td>Amount Payable to Dissenting Financial Creditors i.e. “Y” (C)</td>
<td>-</td>
<td>-</td>
<td>(13.50)*</td>
</tr>
<tr>
<td>Net Payable to other Financial Creditors (A-B-C)</td>
<td>100.00</td>
<td>90.00</td>
<td>86.50</td>
</tr>
<tr>
<td>Final Payout</td>
<td>102.00</td>
<td>92.00</td>
<td>92.00</td>
</tr>
</tbody>
</table>

* Amount Payable to Dissenting Financial Creditor not exercising his security interest = Total Liquidation Value X Voting Share of Dissenting Financial Creditor i.e. (90 X 15% = 13.50).

** Acceding Financial Creditor shall be paid balance of Resolution Amount after satisfying the Dissenting Financial Creditor.
Case 1 contemplates a scenario wherein there is unanimous CoC Approval for the Resolution Plan. In such a case, the payment mechanism is fairly simple and involves paying to the secured financial creditors the Resolution Plan amount, after providing for insolvency resolution cost, in the ratio of debt lent by them.

Case 2 contemplates a scenario wherein there is a dissenting financial creditor and the subset of Case 2, deliberates on the aspect of relinquishment of or enforcement of security interest by the dissenting financial creditor. In case, the dissenting financial creditor, in our case “Y” Bank, relinquishes its security interest, then it will be paid the liquidation value due after providing for insolvency resolution cost, i.e. Rs. 13.50 Crores. The remaining amount of the Resolution Plan, i.e. Rs. 86.50 Crores will be payable to the other secured financial creditor who has acceded to the plan.

However, in a scenario, wherein the dissenting financial creditor enforces its security interest, then the dissenting financial creditor will recover the value of its security interest, i.e. Rs 10.00 Crores, and the remaining amount of Resolution Plan i.e. Rs. 90.00 Crores, will be payable to the other secured financial creditor. It is once again emphasised that all the payments, are to be effected only after factoring in the resolution process cost/liquidation cost.

Case 3 involves liquidation scenario which will entitle the secured financial creditors to recover only the liquidation value due to them (i.e. 85% and 15% of Liquidation Value, respectively), after providing for resolution process cost and liquidation cost, in the order of priority as specified under Section 53 of the Code. Subset of Case 3 contemplates a situation wherein, one of the secured financial creditors, i.e. “Y” Bank enforces its security interest. In such a case, “Y” Bank will be able to realise the value of its security interest of Rs. 10.00 Crores, and lose the 2nd Ranking position in the waterfall mechanism and subside to 5th Ranking position in the waterfall mechanism with respect to its remaining unsatisfied debt.

However, the above interpretation, even though being thought provoking and perfectly fitting the logical interpretation might not be the most appropriate interpretation of the Code.

A careful reading of Regulation 38(1) (b) of CIRP Regulations read with Section 30(2) (b) of the Code will bring out the salient feature that the reference to Section 53 of the Code is only explicit in connection with the “liquidation value due to operational creditors”. There is no such legislative intent for application of same principle with reference to the “liquidation value due to the dissenting financial creditors”. The logic may be founded on the belief that the dissenting financial creditors, are provided with a one-time settlement by way of payment of liquidation value due to them. This is the “cram down” option contemplated in the BLRC Report also.

In short, the dissenting financial creditors will be entitled to receive only the liquidation value due to them, which was arrived at under Regulation 35 of CIRP Regulations, in proportion to the financial debt lent by them and nothing more.

Further, it has been generally witnessed in recent CIRP cases, that operational creditors are not being entitled to any recovery, since they are only entitled to liquidation value due to them in a liquidation scenario as under Section 53. In majority of cases of CIRP, that is generally NIL since the recoveries crystallising from Resolution Plan are not even sufficient to cater to the claims of secured financial creditors. Hence, the stakeholders ranking below the secured financial creditors are unable to recover their dues under the waterfall mechanism.

Additionally, there is another interesting aspect to delve into and dissect. Section 53 of the Code specifies priority of payment to secured creditors. Nowhere does it mention anything which will preclude from its scope a secured operational creditor. In
today’s dynamic business environment, an operational creditor might be a secured creditor. One illustration will be that of a client who gives advance to its Engineering, Procurement and Construction (“EPC”) Contractor for executing certain project. Now, the client will be positioned as a creditor in the books of the EPC contractor. The EPC contractor, as a business convention, will furnish a Bank Guarantee to the client, by way of which the Client will be deemed to be secured operational creditor as there is “an arrangement securing payment or performance of any obligation”. This is derived from the definition of secured creditor and security interest as provided under Section 2(30) and Section 2(31) of the Code. Hence, there is abundant responsibility on the shoulders of RP to analyse and identify the parties entitled to recoveries under the Code. Even, a secured operational creditor, will have to be given preference of payment, ranking equally to that of a secured financial creditor under Section 53 of the Code. This aspect has not been dealt with till now, but there is strong possibility of judicial interpretations on it as there have been various litigations involving invocation of guarantees under CIRP in recent times.

The Dissenting Financial Creditors shall be entitled to recover only the liquidation value due to them arrived under Regulation 38 of CIRP Regulations in proportion to the financial debt lent by them. Hence, the act of dissent should be a strategic and well thought out action considering the facts and circumstances of the respective CIRP case. However, Operational Creditors are entitled to recovery by following waterfall mechanism envisaged under Section 53 of the Code. However, it is worthwhile to note that a Resolution Plan may provide for an alternate settlement for the Operational Creditors by effecting reduction in the amount payable to them or by factoring in the Plan that such operational debts will be settled in due course of time as the entity concretely establishes its “going concern” status.

CONCLUSION

The Dissenting Financial Creditors shall be entitled to recover only the liquidation value due to them arrived under Regulation 38 of CIRP Regulations in proportion to the financial debt lent by them. Hence, the act of dissent should be a strategic and well thought out action considering the facts and circumstances of the respective CIRP case. However, Operational Creditors are entitled to recovery by following waterfall mechanism envisaged under Section 53 of the Code. However, it is worthwhile to note that a Resolution Plan may provide for an alternate settlement for the Operational Creditors by effecting reduction in the amount payable to them or by factoring in the Plan that such operational debts will be settled in due course of time as the entity concretely establishes its “going concern” status.

In a recent judgement by NCLAT in Central Bank of India v. Resolution Professional of the Sirpur Paper Mills Ltd. & Ors, the appellate authority has held that the right to dissent has been provided under Section 30(4) of the Code and a creditor who has dissented cannot be unsuited on the ground that he has dissented and is eligible for only liquidation value. The question of grant of liquidation value to any of the Creditors does not arise at the stage of CIRP as Section 53 is applicable only at the stage of liquidation. NCLAT has further observed that the provisions made by the Board cannot override the provisions of Code nor can it be inconsistent with the Code. It was held that the legislators did not intend any discrimination among the same set of group such as “Operational Creditors” or “Financial Creditors” and hence the Board by its Regulation cannot mandate that the Resolution Plan should provide the liquidation value to the Operational Creditors (Regulation 38(1) (b)) or liquidation value to the dissenting financial creditors (Regulation 38(1)(c)). Such Regulation being against Section 240(1) of the Code cannot be taken into consideration and any Resolution Plan which provides for payment of liquidation value under Regulation 38(1) (b) and 38(1) (c), without any other reason to discriminate between the two sets of creditors similarly situated such as Financial Creditors or the Operational Creditors cannot be approved being illegal. It was further held that the Board is not delegated with the power to decide as to what amount is to be paid to the Financial or Operational Creditor including the liquidation value and hence they should not pass any mandatory regulation forcing the Resolution Applicants to discriminate between equals. In its judgement, NCLAT has clarified that provisions such as Section 53 of the Code, except for limited purpose of finding out minimum amount to be noticed, as provided under Section 30(2) (b) of the Code, cannot be relied upon at the stage of CIRP. However, Board may issue guidelines as to how Section 53 is to be followed during liquidation.

The Board, in cognizance of the above judgment, has amended the CIRP Regulations by way of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018 by notification dated 5th October, 2018. The amendment has been effected to substitute Regulation 38(1) of CIRP Regulations and provide that the amount due to operational creditors under the resolution plan shall be paid in priority over financial creditors and hence consequently, the reference to dissenting financial creditors has been deleted from the Regulations.

The said amendment provides the much required clarity in the interpretation of payment to operational creditors since the reference to Section 53 of the Code has been toned down to limited purpose and it has been clearly brought out that the settlement terms under resolution plan will be sacrosanct. The amendment also eliminates requirement of identifying liquidation value due to dissenting financial creditors and weeds out discrimination among the dissenting and assenting financial creditors, solely by reason of a dissent.

The Code, being recently legislated is evolving rapidly and being interpreted in multiple dimensions. There is imminent need for clarity in relation to various grey areas of the Code, in absence of which there may be inconsistent application of law and result in unnecessary and unfruitful litigations. The essence of the Code is the time bound manner envisaged by it for completing the resolution process. Any vagueness imbibed in the provisions will result in delays and consequently affect the CIRP process and the interest of all stakeholders and also impact the value maximization objective of the Code. Hence, there is positive anticipation for further legislative amendments to the Code in clarifying the grey areas and judicial precedents which will lay down the principles for implementing various provisions of the Code without any ambiguity.
Secretarial Standards – A Tool to Mitigate Litigation

Secretarial Standards have gained regulatory recognition. Standards relating to Board Meetings (SS-1) and General Meetings (SS-2) have been made mandatory by the Act. Standards bring uniformity among varied processes and practices due to rising need for Corporate Governance. These Standards while bringing uniformity in Indian Corporate Regime also reduces the scope for litigation. The present article depicts the role of Secretarial Standards in mitigating litigation.

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It has been observed that whenever any complaint or application is filed under section 241-242 of the Companies Act, 2013 for oppression and management, the minority always alleges that the majority has taken certain actions or taken certain decisions which are against the interest of the minority. Most of these allegations pertain to appointment of director, resignation of director, removal of director, appointment of the new auditor, increase in share capital of the company, change in the authorised signatories in the bank account of the company, starting of a new venture, diversion of funds of the company, appointment of a related party, contract with a related party, etc. The prayer clause in all these applications/petitions is very common i.e., declaration of all these actions as illegal and quashing of all these decisions. Why such a prayer is made? Simply because all these actions or decisions do not have backing or support of a Board Meeting or General Meeting. It is alleged that all these actions or decisions should have been approved by the Board or shareholders of the company and because no such valid Board or General Meeting has been convened and held, therefore these actions and decisions should be declared void or illegal.

Therefore, the genesis of all these complaints is non-convening of a valid Board or General Meeting. If there is no valid Board or General Meeting, any decision purported to have been taken at such Meeting is also invalid. Hence, it is mandatory that all decisions which are required to be taken by the Board or shareholders, must be taken at a validly convened and conducted Board or General Meeting, as the case may be. To be a valid meeting, the meeting must adhere to the Secretarial Standards as issued by the Institute of Company Secretaries of India. The Standards prescribe a set of principles for convening and conducting meetings of the Board, Committees of Board, General Meetings and matters related thereto.

Further, if any member complains under section 241 of the Companies Act, 2013, this will result in litigation in company court i.e. National Company Law Tribunal (NCLT). Further, the litigation may also go to National Company Law Appellate Tribunal (NCLAT), which entertains appeals from the decision of NCLT (Section 421) and again if it involves any question of law, it may also go to the Supreme Court (Section 423). All this is very time consuming and involves huge monetary cost.

Secretarial Standards (SSs) mean the “Secretarial Standards” as issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Basically, where Law is not clear or something is missing in law, or areas left untouched, Secretarial Standards provide clarity on them and fill the gaps.

The Institute of Company Secretaries of India (ICSI) has constituted Secretarial Standards Board (SSB) for identifying areas in which Secretarial Standards are to be issued. The functions of SSB include:

1) Formulating Secretarial Standards.
2) Clarifying issues arising out of Secretarial Standards.
3) Issuing Guidance Notes for the benefit of the members of the ICSI, corporate and other users.
4) Reviewing and updating the Secretarial Standards/Guidance Notes at periodic intervals.

ICSI has, so far, issued 4 Secretarial Standards viz. Secretarial Standard on Meetings of Board of Directors (SS-1), Secretarial Standard on General Meetings (SS-2), Secretarial Standard on Dividend (SS-3) and Secretarial Standard on Report of the Board of Directors (SS-4). While adherence to SS-1 and SS-2 are mandatory, adherence to SS-3 and SS-4 is recommendatory for the time being.
The idea or need behind formulation of Secretarial Standards was that Companies follow diverse secretarial practices and hence, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency. Moreover, whenever there is ambiguity or doubt in the main law i.e. Companies Act, 2013 and rules and regulations made there under, SS helps to clear the doubt. SS lays down the process to be followed, steps to be taken while conducting Board Meetings and General Meetings.

Furthermore, as mentioned earlier, adherence to SSs (SS 1 and SS 2) is mandatory on the part of companies. However, it is generally seen that companies ignore the provisions of Secretarial Standards. Some perception among the professionals is that we ought to follow the main law only and not the peripheral law. This perception is wrong, as SSs are also a law that need to be followed. The adoption of Secretarial Standards will have a positive, substantial and long lasting effect as far as the secretarial practices are concerned. This also helps the companies in making comparable with best Corporates in the world. However, Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, provide to supplement such laws, rules and regulations. Moreover, if due to subsequent changes in the Companies Act, any part of the Standard becomes inconsistent with the Act then in that scenario the provisions of the Act shall prevail.

In addition to the above, following are the reasons why companies should follow SSs:-

- **Mandatory to follow:** As per sub-section 10 of Section 118 of Companies Act, 2013 every Company shall observe, with respect to the Board Meetings and General Meetings, the Secretarial Standards as specified by ICSI and approved by the Central Government. Again, Section 205(1)(b) casts an obligation on Company Secretaries to ensure that the company complies with the applicable Secretarial Standards.

- **To avoid penalty on non-compliance:** Non-compliance of Secretarial Standards issued under this Section shall attract penal provisions as per the Companies Act, 2013. At present, if any default is made in complying with the provisions in respect of any meeting, the company shall be liable to a penalty of Rs. 25,000 and every officer of the company who is in default shall be liable to a penalty of Rs. 5,000.

- **To avoid or mitigate litigation:** This will be discussed in later part of this article.

- **To assuring the shareholders, stakeholders and investors that their investments are in safe hands and to assure them that their company is law abiding company.**

- **To assure transparent practices.**

- **To enhance compliance level.**

- **To align with best secretarial practices in the world.**

Further, if a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term up to two years and with a fine between Rs. 25,000 and Rs. 1 lakh.

As we know that a company is an artificial person and cannot perform or take decisions on its own, it requires natural persons to perform the functions and duties on behalf of a company. Generally, it is Board of Directors (BODs) which takes decisions and controls the management and affairs of the company. However, under the Companies Act, certain powers can be exercised by the shareholders only. For instance, section 180 of Companies Act, 2013 provides for cases where approval of shareholders is necessarily to be obtained. Likewise, section
61 provides that company may alter the provisions of its MOA only with shareholders’ approval. Section 149(1)(b) provides that the company may appoint more than 15 directors after shareholders’ approval. A company may increase its authorized share capital after getting shareholders’ approval. There are many other provisions under the Act where the company is required to obtain approval from its shareholders. Hence, it is clear that Board of Directors and Shareholders take decisions on behalf of the company. BODs takes decisions in Board Meeting or by passing a resolution by circulation, while Shareholders take decision in General Meetings i.e. Annual General Meeting (AGM), Extra Ordinary General Meeting (EGM) or through Postal Ballot.

In many cases, it is seen that these decisions are illegitimate and contain some serious defects which make them actionable, ineffective and void in nature. For example, any decision or resolution passed in Board Meeting will be void and illegal if it is found that proper notice of the Board Meeting was not served to all the directors of the company (as the Standard mandates to give notice of meetings to all the directors). Same could happen in case of General Meetings also. Any member can challenge the validity of such resolutions taken in these meetings.

Further, Companies Act, 2013 empowers members of the company to file a complaint to National Company Law Tribunal (NCLT) if they feel that the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to them or any other member or members or in a manner prejudicial to the interests of the company (Section 241(1)(a) of Companies Act, 2013). It has been observed that there may arise several unfavourable situations, if a company does not take proper decisions and does not hold meetings properly, where these decisions are taken. What is the solution then? Solution lies in the Secretarial Standards as we have already noted in earlier part of the article that SSs lay down a set of principles and processes to be followed while conducting Board Meetings and General Meetings. Detailed procedure of conducting meetings has been prescribed in Secretarial Standards.

What matters can lead to litigation?
Following instances, inter alia, can lead to litigation in National Company Law Tribunal (NCLT):-
(a) Irregular or no notice to Directors.
(b) No quorum present during meeting.
(c) Irregular or no notice to Shareholders.
(d) If interested director participates in the discussion or manner prejudicial to its interests or its members or any class of members (Section 241(1)(b) of Companies Act, 2013).

If any member complains under section 241 of the Companies Act, 2013, this will result in litigation in company court i.e. National Company Law Tribunal (NCLT). Further, the litigation may also go to National Company Law Appellate Tribunal (NCLAT), which entertains appeals from the decision of NCLT (Section 421) and again if it involves any question of law, it may also go to the Supreme Court (Section 423).

So, litigation arising out of irregularity, illegality of the resolutions or decisions of the meeting may cost the following to a company:-
• Huge monetary cost involved in litigation process.
• Litigation always exposes and opens the confidential things that should be kept inside the Board room only.
• Litigation process is much time consuming.
• Company may find it difficult to arrange or finance capital as investors avoid investing in companies facing litigation.
• Image among the stakeholders and investors goes down.
• Company cannot focus on its core work.
• Hampers working of the professionals associated with the company.

Again, they can complain if the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a
A company can avoid litigation by just complying with Secretarial Standards as the process how to conduct Board Meetings and General Meetings has been very clearly mentioned in the Standards. SSs provide clarity where law is silent or is ambiguous. Further, where law is open to multiple interpretations, the Standards aim to provide the best practical interpretation which would further the objects of the law. Secretarial Standards fill all the gaps in law.

Statistics show that more than 80% of the disputes and litigations pending before the company tribunal are the outcome of not adhering to the laws and not following the prescribed practices. To be specific, most of the cases relate to procedural aspects of Company law. To avoid such litigations, a company is advised to follow SSs.

It is seen, in general, that majority shareholders are in stronger position than the minority ones and hence are in a position to rule the company according to their own wishes and whims. Since minority shareholders are in a weaker position, a minority member can complain against the irregular, illegal decisions or resolutions of the company passed in meetings those were not convened as per law. NCLT in such cases may, if satisfied, declare such resolutions as illegal and void.

Following are the instances where company court has declared such decisions as illegal and inoperative:-

In *Balak Ram Nehra & Anr. v. Mansha Builders & Contractors Pvt. Ltd. & Ors* (2018), NCLT quashed the Extra Ordinary General Meeting (EGM) that was held without proper notice by the requisitionists and also set aside the appointment of two directors in the said EGM on account of this irregularity. The resolutions passed in EGM appointing two directors were declared illegal. Further, DIR-12 uploaded on the website of MCA was also declared null and void.

In *Jagdishbhai S. Ramani v. Sachin Infra Management Ltd.* (2013), CLB declared allotment of shares as null and void as no legal board meeting was held for that purpose and AGM (where shares were allotted) was without the authority.

In *J.C. Augustine v. Remanika Silks (P) Ltd.* (2001), Company Law Board held that “if the notice convening Extra-ordinary General Meeting is invalid, all the business transacted will be declared as invalid”.

In *Dipak G. Mehta v. Shree Anupar Chemicals (India) Private Limited* (1999), it was held that it is the right of every shareholder to receive and attend general body meetings and if he is denied this right, he can rightly claim such denial as an act of oppression and can file petition in company court.

We have seen how a company can suffer if the law is not followed properly. We have also seen that a member can complain under section 241 of Companies Act, 2013 if he has reasons to believe that Company has acted or is acting in a manner prejudicial to him or to other members as well. We have also observed the consequences of such complaint. These complaints result into litigation which cost a company to a great extent. Moreover and most importantly, confidential and sensitive information always get exposed through litigation. Any management should be well aware of such threats.

A company can avoid litigation by just complying with Secretarial Standards as the process how to conduct Board Meetings and General Meetings has been very clearly mentioned in the Standards. SSs provide clarity where law is silent or is ambiguous. Further, where law is open to multiple interpretations, the Standards aim to provide the best practical interpretation which would further the objects of the law. Secretarial Standards fill all the gaps in law.

Secretarial Standards not only mitigate the disputes and the litigation but also facilitates the resolution of disputes.

Following the principle “Prevention is better than cure”, the management of the company must adhere to all the laws applicable to the company and more time, energy and focus should be made to enhance the efficiency and effectiveness of the company and ultimately to create wealth for its stakeholders. SSs always assist in achieving these goals while setting higher benchmarks of Corporate Governance.
Kotak Committee Recommendations on Corporate Governance: Evolutionary or Revolutionary?

In the globalized world today, good governance practices are an essential requirement for enhancing investor confidence and are an indicator of a safe and robust market conducive for investment. Although India has made several reforms in its corporate governance regime from time to time, yet new cases of governance lapses in the listed entities have highlighted the flaws or loopholes of the existing legislations. Such failures of the corporate governance systems across the globe along with increasing complexity of the regulatory environment have further accentuated the need to revisit the standards of good governance. In this line SEBI constituted the Kotak Committee in June 2017 to look into the existing SEBI regulations on corporate governance and suggest changes. The Committee submitted its report on 5th October 2017. This paper tries to examine the changes suggested by the Kotak committee and the implications of these changes for the listed companies in India.

Keywords: Corporate Governance, SEBI, Kotak Committee, reforms, listed companies

INTRODUCTION

Governance reforms have become essential for the development of Indian corporate sector in recent years. A well-established governance structure becomes all the more important for the growth of corporate sector in the wake of increasing globalization. In this scenario the Indian companies can now access capital from the international market and foreign investors have made investment in fast growing Indian companies. As compared to many developing countries, corporate governance mechanisms in India are much more institutionalized. Though the systems and institutions of corporate governance in India have been in existence for quite long, yet, corporate governance became an important issue only in the wake of the globalization policy of the Indian Government, adopted in the year 1991. Consequently, the access of Indian companies to the global capital markets has increased and they have been raising funds from the debt and equity markets across the world. But this has also raised concerns regarding transparency and disclosure of information and more importantly, the protection of investors’ interest, especially the small and retail investors (CII, 1998).

In view of this scenario, many governance reforms have eventuated in India, starting with the implementation of Clause 49 of the Listing Agreement by SEBI, in the year 2000 and continuing with the introduction of the New Companies Act, 2013 which has been enforced with effect from 2014. These reforms are anticipated to result in better governance of Indian companies. In this line SEBI constituted the Kotak Committee under the Chairmanship of Shri Uday Kotak in June 2017 to look into the existing SEBI regulations on corporate governance and suggest changes. This paper attempts to examine the changes suggested by the Kotak committee and the implications of these changes for the listed companies in India.

CORPORATE GOVERNANCE IN INDIA

The concept of corporate governance gained momentum in India with the formation of the Securities and Exchange Board of India (SEBI) in 1992. The basic framework of corporate governance in India is provided in the Companies Act, SEBI Act, SEBI guidelines and the Listing Agreements. In line with the emanation of several Corporate Governance codes all over the world (like Cadbury, Greenbury and Hampel Committee reports), Birla Committee on Corporate Governance was constituted by the SEBI in 1999 for promoting and raising the standard of Corporate Governance in respect of listed companies. Based on the recommendations of the Committee a new clause i.e. Clause 49 was inserted in the Equity Listing Agreement. Clause 49 consists of mandatory as well as non-mandatory provisions for corporate governance by the listed companies. Subsequently, SEBI constituted the Narayana Murthy committee for further improving the corporate governance standards in India. As per the recommendations of the Committee, certain modifications were made to the existing provisions of the regulatory framework for corporate governance and to the Clause 49 of the standard Listing Agreement, in 2003. Narayana Murthy Committee (2003) defined corporate governance as “the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company.”

In addition to the steps taken by SEBI, the Ministry of Corporate Affairs laid down Voluntary Guidelines on Corporate Governance in the year 2009. The guidelines could be voluntarily adopted by the public limited companies in India. They aimed at providing a set of best practices, which could help these companies to improve
their internal governance processes. Further in the year 2011 MCA issued National Voluntary Guidelines on Social, Environmental and Economic responsibilities of Business. These guidelines were formulated keeping in view the diverse business sectors in India and also prescribe a suggested approach for adopting them.

In the year 2013, new Companies Act was notified which replaced the six decade old Companies Act, 1956. The new Act is a landmark piece of legislation which envisages comprehensive changes in the existing corporate governance regime by providing for more transparency and enhanced disclosures. Some of the new provisions introduced include appointment of woman and resident directors, definition of independent directors, class action suits, mandatory CSR, cross border restructuring, rotation of auditors, increased reporting framework, provision for e-voting and establishment of serious frauds investigation office. All these provisions are supposed to have far reaching implications for the corporate sector in India and lead to adoption of the best corporate governance practiced worldwide.

Consequently, SEBI also reviewed the standard Listing Agreement, for the purpose of aligning it with the provisions of the Companies Act, 2013 and revised Clause 35B and Clause 49 vide its circular issued on 17th April, 2014. The revised Clause 49 was made applicable to all the listed companies with effect from October 01, 2014. Table 1 hereafter presents a chronological sequence of the corporate governance developments in India.

### Table 1: Corporate Governance Developments in India

<table>
<thead>
<tr>
<th>Year</th>
<th>Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>CII- Desirable Code of Conduct</td>
</tr>
<tr>
<td>2000</td>
<td>Kumar Mangalam Birla Committee (Insertion of Clause 49 in the Listing Agreement)</td>
</tr>
<tr>
<td>2002</td>
<td>Naresh Chandra Committee (Amendment to law involving corporate audit and governance)</td>
</tr>
<tr>
<td>2003</td>
<td>Narayan Murthy Committee (Clause 49 revised)</td>
</tr>
<tr>
<td>2004</td>
<td>Dr. J J Irani Expert Committee on Company Law (Proposed revisions in Companies Act)</td>
</tr>
<tr>
<td>2009</td>
<td>Corporate Governance Voluntary Guidelines issued by MCA</td>
</tr>
<tr>
<td>2011</td>
<td>National Voluntary Guidelines on Social, Environmental and Economic responsibilities of Business issued by MCA</td>
</tr>
<tr>
<td>2013</td>
<td>Companies Act 2013 enacted</td>
</tr>
<tr>
<td>2014</td>
<td>Revised Clause 49 of the Listing Agreement made applicable</td>
</tr>
</tbody>
</table>

There are several studies which research upon and discuss the corporate governance reforms in India and their impact on firm performance (Garg and Singh, 2017; Mishra and Kapil, 2016). But Corporate governance reforms in India have focused primarily on the role and composition of the board of directors (Patra, 2013; Gupta, Krishnamurti and Tournai-Rad, 2013; Rebeiz, 2015; Vishnani, 2017).

While the existing literature has discussed corporate structures and systems across countries, yet it has majorly covered developed economies like the United States, the United Kingdom and Europe where the governance systems are quite different from those found in India (Jackling and Johl, 2009). This dearth can be attributed to the disclosure practices of the Indian corporate sector which have comparatively remained opaque (Goswami, 2000). The study of corporate governance in India is vital due to its unique governance aspects, legal and institutional structures which are not applicable to other developed countries. The industrial and financial deregulation and structural reforms in India have taken place in a phased manner (Ahlulwalia, 1995; Khanna and Palepu, 1999). The Indian institutions of corporate governance have developed in a long duration of time and as compared to other developing countries, are quite stable and progressive in terms of range and depth of existing legislations and regulatory framework (Sarkar and Sarkar, 2000). Aoki (1995) has classified corporate governance regimes in transition economies, amongst which India has been classified as the “post-transition regime” with a well institutionalised and stable corporate governance mechanism. On one hand, Indian companies rely on external sources of finance and on the other hand insider-dominated family businesses also exist.

The Indian Corporate governance scenario is different in terms of ownership structures as large blocks of equity capital in most of the companies are held by business houses and foreign investors (Goswami, 2000; Ramasawamy et al., 2002). It may be a serious challenge to monitor the transparency of operations in these family-owned businesses, for complying with the global standards of corporate governance. Also, there are significant differences between enforcement standards and business practices in western countries and India. Despite India having a matured judicial system, the legal system has some drawbacks (Chakrabarti, Megginson, & Yadav, 2008). The securities market regulator in India (Securities and Exchange Board of India - SEBI) is also confronted with problems in enforcing compliance to capital market regulations, especially relating to price manipulation and insider trading (Bose, 2005).

### CORPORATE GOVERNANCE PROVISIONS IN THE COMPANIES ACT, 2013

The Companies Act, 2013 replaced the Companies Act, 1956. The enactment of this new legislation is a major cornerstone in the history of corporate governance in India. The major objectives of the new Act were to augment the standards of Indian corporate governance, reduce the complexity of regulations and emphasize the interests of small and minority shareholders. The main provisions relating to corporate governance in the new Companies Act, 2013 are discussed hereafter:

i. **One Person Company**: The Act introduced a new class of private companies called ‘One Person Company’ (OPC). OPC provides the benefits of carrying on a business with limited liability, to the individuals.

ii. **Board of Directors**: The new Act defines the duties of directors for the first time. It makes a provision for a maximum of 15 directors on the Board, prescribes both academic and professional qualifications for directors and lays down that the majority of members of Audit Committee including its Chairperson should have the ability to read and understand the financial statements.

iii. **Independent Director**: The Companies Act 2013 has introduced the concept of independent directors for the first time in the company Law in India. The provision mandates all listed public companies to have at least one third independent directors on their boards, who may be appointed for a maximum term of five consecutive years.

iv. **Corporate Social Responsibility (CSR)**: The new Act has made India the first country to have a legal mandate on Corporate Social Responsibility. Section 135 provides that every company having net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or net profit of Rs. 5 crore or more during any financial year shall spend on CSR related activities. Every such company shall spend on CSR (in every financial year) at least 2 percent of the average net profits of the company made during the three immediately preceding...
Although India has made several reforms in its corporate governance regime from time to time, yet new cases of governance lapses in the listed entities have highlighted the flaws or loopholes of the existing legislations. Such failures of the corporate governance systems across the globe along with increasing complexity of the regulatory environment have further accentuated the need to revisit the standards of good governance.

need to sharpen the focus on good governance and to introduce necessary changes in the existing corporate governance regulations. Several academic studies also highlight potential corporate governance issues where the regulators need to tighten the corporate governance norms, like reappointment of independent directors and appointment of statutory auditors (Subramanian, 2017).

KOTAK COMMITTEE ON CORPORATE GOVERNANCE
Last year in June, SEBI set up a twenty-five member committee under the Chairmanship of Shri Uday Kotak, Executive Vice Chairman and Managing Director of Kotak Mahindra Bank to make recommendations on issues relating to corporate governance. The other members of the committee are from SEBI, corporate sector, stock exchanges, professional bodies, representatives from various investor groups, industry, law firms, academic institutes and research professionals. With the objective of raising corporate governance standards of listed corporate entities in India, the terms of reference of Kotak Committee were as under:
1. To ensure independence in spirit of Independent Directors and their active participation in functioning of the company.
2. To enhance safeguards and disclosures relevant to Related Party Transactions.
3. To look into the issues pertaining to accounting and auditing practices by listed companies.
4. To reform effectiveness of existing Board Evaluation practices.
5. To address issues relating to voting and participation in general meetings, which are faced by investors.
6. To look into issues relating to disclosure and transparency.
7. To make recommendation on any other matter pertaining to corporate governance in India, as the Committee may deem fit.

The Committee submitted its report on 5 October 2017. The Committee has identified some crucial governance issues and has also proposed amendments to the Securities & Exchange Board of India (Listing Obligations & Disclosure Requirements) Regulations, 2015 (LODR).

Some of the major recommendations made by the Committee are as follows:
- Separation of the roles of Chairman and Managing Director: Committee has recommended that the position of Chairman and Managing Director in listed companies should be held by different individuals and the Chairman shall be a non-executive director. This recommendation would come into effect from April 1, 2020 for the listed companies with public shareholding more than 40%. Thereafter, SEBI may dwell upon mandating it for all listed companies with effect from the year 2022.
- Provisions regarding Board of Directors and its functioning: As per the report of the committee the requirement of minimum number of members on the board should be raised to six and at least one woman should be appointed as independent director. At least five board meetings should be held by listed companies in a year against as compared to the existing requirement of minimum four meetings. The Committee has also recommended that at least half of the directors of listed companies shall be independent directors and it shall be mandatory for all the directors to attend at least half of board meetings held in a year. It must be mandatory to take consent of shareholders in general meeting for appointment of non-
executive directors over 75 years of age. The board should also discuss succession planning and risk management at least once a year.

- Shareholder meeting and cash flow statement: Webcast of shareholders’ meeting shall be mandatory for top 100 companies (by market capitalization) and all listed companies should prepare cash flow statement every six months. It shall also be mandatory for the listed companies to disclose their quarterly consolidated earnings.

- Credit ratings: For the benefit of investors and other stakeholders, a list of all credit ratings obtained by the listed company must be displayed at a single place.

- Minimum remuneration of Directors: The Committee has also made relevant recommendations pertaining to remuneration of board members. It prescribes that independent directors must be paid a minimum remuneration of Rs. 5 lakh per annum and sitting fee of Rs. 20,000 - 50,000 for every board meeting. It should be mandatory for companies to seek approval of public shareholders in a general meeting, for deciding annual remuneration of executive directors from promoter family (if amount is above Rs. 5 crore or 2.5% of firm’s net profit). If there is more than one such director, public shareholders’ consent would be required for aggregate annual remuneration exceeding 5% of the net profit of the company.

- Risk management and IT committee: Kotak committee recommends that top-500 listed companies in India should constitute a risk management committee for cyber security. Additionally, listed companies should have an information technology (IT) committee focused on all the digital and technological aspects.

Table 2 below presents a comparison of the Committee recommendations to the current provisions in the existing Company Law.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Subject</th>
<th>Current Provision</th>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Minimum no. of directors</td>
<td>No specific provision.</td>
<td>A minimum of six directors</td>
</tr>
<tr>
<td>2</td>
<td>Gender diversity</td>
<td>At least one woman director</td>
<td>At least one independent woman director</td>
</tr>
<tr>
<td>3</td>
<td>Attendance of Directors</td>
<td>No specific provision.</td>
<td>If a director does not attend at least half of the total number of board meetings over two financial years on a rolling basis, his/her continuance on the board should be ratified by the shareholders at the next annual general meeting.</td>
</tr>
<tr>
<td>4</td>
<td>Disclosure of Expertise/ Skills of Directors</td>
<td>No specific provision.</td>
<td>A listed entity should be required to disclose competencies of its board members against every identified competency/expertise without disclosing names in the annual report for financial year ending March 31, 2019. However, detailed disclosures of competencies of every board member, along with their names, should be required w.e.f. March 31, 2020.</td>
</tr>
<tr>
<td>5</td>
<td>Approval for Non-executive Directors on Attaining a Certain Age</td>
<td>No specific provision.</td>
<td>Special resolution required for listed entities for the appointment/continuation of NEDs on attaining the age of 75 years for the relevant term.</td>
</tr>
<tr>
<td>6</td>
<td>Minimum Number of Board Meetings</td>
<td>The board of directors shall meet at least four times a year, with a maximum time gap of 120 days between any two meetings.</td>
<td>Minimum number of meetings of board of directors be increased to five every year.</td>
</tr>
<tr>
<td>7</td>
<td>Update of Knowledge of the Board Members</td>
<td>No specific provision.</td>
<td>At least once every year, the board of directors should be updated on regulatory and compliance changes.</td>
</tr>
<tr>
<td>8</td>
<td>NED Engagement with the Management</td>
<td>No specific provision.</td>
<td>At least once every year, an interaction should be required between the NEDs and senior management.</td>
</tr>
<tr>
<td>9</td>
<td>Quorum for Board Meetings</td>
<td>Companies Act requires a quorum of one-third of the total strength of the board of directors or two directors, whichever is higher, for every board meeting.</td>
<td>Quorum for every board meeting of the listed entity should be a minimum of three directors or one-third of the total strength of the board of directors, whichever is higher, including at least one independent director.</td>
</tr>
<tr>
<td>10</td>
<td>Separation of the Roles of Non-executive Chairperson and Managing Director/CEO</td>
<td>Discretionary</td>
<td>Mandatory</td>
</tr>
<tr>
<td>11</td>
<td>Maximum Number of Directorships</td>
<td>A person shall not serve as an independent director in more than seven listed entities; Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities</td>
<td>The maximum number of directorships in listed entities should be reduced to eight by April 1, 2019 and to seven by April 1, 2020. (Irrespective of whether the person is appointed as an independent director or not).</td>
</tr>
<tr>
<td>No</td>
<td>Requirement</td>
<td>Details</td>
<td></td>
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<td>----</td>
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<tr>
<td>12</td>
<td>Minimum number of Independent Directors</td>
<td>Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors. Irrespective of whether the Chairperson is executive or non-executive, may be required to have at least half its total number of directors as IDs. (Applicable to top 500 listed companies by market capitalization by April 1, 2019 and to the rest of listed companies by April 1, 2020.)</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Minimum Compensation to Independent Directors</td>
<td>No provision on minimum compensation. The minimum total remuneration for an ID per year shall be Rs. 5 lakhs for top 500 companies by market capitalization. In case of inadequacy of profits, the minimum requirement of Rs. 5 lakhs shall not apply.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Minimum Number of Committee Meetings</td>
<td>The audit committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings. The audit committee shall meet at least five times in a year</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Information Technology Committee</td>
<td>No provision. The listed entity may constitute an information technology committee which will focus on digital and technological aspects.</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Sharing of Information with Controlling Promoters/Shareholders with Nominee Directors</td>
<td>No provision. Insertion of new Chapter IV-A for Information rights of certain promoters and significant shareholders</td>
<td></td>
</tr>
</tbody>
</table>

The Committee in its report also recommends creation of a separate department to focus on financial statements and filings by the companies, with an aim to detect reporting, disclosure and audit failures. Another recommendation is creation of a strong data processing framework which can support further investigation and detection of violations by the companies involving manipulated financial statements and misleading or faulty disclosures.

The Committee has proposed insertion of a whole new chapter on the information rights of ‘certain promoters and significant shareholders’ in SEBI’s Listing Obligation and Disclosure Requirements (LODR) and amendments to SEBI’s Prohibition of Insider Trading (PIT) regulations. The committee has recognized a need to provide a robust and transparent framework regulating the information rights of certain promoters and significant shareholders to reduce subjectivity, along with suitable checks and balances for preventing any misuse and illegitimate exchange of unpublished price sensitive-information (UPSI). The new chapter proposed by the Kotak Committee in SEBI’s LODR details the classes of shareholders who can have access to UPSI and their obligations and also lays down the conditions under which such information can be shared.

**IMPLICATIONS**

The recommendations of the Committee are wide ranging and have covered crucial issues pertaining to independent directors, auditors, and information flow to improve governance in listed companies. While several proposed amendments are applicable from April 2018, many others are proposed to come into force between October 2018 and 2020 and in some cases in 2022. The Committee has thus recommended a timeline for these reforms to be implemented between 2018 and 2020 so as to allow companies’ time to adjust to new governance demands. The main objective of Corporate Governance is to reduce agency costs for shareholders of a company incurred by them in monitoring and ensuring effective functioning of a company as per its objectives (by the management). Effective disclosures, thus, are fundamental to Corporate Governance. The Kotak Committee, has made various recommendations pertaining to enhancing disclosure requirements of Indian listed entities. The Committee has adopted an approach of evolution rather than revolution. The new recommendations are more of detailing existing governance concepts rather than introducing new ones. The Committee has recommended separation of the role of the Chairman and Managing Director in listed companies thereby providing an inbuilt check and balance against concentration of power in the board room. Multiple recommendations have been made for strengthening the institution of Independent Directors, which aims at reducing concentration of power and providing for participative decision-making. The Committee also recommends greater transparency in the working of the boards with disclosures about the number of meetings to be held and attendance requirements, defined induction process for directors and disclosing the Board skills matrix. These recommendations, if implemented in their true spirit, will contribute to better decision making by the Boards and also help in protection of the interest of the small shareholders. There are, however, a few difficulties in execution, for example the availability of a pool of qualified independent directors. The Committee has made a recommendation for this challenge. It has acknowledged one of the most evident deterrents, which is compensation, by making provision for a minimum compensation to be paid to the independent directors in a year. Still much needs to be done to enlarge this scarce pool.

In India the promoter/promoter groups have significant shareholding in the businesses which often obscures the lines of control and information flow in these companies. The Committee has proposed having an explicit agreement to share unpublished price sensitive information (UPSI) between the company and certain promoters and significant shareholders, which is a novel concept. This will regulate the information flow in these companies and make it transparent and legitimate by imposing obligations on promoters to safely receive and hold the information. The overall implications of these governance reforms at a firm level will be different. Different companies will require to work
in the recent past, governance practices even in some of the largest Indian companies have raised serious doubts on a number of issues. These include evaluation of company boards, board diversity, role of independent directors, managerial compensation, protection of minority shareholder interests, reliability of financial disclosures and related party transactions. Thus, there is still a need to sharpen the focus on good governance and to introduce necessary changes in the existing corporate governance regulations.

upon different elements of the recommendations. A "One size fits all" approach does not work. Therefore there is a need for Board of directors in companies to possess a governance approach rather than a compliance and tick mark approach. SEBI has a very significant role to play as the regulator of Indian capital markets and requires meticulous detection, monitoring and enforcement action. Thus, the Kotak Committee has recognized that the efficacy of its recommendations would depend majorly upon effectiveness of the SEBI’s detection and enforcement functions. For this purpose the Committee in its report has also made certain recommendations for SEBI as per the global best practices, particularly compared to the U.S. Securities and Exchange Commission (SEC). The Committee has recommended that SEBI should increase the number and competence of its human resources; use advanced technology and data science and function strategically with other agencies, particularly for monitoring and enforcement. These measures would enhance the capacity of SEBI.

ACCEPTANCE OF THE RECOMMENDATIONS BY THE SEBI

In its meeting held in March 2018, SEBI decided to accept several recommendations of the Committee without any modifications. These shall be implemented in a phased manner:

i. Reduction in the maximum number of listed entity directorships from 10 to 6 by April 01, 2019 and to 7 by April 1, 2020.
ii. Expanding the eligibility criteria for independent directors.
iii. Enhanced role of the Audit Committee, Nomination and Remuneration Committee and Risk Management Committee.
v. Disclosures of auditor credentials, audit fee, reasons for resignation of auditors, etc.
vi. Disclosure of expertise/skills of directors.

The Kotak Committee Recommendations on Corporate Governance: Evolutionary or Revolutionary?

The Kotak Committee Report on Corporate Governance has recommended some evolutionary steps which do not claim to turn around the functioning of listed companies in a flash but provides for measures that are anticipated to hold good for next generation of reforms, according to some Committee Members. Strengthening Corporate Governance in Indian listed companies is a long term agenda. Therefore, the Committee has focused on long term value creation and protection of shareholders which are essential to build sustainable companies. Moreover, the recommendations of the Kotak Committee on Corporate Governance assume much significance in light of the recent boardroom wars at two of the leading Indian companies - Tata Sons and Infosys, wherein both these companies have faced allegations of lapses in Corporate Governance. The real challenge in actually making difference is in policy implementation of governance reforms. Regulatory frameworks
SEBI has a very significant role to play as the regulator of Indian capital markets and requires meticulous detection, monitoring and enforcement action. Thus, the Kotak Committee has recognized that the efficacy of its recommendations would depend majorly upon effectiveness of the SEBI’s detection and enforcement functions. For this purpose the Committee in its report has also made certain recommendations for SEBI as per the global best practices, particularly compared to the U.S. Securities and Exchange Commission (SEC).

remain uniform across the country, but there are considerable differences across India in terms of enforcement mechanisms, socio-cultural attitudes and perceptions of the promoters/managers in the different regions and sectors. Therefore, focus has to be laid on the strengthening of enforcement institutions to monitor and enforce the regulations.

REFERENCES

Process Re-engineering of LLP-Incorporation Related Forms – Precautions to be taken by Professionals and Users

The much awaited Limited Liability Partnership (Second Amendment) Rules, 2018 containing the relevant revised rules and incorporation related e-form layouts have been notified on 18 September 2018 which would come into effect from 2 October 2018. The process reengineering of these forms is likely to bring down the processing time to D+1 Day akin to Companies’ Incorporation forms and thus spur the growth of business in our country.

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*Views expressed by the authors in this article are personal. The authors would like to thank MCA for permitting them to contribute the article for publication in Chartered Secretary.

The much awaited Limited Liability Partnership (Second Amendment) Rules, 2018 containing the relevant revised rules and incorporation related e-form layouts have been notified on 18th September 2018 which would come into effect from 02nd October 2018. The said amendment rules contain changes as detailed below:

(i) Introduction of a Web Service titled ‘RUN-LLP (Reserve Unique Name – Limited Liability Partnership)’ replacing the erstwhile Form 1 (Application for reservation or change of name).

(ii) Introduction of a new integrated form christened FiLLiP (Form for incorporation of Limited Liability Partnership) replacing the erstwhile Form 2 (Incorporation document and subscriber’s statement) combining therein 3 services i.e.,
   a) Name reservation.
   b) Allotment of Designated Partner Identification Number (DPIN/DIN).
   c) Incorporation of the LLP.

CHANGE IN THE PROCESSING OF e-FORMS

The applications which would be submitted using the web-service/eForms viz. RUN-LLP, FiLLiP, Form 17, Form 18 and Form 5 would be processed at a Centralised location by the Registrar, Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar. The centralized registration process is likely to bring down the processing time to D+1 Day akin to Companies’ Incorporation forms and thus spur the growth of business in our country.

RUN-LLP (RESERVE UNIQUE NAME – LIMITED LIABILITY PARTNERSHIP)

RUN-LLP would be a simple and easy to use Web Service for reserving a name for a new LLP or for Change of Name of any existing LLP with only 4 relevant fields. The new web service would replace the existing Form 1 which contains 15 fields (4 pages) for reservation of name/change of name of LLP.
(i) This is a ‘post-login’ service and existing users would need to login into their account using their credentials. New users are required to create a login account first before using the service.

(ii) As shown above the service contains following simple fields apart from radio buttons for choosing ‘New Service or Resubmission’:

a) New Incorporation/ Conversion: User has to select whether name reservation is for New incorporation/ Conversion of firm into LLP/Conversion of private company/unlisted public company into LLP.

b) LLPIN/CIN: User shall enter LLPIN in case of name reservation for change of existing name of LLP. CIN shall be entered in case of Conversion of private company/unlisted public company into LLP.

c) Proposed name 1 and 2: User may enter up to two proposed names for reservation.

d) Comments: User needs to mention the objects of the proposed LLP and any other relevant comments.

Note: DPIN/DIN/DSC would no more be a pre-requisite for Name reservation through RUN-LLP.

5. Form for incorporation of Limited Liability Partnership (FiLLiP) (vis-à-vis existing Form 2): New field ‘whether name is already approved by Registrar of Companies’ is introduced to accommodate names approved through RUN-LLP and reservation of name through FiLLiP.

(i) New field 2(a) ‘Type of incorporation’ inserted to enable users to prefill/enter the type of incorporation (New incorporation/Conversion of firm into LLP/Conversion of private company/unlisted public company into LLP).

(ii) New field introduced to enable the user to enter the number of designated partners/partners in a tabular format. Based on the number in the table, relevant section shall be enabled to provide the details.

(iii) Each category of partner/designated partner (except non-individual partner/designated partner is divided into two types, one having DIN/DPIN and another not having DIN/DPIN.

(iv) In case of Body Corporate Designated Partners / Body Corporate Partners, count needs to be entered in the column for ‘not having DIN/DPIN’.

(v) In case of Body Corporate Designated Partner, details of having DIN/DPIN or not having DIN/DPIN shall also be provided for the ‘Nominee of Bodies Corporate Designated Partners’.

(vi) In case individual designated partner/nominee of Body Corporate designated partner is not having DIN/DPIN, all the relevant details pertaining to DIN/DPIN allotment shall be entered in the relevant section.

(vii) Maximum of two DINs/DPINs can be allocated through FiLLiP.

(viii) In case FiLLiP is getting filed for name reservation, user need to enter ‘proposed name’ (only one name is allowed) and other relevant details of name reservation.

(ix) Relevant attachments pertaining to the name reservation/ DIN allotment through FiLLiP got included in the form.

(x) In case none of the Designated Partners have DIN/DPIN, the form can now be signed by providing PAN details of the Designated Partner.

CHANGES DONE IN OTHER FORM FIELDS

Relevant form layout and validation changes to accommodate RUN-LLP SRN in Form17, Form 18, Form 2A and Form 5.

(i) Form 5 shall now be processed under Non-STP mode.

Note: Please refer to the revised eforms notified vide Limited Liability Partnership (Second Amendment) Rules dated 18th September 2018 for more clarity.

PRECAUTIONS TO BE TAKEN BY USERS/PROFESSIONALS FOR SUCCESSFUL SUBMISSION OF RUN-LLP/FiLLiP

The same user login ID which was used for reserving the name through RUN-LLP has to be used for submitting and uploading FiLLiP.

(i) Names already approved in Form 1 can be used while Incorporating an LLP through FiLLiP.

(ii) It is advisable to be familiar with the Limited Liability Partnership Rules 2009, as amended, and conduct your own Name and Trade Mark search, (the links for which are available under ‘MCA Services’ of the portal).

(iii) Ensure to attach the No Objection Certificates (NOCs)/ Central Government approval wherever necessary as per the LLP Rules, 2009.

(iv) In case of conversion of company into LLP, ensure that the proposed LLP name is same as the Company name.

CONCLUSION

Further, users and professionals are also advised to take note of the following changes at a glance captured in the Table:

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5. Form for incorporation of Limited Liability Partnership (FiLLiP) (vis-à-vis existing Form 2):

<table>
<thead>
<tr>
<th>Existing column</th>
<th>New column</th>
<th>Change Proposed</th>
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<tbody>
<tr>
<td>Revised column</td>
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<tr>
<td><strong>Column 1</strong></td>
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<td><strong>Column 2</strong></td>
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<td><strong>Column 3</strong></td>
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<td><strong>Column 4</strong></td>
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</tbody>
</table>

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Followings process flow changes are proposed to enable the LLP incorporation process to function:

- All forms 1 and 1 form 2 along with form 2A(Introduction) which are pending processing from the date of certification of revised forms, shall be treated under modernization/ conversion of body corporate designates to LLP.
- All names submitted for incorporation after the date of certification of revised forms, shall be treated as the new revised form.
- All names which have been approved and against which incorporation forms is not filed till the date of certification of revised forms, shall be allowed to be used for incorporation.
- All names which have been approved and against which change of name form is not filed till the date of certification of revised forms, shall be allowed to be used for incorporation.
Venture Capital – An Analysis in India

Venture Capital is money provided by professional money managers who have special knowledge of the industry in which the start-up founded by the technocrats exist. In this way it differs from ordinary investors in a business. Last year it is observed that early stage venture capital investments in India have plunged to three years low. This has raised alarm bells in the start-up eco-system and the Government is being pressurised to solve some of the existing issues for Venture Capital firms in India.

INTRODUCTION

Venture Capital is the form of finance for new and path breaking companies which work on projects or businesses where empirical basis of its business case doesn’t exist. Venture Capital is the capital invested in the equity and debt securities (Debt which can be later converted to equity) of young unproven companies which are run by professional technocrats and industry experts who do not have the capital required to scale up their dream projects. These professionally run young companies need to be incubated in their early stages and they have the capacity to provide extra ordinary returns for their investors which cannot be achieved by investing in legacy or old economy business segments/entities. For example Tiger Global, an international investment firm provided one of the first rounds of funding for Flipkart in India and has seen its initial investment make 10 fold returns on investment through higher valuations.

In the last year it is observed that early stage venture capital investments in India have plunged to three years low. This has raised alarm bells in the start-up eco-system and the Government is being pressurised to solve some of the existing issues for Venture Capital firms in India.¹ The main reasons for lack of enthusiasm among venture capital firms in India can be attributed to the following factors:

- Lack of easy exits for Angel Investors
- Tightly controlled regulatory policies
- High taxation and no tax benefits for venture capital firms
- Desire to back start-ups that can generate customers from an early stage.

In the first nine months of 2017, Venture Capital firms (VCs) and Private equity firms (PEs) poured in 17.6 Billion Dollars into Indian companies which was higher than the 17.3 Billion dollars raised in 2015, data from market research firm Venture Intelligence showed².

WHAT IS VENTURE CAPITAL

Venture Capital is money provided by professional money managers who have special knowledge of the industry in which the start-up founded by the technocrats exist. In this way it differs from ordinary investors in a business. In the old days people would see the past performance of companies and then make an investment decision taking into consideration factors like the Earnings before Interest and Tax (EBIT) and Debt Equity Ratio of the Company. Technical and Fundamental analysis of the company would provide the price range of the stock in which you would invest. However start-ups have no backing in past performance. In majority of cases these industries do not exist as yet and they are running in fields of cutting edge technology like Artificial Intelligence, Cloud Computing, etc. Venture Capital typically exists in industries with a high degree of uncertainty.

It is seen that when start-ups cannot raise funds from traditional methods e.g. Capital Markets, Banks, Financial Institutions, etc. then they approach venture capital firms for investment. But that is not to say Venture Capitalism does not raise money from traditional methods. The Venture Capital firms raise funds from banks, financial institutions, pension funds, corporations, endowments, foundations and high net-worth individuals. The Venture Capitalists raise funds on the principle that their management is in the hands of highly technocratic individuals who have a deep knowledge and understanding of the business in which the investment is being made, such knowledge of course not being available to other financial institutions and funds because of which they won’t be able to make rational investment decisions in such firms.

Venture capital firms can be categorized as incubators, angel investors, venture capitalists and private equity players based on metrics like size of investment and management participations, etc.

Examples of Venture Capitalists are many. Softbank is a Japanese Conglomerate promoted by Mr. Masayoshi Son which has emerged as the largest Venture Capitalist in the world with marquee investments in Verizon Wireless, Flipkart, PayTM, Ola and Uber. IDG Investors, Nexus Capital Ventures, Sequoia Capital India, etc. are some of the examples of venture capitalists operating in the Indian eco-system.

SUCCESS OF VENTURE CAPITAL FUNDS IN INDIA

It is fairly difficult to accurately calculate the success of venture capital funds in India as there is no separate filing mechanism which is accessible by the public to gauge the success or failure of venture capital funds in India. The knowledge of this field is therefore skewed towards news reports of venture capital funds like Tiger Global and Softbank making millions and even billions on its investment in certain start-ups. But the question

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Venture Capitalism does not raise money from traditional methods. The Venture Capital firms raise funds from banks, financial institutions, pension funds, corporations, endowments, foundations and high net-worth individuals. The Venture Capitalists raise funds on the principle that their management is in the hands of highly technocratic individuals who have a deep knowledge and understanding of the business in which the investment is being made, such knowledge of course not being available to other financial institutions and funds because of which they won’t be able to make rational investment decisions in such firms.

arises does this translate into success for the entire industry or for a select group of certain venture capital funds. UTI Ventures, a Venture Capital fund recently existed Excelsoft Technologies Pvt Ltd a Mysore based electronic learning company selling off its investment for 35.5 Million Dollars against an investment of a mere 600,000 Dollars. Other high returns were made by Chrys Capital and Citigroup Venture Capital whose investments in Suzlon Energy generated 26 to 30 times return on investment. These are what are generally recognized as industry leading returns on investment which have given the whole venture capital industry a sheen of excitement.

However it is questionable if these returns are made by a majority of the venture capital funds in India. Investment by Venture Capital Funds is a complex process where bets are not made as much on companies and promoters as in other investments but also on untested technologies which may sink or swim in the marketplace and have no reference points on which to base valuations on. So investments are made figuratively out of thin air where promoters ask for a specified amount and negotiations are held as to what amount of capital and return that investment amounts to.

In order to mitigate these uncertainties Venture Capital management usually levies a 2% (Industry Average) fee on committed capital/the corpus of the fund as the management fee to find, invest, build and exit a winning company from its Limited Partners (LP). LPs are essentially the investors in the Venture Capital Fund who have invested the capital but do not take decisions on investment by the Venture Capital Fund which is left to the General Partners (GP). This 2% fee is necessitated by the fact that General Partners need to be paid industry matching salaries in order to run the funds smoothly. However this has led to allegations that the GPs run these funds only for the 2% fees they collect on capital and are less inclined to ensure the success of their funds and are out of their depths when it comes to investing, identifying future success and acting on it at the right valuation. The high salaries relative to the rest of the economy attracts a certain kind of Manager into the organization who comes from an elite business school and does not the technology chops or the background that foreign venture capital managers have of being entrepreneurs themselves. When you look at the venture capital industry captains like Peter Thiel, Vinod Khosla and Marc Andreessen you realize these are all former entrepreneurs themselves and when they invest in companies and start-ups they not only provide capital but also vision and direction and their experience which is critical to get the business up and running and successful. The criticism against Indian GPs is that they are unable to provide this kind of expertise and so they get a strategic disadvantage when compared to the wealth of knowledge and experience of their foreign counterparts.

Also most successful venture capitalists are into venture capitalism not just for the money but also to incubate new ideas and solve some glaring problems of the world in the process. Such corporate idealism is absent among Indian GPs and that is another criticism against their functioning and practices.

In light of the fact that accurate industry statistics do not exist and statistics given by venture capital industry organizations are unreliable at best it is difficult to quantify the success or failure of the industry as a whole.

LEGISLATION

The Securities and Exchange Board of India (SEBI) governs the provisions related to Venture Capital in India through two main Regulations namely the SEBI (Venture Capital Funds) Regulations 1996 which governs domestic Venture Capital funds and the SEBI (Foreign Venture Capital Funds) Regulations 2000 which governs the Foreign Venture Capital funds seeking registration and business in India. Any company or trust or body corporate in order to conduct business as a Venture Capital firm in India needs to be registered under the provisions of the SEBI (VCF) Regulations 1996. The said company or trust or body corporate needs to acquire a certificate from SEBI granting permission to start operations under the Regulations. Some of the important features of the SEBI (VCF) Regulations 1996 are as follows:

- It is prohibited in the memorandum and articles of association of a Venture Capital firm from allowing the public to subscribe to its securities
- A Venture Capital Fund can raise capital from any Indian, Foreigner or other entity by way of issue of units
- No Venture Capital Fund can accept any investment in its corpus below the amount of Rs. 5 Lakhs
- Each new scheme launched should have an initial contribution from its investors of Rs. 5 Crores at least

• Venture Capital Undertaking needs to disclose its scheme of investing at the time of making an application for issue of certificate with SEBI
• A Venture Capital Fund should not invest more than 25% of its corpus in any one entity at a time
• At least 66% of the investible funds shall be invested in unlisted equity shares or equity linked instruments of venture capital undertaking
• Not more than 33.33% of the investible funds can be invested by way of subscription to open offer or initial public offering of venture capital funds or debt instrument of venture capital funds, preferential allotment of equity shares of listed public company with a lock in period not less than 1 year
• Venture Capital Fund shall disclose the duration of the fund
• No Venture Capital Fund can get its units listed within 3 years of the date of issuance of units by the Venture Capital fund
• A scheme of venture capital shall be wound up if its duration as listed in the certificate is over or its investors pass a resolution with seventy five percent assent that the scheme be wound up or SEBI directs the winding up of the scheme.

The rules for Foreign Venture Capital funds are similar in nature with a few differences. The Foreign Venture Capital funds undergo a significant assessment of the eligibility criteria as per SEBI.

ADVANTAGES AND DISADVANTAGES OF VENTURE CAPITAL

Some of the advantages of Venture Capital are:
• Notwithstanding financial backing, obtaining venture capital financing can provide a start-up or young business with a valuable source of guidance and consultation. This can help with a variety of business decisions, including financial management and human resource management. Making better decisions in these key areas can be vitally important as your business grows. Most Venture capitalists in the field of technology have been technology entrepreneurs themselves like Peter Thiel managed Founders Fund. These Venture Capitalists also guide the start up entrepreneurs on how to navigate the field of business
• In a number of critical areas, including legal, tax and personnel matters, a VC firm can provide active support, all the more important at a key stage in the growth of a young company. Faster growth and greater success are two potential key benefits. There are many Venture Capitalists who have dedicated teams of tax, HR and legal experts whose job it is to guide the companies in which the VC have invested thus lowering their compliance and operating costs and giving them top class advice as well
• Venture capitalists are typically well connected in the business community. Tapping into these connections could have prolific returns
• As Venture Capital is not a loan scheme in the traditional sense, there is no repayment schedule for the Company being invested in. This means the Company can make bets on technology and business practices that may pay off in the long term instead of going for short term profit
• The strict regulatory overview of Venture Capital funds means there are very few unscrupulous VC firms that are out to make a quick buck

Some of the disadvantages of Venture Capital are:
• VC firms are easy to locate as they are documented in business directories.
• VC firms do not merely give capital and resources to a business in return for equity. They also demand and get a fair degree of management control. This leads to loss of control to an extent for the entrepreneurs who invite the Venture Capital funds in
• From Minority Ownership to Majority Stakes - It has been seen in recent times that due to the big ticket sizes of Venture Capital funding and Series I, II and III fundings that follow the entrepreneurs lose control over their organization to such funds. Recently the sale of Flipkart has been in the news and it has been revealed that the founders of Flipkart hold just over 10% of the equity of the company despite having managerial control. The founders of Google hold just 26% of the ordinary stock (and 58% of the voting rights) because of early seed funding in which they had to cede substantial shareholding
• Usually, VC firms want to close the deal and get their investment back within three to five years. If the business is not profitable or break even in that timeline then VC funding may not be suitable for that type of business
• When a business plan is submitted for financing considerations, most finance companies will agree to sign a non-disclosure agreement. This is not the case in most venture capital firms. Venture capital firms will nearly always refuse to sign a non-disclosure agreement due to the legal ramifications of doing so. This can put ideas from an entrepreneur at risk. There have been cases where Venture Capital funds have gone and replicated the ideas of one company into another company because they didn’t sign a non-disclosure agreement. In the highly competitive world of technology that can make all the difference.

ROLE OF COMPANY SECRETARIES IN VENTURE CAPITAL FUNDS

Company Secretaries play a vital role in administering Venture Capital Funds in India. As Venture Capital Funds are incorporated as Companies with most of them having capital in excess of the prescribed limits they are required to engage Company Secretaries to look after their compliance. In these companies, compliance with Venture Capital Regulations forms an important part of the job profile of Company Secretaries. Young and aspiring Company Secretaries should engage with Venture Capital Funds and look beyond basic company law compliances and learn venture capital compliances as well which will work as a value addition for their resume.

CONCLUSION

One can see that Venture Capital is uniquely positioned to help start-up entrepreneurs find adequate capital. But the success rate of Venture Capital in India is not so good. If adequate professionalism doesn’t come into Venture Capitalism in India then India may fall behind the rest of the world in technology and related fields. On the flipside, Venture Capitalism is still a nascent industry in India and there is room for Venture Capitalism to grow by leaps and bounds in India as the start-up eco-system further blossoms. Needless to mention Company Secretaries have a vital role to play in developing the Venture Capital system in India.
Lifting of Corporate Veil of Government Companies

The courts in their earlier decisions have held that the statutory bodies, PSUs, Government Companies, to be not “State” and hence not amenable to the writ jurisdiction of the courts, based on the decision of Tamilin v. Hannaford L.R. (1950) 1 K.B. 18 wherein Lord Dennings observed that a trading activity carried on by the Government corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf. Finally, in the case of Central Inland Water Transport Corporation Ltd. v. Brojo Nath (AIR 1986 SC 1571), the Supreme Court ripped apart the veil of the Government Companies and held them to be “State”.

As per Section 2(45) of the Companies Act, 2013, a “Government Company” is defined as any Company in which not less than 51% of the paid-up share capital is held by the Central Government, or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, or includes a Company which is a Subsidiary Company of such a Government Company.

All kinds of claims can be filed against Government Companies before Civil Courts for enforcing contracts, etc. However, whether the veil of the Government Companies, which are owned by Central or State Governments, could be lifted for issuing writs against them, for challenging any of their arbitrary actions against the said companies in respect of employment, award of tenders, tax issues, etc. was a vexed issue before the High Courts and Supreme Court and the developments in this field of law are discussed in this article.

In their earlier decisions, the courts have held that the statutory bodies, PSUs, Government Companies, to be not “State” and hence not amenable to the writ jurisdiction of the courts, based on the decision of Tamilin v. Hannaford L.R. (1950) 1 K.B. 18 wherein Lord Dennings observed that a trading activity carried on by the Government corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf.

“In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor does its powers fall within the province of government.”

In the case of University of Madras v. Shanta Bai, [(1953) IMLJ 287], the High Court of Madras held that the University of Madras, which was a body corporate created by the Madras University Act (VIII of 1923) was not a “State” within the meaning of Article 12 of the Constitution of India.

The evolution of Company Law is sui generis. Incorporation of companies by registration was introduced in 1844 and the doctrine of limited liability followed in the year 1855. The concept of separate legal personality of an incorporated company was recognized in the year 1867 in the case of Oakes v. Turquand (1867) L.R.2 H.L.325. Subsequently, in the year 1897, in the landmark case of Saloman v. Saloman & Company, the House of Lords firmly laid down that a company is a distinct legal person entirely different from the members of that company and the said principle is being followed ever since. It is interesting to know that, in India, the first case to apply the principle of distinct personality of an incorporated company was Kondoli Tea Co. Ltd., [(1886) ILR 13 Cal 43] which was even prior to the celebrated case of Saloman.

However, the courts started lifting the corporate veil when it was found that the principle of distinct corporate personality was being misused as a cloak for fraud or improper conduct. Gilford Motor Co Ltd. v. Horne [1933] Ch 935 was the first case in which the veil of a company was lifted. The courts have been, to an increasing extent, lifting or piercing the veil in order to perceive the real person in the corporate entity. However, the rule in Saloman’s case is still the principle and the instances of piercing the veil are the exceptions.

Fundamental rights as guaranteed to the Citizens of India can be claimed only against the “State”. Article 13(2) of the Constitution of India bars the “State” from making any law infringing fundamental rights. As per Article 12, the term “State” includes “other authorities” within the territories of India or under the control of the Central Government. Therefore, the actions of the bodies comprised within the term “State” as defined under Article 12 can be challenged before the courts under Article 12(2) on the ground of violation of fundamental rights and appropriate writs as provided in the Constitution of India can be issued by the High Courts and Supreme Court.

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

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In Subodh Ranjan Ghosh v. Sindri Fertilizers and Chemicals Ltd., AIR 1957 Pat 10, the Patna High Court though observed that the Sindri Fertilisers and Chemicals Ltd. was completely owned by the Union Government, yet, it held that the company had an independent legal entity and it could not be said to be a department of the State or its delegate or agent and further held that the Court was not entitled to pierce the veil of corporate entity and to examine the reality beneath.

In the case of V.S.Hariharan v. Hindustan Shipyard Ltd. (AIR 1960 A.P.518), the Andhra Pradesh High Court had refused to issue the writ on the following grounds:

“It is not in dispute that it is a company registered under the Indian Company’s Act. But what is contended for by the petitioner is that the Government of India have subscribed 80 per cent of the share capital, that 10 of the 13 Directors are nominated by the Government of India and that large subsidies and advances are being given by the Union Government from out of the Shipping Development Fund and, therefore, the Government of India must be regarded as having a controlling and administrative authority over the respondent-company. These circumstances will not in my opinion, make any difference to the jural character of the respondent company. It is still a limited liability company and can in no sense be called a judicial or quasi-judicial tribunal or public or statutory authority discharging judicial or quasi-judicial functions.”

In the case of M.Vergehse v. Union of India, Justice P.B.Mukherjee, (AIR 1963 Cal 421) while dismissing the Petition of the Petitioner who was the employee of the Hindustan Steel Ltd, a Government Company, on the basis of the above precedents, observed as under:

“In an appropriate case in future it may be necessary to re-examine and thoroughly consider how far the doctrine of incorporation making the company a legal entity creates a veil that cannot be pierced and extends to prevent service under such a company from being a service under the State within the meaning of Article 311 of the Constitution, specially in such companies like the Hindustan Steel Ltd., where it is admittedly a completely Government owned company, with all the funds of the capital and all the shares owned by the Government, and where the Government is not merely the majority share-holder of 51 per cent but also the 100 per cent owner of the company.”

The courts have held similarly in the case of other Government Companies, namely, K.C.Verma v. Bokaro Steel Ltd.[MANU/BH/0030/1971] and in the case of Ranjit Kumar Chatterjee v. Union of India (AIR 1969 Cal 95).

The Patna High Court reiterated the same stand, in the case of R.D.Singh v. The Secretary, Bihar State Small Industries Corporation Ltd. (AIR 1974 PAT 212) and held that the Bihar State Small Industries Corporation, a company incorporated under the Companies Act was not a “State” and hence not amenable to the writ jurisdiction of the court despite the fact that the State of Bihar held entire shares of the Company.

However, in the case of Rajasthan State Electricity Board v. Mohanlal, AIR 1967 SC 1857, the Supreme Court had made a small shift and held the Rajasthan State Electricity Board, which is a body corporate, to be a “State” and amenable to the Writ jurisdiction mainly on the basis that it discharged certain sovereign functions.

But, in the case of Praga Tool Corporation Ltd. v. C.A.Imanual (AIR 1969 SC 1306), the Supreme Court held that no writ petition could be filed against Praga Tools Corporation even though the Praga Tools Corporation is a company incorporated under the Indian Companies Act, 1913 and the Union Government and the Government of Andhra Pradesh were the major shareholders.

In Heavy Engineering Corporation Ltd. v. State of Bihar, (AIR 1970 SC 82), the company was one incorporated under the Companies Act. Its entire share capital was contributed by
the Central Government and all its shares were registered in the name of the President of India and certain officers of the Central Government. However, Supreme Court disregarded the same and held that such an inference that the corporation is the agent of the Government may be drawn where it was performing in substance governmental and not commercial functions.

The Supreme Court held similarly in the case of Dr. S.L.Agarwal v. Hindustan Steel Ltd. (AIR 1970 SC 1150). In the case of Sukhdev Singh, Oil & Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations v. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation (21.02.1975 - SC) : MANU/SC/0667/1975, the Corporations ONGC, LIC, Industrial Finance Corporation were held to be “State”. These have been held to be “State” being established by the statutes and not under the statutes.

However, in the case of Som Prakash v. Union of India (AIR 1981 SC 212), Supreme Court changed the course and held as under:

“The preponderant considerations for pronouncing an entity as State agency or instrumentality are (1) financial resources of the State being the chief funding source, (2) functional character being governmental in essence, (3) plenary control residing in Government, (4) prior history of the same activity having been carried on by Government and made over to the new body and (5) some element of authority or command. Whether the legal person is a corporation created by a statute, as distinguished from under a statute, is not an important criterion although it may be an indicium. Applying the constellation of criteria collected by us from Airport Authority (AIR 1979 SC 1628), on a cumulative basis, to the given case, there is enough material to hold that the Bharat Petroleum Corporation (Ltd.) is 'State' within the enlarged meaning of Article 12.

The conclusion is impeccable that if the corporate body is but an ‘instrumentality or agency’ of Government, then Part III will trammel its operations. We have no hesitation to hold that where the chemistry of the corporate body answers the test of ‘State’ above outlined it comes within the definition in Article 12. In our constitutional scheme where the commanding heights belong to the public sector of the national economy, to grant absolution to government companies and their ilk from Part III may be perilous. The court cannot connive at a process which eventually makes fundamental rights as rare as “roses in December, ice in June”, as Lord Byron lamented in English Bards and Scottish Reviewers. Article 12 uses the expression “other authorities” and its connotation has to be clarified. On this facet also the Airport Authority case AIR 1979 SC 1628 supplies a solution.”

In its further shift, widening the ambit of “State”, in the case of Ajay Hasia v. Khalid Mujib (AIR 1981 SC 487), the Supreme Court held that veil of Government companies could be lifted while stating as under:

“We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government. The corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the Companies Act, 1956 or a society registered under the Societies Registration Act, 1860. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society.

It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive
presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity".

Finally, in the case of Central Inland Water Transport Corporation Ltd. v. Brojo Nath (AIR 1986 SC1571), the Supreme Court ripped apart the veil of the Government Companies and held them to be "State" while observing as under:

"If there is an instrumentality or agency of the state which has assumed the garb of a Government company as defined in Section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State. For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State. The Corporation, which is the Appellant in these two Appeals before us, squarely falls within these observations and it also satisfies the various tests which have been laid down. Merely because it has so far not the monopoly of inland water transportation is not sufficient to divest it of its character of an instrumentality or agency of the State. It is nothing but the Government operating behind a corporate veil, carrying out a governmental activity and governmental functions of vital public importance. There can thus be no doubt that the Corporation is "the State" within the meaning of Article 12 of the Constitution."

Thereafter, the courts have lifted the veil of all Government Companies like Steel Authority of India Ltd., Bharat Earth Movers Ltd., Indian Telephone Industries Ltd. etc. and held them to be "State" for enforcing Fundamental Rights and now these Government Companies are amenable to Writ jurisdiction of the High Courts and Supreme Court. Therefore, the veil of the Government Companies could be lifted to show that it is the Government indeed which is behind the said Companies, for enforcing fundamental rights or to quash the arbitrary actions etc.

In all the cases cited above, the corporate veil of the Government Companies was sought to be lifted mainly by the employees thereof to get the arbitrary decisions of the said companies connected with their employment quashed.

However, in the case of Manikant Pathak v. State of Bihar [1997(1) BLJR 721], while agreeing with the Petitioners that it is really the State Government which has been carrying the activities through Bihar Finished Leathers Ltd. and Bihar State Agro Industries Development Corporation Ltd., yet, it was held by the Patna High Court that the lifting of veil of Government Companies could not be extended to such an extent to hold the State Government to be responsible for the liability of those incorporated companies. In this case, the employees of those companies were not being paid and hence approached High Court for a direction for payment of salaries. On the contrary, the High Court had directed the State Government to file winding up petitions for winding up of those companies in accordance with the provisions of the Companies Act.

In the case of Kapila Hingoranii v. State of Bihar [(2003) 6 SCC 1], in dealing with the same issue of payment of salaries to the Government Companies owned by Bihar State Government, Supreme Court held as under:

“The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the Company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the Government companies; in the matter of enforcement of human rights and/or rights of the citizen of life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.”. However, Supreme Court added that they were not laying down any law to the effect that the “State” was directly or vicariously liable to pay salaries/remuneration of the employees of the Government Companies and the order was passed only in the facts and circumstances of the case. Therefore, the question as to whether the liability of the Government Companies is that of the State or Central Government or not is still left open.

LIFTING OF CORPORATE VEIL OF GOVERNMENT COMPANIES IN RESPECT OF TAX MATTERS

State Trading Corporation of India Ltd. is a company incorporated under the Companies Act, 1956 and the shares are held by the President of India and two Secretaries to Government of India. Generally, it is the courts or tax authorities who seek to pierce the veil of the company for assessing tax. However, in the case of State Trading Corporation of India Ltd. v. Commercial Tax Officer, Visakhapatnam, the Company itself sought lifting of corporate veil for enforcing the Fundamental Rights of the Citizens who are the shareholders of the Company. The share capital of the state Trading Corporation is entirely contributed by the Central Government. The shares are held by the President of India and two Secretaries to Government. The State Trading Corporation has been assessed to sales tax by the Commercial Tax Officer, Visakhapatnam and a demand has been made upon it. It challenged the demand under Article 32 of the Constitution of India on the ground, inter alia, that the impugned order and the demand for the tax infringed its fundamental rights which are guaranteed to citizens by Article 19 sub-clauses (f) and (g). The State of Andhra Pradesh denied that the State Trading Corporation being an artificial person is a citizen and consequently contended that Article 19 is inapplicable because the word ‘citizen’ in the article refers to natural persons.

It was held by the Supreme Court that with incorporation, the corporate body becomes a distinct legal entity vis-a-vis the members, who have contributed to the incorporation. Fundamental rights, which are available to the citizens (e.g., Articles 19, 29 and 30) under the Constitution of India, are not available to incorporated bodies, as they do not answer the description of citizen of India and did not allow the argument of the company to lift the veil of the corporate to enforce the fundamental rights.

Electronics Corporation of India Ltd. v. Government of Andhra Pradesh [MANU/S0933/1999] is another case in which lifting
Lifting of Corporate Veil of Government Companies

of corporate veil for the purpose of levy of non-agricultural assessment tax was discussed. ECIL is an incorporated Company and owned by the Government of India. In 1963 the State of Andhra Pradesh had granted a large area of land to the Department of Atomic Energy of the Central Government. In 1964 the Department of Atomic Energy gave the said land to the company. The Government of Andhra Pradesh issued notice of demand for payment of non-agricultural assessment tax on the said land. The company filed a writ petition impugning the said notices of demand. The contention of the company in the writ petition that the property of the company was the property of the Union of India as much as the company was a Government company, its shares being wholly owned by the Union of India. The said land was, therefore, the property of the Union of India and the legislature of the State of Andhra Pradesh was barred by the provisions of Article 285 of the Constitution of India from imposing any tax, including non-agricultural assessment, on the property of the Union of India. However, the Supreme Court held that a clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

LIFTING OF VEIL OF GOVERNMENT COMPANIES
UNDER LIMITATION ACT

In India, Limitation Act, 1963, governs the field. Section 3 of the Limitation Act, 1963 provides that the bar of limitation is required to be examined by the Court in relation to every suit, appeal or application even if limitation as such has not been set up as a defence since it is a matter of Public Policy.

As per the Scheme under the Act, limitation prescribed for claims on behalf of private persons and Governments including Central, State and Local authorities is different. Generally, suits by private persons for various claims under the Act is three years whereas the time limit prescribed for any suit on behalf of the Government is thirty years (30 years) as per Article 112 of Schedule to the Limitation Act, 1963.

Article 112 provides as under:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Description of Suit</th>
<th>Period of Limitation</th>
<th>Time from which Period begins to Run</th>
</tr>
</thead>
<tbody>
<tr>
<td>112.</td>
<td>Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government, or any State Government including the Government of the State of Jammu and Kashmir.</td>
<td>Thirty years</td>
<td>When the period of limitation would begin to run under this Act against a like suit by a private person.</td>
</tr>
</tbody>
</table>

In India, Public Sector Undertakings (PSUs), Public Sector Banks (PSBs), Public Sector Enterprises (PSEs) and Government Companies have been formed under and by various statutes of Parliament/State legislatures which are wholly or substantially funded from the public exchequer and they are here to stay. However, the moot question is whether Government Companies can invoke Article 112 or not.

In the case of Bharat Sanchar Nigam Ltd. v. Pawan Kumar Gupta [(2007)4PLR414], the Punjab & Haryana High Court had an occasion to deal with the said issue. In the said case, BSNL, a Government of India Undertaking, and a Company registered under the Companies Act, 1956, had filed a suit for recovery of Rs.25,296/- for the use of telephone provided to the Defendant therein. The court dismissed the suit against the Defendant since the suit filed by the BSNL was beyond three years and hence was time barred and held that the BSNL could not invoke Article 112 since BSNL was not “Central Government” and dismissed the appeal filed by BSNL.

Similarly, the Madras High Court had also referred to the General Clauses Act in the case of BSNL v. Wipro Net Ltd., [2011 (5) CTC 854] and rejected the claim of BSNL to invoke Article 112 of the Limitation Act, 1963, by its decision dated 6.6.2011.

The judgment of Punjab & Haryana High Court (cited supra) was unsuccessfully carried in appeal [(Bharat Sanchar Nigam Ltd. v. Pawan Kumar Gupta (2016) 1 SCC 63)] by the BSNL before the Supreme Court. The Supreme Court held as under:

“By a careful reading of the aforesaid Article, it makes abundantly clear, that a suit can be instituted by or on behalf of the Central Government. It is not the case of the Appellant herein that it has filed the suit on behalf of the Central Government. This is for the reason that the Appellant-company has instituted the suit on the basis of the instrument of Office Memorandum wherein the DoT has transferred its assets and actionable claims. It cannot be said that it has filed the suit on behalf of the Central Government because the Appellant/Plaintiff is a company, a distinctly independent and separate entity. Therefore, the reliance placed upon the aforesaid Article 112 of the Limitation Act to claim that there would be thirty years of limitation period as the asset transferred is an actionable claim due to the DoT is wholly misconceived in law. The other argument advanced by the learned senior Counsel on behalf of the Appellant-company that it is an agency or instrumentality under the Central Government which falls within the inclusive definition as defined Under Section 3(8) of the General Clauses Act is wholly misconceived for the reason that Article 112 of the Limitation Act speaks of the Central Government or the State Government. Its agencies or instrumentalties are not incorporated under Article 112 of the Limitation Act. Such an argument is contrary to the Constitution Bench judgment of this Court in the case of Padma Sundara Rao (Dead) and Ors. v. State of T.N. and Ors. reported in (2002) 3 SCC 533. In paragraph 14 of the said judgment it is categorically stated that the legislative casus omissus cannot be supplied by judicial interpretative process and the Court cannot do the legislative functions.”

It is clear from the above discussion that, the corporate veil of the Government Companies has been allowed to be lifted to a limited extent of enforcement of fundamental rights only. The other grounds on which the corporate veil is lifted in case of other than Government Companies are not relevant for Government Companies.
ESTIMATING VOLATILITY AND FORECASTING CRUDE OIL FUTURE RETURN WITH GARCH MODELS

ICSI – CCGRT INVITES MANUSCRIPTS ON MULTIDISCIPLINARY CASE STUDIES
Estimating Volatility and Forecasting Crude Oil Future Return with GARCH Models

This study is an extensive study that estimates crude oil future series with twenty various GARCH specifications of models. The overall exercise executes an idea on the suitability of a specific specification for estimating volatility among the twenty specifications formulated. The results reveal that among the GARCH types of specifications of models, GARCH models proved to be better for estimating volatility of the estimated return series. Further, in the business and economic environment, it is very important to predict various kinds of financial variables accurately in order to develop proper strategies and avoid the risk of potential large losses. Forecasting is also done in the formulated return series to find out a suitable forecasting model for the return series. The result shows that GARCH (3,2) specification of model proved to be best suitable model for measuring forecasting efficiencies where as MSE observed as the best fit error measure for the estimated return series.

1. INTRODUCTION

One of the most important driving forces of the global economy is the crude oil. Crude oil prices put significant effects on economic growth of both oil exporting and importing countries. It also affects the standard of living, interest rate, balance of payment, and more particularly the well-being of the population around the world. Crude oil now-a-days is treated as the life blood of all economies.

There is steady increase in the daily demand for oil in the globe, more particularly in developing countries like India due to phenomenal increase in per capita income, increase in sale of motor vehicles, increase in infrastructure and mostly due to increase in the middle age population. Further events like war, conflict, instability, recession and political unrest also contributes in the precautionary demand for oil and its prices. Steady increase in oil demand has forced the oil prices to fluctuate which is termed as volatility. The magnitude of fluctuations in the Volatility, when one wants to measure directly in a financial market is unobservable. It is rather measured by standard deviations or variance of returns which are directly considered as a measure of risk of assets.

As crude oil plays a major role in global economic activity, understanding the volatility of its prices is of paramount importance. For risk managers, oil price volatility mainly impacts hedging. Long-term uncertainty in future oil prices can alter the incentives to develop new oil units in producing countries. In the short term, volatility can affect the demand for storage, as greater volatility should lead to increased storage demand, spot prices and the marginal convenience yield.

*The author thanks Dr. S.K. Dixit, Mentor-Research Cell and CS Sonia Baijal, Director, PD, PP & Studies for encouraging, guiding and giving necessary inputs while developing the manuscript.

Figure-1 derived below shows the trend of oil consumption in India.
over the years. From the figure it can be seen that the demand for crude oil in India is gradually increasing and is reached at 4.7 million barrels per day (mbpd) by the year 2017-18.

Figure-2: Crude Oil Consumption (in mbpd)

Source: Ministry of Petroleum & Natural Gas and IBEF study, September, 2018

Figure-3 derived below shows import figures of crude oil to India over the years. It can be seen from the figure that import of crude oil has gradually increased over the years.

Figure-3: Crude Oil Imports (in mbpd)

Source: Ministry of Petroleum & Natural Gas and IBEF study, September, 2018

3. REVIEW OF RELATED LITERATURES

Table-1 derived below reviews related literatures on volatility and forecasting that are available in the literature.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>RESEARCHERS</th>
<th>DESCRIPTION OF THE RESEARCH WORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>Engle</td>
<td>Introduced the ARCH model which says that the second movement of the distribution of a return series is serially correlated. The conditional variance is a function of the lagged error term.</td>
</tr>
<tr>
<td>1984</td>
<td>Hodrick &amp; Srivastava</td>
<td>Concluded that the forward rate is not an unbiased predictor of the corresponding future or spot rate.</td>
</tr>
<tr>
<td>1986</td>
<td>Bollerslev</td>
<td>Extended the ARCH model with the name of GARCH (p,q) model.</td>
</tr>
<tr>
<td>1988</td>
<td>Diebold &amp; Peter</td>
<td>Found that ARCH effects aggregate out over time and the normality assumption upon which the GARCH model is based on disagrees over higher range of frequencies.</td>
</tr>
<tr>
<td>1989</td>
<td>Ross</td>
<td>Experimented the influence of sudden change in variance on the intensity or the direction of the information flow among markets, stocks or portfolios.</td>
</tr>
<tr>
<td>1990</td>
<td>Lamoureux &amp; Lastrapes</td>
<td>Investigated the persistence of volatility in the GARCH family of models when the variance changes suddenly and found that volatility persistence is over-stated when structural breaks are ignored.</td>
</tr>
</tbody>
</table>

The above compiled by author from various sources.

The above discussed literatures recognize the time-varying nature of the conditional volatility of asset return.

4. OBJECTIVES OF THE STUDY

This study is based on following objectives:

i. Twelve different specifications of GARCH models, four specification of both EGARCH and GJR-GARCH models have been formulated separately by using crude oil return series to estimate volatility.

ii. Volatility in the return series is estimated by using both qualitative as well as quantitative measures.

iii. By using the developed return series, with the help of twenty GARCH models and four EGARCH and GJR-GARCH models, return series is forecasted for next 15 days. The efficiency of the model has been carried out by estimating forecasting error by using Mean Error (ME) and Mean Square Error (MSE) measures.

5. METHODOLOGY

The methodology adopted in the study is categorized in following sub-sections separately:

5.1 Hypothesis

1. \( H_0 \): No serial correlation exists at corresponding elements of lags.
2. \( H_1 \): No correlation exists between the lags of the return series.
3. \( H_0 \): No leverage effect is found in EGARCH specifications of models.
4. \( H_0 \): No evidence of leverage effect is seen in GJR-GARCH specifications of models.

5.2 Data

The return series consists of 1155 days closing values of crude oil data covering from 1\textsuperscript{st} January, 2014 to 31\textsuperscript{st} August, 2018. For
For risk managers, oil price volatility mainly impacts hedging. Long-term uncertainty in future oil prices can alter the incentives to develop new oil units in producing countries. In the short term, volatility can affect the demand for storage, as greater volatility should lead to increased storage demand, spot prices and the marginal convenience yield. Investors who have already invested and new investors who want to invest in crude oil trading are also benefited from volatility estimation and forecasting measures.

5.3 Estimation of Return Series
Let \( R_t \) be the rate of return of considered crude oil market index from time \( t-1 \) to time \( t \). Volatility of a return series is measured as standard deviation of the rates of return. The GARCH type of specifications of models can be implemented by specifying the conditional mean and conditional variance equations. The rates of returns have been calculated by taking logarithmic differences of prices of two successive periods. Symbolically, it is:

\[
R_t = \log \frac{P_{t+1}}{P_t} = \log P_{t+1} - \log P_t
\]

(1)

where successive price observations made at time ‘\( t \)’ and ‘\( t+1 \)’ as \( P_t \) and \( P_{t+1} \), respectively and \( R_t \) is the return series.

5.4 GARCH Models
GARCH modeling builds on advances in the understanding and modeling of volatility in the last decade. It takes into account excess kurtosis (i.e., fat tailed behaviour) and volatility clustering, two important characteristics of financial time series. The model is as:

\[
\epsilon_t = b_t \sqrt{h_t}
\]

where \( \sigma_b^2 = 1 \)

\[
and \quad h_t = k + \sum_{i=1}^{p} G_i \epsilon_{t-i}^2 + \sum_{j=1}^{q} A_j \epsilon_{t-j}^2
\]

(2)

Since \( \{ b_t \} \) is a white-noise process which is independent of past realizations of \( \{ \epsilon_{t-1} \} \), the conditional and unconditional means of \( \{ \epsilon_t \} \) are equal to zero. By taking the expected value of \( \{ \epsilon_t \} \), it is easy to verify that:

\[
E \epsilon_t = Eb_t \sqrt{h_t} = 0
\]

(3)

The point here is most important, hence, needs to be noted that the conditional variance of \( \{ \epsilon_t \} \) is given by \( \{ \epsilon_{t-1}^2 = h_t \} \). Thus, the ‘conditional variance’ of \( \{ \epsilon_t \} \) is given by \( h_t \) derived in equation (3) derived above.

This generalized ARCH (p,q) model, popularly known as GARCH (p,q), allows for both autoregressive and moving average components in the heteroskedastic variance.

5.5. The EGARCH Model
Nelson (1991) proposed the Exponential Generalised Autoregressive Conditional Heteroscedasticity (EGARCH) model. The most important contribution was to propose a model, EGARCH, to test the hypothesis that the variance of the return was influenced directly by positive and negative excess returns. The Nelson’s model can be of the form as:

\[
r_t = \mu_t + \epsilon_t
\]

\[
\mu_t = \phi_0 + \phi_1 r_{t-1} + ... + \phi_r r_{t-S}
\]

\[
\ln(h_t) = k + \sum_{i=1}^{p} G_i \sigma_{t-i}^2 + \sum_{i=1}^{q} \gamma_i \epsilon_{t-i} + \sum_{j=1}^{q} A_j \left( \frac{\epsilon_{t-q}}{\sigma_{t-q}} - \frac{2}{\sqrt{\pi}} \right)
\]

(4)

The parameters estimated in the formula measures as defined earlier.

5.6 The GJR-GARCH Model
The GJR-GARCH model was introduced by a group of authors Glosten, Jagannathan, and Runkle (1993) and was named with the first letter of each author. It extends the standard GARCH (p,q) model to include asymmetric terms that capture an important phenomenon in the conditional variance of equities: the propensity to test the hypothesis that the variance of the return was influenced directly by positive and negative excess returns. The Nelson’s model can be of the form as:

\[
r_t = \mu_t + \epsilon_t
\]

\[
\mu_t = \phi_0 + \phi_1 r_{t-1} + ... + \phi_r r_{t-S}
\]

\[
h_t = k + \sum_{i=1}^{p} G_i \sigma_{t-i}^2 + \sum_{i=1}^{q} \gamma_i \epsilon_{t-i} [\epsilon_{t-i} < 0] + \sum_{j=1}^{q} A_j \epsilon_{t-j}^2
\]

(5)

The parameters estimated in the study measures as defined usual.

5.7 Valuation of the Models
All the six measures considered are calculated by using the following formulae:

\[
\text{Mean Error (ME)} = \frac{1}{h} \sum_{i=1}^{h} (\hat{\sigma}_i^2 - \sigma_i^2)
\]

\[
\text{Mean Squared Error (MSE)} = \frac{1}{h+1} \sum_{i=1}^{h} (\hat{\sigma}_i^2 - \sigma_i^2)^2
\]

Where ‘h’ is the number of day’s forecasts and ‘\( \hat{\sigma}_i \)’ stands for ‘forecasted value’ and ‘\( \sigma_i \)’ for ‘actual value’.
6. EMPIRICAL ESTIMATIONS

Empirical estimation has been carried out in two separate sections. Section 6.1 explains volatility estimation while section 6.2 estimates forecasting efficiencies.

6.1 SECTION-I: VOLATILITY ESTIMATION

This section is organized into three important sections as follows: (a) Pre-fit Analysis; (b) Estimation of the GARCH specifications of Models and (c) Post-estimation Analysis.

(a) The Pre-fit Analysis

To avoid convergence problem, it is needed to perform a ‘pre-fit analysis’.

- Plotting the return series and analyzing the ACF and PACF of the return series
- Performing the preliminary tests, such as Engle’s ARCH test or Q-test.
- Analyzing the ACF and PACF of the Return Series

To check the correlation in the estimated return series, it needs to compute the Auto Correlation Function (here forth referred as ACF) and the Partial Auto Correlation Function (referred as PACF). While it is usually impossible to obtain a complete decision of a stochastic process (i.e., to actually specify the underlying probability distributions), the autocorrelation function will prove extremely useful because it provides a particular description of the process for modeling purposes. It again tells how much correlation exists (and by implementation how much interdependency there is) between neighboring data points in the explained series ‘R’. Both the calculations are represented with graphs. The graphs of ACF and PACF of the return series reveal very useful information on the broad characteristics of the return series. Basically, they provide indication if one needs to use any correlation structure in the conditional mean. Estimated ACF and PACF graphs of crude oil return series are represented below in figure-4 and figure-5 respectively. From both ACF and PACF figures, it can be observed that all the return series displays presence of autocorrelation.

To test the presence of significant correlation of the estimated return series are squared and the ACF of the squared returns are calculated. The figure-6 displays the ACF of the squared returns of the crude oil return series.

It can be observed from the squared ACF (figure-6) return graphs that the autocorrelation has increased for the return series. For the considered return series it is significantly higher for all the lags. It can also be observed from the graph that the ACF has started to reduce upto 4th lags, than remained prominent between 5th lags to 8th lags and beyond eight lags almost appeared to die out slowly, showing the possibility of a variance process close to being non-stationary.

In conclusion, there has been detected significant clustering in the estimated crude oil return series thing that is good indicator of the fact that is absolutely appropriate to reflect the usefulness of the GARCH type of models which was the prime purpose of this study.

- Analyzing the LBP Q-test and Engle’s ARCH Test

The autocorrelation detected with the derivation of the above graphs are not enough to finish the pre-estimation analysis. The quantification check can be done by calculating the correlation using formal hypothesis checks, like the Ljung-Box-Pierce Q-test and Engle’s ARCH test. The LBP Q-test and the Engel’s ARCH test have been computed at 3, 5 and 7 lags, at an alpha value of 0.05. The results of both the tests, show that all parameters estimated at three lags are higher than their critical values. The estimated values of LBP Q-tests are presented in the following table-2 derived below.

<table>
<thead>
<tr>
<th>H</th>
<th>P-value</th>
<th>Statistic</th>
<th>Critical Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.000</td>
<td>0</td>
<td>113.75</td>
<td>18.3070</td>
</tr>
<tr>
<td>1.000</td>
<td>0</td>
<td>120.85</td>
<td>24.9958</td>
</tr>
<tr>
<td>1.000</td>
<td>0</td>
<td>130.12</td>
<td>31.4104</td>
</tr>
</tbody>
</table>

Note: Calculated by using Matlab software.

This conforms that the null hypothesis formulated should be rejected. Rejection of null hypothesis ultimately accepts hypothesis which conform that correlation exists between the lags.

(b) Estimation of the GARCH Specifications of Models

The basic purpose of this study is to choose the best possible univariate GARCH model among the various GARCH types of models on crude oil return series. This translates into finding if the coordinates ‘p’ and ‘q’ of GARCH (p,q); EGARCH(p,q) and GJR (p,q) should be selected in order to optimize the trade-off between the extra parameters and the extra predictability achieved. A time series analysis must be a stationary series.

For a time series analysis, as our study, it is desirable to have stationary series. Stationarity of a series can be examined by summation of values of \( G_{t}+A_{t} \). The required condition is that the sum value should be less than one. The results obtained from the univariate GARCH, EGARCH and GJR-GARCH models are

<table>
<thead>
<tr>
<th>H</th>
<th>P-value</th>
<th>Statistic</th>
<th>Critical Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.000</td>
<td>0</td>
<td>330.77</td>
<td>18.3070</td>
</tr>
<tr>
<td>1.000</td>
<td>0</td>
<td>346.08</td>
<td>24.9958</td>
</tr>
<tr>
<td>1.000</td>
<td>0</td>
<td>355.27</td>
<td>31.4104</td>
</tr>
</tbody>
</table>

Note: Calculated by using Matlab software.

From the above table-2, it is observed that all the ‘H’ values (Boolean decision flag) for the return series and at all the three lags are equal to one. The probability values (p-values) are also very significant as all are zero. Again, the statistic values for the indices are higher than their respective critical values at all the three lags of ACF for the estimated indices. All these estimated values prove that serial correlation exists at corresponding elements of lags.

The Engel’s test statistics also reveals significant evidence in support of GARCH type of models effect i.e., heteroskedasticity.

From the table-3, it is found that the value of ‘H’ is ‘1’ (H=1) estimated for all the three lags for the indices which prove the existence of significant correlation between the corresponding elements of lags for the return series. The p-values are observed to be zero and the estimated values are higher than the critical values. Thus, the second null hypothesis formulated to be tested in this study has been rejected which ultimately accepts the alternate hypothesis.

<table>
<thead>
<tr>
<th>H</th>
<th>P-value</th>
<th>Statistic</th>
<th>Critical Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.000</td>
<td>0</td>
<td>330.77</td>
<td>18.3070</td>
</tr>
<tr>
<td>1.000</td>
<td>0</td>
<td>346.08</td>
<td>24.9958</td>
</tr>
<tr>
<td>1.000</td>
<td>0</td>
<td>355.27</td>
<td>31.4104</td>
</tr>
</tbody>
</table>

Note: Calculated by using Matlab software.

From the above sub-sections it can be concluded that the estimated return series considered in this study are heteroskedastic. However, on the degree of heteroskedasticity, the indices are defers from each other by reveling some more or less degree. For the crude oil return series proves the existence of significant correlation between lags in the return series. Thus, the return series considered in this study are ideal conditions for implementing GARCH specifications of models.
summarized. The GARCH \((p,q)\) specifications of models for crude oil return series have been estimated and the results are presented in table-4 derived. Since the sum values of \(G_iA_i\) for all GARCH specifications are less than one, hence, the return series satisfies the stationarity condition. It is also observed that the sums of all the GARCH specifications are very close to one which indicates a long persistence of shocks in volatility that implies the presence of 'long memory'.

The values of GARCH lag coefficients \((G_i)\) are found to be large. This indicates that shocks to conditional variance takes a long time to die out which proves 'persistent' of volatility in the return series. It is with the low values of error coefficients \((A_i)\) (which are in between 0.08 to 0.15) for all the GARCH specifications suggest that market surprises induce relatively small revisions in future volatility. With the increase in lag of the errors in GARCH specifications volatility effects on the estimated values can be observed. It indicates that, when the GARCH series is measured with various lags in error it is having significant effect on the estimation.

The parameters for various specifications of EGARCH models for the returns have been estimated and presented in same table-4. From the results, the leverage effects \((\gamma)\) in all the four specifications for the first lag are found to be positive. This implies that positive innovations are more destabilizing than negative innovations in the crude oil market trade. It can be seen that no leverage effect is found in EGARCH specifications of models. Since, the t-values are significant; hence, the third null hypothesis formulated is valid. The acceptance of null hypothesis automatically rejects the alternative hypothesis which invalidates EGARCH models. The large values of \(A_i\)’s prove the sensitisiveness of volatility to market events. Again, the values of \(G_i\) in all the four specifications are positive and are also above 0.91 which prove that volatility takes long time to die out.

From the table-4 it can be seen that the \(G_i\)’s for the return series for GJR specifications are found to be greater than 0.9. This suggests that volatility takes long time to die out. The depth of volatility is found to be more. The \(A_i\) values also suggest that the market surprises take long time in future for revision. However, the \(\gamma\) coefficients (measures asymmetric effect) for all the four specifications are estimated to be negative when estimated for the first lag of the error. This indicates that there is no evidence of leverage effect in the return series. This accepts the formulated fourth null hypothesis and, hence, rejects the alternate hypothesis. For this reason, it is clear that GJR models are not suitable for the crude oil data.

An estimated result of GARCH (1,1) model for crude oil return series is presented below.

\[
h_t = 2.1 \times 10^{-5} + 0.91041 \times h_{t-1} + 0.083622 \times \epsilon_{t-1}^2
\]

Form the results of the GARCH type of specifications/models, it can be concluded that both the EGARCH and GJR-GARCH specifications are not fix as appropriate models to measure the estimated return series. It is thus, only the GARCH specifications proved to be having its superiority in estimating the volatility of the series over the other two GARCH types of specifications of models. The ARCH specifications again like other return series seems to be not enough in explaining the volatility alone without the GARCH specifications.

**Table-4: Co-efficient of GARCH Specifications of Models**

```
<table>
<thead>
<tr>
<th>Parameter/ Variance</th>
<th>(K)</th>
<th>(G_1)</th>
<th>(G_2)</th>
<th>(A_1)</th>
<th>(A_2)</th>
<th>(A_3)</th>
<th>(G_0)</th>
<th>(O_0)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GARCH(1,1)</td>
<td>0.1e-007</td>
<td>0.91041</td>
<td>0.083622</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(0,1)</td>
<td>0.5e-007</td>
<td>0.38213</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(2,1)</td>
<td>0.2e-005</td>
<td>0.39179</td>
<td>0.19309</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(3,3)</td>
<td>0.7e-005</td>
<td>0.36092</td>
<td>0.17305</td>
<td>0.16794</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(1,2)</td>
<td>2e-007</td>
<td>0.91386</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(1,3)</td>
<td>3e-007</td>
<td>0.91386</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(2,2)</td>
<td>4e-007</td>
<td>0.43703</td>
<td>0.12426</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(2,3)</td>
<td>5e-007</td>
<td>0.44993</td>
<td>0.12319</td>
<td>0.00000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(3,1)</td>
<td>6e-007</td>
<td>0.32015</td>
<td>0.12001</td>
<td>0.00000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(3,2)</td>
<td>7e-007</td>
<td>0.38151</td>
<td>0.4848</td>
<td>0.15415</td>
<td>0.01451</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GARCH(3,3)</td>
<td>8e-007</td>
<td>0.39447</td>
<td>0.15502</td>
<td>0.13865</td>
<td>0.00100</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
```

Note: Estimated value from the models.

- **Post-Estimation Analysis**
  - The post-estimation analyses of GARCH families of models can be explained in following two steps:
    - Plotting the ACF of the series
    - Quantifying the Engle’s ARCH test
  - Both the steps are analyzed in details as below:
    - **Plotting the post-estimation ACF**

  This step investigates the possibility of presence or absence of volatility clustering in the estimated innovation. The post estimation innovations, standard deviations and ACF estimated for the crude oil return series is plotted in figure-7. From the derived figures, the innovations (innovations divided by their conditional standard deviation), they appear little clustering. Again from the ACF plots at the lower panel of each figure, no correlation can be observed. From the figures, it can be observed that the innovations are very close at each lags upto twenty lags. Furthermore, if the ACF of the squared standardized innovations are to be compared to that of figures to the ACF of the squared returns derived in figure-7 (i.e., prior to the fitting of GARCH models), sufficient degrees of heteroskedasticity in the raw returns are observed.

  - **Quantifying the Engle’s ARCH Test**

  At this stage, the results of both the pre-estimated and post-estimated ARCH-test are compared. The pre-estimation test rejects the acceptance of null hypothesis, but after using the standardized innovations (estimated by GARCH), the same ARCH test indicates acceptance of null hypothesis \((H=0)\). These results confirm the explanatory power of the default model and the existence of the GARCH effects.
In the business and economic environment, it is very important to predict to various kinds of financial variables accurately in order to develop proper strategies and avoid the risk of potential large losses. It is a fact that there does not exist any single model in the financial econometrics literature except GARCH type of models for the estimation of both volatility and forecasting.

### Table-5: Post-estimation Engle’s Test Results

<table>
<thead>
<tr>
<th>H</th>
<th>P-value</th>
<th>Statistic</th>
<th>Critical Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>1.000</td>
<td>0.0422</td>
<td>18.3070</td>
</tr>
<tr>
<td>0</td>
<td>1.000</td>
<td>0.0596</td>
<td>24.9958</td>
</tr>
<tr>
<td>0</td>
<td>1.000</td>
<td>0.0934</td>
<td>31.4104</td>
</tr>
</tbody>
</table>

Note: Calculated by using Matlab software.

6.2 SECTION-II: FORECASTING EFFICIENCY

In the business and economic environment, it is very important to predict to various kinds of financial variables accurately in order to develop proper strategies and avoid the risk of potential large losses. It is a fact that there does not exist any single model in the financial econometrics literature except GARCH type of models for the estimation of both volatility and forecasting. Two basic inferences are expected from these error values. To find out the best model for each return series separately. The answer of this question will help the interested scholars to find out more appropriate model for forecasting said return series while they have to take any decision related to the series. Secondly, which forecasting error measure reveals least or minimum error value among the considered two error measures? The answer to this question will give an idea regarding the suitability of the error estimate. So, the answer of both the above raised questions will help the decision maker to prove the efficiency and validity of the GARCH models that are formulated and calculated in the study.

The forecasting errors as calculated by using two error measures with twenty GARCH type of models for crude oil return series is presented in table-6. From the table it can be seen that GARCH (3,2) specification of model has been ranked first i.e., Rank-1 by both the measures calculated independently.

### Table-6: Forecasting Errors of GARCH Type of Models for Crude Oil Return Series

<table>
<thead>
<tr>
<th>GARCH Type of Models</th>
<th>ME</th>
<th>RANK</th>
<th>MSE</th>
<th>RANK</th>
</tr>
</thead>
<tbody>
<tr>
<td>GARCH(1,1)</td>
<td>0.00969</td>
<td>09</td>
<td>1.33e-06</td>
<td>08</td>
</tr>
<tr>
<td>GARCH(0,1)</td>
<td>-0.00425</td>
<td>18</td>
<td>-1.07e-06</td>
<td>19</td>
</tr>
<tr>
<td>GARCH(0,2)</td>
<td>-0.00373</td>
<td>19</td>
<td>-1.09e-06</td>
<td>18</td>
</tr>
<tr>
<td>GARCH(0,3)</td>
<td>-0.00382</td>
<td>20</td>
<td>-1.08e-07</td>
<td>20</td>
</tr>
<tr>
<td>GARCH(1,2)</td>
<td>0.01192</td>
<td>11</td>
<td>5.6e-06</td>
<td>13</td>
</tr>
<tr>
<td>GARCH(1,3)</td>
<td>0.00776</td>
<td>08</td>
<td>9.4e-07</td>
<td>02</td>
</tr>
<tr>
<td>GARCH(2,1)</td>
<td>0.00564</td>
<td>02</td>
<td>1.71e-06</td>
<td>09</td>
</tr>
<tr>
<td>GARCH(2,2)</td>
<td>0.00681</td>
<td>04</td>
<td>7.94e-07</td>
<td>03</td>
</tr>
<tr>
<td>GARCH (3,1)</td>
<td>0.00564</td>
<td>03</td>
<td>6.02e-07</td>
<td>07</td>
</tr>
</tbody>
</table>

Note: Estimated value from the models.
The lowest values that are recorded by the measures are MSE-0.0000(6.02E-07) followed by ME (0.00011). This indicates that GARCH (3,2) specification i.e., calculated by considering three lags of GARCH and two lags of ARCH better suits for predicting the return efficiently for the crude oil return series. Moreover, among the GJR specifications, GJR (2,2) model proves to be efficient than other three GJR specifications estimated in this study. But the error values of the GJR models including the GJR (2,2) are beyond the tolerable value for which it can be said that GJR models over predicts the forecasting return. The performances of EGARCH specifications of models formulated in the study observed to be very disappointing for the estimated return series. From the table it can be seen that these specifications are ranked higher i.e., from rank-16 to rank-20. Again, from the derived table it can also be seen that MSE, among the other forecasting error measures, calculates the minimum error value for all the twenty models calculated in the study. It is thus, enough to consider that MSE is the most suitable measure to estimate error.

6. CONCLUSION

Volatility estimation is an important area of research in financial market. In this study, the competitive ability of three important GARCH type of volatility estimating models with twenty different specifications for crude return series has been estimated. Based on the volatility estimation efficiency of models, the superiority of the GARCH model again proved to be better over the other two specifications of the models. So far as forecasting measure is considered, GARCH (3,2) specification proved to be best suitable for the crude oil return series with MSE as the best fit error measure for the series.

REFERENCES

ICSI – CCGRT INVITES Manuscripts on Multidisciplinary Case Studies

ICSI-CCGRT is pleased to invite Manuscripts on Multidisciplinary Case Studies with an objective of exploring subject specific expertise that is reserve among its Members both in employment and practice. This invite is open for Company Secretary Professionals who are either in employment or in practice. Academicians and industry experts are also encouraged to contribute.

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

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

**Objectives:**

Case studies are the method of exploring and analyzing the life of a unit, be it a person, a family, an institution and any specific subject. These are particularly useful in depicting a holistic portrayal of individual’s experiences and results regarding a specific study. These can also be used to organize a wide range of information about a specific content and then analyze the happenings. It also facilitates further analysis through cross comparison with other similar instances available in the research literature. It is more an in-depth analysis and comparison that the researcher wants to examine.

**Framework:**

The experts have to keep in view following characteristics while designing a case:

- Comprehensive study of the subject where all the related aspects are to be studied deeply and thoroughly
- It should deal what and why aspects of the problem identified
- The subject under study should be considered as a unified whole

**Coverage**

The experts should contribute case(s) on the following specified subject areas:

1. Corporate Laws including Company Law
2. Securities Laws
3. FEMA and other Economic and Business Legislations
4. Insolvency Law
5. Competition Law
6. Business Strategy and Management
7. Interpretation of Law

**Case Paper Guidelines**

- Original cases on any of the above areas specified are invited
- The paper must be accompanied with the author’s name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, without any maximum limit of words.
- The text should be typed in MS-Word.
- Participants should email their correspondence on the following email id: research@icsi.edu &/or prasant.sarangi@icsi.edu latest by 30.11.2018.
- There is no restriction on number of cases. One participant can submit more than one case in specified subjects.

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STANDARD CHARTERED BANK & ORS v. DIRECTORATE OF ENFORCEMENT & ORS [SC]
K.KISHAN v. VIJAY NIRMAN COMPANY PVT. LTD [SC]
PAHUJA TAKII SEED LTD. & ORS v. REGISTRAR OF COMPANIES, NCT OF DELHI & HARYANA [NCLAT]
M/S SHRIRAM EPC LIMITED v. RIOGLASS SOLAR SA [SC]
SONELL CLOCKS AND GIFTS LTD v. THE NEW INDIA ASSURANCE CO. LTD [SC]
STATE OF MAHARASHTRA v. SAYYED HASSAN SAYYED SUBHAN [SC]
COMMISSIONER OF INCOME TAX v. CLASSIC BINDING INDUSTRIES [SC]
IN RE: ANTIMONOPOLY CONDUCT IN THE DRY-CELL BATTERIES MARKET IN INDIA AGAINST PANASONIC CORPORATION, JAPAN & ORS [CCI]
M/S COUNIFREEDISE v. TIMEX GROUP INDIA LTD [CCI]
As in the case of torts, the general rule prevails that the corporation may be criminally liable for the acts of an officer or agent, assumed to be done by him when exercising authorized powers, and without proof that his act was expressly authorized or approved by the corporation. In the statutes defining crimes, the prohibition is frequently directed against any "person" who commits the prohibited act, and in many statutes the term "person" is defined. Even if the person is not specifically defined, it necessarily includes a corporation. It is usually construed to include a corporation so as to bring it within the prohibition of the statute and subject it to punishment. In most of the statutes, the word "person" is defined to include a corporation.

Therefore, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability.

Inasmuch as all criminal and quasi-criminal offences are creatures of statute, the amenability of the corporation to prosecution necessarily depends upon the terminology employed in the statute. In the case of strict liability, the terminology employed by the legislature is such as to reveal an intent that guilt shall not be predicated upon the automatic breach of the statute but on the establishment of the 'actus reus', subject to the defence of due diligence. The law is primarily based on the terms of the statutes. In the case of absolute liability where the legislature by the clearest intendment establishes an offence where liability arises instantly upon the breach of the statutory prohibition, no particular state of mind is a prerequisite to guilt. Corporations and individual persons stand on the same footing in the face of such a statutory offence. It is a case of automatic primary responsibility. It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue.

Going by the provisions in Section 56 of the FERA Act, if the view expressed in Velliappa Textiles is accepted as correct law, the company could be prosecuted for an offence involving rupees one lakh or less and be punished as the option is given to the court to impose a sentence of imprisonment or fine, whereas in the case of an offence involving an amount or value exceeding rupees one lakh, the court is not given a discretion to impose imprisonment or fine and therefore, the company cannot be prosecuted as the custodial sentence cannot be imposed on it.

The question whether a company could be prosecuted for an offence for which mandatory sentence of imprisonment is provided continued to agitate the minds of the courts and jurists and the law continued to be the old law despite the recommendations of the Law Commission and the difficulties were expressed by the superior courts in many decisions.

As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the
company. Such a discretion is to be read into the Section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the life, liberty and property of the citizens. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.

We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles on this point and answer the reference accordingly.

**LW 73:10:2018**

**K.KISHAN v. VIJAY NIRMAN COMPANY PVT. LTD [SC]**

Civil Appeals No. 21824 and 21825 of 2017

R.F.Nariman & Indu Malhotra, JJ. [Decided on 14/08/2018]

Insolvency and Bankruptcy Code, 2016 read with the Arbitration and Conciliation Act, 1996 – operational debt- arbitration award in favour of operational creditor – corporate debtor challenged the award- insolvency petition filed against corporate debtor based on the award as admitted debt- NCLT and NCLAT entertained the application- whether tenable-HeId, No.

**Brief facts:**

The present appeals raise an important question as to whether the Insolvency and Bankruptcy Code, 2016 ("the Code") can be invoked in respect of an operational debt where an Arbitral Award has been passed against the operational debtor, which has not yet been finally adjudicated upon.

Vijay Nirman Company Pvt. Ltd. (the Respondent) entered into a sub-Contract Agreement with one M/s Ksheerabad Constructions Pvt. Ltd. ("KCPL") to undertake road construction work. During the course of the project, disputes and differences arose between the parties and the same were referred to an Arbitral Tribunal, which delivered its Award in favour of the respondent. KCPL challenged the award, in appeal, under Section 34 of the Arbitration and Conciliation Act, 1996. Meanwhile, Respondent sent a demand notice under the I&B Code and also initiated insolvency proceedings against KCPL. In reply to the notice KCPL claimed that there is a dispute and the award has been challenged, adjudication of which is pending. NCLT as well as NCLAT admitted the insolvency petition stating that challenge of award could not be considered to be ‘existence of dispute’ under the I&B Code. This is under challenge in the present appeals.

**Decision: Appeals allowed.**

**Reason:**

A reading of Section 9(5) (ii) (d) would show that an application under Section 8 must be rejected if notice of a dispute has been received by the operational creditor. In the present case, it is clear on facts that the entire basis for the notice under Section 8 of the Code is the fact that an Arbitral Award was passed on 21.07.2017 against the Appellant. As has been pointed out by us, this clearly appears from the gist of the case that was filed along with the insolvency petition. The fact that the reply of 16.02.2017 to the notice given under Section 8 was within 10 days, and raised the existence of a dispute, also cannot be doubted.

Our recent judgment in Mobilox Innovations (supra) throws considerable light on the issue at hand. Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the Arbitral Award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the Award. Such a case would clearly come within para 38 of Mobilox Innovations (supra), being a case of a pre-existing ongoing dispute between the parties. The Code cannot be used in terrorem to extract this sum of money of Rs. two lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.

We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, at least till the final adjudicatory process under Sections 34 & 37 has taken place. We may hasten to add that there may be cases where a Section 34 petition challenging an Arbitral Award may clearly and unequivocally be barred by limitation, in that it can be demonstrated to the Court that the period of 90 days plus the discretionary period of 30 days has clearly expired, after which either no petition under Section 34 has been filed or a belated petition under Section 34 has been filed. It is only in such clear cases that the insolvency process may then be put into operation.

We may hasten to add that there may also be other cases where a Section 34 petition may have been instituted in the wrong court, as a result of which the petitioner may claim the application of Section 14 of the Limitation Act to get over the bar of limitation laid down in Section 34(3) of the Arbitration Act. In such cases...
also, it is obvious that the insolvency process cannot be put into
operation without an adjudication on the applicability of Section
14 of the Limitation Act. For all these reasons, we are of the view
that the judgment of the Appellate Tribunal needs to be set aside
and is therefore reversed.

**LW 74:10:2018**

**PAHUJA TAKII SEED LTD. & ORS v. REGISTRAR OF
COMPANIES, NCT OF DELHI & HARYANA [NCLAT]**

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

S.I.Mukhopadhyaya, A.I.S.Cheema & Balwinder singh. [Decided on
27/09/2018]

Companies Act, 2013- sections 441 & 451- compounding of
offences- powers of Tribunal- Legal principles elucidated.

**Brief facts:**
In these appeals as common question of law is involved,
they were heard together and disposed of by this common
judgment. The Appellants, Companies along with its Officers,
filed applications under Section 441 of the Companies Act, 2013
for compounding of the offence(s) committed by them, on the
ground that corrective measures have already been taken, which
have been dismissed/disposed of by the National Company Law
Tribunal (hereinafter referred to as “Tribunal”) by common order.
The questions require for determination in these appeals are:

i. Whether the Companies Act, 2013 bars filing of a joint
application for compounding of offence by a defaulting
company along with its officers in default?

ii. Whether the Companies Act, 2013 bars filing of a joint
application for compounding of the same offence committed
in different years?

iii. Whether an offence punishable under the relevant
provisions of the Companies Act, 2013 with ‘imprisonment
or fine’, if repeated within a period of three years results into
a mandatory imprisonment for the defaulters and whether the
same can be compounded or not?

iv. Whether an offence punishable under the relevant
provisions of the Companies Act, 2013 with ‘only fine’,
if repeated within a period of three years results into a
mandatory imprisonment for the defaulters and whether the
same cannot be compounded?

v. Whether the Tribunal has jurisdiction to compound offences
where the fine prescribed for such offence does not exceed
Rs. 5,00,000/-

**Decision: Appeals allowed.**

**Reason:**
On perusal of sub-section (1) to (4) of Section 441, it is clear
that any offence punishable under the Companies Act, whether
committed by a company or any officer thereof with fine only,
may, either before or after the institution of any prosecution
can be compounded by the Tribunal, and where the maximum
amount of fine does not exceed five lakh rupees, can be
compounded by the ‘Tribunal’ as also by ‘the Regional Director’
or ‘any officer authorised by the Central Government’.

The aforesaid provision makes it clear that Section 441 only
puts a restriction on the power of the ‘Regional Director’ and
‘the authorised officers of the Central Government’ permitting
them to compound the offences wherein the maximum amount
of fine does not exceed five lakh rupees and is punishable with ‘fine only’. No such fetter has been put on powers of the
Tribunal, which is the main forum for such compounding of
offences, the other forum of ‘Regional Director’ and ‘Officer
of the Central Government’ being alternative but restricted by
extent of quantum of punishment. The Tribunal has the powers
to compound all the offences irrespective of any pecuniary limit
as evident from a bare perusal of Section 441.

The Tribunal erroneously read Section 441 to hold that where
the penalty is less than five lakh rupees, it has no jurisdiction
because of limitation on its pecuniary jurisdiction, which is non-
existent. In absence of any pecuniary jurisdiction limitation
under Section 441 (except for the ‘Regional Director’ and ‘the
officer authorised by the Central Government’), the Tribunal
has no power to lay pecuniary jurisdiction limitation in respect
of Tribunal itself.

In terms of the scheme envisaged under Section 441 of the
Companies Act, 2013, there is no bar on preferring a single
application for compounding the same offence committed
during different financial years by the Company and its Officers,
nor there do any bar on a joint application being preferred
by a Company along with its Officers in default. It is trite that
procedures are deemed to be permitted unless expressly
prohibited. In this connection, we may refer the decision of the
Hon’ble Supreme Court in Rajendra Prasad Gupta v. Prakash
Chandra Mishra and Ors, AIR 2011 SC 1137.

Further, in absence of any specific bar of ‘joinder of parties’ or
joinder of separate cause of actions in preferring a compounding
application, we hold that joinder of parties for same offence is
permitted. Since facts leading to any non-compliance under
the Act on the part of a company and its officers in default
will be same, any suggestion to the contrary will only lead to
multiplication of proceedings and different findings, which is not
desirable.

The provision for compounding offences vested with the Tribunal,
the Regional Director and the Officer authorised by the Central
Government was earlier vested under earlier Section 621A of
the Companies Act, 1956. Explaining its position, the Central
Government from its Ministry of Corporate Affairs by letter
dated 28th April, 1993 informed that there is no bar under the
Companies Act, 1956 for filing joint compounding applications
under Section 621A. After enactment of Section 441 of the
Companies Act, 2013, the Central Government from its Ministry
of Corporate Affairs reiterated its position by letter dated 31st
January, 2018 that there is no bar under the Companies Act,
2013 in filing joint compounding applications.

Section 451 of the Companies Act, 2013 relates to ‘punishment in
case of repeated default’, is attracted both to ‘a company’ or
‘an officer’ of a Company who commits an offence punishable
either with fine or with imprisonment. From bare perusal of
Section 451, it is clear that where the same offence is committed
for the second or subsequent occasions within a period of three
years, then, (a) that company and (b) every officer thereof who
is in default shall be punishable with twice the amount of fine for
such offence in addition to any imprisonment provided for that
offence.
It is a settled that the Company cannot be imprisoned but if such Company also commits an offence punishable with fine, in such case, if such offence is committed for the second or subsequent occasions within a period of three years, then, the company and every officer thereof who is in default shall be liable to pay twice the amount of fine. The sentence ‘in addition to any imprisonment’ will not be applicable to the Company even if provided for that offence.

On the other hand, if an officer of a company commits an offence punishable either with fine or with imprisonment and the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and such officer thereof who is in default shall be punishable with twice the amount of fine for such offence. It is not necessary that additional imprisonment will be automatically attracted, in absence of any such additional punishment of imprisonment is prescribed under the substantive penal provision of the Act.

It cannot be stated that Section 451 is not attracted in case of violation of sub-section (1) of Section 88. If Section 451 is made applicable to sub-section (5) of Section 88, it is clear that the Company and every officer of the Company who is in default in case of repeated default for the second or subsequent occasions within a period of three years is punishable with twice the amount of fine for such offence as prescribed under sub-section (5) of Section 88. In absence of any provision of imprisonment prescribed under sub-section (5) of Section 88, it cannot be held that in terms of Section 451, the company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to imprisonment even if not prescribed under the provision and the Company cannot be imprisoned.

At this stage, it is also to be determined as to what should be the meaning of “same offence is committed for the second or subsequent occasions within a period of three years” or to say as to how the period of three years to be counted to determine that the same offence is committed for the second or subsequent occasions.

In order to interpret Section 451 and the words used in it “where the same offence is committed for the second or subsequent occasions within a period of three years” aid can be taken from Explanation of sub-section (2) of Section 441 where with regard to that Section, it is provided that “any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously ‘compounded’, shall be deemed to be a first offence”. (Emphasis supplied) It is apparent that unless previously the offence has been “compounded”, the rigour of higher punishment as contemplated under Section 451 would not get attracted.

From the aforesaid provision, it is clear that if a company contravenes any of the provision of Chapter VI, the company shall be punishable with fine which shall not be less than one lakh rupees and may extend to ten lakh rupees. With respect to every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

We have held that the Company cannot be imprisoned. The officer of the company who is in default shall be punishable with imprisonment or fine or with both as prescribed under Section 86. Whether such officer is to be imposed punishment of fine or imprisonment or both will depend on the basis of gravity of offence which can be decided only by the Court of Competent Jurisdiction (Special Court). Such power having been delegated to the Court of Competent Jurisdiction, it cannot be held that in view of Section 451 for committing the same offence for the second or subsequent occasions within a period of three years, the officer is liable to be imprisoned. If such interpretation is given, then it will amount to taking away the power of the Competent Court (Special Court) to decide whether in the fact and circumstances of the case and on the basis of gravity of offence, the officer will be liable for punished of imprisonment or fine or both.

Therefore, we hold that the Tribunal is wrong in holding that if Section 451 is read along with Section 441(6) for offence punishable with ‘fine or imprisonment’ or ‘only with fine’ or ‘fine and imprisonment’ on repeated defaults committed within three years, the Tribunal does not have jurisdiction to compound the offence.

A bare perusal of the provision makes it evident that Section 451 only provides that ‘fine’ in case of any repeated defaults shall be ‘twice the amount of fine’, in addition or in alternative to any imprisonment for such default if prescribed under the relevant provisions of Act, 2013. It does not make the imprisonment mandatory.

Secondly, use of word ‘any’ in Section 451 in the phrase ‘in addition to any imprisonment for that offence’ leaves discretion with the prosecuting authority/court to punish the defaulter with imprisonment. Had the intention of the legislature been to make the imprisonment mandatory, it would not have used the word ‘any’. If the interpretation adopted by the Tribunal is accepted then it will amount to substituting words in a penal provision, which is impermissible in the law.

For the reasons aforesaid, we hold that the Tribunal failed to appreciate Section 451 of the Companies Act, 2013. We further hold that Section 451 only provides with ‘fine’ in case of any repeated defaults shall be ‘twice the amount of fine’, in addition to any imprisonment for such default under the relevant provisions of the Act, if prescribed and it does not make the ‘imprisonment mandatory’.

In view of the aforesaid findings, we set aside the impugned order and remit the respective Company Petitions to the Tribunal for decision on its merit taking into consideration the offence committed by the Company and its Officers and the Report of the Registrar of Companies.
Civil Appeal No. 9515 of 2018 (arising out of SLP (C) No. 13913 of 2018)

R Nariman & Indu Malhotra, JJ. [Decided on 13/09/2018]

Arbitration and Conciliation Act, 1996 read with India Stamp Act, 1889- sections 48&49- enforcement of foreign award- whether stamp duty on the foreign award has to be paid for enforcement-Held, No.

Brief facts:
The Appellant had suffered a foreign award and the Respondent filed the foreign award in India for execution. The Single Judge of the Madras High Court allowed the execution of this foreign award, overruling the objection of the respondent that no stamp duty has been paid on in India and hence it could not be enforced under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996 (“1996 Act”).

Appeal to the Division bench was also dismissed. Hence, the present appeal before the Supreme Court.

Decision: Appeal dismissed.

Reason:
The main bone of contention in the present appeal is whether the expression “award” would include a foreign award.

On a reading of the aforesaid provisions of the Civil Procedure Code, 1882 and the Indian Arbitration Act, 1899, it becomes clear that the only “award” that is referred to in the Indian Stamp Act, 1899 is an award that is made in the territory of British India provided that such an award is not made pursuant to a reference made by an order of the Court in the course of a suit. At this point in time, it is important to note that there were several princely states in India governed by sovereign rulers which had their own laws. Arbitration laws, if any, in the aforesaid princely states, if they were to culminate in awards, would not be “awards” under either the Civil Procedure Code, 1882 or the Indian Arbitration Act, 1899. They would therefore be foreign awards insofar as British India is concerned. An award made in a princely state, or in a foreign country, if enforced by means of a suit in British India, would not be covered by the expression “award” contained in Item 12 of Schedule I of the Indian Stamp Act, 1899. Only awards which are decisions in writing by an arbitrator or umpire, made in British India, on a reference made otherwise than by an order of the Court in the course of a suit would be included.

This position continued even when the Code of Civil Procedure, 1908 contained a Second Schedule, which substituted the arbitration provisions contained in the Code of Civil Procedure, 1882. Here again, under the Second Schedule, parties to a suit may apply for an order of reference to arbitration and an award would follow.

It will thus be seen that “award” under Item 12 of Schedule I of the Indian Stamp Act, 1899 has remained unchanged till date. As has been held by us hereinabove, in 1899, this “award” would refer only to a decision in writing by an arbitrator or umpire in a reference not made by an order of the Court in the course of a suit. This would apply only to such award made at the time in British India, and today, after the amendment of Section 1(2) of the Indian Stamp Act, 1899 by Act 43 of 1955, to awards made in the whole of India except the State of Jammu and Kashmir. This being the case, we are of the view that the expression “award” has never included a foreign award from the very inception till date. Consequently, a foreign award not being includible in Schedule I of the Indian Stamp Act, 1899, is not liable for stamp duty.

SONELL CLOCKS AND GIFTS LTD v. THE NEW INDIA ASSURANCE CO. LTD [SC]

Civil Appeal Nos. 1217-1218 of 2017

Dipak Misra, A.M. Khanwilkar & D.Y. Chandrachud, JJ. [Decided on 21/08/2018]

Insurance Act read with Appointment of Surveyors Regulations- claim lodged with delay of about 4 months- insurer appointed surveyor- later insurer repudiated the claim- whether appointment of surveyor operates as waiver against insurer- Held, No.

Brief facts:
The appellant had taken an Insurance Policy from the respondent (Insurance Company) for a period of one year from 19th July, 2004 to 18th July, 2005, in respect of its building, plant and machinery. Due to torrential rains and floods in the entire area, the water gushed into the factory premises causing damage to the machinery as well as raw material lying therein. This event occurred on 4th August, 2004. Intimation of the loss was given to the respondent after a gap of 3 months 25 days, on 30th November, 2004. Thereafter, the respondent appointed a surveyor to assess the loss caused due to the flooding of the factory premises. The surveyor after causing inspection submitted its report to the respondent *inter alia* stating that the claim was not payable on account of the failure of the complainant to comply with the mandate of Clause 6 of the general conditions of the policy. Acting upon the said report, the respondent repudiated the claim.

Decision: Appeal dismissed.

Reason:
The singular question involved in these appeals is whether the respondent (insurer) had waived the condition relating to delay in intimation, by appointing a surveyor.

It is well established position that waiver is an intentional relinquishment of a right. It must involve conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. It is an agreement not to assert a right. To invoke the principle of waiver, the person who is said to have waived must be fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. There must be a specific plea of waiver, much less of abandonment of a right by the opposite party.

In the present case, it is common ground that the letter of repudiation elucidates that the claim of the appellant was...
Accordingly, these appeals must fail.

The expression “duration” is of some significance which is reflective of the existence or otherwise of the policy itself. In the present case, there is no dispute about the subsistence of the policy but is one of violation of condition No.6 of the policy. Furthermore, in the present case the controversy will have to be answered on the basis of Standard Fire and Special Perils Policy relatable to condition No.6 obligating the insured to give forthwith intimation of the loss to the insurer. The two clauses are materially different and relate to two different and distinct insurance policies. In other words, Clause 5 of the Marine Insurance Policy and Clause 6 of the present policy are incomparable being qualitatively different.

To put it differently, Galada’s case (supra) was not a case which considered repudiation based on a premise or a reason similar to condition No.6 of the present policy and a specific plea taken by the insurer in that behalf in the repudiation letter itself. Notably, Clause 5 of the Marine Insurance Policy which was the subject matter in Galada’s case (supra) did not have a negative covenant as in this case in the proviso to condition No.6 of the subject policy. The fulfilment of the stipulation in Clause 6 of the general conditions of the policy is the sine qua non to maintain a valid claim under the policy.

In that, the event occurred on 4th August, 2004 but intimation was given to the insurer only on 30th November, 2004 after a gap of around 3 months 25 days. No explanation was offered for such a long gap much less plausible and satisfactory explanation. The stipulation in condition No.6 of the policy to forthwith give notice to the insurer is to facilitate the insurer to make a meaningful investigation into the cause of damage and nature of loss, if any.

Thus, the appointment of a surveyor by the respondent after receipt of intimation of the loss from the appellant, in the context of the present insurance policy, coupled with the 2000 Regulations and in particular an express stand taken in the repudiation letter sent by the respondent to the appellant after consideration of the surveyor’s report, it cannot be construed to be a case of waiver on the part of the respondent.

In view of the above, we uphold the conclusion of the Commission that the respondent (insurer) had not waived the condition relating to delay stipulated in Clause 6 of the general 6 conditions of the policy, by appointing a surveyor. Accordingly, these appeals must fail.

**Decision: Appeals allowed.**

**Reason:**

There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence [T.S. Baliah v. T.S. Rengachari– (1969) 3 SCR 65]. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under two enactments, but the bar is only to the punishment of the offender twice for the same offence. Where an act or an omission constitutes an offence under two enactments, the bar is only to the punishment of the offender twice for the same offence. Where an act or an omission constitutes an offence under two enactments, the bar is only to the punishment of the offender twice for the same offence.

In State of Rajasthan v. Hat Singh (2003) 2 SCC 152 this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay (2014) 9 SCC 772 held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.

Regarding the second point as to whether offences under Section 188, 272, 273 and 328 have been made out against the Respondents, we have considered the submissions made by the learned Additional Solicitor General for the State of...
Mahrashtra and the learned Senior Counsel appearing for the Respondents. Without going into details of the submissions made, we find that points that were not argued before the High Court were raised by both sides. We suggested to the parties that the matters have to be considered afresh by the High Court by permitting both sides to raise all contentions which were canvassed before us. There was no serious objection by both sides to the remand of the matters back to the High Court. The only request made by the learned Senior Counsel for the Respondents is that no coercive action should be taken against the Respondents during the pendency of Criminal Writ Petitions and the Criminal Applications before the High Court. We remand the matters to the High Court to consider the Criminal Writ Petitions and Criminal Applications afresh in respect of the second point framed.

**LW 78:10:2018**

**COMMISSIONER OF INCOME TAX v. CLASSIC BINDING INDUSTRIES [SC]**

Civil Appeal No(S). 7208 of 2018 with batch of appeals

Ashok Bhushan & A.K. Sikri, JJ. [Decided on 20/08/2018]

Income tax Act, 1961- section 80-IC: assessee claimed 100% tax benefit after completion of 5 years- whether tenable-Held, No.

**Brief facts:**

Facts are immaterial. A neat question of law which arises in these appeals revolve around Section 80-IC of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’). The High Court by its impugned judgment has discussed various aspects and nuances of the aforesaid provisions which had arisen because of varied kinds of issues raised in a batch of appeals filed by the assessees before the High Court. We are not concerned with all those issues. The only question which needs to be answered in these appeals is as follows:

"Whether an assessee who sets up a new industry of a kind mentioned in sub-section (2) of Section 80-IC of the Act and starts availing exemption of 100 per cent tax under sub-section (3) of Section 80-IC (which is admissible for five years) can start claiming the exemption at the same rate of 100% beyond the period of five years on the ground that the assessee has now carried out substantial expansion in its manufacturing unit?"

**Decision:** Appeal allowed.

Reason: In the instant case, we are concerned with the assessees who had established their undertakings in the State of Himachal Pradesh. Sub-section (3), as noted above, mentions the period of 10 years commencing with the initial Assessment Year. Sub-section (6) puts a cap of 10 years, which is the maximum period for which the deduction can be allowed to any undertaking or enterprise under this section, starting from the initial Assessment Year. Another significant feature under sub-section (3) is that the deduction allowable is 100% of such profits and gains from an undertaking or an enterprise for five Assessment Years commencing with the initial Assessment Year and thereafter the deduction is allowable at 25% (or 30% where the assessee is a company) of the profits and gains. Cumulative reading of these provisions brings out the following aspects:

(a) Those undertakings or enterprises fulfilling the conditions mentioned in sub-section (2) of Section 80-IC become entitled to deduction under this provision.

(b) This deduction is allowable from the initial Assessment Year. “Initial Assessment Year” is defined in Section 80-IB (14) (c) of the Act.

(c) The deduction is @ 100% of such profits and gains for first 5 Assessment Years and thereafter a deduction is permissible @ 25% (or 30% where the assessee is a company).

(d) Total period of deduction is 10 years, which means 100% deduction for first 5 years from the initial Assessment Year and 25% (or 30% where the assessee is a company) for the next 5 years.

When we keep in mind the aforesaid scheme and spirit behind this provision, such a situation cannot be countenanced where an assessee is able to secure deduction @ 100% for the entire period of 10 years. If that is allowed it will amount to doing violence to the provisions of sub-section (3) read with sub-section (6) of Section 80-IC. A pragmatic and reasonable interpretation of Section 80-IC would be to hold that once the initial Assessment Year commences and an assessee, by virtue of fulfilling the conditions laid down in sub-section (2) of Section 80-IC, starts enjoying deduction, there cannot be another "Initial Assessment Year" for the purposes of Section 80-IC within the aforesaid period of 10 years, on the basis that it had carried substantial expansion in its unit.

In view of the aforesaid discussion, we hold that after availing deduction for a period of 5 years @ 100% of such profits and gains from the ‘units’, the assessees would be entitled to deduction for remaining 5 Assessment Years @ 25% (or 30% where the assessee is a company), as the case may be, and not @ 100%. The question of law is, thus, answered in favour of the Revenue thereby allowing all these appeals.

**LW 79:10:2018**

**IN RE: ANTICOMPETITIVE CONDUCT IN THE DRY-CELL**
Suo Motu Case No. 02 of 2017

Sudhir Mital, Augustine Peter, U. C. Nahta & Js. G.P. Mittal. [Decided on 30/08/2018]

Competition Act, 2002- cartel in dry cell battery in India - leniency petition by member of the cartel- Petition allowed.

Brief facts:
The present case was initiated by the Commission suo motu pursuant to receiving a leniency application ("LP Application") from Panasonic Corporation, Japan ["OP-1"] filed by it on behalf of itself, the enterprises controlled by it.

In the LP Application, it was disclosed by the Applicants that there existed a bi-lateral ancillary cartel between OP-2 and Geep Industries (India) Private Limited (hereinafter "OP-3") in the institutional sales of dry cell batteries. This cartel existed from at least 2013 till late-2015 to early 2016. OP-2 was the supplier of batteries to OP-3, as part of its institutional sales. OP-2 had a primary cartel with Eveready Industries India Ltd. (hereinafter "Eveready") and Indo National Limited (hereinafter "Nippo") whereby the three of them co-ordinated the market prices of zinc-carbon dry-cell batteries. Hence, OP-2 had the fore-knowledge about the time of price increase to be affected by this primary cartel. This fore-knowledge was used by OP-2 as leverage to negotiate and increase the basic price of the batteries being sold by it to OP-3. OP-2 would lead OP-3 to believe that the Market Operating Price (hereinafter "MOP") and Maximum Retail Price (hereinafter "MRP") of all the major manufacturers would increase in the near future, and OP-3 would be in a position to pass on the increase in the basic price to the consumers by such increased MOP/ MRP.

Also, it was disclosed that OP-2 and OP-3 used to agree on the market price of the batteries being sold by them, so as to maintain price parity in the market. They used to monitor the MOP of each other and of other manufacturers, and inform each other in cases of any discrepancy noticed. Such price parity was in consonance with the prices determined by the primary cartel. E-mail communications between OP-2 and OP-3 with regard to such monitoring were provided by the Applicants with their submissions. Also, such an understanding between the two of them was recorded in Clause 4.3 of the agreement entered into between OP-2 and OP-3 on 01.10.2010, a copy of which was given.

Further, it was disclosed that as per Clause 2 of the aforesaid agreement, OP-2 used to pack the batteries as per instructions of OP-3 and make supplies. Such packaging had to be changed whenever the MRP increased. The dates on which the packaging was changed by OP-2 for OP-3 when compared with a corresponding list for OP-2's own products shows that price increase in OP-3's products were even within one month of price increase in OP-2's products. Such simultaneous price increase is also evident of a pre-meditated arrangement.

Based on the fore-going, the Applicants submitted that contravention of Section 3 (3) read with Section 3 (1) of the Act has been committed by OP-2 and OP-3.

Decision: Leniency petition allowed.

Reason:
In view of the foregoing, the Commission holds that OP-2 and OP-3 have contravened of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act by indulging in cartelisation and for such contravention, Mr. S. K. Khurana and Mr. Parimal Vazir of OP-2 and Mr. Jainuddin Thanawala, Mr. Joeb Thanawala and Mr. Pushpa M. of OP-3 are also liable under Section 48 of the Act.

Therefore, in terms of Section 27 (b) of the Act, the Commission is empowered to impose upon such companies as well as their persons, appropriate penalties. In the case of OP-2, penalty of up to three times of its profit for each year of the continuance of the cartel may be imposed as the said figure is higher while in case of OP-3, penalty of up to ten percent of its turnover for each year of the continuance of the cartel may be imposed as the said figure is higher. Thus, the Commission decides to impose upon OP-2, penalty @ 1.5 times the profit for each year of the continuance of the cartel which amounts to Rs.73,93,25,600/-. On the other hand, with regard to OP-3, there is no gain saying that OP-3 was not entitled to breach the law even on the plea of compulsion as taken before the DG; however, keeping in mind that OP-2, being the manufacturer of dry-cell batteries and supplier of OP-3, was in the position to influence and dictate the terms of the anti-competitive PSA to OP-3 and OP-3, being a very small player having insignificant market share in the market for dry-cell batteries was not in a bargaining/negotiating position vis-a-vis OP-2, the Commission decides to impose upon OP-3, penalty @ 4% of the turnover for each year of the continuance of the cartel which amounts to Rs. 9,64,06,682/-. As far as the persons held liable under Section 48 of the Act are concerned, the Commission may impose upon them, a penalty of up to ten percent of the average of their income for the three preceding financial years. Keeping all the factors in mind, the Commission, in the present case, deems it appropriate to impose penalty @ 10 % of the average of their income for the three preceding financial years, upon such persons, which is calculated as under:

At this stage, the Commission takes into account the fact that OP-1, on behalf of itself, OP-2 and their Directors, officers and employees had filed an LP Application in the matter. The Commission observes that in the LP Application, vital disclosures had been made by submitting evidence of the alleged cartel which enabled the Commission to form a prima facie opinion regarding existence of the cartel. At the time the LP Application was filed, the Commission had no evidence to form such an opinion. Further, through the application, the Commission could get vital evidences which disclosed the modus operandi of the cartel such as the PSA and the e-mail communications exchanged between OP-2 and OP-3. These evidences were found crucial in establishing contravention of the provisions of Section 3 of the Act in the matter.

The Commission finds that OP-2 and its representatives
had provided genuine, full, continuous and expeditious cooperation during the course of investigation. Thus, full and true disclosure of information and evidence and continuous co-operation so provided, not only enabled the Commission to order investigation into the matter, but also helped in establishing the contravention of Section 3 of the Act. On the basis of the foregoing, the Commission decides to grant 100% reduction in the penalty amount leviable under the Act, to OP-2 and its Directors, officers and employees identified above to be liable under the provisions of Section 48 of the Act.

**LW 80:10:2018**

**M/S COUNFREEDISE v. TIMEX GROUP INDIA LTD [CCI]**

Case No. 55 of 2017

[Decided on 14/08/2018]

**Competition Act, 2002- sections 3 & 4—complaint by dealer against watch manufacturer- complaint dismissed.**

**Brief facts:**
The gist of allegations of the Informant is that the OP stopped doing business with it on account of non-compliance of RPM diktat of the OP and the OP is said to be discriminating against the Informant vis-a-vis other online retailers like Cloudtail, XL Retail etc. Moreover, the OP has allegedly failed to provide after-sale services to the customers who purchased the wrist watches of the OP from the Informant through online platform. Through such conduct, the OP is alleged to have contravened Section 3(3), 3(4) and Section 4 of the Act.

**Decision: Dismissed.**

**Reason:**
The Commission has perused all the material available on record. Considering the oral and written submissions of the parties and taking into account all other material available on record, the Commission observes as under:

Given the presence of such a major player like Titan in the relevant market along with other reputed foreign brands, there seems to be enough competitive constraints upon the OP in the relevant market. Thus, the OP does not appear to be a dominant player in the relevant market. In the absence of dominance, no case of contravention of Section 4 of the Act is made out.

Even though the Commission has concluded that the OP is not dominant in the relevant market, yet the Commission proceeds to examine the allegations of the Informant pertaining to abusive conduct by the OP. The Informant has alleged that the OP has instituted false litigation against the Informant. The Commission takes cognizance of the contentions of the OP that it is facing the menace of counterfeit products, especially on account of online retailers. After conducting its internal verification, the OP initiated legal action against such sellers, including the Informant, to restrain them from manufacturing and/or selling counterfeit products. The Commission observes that the holder of an Intellectual Property has the right to protect it, and therefore, reasonable actions and restrictions imposed in this regard cannot be found at fault under the competition law. Thus, the Commission does not find substance in the allegation of the Informant that the OP has initiated sham litigation against the Informant on account of not abiding by RPM and/or discount policy of the OP.

With regard to the allegation of RPM, the Commission observes that mere mention of the term ‘control discount’ in a single isolated email to a single seller, without any adverse consequence to the other online sellers including the Informant, is not sufficient to infer any anti-competitive conduct on the part of the OP. The Commission notes that for RPM to be effective in the form of discount control, it has to be imposed on all the online retailers and not just the Informant. The Informant has itself stated that the OP has not taken any action against entities like Cloudtail and XL Retail for offering even more discounts on OP’s product on the online platforms. This also negates the contention of the Informant that the OP was indulging in RPM. Further, any agreement in the nature of RPM, in order to be termed as anti-competitive, has to meet the test of causing an appreciable adverse effect on competition (hereinafter, the ‘AAEC’). The Commission notes that even if a manufacturer controls the prices of its products in the market, such conduct would not result into an AAEC unless such a manufacturer holds significant market power. The Commission observes that in the instant case, the OP is just one of the many players in the wrist watch market in the organised sector and players like Titan etc. are way ahead of the OP. Moreover, the Informant is only one of the intermediaries of the OP in the online space, and online sales account for less than one-seventh of the total sales of the OP. The Commission notes that the Informant has failed to place on record any evidence to establish that the OP enforced RPM across the distribution channel so as to be able to cause an AAEC in the relevant market. Therefore, the Commission does not find any merit in the allegations of the Informant that the OP has contravened the provisions of Section 3(4) (e) of the Act.

With regard to the contention of the Informant that it is a key player and refusal to deal by the OP with the Informant will cause AAEC in the relevant market, the Commission observes that the sales by the OP to the Informant is not significant compared to the total sales of the OP. In addition, the revenue derived by the Informant from the sale of watches of the OP is also not significant to infer that the Informant is dependent on the OP. Thereafter, the allegations under Section 3(4) of the Act are examined on the basis of rule of reason approach, and the Commission does not find that there is AAEC as a result of the OP’s denial to deal with the Informant, more so when the OP is apprehensive of dilution of its brand as a result of counterfeit products being sold in the online market.

In light of the above analysis, the Commission finds that no prima facie case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against the OP in the instant matter. Accordingly, the matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
FROM THE GOVERNMENT
1. (1) These rules may be called the Companies (Registration Office and Fees) Fifth Amendment Rules, 2018. In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Fifth Amendment Rules, 2018. (2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in serial number VII, for the ‘note’ the following ‘note’ shall be substituted, namely:-

“Note: During the financial year (2018-2019), fee of rupees five hundred shall be payable from 21.09.2018 to 05.10.2018 and fee of rupees five thousand shall be payable on or after 06.10.2018”.

K. V. R. MURTY
Joint Secretary

2. In the Companies (Registration Office and Fees) Rules, 2014, published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 905(E) dated 20.09.2018

In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Fifth Amendment Rules, 2018. (2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in serial number VII, for the ‘note’ the following ‘note’ shall be substituted, namely:-

“Note: During the financial year (2018-2019), fee of rupees five hundred shall be payable from 21.09.2018 to 05.10.2018 and fee of rupees five thousand shall be payable on or after 06.10.2018”.

K. V. R. MURTY
Joint Secretary
Companies (Indian Accounting Standards) Second Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/01/2009-CL-V (Part-VII) dated 20.09.2018. Published in the Gazette of India Extraordinary, Part II, Section -3, Sub Section (i) vide Notification No. G.S.R. 903(E) dated 20.09.2018]

In exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013) and sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), the Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely:—

1. **Short title and commencement.**-(1) These rules may be called the Companies (Indian Accounting Standards) Second Amendment Rules, 2018.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Indian Accounting Standards) Rules, 2015 (hereinafter referred to as the principal rules), in the "Annexure", under the heading "B. Indian Accounting Standards (Ind AS)"—

   (a) in “Indian Accounting Standard (Ind AS) 20”, -

   for paragraphs 23-28, the following paragraphs shall be substituted, namely:-

   “23 A Government grant may take the form of a transfer of a non-monetary asset, such as land or other resources, for the use of the entity. In these circumstances, it is usual to assess the fair value of the non-monetary asset and to account for both grant and asset at that fair value. An alternative course that is sometimes followed is to record both asset and grant at a nominal amount.

   24 Government grants related to assets, including non-monetary grants at fair value, shall be presented in the balance sheet either by setting up the grant as deferred income or by deducting the grant in arriving at the carrying amount of the asset.

   25 Two methods of presentation in financial statements of grants or the appropriate portions of grants related to assets are regarded as acceptable alternatives.

   26 One method recognises the grant as deferred income that is recognised in profit or loss on a systematic basis over the useful life of the asset.

   27 The other method deducts the grant in calculating the carrying amount of the asset. The grant is recognised in profit or loss over the life of a depreciable asset as a reduced depreciation expense.

   28 The purchase of assets and the receipt of related grants can cause major movements in the cash flow of an entity. For this reason and in order to show the gross investment in assets, such movements are often disclosed as separate items in the statement of cash flows regardless of whether or not the grant is deducted from the related asset for presentation purposes in the balance sheet.”;

   (ii) for paragraphs 32-33, the following paragraphs shall be substituted, namely:-

   “32 A Government grant that becomes repayable shall be accounted for as a change in accounting estimate (see Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors). Repayment of a grant related to income shall be applied first against any unamortised deferred credit recognised in respect of the grant. To the extent that the repayment exceeds any such deferred credit, or when no deferred credit exists, the repayment shall be recognised immediately in profit or loss. Repayment of a grant related to an asset shall be recognised by increasing the carrying amount of the asset or reducing the deferred income balance by the amount repayable. The cumulative additional depreciation that would have been recognised in profit or loss to date in the absence of the grant shall be recognised immediately in profit or loss.

   33 Circumstances giving rise to repayment of a grant related to an asset may require consideration to be given to the possible impairment of the new carrying amount of the asset.”;

   (iii) after paragraph 39, following shall be inserted, namely:-

   “40 *Refer Appendix 1

   “Effective date

   41 *

   42 *

   43 *

   44 *

   45 *

   46 *

   47 *

   48 *

   48A Paragraphs 23-24, 26, 28 and 32 are amended, and paragraphs 25, 27, 33 and 40-48A have been added to allow the option of recording of non-monetary government grants at nominal value and presentation of government grants related to assets by deducting the same from the carrying amount of the asset. An entity shall apply these amendments for the annual periods beginning on or after April 1, 2018.”;

   (iv) In Appendix 1,-

   (A) paragraphs 1 and 2 shall be omitted;

   (B) after paragraph 5, the following paragraphs shall be inserted, namely:-

   “6 Paragraph 40 of IAS 20 related to transitional provisions has not been included in Ind AS 20 since transitional provisions considered relevant have been included in Ind AS 101, First Time Adoption of Indian Accounting Standards.

   7 Paragraphs 41-48 of Effective date of IAS 20 have not been included in Ind AS 20 since these are not relevant in Indian context.”;

   (b) in “Indian Accounting Standard (Ind AS) 12”, -

   for paragraph 33, the following paragraph shall be substituted, namely:-

   “33 One case when a deferred tax asset arises on initial recognition of an asset is when a non-taxable Government grant related to an asset is deducted in arriving at the carrying amount of the asset but, for tax purposes, is not deducted from the asset’s depreciable amount (in other words its tax base); the carrying amount of the asset is less than its tax base and this gives rise to a deductible temporary difference. Government grants may also be set up as deferred income in which case the difference between the deferred income and its tax base of nil is a deductible temporary difference. Whichever method of presentation an entity adopts, the entity does not recognise the resulting deferred tax asset, for the reason given in paragraph 22.”;

   81
(ii) in Appendix 1, paragraph 7 shall be omitted;
(c) in “Indian Accounting Standard (Ind AS) 16”;
(i) for paragraph 28, the following paragraph shall be substituted, namely:-
“28 The carrying amount of an item of property, plant and equipment may be reduced by Government grants in accordance with Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance.”;
(ii) in Appendix 1, paragraph 3 shall be omitted;
(d) in “Indian Accounting Standard (Ind AS) 38”;
(i) for paragraph 44, the following paragraph shall be substituted, namely:-
“44 In some cases, an intangible asset may be acquired free of charge, or for nominal consideration, by way of a Government grant. This may happen when a Government transfers or allocates to an entity intangible assets such as airport landing rights, licences to operate radio or television stations, import licences or quotas or rights to access other restricted resources. In accordance with Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance, an entity may choose to recognise both the intangible asset and the grant initially at fair value. If an entity chooses not to recognise the asset initially at fair value, the entity recognises the asset initially at a nominal amount (the other treatment permitted by Ind AS 20) plus any expenditure that is directly attributable to preparing the asset for its intended use.”;
(ii) for paragraph 77, the following paragraph shall be substituted, namely:-
“77 The revaluation model is applied after an asset has been initially recognised at cost. However, if only part of the cost of an intangible asset is recognised as an asset because the asset did not meet the criteria for recognition until part of the way through the process (see paragraph 65), the revaluation model may be applied to the whole of that asset. Also, the revaluation model may be applied to an intangible asset that was received by way of a Government grant and recognised at a nominal amount (see paragraph 44).”;
(iii) in Appendix 1, paragraph 1 shall be omitted.

K. V. R. MURTY
Joint Secretary

07 Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide E. No. 05/03/2018-CSR dated 19.09.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 895(E) dated 19.09.2018]

In exercise of the powers conferred by section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:-

1. Short title and commencement. - (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, -

08 Date of Coming into force of the provisions of Section 37 of the Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide E. No. 01/01/2018-CL-I) dated 19.09.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 4907(E) dated 19.09.2018]  

1. In exercise of the powers conferred by sub-section (2) of section 37 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 19th September 2018, as the date on which the provisions of section 37 of the said Act shall come into force.

K. V. R. MURTY
Joint Secretary

09 Limited Liability Partnership(Second Amendment) Rules, 2018


In exercise of the powers conferred by sub-sections (1) and (2) of section 79 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby makes the following rules further to amend the Limited Liability Partnership Rules, 2009, namely:-

1. (1) These rules may be called the Limited Liability Partnership (Second Amendment) Rules,2018.
(2) They shall come into force with effect from the 2nd October, 2018.
2. In the Limited Liability Partnership Rules, 2009,
(a) in rule 3, after sub-rule (2), the following shall be inserted, namely:—

“(3) Form RUN-LLP (Reserve Unique Name-Limited Liability Partnership), Form FiLLiP (Form for incorporation of Limited Liability Partnership), Form 5, Form 17 and Form 18 shall be processed by the Registrar, Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar.

Explanation.— For the purposes of this sub-rule, Central Registration Centre means the office of Central Registration Centre as established under sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013) by the Government of India vide notification number S.O. 218(E), dated 22nd January, 2016

(b) in rule 8, in the proviso, for the word and figure “Form 2”, the word and letters “Form FiLLiP” shall be substitute;

(c) for rule 11, the following rule shall be substituted, namely:—

“11. (1) For the purposes of section 11, the incorporation document shall be filed in Form FiLLiP with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated along with fee as provided in Annexure ‘A’:

Provided that if an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP:

Provided further that the application for allotment of DPIN shall not be made by more than two individuals in Form FiLLiP:

Provided also that an application for reservation of name may be made through Form FiLLiP:

Provided also that where an applicant had applied for reservation of name under rule 18 in Form RUN-LLP and which has been approved, he may fill the reserved name as the proposed name of limited liability partnership.

(2) (a) Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies:

Provided that the total period for re-submission of documents shall not exceed thirty days.

(3) The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16.;

(d) in rule 13, -

(a) the word and figure “Form 2”the word and letters “Form FiLLiP” shall be substituted.;

(e) in rule 18, in sub- rule (2), -

(A) clause (viii) shall be omitted;

(B) clause (xiv) shall be omitted;

(C) for sub-rule (5) the following shall be substituted, namely:—

“5 Every such application shall be made through the web service, RUN-LLP, available at www.mca.gov.in and be accompanied by fee as mentioned in Annexure ‘A’, which may either be approved or rejected, as the case may be, by the Registrar after allowing a re-submission of such application within fifteen days for rectification of defects.”;

(f) for Form 1 and Form 2, the following shall be substituted, namely:-

RUN-LLP.

(g) for Form 5, the following form* shall be substituted, namely:-

FiLLiP.

(h) for Form 16, Form 17, Form 18 and Form 19, the following forms* shall be substituted, namely:-

K. V. R. MURTY
Joint Secretary

*Forms not reproduced here for want of space. Readers may log on to mca.gov.in for the forms.

10 Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide E No. 01/5/2013 CL V dated 12.09.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 875(E) dated 13.09.2018]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014,

(i) in rule 6,

(a) for the heading ‘application to the Central Government’ the heading ‘Parameters for consideration of remuneration’ shall be substituted.

(b) the words ‘Central Government’ shall be omitted .

(ii) in rule 7, sub-rule (2) shall be omitted

(iii) for form no.MR-2, the following form shall be substituted

K. V. R. MURTY
Joint Secretary

FORMS

FORMS NO. MR-2

Form of application to the Central Government for approval of appointment of managing director or whole time director or manager

Name of the company

Address of registered office of the company

"Form No. MR-2

(Pursuant to section 196 and Schedule V of the Companies Act 2013 and Rule 7 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014)"
Amendments to Schedule –V of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide E. No. 01/05/2013-CL-V] dated 12.09.2018. Published in the Gazette of India Extraordinary, Part - II, Section –3, Sub Section (ii) vide Notification No. S.O. 4822(E) dated 13.09.2018]

1. In exercise of the powers conferred by sub-sections (1) and (2) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments to amend Schedule V of the said Act, namely:—

2. In Schedule V of the Companies Act, 2013,-

K. V. R. Murty
Joint Secretary
(a) in para (a) after the item (xvi), the following items shall be inserted namely:- “(xvii) the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
(xviii) the Goods and Services Tax Act, 2017 (12 of 2017)
(xix) the Fugitive Economic Offenders Act, 2018 (17 of 2018)

(b) para (d) shall be omitted.

(2) In PART II, under heading “REMUNERATION”, in Section II -
(a) in the heading, the words “without Central Government approval” shall be omitted;

(b) in the first para, the words “without Central Government approval” shall be omitted;

(c) in item (A), in the proviso, for the words “Provided that the above limits shall be doubled” the words “Provided that the remuneration in excess of above limits may be paid” shall be substituted;

(d) in item (B), for the words “no approval of Central Government is required” the words “remuneration as per item (A) may be paid” shall be substituted;

(e) in Item (B), in second proviso, for clause (ii), the following shall be substituted, namely:- “(ii) the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.”;

(f) in item (B), in second proviso, in clause (iii), the words “the limits laid down in” shall be omitted;

(3) In PART II, under the heading “REMUNERATION”, in Section III –
(a) in the heading, the words “without Central Government approval” shall be omitted;

(b) in first para, the words “without the Central Government approval” shall be omitted;

(c) in clause (b), in the long line, for the words “remuneration up to two times the amount permissible under Section II” the words “any remuneration to its managerial persons”, shall be substituted;

(d) clause (d) shall be omitted.

(4) In Part II, in section IV, in Explanation VI, the clause (A) shall be omitted.

K. V. R. MURTY
Joint Secretary

12 Date of Coming into force of the provisions of Sections 66 to 70 of the Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide F. No. 01/05/2013-CL-V-Part-I dated 12.09.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 4823(E) dated 13.09.2018]

1. In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 12th September, 2018 as the date on which the provisions of sections 66 to 70 (both inclusive) of the said Act shall come into force.

K. V. R. MURTY
Joint Secretary

13 Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 01/21/2013 CL-V dated 10.09.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]

In exercise of the powers conferred by clause (b) of sub-section (1) of section 29 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. Short title and commencement.- (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018.

(2) They shall come into force on the 2nd day of October, 2018.

2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, after rule 9, the following rule shall be inserted, namely:-

"9A. Issue of securities in dematerialised form by unlisted public companies.- (1) Every unlisted public company shall-

(a) issue the securities only in dematerialised form; and
(b) facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company,-

(a) who intends to transfer such securities on or
after 2nd October, 2018, shall get such securities dematerialised before the transfer; or

(b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

Every unlisted public company shall ensure that-

(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

(b) it maintains security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and

(c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board of India or guidelines or circulars, if any, issued by the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositaries or registrar to an issue and share transfer agent are made.

Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.

The audit report provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and Protection Fund Authority.

The Investor Education and Protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.

Clarification in filing BEN-1 under the Companies Act, 2013- regarding.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 08/2018 dated 10.09.2018.]

1. In continuation of General Circular No. 07/2018 dated 06.09.2018, the Ministry of Corporate Affairs has received from stakeholders expressing certain difficulties in filing a declaration in Form No. BEN-1 in respect of Companies (Significant Beneficial Owners) Rules, 2018 notified vide G.S.R. No. 561(E) dated 13.06.2018.

2. Accordingly, the matter has been examined and it is hereby informed that keeping in view stakeholders concerns, Form No.BEN-1 would be revised. As such, the due date of 10th September, 2018 for filing BEN-1 declaration would be revised and a revised BEN-1 form would be notified shortly. Stakeholders are advised to file declaration as per the revised form only and adhere to the time lines which will be specified therein.

3. This issues with approval of the competent authority.

Relaxation of additional fees and extension of last date of filing of Form BEN-2 under the Companies Act, 2013- regarding.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 07/2018 dated 06.09.2018.]

1. The Ministry of Corporate Affairs has received several representations regarding extension of the last date for filing of e-Form BEN-2 without additional fees on account of Companies (Significant Beneficial Owners) Rules, 2018 notified vide G.S.R. No. 561(E) dated 13.06.2018. The matter has been examined and it is stated that the time limit for filing the BEN-2 form would be 30 days (from the date of deployment of BEN-2 e-form on the MCA-21 portal and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.

2. This issues with approval of the competent authority.
16 Applicability of Circulars issued for Commodity Derivatives markets

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/CDMRD/DMP/CIR/P/2018/133 dated 28.09.2018.]

1. After taking over the regulation of commodity derivatives market, SEBI has issued various circulars applicable to Commodity derivatives exchanges.

2. As per the amendments in Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 as notified on April 02, 2018 in the Gazette of India, there would be no separate category of ‘Commodity Derivatives Exchanges’ w.e.f. October 1, 2018.

3. Accordingly, it is clarified that all the norms issued for Commodity Derivatives Exchanges till date shall be applicable to Commodity Derivatives Segments of Recognised Stock Exchanges/Recognised Clearing Corporations to the extent applicable.

4. The circular shall be effective from October 1, 2018.

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 www.sebi.gov.in under the category “Circulars” and “Info for Commodity Derivatives”.

VIKAS SUKHWAL
Deputy General Manager

17 Know Your Client requirements for Foreign Portfolio Investors (FPIs)


SEBI Board in its meeting held on September 18, 2018, has after considering the interim recommendations of SEBI Working Group under the chairmanship of Shri H R Khan (hereinafter referred as HR Khan group) in relation to the circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and comments received from public decided that Beneficial ownership criteria in Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as PMLA Rules) should be made applicable for purpose of KYC and not for determining eligibility of FPIs. The clubbing of investment limit for FPIs should not be done on the basis of beneficial owner (BO) as per PMLA Rules. Accordingly, there will be a separate set of norms for determining conditions where Non Resident Indians (NRIs) and Overseas Citizens of India (OCIs) and Resident Indians (RIs) are constituents and also the basis for clubbing of investment limits. The Amendments in SEBI (FPI) Regulations, 2014, wherever necessary, will be notified separately.

In supersession of the directions contained in SEBI circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 and in partial modification of SEBI circular No. CIR/MIRSD/11/2012 dated September 05, 2012 and subsequent SEBI circular No. CIR/MIRSD/07/2013 dated September 12, 2013, FPIs shall comply with the following Know Your Client (KYC) requirements:-

1. Identification and verification of Beneficial Owners – For Category II & III FPIs

i. Beneficial Owners (BOs) are the natural persons who ultimately own or control an FPI and should be identified in accordance with Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as PMLA Rules). FPIs are required to maintain a list of BOs and should provide such list of their BOs as per Annexure A. BOs of FPIs having General Partner/ Limited Partnership structure shall be identified on ownership or entitlement basis and control basis.

ii. In respect of FPIs coming from “high risk jurisdictions” as referred in SEBI Master circular No. SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 104 dated July 04, 2018 the intermediaries may apply lower materiality threshold of 10% for identification of BO and also ensure KYC documentation as applicable for category III FPIs.

iii. The materiality threshold to identify the beneficial owner should be first applied at the level of FPI and next look through basis shall be applied to identify the beneficial owner of the intermediate shareholder/ owner entity. Beneficial owner and intermediate shareholder/ owner entity with holdings equal & above the materiality thresholds in the FPI need to be identified through the look through basis. For intermediate material shareholder/ owner entity/ies, name and percentage holding shall also be disclosed as per Annexure B. In case the intermediate shareholder/ owner entity is eligible for registration as Category I FPI, in case the intermediate shareholder/ owner entity is eligible for registration as Category I FPI, there is no need for identification and verification of beneficial owner of said entity eligible as Cat. I FPI.

iv. The term senior managing official (SMO), for identification as BO, means an individual as designated by the FPI who holds a senior management position and makes key decisions relating to the FPI.

v. No foreign company shall be entitled to exemption under Rule 9(3)(f) of PMLA Rules.

vi. In case of companies/ trusts represented by service providers like lawyers/ accountants, FPIs should provide information of the real owners/ effective controllers of those companies / trusts. If the BO
exercises controls through means like voting rights, agreements, arrangement etc., that should also be specified. It is clarified that BO should not be a nominee of another person and real BO should be identified.

vii. Offshore Derivative Instrument (ODI) issuing FPIs shall also identify and verify the BOs in the subscriber entities, as per these guidelines.

2. Periodic KYC review
KYC Review means steps taken to ensure that documents, data or information collected under the due-diligence process are kept up-to-date and relevant by undertaking reviews of existing records on a periodical basis. FPIs shall be subject to KYC review as and when there is any change in material information / disclosure. The KYC review (including change in BOs / their holdings) should be done based on risk categorization of FPIs. In case of Category III and Category II FPIs from high risk jurisdictions KYC review should be done on yearly basis. In case of all other clients, the KYC review should be conducted at the time of continuance of FPI registration. In the event of non-submission of KYC documents, if any, no further purchase transactions shall be permitted to such clients.

3. KYC documentation for Category III FPI
SEBI has prescribed “Financial Data” as mandatory for Category III FPIs only. In this regard, it is clarified that audited Annual financial statement or a certificate from auditor certifying net worth may be obtained from Category III FPIs. In case of new funds/ companies/ family offices, the audited financial statement of promoter person may be obtained. Further, prospectus and information memorandum are acceptable in lieu of an official constitutive document.

4. Exempted documents to be provided during investigations/ enquiry
(i) SEBI vide circular dated September 12, 2013 has exempted FPIs from furnishing certain supporting KYC documents depending on risk involved. In respect of exempted documents, FPIs concerned should submit an undertaking to DDP/ Custodians that upon demand by Regulators/ Law Enforcement Agencies, the relevant documents would be provided.
(ii) Further, SEBI vide circular dated September 12, 2013 has exempted Category III FPIs from submission of proof of address of BOs, Senior Management and Authorised Signatories. Since Category III FPIs are high risk investors, “declaration on letter head” shall be provided by them.

5. Data security
The KYC Registration Agencies (KRAs) shall lock personal information provided with regard to beneficial owner including SMO of FPI. Such information should be made available to intermediaries only on ‘need to know basis’ using an authentication method wherein an intermediary, can access the information from KRA using the authentication (similar to OTP) after the KRA gets confirmation from the FPI or its Global custodian. For this purpose, KRA need to maintain email ids of the FPI and its Global custodian. This functionality will be optional and it will be deactivated only upon receipt of instruction from the FPI to KRA.

6. Period for maintenance of records
The Custodian should maintain the KYC records in original for a minimum period of five years from the date of cessation of the transactions with the said FPI. In case any litigation is pending, these records should be maintained till the completion of the proceedings.

7. Timelines for compliance
Category II and III FPIs registered prior to this circular (existing FPIs) should provide the list of BOs (as per Annexure A) and applicable KYC documentation within six months from the date of this circular. If an existing FPI fails to comply with the applicable KYC requirements by the given deadline, the concerned Custodian shall not allow such FPI to make fresh purchases till the time KYC documentary requirements, as applicable, are complied with. However, such FPI shall be allowed to continue to sell the securities already purchased by it. Such FPI shall be allowed to disinvest its holdings within a period of 180 days from the expiry of the timeline. In case the FPI remains non-compliant with this requirement even after 180 days from the said deadline, its FPI registration will no longer be valid and it would need to disinvest its holdings immediately.

8. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Sub-rule 14(i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

9. A copy of this circular is available at the links “Legal Framework→Circulars” and “Info for →F.P.I” on SEBI website www.sebi.gov.in. The DDPs/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

18

Eligibility conditions for Foreign Portfolio Investors (FPIs)


1. SEBI Board in its meeting held on September 18, 2018, has after considering the interim recommendations of SEBI Working Group under the chairmanship of Shri H. R. Khan (hereinafter referred as HR Khan group) in relation to the circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and comments received from public decided that Beneficial ownership criteria in Prevention of Money-laundering
2. The Board broadly accepted the recommendations of HR Khan group. Accordingly, it has been decided to put in place the following eligibility norms. The Amendments in SEBI (FPI) Regulations, 2014, wherever necessary, will be notified separately.

2.1. Non Resident Indians (NRIs) and Overseas Citizens of India (OCIs) shall have the same meaning as assigned to them under regulation 2 of the Foreign Exchange Management (Transfer or issue of security by a Person Resident outside India) Regulations, 2017.

2.2. NRIs/ OCIs/ Resident Indians (RIs) shall be allowed to be constituents of FPIs subject to the following conditions:-

   a. Contributions by NRI/ OCI/ RI including those of NRI/ OCI/ RI controlled Investment Manager should be below 25% from a single NRI/ OCI/ RI and in aggregate should be below 50% to corpus of FPI.

   Explanation: Resident Indian’s contribution permitted is that made through Liberalised Remittance Scheme (LRS) approved by Reserve Bank of India in global funds whose Indian exposure is less than 50%.

   b. NRI/ OCI/ RI should not be in control of FPI.

2.3 FPIs can be controlled by investment managers (IMs) which are controlled and / or owned by NRI/ OCI/ RI if following conditions are satisfied:-

   i. IM is appropriately regulated in its jurisdiction and registers itself with SEBI as non-investing FPI; or
   ii. IM is incorporated or setup under Indian laws and appropriately registered with SEBI.

2.4 A non-investing FPI may be directly or indirectly fully owned and/ or controlled by a NRI/ OCI/ RI.

2.5 The restriction that NRI/ OCI/ RI should not be in control of FPI shall also not apply to FPIs which are ‘offshore funds’ for which no-objection certificate has been provided by the Board in terms of SEBI (Mutual Funds) Regulations, 1996.

2.6 These restrictions in regard to eligibility conditions (viz. referred at para 2.2 above) will not be applicable to FPIs investing only in mutual funds in India.

2.7 Existing FPIs and new applicants shall be given a time period of two years from the date of coming into force of the amended regulations or from the date of registration, whichever is later in order to satisfy these eligibility conditions.

2.8 In case of temporary breach, a time period of 90 days will be given to ensure compliance with above conditions.

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

4. A copy of this circular is available at the links “Legal Framework→Circulartes” and “Info for→F.P.I.” on SEBI website www.sebi.gov.in. The DDPS/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager
shall consist of majority of members that are different from those in the Rating Committee of the CRA that assigned the earlier rating, and at least one-third of members are independent.

ii. All other provisions of the aforementioned circular shall remain unchanged.

3. This circular is issued in exercise of the powers conferred by Section 11(1) of Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

SURABHI GUPTA
Deputy General Manager

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018*

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO/GN/2018/31 dated 11.09.2018.]

AJAY TYAGI
Chairman

*Text of the Regulations not reproduced here for want of space. Readers may log on to www.sebi.gov.in and then go to the Regulations section for the entire text of the Regulations.

Securities and Exchange Board of India (Buy-Back Of Securities) Regulations, 2018*


AJAY TYAGI
Chairman

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- LIST OF MEMBERS WHOSE REMOVAL OF NAME FROM REGISTER OF MEMBERS REVOKED W.E.F. 01-09-2018
- KNOW YOUR MEMBER (KYM)
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List of members whose removal of name from Register of Members revoked w.e.f. 01-09-2018

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**KNOW YOUR MEMBER (KYM)**

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf

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**NOTICE**

The last date for payment of annual membership fee was 31-08-2018 and for renewal of certificate of practice was 30-09-2018. The members who have not paid their annual membership fee and/or certificate of practice fee by the last date are required to restore their membership and/or certificate of practice by paying the requisite entrance and renewal fees along with the applicable annual membership fee and annual certificate of practice fee with GST @18% on the total fee payable. Members are required to submit Form–BB for restoration of membership and Form–D for restoration of certificate of practice duly filled and signed. For more clarification, please write at jitendra.kumar@icsi.edu(for restoration of membership) and vidhya.ganesh@icsi.edu (for restoration of certificate of practice).
MISCELLANEOUS CORNER

- ETHICS & SUSTAINABILITY CORNER
- GST CORNER
- ICSI ELECTION – 2018 : ADDRESSES OF POLLING BOOTHS
- SECRETARIAL STANDARD ON REPORT OF THE BOARD OF DIRECTORS (SS-4)
- GLOBAL CONNECT
- CERTIFICATE COURSE IN GST
- ICSI ENTERS INTO MOUS WITH INSURANCE PROVIDERS FOR ITS MEMBERS AND STUDENTS
- CG CORNER
ndian sub-continent is famous for its festivals and the splendid rituals and zeal with which the celebrations are carried out. Although the rituals differ from place to place and the incidents attached to them also vary, their essence and the message they elaborate remain more or less the same.

This is the month marking the start of festivities with 9 day long festival of Navratri meaning 9 nights, in which 9 forms of Goddess are worshipped. Fasting, worshipping, gathering during night where people remain awake and sing kirtans to appease the Goddess, dancing on garba tunes, inviting young girls to household and treating them as avatars of Goddess and feeding them, are common sights.

The closure of these 9 days and nights of devotion is marked with the festival of Dussehra or Vijayadashami is a major Hindu festival which is celebrated at the end of Navratri every year. It is observed for different reasons and celebrated differently in various parts of the Indian subcontinent. In some parts of country, it celebrates the victory of good over evil, symbolized in Indian mythology by the slaying of the mighty demon king Ravana by Rama, and by killings of the buffalo monster Mahishasura by Goddess Durga.

Every year, effigies of Ravana, Meghnada and Kumbhkaran are burnt with fireworks on Dussehra, which falls on the 10th day of the month Ashwin in the Hindu lunar calendar. As per another folklore of destruction of Mahishasura idols of Goddess Durga, riding a lion and killing the monster are worshipped along with other idols of Lakshmi, Saraswati, Ganesha and Kubera.

Here is the spiritual significance of celebrating this festival and following these rituals every year.

The festival’s name is derived from the words dasha (ten) and hara (take away). If we around we find that man has succumbed to evils such as lust, anger, greed, attachment, ego, laziness, fear, carelessness, hatred and jealousy. All of these 10 vices are causing conflicts in relationships and violence in the world.

Rama is the personification of virtue, the Marayada Purush, who will never abandon his sanctity, no matter how whatever the situation is. Also, Rama denotes benefactor, or the liberator, who is known to be the master or consort of Sita who was born from an earthen pot.

Sita symbolizes the soul which resides in the body of 5 elements, the primary of which is Earth. When the soul realizes itself, it is awakened and enlightened and subsequently liberated from fear, sorrow, worldly attachments, and other negative emotions rooted out of body consciousness, which is symbolic of taking away of 10 vices or Dussehra. It is then believed to be pure, divine and dedicated to or belong to the master of the Universe- the true benefactor.

On the other hand, Ravana, who is the burnt on this day, is the personalization of evil. He is shown to be a learned scholar who gave in to lust, anger, greed, ego, etc. Ravana means one who makes everyone cry. He is shown as a 10 headed demon who was the mightiest of all the kings and rulers and was equally knowledgeable and a great devotee. It symbolizes worldly knowledge and external devotion without purity of the mind and soul due to gross body consciousness resulting in the 10 vices of lust, anger, greed, attachment, ego, laziness, carelessness, jealousy, hatred and fear. If we try to overcome these vices one by one superficially, it is not possible to do so as very soon our resolution of giving away of any of these vices is broken due to the soul being grossly trapped in body consciousness. Thus, it was shown that beheading Ravana was not possible as the head cut-off would soon grow back without any harm to Ravana.

When the Sita, the soul, crosses its limit of soul consciousness or Lakshman rekha (Lakshya= aim + Mann= mind), it gets carried away or abducted by the vices, the Ravana. It is then that it enters the clutches of vices and seeks re-union with the liberator. When we gain victory over our body consciousness, denoted as hitting the arrow of knowledge at that the root of all the vices, the soul or Sita is freed from the negativities and regains liberation or reunion with Rama.

Along with the slaying of Ravana, Meghanad and Kumbhkaran are also burnt. Meghanad means ‘mehg’
We celebrate Dussehra every year but are we really becoming free of vices or are the celebrations just another form of annual ritual? When we look at the world, we find that far from overcoming vices, people are becoming slaves to them. Increasing corruption, immorality and materialism indicate a growing void that is being sought to be filled with possessions and physical pleasures. The increasing influence of vice in our lives is unwittingly reflected in the size of the Ravana effigies built for Dussehra, which grow taller each year.

Simply burning wood and straw effigies is not going to bring us victory over evil. That can be achieved only by spiritual effort. The story of the Ramayana is a parable of how God, personified by Rama, and humans represented by army of monkeys, together can rid the world of negative tendencies under the leadership of the Supreme. The battle described in the Ramayana is an allegory for the struggle that goes on in the mind between our higher self and our weaknesses. God helps us in this struggle by giving us the strength to resist evil and the wisdom to avoid deceptions created by ignorance of our true identity.

When we forget that we are spiritual beings, or souls, we begin to define ourselves in terms of our body and the labels that come with it- of race, religion, nationality, gender, caste, color, creed, race, profession and many more. We also measure our worth and that of others in terms of personal and professional roles, responsibilities, possessions, appearance and social and financial status. Such identification with the physical not only begets attachment but also brings sorrow when our gross identity suffers due to ageing, declining social, financial or professional positions. It also makes us vulnerable to vice, the cause of suffering.

We need to remove veils of ignorance from the intellect, by becoming aware of our true identity as souls innately possessing divine qualities of peace, love and cooperation. This awareness needs to be awakened to dissipate and sublimate acquired demonic traits, through the subtle fire of Rajyoga Meditation.

With the collective practice of spiritual knowledge and meditation, not only our negative proclivities but even the polluted elements of nature can be purified. Rajyoga connects us to divinity and empowers the soul to resist negative influences, sorrows and sufferings. It is the ultimate stage of a yogi as described in Gita- one who remains unmoved by victory or defeat, fame or notoriety, loss or gain. Such self-mastery is not only the prerogative of saints and sages but can be easily attained by any house-holder with a little self-awareness and effort.

To make our celebration of Vijaya-dashmi meaningful, we must resolve on this occasion to take at least one step towards conquering our weaknesses, so that each year we move closer to attaining victory over them. This is the only way we can sublimate the negative propensities of Ravana living in our minds.
1. **Finance Ministry notifies Annual Return Forms under GST for 2017-18**
   - The finance ministry has notified annual tax return forms for businesses registered under the GST, in which details of sales, purchases and input tax credit (ITC) benefits accrued to them during 2017-18 fiscal have to be provided in a consolidated manner.
   - The ministry has notified annual return form for normal taxpayers (GSTR-9) and for composition taxpayers (GSTR-9A). The last date for filing the annual return forms is December 31, 2018.

2. **Government sets up office of GST Commissioner under CBIC to check tax evasion**
   - The revenue department has created the office of Commissioner GST (Investigation) to deal exclusively with enforcement issues like search, seizure and arrest, as it looks to crackdown on tax evaders.
   - Initially, the Government was going slow on enforcement action to give time to the industry to adjust to the new tax regime. With most of the loose ends tied up with regard to Goods and Services Tax (GST), the revenue department has now decided to focus on enforcement with a view to shore up revenues by checking tax evasion.
   - As per the instruction issued by Central Board of Indirect Taxes and Customs (CBIC), Commissioner GST (Investigation) will deal exclusively with policy issues and legislative matters, concerning enforcement aspect namely, search, seizure, arrest, prosecution and compounding under GST Act, Excise Act and matters relating to Service Tax.
   - Commissioner (Investigation) will also monitor the work of Directorate General of GST Intelligence (DGGSTI) and GST field formations in relating to investigation of cases, search and seizure operations on searches, arrests etc.
   - Neeraj Prasad has been appointed the first Commissioner in the office of GST-Investigation.
   - The commissioner will also coordinate with DGGSTI and Directorate General of Analytics and Risk Management (DGARM) in analysing and disseminating intelligence to the field formations.
   - It will act as a nodal agency for inter-departmental coordination relating to investigation and enforcement agencies and conduct research and studies to monitor and ascertain modus operandi of evasion.

3. **YES Bank evaded Rs 330 million tax via ‘cut and pay’ scheme: GST Authority**
   - The anti-evasion wing of the Goods and Services Tax (GST) department in Mumbai has alleged that YES Bank evaded central GST (CGST) dues, through a ‘cut and pay’ scheme, to the tune of Rs 330 million. The bank, however, said it had consulted tax experts who confirmed its interpretation of the law was correct and tenable.

4. **TDS and TCS provisions under GST laws implemented from October 1, 2018**
   - The Government has notified October 1 as the date for implementing the tax deducted at source (TDS) and tax collected at source (TCS) provisions under GST laws.
   - As per the Central GST (CGST) Act, the notified entities are required to collect TDS at 1 per cent on payments to goods or services suppliers in excess of Rs 2, 50,000.
   - Also, states will levy 1 per cent TDS under state laws.
   - E-commerce companies will now be required to collect 1 per cent TCS (TCS Rates notified vide N/N. 02/2018-Integrated Tax and N/N. 52/2018-Central Tax) while making any payment to suppliers under the Goods and Services Tax (GST).

5. **Taxpayer with turnover over Rs 2 Crore need GST Audit Certificate.**
   - The Government notified the FORM GSTR-9C for annual GST audit under which every taxpayer above Rs 2 Crore turnover in a financial year would need to fill up a reconciliation statement and also obtain a certification of audit.
   - Under GST, annual return is to be furnished in GSTR-9 (recently notified on September 4, 2018). In addition, as per Section 35 of CGST Act, 2017, every tax payer whose turnover exceeds Rs 2 Crore during a financial year, is required to submit audited annual accounts and a reconciliation statement in GSTR-9C.
   - The Government through the Notification No. 49/2018 - Central tax dated September 13, 2018 has notified the format for GSTR-9C.

6. **IIMs’ Executive Post-Graduate Programmes to face GST**
   - Executive post-graduate programmes offered by the Indian Institutes of Management (IIMs) will face the GST, according to the Authority for Advance Rulings.
   - The Madhya Pradesh AAR said the one year programme is taxable even though the Indian Institutes of Management Act, 2017, provides tax exemptions for courses offered by the IIMs. It said executive programmes are not specifically exempted from tax.
   - The ruling came in response to an application filed by IIM Indore, which sought to know if this programme would be taxable. The MP AAR held that the Executive Post-Graduate Programme in management is taxable under GST. Under GST, services provided by an educational institution are exempt from tax. Under the GST law, educational institutions include those providing training to obtain a qualification recognised by law.
   - IIM Indore had contended that with the enactment of the IIM Act, degrees and diplomas granted by IIMs are recognised by law and hence should be exempted from tax. The AAR, however, observed that the services provided by the IIMs are specified by way of a separate entry in the exemption notification. While the two-year full time MBA courses, five-year integrated programme and fellow programme in management are exempt from tax, courses such as executive development programmes are not exempted.
   - The ruling underlines the principle that a specific entry shall prevail over a general entry.

7. **Watchdog penalises builder for not passing GST benefit to homebuyers**
   - In a first ever order against a real estate firm for failing to pass on the GST reduction benefits to homebuyers, the federal anti-profiteering watchdog has ordered Gurgaon-based Pyramid Infratech to refund over Rs 8.22 crore to 2,476 flat owners within the next three months with 18% interest.
   - Passing the order, the National Anti-profiteering Authority (NAA) said it will also issue a notice asking the builder why penalty should not be imposed on it for the
violation. It has directed the builder to refund or reduce the amount, for every buyer at the time of collecting the last installment. The authority has also ordered Haryana’s tax commissioner to monitor the compliance and submit a report within four months.

- According to the order, 109 home buyers had filed a complaint of profiteering against the builder in two affordable housing projects — Urban Homes in Sector-70A and Urban Homes in Sector-86 — in Gurgaon. They had alleged that the builder had not passed on the benefit of lower tax arising out of availing of input tax credit (ITC) post roll out of the GST and hence was indulged in profiteering.

- Passing the order after an investigation by the Director General of Anti-Profitiing (DGAP), the authority said it as “absolutely clear” that excess ITC was available to Pyramid Infratech and it was required to be passed on to the buyers. “The Respondent (Pyramid Infratech) cannot appropriate this benefit as this is a concession given by the government from its own tax revenue to reduce the prices being charged by the builders from the vulnerable section of society which cannot afford high value apartments,” the order said.

- It further stressed that the builder was not being asked to extend this benefit out of his own account and it was only liable to pass on the benefit of ITC to which it had become entitled by virtue of the grant of ITC on the construction service by the government.

8. Finance Ministry extend GSTR-1 filing date to October 31, 2018

- The Finance Ministry extended the last date for filing final sales return GSTR-1 to October 31 for the taxable periods from July 2017 to September 2018. The ministry also waived the late fee for the delayed filing of returns.

- It said that the number of taxpayers who have filed summary sales return GSTR-3B is substantially higher than the number of taxpayers who furnished GSTR-1.

- "In order to encourage taxpayers to furnish Form GSTR-1, a one-time scheme to waive late fee payable for delayed furnishing of GSTR-1 for the period from July 2017 to September 2018 till October 31, 2018, has been launched," the ministry said.

- For taxpayers having aggregate turnover up to Rs 1.5 crore, the due date for furnishing GSTR-1 for the quarters from July 2017 to September 2018, too has been extended till October 31, 2018.

- For registered persons having aggregate turnover up to Rs 1.5 crores in Kerala, or whose principal place of business is in Kodagu (Karnataka) and Mahe (Puducherry), the due date for furnishing GSTR-1 for the quarter July 2018 to September 2018 would continue to remain as November 15, 2018," the ministry said.

- It further said that those taxpayers who will now be migrating to GST the last date for furnishing the details of outward supplies of goods or services or both in GSTR-1 and for filing the return in GSTR-3B for the months of July 2017 to November 2018 has been extended till December 31, 2018.

- "The registered person shall not be entitled to take input tax credit in respect of any invoice after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains; or furnishing of the relevant annual return, whichever is earlier. The taxpayers are thus, advised to furnish their returns on time to ensure that input tax credit does not become time barred," the ministry added.

9. Organized fan manufacturers seeks 12% GST slab

- Fan manufacturers in the organised sector are seeking a reduction in GST slab from 18% to 12% for which representations have been already submitted to the GST Council.

- Indian Fan Manufacturers Association (IFMA) said that fans are a basic necessity in a tropical climate like India and being used by all strata of the society.

10. Finance Minister proposes additional cess under GST to help flood-hit Kerala

- Finance Minister Arun Jaitley has proposed additional cess on select commodities under GST to raise funds to help Kerala tide over the damages caused due to floods, a state minister said on Friday.

- The proposal of levy of cess is expected to come up for discussion at the GST Council meeting on September 28.

- "Kerala welcomes the suggestion of hon'ble FM for a national level cess on select commodities for a specified period to help such states. GST Council to discuss," Kerala Finance Minister Thomas Isaac said in a tweet.

11. Cabinet Clears Proposal to Convert GSTN into Government Entity

- The Cabinet cleared a proposal to convert GST Network (GSTN) into a government-owned company, Finance Minister Arun Jaitley said.

- Briefing reporters about the decisions taken in the Cabinet meeting, the finance minister said that 50% stake will be owned by the Centre and the remaining by the states on pro-rata basis in the new structure.

- Currently, the Centre and states together hold 49% stake in the GSTN, the company that provides IT backbone to the new indirect tax regime. The remaining 51 per cent is held by five private financial institutions -- HDFC Ltd, HDFC Bank Ltd, ICICI Bank Ltd, NSE Strategic Investment Co and LIC Housing Finance Ltd.

- The proposal to convert GSTN into 100% government-owned company was earlier approved by the all-powerful GST Council.

- The GSTN was incorporated as a private limited company on March 28, 2013 under the UPA government. It is a Section 8 company under the new Companies Act and hence is a not-for-profit entity.

12. Infosys to Design New Forms for Filing GST Returns

- The Goods and Services Tax Network (GSTN) has directed its software vendor Infosys to design new forms for filing returns by traders, said its Group of Ministers Chairman Sushil Kumar Modi.

- “We plan to roll out the new simplified GST returns form in the next 4-6 months for the benefit of dealers or traders paying the indirect tax through the network,” said Modi, who is also Bihar deputy chief minister.

- The GoM has identified 18 companies across the country to develop a uniform accounting software for the smaller tax payers.

- “The new software will be given to all small traders to ensure uniformity in filing GST returns,” said Modi.
### EASTERN REGION

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<td>The Calcutta Stock Exchange Ltd. 7, Lyons Range, Kolkata – 700001</td>
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<td>Sarada Prasad Institution 108/18, Bidhan Nagar Road, Kolkata – 700067</td>
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<td>Jamshedpur Chapter of EIRC of the ICSI Room No-9, Centre for Excellence, Jubilee Road, P.O.-Bistupur, Jamshedpur – 831001</td>
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<td>Hooghly Chapter of EIRC of the ICSI Krishnakunj Apartment, 89/114/2, D.N. Banerjee Street, Bangar Park, Rishra, Hooghly – 712248</td>
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<td>Howrah</td>
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<td>Howrah Akshaya Sikshayatan 1, Joyneray Santra Lane, (Opposite of Howrah ‘Sarat Sadan’), Howrah – 711101</td>
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### NORTHERN REGION

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<td>Banga Sanskriti Bhawan 18 - 19, Bhai Veer Singh Marg, Gole Market, New Delhi – 110001</td>
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<td>Delhi Tuberculosis Association 9, Institutional Area, Lodhi Road, New Delhi – 110003</td>
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<td>College of Vocational Studies (University of Delhi) Triveni, Sheikh Sarai, Phase-II, New Delhi – 110017</td>
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<td>Jagan Institute of Management Studies 3, Institutional Area, Sector-5, Rohini, Near Rithal Metro Station, Delhi – 110085</td>
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<td>AVB Public School Near Bapu Apartments, I.P. Extension, Patparganj, Delhi – 110092</td>
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<td>Presidium School Plot No. 18, Sector-22, Dwarka, Delhi – 110077</td>
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<td>Kasturba Balika Vidyalaya Mathura Road, Ishwar Nagar, New Delhi – 110065 (Near to Allahabad Bank)</td>
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<td>Faridabad Chapter of NIRC of the ICSI ‘ICSI House’, Institutional Plot No. 1A, Sector-16A, Faridabad – 121002</td>
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<td>Aggarwal College Near Ambedkar Chowk, Tigaon Road, District Ballabgarh, Faridabad – 121004</td>
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<td>Gurgaon Chapter of NIRC of the ICSI First Floor, Deenbandhu Sir Chhotu Ram Bhawan, Jharsa Road, Behind Shiv Mandir, Sector-32, Gurugram – 122002</td>
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<td>HUDA Gymkhana Club Sector-29, Gurugram – 122022</td>
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<td>Lal Bahadur Shastri PG College Pt. Devi Shankar Tiwari Marg, Tilak Nagar, Near Raja Park, Jaipur – 302004</td>
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| N-17 | Malviya Convent School  
              2, Malviya Institutional Area,  
              Near Sudha Sagar Colony, Block A,  
              Malviya Nagar, Jaipur – 302017     |
| N-18 | SS Jain Subodh PG College  
              Bhawani Singh Road, Rambagh Circle,  
              Jaipur – 302015                      |
| Ghaziabad N-19 | Ghaziabad Chapter of NIRC of the ICSI  
              23-B, Nehru Apartment, Nehru Nagar,  
              Near Nasirpur Railway Crossing,  
              Ghaziabad – 201001                   |
| N-20 | Vaishali Public School  
              3A-216, Rachna, Vaishali,  
              Ghaziabad – 201010                   |
| N-21 | Jaipuria Institute of Management  
              A-32A, Sector-62, Opposite IBM,  
              Noida – 201309                      |
| N-22 | Rockwood School  
              B-67, Sector-33, Near NTPC Township,  
              C Block, Sector-33, Noida – 201307  |
| Ambala N-23 | Murlidhar DAV Public School  
              Jagadhari Gate, Patti Mehar,  
              Ambala Cantt – 134003               |
| Bahadurgarh N-24 | Vaish Arya Kanya Mahavidyalaya  
              Nahra Nahri Road, Line Par,  
              Bahadurgarh – 124507                |
| Hisar N-25 | Thakur Dass Bhargava Senior Secondary  
              Model School, Raigarh Road,  
              Hisar – 125001                      |
| Karnal N-26 | Karnal Club  
              Ambedkar Chowk, Old G. T. Road,  
              Karnal – 132103                     |
| Panchkula N-27 | Sood Bhawan  
              Opposite Police Post, Sector-10,  
              Panchkula – 134109                  |
| Rewari N-28 | Holy Child Public School  
              Delhi Road, Rewari – 123401         |
| Rohtak N-29 | Gaur Brahman Sr. Sec School  
              Gau Karon Road, Near Mata Darwaza,  
              Rohtak – 124001                     |
| Panipat N-30 | Karnal-Panipat Chapter of NIRC of the ICSI  
              Shop No. 1, 1st Floor, Left Portion,  
              Above JSR Trading, Geeta Mandir Road,  
              Near Geeta Mandir, Panipat – 132103  |
| Sonipat N-31 | Sonipat Chapter of NIRC of the ICSI  
              523/22, Old Rohtak Road, Near Suri  
              Petrol Pump, Landmark: Lovely Studio,  
              Sonipat – 131001                     |
| Shimla N-32 | Shimla Chapter of NIRC of the ICSI  
              Jeevandeep Niwas, BCS, Byepass Road,  
              New Shimla, Shimla – 171009          |
| Jammu N-33 | Jammu Chapter of NIRC of the ICSI  
              213-A, First Floor, Shastri Nagar,  
              Jammu – 180004                      |
| Amritsar N-34 | SISE Computer Institute  
              F-7/186, Batala Road, Mata Kola Marg,  
              Kashmir Avenue, Near Gopal Mandir,  
              Adjoining Capering Kids Pre School,  
              Amritsar – 143001                    |
| Jalandhar N-35 | The Citizen Urban Co-Op Bank Limited  
              506, New Jawahar Nagar, Near Shangri  
              la Hotel, Jalandhar – 144001         |
| Ludhiana N-36 | Ludhiana Chapter of NIRC of the ICSI  
              11B, 2nd Floor, Pheruman Complex,  
              Gurudwara Saheedaan, Opposite Manju  
              Cinema, G. T. Road, Ludhiana – 141003 |
| Mohali N-37 | Rotary Club Mohali  
              Plot No. 1-A (Adjoining Gurudwara/Oppo  
              site Booth No. 76-77), Institutional Area,  
              Sector-70, Mohali – 160071            |
| Patiala N-38 | Siddhidhata Associates  
              SCO-22, Opposite Amar Ashram  
              Lower Mall, Patiala – 147001         |
| Ajmer N-39 | Ajmer Chapter of NIRC of the ICSI  
              270/9, “Pokhama House”, Near Old Ice  
              Factory, Hathi Bhatra, Ajmer – 305001 |
| Alwar N-40 | Alwar Chapter of NIRC of the ICSI  
              2nd Floor, Rajat Tower, Main Road,  
              Ashok Vihar, Behind CP Mall, Alwar –  
              301001                               |
| Bhiwara N-41 | Bhiwara Chapter of NIRC of the ICSI  
              ICSI House, Sector-8, Institutional Area,  
              Ring Road, Patel Nagar, Bhiwara – 311001 |
| Bikaner N-42 | Bikaner Chapter of NIRC of the ICSI  
              In Front of CMHO Office, Tyagi Vatika,  
              Biscuit Gali, Station Road, Bikaner –  
              334001                                |
| Jodhpur N-43 | Onkarmal Somani College Of Commerce  
              Chopasani Road, Kamla Nehru Nagar,  
              1st Puliya, Jodhpur – 342008          |
| Kota N-44 | Kota Chapter of NIRC of the ICSI  
              B-382, Talwandi, Kota – 324005        |
| Udaipur N-45 | Udaipur Chapter of NIRC of the ICSI  
              Block ‘A’, Chitrakoot Nagar,  
              Bhuwana, Behind Community Centre,  
              Udaipur – 313001                    |
| Chandigarh N-46 | Goswami Ganesh Dutta Sanatan Dharma College  
              Sector-32-C, Chandigarh – 160030    |
| Agra N-47 | Agra Chapter of NIRC of the ICSI  
              Silver Point, 3/2 G, Second Floor, Nehru  
              Nagar, (Near Anjana Cinema, M G Road),  
              Agra – 282002                      |
| Aligarh N-48 | Shree Varshney College  
              Near Ram Leela Ground, Achal Taal,  
              G. T. Road, Aligarh – 202001         |
| Allahabad N-49 | Allahabad Chapter of NIRC of the ICSI  
              30A/9/2A, Cooper Road, 2nd Floor,  
              Near Hari Masjid, In Front of HT Media  
              Office, wWcCivil Lines, Allahabad –  
              211001                               |
| Bareilly N-50 | Lions Rohila Inter College  
              Janakpuri, Bareilly – 243003         |
| Gorakhpur N-51 | Marwar Business School  
              Naseerabad, Near Jhankar Cinema,  
              Gorakhpur – 273001                  |
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<td>Akanksha Vidyaapeeth Inter College Delhi Road, Milan Vihar, Moradabad –</td>
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**SOUTHERN REGION**

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<th>Booth No.</th>
<th>Address</th>
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</thead>
<tbody>
<tr>
<td>Chennai</td>
<td>S-1</td>
<td>The Southern India Chamber of Commerce and Industry MAC Hall, Indian Chamber Buildings, Esplanade,</td>
</tr>
<tr>
<td></td>
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<td>Chennai – 600108</td>
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<tr>
<td>Chennai</td>
<td>S-2</td>
<td>Southern India Regional Office of the ICSI ‘ICSI House’, No. 9, Wheat Crofts Road, Nungambakkam,</td>
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<tr>
<td></td>
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<td>Chennai – 600034</td>
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<tr>
<td>Chennai</td>
<td>S-3</td>
<td>Gokhale Shastri Institute Shanmugasundaram Hall 16, Karpagambal Nagar, Mylapore, Chennai – 600004</td>
</tr>
<tr>
<td>Chennai</td>
<td>S-4</td>
<td>The Industrial Estate Manufacturers’ Association, No. 10 R V Towers, Ground Floor, GST Road,</td>
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<tr>
<td></td>
<td></td>
<td>(Adjunct to SBI SISI), Guindy, Chennai – 600032</td>
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<td>Chennai</td>
<td>S-5</td>
<td>Dhanraj Baid Jain College (Autonomous) Rajiv Gandhi Salai, Jyothi Nagar, Okkiyam, Thoraiapakkam,</td>
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<td>Chennai – 600097</td>
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<td>Chennai</td>
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<td>Hyderabad Chapter of SIRC of the ICSI #6-3-609/5, Anandnagar, Khairatabad, Hyderabad – 500004</td>
</tr>
<tr>
<td>Chennai</td>
<td>S-7</td>
<td>The Institute of Cost Accountants of India – Hyderabad Chapter CMA Bhavan, Beside Dena Bank,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Opposite Police Station, Sanathnagar, Hyderabad – 500018</td>
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<tr>
<td>Chennai</td>
<td>S-8</td>
<td>ICSI Centre of Excellence Survey No. 1, IDA Uppal, Genpact Road, (Near Mallikarjun Swamy Temple),</td>
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<tr>
<td></td>
<td></td>
<td>Uppal, Hyderabad – 500039</td>
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<td>Chennai</td>
<td>S-9</td>
<td>YMCA Sardar Patel Road, Near Clock Tower, Secunderabad, Telangana – 500003</td>
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<tr>
<td>Bangalore</td>
<td>S-10</td>
<td>Bengaluru Chapter of SIRC of the ICSI No. 5, 1st Main Road, KSSIDC Industrial Estate, 6th Block,</td>
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<td></td>
<td></td>
<td>Rajajinagar, West of Chord Road, Bengaluru – 560010</td>
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<td>Bangalore</td>
<td>S-11</td>
<td>Institution of Agricultural Technologists No. 15, Queens Road, Bengaluru – 560052</td>
</tr>
<tr>
<td>Bangalore</td>
<td>S-12</td>
<td>The Institute of Cost Accountants of India – Bangalore Chapter No. 81, Mallikarjuna Temple Street,</td>
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<tr>
<td></td>
<td></td>
<td>Basavanagudi, Bengaluru – 560004</td>
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<tr>
<td>Bangalore</td>
<td>S-13</td>
<td>Rotary Bangalore Indiranagar Rotary House of Service 2143, 16th E Main, HAL 2nd Stage, (Opposite</td>
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<td></td>
<td></td>
<td>BDA Park &amp; Near Lohit Hospital), Indiranagar, Bengaluru – 560008</td>
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<tr>
<td>Bangalore</td>
<td>S-14</td>
<td>Alumni Association University of Agricultural Sciences Hebbal, Bengaluru – 560024</td>
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<tr>
<td>Guntur</td>
<td>S-15</td>
<td>Amaravati Chapter of SIRC of the ICSI 1st Floor, North Block, Hindu College &amp; High School Campus,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Opposite Gandhi Park, Beside Canara Bank, Guntur – 522003</td>
</tr>
<tr>
<td>Vijayawada</td>
<td>S-16</td>
<td>The Institute of Cost Accountants of India – Vijayawada Chapter CMA Bhavan, D No. 58-6-14, Karanangari Street, Patamata, Near Benz Circle, Krishna District, Vijayawada – 520010</td>
</tr>
<tr>
<td>Visakhapatnam</td>
<td>S-17</td>
<td>Visakhapatnam Chapter of SIRC of the ICSI Dr. Lankapalli Bullayya College, Survey No. 44, B Block</td>
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<tr>
<td></td>
<td></td>
<td>Building, 1st Floor, Upstairs of Andhra Bank, Resapuvanipalem, Visakhapatnam – 530013</td>
</tr>
<tr>
<td>Belgaum</td>
<td>S-18</td>
<td>D. M. S. Mandals Bhaurao Katkar College, Belgaum Jyoti College Compound, Club Road,Belgaum – 590001</td>
</tr>
<tr>
<td>Hubli</td>
<td>S-19</td>
<td>J G College of Commerce Saptarshi Building Vidyanagar, Hubli – 580021</td>
</tr>
<tr>
<td>Mangaluru</td>
<td>S-20</td>
<td>Mangalore Chapter of SIRC of the ICSI Grace Towers, 2nd Floor, Bejai, Kapikad Road, Mangalore – 575004</td>
</tr>
</tbody>
</table>
### Mysore
- **S-21**
  - Mysore Chapter of SIRC of the ICSI
  - ICSI House, #125, NHCSL Layout, Off KRS Road, Opposite Vikrant Tyres, Metagalli, Mysore – 570016

### Kochi
- **S-22**
  - Kochi Chapter of SIRC of the ICSI
  - 66/3117, Govardhan Building, Chittor Road, Emakulam, Kochi – 682035

### Kottayam
- **S-23**
  - Bishop Chulaparambil Memorial College
  - Opposite Knanaya Catholic Metropolitan’s House, Kottayam-Kumily Road, Kottayam – 686001

### Kozhikode
- **S-24**
  - Calicut Chapter of SIRC of the ICSI
  - 5/2697 F1, 1st Floor, K.P. Chandran Road, Cherooty Nagar, Kozhikode – 673004

### Palakkad
- **S-25**
  - Palakkad Chapter of SIRC of the ICSI
  - 1st Floor, Shree Krishna Building, Above Punjab National Bank, Nurani, Palakkad – 678004

### Thrissur
- **S-27**
  - Thrissur Chapter of SIRC of the ICSI
  - Door No. 26/728, 3rd Floor, Capital Radhas, Near Paramekkavu Temple, Swaraj Round East, Thrissur – 680001

### Coimbatore
- **S-28**
  - Coimbatore Chapter of SIRC of the ICSI
  - 209, KSG Complex, II Floor, Door No. 1 & 3, Sasthri Road, Ram Nagar, Coimbatore – 641009

### Madurai
- **S-29**
  - Madurai Chapter of SIRC of the ICSI
  - C-3, III Floor, A.R. Plaza, 16/17, North Veli Street, Madurai – 625001

### Salem
- **S-30**
  - Salem Chapter of SIRC of the ICSI
  - No. 173, Pearl Villa, 1st Floor, 3rd Cross, Near Co-Operative Marriage Hall, New Fairlands, Salem – 636016

### Trichy
- **S-31**
  - St. Joseph’s College
  - AV Hall, Community Centre Building, Ground Floor, College Road, Theppakulam Post, Tiruchirappalli – 620002

### Western Region

<table>
<thead>
<tr>
<th>PLACE</th>
<th>BOOTH NO.</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mumbai</td>
<td>W-1</td>
<td>Western India Regional Office of the ICSI 13, Jolly Maker Chambers No. II, First Floor and Nos. 56 &amp; 57 (5th Floor), Nariman Point, Mumbai – 400021</td>
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<tr>
<td></td>
<td>W-2</td>
<td>Indian Merchants’ Chamber IMC Building, Churchgate, Mumbai – 400020</td>
</tr>
<tr>
<td></td>
<td>W-3</td>
<td>Maharashtra Chambers of Commerce &amp; Industries Oricon House, 6th Floor, 12, K. Dubhas Marg, Kala Goda, Opposite Lion Gate, Fort, Mumbai – 400001</td>
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<tr>
<td></td>
<td>W-4</td>
<td>Century Bhawan Dr. Annie Besant Road, Worli, Mumbai – 400018</td>
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<tr>
<td></td>
<td>W-5</td>
<td>Pinge’s Classes Pvt. Ltd. Janardhan Building, Near Ideal Book Depot, Opposite Chhabildas School, Near Shri Krishna Wada Center, Dadar (West), Mumbai – 400028</td>
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<tr>
<td></td>
<td>W-6</td>
<td>Mehta Institute 202, B-Laram Centre, M. A. Road, Near Andheri Railway Station, Andheri (West), Mumbai – 400058</td>
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<td></td>
<td>W-7</td>
<td>S. K. Somaiya College of Arts, Science &amp; Commerce Aurobindo Building, Somaiya Vidyavihar Campus, Vidya Vihar (East), Mumbai – 400077</td>
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<tr>
<td></td>
<td>W-8</td>
<td>Mulund College of Commerce Sarojini Naidu Road, Mulund (West), Mumbai – 400080</td>
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<td></td>
<td>W-9</td>
<td>Kendvichi Education Society’s Annex (First Floor), Bhulabhai Desai Road, Kendvichi (West), Mumbai – 400067</td>
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<tr>
<td>Ahmedabad</td>
<td>W-10</td>
<td>Ahmedabad Chapter of WIRC of the ICSI Maneklal Mills Complex, S-2, B-Tower, Chinubhai Towers, Opposite Handloom House, B/S H.K. College of Arts, Ashram Road, Ahmedabad – 380009</td>
</tr>
<tr>
<td></td>
<td>W-11</td>
<td>Shree Swaminarayan Arts College Geeta Mandir Road, Shahalam Tolnaka, Kankaria, Behrampura, Ahmedabad – 380222</td>
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<tr>
<td></td>
<td>W-12</td>
<td>Xavier Research Foundation; Loyola Centre for Research &amp; Development St. Xavier’s College Campus, Navarangpura, Ahmedabad – 380009</td>
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<tr>
<td></td>
<td>W-13</td>
<td>Prakash Higher Secondary School Aurobindo Society Road, Near Sandesh Press, Bodakdev, Ahmedabad – 380054</td>
</tr>
<tr>
<td>Indore</td>
<td>W-14</td>
<td>Devi Ahilya Arts &amp; Commerce College (Jagdale) 8/1, Chhawni Road, Ushaganj, Jaora Compound, Indore – 452001</td>
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<td>W-15</td>
<td>Indore Chapter of WIRC of the ICSI B/1-2-3, Ashray Apartment, 2/1 Manoramaganj, (Near Mayank Hospital Palasia), Indore – 452001</td>
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<td>Pune</td>
<td>W-16</td>
<td>Pune Chapter of WIRC of the ICSI 23, Mukund Nagar, Corner of Lane No. 1, Gupte Market, Above Dr. Joshi Hospital, Pune – 411037</td>
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<tr>
<td></td>
<td>W-17</td>
<td>MIT-WPU Campus Saraswati Vishwa, “A” Wing, Gymnasium, Paud Road, Kothrud, Pune – 411037</td>
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<tr>
<td></td>
<td>W-18</td>
<td>Mahatta Chamber of Commerce, Industries &amp; Agriculture (MCCIA) Navalal Firda Centre for Excellence, MCCIA Bhosari Branch, J-462, MIDC, TELCO Road, Ganesh Nagar, Bhosari, Pune – 411026</td>
</tr>
<tr>
<td></td>
<td>W-19</td>
<td>Yashwantrao Chavan Academy of Development Administration (YASHADA) Raj Bhavan Complex, Baner Road, Near Armament Colony, Gangeskhind, Pune – 411007</td>
</tr>
<tr>
<td>City</td>
<td>W-20</td>
<td>Office of WIRC of the ICSI</td>
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<tr>
<td>Thane</td>
<td>201-202, Sai Plaza Complex, Above Vijay Sales, Kapurbavdi Junction, Ghodbunder Road, Thane (West) – 400607</td>
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<tr>
<td>Durg</td>
<td>Bhilai Institute of Technology, G.E. Road, Bhilai House, In Front of Govt. V.Y.T. Post Graduate Autonomous College, Durg – 491001</td>
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<tr>
<td>Raipur</td>
<td>Raipur Ward of WIRC of the ICSI House No. C-67, Sector-2, 1st Floor, Above Little Star Play School, Devendra Nagar, Raipur – 492001</td>
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<tr>
<td>Margao</td>
<td>Don Bosco College of Engineering C/o The Fatorda Salesian Society, Behind PWD, Murinda Road, Fatorda, Margao – 403602</td>
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<tr>
<td>Panjim</td>
<td>Goa Chapter of WIRC of the ICSI Indraprashta Building, 6th Floor, Opposite Govindra Building, M.B. Road, Panjim, Goa – 403001</td>
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<tr>
<td>Anand</td>
<td>Anand Institute of Business Studies, Opposite Town Hall, Anand – 388001</td>
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<tr>
<td>Baruch</td>
<td>Regenta Central Harimangla, Near ABC Circle, Old N.H. 8, Bholav, Bharuch – 392015</td>
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<tr>
<td>Gandhidham</td>
<td>Tolani Commerce College, P.O. Box # 27, Adipur, Kutch – 370205</td>
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<tr>
<td>Gandhi Nagar</td>
<td>Shree Ved International School, Plot No. X-19-20-21, Behind Cambay Resort, Sector-25, Gandhinagar – 382027</td>
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<tr>
<td>Jamnagar</td>
<td>Shri Jaysukh Ramnath Institute Of Management Studies, Shri B. K. Shah Education Complex, Ahead Octroi Post, Indira Gandhi Nagar, Jamnagar – 361004</td>
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<td>Rajkot</td>
<td>Rajkot Ward of WIRC of the ICSI 216, 2nd Floor, Krishna Con Arch-II, Tagore Road, Rajkot – 360002</td>
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<td>Surat</td>
<td>Surat Ward of WIRC of the ICSI B-209, Tirupati Plaza, Near Collector Office, Athwa Lines, Surat – 389001</td>
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<td>Vadodara</td>
<td>Vadodara Ward of WIRC of the ICSI Office No. 1 (2nd Floor), Stop-N-Shop Plaza, (Off The Flower Tower-II), R.C. Dutt Road, Vadodara – 390007</td>
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<tr>
<td>Vapi</td>
<td>Keshavji Bharmal Sumaria Commerce &amp; NATARAJ Professional Sciences College, Chanod Colony Naka, Silvassa Road, Vapi – 396195</td>
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<td>Bhopal</td>
<td>Bhopal Ward of WIRC of the ICSI Plot Number-148, 1st Floor, Anchor Mansion, Zone-II, M.P. Nagar, Bhopal – 462011</td>
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<tr>
<td>Gwalior</td>
<td>Jiwaji University, Political Science &amp; Public Administration, Sachin Tendulkar Road, Gwalior – 474001</td>
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<tr>
<td>Jabalpur</td>
<td>Government M.H. College of Home Science and Science for Women, Napier Town, Jabalpur – 482002</td>
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</tbody>
</table>

Sagar W-37 Govt. (Auto) Girls P.G. College of Excellence, Near Main Bus Stand, Court Road, Sagar – 470001

Ujjain W-38 Lokmany Tiak Science and Commerce College, Lokmany Tiak Santrasik Nyas Shiksha Parish, Rising Sunflower and Oil Mill Parish, Neelganga Road, Ujjain – 456010

Aurangabad W-39 Aurangabad Ward of WIRC of the ICSI FR-9, 1st Floor, Kuber Avenue-B, Rana Nagar, Beside Seven Hills Flyover, Jaina Road, Aurangabad – 431005

Bhayander W-40 Bhayander Ward of WIRC of the ICSI Shop No. 3, Hastagiri Apartment, Padmavati Nagar, 150 Feet Road, Near Maxus Mall, Bhayander (West), Thane – 401101

Dombivli W-41 Dombivli Ward of WIRC of the ICSI Satchidanand CHS, Ground Floor, Opposite HDFC Bank, Near Old Post Office, Madan Thakre Chowk, Tilak Road, Dombivli (East) – 421201

Jalgaon W-42 Adv. S.A. Baheti College, Khwajarniya Road, Jilha Peth, Post Box No. 110, Jalgaon – 425001

Kalyan W-43 K. M. Agrawal College, Padgah Road, Ghandare, Kalyan (West) – 421301

Kolhapur W-44 Kolhapur Ward of WIRC of the ICSI Matsoshree Plaza, Fourth Floor, 403 and 404, Venus Corner, Shahuropur, Kolhapur – 416001


Nagpur W-46 Nagpur Ward of WIRC of the ICSI 3-A, 3rd Floor, Avishina Towers, Mahad Square, Dantoli, Nagpur – 440012

Nasik W-47 Nashik Ward of WIRC of the ICSI Natraj Plaza, 7 & 8, Opposite Boy’s Town School, Anandvan Colony, College Road-Trimbak Link Road, Nashik – 422005


Ulhasnagar W-49 Institute of Cost Accountants of India – Kalyan-Ambernath Chapter, Sai Chintan C.H.S. Ltd., Near Dhobi Ghat, Maratha Section 32, Ulhasnagar – 421004

Vasai W-50 Vidya(varidhini) Annsaheb Vartak College of Arts, Near Primary Health Centre, Vasai Road, Next to Vasai Railway Station, Vasai (West) – 401202
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After implementation of Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) issued by the ICSI under Section 118(10) of the Companies Act, 2013, the ICSI has issued the Secretarial Standard on Dividend (SS-3) which is effective from 1st January, 2018 for voluntary adoption by the Companies.

The Secretarial Standards integrate, harmonise and standardise the diverse Secretarial practices followed by the corporates so as to promote uniformity and consistency.

In order to promote the standardised practices in preparation of Board’s Report, the ICSI has issued the Secretarial Standard on Report of the Board of Directors (SS-4) effective from 1st October, 2018 for voluntary adoption by the Companies.

The text of SS-4 is available on ICSI website at the link https://www.icsi.edu/ssb/home/ and the same is published here for reference of all the Stakeholders.
SECRETARIAL STANDARD
ON
REPORT OF THE BOARD OF DIRECTORS

This Standard is issued by the Council of the Institute of Company Secretaries of India and may be called the Secretarial Standard - 4 (SS-4) on “Report of the Board of Directors”.
Following is the text of SS-4.
(In this Standard, the text set out in bold and normal type has equal authority and shall be read in the context thereof.)

INTRODUCTION

The Companies Act, 2013, requires the Board of Directors of every company to attach its report to the financial statements to be laid before the members at the annual general meeting.

The Board’s Report is an important means of communication by the Board of Directors of a company with its stakeholders. The Board’s Report provides the stakeholders with both financial and non-financial information, including the performance and prospects of the company, relevant changes in the management and capital structure, recommendations as to the distribution of profits, future and on-going programmes of expansion, modernisation and diversification, capitalisation of reserves, further issue of capital and other relevant information.

The Companies Act, 2013, mandates certain disclosures to be made in the Board’s Report.

A listed company is also required to comply with certain additional requirements as stated under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Similarly, a company whose securities are listed on an overseas stock exchange, is required to comply with additional requirements as may be specified by such stock exchange.

Further, a company which is regulated under other laws, may also be required to make additional disclosures in its Board’s Report as stated in the respective applicable laws.

The Board’s Report should be based on the company’s standalone financial statement and not on the consolidated financial statement and should relate to the financial year for which such financial statement is prepared.

The Board’s Report should avoid repetition of information. If any information is mentioned elsewhere in the financial statement, a reference thereof should be given in Board’s Report instead of repeating the same.

SCOPE

This Standard prescribes a set of principles for making disclosures in the Report of the Board of Directors of a company and matters related thereto.

In case, a particular disclosure which is required to be made as per this Standard is not applicable to a particular company, the company need not disclose the same in the Board’s Report except where the Standard requires specific disclosure in this respect.

The Board’s Report of a One Person Company (OPC) and Small Company shall be prepared in the abridged form as prescribed by the Central Government.

This Standard is in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, any part of this Standard becomes inconsistent with the Act, the provisions of the Act shall prevail.

Adherence to this Standard is recommendatory.

DEFINITIONS

The following terms are used in this Standard with the meaning specified:

“Act” means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

“Committee” means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

“Listing Regulations” means SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

“Report” means Board’s Report or the Report of the Board of Directors.

“Specified Securities” means the specified securities as defined in the Listing Regulations.

“Year” means the financial year to which the Board’s Report relates.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

SECRETARIAL STANDARD

PART I: DISCLOSURES

The Report shall, inter alia, include the following:

1. COMPANY SPECIFIC INFORMATION
   1.1 Financial summary and highlights
   1.2 Amount, if any, which the Board proposes to carry to any reserves
       The amount proposed to be transferred to any reserves of the company. If no amount is proposed to be transferred to reserves, a statement to that effect shall be included.
   1.3 Dividend
a. The amount of dividend per share and the percentage thereof which the Board recommends for the year and the dividend distribution tax thereon. In case no dividend has been recommended by the Board, a statement to that effect shall be made.
b. The amount and the percentage of interim dividend declared, if any, during the year and the dividend distribution tax thereon.
c. The total amount of dividend for the year.
d. A statement on compliance with the Dividend Distribution Policy, if applicable, and the reasons for deviation and the rationale for additional parameters considered, if any.
e. Payment of dividend from reserves.

1.4 Major events occurred during the year

a) State of the company’s affairs
The state of affairs of the company shall, inter alia, include the following information -
   i. segment-wise position of business and its operations;
   ii. change in status of the company;
   iii. key business developments;
   iv. change in the financial year;
   v. capital expenditure programmes;
   vi. details and status of acquisition, merger, expansion, modernization and diversification;
   vii. developments, acquisition and assignment of material Intellectual Property Rights;
   viii. any other material event having an impact on the affairs of the company.

b) Change in the nature of business
In case the company has commenced any new business or discontinued/sold or disposed off any of its existing businesses or hived off any segment or division during the year, the Report shall disclose the details of the same highlighting the key focus areas.

b) Material changes and commitments, if any, affecting the financial position of the company, having occurred since the end of the Year and till the date of the Report
The effect of such changes and commitments and an estimate of their financial impact shall also be disclosed in the Report. If evaluation of such an estimate cannot be made, a statement to that effect be made.
The causes for such material changes and commitments and the remedial measures taken shall also be disclosed.
The Report shall also disclose the information with respect to changes in external and internal environment including technical, legal and financial, strikes, lockouts and breakdowns affecting the business of the company.

1.5 Details of revision of financial statement or the Report
In case the company has revised its financial statement or the Report in respect of any of the three preceding financial years either voluntarily or pursuant to the order of a judicial authority, the detailed reasons for such revision shall be disclosed in the Report of the year as well as in the Report of the relevant financial year in which such revision is made.

2. GENERAL INFORMATION

1.1 Overview of the industry and important changes in the industry during the last year;
1.2 External environment and economic outlook;
1.3 Induction of strategic and financial partners during the year; and
1.4 In case of a company, which has delisted its equity shares, during the year or till the date of the Report, the particulars of delisting activity giving details like price offered pursuant to delisting offer, offer period of delisting, number of shares tendered and accepted, total consideration paid and the holding of the Promoters in the company post delisting.

3. CAPITAL AND DEBT STRUCTURE
Any changes in the capital structure of the company during the year, including the following:
(a) change in the authorised, issued, subscribed and paid-up share capital;
(b) reclassification or sub-division of the authorised share capital;
(c) reduction of share capital or buy back of shares;
(d) change in the capital structure resulting from restructuring; and
(e) change in voting rights.

3.1 Issue of shares or other convertible securities
During the year, if the company has issued any equity shares or preference shares or any securities which carry a right or option to convert such securities into shares, the disclosure shall include the following:
(a) date of issue and allotment;
(b) method of allotment (QIP, FPO, ADRs, GDRs, rights issue, bonus issue, preferential issue, private placement, conversion of securities, etc.);
(c) issue price;
(d) conversion price;
(e) number of shares allotted or to be allotted in case the right or option is exercised by all the holders of such securities;
(f) number of shares or securities allotted to the promoter group (including shares represented by depository receipts);
(g) in case, shares or securities are issued for consideration other than cash, a confirmation that price was determined on
the basis of a valuation report of a registered valuer.

3.2 Issue of equity shares with differential rights
The disclosure shall include the following:
(a) total number of shares allotted with differential rights;
(b) details of the differential rights relating to voting rights and dividend;
(c) percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting rights shall carry to the total voting rights of the aggregate equity share capital;
(d) price at which shares with differential rights have been issued;
(e) particulars of Promoters, Directors or Key Managerial Personnel to whom shares with differential rights have been issued;
(f) change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
(g) diluted earnings per share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;
(h) pre and post issue shareholding pattern along with voting rights in the prescribed format.

3.3 Issue of Sweat Equity Shares
The disclosure shall include the following:
(a) class of Directors or employees to whom sweat equity shares were issued;
(b) class of shares issued as sweat equity shares;
(c) number of sweat equity shares issued to the Directors, Key Managerial Personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the names of allottees holding one percent or more of the issued share capital;
(d) reasons or justification for the issue;
(e) principal terms and conditions for the issue, including pricing formula;
(f) total number of shares arising as a result of the issue;
(g) percentage of the sweat equity shares to the total post issued and paid up share capital;
(h) consideration, including consideration other than cash, received or benefit accrued to the company from the issue;
(i) diluted earnings per share pursuant to the issue.

3.4 Details of Employee Stock Options
The disclosure shall include the following details of all the Employee Stock Options Scheme(s) implemented from time to time:
(a) options granted;
(b) options vested;
(c) options exercised;
(d) the total number of shares arising as a result of exercise of options;
(e) options lapsed;
(f) the exercise price;
(g) variation in terms of options;
(h) money realised by exercise of options;
(i) total number of options in force;
(j) employee wise details of options granted to:
(ii) Key Managerial Personnel;
(iii) any other employee who receives a grant of options in any one year of options amounting to five percent or more of total options granted during that year;
(iv) identified employees who were granted options, during any one year, equal to or exceeding one percent of the issued capital, excluding outstanding warrants and conversions, of the company at the time of grant.
(k) in case of a company whose shares are listed:
(i) any material change to the scheme and whether such scheme is in compliance with the SEBI (Share Based Employee Benefits) Regulations, 2014;
(ii) web-link of disclosures made on the website of the company, as required under SEBI (Share Based Employee Benefits) Regulations, 2014.

3.5 Shares held in trust for the benefit of employees where the voting rights are not exercised directly by the employees
The disclosure shall include the following:
(a) names of the employees who have not exercised the voting rights directly;
(b) reasons for not voting directly;
(c) name of the person who is exercising such voting rights;
(d) number of shares held by or in favour of such employees and the percentage of such shares to the total paid up share capital of the company;
(e) date of the general meeting in which such voting power was exercised;
(f) resolutions on which votes have been cast by persons holding such voting power;
(g) percentage of such voting power to the total voting power on each resolution;
(h) whether the votes were cast in favour of or against the resolution.
3.6 **Issue of debentures, bonds or any non-convertible securities**

The disclosure shall include the following:

(a) date of issue and allotment of the securities;
(b) number of securities;
(c) whether the issue of the securities was by way of preferential allotment, private placement or public issue;
(d) brief details of the debt restructuring pursuant to which the securities are issued;
(e) issue price;
(f) coupon rate;
(g) maturity date;
(h) amount raised.

3.7 **Issue of warrants**

The disclosure shall include the following:

(a) date of issue and allotment of warrants;
(b) number of warrants;
(c) whether the issue of warrants was by way of preferential allotment, private placement, public issue;
(d) issue price;
(e) maturity date;
(f) amount raised, specifically stating as to whether twenty five percent of the consideration has been collected upfront from the holders of the warrants;
(g) terms and conditions of warrants including conversion terms.

4. **CREDIT RATING OF SECURITIES**

The disclosure shall include the following:

(a) credit rating obtained in respect of various securities;
(b) name of the credit rating agency;
(c) date on which the credit rating was obtained;
(d) revision in the credit rating;
(e) reasons provided by the rating agency for a downward revision, if any.

5. **INVESTOR EDUCATION AND PROTECTION FUND (IEPF)**

The disclosure shall include the following:

(a) details of the transfer/s to the IEPF made during the year as mentioned below:
   (i) amount of unclaimed/unpaid dividend and the corresponding shares
   (ii) redemption amount of preference shares;
   (iii) amount of matured deposits, for companies other than banking companies, along with interest accrued thereon;
   (iv) amount of matured debentures along with interest accrued thereon;
   (v) application money received for allotment of any securities and due for refund along with interest accrued;
   (vi) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation;
(b) details of the resultant benefits arising out of shares already transferred to the IEPF;
(c) year wise amount of unpaid/unclaimed dividend lying in the unpaid account upto the Year and the corresponding shares, which are liable to be transferred to the IEPF, and the due dates for such transfer;
(d) the amount of donation, if any, given by the company to the IEPF;
(e) such other amounts transferred to the IEPF, if any, during the year.

6. **MANAGEMENT**

6.1 **Directors and Key Managerial Personnel**

The disclosure shall include the following:

(a) names of the persons who have been appointed /ceased to be Directors and/or Key Managerial Personnel of the company:
   (i) during the year;
   (ii) after the end of the year and up to the date of the Report;
(b) mode of such appointment/cessation;
(c) names of the Directors retiring by rotation at the ensuing annual general meeting and whether or not they offer themselves for re-appointment.

In case the company operates in a specific sector where approval of any regulatory authority is required before the appointment of a Director/ Key Managerial Personnel, the Report shall also state whether the company has obtained the approval of such regulatory authority.

6.2 **Independent Directors**

The disclosure shall include the following:

(a) in case of appointment of Independent Directors, the justification for choosing the proposed appointees for appointment as Independent Directors; and
(b) in case of re-appointment after completion of the first term, the rationale for such re-appointment.
6.3 Declaration by Independent Directors and statement on compliance of code of conduct
The Report shall include a statement:
(a) that necessary declaration with respect to independence has been received from all the Independent Directors of the company;
(b) that the Independent Directors have complied with the Code for Independent Directors prescribed in Schedule IV to the Act.
If the company has formulated a Code of Conduct for Directors and senior management personnel, the Report shall also include a statement on compliance of such Code.

6.4 Board Meetings
The number and dates of meetings of the Board held during the year shall be disclosed in the Report.

6.5 Committees
The Report shall disclose:
(a) Composition of Committees constituted by the Board under the Act and the Listing Regulations as well as changes in their composition, if any, during the year;
(b) The number and dates of meetings of such committees held during the year.

6.6 Recommendations of Audit Committee
Where the Board has not accepted any recommendation of the Audit Committee, a statement to that effect shall be disclosed in the Report along with the reasons for such non-acceptance.

6.7 Company’s Policy on Directors’ appointment and remuneration
The Report of every listed company and other prescribed class of companies shall disclose company’s policy on directors’ appointment and remuneration and the criteria for determining qualifications, positive attributes and independence of a Director. Where the said policy is available on the website of the company, it would be sufficient to disclose salient features of such policy, any change therein and the web-link at which the complete policy is available.

6.8 Board Evaluation
The Report of every listed company and other prescribed class of public companies shall include a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual Directors has been made.

6.9 Remuneration of Directors and Employees of Listed Companies
The following disclosures, shall be made, either in the Report or by way of an annexure thereto:
(a) the number of permanent employees on the rolls of the company;
(b) the ratio of remuneration of each Director to the median remuneration of the employees of the company for the year; 
    [The expression “median" means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one; (ii) if there is an even number of observations, the median shall be the average of the two middle values.]
(c) the percentage increase in remuneration of each Director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the year;
(d) the percentage increase in the median remuneration of employees in the year;
    [The expression “Remuneration” means any money or its equivalent given or passed to an employee for services rendered by him and includes perquisites under the Income tax Act.]
(e) average percentile increase already made in the salaries of employees other than managerial personnel in the last year and its comparison with the percentile increase in the managerial remuneration and justification thereof and whether there are any exceptional circumstances for increase in the managerial remuneration;
(f) affirmation that the remuneration is as per the remuneration policy of the company.
In addition to the above, the Report shall include a statement indicating:
(a) names of top ten employees of the company in terms of remuneration drawn.
    Employees who have resigned / retired during the year shall also be considered for this purpose. In case of companies having less than ten employees, such statement shall include details of all employees.
(b) name of every employee who:
    (i) if employed throughout the year, was in receipt of remuneration not less than one crore and two lakh rupees in the aggregate;
    (ii) if employed for a part of the year, was in receipt of remuneration not less than eight lakh and fifty thousand rupees per month in the aggregate;
    (iii) if employed throughout the year or part thereof, was in receipt of remuneration which in excess of that drawn by the Managing Director or Whole-time Director or Manager and who holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.
The aforesaid statement shall also indicate the following:
(a) designation of the employee;
(b) remuneration received;
(c) nature of employment, whether contractual or otherwise;
(d) qualifications and experience of the employee;
(e) date of commencement of employment;
(f) the age of such employee;
(g) the last employment held by such employee before joining the company;
(h) the percentage of equity shares held by the employee along with his spouse and dependent children, if such shareholding is not less than two percent of the total equity shares;
(i) whether any such employee is a relative of any Director or Manager of the company and if so, the name of such Director or Manager.

Particulars of employees posted and working in a country outside India, not being Directors or their relatives, drawing more than sixty lakh rupees per year or five lakh rupees per month, as the case may be, as may be decided by the Board, need not be circulated to the members in the Report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and the Report.

6.10 Remuneration received by Managing/Whole time Director from holding or subsidiary company

In case the Managing/Whole time Director of the company is in receipt of any commission from the company, and also receives any remuneration or commission from its holding company or subsidiary company, details of such remuneration or commission shall be disclosed in the Report.

6.11 Directors’ Responsibility Statement

The Report shall include a Directors’ Responsibility Statement stating the following:
(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
(b) the Directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the year and of the profit and loss of the company for that period;
(c) the Directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
(d) the Directors had prepared the annual accounts on a going concern basis;
(e) the Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively;
(f) the Directors, in case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and operating effectively.

6.12 Internal Financial Controls

Details in respect of adequacy of internal financial controls with reference to the financial statement.

6.13 Frauds reported by the Auditor

The following details of frauds reported by the Auditor (Statutory Auditor, Secretarial Auditor or Cost Auditor) to the Audit Committee/Board, as the case may be, and the frauds reported to the Central Government shall be disclosed in the Report:
(a) nature of fraud with description;
(b) approximate amount involved;
(c) parties involved, if remedial action not taken;
(d) remedial action taken to prevent occurrence of such frauds in future.

If no fraud is reported by the Auditor, a statement to this effect shall be given in the Report.

7. DISCLOSURES RELATING TO SUBSIDIARIES, ASSOCIATES AND JOINT VENTURES

7.1 Report on performance and financial position of the subsidiaries, associates and joint ventures

In case of companies having subsidiaries, associates and joint ventures, the Report shall include a separate section highlighting the performance of each of the subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company.

7.2 Companies which have become or ceased to be subsidiaries, associates and joint ventures

During the year or at any time after the closure of the year and till the date of the Report, if the company has acquired or formed any new subsidiary, associate or joint venture, details of such companies shall be disclosed. Where any of the subsidiaries, associates or joint ventures of the company has ceased to be a subsidiary, associate or joint venture on account of sale of shares, amalgamation, or by any other manner, then, the names of such companies along with the manner of such cessation shall also be disclosed in the Report.

Companies which have listed their specified securities shall also state in the Report the name of its material subsidiary as per the Listing Regulations. If such material subsidiary has sold, disposed of and leased assets of more than twenty percent of the assets of the material subsidiary on an aggregate basis during a year then details of such sale shall be disclosed.

8. DETAILS OF DEPOSITS

The disclosure shall include the following:
(a) details of deposits accepted during the year;
(b) deposits remaining unpaid or unclaimed as at the end of the year;
(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, the number of such cases and the total amount involved:
(i) at the beginning of the year;
(ii) maximum during the year (i.e. highest number of cases pending repayment of deposits or interest during the year and maximum amount that was due);
(iii) at the end of the year;
(d) details of deposits which are not in compliance with the requirements of the Act;
(e) details of National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT) orders with respect to depositors for extension of time for repayment, penalty imposed, if any;
(f) in case of a private company, details of amount received from a person who at the time of the receipt of the amount was a Director of the company or relative of the Director of the company.

9. PARTICULARS OF LOANS, GUARANTEES AND INVESTMENTS
Particulars of the loans given, investments made, guarantees given or securities provided during the year and the purpose for which the loans/guarantees/securities are proposed to be utilised by the recipient of such loan/guarantee/security. A company shall disclose the aforesaid particulars in the notes to the financial statement and give reference thereof in the Report.

10. PARTICULARS OF CONTRACTS OR ARRANGEMENTS WITH RELATED PARTIES
The disclosure shall include the following:
(a) contracts / arrangements / transactions with related parties which are not at arm's length basis;
(b) material contracts / arrangements / transactions with related parties which are at arm’s length basis;
(c) contracts / arrangements with related parties which are not in the ordinary course of business and justification for entering into such contract.
Such disclosure in the prescribed form shall be annexed to the Report.

11. CORPORATE SOCIAL RESPONSIBILITY (CSR)
The Report shall disclose about the CSR policy of the company and the CSR initiatives taken during the year. Where the said policy is available on the website of the company, it would be sufficient to disclose salient features of such policy, any change therein and the web-link at which the complete policy is available. The Report shall include an Annual Report on the CSR activities and shall comprise the following:
(a) a brief outline of the CSR Policy, including overview of projects or programs proposed to be undertaken and a reference to the web link to the CSR Policy and projects or programs;
(b) composition of the CSR Committee, number of meetings held during the year;
(c) average net profits for the three immediately preceding years;
(d) prescribed CSR expenditure i.e. two percent of clause (c) above;
(e) details of amount spent on CSR during the year including total amount to be spent, amount unspent and manner in which the amount has been spent;
(f) in case the prescribed CSR amount has not been spent, reasons for not spending the same;
(g) a responsibility statement from the CSR Committee that the implementation and monitoring of the CSR Policy is in compliance with the CSR objectives and policy of the company.

12. CONSERVATION OF ENERGY, TECHNOLOGY ABSORPTION, FOREIGN EXCHANGE EARNINGS AND OUTGO
The disclosure shall include the following:
(a) Conservation of energy -
(i) the steps taken or impact on conservation of energy;
(ii) the steps taken by the company for utilising alternate sources of energy;
(iii) the capital investment on energy conservation equipments.
(b) Technology absorption -
(i) the efforts made towards technology absorption;
(ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
(iii) in case of imported technology (imported during the last three years reckoned from the beginning of the year under reference) –
   a) details of the technology imported;
   b) the year of import;
   c) whether the technology has been fully absorbed and if not, areas where absorption has not taken place, and the reasons thereof;
(iv) the expenditure incurred on Research and Development.
(c) Foreign exchange earnings and Outgo –
The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.
In cases where such disclosures are not applicable, the Report shall include a statement to that effect.

13. RISK MANAGEMENT
A statement indicating the development and implementation of a risk management policy for the company. Such statement shall,
inter alia, disclose:

(a) various elements of risk which, in the opinion of the Board, may threaten the existence of the company and
(b) strategy to mitigate such risks.

14. DETAILS OF ESTABLISHMENT OF VIGIL MECHANISM
Every listed company and other prescribed class of companies shall disclose in its Board’s Report, details of establishment of a vigil mechanism.

The disclosure shall, inter alia, include the mechanism for:-

a) the Directors and employees to report their genuine concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct;
b) providing adequate safeguards against victimisation;
c) providing direct access to the higher levels of supervisors and/or to the Chairman of the Audit Committee, in appropriate or exceptional cases.

Web-link of the aforesaid mechanism shall also be disclosed in the Report.

15. MATERIAL ORDERS OF JUDICIAL BODIES /REGULATORS
Details of significant and material orders passed by any Regulator, Court, Tribunal, Statutory and quasi-judicial body, impacting the going concern status of the company and its future operations shall be disclosed.

16. AUDITORS
Names of the Statutory Auditor, Cost Auditor and Secretarial Auditor and details of any change in such Auditors, during the year and up to the date of the Report due to resignation / casual vacancy/ removal / completion of term shall be disclosed in the Report.

17. SECRETARIAL AUDIT REPORT
The Secretarial Audit Report shall be annexed to the Report.

18. EXPLANATIONS IN RESPONSE TO AUDITORS’ QUALIFICATIONS
The Report shall include explanations or comments on every qualification, reservation or adverse remark or disclaimer made in the Auditor’s Report and the Secretarial Auditor’s Report.

If there are no qualifications, reservations or adverse remarks made by the Statutory Auditors/Secretarial Auditors in their respective Report, a statement to this effect shall be given in the Report.

Further, if such qualification, reservation, adverse remark or disclaimer has a material adverse effect on the financial statement or on the functioning of the company, its likely impact and the corrective measures that are proposed to be taken shall also be disclosed in the Report.

19. COMPLIANCE WITH SECRETARIAL STANDARDS
The Report shall include a statement on compliance of applicable Secretarial Standards and other Secretarial Standards voluntarily adopted by the company.

20. CORPORATE INSOLVENCY RESOLUTION PROCESS INITIATED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)
The disclosure shall include the following:

(a) details of any application filed for corporate insolvency resolution process, by a financial or operational creditor or by the company itself under the IBC before the NCLT;
(b) status of such application; and
(c) status of corporate insolvency resolution process, if any, initiated under the IBC.

21. FAILURE TO IMPLEMENT ANY CORPORATE ACTION
In case the company has failed to complete or implement any corporate action within the specified time limit, the Report shall disclose the same and the reasons for such failure.

For the purpose of this clause, the term “corporate action” includes buy back of securities, payment of dividend declared, mergers and de-mergers, delisting, split and issue of any securities.

22. ANNUAL RETURN
A copy of the annual return shall be placed on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Report.

23. OTHER DISCLOSURES
Other disclosures shall include the following:

(a) a statement, wherever applicable, that the consolidated financial statement is also being presented in addition to the standalone financial statement of the company.
(b) key initiatives with respect to Stakeholder relationship, Customer relationship, Environment, Sustainability, Health and Safety.
(c) reasons for delay, if any, in holding the annual general meeting;
(d) a statement as to whether cost records is required to be maintained by the company pursuant to an order of the Central Government and accordingly such records and accounts are maintained.

24. ADDITIONAL DISCLOSURES UNDER LISTING REGULATIONS

24.1 Statement of deviation or variation
Companies which have listed their specified securities shall furnish in the Report an explanation for any deviation or variation in connection with certain terms of a public issue, rights issue, preferential issue etc. as under:
(a) Statement indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
(b) Statement indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between the projected utilisation of funds made by the company in its offer document or explanatory statement to the notice for the general meeting, as applicable, and the actual utilisation of funds.

24.2 Management Discussion and Analysis Report (MDAR)
In case of companies which have listed their specified securities, the Report shall include an MDAR, either as a part of the Report or as an annexure to the Report. The MDAR shall include the following details in relation to the company:
(a) industry structure and developments;
(b) opportunities and threats;
(c) segment wise and product wise performance;
(d) outlook;
(e) risks and concerns;
(f) internal control systems and their adequacy;
(g) discussion on financial performance with respect to operational performance;
(h) material developments in human resources / industrial relations, including number of people employed;
(i) details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:
   (i) Debtors Turnover
   (ii) Inventory Turnover
   (iii) Interest Coverage Ratio
   (iv) Current Ratio
   (v) Debt Equity Ratio
   (vi) Operating Profit Margin (%)
   (vii) Net Profit Margin (%)
   or sector-specific equivalent ratios, as applicable.
(j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.

24.3 Certificate on Compliance of conditions of Corporate Governance
Companies which have listed their specified securities, shall annex with the Report a certificate obtained from either the Statutory Auditor or a practicing Company Secretary regarding compliance of the conditions of corporate governance.

24.4 Suspension of Trading
In case the securities of the company are suspended from trading, the Report shall explain the reasons thereof.

25. DISCLOSURES PERTAINING TO THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013
The disclosure shall include the following:
(a) a statement that the company has complied with the provision relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.
(b) the details of number of cases filed and disposed as required under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

PART II: OTHER REQUIREMENTS

26. APPROVAL OF THE REPORT
The Report shall be considered and approved by means of a resolution passed at a duly convened meeting of the Board.

27. SIGNING OF THE REPORT
The Report shall be signed by the Chairman of the company, if authorised in that behalf by the Board or by two Directors one of whom shall be the Managing Director or in the case of a One Person Company, by one Director.
The financial statement, including consolidated financial statement, if any, shall be approved by the Board before they are signed on behalf of the Board. The statements so approved are required to be signed on behalf of the Board by the Chairman of the company if authorised in that behalf by the Board or by two Directors one of whom shall be the Managing Director and the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed or in the case of a One Person Company, by one Director.
The financial statement so approved and signed on behalf of the Board are required to be submitted to the auditor(s) for their
report thereon. The financial statement is thus signed by the auditor(s) and the audit report thereon is submitted to the Board after such approval.

The annexures to the Report shall be signed in the similar manner as the Report, except the Report on CSR activities of the company, which is required to be signed by the Chief Executive Officer or the Managing Director or any other Director of the company and by the Chairman of the CSR Committee of the company.

28. DISSEMINATION

28.1 Right of Members to have copies of the Report
A copy of the Report along with the financial statement and the Auditor’s Report shall be sent, either physically or in electronic form, to every member at least twenty-one clear days in advance of the annual general meeting.

The copies of the above documents can be sent less than twenty-one clear days in advance of the annual general meeting, if it is so agreed by members:
(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
(b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at the meeting.

In case of section 8 companies, the said documents shall be sent to the members not less than fourteen clear days before the date of the annual general meeting.

28.2 Placing of the Report on the Website
The Report shall be placed on the website of the company, if any.

29. FILING AND SUBMISSION OF THE REPORT

29.1 The Report along with the audited financial statement of the company shall be filed with the Registrar of Companies. The resolution passed by the Board approving such Report shall also be filed with the Registrar of Companies. However private companies are not required to file such resolution with the Registrar of Companies.

29.2 Every listed company shall submit to the stock exchanges on which its securities are listed, its financial statement together with a copy of the Report within twenty-one working days of it being approved and adopted in the annual general meeting.

EFFECTIVE DATE
This Standard shall come into effect from 1st October, 2018.

ANNEXURES TO THE REPORT
The following matters, wherever applicable, will be annexed to the Report:
- Particulars of prescribed contracts / arrangements with related parties in Form AOC-2
- Prescribed particulars of remuneration of Directors and employees.
- Secretarial Audit Report for the relevant year in Form MR-3.
- Annual Report on CSR activities.
- Prescribed details of conservation of energy, research and development, technology absorption, foreign exchange earnings and outgo.
- Auditors’ certificate on Corporate Governance in case of companies which have listed their specified securities.
- Dividend Distribution Policy in case of companies which have listed their specified securities.
- Company’s policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters.

ANNOUNCEMENT
In line with the Green Initiatives and the Ministry of Corporate Affair’s Circular No. 18/2011 (No. 17/95/29/11-CL.V dated April 29, 2011) requiring companies to send Balance Sheet and Auditors Report etc. to their members through electronic mode and pursuant to the decision of the Council of the Institute, the Annual Report of the Council for the Financial Year 2017-18, has been sent to all the members of the Institute through electronic mode on 27th September, 2018. The Annual Report has also been hosted on the website of the Institute on link-

Dear Professional Colleagues

**Subject: Recognition of Executive and Professional Programmes of the ICSI Company Secretaryship Course by UK NARIC**

The Institute of Company Secretaries of India (ICSI) while striving for academic and professional excellence of its key stakeholders, i.e., students and members, aims to expand the opportunities for Governance Professionals in not just national territory but beyond as well. And for an organisation setting best professional standards for the corporate and even for the promotion of national governance, it becomes imperative that the Institute itself strives to meet the internationally set benchmarks.

In one such attempts, the Institute engaged UK NARIC, UK’s National Agency responsible for providing informed advice and guidance on vocational, academic and professional qualifications from over 190 countries worldwide, to conduct an independent benchmarking study, and evaluate the comparability of the Executive and Professional Programmes of the Company Secretaryship Course in the context of the UK and UAE education systems.

After a detailed comparative analysis on various activities relating to Company Secretaryship course, the agency came forth with the following comparability recommendations to the UK/UAE education system:

<table>
<thead>
<tr>
<th>Stage</th>
<th>UK Qualifications</th>
<th>UAE Qualifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>CS Executive Programme</td>
<td>RQF Level 6 [Bachelor degree standard]</td>
<td>QF Emirates Level 7</td>
</tr>
<tr>
<td>CS Professional Programme</td>
<td>RQF Level 7 [Master degree standard]</td>
<td>QF Emirates Level 9</td>
</tr>
</tbody>
</table>

The executive summary of UK NARIC benchmarking study is available at [https://www.icsi.edu/media/webmodules/BenchmarkingICSI_Qualifications_ExeSummary.pdf](https://www.icsi.edu/media/webmodules/BenchmarkingICSI_Qualifications_ExeSummary.pdf)

I am confident that this benchmarking would lead the profession to newer opportunities and newer avenues to pursue further their studies and professional Career with cross border movement.

Regards,
(CS Makarand Lele)
President, The ICSI
UK NARIC has been commissioned by the Institute of Company Secretaries of India (ICSI) to conduct an independent benchmarking study, evaluating the comparability of the ICSI Executive and Professional Programmes of the Company Secretaryship in the context of the UK and UAE education systems.

To place the study in context, ICSI is a professional body for company secretaries with a global membership of 55,000. The ICSI Executive and Professional programmes are primarily taught by distance learning, and assessed through eight and nine three hour written examinations respectively. Passing the Executive Programme is a prerequisite for progression onto the Professional Programme, whereupon successful completion individuals can apply to become an Associate Member of the Institute and work in the role of Company Secretary in India, a role recognised under the Companies Act 2013.

A well-established methodology was employed to conduct the study, including review of the ICSI Executive and Professional Programme core components: duration, entry requirements, learning outcomes, content and structure, mode of learning, assessment and associated outcomes. The main reference point for comparison to the UK education system is the Regulated Qualifications Framework (RQF), supported by level descriptors which define key skills and knowledge expected at each level. The newly revised ICSI syllabus, for first assessment in 2018, was used for the purposes of this evaluation. The process combined desk-based review of documentation, including the ICSI syllabus and past exam papers, with interviews with key personnel involved in the assessment and curriculum development.

A detailed comparative analysis was conducted of learning outcomes, content depth and breadth and assessment to the RQF level descriptors and selected UK similarly focused qualifications. Quality assurance processes, including the measures for curriculum development and review, assessment development and administration, marking and standard setting, external recognition are examined and support the comparative analysis.

In conclusion, the ICSI Executive Programme learning objectives, content and assessment demonstrate similarities with the level of skills and knowledge at RQF Level 6. In particular, the ICSI learning objectives focus on developing application and problem solving skills in addition to advanced conceptual knowledge and understanding, corresponding to RQF Level 6. Review of assessment highlighted linkages to RQF Level 6 related qualifications in areas of law, finance and management in respect to assessed skills.
The ICSI Professional Programme components relate to the knowledge and skills at RQF Level 7. The relevant competencies developed and assessed by the Professional Programme include being able to use specialised skills to solve complex problems with many interacting factors as well as to engage critical analysis and evaluation of information, ideas and concepts. In the Professional Programme, being able to understand the latest developments in the area and determine and use relevant methodologies to solve industry based problems are developed and assessed through extended case studies, reflecting assessment methods used in similar professional qualifications at RQF Level 7.

The quality assurance mechanisms which underpin the programme were found to be sufficient, and support the overall finding of comparability. The curriculum review process involves multiple stakeholders to ensure relevance of the curriculum which is subject to final approval by the Ministry of Corporate Affairs, furthermore the assessment development is conducted to ensure the validity of the skills and knowledge assessed in relation to the curriculum. The marking and moderation process facilitates the reliability of assessment, indicating that broadly consistent standards required to pass are applied from cohort to cohort. Processes are in place to ensure the effective administration of the examinations across ICSI approved centres.

The following comparability recommendations to the UK education system can therefore be provided:

<table>
<thead>
<tr>
<th>Qualification title</th>
<th>ICSI Executive Programme</th>
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</thead>
<tbody>
<tr>
<td>Country:</td>
<td>India</td>
</tr>
<tr>
<td>Awarded by:</td>
<td>Institute of Company Secretaries of India</td>
</tr>
<tr>
<td><strong>Comparison</strong></td>
<td></td>
</tr>
<tr>
<td>UK framework level:</td>
<td>RQF Level 6</td>
</tr>
<tr>
<td>Comparable UK qualifications:</td>
<td>Bachelor degree standard</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Qualification title</th>
<th>ICSI Professional Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country:</td>
<td>India</td>
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</tr>
<tr>
<td><strong>Comparison</strong></td>
<td></td>
</tr>
<tr>
<td>UK framework level:</td>
<td>RQF Level 7</td>
</tr>
<tr>
<td>Comparable UK qualifications:</td>
<td>Master’s degree standard</td>
</tr>
</tbody>
</table>

In terms of comparability in the context of the UAE system, UK NARIC’s work comparing levels of the QFEmirates to the former QCF\(^1\), found that QCF Level 6 and QFEmirates Level 7 were comparable to QCF Level 6; as were QCF Level 7 and QFEmirates Levels 8 and 9. On the basis of this, the Executive Programme is considered broadly comparable to QFEmirates Level 7; while the Professional Programme demonstrates comparability with Level 9, given the focus on developing advanced level professional skills and competencies.

On this basis the following QFEmirates comparability guidelines can be summarised:

<table>
<thead>
<tr>
<th>Qualification title</th>
<th>ICSI Executive Programme</th>
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<tbody>
<tr>
<td>Country:</td>
<td>India</td>
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</tr>
<tr>
<td><strong>Comparison</strong></td>
<td></td>
</tr>
<tr>
<td>QFEmirates framework level:</td>
<td>Level 7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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</tr>
<tr>
<td><strong>Comparison</strong></td>
<td></td>
</tr>
<tr>
<td>QFEmirates framework level:</td>
<td>Level 9</td>
</tr>
</tbody>
</table>

It should be noted that the framework referencing, on which this is based, is not intended to imply the recognition of qualifications on the QFEmirates from one system to the other; nor to comment on the status of implementation of the QFEmirates.

\(^1\) The eight level QCF was replaced by the RQF from 2015 onwards. Each of the eight levels on the RQF relate directly to the eight levels on the previous QCF.
CERTIFICATE COURSE IN GOODS & SERVICES TAX
INTRODUCTION

Goods & Services Tax (GST) is a comprehensive destination based indirect tax levied on goods as well as services at the national level. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming number of indirect tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration. The essence of GST is in removing the cascading effects i.e., tax on tax of both Central and State taxes by allowing setting-off of taxes throughout the value chain, right from the original producer and service provider’s level up to the consumer level.

The GST domain includes varied concepts from registration, payment, returns, refunds, classification and valuation, place and time of supply, input/output credit, and compliance system with respect to e-way bill mechanism along with various other new concepts. GST is an apposite tribute to spirit of cooperative federalism and binds India into an Economic Union upholding the Government of India’s motto of ‘One Nation One Tax’. GST is a proactive step towards vivid opportunities for the country. For better administration of new tax regime in the country, it is important to have more competent and skilled professionals to facilitate regulators to ensure effective compliance of GST. The Company Secretaries, practice in almost all the branches of law as they are experts in interpreting laws and possess a strong accounting background. They are competent professionals to handle the regulatory compliances under the GST laws. The Company Secretaries are rendering value added services to the trade and industry and acting as extended arms of the regulatory mechanism. There are ample opportunities available for Company Secretaries in GST regime viz. compliances, advisory, consultancy, tax planning etc. as they are well versed in understanding the nuances of laws & taxation system.

With a view to equip Company Secretaries with the skills and develop competency in the area of GST, ICSI and BSE Institute Limited (BIL) a wholly owned subsidiary of BSE Limited (formerly known as Bombay Stock Exchange), have joined hands to offer a Certificate course in GST for its Members and Professional Programme students. The course gives a comprehensive insight about principles of GST as well as other nuances of the new indirect tax regime. It encourages the candidate to gain an understanding about the relevance of GST inclusively as well as of the preparations and challenges that lie ahead.
ELIGIBILITY CRITERIA
The Members and Professional Programme students of the Institute shall be eligible for the admission to the course.

REGISTRATION
The Members and Professional programme students interested to apply for the course shall apply online through www.icsi.edu. The members and Professional programme students will be enrolled on first come first served basis. The minimum batch size will be 40 participants.

FEE STRUCTURE
Registration Fee (One time): Rs. 7,500/- inclusive of GST. The fees will be paid online.

COURSE STRUCTURE
The certificate course in GST is an advanced level course and shall test a candidate’s knowledge of various concepts of GST.

In order to give sufficient practical knowledge of GST, the course has been modeled with web based classes followed by an online examination.

DURATION OF THE COURSE
The duration of the course will be 5 weeks (online web based classes to be held on Saturday and Sunday) comprising of:

<table>
<thead>
<tr>
<th>Mode of learning</th>
<th>No. of hours</th>
<th>Purpose of Learning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Web based classes</td>
<td>60 hours</td>
<td>To give sufficient practical knowledge</td>
</tr>
<tr>
<td>Online Examination</td>
<td></td>
<td>After Completion of 5 weeks web based classes</td>
</tr>
</tbody>
</table>

ATTENDANCE
Attendance of atleast 60% is necessary in web based classes in order to appear in the online-examination.

The online live session shall be recorded and the recording shall be made available to the participants in 5 working days post the session is conducted. However, the same will not be considered for marking attendance.

EXAMINATION/ASSESSMENT
An online test will be conducted at the end of the course comprising of multiple choice or short questions. The passing criteria will be 50%. In case the participant is unable to qualify the online test in his/her first attempt, he/she will be given two more attempt(s) to appear and qualify the online test in subsequent batch(es) of the course. Non appearance at the examination shall also be counted as an attempt. There will be no separate examination fee.
CERTIFICATION
The candidates successfully completing the Course shall be awarded a Certificate to that effect in the appropriate form by ICSI jointly with BSE Institute Limited.

COURSE CONTENTS
Background and Basic Principles of GST Law
- Journey of GST in India
- Constitutional mandate and Legislative Framework
- Important definitions
- Levy under GST
- Distinction between Goods and Services
- Incidence of Tax – Supply

Journey of GST in India

Constitutional mandate and Legislative Framework

Important definitions

Levy under GST

Distinction between Goods and Services

Incidence of Tax – Supply

COURSE CONTENTS

GST – Operational Scheme
- Place of Supply
- Time of Supply
- Valuation
- Reverse Charge Mechanism

Place of Supply

Time of Supply

Valuation

Reverse Charge Mechanism

GST – Operational Scheme & Procedural Aspects
- Input Tax Credit mechanism
- Registration under GST including types (to cover Non Resident & Casual Person)
- Unregistered person
- Composition Scheme
- Tax Invoice, Credit and Debit Notes and similar documents
- Accounts & Records

Input Tax Credit mechanism

Registration under GST including types (to cover Non Resident & Casual Person)

Unregistered person

Composition Scheme

Tax Invoice, Credit and Debit Notes and similar documents

Accounts & Records

Special dispensations
- GSTN Portal - overview
- Returns under GST – Preparation and Filing

GSTN Portal - overview

Returns under GST – Preparation and Filing

Special Dispensation

Exports (including Deemed Exports) and Imports under GST

Brief Discussion on Customs and FTP

SEZ and EOUs – related provisions under GST

Input Service Distributor (ISD)

Job-Work provisions

Audit under GST

Advocacy Areas

Demand proceedings

Penal provisions

Appeals

Recovery proceedings

Advance Ruling mechanism

Litigation Basics – Drafting of SCNs/ Appeals, Appearance, etc.

Demand proceedings

Penal provisions

Appeals

Recovery proceedings

Advance Ruling mechanism

Litigation Basics – Drafting of SCNs/ Appeals, Appearance, etc.

Miscellaneous Areas

Transitional Provisions

Exempted Goods and Services

Anti-Profitteering

TDS/TCS Provisions

Sector specific Issues (Construction, Logistics, E-Commerce and Banking)

Selective Advance Rulings/ Judicial Pronouncements

Role of Company Secretary in GST

Sum-Up
**ICSi enters into MoUs with various Insurance providers for its Members and Students**

<table>
<thead>
<tr>
<th>ICSI</th>
<th>Oriental Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Professional Indemnity</td>
<td>a. Professional Indemnity</td>
</tr>
<tr>
<td>b. Medical Insurance</td>
<td>b. Office Package Policy</td>
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<tr>
<td>c. Motor Insurance</td>
<td>c. Medical Insurance</td>
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<tr>
<th>ICSI</th>
<th>ADITYA BIRLA HEALTH</th>
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<tbody>
<tr>
<td>a. Super Top up Health</td>
<td>a. Cyber Insurance – for Individuals</td>
</tr>
<tr>
<td>b. Insurance Policy</td>
<td>b. Director’s and Official’s Liability Policy</td>
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<tr>
<th>ICSI</th>
<th>SBI Life</th>
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<tr>
<td>a. Term Life Insurance</td>
<td>a. Motor Insurance Policy</td>
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<th>ICSI</th>
<th>TATA AIG INSURANCE</th>
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<tr>
<td>WITH YOU ALWAYS</td>
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<tr>
<td>a. Motor Insurance Policy</td>
<td></td>
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</tbody>
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*ICSI Vision*

“To be a global leader in promoting good corporate governance.”

*ICSI Mission*

“Developing high caliber professionals facilitating good corporate governance.”

*ICSI Connect*

https://www.facebook.com/ICSI
https://twitter.com/ICSI_CS
Medical Insurance*

- Price based on Age of eldest member
- Parents’ age is based on the senior most parent.
- USP
- No Medical Test on entry and lifetime cover.
- No Age Limit to take the policy. Parents/inlaws can be covered upto Rs.10 Lacs.
- No loading of premium on renewal if claim was made in previous year.
- Reduction in Premium on renewal for Claim Free Year.
- No need to Port the previous Individual Mediclaim or Family Floater Policy. Just mention the policy Number, Company and Sum Insured. We will take over.
- Critical illness covered upto Total Sum Insured.
- Pre Existing disease covered fully just basing on declaration about three policy periods and Sum Insured.
- Even if not insured earlier, staggered cover for Pre existing disease is available from 2nd Month itself.
- Top Up policy above Rs. 10 lacs Don’t take the risk when hospital cost increases.

*Medical Insurance cover provided by The Oriental Insurance Company, SBI Life Insurance, Aditya Birla Health Insurance and New India Assurance Company Limited. Refer policy document for detailed coverage.
**Professional Indemnity**

- Premium is Rs. 4,500/- per year for Sum Insured of Rs.50 lacs.
- USP
- Cover for breach of confidentiality
- Defamation
- Loss of documents
- Bodily injury (from breach of professional duty)
- Court attendance costs and Defence Costs
- Waiver of subrogation if contract demands
- Worldwide cover subject to Indian legal Jurisdiction
- Policy available through mode at your convenience from Home.
- Many more features available in detailed policy terms.
- Policy covers the actions attributed to earlier year even if insured with some other Company. But found during the current policy period.
- Insolvency Professional cover is issued by us on case to case basis basing on proposal

*Professional Indemnity Insurance cover provided by The Oriental Insurance Company and New India Assurance Company Limited. Refer policy document for detailed coverage.*
Office Protection Shield*

- Price for Sum Insured of 1 lac is Rs, 4,176/- plus GST.
- Building, Contents, machinery, Desktops, Personal accident, Employee fidelity, Workmen Compensation, Public Liability, Baggage Loss and Cash lost in transit
- Fire and allied Perils like Flood, earthquake, Theft etc. are covered.
- Money lost in transit is covered.
- Damage to machinery Both Electrical and Non Electrical
- Portable Equipment’s like laptops while used in office is covered.
- Personal Accident
- This policy has 12 different sections of insurance under one umbrella. The most vulnerable points of an office are given above from insurance

*Office Protection Shield cover provided by The Oriental Insurance Company. Refer policy document for detailed coverage.

Motor Insurance*

- Best Rates at par with maximum discount available
- USP
- Comprehensive Insurance cover online.
- Online reporting of claim
- Zero depreciation cover without additional cost
- Best Sum Insured provided to protect better benefits on theft or total loss
- Legal Liability as per law is honored by Insurance Company

*Motor Insurance cover provided by Tata AIG General Insurance Company and New India Assurance Company Limited. Refer policy document for detailed coverage.
Unveiling value through valuation

Education Course on Valuation of Securities or Financial Assets

REGISTERED VALUERS ORGANISATION
A wholly owned subsidiary of ICSI and registered with IBBI
"You cannot connect dots looking forward, but you can connect dots looking backwards."
~ Steve Jobs

The concept of 'Registered Valuer' was introduced under section 247 of the Companies Act, 2013 to carry out valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, as per the Companies (Registered Valuers and Valuation) Rules, 2017 notified by MCA on 18th October, 2017. The Rules will lead to setting-up of Valuation Standards which will further improve transparency and governance and, while bringing about a clarity regarding various aspect of valuation will have a major impact on the industry, professionals, stakeholders and the government as well. Needless to say, the requirement of Registered Valuers will definitely enhance professional opportunities for both the Company Secretaries as well as other professionals.

Some of the areas under Companies Act, 2013 requiring valuation include:

- Further issuance of shares
- Sweat equity shares
- Shares under a scheme of Corporate Debt restructuring/compromise or arrangement/M&A
- Purchase of Minority Shareholding

About the Institute of Company Secretaries of India (ICSI):

ICSI is a statutory body constituted under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries. The Institute has been contributing in all initiatives of Govt. of India having potential to excel socio-economic growth of the nation and in one such initiative has delved into developing Registered Valuers by establishing its wholly owned subsidiary ICSI Registered Valuers Organisation (ICSI RVO).
### SYLLABUS FOR VALUATION OF SECURITIES OR FINANCIAL ASSETS

<table>
<thead>
<tr>
<th>S. NO.</th>
<th>COVERAGE</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>Macro Economics</td>
</tr>
<tr>
<td>3.</td>
<td>Professional Ethics and Standards</td>
</tr>
<tr>
<td>5.</td>
<td>General laws and Judicial Pronouncements</td>
</tr>
<tr>
<td>7.</td>
<td>Valuation Approaches and Methodologies</td>
</tr>
<tr>
<td>9.</td>
<td>Laws and Regulations relevant to Financial Assets Valuation</td>
</tr>
<tr>
<td>2.</td>
<td>Finance</td>
</tr>
<tr>
<td>4.</td>
<td>Financial Statement Analysis</td>
</tr>
<tr>
<td>6.</td>
<td>Overview of Valuation</td>
</tr>
<tr>
<td>8.</td>
<td>Valuation Application</td>
</tr>
<tr>
<td>10.</td>
<td>Case Studies</td>
</tr>
</tbody>
</table>

### EDUCATIONAL QUALIFICATION & EXPERIENCE

- **Graduate Level**: Graduate in any stream
- **Post Graduate level**: (1) Member of the The ICSI or ICAI or The ICMAI or; (2) MBA/PGDBM specialisation in finance or; (3) Post Graduate Degree in Finance
- **Experience**: 3 years of experience in the discipline after completing graduation

### REGISTRATION

Any individual willing to register himself as a Valuer Member may send an application in the form available at the website: [www.icsirvo.in](http://www.icsirvo.in)

The form shall be accompanied by a Demand Draft favouring ICSI Registered Valuers Organisation payable at New Delhi.

### FEE FOR THE COURSE:

- Enrolment Fee: Rs. 8,850/- (Rs. 7,500 + GST @ 18%)
- Course Fee: Rs. 26,550/- (Rs. 22,500 + GST @ 18%)
**PROCEDURE TO BE FOLLOWED**

1. Meet eligibility requirements, qualification and experience prescribed under Rule 4 of the Companies (Registered Valuers and Valuation) Rules, 2017.

2. Seek enrolment as a valuer member of ICSI RVO.

3. Complete 50 hours educational course.

4. Register and pass computer based Valuation Examination conducted by ICSI RVO.

5. Within 3 years of passing the examination, submit Form A along with requisite fee in favour of Insolvency and Bankruptcy Board of India and supporting documents, to ICSI RVO.

6. ICSI RVO shall verify Form A & other requirements and submit the same along with its recommendation to IBBI.

7. On receipt of Form A along with recommendation of ICSI RVO, fee and other documents, the IBBI shall process the application for registration in accordance with the Rules.

8. After registration with IBBI, take up training with ICSI RVO.

9. On completion of the training, the ICSI RVO shall issue a Certificate of Practice to the registered valuer.

10. Valuation certificate can be issued only after obtaining Certificate of Practice.

**IBBI EXAMINATION REQUIREMENTS**

a. The examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions by IBBI

b. The duration of the examination is 2 hours

c. A candidate is required to answer all questions

d. Wrong answer attracts a negative mark of 25% of the marks assigned for the question

e. A candidate needs to secure 60% of marks for passing

**FEE FOR THE IBBI EXAMINATION:** Rs. 1500/- for every enrolment.

**For further information contact:**
CS Samir Raheja, CEO (Designate), ICSI RVO
4th Floor, ICSI-House, 22, Institutional Area, Lodi Road, New Delhi-110 003,
Phone : +91-11-45341028, E-mail : rvo@icsi.edu, Website : www.icsirvo.in

**REGISTERED VALUERS ORGANISATION**
A wholly owned subsidiary of ICSI and registered with IBBI
Canada: OSFI Releases Final Updated Corporate Governance Guideline

Canada's federal financial institutions regulator, the Office of the Superintendent of Financial Institutions (OSFI), released the final version of its revised and updated Corporate Governance Guideline (the “Updated Guideline”).

The Updated Guideline sets forth OSFI’s current expectations for corporate governance of federally-regulated financial institutions, other than foreign bank branches and foreign insurance company branches.

The release of the Updated Guideline follows a consultation process which included the release last fall of a draft updated guideline (the “Draft Updated Guideline”). The changes from the Draft Updated Guideline are mostly limited to minimal fine-tuning in response to comments received. The main reason for the update is to reflect the continuing evolution of corporate governance standards since the previous Guideline was released in 2013.

The Updated Guideline enables boards to be more effective in executing their roles and responsibilities. Key changes include:

- Providing boards with greater discretion over how they meet the principles of the Guideline, taking into account their institutions’ size, complexity and risk profile;
- Clarifying the delineation between board and senior management responsibilities; and
- Consolidating and rationalizing all OSFI requirements for boards in one guideline.


UK: Quoted Companies Alliance (QCA) updates its Corporate Governance Code

In April 2018, the Quoted Companies Alliance (QCA) published an updated version of its Code. The QCA Code provides UK small and mid-sized companies with a corporate governance framework that may be more appropriate for many AIM companies than the UK Corporate Governance Code, for premium-listed companies.

The new QCA Code highlights the need for communication with stakeholders to build and develop trust. It calls for a more detailed chair’s corporate governance statement and clear signposting to what is disclosed in the annual report and on the company’s website. It emphasises the importance of long-term value, shareholder engagement, risk management, culture, board composition and effectiveness. The publication of the new QCA Code is timely. From 28 September 2018 the new AIM Rule 26 comes into force; requiring AIM companies to provide details of a recognised corporate governance code. This will mean AIM companies will need to explain how they comply with, and where they depart from, their chosen code.

Disclosures made pursuant to AIM Rule 26 should be reviewed annually and the date on which the information was last reviewed should be included on the website. AIM companies will therefore have a choice as to which code they wish to adopt. The two main corporate governance codes in the UK are the UK Corporate Governance Code and the Quoted Companies Alliance Corporate Governance Code (QCA Code).

QCA Corporate Governance Code is available at: https://www.theqca.com/shop/guides/
MOVE TO
DIGITAL BOARD
AND COMMITTEE
MEETINGS WITH EASE.

“Dess Digital Meetings besides being robust, environment friendly is simple to implement and use. Going digital was a seamless transition with all the stakeholders at Raymond.”

Thomas Fernandes,
Director - Secretarial & Company Secretary
Raymond Limited

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

email: info@dess.net
Introducing Governance Cloud™

Special Offer in India – 60% OFF

Is your data currently hosted in a secure and compliant environment? Diligent have also released applications on Evaluations and Meeting Minutes so you can run all your Board meetings securely and compliantly. Sign up before 31 December 2018 and receive 60% discount off Diligent Boards.

Diligent has a number of clients in India including Indian Oil—read the case study below to learn how Diligent has helped them.

Indian Oil is very satisfied per Raju, “In the beginning, one of the things we also heard before choosing Diligent was that they provided excellent services, and we found this to be very true. And, we were really amazed by the Diligent Boards’ solution – it is so simple and easy to use.”