53rd ICSI Foundation Day
Powering Atmanirbhar Bharat through Entrepreneurship and Innovation
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– Aditya Birla Insurance & Brokers Limited

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The write ups of this issue are also available on the website of the Institute.

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1. Celebrations of the 53rd Foundation Day of the Institute of Company Secretaries of India held at Vigyan Bhawan, New Delhi- On the dais from Left: CS Ranjeet Pandey, Past President, Shri T.V. Somanathan, Secretary, Finance and Expenditure, Ministry of Finance, CS Nagendra D. Rao, Smt. Nirmala Sitharaman, Hon’ble Union Minister of Finance & Corporate Affairs, CS Devendra V. Deshpande, Shri Rajesh Verma, Secretary, Ministry of Corporate Affairs and CS Asish Mohan.

2. ICSI Eastern Region Convocation held at Kolkata on 11th September, 2021. Shri Annada Sankar Mukhopadhyay, Chief Judicial Magistrate, Murshidabad graced the occasion as Chief Guest.
3. CS Nagendra D. Rao and CS Ranjeet Pandey met Shri Sanoj Kumar Jha, Secretary, Central Electricity Regulatory Commission and apprised him about the various responsibilities that a Company Secretary can take under the Commission.

4. CS Nagendra D. Rao and CS Asish Mohan met CS (Dr.) Pawan Agrawal, Founder & President of Kamalabai Educational and Charitable Trust, Mumbai.

5. CS Nagendra D. Rao addressing at Two Days Annual Regional PCS Conference of WIRC of ICSI hosted by ICSI Nagpur Chapter on 4th - 5th September, 2021 at Nagpur. Dr. Nitin Kashinath Raut (Hon’ble Cabinet Minister Ministry of New and Renewable Energy, Government of Maharashtra, Mumbai), Shri. Vijay C. Daga (Retd. High Court Judge, Bombay High Court, Nagpur) along with other dignitaries sitting on the dais.

7. ICSI-NIRC UP State Conference held on 25th September, 2021. Shri Anurag Sharma, Hon’ble Member of Parliament, Jhansi & Lalitpur Constituency, Uttar Pradesh, Shri Suhas Lalinakere Yathiraj, IAS, District Magistrate, G.B. Nagar (UP) & Silver Medalist in Tokyo Paralympics Games along with other dignitaries standing on the dais.

8. CS Nagendra D. Rao, President, ICSI addressing in Inauguration function of 324th Batch of MSOP at ICSI NIRC.

9. Group photo of Inauguration function of 324th Batch of MSOP at ICSI NIRC.
FROM THE PRESIDENT

Dear Professional Colleagues,

Having shared these verses from the Shrimad Bhagavad Gita on the auspicious occasion of the 53rd Foundation Day of the Institute of Company Secretaries of India, I find them worthy of reiterating the same through pages of this Journal.

The month of October while marking the onset of festivals and festivities across the nation holds utmost significance for the ICSI as well as its members, students and all its stakeholders for it is on the 4th of October, 1968 that the ICSI was formed and established laying down the groundwork, the foundation for creating, promoting and strengthening a culture of good governance across the nation. While being a professional in itself fills our heart with great pride, what exalts the same is the set of responsibilities entailing and the expectations keeping us on our toes, acting as the perfect motivation.

Year on year, the celebrations marking the day have witnessed grandeur unparalleled. The guests presiding over have been quite kind and forthcoming in bestowing us their benign presence, sharing their words of wisdom, patting our backs for the accomplishments made and guiding us for the future lying ahead. Reminiscing the festivities of the years gone by, the heart swells with pride to have had amongst us the Hon’ble President and the Hon’ble Prime Minister of the country sharing pearls of knowledge and the expectations of the highest order as regards our roles and our conduct in the India of tomorrow.

Powering Aatmanirbhar Bharat through entrepreneurship and Innovation

To state the obvious, the splendour of the 53rd Foundation Day of ICSI akin to its predecessors, was beyond what any quantum of words could express. Celebrated with full gusto on the 4th of October, 2021 in the premises of Vigyan Bhawan, the opulence of the ceremony befittingly signified the mutuality. But what truly added to its magnificence was the presence of the Hon’ble Union Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman as the Chief Guest. Having the first full-time female defence minister, and the first full-time female finance minister, the spearhead of the Ministry of Corporate Affairs amongst us, indeed added to the magnanimity. But what was truly admirable was her humility, her passion for the development of the nation and her faith and trust in this brigade of professionals and our institution to extend our full support and undertake our activities and efforts with full conviction.

As the President of our Alma Mater, sharing stage with a persona so majestic and dignified, has not only accorded me with some wondrous memories and great learnings but has brought with it an abundance of realisations – realisations of the expectations of the Regulatory Authorities, of the fact that as professionals we can never afford to let our guards down and rest, our consistent effort must be our goal and that even when we might know, the world is watching our actions.

Sharing her thoughts about the profession, as the Hon’ble Minister held a holistic approach towards the goal of according ease of doing business and ease of compliance in the corporate sector, her faith in the profession was expressed through her expectations that “Company Secretaries should look beyond their existing set of responsibilities and partner with the Ministries and the Regulatory Authorities in easing compliances for the tax paying citizens.”

Interestingly, the presence of Dr. T.V. Somanathan, a member of the CS fraternity by her side, as the Finance Secretary proved the fact that the role of Company Secretaries in guiding all facets has been established and accepted in all entirety. Having a persona such as himself as the Guest of Honour, one who had witnessed the growth and expanding
presence of the Institute and the profession, up and close
came to feel more familiar than formal. His compliments on
the developments witnessed in the Indian corporate governance
scenario meted along with the anticipation of a much brighter
tomorrow have filled our hearts with gratification.

Our second Guest of Honour, Shri Rajesh Verma, Secretary,
Ministry of Corporate Affairs, while being a constant pillar of
support on behalf of the Regulatory Authority has been our
guiding light in all our initiatives and actions. His eclectic
address wherein he shared the futuristic thought of the Ministry
and technological developments anticipated simultaneously
with the intent of reducing the compliance burden, felt quite
adequate to guide us in charting our way.

ICSI Overseas Centre, Australia: Conquering the world

An Institute which holds high its vision “to be a global leader
in promoting good corporate governance”, claiming the world
through our global presence seems only befitting. For us, the
ICSI Overseas Centres come across as perfect nodes to step
our feet and to make our mark worldwide. It is with this intent
and thought and, as well as keeping in view the expectations of
all our stakeholders, that the ICSI embarked on its journeys
of establishing Overseas Centres in UAE, USA, UK and
Singapore. Inauguration of the 5th ICSI Overseas Centre in
Australia, at the hands of the Hon’ble Finance Minister on the
august occasion of the 53rd Foundation Day of ICSI, rendered
the accomplishment all the more galvanising and prolific.
We surely believe that the Centre while strengthening our
global outreach further shall definitely augment professional
opportunities for ICSI members and students internationally.

Fit India – Fit ICSI Walkathon: Walking miles together

Exercise results in good health, long life, strength and
happiness. Good health is the greatest blessing. Health is
means of everything.

As we took our celebrations to a global level with the
inauguration of our fifth ICSI Overseas Centre in Australia at
the hands of our illustrious Chief Guest, the Home ground
revelled in the zeal of the Fit India – Fit ICSI Walkathon. For
us at ICSI, Fit India is not just a movement, it is a legacy; a
legacy that we exult and relish on the morning of our
Foundation Day. Where we walk miles holding great pride
in our hearts for the profession, the unity shared with our
dignitaries, the families of our members, students and
stakeholders; the shared strength of the profession and all
of us as citizens of this magnificent nation is reiterated.
The gleam on our faces, the sheen of our smiles is what we
cherish the year through...

Celebrations aplenty: Shared togetherness

(He who removes darkness of ignorance of the un-
enlightened with the medicine of knowledge. He who opens
the eyes, salutations unto that holy Guru.)

While I may have shared a peep into a part of our
celebrations of the Teacher’s Day at ICSI; the weekend long
Teachers’ Conferences conducted pan-India have tempted
me to share the same once again. It gives me immense
pleasure to share that the ICSI took to engaging Teachers
and Educationalists through the platform of ‘ICSI Teachers
Conference’ organised on the theme “Empowering Educators”. With dedicated sessions on the topics related
to Companies Act Amendments, National Education Policy
and also on ‘Career as a Company Secretary’, the large
scale nation-wide participation of faculty members was
heart-warming. To quote numbers, more than 80 such
Conferences were held across nearly 60 Chapters and
Regional Councils.

In the same breath, it gives me immense delight to share
yet another scintillating, enriching and gratifying meet with
the youngest brigade of entrants into the profession at the
first bi-annual Eastern Region Convocation for FY 2021-22
organized at Kolkata in the presence of Shri Annada Sankar
Mukhopadhyay, Chief Judicial Magistrate, Murshidabad.
Watching the faces of young Company Secretaries, sensing
their eagerness to serve the nation; assured me to the core
that the future of the profession, the institution and the nation
is in capable and safe hands.

The road ahead: Greater compliance, mature
compliance

To quote the Hon’ble Finance Minister once again, “For
corporations to function and function without the burden of
compliance being on their shoulders; in that respect, the
Company Secretaries have a very important role to play with
on the one hand government wanting to ease compliance
and on the other hand where opportunities are ever growing
because of the introduction of technology”.

It goes without saying and without a doubt that the dynamics
of our roles, our responsibilities shall be altering drastically
in the times to follow. And, as professionals, what is
required of each one of us is that with the opening of doors
of opportunities, we are armed with the skills, capacities
and capabilities to enter them with our full supremacy and
command to commandeer the task of strengthening the
framework of good governance. That said, this task is one
that we shall take on in all togetherness, for as we have
always believed,

Together we can. Together we will.

Happy reading !!!

Yours Sincerely

CS Nagendra D. Rao
President, ICSI

OCTOBER 2021
INITIATIVES UNDERTAKEN DURING THE MONTH OF SEPTEMBER, 2021

INITIATIVES FOR MEMBERS

MEETINGS WITH DIGNITARIES

During the month, ICSI delegation met with Shri Sanjiv Kumar Jha, Secretary, Central Electricity Regulatory Commission on 23rd September, 2021.

REPRESENTATIONS SUBMITTED

During the month, following representations were submitted to various Regulatory Authorities:


• Request for extension for holding Annual General Meeting (AGM) due to COVID-19 to MCA on 22nd September, 2021

APPLICATIONS INVITED FOR ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE FROM 7TH SEPTEMBER, 2021

The ICSI in continuation of its commitment to promote good Corporate Governance and to create awareness on various issues impinging upon corporate governance has unfolded the ICSI National Awards for Excellence in Corporate Governance, 2021 to recognize those companies worthy of being exemplified. Applications have been invited for the following Awards:

• 21st ICSI National Awards for Excellence in Corporate Governance
• 6th ICSI CSR Excellence Awards
• 3rd ICSI Best Secretarial Audit Report Award
• 1st ICSI Best PCS Firm Award

For more details visit https://www.icsi.edu/icsiexcellenceawards/

Last date for submission has been extended from 6th October, 2021 to 12th October, 2021.

EEE 2.0: WEBINAR SERIES

The ICSI had initiated a webinar series “Enable, Evaluate, Excel” in 2017, for reviving refreshing and sharpening the knowledge of its members in Companies Act, 2013. In view of the various amendments, the ICSI re-launched this capacity building initiative. EEE 2.0 - Webinar Series on Companies Act, 2013 and SEBI Laws is an attempt to keep the Governance Professionals abreast with the dynamics of these laws. During the month of September, following Webinars were organized under the Series:

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
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<tbody>
<tr>
<td>3rd September</td>
<td>Related Party Transactions under the Companies Act, 2013 and SEBI (LODR) Regulations, 2015</td>
</tr>
<tr>
<td>10th September</td>
<td>MCA-21 Version 3.0</td>
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<tr>
<td>14th September</td>
<td>Declaration and Payment of Dividend-Secretarial Standard on Dividend(SS3)</td>
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<tr>
<td>17th September</td>
<td>LLP (Amendment) Act, 2021</td>
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<td>21st September</td>
<td>Art of Convening and Conducting general meetings Coverage-SS2 &amp; E-voting</td>
</tr>
<tr>
<td>24th September</td>
<td>Panel Discussion on Independent Directors</td>
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<tr>
<td>28th September</td>
<td>Webinar on Delisting of Securities</td>
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JOINT WEBINAR WITH IEPFA

The ICSI in association with Investor Education and Protection Fund Authority (IEPFA) organised a National Webinar on September 7, 2021 on the theme ‘Empowering Investor: IEPFA, Journey of 5 Years and Way Forward’ to celebrate and share IEPFA journey of 5 years of imparting Investor Education and Awareness amongst the masses. Shri Rao Inderjit Singh, Hon’ble Minister of State (I/C) Ministry of Statistics and Programme Implementation, Ministry of Planning and Minister of State, Ministry of Corporate Affairs, graced the occasion as the Chief Guest.

The inaugural session was addressed by Shri Rajesh Verma, Secretary, MCA and Ex-Officio Chairperson, IEPFA, Shri Manoj Pandey, Joint Secretary, MCA and CEO, IEPF Authority, CS Nagendra D Rao, President, The ICSI. Two technical sessions were also organized comprising CS Devendra V Deshpande, Vice-President, ICSI and other eminent speakers as panelists.

INSTITUTIONAL PARTNER FOR 12TH FINANCIAL MARKETS SUMMIT WITH CII

Confederation of Indian Industry (CII) organized 12th Financial Markets Summit on the theme ‘Building India for a New World – Role of Financial Markets’ on September 16-17,
RECENT INITIATIVES TAKEN BY ICSI

2021 over virtual platform with ICSI as Institutional Partner. The President, ICSI addressed the Special Plenary Session of Summit on ‘Creating Value through Good Governance’ on September 16, 2021.

JOINT VIRTUAL CAPACITY BUILDING PROGRAMME FOR DIRECTORS OF CPSES WITH DPE

ICSI in association with the Department of Public Enterprises (DPE) organized a Virtual Capacity Building Programme for Directors of CPSEs on September 22, 2021. CS Asish Mohan, Secretary, ICSI and Shri Sanjay Kumar Jain, Joint Secretary, DPE addressed at the beginning of the programme which was attended by about 70 delegates from various CPSEs. CS Ranjeet Pandey, Past President & Council Member, ICSI, CS Gopalakrishna Hegde, Former Council Member, ICSI; CS (Dr.) Kumudani Sharma, DGM (CS), Oil India Ltd.; CS Savithri Parekh, Joint Company Secretary & Compliance Officer, Reliance Industries Ltd. were the speakers for the Technical Sessions.

ICSI UNIQUE DOCUMENT IDENTIFICATION NUMBER (UDIN) GUIDELINES, 2019

The Council of the Institute approved amendments in the ICSI Unique Document Identification Number (UDIN) Guidelines, 2019 so as to further include the mandatory generation of UDIN by a Practicing Company Secretary for few other Reports, Returns and Certificates etc. which are prescribed to be certified or issued under any applicable law or rules and regulations made thereunder. The amendments are effective from October 1, 2021.

JOINT WEBINAR WITH PHD CHAMBER OF COMMERCE AND INDUSTRY

The ICSI joined as Associate Partner in the webinar organized by PHD Chamber of Commerce on topic “Most Litigated Issues in GST” on 23rd September 2021.

BI-ANNUAL EASTERN REGION CONVOCATION AT KOLKATA

The first of the bi-annual Eastern Region Convocation for FY 2021-22 was organized at Kolkata on 11th September, 2021 at Rotary Sadan, Kolkata. A total of 28 FCS and 166 ACS were eligible for the ICSI EIRC Convocation of which 11 FCS and 66 ACS received their membership certificates. Shri Annada Sankar Mukhopadhyay, Chief Judicial Magistrate, Murshidabad graced the occasion as Chief Guest.

1ST ALUMNI MEET (VIRTUAL) (SOUTHERN REGION) ON 4TH SEPTEMBER, 2021

ICSI-SIRC organized 1st Alumni Meet (Virtual) for Newly Inducted Members (Southern Region) on Saturday, 4th September, 2021. CS Nagendra D Rao, President, The ICSI delivered presidential address. CS Devendra V. Deshpande, Vice-President, The ICSI, also addressed the participants. In the first session, CS S P Kamath, Company Secretary, Amalgam Foods Limited, Kochi and CS Siva C, Senior Vice President, Rane Group, Chennai spoke on the topic “Emerging Role of CS in Corporate and Professional Growth”. In the second session, CS Bijoy P Pulipra, PCS, Thiruvananthapuram and CS S C Sharada, PCS, Bengaluru spoke on the topic “Challenges in CS Practice for a new CoP holders and how to establish and manage your Practice”.

2ND ALUMNI MEET (VIRTUAL) (NORTHERN REGION) ON 15TH SEPTEMBER 2021

ICSI-NIRC organized its 2nd Alumni Meet (Virtual) for Newly Inducted Members (Southern Region) on Wednesday, 15th September, 2021. CS Manish Gupta, Central Council Member, ICSI and CS B Murli, General Counsel & Company Secretary, Nestle India Limited addressed at the first and second session respectively. CS Nagendra D Rao, President ICSI, CS Devendra V Deshpande, Vice President, ICSI, CS Dr. Ahalada Rao V, Chairman, Placement Committee, CS Asish Mohan, Secretary, ICSI and CS Vimal K Gupta, Chairman, NIRC were also present at the Meet.

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

• Workshops organized
  • ‘Accountability of Personal Guarantors under IBC’ on 4th September, 2021
  • ‘IBC vis-à-vis Companies Act’ on 11th September, 2021
  • ‘Impact of Writ Jurisdiction of High Court on the Objectives of IBC’ on 25th September, 2021

• LIT UP (Limited Insolvency Examination Training)

Pursuant to Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, an individual is eligible for registration as an Insolvency Professional only after passing Limited Insolvency Examination conducted by IBBI.

ICSI IIP organized three days intensive training program for preparation of Limited Insolvency Examination from 17th to 19th September, 2021.

• Webinar on “Sale process of the Corporate Debtor as Going concern and the challenges faced by the Liquidator”

ICSI IIP in association with the British High Commission organized a session on “Sale process of the Corporate Debtor as Going concern and the challenges faced by the Liquidator” on 29th September, 2021. Inaugural address was delivered by CS Nagendra Rao, President ICSI and the session was addressed by the experts from both India and UK.

INITIATIVES FOR STUDENTS

ALL INDIA COMPANY LAW QUIZ 2021

All India Company Law Quiz 2021 is being organized for the existing students of ICSI. The idea is to enhance their visibility, level of knowledge and understanding in Company
Law & allied areas and to generate interest among the students for in-depth study of the subject including greater conceptual clarity.

The Registration for the competition was done through online mode. Preliminary Round of the Quiz was held on 25th June, 2021 through online mode in MCQ Pattern. The Semi-Final round was organized on 23rd July, 2021 following similar pattern.

48 Finalists (16 Finalists for each Stage) participated in Final round which was organised virtually on 18th September 2021. Three all India Winners of each stage as selected in the Final Round will be given Cash Award & Certificate at the end of the competition.

For more details, visit https://www.icsi.edu/video-spice/

ONLINE CURRENT AFFAIRS AND GENERAL KNOWLEDGE QUIZ 2021

The Institute is organising online Current Affairs and General Knowledge Quiz which will be conducted in three Rounds. Students pursuing 11th Class / 12th Class / Passed 12th Class/ pursuing Graduation / Post Graduation of any stream are eligible to participate in the quiz. Online registration for the same commenced from 1st July 2021 and last date to register is 31st August 2021. First round of GK Quiz was organised on 17th September 2021.

For more details, visit https://www.icsi.edu/all-india-online-current-affairs-gk-quiz-2021/

WEBINAR HELD ON 5TH SEPTEMBER 2021 ON THE OCCASION OF TEACHER’S DAY

The Institute organized a power packed motivational webinar for the students on the occasion of Teachers Day on 5th September 2021. IAS, Sweta Agarwal, President, Vice-President, and Secretary, The ICSI addressed the students during the webinar. Webinar got many accolades from all the stakeholders of the Institute.

The webinar is available at https://www.youtube.com/watch?v=RQ6yAhvUoUA

ONE DAY FREE PROGRAMME ON “TRANSFORMING EDUCATION” SCHEDULED FOR 8TH SEPTEMBER 2021

The Institute conducted “One Day free Programme for the students” of the Institute during International Literacy Day on the theme “Transforming Education”. The programme was organized by all Regional/Chapter Offices uniformly on 8th September 2021 for all current (active) students of the Institute and students of various Universities / Colleges.

The Programme is available at the following links: https://www.youtube.com/watch?v=ALwlV7F8G-Y%29&feature=youtu.be https://www.youtube.com/watch?v=3at0hPYpIrA&feature=youtu.be

DECLARATION OF WINNERS OF “POWER POINT COMPETITION” AND “VIDEO BYTE COMPETITION”

The Institute has announced the results of “Power point Competition” and “Video Byte Competition” organised for the students during the Student Month. The power point Competition was organised on 5th July 2021 on the topic “Employees welfare schemes in the Industry” and “Video Byte Competition” was organized on 28th July 2021 on the topic “How do leadership skills improve Professional Performance?”

The Institute heartily congratulates all the winners of both the competitions. The details of the winners are available at the following links: https://www.icsi.edu/media/webmodules/videowebsite.pdf https://www.icsi.edu/media/webmodules/pptwebsite.pdf

ICSI SAMADHAN DIWAS

Samadhan Diwas is an initiative by the ICSI towards on the spot solution of the grievances of the trainees and trainers. The ICSI successfully organized 8th Samadhan Diwas on Thursday, 9th September 2021. Around 25 students attended the Samadhan Diwas and the officials of the Institute resolved all the issues on the spot.

Pending matters of students in the areas of Switchover from Old training to New Training Structure, registration in Classroom EDP, e-EDP, e-MSOP, issue of sponsorship letters for Practical Training, Exemption related matters in Practical Training and issues of Training Completion Certificate which were resolved. The students appreciated the efforts of the Institute for creating a platform for direct interaction with the ICSI officials.

COMPANY SECRETARY EXECUTIVE ENTRANCE TEST (CSEET)

During the month, following initiatives were taken for the CSEET students:

- CSEET (November 2021 session)

Students who aspire to join CS profession may note that the last date to register for CSEET November 2021 session is 15th October, 2021. CSEET November session will be held on 13th November 2021.

To register Click https://smash.icsi.edu/Scripts/CSEET/Instructions_CSEET.aspx

- Exemption to Graduates and Post Graduates from appearing in CSEET and enabling them to take direct admission in CS Executive Programme

The Institute has decided to grant exemption to the following categories of students from appearing in CSEET enabling them to take direct admission in CS Executive Programme.

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Graduates (having minimum 50% marks) or Post Graduates (without any criteria of minimum % of marks) in any discipline of any recognised University or any other Institution in India or abroad recognized as equivalent thereto by the Council.

To get exemption from CSEET on the basis of above qualification, such students shall be required to pay applicable exemption fees alongwith the requisite registration fees for the Executive Programme.


**Provisional registration in Executive Programme for CSEET passed candidates**

In view of the difficulties faced by the students due to unprecedented crisis in the country due to corona outbreak, Institute has decided to allow provisional registration in CS Executive Programme for CSEET passed candidates. Such students can now submit 12th pass mark/certificate within six months since their registration in Executive Programme. For details, click [https://www.icsi.edu/media/webmodules/CSEET/Announcement%20students_12th_20211.jpg](https://www.icsi.edu/media/webmodules/CSEET/Announcement%20students_12th_20211.jpg)

**Online CSEET classes**

Online CSEET Classes are being conducted by Regional/Chapter Offices for the students appearing in CSEET to be held in November 2021. To contact coordinators click [https://www.icsi.edu/media/webmodules/website Classroom.pdf](https://www.icsi.edu/media/webmodules/website Classroom.pdf)

**ONLINE DOUBT CLEARING CLASSES FOR CS STUDENTS**

ICSI is conducting online doubt clearing classes for students appearing in December 2021 examinations. The classes are being conducted in particular for the students appearing in December 2021 examination, however other students of the Institute can also join the classes. Classes are being conducted for all stages, all subjects and students of both new and old syllabus. The classes are being taken by renowned and distinguished faculties with enriched teaching experience. Students can submit their queries through Google link which will be sent to them after registration. They can also interact live with the faculties through the chat box during the classes. Students are required to register at [https://tinyurl.com/uz7j7jf](https://tinyurl.com/uz7j7jf) to attend the classes.

**CONCESSION IN FEES PAYABLE AT THE TIME OF REGISTRATION IN CS EXECUTIVE PROGRAM FOR STUDENTS WHO LOST THEIR PARENTS DUE TO ANY REASON, INCLUDING COVID19 PANDEMIC**

As the COVID pandemic has engulfed the entire globe, it has affected many children in our country also who have lost their parents/or earning member of their family.

To curtail any financial distress on account of educational needs, the Institute has decided that such students may be supported for continuing their education by granting one time concession in fees. It has been decided that the students who have lost their both parents or surviving parent or legal guardian/adoptive parents due to any reason, including COVID-19 pandemic and who have taken registration/ or will be registering in CS Executive Programme between 1st April, 2021 to 31st March, 2022 will be given 100% concession in registration fee. For more details, visit [https://www.icsi.edu/media/webmodules/Granting_ Exemption_230621.pdf](https://www.icsi.edu/media/webmodules/Granting_ Exemption_230621.pdf)

**SCHEDULE OF ICSI CLASSES AT REGIONAL/ CHAPTER OFFICES FOR DECEMBER, 2021 SESSION OF EXAMINATION**

Online Classes are being conducted by Regional/Chapter Offices for the students appearing in December 2021 Examination. For schedule and details, please click here [https://www.icsi.edu/media/webmodules/Schedule_of_classes_for_DEC_21_session_at_RO_CHARTERS.pdf](https://www.icsi.edu/media/webmodules/Schedule_of_classes_for_DEC_21_session_at_RO_CHARTERS.pdf)

**RECORDING OF VIDEO LECTURES**

ICSI has been recording video lectures of eminent faculties for the students of ICSI which help them to prepare for the examination. Students of the Institute can access recorded videos available on the E-learning platform by logging in to [https://elearning.icsi.in](https://elearning.icsi.in)

Login credentials are sent to all registered students at email. After successful login, go to “My courses” or “My Communities” section, where you can find the recorded videos and other contents.

**OPT OUT FACILITY FOR STUDENTS ENROLLED FOR JUNE 2021 SESSION**

Due to COVID-19 crisis, and keeping in view the requests received to carry forward their examination fees to December 2021 session of examination. In its endeavour to support and facilitate the students, Institute provided the facility to the students for carrying forward their exam fee from June 2021 to December 2021 session. The list of all such students who availed opt out/carry forward facility is available at [https://www.icsi.edu/media/webmodules/Total_Opt_out_Dec_2021.pdf](https://www.icsi.edu/media/webmodules/Total_Opt_out_Dec_2021.pdf)

**CBE FOR CS FOUNDATION PROGRAMME, JUNE, 2021 SESSION ON 11-12 SEPTEMBER, 2021 IN LAB / CENTRE MODE**

The Institute conducted Computer Based Examination (CBE) for Foundation Programme, June, 2021 session in Lab / Centre Mode on 11-12 September, 2021 for the candidates who could not appear in Foundation Programme, June, 2021 session held on 13-14 August, 2021 in anywhere
mode through remote proctoring. For details, click https://www.icsi.edu/media/webmodules/6.9.2021_IMPORTANT_EXAMINATION_ANNOUNCEMENT.pdf

STUDENT COMPANY SECRETARY, CS FOUNDATION E-BULLETIN AND CSEET COMMUNIQUE

The Student Company Secretary e-journal for Executive/Professional programme students of ICSI, CS Foundation course e-journal for Foundation programme students of ICSI and CSEET Communique covering the latest update on the subject on the CSEET have been released for the month of September, 2021. The journals are available on the Academic corner of the Institute’s website at the link: https://www.icsi.edu/e-journals/

INFO CAPSULE

A Daily update for members and students, covering latest amendment on various laws for the benefits of our members and students available at https://www.icsi.edu/infocapsule/

ICSI TEACHERS’ CONFERENCES

The ICSI engaged with the educators across India through the august platform of ‘ICSI Teachers Conference’ organized on the theme “Empowering Educators” to celebrate ICSI Teachers’ Week and empower the torchbearers of knowledge through threadbare sessions on the recent topics related to Companies Act Amendments, National Education Policy and also apprised them on Career as a Company Secretary.

The Conferences witnessed large scale participation from Commerce/Management and Law Faculty members from premier institutions, Colleges and Higher Secondary Schools. Many august speakers shared their knowledge and expertise with an aim to bring scholars, educators, and professionals to share developments in their respective fields and open the knowledge frontiers. 82 ICSI Teachers Conferences were conducted by RCs and Chapters during the Celebration of ICSI Teacher’s Week.

CAREER AWARENESS INITIATIVES

As part of its initiative aimed at creating awareness regarding the profession, the Career Awareness Cell organized Webinar on the theme: ‘Corporate Challenges during COVID-19 Pandemic’ with Guru Gobind Singh Indraprastha University, Delhi. CS Nagendra D Rao, President-ICSI, CS Devendra V. Deshpande, Vice President-ICSI, Prof. A K Saini, Dean of the University School of Management Studies (USMS), GGSIPU Dr. John Mendy, Senior Lecturer and Programme Lead for MSc HRM, Chair of Organisational Transformation, University of Lincoln, United Kingdom, Dr Gagan Deep Sharma, Associate Professor, USMS & Associate Director, Office of International Affairs GGSIPU, Delhi shared their views on the platform.

Also, Two Career Awareness Programmes were conducted on 30th September, 2021 in Haryana which were attended by around 200 Students:

- Govt Senior Secondary School, Kadipur, Haryana
- G D Goenka Public School, Gurugram, Haryana

ICSI STUDY CENTRE MOUs

The Institute of Company Secretaries of India signed MOUs for ICSI Study Centres with the following Academic Institutions during the month of September, 2021:

- K.L.E Society’s Jagadguru Gangadhar College of Commerce, Belgavi, Karnataka
- Chitamani College of Arts & Science, Gondpipri, Nagpur, Maharashtra
- Chitamani College of Commerce, Pombhurana, Nagpur, Maharashtra
- Nilkanthrao Shinde Science and Arts College, Bhadrawati, Chandrapur Maharashtra
- Chintamani B.Ed College, Ballarpur, Maharashtra
- Chintamani Mahavidhyalya Ghusus, Maharashtra
- Anand Niketan College, Warora, Maharashtra
- Shri Govindrao Munghate Arts & Science College, Kurkheda, Maharashtra
- Govt. Dau Kalyan Arts & Science Post Graduate College, Baloda Bazar, Chhattisgarh
- Biyani Girls College, Jaipur, Rajasthan.

IMPORTANT LINKS FOR STUDENTS

To facilitate and update the students, a list of important links at the website of the Institute has been compiled. Students can go through the links given below to get all important details:

- For Student Services related updates: https://www.icsi.edu/media/webmodules/Student_Services_links.pdf
- For Academic updates: https://www.icsi.edu/media/webmodules/Academic_links.pdf
- For Training related updates: https://www.icsi.edu/media/webmodules/Training_Links.pdf
Celebration of 53rd Foundation Day of ICSI held on 4th October, 2021 at Vigyan Bhawan, New Delhi
Celebration of 53rd Foundation Day of ICSI held on 4th October, 2021 at Vigyan Bhawan, New Delhi
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मुझे यह जानकार प्रसन्नता हो रही है कि भारतीय कम्पनी सावित संस्थान दिनांक 04 अक्टूबर, 2021 को अपना 53वाँ स्थापना दिवस मना रहा है। भारतीय कम्पनी सावित संस्थान द्वारा अपने रूपांतरण के औचित्य सामग्री के क्षेत्र में स्वयं को सुदृढ़ रूप से स्थापित किया है।

भारतीय कम्पनी सावित संस्थान (आईएसआई) कम्पनी अधिवेशन के अभिप्रेरण को विकसित और विनियमित करने वाला भारत का एक महत्वपूर्ण मान्यता प्राप्त निकाय है। भारत के कम्पनी सावित अपनी विश्वसनीयता व्यवसायिता के लिए और केवल देश के सामाजिक-आर्थिक विकास को बढ़ाने में अपना योगदान देने में उत्तम दृष्टि का प्रमुख अभिकार है। वर्तमान में भारत में विदेशी संयुक्त संबंधों को बढ़ाने में भी अहम भूमिका निभा रहे हैं।

माननीय प्रधानमंत्री श्री नरेंद्र मोदी जी ने ऐतिहासिक सुधारों और नए लक्ष्यों के लिए दिशा दी। भारत की अग्रणी रोजगार का संकल्प तिया है। आइये आजादी के अगुष्ट महोत्सव पर्व पर लम्बे 'आत्मनिर्भर-भारत' के स्वर्ण को पूर्ण करने में अपना योगदान दें।

मैं, भारतीय कम्पनी सावित संस्थान के स्थापना दिवस पर समर्थ पदाधिकारियों व सदस्यों को अपनी भूमिका माननाएं देते हुए संस्थान के उज्जवल भविष्य की कामना करता हूं।

धन्यवाद सहित,

(अमित शाह)

कार्यालय : गृह मंत्रालय, नॉर्थ क्लासिक, नई दिल्ली-110001
दूरभाष : 23092462, 23094686, फैक्स : 23094221
29 September, 2021

MESSAGE

Heartiest congratulations to the Institute of Company Secretaries of India on completing 53 glorious years as an inclusive body contributing towards building a self-reliant and robust nation. It is heartening to note that the Institute has attuned its celebration this year with Azadi Ka Amrit Mahotsav. My compliments to the Institute for continuously striving to improve the credibility and reputation of the Company Secretary profession across the globe. I appreciate irrefutable support and efforts of the Institute towards nation building. My best wishes for all future endeavours.

Jai Hind.

(Smriti Zubin Irani)
MESSAGE

I am delighted to note that the Institute of Company Secretaries of India (ICSI) is celebrating its 53rd Foundation Day this year. It is a moment of pride for all the stakeholders to carry forward the legacy of good governance that ICSI has built over the years.

ICSI has prepared a unique cadre of equipped governance professionals who have increased the credibility and reputation of the company secretary profession not only in India but across the globe. ICSI professionals are actively contributing in making India a transparent, efficient and self-reliant nation.

As India is celebrating ‘Azadi Ka Amrit Mahotsav’, my heartiest congratulations to the institute for strengthening the corporate governance framework in the country and contributing positively to nation building.

Piyush Goyal
I offer my heartiest congratulations to the Institute of Company Secretaries of India (ICSI) on its 53rd Foundation Day Celebrations. Over the last 53 years, your dedication to strengthening the corporate governance framework in the country has been exemplary. Company Secretaries across India play a pivotal role in maintaining transparency and the highest ethical standards in corporate organisations by their knowledge and adherence to compliances. Through its credibility and multi-dimensional support, ICSI has considerably strengthened India’s reputation as a business-friendly economy on the world stage.

I hope the young professionals of the country will learn from and be inspired by the discussions on the theme of “Powering AatmaNirbhar Bharat through Entrepreneurship and Innovation” in the celebrations, and carry forward the legacy of good governance.

My best wishes to the Institute for all future endeavours.

New Delhi
01 October 2021

(Hardeep S Puri)
28 September 2021

The President
The Institute of Company Secretaries of India (ICSI)
INDIA

Dear Sir/MA,

CONGRATULATORY MESSAGE TO THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI) ON THE OCCASION OF THEIR 53rd FOUNDATION DAY

On behalf of the CEO of New Public Support and all the partners of 24governance we congratulate the Board, management, all employees and students of ICSI on their 53rd foundation day.

It goes without saying that the ICSI has proven its worth in recent decades as a guide in governance land and an inspiring example of meaningful education for governance professionals / Company Secretaries. The impact of ICSI does not stop at the borders of India, but is felt in the rest of the world, where the implementation power of ICSI is still admired. It requires a great deal of commitment and loyalty from director and employees to continuously monitor relevant developments, to link these to the social mission of ICSI and to translate them in a timely manner into customer-driven, professional services and training courses throughout the whole country. All stakeholders, from high to low, can rightly be proud of this.

With these words of deep respect, we also wish ICSI the strength, daring and courage to face the challenges of the coming decades with full energy. The changes and challenges in the world and therefore also in India are enormous, both economically and in terms of sustainability and a safer and more healthy world. The Sustainable Development Goals drawn up by the United Nations require an enormous turnaround and enormous tasks for many Boards. The transition makes also an enormous appeal to governance professionals / Company Secretaries who, as the moral conscience of the company, will have to act more and more as a kind of a Board producer and take control to all aspects of governance in facilitating the Board in all decision-making. Governance professionals must make much more use of the technological capabilities in the boardroom. Development of their is 21st century skills such as media wisdom, creativity, collaboration and critical thinking is their greatest challenge. This enormous task for governance professionals / Company Secretaries requires an institution that has the authority, direction and impact to lead and support. A role that ICSI has fulfilled with verve in recent decades and which it will certainly fulfill in the coming years. We as New Public Support, and partner of 24governance, extend our hand to ICSI to contribute where necessary to this honorable and wonderful assignment.

Yours faithfully,

Drs. Edo de Vette
Chief Executive

new public support * Arendshorstlaan 4B * 8043 VE ZWOLLE * T: 06 – 51 48 33 64 * E: e.de.vette@windesheim.nl * NL23INGB 0701 5162 16 * BTW NL 103250542B01 * KvK 65335465
On behalf of the board, staff and members of the Governance Institute of Australia I extend our sincere congratulations and best wishes for the celebration of your 53rd Foundation Day. We appreciate the sustained work of your members and staff to raise the standards of good governance in India and indeed around the world as you support your network in the business community and beyond. We value the relationship between our Institutes and our countries, and hope that our close ties continue for many years to come. All the best for your celebrations on this momentous occasion.

Megan Motto

Chief Executive

Governance Institute of Australia Ltd

The President
The Institute of Company Secretaries of India
India

Dear Sir/Ma,

**CONGRATULATORY MESSAGE TO THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI) ON THE OCCASION OF THEIR 53RD FOUNDATION DAY**

On behalf of the President, Council, Management and Members of the Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN), we felicitate with the Institute of Company Secretaries of India on the auspicious occasion of your 53rd Foundation Day on 4th October, 2021.

The Institute of Company Secretaries of India has come a long way. You have established yourself as a pioneer body in promoting corporate governance, risk management and compliances (GRC) in the last five decades of your existence in addition to the fact that you also regulate and develop the profession of Company Secretaries in India. With over 66,000 members and above 2,00,000 students, you have the largest membership and student base of Company Secretaries in the world and you have also evolved as an inclusive body in the global corporate governance map.

We have no doubts in our minds that in the last 53 years, the Institute has played a significant role in the administration of affairs in the private and public sectors of your country. You have made contributions in shaping the governance process and also impacting positively on other professions in your country.

The theme of your Foundation Day; “**Powering Atmanirbhar Bharat through Entrepreneurship and Innovation**” is apt and we have noted that it will be an occasion to inspire the emerging young professionals in your country to carry forward the legacy and reflect on their roles in the evolving corporate governance framework. We commend and urge you to keep the flag flying.

We have noted that ICSI is playing a pivotal role in the proliferation of Good Governance world over and has also rendered yeoman’s service in developing the Model Code of Governance for Gram Panchayats and Codes for Charity Governance, etc.

This is worthy of emulation and should be sustained at all times. As you celebrate this milestone, we wish you many more years of fruitful impact in India, Asia and Corporate Secretaries International Association (CSIA).

Long Live ICSI!
Long Live CSIA!!!
Long Live the Governance Profession!!!

................................................
Taiwo Ganiyat Olusesi (Mrs), FCIS
Registrar / CEO
Message for 53rd Foundation Day of ICSI

It is certainly a moment of pride for ICSI to be celebrating its 53rd Foundation Day with the theme “Powering Atmanirbhar Bharat through Entrepreneurship and Innovation”. I believe this will inspire young professionals in their journey towards becoming good governance professionals in the evolving corporate governance framework.

I wish to congratulate Team ICSI on this occasion, as well as commend you on your pivotal role in moulding young professionals to be the catalyst in promoting corporate governance in your jurisdiction.

Taking cognisance of the changing landscape in corporate governance, it is indeed a timely call to all young professionals to embark on competency development, in order to elevate themselves in the governance space, by giving their best performance for both personal as well as career advancement.

Once again, congratulations, and on behalf of The Malaysian Institute of Chartered Secretaries and Administrators, I wish you every success in your undertakings.

Datuk Suseela Menon, FCIS (CS) (CGP)
President
President
Institute of Chartered Secretaries of Bangladesh

September 27, 2021

Message

I am delighted to know that the Institute of Company Secretaries of India (ICSI) is celebrating its 53rd Foundation Day on October 4, 2021. On the eve of this auspicious occasion, I, on behalf of all the members of the Institute of Chartered Secretaries of Bangladesh (ICSB), express my heartfelt complements to all members of ICSI. It has been a wonderful journey of ICSI for more than half of a century altogether. It was a journey of brilliance and hard work of all the members of ICSI. Within this period, ICSI has taken the standard of India’s Corporate Governance to a new height with great success. Your dedication and creativity can only be matched with an unquenchable thirst for excellence.

It makes me feel that it’s not just an anniversary for ICSI. It’s an anniversary of a family that grew into a global institution defying all the odds and challenges. I am certain, ICSI is surely destined for a much higher ambition, which its members with pursue with utmost dedication and feat.

On the eve of ICSI’s 53rd Foundation Day, I wish you many more years of unparalleled success and unrivaled service for the corporate world of India and beyond. May this journey of corporate success continue in the coming years also. Wish you and your excellent members of ICSI a happy anniversary.

Muzaffar Ahmed FCMA, FCS
Inauguration of ICSI Overseas Centre Australia

We are pleased to inform you that the Institute of Company Secretaries of India inaugurated its fifth Overseas Centre in Australia on the momentous occasion of 53rd Foundation Day, on 4th October 2021, at the hands of Hon’ble Minister of Finance and Corporate Affairs, Government of India Smt. Nirmala Sitharaman at Vigyan Bhawan, New Delhi.

Aligning with its vision “to be a global leader in promoting good corporate governance”, the ICSI has already made headway in growing its global footprint by setting up ICSI Overseas Centres in UAE, USA, UK and Singapore, which are actively engaged in organizing capacity building programmes for members of the ICSI diaspora.

The setting up of the ICSI Overseas Centre in Australia will further strengthen the global outreach of the profession along with tapping all opportunities to nurture, grow and sustain two-way flow of knowledge and professional potential.

The ICSI Overseas Centre, Australia will function from:
Address: Unit 23, 1689-93 Pacific Highway, Wahroonga, New South Wales 2076
Email id: australiacentre@icsi.edu

Committee of Members:

CS Joginder Sharma
Chairman

CS Anil Kumar Jain
Vice-Chairman

CS Anusha Vyas
Secretary

CS Harman Jot
Treasurer

CS Manish Ghiya
Member

CS Anisha Chandna
Member

CS Nirupama Ravindran
Member

The launch video is available at https://www.youtube.com/watch?v=HXvRlpBzsWA

Regards,

CS Nagendra D. Rao
President, The ICSI

CS Ashish Garg
Chairman, International Affairs Committee, &
Immediate Past President, The ICSI

Connect with ICSI www.icsi.edu | Online helpdesk : http://support.icsi.edu
POWERING ATMANIRBHAR BHARAT THROUGH ENTREPRENEURSHIP AND INNOVATION
A year ago, when the Hon’ble Prime Minister had given the clarion call to make a self-reliant nation, an Aatmanirbhar Bharat, it was then that these verses from the revered Indian scriptures had been quoted. While the literary meanings might have been deciphered beautifully, what stays along is the concept of which means the creation of a self-sufficient India.

A package of ₹20 lakh crore, near about 10% of GDP, a committed government with deepening focus on land, labour, liquidity and laws and an overall inclusive approach comes across as the perfect recipe for creating a self-reliant environment in a nation which is striving to be the next global superpower.

The package along with the reforms which are intended to restore economic growth and make the nation resilient have come in the wake of the post pandemic era as the nation as well as the entire world is trying its level best to move towards a period of normalcy, growth and development.

Embarking on the journey of the celebration of Azadi ka Amrut Mahotsav and partnering with the Government and the Regulatory Authorities, the Institute of Company Secretaries of India attempted to celebrate its 53rd Foundation Day on the theme “Powering Aatmanirbhar Bharat through Entrepreneurship and Innovation”. While the nation in all its togetherness is undertaking initiatives leading to the strengthening of the five pillars of Economy, Infrastructure, System, Vibrant Demography and Demand; it falls on the shoulders of the professionals and more importantly the Governance Professionals to understand their roles towards both, the India Inc. as well as those business enterprises falling outside the ambit of the Companies Act, 2013 and allied laws.

With small and medium enterprises gaining ground and the Government of India committed to bring about alterations in the dynamics of entrepreneurship, employment and investment, Company Secretaries come across as the perfect guides, competent enough to handhold these enterprises creating a culture of compliance and good governance.

Where on one hand, the aim of the Aatmanirbhar Bharat Abhiyaanis to make the country and its citizens independent and self-reliant in all senses through its various Reforms and Enablers, the aim of the ICSI is to provide the Abhiyaan with the much needed impetus of governance. He further outlined five pillars of AatmaNirbhar Bharat.

On this proud and propitious moment of the celebration of 53rd Foundation Day of the Institute of Company Secretaries of India, let us all pledge to undertake our roles and responsibilities with renewed vigour and with the bull’s eye focus on making the nation a global super power. For as the Hon’ble Prime Minister at the 76th UN General Assembly Session said and I quote

“When India grows, the world grows, when India reforms the world transforms.”
In the last seven years, India has leaped forward in the Global Innovation Index from 76th position in 2014 to 46th in 2021. This has been possible due to the immense faith of the government in innovation and the investment in supporting infrastructure which has fostered an environment of innovative and critical thinking among the youth and the society at large. It is leading towards the fulfilment of the dream “AtmaNirbhar Bharat.” Scientific wings like the Department of Atomic Energy, Department of Science and Technology, Department of Biotechnology, and the Department of Space have played a pivotal role in enriching the national innovation ecosystem.

Start-ups form the most important component of innovation ecosystem. In the past, start-ups had to overcome several regulatory hurdles, including filing papers, facing audits, etc. In 2015, Prime Minister Narendra Modi launched one of the government’s flagship program ‘Start-up India’ initiative, which is aimed to promote research parks, technology business incubators, and patent management for companies that would promote innovative ideas until they become commercial ventures. These initiatives are based on start-up policy and implementation, incubation support, seed funding, angel and venture funding, simplification of regulations, easing public procurement, and outreach. One of the most important policy changes under this initiative is reduction of capital gain tax on commercialization of Intellectual Property generated in India. Due to these efforts, Indian R&D ecosystem is now comprised of some 20,000 start-ups, 280 incubation and business acceleration programmes, 200 global and domestic venture capital firms supporting home grown start-ups, and a fast-growing community of 231 angel investors and eight angel networks. These start-ups are involved in cutting age areas like AI, blockchain, robotics, new affordable diagnostics, etc.

Another initiative by the government is “Atal Innovation Mission” (AIM) which is a flagship initiative to promote a culture of innovation and entrepreneurship in the country. AIM has taken a holistic approach to ensure creation of a problem-solving innovative mindset in schools and creating an ecosystem of entrepreneurship in universities, research institutions, private and MSME sector. AIM has set up unique “Atal Tinkering Labs” in more than 7500 schools across India to foster the culture of innovations among school children by giving them hands-on experience on robotics, 3-D Printing etc.

AtmaNirbhar Bharat Abhiyaan or Self-reliant India campaign is the vision of New India. The Prime Minister raised a clarion call to the nation giving a kick start to the “AtmaNirbhar Bharat Abhiyaan” and announced the Special economic and comprehensive package of Rs 20 lakh crores - equivalent to 10% of India’s GDP – to fight COVID-19 pandemic in India. 10 Sectors have been identified under AtmaNirbhar Bharat Abhiyaan. In addition, the government has taken several bold reforms such as Supply Chain Reforms for Agriculture, Rational Tax Systems, Simple and Clear Laws, Capable Human Resource and Strong Financial System.

India’s resolve of Atmanirbhar Bharat was tested during COVID-19 pandemic. At the beginning, India had insignificant production of PPE kits, masks etc and every RT-PCR test kit were imported. We could not only ramp up production of these essential materials but also developed indigenous RT-CRR and other kits. We also exported several essential medicines to more than 80 countries and India has become a main hub of global vaccine supply. It only shows that India’s intellectual capital and manufacturing capabilities are not only beneficial for our country but also for the rest of the world. No wonder, US President Joe Biden acknowledges India’s pivotal role in control of the COVID-19 pandemic.

In short, India’s start-up ecosystem is now growing rapidly due to necessary policy changes, simplification of processes, making adequate capital available for innovators. In addition, various incentive schemes, for example, the Production Linked Incentives (PLI) has enabled business community to invest in enhancing manufacturing capabilities in thirteen key sectors such as textiles, pharmaceuticals, food processing, electronics, etc. All these transformational changes will surely reduce dependence on imported items in critical sectors, generate employment in India, stimulate innovation and contribute significantly to boost the Indian economy.
The progress of any nation depends on few important parameters, viz., education, innovation and entrepreneurship. India, which is celebrating 75 years of independence this year, but has a rich and cherished history of several thousands of years in terms of education, innovation, art and culture, entrepreneurship among others. Hence this is a year dedicated to reinvent ourselves through the campaign of Atmanirbhar Bharat or Self Reliant India, a clarion call given by the Hon’ble Prime Minister Shri Narendra Modi. ICSI, through its Chartered Secretary Journal has been pro active in supporting the vision of the Prime Minister.

The present Prime Minister, in his seven years of tenure has been focussed on getting to Atmanirbharata through a slew of reforms starting from Swachha Bharat Mission, Digital India, Skill India, Make in India, Smart Cities, Unnat Bharat Abhiyan, and Start up India. These are like seven precious beads in a necklace of Atmanirbharata.

The supporting elements as narrated in the beginning are education, innovation and entrepreneurship. These are like a tripod sporting each other and feeding to each other.

The education needs to be innovative starting from curriculum design, faculty selection, their progress, growth, capacity building, and research activities leading to empowered students who will get holistic all rounded education and personality development with credentials of being not just employable but entrepreneurial and innovative. This is possible by intense interaction between the students and teachers, in the classrooms and outside the classrooms, getting hands on practical exposure, experiential learning, internships, examination and evaluation in terms of Blooms taxonomy and not mere memory based question papers, bringing out capabilities in terms of critical thinking, analytical ability and creativity. This will naturally lead to confidence building among students, with ability to take risks, constantly endeavouring to be innovative and creative. The new and emerging areas of technology like AI, IoT, Machine Learning, Robotics, Drones, 3D Printing, AR/VR/XR, Data Science and Analytics, Cloud Computing, Quantum Computing, Block Chain, Cyber Security and lifelong learning approach will catapult newer and newer start-ups who will make India Atmanirbhar in all domains, be it agriculture, healthcare, education itself, transportation (on land, road, rail, air, and water), internet connectivity, mobile Apps and software, to hardware, automobiles to aircrafts, steel, cement to electronic gadgets to defence equipment. Thus MSMEs and Large Companies fed by Start-ups shall create a new India where every citizen is taken care, respecting diversity, gender sensitivity, physically challenged, to sensitivity to deprived sections of the society in remote rural and tribal areas. Thus when 1.35 billion populations, large part of it being young, get empowered and rises to the occasion, demographic dividend shall be the natural corollary, and nothing shall be impossible and truly we can and shall become Atmanirbhar.

The nation is witnessing a big ticket change and transformation, starting with “Ease of Doing Business”, single window clearances, removing archaic laws, creating conducive climate for investment and start-ups, new education policy among others. AICTE and the Ministry of Education have been constantly changing the landscape of education in terms of multidisciplinary education, removing all barriers to learn, increase Gross Enrolment Ratio, Academic bank of Credits, Multiple Entry, Multiple Exit, Support for Innovation and Research, Values and Ethics, Indian Knowledge Systems, Use of Technology in Education and several reforms are either already undertaken or are in the pipeline.

There is a spirit of collaboration developed while competing amongst ourselves and the best in the world. Institutes of Eminence have been selected to play a bigger role and attract students and faculty from all over the world and see to it that India once again becomes Vishwa Guru.

The batteries are all charged up and we are raring to go. The next 25 years are going to be India’s years with not merely Atmanirbharata but supporting all nations of the world through our caring nature, caring for environment, caring for poor and the needy, caring for human values, in the true spirit of Vasudhaiva Kutumbakam and Sarve Janaha Sukhinou Bhavantu.

Let us all work hard to achieve the desired vision of Prime Minister.
India is well-equipped to become a Global Manufacturing hub

Mr. Warren Harris
CEO & Managing Director, Tata Technologies Ltd

The onset of the COVID-19 crisis has completely changed how the world operates. In the last 18 months, we have seen more radical changes globally than we have seen over the last 20 years. Organizations are now increasingly focused on demand creation. Considering the supply chain disruption experienced across the globe during the period, most countries are now concentrating on ‘making’ in their own country. This is a phenomenon that has been witnessed across the world as every country is now trying to encourage entrepreneurship, innovation, manufacturing and growth within its own states to become more self-reliant and prosper in the new normal.

In India, the Government has been visionary in prioritising the country’s growth story. The Atmanirbhar Bharat, or Make in India program, which was launched several years back has been an essential step in the same direction. With its emergence as a credible economy and the support it has provided to the global community during the pandemic, India is now well-equipped to become a global manufacturing hub.

India has always been a country at the forefront of economic discovery and leadership. Among the various industrial sectors that are driving the country’s transition from being a ‘follower’ to a ‘leader’, the country’s technology sector is leading from the front. Organizations such as TCS, Infosys and Tata Technologies are playing an integral role in shaping the government’s dream of a Digital India and catapulting the country’s position as a global powerhouse through technological innovation. These companies are hiring lakhs of future innovators who are contributing relentlessly towards building an advanced India – a more empowered India. Moreover, we also have examples of e-commerce giants, such as Flipkart, who are challenging the status quo through their entrepreneurial vision. In fact, as a recent example, Freshworks, an India-based SaaS start-up, became the country’s first Indian software solution provider to be listed on NASDAQ. This is an example of how Indian entrepreneurs are being recognized globally.

The Indian manufacturing industry is witnessing a revolutionary transition like never before. Be it the recent launch of an e-scooter by Ola, or the ongoing efforts of Tata Motors to manufacture electric cars and batteries and set up charging stations across the country, Indian players are rapidly consolidating their position as producers instead of importers.

Today, India has the largest pool of talented engineers and, at Tata Technologies, we are leveraging that to deliver innovative solutions to our customers globally. One example of this is our collaboration with GKN automotive, a market leader in powertrains, to develop next-gen powertrain technology solutions through our advanced global e-mobility Software Engineering Center in Bengaluru. We are also leveraging our dedicated online training course library, i GET IT, through various solutions, such as the partnership we have with the Karnataka Government and various other state governments to train our engineers and make them job ready. Such steps are integral for entrepreneurship and innovation.

Indians have never lacked the talent or intent. It is only a matter of the right approach in the right direction with the right support. That is what Atmanirbhar Bharat Abhiyaan truly stands for. As Sir Ratan Tata once rightly asserted - “Indians are entrepreneurs at heart. What we need is an opportunity to flourish.”

“Every crisis comes with an opportunity, so what you have to do is dependent on your thinking”
Self-reliance is a powerful feeling, a feeling of empowerment, articulated no better than in the words of Gurudev Rabindranath Tagore in his timeless, “Where the mind is without fear and the head held high, where knowledge is free.” Atmanirbhar Bharat – a clarion call given by the Prime Minister towards building self-reliant communities evokes this sense of purpose to build a stronger and more resilient India. Since early 2020, the world has seen an unprecedented disruption. As we faced the greatest health and humanitarian crisis the world has seen in a century, it was time for India to look beyond just cushioning the shock. We needed to find new ways of strengthening the lives and livelihoods of communities.

Innovation has been an important part of the way India dealt with the crisis. Reliance too has contributed in this effort. Setting up the first exclusive COVID-care hospital in India to re-engineering a plant to produce medical oxygen for meeting emergency needs and producing PPE kits when we had urgent requirement, Reliance has been at the forefront, to stand with the nation and support through this critical period.

Reliance has similarly built the spirit of innovation and entrepreneurship to empower grassroots communities through multiple efforts in a participatory model of building self-reliance. Our rural initiatives, started over a decade ago, are designed to build self-reliance and resilience, and resonate with the national goal of being Atmanirbhar.

One of the pathways is through the Women Entrepreneurship Development program of Reliance Foundation (RF). The program aims to build capacity, facilitate linkages with government schemes, financial source for women, to take up microenterprises and achieve economic self-reliance. RF mentored over 3,500 SHGs, impacting over 35,000 women with access to knowledge and entitlements. This has contributed to the village economy, with over 10,000 women taking up various microenterprises in farm and non-farm sector.

Another pathway is through Farmer Producer Organisations (FPOs). RF has mentored 31 FPOs across 11 states to manage sustainable operations. These FPOs deal with more than 30 agricultural commodities and some have progressed to processing capabilities in downstream value chain. An example of a success story of an FPO is that of Banas Farmers Producers Company (Banas FPC) in Radhanpur in Patan district in Gujarat.

Radhanpur is located about 100 kms from Unjha, Asia’s largest market for seed spices and the undisputed nerve center of cumin trade. Despite being close to such a large market, small farmers from Radhanpur rarely benefited. Critical was the need to hold stock for a right price and/or transport in bulk volumes to Unjha, which the farmers struggled with. Banas FPC was formed to help address these issues for the farmer.

Banas FPC, set up in April 2016, is already among the most promising FPCs in North Gujarat, and changing the very paradigm of cumin farming in the region, step by step. It is a part of Reliance Foundation’s larger development initiatives to address livelihood-related bottlenecks in a holistic manner. The FPC ventured into processing and selling finished cumin in the market in FY 2018-19. Since then, the FPC’s processed cumin business has grown from about INR 8 Lakh in 2018-19 to INR 2.8 Cr in 2020-21 and is estimated to cross INR 4 Cr by March 2022. From sellers of raw cumin, this farmer group today sells processed cumin to some of the largest buyers in the country. It has also created a federation of five FPCs that together reach out to 2,600 farmers from 96 villages. The story of Banas is one of the many examples of entrepreneurship and innovation at grassroots and a demonstration of collective will for realization of the potential and self-reliance.

The rural economy with its positive growth through the pandemic against all odds, has demonstrated the value of native innovation in building a resilient society. What we need is a catalyzation of the innate potential. In the case of the farmers of Radhanpur, what was needed was a little help to collectivize and become a formal entity, to convert ideas into actions towards self-reliance and propel forward in the entrepreneurial journey.
The concept of Innovation (‘nava-pravartana’ in Sanskrit) and Aatma Nirbharata (‘Svavriti’) are as old as the idea of Bharata & Bharateeyata – only gaining renewed interests, thanks to the grand vision and sincere efforts of the incumbent political leadership. Among the myriad definitions, the phrase ‘Idea to Value’ very well captures the essence of innovation. Students of innovation profess that ideas are dozen a dime, and what sets them apart from plain creativity is that innovation takes an idea to its state of ‘value realization’ by customers. Innovation not only generates a class of value creators addressing known issues, but also opens newer consumption arenas & processes that drive economic growth. Because, innovation involves value creation and consumption thereof, it sets up a good platform for exchange of economic value.

Thus, Innovation becomes a three-dimensional phenomenon. A ‘problem’ affecting a section (‘seekers’) or more of the society and willing to pay a price to overcome it, and a community (‘solvers’) that willingly accepts the challenge of solving the problem within the constraints of price (not necessarily monetary value) set by the seekers. Researchers in innovation economics, an emerging branch that studies the economic impact of Innovation, profess that in today’s knowledge economy, it’s not access or availability of capital that drives economic activity, but capacity spurred by knowledge and tech externalities. As world’s largest democracy, we have problems or issues, rather opportunities galore; seekers in the highly aspirational middle class, and solvers in our great demographic dividend (a younger population) with an entrepreneurial mindset in a knowledge economy– making India a perfect ecosystem for innovation to thrive.

The concept of Atma Nirbharata or self-reliance is two dimensional; First, producing enough of what is needed within the constraints (the production side of Innovation) and the other is to optimise consumption.Guided by the principles of Ishopanishad (‘Tena tyaktena bhūṣijātā, Mā grdhaḥ kasca vid dhanam: thou shall enjoy what’s given by HIM to thee and never eye the other’s share), innovation on the consumption side translates to reduction of wastage, newer business and delivery models that make innovations affordable, sustainable & promote distribution of equitable benefits to the society.

At the cross hairs of Aatmanirbharta & Innovation, are opportunities in the societal space powered by knowledge & tech that hold promise for India. Then, Aatma Nirbharata (‘Svavriti’) is all about channelising our resources & innovation strategy to spur economic activities in areas where India is currently reliant on other economies. How do we channelise them to propel India’s economic activity to the position of a Vishwa Guru and what are those impactful areas? Is Innovation restricted to produce the next GAFA (Google-Apple-Facebook-Amazon) from India? Not necessarily…

Where do we innovate for maximum societal impact? Green Energy, Circular Economy & Overall Wellness…

A cursory glance at India’s exports reveals that innovations in the Energy sector could go a long way in delivering on the vision of Atma Nirbhar Bharat. About 40% of India’s energy demand is imported today at a cost of US$160 billion and the demand is expected to rise by at least 60% towards 2030. Brightening up a billion lives is no small ask ! With the world pledging for a greener and decarbonised world, a promising green Hydrogen economy is slowly emerging. The higher energy efficiency of Hydrogen, its multifaceted value of not just being a primary source of energy but also a carrier or intermittent storage for other greener energy sources with a potential to replace Carbon in our value chain, make it a very attractive arena for Innovation in India. The Hydrogen future brings a power shift from the fossil fuel and mineral rich economies to economies like India, Africa etc. rich in alternate resources like space, sunshine, wind and other resources needed to generate greener Hydrogen and have the potential to reverse the economic stature and alter the geopolitical equations. An installed solar capacity of ~45GW and a compelling target of 100GW over the next couple of years puts India in the right stead to produce green hydrogen and a balanced policy helps to combine the traction for solar & hydrogen to eradicate energy hunger and contribute to a greener energy mix. As a country projected to not only be the leading energy consumer by 2030 & beyond, but also to be the worst hit by potable water crisis, innovations in green hydrogen production distribution & management processes with water as a by
product would also help us overcome the twin crises of potable water & energy at one shot. Emergent opportunities in Carbon accounting, credit management and carbon traceability powered by digital technologies and our strength in IT services is another potential area.

The evergreen verses of Ishopanishad – ‘Purna mada Purna midam poornaat poornamudachyate .. ..purnasya poornam aadaaya poorna mewa avashishyate’ – which in a nutshell translates to zero losses, has been shaping the Indian spirit of resource utilization for long (till very recently), anchoring us well into the realm of a cradle to cradle or circular economy. Tapping into the practice of these ethos from many parts of rural India can form the edifice for innovations in circular economy and associated business models.

Personalised medicine, timely & remote delivery of care, epidemiological containment, molecular biology, genomics etc. that leverage our mathematical & data science strengths and positively impact overall wellbeing are green pastures for innovation too.

**What can we do more of?**

Our Innovation ecosystem has been making concerted efforts to scale and systematize jugaad and venture beyond it. There are avenues wherein we can do a lot more to catapult into the orbit of disruptive innovation.

- Indian Innovation should focus on creating enduring value beyond an immediate need. Develop a product mindset and a long-term perspective that goes beyond immediate, project-based efforts.
- Top up the functional brilliance or utilitarian biases of our innovations with aesthetic brilliance that can accelerate adoption of Indian innovations, within India, to start with.
- Focus on Innovation at the upstream, to cover business model, packaging, pricing & processes.
- An element of marketing wizardry & blitz that clearly articulates the value of innovation.

**How can the State help?**

While our vibrant entrepreneurial ecosystem has been endeavouring to break into the disruptive league, it would do well with a bit of support from all other quarters.

- The real challenge for entrepreneurs is not availability of capital, but the access to it. There is always enough money in the market for great ideas, but the archaic bureaucratic frameworks disconnected from the ground realities of the entrepreneurial ecosystem prevent free exchange of ideas and capital between solvers & seekers, thus nipping Innovation in the bud. Instead of devising subsidies & protectionist mechanisms, the state should focus on simplifying the investment processes, lowering compliance overheads, improving ease of biz (on the ground) etc. to remove frictions from the ecosystem.
- Policies for crowd sourcing & open innovation that democratize innovation, making it more inclusive by way of participation at the grassroots level, would not only provide better user / seeker empathy to the solvers, but also accelerate adoption (and thus monetisation).
- Green Energy, Overall Wellbeing and other areas of Innovations favouring India’s future are based on the marriage between fundamental sciences & applied technologies making it an interdisciplinary and collaborative affair. Multidisciplinary and Interdisciplinary collaboration should be the focus of our pedagogy: After all, the opening verses of the Rigveda ‘:‘Aano bhadrah Kratavo Yaantu vishwataha : May positive thoughts inspire us from everywhere …’ epitomise this spirit of celebrating diverse & multi-disciplinary ideas.
- Encourage the spirit of sportsmanship in general, to celebrate success & failures with equal poise and nurture a spirit of resilience. A general acceptance for such failures by society reduces the taboo surrounding failures that are so much a critical part of Innovations & inspire the entrepreneurial ecosystem to venture into unchartered territories.

Systemic efforts as these by different stakeholders of the ecosystem including the state and society will in all certainty propel India beyond the sphere of Aatma Nirbharta into the Vishwa Guru Orbit.
As of the end of August 2021, India had 100 unicorns—companies valued over $1 billion, adding on an average three such entities every month of this year to the list. At present, India is third behind the US and China in the number of such firms.

There is no illuminating lesson here except that with the right kind of fuel, the country can create companies that can stand up to other giants of the world. The best example of this came a few years ago when American giant Walmart paid $16 billion for a majority stake in home-grown e-commerce platform Flipkart.

The Honourable Prime Minister’s clarion call for self-reliance, during the pandemic last year, could not have been timed better. As countries closed borders, international trade spluttered to a halt, disruptions erupted in supply chains, consumption went down and the future remained uncertain, the only way forward for India was to be atmanirbhar.

Self-reliance is driven by innovation, which needs a fertile ground for growth. It requires an ecosystem that supports skill development and vocational education, research, financing, equal opportunities, knowledge sharing, transparency, and imagination. It needs collaboration between corporate India, academia, local and central governments, a corruption-free environment that gives a hand up rather than a push down.

This ecosystem will enable India’s young demographic to become job creators and not employment seekers. Post pandemic, with some offices becoming redundant, some of India’s talent has moved back to its villages, Tier 3 and Tier 4 cities. These smaller centres can now go beyond being agricultural hubs to becoming the next centres of dynamism. Socio economic growth and inclusive economic development can reverse the trend of migration. It’s interesting that when in the 1960s to the 1990s, young Indians went to the West in search of opportunities, academics and entrepreneurship, the future can see them going deeper into India’s heartlands for similar possibilities.

While economic liberalisation of the early 1990s lifted millions of Indians out of poverty, this drive for self-reliance of the 2020s can not only generate wealth, but also elevate self-esteem. The finest recent example is the manufacture of the Covid-19 vaccine by an Indian lab, the largest in the world, and made-in-India vaccines being supplied to nearly a hundred countries. An open economy that encourages multinational organisations to invest, improves efficiency, productivity and engages India’s 900 million working population under the age of 30 will help reduce dependence.

The country has already embarked on this journey. A detailed look at these 51 Unicorns gives an indication of their variety, which includes health-tech, ed-tech, food-tech, insurance, home services, social commerce, e-commerce, crypto currencies, gaming, logistics services, content news, and used car sales. A number of these companies’ founders are under the age of 30, many of them products of indigenous engineering and management colleges.

For media, there has never been a more exciting time to bring forward these stories of creation. With over 50,000 start-ups and 326 incubators, one of the fastest such ecosystems, India is a leading innovator of the world. All that its citizens needed was a gentle push, a dose of self-belief and faith.

(Endnotes)

3 https://www.mea.gov.in/vaccine-supply.htm
4 https://www.startupindia.gov.in/content/sih/en/international/go-to-market-guide/indian-startup-ecosystem.html
5 https://yourstory.com/2021/08/evolution-startup-incubators-incubation-policy-india/amp
Atmanirbhar Bharat, the clarion call of the Hon’ble Prime Minister has become a buzzword that has made its way through to the annual reports, magazines and business language of Corporate India. Self-reliance could potentially change India’s developmental landscape – but for it to translate to the grassroots will require gargantuan efforts all around. Government, educational institutes, businesses and people – need to imbibe the idea of Atmanirbharta into the fabric of their existence for it to make a commendable impact on India’s developmental story.

We live in a global, cosmopolitan world, so it is imperative that we do not confuse self-reliance with global estrangement. India needs to be open to the ideas that can transform its developmental landscape, but they need to be customised and Indianised. A good place to start benchmarking is the Silicon Valley – India Incorporated needs to identify the critical cultural elements and thought processes that has made Silicon Valley a poster child of innovative entrepreneurship. A melting pot of some of the brightest minds in the world, Silicon Valley has perfected the art of “need seeking” – identifying human needs of the future and has consciously reduced any bias against ideas not “made in America.” No matter where an idea originated, it’s yours when you can use it to bring wealth, prosperity and progress, as we have seen in India too, with the success of Ola, Zomato and Nykaa.

India’s growth story must be supported by a robust national policy that is centred on fostering innovation and entrepreneurship. Through initiatives like start up India, skill India, digital India etc, the government has shown its intent but much more needs to be done. The legal process of starting a new venture, obtaining key licences etc. can be an active deterrent to innovation. The process can be so laborious that it takes away from the time actually spent running a business. It is imperative that ‘ease of doing business’ is not just adopted in government policies but also implemented at the ground level.

Before focusing on Atmanirbhar innovation, we need to focus on Atmanirbhar manufacturing. From Apple to Tesla, companies are lining up to make in India to capitalise on the Indian government’s lucrative PLI scheme, but reports indicate that this “manufacturing” may be largely limited to assembly. Currently, imported components used in manufacturing account for about 80% of India’s local demand for IT hardware, solar panels, and telecom network kit; 40% of its consumption of pharmaceutical ingredients, and more than one fifth of its consumption of alloy steel and auto components, as per a report by Enam Asset Management which was quoted in a Reuters article. With most of these components coming from China, it is likely that, in spite of increased manufacturing in the future, our dependency on others may not reduce. Thus, there is an urgent need to change our perspective on manufacturing itself, atmanirbharti cannot come from just assembly.

Another key catalyst of innovation is creativity in education. Entrepreneurs are not born, but bred. Education in India needs to be revolutionised to keep up with the demands of a disruptive world. India needs to bring into sharp focus, futuristic technologies such as AI, Robotics, Data analytics, space exploration etc. In cities such as Bangalore the future is already here – but to tap the true potential of Indian entrepreneurship, these industries need to become more pervasive across the country – and governments must make a concerted effort towards making this possible.

“We have to take the step of self reliance, slowly – slowly we have to increase ourselves”
There has been a great deal of attention in the past few months on India’s ability to be more resilient and self-reliant in combating global forces of economic and geo-political change. The pandemic has forced us to re-imagine ways in which we as a nation can be more equipped in addressing economic and societal demands and our ability to harness and deploy our resources rapidly and creatively to meet critical priorities.

Entrepreneurship sits at the heart of such ability. Many of the priorities that we face as a nation are unique to us. A combination of geographic dispersion and economic diversity create very peculiar and sometimes intractable problem sets. In the same breath this complexity engulfs very large market opportunities for innovative solutions.

The demographic dividend offered by India – a very large base of young workforce infused with the awareness and confidence of digital natives – is also an enviable market for emerging business models and business ideas. Small wonder that areas of consumer products & services, education, financial literacy, economic inclusion, hyper local convenience, and affordable healthcare have been fertile areas for start-ups to build solutions that have scaled to meet the needs of millions of Indians. Many of the recent storied entrepreneurial successes and unicorns have successfully ridden this wave.

The second phenomenon that is growing at an accelerated pace is the ability of entrepreneurs to use emerging technologies – a potent combination of cloud-based, deep-tech enabled, mobile-powered innovation – to leapfrog technology adoption journeys that mature economies have experienced. Such innovations create intellectual property that not only allows start-ups to address new areas of opportunity in domestic markets but also imagine solutions that are globally relevant and uniquely competitive. Today Indian entrepreneurs are being seen as globally competitive innovators in a variety of areas such as product engineering, deep-tech, agriculture, healthcare & bio-tech, defence & space tech, and education.

The third area is in a growing class of entrepreneurs who are rediscovering the Indian roots of heritage and craftsmanship to design products and services that reaffirm not only our own sense of national identity but also ignite our sense of aesthetic beauty and utility value. An emergence of entrepreneurs who are reconfiguring design and manufacturing practices that have evolved over generations of artisanship using indigenous raw materials is opening a completely new market economy that has been dormant so far.

All of this sits on top of a foundation of public enterprise invested in fundamental sciences that is unique to India. The technical expertise in institutions such as the IITs and research institutions like ISRO and CSIR find great partners in entrepreneurs looking to create and commercialise fundamental research. Public sector infrastructure such as the JAM (Jan Dhan- Aadhaar-Mobile) trinity has become a backbone for innovation to reach the last mile of Indian consumers. This coming together of government, industry, and academia to foster entrepreneurship augurs well.

It is sometimes said that the best foreign policy is economic progress. For any nation to see eye-to-eye with its peers globally and sustain the flow of capital, trade, and information, it needs a strong ability to continuously innovate and innovate at scale. The growth in entrepreneurial energy that we are witnessing today is a testament to our evolution along this dimension. A lot more needs to be done to continue this journey and make it more impactful. We are at the early stages of a great momentum forward if we stay the course.

“Self-reliance makes us glorious and empowered, so come one step towards self-reliance”
2020 was a defining year in value creation. Not diminishing the impact of a humanitarian crisis at such a global scale, COVID-19 has taught us lessons in resilience, innovation, and positive disruption- something that can fundamentally change our mental models.

But Black Swan events such as this, often present avenues for you to learn and even gain. With the stock markets still rallying, 11 Indian startups entered the $1B+ club in the pandemic-hit year and boosted the confidence in many to go public with a record number of IPO filings.

But in the thick of crisis, what we needed at a very fundamental level was reassurance that we could do a lot more with lot less. This helped shape the agenda of an Atmanirbhar Bharat which is the power of self-reliance. While it was a survival tactic necessitated by COVID-19, it has helped shape a revolution that will inspire more entrepreneurial efforts, create employment, and also spur innovation.

The power of data and its proliferation has helped us become more participative in governance and even how corporates do business. The rise of a conscious consumer is both an encouragement and a deterrent for organisations who now have to relook at their way of working. Not long ago, Japan, known for lending other emerging economies some of the celebrated business practices like Kanban and Kaizen, also introduced the philosophy of ‘Monozukuri’ which is simply put, the art of making a product. Typically, organizations focus on the process and man hours. But in this Japanese philosophy, the focus is on craftsmanship. And this philosophy can be an inspiration for us too in creating the best of practices across the business value chain that will help us become self-reliant to a large extent.

It was not so long ago that the Indian IT/ITES sector was purely looked at from a cost arbitrage perspective. But today we command much more value in being partners in innovation and IP creation. Now with cost of talent going up, it is imperative that we invest in talent.

From a skilling perspective, at Mphasis, we have a robust program called TalentNext that offers multiple skills and over 10,000 courses, to empower employees to chart their own learning journeys and career maps. They have the freedom to self-assign skills, and they can learn the Behavioral and Leadership, New Gen skills to compete in the continuously innovating and recalibrating demand and supply market with an agile model of delivery.

In terms of impact investing, Mphasis champions Tech-for-Good and believes in empowering socially excluded and economically disadvantaged groups through disruptive and tech-based solutions in the areas of education, livelihood and inclusion. We partnered with Ashoka University to identify and support 50 promising young changemakers who are doing high impact work in local communities to foster their ideas and initiatives towards achieving the ‘Everyone A Changemaker’ world and spreading changemaker framework among 200,000 youth, parents, teachers, school leaders and other stakeholders. We have also partnered with N/Core Foundation to build scalable non-profit social ventures for poverty alleviation and have already incubated 15 start-ups working in thematic areas such as environment, healthcare, sports, governance, agriculture etc.

Today India is charting history in creating companies that are making products and stakeholder wealth globally. But for many of these startups to survive in the long run, they need the backing of institutions who can give them more than capital- an ecosystem where they can experiment the true impact of their offering- which only established organisations can provide.

The disruptions that followed from the initial lockdowns, affecting global supply chains, changing how companies carried out day to day transactions with their employees and customers alike; and got organisations thinking about survival and even growth, made me change the blueprint of my own thinking as a business leader. My book, ‘Transformation in Times of Crisis’ was conceptualized in the pandemic to help leaders better prepare for future disruptions.

I hope someday we can look back at 2020 as the year of self-discovery through unlearning and adopting life-enhancing and economy driving habits.
Today India is ranked third in the startup ecosystem, home to close to 40000 startups and unleashing a startup revolution in the country. From e-commerce to healthcare, the startups are cutting across multiple domains, building tech solutions to solve challenges of not only India but also the world.

As our Prime Minister Modiji says, the Indian Startup Ecosystem is rapidly moving towards “of the youth, by the youth, for the youth”. Most of the Indian startup founders, in their early thirties, with grit, determination and fire in their belly are transforming the Indian Startup Landscape. For any startup founder, it is perfect timing to take the plunge. The ingredients for trying out variety of recipes and churning out successful companies is here today!

There is an Indian wholistic ecosystem to enable entrepreneurship talent to thrive and grow. From early stage to mid stage to late stage startups, the entrepreneurs get multi dimensional support. Be it grants/ funds for idea to Proof of Concept; Investments to grow and scale up – it is all there, backed by a knit system of incubators and accelerators, which provide the much needed access to mentors and market. Corporate organisations, both Indian and MNCs have boarded the bandwagon and are getting entrenched with startups. From providing tech expertise/ mentorship to Go-to-Market (GTM) to investments to acquisitions, corporates are not only able to support the startups but also leverage their agility to exploit their own opportunities for innovation.

Indian startups are leveraging technology to solve problems of the country, no doubt, but the problems and the opportunities, both lie at the bottom of the pyramid. Dr.C.K.Prahalad famously said “When the poor at the BOP are treated as consumers, they can reap the benefits of respect, choice, and self-esteem and have an opportunity to climb out of the poverty trap.” Though there are significant number of startups working on rural market, the numbers are dismal compared to the size of the Indian rural consumer base.

The Ecosystem has to usher in various elements of the support that these startups need to cater to the rural markets. Apart from funds/ grants, startups need deep mentoring and GTM for rural areas. This can happen through a multi pronged approach driven by incubators, backed by the Government along with Corporate organisations who can utilise their CSR budgets to prudently transform the rural landscape by technology interventions.

India can truly become Atmanirbhar only when we build an inclusive rural India. This story can only be propelled by the nimble agile startups who can fast track the growth story both for themselves and for the country. Jai Hind!

“The development of each one is the identity of a self-reliant India”
Fit India- Fit ICSI Walkathon
(October 4, 2021)
Pan India Celebrations
Fit India- Fit ICSI Walkathon
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Pan India Celebrations
Fit India- Fit ICSI Walkathon  
(October 4, 2021)  
Pan India Celebrations
WEBINAR ON
MCA-21 VERSION 3.0 (V3.0) HELD ON 10TH SEPTEMBER, 2021

SPEAKER

Shri Vivek Kumar
Deputy Director, Ministry of Corporate Affairs

WEBINAR ON
DECLARATION & PAYMENT OF DIVIDEND HELD ON 14TH SEPTEMBER, 2021

SPEAKER

CS Dhiren R Dave
Practicing Company Secretary

WEBINAR ON
LLP (AMENDMENT) ACT, 2021 HELD ON 17TH SEPTEMBER, 2021

SPEAKER

Shri Chandan Kumar
Deputy Director, Ministry of Corporate Affairs
WEBINAR ON

**ART OF CONVENING AND CONDUCTING GENERAL MEETINGS**
21st September, 2021

**SPEAKER**
CS Geetika Anand
Vice President, CS & Compliance Officer, Aditya Birla Fashion & Retail Limited

WEBINAR ON

**PANEL DISCUSSION ON INDEPENDENT DIRECTORS**
24th September, 2021

**PANELISTS**
CS Vijaya Sampath
Independent Director

CS G.P. Madan
Managing Partner, Madan Law Office

WEBINAR ON

**DELISTING OF SECURITIES**
28th September, 2021

**SPEAKER**
CS Ravi Varma
VP - Corporate Affairs, Company Secretary & Compliance officer, Torrente Rail & Engineering Limited.
ICSI in association with IEPFA organised a live webinar on “Empowering Investors: IEPFA, Journey of 5 Years and Way Forward” held on 7th September, 2021

Chief Guest:
Shri Rao Inderjit Singh, Hon’ble Minister of State (I/C) Ministry of Statistics and Programme Implementation, Ministry of Planning and Minister of State, Ministry of Corporate Affairs

Inaugural Session
Empowering Investor: IEPFA, Journey of 5 Years and Way Forward

Technical Session - I
Empowering Investors and Imparting Investor Education and Awareness in Past 5 Years

Technical Session - II
Road Map for Investor Awareness and Protection Till 2047
Glimpses of ICSI Webinars

WEBINAR ON
ICSI-SIRC ORGANISED 1ST ALUMNI MEET (SOUTHERN REGION) ON 4TH SEPTEMBER 2021

WEBINAR ON
“ONE DAY PROGRAMME FOR THE STUDENTS” ON THE THEME “TRANSFORMING EDUCATION” HELD ON 8TH SEPTEMBER, 2021

WEBINAR ON
40TH FOUNDATION DAY CELEBRATION OF ICSI BHUBANESWAR CHAPTER ON 12TH SEPTEMBER, 2021

Chief Guest:
Dr. M S Sahoo, Chairperson, IBBI
Glimpses of ICSI Webinars

WEBINAR ON

2ND ALUMNI MEET FOR MEMBERS OF NORTHERN REGION ORGANISED BY ICSI-NIRC ON 15TH SEPTEMBER, 2021

WEBINAR ON

CONFEDERATION OF INDIAN INDUSTRY (CII) ORGANISED 12TH FINANCIAL MARKETS SUMMIT ON THE THEME ‘BUILDING INDIA FOR A NEW WORLD – ROLE OF FINANCIAL MARKETS’ ON SEPTEMBER 16-17, 2021

WEBINAR ON

JOINT WEBINAR FOR STUDENTS ON “CORPORATE CHALLENGES DURING COVID-19 PANDEMIC” HELD ON 16TH SEPTEMBER, 2021
Glimpses of ICSI Webinars

WEBINAR ON ICSI IN ASSOCIATION WITH THE DEPARTMENT OF PUBLIC ENTERPRISES (DPE) ORGANIZED A VIRTUAL CAPACITY BUILDING PROGRAMME FOR DIRECTORS OF CPSES ON SEPTEMBER 22, 2021

INAUGURAL SESSION
Sh. Sanjay Kumar Jain, Joint Secretary, Department of Public Enterprises, Ministry of Finance
CS Asish Mohan, Secretary, ICSI

TECHNICAL SESSION-I
“ROLE OF DIRECTORS AND BOARD IN CORPORATE GOVERNANCE”
CS Gopalakrishna Hegde, Past Council Member, ICSI

TECHNICAL SESSION-II
“COMPLIANCES UNDER THE COMPANIES ACT, 2013”
CS (Dr.) Kumudani Sharma, DGM, Oil India Ltd

TECHNICAL SESSION-III
“RISK GOVERNANCE”
CS Savithri Parekh, Joint Company Secretary & Compliance Officer, Reliance Industries Limited

TECHNICAL SESSION- IV
“ICSI SECRETARIAL STANDARDS”
CS Ranjeet Pandey, Past President & Council Member, ICSI

OCTOBER 2021 | 51
POST MEMBERSHIP QUALIFICATION (PMQ) COURSES ON
INTERNAL AUDIT
CORPORATE GOVERNANCE
ARBITRATION

Eligibility Criteria
The members of the Institute shall be eligible for the admission to the course.

Course Structure
In order to provide in-depth theoretical and practical knowledge to the candidates, PMQ Courses shall comprise of the following three stages namely:
- Online and/or physical classes of up to 25 hours will be conducted by the Institute on weekends
- Online case study based MCQ examination will be conducted twice a year in June and December
- Project Report submission
- Presentation by candidate

Passing Criteria
- Passing percentage of 50% in online examination of 100 marks. Negative marking of 1/4th for every incorrect answer.
- Passing percentage of 50% in project report.
- Passing percentage of 50% in presentation.

Award of Diploma Certificate
All successful candidates of PMQ courses after qualifying Stage I, II, III & IV of the Course shall be awarded with a Diploma Certificate at ICSI National Convention or at Convocation Ceremony.

CS Nagendra D. Rao
President, The ICSI

Admission Procedure
- Admissions are open throughout the year in online mode
- Candidates registered between 1st January to 30th June – will be eligible to appear in same year December attempt of examination under Stage – II of the course.
- Candidates registered between 1st July to 31st December - will be eligible to appear in June attempt of examination under Stage – II of the course

Fee Structure
- 1st installment of Rs. 12,500/- plus GST to be paid at the time of registration.
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Council Member, The ICSI &
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Part - I Articles

The Changing Dynamics of Corporate Governance in India: Transformed Role of Company Secretary
Dr. Anil Kumar

The corporate legal framework in India has been altered to a great extent after the enactment of the Companies Act 2013. The Act reflected the renewed focus of policy makers on the ways companies function and in particular the role of boards of directors. As India adopted the path of ‘compliance’ for the corporate governance norms, company secretary has assumed the role of compliance officer ensuring that the company runs on the sound principles of corporate governance. Consequently, the responsibilities of the company secretary have transformed from a ‘note-taker’ to that of a ‘gatekeeper’. Board of directors and its committees have become increasingly dependent on company secretary for advice not only on the statutory duties but also on board processes and other norms of corporate governance.

Measuring the Quality of Due Diligence
Sati Mukund

Conducting a due diligence comes with a responsibility to cull out the correct facts, analyze them and share the outcome in the form of a report, which can then be guidance in taking a decision. It is essential to be equipped with appropriate tools to conduct the due diligence, so that there is no loss of time or energy in the entire process. If the approach is not structured, it may become a very time consuming exercise and will not give the clarity that it is expected. Therefore, following a structured approach and using certain techniques and tools, will be very handy and will ensure that the focus on the scope is not distracted.

Due Diligence - An Overview
D K Prahlada Rao

In the corporate world, there is a general belief that turnover represents vanity and the bottom line represents sanity. DD should help us the bridge the gap between the two. The need to achieve growth is an integral part of any business organisation and this compels businesses to draw up various forms of compromises, arrangements, and amalgamations from time to time. The intended purpose is to achieve better economics of operational scale, operational efficiency, achieving a competitive edge in the marketplace, change in manufacturing technology, change in consumer interests, and positive impact on a host of other aspects.

Measuring Quality of Due Diligence -Lessons For Company Secretary
Ashok Kumar Dixit

Due diligence impacted on the ultimate goal–preventing harm to people and the environment. It involves elements of both risk assessment and risk management. It ensures that regulatory decision-makers have sufficient information to decide if it should be allowed to proceed. Non-compliance can be explained as a failure to fulfill the specific tasks of the regulatory requirement, and can be due to either sub-par system performance or a lack of proper processes in place. System Non-Compliance might include a failure to capture information as per the regulatory objectives, while Process Non-Compliance might include not achieving operating criteria. Either form of non-compliance could cost an organization dearly, with consequences ranging from no action to heavy fines or custodial sentences for individuals. At any stage where a company faces such a situation, it can overcome by adopting the first step towards total compliance. Organization can institutionalize a structured Non-Compliance Resolution Process to plan, execute, monitor, and fix compliance efforts throughout the organization.

Company Secretary and compliance under SEBI (Prohibition of Insider Trading) Regulations, 2015
Tosit Agarwal

The article expansively covers the role of Compliance officer for the compliance of SEBI (PIT) Regulations, 2015. The discussion begins with the overarching responsibility of Compliance officer and later deals with the specific requirements under the Law. The article has been divided into four parts encompassing the life cycle of compliance around Insider Trading. The first part pertains to ‘Identification of UPSI’, wherein the principles of identification have been discussed along with illustrative guidelines provided in the Regulations. The second part deals with ‘Preservation of UPSI’, which elaborates the requirements of the Code of Fair Disclosure and details regarding handling of leakage of UPSI. The most discussed topics of Structured Digital Database and System Driven disclosures have also been touched upon. The third part deals with compliance requirements with respect to trading in securities. It includes brief overview of trading plan and pre-clearance norms. The last part emphasizes on importance of Codes and Internal controls to prevent any possible violation of Regulations. Therefore, the effort has been made in the article to draw a structural outline around Regulatory requirements with respect to the prohibition of insider trading.
Mergers and acquisitions have become a preferred technique of business expansion on a national and international scale. Globally, firms compete for the chance to purchase or merge with other enterprises. In the real world, many transactions are completed by signed letters of intent or term sheets, with purchasers having just a cursory knowledge of the seller, which is frequently based on public information. Due diligence enables the customer to gather detailed information about the target company and to prepare themselves in accordance with the target company’s vision. Due diligence enables the acquirer to avoid potential risks during the course of the business acquisition. This article tries to describe the current condition of mergers and acquisitions and emphasise the critical nature of the due diligence procedure. A significant failure of mergers and acquisitions is globally in conjunction with a variety of factors, most notably the failure of the due diligence process.

Four Auditing and Secretarial Standards implying Due diligence

Raveena Agrawal

This article presents an overview on the entrepreneurial development in the Company Secretarial profile in the 21st century, the new glossary, and emerging roles for Company Secretaries. Further, there is mention about the terminologies of Standards, Secretarial Audit, due diligence, etc. It is an attempt to brief on the role of Standards and Company Secretary in due diligence. The explanation of the four Auditing Standards and Secretarial Standards issued by ICSI and why there is a need of the Auditing and Secretarial Standards. The brief about the duties of Company Secretaries and their responsibilities towards the Central Government and stakeholders and to follow the motto of ICSI “Speak the Truth abide by the law”.

The Growing Importance of Building A Strong Due Diligence Strategy: Role of CS

Shantam Gorawara and Nikita Sharma

Describable as a necessary evil, due diligence is an imperative prerequisite for any transaction. This paper, firstly, intends to understand the growing importance of conducting due diligence in deal-structuring. It then lays focus on defining the standard processes and common challenges which are involved in the due diligence activity.

While it focuses on challenges it simultaneously and primarily aims to define aspects that help build a strong due diligence strategy. Lastly, the paper discusses the growing importance of the role of a CS as a governance professional in undertaking, managing and successfully concluding the end-to-end exercise of due diligence. It is pertinent to mention that this will go on to enable businesses to not only determine the overall success of the transaction but also helps set the tone and pace for the financial growth of the entities involved in the contemplated transaction.

Initial Coin Offerings (ICO’s) : The Next-Gen Method of Fund Raising

Satyan S. Israni

While an IPO is a traditional route to raise funds from the public, there is a new and emerging route that is beginning to pick up the pace. The ICO i.e. Initial Coin Offering which has not yet taken the fancy of the startups and tech companies in India. Both are processes by which companies raise capital. The difference being that while in an IPO, the company issues securities to the investor; in an ICO, the investor will receive a digital coin or a token in return for his / her investment which unlike securities need not have any ownership right in the company. Further, an ICO is a dependant on Blockchain technology as it entails the issuing of digital coins/tokens. At present, there is no prescribed regulation or method for conducting an ICO, although certain common practices have emerged. With India emerging as one of the top countries in the cryptocurrency space and blockchain technology also beginning to make inroads and so many tech companies spawning due to encouragement from the policymakers, it is only a matter of time before ICO’s become the primary source for raising funds.

Buy-Back of Shares or other Specified Securities – Concept & Methodology

Sudhakar Saraswatula

Buy-back of shares is one of the preferred ways to return cash to the shareholders apart from dividend distribution. When a company has surplus cash and has no potential growth opportunities in sight, holding such cash or unused equity has no meaning and it becomes more of a burden than a blessing. Under such circumstances its useful and advisable for a company to return such cash to its shareholders who are the owners of the company. However, stock buyback is one of the critical decisions which a Board has to take, with a great amount of responsibility, in the best interest of the company and after due consideration of the financial status of the company and its future outlook. However, it should not be used for tax evasion, market manipulation of share price or to please a section of shareholders.
Decoding the New Amendments to the SEBI (Delisting of Equity shares) Regulations, 2021
Pradeep Ramakrishnan and Neeraj Kumar Modi

Delisting of equity shares of a listed company from a recognised stock exchange can be made under the provisions of SEBI (Delisting of Equity Shares) Regulations, 2021 (“Delisting Regulations”). The Delisting Regulations provide the detailed framework for delisting of equity shares. After almost twelve years, SEBI has reviewed its old Delisting Regulations and after public consultation in the month of December 2020, it has notified SEBI (Delisting of Equity Shares) Regulations, 2021 (“new Regulations”) in June 2021. The process of delisting involves certain steps. Delisting in line with the Regulations goes a long way to earn the confidence of the shareholders and, importantly, avoid regulatory complications and pave the way for successful delisting.

Social Stock Exchange: Bane or Boon for a Developing Nation Like India
Maninder Singh and Etika Aggarwal

Social Stock Exchange (‘SSE’) is an emerging concept in India. The Hon’ble Finance Minister in her Budget speech for the year 2019-20 proposed to establish a SSE for the social enterprises under the regulatory ambit of the Securities and Exchange Board of India (‘SEBI’) whereby such entities will be able to list their securities (equity, debt, units of mutual fund, etc.) on SSE for generating funds. Thereafter, SEBI constituted two expert groups i.e., Working Group, to suggest possible structures & mechanisms within the securities market domain & to facilitate the process of raising funds by such social enterprises, and Technical Group to suggest a framework for onboarding and regulating non-profit organizations (NPOs) and for-profit social enterprises (FPEs) on SSE, reporting and disclosure requirements, scope of work etc. Both the Groups have submitted their reports and final regulations are yet to be issued. Various applicable laws that regulate the functioning of the social entities are required to be amended before introducing the legal framework of SSE in India.

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THE CHANGING DYNAMICS OF CORPORATE GOVERNANCE IN INDIA: TRANSFORMED ROLE OF COMPANY SECRETARY

MEASURING THE QUALITY OF DUE DILIGENCE

DUE DILIGENCE - AN OVERVIEW

MEASURING QUALITY OF DUE DILIGENCE - LESSONS FOR COMPANY SECRETARY

COMPANY SECRETARY AND COMPLIANCE UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

THE IMPORTANCE OF DUE DILIGENCE INVESTIGATIONS IN THE INDIAN CONTEXT: A GLOBAL LESSON FROM FAILED MERGERS AND ACQUISITIONS

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THE GROWING IMPORTANCE OF BUILDING A STRONG DUE DILIGENCE STRATEGY: ROLE OF CS

INITIAL COIN OFFERINGS (ICO’S): THE NEXT-GEN METHOD OF FUND RAISING

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SOCIAL STOCK EXCHANGE: BANE OR BOON FOR A DEVELOPING NATION LIKE INDIA
The Changing Dynamics of Corporate Governance in India: Transformed Role of Company Secretary

The changing paradigms of corporate governance with the stricter norms have transformed the role of company secretary from a ‘note-keeper’ to that of a ‘gate keeper’ owing to their professional expertise and training in the arena of corporate laws and corporate governance including board processes. Though the emergence of continuously expanding roles for the company secretary could be seen post the blowing of the winds of liberalisation and globalisation in 1991 followed by the amendments to the listing agreement providing for compliances relating to corporate governance norms for listed companies, in terms of giving the push to the profession in the space of unlisted companies, the firm push was given by the provisions of Companies Act, 2013. The shift in paradigm is continuing in the wake of increased stakeholder expectations from the Company Secretaries as a “Governance Professional”, which calls for the Company Secretaries to function as an independent professional and earn the respect of all stakeholders.

Unleashing the forces of liberalisation and globalisation in India in 1991, and setting up of the Securities and Exchange Board of India (SEBI) in 1992, paved the way for establishing the basic rules of corporate governance in the country. The recommendations of Kumar Mangalam Birla Committee (1999) and Narayana Murthy Committee (2003 and 2005) set up by the SEBI were inspired from the Cadbury Committee of the UK (1992) and Sarbanes-Oxley Act (2002) of the USA. India, however, adopted the path of ‘compliance’ in contrast with ‘comply or explain’ of the UK which was eloquent with the insertion of Clause 49 and revised Clause 49 in the Listing Agreement. The listed companies were asked to obtain a certificate from either the auditors or practising company secretary regarding compliance of conditions of corporate governance as stipulated in the clause and to send the compliance certificate to the stock exchanges. It certainly brought the role of company secretary in the forefront as the compliance officer from that of a note-taker.

The Companies Act 2013 made most sweeping changes affecting corporate governance to improve transparency and accountability in India’s corporate sector. Some of the provisions in the Act concerning corporate governance are on board composition and processes including board committees; appointment of woman director; codification of directors’ duties; E-governance; enhancing the rights of shareholders; key managerial personnel including their liabilities, managerial remuneration; appointment and rotation of auditors; secretarial audit; certification of financial statements; and vigil mechanism. These provisions together with the norms of corporate governance laid down by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have tremendously increased the level

**INTRODUCTION**

Corporate governance in India has evolved from the system of management by managing agents around 1850 into the present model which is based on the Anglo-American model. The managing agent model which was unique to India, had no place for key managerial personnel including the boards. After independence of the country, the Companies Act 1956 provided a legal framework for regulating the corporate activities including governance and administration of companies, rights of investors (shareholders and creditors) and disclosure requirement. With the abolition of managing agency system in 1970, the board of directors of company was assigned the all-pervasive role of ‘entitled to exercise all such powers and do all such acts as company is authorised to exercise and act’. Section 383A of the Act also required every company having a paid-up share capital of not less than rupees fifty lakhs [Companies (Appointment and Qualifications of Secretary) Rules, 1988] to have a whole-time secretary. It was the time when the role of company secretary was evolving in India. The Indian corporate sector, continuing the legacy of the managing agency system remained family oriented with little distinction between the ownership and management. The boards of companies were also stuffed with family members or close associates of the promoter groups. Consequently, the powers of managing the companies remained with the business families with little or no scope for the boards or other managerial personnel. The role of company secretary was also miniscule to take notes of the board meetings and shareholders meetings and to finalise the minutes in consultation of the controlling family group. The filing of annual return, resolutions and other documents were the important legal duties of the company secretary which was generally episodic.

The Companies Act 2013 made most sweeping changes affecting corporate governance to improve transparency and accountability in India’s corporate sector. Some of the provisions in the Act concerning corporate governance are on board composition and processes including board committees; appointment of woman director; codification of directors’ duties; E-governance; enhancing the rights of shareholders; key managerial personnel including their liabilities, managerial remuneration; appointment and rotation of auditors; secretarial audit; certification of financial statements; and vigil mechanism. These provisions together with the norms of corporate governance laid down by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have tremendously increased the level
of corporate governance compliance in large companies, pushing the role of company secretary from a compliance officer to the role of a gatekeeper to ensure due adherence with the norms to minimise the compliance risk. The increased role of non-executive directors especially independent directors has enhanced the importance of the company secretary an indispensable officer to advise and facilitate the board processes different from lending the ears to directors in the intervening era.

USA, UK, and many commonwealth countries have introduced the position of company secretary through their legislation. Although history of the role of company secretary is shorter than that of company auditor, the changing dynamics of corporate governance entails an integral role for company secretary to ensure effective governance of the company which goes beyond the traditional role of filing documents with the Registrar of Companies.

MULTI-FACET ROLE OF COMPANY SECRETARY (CS)

1. Key Managerial Personnel (KMP)

Company Secretary is designated as Key Managerial Personnel (KMP) by the Companies Act 2013. Section 203 of the Act provides “all listed company and all other company having paid-up share capital of rupees ten crore or more shall have following whole-time key managerial personnel:

- Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- Company Secretary; and
- Chief Financial Officer

2. Compliance Officer

Section 205(1)(a) of the Companies Act specifies one of the functions of CS as ‘to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company’. Company secretary as the ‘compliance officer’ has a responsibility to ensure that the compliance relating to all the applicable laws to the company is complied with. It becomes the duty of CS to monitor the compliance with the plethora of the laws and regulations applicable across various functional domains of the company and report to the board.

SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (SEBI-LODR) specifically require a listed entity to appoint a qualified company secretary as the compliance officer. As compliance officer, CS is required to ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit; coordinate with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities; ensure that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations; and to monitor email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

3. Filing of Annual Return and other Documents

The annual return (a comprehensive document containing information about the company relating to its share capital, directors, shareholders, changes in directorships, etc.) of a listed company and public company having paid-up share capital of rupees ten crore or more or a turnover of rupees fifty crore or more is required to be certified from a ‘Practising Company Secretary’ regarding the correctness of the facts stated in the annual return. The increasing requirement of disclosure, corporate filings and timely announcements to the regulators and other stakeholders has made the role of CS indispensable in a company operating in a rule-based multiple regulatory framework.

4. Assisting the Board of Directors

Section 205 of the Companies Act clearly lays down the responsibility on the CS to assist the board of directors with regard to the following:

- To provide to the directors of the company the guidance they require in discharging their duties, responsibilities and powers.
- To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
- To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
- To assist the Board in the conduct of the affairs of the company.
- To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.
ROLE OF COMPANY SECRETARY IN CORPORATE GOVERNANCE

Following the publication of Cadbury Committee Report in 1992, the Confederation of Indian Industry (CII) took the first initiative on corporate governance. Based on the recommendations of the task force constituted by the CII in 1996, ‘Desirable Corporate Governance-A Code’ was issued in 1998. The Code in line with the Cadbury Committee pleaded for voluntary compliance as in the opinion of the CII Committee, ‘corporate governance goes beyond company law’.

The plea of the CII for voluntary compliance of the ‘Code of Best Practice’ could not make much headway ostensibly because of weaker institutional premise for self-regulation in India. In view of several malpractices and bad governance being pursued by a large number of companies, a need was felt to move towards a statutory rather than a voluntary code, at least in respect of ‘essential features’ of corporate governance.

Securities and Exchange Board of India (SEBI) took the initiative and appointed a committee under the chairmanship of Kumar Mangalam Birla in 1999 to suggest measures to improve the standards of corporate governance of listed companies in India in the areas of disclosures of information, and responsibilities of independent directors. Further, the committee was asked by SEBI to draft a code of corporate best practices to suit the Indian corporate environment. The report of the Kumar Mangalam Birla (Birla) Committee was the first formal and ‘one of the most comprehensive’ attempts in India to evolve a ‘Code of Corporate Governance’. The Committee called for mandatory compliance in respect of certain provisions considered ‘absolutely essential’ to enforce good governance, and other areas, although desirable, were left as non-mandatory provisions with the requirement to disclose the non-compliance in the annual reports of company.

The Birla Committee recommended to SEBI that the mandatory provisions of the recommendations may be implemented through the listing agreement of the stock exchanges. It was also advocated that there should be a separate section on corporate governance in the annual reports of companies with a detailed compliance report on corporate governance. Non-compliance of any mandatory recommendation with reasons thereof and the extent to which the non-mandatory recommendations have been adopted should be specifically highlighted in the report. It was also desired that the company should arrange to obtain a certificate from the company auditors/company secretary regarding compliance of mandatory recommendations and annex the certificate along with the director’s report. SEBI adopted the recommendations of the Committee on January 25, 2000 and in accordance with the directives from SEBI, the stock exchanges in India modified the listing requirements by incorporating in the listing agreement a new clause — Clause 49 to ensure the compliance of corporate governance code by the companies.

Clause 49 and thereafter Revised Clause 49 of the listing agreement (based on the recommendation of the Narayan Murthy Committee appointed by the SEBI) served as the regulatory code of corporate governance in India until it was replaced by the SEBI (Listing Obligation and Disclosure Requirements) Regulations 2015 (SEBI-LODR). Thus, the country moved a step ahead by transforming the ‘contractual obligations’ to the ‘statutory regulations’ which are directed to be abided by all listed companies. Since its notification on September 2, 2015, many amendments have been made in SEBI-LODR, the major ones were based on the recommendations of Kotak Committee appointed by the SEBI. The mandatory requirements of the SEBI-LODR have since been made more stringent in consonance with the global practices especially for the top 1000 listed companies.

In recent years India has seen a marked increase in corporate scams and misdemeanors arising out of gross neglect of legal and compliance requirements by certain companies. In many cases, the professionals such as auditors came under scanner for negligence or connivance in perpetuating the frauds. The legal and reputational risk emanating from frauds may be minimised by following proper compliance procedures and exercising due diligence by company professionals such as auditors and company secretary. To ensure compliance with the regulations, many companies in India conduct due diligence internally led by company secretary to ensure conformity with the regulatory requirements and corporate governance norms.

Company secretaries have over a period of about four decades emerged as the ‘corporate gatekeepers’ in the regulatory regime of corporate governance owing to their professional expertise and training in the areas of corporate laws and corporate governance including board processes. As compliance officer and KMP of a company, they have been handling the job of complying with the laws and regulations. The objectives of Indian corporate laws have also been enhanced from ‘minimum standard’ to ‘high standards’ of corporate governance through the tenets of transparency, disclosure and accountability. Adoption of global practices like whistle blowing, class action suits, code of conduct, shareholders’ democracy, e-voting and e-governance have cast a greater responsibility and demanded continued endeavours on the company professionals especially company secretaries to design the corporate governance structure to keep pace with the changing dynamics. The changing paradigms of corporate governance with the stricter norms have transformed the role of company secretary as ‘gate keeper’ to ‘governance professionals’ and expected to exercise due diligence in adherence to the laid down regulations. The responsibility of implementing processes to promote and comply with the corporate governance norms has fallen largely within the ambit of company secretary. Some of such responsibilities are outlined as under:

5. Secretarial Standards and Audit

Section 204 of the Act mandates a listed company and a company belonging to such class as may be prescribed in the rules, to annex with its Board’s report a Secretarial Audit Report, given by a company secretary in practice. The Board is also required to give explanation on any qualifications or observations or other remarks, if any made in the secretarial audit report. Section 204(4) prescribes stringent penal provisions for non-compliance. Section 118 (10) requires from every company to observe Secretarial Standards with respect to general and board meetings as specified by the ICSI and approved by the Central Government.
One of the key functions of the board of directors is to ‘monitor the effectiveness of the listed entity’s governance practices and making changes as needed’ [SEBI-LODR; 2(f)(ii)]. The company secretary is generally tasked to ensure that corporate governance arrangements are in place, are clearly documented and communicated to the board. The company secretary as the compliance officer is in a position have a holistic view of the governance framework documenting the supporting policies and procedures.

In recent years there has been an increased emphasis on the quality of corporate governance reporting and increased transparency. The company secretary usually has the responsibility of drafting the governance section of the company’s annual report and ensuring that all reports are made available to shareholders according to the relevant regulatory and listing requirements.

Corporate governance hinges on disclosure and transparency. A listed company is required ‘to make disclosures and abide by its obligations under these regulations’ [SEBI LODR; 4(1)]. The driving force for the increased importance of the company secretary has been the developments in the law requiring greater transparency and enhanced level of disclosure. The company secretary must make sure that timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity are prepared and disclosed in accordance with the prescribed standards. And, to ensure that disseminations made under provisions of these regulations and circulars made there under, are adequate, accurate, explicit, timely and presented in a simple language.

The company secretary has a duty to advise the Board including the chairperson, on all governance matters. The relationship between the company secretary and the chairperson is of paramount importance in running the affairs of the Board of Directors and complying with the corporate governance norms. At present, more than 60% of boards of Indian listed companies are headed by non-executive chairpersons. SEBI LODR requires that from April 1, 2022, the top 500 listed companies shall have to appoint non-executive chairperson. In that structure, the role of company secretary becomes all the more important to assist and advise the chairperson on board processes. The agenda of the board meeting has to include all the matters specified in Part A of Schedule II of the SEBI LODR. As the non-executive chairperson is not involved with the company on daily basis, the CS must review the relevant documents and determine whether the appropriate agenda and information on agenda have been placed at the board meeting.

Assisting the non-executive chairperson in formulation of board committees; selection and appointment of non-executive directors; induction and training programmes to new directors, and assisting the non-executive chairman in conducting board evaluation are some of the important areas where company secretaries are performing a significant role in the changing dynamics of corporate governance.
BOARD AND COMMITTEE PROCESSES

The corporate governance norms require ‘members of the board of directors to act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders’ [SEBI LODR; (2) (f) (iii) (2)]. With majority of directors in the boards consisting of non-executive or independent directors, the job of company secretaries includes facilitating the directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors. The company secretary plays a leading role in providing support to the board and its committees which goes beyond scheduling meetings and finalising agendas to ensuring that the meetings function effectively and in accordance with their terms of reference and best practice.

The board of directors is mandated ‘to periodically review compliance reports pertaining to all laws applicable to the listed entity, as well as steps taken by the listed entity to rectify instances of non-compliances’ [SEBI LODR;17(3)]. The company secretary as the compliance officer prepares the compliance reports and highlights the areas of non-compliance for corrective decision of the board.

The corporate governance norms require a company to establish board committees, the important ones being audit committee, nomination and remuneration committee, stakeholders’ relationship committee and risk management committee. In these committees, the company secretary acts as the secretary and while assisting the committees, as the goalkeeper ensures that the agenda proceeds as per the term of reference, minutes are recorded accurately and follow up actions are taken.

The norms of corporate governance are being redrawn in the midst of COVID-19. The boards are facing new realities of running the company and balancing the interest of various groups of stakeholders. More frequent virtual meetings to get regular updates to deal with various issues ranging from the COVID-19 SOPs, health and well-being of the employees, supply-chain disruptions, compensation and related issues require more time of the directors. Shareholders’ meetings, boardcommittee meetings, investors’ meetings through video conferencing and other virtual modes have become a new normal practice. It has added to the responsibilities of the company secretary as more active role of directors means frequent reporting and communication with the stakeholders. In addition to the procedures required for Board meetings in person, the requirements and procedures for convening and conducting Board meetings through video conferencing or other audio-visual means as laid down by Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 have to be followed.

i. Every Company shall make necessary arrangements to avoid failure of video or audio-visual connection.

ii. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care:

   a. to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

   b. to ensure the availability of proper video conferencing or other audio-visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorized participants at the Board meeting;

   c. to record the proceedings and prepare the minutes of the meeting;

   d. to store for safekeeping and marking the tape recording(s) or another electronic recording mechanism as part of the records of the company at least before the time of completion of an audit of that particular year;

   e. to ensure that no person other than the concerned director is attending or have access to the proceedings of the meeting through video conferencing mode or other audio-visual means; and

   f. to ensure that participants attending the meeting through audio-visual means can hear and see the other participants clearly during the meeting, but the differently-abled persons may request the Board to allow a person to accompany him

BOARD TRAINING AND DEVELOPMENT

All directors, especially the independent directors should have access to the advice and services of the company secretary. The company secretary has to build effective relationships with all board members, offers impartial advice and acts in the best interests of the company. SEBI LODR requires a listed company to familiarise the independent directors through various programmes about the listed entity, including the following:

a. nature of the industry in which the listed entity operates;

b. business model of the listed entity;

c. roles, rights, responsibilities of independent directors; and

d. any other relevant information

In promoting the board development, company secretary has to ensure that there are frameworks in place for formulating and implementing induction and training programmes for the directors including developing tailored induction plans for the new directors.

CODE OF CONDUCT

Listed company is required to lay down down a code of conduct for all members of board of directors and senior management. Company secretary applies his/her proficiency in corporate matters to develop the code and update it regularly to ensure that the company is run on sound ethical principles. As compliance officer and the gatekeeper, the company secretary ensures that the directors and senior managers give their adherence to the code. The company secretary also makes sure that the code is communicated to all concerned.

Many companies have established a high-level ethics committee as sub-committee of the board whether standing alone or with an existing board committee to deliberate on ethical issues, the main purpose being to raise awareness of ethical values and issues indicating to the directors and senior managers values and ethics which occupy a high
priority at the top. Companies have different names for ethics committees—Corporate Responsibility Committee, Compliance Committee, CSR committee, Business Principles Committee, Risk and Responsibility Committee etc. Broadly, responsibilities of ethics committee include:

- Laying down the Code of Ethics for the top-level personnel including directors and CEO and at every level of management across the company
- Ensuring that the Code is communicated at all the levels and its formal adherence is carried out
- Effective training in the code of ethics at all levels
- Monitoring that management develops and implements programmes, guidelines and practices congruent with the company’s social and ethics policies
- Ensuring that there is effective communication reinforcing ethical values and good practice in the business and censuring unacceptable practice
- Reviewing the material risks and liabilities relating to the provisions of the code of ethics
- Reviewing the company’s performance in implementing the provisions of the code of ethics and the assertions made in this regard
- Obtaining independent external assurance of the company’s ethics performance on an annual basis, and including in the Integrated Report an assurance statement related to the ethics performance of the company
- Establishing and monitoring the whistle-blowing policy to enable employees to raise concerns on unethical practices
- Developing and reviewing the effectiveness of and updating ethics and related policies
- Reviewing the adequacy and effectiveness of the company’s engagement and interaction with its stakeholders

COMMUNICATION WITH STAKEHOLDERS

The company secretary acts as an interface between the Board and management and serves as an important link between the company and various stakeholders including shareholders, employees, vendors and regulatory bodies. SEBI LODR requires the information to be sent on regular basis to the stakeholders, some of which are the following:

1. Providing to the members of the board of directors’ access to accurate, relevant, and timely information.
2. Providing adequate and timely information to recognised stock exchange(s) and investors.
3. Periodic filings, reports, statements, documents and information reports containing information to enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.
4. Monitoring the complaints by investors on the grievance redressal division

Listed company is required to lay down a code of conduct for all members of board of directors and senior management. Company secretary applies his/her proficiency in corporate matters to develop the code and update it regularly to ensure that the company is run on sound ethical principles. As compliance officer and the gatekeeper, the company secretary ensures that the directors and senior managers give their adherence to the code.

5. To co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc, within timelines and procedures specified under the Act, regulations and circulars issued there under.
6. Submission of a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.
7. Details of all material transactions with related parties are required to be disclosed along with the compliance report
8. Prior intimation to stock exchange about the meeting of the board of directors in which any financial results, buy-back, voluntary de-listing, raising of funds by way of public offers or other methods, declaration of dividend or bonus securities are to proposed/discuss

CONCLUSION

The role of company secretary has changed from being a ‘note-taker’ at the meetings of boards of directors to the ‘gatekeeper’ for ensuring that the company runs on sound corporate governance principles. The driving force for the increased importance of the company secretary has been the developments in the law requiring greater transparency, disclosure and high governance standards. These include increasing reliance on independent directors, board committees, separation of roles of chairman and CEO, code of conduct, whistle blowing and regular communication with the stakeholders which are required by the corporate regulatory framework.

It is for the company secretaries to fulfil the demands of the role of corporate governance officers with responsibility retaining the critical attribute of independence as other gatekeepers such as auditors, lawyers etc. Company secretaries should be independent and exercise due diligence in terms of their relationships with the companies and chairpersons including directors of the companies, investors and other stakeholders while exercising their professional judgment.
Due Diligence is a word which has gained more popularity in the recent past, due to various legal and regulatory requirements. It has opened up a lot of opportunities for professionals. Due diligence (“DD”) can be for various requirements, for example it could be for purchase of assets, for a merger or acquisition transaction, for securitization or any stipulated statutory or regulatory due diligence. The DD can be specific to subjects like administrative DD, financial DD, Legal DD etc. Whatever be the scope or requirement of the due diligence, the broad principles to be followed at the time of doing the diligence and drafting the report is what is being discussed in this article.

At times, the scope of a diligence and audit appears to be same, but the expected outcome of both are quite different and therefore, it is very important to understand the right approach to do a diligence. This becomes important since now Company Secretaries have been recognized and empowered with the responsibility of conducting due diligence for various purposes and the report is relied on by various authorities and the Reserve Bank of India has also suggested that the banks can get their DD conducted by a Company Secretary, it is essential to understand the significance of DD and the principles to be followed while conducting the DD.

**SIGNIFICANCE OF DD**

A question arises as to why is a DD required? What is the significance and why time and cost is spent on DD?

DD is a concise summary of facts happened over a period of time, which is collated and analysed with the perspective of the Scope of the DD. DD gives the position at a given point of time, which helps in taking a decision. If the DD is for acquisition of a firm/company or a merger, DD divulges various aspects of the business, based on which the terms/ price of the purchase is decided. If the DD is based on a regulatory requirement, it establishes compliance of provisions or exhibits the position of the entity and is expected to bring out all the relevant information, which is required to be divulged to the regulatory or statutory authority. DD is a fact finding and collating exercise, which helps the parties in taking a decision on the issue for which the DD is conducted.

**SCOPE AND REQUIREMENT**

It is very essential to understand the scope and requirement of a DD, since this will help identify the areas to be covered and the pertinent questions to be asked. DD is an investigation into the required aspects and the outcome in the form of report should bring out the necessary information to the recipient. To achieve this end result, the scope should be understood well and a checklist be made, which should include:

a. Points to be covered under the DD;

b. Departments to be covered (i.e.) finance, legal, secretarial etc.;

c. Policies to the checked;

d. Questions to be asked;

e. Maintenance of books to be checked;

f. Filings with ROC/ SEBI/ Stock exchanges / tax authorities;

g. Officials to be met;

h. Sampling size;

i. Internal reports like MIS reports, Internal Audit report, minute books etc., to be checked.

The above is by no means an exhaustive list and more items could be added on the basis of the scope, specific subject of DD and the extent of the DD to be conducted.

**APPROACH TO THE DD-DEEPER OR BROADER?**

Approach is very critical while conducting the DD though this is predominantly dependent on the scope and requirement, it is very essential to be open to receive any information or detail with a neutral frame of mind while conducting the DD. The approach or intention should not be to find any problem or inconsistency in the requirement, rather it should be just collecting all the facts first and then assimilate to achieve the scope.

Should the DD be deeper or broader depends on the scope. If the DD is for a specific purpose then it is advisable to take a...
deep approach (i.e.) DD for acquisition etc., should be a deep DD. While conducting a DD for secretarial audit, it would be a broad-based approach, as it will cover various aspects to determine the overall compliance framework.

It is rightly said that ‘the devil is in the details’. It is essential that a detailed investigative approach is taken, but the actual technique employed lies in determining when to go deeper into details, and when not to. The general guidance would be to go deeper when discrepancy or issues are identified, so that nothing is left without being checked satisfactorily. Further deep investigation may not be required, if satisfactory evidence is obtained, else it would be advisable to take one deeper step to get the issues clarified. This guiding factor is the point of satisfaction to the person undertaking the DD. If the scope of the DD is broad (i.e.) covering a general principle or covering a large scope, then it may not be possible to go into details of all the aspects, in that case, it is essential to keep the most important points ready in the checklist so that a focused DD can be achieved within the time frame agreed or provided. Too much details at times, may not be essential and can dilute the scope. Further, there is a danger of straying and losing focus. Time can be taken for finalizing the scope and preparing the checklist. Once the checklist is prepared, the process would be smooth and can be streamlined and it becomes easy to keep track of the DD.

At any point of the DD, if there is a disconnect or the chain of facts could not be established from the documents, then it is essential to investigate a bit deeper into the facts. Never omit or discard the facts in such an event, until all the requirements are satisfactorily met. Even a small fact can lead to or reveal big issues, therefore, a thoughtful approach is very essential.

NOTABLE POINTS/ SIGNALS

While conducting a DD, if certain important points come to light, the same should be highlighted, whether or not it falls under the scope. If the noteworthy point is unrelated to the health/business or conduct of the entity, then it may be ignored. As a prudential person, and from a professional angle, if the issues / points noted are slightly out of scope, but at the same time, may be important to highlight or bring to the notice, then please list the points separately as ‘noteworthy points’ or give them a caption, that may be appropriate and mention them in the report. This may be an early signal to the concerned and help them in taking timely corrective steps.

RISK ANALYSIS

DD is not an activity purely to bring out the facts as may be required for the scope. DD also incorporates a component of risk analysis. Facts which have been culled out is also required to be analyzed to achieve the perspective of the scope. A threadbare analysis is not expected; the intention is just to give a perspective based on all the facts collected. It needs to be ensured that while doing a risk analysis, a balanced view based on all the facts should be taken. The quality of Due Diligence gets enhanced by the skill exhibited in connecting the facts and arriving at the conclusion. The scope of the DD and the purpose for which the DD is conducted will be the basis for determining the depth of the DD.

The risk analysis should help in decision making and should not be too wide. DD may contain many points, depending on the scope, separate analysis on individual points should be made and an overall analysis and conclusion is also required to be made.

While recording the analysis and making the report, care should be taken to mention about the assumptions and reliance made for the DD, including the analysis made.

CHALLENGES FACED DURING DD

Some of the challenges faced during the DD process are discussed below:

(i) Incomplete Information

Incomplete information and / or non-availability of information is the first and foremost challenge in the path of conducting a DD. Companies in due course of their business, do maintain records, as required by the Companies Act, 2013 and other statutory provisions, but it may not give all the information and the extent of details that may be required for the DD. The first and foremost option available is to try and locate the missing information, but many a times, the efforts may not yield much of a result. In a situation where full information
is not available, but basic concrete information / documents are available, then the gaps can be filled in by making logical assumption, which can help in concluding the DD. While taking this approach, it should be ensured that there are no facts existing or known which prevents in making the assumption. Assumptions cannot be made just for the sake of arriving at a conclusion, it should be a very logical assumption and should be just aiding in making the conclusion and not the basis of the conclusion. If assumption becomes the basis of the conclusion, then it gives an impression that the DD was not done meticulously.

Another way of handling incomplete information is to state the existing facts and suggest on the mitigation that can be taken to fill the gap. This may not be possible in all cases and instances, but this is one way of addressing the shortfall of information.

(ii) Non-Cooperation:

If the DD is being conducted for the purposes of investigation, then there could an element of non-cooperation. If it is a clear non-cooperation, due to which DD has gaps, then this should be highlighted in the DD report.

(iii) Paucity of Time:

If the DD is time sensitive, paucity of time can affect the quality of the DD and the report thereof. No compromise on the core aspects of the DD be made because of the time availability. The documents verified for DD must be very carefully drafted if the DD is time sensitive and it should be ensured that the documents listed are looked into meticulously.

REPORT WRITING

The most important phase of the DD is the writing of the DD report, its contents and the manner of expression. It is very essential that the report is in simple language, clear and expressed with clarity.

For ease of reference, the report can be made with the following headings, these are indicative, the headings will change depending on the nature of the DD, the scope and the intention behind the DD:

a. Scope – this can be taken out from the mandate for conducting the DD

b. Reference – whether the DD is due to regulatory requirement or a business requirement or is it a fact finding exercise etc.

c. Assumptions – this should cover assumptions (for example that all the documents relating to the subject have been shared for the purposes of DD etc.)

d. Reliance – If reliance is made on certain undertakings from the promoter or officers of the company or any opinion expressed by an auditor or legal counsel etc., these should be clearly and elaborately mentioned.

e. List of documents reviewed – Indicate the nature of the document and whether a copy or original etc., if the requirement is an original and the same is not signed, this should be mentioned.

f. Documents not available – Documents which are essential, if not shared / provided or not maintained, then there should be a mention of the same along with the probable impact on the DD due to non-maintenance of documents/ records.

g. Observations – This is the most important portion of the DD, where the most crucial observations are made. It has to be ensured that observations made are backed by facts or documents.

h. Risk Analysis – Analysis should be done based on the observations.

i. Noteworthy points/ Early signs – These points should be noted appropriately and the nature of concern should be highlighted.

j. Rectifications –If any corrective action or rectifications are required and the effect of doing or not taking the corrective action or taking the remedial measures on the DD should be highlighted.

k. Conclusion – The most important part of the DD report is the conclusion, which should be an answer to the scope of the DD. The conclusion should be clear and fact based. It is very much necessary to ensure that the reasons and the logic based on which the conclusion is arrived at should be cited.

l. Confidentiality and restrictions – Invariably the DD reports required and the effect of doing or not taking the corrective action or taking the remedial measures on the DD should be highlighted.

In addition to providing an excellent business opportunity to the Company Secretaries, as a professional, conducting DDs, also gives immense experience and a clear understanding of the do’s and don’ts. DD should be conducted meticulously, and not treated as a routine compliance issue. If the scope of the DD is wide and complicated, necessary support from professionals from other domains like legal and finance should be taken or a separate DD on the important aspects should be advised to be done. Getting hands-on experience to conduct DD will immensely improve expertise and will enable the person conducting the DD to appreciate the nuances of business, practical aspects of compliance and also sharpen the skills in evaluation of the way compliances of regulatory and statutory requirements are handled.
Due Diligence - An Overview

The buzzword these days is Due Diligence and is invariably undertaken before any major transaction such as an Initial Public Offering (IPO), Merger, Amalgamation, Takeover, Acquisition and the like are proposed to be taken up. The purpose of such Due diligence as a pre-transaction exercise can be multi-fold some of which could to identify road blocks if any, or ascertain if there are any hidden liabilities or exposure having a major bearing on the transaction or for validation / seeking modification of the principal terms of understanding initially agreed upon. The outcome of such due diligence findings is a DD report, which is the starting point before the initial steps are taken up for implementation of the proposed transaction.

INTRODUCTION

In the corporate world, there is a general belief that turnover represents vanity and the bottom line represents sanity. The need to achieve growth is an integral part of any business organisation and this compels businesses to draw up various forms of compromises, arrangements and amalgamations from time to time. The intended purpose is to achieve better economics of operational scale, operational efficiency, achieving competitive edge in the market place, change in manufacturing technology, change in consumer interests and positive impact on a host of other aspects. This may take the form of restructuring of capital, consolidation and reduction of different classes of shares and the like. These are individual centric changes, whereas mergers and amalgamations of businesses have company- wide ramifications, requiring consent of members and creditors of companies including approval of the Tribunal along with reports from other regulatory authorities for the proposed mergers / amalgamations.

The instances of businesses drawing up the schemes of merger and amalgamation are quite common and frequent, as they operate in a highly competitive environment. The negative aspect of some such schemes often tend to create monopolistic and unfair trade practices to gain undue advantage over others in the market place, which shakes the market dynamics of demand and supply. Laws are in place to curb such tendencies.

The schemes drawn up by businesses require closer look. This has to be done in a most transparent manner by disclosure of all material facts relating to companies such as latest financial position, the auditors’ report on the accounts of companies, pendency of any proceedings or investigation against a company and a host of other disclosures mandated by law. All these aspects are dealt with in sections 230 to 236 of the Companies Act, 2013 and in the case of listed companies, they also have to comply with the applicable provisions of Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR). In particular, the transferee company will have to handle a lot of practical issues like the culture of the transferor company, its workforce, integration of facilities and a host of other issues. These have also to be looked at from the human angle.

APPLICATION OF DUE DILIGENCE (DD)

The scope of application of DD varies depending upon the complexity of the issue and the type of merger and amalgamation. Merger or amalgamation affects two or more companies and offers a glaring example of the need to exercise the utmost degree of care and the application of due diligence. There is bewildering variety of M&A and it includes;(i) re-organisation of company’s share capital by consolidation of shares of different classes or divisions thereof,(ii) conversion of preference shares into equity shares,(iii) compromise or arrangements proposed with a scheme of reconstruction or involving two or more companies,(iv) transfer of the whole or any part of the undertaking or liabilities of a company,(V) merger or amalgamation of companies, involving two or more small companies,(vi) merger and amalgamation with a foreign company,(vii) purchase of minority shareholding,(viii) power of the Central Govt to provide for amalgamation of companies in public interest.

DUE DILIGENCE (DD), WHY AND HOW?

DD is a process and a procedure to look at from a close angle the business transactions conducted by the transferor company over a period of years. This does not mean that the transactions have to be considered in a doubtful manner but with an open mind. This requires a peep into future effect of past transactions from the point of view of finding out hidden losses, if any, which will have the effect of increasing the financial liability of the transferee company. The liability of the transferor company becomes the liability of the transferee company with the completion of all legal and procedural formalities. The areas to be considered are litigation, legal compliances and the adequacy of it, contingent liabilities as disclosed as part of audited profit & loss account and the balance sheet of a company, auditors’ report on the account and any reservations, contractual liabilities with the suppliers of goods and services, taxation, intellectual property rights, to mention a few of many areas requiring closer scrutiny. This is to ensure that there
Due Diligence is understood to be an investigation or exercise of care that a reasonable business or person is normally expected to take before entering into an agreement with another party or an act with certain standard of care. It can be legal obligation, but the term is more commonly apply to voluntary investigation. A common example of DD in various industries is the process to potential acquirer to evaluate a target company or its assets for acquisition. The theory behind DD holds that performing this type of investigation contributes significantly to informed decision making by enhancing the amount and quality of information available to decision makers and by ensuring that this information is systematically used to deliberate on the decision on hand and all its costs, benefits and risks.

The information or data generated by the DD gives confidence to the decision makers about the decision on hand. This is essentially a SWOT analysis and takes the decision makers to the past, the present and the future of an enterprise. It also means exercise of certain degree of care on the part of investigators.

DD became a specialized legal term and later on became a common business term due to United States Securities Act, 1933 where the process is called “reasonable investigation”. In the legal and business parlance, the term “Due Diligence” soon became to be used for the process itself rather than how it is performed.

**DILIGENCE, WHAT IT MEANS?**

Essentially the omnibus word “diligence” conveys a certain frame of mind and its application. It also means steady and earnestness in the application of knowledge to any field of activity. We live in a knowledge world and it also means an era of intelligence. The more we seek knowledge, the knowledge horizon gets receded and it looks as though there is a rat race between the seekers of knowledge and the knowledge itself. Be that what it may, all of us take pride in calling ourselves professionals and stake our claim thereto. There is bewildering variety of professionals and more and more professions are joining the list. In simple words, professional means a person who has undergone a systematic study of knowledge and the exercise of it is regulated by a code of conduct. This is the starting point and the performance by excellence is at the other end of the spectrum. Excellence lies in a doing a thing or performing an act better than best and a cut above the rest. The skill of a craftsman shows up the way he makes an idol. Why not we call ourselves excellent professionals and take pride in providing service to corporate and others clients in the same spirit. When done in that manner, it becomes an exercise in due diligence.

**DD AND THE BUSINESS TRANSACTIONS**

DD takes different forms depending upon the purpose. They are:

- i. examination of potential target for merger, acquisition, privatization, or other similar finance transactions by a buyer;
- ii. an investigation focussing on material future business;
- iii. an examination being conducted by asking certain key questions, including restructuring, an amalgamation and the quantum of payment;
- iv. an investigation into the current practices of process and policies and
- v. an examination to make an acquisition decision on the principles of valuation and shareholder value analysis.

DD process can be divided into nine distinct areas. They are:

1. **Compatibility audit:** This deals with strategic components of the transaction and in particular the need to add shareholder value.
2. **Financial audit:** This essentially is a reconciliation audit together with linkage with a formal valuation order. The relevant areas of concern may include the financial, legal, labour, tax, IT, environment and market and commercial situation of the company. It may include other areas like intellectual property rights, real and personal property, insurance and liability coverage, debt instrument review, employee benefits, labour matters, immigration and
international transactions as also include the purchase Price, representation and warranties, indemnification by the sellers.

3. Production audit
4. Macro environmental audit
5. legal environmental audit
6. Marketing audit
7. Management audit
8. Information systems audit and
9. Reconciliation audit.

Though we have referred to review of these areas as audit, in sum and substance, the purpose, emphasis and the process in the case of DD is vastly different when compared to an audit.

DUTY OF CARE

It is an obligation on the individual requiring adherence to a reasonable care while performing any act which could reasonably harm others. This is the first element that must be established to proceed with an action in negligence. The claimant must be able to establish a duty of care imposed by law which the defendant has breached and this is a subject of individual liability. Duty of care may be considered a formalisation of social contract, the implicit responsibility held by individuals towards others. An engineer or construction company involved in erecting a building may be reasonably responsible to tenants inhabiting the building many years later. This point is illustrated by the decision of the South Carolina Supreme Court in Terlinde v Neely 275 SC395,271 SE 2nd 768(1980) and later cited by the Supreme Court of Canada in Winnipeg Condominium No 36 v Bird Construction company.

MANNER OF CONDUCTING DD

DD is a useful tool for review of areas in which there is prima facie concern. It saves a lot of revenue which otherwise gets frittered away. It provides an opportunity to look at contingent liabilities standing firmly in the present.

DD though less known in India is fast catching up and mainly in vogue and practised by law firms in the area of legal compliances. This does not mean that necessary controls have not been exercised by others in a scheme of M&A. But the DD provides a systematic tool for scrutinising transactions running into crore of rupees of revenue.

In the case of mergers and amalgamations for instance, on the basis of information provided by the transferor company, a template is prepared giving details of (i) organisation and structure of the transferor company,(ii) business profile including manufacturing and marketing network as also distribution channel,(iii) types of transactions entered into with the various agencies together specimen contracts,(iv)areas of concern including contingent liabilities and litigation,(v) methodology adopted,(vi) observation and verification and the areas covered,(vii) conclusion indicating the areas of concern,(viii) preparation of DD report,(ix) identification of need to appoint domain experts for areas not covered in the DD report as it a multi-dimensional task and(x) sharing the result with the parties concerned.

The task aforesaid can be usefully taken up, coordinated and carried out by the practising members of CS profession and will add another feather to their cap. In fact, quite a few Practising company secretaries are today involved in due diligence exercises and what is now required is to raise the bar for the profession. This calls for professional approach with thorough legal knowledge and a devotion to the cause. A sound knowledge of the domain areas like law, litigation, legal compliances, finance and contract obligations are required. The most important is the duty of care on the part of professionals which is widely accepted. In tort, a duty of care is a legal obligation imposed on an individual to a standard of care while performing any act.

ARTICLE ON DD ON GOOGLE PLATFORM

A focussed article on DD is available on the Google platform. Some of the observations are dealt within this write up to highlight the need to act with certain standard of care.DD has emerged as a separate profession for accounting and auditing experts and is typically referred to as Transaction services.

CONCLUSION

A review of what is stated above indicates that DD is a highly dedicated task requiring a sound knowledge of the relevant laws and a professional approach in the conduct of due diligence. This task may be undertaken by the buyer, if such buyer has the expertise or may be undertaken by a professional firm. The task is multi-dimensional in nature and has a company-wide effect. The degree of care required is of utmost importance and it is what a reasonable person is expected to exhibit. A careless or inadequate care may land the investigator into civil and criminal liabilities, apart from failure of the project. Due diligence requires a high degree of care and caution. Some investigators list out the documents examined by them and made available to them by the buyer or the transferor company on the basis of which conclusions and recommendations have been drawn in the DD report.
Measuring Quality of Due Diligence - Lessons For Company Secretary

Due diligence is a broadly used term across multiple disciplines, particularly in the legal and corporate realms. Due diligence is an investigation, audit, or review performed to confirm facts or details of a matter under consideration. It is basically a “background check” to make sure that the parties to the transaction have the required information they need, to proceed with the transaction. While Due Diligence is inherent in every transaction or corporate action or process, ensuring quality in the Due Diligence process and outcomes is an extremely important aspect, which calls for the Company Secretaries to raise the bar.

Due Diligence is significant as for many transactions it functions as an assurance engagement report. It is an exercise normally expected to take before entering into an agreement or contract so as to ensure that all risks have been disclosed and all opportunities are placed on the table before the commercial deal proceeds.

SCOPE AND OBJECTIVES

Scope of due diligence depends on the needs of the people who are involved in the potential transaction, in addressing key uncovered issues, areas of concern/threat and in identifying additional opportunities. It is an analysis and risk assessment of an impending business transaction. It is the careful and methodological investigation of a business or persons, or the performance of an act with a certain standard of care to ensure that information is accurate, and to uncover information that may affect the outcome of the transaction.

The scope of the Due diligence may be comprehended from the following forms of general transactions which take place regularly in the corporate world and it covers:

i) **Mergers and Acquisitions**: In mergers and acquisitions, Due diligence is conducted from the perspective of the both seller and the buyer. While the buyer reconnoiters the financials, litigations, patents and complete magnitude of pertinent information, the seller lays emphasis on the background of the buyer, the financial capabilities to complete the transaction and the ability to honor the commitments accepted.

ii) **Partnership**: With reference to partnership firms, Due diligence is espoused for strategic alliances, strategic partnerships, business coalitions and such other partnerships.

iii) **Joint Venture and Collaborations**: It is to be noted that when one company joins hands with another the reputation of the company is a matter of concern. Understanding the other company’s stand and gauging the adequacy of resources at their end assumes importance. Thus, in case of joint venture and collaborations, due diligence captures center stage in terms of ascertaining the reputation of the companies and sufficiency of various crucial resources, i.e., financial, human, material etc.

iv) **Public Offer**: The critical facets associated with a public offer are- decisions on public issues like corporate suitability, advantages on going public, costs involved etc, disclosures in a prospectus, pre or post issue
compliances/disclosures and so on and so forth. These vital aspects are necessary to be observed minutely for a successful transaction.

The main objectives of due diligence could be stated as under:

- Collect material information from the target company
- To take informed decision about investment
- Conducting the SWOT analysis to identify the strength and to uncover threat and weakness
- Improving the bargaining position depending on swot analysis
- Identify the areas where representations and warranties are required
- To provide desired comfort level in a transaction
- Complete and accurate disclosure
- Bridge the gap between the existing and expected
- Smooth/accurate action/decision
- Enhance confidence of Stakeholders

**IMPORTANCE**

Misrepresentations and fraudulent dealings are not always obvious or straight. These are to be uncovered, especially in a major business transaction, as it would create a major impact on the business. Proper due diligence services explore and assess the details behind the same and inform about the financials, business, internal systems, profitability, key operational aspects, management team, promoters and other material factors which will help in making an accurate decision about an investment. Due diligence is designed to protect the interests of the Company by providing objective and reliable information on the target company before making any written commitments.

The procedures and analyses ultimately represent a window into the target Company’s success and potential, including what opportunities exist to grow the business further to meet goals and objectives. Due diligence is necessary to allow the investigating party to find out everything that one needs to know about the subject of the diligence.

The objective is to allow the investigator to consider the following options, considering the facts found in the course of due diligence:

- Withdrawal of deal – if the due diligence uncovers information that disclosed the investments, loan or participation, a risky or undesirable one and which cannot be adequately resolved then the investigator may withdraw from the deal.
- Adjusting the valuation of the investment – the investigator may revise his valuation of the company or reassess the price at which it will provide services. More often, the information will be adverse and therefore the valuation will go down or the price will go up.
- Solving of uncovered problems – it may be possible to solve uncovered problems by the due diligence exercise before the deal goes ahead.

**FACTORS TO BE KEPT IN MIND WHILE CONDUCTING DUE-DILLIGENCE**

**Benefits**

Due diligence is needed so that the entity is well conscious of all the essential items like:-

- Administration And Ownership-
  Analysis of who runs the Company
- Capitalization-
  Examining how large and volatile is the Company and market. A contrasting analysis of both of them is needed.
- Business Competitors And Industries-
  Research and compare the boundaries of competitors for a better comprehension of the target Company
- Balance Sheet Review-
  This helps in interpreting the debt-to-equity ratio
- Revenue, Profit And Margin Bearings-
  To examine if there are any recent trends in the figures which may be rising, falling or stable?
- Risk it enables to learn industry-wide and Company specific dangers, and all the checking if there are any on-going risks and trying to predict any futuristic unforeseeable threats in the future.
- Capital History/Options And Probabilities-
  How long has the Company been dealing? For a short-term or long-term? Has there been a steady stock price?
- Expectations-
  To maximize the profit for the future.

**Types**

In business transactions, the due diligence process varies for different types of companies. The relevant areas of concern may include the financial, legal, tax, environment and market/commercial situation of the company. Other areas include intellectual property, real and personal property, insurance and liability coverage, debt instrument review, employee benefits and labour matters, immigration, and international transactions. The most important types of Due Diligence are:

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Proper due diligence services explore and assess the details behind the same and inform about the financials, business, internal systems, profitability, key operational aspects, management team, promoters and other material factors which will help in making an accurate decision about an investment. Due diligence is designed to protect the interests of the Company by providing objective and reliable information on the target company before making any written commitments.
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**FACTORS TO BE KEPT IN MIND WHILE CONDUCTING DUE-DILLIGENCE**

**Benefits**

Due diligence is needed so that the entity is well conscious of all the essential items like:-

- Administration And Ownership-
  Analysis of who runs the Company
- Capitalization-
  Examining how large and volatile is the Company and market. A contrasting analysis of both of them is needed.
- Business Competitors And Industries-
  Research and compare the boundaries of competitors for a better comprehension of the target Company
- Balance Sheet Review-
  This helps in interpreting the debt-to-equity ratio
- Revenue, Profit And Margin Bearings-
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**Types**

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A detailed description of the three forms of Due diligence is as under:

a) Business Due Diligence: It involves background check of the parties involved in the transaction, prospects of the business and the quality of investment. Further, the Business Due Diligence includes the following:

i) **Operational**: It looks into the operational weaknesses, functioning of the Target Company, degradation or up-gradation related to operational process of Company and economic impact on the operational efficiency of the Company.

ii) **Strategic**: In this analysis, it is checked whether business or transaction is commercially feasible or not from a strategic view point. The position of Company in a competitive environment is also looked into to gain better results.

iii) **Technical**: This includes checking of the current technical aspects with the one exist in the company and also to assess whether any investment is required in the company to meet future opportunities.

iv) **Environmental**: This type of Due Diligence involves environmental risk associated with a Company. This type includes risk identification regarding:

   a) Site assessment

   b) Managing operation at company.

   c) Reviewing the history of sites and the environmental condition of a company.

   d) Regulatory pollution check of the company.

v) **Human Resource**: It aims at the issues pertaining to the human capital in the company. Sometimes, there are cultural differences in the company, which lead to problems in the company. It is important to understand the vital cultural differences in the company for a healthy working environment in the company.

vi) **Ethical**: It calculates the ethical risks involved with the company. The ethical character of the company, the reputation of the company, whether the partner is ethical or not in case of partnership firm etc.

b) Legal Due Diligence: It mainly focuses on the legal aspects of a transaction, legal pitfalls and other law related issues. It covers both inter-corporate transactions as well as intra-corporate transactions. Various regulatory checklists form a part of this diligence along with the already existing documentation.

In crux, it may be stated that legal due diligence throws light on the legal facets of the transactions, legal drawbacks and other law related issues. Under this form of due diligence, the following components are examined:

- Memorandum of Association (MoA) and Article of Association (AoA).
- Minutes of Board Meetings.
- Copy of all the share certificates issued to shareholders.
- Guarantees to which a company is a party.
- Licensing Agreements.
- Loan Agreements etc.

c) Financial Due Diligence: Financial, operational and commercial assumptions are validated here. This provides a huge sign of relief to the acquiring company. Review of accounting policies, audit practices, tax compliances and internal controls are done in detail here.

**Process and Procedure**

- **Pre-Diligence**: Activity of management of paper, files and people.
- **Diligence**: DD Report at this stage is prepared covering significant findings.
- **Post Diligence**: Rectification of non-compliances found during the course of due-diligence.

**Stages/Process of Due Diligence**

**Pre-Diligence includes**:

- Signing the Letter of Intent (LOI) and the Non-Disclosure Agreement (NDA)/ Engagement letter for scope of the transaction/subject and the defined timelines to achieve the same.
- Receipt of documents from the company and review of the same with the checklist of documents already supplied to the company.
- Identifying the issues, set out process and expectations.
- Creating a data room.

Prior to commencement of the process, overviews of issues considered to be of significance for the successful execution of the transaction are normally deliberated. This pre-diligence deliberative overview stage is of critical significance as it sets out the basis for setting out the scope and intensity of the due diligence process specific to the contemplated transaction at hand.
Components of Deliberative overview-

Due-Diligence Includes:
- to identify the structure of transaction i.e. share or asset purchase, tax consideration, restrictive covenants etc.
- identify source of funding, any significant issues involved.
- Based on transaction, analysis of regulatory compliances, approvals, authorities etc. required.
- Analyse involvement of overseas and related compliance
- Analyse the informations which are restricted to release and review of covenants in relation thereto
- Industry segment/relevant sector specific issues.

Post Due-Diligence Includes:

After completion of Due-Diligence process, a report is usually prepared on the basis of terms of reference as agreed and it must seek to provide the most pertinent information at the given point of time in most easily absorbed form. It consists of three sections:

- Executive Summary
  - Includes most critical points or deal breakers
- Main Body
  - Follow the order and headings of the terms of reference or checklist
- Appendices
  - Data Sheet and/or documentation relevant to critical issues.

The breadth and magnitude of investigation varies from situation to situation.

Listed below are general steps which helps in evaluating the quality of Due-Diligence.

1. Evaluate Goals of the Project
   - As with any project, the first step delineating corporate goals. This helps pinpoint resources required, what you need to glean, and ultimately assure alignment with the firm’s overarching strategy.
   - This involves introspective questions revolving around what you want to gain from this investigation.

2. Analysis of Business Financials
   - This step is an exhaustive audit of financial records. It ensures that documents depicted in the Confidentiality Information Memorandum (CIM) were not fluffed.
   - Additionally, it helps gauge the company’s asset health, assess overall financial performance and stability, and detect any red flags.

3. Thorough Inspection of Documents
   - This due diligence step begins as a two-way conversation between buyer and seller. The buyer asks for respective documents to audit, conduct interviews or surveys with the seller, and go on site visits.
   - Responsiveness and organization on the seller’s end are key to expedite this process. Otherwise, it may create an arduous experience for the buyer. Following, the buyer examines the information collected to ensure proper business practices as well as legal and environmental compliances. This is the major part of due diligence process.

4. Business Plan and Model Analysis
   - Here, the buyer looks specifically at the target company’s business plans and model. This is to assess whether it is viable and how well the firm’s model would integrate with theirs.

5. Final Offering Formation
   - After information and documents are gathered and examined, individuals and teams collaborate to share and evaluate their findings.
   - Analysts utilize information collected to perform valuation techniques and methods. This substantiates the final dollar you are willing to offer during negotiation.

6. Risk Management
   - Risk management is looking at the target company holistically and forecasting risks that may be associated with the transaction.

Due –Diligence: Risk and Review

Due diligence can be thought of as the effort one would expect a reasonably prudent person to exercise in similar circumstances to prevent harm. The key to the concept of due diligence is the foresee ability of the risk. If the risk can reasonably be foreseen, then steps must be taken to address it. Essentially, due diligence is a risk management process; therefore, the terms risk management and project due diligence are used interchangeably in this guidance.

There are countless potential transactions on the market. Some may already pose a higher risk than others, due to their types like a small start-up requires less detailed analysis than a large company from a risky economic sector. Accordingly, different forms of precautionary risk analysis exist that are tailored to different needs and review of same is equally required.

Simplified and extended due diligence review

- **Simplified due diligence**: If it is likely to be low risk, simplified analysis is sufficient. Young companies with few employees, for example, have a low risk potential. Bribery offences are rare among them, as there is usually no contact with public officials.

  A simple method: do your research online. In addition, one should obtain access to company databases to learn more about financial structures in the business.

- **Extended due diligence**: Large, internationally active companies generally represent a greater risk. On the one hand, they have to comply with country-specific laws and on another hand with international laws; A large number of subsidiaries and business partners are more likely to follow due-diligence for successful business or transactions.
DUE DILIGENCE: ITS IMPACT, NON-COMPLIANCE AND REPORTING

Due diligence impacted on ultimate goal – preventing harm to people and the environment. It involves elements of both risk assessment and risk management. It ensures that regulatory decision-makers have sufficient information to decide if it should be allowed to proceed.

Non-compliance can be explained as a failure to fulfill the specific tasks of the regulatory requirement, and can be due to either sub-par system performance or a lack of proper processes in place. System Non-Compliance might include a failure to capture information as per the regulatory objectives, while Process Non-Compliance might include not achieving operating criteria. Either form of non-compliance could cost an organization dearly, with consequences ranging from no action to heavy fines or custodial sentences for individuals. At any stage where a company faces such situation, it can overcome by adopting first step towards total compliance. Organization can institutionalize a structured Non-Compliance Resolution Process to plan, execute, monitor and fix compliance effort throughout the organization.

Once areas of non-compliance have been identified and necessary action has been taken to rectify the situation, it is important to ascertain why the non-compliance happened in the first place and the next step is to make recommendations for improvement.

The information collected during this process is crucial for decision making and hence needs to be reported. The Due Diligence report (DDR) helps to understand what kind of move should one make to fulfill the proposed transaction. It serves as a ready reckoner for understanding the state of affairs of the transaction.

Drafting the due diligence report involves addressing of 3 W’s:

1. Who gets effected from proposed transaction?
2. What is the objective of proposed transaction?
3. Which are aspects that will be key to decision making?

Areas of focus for DDR

- Vitality
- Monetary Aspects
- Environment
- Personnel
- Existing and Potential Liabilities
- Technology

DUE DILIGENCE IN INDIA

India nowadays has been set as a lucrative destination for foreign investment. Its large labour force, powerful wealth, and untapped resources are lead source of attraction in the Indian economy. Ever since India opened its doors to the global market, many foreign-based firms have been aggressively looking to invest in the Indian market, and even vice versa.

India presents a multifaceted economic, regulatory, and legal landscape for doing business. Due diligence in India is generally performed by a company before any merger & acquisition, private equity investment, raising funds through IPO, FPO, right issue, bonds bank loan funding, etc. Indian companies have recognized that in order to confirm with international standards of due diligence, the practice must be incorporated in their framework. That due diligence becomes a powerful tool for companies to ensure that it is able to manage the risk prior to entering into a business transaction. Due Diligence is now finding deserved place in Indian Statutes. Mandatory provisions have been introduced for the conduct of due diligence under various statutory laws.

The process of conducting due diligence in different countries differs significantly, though they seek to achieve very similar ends. Indian companies give tremendous significance to legal due diligence in order to comply with the statutory guidelines laid down by MCA, FEMA, and the SEBI. Due diligence has also been considered to be an aspect of Civil Litigation, Competition Law, Property Law, M&A, JV, and Tax Law. The Indian globalization flow considers due diligence as an important aspect of the ease of doing business as multiple compliance requirements and their implementation is verified through due diligence check.

India has approached towards digitization with government initiatives namely ‘Digital India’ which will help it to close the informational gap in terms of procuring and providing vital information digitally.

As at the global level, in India too, Due Diligence is taken up assiduously. For instance, while conducting Due Diligence for transactions like joint ventures, mergers and acquisitions, raising fund through public offer, borrowing loans etc following documents/information were review:

1. Review of Ministry of Corporate Affairs documents: Most of the due diligence of a company starts with the MCA i.e. Ministry of Corporate Affairs. The master data about a company is made available to the public through MCA website. On with minimal fee payment, all the documents that are filed with the Registrar of Companies are made available to anyone and everyone.
2. Review of Memorandum and Articles of Association: It is quite essential to review the memorandum and articles of association of a company in order to determine scope and regulations within which a company operates.
3. Review of Statutory Registers of Company: According to the Companies Act, 2013 a company requires to maintain various statutory registers with respect to share allotment, share transfer, board meetings, contracts in which board of directors are interested, general meetings, loans, related party transactions etc.
4. Review of Financial Statements: According to the Companies Act, 2013 it is mandatory for all the companies to maintain the books of accounts as well as detailed information of financial transactions like:
   - Verification of bank statements.
   - Verification of valuation of all the assets and liabilities.
   - Verification of cash flow information.
   - Verification of all financial statements against transactional information.
5. Review of Taxation Aspects: It is important to check all the taxation facets of a company thoroughly during the due diligence process in order to ensure that there is no unexpected taxation liability of the company in the near future.
Taxation aspects include: Income tax return to be filed, income tax liability by the company must be calculated, service tax payments and returns must have been filed, TDS returns, payments and calculation must be carried out.

6. **Review of Legal Aspects**: Legal aspects of the company have to be checked and compiled meticulously as per the statute. A complete legal audit of the company must be performed by a legal representative to ensure that there are no more pending legal actions, suits by or against the company and liability that might arise.

7. **Review of Operational Aspects**: It is essential to comprehend the business model, business operations and operational information during the due diligence process scrupulously. The review of operational facets must be extensive and shall cover all the site visits and employee interviews etc.

However, the list mentioned above is not exhaustive. The inspection of documents depends upon the type of transaction to be undertaken.

**ALTERING DYNAMICS OF THE ROLE OF COMPANY SECRETARY IN DUE DILIGENCE**

*Bhagvat Gita Says:*

यदिि वाचत्वयां तुमनाः प्रजायां नाहि: 
सप्तभवमाणं कुवेलोकं समस्तकालं

*One should perform work to set an example for the good of the world. Whatever actions great persons perform, common people follow. Whatever standards they set, all the world pursues.*

Due-Diligence is a background check and the Company Secretary is the profession which carries out the process of Due Diligence transparently and efficiently.

The above moto when read with the country’s economic developments in recent years where interest of stakeholders in the companies are increasing along with the concern for the conduct of the affairs of the companies, the need for best diligence practices are increasingly required at all times. The requirement can be further evidenced by the introduction of a series of corporate governance codes.

It can be seen from the emerging trends that in the monitoring of compliance more caution is required which are more likely in the near future to be laid on company secretaries. It is true to say that the role of the company secretary also includes keeping the Board informed of new legislation and how it applies to them. With this increased focus on corporate governance, the role of the company secretary has been extended such that the company secretary is now seen as the guardian of the company’s compliance with legislative requirements and best practices.

Corporate managements are constituted by corporate executives of multi-disciplinary professionals having dynamism and vision for the effective role of molding and shaping the corporate sector under any demanding situation. With the increased professionalization of corporate management in the context of modern corporate culture, company secretaries play a key role in guiding and shaping the distinct corporate entities engaged with them. They often looked upon as a Senior Management Professional who is expected to discharge a wide range of responsibilities.

Company Secretary is one of the professionals who act as a catalyst in due-diligence. Company secretaries are now more popularly known as “Governance Professionals” and are called upon to guide the corporate board on various strategic, governance-related and compliance issues. Broadly, Company Secretary professionals have been authorized to verify compliances and issue certificates under various securities laws, SEBI regulations and guidelines, Listing agreements, etc. With this scope, at every step there is a need for company secretaries to alter their roles while undertaking any compliance and to perform utmost due-diligence with respect to same.

There is an endless list of regulatory compliances, certifications, responsibilities, etc. that a CS professional is required to understand and ensure compliance under prevailing laws.

A Company Secretary performs various administrative and corporate governance tasks in addition to the compliance with the provisions of the Companies Act such as taxation laws, shareholder’s rights, business structure, statutory laws, industrial and economics laws applicable to the company. Thus, he acts as a link between the directors and shareholders of the company. Under the Companies Act, the role of a company secretaries are -

As Coordinator

As Administrator

As Governance Officer

As Associate in Strategic Planning

The Company Secretary is a Key Managerial Person (KMP), one amongst the highest authorities in the company, entrusted with the tasks of managing the company by complying with the corporate laws and rules, the failure of which can result in legal consequences dealt by him individually along with a fine on the company. He is a person responsible for maintaining the image of the company to the external environment and the interpersonal relations with other companies. Combining all these, his parameters should be expanded to ensure efficient and proper governance.
With the onset of Companies Act, 2013, Insolvency & Bankruptcy Code, 2016, various SEBI Regulations ushering resurgence in capital and securities markets etc. has brought a metamorphosis in the profession of Company Secretary, i.e., from an Administrative Officer to Key Managerial Personnel, Compliance Officer, Internal Auditor, GST Professional, Registered Valuer, Advisor to the Board of Directors, Corporate Planner and Strategic Manager, Secretarial Auditor, Governance Professional, Insolvency Professional etc.

If observed through the lenses then it may be inferred that in the new roles of a Company Secretary, the element of Due Diligence is integrated as well as in-built, whether as Key Managerial Personnel, Governance Professional, Compliance Officer, Advisor to the Board of Directors and so on and so forth, all positions demand a scientific approach and it requires a professional to be diligent in discharging professional obligations.

In the current scenario with the surge in mergers and acquisitions, setting up of new businesses, especially start-ups, expansion of business operations in foreign lands in the form of opening up of branches or setting up of subsidiaries, corporate restructuring etc., the business, legal and financial due diligence has gained center stage, thus creating phenomenal opportunities for Company Secretaries to take up Due Diligence assignments.

DUE DILIGENCE DOCUMENTATION

The final output of Due Diligence is presented in the form of a Due Diligence report. A good Due Diligence report should not only list the material issues identified in Due Diligence but also provide recommendations on how each issue should be dealt with. The Report covers following areas:

1. Basic information
2. Financial Data
3. Important business Agreements
4. Litigation aspects
5. IPR Details
6. Marketing information
7. Internal control system
8. Taxation aspects
9. Insurance coverage
10. Human resources aspects
11. Environmental impact
12. Cultural aspects

The purpose of providing this list is to provide a general idea of documents that are required to be checked in any type of due diligence.

Bhagavat Gita Says:

For if I did not carefully perform the prescribed duties, O Parth, all men would follow my path in all respects.

GLOBAL DUE-DILIGENCE

Once an offer has been accepted on a global corporate transaction due diligence aims to confirm or correct the legal and administrative standing of the organization, and understand how and with whom they do business through a detailed examination and analysis of every aspect of the company’s operations. Global deals in the works for years can be scuttled by a single missing document, underscoring the critical importance of thorough and meticulous due diligence investigations. Attorneys assisting clients on global transactions have the added challenge of conducting this work in foreign jurisdictions and obtaining - in a country they may not be familiar with - as much information as they can in order to provide their clients with sounds recommendations on the deal at hand.

Performing due diligence abroad: what’s involved? In order to conduct thorough due diligence, attorneys must research and gather a variety of documents across functions such as legal, financial, sales, marketing, and human resources. This can be an extensive process that gets more complicated when dealing with international deals involving one or more countries. Each due diligence investigation is unique, and each jurisdiction will have certain requirements in order to obtain documents. Additionally, documents are always issued in the local language and may not be available in English. Therefore, an official translation will need to be generated. Naming conventions can also differ and understanding the differences is key to ensure the kind of documents needed.

WHAT ARE CHALLENGES OF DUE DILIGENCE?

A thorough due diligence helps to reveal any of the negatives, but the process of due diligence rarely goes smoothly because of one major stumbling block, which is the availability of relevant information at all times. Gaining an in-depth understanding of a company can be a highly specialized process beyond most people without experience in the field.
There tend to be a myriad of challenges, but the following are usually among the most commonly encountered:

- Not knowing what questions to ask: It is vitally important to know in advance what issues are and what questions need to be asked to investigate them properly.
- Slowness of execution: Asking sellers to acquire documentation or information can take time, often with the consequence of delaying the transaction’s closing.
- Lack of communication: Sellers, even willing sellers, tend to regard due diligence as a hassle, leading to impatience, poor communication, and even friction.
- Lack of expertise: There is a good chance that will bring in some hired hands for at least some parts of the due diligence process (e.g., an IP expert).
- Cost and Time challenges: Due diligence can be expensive, running into months and extensive specialist hours, making many erroneously think that they can cut corners.

While there are challenges in undertaking diligence, effective planning and strategizing can, to an extent, help in overcoming the issues. The diligence process can be bifurcated into pre-closing diligence and post-closing tasks. Pre-closing diligence must be initiated with the acquirer’s identification of the correct industry experts to conduct the diligence. Such an expert should understand the people involved in the business and how the business functions. Post-closing diligence should include the diligence report which must suitably contain recommendations to the issues involved during diligence.

**CONCLUSION**

Due Diligence is an indispensable element of any form of business organization. Right from the setting up of business, managing organic and inorganic growth of business, dealing with legal issues and so on and so forth, due diligence is all pervasive. It is through robust due diligence that fiascos can be averted.

It is heartening to note that Due Diligence has gained substantial footprints in India and one of its biggest evidence is the recent New IT Rules which is considered as a ‘Great stretching of Due Diligence Requirements under Section 79. After waiting for long, the Ministry of Electronics and Information Technology (MEITY) has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.3

The basic theme of the new rules is the imposition of new responsibilities on Internet intermediaries as a pre-condition for seeking to enjoy the legal immunities offered by Section 79 of the Information Technology Act, 2001. Previously, the law allowed internet intermediaries to enjoy unprecedented and wide-ranging immunity from legal liability at little to no cost.

Thus, in present scenario and in developing country like India, Due Diligence is not a choice but a compulsory process in order to preserve the interest of the stakeholders of the organization and Company Secretaries being ‘Governance Professionals’ have the pivotal role in ensuring proper Due Diligence in the organization.

Company Secretary and Compliance Under SEBI (Prohibition of Insider Trading) Regulations, 2015

The Compliance officer plays a central role in the compliance of various requirements under SEBI (PIT) Regulations, 2015. It spans from policy making to monitoring the execution as per procedures and thereafter reviewing them on periodic basis. An ecosystem of compliance created by Compliance Officer will ensure minimizing the transgression of Regulations by the Company or its constituents.

ROLE OF A COMPLIANCE OFFICER W.R.T INSIDER TRADING PROHIBITION MECHANISM

1. Additionally, the definition of Compliance Officer under Regulation 2(1)(c) of PIT Regulations gives an overview of expectations from him/her, viz. –
   1.1 Being a ‘governance’ professional;
   1.2 responsible for compliance of policies, procedures,
   1.3 maintenance of records,
   1.4 monitoring adherence to the rules for the preservation of unpublished price sensitive information,
   1.5 monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors.

2. Further, the high-level committee under the chairmanship of Hon’ble Justice Sodhi, observes under Para 80 – “The minimum standards stipulated in Schedule B to the Proposed Regulations entail a serious role for the compliance officer who would need to police, monitor and regulate trading by employees and connected persons. A system of pre-clearance of trades, post transaction reporting and recording of reasons for decisions has to be devised by each such entity. In addition, one of the standards statutorily prescribed is that UPSI should be handled on a need to know basis.”

3. Largely, the role of a compliance officer with respect to PIT Regulations can be divided into 4 parts as presented in the following chart:

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1. From ‘Guidance Note on Prevention of Insider Trading’ by ICSI.
2. The views expressed are the personal views of the author.
internal controls etc. These are explained in the succeeding paragraphs.

Identification of Unpublished Price Sensitive Information (UPSI)

4. The identification of UPSI under Regulation 2(1)(n) of PIT Regulations can be read in two parts i.e. principle based approach and specific/explicit.

4.1 Principle based approach - any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities. It is to be noted that, SEBI has taken a view in an adjudication order\(^2\) that although an information should likely to materially affect the price of the securities, the actual impact on the price post disclosure is not relevant for its classification as UPSI. A similar view has also been taken in the orders passed by Whole Time Members of SEBI.

4.2 In addition to the above principle-based approach, PIT Regulations also provide illustrative guidance on types of matters that would ordinarily give rise to UPSI, viz. financial results; dividends; change in capital structure; mergers, de-mergers, acquisitions, de-listings, disposals and expansion of business and such other transactions; changes in key managerial personnel.

Preservation of UPSI

5. The compliance officer is expected to develop the policies and practices for the preservation of UPSI at company, based on the principle of ‘need to know basis’. Similarly, the PIT Regulations casts an obligation on all the persons who are in possession of UPSI to handle the information on need to know basis.

6. For furtherance of preservation of UPSI, the PIT Regulations prescribes that a listed company shall have a Board approved ‘Code of Fair Disclosure’ as formulated under Regulation 8 of the said regulations. In this regard, the Compliance Officer shall strive to avoid selective disclosure and maintain universal dissemination of the UPSI. It is also expected out of company to put in place the process of handling and verification of market rumours.

7. In recent enforcement actions\(^3\) taken by SEBI, it has been observed that the employees of listed companies who are in violation of PIT Regulations were not aware of such violations due to lack of awareness regarding compliance requirement. Therefore, it is the duty of compliance officer to create an ecosystem of compliance by ensuring that each and every employee within the organization is minutely informed of the implications of the PIT Regulations on a recurring basis, so that they handle any UPSI consciously in accordance with the regulations. Another aspect of it is sensitizing the employees of the manner and circumstances in which people may be brought “inside” on sensitive transactions, duties and responsibilities attached to the receipt of inside information, and the liability that attaches to misuse or unwarranted use of such information.

8. The preservation of UPSI becomes even more critical and multifarious when it is shared with outsiders for a legitimate purpose. In such scenarios, the responsibilities of compliance officer while dealing with fiduciary/intermediaries, to ensure through their board of directors that such intermediaries/fiduciaries execute agreements to contract confidentiality and non-disclosure obligations on the part of such entities and they shall keep information so received confidential.

9. A compliance officer should be appreciative of the fact that despite best efforts, there can be instances of unintended leakage of UPSI. In this regard, the provisions under PIT Regulations broadly requires formulation of written policies and procedures approved by Board for inquiry into such leak. Further, the listed company shall also have a whistle-blower policy and make employees aware of such policy to enable them to report instances of such leakages.

10. The disclosure regime under PIT Regulations has gone under significant change by introduction of Automation of Continual Disclosures under Regulation 7(2)\(^4\). SEBI has introduced System Driven Disclosure (“SDD”) for equity shares and equity derivative instruments, and for debt securities of equity listed companies for Promoter(s) including member(s) of the promoter group, designated person(s) and director(s). In this regard, the listed company shall provide the information including PAN number to the designated depository in the format and manner prescribed by the Depositories. Further, the Compliance Officer shall strive to avoid selective disclosure and maintain universal dissemination of the market rumour.


11. The Fair Market Conduct Committee under the chairmanship of Dr. T.K. Viswanathan, in its Report dated August 08, 2018 has observed that “...It would thus be prudent to have a physical and/or digital trail of information flows of such legitimately shared information. It would also be prudent to intimate the persons receiving the UPSI of their obligation towards preventing mis-use of such information for insider trading, by way of an advance notice...”

Accordingly, Regulation 3(5) of PIT Regulations requires that the board of directors or head(s) of the organisation shall ensure that a **Structured Digital Database** is maintained. Such Database shall be maintained under the supervision of the Compliance Officer of the company and reviewed on a periodic basis. The said database should contain name and PAN or any other identifier of persons or entities with whom UPSI is shared along with details of insider who shared such information. It is pertinent here that to ensure non-tampering of database, there should be time stamping and availability of audit trails. Further, such information should be preserved for 8 years. It has been also specified that the database should be maintained internally and can not be outsourced to an outside agency.

12. Further, the PIT Regulations mandates the preparation of **database of Designated Persons (“DPs”).** The list of designated persons is required to be maintained under the supervision of the Compliance Officer of the Company and it should be reviewed on a periodic basis.

**Trading in securities**

13. The Regulation 4(1) of PIT Regulations prohibits any insider to trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

14. Further, Regulation 5 of PIT Regulations provides for the concept of **Trading Plan,** to give an option to persons who may be perpetually in possession of unpublished price sensitive information and enabling them to trade in securities in a compliant manner. There is an extensive role of Compliance Officer under the mechanism of Trading Plan, which *inter-alia* involves –

14.1 the compliance officer shall be presented with the trading plan by an insider for approval and public disclosure (to the Stock Exchanges)

14.2 the compliance officer shall review such trading plan to assess whether the plan would have any potential for violation of these regulations.

15. The Compliance Officer shall use a **notional trading window** as an instrument of monitoring trading by the designated persons when they are reasonably expected to be in possession of the UPSI. The Compliance officer plays a very important role in Trading Window closure, by identifying the existence as well as period of UPSI,
Company Secretary and Compliance Under SEBI (Prohibition of Insider Trading) Regulations, 2015

intimation of such closure to Stock Exchanges and also to ensure non-violation by designated persons of such restrictions.

16. Another important aspect of control over trading in securities is granting of pre-clearance by Compliance Officer. As per the PIT Regulations, DPs and their immediate relatives cannot trade when the trading window is closed. On the other hand, when trading window is open, trade by them shall be subject to pre-clearance by compliance officer. For this purpose, the Compliance officer shall seek declaration that person is not in possession of UPSI.

17. In the real-world scenarios, there can be instances where a designated person is in violation of the formulated Code of Conduct of the company for prevention of insider trading. SEBI has issued a circular on July 19, 2019 for standardizing the reporting of violations related to Code of Conduct under PIT Regulations. The said circular requires companies to record lapse or violations under PIT Regulations in a digital database. In order to streamline diverse practices and reporting in informal and self-generated formats, the circular has provided a standard format for reporting of any insider trading lapses.

“Since technology is evolving and modern means of communication is getting increasingly complex making it difficult to track, the level of complexity is heightened in tracking insider trading cases and this is where Company Secretaries play a huge part.”

Codes and Internal Controls

18. The PIT Regulations prescribes formulation of various Codes, viz. Code of Fair Disclosure by listed company (Schedule A), Code of conduct by listed company (Schedule B) and Code of conduct for intermediaries & fiduciaries (Schedule C).

19. As per Regulation 8 of PIT Regulations, every listed company and intermediary shall have a Code of Conduct to regulate, monitor and report trading towards achieving compliance with these Regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these Regulations.

20. The PIT Regulations has stipulated that every such listed company and intermediary shall identify and designate a Compliance Officer to administer the code of conduct and other requirements under these Regulations.

21. In addition to the Code of Conduct, the Compliance Officer is also instrumental in setting up Institutional Mechanism for Prevention of Insider trading. He/She should assist the CEO or Managing Director of the company / intermediary to put in place adequate and effective system of internal controls to ensure compliance with the requirements under the PIT Regulations.

SEBI, while recognising that Insider trading is a complex subject and involves the factor of preponderance of probability, has brought comprehensive literature on Insider trading, which can be accessed on its website. It contains, inter-alia,

- Frequently Asked Questions on the SEBI PIT Regulations
- Clarifications issued on the SEBI PIT Regulations
- Compilation of informal guidance issued on the SEBI PIT Regulations
- Guidance note on the SEBI PIT Regulations

Compliance officers and Company Secretaries would find this very useful.

COMPLIANCE AND RISK

There are three levels of compliance:

- **Apparent**
- **Adequate**
- **Absolute**

The apparent compliance which is done with tick-box approach, without going into the intent and reason behind is nothing less than building a facade of compliance (also known as paper compliance). At the same time, absolute compliance for a professional in securities market may seem like idealistic concept. Therefore, the Company Secretaries should at least strive for aiming at having adequate compliance in their field of practice.

A case in point to mention here is Adjudication Order in respect of B Renganathan in the matter of Edelweiss Financial Services Ltd. In the instant matter, the compliance officer was at default in not closing the trading window for a material information mentioned in Regulation 30 of SEBI (LODR) Regulations, 2015. The Adjudicating Officer has noted in the said order that, merely making the relevant employees cognizant of their responsibilities through an email (example of apparent compliance) does not tantamount to closure of trading window as has been expected in the law (i.e. adequate compliance).

The Compliance Officer is seen as the leader and role model by secretarial and compliance staff of the Company. Their conduct in the organisation influences as well as sets the standard for the staff looking up to them.

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The components of various Business Risks are taught in all the major professional courses of the world. Among these, Technological Risk has gained a lot of traction recently. However, corporate professionals who are the keeper of compliance conscience in the corporate world, should acknowledge that the most important risk is – the Reputational Risk.

The loss of reputation by erring on the wrong side of the law, results in loss of social capital of the individual as well that of employer’s. The most unfortunate victim of such incident is the reputation of Profession itself. Every member of Institute shoulders the responsibility of exercising the principles of good faith and act honestly with professional care and not to bring any disrepute to the profession.

Further, the risk of non-compliance is quite pronounced in this interconnected world of internet. In the erstwhile times, any bad news had relevance as per the life and reach of newspaper column written on it. However, now the news of wrongdoing is etched for perpetuity in the web world. Any Regulatory sanction is discussed and shared over social media with great fervour by stakeholders of the industry. Hence, the reputation and name built over the decade gets tarnished in the matter of few days. In the absence of Right to be Forgotten, such blots are difficult to be concealed from the watchful eyes of the internet.

Therefore, Company Secretaries should endeavor to foster a culture of high standard of Governance. This in turn will ensure that the growth in the capital market and the economy, will rest on a solid underpinning of ethical behaviour and investor protection.

**CONCLUSION**

If some insiders make profits on the basis of insider information, it will put others in an unfavourable position and can affect investor confidence. The Company Secretary is the keeper of conscience, the moral torch bearer of an organisation. The ICSI has come out with a comprehensive Guidance Note on Insider trading, covering a lot of aspects from disclosures – initial and continuous, codes of fair disclosure an conduct, UPSI etc. The prelude to the Guidance Note states that it is an attempt to provide a comprehensive guidance on the PIT Regulations, by incorporating PIT Regulations, informal guidance(s) issued by SEBI from time to time, relevant judicial pronouncements relating to Insider Trading and to set out explanations, illustrations, procedures and practical aspects in order to facilitate compliance of PIT Regulations by the stakeholders. Company secretaries can look upon this as a comprehensive guidance mechanism for setting up effective insider trading prevention mechanisms in the work place.

Thus, the Compliance Officer under the PIT Regulations, shall be responsible for compliance of policies, procedures; maintenance of records; monitoring adherence to the rules for the preservation of unpublished price sensitive information; monitoring of trades and the implementation of the codes specified in these Regulations.

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(Sincere thanks to Shri V S Sundaresan, Executive Director, SEBI for his valuable inputs in writing this article)

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The Importance of Due Diligence Investigations in the Indian Context: A Global Lesson from Failed Mergers and Acquisitions

The due diligence is carried out in accordance with the purchasing firm’s concepts and goals. Due diligence is the process of thoroughly investigating a company or investment opportunity to ensure customer confidence. Despite the quantity of data and the relative ease of requesting information, due diligence failures continue to affect organizations. After reviewing the basics of due diligence, it’s best to move on to the next phase.

**INTRODUCTION**

Merger and acquisitions are examples of inorganic growth. While mergers are defined as the consolidation of two parties into a single entity, acquisitions are defined as circumstances in which one player acquires the other in order to merge the acquired firm with it. It can take the form of a merger, in which one business acquires another, or a management buyout, in which management acquires the business from its owners. Additionally, de-mergers, i.e., the division of a single business into two or more companies, must be recognised and treated on an equal footing with mergers and acquisitions, as proposed below, and so references to mergers and acquisitions below are intended to encompass de-mergers as well (with the law & Rules as framed duly catering to the same).

The due diligence examination is conducted in accordance with the acquiring firm’s specified concepts and objectives. Due diligence is the process of thoroughly researching a company or an investment opportunity in order to give customers confidence in the product they are purchasing. It is the process of evaluating a company or individual prior to entering into a contract. Mergers and Acquisitions (M&A) have become a common form of corporate restructuring around the world. Cross-border mergers and acquisitions, especially by transnational businesses (TNCs), have become a substantial part of the M&A process. Market-driven M&A is mostly a phenomenon of the late 1990s in the Indian sector. Early M&A in India was facilitated by government agencies or financial institutions operating inside a controlled environment. Since 1991, however, Indian companies have become increasingly vulnerable to both domestic and international competition, and survival has become a necessity. As a result, firms have begun to restructure their operations around their core business activities through M&A in recent years.

Due diligence is required for mergers and acquisitions. Due diligence allows the buyer to check key information about the seller, such as contracts, finances, and customers, during the mergers and acquisitions process. After gathering this information, the consumer is in a better position to make an informed decision and complete the purchase with confidence. Before due diligence can begin, the letter of intent must be signed (LOI). Due diligence is usually included in the purchase of a company and entails a thorough understanding of the firm’s obligations, such as liabilities and lease agreements. The firm employs a variety of procedures while conducting financial due diligence, including conducting interviews and talks with key personnel and senior management, document checks, comparing various historical financial data, trend analysis, and reporting on financial issues and tax risks. Additionally, financial due diligence service providers investigate the current state of the target firm’s activities in order to offer this information to the firm responsible for acquiring them. The key to a successful merger or acquisition is to properly combine staff engagement

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**Mergers And Acquisitions** https://www.mca.gov.in/MinistryV2/mergers+and+acquisitions.html

The Importance of Due Diligence Investigations in the Indian Context: A Global Lesson from Failed Mergers and Acquisitions

programmes with a multi-layered communication strategy. Organizations will have a better chance of resisting the merger and acquisition trend if this is at the centre of their overall strategy.

PURPOSE OF DUE DILIGENCE INVESTIGATION

When a business is considering acquiring a target, the following are the objectives of a due diligence investigation:

1. To ascertain the buyer’s optimal purchasing price, and the manner in which payment will be made, including earn outs;
2. To ascertain pertinent data for the writing of the acquisition agreement, including its content, scope, and restrictions of representations and warranties, as well as any applicable escrow or hold-back arrangements agreement for the purpose of enforcing the same;
3. To assess the transaction’s legal and financial risks;
4. To assess the physical plant and equipment’s condition; as well as any other tangible or intangible property acquired as part of the transaction;
5. To conduct an analysis of any potential anti-trust issues that would preclude the merger or acquisition proposal;
6. To ascertain compliance with applicable legislation and to make any necessary disclosures on constraints imposed by regulators on the proposed transaction; and
7. To identify any liabilities or hazards that could adversely impact the transaction.

TYPES OF DUE DILIGENCE

1. Business Due Diligence
   Due diligence is performed to examine whether a business’s income and cash flow are sustainable over the long term and whether it has the capacity to grow.

2. Accounting Due Diligence
   The major goal is to ensure that the accounting data you provide them with is accurate and truthful. This is a vital part in the due diligence process.

3. Legal Due Diligence
   This part of the operation will entail an investigation of the legal background of your organisation. Lawyers will conduct a review of previous contracts with service providers and bill them for any potential liability issues.

4. Information Technology Due Diligence
   During the IT due diligence phase, an IT team will look for security risks, concerns about downtime, and other IT issues that may need to be addressed before the acquisition can be completed.

5. Environmental Due Diligence
   In this sense, the due diligence team may choose to spend some time disclosing any environmental concerns linked with the acquisition of your business, either now or in the future.

6. Financial due diligence
   Financial specialists undertake a study and analysis of the target company’s financial difficulties and circumstances, as well as an evaluation of a variety of related factors.

MERGERS AND ACQUISITIONS: INDIA’S REGULATORY FRAMEWORK

In India, multiple regulatory frameworks govern M&A. These regulations aim to make the M&A process more transparent and thereby protect shareholder interests. Following the economic expansion since 1991, a market for commercial control has emerged in India, characterised by M&A and other forms of corporate reformation. The authoritarian outline has been measured on M&A activities. It is also said that the M&A regulatory framework and guideline programmes facilitate this conversion in the Indian business zone. The Indian regulatory framework for M&A is summarised below (table 1)

Due diligence allows the buyer to check key information about the seller, such as contracts, finances, and customers, during the mergers and acquisitions process. After gathering this information, the consumer is in a better position to make an informed decision and complete the purchase with confidence.
Indian Regulatory Framework on Mergers and Acquisitions

Table - 1

<table>
<thead>
<tr>
<th>Regulations</th>
<th>Administering Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies Act 2013 (and any rules framed under this law)</td>
<td>Ministry of Corporate Affairs, the Registrar of Companies, Regional Directors and the National Company Law Tribunal.</td>
</tr>
<tr>
<td>Securities and Exchange Board of India Act 1992 (SEBI Act)</td>
<td>SEBI</td>
</tr>
<tr>
<td>Regulations framed under the SEBI Act</td>
<td>SEBI and the stock exchanges regulate and administer these regulations.</td>
</tr>
<tr>
<td>Securities Contracts (Regulation) Act 1956 (and the rules and circulars framed under this law)</td>
<td>SEBI</td>
</tr>
<tr>
<td>Competition Act 2002</td>
<td>Competition Commission of India</td>
</tr>
<tr>
<td>Foreign Exchange Management Act 1999 (including all rules, regulations and circulars issued under this law)</td>
<td>Reserve Bank of India (RBI) and the Department of Industrial Policy and Promotion (DIPP).</td>
</tr>
<tr>
<td>Indian Stamp Act 1899, as amended by various states</td>
<td>State-specific stamp authorities.</td>
</tr>
<tr>
<td>In addition, sector-specific regulators may also come into play if the bidder and/or the target belong to a regulated sector (such as banking or telecom).</td>
<td></td>
</tr>
</tbody>
</table>


SIGNIFICANCE OF MERGERS AND ACQUISITION DEAL

M&A are two permanent forms of business combinations used to manage, control, or administer a company's operations. Firms engage in M&A to combine their market influence and control. Table -2 shows the importance of M&A as Value Drivers (purposes) and Integration of Focus (Outcomes).

Table - 2

<table>
<thead>
<tr>
<th>Value Drivers</th>
<th>Integrating Areas of Focus (Resources Will Be Applied)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Scale economies</td>
<td>• Operational consolidation</td>
</tr>
<tr>
<td>• Leverage in operation</td>
<td>• Abatement of excess capacity</td>
</tr>
<tr>
<td>• Introduction of new products/services</td>
<td>• Taking advantage of combined purchase volume</td>
</tr>
<tr>
<td>• New geographies/markets</td>
<td>• Integration and rationalization of the back office</td>
</tr>
<tr>
<td>• Additional channels</td>
<td>• Integration with the front office</td>
</tr>
<tr>
<td></td>
<td>• Operational implementation</td>
</tr>
<tr>
<td></td>
<td>• Alignment of the organization</td>
</tr>
<tr>
<td></td>
<td>• Business-supporting back-office capabilities</td>
</tr>
</tbody>
</table>

MERGERS AND ACQUISITIONS IN INDIA AND WORLD WIDE (25 YEARS OF HISTORY)

The Mergers & Transactions in India and Around the World are shown in Table 3 below. In comparison to the rest of the world, India's M&A rate increased by 3% from 2005 to 2010. The average growth rate in contrast to the rest of the world is 2.37 percent. It has been determined that for every 100 corporate mergers worldwide, India has two mergers and acquisitions. We understand the importance of mergers and acquisitions, as well as the importance of understanding the M&A due diligence process and protocols.
Table - 3

Year Wise Merge & Acquisition Transactions in India and World Wide

<table>
<thead>
<tr>
<th>Year</th>
<th>M &amp; A Transactions in India</th>
<th>M &amp; A Transactions in World wide</th>
<th>India's Position Compare to World Wide M &amp; A Transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of M &amp; A</td>
<td>Total Value (in billion USD)</td>
<td>Number of M &amp; A</td>
</tr>
<tr>
<td>1996</td>
<td>115</td>
<td>1.6</td>
<td>24310</td>
</tr>
<tr>
<td>1997</td>
<td>127</td>
<td>1.59</td>
<td>26227</td>
</tr>
<tr>
<td>1998</td>
<td>156</td>
<td>1.49</td>
<td>30218</td>
</tr>
<tr>
<td>1999</td>
<td>395</td>
<td>4.48</td>
<td>33132</td>
</tr>
<tr>
<td>2000</td>
<td>892</td>
<td>11.66</td>
<td>39783</td>
</tr>
<tr>
<td>2001</td>
<td>709</td>
<td>5.04</td>
<td>31047</td>
</tr>
<tr>
<td>2002</td>
<td>582</td>
<td>7.74</td>
<td>27201</td>
</tr>
<tr>
<td>2003</td>
<td>706</td>
<td>6.32</td>
<td>29573</td>
</tr>
<tr>
<td>2004</td>
<td>763</td>
<td>7.81</td>
<td>32953</td>
</tr>
<tr>
<td>2005</td>
<td>1254</td>
<td>35.94</td>
<td>36025</td>
</tr>
<tr>
<td>2006</td>
<td>1449</td>
<td>34.03</td>
<td>41407</td>
</tr>
<tr>
<td>2007</td>
<td>1510</td>
<td>55.45</td>
<td>47455</td>
</tr>
<tr>
<td>2008</td>
<td>1402</td>
<td>48.44</td>
<td>45173</td>
</tr>
<tr>
<td>2009</td>
<td>1294</td>
<td>41.08</td>
<td>40710</td>
</tr>
<tr>
<td>2010</td>
<td>1329</td>
<td>59.2</td>
<td>43940</td>
</tr>
<tr>
<td>2011</td>
<td>1045</td>
<td>34.88</td>
<td>43135</td>
</tr>
<tr>
<td>2012</td>
<td>1070</td>
<td>36.53</td>
<td>40774</td>
</tr>
<tr>
<td>2013</td>
<td>958</td>
<td>31.61</td>
<td>38918</td>
</tr>
<tr>
<td>2014</td>
<td>1086</td>
<td>31.44</td>
<td>43190</td>
</tr>
<tr>
<td>2015</td>
<td>1310</td>
<td>52.77269</td>
<td>47400</td>
</tr>
<tr>
<td>2016</td>
<td>1310</td>
<td>51.77</td>
<td>49319</td>
</tr>
<tr>
<td>2017</td>
<td>1520</td>
<td>68.35469</td>
<td>52740</td>
</tr>
<tr>
<td>2018</td>
<td>1798</td>
<td>106.48256</td>
<td>50607</td>
</tr>
<tr>
<td>2019</td>
<td>1008</td>
<td>39.364</td>
<td>49327</td>
</tr>
<tr>
<td>2020</td>
<td>798</td>
<td>33.299</td>
<td>45652</td>
</tr>
<tr>
<td>Average</td>
<td>983.4</td>
<td>32.3</td>
<td>39608.6</td>
</tr>
</tbody>
</table>

Note: Formula for India’s Position Compare to World Wide M & A Transactions

\[ \frac{\text{Number of M & A}}{\text{Worldwide No. of M&A (respective year)}} \div \frac{\text{India No. of M&A (respective year)}}{\text{Total Value}} = \frac{\text{Number of M & A (in %)}}{\text{India Total Value (respective year)}} \]

Data Sources compiled and calculated from various sources

https://imaa-institute.org/m-and-a-statistics-countries/


(symbol “/” refers as “divided by”)
FAILURE OF M & A - GLOBAL CONTEXT

The failure rate for mergers and acquisitions (M&A) is between 70% and 90%, according to studies in a new Harvard Business Review analysis. That is an astonishingly high figure, but it is not surprising given the wide range of economic, IT, and cultural elements that occur throughout the usual merger or acquisition.

Not only are two organizations merging by one corporate objective, but vast groups of people with their own personalities, ambitions, behavioural quirks, and working styles are also being brought together. When several branch offices, cross-border IT infrastructure, and financial regulation are included in this exercise, the level of complexity rises dramatically.

The merger or acquisition may struggle to provide the required results if it lacks a defined strategy, good project management, and open communication among stakeholder groups. If success is to be accomplished, the process must be open, realistic, and engage all levels of management. In Table 4 Large M&A deals, a sector-by-sector failure report is shown, concluding that communication services M&A acquisition failure occurs at a high rate around the world. As indicated in Table 5, numerous reasons for M&A failure have been identified, and an analysis of both quantitative and qualitative factors must be done. Several critical qualitative parameters, such as culture, language differences, and firms’ engagement in the M&A process, must be analysed as well as whether the M&A is appropriately placed in terms of its objectives evaluated. Depending on the purpose or objectives, substantial due diligence is required.

### Table - 4

<table>
<thead>
<tr>
<th>Nature of Sector</th>
<th>Failure of M&amp;A Deals (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy</td>
<td>6.6</td>
</tr>
<tr>
<td>Financials</td>
<td>6.7</td>
</tr>
<tr>
<td>Industrials</td>
<td>8.4</td>
</tr>
<tr>
<td>Consumer Staples</td>
<td>9.4</td>
</tr>
<tr>
<td>Materials</td>
<td>9.9</td>
</tr>
<tr>
<td>Information Technology</td>
<td>10</td>
</tr>
<tr>
<td>Real Estate</td>
<td>10.5</td>
</tr>
<tr>
<td>Utilities</td>
<td>11.2</td>
</tr>
<tr>
<td>Health Care</td>
<td>11.7</td>
</tr>
<tr>
<td>Consumer Discretionary</td>
<td>13.2</td>
</tr>
<tr>
<td>Communication Services</td>
<td>18.8</td>
</tr>
</tbody>
</table>

Deals over €1 billion accounted for the calculation
Infographics converted as tabular format.

### Table - 5

<table>
<thead>
<tr>
<th>Name of the Merged Company</th>
<th>Size of Deal</th>
<th>Reasons for Failure (M &amp; A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOL &amp; Time Warner (2000)</td>
<td>$ 350 Billion</td>
<td>For both organizations, merger deal has not generated synergy at the intended level. (The year 2009, Merger Has Been dissolved)</td>
</tr>
<tr>
<td>Quaker &amp; Snapple (1994)</td>
<td>$ 1.7 Billion</td>
<td>Failure of Marketing Strategy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Quaker finally sold Snapple to Triarc $ 300 Million (1997) (with a loss of $ 1.3 Billion)</td>
</tr>
<tr>
<td>Sprint &amp; Nextel (2005)</td>
<td>$35 Billion</td>
<td>Cultural differences between two merged organisations resulted in an inability to coordinate, trust, and operate in teams (Cultural Differences Examples: Language, ethics, business practices)</td>
</tr>
<tr>
<td>New York Central Rail Roads &amp; Pennsylvania Rail Road (Penn Central Transportation Company) (1968)</td>
<td>Not Disclosed</td>
<td>Cultural differences between two merged organisations resulted in an inability to coordinate, trust, and Team work. Company joined together merely create a monopoly is not purposed of merger. Company filled Bankruptcy petition. (1970)</td>
</tr>
<tr>
<td>E-Bay &amp; Skype (2005)</td>
<td>$ 2.6 Billion</td>
<td>Synergy failure. Failure to understand the psychology of consumer (need of the consumer) E-Bay sold 65 % stake to private investors $ 1.90 Billion (2009)</td>
</tr>
</tbody>
</table>
The Importance of Due Diligence Investigations in the Indian Context: A Global Lesson from Failed Mergers and Acquisitions

<table>
<thead>
<tr>
<th>Company</th>
<th>Value</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damlyer Benz &amp; Chrysler (1998)</td>
<td>$36 Billion</td>
<td>Cultural differences between two merged organisations resulted in an inability to coordinate, trust, and team work. Majorly language difference between two management companies has the causing factors for unity is failure. (2007)</td>
</tr>
<tr>
<td>Arby’s &amp; Wendy’s (2008)</td>
<td>$2.3 Billion</td>
<td>Failure to concentrate on Growth &amp; Development. Arby’s was incurring losses in huge manner. Wendy’s decided to sell its Arby’s chain of restaurants to ‘Roark Capital Group’, a private equity firm. (2011)</td>
</tr>
</tbody>
</table>

Note: Figures in brackets denotes the Year

Information is extracted from the various research articles.

Courtesy:
1. 10 of the Absolute Biggest Merger Failures of All Time https://businesszeal.com/biggest-merger-failures-of-all-time

SCENARIO OF MERGERS AND ACQUISITIONS IN INDIA

According to Bain Report India on Mergers and Acquisitions report 2019, with a few highs and lows, merger and acquisition (“M&A”) activity in India has been fairly resilient between 2015 and 2019. India has witnessed over 3,600 M&A transactions worth more than USD 310 billion over this period. Sectors such as industrial goods, energy, telecommunications, and media accounted for more than 60% of transactions in terms of volume and value. Among the most significant transactions are Walmart’s USD 16 billion acquisition of Flipkart (2018), a Russian consortium led by Rosneft’s acquisition of Essar Oil for USD 13 billion (2017), and Adani Transmission’s USD 3 billion acquisition of Reliance Infrastructure’s integrated Mumbai power distribution business (2018).

From a global perspective, there is a lesson to be learnt. The majority of M&A failures are due to a lack of understanding of the due diligence process. Due diligence failures continue to affect organisations, despite the volume of data available and the relative ease with which enterprises may receive the information they require upon request. It is advisable to move on to the next step after going over the principles of due diligence.

The challenges of the Indian situation in terms of validating the contents, although Independent reports state that nations that are more developed on average have less corruption and greater transparency, making it easier to verify information found. As a result, the presence of various government offices that also serve as public record offices makes information readily available to a company conducting due diligence. The efficiency of such offices in maintaining information records, on the other hand, is inextricably tied to the accessibility of information.

CONCLUSION

Companies can simply address the risks involved and make the end result successful in effective mergers and acquisitions with the strict firm commitment that exists. Today, India offers considerable prospects for cross-cultural trade and mergers and acquisitions for businesses. Indian marketplaces are

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Footnote:
witnessing considerable expansion in foreign firms as well as fierce competition among companies looking to expand their market.

Due diligence assists the consumer in obtaining extensive information about the target firm and preparing them in accordance with the target company’s vision. Due diligence assists the acquirer in avoiding potential hazards during the business transaction. It also aids in the development of effective measures and efficient planning for a successful integration. Consistent hard work aids in the development of a positive relationship between the buyer and the target organisation. It is critical to learn from the lessons learnt about how countries are dealing with M&A difficulties and to revise the due diligence process in order to get the best possible results.

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10. Thomson Reuters Practical Law https://content.next.westlaw.com/3-503-1108?__10612234643644 & transition Type= Default &context Data=(sc.Default) &firstPage=true
Four Auditing and Secretarial Standards Implying Due Diligence

During COVID-19 and post pandemic the role of Company Secretary had undertook major transformation from physical to completely digital and virtual mode engaging Secretarial duties to more strict compliances. Due diligence by Company Secretary Professionals plays eminent role in understanding the business, its need with a view to help clients to improve performance and operating efficiency and blend this with the sectors in which they operate.

“Great power involves great responsibility
- Franklin D. Roosevelt

SECRETARIAL AUDIT

Secretarial Audit is a proactive governance measure that will have a positive effect on corporate entity. Secretarial Audit (SA) is all encompassing and highly relevant. It is a form of Compliance Auditing System that is used in carrying out total auditing of compliances with all codes and regulatory requirements. It looks into all the books used for a period to check whether they really comply with the various applicable laws and standards.

According to Cambridge dictionary, due diligence the care that a reasonable person exercises to avoid harm to other persons or their property. Due Diligence is the process by which confidential legal, financial and other material information is exchanged, reviewed and appraised by the parties to a business transaction, which is done prior to the transaction.

“Due diligence” is an analysis and risk assessment of an impending business transaction. It is the careful and methodological investigation of a business or persons, or the performance of an act with a certain standard of care to ensure that information is accurate, and to uncover information that may affect the outcome of the transaction.

It is basically a “background check” to make sure that the parties to the transaction have the required information they need, to proceed with the transaction. Due diligence is used to investigate and evaluate a business opportunity. The term due diligence describes a general duty to exercise care in any transaction. As such, it spans investigation into all relevant aspects of the past, present, and predictable future of the business of a target company.

Secretarial Due diligence report should provide information and insight on aspects such as the risks of a transaction, the value at which a transaction should be undertaken, the warranties and indemnities that needs be obtained from the vendor etc.

ROLE OF STANDARDS AND COMPANY SECRETARY IN DUE DILIGENCE

Misrepresentations and fraudulent dealings are not always obvious or straight. These are to be uncovered, especially in a major business transaction, as it would create a major impact on the business. Proper due diligence services explore and assess the details behind the same and to become fully informed about the financials, business, internal systems, profitability, key operational aspects, management team, promoters and other material factors that will help in making an informed decision about an investment. Due diligence is designed to protect the interests of the Company by providing
objective and reliable information on the target company before making any written commitments.

The Standard procedures and analyses ultimately represent a window into the target Company’s success and potential, including what opportunities exist to grow the business further to meet your goals and objectives. Hence, the Secretarial Audit services may extend beyond the conventional/traditional compliance reporting function and are designed to enhance the reliability, regulation & to meet the corporate governance responsibility of the client Company.

Company Secretary professionals play a constructive role in understanding the business, its need with a view to help clients improve performance and operating efficiency and blend this with the sectors in which they operate.

As “Confidence breeds Success” the seamless integration of business facts, Auditing and Secretarial standards with experience allows us to identify the major risks and opportunities by providing investors with accurate & relevant information that leads us to make intelligent transactions and profitable deals.

‘Where there is a will there’s a way’ - it is a very commonly used proverb across the world. It means if you have strong desire and determination to do something, you can accomplish it irrespective of all the obstacles. There are solutions to every problem. Sometimes it takes a minute to find out the solution and sometimes it takes days to figure out the solutions. But you should never give up.

AUDITING STANDARDS BY ICSI

To promote standardisation and uniformity in the professional arena and improvement in due diligence techniques the Institute of Company Secretaries of India (ICSI) through Auditing Standards Board (ASB) and the Council has issued the first four Auditing Standards, i.e

t. Auditing Standard on Audit Engagement (CSAS-1);

i. Auditing Standard on Audit Process and Documentation (CSAS-2);

ii. Auditing Standard on Forming of Opinion (CSAS-3) and

iv. Auditing Standard on Secretarial Audit (CSAS-4),

These are effective from 1st July, 2019 on a recommendatory basis and are applicable mandatorily on the audit assignments accepted by the auditor on or after 1st April, 2021.

ICSI Auditing Standards aims to support the Company Secretaries in developing auditing acumen, techniques and tools and inculcate best auditing practices while conducting the audit.

CSAS-1 – Auditing Standard on Audit Engagement

This deals with roles and responsibilities of Auditor under taking audit engagement. They also elaborates procedures and principles for entering into agreement with appointing authority.

ELIGIBILITY TO TAKE AUDIT ENGAGEMENT

Auditor shall not hold, singly or along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, more than 2% in the paid up share capital or shares of nominal value of Rs.50,000, whichever is lower or more than 2% voting power in the Auditee, as the case may be. Auditor shall not be indebted to the Auditee for an amount of five lakh rupees or more except if such indebtedness is arising out of ordinary course of business.

If an Auditor was in employment of the Auditee, its holding or subsidiary company and 2 (two) years must have lapsed from the date of cessation of employment.

Requirements mentioned in CSAS-1:

- Ensure that appointment is made as per provisions of Companies Act 2013 and rules made thereunder.

- Submit eligibility certificate to appointing authority.

- Obtain audit engagement letter and copy of resolution passed by appointing authority and provide acceptance thereto.

- Ensure audit engagement letter includes:

  1. The objective and scope of the audit; if the same has been established by law, reference to relevant provisions must be stated.

  2. The responsibilities of the Auditor and the Auditee;

  3. Written representations provided and/or to be provided by the Management to the Auditor, including particulars of the Predecessor or Previous Auditor;

  4. The period within which the audit report shall be submitted by the Auditor, along with milestones, if any

  5. The commercial terms regarding audit fees and reimbursement of out of pocket expenses in connection with the audit;

  6. Limitations of audit, if any.

Proper due diligence services explore and asses the details behind the same and to become fully informed about the financials, business, internal systems, profitability, key operational aspects, management team, promoters and other material factors that will help in making an informed decision about an investment. Due diligence is designed to protect the interests of the Company by providing objective and reliable information on the target company before making any written commitments.
Four Auditing and Secretarial Standards implying Due diligence

- Intimate previous auditor about such engagement, in writing. Ensure that such engagement is within the limits prescribed by ICSI from time to time.
- Maintain confidentiality of information obtained during the course of audit unless there is a legal obligation to disclose such information. Also, ensure that employees, staff and other team members also be bound by duty of confidentiality.
- Do not agree to change in terms of engagement unless there is reasonable justification for doing so. If terms of appointment are changed resulting in lower level of assurance, it shall be accepted only after considering the appropriateness of the same.
- Any changes in terms of engagement must be agreed by way of supplementary or revised engagement letter.

CSAS-2 Auditing Standard on Audit Process and Documentation

This Standard deals with the roles and responsibilities of Auditor with respect to maintenance of proper audit records that provides sufficient and appropriate record to form the basis for the Auditor’s Report; and evidence that the audit was planned and performed in accordance with the applicable Auditing Standards and statutory requirements.

Requirements mentioned in CSAS-2

- Formulate an audit plan as per terms of audit engagement.
- Ensure adherence to audit plan.
- Conduct risk assessment of auditee considering business, environmental and organisational structure and compliance requirements.
- Evaluate high-risk areas relating to internal control systems, transparency, prudence, probity, changes in compliance team etc.
- Obtain sufficient information of the auditee for conduct of audit.
- Make use of systematic and comprehensive checklists.
- Obtain necessary evidence and evaluate the same so as to support the opinion. This shall be adequately documented in audit working papers.
- Obtain third-party confirmations wherever required.
- Document discussions with management of the auditee in significant matters.
- Collate the documentation for records within 45 days of date of signing of auditor’s report.
- Maintain documentation in physical or electronic form for a period of 8 years from date of signing of auditor’s report.
- Features of audit plan
  1. The audit shall be planned in a manner which ensures that qualitative audit is carried out in an efficient, effective and timely manner.

2. Audit planning shall ensure that appropriate attention is accorded to crucial areas of audit and significant issues are identified in a timely manner.

3. Audit plan should be based on professional scepticism, so that it is possible to exercise professional judgment in an objective manner.

CSAS-3 – Auditing Standard on Forming of Opinion

This Standard provides details about the manner of evaluation of conclusions derived out of audit evidence which leads to formation of Auditor’s opinion.

Requirements mentioned in CSAS-3

- Consider materiality while forming opinion.
- Consider all relevant audit evidence before issuing audit report. Apply professional judgement and scepticism to ensure evidence is factually correct.
- Prepare audit report within the agreed time-frame.
- Verify accuracy of facts and responses from concerned persons.
- Adhere to generally accepted principles and practices in relation to audit process.
- Indicate if any third-party report or opinion is being relied on.
- Indicate if third-party report is provided by the auditee and also consider important findings of third party.
- Carry out a supplemental test to check veracity of third-party report.
- Express unmodified opinion if satisfied that applicable laws have been duly complied with and relevant records are free from misstatement.
- Express modified opinion in bold or italic letters. Modified opinion is to be issued if:
  - Non-compliance of applicable laws is found, relevant records aren’t free from misstatement, sufficient and appropriate audit evidence to ensure the above is not available.
Four Auditing and Secretarial Standards implying Due diligence

- Ask auditee to remove any such limitation on scope of audit which is likely to make the Auditor give modified opinion or disclaimer.
- Give unmodified opinion, if in case of absence of sufficient and appropriate evidence, Auditor can conclude that effects of unavailability of such evidence will be non-materail. However, if the effects are likely to be material, the auditor shall express disclaimer of opinion.
- Format of audit report
  1. The report shall be addressed to appointing authority unless the terms of engagement provide otherwise.
  2. Report must be detailed. Specific formats, if any, must be followed.
  3. Provide annexures for detailing of certain aspects, wherever necessary. Include a section named Auditor’s responsibility in the audit report.
  4. This section shall state that the audit was conducted in accordance with applicable Standards.
  5. The report shall state that due to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed.
  6. Signature block shall mention name of auditor/firm, certificate of practice number/registration number and membership number of the auditor. Mention clearly the date and place of signing audit report.

CSAS-4 – Auditing Standard On Secretarial Audit

This Standard lays down the manner of evaluation of statutory compliances and corporate conduct in the process of doing secretarial audit u/s 204 of the Companies Act, 2013. It gives a broad structure to the audit process.

Requirements mentioned in CSAS-4

- Take note of laws applicable to the auditee. This includes specific laws as well as general laws.
- Review Memorandum of Association, Articles of Association, statutory books, disclosure by the auditee etc.
- Identify events and corporate actions that took place in the audit period by reviewing website of the auditee, disclosures made to stock exchanges, statutory records of the auditee etc.
- Verify event based as well as calendar compliances of the auditee.
- Verify composition of Board of directors is in compliance with applicable rules and regulations i.e. optimum combination and strength is maintained and directors are not disqualified.
- Ensure formation of required committees and proper composition of such committees.
- Ensure decisions by board of directors are taken in compliance with the law i.e. in properly constituted meeting or by circulation.
- Ensure that systems of compliance are adequate and effective. Analyse instances of receipt of show cause notices, prosecutions initiated, fee or penalty levied etc.
- Collect further evidence and conduct in-depth checking if a fraud is suspected.
- If there is a sufficient reason to believe that a fraud has been committed, the same shall be reported to Audit Committee/Board/Central Government as per the process laid down under the Companies Act, 2013. Also, the same shall be included in Secretarial Audit Report.
- Verify the comments received on reporting fraud.
- Include fraud detected by other auditor in the audit report.
- Report all the events that affect auditee’s going concern or alters the charter or capital structure or management or business operation or control, etc.

SECRETARIAL STANDARDS BY ICSI

For the first time in the history of corporate India, the new Companies Act, 2013 requires companies to observe two Secretarial Standards. In its existence of more than a decade now, SSB has published ten Secretarial Standards out of which, as pointed out above, contents of two have, from 1 July 2015, the same force as that of provisions of the new Act itself. ICSI issued 10 Secretarial Standards till date out of which Secretarial Standards on Meeting of the Board of Directors (SS-1) and General Meetings (SS-2) were approved by the Central Government under Section 118(10) of the Companies Act, 2013 on 10th April, 2015 and were published in the Gazette of India Extraordinary Part III -Section 4 on 23rd April, 2015 are approved by Central Government.

Here’s a list of Secretarial Standards:

i. SS-1 : Secretarial Standards on Meeting of Board of Directors.
ii. SS-2 : Secretarial Standards on General meetings.
iii. SS-3 : Secretarial Standards on Dividend.
iv. SS-4 : Secretarial Standards on Registers and Records.
v. SS-5 : Secretarial Standards on Minutes.
vi. SS-6 : Secretarial Standards on Transmission of Shares and Debentures.
vii. SS-7 : Secretarial Standards on Passing Resolutions by Circulation.
viii. SS-8 : Secretarial Standards on Affixing of common seal.
ix. SS-9 : Secretarial Standards on Forfeiture of Shares.
x. SS-10 : Secretarial Standards on Board’s Report.

The two Standards specifically mentioned in the new Act are one on general meetings of members of a company (‘general
Four Auditing and Secretarial Standards implying Due diligence

meetings’) and the other on meetings of the board of directors (‘Board meetings’) – which have already been approved by the Central Government. The approval came in after, as required under the new law, the two Standards were specified (that is, drafted and submitted) by the Institute of Company Secretaries of India (ICSI).

All companies, irrespective of their size, type or listing status, will have to observe these two Standards. There is no exception. Penalty provisions specified in Section 118 of the new Act will apply to the defaulting company and also to the officers concerned for defaults in observing these two Standards.

Apart from the above two Standards, since December 2001 ICSI has published eight other Secretarial Standards also. These other Standards do not, as of now, have the statutory recognition and are, therefore, recommendatory at this stage.

1. Secretarial Standard on Board Meetings (SS-1)

The Secretarial Standard on Board meetings adherence to which is mandatory now contains detailed practices and procedures mainly with regard to the following:

- Who may convene the meeting
- Time, place and mode of holding such meeting
- Meeting notice & agenda
- Frequency of meetings
- Meetings of Board committees and independent directors
- Quorum
- Attendance at meetings
- Directors’ participation in a meeting through electronic mode
- Chairman of board or committee meetings
- Procedure for passing board resolutions at board meetings, or, by circulation
- Minutes of board meetings and minute books

SS-1 seeks to ensure that a healthy and transparent procedure is followed for convening a board meeting by an authorised person, sufficient advance notice is given to the directors, the agenda contains adequate details of the proposals, board members are given proper opportunity to take an objective view on the matters to be discussed, necessary discussion follows at the meeting and recording of decisions is made objectively by drawing up proper minutes of the business transacted at the meetings.

2. Secretarial Standard on General Meeting (SS-2)

Adherence to the Secretarial Standard on General Meetings which is also mandatory now will ensure that within the overall legal framework laid down in the new 2013 Act, a uniform practice is followed by companies mainly with regard to the following:

- The meeting is duly authorized and convened,
- Notice is given in time and sent in an authorized manner,
- Agenda contains the requisite particulars,
- Frequency of meetings,
- Quorum,
- Presence of directors and auditors,
- Chairman of the meeting and his responsibilities,
- Proxies,
- Voting by a show of hands, postal ballot, poll and electronic voting,
- Scrutineer’s role and responsibilities,
- Rescinding of, or, modification to resolutions,
- Distribution of gifts,
- Adjournment of meetings, and
- Minutes.

Clearly, the above Standard SS-2 on general meetings is meant to ensure that members of a company receive the notice of a general meeting in time, it contains particulars required by a member to decide whether or not to support a resolution, he has proper opportunity to attend the meeting, vote with or without attending the meeting physically either in favour of or against the resolution, such votes are counted properly for declaration of the voting results, the meeting is conducted in a fair manner, proceedings at the meeting are recorded objectively in the minutes of the meeting and the minutes form a part of the permanent record of the company.

In view of the express provision in the Companies Act, 2013 requiring all companies to observe the above two Secretarial Standards, with effect from 1 July, 2015 contents thereof are as much part of the legal requirements as are the provisions contained in the Act itself.

WHY AUDITING AND SECRETARIAL STANDARDS ARE REQUIRED

Auditing Standards are needed because of the following reasons:-
The Secretarial Standards have the potential to create enormous confidence in minds of investors particularly fund managers and overseas investors as these investors are very much concerned about good governance practices and sound procedures. They invest in companies where top management values transparency and recognises the need to follow healthy governance practices.

The Secretarial Standards are unique; in fact, they not only ensure uniformity of diverse practices but also cover the softer aspects of governance with a well documented set of codes. SS will help in strengthening board processes. They will bring more clarity as board processes will be documented. The information to be placed before the Board shall be duly codified. As the agendas would be circulated well in advance, Board members will come prepared in board meetings, engage in constructive debate, and take informed decisions. The Board members can and should demand that all the information is provided to them.

1. Transparency and accountability are considered essential characteristics of good corporate governance. The Standards would lead to higher standards of governance as they will strengthen the flow and quality of information and improve transparency.

2. Consistent, unambiguous and uniform board room practices as well as better transparency and disclosure norms including timely flow of information, will lead to better protection of minority interests. It would also be easier to fix the accountability on account of any lapse or mismanagement.

3. The Secretarial Standards have the potential to create enormous confidence in minds of investors particularly fund managers and overseas investors as these investors are very much concerned about good governance practices and sound procedures. They invest in companies where top management values transparency and recognises the need to follow healthy governance practices. Consequently, this will lead to increased flow of capital into India, new projects, more modernisation and expansion. Ultimately, it would help in achieving objective of ‘Make in India’.

4. Board Meetings and General Meetings are events where all important decisions are taken which affect business operations, performance and profitability. Standardisation of processes and adoption of best practices in these meetings will improve credibility of the decision making process.

5. It would also complement ease of doing business in India as there would be clarity and uniformity in the processes being followed by companies in respect of the very important task of taking decisions at the highest level – whether at board meetings or at general meetings.

6. Adoption of fair and transparent practices would certainly reduce the meeting related litigations, including conflicts in attendance, decisions & minutes.

**CONCLUSION**

The Standards issued are basically to provide a broad structure to the audit process and direction as to proceeding the audit. Having a direction to proceed will make the audit more systematic, consistent and unique. Of course there will be hassle initially to implement and impose in their routine work to audit practice as per standards. However being Company Secretary professionals its always been habitual to work and foresee the difficulties and issue and make compliance in the multiple areas of law these new standards can also be included in professional checklist.

A very significant duty has been cast on the company secretary in practice under section 143 (12) of the Companies Act, 2013. It provides that if the company secretary in practice, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving the prescribed amount is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government. The ultimate goal of the Secretarial Standards is to promote good corporate practices leading to better corporate governance. The Standards are for good secretarial practices and desirable corporate governance with a view to ensuring shareholders democracy and utmost transparency, integrity and fair play, going beyond the minimum requirements of law.

The Institute had completed its role and responsibilities to draft, issue and provide for standardization of process of audit for professionals, now its time for professionals to complete their duties and abide by the law. To follow the motto of ICSI: “Speak the truth abide by law”

**REFERENCES:**

The Growing Importance of Building a Strong Due Diligence Strategy: Role of CS

Essentially, undergoing due diligence is like doing “homework” on a potential deal to enable business make informed investment decisions. This paper outlines the growing pertinence of the due diligence exercise as part of the deal structuring. It tries to understand as to how imperative the job of a CS has become in this growing empire. While trying to define the role of CS, it intends to lay down a standard procedure and cull out the contours in which a CS must manage this exercise.

Due Diligence can easily be described as a rigorous and robust process of investigation targeted at seeking a reasonable assurance when entering into a transaction with an organization or individual, depending on the nature of transaction, regard being had to relevant aspects of its existence ranging from solvency, valuation, existing liabilities, human liabilities, capacity, potential risk factors etc. Due diligence is envisaged to be an “on-going proactive and reactive process whereby enterprises take reasonable steps and make good faith efforts to identify and respond to risks of adverse impacts”\(^1\). It is the basic “reasonable care” that should be expected to be done by any organization before committing itself to a contract or any such similar arrangement. While there is always a starting point, there is no straight-jacket formula to conduct due diligence.

Thus, although the meaning is definitive, the actual way in which it is to be conducted is highly variable and depends largely on the type of transaction, deal structure (i.e., stock purchase, asset purchase, strategic investment, financial investment, partnership, etc.), the relevant industry, the existence of known liabilities and cost and time constraints. In fact, today, there are more concerns than money that weigh with business houses and so due diligence regarding aspects like social media presence, environmental impact, business philosophy, political and socio-economic ideologies\(^2\) is also looked into before committing, especially in M&A transactions where a long term relationship needs to be built.

This paper intends to understand the need and rationale of conducting due diligence by modern business houses who analyse everything from HR to environment and more importantly to understand as how imperative the job of a CS has become in this growing empire that can easily be described as a necessary evil. The paper intends to understand the role of CS and intends to lay down the contours in which a CS must manage this exercise. While it focuses on challenges it primarily aims to define aspects that help build a strong due diligence strategy.

**RATIONALE BEHIND CONDUCTING DUE DILIGENCE**

Due diligence has become an imperative pre-requisite for every entity thinking of or proposing to undertake any transaction. The key reasons for the same are as follows:

**Negative Confirmations:** Transactional commitments already come with financial burdens; no one is eager to assume additional burdens on account of ignorance. It is important that one knows fully well the status of assets and liabilities about the target before committing to the target. Misrepresentations and fraudulent dealings are generally hidden and so the need of a robust due diligence exercise becomes obvious. It is rendered not only desirable but also necessary to make an informed business or investment decision\(^3\).

The exercise of due diligence is needed to avoid any surprises

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in future like tax and financial risks or even third party contracts that may affect the current transaction. A well conducted due diligence can save a business from a potential havoc.

Positive Effects: Now, while detecting frauds and uncovering potential liabilities help make informed decision about investment, the absence of same provides a strong breeding ground for business relations. In fact, one of the best effects of a due diligence exercise is the installation of a good corporate governance regime right from the beginning of corporate relations. It also helps make prognostic analysis of future performance of the firm on the basis of its performance in the past and so provides a SWOT analysis for making an informed decision. Due diligence can help enterprises create more value, including by: identifying opportunities to reduce costs; improving understanding of markets and strategic sources of supply etc. Effectively preventing and mitigating adverse impacts helps an enterprise maximise positive contributions to society, improve stakeholder relationships and protect its reputation.

Effect on Negotiation: Moreover, by obtaining the above background one is able to lay a suitable foundation for follow-up negotiations, adjusting the value of transaction, strategic investment decisions and the formulation of a business plan. In fact, it can be said to be a tool to get a better deal. Accordingly, the process allows negotiating team to strategise the course of action and terms of negotiations going forward. Most importantly, it helps to determine whether the item of investment in question is in keeping with the general strategic targets and investment principles.

**OBJECTIVE AND SCOPE**

The above discussed rationale explains why we need due diligence and for a due diligence exercise to be meaningful it must justify itself when seen in its perspective. It, thus, gives us the parameters on the basis of which the reliability of due diligence exercise must be measured and the direction in which the investigation must be targeted. The target of any due diligence exercise for a CS has to be the achievement of the ability to understand fully well what one is getting oneself into. Any ambiguity or confusion undermines the reliability over this exercise.

To determine the scope of any due diligence exercise, a CS needs to understand what the client/business expects out of the transaction and the due diligence exercise. A term sheet or letter of intent can come in handy at this time. It is with a thorough understanding of the needs and strength of the client that a perspective should be formed to gather where the transaction is directed and what is required of the due diligence process. This helps to define the contour of investigation in the planning phase. For example, if the target company’s history shows it to have undertaken aggressive takeovers, it must be a red light for a company offering it private placement of shares but not so much for a firm intending to enter into a mere purchase transaction. It must be noted that business transactions may not be in itself very risky but may become unfruitful on account of external circumstances, understanding objectives of business helps to conduct due diligence in this light.

There is however a basic background check necessary which involves checking the compliance with applicable laws, regulatory violations or disciplinary actions, financial statements, assets, real and intellectual property, brand value, tax liability, double taxation, foreign exchange fluctuation, sovereign risk, investment climate etc. As alluded-to before, a SWOT analysis becomes an inevitable part of Due Diligence exercise which necessarily implies that intangibles must be analysed along with tangibles. This would involve analysing the past business failures and consequential debt, exaggerated credentials, fraudulent claims, character issues, goodwill, litigation and ability to pursue litigation, other cultural aspects etc. Tangibles and intangibles are equally important and must be so treated throughout the process.

**MANAGING DUE DILIGENCE EFFECTIVELY**

Before commencement of the actual due diligence exercise, the objective, scope and the type of due diligence that is to be conducted must be established in very clear terms and must be then communicated in those clear terms to the entire team so that the momentum and efforts of the entire team are synergetic. Furthermore, synergy in effort and clarity in goal lay the foundations of a strong management system and functional alignment. It is for this purpose, that a business conduct policy, internal controls and an effective grievance mechanism must be established. The management of team must be in such a fashion that while the labour is divided, control over the process is maintained.

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8 Id. at 2


10 Due Diligence, Thompson Reuters Practical Law, https://uk.practicallaw.thomsonreuters.com/5-107-6162?transitionType=Default&contextData=(sc.Default)&firstPage=true

11 Due Diligence For Transactions, ICSI, https://www.icsi.edu/media/portals/70/241120123.pdf

A typical Due Diligence exercise consists of the following steps:

Planning for Due Diligence and Negotiations: Once your objectives, expectations and scope is clarified, commencement of the actual due diligence process follows. First things first, the complete process must be elaborately planned. The most important aspect of planning is deciding the “terms of reference” based on needs of client11. On this basis one needs to draw up a wish list / checklist for circulation to target and team. The terms of reference for each group must be laid down and procedure must be clearly established. Every group should be adequately supported by IT and clerical staff. Groups must be encouraged to seek clarifications and support.

It is at this stage only that preliminary survey must be conducted to identify deal-breaking issues upfront so that special attention can be given to them. Some specialized issues might get highlighted such as industry-segment and relevant sector-specific issues12. This will come in handy at discussions regarding due diligence with the target and will guide the team in deciding which information they need in priority.

Negotiation over Information and Time: As highlighted, whenever an interest comes up, it must be attempted that an investigation, at least preliminary, is done before sitting on the table. This is not only to negotiate the kind and quantity of information needed but also understand the time that would be needed to conduct due diligence exercise and so timelines can be framed accordingly. That being said, due diligence can take varying amounts of time and so timelines for each process must be predetermined especially an agreed timeline should be provided for furnishing of information by the target and adequate time and documentation irrespective of any pressure from client or target must be negotiated. Although this seems unnecessary, this can certainly do wonders to get the process completed not only in less time but also makes the entire process very professional.

Collection of Data and Organization of Relevant Data: The actual process of data collection starts with “due diligence request list” which takes form of questionnaire to be answered by the target. This provides a holistic picture of the business and KMP. Most of the times the data is requested and locked in “data rooms” which may contain generic information or copies of core documents of company and is more or less subjected to confidentiality requirement. Now, in the digital world, only best of affordable technologies must be used, not to say physical rooms can’t be used. However, in case the data rooms are physical, a receipt of information received and dispatched must be taken or given respectively. In digital data rooms, this function is automatically recorded in memory.

Once accessed, the data relevant to a study must be extracted and organized tailored to the requirements of a team, so that the same can be easily accessed by another team or at any time in future, without any wastage of time13. This helps provide a professional nature to the process, helps to track all the data that has been analysed and also avoids time-costs in future.

**Data Analysis**: It is on the basis of documents and information collected in second phase that further investigation is initiated via a review by a professional team and this may take a time period of a week to few months. Again, help of software and hardware should be taken to save time and increase accuracy. There is often a back-and-forth movement of information.

It must also be noticed that reliance should not be placed blindly on documents provided and these must be tallied as much as possible with any available government and other independent record. In fact, information must be extracted from reliable external sources and it must be seen that whether they match the target’s record. However, their reliability is a must. Media reports should not be ignored or over-emphasised. In case a genuine doubt comes up, investigation should be steered in that direction. Being a CS, it is natural that one is required not only to double check financial statements but also detect any creative accounting practice or window dressing.

**Reporting the Findings**: On extraction of relevant information backed by documents, everything boils down to written findings and conclusions which compiled into what is referred to as “due diligence memorandum” or “diligence reports” consisting generally of executive summary, main body and appendices containing data sheets and/or documentation which are relevant to a critical issue. The actual result of report results in Deal Breakers, Diluters, Cautioners and Makers. Also, many times a due diligence exercise goes on along with negotiations, whenever a pertinent information comes up which can land a better hand to the client, it must be disclosed to the client forthwith so that he loses no opportunity on account of ignorance.

The report is meant to highlight all the potential areas of concern and the degree of relevance. Just like an audit report, a due diligence report must also be precise and only the information that has a material impact on the target company is required to be included. “One needs to remember that a CS would be hired for a reason and the exercise of due diligence is bound to become excessively complex and a professional is needed to translate those complexities for a business. This is exactly what a report must be targeted at. Thus, the

"SWOT analysis becomes an inevitable part of Due Diligence exercise which necessarily implies that intangibles must be analysed along with tangibles. This would involve analysing the past business failures and consequential debt, exaggerated credentials, fraudulent claims, character issues, goodwill, litigation and ability to pursue litigation, other cultural aspects etc."

12 P RAMANATHA AIYAR, ADVANCED LAW LEXICON, Lexis Nexis.
13 Id. at 14
report must be well structured and must provide the most pertinent information about the target, in line with the strategic objectives of the client, in the most easily absorbable form.

However, this is not the end, the due diligence must continue and be carried out throughout the business relationship to uncover any on-going or up-coming area of concern.

**KEY FACTORS FOR OPTIMIZING THE EFFICACY OF DUE DILIGENCE**

Following are certain key aspects and factors which increase the efficiency of a due diligence exercise manifolds and so a specific policy on these aspects must be made and taken into account for optimising the efficacy of the due diligence.

*Setting Flexible Methodology:* First things first, a due diligence exercise must be dynamic. The investigation stage should not be taken to be too formal. In fact, one must encourage the team to begin with investigation in a formal sense in terms of review etc. and gradually move to informal but legal manner. A haphazard research methodology rather than a simple review of documents can do wonders. Enough flexibility should be provided to the team to follow their professional gut to dig deeper into a particular matter. A professional must be able to detect red flags like concealment of facts and figures, insufficient internal controls, non-compliance of or adventurous interpretations of contracts, contingent liabilities, etc. Although there is always pressure to wrap up the due diligence process in time, in case of emergent red flags, one must suggest the client to demand adequate clarifications.

*Reliance on Interviews:* Following this flexibility, it must be understood that while verifying and investigating private and public record is all well and fine, the worth of conducting interviews or having small talks with high level employees who have been in the organization for a long time, just like an audit process, cannot be undermined. So, one must always insist on plant visit. In fact, it is important that the best among the lot is chosen for conducting the interview since they will reflect the environment of the organization and exhibit whether they are coming from a position of strength or weakness. In case there is resistance with regard to certain information, same question should be asked to various people with professional scepticism. Polite persistence will also help over-come the resistance.

*Clarify Doubts and Document them:* In case, there arises a substantial doubt about a specific finding in any of the stages, the business must be asked to place reliance on written assurance and warranties. There must be follow up questions. In fact, the due diligence team must obtain a declaration or certificate from the target company confirming the completeness of the disclosed information and documents, and that no material data has been withheld by the target.

*Taking care of Stakeholders vis-à-vis Confidentiality:* While we talk about communication of information, a CS should demand an enterprise to account for how it identifies and addresses actual or potential adverse impacts and who are its intended users. Information should be accessible to its intended audiences or stakeholders. Stakeholder engagement involves the timely sharing of the relevant information needed for stakeholders to make informed decisions in a format that they can understand and access. On the other hand, it is also important that the scope of confidentiality of process and documents is maintained. The two interests must be ethically managed by a professional and suggestions to the client must be made accordingly.
The Growing Importance of Building a Strong Due Diligence Strategy: Role of CS

**Being the Target:** Turning the table, the expectations one has while performing due diligence must be reciprocated in due diligence conducted by the other party. Not only it helps build trust and encourage sharing of whole-some information bona fide, it also helps lay the ground clear for any future conflict as to the position in one’s business. It is always better to come out straight than fear the closet to get opened. However, one must know where to draw the line for example, there may be decreased competitiveness due to transparency whereby the core competencies and strategic advantages of a business are revealed. As of principle, the dispatching of information must not be delayed, a checklist of all information provided must be prepared, single point contact must be appointed, and record of all the people involved must be kept. In fact, a warm, hospitable and receptive attitude must be maintained. In case the target in its due diligence exercise detects some red flags, it must be admitted and due compliance should be affected.

**Continuous Exercise:** Finally, a professional must remember that a report only opens up alternatives among which the business has to pick one. A professional must be ready to provide an analytical opinion on each of the alternatives and their viability. For example, when the deal is indispensable, the client may choose to mitigate or handle the risk itself for the target, a CS needs to identify & assess adverse impacts of each of these alternatives so as to enable the client to take informed decision.

**DUE DILIGENCE : STATUTORY REQUIREMENTS**

Amongst the several supporters and advocates of the Due Diligence exercise, the largest one certainly has to be the Organization for Economic Cooperation and Development (‘OECD’). The OECD in 1976 adopted the Declaration on International Investment and Multinational Enterprises\(^\text{15}\), a policy commitment binding for adhering governments, promoting “an open and transparent environment for international investment”. OECD defines Responsible Business Conduct (RBC)\(^\text{16}\) as a broad philosophy of carrying out all aspects of business not only in compliance with applicable laws and internationally recognized standards, but also contributing positively to economic, environmental and social progress by minimizing adverse impact on all stakeholders.

To help businesses ensure that the target adhere to international standards, OECD has come up with sector specific guidelines on the conducting of due diligence before any transaction.

Its report acknowledges that with FDI being encouraged by the government, there could be nothing more important than conducting a due diligence over these foreign entities that exceed the wealth of many nations. The need is thus only paramount in Indian conditions.

Legally speaking, it is meant to be a pre-emptory function needed to guard against committing an offence by ignorance. A due diligence exercise ensures that there is no knowledge imbalance in a world where knowledge is power.

In India, there is neither a positive statutory duty to exercise due diligence nor a criminal liability for a failure to do the same. In other words it is the “reasonable degree of care” that common law required and various statutes expect to be present while presuming constructive knowledge, Section 3 of Transfer of property Act\(^\text{17}\) being the best example. Similarly, many provisions like S. 24 SCRA\(^\text{18}\), 1956, S.53 MRTP\(^\text{19}\), 1969, S.27 SEBI 1992\(^\text{20}\), S.85 IT Act, 1961\(^\text{21}\) contain a standard section on offenses committed by companies followed by a proviso:

“Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.”

Thus, it seems we are back in the days of “caveat emptor.” A CS specifically needs to adhere to the principles under MR 3 and S. 204 Companies Act, 2016\(^\text{22}\) to ensure that any legal compliance by the target company whereby the client can be deemed to have any knowledge, actual or constructive, is done.

**CHALLENGES IN CONDUCTING A DUE DILIGENCE**

A due diligence exercise is based on information acquired from the target. The exercise can fail if:

- a. Information is not shared or misleading information is shared
- b. Red flags could not be detected on time
- c. Analysis of information is flawed

While the last two of the aforesaid aspects are in the hands of a professional, the first is not. This may be a lot of times on account of non-availability of information\(^\text{23}\). For example, a lot of information is not shared on account of third party obligations. Many a times the target is not willing to show the entire picture to maintain its position in negotiations. For example, the client may be interested in company’s talent as in Software Company and intends to talk to its employees. This might be rejected by the target simply because it does not want to let go of its strength in negotiation. However, it is the second situation which is more troublesome where fraudulent or misleading information is shared and so comes in the need to double check the veracity of documents and uncovering creative accounting. Then, a number of times the target resists from sharing full information which not only effects the due diligence exercise but also raises red flags.

\(^{15}\) **OECD** Declaration on International Investment and Multinational Enterprises, OECD, [https://www.oecd.org/daf/inv/investmentpolicy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm](https://www.oecd.org/daf/inv/investmentpolicy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm)\(^\text{16}\)

\(^{16}\) Id. at 2

\(^{17}\) Transfer of Property Act, 1882, S 3, No. 4, Acts of Parliament, 1882


\(^{21}\) Information and Technology Act, 2000, S 85, No. 21, Acts of Parliament, 2000


However, there may be other issues like language barriers, traveling to remote locations, etc. Another area where necessary information justifiably goes hidden is where there operate secrecy covenants, genuine or made up. There are other areas too where accessing information and analysing it becomes very difficult. For example, it is almost always difficult to obtain KMP information or to analyse the hidden share of their interest in the business.

It must be noted that Due diligence is part of legal and financial need of business and so is a part of business. Thus, like any other aspect of a business, the cost must not outweigh the benefit. Costs are generally one-time and recurring costs. Now, the biggest cost in due diligence exercise is time. For example, market position may be favourable today and not necessarily tomorrow. Take distressed M&A for example, under the IBC regime a specific period is provided for insolvency resolution process and so conducting due diligence in a time bound manner becomes ever more important, at the same time however, the need of a quality due diligence is multiplied manifold on account of the stressed nature of target. Thus, time is of essence here. However, there may be cases where unintentional and intentional delays put a damper on the entire process. For example, a number of new kinds of businesses and so new legislations are coming up. So, it becomes difficult to identify all the relevant and sector specific legislation. This is bound to take up a lot of time. Intentional or controllable delay may be on account of multiple layers of scrutiny before handing over the data and so pushing of time-lines.

Improper identification, mitigation or prevention strategies can lead to diverted decision-making, miscommunication of goals and misdirected investments in strategies which causing resource crunch and redundant systems and so a CS must recognise the burden of one’s job.

CONCLUSION

Due diligence helps investors and companies understand the nature of a deal, the risks involved, and whether the deal fits their portfolio. Essentially, undergoing due diligence is like doing “homework” on a potential deal and is essential to informed investment decisions.

Due diligence has become an imperative pre-requisite for every entity thinking of or proposing to undertake any transaction. This paper has outlined and highlighted the growing pertinence of the due diligence exercise as part of the deal structuring and M & A process. It has also focused on laying down the standard processes and common challenges which are involved in the due diligence activity. Lastly, the paper discusses the growing importance of the role of a CS as a governance professional in undertaking and successfully concluding the end-to-end exercise of due diligence.

All in all it can be conclusively opined that due diligence has become the heart and soul of every potential corporate deal and/or transaction and it not only determines the overall success of the transaction but also sets the tone and pace for the financial growth of the entities involved in the contemplated transaction.

Initial Coin Offerings (ICO’s) : The Next-Gen Method of Fund Raising

Move over IPO’s, there is a new kid on the block called ICO’s. A new alternative way to raise capital from the markets which has already created quite a buzz. Soon we will be witnessing ICO’s coming into the mainstream and who knows, may also become the primary method for fund raising.

This Blockchain technology has several unique features with some of the prominent ones being that it is decentralized and is considered highly secure. A blockchain is an incorruptible digital ledger of economic transactions that can be programmed to record, not just financial transactions, but anything of value. Further, since this is not stored in a single location but spread across multiple computers, it is next to impossible to manipulate.

There are at present more than 10,000 different crypto-currencies that are out there being traded. Some of the most prominent of them being Bitcoin and Ethereum. At present, the total market cap of all the crypto-currencies is in the region of approximately USD 2 trillion.

INITIAL COIN OFFERINGS (ICO’s)

An initial coin offering is similar in concept to an IPO, both being a process in which companies raise capital. The difference being that while in an IPO, the company issues securities to the investor; in an ICO, the investor will receive a digital coin or a token in return for his / her investment which unlike securities need not have any ownership right in the company.

Tokens / Coins issued from an ICO will have a value and is an asset giving investors access to the features / services of a particular project rather than ownership of the company itself.

It’s ultimately the process of crowd funding a new project, involving a token/coin sale, with the project raising capital to fund operations, with investors receiving an allocation of the project’s tokens/coins in return. The company can do an ICO either through family / friends or private placement or through the public at large.

ICOs tend to be open from between a few weeks to a month, though some have been open for longer and fund raising for a particular ICO possibly taking place on multiple occasions, unlike an IPO which is a onetime event. This is mainly due to the reason that while the IPO’s are strictly regulated, there is almost no regulation for ICO’s at present.

THE ICO PROCESS

Although there is no prescribed regulation or method for conducting an ICO, certain common practices have emerged which have been enumerated herein below.

a. White Paper

When a company wants to raise money through an ICO, it usually creates a whitepaper. This whitepaper provides the following information:
b. Detailed Roadmap

After the white paper has been published, the company needs to provide a detailed roadmap regarding the development of its project to the proposed investors. This will include the time and cost for each stage of the project. The funding of each stage of the project will have to be allocated in the roadmap as there can be stage wise ICO’s.

c. Opening Public Blockchain

This is done in the interest of transparency where all the code of the project is published in the public domain through the public blockchain.

d. Coin/Token Creation and Sale

This means creating the coins / tokens using the blockchain technology and assigning a fair value to the coins / tokens that will be sold and conducting the entire sale process in a fair and transparent manner. It has to be determined as to how many coins / tokens will be sold to the members of the public and what will be the amount that will be retained by the promoters / founders. The company can vary the value of the coins / tokens and can also vary the number of coins / tokens being sold at its discretion.

e. Listing the Coins / Tokens on a crypto exchange

Getting the coins / tokens listed on a reputable crypto exchange brings instant liquidity as trading in the coins/ tokens can commence almost instantly and with increasing trades the price of the coins / tokens can begin rising immediately.

COMPARISON BETWEEN ICO’s AND IPO’S

i. In an IPO, the investors receive shares for their investment. In an ICO, the investors receive digital coins / tokens but no shares for their investment.

ii. While the shares issued in an IPO are legally recognized and carry an intrinsic value, the coins / tokens issued

Crypto-currencies are created on the technology called the Blockchain technology. This Blockchain technology has several unique features with some of the prominent ones being that it is decentralized and is considered highly secure. A blockchain is an incorruptible digital ledger of economic transactions that can be programmed to record, not just financial transactions, but anything of value. Further, since this is not stored in a single location but spread across multiple computers, it is next to impossible to manipulate.
in an ICO neither have any intrinsic value nor any legal guarantee.

iii. IPO’s are strictly regulated, however, ICO’s are largely unregulated.

iv. Companies in India have to comply with SEBI’s strict norms and need to have a good track record to be allowed to raise funds through an IPO. However, companies seeking to raise funds through an ICO have no such restrictions.

v. An IPO is a one time sale of shares in the lifetime of the company while an ICO can have multiple rounds of varying durations.

vi. Due to the IPO’s being regulated, they have to follow a rigid structure. However, being mostly unregulated, ICO’s do not follow any set structure.

vii. The risk factors in an ICO are much higher than those compared to in an IPO. Since ICO’s are mostly unregulated there are more chances of scams and fraudulent ICO’s.

viii. There is also the possibility of a far higher return on investment in an ICO than in the case of an IPO.

ix. For investing in an ICO, basic knowledge of cryptocurrencies and owning of a crypto-wallet is a must. Also familiarity with the ICO mechanism is crucial.

x. In the case of an IPO, audited financial data of the issuer company is available readily in the public domain. However, in the case of an ICO, the investor will have to rely mainly on the white paper issued by the ICO.

CURRENT SCENARIO

ICO’s had picked up steam the world over in the year 2017 and similarly, in India as well we saw a few ICO’s of startups like WandX, Cashaa and a few others. However, the market dried out as soon as the Reserve Bank of India issued a circular by which it banned all regulated banks from holding or facilitating crypto-currency transactions.

Vide order dated 4th March, 2020, the Hon'ble Supreme Court of India set aside the said circular issued by the Reserve Bank of India. Since then the crypto-currency environment has got a massive boost in India. In fact, when it came to the knowledge of the Reserve Bank of India recently, that several banks were cautioning their customers from dealing in cryptocurrencies, the Reserve Bank of India directed all such banks to stop such cautions in light of the said Apex Court judgment. (Internet & Mobile Association of India vs RBI, Supreme Court. WP(C) 528 of 2018)

All pointers now indicate to a golden period of crypto-currency and consequently, ICO’s in India. In fact, India is already one of the top five countries in the world as far as ownership of crypto-currencies is concerned post the passing of the said Supreme Court judgment.

There have been murmurings that some plans are afoot to bring in regulations with respect to crypto-currencies and that the various agencies of the government i.e. Ministry of Corporate Affairs, Reserve Bank of India, SEBI, etc., are all working in that direction.

With the Government giving a boost to the start-up sector and the boom in various fin-tech, consumer-tech, ed-tech and various other tech start-ups, we will soon see a flood of ICO’s. Having some sort of policy in place will go a long way in creating a stable market and also protecting the investors from frauds and fly by night operators.

However, till we actually see some regulation, it’s open season and any person wanting to wet his / her fingers in the crypto-currency world needs to do so being well aware of the pit-falls and high risks involved.

Having said that, seeing the way in which various foreign governments and foreign businesses are adopting cryptocurrencies and using ICO’s to raise funds, it is soon going to be a reality in India sooner rather than later.
Buy-Back of Shares or other Specified Securities – Concept & Methodology

Buy-back of shares may be used as one of the financial engineering tools under which the capital base can be reduced by returning cash to the shareholders and relevant financial ratios can be improved. This can also be used as a defensive mechanism in the anticipated hostile takeovers by increasing the shareholding base of the promoters. By reducing the floating stock ratio, it will help in increasing the intrinsic value of the shares of the company.

INTRODUCTION

Under a buy-back, a company can purchase its own shares or other specified securities and can pay the shareholders the market value of the shares and can re-absorb that portion of its ownership that was previously distributed among the promoters, public and private investors. Buy-back of shares is one of the preferred ways to return cash to the shareholders apart from dividend distribution. When a company has surplus cash and has no potential growth opportunities in sight, holding such cash or unused equity has no meaning and it becomes more of a burden than a blessing. Under such circumstances its useful and advisable for a company to return such cash to its shareholders who are the owners of the company. Buying back of some or all of the outstanding shares can be a simple way to pay off investors and reduce the overall cost of capital.

SHAREHOLDERS’ EXPECTATION AND SURPLUS CASH

Shareholders usually want a steady stream of increasing dividends from the company. And one of the goals of a company’s Board is to maximize shareholder wealth as well as declaration and distribution of dividend. While declaring the dividend, Boards can’t be too conservative or too liberal. It is also believed that company profits are best re-invested in the company, research and development, capital investment, expansion, diversification etc. Proponents of this view suggest that an eagerness to return profits to shareholders by way of buy-back or declaration of liberal dividends, may indicate that the management having run out of good ideas for the future of the company. Some studies, however, have demonstrated that such decisions of the Boards may be evidence of confidence in earnings growth and sufficient profitability to fund future expansion plans. Overall, it’s the responsibility of the Boards to maintain an appropriate balance while declaring and distributing the profits of the company by way of buy-back and dividend.

UNDERVALUATION OF SHARES

Another major motive for corporates to go for buyback is that where the Boards genuinely feel that their shares are undervalued. Undervaluation of shares occurs for a number of reasons, such as economy of the country, market volatility, market sentiment, perception of the investors towards the company, company’s performance, so on and so forth. Under such circumstances the corporates buy-back their shares and thus reduce the shares available in the market. However, a company shall not use buy-back as a tool for market manipulation.

Another way of looking at a buyback is that the company is financially healthy and no longer needs excess equity funding. It can also be viewed by the market that management has enough confidence in the company to reinvest in itself. Share buybacks are generally seen as less risky than experimenting with the surplus cash in unknown territories of new acquisitions, mindless expansion or diversification plans etc. As far as the company continues to grow, investors see the share buybacks as a positive sign for appreciation in the future. As a result, share buybacks can lead to a rush of investors buying the stock.

CRITICALITY OF THE DECISION OF BUYBACKS

Stock buyback is one of the critical decisions which a Board has to take. While deciding a buy-back the Board has to act with great amount of responsibility and has to decide in the best interest of the company and after due consideration of the financial status of the company and its future outlook. However, it should not be used for tax evasion, market manipulation of share price or to please a section of shareholders.

DEFINITION AND IMPACT OF BUY-BACK

Buy-back as such is not defined either by the Companies Act, 2013 (‘the Act’) or Securities and Exchange Board of India (Buy-Back of securities) Regulations, 2018 (‘the Buy-back
It can be said that buy-back is a corporate action in which a company buys back its shares or other specified securities from the existing shareholders usually at a price higher than the market price, thus reducing the shares or other specified securities available in the open market. This leads to an increase in demand for the company’s shares, price of the shares in the market, stock’s earnings per share (EPS) while the price-to-earnings ratio (P/E) decreases, or the stock price increases. A higher EPS and lower P/E ratio elevates the market value of the remaining shares and company will be comfortable in servicing the equity.

**ADVANTAGES OF A BUY-BACK**

Considering the above, the advantages of a buy-back may be summarized as under:

- Surplus cash can be returned to the shareholders when no potential growth opportunities in sight
- One of the financial engineering tools by which equity base can be reduced and relevant financial ratios can be improved
- Can be used as a defensive mechanism in the anticipated hostile takeovers by increasing the shareholding base of the promoters
- By reducing the floating stock, it will help in increasing the intrinsic value of the shares of the company
- Undervaluation of shares of the company can be addressed and can also be viewed by the market that management has enough confidence in the company to reinvest in itself
- Less risky than experimenting in unknown territories of new acquisitions, mindless expansion or diversification plans

**DRAWBACKS OF A BUY-BACK**

There may be some drawbacks of a buy-back as under:

- Unscrupulous promoters may use the money of the company to increase their stake by opting for buy-backs
- Unscrupulous promoters may also use this method to manipulate the market
- Such unscrupulous promoters may do this, at the cost of productive investment by the company
- The improvement in the financial ratios of the company may not be real. The increase may be due to a reduction in the denominator on account of a decrease in the number of equity shares and assets.

**RESTRICTIONS ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES**

Section 67(1) of the Act provides that no company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of the Act. However, this provision shall not apply to a Nidhi company, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as a reduction of share capital under section 66 of the Act.

Section 67(2) of the Act provides that no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. However, this provision shall not be applicable in the following cases:

(a) lending of money by a banking company in the ordinary course of its business

(b) the provision by a company of money in accordance with any scheme approved for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company

(c) the giving of loans by a company to persons in the employment of the company other than its Directors or Key Managerial Personnel, for an amount not exceeding their salary or wages for a period of six months

Provisions of section 67 shall not affect the right of a company to redeem any preference shares issued by it under the Act or under any previous company law. Provisions of section 67 shall also not apply to a private company or to a specified IFSC public company-

(a) in whose share capital no other body corporate has invested any money
(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and

c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

PROHIBITION FOR BUY-BACK OF SECURITIES BY COMPANIES UNDER CERTAIN CIRCUMSTANCES

Section 70 of the Act prohibits the companies from buying its own shares or other specified securities whether directly or indirectly under the following circumstances—

(a) through any subsidiary company including its own subsidiary companies

(b) through any investment company or group of investment companies; or

(c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

As provided under the provisions of section 70 of the Act, companies are also prohibited from purchasing its own shares or other specified securities whether directly or indirectly, in case a company has not complied with the provisions of:

- sections 92 with respect to filing of Annual Return of the company
- section 123 with respect to declaration of Dividend
- section 127 with respect to failure to distribute Dividend and
- section 129 with respect to Financial Statement of the company

POWER OF A COMPANY TO PURCHASE ITS OWN SECURITIES

Notwithstanding anything contained in the Act, but subject to the provisions of section 68(2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

(a) its free reserves

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. The company shall also not to utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares

However, no company shall purchase its own shares or other specified securities under section 68(1) of the Act, unless—

(a) the buy-back is authorised by its articles

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back. However, such special resolution is not required to a case where-

(i) the buy-back is ten per cent or less of the total paid-up equity capital and free reserves of the company; and

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting

In view of the above the resolution to be passed by the board of directors shall be at a meeting of the board of directors and shall not be passed by way of a circular resolution.

As provided under explanations I and II for the purpose of this section “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time, and “free reserves” includes securities premium account.

Buy-back shall be completed within a period of one year from the date of passing of the special resolution, or the resolution passed by the Board, as the case may be,

(c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year

(d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies

(e) all the shares or other specified securities for buy-back shall be fully paid-up

(f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India (SEBI) in this behalf; and

(g) the buy-back in respect of shares or other specified securities which are unlisted, is in accordance with the Companies (Share Capital and Debentures) Rules, 2014
Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

The aforesaid buy-back may be—

(a) from the existing shareholders or security holders on a proportionate basis

(b) from the open market

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity

The company shall not withdraw the offer once it has announced the offer to the shareholders.

DECLARATION OF SOLVENCY

Where a company proposes to buy-back its own shares or other specified securities, it shall, before making such buy-back, file with the Registrar and the SEBI, a declaration of solvency in form SH9, signed by at least two Directors of the company, one of whom shall be the Managing Director, if any, and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that the company is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board. No declaration of solvency shall be filed with the SEBI by a company whose shares are not listed on any recognised stock exchange.

EXTINGUISHMENT OF SHARES SO BOUGHT BACK

On buy-back of its own shares or other specified securities, a company shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

FURTHER ISSUE OF SHARES OR OTHER SECURITIES

Where a company completes a buy-back of its shares or other specified securities, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares, if any.

REGISTER OF SHARES OR SECURITIES BOUGHT BACK

Where a company buy back its shares or other specified securities, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as prescribed. The entries in the register shall be authenticated by the Secretary of the company or by any other person authorized by the Board for the purpose.

After completion of the buy-back, the company shall file, with the Registrar and the SEBI a return in from SH11, containing such particulars relating to the buy-back within thirty days of such completion. However, such return need not be filed with the SEBI by a company whose shares are not listed on any recognised stock exchange.

COMPLIANCES UNDER RULE 17 OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014 FOR BUY-BACK OF THEIR SECURITIES

Unless otherwise stated, private companies and unlisted public companies shall comply with the prescribed norms under Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014 (“Buy-back rules”) for buy-back of their securities.

CONTENTS OF THE EXPLANATORY STATEMENT

Section 68(3) provides the explanatory statement shall state the following:

(a) a full and complete disclosure of all material facts

(b) the necessity for the buy-back

(c) the class of shares or securities intended to be purchased under the buy-back

(d) the amount to be invested under the buy-back; and

(e) the time-limit for completion of buy-back

In addition to the above pursuant to rule 17 of the Buy-back rules the explanatory statement to be annexed to the notice of the general meeting for obtaining the consent of the shareholders to buy-back its own shares or other specified securities, shall inter-alia contain the following prescribed disclosures:

- the aggregate shareholding of the promoters, directors and key managerial personnel and where the promoter is a company the shareholding of directors of such promoter company, as on the date of the notice convening the general meeting

- the aggregate number of equity shares purchased or sold by the above-mentioned persons during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting

- the maximum and minimum price at which purchases, and sales were made along with the relevant dates
In case the above-mentioned persons intend to tender their shares for buy-back –

- the quantum of shares proposed to be tendered
- the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
- a confirmation that there are no defaults subsisting in repayment of deposits, term loans, redemption of debentures or preference shares, payment of interest and dividends
- a confirmation that the Board of directors have made full enquiry into the affairs and prospects of the company with regard to its ability to pay its debts and other liabilities as and when fall due
- a report from the Auditors of the company addressed to the Board of directors stating that they have enquired into the company’s state of affairs and that the company shall not be rendered insolvent within a period of one year from the date of the offer document

**FINANCIAL STATEMENTS**

The audited accounts on the basis of which the calculation with reference to buy back is done shall not be more than six months old from the date of offer document; and where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document and such accounts shall be subject to limited review by the auditors of the company.

**LETTER OF OFFER**

Companies shall file with the Registrar of Companies a letter of offer in Form No. SH.8, and such letter of offer shall be dispatched to the shareholders or security holders immediately after filing but not later than twenty days from its filing with the Registrar of Companies. The letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer. However, where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days.

The company shall ensure that the letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in the letter of offer.

**PROPORTIONATE BUY-BACK**

In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on a proportionate basis out of the total shares offered for being bought back.

**COMMUNICATION WITH RESPECT TO ACCEPTANCE OR REJECTION OF OFFERS**

The company shall complete the verifications of the offers received within fifteen days from the date of closure of the
offer and the shares or other securities. A communication shall be sent to the shareholders within twenty-one days from the date of closure of the offer with regard to acceptance or rejection of offers. In the absence of such communication the shares lodged shall be deemed to be accepted.

**PAYMENT WITH RESPECT TO BUY-BACK OF SHARES**

The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back in terms of these rules. Within seven days of dispatch of communication the company shall

(a) make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or

(b) return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance

**FURTHER ISSUE OF SHARES**

The company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer, except those arising out of any outstanding convertible instruments.

**BUY-BACK OF SHARES AND OTHER SPECIFIED SECURITIES BY LISTED COMPANIES**

Buy-back regulations shall be applicable to buy-back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act. For buy-back of its shares and other specified securities listed companies shall comply with the Buy-back regulations. For the purpose of the Buy-back regulations ‘specified securities’ includes employees’ stock option or other securities as may be notified by the Central Government from time to time and the term “shares” shall include equity shares having superior voting rights.

**CONDITIONS AND REQUIREMENTS FOR BUY-BACK OF SHARES AND OTHER SPECIFIED SECURITIES**

**Maximum limit of buy-back**

The maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company. The paid-up capital and free reserves of the company shall be based on both standalone and consolidated financial statements of the company. The reference to twenty-five per cent shall be construed with respect to its total paid-up equity capital in that financial year.

**Debt – Equity ratio**

The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy-back shall -

a) be less than or equal to 2:1, based on both standalone and consolidated financial statements of the company.

b) be less than or equal to 2:1, based on both standalone and consolidated financial statements of the company, after excluding financial statements of all subsidiaries that are non-banking financial companies and housing finance companies regulated by Reserve Bank of India or National Housing Bank, as the case may be.

Provided that buy-back of securities shall be permitted only if all such excluded subsidiaries have their ratio of aggregate of secured and unsecured debts to the paid-up capital and free reserves of not more than 6:1 on standalone basis.

**Methods of buy-back**

For buy-back, all shares or other specified securities shall be fully paid-up. A company may buy-back its shares or other specified securities by any one of the following methods:

a) from the existing shareholders or other specified securities holders on a proportionate basis through the tender offer

b) from the open market through-

i) book-building process

ii) stock exchange

c) from odd-lot holders:

Provided that the buy-back from open market shall be less than fifteen per cent of the paid up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company.

**Restrictions on buy-back**

- A company shall not buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.

- A company shall not buy-back its shares or other specified securities from any person through negotiated deals, whether on or off the stock exchange or through spot transactions or through any private arrangement.

- A company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buyback period of the preceding offer of buy-back, if any.

- A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is affected.

- A company may undertake a buy-back of its own shares or other specified securities out of—

  (a) its free reserves

  (b) the securities premium account; or
(c) the proceeds of the issue of any shares or other specified securities

However, no such buy-back shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- No company shall directly or indirectly purchase its own shares or other specified securities:
  - through any subsidiary company including its own subsidiary companies
  - through any investment company or group of investment companies; or
  - if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist

**General compliances**

The buy-back whether by way of tender offer or from open market or odd lot shall be authorised by the company’s articles and a special resolution shall be passed at a general meeting of the company authorising the buy-back. However, where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company based on both standalone and consolidated financial statements of the company and is authorised by the board of directors by means of a resolution passed at its meeting, no such special resolution is required.

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution by shareholders, or the resolution by the Board of Directors as the case may be. For any reasons in case the buy-back could not be completed within a period of one year, a fresh special resolution or board resolution may be obtained. The company shall, after the expiry of the buy-back period, and within thirty days of such expiry, shall file with the Registrar of Companies and the SEBI, a return containing the particulars relating to the buy-back.

The explanatory statement annexed to the Notice of for the General meeting, wherein the special resolution is to be passed shall contain the following mandatory disclosures:

- the maximum price at which the buy-back of shares or other specified securities shall be made
- whether the board of directors of the company are authorised to determine the specific price
- in case the promoter intends to offer his shares or other specified securities, the quantum proposed to be tendered
- details of their transactions and their holdings for the last six months prior to the passing of the special resolution including the price and the date of acquisition

Where the buy-back is from open market either through the stock exchange or through book building, the resolution of board of directors or of the shareholders shall specify the maximum price at which the buy-back shall be made:

Within seven days of passing copy of the shareholders resolution and within two working days of passing copy of the Board resolution shall be filed with the SEBI and stock exchanges

**BUY-BACK OF SHARES OR OTHER SPECIFIED SECURITIES THROUGH ‘TENDER OFFER’**

For the purpose of the Buy-back regulations ‘Tender Offer’ means an offer by a company to buy-back its own shares or other specified securities through a letter of offer from the holders of the shares or other specified securities of the company. Tender offers are typically made publicly and invite shareholders to sell their shares for a specified price and within a particular window of time. The company issues a letter of offer and tender form to all the eligible shareholders on the company records as on the buyback record date. The price offered is usually at a premium to the market price and
is often contingent upon a minimum or a maximum number of shares sold. Thus, the shareholders have a much greater incentive to sell their shares. Tender offers are a commonly used as means of acquisition of one company by another.

In this method, a company may buy-back its shares or other specified securities from its existing securities holders on a proportionate basis. Provided that fifteen per cent of the number of securities which the company proposes to buy-back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.

For the purpose of the Buy-back Regulations ‘small shareholder’ means “a shareholder of a company, who holds shares or other specified securities whose market value, on the basis of closing price of shares or other specified securities, on the recognised stock exchange in which highest trading volume in respect of such securities, as on record date is not more than two lakh rupees”.

Within two working days from the date of passing the shareholders or Board resolution with respect to the buy-back, the company shall make a public announcement and the said public announcement shall contain all the material information as specified in Schedule II of the Buy-back regulations. Simultaneously a copy of the public announcement shall also be submitted to the SEBI, through the merchant banker.

Within five working days of the public announcement the company shall file the following with SEBI:

- a draft letter of offer, along with a soft copy, containing disclosures as specified in Schedule III through a merchant banker who is not associated with the company.
- a declaration of solvency in specified form and in a manner provided in sub-section (6) of section 68 of the Companies Act.
- fees specified in Schedule V.

SEBI may provide its comments on the draft letter of offer not later than seven working days of the receipt of the draft letter of offer. Wherein SEBI has sought clarifications or additional information from the merchant banker, the period of issuance of comments shall be extended to the seventh working day from the date of receipt of satisfactory reply to the clarification or additional information sought. In the event the SEBI specifies any changes, the merchant banker to the buy-back offer and the company shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

**OFFER PROCEDURE FOR BUY-BACK OF SHARES UNDER ‘TENDER OFFER’**

i) Company shall announce a record date in the public announcement for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.

ii) Not later than five working days from the receipt of communication of comments from SEBI the letter of offer along with the tender form shall be dispatched to the securities holders who are eligible to participate in the buy-back offer.

iii) Even if an eligible public shareholder does not receive the tender offer/offer form, he may participate in the buy-back offer and tender shares.

iv) An unregistered shareholder may also tender his shares for buy-back by submitting the duly executed transfer deed for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.

v) The date of the opening of the offer shall not be later than five working days from the date of dispatch of the letter of offer and the offer for buy-back shall remain open for a period of ten working days.

vi) The company shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism and shall accept shares or other specified securities from the securities holders on the basis of their entitlement as on record date.

vii) The shares proposed to be bought back shall be divided into two categories; (a) reserved category for small shareholders and (b) the general category for other shareholders, and the entitlement of a shareholder in each category shall be calculated accordingly.

viii) For the purpose of identification of small shareholder holdings of multiple demat accounts would be clubbed if sequence of Permanent Account Number for all holders is matching.

ix) After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by securities holders in that category and thereafter from securities holders who have tendered over and above their entitlement in the other category.

x) On or before opening the offer, the company shall open an escrow account and deposit the requisite sum as under:

- if the consideration payable does not exceed Rupees 100 crores, 25 per cent of the consideration payable.

b) if the consideration payable exceeds Rupees 100 crores, 25 per cent up to Rupees 100 crores and 10 per cent thereafter.

xi) The escrow account referred to in this regulation shall consist of:

- cash deposited with a scheduled commercial bank, or
- bank guarantee in favour of the merchant banker which shall be valid until thirty days after the expiry of buyback period, or
- deposit of acceptable securities with appropriate margin, with the merchant banker, or
- a combination of the above.
xii) Where the escrow account consists of bank guarantee or deposit of approved securities, the company shall also deposit with the bank in cash a sum of at least one per cent of the total consideration payable, as and by way of security for fulfillment of the obligations under the regulations by the company.

xiii) On payment of consideration to all the securities holders who have accepted the offer and after completion of all formalities of buy-back, the amount, guarantee and securities in the escrow, if any, shall be released to the company.

xiv) In case of nonfulfillment of buy-back obligations SEBI may forfeit the escrow account either in full or in part and such amount may be distributed pro rata amongst the securities holders who accepted the offer and balance, if any, shall be utilised for investor protection.

CLOSURE OF OFFER

After the date of closure of the offer, the company shall open a special account with a banker to an issue and deposit the entire sum due and payable as consideration for buy-back in terms of these regulations and for this purpose, may transfer the funds from the escrow account. The company shall complete the verification of offers received and make payment of consideration to those holders of securities whose offer has been accepted and return the remaining shares or other specified securities to the securities holders within seven working days of the closure of the offer.

CLOSURE COMPLIANCES

The company shall extinguish and physically destroy the securities certificates so bought back in the presence of the registrar to the issue or the Merchant Banker and the Statutory Auditors within fifteen days of the date of acceptance of the shares or other specified securities. The aforesaid period of fifteen days shall in no case extend beyond seven days of expiry of buy-back period. Within seven days of extinguishment and destruction of the certificates the company shall furnish the particulars to the stock exchanges.

In this regard, within seven days of extinguishment and destruction of the certificates the company shall furnish a certificate to SEBI duly verified by registrar / merchant banker, two directors of the company one of whom shall be the Managing Director and the statutory auditor of the company.

ODD LOT BUY-BACK

The provisions pertaining to buy-back through tender offer as specified above shall be applicable mutatis mutandis to odd-lot shares or other specified securities.

For the purpose of Buy-back regulations, ‘Odd lots’ mean “the lots of shares or other specified securities of a company, whose shares are listed on a recognised stock exchange, which are smaller than such marketable lots, as may be specified by the stock exchange”.
However, during these days wherein, the shares are traded in electronic mode and physical transfers are prohibited, the concept of 'odd lot' has become irrelevant and this provision has virtually become redundant.

**BUY-BACK FROM THE OPEN MARKET**

The buy-back of shares or other specified securities from the open market may be in any one of the following methods:

(a) through book-building process

(b) through stock exchange

In case of buy-back from open market, no draft letter of offer/letter of offer is required to be filed with the SEBI.

**BUY-BACK THROUGH BOOK BUILDING PROCESS**

The book-building process shall be made through an electronically linked transparent facility. The number of bidding centers shall not be less than thirty and there shall be at least one electronically linked computer terminal at all the bidding centers.

The offer for buy-back shall remain open to the securities holders for a period not less than fifteen days and not exceeding thirty days.

The merchant banker and the company shall determine the buy-back price based on the responses received. The final buy-back price, which shall be the highest price accepted shall be paid to all holders whose shares or other specified securities have been accepted for buy-back.

**BUY-BACK THROUGH STOCK EXCHANGE MECHANISM**

In case of buy-back from the open market through the stock exchange mechanism, a company can buy back the shares only on the stock exchanges having nationwide trading terminals via an order matching mechanism. The promoters are not allowed to participate in the open market offers through the stock exchange. All the other shareholders holding equity shares of the company can participate in this offer. This is the most popular buy-back mechanism in India.

The company shall ensure that at least fifty per cent of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, is utilized for buying-back shares or other specified securities.

In case of buy-back through stock exchange mechanism there is no concept of record date and all shareholders can participate. A shareholder can sell all of its shares till it is within the maximum buyback size announced by the company.

**PROCEDURAL COMPLIANCES**

(i) The buy-back shall be made only on stock exchanges having nationwide trading terminals

(ii) The buy-back of the shares or other specified securities through the stock exchange shall not be made from the promoters or persons in control of the company

(iii) The buy-back of shares or other specified securities shall be made only through the order matching mechanism except ‘all or none’ order matching system

(iv) The company shall appoint a merchant banker and within two working days from the date of passing the board of directors’ resolution or the special resolution as the case may be make a public announcement pertaining to the offer furnishing the details as specified under Schedule IV of the Buy-back regulations.

(v) The public announcement shall also contain disclosures regarding details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made

(vi) Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with the SEBI along with the fees specified in Schedule V of the Buy-back regulations.

(vii) The buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer.

**SUBSEQUENT COMPLIANCES**

i) The company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange and upload the information on its website, on a daily basis.

ii) The company shall create an escrow account and deposit 25 per cent of the amount earmarked for the buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be. Such deposit may be a cash deposit, or a bank guarantee issued in favour of the merchant banker. Where part of the escrow account is in the form of a bank guarantee, the company shall deposit in cash, a sum not less than 2.5 per cent of the total amount earmarked for buy-back for fulfillment of the obligations under the Buy-back Regulations.

iii) The company shall complete the verification of acceptances within fifteen days of the payout and shall extinguish and physically destroy the securities certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month. The company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.

**PRICING MECHANISM**

The price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker.
Provided that the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.

In case no shares or other specified securities were bought back in the normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.

**GENERAL OBLIGATIONS FOR ALL BUY-BACK**

**OBLIGATIONS OF THE COMPANY**

- The letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents.

- The company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations.

- The company shall pay the consideration only by way of cash.

- The company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the Board or public announcement of the offer to buy-back is made.

- The promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter-se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer.

- The company shall not raise further capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.

**OBLIGATIONS OF THE MERCHANT BANKER**

The merchant banker shall ensure that—

- the company is able to implement the offer.

- the provision relating to escrow account has been complied with and firm arrangements for monies for payment to fulfill the obligations under the offer are in place.

- the public announcement of buy-back is made in terms of the regulations and the letter of offer has been filed in terms of the regulations.

- a due diligence certificate along with the draft letter of offer has been furnished to the Board and the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate.

- due compliance of the Companies Act and any other laws or rules as may be applicable in this regard has been made.

- the bank with whom the escrow or special amount has been deposited releases the balance amount to the company only upon fulfillment of all obligations by the company under the regulations.

- a final report is submitted to the SEBI within fifteen days from the date of expiry of buyback period.

**PENAL PROVISIONS**

If a company makes any default in complying with the provisions of section 68 or any regulation made by the SEBI, for the purposes of buy-back, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with a fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

**CONCLUSION**

Thus, it can be concluded that Buy-back may be used as one of the financial engineering tools under which the capital base can be reduced and relevant financial ratios can be improved. This tool can also be used as a defensive mechanism in the anticipated hostile takeovers by increasing the shareholding base of the promoters. By reducing the floating stock ratio, it will help in increasing the intrinsic value of the shares of the company. Apart from all these advantages the icing on the cake is rewarding the shareholders by returning a part of the capital to them which certainly boost the shareholder sentiment and value. However, the Boards are to be cautioned about certain associated draw backs to the buy-back such as some unscrupulous promoters may use the money of the company to increase their stakes by opting for buy-backs. This they may do at the cost of productive investments.

The buyback of shares may be good or bad based on various factors. The investors should not just get lured by the premium price offered by the company but should also consider the main objective of the buy-back. While considering offering their shares in the buy-back, the investors may also have to consider the company’s future growth prospects, individual goals, holding capacity, and risk appetite.

Overall, buy-back is a beneficial and permitted methodology which is beneficial to both the company and its shareholders. Buy-back is a good opportunity for the shareholders as it provides an easy exit route at a premium price. The Board of Directors must exercise caution while deciding on such corporate action.
Decoding the New Amendments to the SEBI (Delisting of Equity shares) Regulations, 2021

Since introduction of the Delisting guidelines, several amendments have been made to this by SEBI including converting the guidelines into regulations in 2009. Now, after almost twelve years, SEBI has reviewed the old Delisting Regulations and notified new Delisting Regulations, 2021 on June 11, 2021. This article is the feature of all the amendments made into the new regulations.

Companies tap the capital market for a variety of reasons, including meeting capital needs, business growth, providing liquidity to the shareholders, and unlocking value of the company’s stock, tapping benefits of listing and so on.

Companies also choose to delist voluntarily from the stock exchanges for various reasons, including:

- For exercising absolute control over the company.
- Strategic business decision involving revamping the overall business of company
- Company stock may trade below its intrinsic value.
- Fear of hostile takeover, due to stock available at cheap prices.
- Accomplishment of the objective for which the company was formed (e.g. joint venture agreement ended).

There are various studies on the ‘why’ of delisting and the effects of delisting, including findings on the effects of delisting on volatility and liquidity¹. For delisting of equity shares of a listed company from a recognised stock exchange (presently BSE, NSE, MSE) the provisions of SEBI (Delisting of Equity Shares) Regulations, 2021 (“Delisting Regulations”) need to be complied with. The Delisting Regulations provide the detailed framework for delisting of equity shares.

Delisting is a major event in the life span of a company. As listing brings currency to the shares of a company, so as delisting ends liquidity in the shares of a company, since no trading is permitted post delisting. Delisting is considered as permanent loss of investment opportunity and end to participate in the growth prospects of a company, that is why shareholders seek premium while bidding in the delisting process through reverse book building mechanism (RBB).

As comparison to other global securities markets, perhaps India is such a unique market, where price for delisting is decided through RBB. Where during listing, pricing is decided by the issuer in consultation with the lead managers, in delisting pricing is decided by the investors through RBB mechanism, where investors assume predominant role for deciding delisting terms. Another feature in the process is, if the price is not acceptable to promoter, such promoter may like to give counter offer, which is obviously less than the RBB price. This makes the delisting process very democratic, thus balancing the interest of all the stakeholders.

LEGISLATIVE BACKGROUND

In the year 2002, SEBI had constituted a committee to inter-alia examine and review the conditions for delisting of securities of companies listed on recognized stock exchanges and suggest norms and procedures in connection therewith. Based on the report of the committee, SEBI vide Circular SMD/Policy/CIR – 7/ 2003 dated February 17, 2003 issued the SEBI (Delisting of Securities) Guidelines, 2003 (“Guidelines”). Subsequently, vide notification dated June 10, 2009, SEBI notified the SEBI (Delisting of Equity Shares) Regulations, 2009 (“old Regulations”), and superseded the Guidelines. Now, after almost twelve years, SEBI has reviewed its old Delisting Regulations and after public

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*The views expressed are personal views of the author
consultation in the month of December 2020, it has notified SEBI (Delisting of Equity Shares) Regulations, 2021 ("new Regulations") on June 11, 2021, w.e.f June 10, 2021.

The success of a delisting proposal is dependent on
(i) public shareholder interest in the delisting proposal, and
(ii) the price at which the highest number of shares is tendered by public shareholders

Delisting proposals are closely monitored by SEBI. SEBI has taken action against promoters if there has been a compromise of the process of price discovery through reverse book building or public shareholders are being treated unfairly. Proxy advisors have brought cases to SEBI's attention, where such instances have happened.

**WHAT ARE THE TYPES OF DELISTING?**

1) Voluntary Delisting:

A Company may delist either from all the Stock Exchanges or any one of the Stock Exchange and remain listed on another Stock exchange. However, in case the company is delisted from all the Stock Exchanges, the promoter has to give exit opportunity through the RBB process.

### A comparison between old and new timelines of voluntary delisting

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<td>Bidding period (RBB Process)</td>
<td>Offer shall remain open for a period of 5 working days</td>
<td>Offer shall remain open for a period of 5 working days</td>
</tr>
<tr>
<td>10</td>
<td>Announcement of RBB’s Process Fate</td>
<td>Not specified</td>
<td>Within two hours of closure of tendering period</td>
</tr>
<tr>
<td>11</td>
<td>Counter Offer</td>
<td>Within 2 working days of closure of bidding</td>
<td>Within 2 working days of closure of bidding</td>
</tr>
<tr>
<td>12</td>
<td>Announcement of success or failure of RBB process and acceptance of discovered price</td>
<td>Within 5 working days of closure of bidding</td>
<td>If discovered price equals to floor price / indicative price as per secondary market settlement otherwise within 5 working days of public announcement of acceptance of discovered price</td>
</tr>
<tr>
<td>13</td>
<td>Payment</td>
<td>Within ten working days of RBB closure</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Shares Return</td>
<td>Within ten working days of RBB closure</td>
<td>Immediately upon announcement of failure of RBB</td>
</tr>
<tr>
<td>15</td>
<td>Final application (8(1)(d))</td>
<td>Within one year of passing SR</td>
<td>Within 5 working days of final payment</td>
</tr>
</tbody>
</table>

*Compiled by authors*
Delisting is a major event in the life span of a company. As listing brings currency to the shares of a company, so as delisting ends liquidity in the shares of a company, since no trading is permitted post delisting. Delisting is considered as permanent loss of investment opportunity and end to participate in the growth prospects of a company, that is why shareholders seek premium while bidding in the delisting process through reverse book building mechanism (RBB).

2) Compulsory Delisting:

Section 19 of the Securities Contracts (Regulations) Act, 1956 and Rule 21A of the Securities Contract (Regulations) Rules, 1957 empowers the Stock exchanges to delist a company, in case of non-compliance of one or more the conditions as stated therein, including non-compliance with the listing obligations.

Chapter V of the new Delisting Regulations provides detailed framework of compulsory delisting. The said chapter inter-alia provides that a recognised stock exchange may, by a reasoned order, delist the equity shares of a company on any ground prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956 after providing reasonable opportunity of being heard.

Upon compulsory delisting by the Stock Exchange, the promoter of a company is required to acquire the delisted equity shares from the public shareholders by paying them the value determined by the valuer as appointed by the Stock Exchanges, within three months of the date of delisting. However, the public shareholders may opt to retain their shares.

In case of delay, the promoter is liable to pay interest at the rate of ten percent per annum to all the shareholders, who offer their shares under the compulsory delisting offer. However, in case, the delay was not attributable to any act or omission of the promoter or was caused due to the circumstances beyond the control of the promoter, SEBI may grant waiver from the payment of such interest.

In case of failure to acquire within the timeline, the penalty provisions are also attracted against the promoter and other entities as per the provisions of the SEBI Act, 1992. Further, consequences are also provided under regulation 34.

PROCESS OF DELISTING

The process of delisting involves the following:

- Before passing of board resolution, a listed company should intimate about proposed delisting to concerned Stock Exchange and appoint a merchant banker to conduct Due-Diligence and submit report to the Stock Exchange;
- A resolution should be passed by board approving the delisting process; they should also certify the compliance of the company with the securities laws;
- Approval from shareholders (for making in-principle application to Recognised stock exchange for delisting) is required by way of Special Resolution passed by postal ballot / e-voting;
- An application for in-principle approval should be filed with concerned RSE. Within one year from passing of a Special Resolution, the final application should be submitted to RSE;
- The Merchant Banker will undertake the reverse book building process – shareholders may reverse bid;
- The final delisting price will be the price where approval of 90% of the shareholders (in number of shares) is obtained.

NON-APPLICABILITY OF THE DELISTING REGULATIONS

The Delisting regulations are not applicable:

- If a company under delisting has been listed and traded on the innovators growth platform of a recognised stock exchange without making a public issue;
- If the company is delisted pursuant to a resolution plan approved under section 31 of the Insolvency Code and such inter-alia provides for: delisting of shares; or an exit opportunity to the existing public shareholders at a specified price.

REASONS FOR AMENDMENTS TO THE OLD DELISTING REGULATIONS

SEBI is a dynamic regulator which is responsive to the dynamic changes in the Marketplace. Keeping in tune with the changing environment and market practices, there necessitated changes to the Delisting regulations. Predominantly, the reasons for the amendments are:

1) Enhancing disclosures to help investors to take informed investment decisions
2) Refining the process of delisting
3) Rationalizing the existing timelines so as to complete the delisting process in a time bound manner
4) Streamlining the delisting regulations to make it robust, efficient, transparent and investor friendly
5) Plugging the gaps in the delisting process
6) Updating references to the Companies Act, 2013 and other securities laws
7) Parity in the pricing requirements between the takeover and delisting regulations.
KEY HIGHLIGHTS OF THE NEW DELISTING REGULATIONS

1) Various timelines have been streamlined, such that the voluntary delisting process can now be completed within 4-5 months, against the previous outer time limit of one year. And specific timelines have been provided for obtaining the Board approval, Shareholders approval, filing of in-principal approval and final application for voluntary delisting to the Stock Exchange;

2) The Committee of independent directors shall now be required to provide its reasoned recommendations on the voluntary delisting and also disclose its voting pattern on the proposal of delisting;

3) On the lines of Takeover Regulations, responsibility has been casted on the promoter to disclose her intention to delist the company to the stakeholders;

4) The Shareholders’ approval can also be taken by way of e-voting;

5) Option has been given to provide indicative price over and above the floor price;

6) To ensure serious and preparedness of the promoter, the escrow account shall now be opened within seven working days of obtaining shareholders’ approval and the promoter shall deposit a minimum 25% of total consideration;

7) To instil confidence, security and assurance in the minds of the shareholders about the timely return of their shares in the event of failure of delisting and considering the benefits of pledge system, the dematerialized shares shall now be tendered by way of marking a lien through depository system;

8) To avoid any uncertainty in the minds of the shareholders, the outcome of the reverse book building process (“RBB”) shall now be announced within two hours of the closure of the bidding period;

9) Given the vital role of the manager to the offer, a detailed framework has been provided on its role and responsibilities in line with the Takeover Regulations;

10) To further safeguard such shareholders who could not participate during the RBB process due to any reason, additional measures have been provided for giving for exit opportunity to the remaining shareholders;

11) Carve out has been provided in case of companies having shareholders which have been declared as vanishing companies; struck off companies; and whose shares have transferred to IEPF account;

12) Clarity has been provided on the computation of the book value as to which financials (standalone or consolidated) are to be considered and which date to be considered for these financials;

13) Also clarity has been provided that in the event the price discovered through RBB is equal to the floor price / indicative price, the promoter shall be bound to accept the said price. And the expenses relating to delisting offer shall be borne by the promoter and the company shall bear expenses of the due-diligence report.

14) The cooling off period for relisting subsequent to delisting has been reduced to three years and synchronized it with the requirement of delisting after initial listing.

15) To avoid any chance of varying practice that may be followed by the companies, a cooling off period of six months has been provided for voluntary delisting after the buy-back / consolidation of shares and the preferential allotment. It is also clarified that the cooling off period, in case of preferential allotment, shall be applicable only, if the allotment has been made to the promoters / acquirer, who has proposed the delisting.

16) To avoid any disruptions upon frequent delisting offers in the stock of the company, a cooling off period of six months has been provided between two voluntary delisting offers;

17) Post delisting of shares in the home jurisdiction, the company shall compulsorily convert all the outstanding Depository Receipts (“DR”) into the equity shares and terminate its DR program within one year of delisting.

WHAT IS REVERSE BOOK BUILDING MECHANISM (“RBB”)?

Regulation 20 of the Delisting Regulations states that for providing exit opportunity a floor price shall be fixed as per regulation 8 of the SEBI (SAST) Regulations, 2011. After fixation of the floor price, the exit price shall be discovered through the reverse book building process in the manner specified in Schedule II of the regulations.

The discovered price is the price at which shares are accepted through eligible bids, that takes the shareholding of the promoter (along with the persons acting in concert) to ninety per cent of the total issued shares of that class excluding the shares of certain categories of shareholders.
Illustration for arriving at the discovered price

The following table illustrates the mode of discovery of price:

<table>
<thead>
<tr>
<th>Bid price (Rs.)</th>
<th>Number of investors</th>
<th>Demand (Number of shares)</th>
<th>Cumulative demand (Number of shares)</th>
</tr>
</thead>
<tbody>
<tr>
<td>550</td>
<td>5</td>
<td>2,50,000</td>
<td>2,50,000</td>
</tr>
<tr>
<td>565</td>
<td>8</td>
<td>4,00,000</td>
<td>6,50,000</td>
</tr>
<tr>
<td>575</td>
<td>10</td>
<td>2,00,000</td>
<td>8,50,000</td>
</tr>
<tr>
<td>585</td>
<td>4</td>
<td>4,00,000</td>
<td>12,50,000</td>
</tr>
<tr>
<td>595</td>
<td>6</td>
<td>1,20,000</td>
<td>13,70,000</td>
</tr>
<tr>
<td>600</td>
<td>5</td>
<td>1,30,000</td>
<td>15,00,000</td>
</tr>
<tr>
<td>605</td>
<td>3</td>
<td>2,10,000</td>
<td>17,10,000</td>
</tr>
<tr>
<td>610</td>
<td>3</td>
<td>1,40,000</td>
<td>18,50,000</td>
</tr>
<tr>
<td>615</td>
<td>3</td>
<td>1,50,000</td>
<td>20,00,000</td>
</tr>
<tr>
<td>620</td>
<td>1</td>
<td>5,00,000</td>
<td>25,00,000</td>
</tr>
<tr>
<td></td>
<td>48</td>
<td></td>
<td>25,00,000</td>
</tr>
</tbody>
</table>

*Source: Schedule II of Delisting Regulations

(Assuming floor price of Rs.550/- per share, shareholding of the acquirer at 75% and number of shares required for successful delisting as 15,00,000, the discovered price would be the price at which the acquirer reaches the threshold of 90%, i.e., it would be Rs.600/- per share.)

The reference date for computing the floor price is the date on which the stock exchange was notified of the board meeting in which the delisting proposal was considered and approved. The promoter can also opt to provide an indicative price, over and above the floor price. The indicative price can also be revised upwards before the start of the bidding period. The promoter may also opt to pay a price higher than the price discovered through RBB process.

The promoter is not under the obligation to accept the discovered price, if it is higher than the floor price or the indicative price, however she has to accept the discovered price if it is equal to the floor price or the indicative price or between the floor price and the indicative price.

**WHAT IS ‘COUNTER OFFER’?**

In case the discovered price is not acceptable to the promoter, a counter offer can also be made by the promoter within two working days of the closure of bidding period and as per the process given under Schedule IV of the Delisting Regulations.

The counter offer price cannot be less than the book value of the company, which is required to be certified by the Manager to the offer. The book value shall be computed on the basis of both consolidated and standalone financial statements of the company as per the latest quarterly financial results filed by the company on the recognized stock exchange(s) as on the date of public announcement for counter offer, and the higher of the values so computed shall be treated as the book value.

**HOW MANY SHARES TO BE ACQUIRED FOR VOLUNTARY DELISTING TO BE SUCCESSFUL?**

For successful delisting the promoter has to acquire minimum ninety percent of the total issued shares of that class after excluding the shares held by:

i. a custodian(s) holding shares against which depository receipts have been issued overseas;

ii. a trust set up for implementing an Employee Benefit scheme under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;

iii. inactive shareholders such as vanishing companies, struck off companies, shares transferred to Investor Education and Protection Fund account and shares held in terms of sub-regulation (4) of regulation 39 read with Schedule VI of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015.

The process of reverse book building is an essential element to determine the fair exit price for public shareholders. SEBI takes a very strong stance against attempts to influence or manipulate this process, including funding attempts by promoters.

The paramount concern of SEBI is that shareholders should not be short-changed. In one of the cases, SEBI accepted undertaking of the promoters to pay the public shareholders, the difference between the transaction price agreed upon with the buyer and the price discovered under the Delisting Regulations.

2. Case of ECE Industries Limited
3. Case of Essar Oil Limited
**TRENDS IN VOLUNTARY DELISTING THROUGH REVERSE BOOK BUILDING PROCESS**

<table>
<thead>
<tr>
<th>F.Y.</th>
<th>Successful</th>
<th>Unsuccessful</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>2018-19</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>2019-20</td>
<td>5</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>2020-21</td>
<td>3</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Grand Total</td>
<td>12</td>
<td>5</td>
<td>17</td>
</tr>
</tbody>
</table>

*Compiled by authors*

The above data reflects that, the voluntary delisting process have been working successfully and thus helping investors to fetch fair exit price through reverse book building price discovery mechanism. The data also suggest that post 2019 there is rise in voluntary delisting of companies. This also coincided with the Covid19 pandemic.

**ARE THERE ANY SPECIAL PROVISIONS FOR ANY CLASS OF COMPANIES?**

Chapter VI of the Delisting regulations provides special provisions for the following companies, wherein the promoter is not required to give exit opportunity through the RBB process:

i. Small Companies:

ii. Companies listed on innovators growth platform

iii. Listed subsidiary entering scheme of arrangement with its holding company

**DELISTING AND THE COMPANY SECRETARY**

SEBI has recognised the role of Company secretaries in the voluntary delisting process. In case of a whole time company secretary of a listed entity that is going through the delisting process, the steps in the Delisting Regulations, as outlined above need to be complied with. Given their expertise and legal background the due diligence process can be performed by a peer reviewed practising company secretary.

**CONCLUSION**

The delisting framework has been evolving since its introduction. The process of delisting has undergone many modifications, so as to make it transparent as well as to result in efficient price discovery. The major overhaul of the Delisting process was done in 2015 after intensive deliberations with all the stakeholders. It is seen that market does not welcome any delisting move by the promoters and at times it is also perceived as preventing the investors from participating in the growth of the company taking their rightful pie. However, the day is not far when delisting will not be considered as sin but the part and parcel of the company's life.

Further, Companies as well as promoters of companies seeking delisting should consider the delisting offer while ensuring that the process is carried out in a transparent manner as well as disclose all relevant information to their shareholders to enable them take a decision – this is, in fact, a matter of credence and trust. This will earn the confidence of the shareholders and, importantly, avoid regulatory complications and pave the way for successful delisting.
Social Stock Exchange: Bane or Boon for a Developing Nation Like India

The Hon’ble Finance Minister in her Budget speech for the year 2019-20 proposed to establish a Social Stock Exchange (‘SSE’) for the social enterprises under the regulatory ambit of the Securities and Exchange Board of India (‘SEBI’) to enable such entities to list their securities (equity, debt, units of mutual fund, etc.) on SSE for generating funds. Thereafter, SEBI constituted two expert groups i.e. Working Group, and Technical Group, which have submitted their detailed reports. SEBI is yet to issue regulations on SSE. Additionally before setting-up SSE in India, various existing laws regulating social entities needs to be amended to allow them to list their securities on SSE.

Sir Ratan Tata Trust is one of the oldest grant making public foundation, which was established in 1919 with a sum of INR 8 million. This trust provided grants in the form of institutional grants, endowment grants, small grants, individual grants. Other example of family foundations are Godrej, Birla and Bajaj Foundations and were also established before the country’s Independence. Besides this, many hospitals, schools, old age homes, shelters etc. were and/or are being constructed by various persons in the memory of certain deceased persons and/or other reasons. Other persons contribute towards enhancing or upgrading the facilities of such hospitals, schools etc.

Thus, it can be concluded that Philanthropy is in the blood of India. We have inherited this tradition from our ancestors and the same will continue forever.

Philanthropy in India continues to grow on steady pace. In the financial year 2020, private sector philanthropy funding totalled about INR 64,000 crore, which is approximately 23% more than financial year 2019, wherein it was INR 52,000 crore. This was despite the fact that there was slow down in various sector due to outbreak of COVID-19.

Despite the remarkable growth of private sector and non-profit organisations participating in social sector, India still faces a significant challenge in meeting the 2030 deadline for the UN-mandated Sustainable Development Goals (‘SDGs’). The Human Development Index (‘HDI’) of India lags behind many of the south Asian countries as per the recent report published by the United Nations Development Fund. India ranked 131 out of 189 countries on the HDI index 2020 with a score of 0.645, which places India in the “medium” category of development, and is behind countries like Sri Lanka (HDI 0.782, rank 72) and China (0.761, 85). HDI score is calculated using indicators such as Life expectancy, per capita income and education. It also brings together three dimensions of education, health and income to produce a comprehensive measure of country’s human development.

India is a home to over a million of non-profit organizations, which plays an important role not only in improving HDI but also in improving other social indicators.

1 As per the report published by Bain and Company, India Philanthropy Report 2021.
2 UN has mandated 17 SDGs for its member countries which includes peace, justice, quality education etc.
3 Latest human development index ranking at http://hdr.undp.org/en/content
the overall GDP of India. The social enterprises or welfare organizations works for the betterment of the society. Thus, they must receive adequate funds or financial assistance or grants for meeting their commitments/objectives.

In order to meet the financial needs of these organizations, the Hon’ble Finance Minister in her Union Budget speech for the year 2019-20 announced the proposal to establish of Social Stock Exchange (‘SSE’) under the regulatory ambit of the Securities and Exchange Board of India (‘SEBI’) and the social enterprises and voluntary organizations working for the realization of a social welfare objectives can be listed on such SSE and raise capital in the form of equity, debt or units of mutual fund.

SEBI constituted a working group (‘WG’) on SSE under the chairmanship of Shri Ishaat Hussain on September 19, 2019. The broad terms of reference of the WG were to review and recommend on:

- Possible structures and mechanisms, within the securities market domain, to facilitate raising of funds by social enterprises and voluntary organizations;
- Associated regulatory framework inter-alia covering the issues relating to eligibility norms for participation, disclosures, listing, trading, oversight etc.

With reference to the recommendations made by the WG on SSE, SEBI constituted a Technical Group (‘TG’) under the chairmanship of Dr. Harsh Kumar Bhanwala (Ex-Chairman, NABARD) on September 21, 2020 and the terms of reference of TG were to review and make recommendations on the following matters:

- Framework for on-boarding and regulating non-profit organizations (‘NPOs’) and for-profit social enterprises (‘FPEs’) on the SSE including defining for-profit social investing/enterprises.
- Standardizing reporting and disclosure requirements for NPOs and FPEs on the SSE including financial reporting, governance & operational performance and social impact.
- Scope of work, eligibility criteria and regulation of social auditors, other intermediaries such as information repositories and, their necessary Self-Regulatory Organisations (SROs).
- Further evolution and growth of social auditors

**IDEA OF SOCIAL STOCK EXCHANGES FOR INDIA**

During the current COVID-19 times, the Indian economy crashed drastically. But the Indian corporates (both Private and Public), social enterprises, voluntary organisations etc., worked in many folds during the pandemic. They provided resources to the most vulnerable groups of the society & migrants, healthcare facilities to the people in remote areas, provided women with the access to finance and in many other ways. The Indian Government also introducing various measures to support these organisations. The Ministry of Corporate Affairs (‘MCA’) issued clarifications and general circulars related to spending of Corporate Social Responsibility (CSR) funds for COVID-19 or setting up makeshift hospitals and temporary COVID Care facilities being eligible CSR activity under Schedule VII of the Companies Act, 2013 (“CA, 2013”). The MCA has recently clarified that spending of CSR funds on COVID-19 vaccination for people, other than employees and their family members, is eligible as CSR activity.

But this is not enough. Yet, more can and should be done for funding these social enterprises and voluntary organisations in order to allow them function smoothly. The primary sources of their funding are grants from the Government or other organisations, donations, CSR spending and funds generated from charity events organized by big corporate houses etc. The pool of resources is much lesser than their needs. Thus, there is a need to upsurge the source of funds for these organisations.

Now the question arises “HOW”?

The answer to this question can be cited from the Hon’ble Finance Minister’s vision. In her Budget speech for the year 2019-20, she said:

> “It is time to take our capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion. I propose to initiate steps towards creating an electronic fund raising platform – a social stock exchange - under the regulatory ambit of Securities and Exchange Board of India (SEBI) for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund.”

From that day, a new notion had emerged in India. The concept of SSE is new for India but for various other nations it was an old concept.

Another question after this come out to be the “Need for SSE”?

4. **SSE is a set of processes as much as it is a place**, which means that SSE is not only a place where securities or other funding structures are listed but also a set of procedures that act as a filter, selecting-in only those entities that are creating measurable social impact and reporting such impact. The SSE shall be a separate segment under the existing stock exchanges. The idea of SSE will not only benefit the social enterprises but also to the individual investors who are willing to participate in the social sectors through one or the other means.

Setting-up of SSE will be most beneficial for the social enterprises, voluntary organisations, self-help groups, NGOs etc. and all other forms of organisation that works for the social welfare of the society. Due to lack of funds or inadequacy of funds, these organisations couldn’t achieve their ultimate objective. This concept will bring a new era of opportunities to all these organisation and through SSES, these organisations can list their securities and other financial instruments for raising funds for running their operations and for better sustainability, thereby improving their overall growth and reducing dependency on other sources. The aim of introducing this concept was not only to reduce financial dependency but also to help these organisations create an investment network for themselves.

4. Working Group Report on SSE.
SSE will be most beneficial for the social enterprises, voluntary organisations, self-help groups, NGOs etc. and all other forms of organisation that works for the social welfare of the society. Due to lack of funds or inadequacy of funds, these organisations couldn’t achieve their ultimate objective. This concept will bring a new era of opportunities to all these organisation and through SSEs, these organisations can list their securities and other financial instruments for raising funds for running their operations and for better sustainability, thereby improving their overall growth and reducing dependency on other sources.

The Social enterprises have contributed tremendously during the pandemic. But the fuel of these organisations is funding. Indian Government have tried their best through various means but in order to maintain sustainability of these organisation and bridge the gap between available funds and needs of the society the donors have to come forward and access this new segment.

CHALLENGES IN IMPLEMENTING SSE

Type of Entities

Philanthropy can be through Individuals or through entities established for the said purposes. The entities for philanthropy in India can be registered under the following Acts in India:

1. **CA, 2013:** Section 8 of the CA, 2013 permits a person or an association of persons to get itself registered under this Act. Section 8 companies have restrictions in its Memorandum of Association as to the objects they pursue and utilization of revenue they receive etc. The major restriction on such Section 8 companies is that they cannot distribute their profits as dividend to its shareholders. They have to plough back their profits or other incomes in promoting their objects only that is promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other similar objects.

As such there are no regulatory hurdles in listing the shares or debt instruments of Section 8 companies having share capital. But, they have to comply with minimum capital adequacy norms, turnover and/or market capitalisation requirements in accordance with the provision of SEBI Regulations and as prescribed by the different stock exchanges.

Presently, the criteria for listing on National Stock Exchange (NSE) inter-alia includes a minimum paid capital of not less than INR 10 crore and market capitalization of not less than INR 25 crores. Along with this, a track record of at least three years of either the applicant seeking listing or promoters/promoting company, incorporated in India or outside India, a positive net worth, if the proposed issue size is less than 500 crores etc. It will be difficult for most of the Social enterprises to meet such requirements. Thus, it will pose a practical difficulty for the Section 8 Companies to issue securities on such exchanges.

Further, the Section 8 Companies are restricted to offer dividend to its shareholders. This restriction will affect the prospective investor’s interest.

2. **Societies Registration Act, 1860:** Seven or more persons are entitled to form a registered society under this Act. The society so formed must be registered to carry out literary, scientific or charitable activities.

3. **Indian Trust Act, 1882:** A trust can be formed as a public trust or a private trust. Only Private Trust is governed by the Indian Trust Act, 1882. There is no central law governing the trusts in India. Most of the states have enacted their own laws for registration of Trusts. The essence of a forming a public trust is charitable objects.

Trusts and Societies, not being a body corporate as defined in 2(11) of the CA, 2013, does not require registration under the CA, 2013. Thus, they cannot issue anything which qualifies to be securities under the Section 2 (h) of the Securities Contracts (Regulation) Act, 1956 (SCRA).

This will pose a practical difficulty for such organisations to participate in SSE platform. Thus, there is a need to develop a class of securities that can be issued by the Section 8 Company, Trusts and societies or any other unregistered entity also.

The TG recommended that NPOs should be allowed to issue Zero-Coupon Zero Principal (ZCZP) bonds (to be notified as securities under the SCRA), Development Impact Bonds, Social Impact Fund (presently known as Social Venture Funds) with 100% grant-in and grant out provisions and donations by investors through mutual funds. It further recommended that FPEs should be allowed to issue Equity, Debt, Development Impact Bonds and Social Venture Funds.

All of these will necessitate making required amendments to various applicable laws like CA 2013, SCRA, Societies Registration Act and state enactments for registration of Trusts.

REGULATORY ENVIRONMENT FOR SSEs

Regulatory aspects for SSEs will not be limited to SEBI only, instead one needs to look the same from various applicable laws as one needs to comply various applicable laws depending on the source of funds or other factors. Beside compliance with SEBI regulations, the Regulatory environment of SSEs based on source of funds will be like:
Domestic Source: Domestic sources are basically those sources of funds which are obtained or generated locally (i.e. within the country). Funds from the domestic sources can be (i) CSR spending of the corporates or (ii) Non-CSR funds. The CSR spending of the corporates is presently regulated by the Section 135 of the CA, 2013 read with schedule VII and CSR (Rules) as amended from time to time. However, the Non-CSR spending can further be broadly classified into two categories i.e. from Individuals and from other than individuals (like grants from Government or semi-government agencies etc.).

Since SSE is proposed for both types of Companies i.e. NPOs and FPEs, a lot of regulatory issues need to be addressed before launching the SSE platform.

Few of them are as follows:

- **Income Tax Act, 1961 (‘IT Act’)**: There are certain pre-requisites for registration of NPOs under Section 80G and 12A/12AA, which pertains to the nature of business, its revenue etc. Further if the securities of NGOs are traded on the SSE platform, it will be a violation of the pre-requisites. Thus, there is a need to amend the provisions of the IT Act with respect to registration of NGOs under Section 80G and 12A/12AA.

- **Enhanced Tax burden for the Individuals**: The investors on SSE have to pay Securities Transaction Tax (‘STT’) for the trades made on SSE which will ultimately affect the volume and liquidity on the exchange. The investors also have to bear the burden of Capital Gain Tax on long term gains accruing from sale of securities in SSE.

  There is a cap of 10% of the Gross total income on the eligible amount of deduction under Section 80G of the IT Act which again acts as a barrier for the donors who are willing to donate.

  It is suggested that requisite steps should be taken to reduce the tax burden and encourage donors to invest their funds. It is recommended to exempt STT, Capital Gain Tax and provide 100% tax exemption to the donations made to the NPOs that are benefited from SSE. The cap of 10% in Section 80G should be removed. Instead 100% tax exemption should be allowed to the first time investors in SSE subject to an overall limit of INR 1 lakh. This is lines with Section 80 CCG of IT Act.

- **Difficulty in getting registration under Section 80 G, 12A/12AA**: There are various criteria’s to be complied with by an organization for registration under Section 80 G, 12A/12AA and further at the time of its re-evaluation after every 5 years.

  It is suggested to enable ease of obtaining these registrations and the requirement of re-evaluation should be waived off.

Foreign Source: Foreign source is defined in clause (j) of Section of the Foreign Contribution (Regulations) Act, 2010 (‘FCRA’), which is very wide in scope and includes share capital contributed by non-resident in Section 8 Company. Any contribution received from the foreign sources are regulated by FCRA.

Recently the Foreign Contribution (Regulation) Amendment Act, 2020 was passed which poses certain restrictions on obtaining prior permission/registration under FCRA as well as utilisation of foreign contributions. This amendment also prohibits transfer/sub-grant of foreign contribution to any other person by FCRA registered entity.

Further there is restrictions on use of such foreign contribution for investment in:
• Any activity or investment that has an element of risk of appreciation or depreciation of the original investment including investment in mutual funds or in shares;
• Participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims & objectives of the organization or association.

However the debt-based secure investment shall not be treated as speculative investment as recommended by the WG. Thus, as of now, the NGOs can invest in Debt markets but not in equity markets. Before implementing the SSE, necessary amendments are required to carried-out in the FCRA provisions.

Further, the WG recommended that the foreign entities should be allowed to invest in Social Venture Fund (‘SVFs’) listed on the SSE. SVFs is an Alternative Investment Fund which invests primarily in securities or units of social ventures and which satisfies social performance norms laid down by the fund and whose investors may agree to receive restricted or muted returns. As in such a scenario, the donors will not have any control on choosing the NGOs. The decision will be taken by SEBI-regulated Indian fund managers of AIF and will therefore be easier for the Government to monitor.

All of these will also necessitate making required amendments to various applicable laws to enable FCRA registered entities to list on SSE and avail funds from Foreign Source.

**REPORTING REQUIREMENT**

The purpose of reporting is not only regulation but also to access, improve and enhance the quality of functioning. Like other exchanges, SSE will also be bound with some reporting requirements which may be monthly, quarterly, half-yearly or annually as SEBI may decide from time to time. But the basis of reporting may be determined since inception. SEBI has already determined certain reporting requirements for other exchanges. Such requirements may or may not vary from the requirements of SSE.

There are variety of practices being followed around the world. In some countries the SSE is functioning within the existing stock exchanges or jointly with the existing stock exchange of the country also known as *Alternate investment instruments traded on an existing stock exchange*, whereas in some countries there are entirely different platforms set up separately from the existing exchanges, also known as *Matchmaking platforms*. The international experiences on the aforementioned SSE models are briefly discussed in the later part of this article.

Both the platforms have their own advantages and disadvantages. Learning from the mistakes of these Exchanges, SSE in India will allow trading for equities issued by the FPEs and open up new avenues for direct listing for NPOs along with a standard reporting mechanism.

In accordance with the TG report the reporting criteria will be as follows:

1. **Disclosure on General, Governance and Financial aspects:** As per the TG report, the disclosures for NPOs and FPEs will be different. The report recommends:
   - **NPOs:** The TG report recommends for all NPOs, whether listed or not, a set of minimum standards for disclosure on *General* (vision, mission, activities and scale of operations), *Governance* (Legal form, board and management, org-level risks and mitigation, related party transactions and other ethical concerns, remuneration policies, stakeholder redressal, compliance, and certifications and *Financial* (Legal form, board and management, org-level risks and mitigation, related party transactions and other ethical concerns, remuneration policies, stakeholder redressal, compliance, and certifications) which can be reviewed and enhanced over time. These are applicable to all NPOs (Section 8 Company, Trust or Society) and are to be on an *annual basis*.

   Apart from the annual disclosure, the organization has to report any event that might have a material impact on the planned achievements of their outcomes to the exchange in which they are registered within 7 days.

   This disclosure will include the following:
   - i. details of the event,
   - ii. the potential impact of the event and what the NPO is doing to overcome the impact.
Examples of such events that may result in exit of key executives, disturbances in the implementation locations, regulatory restrictions, stoppage of funds by key donors, and so on.

FPEs: In accordance with the recommendation of the TG, the FPE listing equity/debt shall in addition to the social impact reporting, comply with the disclosure requirements as per the applicable segment such as main board, SME, IGP etc.

2. Social Impact Reporting: Apart from the Disclosures on General, Governance, Financial aspects of Social entities. The TG report also recommended a disclosure on the social impact of these. It states both FPEs and NPOs, once their securities are listed on the exchange (or NPOs registered but chooses not to list its securities) will have to produce an Annual Impact Report (‘AIR’). The WG report on SSE also provided a broad outline on this aspect.

AIR will cover the qualitative and quantitative aspects of the social impact generated by the entity, and where applicable, that generated by the project or solution the security is meant to fund. If the NPO is registered without listing any security, the AIR must cover the NPO’s significant programs or projects during the year, and the methodology for determination of significance must be explained.

Additionally, if there is a program covered under a listed security, it will qualify as a significant program.

Apart from these disclosure and reporting requirements, the NPOs and FPEs have to comply with the provisions of the CA 2013, IT Act 1961, Societies Registration Act 1860, Indian Trust Act 1882, SEBI (Issue of Capital & Disclosure Requirements) Regulations 2018, SCRA, FCRA etc. as may be applicable. There are certain specific requirements in each of the above acts.

INTERNATIONAL OUTLOOK ON SSEs

India is not the First country to introduce the concept of SSE. Various nations have established their SSE like Brazil’s Socio-Environmental Impact Exchange (BVSA), Portugal, South Africa’s SASIX, Jamaica (JSE), the UK, Singapore, and Canada’s Social Venture Connexion (SVX). The concept floated in a boom in these nations but later on faced many challenges and are thus closed for one or the similar reasons. The basic and most important reason for their closure was lack of proper business model. The details (in brief) of some of the SSE established outside India are as follows.

BVSA: was the first SSE. It was set up under the BOVESPA Stock Exchange in 2003. The BVSA acts as an information exchange to evaluate NPOs and identify the projects which are in need of funding from private investors. The capital raised through the exchange is used to fund specific projects within a fixed time frame. From 2016, BVSA has relied on the SDGs to measure impact on society. Importantly, funders receive no financial returns.

SASIX: The SASIX was set up by the Greater Good South Africa Trust in June 2006. Like the BVSA, the SASIX does not provide financial returns to investors. SASIX allows investors to purchase “shares” of a specified value that are directed at funding towards specific projects in a time bound manner. Impact is measured by outcomes in the community.

Social Stock Exchange of UK also works like an information platform but it is established for FPEs. The securities of such FPEs are listed on London Stock Exchange. As pre-requisite for listing on SSE, the FPEs were required to file annual social impact report indicating the progress on the ground. This SSE failed due to failure of regulatory framework, since there was no demarcation between the finance-first and impact-first models.

Canadian SVX was also intended to be an information centre. The platform links accredited investors with business in need of equity investment. The Global Impact Investing Rating System (GIIRS) determined the impact of each entity based on the proof of ratings submitted by them for listing. It was considered that there is a lack of clarity as to which parameter disable an entity to be listed on the exchange.

These Exchanges in the matchmaking platform worked as information centres and helped to discover the potential investors only and does not create new avenues for the NPOs by introducing new instruments/ securities for trading. There focus was more on calculating impact rather than on generation of funds for the NPOs. Also it does not provide all the NPOs an equal opportunity of participating.

Only three out of the Seven SSEs set up across the world are still active. Currently the SSE of Canada, Singapore and Jamaica are still active.

On the contrary, the concept of SSE has been introduced with a wider spectrum in India creating more avenues for NPOs and better ways of competing for FPEs. It provides a platforms for trading not only equity instruments but also debt.

Based on the international experiences on SSE, it is recommended that the social stock exchanges should possess the following features:

1. Independent leadership skills and decision making power
2. Concentrate on building investor’s and donor’s appetite
3. Create better opportunities for both NPOs and FPEs
4. Create new instruments other than Equity and Debt
5. Equal opportunities to participate
6. Varying capacity of civil society organisations

CONCLUSION

The concept has further more intricacies but the same cannot be realised without execution. The Report of Working Group and Technical Group are submitted with SEBI which is yet to be finalised by SEBI. Till then it can be established that though we are new to the concept but we are not new to the objective i.e. Philanthropy. Keeping in mind the positives and negatives experiences from other social stock exchanges established worldwide, India should welcome this move. With changes to the existing regulatory structure and laws of India, we can achieve a better world for these Social enterprises. It can be concluded that the concept of SSE will be a ‘BOON’ for a developing nation like India.

\(^5\)Report of irdonline.org dated March 25, 2021
15th INTERNATIONAL PROFESSIONAL DEVELOPMENT
& FELLOWSHIP PROGRAMME & INTERNATIONAL CONFERENCE

04 NIGHTS AND 05 DAYS IN MALDIVES

Place of boarding: Delhi, Mumbai, Bengaluru

Sub: Seeking interest for participation

The Institute of Company Secretaries of India (ICSI) is organising 15th International Professional Development & Fellowship Programme & International Conference from Tuesday, the 26th October to Saturday, the 30th October, 2021 for its members. (Preferably for fully vaccinated persons). International Conference will be held on Friday, the 29th October 2021, at Maldives. (Tentative)

Members (along with their accompanying family members) who are interested in participating in the above program are requested to send their confirmation by submitting the required information in the google form available at https://ggle.io/15IPDFP

The cost of the tour per pax on twin sharing basis is as under:

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The cost of tour for kid age 02 Years to less than 12 years will be INR 47,900 + Airlines as per actuals.

In case the numbers of pax are less from the minimum guarantee, the cost shall be taken from the person proportionately.

HOTEL (https://alimatha.nakairesorts.com/)
KEY NOTES & PACKAGE COST INCLUSIONS: -

i. Visa is on arrival.

ii. 5% GST + 5% TCS is extra and to be paid over and above total tour cost. In case there is any change in tax pattern, same will be applicable at the time of final billing.

iii. RTPCR Test cost in Maldives US $ 80/- Per Person will be Extra. (Mandatory for all)

iv. Accommodation for 04 nights (2N Beach Bungalow + 2N Water Villa)

v. Return economy class airfare

vi. Transfer Airport-Hotel-Airport

vii. Transport services according to the program

viii. All Inclusive Meal Plan (All Meals served on Buffet Style)

ix. Wind Surfing, Canoes, Beach Volley, Table Tennis at the resort.

x. Indoor and outdoor games.

xi. Special Gala dinner

xii. AI Drinks Bar Services (10.00 a.m./12.00 am): soft drinks, water, fruit juices, American coffee, tea.

xiii. All Maldivian taxes including green tax

xiv. Travel Insurance upto the age of 60 years only.

xv. Service of Tour Manager

xvi. Travel Kit (Printed Itinerary, Luggage Tags, Sanitizer, Face Mask)

EXCLUSIONS:

• Porter Services at Airport or at Hotel
• Personal expenses
• Permissions of photo/video shooting at the museums.
• Expenses of personal nature like laundry, telephone, fax, internet, beverages, snacks, medical expenses, objects purchased etc.
• Any other services not mentioned in Price Inclusions above
• Personal expenditures e.g. meals not stated in the itinerary, optional excursions or shows, insurance of any kind, tipping, early check in or late checkout and other items not specified on the itinerary are at your own expense

Last date of submitting response is 7.10.2021

The detailed itinerary will be shared shortly.

You may send your query, if any, to overseas@icsi.edu.

Regards

Team ICSI
Preface

“If you’re walking down the right path and you’re willing to keep walking, eventually you’ll make progress.”

- Barack Obama

Organisations as well as individuals, have grappled with challenges posed by the recent pandemic as well as the uncertainty of things. It is these shared experiences which have led us into exploring new ways of maintaining balance in approach, futuristic course of thought and consistent progressive action.

To quote George Bernard Shaw, “Progress is impossible without change, and those who cannot change their minds cannot change anything.” It stands true that our experiences of struggle over the past two years have not only made us stronger but also accorded us with a paradigm shift in outlook as well as a different panorama to alter our strategy, putting us on the path of dedicated attitude towards the achievement of our common goals.

Our combined zeal to not be bogged down by the adversaries as well as the support of our stakeholders combined with the proactive measures undertaken by the Government and Regulatory Authorities to not only safeguard the interests of the economy but build greater resilience by focussing on building a self-reliant nation, an Aatmanirbhar Bharat has born fruitful results.

Taking forward our pursuit of professional excellence, the ICSI, too has been continuously making unstinted efforts to achieve its vision, mission and goals for the strengthening of governance framework in the India Inc. as well as for the furtherance of interests of all stakeholders. It gives me immense pride that the ICSI has performed uninterruptedy, all with the overwhelming support of all our members, students, and employees, Regional Councils, Chapters and Regulatory Authorities.

I am glad to share that even amidst the pandemic crisis, in the months gone by, focus of the ICSI has been on providing unhindered services to all its stakeholders offering new capacity building avenues through virtual learning, webinars, crash/certificate courses, enhancing brand equity for profession, facilitating global outreach, strengthening governance and welfare initiatives for members, students, employees, society, etc.

Given the multifarious initiatives undertaken, achievements made and celebrations held, I am happy to present this ICSI Progress Report (January-July,2021) on the memorable occasion of the 53rd Foundation Day of ICSI on behalf of the Council and entire team of ICSI.

We hope to continue to serve all our stakeholders with greater fervour and with razor sharp focus on our dreams and aspirations with the support of our national as well as global stakeholders. For as we always say and believe,

Together we can. Together we will.

With warm regards,

CS Nagendra D. Rao
President, The ICSI

Date: 4th October, 2021
Place: New Delhi

Link - https://www.icsi.edu/media/webmodules/BI_ANNUAL_REPORT_06102021.pdf
The Company Secretaries Benevolent Fund (CSBF) provides a safety net to the Company Secretaries who are members of the Fund and their family members in times of distress.

**CSBF**
- Registered under the Societies Registration Act, 1860 Recognised under Section 12A of the Income Tax Act, 1961
- Subscription/Contribution to the Fund qualifies for deduction under section 80G of the Income Tax Act, 1961
- Has a membership base of over 14,000 members

**ELIGIBILITY**
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**HOW TO JOIN**
- By making an application in Form A (available at https://www.icsi.edu/csbf/home/) along with one time subscription of 10,000.
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**BENEFITS**
- ₹ 10,00,000 in the case of death of a member under the age of 60 years
- Upto ₹ 3,00,000 in the case of death of a member above the age of 60 years
- Upto ₹ 50,000 per child one time (upto two children) for education of minor children of a deceased member
- Upto ₹ 75,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

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BLOOM DEKOR LTD & ANR v. SUBHASH HIMATLAL DESAI & ORS [SC]
NATIONAL SPOT EXCHANGE LIMITED vs ANIL KOHLI- RP FOR DUNAR FOODS LTD [SC]
DLF HOME DEVELOPERS LTD v. RAJAPURA HOMES PRIVATE LTD [SC]
RAM MANOHAR LOHIA JOINT HOSPITAL & ORS v. MUNNA PRASAD SAINI & ANR [SC]
EMPLOYERS IN RELATION TO THE MANAGEMENT OF BHALGORA AREA (NOW KUSTORE AREA) OF M/S BHARAT COKING COAL LTD v. WORKMEN BEING REPRESENTED BY JANTA MAZDOOR SANGH [SC]
ALLAHABAD BANK v. KRISHAN PAL SINGH [SC]
IN RE: ALLEGED ANTI-COMPETITIVE CONDUCT BY MARUTI SUZUKI INDIA LIMITED IN IMPLEMENTING DISCOUNT CONTROL POLICY VIS-À-VIS DEALERS
PF DIGITAL MEDIA SERVICES LTD & ORS v. UFO MOVIEZ INDIA LTD & ORS [CCI]
Landmark Judgement

LMJ 10: 10: 2021

BLOOM DEKOR LTD & ANR v. SUBHASH HIMATLAL DESAI & ORS [SC]

Civil Appeals No. 1750 & 1751 of 1994

M.N.Venkatchelliah, P.B.Sawant & S.Mohan, JJ. [Decided on 09/09/1994]


Injunction against public issue- registered office of the company was in Ahmedabad- injunctions obtained from courts other than Ahmedabad- whether injunction proper-Held, No. Supreme court reiterates the principles of issuing injunction orders against a company.

Brief facts:

The appellant-Company came up with a public issue. The respondents filed different injunction suits in different courts and got stay on the issue. The aggrieved appellant company approached the Apex Court, which was required to examine this kind of “remote place injunction seeking trend” and the validity thereof.

Decision:

Appeals allowed.

Reason:

What is surprising in this case is suits were filed before courts which have no jurisdiction whatever, namely, Morvi and Vadodara, though in the name of different persons all backed up by Ramlal Thakkar. No part of cause of action has arisen within the jurisdiction of either of these courts. Then again, the courts are approached at the last minute. Yet an order of ad interim injunction came to be passed without even notice to the appellant. The aggrieved appellant company approached the Apex Court, which was required to examine this kind of “remote place injunction seeking trend” and the validity thereof.

By “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.

If the matter is viewed as a contract no part of cause of action has arisen within the jurisdiction of Morvi court. The same principle will be applicable to the suit before the Civil Court (Senior Division), Baroda; more so, in the light of Explanation to Section 20, the appellant-Company having its registered office in Ahmedabad. Therefore, we could expect the court to examine these aspects before granting an interim order. So much for cause of action.

This Court had occasion to lay down the principles governing the grant of injunction in such matters in Morgan Stanley Mutual Fund case (supra). It is stated thus:

“As a principle, ex parte injunction could be granted only under exceptional circumstances. The facts which should weigh with the court in the grant of ex parte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

As to venue restrictions, the observations of this Court Morgan Stanley Mutual Fund (supra) are apposite. Paragraph 50 reads thus:

“As far as India is concerned, the residence of the company is where the registered office is located. Normally, cases should be filed only where the registered office of the company is situated. Courts outside the place where the registered office is located, if approached, must have regard to the following. Invariably, suits are filed seeking to injunction either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The court is approached at the last minute. Could injunction be granted d even without notice...
to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in relation to the fact which should weigh with the court in the grant of ex parte injunction and the rulings of this Court must be borne in mind."

It is not difficult to perceive that all these actions are nothing but attempts by one caucus of persons to baulk the appellant-Company from issuing or dealing with shares or debentures. The action of the respondents calculated to harm the interests of the appellant-Company must be viewed with serious concern and must be totally disapproved.

All the said suits mentioned in TP (C) Nos. 26 to 30 of 1994 will stand transferred to the file of senior most Civil Judge at City Civil Court, Ahmedabad and be tried along with Ahmedabad suit, CS No. 6630 of 1993. The transfer petitions are ordered accordingly.

**LW 68: 10: 2021**

**NATIONAL SPOT EXCHANGE LIMITED vs ANIL KOHLI- RP FOR DUNAR FOODS LTD [SC]**

Civil Appeal No. 6187 of 2019

M.R. Shah & A.Bose, JJ. [Decided on 14/09/2021]

**Insolvency and Bankruptcy Code,2016- section 61-appeals- limitation period – power of NCLAT to condone delay- delay of 44 days in filing appeal- NCLAT refused to condone the delay- whether correct- Held, Yes.**

**Brief facts:**

Feeling aggrieved and dissatisfied with the impugned order dated 05.07.2019 passed by the National Company Law Appellate Tribunal [NCLAT] whereunder the NCLAT has refused to condone the delay of 44 days in preferring the appeal against the order passed by the National Company Law Tribunal (hereinafter referred to as the 'NCLT'), rejecting the claim of the appellant herein, the appellant National Spot Exchange Limited has preferred the present appeal.

**Decision:** Appeal dismissed.

**Reason:**

At the outset, it is required to be noted that the appellant herein has challenged the order passed by the adjudicating authority dated 6.3.2019 affirming the decision of the resolution professional of rejection of the claim of the appellant before the NCLAT. The appeal preferred before the NCLAT was under Section 61(2) of the IB Code. As per Section 61(2) of the IB Code, the appeal was required to be preferred within a period of thirty days. Therefore, the limitation period prescribed to prefer an appeal was 30 days. However, as per the proviso to Section 61(2) of the Code, the Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed 15 days. Therefore, the Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IB Code.

In the present case, even the appellant applied for the certified copy of the order passed by the adjudicating authority on 8.4.2019, i.e., after a delay of 34 days. Therefore, even the certified copy of the order passed by the adjudicating authority was applied beyond the prescribed period of limitation, i.e., beyond 30 days. The certified copy of the order was received by the appellant on 11.04.2019 and the appeal before the NCLAT was preferred on 24.06.2019, i.e., after a delay of 44 days. As the Appellate Tribunal can condone the delay up to a period of 15 days only, the Appellate Tribunal refused to condone the delay which was beyond 15 days from completion of 30 days, i.e., in the present case delay of 44 days and consequently dismissed the appeal. Therefore, as such, it cannot be said that the learned Appellate Tribunal committed any error in not condoning the delay of 44 days, which was beyond the delay of 15 days which cannot be condoned as per Section 61(2) of the IB Code.

It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to genuineness, viz., illness, accident etc. However, under the statute, the Parliament has not carved out any exception of such a situation. Therefore, in a given case, it may cause hardship, however, unless the Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with the Parliament and the legislature. The courts have no jurisdiction and/or authority to carve out any exception. If the courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.

It is also required to be noted that even the learned senior counsel appearing on behalf of the appellant has, as such, fairly conceded that considering Section 61(2) of the IB Code, the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, has requested and prayed to condone the delay in exercise of powers under Article 142 of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body. We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India.

In view of the afore-stated settled proposition of law and even considering the fact that even the certified copy of the order passed by the adjudicating authority was applied beyond the period of 30 days and as observed hereinafore there was a delay of 44 days in preferring the appeal which was beyond the period of 15 days which maximum could have been condoned and in view of specific statutory provision contained in Section 61(2) of the IB Code, it cannot be said that the NCLAT has committed any error in dismissing the appeal on the ground of limitation by observing that it has no jurisdiction and/or power to condone the delay exceeding 15 days.
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CHARTERED SECRETARY

LW 69: 10: 2021

DLF HOME DEVELOPERS LTD v. RAJAPURA HOMES PRIVATE LTD SC

Arbitration Petition (Civil) No. 17 of 2020

N.V.Ramana & Surya Kant, JJ. [Decided on 22/09/2021]

Arbitration and Conciliation Act, 1996- two sets of agreements between the parties- differently worded arbitration clauses- different seats of arbitration- contention as to under which agreement the arbitrator to be appointed- Supreme Court clarifies the principles of the law.

Brief facts:

The Petitioner and then Respondents had two set of agreements with respect to two housing projects. The first set is ‘share purchase agreements (SPAs)’ under which then petitioner transferred the ownership of the housing projects to the Respondents. The second set is the ‘construction management agreements (CMAs)’ under which the petitioner was to complete the construction of the projects for a fee to be paid by the Respondent.

Both these set of agreements had different arbitration clauses. Dispute arose with respect to the payment of fee under the CMAs and the Petitioner invoked the arbitration clause under the CMA, where the venue of arbitration was New Delhi. However, the respondents contended that the dispute arose with respect to the SPAs, where the venue was Singapore.

Decision: Petitions allowed.

Reason:

To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.

Keeping the settled position of law in mind, the foremost question that arises for our consideration is whether the nature of dispute sought to be referred for arbitration in these petitions fall under the Arbitration Clause(s) of RCMA and SCMA, governed by the Arbitration and Conciliation Act, 1996, with the seat and venue for arbitration at New Delhi or such disputes can be arbitrated only in terms of the dispute resolution mechanism specified in Clause 9 of the Rajapura SPA/Southern Homes SPA i.e. under the rules of the Singapore International Arbitration Centre and the seat and venue of the arbitration at Singapore?

Upon perusing the Share Purchase Agreements, it is clear that the primary purpose of these agreements is to effectuate the change of ownership of Respondent No.1 and the Begur Company from DHDL to Resimmo PCC. No doubt, the Rajapura SPA and the Southern Homes SPA as per their Clause 6.1 and 6.2, do provide for the completion of the respective residential projects as a post- closing obligation, however, these construction obligations had to be fulfilled in accordance with the terms of the ‘Construction Agreements’. The very purpose of the RCMA and SCMA was, on the other hand, to operationalise the manner in which the Petitioner-DHDL would achieve the said construction related obligations. The construction agreements not only contemplate the scope of services to be provided by the petitioner but also lays down the obligation on Respondent No.2 to pay “Fee” to the Petitioner-DHDL upon completion of the residential projects.

Prima facie reading of ‘Share Purchase Agreements’ and ‘Construction Management Agreements’, does suggest that notwithstanding certain overlaps between these agreements, their object and field of operation is different and distinct in nature. It is therefore difficult for us to accept it outrightly that the respective Share Purchase Agreements are the ‘principal agreements governing the transaction’ between the parties or that the present disputes can be resolved solely under the arbitration clause contained therein.

27. The dispute sought to be referred to arbitration by the Petitioner DHDL pertains to non-deposit of agreed amount by Respondent No.2 and resultant payment thereof as ‘Fee’ which the Petitioner claims in terms of clause 4 of RCMA/SCMA. Whether or not the Petitioner has complied with the condition precedent under Rajapura SPA and thus has become entitled to ‘fee’ as per clause referred to above, is purely a question of fact to be determined by the Arbitral Tribunal.

We may now briefly deal with the question whether the disputes should be referred to a consolidated and composite tribunal or should there be two different arbitral tribunals to resolve the same. It was urged on behalf of the Petitioner that since the RCMA and SCMA are inextricably interlinked to each other, the dispute/difference cannot be segregated into two separate proceedings. It was pointed out that the obligation of computation/determination and payment of “Fee” to the Petitioner arises out of the SCMA, the RCMA and the Fee Agreement, and under the Fee Agreement, the parties have to calculate the “DLF Receivables”. Such DLF Receivables have to be computed taking into account financial components/accounts of both, the Southern Homes Project and the Rajapura Homes Projects. It was thus submitted that in order to avoid multiplicity of proceedings which may result in conflicting awards, the sum of disputes may be referred to a single and composite arbitral tribunal.
The fact remains that the RCMA and SCMA, though interlinked and connected, are still two separate agreements. We also cannot lose sight of the fact that the case of the Respondent(s) is that the Petitioner has committed breaches under both RCMA as well as SCMA, and that the genesis of the disputes lies in separate and distinct facts. Save where the parties have resolved to the contrary, it would be inappropriate to consolidate the proceedings originating out of two separate agreements. However, since the Fee Agreement provides that the “Fee” can only be calculated after taking into consideration various financial components of both the Rajapurra Homes Projects and the Southern Homes Project, it would be necessary for the sake of avoiding wastage of time and resources, and to avoid any conflicting awards, that the disputes under Arbitration Petition No.17 and Arbitration Petition No.16 are referred to a sole Arbitrator. We leave it to the wisdom of the sole arbitrator to decide whether the disputes should be consolidated and adjudicated under one composite award or otherwise. The modalities and manner in which the two separate arbitral proceedings shall be conducted shall also be resolved by the sole arbitrator.

Decision: Partly allowed.

Reason:

The first aspect in the dispute was whether the first respondent workman was an employee of the second respondent, namely, Bombay Intelligence Security (I) Ltd or an employee of the appellant Hospital.

We have considered these documents but would not like to interfere with the factual findings recorded by the Labour Court, which has been affirmed by the High Court with respect to the engagement of the first respondent by the appellant hospital. It has been explained to us that the first respondent had impleaded the second respondent as a co-respondent in view of the stand taken by the appellant regarding the first respondent’s engagement through the second respondent, which factum was disputed by the first respondent. No doubt, the appellant has also placed before us Annexure P-4, an agreement dated 01.04.2003 between the appellant and the second respondent for engaging contractual workers including 12 ward boys/aya/patient helpers, but this contract states that the payment will be made by the appellant to the second respondent every month within one week from the date of receipt of bill, which if required will be rectified to meet valid objections of the appellant. The reason why we would not like to rely upon the said agreement is that the Labour Court took notice of documents like attendance register/duty chart, copy of the joining report, salary payment register, etc. and then arrived at the conclusion with respect to the employer-employee relationship. The agreement would not by itself be a determinative factor as the first respondent is not a party to the agreement. The factual finding of the Labour Court is comprehensive and requires no interference. Thus, we are unable to accept the first contention of the appellant on the question of employer-employee relationship.

However, on the question of reinstatement and compensation payable, we are inclined to accept the alternative submissions made by the appellant. The appellant is a hospital run by the State Government which requires approval of the State Government for creation of regular posts and for recruitment and appointment. The procedure as prescribed under the relevant extant rules has to be followed. The first respondent has not asserted or claimed that the procedure prescribed was followed for his selection and appointment. On the other hand, the appellant is right in relying upon letter dated 30.03.1999 issued by the Special Secretary, Government of Uttar Pradesh granting permission to appoint 28 workers on contractual basis at the appellant hospital. Thereafter, by another letter dated 29.03.2003, the Assistant Secretary, Government of Uttar Pradesh, had granted approval for 106 posts to be held on contract and creation of 111 posts in the regular pay-scale. With regard to the posts to be filled on contract, fixed salary was payable and no other facility was to be provided to such employees. Before granting further benefits or facilities, approval of the Government was necessary. It is the case of the first respondent that he was appointed on a fixed salary and was neither entitled to nor granted any perks or other facilities. The appellant has placed before us the list of 111 regular posts, which does not include ward boys. On the other hand, the list of 106 contractual posts states that 35 ward boys/maids had to be appointed.

Brief facts:

The appellants, Ram Manohar Lohia Joint Hospital and two others, have filed this appeal taking exception to the order and judgment dated 15.11.2018 whereby Lucknow Bench of the High Court of Judicature at Allahabad has upheld the order dated 20.01.2010 passed by the Labour Court, Lucknow directing reinstatement of the first respondent herein, namely, Munna Saini along with compensation of Rs.20,000/- (rupees twenty thousand only) for the period of unemployment and entitlement to full pay from the date of the said order.
Therefore, the appointment of the first respondent was on contractual basis and not to a regular post on proper selection in terms of the rules. Pertinently, the respondent has not indicated his educational qualifications and whether he has necessary qualifications to work as a nurse or a ward boy. It is also obvious that the contractual term was over. In other words, the first respondent had worked with the appellant during the period September, 2003 to June, 2005. He has not worked thereafter. There is nothing on record to show and establish the appellant had not followed the rule ‘last to come, first to go’. This is neither alleged nor proved.

In view of the facts stated above, it is clear that the first respondent was not a permanent employee but a contractual employee. There is no evidence to establish that the appellant had retained junior workers; such unfair trade practice is not alleged or even argued before us. The first respondent having worked for more than 240 days, termination of his services violated the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Therefore, in the facts of the present case, we modify the order of the Labour Court by setting aside the direction for reinstatement and would enhance the compensation by awarding a lump sum amount.

**LW 71: 10: 2021**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF BHALGORA AREA (NOW KUSTORE AREA) OF M/S BHARAT COKING COAL LTD v. WORKMEN BEING REPRESENTED BY JANTA MAZDOOR SANGH [SC]**

SLP (C) No.29873 of 2016

Sanjay Kishan Kaul & Hrishikesh Roy, JJ. [Decided on 07/09/2021]

Industrial award directing to reinstate with 50% back wages – fraudulent appointment of the workman—whether termination is valid-Held, Yes.

**Brief facts:**

This appeal has been preferred by the Management against the judgement whereby, the Division Bench of the High Court of Jharkhand had set aside the order passed by the learned Single Judge and restored the Award dated 28.09.2005 passed by the Central Government Industrial Tribunal No.1 Dhanbad whereby, the workmen- respondents were directed to be reinstated with 50% back wages.

**Decision:** Appeal allowed.

**Reason:**

In the present case, the Management’s consistent stand has been that it was a case of fraudulent appointment in connivance with the Dealing Assistant and Personnel Manager, who faced disciplinary action for facilitating wrongful appointment. It is also noteworthy that the appellant as a Government Undertaking, is under a statutory obligation under the 1959 Act, to make appointments only through the Employment Exchange. But this was not done in this case for the 38 litigating workmen. The names of the respondent-workmen, as earlier noted, did not figure in either of the two lists relatable to the Employment Exchange. Moreover, the workmen, as can be seen, failed to discharge their burden and took the contradictory stand in a desperate attempt to convey legitimacy to their appointment.

We must also be conscious of the fact that departmental action was taken by the appellant against the errant Personnel Manager and the Dealing Assistant, for their misconduct in facilitating unmerited appointment to the 38 workmen through a fraudulent process. In this regard, usefully it can be noted that the Dealing Assistant and the Personnel Manager were dismissed for their misconduct. For the record, the Dealing Assistant’s dismissal was upheld by the Tribunal on 13.06.2000 in the Reference No.5/97. The dismissal order against the Personnel Manager was although interfered by the High Court but on appeal by the Management, the case was remanded to the High Court for fresh adjudication. Since then, the Personnel Manager has reached the age of superannuation. These would suggest that the appellant pursued the issue of unmerited appointment, both against the facilitators and also the beneficiaries.

In the above perspective, the reference in our opinion, was erroneously answered by the Tribunal, against the Management. In the process, the steps taken by the Management to undo the wrong done by the two delinquent employees to facilitate unmerited appointment, was undeservedly interdicted by the Tribunal.

The learned Single Judge should not have been overruled by the impugned judgment by ignoring the key fact that the appointees did not figure in either of the lists, sponsored by the jurisdictional Employment Exchange and that they were beneficiaries of a fraudulent process. Enough materials were presented to the Tribunal to justify the action against the illegally appointed workmen, and as such the appellants cannot be made to suffer the consequence of the misconduct of their two errant employees against whom, disciplinary actions were taken by the Management. Moreover, the contradictory stand of the workmen at different stage would suggest that they were conscious and aware of being appointed through a non-bona fide process. In any case, the appointments were contrary to the requirements of the 1959 Act.

Fraudulent practice to gain public employment cannot be countenanced to be permitted by a Court of law. The workmen here, having hoodwinked the Government Undertaking in a fraudulent manner, must be prevented from enjoying the fruits of their ill- gotten advantage. The sanctity of public employment, as a measure of social welfare and a significant source of social mobility, must be protected against such fraudulent process which manipulates and corrupts the selection process. Employment schemes floated by the State for targeted groups, can absorb a finite number of workmen. To abuse the legitimate process therefore would mean deprivation of employment benefits to rightful beneficiaries. The Courts as sentinel of justice must strive to ensure that such employment programmes are not manipulated by deceitful middlemen, thereby setting up a parallel mechanism of Faustian Bargain. Often, desperate job aspirants’ resort to such measures to compete for limited vacancies, but this Court cannot condone false projections so as to circumvent the statutorily prescribed procedure for appointments. Such illegal practices must be interdicted by the Courts. For the
brief facts:

This appeal is preferred by the appellant – Bank, aggrieved by the Order dated 25.04.2019 of the High Court of Allahabad. By the aforesaid order, the High Court has quashed the award dated 07.10.1997, passed by the Central Government Industrial Tribunal– cum—Labour Court so far as it relates to refusal of reinstatement of the respondent with back wages and issued directions, directing the appellants to reinstate the respondent with all consequential benefits.

decision: Appeal partly allowed.

reason:

Order of dismissal was passed by the Bank, alleging involvement of the respondent in the incident relating to burning of relevant Bank records. One Mr. Balak Ram was prime accused in the aforesaid incident, and the respondent being a friend of said Mr. Balak Ram, was suspected on the ground that one of the witnesses namely Mr. Ram Singh, MW-1, examined in the disciplinary proceedings, has deposed that Mr. Balak Ram and others assembled together on the date of incident. The Industrial Tribunal has found that though there was a strong suspicion, but there was no sufficient evidence to prove his misconduct to dismiss from service. The Industrial Tribunal has found that the Bank has lost confidence on the respondent and ordered payment of monetary compensation of Rs.30,000/- in lieu of reinstatement. When the said award was challenged before the High Court, it has found that suspicion, however, high may be, can under no circumstances be held a substitute to legal proof. By further recording a finding that the appellants have not challenged the award passed by the Industrial Tribunal, has allowed the Writ Petition by directing reinstatement with all consequential benefits.

In this case, it is to be noted that the respondent was appointed in the Bank as Clerk–cum– Cashier on 23.09.1985 and he was placed under suspension on 13.02.1989 and dismissed from service vide Order dated 22.08.1991. Including the suspension period, he was in Bank service for about six years before dismissal. Thereafter, he was unsuccessful before the departmental Appellate Authority and the Industrial Tribunal ordered payment of lump sum monetary compensation of Rs.30,000/- in lieu of reinstatement.

The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23.08.2019. During the pendency of these proceedings, the respondent – workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination / dismissal is found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs.15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% per annum, till payment. This Civil Appeal is partly allowed. Order of the High Court dated 25.04.2019 stands modified to the extent indicated above.
a penalty is levied upon the dealer by MSIL. This is called the ‘Discount Control Policy’ of MSIL. It was averred that, as such, a cartel is formed by MSIL within the dealerships, which is a policy of MSIL.

**Decision:** Cease & desist order passed with Penalty.

**Reason:**

In the instant case, the RPM enforced upon the dealers by MSIL has led to denial of benefits to the consumers in terms of competitive prices being offered by MSIL dealers. When all the dealers are controlled by a Discount Control Policy, they are forced to sell the same product at the same price which, to a large extent, eliminates price competition amongst them. As such, due to almost nil intra-brand competition amongst MSIL dealers, the consumers would have had to purchase MSIL vehicles at fixed prices without flexible discounts being offered to them by MSIL dealers, thereby leading to charging of higher prices/denial of discounts in kind, to them. Such arrangements perpetuated by MSIL restricted intra-brand competition amongst MSIL dealers, as it impaired their ability to compete with respect to prices in the sale and distribution of MSIL brand cars. There are numerous instances noted above whereby dealers have offered additional discounts to the MSAs assuming them to be genuine consumers and have been levied financial penalties for their such conduct by MSIL. As such, it is evident that had there been no Discount Control Policy enforced by MSIL, customers of MSIL would have been able to buy MSIL vehicles at lower prices. This has resulted in the denial of benefits to consumers, which would have otherwise been accrued to them in a healthy competitive environment between dealers. The anti-competitive impact of such a practice of MSIL is reinforced by the fact that MSIL has more than 50% market share in the passenger vehicles segment, as observed by the DG.

The Commission, however, is of the view that, imposition and enforcement of RPM by a player like MSIL, having a significant market share, not only thwarts intra-brand competition but also leads to the lowering of inter-brand competition in the passenger vehicles market. When a significant player such as MSIL imposes minimum selling price restrictions in the form of maximum discount that can be offered by the dealers, RPM can decrease the pricing pressure on competing manufacturers. This is more so in case of dealers who may be in an interlocking relationship with multiple manufacturers. When all dealers of MSIL are selling vehicles at similar prices, the prices of MSIL’s vehicle models can be easily comprehended by other players in the market. Being aware of the similar prices of MSIL’s dealers due to prevalence of RPM in the passenger vehicle segment, the other OEMs can easily monitor MSIL’s prices and also factor it in their pricing strategy, thereby softening competition. As such, it relaxes competitive pressure upon them and they can price their competing models accordingly, which due to the prevalence of RPM, may be priced higher than a competitively determined price. This phenomenon creates an obstruction for consumers to avail the benefit of competition in pricing across different brands as well.

It is known that RPM as a practice by multiple manufacturers is conducive for monitoring of tacit collusion among such manufacturers. Higher prices under RPM can exist, even when a single manufacturer imposes minimum RPM. This is more likely in the case of multi-brand dealers who have significant bargaining power because of their ability to substitute one brand with another. Further, this leads to another likely anti-competitive effect of higher prices across all brands even if there is no upstream or downstream conspiracy, because preventing price competition on a popular brand would result in higher prices of competing brands as well, including those that have not adopted RPM. Thus, minimum retail price RPM has the effect of reducing inter-brand price competition in addition to reducing intra-brand competition.

Further, in terms of the factors stated under Section 19(3) of the Act, the impugned agreement/arrangement did not result in accrual of any consumer benefits; rather, the same resulted in denial of benefits to consumers as they were made to pay high prices. Further, the said arrangement/agreement is not resulting in any improvements in production or distribution of goods or provision of services. The arrangement/agreement perpetuated by MSIL also hindered in the distribution of goods and the provision of services in relation to new cars. The arrangement/agreement put in place by MSIL also resulted in creation of barriers to new entrants/dealers in the market as the new dealers would take into consideration restrictions on their ability to compete with respect to prices in the intra-brand competition of MSIL brand of cars. Hence, the arrangement perpetuated by MSIL in fixing the resale price of MSIL brand of cars in the manner, as discussed above, foreclosed intra-brand price competition for its dealers as well as stifled inter-brand competition.

The Commission is, however, of the view that by controlling the dealers’ margin, inter brand competition softens due to ease of monitoring of retail prices by the competitors. This provides the manufacturer more liberty to regulate its own margin freely. Thus, RPM lowers the pressure on the margin of the manufacturer. As such, MSIL may have a motive to indulge in RPM through the Discount Control Policy. Anyhow, motive or mens rea of the alleged violator of Competition Law is of no value or significance.

However, the Commission is of the view that the SOP and SPG put in place by MSIL provide a very clear and detailed description for working of MSIL dealers in terms of services to be rendered to the customers and other pre-sales services. Further, admittedly, these services are also monitored by MSIL through MSAs and the imposition of penalties. As such, considering such detailed guidelines for dealers backed by sanctions, there is very little scope for issues like free riding. All dealers of MSIL are subjected to the SOP/SPG and non-compliance with the same also results in the imposition of penalties. As such, the justification put forth by MSIL, that RPM is required to eliminate the problem of free riding, is not tenable.

Though MSIL has argued that SOP/SPG may not be sufficient to solve the free-riding problem, and neither can they be fully monitored, the Commission observes that even a vertical restraint like RPM may not be the solution to such a problem. Eliminating price competition between dealers may not necessarily incentivize them to pass on the benefit of extra margins to consumers by way of providing better complementary services and it may not necessarily add extra value to complementary services. Nonetheless, in any circumstances, even if a benefit in the form of improved complementary services may be resulting from RPM, the
same does not outweigh the harm caused to the market due to significant reduction in intra-brand competition and softening of inter-brand competition, leading to higher prices for the consumers.

On the basis of the above analysis, the Commission concludes that MSIL not only entered into an agreement with its dealers across India for the imposition of Discount Control Policy amounting to RPM, but also monitored the same by appointing MSAs and enforced the same through the imposition of penalties, which resulted in AAEC within India, thereby committing contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Act.

Having considered the nature of the infringing conduct and the post-pandemic phase of recovery of automobile sector, the Commission takes a considerate view and deems it appropriate to impose a penalty of ₹200 crores (Rupees Two Hundred Crores) only upon MSIL, as against a maximum penalty permissible under the provisions of the Act, which may extend up to ten percent of the average of the turnover of the entity for the last three preceding financial years.

**LW 74: 10: 2021**

**PF DIGITAL MEDIA SERVICES LTD & ORS v. UFO MOVIEZ INDIA LTD & ORS [CCI]**

Case No. 11 of 2020

A.K. Gupta, Sangeeta Verma & B. S. Bishnoi. [Decided on 17/09/2021]

**Competition Act, 2002- section 3- restrictive clauses in dealership agreements- enhancement of market of the associate company - whether restrictive to the detriment of competition- Held, yes.**

**Brief facts:**

In the present case, it has been alleged that UFO Moviez has entered into anti-competitive agreements with CTOs to help and assist the business of Scrabble Digital. It has been alleged that such agreements are in violation of competition law and are aimed at maintaining/enhancing the market for Scrabble Digital.

**Decision:** Investigation ordered.

**Reason:**

The Commission notes that both UFO Moviez and Scrabble Digital are enterprise(s) within the definition of enterprise under Section 2(h) of the Act, in the sphere of respective economic activities that they undertake. Further, Scrabble Digital is stated to be a wholly owned subsidiary of UFO Moviez, which makes them part of the same group, i.e., the UFO Group.

As already stated above, Qube Cinema Technologies, in terms of its internal estimates has quoted a market share in the range of 10-20 percent on the basis of DCE provided to CTOs on lease basis. However, notwithstanding the mismatch between the data provided by the Informant, UFO Moviez and Qube Cinema Technologies, it prima facie appears that UFO Moviez and Qube Cinema Technologies are significant players in the first relevant market. Thus, in the facts and circumstances, it cannot be countenanced at this stage that UFO Moviez holds a position of dominance in the relevant market so delineated.

The Commission, in this regard, observes that dominance of Scrabble Digital is not relevant to be determined as Scrabble Digital only appears to be the beneficiary of alleged anti-competitive practices of its holding company, i.e. UFO Moviez. Further, as UFO Moviez, is prima facie not dominant in the first relevant market as has been observed earlier, it may not be not germane to ascertain the dominance of Scrabble Digital in the second relevant market.

As already discussed above, Qube Cinema Technologies is a significant player in the market and prima-facie enjoys market power. The Commission further notes that prima facie the practice of supplying DCE along with film content and putting fetters on CTOs/distributors/producers on procurement of such content from another entity as aforementioned appears to be in the nature of restrictive tie in arrangement and also resulting in exclusive supply agreement and with elements of refusal to deal with other content providers which has or is likely to violate the provisions of Section 3(4) read with Section 3(1) of the Act. The Commission observes that prima facie this conduct has the potential to cause appreciable adverse effect on competition by thwarting the development of technology and innovation in post-production processing services market in India and also create entry barriers for new players and even stifle the business of the existing players offering such services. It is, thus, imperative for a holistic appreciation in the facts and circumstances of the case that the restraints, if any, imposed by Qube Cinema Technologies in its agreements with the CTOs/distributors/exhibitors may also be looked into through the lens of investigation for alleged contravention of provisions of Section 3(4) read with Section 3(1) of the Act.

In view of the foregoing, the Commission is of the opinion that there exists a prima facie case which requires an investigation by the DG, to determine whether the same has resulted in contravention of the provisions of Section 3(4) read with Section 3(1) of the Act thereof, if any.

With respect to allegations of violation of Section 3(3) (c) of the Act, the Commission is of the prima facie view that UFO Moviez and Scrabble Digital are not engaged in identical/similar trade of goods or provision of services and cannot be said to be competing with each other in the same production chain, and further form part of same group (Scrabble Digital is subsidiary of UFO Moviez). The Commission observes that, as there is no horizontal relationship between UFO Moviez (which is inter alia engaged in provision of Digital Cinema Equipment) and Scrabble Digital (which is engaged in post-production processing services), the provisions of Section 3(3) of the Act may not be attracted.

Accordingly, the Commission directs the Director General (‘DG’) to cause an investigation to be made into the matter and submit the investigation report within a period of 60 days from the receipt of this order.
The Institute of Company Secretaries of India (ICSI), recognizing the need to provide support to its members in developing auditing acumen, techniques and tools and for inculcation of best auditing practices among its members, issued the following Auditing Standards on 6th May, 2019:

- **CSAS-1**: Auditing Standard on the Audit Engagement
- **CSAS-2**: Auditing Standard on Audit Process and Documentation
- **CSAS-3**: Auditing Standard on Forming of Opinion
- **CSAS-4**: Auditing Standard on Secretarial Audit

Above Standards are mandatory from 1st April, 2021 and will bring substantial impact on the quality of audits performed by Company Secretaries and also bring consistency.

The ICSI has also issued Guidance Notes on CSAS-1 to CSAS-4 to facilitate the stakeholders to understand the Standards in its true spirit.

To download the Auditing Standards and Guidance Notes on Auditing Standards, click on the link: [https://www.icsi.edu/auditing-standard/](https://www.icsi.edu/auditing-standard/)

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**CS Nagendra D. Rao**  
President, The ICSI

**CS Vineet K Chaudhary**  
Council Member, The ICSI and  
Chairman, Auditing Standards Committee

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For any queries, please write to us at asb@icsi.edu
EXTENSION OF LAST DATE OF FILING OF COST AUDIT REPORT TO THE BOARD OF DIRECTORS UNDER RULE 6(5) OF THE COMPANIES (COST RECORDS AND AUDIT) RULES 2014

CONSTITUTION OF THE COMPANY LAW COMMITTEE

SWING PRICING FRAMEWORK FOR MUTUAL FUND SCHEMES

RISK MANAGEMENT FRAMEWORK (RMF) FOR MUTUAL FUNDS

CLARIFICATIONS WITH RESPECT TO CIRCULAR DATED APRIL 28, 2021 ON ‘ALIGNMENT OF INTEREST OF KEY EMPLOYEES (‘DESIGNATED EMPLOYEES’) OF ASSET MANAGEMENT COMPANIES (AMCS) WITH THE UNITHOLDERS OF THE MUTUAL FUND SCHEMES’

NOTIFICATION UNDER SECURITIES AND EXCHANGE BOARD OF INDIA (CERTIFICATION OF ASSOCIATED PERSONS IN THE SECURITIES MARKETS) REGULATIONS, 2007

INTRODUCTION OF T+1 ROLLING SETTLEMENT ON AN OPTIONAL BASIS

POSITION LIMITS FOR CURRENCY DERIVATIVES CONTRACTS

AMENDMENT TO SEBI CIRCULAR SEBI/HO/DMS/CIR/P/2017/15 DATED FEBRUARY 23, 2017 ON AMENDMENT PURSUANT TO COMPREHENSIVE REVIEW OF INVESTOR GRIEVANCE REDRESSAL MECHANISM

ALIGNMENT OF INTEREST OF ASSET MANAGEMENT COMPANIES (‘AMCS’) WITH THE UNITHOLDERS OF THE MUTUAL FUND SCHEMES

REVISED GUIDELINES FOR LIQUIDITY ENHANCEMENT SCHEME IN THE EQUITY CASH AND EQUITY DERIVATIVES SEGMENTS
01 Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules 2014

[Issued by the Ministry of Corporate Affairs Vide F.No.01/40/2013-CL-V (Pt.I) dated 27.09.2021. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

Representations have been received from various stakeholders for extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 due to impact of COVID-19 pandemic.

1. In view of the extraordinary disruption caused due to the pandemic, it has been decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the companies is submitted by 31st October, 2021 then the same would not be viewed as violation of rule 6(5) of Companies (cost records and audit) Rules, 2014. Consequently, the cost audit report for the financial year ended on 31st March, 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company. However, in case a company has got extension of time for holding Annual General Meeting under section 96(1) of the Act then e-form CRA-4 may be filed within the timeline provided under the proviso to rule 6(6) of the companies (Cost Records and Audit) Rules, 2014.

2. This issues with the approval of the competent authority.

ATMA SAH
Joint Director

02 Constitution of the Company Law Committee

[Issued by the Ministry of Corporate Affairs Vide F. No. 2/1/2018-CL-V dated 23.09.2021. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In continuation of the Order of even no. dated 18.09.2019 and order of even no. dated 17.09.2020 (annexed herewith), the tenure of the Company Law Committee is hereby further extended by one year from the date of expiry of the last order i.e. till 16.09.2022.

1. This issues with the approval of the competent authority.

PRANAY CHATURVEDI
Deputy Director

03 Swing pricing framework for mutual fund schemes

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/IMD-IMD-II DOF3/P/CIR/2021/631 dated 29.09.2021]

SEBI floated a consultation paper on introduction of swing pricing framework for mutual fund schemes. Pursuant to the feedback received on the said consultation paper and subsequent deliberations in the Mutual Fund Advisory Committee (MFAC), it has been decided to introduce swing pricing framework for open ended debt mutual fund schemes (except overnight funds, Gilt funds and Gilt with 10-year maturity funds).

Under this framework, to begin with, the swing pricing framework will be made applicable only for scenarios related to net outflows from the schemes. The framework shall be a hybrid framework with:

a. a partial swing during normal times and
b. a mandatory full swing during market dislocation times for high risk open ended debt schemes.

I. Swing pricing for normal times

a. For normal times, the swing pricing framework is stipulated as under:

i. AMFI shall prescribe broad parameters for determination of thresholds for triggering swing pricing which shall be followed by the AMCs. AMFI shall also prescribe an indicative range of swing threshold to the industry for normal times.

ii. Additionally, AMC may be allowed to have other parameters, if it desires so, considering the nature and characteristics of the mutual fund scheme.

iii. For normal times, AMCs shall decide on the applicability of swing pricing and the quantum of swing factor depending on scheme specific issues.

iv. All of the above shall be disclosed by the AMC in its Scheme Information Document (SID).

b. AMCs may, if they desire so, implement the swing pricing framework for normal period, after incorporating clauses pertaining to the same in their SIDs and the same shall be considered as a Fundamental Attribute Change of the scheme in terms of regulation 18(15A) of SEBI (Mutual Fund) Regulations, 1996.

BITHIN MAHANTA
General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

04 Risk Management Framework (RMF) for Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/ HO/IMD-IMD-1 DOF2/P/CIR/2021/630 dated 27.09.2021]

1. In order to ensure that mutual funds render, at all times, high standards of service, exercise due diligence, ensure proper care in their operations and to protect the interests of investors, SEBI vide Circular No. MFD/CIR/15/19133/2002, dated September 30, 2002 prescribed certain systems,
procedures and practices that must be followed by all mutual funds with regard to risk management in various areas like fund management, operations, customer service, marketing and distribution, disaster recovery and business contingency, etc.

2. Since the date of issuance of the aforesaid circular, there have been significant developments in the mutual fund industry and in the financial markets as a whole, including in the area of product innovation, investment in newer asset classes, distribution landscape, technological evolution, investor penetration and awareness, increase in risk elements, etc. Accordingly, it has been decided to review the extant Risk Management Framework for Mutual Funds. The matter was deliberated in the Mutual Funds Advisory Committee (MFAC) based on the inputs received from the mutual fund industry. The recommendations of MFAC have been suitably incorporated in the Risk Management Framework for mutual funds.

3. With the overall objective of management of key risks involved in mutual fund operation, the revised Risk Management Framework (RMF) shall provide a set of principles or standards, which inter alia comprise the policies, procedures, risk management functions and roles & responsibilities of the management, the Board of AMC and the Board of Trustees.

4. The detailed RMF for mutual funds are placed at Annexure-A.

5. The elements of RMF, wherever applicable, have been segregated into ‘mandatory elements’ which should be implemented by the AMCs and ‘recommendatory elements’ which address other leading industry practices that can be considered for implementation by the AMCs, to the extent relevant to them.

6. AMCs shall perform a self-assessment of their RMF and practices and submit a report, thereon, to their Board along with the roadmap for implementation of the framework. The aforesaid exercise must be completed and the necessary systems must be in place at the AMCs to enable compliance with the provisions of this circular with effect from January 01, 2022. The Circular No. MFD/CIR/15/19133/2002, dated September 30, 2002 on “Risk Management System” shall be rescinded with effect from January 01, 2022. The Circular No. MFD/CIR/2021/582 dated June 25, 2021 shall remain unchanged.

7. Compliance with the RMF should be reviewed annually by the AMC. Reports of such reviews shall be placed before the Board of AMC and Trustees for their consideration and appropriate directions, if any. Trustees may forward the findings and steps taken to mitigate the risk along with their comments to SEBI in the half-yearly trustee reports.

8. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HRUDA RANJAN SAHOO
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in
2. The Portfolio Managers shall ensure that all such associated persons who are principal officers or employees having decision making authority related to fund management as on the date of this notification obtain the certification by passing the NISM-Series-XXI-B: Portfolio Managers Certification Examination within two years from the date of this notification:

Provided that a Portfolio Manager, who engages or employs any such associated person who is a principal officer or an employee having decision making authority related to fund management, after the date of this notification, shall ensure that such person obtains certification by passing the NISM-Series-XXI-B: Portfolio Managers Certification Examination within one year from the date of their employment.

3. This notification shall come into force on the date of its publication in the Official Gazette.

**Notification under Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007**

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD2/DCAP/P/CIR/2021/628 dated 07.09.2021]

In terms of Regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with sub-regulation (11) of regulation 23 of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, the Board hereby issues the following notification:

1. The associated persons, engaged by a Portfolio Manager as a distributor of the Portfolio Management Services, shall obtain certification from the National Institute of Securities Markets by passing the NISM-Series-XXI-A: Portfolio Management Services (PMS) Distributors Certification Examination as mentioned in the communiqué No. NISM/Certification/Seires-XXI-A:Portfolio Management Services (PMS) Distributors Certification Examination/2021/01 dated February 16, 2021 issued by the National Institute of Securities Markets.

2. The portfolio managers shall ensure that all such associated persons who are distributors of the Portfolio Management Services as on the date of this notification obtain the certification by passing the NISM-Series-XXI-A: Portfolio Management Services (PMS) Distributors Certification Examination within two years from the date of this notification:

Provided that a portfolio manager, who engages or employs any such associated person who is a distributor of the Portfolio Management Services, after the date of this notification, shall ensure that such person obtains certification by passing the NISM-Series-XXI-A: Portfolio Management Services (PMS) Distributors Certification Examination within one year from the date of their employment:

Provided further that an associated person, who being a distributor of the Portfolio Management Services, has obtained any of the following registration/certification as on the date of this notification:

a) valid AMFI Registration Number (ARN)
b) NISM Series-V-A exam certification

shall be exempted from the requirement of obtaining certification by passing the NISM-Series-XXI-A: Portfolio Management Services (PMS) Distributors Certification Examination till the validity of the said registration/certification.

3. This notification shall come into force on the date of its publication in the Official Gazette.

**Introduction of T+1 rolling settlement on an optional basis**

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD2/DCAP/P/CIR/2021/628 dated 07.09.2021]

1. SEBI, vide circular no. SMD/POLICY/Cir - /03 dated February 6, 2003, shortened the settlement cycle from T+3 rolling settlement to T+2 w.e.f. April 01, 2003.

2. SEBI has been receiving request from various stakeholders to further shorten the settlement cycle. Based on discussions with Market Infrastructure Institutions (Stock Exchanges, Clearing Corporations and Depositories), it has been decided to provide flexibility to Stock Exchanges to offer either T+1 or T+2 settlement cycle.

3. Accordingly, a Stock Exchange may choose to offer T+1 settlement cycle on any of the scrips, after giving an advance notice of at least one month, regarding change in the settlement cycle, to all stakeholders, including the public at large, and also disseminating the same on its website.

4. After opting for T+1 settlement cycle for a scrip, the Stock Exchange shall have to mandatorily continue with the same for a minimum period of 6 months. Thereafter, in case, the Stock Exchange intends to switch back to T+2 settlement cycle, it shall do so by giving 1-month advance notice to the market.

5. Any subsequent switch (from T+1 to T+2 or vice versa) shall be subject to minimum period and notice period as mentioned in Para 4 above.

6. There shall be no netting between T+1 and T+2 settlements.

7. The settlement option for security shall be applicable to all types of transactions in the security on that Stock Exchange. For example, if a security is placed under T+1 settlement on a Stock Exchange, the regular market deals as well as block deals will follow the T+1 settlement cycle on that Stock Exchange.

8. The provisions of this circular shall come into force with effect from January 01, 2022.

9. Stock Exchanges, Clearing Corporations and Depositories are directed to take necessary steps to put in place proper
systems and procedures for smooth introduction of T+1 settlement cycle on optional basis, including necessary amendments to the relevant bye-laws, rules and regulations.

10. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

11. This circular is available on SEBI website at www.sebi.gov.in at “Legal Framework→Circulars”.

SUDEEP MISHRA
General Manager

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD2_DCAP/P/CIR/2021/626 dated 07.09.2021]

1. SEBI vide circular CIR/MRD/DP/20/2014 dated June 20, 2014 inter alia prescribed the position limits in permitted currency pairs. Based on feedback received from Stock Exchanges/ Clearing Corporations and upon a review of the same, it has been decided to revise the client level position limits, per stock exchange, as follows:

<table>
<thead>
<tr>
<th>Currency Pair</th>
<th>Position limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD-INR</td>
<td>Gross open position across all contracts shall not exceed 6% of the total open interest or USD 20 million, whichever is higher.</td>
</tr>
<tr>
<td>EUR-INR</td>
<td>Gross open position across all contracts shall not exceed 6% of the total open interest or EUR 10 million, whichever is higher.</td>
</tr>
<tr>
<td>GBP-INR</td>
<td>Gross open position across all contracts shall not exceed 6% of the total open interest or GBP 10 million, whichever is higher.</td>
</tr>
<tr>
<td>JPY-INR</td>
<td>Gross open position across all contracts shall not exceed 6% of the total open interest or JPY 400 million, whichever is higher.</td>
</tr>
</tbody>
</table>

2. The revised position limits shall also apply to Non Resident Indians (NRIs) and Category II FPIs that are individuals, family offices, and corporates. The circular(s) SEBI/HO/MRD/DP/CIR/P/2017/63 dated June 28, 2017 and CIR/MRD/DP/20/2014 dated June 20, 2014 read with SEBI circular IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019 shall stand modified to the extent mentioned above.

3. The position limits for Category I FPIs and Category II FPIs (other than individuals, family offices, and corporates) shall continue to remain the same as specified vide SEBI circular CIR/MRD/DP/20/2014 dated June 20, 2014 read with SEBI circular IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019. All other conditions as specified vide earlier SEBI circulars shall also remain unchanged.

4. Stock Exchanges/ Clearing Corporations may specify additional safeguards/ conditions, as deemed fit, to manage risk and to ensure orderly trading.

5. The provisions of this circular shall come into force with immediate effect.

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

7. This circular is available on SEBI website at www.sebi.gov.in under the category "Circulars".

SUDEEP MISHRA
General Manager

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD1/ICC1/CIR/P/2021/625 dated 02.09.2021]

1. SEBI issued a Circular SEBI/HO/DMS/CIR/P/2017/15 dated February 23, 2017 on Amendment pursuant to comprehensive review of Investor Grievance Redressal Mechanism.

2. Pursuant to representation received from the stock exchanges, the following paragraphs of the aforesaid circular stands modified/replaced as under:

A. Clause 1.H. is replaced as under:

“1.H. Place of arbitration / appellate arbitration

In case award amount is more than Rs. 50 lakh (Rs. Fifty lakh), the next level of proceedings (arbitration or appellate arbitration) may take place at the nearest metro city, if desired by any of the party involved. The additional statutory cost for arbitration, if any, to be borne by party desirous of shifting the place of arbitration.”

B. Clause 1.J. is modified as under:

“1.J. Speeding up grievance redressal mechanism

“(v) In all cases except the additional fees charged from the trading members, if the claim is filed beyond the timeline prescribed in column 3, (only for member), on issue of the arbitral award the stock exchange shall refund the deposit to the party in whose favour the award has been passed.

(vi) The additional fees charged from the trading members, if the claim is filed beyond the timeline prescribed in column 3, (only for member), if any, to be deposited in the IPF of the respective Stock Exchange.”

NIRDOSH RAJAN MINZ
Deputy General Manager

Complete details are not published here for want of space. For complete notification readers may log on to www.sebi.gov.in
Alignment of interest of Asset Management Companies (‘AMCs’) with the Unitholders of the Mutual Fund Schemes

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD-IDOF5/P/CIR/2021/624 dated 02.09.2021]

1. Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2021 (‘MF Amendment Regulations’) was notified on August 05, 2021 (https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-mutual-funds-second-amendment-regulations-2021_51695.html) and the provisions of the said Regulations will come into force on the 270th day from the date of notification.

2. As per the amended regulations i.e. sub-regulation 16(A) in Regulation 25 of SEBI (Mutual Funds) Regulations, 1996 (‘MF Regulations’), asset management companies (‘AMCs’) are required to invest such amount in such scheme(s) of the mutual fund, based on the risk associated with the scheme, as may be specified by the Board from time to time.

3. Accordingly, it is decided that based on the risk value assigned to the scheme(s), in terms of SEBI circular no. SEBI/HO/IMD/DF3/CIR/P/2020/197 dated October 5, 2020, AMCs shall invest minimum amount as a percentage of assets under management (‘AUM’) in their scheme(s) as provided in the Annexure.

4.1. The Stock Exchange shall introduce liquidity enhancement schemes on any security. Once the scheme is discontinued, the scheme can be re-introduced on the same security).

3. The above will also be applicable to existing schemes. Other conditions prescribed in aforesaid SEBI Circular dated April 23, 2014 shall remain unchanged.

4. Stock exchanges are directed to:

4.1. take necessary steps and put in place necessary systems for implementation of the above.

4.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.

4.3. bring the provisions of this circular to the notice of the stock brokers/trading members of the stock exchanges and also disseminate the same on its websites.

5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with Section 10 of Securities Contracts (Regulation) Act, 1956, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. This circular is available on SEBI website at www.sebi.gov.in.

AMIT KAPOOR
General Manager

Revised guidelines for Liquidity Enhancement Scheme in the Equity Cash and Equity Derivatives Segments

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DSA/CIR/P/2021/623 dated 01.09.2021]

1. SEBI vide circular CIR/MRD/DP/14/2014 dated April 23, 2014 permitted stock exchanges to introduce liquidity enhancement schemes in the equity cash and equity derivatives segments to enhance liquidity in illiquid securities.

2. Based on the experience of stock exchanges, it has been decided to modify clause 3.1 and 4.1 of said Circular as under:

“3.1 The Scheme shall have prior approval of the Governing Board of the Stock Exchange which will be valid for one year. The Governing Board of the Stock Exchange may give yearly approval till the time the scheme is in operation. Further, its implementation and outcome shall be monitored by the Governing Board at quarterly intervals.

4.1. The Stock Exchange shall introduce liquidity enhancement schemes on any security. Once the scheme is discontinued, the scheme can be re-introduced on the same security).

AMIT KAPOOR
General Manager

“This is a book that can be a light read for self-development and reflection, as also a reference book for educational courses on corporate ethics”

Prof. Nathan Subramaniam, Director, Institute of Public Enterprise Hyderabad.

“The book is indeed a mirror for keeping in constant scrutiny our personal value system, the very core of any good manager”

Krishan Kalra, President (1998-99), All India Management Association New Delhi.
The Quality review Board (Board) of ICSI has been constituted by the Ministry of Corporate Affairs to make recommendations to the Council with regard to the quality of services provided by the members of the Institute; to review the quality of services provided by the members of the Institute including secretarial services; and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

With a view to carry out the above mentioned functions, the Board contemplates to avail the services of senior members of the profession as Quality Reviewers to assess the quality of services being rendered by Company Secretaries both in practice and in employment.

**Revised Eligibility criterion for Quality Reviewers—**

A Quality Reviewer shall fulfil the criteria mentioned in para I or para II:-

I. An individual desiring to be empanelled:
   a) Be a Fellow member of ICSI; and
   b) Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company; and
   c) Be currently in practice of the profession of company secretaries.”

II. An individual desiring to be empanelled
   a) Be empanelled Peer Reviewers and has completed minimum 5 assignments of Peer Review

The Board assigns review of Quality of services rendered by the members to Quality Reviewers.

For payment terms and other details please refer to Terms of Reference for Quality Reviewers available at https://www.icsi.edu/qrboard/home/

Interested persons may kindly apply in the enclosed format and send it through e-mail to qrb@icsi.edu

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**Congratulations**

ICSI congratulates **CS A. Sekar** on being appointed as “Industry Expert” on the Board of Studies of the Finance Department of “Mithibai College of Arts, Chauhan Institute of Science & Amrutben Jivanlal College of Commerce and Economics”, the flagship institute of Shri Vile Parle Kelavani Mandal (SVKM) and a premier educational institution in Mumbai, which also happens to be an autonomous university.

The Institute wishes him all the very best in his role as “Industry Expert” and considers this to be a recognition of the potential of the contribution that the CS profession can make in the field of academics and research and a source of motivation to younger members in the profession to achieve excellence.
PROFORMA FOR INCLUSION OF NAME IN THE PANEL OF “QUALITY REVIEWERS” CONSTITUTED UNDER THE AEGIS OF “QUALITY REVIEW BOARD”

To,
Quality Review Board
The Institute of Company Secretaries of India
ICSI House
22, Institutional Area, Lodi Road
New Delhi - 1100 003

1. Applicant's Name Mr/Ms/Dr. (in Capital Letter)
FIRST MIDDLE LAST

2. Father's/Husband's Name Mr. (in Capital Letter)
FIRST MIDDLE LAST

3. Date of Birth (DD MM YYYY)

4. Institute's Membership details:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Membership Number</th>
<th>Month &amp; Year of membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACS details</td>
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<tr>
<td>FCS details</td>
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<td>COP details</td>
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5. Contact details in CAPITAL letters

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<th>Professional</th>
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<tr>
<td>City</td>
<td></td>
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<tr>
<td>State</td>
<td></td>
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<tr>
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<tr>
<td>Phone No With STD Code:</td>
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<tr>
<td>Mobile No.</td>
<td></td>
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<tr>
<td>E-mail Address</td>
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6. Details of academic, professional and Post Membership qualifications (Graduation onwards):

<table>
<thead>
<tr>
<th>Examination Passed</th>
<th>University / Institution</th>
<th>Main subjects, if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Exam</td>
<td>Year</td>
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</table>
7. Current Occupation (indicate major area(s) in which services rendered):
________________________________________________________________________________________________
________________________________________________________________________________________________
________________________________________________________________________________________________

8. Work experience:
Do you possess minimum fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company;  
(Yes/No)

9. Are you empanelled Peer Reviewers who has completed minimum 5 assignments of Peer Review. If yes, please share the below details:  
(Yes / No)

   a. Peer Reviewer Code: ___________

   b. Details of the Peer Review done:

<table>
<thead>
<tr>
<th>Sl. no.</th>
<th>Name of the Practice Unit</th>
<th>Year of Review</th>
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<tbody>
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</table>

Please add separate sheet, if required.

10. Details of Post Qualification Experience in Employment/Practice (if require, attach separate sheet)

<table>
<thead>
<tr>
<th>Name of the Employer/s</th>
<th>Designation</th>
<th>Professional Experience</th>
<th>Work Assigned / Performed</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

11. Are you member of Council / Regional Council / Managing Committee of Chapter, if yes; please provide the details:
________________________________________________________________________________________________
________________________________________________________________________________________________
________________________________________________________________________________________________

12. Other professional achievements, if any:
________________________________________________________________________________________________
________________________________________________________________________________________________
________________________________________________________________________________________________
________________________________________________________________________________________________
13. Whether any penal action under any law has been taken/pending against you during last 5 financial years and/or thereafter? (Yes/No)

If yes, please give details thereof:
________________________________________________________________________________________________
________________________________________________________________________________________________
________________________________________________________________________________________________

14. Whether you have been charged for any criminal proceedings / cognizance of offence. (Yes/No)

If yes, please give details thereof:________________________________________________________________________________________________
________________________________________________________________________________________________
________________________________________________________________________________________________

I hereby declare that the information given above is true and correct to the best of my knowledge and belief and that nothing has been concealed therefrom.

Place:

Date:  

(Signature)

(Name_________________________________)  

For Office Use Only:

1. Whether complete information in the prescribed format is given:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a. a Fellow member of ICSI</td>
<td>Yes</td>
</tr>
<tr>
<td>b. Possess at least fifteen years of post-membership experience as Company Secretary in Practice or employment in the Secretarial Department of a Company or as a combination of practice and employment in the Secretarial Department of a Company</td>
<td>Yes</td>
</tr>
<tr>
<td>c. Be currently in practice of the profession company secretaries</td>
<td>Yes</td>
</tr>
<tr>
<td>d. Empanelled Peer Reviewers who has completed minimum 5 assignment of Peer Review</td>
<td>Yes</td>
</tr>
</tbody>
</table>

2. Whether all other applicable points of the form have been filled:

Yes ☐  No ☐

If no, give details______________________________________________________________
____________________________________________________________________________

3. Whether applicant is to be considered for allotment of reviews:

Yes ☐  No ☐

Remarks______________________________________________________________
____________________________________________________________________________

4. Reference No. allotted ………………………………………
NEWS FROM THE INSTITUTE

- MEMBERS RESTORED DURING THE MONTH OF AUGUST 2021
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF AUGUST 2021
- ATTENTION
- CHANGE / UPDATION OF ADDRESS
- RESTORATION OF MEMBERSHIP
- RESTORATION OF CERTIFICATE OF PRACTICE
- ATTENTION MEMBERS
- OBITUARIES
- LIST OF PRACTICE UNITS PEER REVIEWED / CERTIFICATE ISSUED DURING SEPTEMBER 2021
MEMBERS RESTORED DURING THE MONTH OF AUGUST 2021

<table>
<thead>
<tr>
<th>SL. NO</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CS PRADIP KUMAR GHOSH</td>
<td>ACS - 5529</td>
<td>EIRC</td>
</tr>
<tr>
<td>2</td>
<td>CS CHARUL PAHUJA</td>
<td>ACS - 22598</td>
<td>NIRC</td>
</tr>
<tr>
<td>3</td>
<td>CS SARIKA GANDHI</td>
<td>ACS - 26452</td>
<td>SIRC</td>
</tr>
<tr>
<td>4</td>
<td>CS SANIA IMTIAZ SURVE</td>
<td>ACS - 33428</td>
<td>WIRC</td>
</tr>
<tr>
<td>5</td>
<td>CS PREETI S NAIR</td>
<td>ACS - 34802</td>
<td>NIRC</td>
</tr>
<tr>
<td>6</td>
<td>CS P K VENKATA SUBRAMANIAN</td>
<td>ACS - 22089</td>
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<tr>
<td>7</td>
<td>CS PRIYA SHARMA</td>
<td>ACS - 40978</td>
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</tr>
<tr>
<td>8</td>
<td>CS CHETAN MALIK</td>
<td>ACS - 12494</td>
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<td>9</td>
<td>CS RAJESH WALIA</td>
<td>ACS - 19549</td>
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<td>10</td>
<td>CS PARUL GUPTA</td>
<td>ACS - 41465</td>
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<td>11</td>
<td>CS AMAN KUMAR</td>
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<td>CS KRISHAN ARORA</td>
<td>FCS - 5100</td>
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<td>CS MUKESH MANGLIK</td>
<td>FCS - 938</td>
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<td>14</td>
<td>CS ASHISH KUMAR SACHDEVA</td>
<td>ACS - 16444</td>
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<td>15</td>
<td>CS RAKESH PODDAR</td>
<td>ACS - 17737</td>
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<td>CS PRAKRATI AGARWAL</td>
<td>ACS - 18229</td>
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<td>CS PURNIMA BHALLA</td>
<td>ACS - 31554</td>
<td>NIRC</td>
</tr>
<tr>
<td>18</td>
<td>CS PREETI SINGH</td>
<td>ACS - 42881</td>
<td>NIRC</td>
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<tr>
<td>19</td>
<td>CS MANOJ KUMAR</td>
<td>ACS - 20503</td>
<td>NIRC</td>
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<tr>
<td>20</td>
<td>CS RAJESWARI VENKATESAN</td>
<td>ACS - 17586</td>
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<tr>
<td>21</td>
<td>CS SUSHIL KUMAR RATHI</td>
<td>ACS - 12960</td>
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CHANGE / UPDATION OF ADDRESS

The members are requested to check their professional and residential addresses and make changes, if any, online through Member Login following the given below steps:

- Login to portal www.icsi.edu
- Click Online services in the Menu and then click on Member
- Fill the User name: Enter your membership number (e.g. A1234) and Password. In case a member does not have/remember his/her password, he/she can get the password by clicking on the "Retrieve Password" option. The password will be sent to his/her email/mobile registered with the Institute. Alternatively, he/she may send email at member@icsi.edu from his/her email registered with the Institute to get the password on the said email id.
- After login, go to Members Option then click on Manage Account
- Then click on Change of Address and professional/residential option and click Go button
- Then make changes required and Click on Submit.

Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date

RESTORATION OF MEMBERSHIP

The members can restore their membership online only by making an application in Form BB (available on the website of the Institute www.icsi.edu) together with payment of the annual membership fee for the year 2021-2022 including GST@18% (Associates admitted on or after 1-4-2020 – Rs. 1770/-, Associates admitted till 31-03-2020 – Rs. 2950/- and Fellow – Rs. 3540/-) with the entrance fee of Rs. 2360/- and restoration fee of Rs. 295/-.

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* Fee inclusive of applicable GST@18%.

MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute’s website www.icsi.edu. Payment made through any other mode will not be accepted.

For specific assistance raise a ticket at http://support.icsi.edu
RESTORATION OF CERTIFICATE OF PRACTICE

The process of Restoration of Certificate of Practice is now enabled for the members who could not pay the COP fees by the due date i.e. 30-09-2021.

The certificate of practice fee and restoration fee payable is as follows:

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* Fee inclusive of applicable GST@18%.

** Fee inclusive of applicable GST@18% and applicable as certificate of practice fee is not received by 30th September, 2021

MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute’s website www.icsi.edu. Payment made through any other mode will not be accepted.

For specific assistance raise a ticket at http://support.icsi.edu

ATTENTION MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2021 is available in the Institute on payment of Rs. 295/-* for members and Rs. 590/-* for non-members (*including GST@18%). Request along with payment by way of cheque at par or demand draft payable at New Delhi favouring “The Institute of Company Secretaries of India” may please be sent to Joint Secretary, Directorate of Membership, ICSI House, C-36, Sector-62, Noida - 201309. For queries if any, please write to member@icsi.edu

For specific assistance raise a ticket at http://support.icsi.edu

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following members:

**CS Ashok Kumar** (01.02.1962 – 02.07.2021), a Fellow Member of the Institute from Noida.

**CS Ajit Kumar Dhariwal** (27.05.1950 – 09.04.2021), an Associate Member of the Institute from Mumbai.

**CS G S Ratnakara Rao** (18.11.1936 – 14.01.2019), a Fellow Member of the Institute from Mumbai.

**CS Inder Kumar Gupta** (10.08.1938 – 15.04.2021), a Fellow Member of the Institute from Gurgaon.

**CS P Sundararajan** (01.03.1956 – 08.05.2021), a Fellow Member of the Institute from Chennai.

**CS Anurag Upadhyaya** (16.04.1976 – 24.04.2021), an Associate Member of the Institute from Gurgaon.

**CS Dinesh Kumar Jalan** (23.05.1970 – 30.04.2021), an Associate Member of the Institute from Kolkata.

**CS Alok Sud** (18.07.1959 – 03.03.2021), an Associate Member of the Institute from New Delhi.

**CS Deepak Bhasin** (20.10.1981 – 23.08.2021), a Fellow Member of the Institute from Kanpur.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.
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<th>Sl. No.</th>
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<td>Mr. Rajarshi Ghosh</td>
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<td>2020-21</td>
<td>1487/2021</td>
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<tr>
<td>9</td>
<td>Ms. R. Jalaja</td>
<td>Chennai</td>
<td>2020-21</td>
<td>1488/2021</td>
</tr>
<tr>
<td>11</td>
<td>Ms. R. Pavithra</td>
<td>Chennai</td>
<td>2020-21</td>
<td>1490/2021</td>
</tr>
<tr>
<td>12</td>
<td>Mr. Pramod S.</td>
<td>Bengaluru</td>
<td>2020-21</td>
<td>1491/2021</td>
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<tr>
<td>13</td>
<td>M/s. Komal Thakkar &amp; Co.</td>
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<td>2020-21</td>
<td>1492/2021</td>
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<td>M/s. A. Sachin &amp; Associates</td>
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<tr>
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<td>Mr. Rupinder Singh Bhat</td>
<td>New Delhi</td>
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<tr>
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<td>M/s. Smita Sharma &amp; Associates</td>
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<td>M/s. V. N. Vasani &amp; Associates</td>
<td>Rajkot</td>
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<td>23</td>
<td>M/s. S. Swaminathan &amp; Associates</td>
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<td>30</td>
<td>Mr. Tushar Shridharani</td>
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<tr>
<td>31</td>
<td>Ms. Neha Khunteta</td>
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<td>M/s. Girish Madan &amp; Associates</td>
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<td>1514/2021</td>
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<td>36</td>
<td>Mr. Gopesh Sahu</td>
<td>Kanpur</td>
<td>2020-21</td>
<td>1515/2021</td>
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<tr>
<td>37</td>
<td>M/s. SGP &amp; Associates</td>
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<td>M/s. Chandanbala Jain &amp; Associates</td>
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<td>2019-20</td>
<td>1517/2021</td>
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<td>M/s. Amit K Mangla &amp; Company</td>
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<td>2020-21</td>
<td>1518/2021</td>
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<td>M/s. Ashok P. Pathak &amp; Co.</td>
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<td>1519/2021</td>
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<td>M/s. S. R. Siddheshwar &amp; Co.</td>
<td>Pune</td>
<td>2020-21</td>
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<td>42</td>
<td>M/s. KGS &amp; Company</td>
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<td>2019-20</td>
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<td>43</td>
<td>Ms. Dunna Meena Kumari</td>
<td>Bhilai</td>
<td>2020-21</td>
<td>1522/2021</td>
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<td>M/s. Sandeep V. Walawalkar &amp; Associates</td>
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<td>1523/2021</td>
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<td>M/s. RSVH &amp; Associates LLP</td>
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<td>1524/2021</td>
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<td>M/s. Puneet &amp; Associates</td>
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<td>2020-21</td>
<td>1525/2021</td>
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<td>47</td>
<td>Mr. S. R. Deshpande</td>
<td>Begaun</td>
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<td>1526/2021</td>
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<td>48</td>
<td>M/s. R. S. Bajaj &amp; Co.</td>
<td>Mumbai</td>
<td>2020-21</td>
<td>1527/2021</td>
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</table>
Documents downloadable from the DigiLocker Platform

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon’ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the Digilocker anytime, anywhere.

How to Access:
- Go to https://digilocker.gov.in and click on Sign Up
- You may download the Digilocker mobile app from mobile store (Android/iOS)

How to Login:
- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your Documents digitally:
Members can download their digital ID Card / ACS / FCS / COP certificate(s) by following the steps given below:
1. Log in to https://www.digilocker.gov.in website, go to ‘Issued Documents’ section.
2. Then go to Sub-head ‘Education’ and click on view all.
3. A list will open from which you can select ‘Institute of Company Secretaries of India’.
4. After you click on ‘Institute of Company Secretaries of India’, a screen will open, Click on “ID Card or Membership / COP Certificate” as the case may be.
5. For ID Card, enter your membership number as ACS 12345 / FCS 12345.
6. For membership certificate, select ACS / FCS / COP from dropdown and enter your membership number as 12345 for membership certificate. For COP enter your COP number as 12345.
7. Click download / generate.
8. The ID Card / Membership certificate can be downloaded every year after making payment of Annual Membership fees.

We believe that this initiative shall go a long way in providing ease of access of all documents of our members and rendering them just a click away.
Dear Members/Employees,

As part of our initiatives, we would like to inform you about Bajaj Allianz Life Insurance Co. Ltd., one of India’s leading private life insurers who will be providing you its Bajaj Allianz Life Smart Protect Goal - A Non Linked, Non-Participating, Pure Life Term Insurance Plan.

Key Benefits:

- Dedicated relationship managers to address your queries and do need analysis
- Virtual Policy servicing of your insurance policy

Bajaj Allianz Life Insurance Co. Ltd. will also be able to assist you with your life insurance journey via their innovative tech solutions to enable a virtually assisted sales and service process.

Kindly go through the special value packed offering from Bajaj Allianz Life Insurance Co. Ltd. to help secure the life goals of your loved ones

<table>
<thead>
<tr>
<th>AGE</th>
<th>25 PT - 45 Years PPT - 65 Years</th>
<th>30 PT - 40 Years PPT - 65 Years</th>
<th>35 PT - 55 Years PPT - 75 Years</th>
<th>40 PT - 25 Years PPT - 75 Years</th>
<th>45 PT - 20 Years PPT - 75 Years</th>
<th>50 PT - 15 Years PPT - 75 Years</th>
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<td>Male-₹50 Lakh Life Cover</td>
<td>₹ 5266</td>
<td>₹ 6240</td>
<td>₹ 7917</td>
<td>₹ 10329</td>
<td>₹ 14026</td>
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<td>Male-₹1 Cr Life Cover</td>
<td>₹ 9296</td>
<td>₹ 11211</td>
<td>₹ 14488</td>
<td>₹ 19212</td>
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<td>Female-₹50 Lakh Life Cover</td>
<td>₹ 4751</td>
<td>₹ 5400</td>
<td>₹ 6575</td>
<td>₹ 8326</td>
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<td>₹ 14980</td>
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<tr>
<td>Female-₹1 Cr Life Cover</td>
<td>₹ 8301</td>
<td>₹ 9584</td>
<td>₹ 11884</td>
<td>₹ 15322</td>
<td>₹ 20869</td>
<td>₹ 28537</td>
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</table>

1Above illustration is considering Male & Female | Standard Life | Non-Smoker | Life Cover Variant | Medical Rates | Policy term (PT) | Premium Payment Term (PPT) | Yearly Premium Payment Mode | Premium shown above is inclusive of Goods & Service Tax/any other applicable tax levied and is for illustrative purpose only.

Have us call you

Beware of Spurious Phone Calls and/or Fictitious/fraudulent Offers: ICICI is not involved in activities like selling insurance policies, announcing bonus or investment of premiums. ICICI receives such phone calls are requested to lodge a police complaint.

Risk Factors and Warnings Statements: Bajaj Allianz Life Insurance Company Limited and Bajaj Allianz Life Smart Protect Goal are the names of the company and the product respectively and do not in any way indicate the quality of the product and its future prospects or returns. For more details on risk factors, terms and conditions please refer to brochures & policy documents available at www.bajajallianzlife.com. Bajaj Allianz Life Insurance Company Limited. Lic no: 123, dated 20/06/00,有效 from 21/06/00 to 20/06/26, is regulated by Insurance Regulatory and Development Authority of India. The above offer is underwritten by Bajaj Allianz Life Insurance Company Limited. The purchase of the insurance plan by the members of ICIS is purely on a voluntary basis. ICIS takes no responsibility and has no obligations in relation to the aforementioned policy. ICIS is merely disseminating this information to its members.
The ICSI is pleased to announce the signing of Memorandum of Understanding (MOU) between Balmer Lawrie Co Ltd and the Institute of Company Secretaries of India to offer professional travel services to all the Members, Students and Employees of the ICSI.

**SALIENT FEATURES**

- Personalized access of online Self Booking Tool to all the ICSI Students, Members, Employees. Enhanced security features already incorporated in the tool.

- Provides 100% transparency of Fares & Availability and Facility to book domestic international air tickets directly from our online platforms on real time basis with no hidden costs.

- **Passing of Corporate deal Benefits -**
  - Free Meal Options
  - Free Seat Selection
  - Nominal Cancellation fee.

- No Service fee from Balmer Lawrie on Cancellation of Air tickets.

- Inventory of 400000 domestic hotels and 100000 international hotels, holiday homes at special contracted rates on SBT.

- Arrangement of LTC tickets as per Govt of India guidelines as well as booking LTC holiday packages at special discounted rates.

- Domestic/International holiday packages at special discount rate for ICSI Members, Students and Employees

- VISA facilitation, travel insurance, forex other ancillary services.

- 24x7 call center support services with dedicated key account managers for hassle free consultation, transactions and settlements.

- Digital/Online payment options.
Reconnect with your Alma Mater... The ICSI

- Participate in programmes / seminars / conferences organised by the Institute for continuing professional development.
- Participate in the Institute’s democratic process.
- Get Chartered Secretary - The Journal for Governance Professionals (monthly Journal of the Institute) prospectively.
- ICSI Membership enables entering into new emerging professions such as Insolvency Profession/Registered Valuer.

Take pride being an esteemed CS Professional Restore Your Membership

- You are required to pay the arrears of annual membership fee, entrance fee and membership restoration fee with applicable GST
- 75% concession in annual membership fee for members above the age of seventy years
- Restore your membership online at www.icsi.edu
- Due date for payment of annual membership fee is 1st April, every year
- Online helpdesk http://support.icsi.edu

THE INSTITUTE OF Company Secretaries of India भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE Statutory body under an Act of Parliament (Under the jurisdiction of Ministry of Corporate Affairs)
Restore Your Membership

1. Visit www.icsi.edu
2. Click on Online Services
3. Click on Member
4. Enter your User ID & Password
5. Go to Manage Account (In the Member Tab)
6. Restoration of Old Defaulters Members
7. Upload the duly filled & signed Form BB
8. Proceed for Payment
9. Submit request to update Email ID/Mobile No. at http://support.icsi.edu (attach scanned copy of Photo ID proof)
10. Retrieve Password

Forgot Password?

Is your Email ID & Mobile No. registered with Institute?

Yes or NO

Restoration of membership will be effective from the date of receipt of Form-BB
The Institute of Company Secretaries of India (ICSI) has considered it to be their responsibility to undertake initiatives so as to benefit not just its own members but other stakeholders and the society at large.

Over the years, various schemes have been initiated and collaborations been made by Members of ICSI using their good offices to get discounts for other members on either regional or pan India basis. We are pleased to inform you that all such schemes and initiatives have been brought under one umbrella of ICSI Social Connect and the same have been placed on the ICSI website.

The ICSI Social Connect tab on the website attempts to provide an easy and single point access to information about several welfare schemes of the Institute and their various aspects including eligible beneficiaries, types of benefits, scheme details, etc.

Continuing the trend of synergic advantage through collective bargaining, we would like to expand the benefit base for the members and students of the CS fraternity.

Soliciting your wholehearted support in this endeavour of ours, we earnestly request our members pursuing business activities or providing professional services to realise the mutual benefit of this initiative and connect with us to not just expand their business base but simultaneously connect with this league of professionals.

You may kindly share the details of such discounted deals/offers at member@icsi.edu Please feel free to contact us for any other clarification and information.

All the benefits and discounts under ICSI Social Connect are accessible at:
https://www.icsi.edu/profile/social/
ICSi Signs MoU with Poonawalla Fincorp

Poonawalla Fincorp offers a special loan scheme with affordable interest rate and unmatchable product features for Company Secretaries.

### In Full-Time Employment

**Personal Loan (Unsecured Term Loan):**
Customized solutions based on your need. These include financial support for medical emergency, higher education, home renovation, wedding or dream vacation amongst others.

- **Loan amount:** Min INR 1 Lakh, Max INR 30 Lakh.
- **Processing fee:** Nil for loan up to 36 months.
- **Interest rate:** 9.99% p.a. up to 36 months.
- **Tenure:** Min 12 months, Max 60 months.
- **Processing fee:** Nil for loan up to 36 months.
- **Rate of Interest**:
  - Min 12 months: 9.99% p.a. up to 36 months.
  - Max 60 months: 10.99% p.a. above 36 months.
- **Stability**: 1 year with 2 months’ stability with current employer.

### Practicing Professionals

**Loan for Professionals (Unsecured Term Loan):**
Specially designed loans to help you reach the next level in professional practice or go for business expansion. We also takeover existing high cost loans with clean track.

- **Loan amount:** Min INR 1 Lakh, Max INR 10 Lakh for a member having less than 5 years of experience. Maximum INR 30 lakh for a member having equal to or more than 5 years of experience.
- **Processing fee:** Nil for loan up to 36 months.
- **Rate of Interest**:
  - Min 12 months: 9.99% p.a. up to 36 months.
  - Max 60 months: 10.99% p.a. above 36 months.
- **Stability**: 2 years. Minimum 1 year experience in employment for those members who later on intend to start their own practice.

### Poonawalla Advantage

- No Prepayment Charges
- No Hidden Charges
- Pan India Territory
- 100% Online No Branch Visit
- Hassle Free Process
- Minimum Documentation
- Takeover of high cost existing loans
- Insurance cover for exigency

### Loan in Easy 4 Steps

1. **Apply Online**
2. **Upload documents**
3. **Approval in 24 hrs**
4. **Loan disbursed**

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- customercare@poonawallafincorp.com
- 1800-256-3201

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MISCELLANEOUS CORNER

- GST CORNER
- ETHICS IN PROFESSION
- CG CORNER
- STARTUP INDIA
NOTIFICATIONS AND CIRCULARS

In order to give effect to the recommendations made in the 45th GST Council Meeting held on 17th September, 2021 in Lucknow, Uttar Pradesh under the Chairpersonship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman, the CBIC has issued 2 Central Tax notifications, 7 Central Tax (Rate) notifications, 7 Integrated Tax (Rate) notifications, 7 Union Territory Tax (Rate) notifications and 1 Compensation Cess (Rate) notification. CBIC has also issued 4 circulars.

CENTRAL TAX NOTIFICATIONS

1. **Notification No. 35/2021-Central Tax dated 24.09.2021**

   The Government has amended the CGST Rules, 2017 eighth time in the year 2021 vide Notification No. 35 / 2021 - Central Tax dated 24th September 2021 in order to bring into effect some of the recommendations made in the 45th GST Council Meeting.

   **THE BRIEF OF THE AMENDMENTS IS AS BELOW:**

   I. **Amendment in Rule 59(6) regarding restricting the filing of FORM GSTR-1**

      Rule 59(6) of the CGST Rules amended to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.

      Earlier, the registered person was not allowed to file Form GSTR-1, if he has not furnished the return in Form GSTR-3B for preceding two months. Now, the said period of two months has been reduced to one month.

      *This amendment will come into force w.e.f. January 01, 2022.*

   II. **Amendment in Rule 45(3) for providing relaxation in the requirement of filing FORM GST ITC-04**

      Requirement of filing FORM GST ITC-04 under Rule 45(3) of the CGST Rules has been relaxed as under:

      a. Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months i.e. for April to September & for October to March.

      b. Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually.

      Earlier they were required to furnish it quarterly.

      *This amendment became effective from October 01, 2021.*

   III. **Aadhaar authentication of registration made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.**

      Rule 10B has been inserted after Rule 10A of CGST Rules, 2017 whereby the registered persons (other than the notified persons who are exempt from the requirement of Aadhaar authentication) shall be mandatorily required to undergo Aadhaar authentication of the person mentioned in Table below and of the authorized signatory in order to be eligible for filing-

      - Application for Revocation of cancellation of registration in FORM REG-21 under Rule 23.
      - Refund application in FORM RFD-01 under Rule 89.
      - Refund under Rule 96 of IGST paid on goods exported out of India.

      | S. No. | Organization | Person |
      |-------|-------------|--------|
      | 1.   | Proprietorship Firm | Proprietor |
      | 2.   | Partnership Firm | Any Partner |
      | 3.   | HUF | Karta |
      | 4.   | Company | Managing Director or any Whole Time Director |
      | 5.   | Association of persons or Body of individuals or a Society | Any of the Members of the Managing Committee |
      | 6.   | Trust | Trustee in the Board of Trustees |

      If Aadhaar number has not been assigned to the person required to undergo Aadhaar authentication, such person shall furnish the following identification documents, namely: –

      a. Her/his Aadhaar Enrolment ID slip; and

      b. Bank passbook with photograph, or Voter identity card issued by the Election Commission of India or Passport or Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988)

      Such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

      Consequential amendments have also been carried out in Rule 23, Rule 89 and Rule 96 of the CGST Rules, 2017.

      *The date of the applicability of the above amendments has not been notified yet.*

IV. **Furnishing of Bank account details on GSTN Portal**

   Rule 10A of the CGST Rules, 2017 has been amended whereby after obtaining registration, a registered person is required to upload the details of the bank account which is in his name and obtained on his PAN.

   In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

   *The date of the applicability of the above amendment has not been notified yet.*
V. Insertion of Rule 89(1A) for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid as specified in section 77 of the CGST Act

The new sub-rule lays down that any person, claiming refund under section 77 of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

This amendment became effective from September 24, 2021.

VI. Insertion of Rule 96C pertaining to bank account for credit of refund

Rule 96C has been inserted to provide that for the purposes of Rule 91 (3), Rule 92 (4) and Rule 94 “bank account” shall mean such bank account which is in the name of the applicant and obtained on his PAN.

In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

The date of the applicability of the above amendment has not been notified yet. Source: https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-35-central-tax-english-2021.pdf


Notification No. 36/2021-Central Tax seeks to amend Notification No. 03/2021 dated 23.02.2021 by inserting words, brackets, figure and letter “sub-section (6A) or” after the words “hereby notifies that the provisions of” in Notification No. 03/2021 which means now the provisions of the Section 25(6A) of the CGST Act, 2017 shall not apply to a person who is not a citizen of India, a Department or establishment of the Central Government or State Government, a local authority, a statutory body, a Public Sector Undertaking or a person applying for registration under Section 25(9) of the CGST Act.


<table>
<thead>
<tr>
<th>S. No.</th>
<th>Notification No. &amp; Date of Issue</th>
<th>Subject</th>
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<tbody>
<tr>
<td>2.</td>
<td>07/2021-Central Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.</td>
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<tr>
<td>3.</td>
<td>08/2021-Central Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 1/2017- Central Tax (Rate)</td>
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<td>4.</td>
<td>09/2021-Central Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 2/2017- Central Tax (Rate)</td>
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<tr>
<td>5.</td>
<td>10/2021-Central Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 4/2017- Central Tax (Rate)</td>
</tr>
<tr>
<td>6.</td>
<td>11/2021-Central Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 39/2017- Central Tax (Rate)</td>
</tr>
<tr>
<td>7.</td>
<td>12/2021-Central Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021</td>
</tr>
</tbody>
</table>


INTEGRATED TAX (RATE) NOTIFICATIONS

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Notification No. &amp; Date of Issue</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>06/2021-Integrated Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021.</td>
</tr>
<tr>
<td>2.</td>
<td>07/2021-Integrated Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 09/2017- Integrated Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.</td>
</tr>
<tr>
<td>3.</td>
<td>08/2021-Integrated Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 1/2017- Integrated Tax (Rate)</td>
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<td>4.</td>
<td>09/2021-Integrated Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 2/2017- Integrated Tax (Rate)</td>
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<td>5.</td>
<td>10/2021-Integrated Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 4/2017- Integrated Tax (Rate)</td>
</tr>
<tr>
<td>6.</td>
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<td>12/2021-Integrated Tax (Rate) dt. 30.09.2021</td>
<td>Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021</td>
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**UNION TERRITORY TAX (RATE) NOTIFICATIONS**

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<th>Notification No. &amp; Date of Issue</th>
<th>Subject</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>06/2021-Union Territory tax (rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021.</td>
</tr>
<tr>
<td>2</td>
<td>07/2021-Union Territory tax (rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.</td>
</tr>
<tr>
<td>3</td>
<td>08/2021-Union Territory tax (rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 1/2017- Union territory Tax (Rate)</td>
</tr>
<tr>
<td>4</td>
<td>09/2021-Union Territory tax (rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 2/2017- Union territory Tax (Rate)</td>
</tr>
<tr>
<td>5</td>
<td>10/2021-Union Territory tax (rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 4/2017- Union territory Tax (Rate)</td>
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<tr>
<td>6</td>
<td>11/2021-Union Territory tax (rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 39/2017- Union territory Tax (Rate)</td>
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<tr>
<td>7</td>
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<td>Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021</td>
</tr>
</tbody>
</table>


**COMPENSATION CESS (RATE) NOTIFICATIONS**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Notification No. &amp; Date of Issue</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>01/2021-Compensation Cess (Rate) dt. 30.09.2021</td>
<td>Seeks to amend notification No. 1/2017- Compensation Cess (Rate).</td>
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</tbody>
</table>


**CIRCULARS**

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<thead>
<tr>
<th>S. No.</th>
<th>Circular No. &amp; Date of Issue</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>159/15/2021-GST dt. 20.09.2021</td>
<td>Clarification on doubts related to scope of “Intermediary”</td>
</tr>
<tr>
<td>2</td>
<td>160/16/2021-GST dt. 20.09.2021</td>
<td>Clarification in respect of certain GST related issues II Corrigendum</td>
</tr>
<tr>
<td>3</td>
<td>161/17/2021-GST dt. 20.09.2021</td>
<td>Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017</td>
</tr>
<tr>
<td>4</td>
<td>162/18/2021-GST dt. 25.09.2021</td>
<td>Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act.</td>
</tr>
</tbody>
</table>


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Also, available on Amazon website: [https://www.amazon.in/](https://www.amazon.in/)
Complaints of “Professional or other Misconduct”

The Council of the Institute by notification in Gazette of India has established the Disciplinary Directorate under section 21 of the Company Secretaries Act, 1980 (the Act), headed by the Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

In order to make investigations under the provisions of the Act, the Disciplinary Directorate shall follow such procedure as may be specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. For the purposes of the Company Secretaries Act, 1980, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Ministry of Corporate Affairs in the Gazette of India PART II-Section 3 - sub-section (i), DL-E-10112020-223030, Tuesday, November 10, 2020 has published the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2020 which inter-alia provides for modification in Form I, e-filing of complaints, documents, services of notices, letters, summons etc., conducting e-hearing of cases, and payment of fees, cost, fine etc. through electronic mode.

Accordingly, a complaint under Section 21 of the Company Secretaries Act, 1980 against a member of the Institute or a firm registered with the Institute under the Company Secretaries Regulations, 1980 (the Regulations) can be filed in prescribed Form I, in triplicate before the Director (Discipline) in person or by post or courier or through electronic mode. Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee of Rs. 2500/- as prescribed by the Council through the Company Secretaries Regulations, 1982. The fee shall be paid through electronic mode or in the form of a demand draft. The fee once paid shall not be refunded.

Any written information containing allegation or allegations against a member of the Institute or a firm registered with the Institute under the Regulations, received in person or by post or courier or through electronic mode, by the Directorate, which is not in Form I under the Rules, shall be treated as information received under Section 21 of the Act and shall be dealt with in accordance with the provisions of the rules. Anonymous information received by the Disciplinary Directorate will not be entertained by the Disciplinary Directorate.

Any complaint sent by post or courier or through electronic mode shall be deemed to have been presented to the Director (Discipline) on the day on which it is received in the Disciplinary Directorate or uploaded on portal. Every complaint received by the Directorate shall be acknowledged by electronic mode or through ordinary post together with an acknowledgement number. The Director or an officer or officers authorized by him shall scrutinize the complaints so received. If, on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in the rules. If a complaint, on scrutiny, is found to be defective, including the defects
of technical nature, the Director (Discipline) may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine. However, no additional fee shall be payable if the complaint is resubmitted after rectification of defect. If, the complainant fails to rectify the defects within the time allowed under the Rules, the Director (Discipline) shall form the opinion that there is no prima facie case. If the subject matter of a complaint in the opinion of the Director (Discipline) is substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take further action for clubbing of such cases, as per the provisions of the Company Secretaries Act, 1980 and the Rules.

On receipt of information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct in each case and shall place the same before the Board of Discipline or the Disciplinary Committee, as the case may be, depending upon the Schedule or provision of the Company Secretaries Act, 1980 to which the case relates, for taking further decision by these authorities. Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

Appellate Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) are vested with the powers of civil court for the purposes of an inquiry under the provisions of the Company Secretaries Act, 1980, and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of - (a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; and (c) receiving evidence on affidavit.

CASE STUDY- 1

The Informant has alleged that the Respondent has imparted apprenticeship training to various CS students as a Company Secretary in practice and has signed Training Completion Certificates of two students who have completed their management training with two private companies, as Authorized Signatory for the company. The Respondent has contended that she is in full time practice and do not hold any kind of employment anywhere. However, she was holding position of non-executive director in one company and as a Director-HR Committee in another company.

The Respondent submitted that she has signed Training Completion Certificate as authorized Signatory for the company of two students who have completed their management training with two private companies.

The Respondent submitted that in Practice, they try to make their clients feel fully secure and become ready to take all responsibilities told by them. It’s an unintentional mistake done just to speed up the things and she should have read all the rules and guidelines more carefully and avoided to carry out any non-attestation services to the companies. The Respondent is not associated with them anymore. She will engage any apprentice only with the prior permission of the ICSI and after providing necessary additional information to the Institute. The Respondent apologized and submitted that in future, she will not indulge in any of the activities beyond scope of professional services as company secretary in whole time practice. The Respondent pleaded ‘guilty’ of professional misconduct before the Disciplinary Committee under Rule 18 (8) of the Rules. The Respondent requested for leniency in quantum of punishment. The Disciplinary Committee passed an order of REPRIMAND; and imposed a FINE of Rs. 5,000/- against the Respondent.

CASE STUDY- 2

The Informant has alleged that the Respondent has issued Compliance Certificate dated of a company for the FY 2009-10 without verification of records. The Respondent has certified that the company is maintaining all the Secretarial record and has held five Board meetings in respect of which proper notice(s) were given. While, the Respondent has accepted in one of his statement on oath that he never visited the registered office of the company and the company’s person came with the required documents to his office with regard to holding of Board Meeting.

The Respondent has contended that he has given certificate for the period of one and a half month from the date of incorporation and there were no instance at the point of time which raises and doubt in his mind while issuing the Compliance Certificate. He also submitted that since the matter is too old it is difficult to procure the documents hence, requested to consider the limitation period in terms of Rule 12 of the Rules.

The Disciplinary Committee ruled out the request of the Respondent regarding limitation period and held the Respondent ‘guilty’ of professional misconduct under clause (7) of Part I of Second Schedule to the Act and passed order of REPRIMAND; and imposed a FINE of Rs. 20,000/- against the Respondent.

CASE STUDY- 3

The Respondent was engaged by the Complainant for an assignment for which Rs. 1,95,000/- was transferred to the Respondent’s bank account on January, 2018. But, the Respondent has not completed the assignment. The Respondent has stated that the money was paid towards registration fees and stamp duty and account for money utilized, invoice for his services was sent to the Complainant in June, 2018. The Respondent has further stated that there was delay in execution and accomplishment of the assignment but the grievance of the company has been duly redressed; and delay was due to administrative reasons.

The Disciplinary Committee held the Respondent ‘guilty’ of professional misconduct under clause (10) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 as the Respondent has failed to use the moneys received from the client for the purpose for which it was intended within a reasonable time. The Disciplinary committee passed order of REPRIMAND; and imposed a FINE of Rs. 10,000/- against the Respondent.
The EU Corporate Sustainability Reporting Directive (CSRD) - Sustainability Reporting to the Next Level

In the fast-moving landscape of sustainability reporting, the European Union (EU) has emerged as a front-runner and in doing so, it is making a crucial impact not only in Europe, but across the world. The EU law requires certain large companies to disclose information on the way they operate and manage social and environmental challenges. This helps investors, civil society organisations, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large companies and encourages these companies to develop a responsible approach to business.

Directive 2014/95/EU—also called the Non-Financial Reporting Directive (NFRD)—lays down the rules on disclosure of non-financial and diversity information required by certain large companies.

On April 21, 2021, the European Commission (EC) adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD) that would radically improve the existing reporting requirements of the EU’s Non-Financial Reporting Directive (NFRD). The CSRD covers all relevant Environmental, Social and Governance (ESG) elements and aims to increase investments in sustainable activities across the EU.

TO WHICH ORGANISATIONS DO THE CSRD REQUIREMENTS APPLY?

The proposal will extend the scope of sustainability reporting requirements to all large companies, whether they are listed or not and without the previous 500-employee threshold. This change will result in all large companies being held publicly accountable for their impact on people and the environment.

CSRD REQUIREMENT APPLIES TO

- All ‘Large companies’ (whether listed or not)
- All companies with listed securities on EU-regulated market, except micro-undertakings

An entity will be considered “large” if it exceeds at least two of the following on its balance sheet:

- A net turnover of EUR 40 million or above
- Total assets of EUR 20 million or above
- 250 employees or more on average over the year

HIGHLIGHTS OF CSRD

- The CSRD will cover 49,000 companies, compared to 11,000 under the previous NFRD

All large companies governed by the law of, or established in, an EU member state and all European stock exchange-listed companies (with the exception of micro-companies) are under the scope of the new directive. For global businesses with operations in Europe, these new requirements may apply.

- The CSRD proposal applies double materiality

Double materiality means that businesses must not only disclose how sustainability issues can affect the company, but also how the company impacts society and the environment. The “sustainability information” that will be required to be disclosed will concern at a minimum the following four items from a “double materiality” perspective:

- The CSRD proposal mandates that companies will need to report according to new EU Sustainability Reporting Standards

The European Commission has commissioned the European Financial Reporting Advisory Group (EFRAG) to develop EU Sustainability Reporting Standards. The standards will be mandatory for large companies, while SMEs will benefit from a simplified reporting regime.
**CSRD Audit Requirements**

The CSRD is set to introduce a more complete approach to audit or assurance requirements on non-financial statements. There will be an obligation on the auditor or audit firm to express an opinion about the compliance of the sustainability reporting with Union requirements based on a limited assurance engagement. This opinion must cover the compliance of the sustainability reporting with regard to standards and the methodology used by the reporting entity to identify the information.

**CSRD Publication and Submissions**

The CSRD requires that all information is published as part of companies’ management reports, and disclosed in a digital, machine-readable format.

### CSRD Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
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<tbody>
<tr>
<td>October 31, 2022</td>
<td>First set of European Sustainability Reporting standards expected to be published</td>
</tr>
<tr>
<td>January 1, 2023</td>
<td>In scope large companies shall start reporting under CSRD</td>
</tr>
</tbody>
</table>

The EU plans to adopt the CSRD by the end of 2022. In the meantime, a first set of standards should be adopted by October 2022 and a second set of standards by October 2023 with complementary and sector-specific information. SMEs will have more time to comply. The new Sustainability Reporting Directive is expected to bring resurgence in the arena of sustainability reporting. If we look at its focal points, such as business model and strategy including plans and implementation; sustainability targets and progress made towards achieving those targets; rule of the management and supervisory bodies regarding sustainability etc. it will definitely provide for decision-useful information to both investors and stakeholders at-large, thereby increasing the impact of disclosure and reducing the burden of reporting on companies.

**REFERENCE**:


**ANNOUNCEMENT**

The Institute has adopted the “Green Initiatives in the Corporate Governance” initiated by the Ministry of Corporate Affairs, allowing the companies to send Notices / Documents / Annual Reports and other communications to its shareholders by electronic mode. Accordingly, the Annual Report of the Institute for the Financial Year 2020-21, has been sent to all the members of the Institute through electronic mode on 29th September, 2021. The Annual Report has also been hosted on the website of the Institute on link-

Startup India Hub and International Bridges

Startup India Hub is a one-stop platform for all stakeholders in the Startup ecosystem to interact amongst each other, exchange knowledge and form successful partnerships in a highly dynamic environment. The portal hosts 700+ incubators, 56K+ startups, more than 4640 investors and 40+ government bodies. The number of registered users on the hub is more than 5 lakhs, with the website facilitating approximately 25,000 connects.

The hub has all the information regarding startup ecosystem. Some of the information and data provided includes Partnered Services, Learning and Development Programs, Tools and Templates for basic applications and forms, information regarding marquee programs, startup Schemes and Policies by various departments, information about International Bridges and other pertinent information about the startup ecosystem.

INTERNATIONAL BRIDGES

Startup India enables global market access and knowledge exchange for Indian Startups through bilateral government collaborations with countries like Russia, Korea, Portugal, Japan, Netherlands, Sweden, Finland, Israel and Singapore. These Startup Bridges enable Startups, investors, incubators, accelerators, and aspiring entrepreneurs of both countries to connect with one another and provide them with resources to expand and become globalized Startups. The salient features include Knowledge Exchange, Network opportunities, hosting joint programs and capacity building platform.

These bridges are the crucial first step to evaluate new markets and to assess the expansion opportunities in those markets. We couple these bridges with targeted programs to enable business connections with the relevant stakeholders. For instance, the Indo-Sweden Mentor Connect is one program that enables Indian startups to connect with stakeholders from Sweden, learn about their experiences in that market and assess the market-product fit. We have been able to cumulatively facilitate over 800 startups through such curated programs in their international market expansion journey.

INDIA-JAPAN PARTNERSHIP

The Japan India Startup Hub is an online platform to bridge the gap between Indian & Japanese startup ecosystems and enable meaningful synergies to promote joint innovation in both economies. The Hub was conceptualized as part of a joint statement signed between the Ministry of Economy, Trade, & Industry (Japan) and Ministry of Commerce & Industry (India) on 1st May 2018. Subsequently, multiple activities have been undertaken to strengthen the Indo-Japan partnership.

In furtherance of a concerted vision, Startup India and the Embassy of India, Tokyo, in collaboration with JETRO to provide Indian startups with an exclusive opportunity to explore Japan as a potential business destination. To achieve the same, a focused pitching series was organized for Indian startups to pitch their innovations to Japanese investors and business corporations to explore investment and collaborative strategic business and technical alliances.

Startups selected for the pitching sessions are winners and finalists of the National Startup Awards 2020 organized by the Department for Promotion of Industry and Internal Trade (DPIIT) to recognize and reward outstanding Indian startups. A total of 1,641 Startups participated in the awards. Each of the winning startups have been selected meticulously by various panels of industry experts nominated by DPIIT.

Having had esteemed speakers like H.E Sanjay Kumar Verma, Ambassador of India to Japan, Mona ma’am, Minister E&C as well as Mr. Joshi, Deputy Chief of Missions, the series became a platform for knowledge exchange in addition to the primary purpose of pitching. Sessions were also attended by significant players in the Japanese ecosystem: Deloitte Tohmatsu Financial Advisory, Mitsubishi UFJ Morgan Stanley, Bosch Corporation Toyota Tsusho, Mitsui & Co, and Hitachi among many others.

The impact of the series has been vast and a continued process of facilitation includes:

- Exclusive opportunity to selected 77 NSA startups across 8 sectors
- Between 50-80 stakeholders attended each session
- 243 connects facilitated
- A total of 71 startups (92%) received at least one connect request.
- Quality of Startups at Sessions: Industry 4.0 at 4.4, Health 4.3, Education at 4.1, Agriculture at 4.1

CONCLUSION

The exercise of bridging the gap between different startup ecosystems is essential for the growth of the domestic startup ecosystem. Cross-border knowledge sharing not only benefits economically, but it also provides a glimpse into cultural, socio-economic practices, consumer behavior of various countries. To deep dive into more information about International Bridges please visit: https://www.startupindia.gov.in/content/sih/en/international.html
“Company Law - Procedures & Compliances”

Authored By:  
Dr. Sanjeev Gupta, M.Com, LL.B, Ph.D, FCS

Published by: Bharat Law House Pvt. Ltd., New Delhi

Price: Rs. 4195

Binding: Hard Case Binding

The present 2nd edition titled “Company Law – Procedures and Compliances” is presented in Two Volumes which are very comprehensive and covers all the core chapters and relevant Rules of the Companies Act, 2013 as amended upto 12th July, 2021. Therefore, it’s a very latest edition on the Company Law which covers very significant matters related to the topics which is divided into 44 main topics inclusive of 130 procedures along with 17 references and 10 Appendices.

The References covers the systematic presentation of the exemptions provided by the Central Government to various types and categories of companies; latest provisions relating to the fine and penalty provisions along with the adjudicating and compounding powers as amended by the Companies (Amendment) Act, 2020, list of compliances, register and documents required to be maintained in the tabular form which is expressed in a very simple and easy manner therefore, a layman can understand the requirements of the applicable laws and procedures relating thereto and how to comply with them.

The Author has very systematically provided the contents of the main body of the book and has elaborated thoroughly about 130 procedural aspects as applicable under the Company Law and Rules made thereunder and each procedure therein have been properly divided in sub headings like; procedure with check points, forms to be filed, list of documents, list of information which is required along with the appendix for sample of Board and shareholders resolution, format for applicable correspondences needs to be made, confirmation, declaration, notices, explanatory statements, etc. so that the book provides adequate understanding and helps in drafting the documents and other procedural aspects which help in complying with the applicable law on the company, its directors and professionals, and any other person dealing with the company law matters.

It has been observed that the Author has not covered some of the chapters of the Companies Act, 2013 like, Inspection, Inquiry and Investigation; Compromise, Arrangements and Amalgamations; Prevention of Oppression and Mis-Management; Registered Valuer; Winding up; Producer Companies National Company Law Tribunal; Special Court, etc. Further that the applicable provisions of the SEBI (LODR) Regulations, 2018 viz a viz Companies Act, 2013, which are also relevant and today’s need to be complied with by a listed entity, material subsidiary to a listed entity. I understand that, these chapters are not applicable to a normal and active company, so that the author might have not considered to include the same in the present second edition of the book. I advise to the author that he should cover these chapters in his next edition of the book with three volumes so that it may be considered as a complete book on the Company Law- Procedures and Compliances.

The author has done justice to the subject and covered the generally applicable sections along with the adequate commentary, relevant circulars, notifications, and has also precisely covered various judgements which provides adequate clarity along with the through interpretation for the understanding of the readers, professionals, and other concerned persons.

No doubt that the author has immense knowledge of the Company law and various amendments, and clarifications issued therein. I found all the requirements and procedural part in two volumes of the book which makes it unique and useful for the corporate, Company Secretaries, department executives, director and Key Managerial Persons, Auditors of the companies, shareholders, creditors, investors, and budding law/CS students, etc. It would be equally beneficial for practitioners, teachers and department officers and judges.

I appreciate that the Author has provided valuable contribution in his second edition with his practical knowledge and experience which he gained in the Company Law, therefore, this book will be highly insightful for companies, its directors, which includes professional and independent directors, KMPs, auditors, to analyze their role and make up their mind for further course of action for purpose of understanding, review and absolute compliance as well as to take future proposed action in compliance with the requirement of law in the letter and spirit.

The author is complemented and appreciated for his second edition and I wish him all the success.

CS (Dr.) D.K. Jain

Member of the Editorial Advisory Board
The Institute has been making due efforts to bring out the Chartered Secretary Journal on varied topics and dispatch to all members as per the corresponding address opted by Member in ICSI Membership Database. Nevertheless, we understand that some of our Members/Subscribers are not receiving the journal in time.

As the regular bulk dispatch is done through India Post, there is also a possibility of non-delivery or loss in transit by the Post Office officials at some locations.

While we have been taking steps to minimize the complaints of non-receipt of the journal by checking the Membership database as available @ ICSI and sending e-mails to Members and other stakeholders at regular intervals for keeping database up-to-date owing to change of job or shift of office / residence, if any, we also make efforts to resolve any complaint within 24 hours and sending the replacement copy as per their requirement.

In order to serve the stakeholders with uninterrupted supply of the journal, we request members to check and update their corresponding address, add some more location/landmark for easy access by India Post delivery officials.

Further, we are also sending additional copies of CS Journal to All ICSI Chapter and Regional Offices pan India. Member may also collect copies from nearest Chapter or Regional office in case of non receipt of CS Journal.

For all queries relating to non-receipt of Chartered Secretary, write at the dedicated email  journal@icsi.edu

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Chartered Secretary, a prestigious monthly corporate Journal having a readership of more than 100,000 per month is rated to be one of the best journals for the professionals. The Journal enjoys a revered position amongst its peer journals not only for its thought provoking articles contributed by leading professionals from the Corporate World and the Government, but also other information such as:

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- Important notifications, circulars and clarifications from the Government
- Economic, trade and related events of corporate relevance.
- Information/Events of the Institute
- International best practices, etc., as per the Code Manual
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FULL PAGE (COLOURED)       HALF PAGE (COLOURED)

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PANEL (QTR PAGE) (COLOURED)       EXTRA BOX NO. CHARGES

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