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“Nothing we do can change the past, but everything we do changes the future.”

- Ashleigh Brilliant

Dear Professional Colleagues,

The Institute of Company Secretaries of India while for our stakeholders is represented by the President or the Council members, but in true sense, the Institute as it stands today, is the aggregation of all its past, present and future torchbearers; our forefathers who laid the foundation of this great institution, the members of Team-ICSI who have cemented the walls of this organisation with their conviction and dedication, the members who uphold the spirit of the vision and mission and the students who shall be the future upholders of governance initiatives.

Though these words might sound as a parting speech, but rest assured they only confirm from moments of understanding, both as a member of this magnanimous Institute and those brought forth from the accomplishment of half journey of my presidential tenure. Truly, standing at the midpoint in any venture or journey comes with a much cherished feeling attached to it. It only seems like yesterday when the responsibilities of this office were pinned to my lapel and I had vowed to work with complete diligence in furtherance of the initiatives, vision, mission and motto of this institution.

The Past and Present – ICSI Bi-Annual Report, 2019

The quote above though seems short and sweet but holds deeper meanings plentiful. For us at ICSI, a look into the months gone by seems inevitable to understand the quantum of road travelled and that lying ahead of us...

It is with this intent of gaining a perception of the work done, the initiatives undertaken, the recognitions gained, the footprints placed internationally and even further the success achieved in significant tasks like strengthening discipline, that the need was felt to chalk out a Bi-annual Report of the Institute not only as a document for internal mapping and road crafting but to share with all our stakeholders and apprise them with the dedication and diligence of the institute portrayed in working towards the attaining the best of their interests.

And while each such initiative has been shared with you in that very instant, whether it be social media or other medium of communication, the report aims to provide a comprehensive insight into the performance of the Council and the Team-ICSI in totality to uphold, promote and take forth the torch of the goals and objectives of the institute.

Be it the highest number of participants registered in the National Conference of Practising Company Secretaries or the Launch of a dedicated orientation Programme for the students of Foundation Programme to give them a bioscopic view into the roles and responsibilities of Governance Professionals and the expectations that the Institute and its various stakeholders might have from them once they are ready to profess; the accomplishments have been worth triumphing. The launch of initiatives like UDIN or eCSin to ensure self-governance and pursuing infrastructural expansions for research purposes have all adhered to the 360 degree approach of the ICSI Vision 2022.

Expanding Horizons – Extending outreach

Amidst the discussions at an expansive level, I would like to take this opportunity to share a more recent achievement of the Institute in terms of expanding its horizons by way of strengthening its infrastructural
capabilities and expanding outreach to its various stakeholders. The Institute whilst adding new Chapters in the Northern Region at Patiala (Punjab) and Gorakhpur (Uttar Pradesh), has also revamped and refurbished the existing structures at Ludhiana (Punjab) to meet the ever-expanding needs of the stakeholders of the Institute.

Presiding over inauguration ceremonies at these venues, the thought prevailing was that of opening bigger doors for the members to connect and the students to gather greater learning experiences and it is with this intent that the Institute shall forever attempt to make its presence felt in areas wherein the dots on the map are still missing.

And this expansion spree is not only limited to the Chapters, rather revisiting the existing guidelines for Examination Centres and reducing the parameters pertaining to distance and number of students, the Institute in its attempt to support the students has opened such centres in seven (7) locations in places as far as Imphal (Manipur) and Port Blair (Andaman And Nicobar Islands).

**Arbitration Recognition – New Avenues sighted**

Where on one hand, extending physical boundaries confirms its seat in the list of achievements, another success worth sharing is the recognition gained by the Institute for its members under the Arbitration and Conciliation law. In response to the representations submitted by the Institute to the Ministry of Law and Justice, Company Secretaries have been included in the list of qualifications at par with other professionals in the Eighth Schedule of the Arbitration and Conciliation (Amendment) Bill, 2019 which was passed by the Rajya Sabha on 18th July, 2019. On behalf of the entire professional fraternity, I would like to extend our heartfelt gratitude towards the Ministry of Law and Justice headed by Shri Ravi Shankar Prasad, for this kind consideration.

**Accountability and Responsibility – Discipline reinforced**

Pursuing a professional course and becoming a part of the fraternity is indeed a feeling par ecstatic. And yet the greatest aspect that forms part of being a professional is the humongous set of responsibilities that follow, needless to say the accountability towards the various stakeholders as well. As an institute, while we take pride in being governance professionals ensuring compliance as well as good governance, issues of strained discipline have been brought to light on occasions more than one. And as the great American Author, William Feather puts it, “If we don’t discipline ourselves, the world will do it for us”.

Understanding the need to strengthen the in-house disciplinary mechanism in the Institute, record number of meetings of the Disciplinary Committee of the Institute were held with the commitment to afford to the members speedy, efficient and effective disposal of cases as well as reiterating the accountability of the members of the Institute towards their actions and their responsibilities to affirm to the standards and Code of Conduct metted out by the Institute.

Even further, upholding the need for ethical conduct and integral working the Institute is attempting to develop an online disciplinary portal, to make the process tech-driven.

**The Way Forward**

Akin to the activities of the first half of this year, the intent to cater to the needs of all the stakeholders stands affirmatively in sight for the future path of the Institute in standing true to its vision, mission and motto and realising the aspects of the ICSI Vision of 2022.

While on one hand, the intent is to launch dedicated courses in the arenas of Forensic Audit and Arbitration & Conciliation for the members of the Institute to equip them in utilizing the upcoming opportunities in these arenas to the fullest and hone their existing skill set to suit the ever-altering dynamics of the professional and corporate scenario; similar attempts of upgrading the skills and knowledge of the students shall be made by pursuing collaborations for the purpose of engaging faculty best suited to support the needs of the upcoming brigades of governance professionals.

Focussing on the students once again, it gives me immense pleasure to share that the entire mechanism of providing Study Material has been transformed to reduce the time involved in delivery significantly i.e. from 55 days to 30 days (inclusive of printing and despatch). We, at ICSI, firmly believe that this drastic shrinkage shall save quality time of the students and provide benefit to them in ways more than one.

**Results ahead...**

The month of August, akin to February, has always been of anticipation for those seeing their future in this profession. To all those students expecting their results of the June-2019 Examinations in the days to follow, we wish you all a very best of luck !!! May you all achieve success in your endeavours and prepare yourselves to serve the nation with your very best for as renowned Author Maya Angelou puts it, “Do the best you can until you know better. Then when you know better, do better”.

Happy Reading !!!

Yours Sincerely

CS Ranjeet Pandey
President, ICSI
Recent Initiatives Taken by ICSI

Interaction with Dignitaries
Taking forward our pursuit for exploring opportunities for the profession and also for joint participation in flagship government initiatives, meetings with the following dignitaries were organised:

- Shri Rajnath Singh, Hon’ble Minister of Defence
- Shri Santosh Gangwar, Hon’ble Minister of Labour & Employment
- Shri Bhupender Yadav, Member of Parliament
- Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs
- Shri Jayanti Tari, Commissioner, Labour & Employment, Goa

National PCS Conference
The 20th National Conference of Practising Company Secretaries was organised at Bengaluru on 5th and 6th of July 2019 on the theme “Expanding Dynamics of professional Excellence”. The Conference was attended by over 500 delegates. The Awards for Best Regional Council and Best Chapters for the year 2017 were also presented during the event. Detailed proceedings of the Conference are placed elsewhere in this issue. The event marked the launch of various significant initiatives of the ICSI of the likes of:

- Unique Document Identification Number (UDIN) Portal
- Employee Company Secretary Identification Number (eCSin) Guidelines
- Company Secretary in Practice – Ready Reckoner
- Best Secretarial Audit Report Award
- Revamped ICSI Website
- PCS Portal

Opening of new Chapter of ICSI
With the intent of expanding the brand horizon of ICSI and governance base in all corners of the nation, the Institute recently added another Chapter in the existing list. A new Chapter of the Institute was inaugurated at Patiala on 22nd July, 2019 with the intent of motivating the students not only in the city but its nearby surroundings as well to pursue the course and partner in the achievement of ICSI vision and mission.

Apart from this the existing infrastructure of the Ludhiana Chapter was refurbished to meet the changing needs of the stakeholders therein. The renovated building was inaugurated on 23rd July, 2019.

Opening of two new Study Centres
In an attempt to enhance the infrastructural base of the Institute and to overcome the distance barrier for the students, the Institute of Company Secretaries of India had launched the Study Centre Scheme, the same has been successful in creating the much needed links between the Institute and its stakeholders, especially students. With the aim to provide better facilities to students, the Institute has opened 02 study centres recently to the already existing fleet of 104 Study Centres. In the month of July, 2019, the following study centres have been opened:

- Ananda Chandra College of Commerce, Jalpaiguri (West Bengal)

Convocation – 2019
The first round of bi-annual Convocation of 2019 of the Institute for the Northern Region was successfully held at Chandigarh on 21st July, 2019 for awarding certificate of membership to Associate & Fellow members admitted during the period from 1st October, 2018 to 31st March, 2019. Prizes/Medals were also awarded to meritorious students (National Level).

Renewal of MoU with Chartered Institute for Securities and Investment (CISI), London
MoU between ICSI and CISI, London is extended for further period of three years till March 2022. CS Ranjeet Pandey, President, ICSI and Mr. Kevin Moore, Director, Global Business Development, CISI signed and exchanged the copy of MOU on 15th July 2019.

International Corporate Governance Network (ICGN) Annual Conference-2019
The representatives of Institute participated in the Annual Conference of ICGN, held on 16-18 July, 2019 and ICGN Stewardship and ESG Seminar held on 19th July, 2019 at Tokyo which was hosted by the Tokyo Stock Exchange.

ICSI Certificate Courses
The registration for the 2nd batch of Certificate course on Certified CSR Professionals was open from July 1- 22, 2019. The course received an overwhelming response with more than 500 candidates registering for the course. The course is an online course of 3 months which shall commence in the month of August, 2019.

The registration for 2nd batch of certificate course in Goods and Services Tax in association with BSE Institute Ltd. was open from July 1- 5, 2019. This is an online course of 5 weeks and has commenced w.e.f. 20th July, 2019.

Training Programmes to empanel Peer Reviewers
With a view to ensure that the objectives of the Peer Review are achieved in letter and spirit and the Reviewers are duly equipped with the thorough understanding of the procedure, manner, prescriptions, guidelines and other related aspects of conducting Peer Review, training programmes were organised at Guwahati and Pune on 13th July, 2019 and at Ahmedabad on 26th July, 2019.

ICSI Webinars
In furtherance of its initiatives to provide the members with the right acumen in terms of knowledge and guide them adequately to deal with the ever changing legislative scenario, ICSI has been organising Webinars wherein experts from the profession accompanied by members from regulatory authorities provide appropriate guidance to the professionals acquainting them with not just the facts of the law but also providing possible recourses to the practical issues and challenges faced by them. The following
webinars were organised during the month of July, 2019:
  • ICSI Auditing Standards on 4th July, 2019 at ICSI-HQ, Lodi Road, New Delhi
  • Recent Developments under Companies Act, 2013 (FORM BEN-2 and NFRA-1) on 12th July, 2019 at Kolkata
  • The Companies (Significant Beneficial Owners) Rules, 2018 on 20th July, 2019 at ICSI-HQ, Lodi Road, New Delhi

Workshops and Events in partnership with PHD Chamber
The Institute had played the role of Associate Partner in two workshops organised by PHD Chamber. The details of the same are as follows:
  • Conference on Risk based Internal Audit : Good Governance Advisor on 19th July, 2019
  • GST Conclave on “Important Changes in Customs and GST – Union Budget 2019 and GST Outward Supply - Detailed analysis & discussion on various provisions with relevant Advance Ruling and GSTR-9 & 9C” on 24th July, 2019

Interaction with Invest India
ICSI delegation led by CS Ranjeet Pandey, President, ICSI met Mr. Deepak Bagla, MD & CEO, Invest India on 25th July, 2019. The intent of this meeting with the National Investment Promotion and Facilitation Agency of the Government of India was to explore areas of mutual collaboration for promotion of Investment Opportunities in India.

ICSI Sampark drive
The Institute initiated a drive under the SAMPARK initiative to update the contact details of the members. The process of manual handling of fees of members was done away with and financial discipline was enforced. Through an initiative by hand holding most of the members have now moved to the online platform.

International Commerce Olympiad
This year the Institute will conduct the first ever International Commerce Olympiad on 28th November and 19th December 2019 for the students of Classes 11th and 12th respectively. As an initiative to spread Awareness about the CS Course and profession in the schools of the winners of the CS Olympiad, the Institute has conducted 22 Career Awareness Programmes across India, while giving away the cash prizes and ICSI Citations to Zonal Winners, in the month of July 2019.

Student Month
July being the Student Month was filled with activities aimed at not just connecting with the future professionals or generate a feeling of oneness amongst them with the Institute but to share dedicated moments with them. From Van Mahotsav Divas or Plantation Drive, Blood donation camps, to Quiz contests and Launch of special initiatives for students like Mock tests, Crash Course, Revision classes, Special classes for non-commerce students, Classes of specific subjects, etc. from Moot Court Competitions to Communication / Soft skills development Programmes, from ‘Samadhan Diwas’- Zero Grievance Day to Celebration of Career Awareness Week, from World Nature Conservation Day to Swachh Bharat Abhiyan, the month had it all.

Commencement of Classes for Students appearing in December 2019 examination
In its attempt to rigorously augment the quality of education and to provide best of the services to the stakeholders, various initiatives have been taken by the Institute recently. It has been decided to commence classes uniformly across the country by Regional/Chapter Offices on 8th July 2019 for the benefit of Students appearing in December 2019 examination. Also, a webpage for the same has been created at the website of the Institute wherein all information pertaining to the Class Room Teaching has been made available. The link is https://www.icsi.edu/student/class-room-teaching/

ICSI Signature Award Scheme
In January, 2016, the Institute has launched an ICSI Signature Award Scheme under which top rank holders in B.Com. Final Examinations in reputed universities and also specialised programmes/ papers of IITs / IIMs are awarded a Gold Medal and a Certificate. In the month of July 2019, Gold medal was presented to Ms. Navneet Kaur, First Topper from Bachelor of Commerce Examinations, 2018 of the Guru Nanak Dev University, Amritsar (PB).

‘Student Company Secretary’ and ‘CS Foundation course’ e-bulletins, July, 2019
The Student Company Secretary e-bulletin for Executive/ Professional programme students of ICSI and CS Foundation course e-bulletin for Foundation programme students of ICSI have been released for the month of July, 2019. These bulletins provide necessary information on various topics, academic guidance, registration, class room teaching centres, information on special initiatives, examinations, etc. The monthly issue of the bulletins has also been disseminated to students through bulk mail, social media platform and are also uploaded on the Academic corner of the Institute’s website at the link: https://www.icsi.edu/e-journals/

ICSI Initiatives towards GST
In standing shoulder to shoulder with the government towards directed implementation of GST, the Institute has been committed to building the capacity of its members, students and related stakeholders by advancing their understanding about GST and also by constantly apprising them with updates in GST through various initiatives. Some of the major initiatives in this direction are listed below:
  • GST Newsletter – Initiated from April, 2017, 24 issues of the GST Newsletter have been published so far, with July, 2019 issue being the latest.
  • GST Educational Series – 460 Issues have been brought so far.

In addition to this, the Institute is regularly organising workshops, seminars and programmes on GST in order to keep its members & students updated on developments in GST
The Institute celebrates Student Month every year during July for the budding professionals of the Institute. It brings plethora of opportunities for our young and dynamic students and to learn and face the challenges of the corporate world. Around 25 activities for the students have been organised during the month of July 2019 on Pan India basis at various Regions/Chapters offices of the Institute. The events organised during the month were covered in various leading newspapers. Since the main focus of the student month was social awareness, the initiative got accolades from all strata. We feel extremely happy to inform that the students have participated in large numbers in the various events and competitions. The photographs of the various events organised during the Student Month have been uploaded on the webpage exclusively developed for the student month.

Glimpses of Student Month
Various Programmes Conducted during the Student Month

Van Mahotsav Divas
The Student Month has been initiated with the “Van Mahotsav Divas’ on 01st July, 2019 in which almost all the Regional / Chapter Offices have participated.

Blood Donation Camps
01st July, is celebrated as the doctor’s day. To pay tribute and to honour the doctors who save millions of lives, Blood donation camps were organised across India by Region and Chapter Offices.

Career Awareness Activities
Special interactive sessions have been conducted in various Colleges to create awareness about the profession of company secretaries. A Career Awareness Week has also been observed during the month. From the perspective of prospective students, the Career Awareness sessions shall provide an opportunity to know the details of the profession.

Engaging Student Community
In order to promote brotherhood among the student community, Cultural Programmes and Get- togethers have been organised in various offices of the Institute. Such extracurricular activities play a pivotal role in developing the personality of the students and necessary exposure which will help them in their march towards becoming a professional.

Competitions for Students
Various competitions for students like Elocution Competition, Quiz Contests, Moot Court Competition, Essay Writing Competition, Power Point Competitions, etc. have been organised during the Student Month. The Competitions have given an opportunity to the students and offered them a platform to express their hidden talents.

Academic Initiatives
Updates on various academic topics have been brought out by the Institute for the benefit of students. Some of the latest initiative for students such as Mock Test, Moot Court competition, Crash Course, Revision Classes, Special classes for non-commerce students, classes for specific subjects etc have been organized during Student Month 2019.

Renewed Thrust on Class Room Teaching
Regional Councils & Chapters across India have uniformly commenced fresh batches of classes during the Student Month on 8th July 2019. Faculty Induction Programmes were also organised during the Student Month to enhance the quality of coaching imparted to the students.

Webcast
A Webcast was organised during the Student Month on Union Budget. Webcasts are the best mode for interacting with the students. Students should make it a point to join all the webcasts organised by the Institute from time to time as these are intended to develop their general skills and knowledge in the core subject areas.

Orientation Programmes, Guidance Sessions
Apart from Orientation Programmes for students undergoing training, Corporate Houses were invited to guide the students in some of the offices of the Institute.

Reaching out to Parents
In order to ensure the participation of Parents, meetings of Parents and Students have been organised during the Student Month. Since the students are joining the CS Course at such a young age, the Institute recognises contribution of parents in supporting them during the course of their career. The Parents also get to know more about the Institute and the profession of Company Secretaries by attending such sessions.

Communication/Soft skills Programme for Students
Training programmes on enabling Communication/Soft Skills and Motivational Talks have been organised for the benefit of students. Students should acquire such skills which shall contribute in sharpening their skills as a professional.

Samadhan Divas
Samadhan Divas was organised by Every office of ICSI and Call Centre ensured zero pendency of complaints. The Institute values the concerns of the stakeholders and it has always been trying to improve upon the quality of services being provided to the students. This event was celebrated on 19th July, 2019.
Kargil Vijay Divas
To pay tribute to the martyrs who laid their lives for the country, an essay writing competition on the theme “Due Diligence in armed forces” were organised to remember soldiers who have given remarkable contribution for the country.

Swatch Bharat Mission
Cleanliness drives were organised in the Regional / Chapter Offices of the Institute as part of “Swatch Bharat Mission.

Online Quiz for Students
Institute also organised online quiz for students during the student month on daily basis in which thousands of students participated. This not only shows the competitive spirit of the students but also shows their interest in various activities and initiatives taken by the Institute.

Felicitation of Rank Holders for December 2018 Examination
Institute, its Regional Offices and chapters organised felicitation programme for the students of Foundation, Executive and Professional Programme, who were rank holders in their respective examination.

World Population Day (debate Competition)
Institute, its Regional Offices and chapters organised programme on world population day on 11th July 2019. Debate competition were organized for Foundation and Executive Programme students separately.

Power point Presentation – (Jurisprudence, Interpretation & General laws)
ICSI Regional Offices and chapters organised power point presentation competition for students on Jurisprudence, Interpretation and General laws to assess their knowledge on the above topic.

Registration Day – Installation of Registration Desk
ICSI Regional Offices and chapters has installed registration desk with Laptop/Computer with internet connectivity and felicitating students in registration. Each ICSI Regional Offices and chapters had to ensure at least 2 registration on Registration Day i.e. 26th July, 2019.

Videobytes of All India Rankholders
Videobytes of All India Rankholders of Class Room Teaching centres of ICSI are being developed to motivate other students.

Recording of Video lectures for Class Room Teaching Students
Recording of Video lectures has been initiated for Class Room Teaching Students on key Subjects/Important Topics pertaining to CS.

The recording of the following topics has been completed:
- ICSI Webinar on Goods & Services Tax
- Union budget with special focus on Direct and Indirect taxes in context to CS Profession
- Taxation- Capital Gains

Recorded lectures will be uploaded at E-learning platform and made available at all Offices which will be used during faculty drop out, absence and as special classes.
CS Ranjeet Pandey, President, ICSI and Mr. Kevin Moore, Director, Global Business Development, CISI signed & exchanged the copy of MOU. CS Hitender Mehta, Chairman, International Affairs Committee, ICSI and other officials of ICSI & CISI were also present at the occasion.

CS Praveen Soni, Council Member, ICSI and CS Ashok Kumar Dixit, Officiating Secretary, ICSI met with Mr. Yasuyuki Konuma, Director, Tokyo Stock Exchange.

CS Praveen Soni, Council Member, ICSI and CS Ashok Kumar Dixit, Officiating Secretary, ICSI met with Mr. Sanjay Kumar Verma, Indian Ambassador to Japan.

CS Praveen Soni, Council Member, ICSI and CS Ashok Kumar Dixit, Officiating Secretary, ICSI at ICGN Annual Conference held at Tokyo.
Day 1: July 5, 2019

INAUGURAL SESSION

Hon’ble Mr. Justice Santosh Hegde, Former Judge Supreme Court and Lokayukta of Karnataka, inaugurated the 20th National Conference of Practising Company Secretaries on the theme ‘Expanding dynamics of Professional Excellence’.

Hon’ble Justice congratulated the professional fraternity of the Institute of Company Secretaries of India for their unflinching efforts in taking forward the torch of good governance with their perseverance. Focusing on the significance of ingraining values in daily life and conduct, Justice Hegde said, “Values are very important for the society. If corporates too can inculcate values and ethics and understand their responsibility towards the society at large, not only the corporates but the entire nation as a whole will be benefitted”.

Emphasising upon the overarching role of Company Secretaries, Guest of Honour, Mr. Udaya Kumar, Managing Director & CEO, Credit Access Grameen Limited said, “Company Secretaries have come to play expansive roles in the India Inc. Their holistic knowledge in almost every sphere of corporate activity raises them to the level of playing multifarious roles at once”. Heading an educational institution himself, Dr. Gururaj Karajagi, Chairman, Academy of Creative Teaching, in his Keynote address appreciated the earnest efforts of the ICSI in updating the syllabus for the students to fall in line with the dynamic corporate and economic scenario of the nation. He also congratulated the Institute for organising events like the National Conference of Practising Company Secretaries to hone and upgrade the skill base of its members as well.

In his address, CS Ranjeet Pandey, President, ICSI touching upon the theme of the Conference emphasized upon the need for all the professionals especially those in practice to look beyond the confines of their existing job profiles. He urged the CS professionals to expand their work territories into newer arenas offering greater opportunity of self growth and hence contribute to the achievement of the vision of New India 2022. Focussing on the need for self-governance while handholding the role players in national growth on the path of good governance, ICSI President thanked the regulatory bodies for instilling their faith in the professional brigade of Company Secretaries and expanding their roles in Secretarial Audit to enhance the trust and faith of stakeholders in listed entities.

Sharing his intent behind the selection of theme and sub-themes of the two day event, he informed that the 20th National Conference of PCS will deliberate on the following topics:

- Audit & Certification: Professionals’ Accountability
- Start-up India: Professional Opportunities
- Artificial Intelligence vis-à-vis Role of CS
- Special Session on NCLT, etc.

While CS Ashish Garg, Vice President, ICSI, in his address to the participants spoke about the importance of “Satyam Vada Dharmam Chaara” and presented some anecdotes from the Mahabharata, CS Manish Gupta, Council Member, ICSI and Chairman, PCS Committee, introduced the Theme for the Conference.

CS Nagendra Rao, Council Member, ICSI and Programme Director for the Conference delivered the welcome address and thanked all the delegates and their family members for participating in the conference.
CS Mohan Kumar A, Chairman, SIRC of ICSI & Programme Coordinator introduced the Chief Guest at the inaugural session.

CS Pradeep Kulkarni, Chairman Bengaluru Chapter of ICSI and Programme Facilitator welcomed all present at the Conference and arranged for release of the Conference Souvenir cum backgrounder and other publications. Vote of thanks was proposed by CS Ashok Kumar Dixit, Officiating Secretary, ICSI at the end of the Inaugural Session.

The Best Regional Council and Chapter Awards for the year 2017 were also presented during the session.

FIRST TECHNICAL SESSION – Audit & Certification: Professionals’ Accountability

The first technical session was a Panel Discussion on Audit & Certification: Professionals’ Accountability and was addressed CS Pradeep Ramakrishnan, General Manager, CFD-CMD, SEBI; CS V Sreedharan, Practising Company Secretary, Bangalore; CS Keyoor Bakshi, Past President, ICSI & Practicing Company Secretary and CS Gopalakrishna Hegde, Former Council Member, ICSI. The Session was chaired by CS B Narasimhan, Council Member, ICSI

CS Pradeep Ramakrishnan spoke about the importance of Secretarial Audit in ensuring better governance in corporates. He also highlighted the objective/ genesis of bringing out the annual secretarial compliance report in terms of Regulation 24A of SEBI (LODR) Regulations and how it is different from Secretarial Audit Report required in terms of section 204 of Companies Act, 2013. He apprised all present about the level of expectation of the Regulator from the professionals while carrying out audit and writing the reports and what exactly the Regulator looks for in the secretarial audit reports.

CS V Sreedharan deliberated upon peer review and how it could help in improving the quality of audit and attestation services and also the approach of peer reviewers in handholding the new entrants in the profession. As a Secretarial Auditor, he spoke about the 10 key points that must be kept in mind while undertaking Secretarial Audit to ensure that the report reflects true picture of the company as far as audit of non-financial aspects is concerned.

CS Keyoor Bakshi deliberated upon how audit and the reports can help the Regulators in reducing the occurrence of governance frauds in the country and undertaking proactive measures in stopping the corporate governance frauds. He emphasized on Secretarial Audit as a tool to help in making India a ‘Compliant India’ and in achieving the government’s target of making a ‘Corporate Complaint India’. He also apprised about the consequences of false statements in Report, skipping the less relevant aspects and leaving out the most relevant information of the company.

CS Gopalakrishna Hegde shared his thoughts on how much a secretarial auditor can rely on Management Representation Letters and Financial certification by statutory auditor. He said that there cannot be a strict format/ straight jacket format of reporting of the secretarial audit and hinted that the present format of Secretarial Audit Report needs improvement.

CS Siddhartha Murarka, Council Member, ICSI delivered the Concluding remarks and Vote of Thanks.

SECOND TECHNICAL SESSION – Start-up India: Professional Opportunities

The second session was chaired by Shri Sudhir Garg, Joint Secretary (MSME), Government of India. CS Deepak Khaitan, Council Member, ICSI introduced the theme for the session. Dr. Preet Deep Singh, Co-Head, Startup India Invest India and Dr. Chandan Kar, Wadhani Global University, National Entrepreneurship Network addressed the participants at the session.

Shri Sudhir Garg shared that the Government is trying to create an ecosystem and CS as professionals should be messenger to them. India is a place where impossible can be made possible and startups hold huge potential for India. He added that the approach of startups is different from that of other entrepreneurs or businessmen and is still in its nascent stage. The role of Company Secretaries is not limited to registration only. They are expected to hold hands of startups and guide and act as mentors.

Dr. Preet Deep Singh, made a presentation on benefits and exemptions available to Startups. He informed that the biggest challenge being faced by startups is dispute resolution and CS can play a lead role as mediators in dispute resolution. The government expects professionals to be educated on the latest laws and requirements for startups. Their expert advice would be highly appreciated by the startups.

Dr. Chandan Kar provided an insight into the realities of the issues faced by start-ups and the reasons for their failures and successes.

CS Hitender Mehta, Council Member, ICSI proposed a formal vote of thanks at the end of the session.

Day 2: August 13, 2016

SPECIAL SESSION: MEDITATION

The second day of the Conference started with a special session on Meditation for Professionals and was addressed by Shri Ravindra Kini, Meditation expert. He apprised all present about the benefits of meditation in combating the stress of day-to-day personal and professional life.

INTERACTIVE SESSION

In consonance with past practices, an Interactive Session was convened for the members with a view to invite their suggestions for further development and growth of the profession. The interactive session was addressed by President, ICSI alongwith all the Council members of ICSI wherein members were apprised about the recent initiatives of the Institute and the plan of action for the year. Several issues of importance to the profession were figured during discussion and clarified appropriately.

THIRD TECHNICAL SESSION – Artificial Intelligence vis-a-vis Role of CS

The third session of the National Conference was on Artificial Intelligence vis-a-vis Role of CS.
Mr. S Bhasker, introduced the theme and talked about the factors that make humans intelligent, importance of artificial intelligence and the same being deployed across business domains. He made a detailed presentation on what is in store for professionals under MCA21 Version 3.0. He also spoke about the role of company secretaries in compliance management and data analytics through artificial intelligence.

CS Kiran Chitale in his presentation deliberated on the need for recalibrating our skills as most of the day-to-day functions of company secretaries would now be taken up by machines through deployment of artificial intelligence. The widespread use of artificial intelligence would free the company secretaries of routine and recurring tasks. The Ministry of Corporate Affairs is already in the process of introducing new e-forms and Company Secretaries need to perform such tasks that are more knowledge based. Drafting of resolutions, record keeping, standard letters to stock exchanges and SEBI, filing of forms etc. could be handled by artificial intelligence. Review, writing detailed minutes, audit confirmation and validation of records, timelines, etc. would require CS intervention. Likewise, Company Secretaries could continue to add value in advisory services, data analysis for better governance, representation, certification and audit, interpretation of laws.

SPECIAL SESSION – NCLT

CS Vineet Chaudhary, Council Member, ICSI introduced the theme of the session and welcomed the dignitaries on the dais. Dr. Ashok Kumar Mishra, Member (Technical), NCLT chaired the session and CS Nesar Ahmad, Past President, ICSI addressed the participants and presented the nuances of appearances before the quasi judicial bodies.

Dr. Mishra acknowledged the role of Company Secretaries in representing before NCLT. He mentioned that scope of Company Secretaries has enhanced, as they can appear in almost all tribunals. It is more important for professionals to improve their representation skills and advocacy skills. Ground work and proper research work is important.

CS Nesar Ahmad, said that a new opportunity for Company Secretaries was opened with the introduction of Section 432 of the Companies Act, 2013, wherein they were recognized for appearing before tribunals. He emphasized the importance of art of advocacy, court craft, dress code and prior preparation. The Company Secretaries should understand all these and improve their skills and knowledge which would take them a long way in appearing before tribunals.

The vote of thanks was presented by CS Chetan Patel, Council Member, ICSI at the end of the session.

VALEDICTORY SESSION

Swami Tadukanta Ji, Sri Ramaskrishna Matha, Bengaluru was the Chief Guest at the Valedictory Session. CS Devendra Deshpande, Council Member, ICSI delivered the welcome address. CS Ranjeet Pandey, President, ICSI delivered the Presidential Address. CS Ashish Garg, Vice President, ICSI also addressed the participants at the session. CS Pradeep Kulkarni, Chairman, Bengaluru Chapter and Programme Facilitator for the Conference introduced the Chief Guest.

Swami Ji, in his address urged the Company Secretaries to focus on personal excellence along with professional excellence. He emphasised on the meaning of ‘Satyam Vada Dharmam Chara’ with the ancient knowledge system, social values and the application to profession. He said that the ideas and practices are not different from one another. He quoted Swami Vivekananda that dharma encompasses all activities that a man does with respect to the activities around us.

CS Nagendra D. Rao, Council Member and Programme Director for the Conference proposed a Vote of Thanks and thanked all the delegates, council members, regional council members, members of the Managing Committee of Bengaluru Chapter, Team ICSI, sponsors, student volunteers, etc. for their efforts in making the Conference a memorable event.

The conference concluded on a high note with the key takeaways that included a clear understanding of the emerging role of practicing company secretaries.

The announcement regarding the Best Secretarial Audit Report Awards and the 47th National Convention of Company Secretaries at Jaipur during November 14-15-16, 2019 was also made before the final close of the Conference.

Release of Conference Souvenir, Publications and Portals

Apart from a dedicated Souvenir cum Backgrounder containing theme articles, messages from persons of eminence and other interesting features, a revised edition of the publication titled ‘Company Secretary in Practice – Ready Reckoner’ was also released at the mega annual event.

Holding on to the idea of self-governance, the Institute also released two sets of guidelines for Company Secretaries in employment and in Practice under the aegis of Unique Document Identification Number as governed by the UDIN Guidelines and Employee Company Secretary Identification Number Guidelines or the ECSIN Guidelines. Initially recommendatory, adherence to both the Guidelines shall be mandatory for the members, w.e.f. 1st October, 2019.

In order to make the technical sessions live and interactive, Slido App was extensively used throughout the Conference in order to enable the members and other participants to raise their queries directly to the speakers during the session.
The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

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For more details please visit www.icsi.edu/csbf
Some issues to ponder over the domain of Directors-Companies Act, 2013

Ramaswami Kalidas

The Companies Act 2013 has been subjected to far too many changes since its inception. While the Act brings to the fore several new features, at the same time, it has thrown up several issues which offer food for thought. In this article the author has articulated some of the issues which relate to the domain of directors, appointment of Key Managerial Personnel etc. There is a dichotomy in the Act where it comes to the treatment of small shareholders’ director as an independent director whereas a Nominee director is not considered as one. The other discussion area is whether Section 151 of the Act is recommendatory or mandatory. The author concludes on an optimistic note by stating that once the grey areas that exist in the Act are settled, its operation will stabilize before long.

Companies (Amendment) Act, 2019 – Some salient features thereof

Delep Goswami and Anirrud Goswami

The Companies Act, 2013 introduced significant changes relating to disclosure to shareholders, accountability of directors, auditors and Key Managerial Personnel, investor protection and corporate governance. The Act went in for significant review dealing with offences and the Expert Committee in August 2018 recommended measures to promote better compliance and shifted many offences from the rigours of Court proceedings to in-house adjudication by the Regional Director, MCA. The Companies (Amendment) Act 2019 incorporates the provisions of the ordinances which was promulgated by the Government to give effect to the recommendations of the said Expert Committee. It has also added certain new amendments aimed towards ease of doing business and for good corporate governance. The article highlights some of the essential features of the Companies (Amendment) Bill 2019 which got passed by the Parliament on 30th July 2019, received the assent of the President of India on 31st July 2019 and has been published in the Gazette of India on 31st July 2019.

Governance, Risk and Compliance in Entrepreneur Driven Entities – Emerging Paradigms in the Ecosystem

Suresh Viswanathan

Indian MSMEs are a special creed of enterprise, driven by families and entrepreneurs. Traditional mindset, changing environment, intense regulatory and statutory compulsions, and resource crunch are some of the glaring challenges that stare upon the sector as a whole. Technology plays a vital part in assuaging their hardships. The article harps on the importance of Governance, Risk and Compliance (GRC) attached to the sector as a whole and the steps that each mid-size enterprise need to initiate in order to spruce up their internal controls. Adoption of GRC processes and systems help create enterprise value in terms of raising capital, both equity and debt and in meeting the listing aspirations of entrepreneurs. GRC showers transparency and enhances scope for resource augmentation. All these matters are inter-dependent and hence of immense consequence to the economy at large. The economy is significantly dependent on the mid-size corporate entities for their contributions in meeting the aspirations of the billion plus population of the country with respect to job-creation, quality products and services, and above all exports and balance of payment.

Board Composition, Conduct and Outcome : Is a paradigm shift imperative?

Santhi Subramanian

Businesses are operating in an ultra-dynamic business environment where even a tweet by a CEO influences the destiny of an organization. When operating in such a highly sensitive environment, how can a Board disregard the variety of interests and market needs it has to serve? For any corporate to progress successfully, its Board should reflect an ideal combination of knowledge, experience and expertise relating to the business. At the same time, it should be able to bring diverse ideas and perspectives to the table. This is possible only by deliberately implementing diversity as a policy inside the Boardroom. While management agrees that Board diversity is essential for effective positive Board functioning, there is a reluctance and hesitation to explore the various possibilities its implementation would open up. The moment the Board opens its doors towards diversity, it will get hold of the key to effectively tackle the fast paced challenges brought forth by technological advancements, digital disruptions and cyber security risks. The earlier the focus is shifted towards diversity as a priority, the better it is for the organization.

Social Stock Exchanges

A. Sekar and Meghna Shah

Though the concept of Social Stock Exchanges is new to India, having been introduced by the Union Budget 2019-20, globally countries such as Brazil, UK, Canada, Singapore, Kenya and South Africa already have a structure in place though with significant variations. From an Indian perspective, announcement about Social Stock Exchange is a revolutionary thought, which calls for a paradigm shift and change of mindset not only amongst the NGO’s and other champions of social cause, but also the way business and investors would look towards projects having social impact. This article introduces the conceptual framework of Social Stock Exchange, its benefits to the stakeholders, an overview of the global scenario, the prevailing scenario in India, its potential for India, the challenges and the way forward. The authors intend this to be a starting point for further brainstorming and discussions on this new subject, which also offers opportunities for Company Secretaries.

CSR: Just the beginning, a long way to go

Dr. Joffy George

Indian legacy of CSR carries from provision of mid-day-meals to the other extreme of fundamental research by industry prior to India’s independence. The pure voluntary flavour of Indian CSR has recently been blended with a mandatory element in it. The mandatory CSR were potentially viewed to have negative impact - the left, the right, and the centre. The mandatory CSR provisions had no impact on stock prices of most firms who get covered by the Act. This is an indication that the industry stakeholders had no impact on stock prices of most firms who get covered by the Act. This is an indication that the industry stakeholders had no impact on stock prices of most firms who get covered by the Act. This is an indication that the industry stakeholders had no impact on stock prices of most firms who get covered by the Act. This is an indication that the industry stakeholders had not viewed mandatory CSR norms as coercive and a regressive measure. At one end of the spectrum, CSR can be viewed simply as a collection of good citizenship activities being engaged by various companies. At the other end, it can be a way of doing business that has significant impact on society. For this latter vision to be enacted in India, it will be necessary to build CSR into a movement. Organization in present world cannot be successful without taking into account the social responsibility. CSR has been a vital
component for any organization to have perpetual success and to create brand. The concept of corporate social responsibility is now firmly rooted on the global business agenda.

**Recent landmark judgments under the Insolvency and Bankruptcy Code, 2016**

**Sameer Maniar and Abdullah Fakih**

The Insolvency and Bankruptcy Code, 2016 (the Code), has in the last couple of years revamped the insolvency law in India. The Hon’ble Supreme Court (SC) has recently upheld the constitutional validity of the Code. There have also been certain landmark decisions of the SC and the National Company Law Tribunal / Appellate Tribunal in the recent past which have set a precedent for future cases while also providing interpretational clarity.

**Law relating to Collective Investment Schemes on shared ownership of real assets**

**Vinod Kothari**

The shared economy of the internet age permits collective ownership and use of several assets, such as properties, cars, equities, and lot more. The trend is increasing. At the same time, there are strict financial regulations that seek control of investment schemes in form of collective investment schemes (CIS) regulations, and unregulated deposit schemes. What are the distinguishing features of a collective investment scheme? Some of the key features are - handing over of resources by “investor” to “manager”, pooling of resources, separation of ownership and management of such resources, intent to produce financial returns, and lack of day-to-day control of the investors. The definition of CIS under SEBI Regulations has equivalents elsewhere in the world. Based on the work done by Prof LCB Gower, the UK Financial Services and Markets Act has defined collective investment schemes in a manner substantially similar to that in India. Based on these rulings, it may infered that if the scheme is a scheme of sharing of real resources, it may just be a property-sharing scheme, but once the scheme becomes the way for investors to produce financial returns, it may become an investment scheme. Additionally, investors give up control over resources to the manager, who manages pooled resources, usually with an intent to produce fixed returns. As shared ownership schemes proliferate, it is necessary to stay within the regulation, as consequences may be very serious.

**Significant Beneficial Ownership- A Pandora’s Box?**

**Kalidas Vanjpe**

The article gives background of the concept of beneficial ownership starting from Financial Action Task Force and India’s commitment to their recommendations to deal with the global concerns of terror funding and money laundering practices by putting in place a system for disclosure of the ultimate beneficial owner behind the corporate structure. The Companies (Amendment) Act, 2017 has introduced the concept of Significant Beneficial Owner. The article critically analyses some of the provisions which are difficult for compliance and record apprehensions about the possible regulatory interpretation and probable action by them, which can be harmful to legitimate corporate planning. The article also apprehends that the compliance will be a nightmarish experience due to ambiguity of many provisions which is capable of many interpretations.

**Budget 2019: Marching towards a USD 5 Trillion Economy**

**M. S. Mani**

While there was an interim budget presented in February 2019, all eyes were on the Union Budget proposals in July 2019 on account of the fact that this would be the first macro-economic and tax policy pronouncement of the new Government. The pre-budget economic survey painted a good picture of the economic performance over the past five years and also mentioned some of the areas where increasing focus was required in order to speed up economic development, increase employment and provide stability in taxation matters. The Budget laid out specific areas that the Government would focus with a five year vision and mentioned that many of the changes suggested would provide long term stability and improve the ease of doing business and the ease of living. Several measures were announced to further the reform in the agricultural sector which is one of the key employment generators. The strategy to aggressively focus on the Make-In-India initiative by reducing the duties on inputs and increasing the duties on final products continued in order to increase employment and GDP. There was a conscious effort to make it easy for start-ups and their eco-systems as the Government realises their increasing importance. There was also a renewed focus to promote manufacturing of Electric Vehicles in India by providing Customs Duty and GST relief, considering the significant role by them in reducing the carbon footprint. This budget has outlined the key areas that the Government will focus, not only for the coming year, but over the next five years.

**Bridging the Gap in CSR Spending**

**Dr. Jai Prakash Sharma, Dr. Shital Jhunjhunwala and Shweta Sharda**

A company is a social entity which has responsibility to fulfill the expectations of all stakeholders who provide resources to it and not just the shareholders. The corporate social responsibility thus originates to address undue emphasis on maximization of shareholders’ return by companies, and make them accountable towards society. The Ministry of Corporate Affairs has therefore incorporated provisions in the Companies Act, 2013, which direct companies crossing threshold mentioned in Section 135(1) to spend at least 2 per cent of their average net profit earned over the last three financial years on CSR in every financial year. This study is hence undertaken to examine the changes in the CSR spending of listed companies in India during the FY 2015 to FY 2017. The overall increase in spending on CSR is depicted since 2015. The analysis of CSR spending by companies in the Post legislation era provides timely update to the policy makers for taking stringent action to compact the weak enforcement environment in order to improve CSR spending in India.

**Research Paper**

**Volatility, Valuation and Forecasting**

**Dr. Prasant Sarangi**

Valuation is needed by asset managers to mark their books and hence, appraise their investors of the value of their positions. Valuation is needed by regulators to make sure that bank and other systemically important entities are staying within safe bounds. Due to various ups and downs in the world economic environment, risks and obstacles emerging due to
volatility have emerged as a more serious task which needs to be addressed at the earliest. In such a scenario, the need of the hour is a good valuation methodology(ies). Valuation methods not only vary but also often involve making arbitrary adjustments based on feeling and limited empirical evidence. Forecasting models that incorporate historical volatility could yield significantly more accurate and less biased forecasts than forecasting models that exclude volatility. But as a matter of fact, model that includes volatility takes ‘variance’ as the factor. But ‘Variance’ is not always constant (i.e., homoscedastic), rather it is a heteroscedastic process. In such estimations, it is not advisable to assume zero weights for observations prior to the fixed time frame. This generalized ARCH (p,q) model - popularly known as GARCH (p,q)- allows for both autoregressive and moving average components in the heteroskedastic variance, hence, could yield more accurate result when included in a forecasting model. Forecasting models that are incorporating volatility as an independent variable while estimating valuation will definitely be more accurate and less biased than corresponding models that excludes volatility as an explanatory variable.

**Legal World**

- **LMJ 08:08:2019** In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. [SC]
- **LW 56:08:2019** It is clear that the existence of dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. [NCLAT]
- **LW 57:08:2019** We are more than satisfied that in the facts and circumstances of the case, narrated hereinabove, and also in the larger public interest and when thousands of crores of public money is involved, the Tribunal is justified in allowing the application under Section 130 of the Companies Act, which was submitted by the Central Government as provided under Section 130 of the Companies Act.[SC]
- **LW 58:08:2019** Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, Section 14 could be triggered.[Del]
- **LW 59:08:2019** That the signatory was in no way associated with respondent No.2 and was only an employee of respondent No.1, who acted in that capacity during the negotiations preceding the execution of agreement and thus, respondent No.2 was neither the signatory to the arbitration agreement nor did have any causal connection with the process of negotiations preceding the agreement or the execution thereof, whatsoever. [SC]
- **LW 60:08:2019** We would acknowledge that creation of a new State was an unforeseen event and could give rise to unusual situations, but this cannot be a ground and reason to treat inter-state sales between the two successor states as intra-state sales. [SC]
- **LW 61:08:2019** Once dominance could not be established, examination of the abuse of dominance by the OP does not arise. [CCI]
- **LW 62:08:2019** In the face of existence of statutory rules to deal with the grievance, no anti-competitive conduct can be said to have arisen in the present case, warranting an investigation into the matter. [CCI]
ARTICLES

- Some Issues to Ponder Over the Domain of Directors-Companies Act, 2013
- Companies (Amendment) Act, 2019 – Some Salient Features Thereof
- Governance, Risk and Compliance in Entrepreneur Driven Entities – Emerging Paradigms in the Ecosystem
- Board Composition, Conduct and Outcome: Is a Paradigm Shift Imperative?
- Social Stock Exchanges
- CSR: Just the Beginning, a Long Way to Go
- Recent Landmark Judgments Under the Insolvency and Bankruptcy Code, 2016
- Law Relating to Collective Investment Schemes on Shared Ownership of Real Assets
- Significant Beneficial Ownership: A Pandora’s Box?
- Budget 2019: Marching Towards a USD 5 Trillion Economy
- Bridging the Gap in CSR Spending
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AUGUST 2019 | CHARTERED SECRETARY
Some Issues to ponder over the Domain of Directors-Companies Act, 2013

The Companies Act, 2013 has brought to the fore several new features particularly in the area relating to Board Management, appointment of directors etc. However, it has thrown up several issues which offer considerable food for thought. In this exposition, the author articulates on some of the issues which relate to the domain of directors, appointment of key management personnel etc.

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The Companies Act, 2013 (hereinafter referred to as "The Act") has completed half of decade of its chequered existence and in this relatively short period it has been tinkered along far too many times-much to the disdain of the practitioners and students alike. Law is after all, the edict of parliament, a creation of man and hence the concept of a perfect law is illusory as humankind is not infallible.

Change is constant in every walk of life and it is but natural that the Statute also needs to be vibrant in tune with the dynamics of the economic environment so that it is not reduced to an anachronism. The Act therefore, brings to the fore, certain new features and an effort has been made in this exposition to articulate on these, particularly those which are concerned with the appointment of directors, small shareholder directors, KMPs etc.

DIRECTOR-DEFINED RESTRICTIVELY

The 1956 Act defined a director inclusively under Section 2(13) to include any person occupying the position of director by whatever name called. Being an extensive definition, the term covered even a person who was exercising the authority of being a director regardless of whether he was so called. Hence a person wielding such authority being a de facto director could fall within the ambit of the term. The emphasis was on the position or function discharged by the person as opposed to the formal appointment of the person to the Board. In Forest of Dean Coal Mining Co. In re.(1878)(10 Ch D 450) it was noted that “function is everything, name matters nothing. So long as a person is duly appointed by the company to control the company’s business and authorized by the articles to contract in the company’s name and on its behalf, he was a director”. Thus a “shadow director” who fulfilled the function of the director was to be treated as a director even if he were not so designated as long as there was lawful occupation of that position. Where the incumbent had functioned as director without being lawfully appointed, he could not be treated as a director as held in Dean v Hiesler (1942)(2 All ER 340)(KB).

As opposed to the above position, the Companies Act, 2013 defines a director restrictively under Section 2(35) through a “means” definition and states that the term refers only to a director appointed to the Board of a company. Thus, to be considered as a director, the person should be appointed as such to the Board. The present Act takes into consideration only those who are de jure directors. The concept of a “shadow director” does not come within the scope of the definition under the Companies Act, 2013.

Having said this, notwithstanding the restrictive application to the term in Section 2(35), the Act willy-nilly takes cognizance of the existence of a shadow director such as is demonstrated by clause (viii) under Section 2(76) wherein any person on whose advice, directions or instructions, the director or manager is accustomed to act is considered as a “related party” and his position is analogous to the director.

BOARD OF DIRECTORS- RECOGNITION AS A COLLECTIVE BODY

Under Section 2(6) of the 1956 Act the Board was referred, in relation to a company, to the Board of Directors of the company. Under Section 2(10) of the present Act, the Board is referred to as the collective body of the directors of the company. The use of the expression “collective body” suggests that under the Act, the Board is being institutionalized as a body and that it is contemplated that it shall function collectively to steer the fortunes of the company. Although the difference in the definition between the two Acts is ever so subtle, the inference as drawn above is unmistakable.

FEES PAYABLE TO DIRECTORS- WHETHER FEES CAN BE PAID TO DIRECTORS FOR ATTENDING COMPANY’S AGM

Section 309(2) of the 1956 Act provided that a director could receive remuneration by way of fees for each meeting of the Board or a Committee thereof attended by him. It follows from the above that fees shall be payable to directors only in respect of meetings of the Board or Committees attended by them. Payment of fees was not permitted for any other purpose.

By contrast, Section 197(5) of the Act stipulates that a director may receive remuneration by way of fees for attending meetings of the board or committee thereof or for any other purpose whatsoever as may be decided by the Board. (Emphasis supplied).

The sub-section ends with the proviso that the amount of such fees shall not exceed the amount as may be prescribed. Rule 4...
Companies Act 2013

The Report on Corporate Governance which has to be appended to the Board’s Report to the shareholders annually in accordance with the SEBI Listing Regulations should contain information as regards attendance of the directors at the company’s AGM. Directors as also the Chairmen of the Committees mentioned above are therefore under obligation to attend the AGM of the Company.

of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 lays down that a company may pay sitting fees to a director for attending meetings of the Board or committees thereof, such sums as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or Committee thereof.

It is pertinent to note that Section 197(5) contemplates that sitting fees may be paid to the directors also for any other purpose whatsoever as may be decided by the Board subject however to the threshold prescribed in Rule 4 above. The Board thus has the discretion to pay fees to its members for purposes other than attending meetings of the Board and its committees. We would hasten to add that Rule 4 ibid contradicts Section 197(5) by restricting the payments of fees only to the Board/committee meetings attended by the directors.

Readers are aware that Section 177 and 178 of the Act mandate respectively that the Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholder Relationship Committee shall be present at the Annual General Meeting of the company to respond to queries of shareholders at the Meeting. In case they are unable to attend the meeting for some reason, they are allowed to authorize one of their colleagues on the Board to be present on their behalf. The Report on Corporate Governance which has to be appended to the Board’s Report to the shareholders annually in accordance with the SEBI Listing Regulations should contain information as regards attendance of the directors at the company’s AGM. Directors as also the Chairmen of the Committees mentioned above are therefore under obligation to attend the AGM of the Company.

Considering the fact that Section 197(5) empowers the Board to authorize payment of sitting fees for any purpose as determined by the Board, there is a strong case for making payment of sitting fees to the directors for attending the AGM. Rule 4 above restricts the scope of Section 197(5) and being sub-ordinate legislation, it cannot transgress the mother law and it has to yield, in terms of precedence, to the Act. The Board would be well within the scope of its authority to approve by resolution the payment of fees to directors for attending the AGM. Such payment cannot also result into the creation of a pecuniary relationship as between the company and its directors.

**Nominee Director vs. Small Shareholders’ Director**

Section 149(6) stipulates, *inter alia*, that a Nominee Director shall not be considered as an Independent director. The definition of a “Nominee director” is provided by the Explanation under Section 149(7).

It is pertinent to note that under the dispensation of the erstwhile Listing Agreement under Clause 49 a Nominee director appointed by a listed company was considered as an independent director.

The reason why the “Nominee director” has not been considered under the Act as an independent director is understandable. He represents a constituency of stakeholders in the company and his paramount concern is that their interests should be protected. This allegiance could stand in the way of independent discharge of his responsibilities to the shareholders.

Section 151 of the Act provides that a listed company may have one director elected by small shareholders (those who hold equity of a face value not exceeding Rs. 20,000/-) in the manner and as per the terms laid down in rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Rule 7(4) ibid clarifies that such a director shall be considered as an independent director subject to his being eligible under Section 149(6) and his giving a declaration of his independence as per the requirements of Section 149(7).

The trigger for the appointment of a director of the above genre is pretty much similar to the provocation for appointing a Nominee director-protection of the interests of the constituency he represents. That being so, it is intriguing to note that the Act considers him as an Independent director whereas a Nominee director does not merit such consideration. This is a paradox in the Act which is difficult to defend logically.

**Small Shareholder Director’s Term-Why Three Years Only?**

Rule 7(5) of the above Rules stipulates that the director so appointed shall not be liable to retire by rotation and shall not have a term beyond three years. Upon completion of the above term, he shall not be eligible for re-appointment for another term. Under Section 149(10) an independent director can have a term of up to five consecutive years and upon completion thereof, subject to eligibility, he can be re-appointed for a further term of five years by special resolution. Whereas the Act recognizes the small shareholder director as an independent director, it is hard to decipher as to why he should be discriminated where it comes to his term of appointment. Besides, he is not eligible for a second term.

If the logic for limiting his term is that familiarity may perhaps breed contempt, the same would hold good for any other independent director. What is sauce for the goose is also sauce for the gander!
IS SECTION 151 A DIRECTORY PROVISION?

Section 151 provides that a listed company “may” have one director elected by the small shareholders in the manner laid down in Rule 7 of the above Rules. The use of the expression “may” in the Section suggests prima facie that the provision is discretionary and does not carry any mandatory force. On the other hand, the use of the expression “shall” in a statutory provision suggests that there is a mandatory direction contained therein. However, in Jurisprudence, the words “may” and “shall” have been used interchangeably frequently and the expression “may” has been construed as “shall” and vice versa depending upon the intention of the legislature. There is a rich repository of judicial precedents on the subject and reference may be made to the following decisions which provide an insight into the interpretation of the above two terms.

(i) Dinesh Chandra Pandey v High Court of MP (2010)(11 SCC500)
(ii) Mohan Singh v International Airport Authority of India(1997) (9 SCC 152).

Taking a cue from the jurisprudence on the subject, in our view, Section 151 should be considered to have mandatory force notwithstanding the use of the expression “may” considering that the intention of the provision is to provide an opportunity to the minority shareholders to have their representative on the Board. The provision espouses the ethos of corporate democracy and in the event, a company receives a notice for appointment of a small shareholder director which satisfies all the ingredients in the relevant rules, it is obliged to act on the same and set in motion the process for the appointment. It would not be in order for the company to disregard the notice received for the appointment under one pretext or the other.

CONFUSION CAUSED BY AMENDMENT TO SECTION 161(4) –TERM OF DIRECTOR APPOINTED TO FILL UP A CASUAL VACANCY

The above sub-section has been amended by the Companies (Amendment) Act, 2017 and the amendment has been notified for application with effect from 7.2.2018. The amendments have raised a grey area which we shall articulate as under:

The words “in the case of a public company” have been deleted in the sub-section to make it clear that in the case of both a private and a public company, if the office of a director who has been appointed in general meeting is vacated before his term of office expires in the normal course, the resulting
casual vacancy may, subject to the Articles of the company be filled up by the Board of directors at their meeting. The removal of the above words takes away the hardship created unwittingly to private companies which perforce had to resort to seeking the consent of the members at general meeting for filling up a casual vacancy on the Board whereas a public company could fill up the vacancy through the simple process of a board approval.

The words “which shall be subsequently approved by members in the immediate next general meeting” have been added after the words “meeting of the Board” with the result that after the amendments the sub-section reads as under:

“If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company be filled by the Board of directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting”.

The fall out of the above amendment is that if there arises any casual vacancy in the office of a director who has been appointed by the shareholders, the board can fill up the vacancy at its meeting and such appointment shall be subsequently approved by members at the immediate next general meeting.

The settled position in the law is that any person appointed to fill up a casual vacancy continues as director until the expiry of the term of the director whose vacancy he has filled up. On account of the above amendment, the above position will be jeopardized and it would be necessary that the vacancy filled up would have to be regularized at the next general meeting of the members. Arising out of the above, there would really be no difference as regards the procedure to be adopted for appointing an Additional director as also for a director appointed to fill up the casual vacancy. In case of an Additional director, he holds office up to the date of the next AGM at which his appointment has to be regularized. The director filling up the casual vacancy will have to seek appointment at the next general meeting which could even be an Extra-ordinary Meeting of the members.

The confusion on this issue is further compounded by the fact that even after the above amendment, the proviso under the sub-section survives in the statute Book. The proviso reiterates the settled position that the person appointed in the casual vacancy would hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

As the amendment made by the Amendment Act, 2017 raises a question as regards the term of office of the director appointed to fill a casual vacancy in that it contradicts the proviso to the sub-section, it would be appropriate if MCA clarifies the issue. The dichotomy caused in the law caused by the amendment discussed above need to be explained.

RESIGNATION BY DIRECTOR-WHEN DOES IT TAKE EFFECT?

Section 165 of the Act sets out the limit on the number of companies with which a person can be associated as a director. Sub-section (4) thereto provides that where a director submits his resignation on account of the fact that his number of directorships has exceeded the maximum limit, the resignation
The settled position in the law is that any person appointed to fill up a casual vacancy continues as director until the expiry of the term of the director whose vacancy he has filled up. On account of the above amendment, the above position will be jeopardized and it would be necessary that the vacancy filled up would have to be regularized at the next general meeting of the members. Arising out of the above, there would really be no difference as regards the procedure to be adopted for appointing an Additional director as also for a director appointed to fill up the casual vacancy.

![Companies Act](Image)

The above provision runs contrary to what is stated in Section 168 which deals specifically with resignation of directors. Sub-section (1) thereto provides, *inter alia*, that a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and file the required intimation to the Registrar. As per this section the resignation is complete only when the same is received by the company and taken note of by the Board.

There is therefore a clear conflict as between Section 165 and 168 as to the time at which the resignation is to take effect. Under Section 165 the act is complete if the director dispatches his resignation to the company. What would be the consequences if the directors’ communication is lost in transit. Section 168 is rational in that it provides that the Board should take cognizance thereof for the resignation to be effectuated.

It is also pertinent to note that Section 168 is a specific provision which deals with resignation by a director whereas Section 165 sets out the limits on the number of directorships and also deals with the resignation which is triggered off due to the number of directorships being beyond the thresholds provided. The trigger points for a resignation to take effect cannot be different under the same statute, regardless of the provocation. It is a settled principle that where there is a conflict between a special provision and a general provision, the general provision yields place to the specific provision. Hence in this instance Section 166(1) shall prevail. The available jurisprudence on this is also tilted in favour of the latter proposition. Reference may be made to the following citations on this point:

a) Glossop v Glossop (1907) (2 CH 370)

b) T. Murari v The State (46 Comp Cas 613)

c) Moti Ram v Param Dev (AIR 1993 SC 1662)

**WHETHER COMPANY SECRETARY APPOINTED UNDER RULE 8A OF THE COMPANIES (APPOINTMENT & REMUNERATION OF MANAGERIAL PERSONNEL) RULES 2014 BE CONSIDERED AS A KMP UNDER SECTION 203.**

Under Section 203(1) every company which comes within the ambit of Rule 8 of the above Rules has to have the following whole-time KMPs-

a) Managing director or chief Executive Officer or manager and in their absence a whole time director

b) Company Secretary and

c) Chief Financial Officer.

Rule 8 applies to every listed company and every other public company having a paid up capital of rupees ten crores or more. Companies belonging to the above genre have to appoint persons who shall hold the above positions on a full time basis.

Rule 8A was inserted to the above Rules through the Companies (Appointment & Remuneration of Managerial Personnel) Amendment Rules, 2014 with effect from 9.6.2014 to state that a company other than a company covered under Rule 8 which has a paid –up capital of five crores or more shall have a whole-time company secretary. Rule 8A therefore postulates that unlisted private and public companies with a paid up share capital of rupees five crores or more shall appoint a whole time company secretary. The question which arises is whether the person so appointed under the provocation of Rule 8A can be considered as a KMP for the purposes of Section 203. Admittedly the person so appointed is a KMP as defined under Section 2(51). However, he may not be considered as a KMP for the purposes of Section 203(1) read with Rule 8. The Section calls for the appointment of KMPs in the specified designation where the company comes within the ambit of Rule 8. Rule 8A calls for only the appointment of a full time company secretary where the paid up capital is five crores or more but within rupees ten crores. Rule 8A does not call for appointment of any other personnel. In view of the above, we can forcefully state that the incumbent appointed at the behest of Rule 8A *ibid* is not a KMP for the purposes of Section 203(1).

**CONCLUSION**

Though the new Act is now five years old, it has still to be considered as work in progress in that several contradictions and inconsistencies still need to be ironed out. Every new Statute takes a certain period of time to stabilize. It is often said that “Hope rests eternally in the human heart”. Hopefully the adhocism and knee jerk changes which have characterized the existence of the Act in the face of the slightest provocation will soon be a thing of the past and that we shall before long witness a period of stability over the operation of the Enactment.
Companies (Amendment) Act, 2019 – Some Salient Features Thereof

The article highlights some of the essential features of the Companies (Amendment) Act 2019 which got passed by the Parliament on 30th July 2019. Certain new amendments aimed towards ease of doing business and for better corporate governance and compliance are also deliberated.

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To further amend the Companies Act, 2013, (“CA 2013” or “the Act”), the Companies (Amendment) Bill, 2019 (hereinafter referred to as the “CA Bill 2019”) was introduced in the Lok Sabha on 25th July, 2019 and the said Bill was passed by the Lok Sabha on 26th July, 2019 and by the Rajya Sabha on 30th July, 2019. The said Bill passed by the Parliament received the assent of the President of India on 31st July 2019 and has been published in the Gazette of India on 31st July 2019.

It is necessary to appreciate why the CA Bill 2019 was necessary. The “Statement of Objects and Reasons” for introducing the Bill states that the CA 2013 was enacted with a view to consolidate and amend the law relating to companies. The CA 2013 introduced significant changes relating to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. Thereafter, in order to review the existing provisions of the Act dealing with the offences and to make recommendations to promote better corporate compliance, the Government of India constituted a Committee in July, 2018 and the said Committee, after taking the views of several stakeholders, submitted its Report in August, 2018. The Committee recommended that the existing rigour of the law should continue for serious offences, whereas the lapses that are essentially technical or procedural in nature, may be shifted to in-house adjudication process. The recommendations made by the Committee were examined by the Government and it was noted that the changes in the CA 2013 suggested by the said Committee would fill critical gaps in the corporate governance and compliance framework as enshrined in the Act, while simultaneously extending greater ease of doing business to law abiding corporates. Accordingly, it was proposed to amend certain provisions of the CA 2013. However, in view of the urgency, the Companies (Amendment) Ordinance, 2018 was promulgated on 2nd November, 2018. To replace the aforesaid Ordinance, a Bill, namely, the Companies (Amendment) Bill, 2018 was introduced in the Lok Sabha and passed in the said House on 4th January, 2019. However, the said Bill could not be taken up for consideration in the Rajya Sabha.

In order to give continued effect to the Companies (Amendment) Ordinance, 2018, the President promulgated the Companies (Amendment) Ordinance, 2019 and the Companies (Amendment) Second Ordinance, 2019 on the 12th January, 2019 and 21st February, 2019 respectively. The recently passed CA Bill, 2019 replaces the Companies (Amendment) Second Ordinance, 2019 with certain other amendments which are considered necessary to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in the corporate sector. This article highlights some of the following significant amendments brought about in the CA 2013 through the CA Bill 2019:

1) Relief to Holding Company in changing Financial Year – Amendment in Section 2(41)

Relief to holding company or a subsidiary of a company incorporated outside India to follow a different financial year for consolidation of its accounts outside India. Such companies, as per section 2(41) of CA 2013 had to approach the National Company Law Tribunal (“Tribunal”) and the Tribunal if satisfied, would allow any period as the applicant’s financial year, whether or not that period is a year. The amendment in CA Bill 2019 will enable the concerned companies to follow different financial year with the approval of the Central Government, instead of taking approval of the Tribunal. It is hoped that this amendment will not only reduce the workload of the Tribunal, but will pave the way for “ease in doing business” and Central Government’s approval is expected to be much faster and less cumbersome. A welcome change.

2) ROC empowered to physically verify Registered Office. Declaration by Company about payment by Subscribers – Insertion of new Sections 10A and 12(9) in the Act

Further, the Bill seeks to insert a new section 10A in the CA 2013 relating to commencement of business etc. to provide that a company having a share capital shall not commence
3) **Changes in Section 29 – Dematerialization of Shares of Companies**

The Bill amends section 29 of the CA 2013, which provides for conversion of securities into dematerialised form and it provides that certain classes of public companies are required to issue shares for conversion of securities into dematerialised form only. **Sub-section (1A) inserted in Section 29 provides for the requirement of issuance, holding or transferring of securities in dematerialised form for any class of unlisted companies, as may be prescribed by the Central Government. This change will definitely help the shareholders of unlisted companies and will reduce time consuming cumbersome paper-work, as holding of shares in dematerialised form is the most convenient mode these days.**

4) **Amendment to Section 90 of the Act – unearthing beneficial ownership of shares**

The provisions of Section 90 of the CA 2013 stipulates that every person who holds a beneficial interests of not less than twenty five per cent in the share capital of a company or holds the right to exercise or actually exercises significant influence or control over the company (‘Control’ as defined in Section 2(27) of the Act) is required to make a declaration to the company, specifying the nature of his interest and other particulars. As per Sub-Section 2 of Section 90, every company is to maintain a register of interest declared by individuals under Section 90(1) and such register shall include the name of the individual, his date of birth, address, details of ownership in the company. Further, Section 28 (5) of Section 90 requires every company shall file a return of significant beneficial owners of the company, with the Registrar of Companies. As per Sub-Section 7 of Section 90, where despite the company giving to the concerned director who the company knows or believes to be a significant beneficial owner of the company, if the said person fails to give the company the requisite information sought for in the notice within the specified time or if such information given is not satisfactory, the company shall apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares.

The Bill amends section 90 of the Act by inserting sub-clause (4A) to provide that the company shall take necessary steps to identify an individual who is a significant beneficial owner. Failure to take necessary steps shall lead to action under sub-section (11). The Bill amends sub-section (9) of Section 90 to provide that the company or the person aggrieved by the order of the Tribunal, may make an application to the Tribunal for relaxation or lifting of the restrictions placed under Sub-Section (8), within a period of 1 year from the date of such order and if no such application is filed, such shares shall be transferred “without any restrictions” to Investor Education and Protection Fund Authority. The Bill also introduces Sub-Section 9A to provide the power to the Central Government to make rules for the purposes of this section. The amendment indicates intention of the Central Government to go to the roots of the actual beneficial ownership of shares of a company in order to eliminate any possibility of the company being controlled remotely by person who is actually the promoter/director, but does not want to be reveal his identity to escape rigours of liability/prosecution under the Act.

5) **Amendments in Section 135 of CA 2013 on how to spend CSR Funds and Stricter Penal Provisions**

The Bill amends sub-section (5) of section 135 of the CA 2013 and insert sub-clauses (6), (7) and (8) in section 135 to provide, inter-alia, for (a) carrying forward the unspent CSR amounts, to a special account to be spent within three financial years and transfer thereafter to the Fund specified in Schedule VII to CA 2013 in case of an on-going project; and (b) transferring the unspent amounts to the Fund specified under Schedule VII to the Act in other cases. The newly inserted sub-section (6) stipulates that any amount remaining unspent under sub-section (5), pursuant to any on-going project as per its CSR Policy, shall be transferred by the company, within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank, and it shall be called the “Unspent CSR Account” and such amount shall be spent by the company in pursuance of its obligations towards the CSR Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. The proposed
amendment clarifies lot of ambiguities otherwise associated with treatment of the unspent CSR amount.

At present, if the concerned company cannot fully spent the calculated CSR amount, then it has to disclose the reason why it could not spent it fully and report the same in the Annual Report. Unspent amount committed for an on-going project is required to be transferred to an Unspent CSR Account, which can be spent within three years. As per the amendment, unspent amount, beyond the specified period of three years, will have to be transferred to one of the Funds specified in Schedule VII.

The newly inserted sub-section (7) to section 135 stipulates that if a company convenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine, which shall not be less than Rs.50,000/-, but which may extend to Rs.25 lakhs and every officer of such company, who is in default, shall be punishable with imprisonment for a term which may extend to three years or with fine, which shall not be less than Rs.50,000/-, but which may extend to Rs.5 lakhs or with both. In other words, fear of stringent penal consequences will force the concerned companies to be more serious in rigorously following the CSR law and policy. The amendment reflects change in the approach of the law enforcing authorities from treating CSR spent from being merely ‘voluntary’ in nature to a “statutorily mandated” nature.

6) Amendment in Section 165 of CA 2013 - Company directors exceeding maximum number of directorship will be punished
The Bill amends Section 165 of the Act and enhances the punishment of fine where a company director exceeds the maximum number of directorships in public limited company and private companies. This will prevent carelessness and lackadaisical attitude of those persons who were violating this limit with impunity.

7) Insertion of sub section (14A) in section 212 – empowering Arrest by SFIO and Central Government’s Power to Seek Disgorgement of Funds by Directors/KMP
In a significant move, the Bill amends Section 212 of the CA 2013 to empower any officer “not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO)”, if so authorised, to arrest any person in accordance with the provisions of Section 212 if such SFIO officer has reason to believe, on evidence, that any company Director/official committed fraud. Also, the Bill inserts in section 212, a new Sub-Section (14A) which provides that investigation by SIFO reveals that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, then the Central Government may approach the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, and such other officer or any other person liable personally without any limitation of liability.

The newly introduced Sub-Section (14A) to Section 212 empowers the Central Government to take back or disgorge the funds including assets, property or cash fraudulently acquired by a director or any key managerial person and further to that, such persons shall also be liable “personally without any limitation of liability”. This also imposes onerous responsibility on the promoters, directors, key managerial personnel and any other officer or person connected with the company to take stringent measures to comply with the provisions of law and ensure good corporate governance.

8) Amendment in section 241 and 243 - Central Government can initiate action against persons responsible for oppression and mismanagement
In section 241 of the CA 2013, the following proviso shall be inserted in sub-section (2), namely:

“Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;

Importantly, the Bill inserted the following sub-sections after sub-section (2) of section 241 of the Act, namely:

“(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances
and materials as the Central Government may consider
necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in
the Code of Civil Procedure, 1908, for the signature and
verification of a plaint in a suit by the Central Government.”.

It needs to be appreciated that while the provisions relating
to “oppression and mismanagement” were considered to be a triggered by dispute amongst the warring factions of the shareholders of a company, the newly inserted sub-sections under Section 241 of the CA 2013 demonstrate that the Central Government can intervene in appropriate cases and even put up a concise case to the Tribunal against individual persons and where the Tribunal finds such persons to be guilty, it can take stringent actions against such persons. This also, enhances the possibility to weed out undesirable, unscrupulous persons from being associated with company management and augurs well towards good corporate governance.

Further, Section 243 of the Act has been amended and a new sub-section (1A) has been added whereby, the person who is not a fit and proper person pursuant to sub-section (4A) of Section 242 of the Act, shall not hold office of a director or other office connected with the conduct and management of the affairs of any company for a period of five years from the date of such decision. Further, as per the newly inserted sub-section (1B) to Section 243 of the Act, a director so removed from his office shall not be entitled to or be paid any compensation for the loss or termination of office.

9) Amendment in section 441 for Enhancement of Financial Threshold for Compounding of Offences by the Regional Director, MCA

The CA Bill 2019 amends section 441 of the Act in line with the Companies (Amendment) Ordinances and the enhances pecuniary jurisdiction of the Regional Director (RD) to compound those offences where the maximum amount of fine to be imposed up to Rs.25 lakhs. This will definitely reduce the workload of the Tribunal. Further, existing Sub-Section (6) of Section 441 has also been substituted with a new clause which stipulates that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under the CA 2013 with imprisonment only or with imprisonment and also with fine, shall not be compoundable.

10) Re-Categorization of Certain Offences

As per the Injeti Committee Report of August 2018, which undertook a detailed analysis of all penal provisions under the CA 2013, the Committee recommended that the existing rigour of the law should continue for serious offences, whereas for lapses that are essentially technical or procedural in nature, may be shifted to in-house adjudication process. The Committee observed that this would serve the twin purposes promoting of ease of doing business and better corporate compliance. It would also reduce the number of prosecutions filed in the Special Courts, which would, in turn, facilitate speedier disposal of serious offences and bring serious offenders to book. The cross-cutting liability under section 447, which deals with corporate fraud, would continue to apply wherever fraud is found. Broadly, the penalties covered fall under Sections 53(3), 64(2), 92(5), 102(5), 105(3), 117(2), 121(3), 137(3), 140(3), 157(2), 159, 165(6), 191(5), 197(15), 203(5), 238(3), 446B and 454A of the CA 2013.

11) Insertion of section 132(4B) for making provisions for Debarring Erring Auditors

It needs to be appreciated that while the provisions relating to “oppression and mismanagement” were considered to be a triggered by dispute amongst the warring factions of the shareholders of a company, the newly inserted sub-sections under Section 241 of the CA 2013 demonstrate that the Central Government can intervene in appropriate cases and even put up a concise case to the Tribunal against individual persons and where the Tribunal finds such persons to be guilty, it can take stringent actions against such persons.

The CA Bill 2019 amends Section 132 of the Act and strengthens and empowers the National Financial Reporting Authority and substitutes Section 132(4B) debarring the member or the firm from:

I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.”.

This seems to be an onerous provision and in the interest of professionalism, debarring auditors may be reviewed unless and until serious lapses or misconduct is proven beyond doubt.

CONCLUSION

The Companies (Amendment) Act, 2019 impacts significantly in the way the companies function and it is appreciated that the Central Government is alive to the need to make suitable changes in the Act to amend those sections which hinder “ease of doing business” and come in the way of good corporate governance. While the powers of the ROC and the Regional Director get enhanced, it is hoped that high standard of professionalism be maintained in these law enforcing authorities so that the corporate sector gets due weightage in presenting its case before being held guilty and punished. The working of the new provisions might throw some procedural and practical difficulties which may need further consideration by the Central Government.
Governance, Risk and Compliance in Entrepreneur Driven Entities – Emerging Paradigms in the Ecosystem

Governance, Risk and Compliance (GRC) are the three sides of the Rubik Cube of entrepreneurship. The other three being, doing business, finance and wealth creation. Once all function in unison, we can say the puzzle of entrepreneurship is solved! The mid-size corporate segment in India is a formidable economic force. The paper focuses on the paradigms of corporate management in this segment that yearn for a change to match the growth trajectory that the economy aspires for. The changing fiscal compliance scenario in the country compels the entrepreneur-driven and family-owned enterprises to discover the need to propel their ambitions of value creation through the GRC route.

Corporate India has come of age. Corporate structure for start-up and stand-up themes have thrown open floodgates of opportunities for brainy entrepreneurs. The adoption of corporate structure, more so the shield of its veil, will henceforth be restricted to genuine business needs, fiscal growth, collaboration and, above all, value creation. The evolving corporate compliances have pushed ‘faceless’ corporates and their ‘unidentifiable’ promoters to the extremes to mystify their obnoxious transactions. Application of global anti-money laundering guidelines to companies, for the first time in India; reporting of dubious entries ‘treated as’ outstanding loans, tight norms to identify directors of non-compliant companies; and synchronization of direct and indirect taxation data, are some of the rigours that the emerging corporate India faces. The challenges manifested are manifold and multi-dimensional. The punitive diktats are exemplary if not horrifying, the bad apples in our own corporate ecosystem having caused this happen.

Imbibing Governance, Risk and Compliance (GRC) practices into the business systems is the way forward for corporate India, especially in the mid-size segment. While large corporates can afford the costs of compliance, the companies that are tiny and small need to gear up fast with cheaper but effective alternatives to surmount these ever growing governance predicaments.

**THE BUSINESS-GRC CONUNDRUM**

The principal factors that propel GRC in industrial and service sectors in any economy are (i) maturity of markets, (ii) legal and regulatory environment, (iii) ethical culture, and above all, (iv) contemporary financial circumstances. Governance practices are guided by the size of the firm, its structure, ownership and business priorities. For small and medium sized firms that are predominantly family owned, addressing GRC often may become a handicap. However, as companies diversify, expand and embark upon organic or inorganic growth, there emerges a corresponding need for equity capital and long term debt from outside. Lack of transparency on the management of entrepreneur driven entities considerably jeopardizes the interests of investing and lending institutions. These institutions eventually shy away from funding entrepreneur driven companies.

“The role of micro, small and medium enterprises (MSMEs) in the economic and social development of the country can hardly be over-emphasized. About one-third of the country’s GDP is contributed by more than 50 million MSMEs in the country. It is expected that by 2020, India will have the largest job-ready youth population in the world”¹. However, a fragile governance system espoused by small firms saddled with a dearth of crucial information and inputs, has made them vulnerable to various enterprise risks. The absence of GRC practices makes it difficult for these entities to access financial resources from banks and investors. Good practices that encompass governance, risk mitigation and statutory compliance is bound to fuel organic growth in the entrepreneur driven mid-size corporate segment. Professional investment and organic growth will be the essential resultant bye-products.

**FUNDING ISSUES HAUNT ENTREPRENEURS**

It is a fond dream of every entrepreneur to reach to astronomical valuations. Start-up theme heavily leverages on the valuation factor. But we see many a firm oft flounder and fail on the seed funding stage itself; muster basic institutional credit after strenuous struggles. Why?

The internal processes are not verifiable. The investor has to depend only on the audited financial statements to feel the pulse performance, and this comes once a year. Section 143(3) (i) of Companies Act 2013, mandates that auditor’s report shall state whether the company has adequate Internal Financial Control System in place and the operating effectiveness of such controls. However, certain categories of companies including small companies have been excluded from these requirements. The stakeholders need a comfort that the end use of funds is transparent, that the internal processes would hinder the entrepreneur from syphoning the infused funds for personal enhancements. For the seed investor, the recourse to recover

¹ Keynote address delivered by Shri S. S. Mundra, Deputy Governor, Reserve Bank of India at the 3rd Bankers Borrowers Business Summit organized by ASSOCHAM in New Delhi on June 16, 2017
his return-on-investment is remote in the absence of fool proof internal controls. While the lending institution cannot be sure that the firm’s internal processes will help prevent any financial mismanagement; the only remedy available to them, should there be a default, is to lay hands on the collaterals.

When the firm is in a squeeze for funds, the performance reels under pressure. The cycle gets vicious and the entrepreneur loses focus on business. The situation may even force him to indulge in unethical practices like tax evasion, mis-selling, compromise on quality etc. The illustration below depicts a typical example.

ECONOMIC CHALLENGES FACED BY SMEs IN INDIA

“The current economic situation, with political and economic integration and technological breakthroughs, warrants the need to make our Small and Medium Enterprises globally competitive.”

Globalization has reduced dramatically the costs of distance and now businesses can operate seamlessly in multiple markets. As a result, even smaller and locally orientated businesses have necessarily to see themselves in a global context, if they want to sustain. Consequently SMEs are forced to deal with increased competition even from global players. “Competition brings pressures on SMEs to reduce costs, innovate and manage knowledge in similar ways to large companies, often without having surplus resources to invest for such activities, in a fast changing environment.”

On the other hand, the financial support system, i.e., the Banking Sector is facing grave issues like growing NPAs caused by the faulty economic policies of yesteryears. Corruption and conflicts of interests have plagued the banking system and mounting NPA levels have turned the banks shy of funding the mid-sized enterprises. Consequently, Indian financial markets have witnessed a significant development of non-bank sources of credit such as lending by NBFCs, corporate bonds, External Commercial Borrowings (ECBs) and Commercial Papers (CP).

SIGNIFICANCE OF SYSTEMS AND PROCESS

Adoption of a corporate GRC framework by entrepreneur driven small and mid-size enterprises is indispensable for taking the MSME sector into a growth trajectory. Weak governance practices of small and mid-size firms burdened with a daunting dearth of crucial professional advise and counseling expose them to multiple regulatory actions and penalties. Unethical business practices may beget short term gains, but in the long term all the stakeholders, especially the end customers lose faith in the management leaving the entity prone to business disasters.

The financial institutions do have a primary business interest to ensure that a culture of GRC is incubated in their investee and borrower companies. Further, in injecting good governance practices, these institutions also fulfill their duty as stakeholders in these companies and as custodians of the economic environment as well.

“To examine CG practices and their impact on firm-level performance we used the CG score obtained from the S&P ESG India Index as proxy for firm-level governance quality. Our results show a positive and significant relationship between CG score and firm-level performance after controlling for a number of firm-specific and time-specific factors. Better governed firms not only command a higher market valuation but are also less leveraged and have higher interest coverage ratios. Further they provide a higher return on net worth and capital employed, and additionally their profit margins are relatively more stable. Finally their Price-Earnings Ratio (P/E) and yield—the return earned by the shareholders by way of dividend—are also higher in comparison to the firms whose CG score is lower.”

An appropriate GRC system, once implemented, gives the enterprise a formidable structure to address major risks that stare at the business such as financial risks, regulatory risks and reputation risks. These three risks eventually expose the enterprise to financial crimes, non-compliance and sales retardation.

ADDRESSING ENTERPRISE RISKS - AFFORDABILITY

Ideally, a corporate body shall have developed an appropriate Risk Register and the ways and means to address the Systematic (foreseeable) and Unsystematic (Unforeseen) Risks. Further, these can be grouped into ‘Internal Risks’ and ‘External Risks’. The Risk Appetite (the capacity to contain unaddressed Risk) of the entity need to be assessed vis-à-vis its resilience and financial depth to withstand each type of risk.

The following practice is normally adopted by large institutions for risk containment and can be emulated to a great extent by mid-size enterprises. A Risk Spectrum Analysis is carried out and the enterprise risks are analyzed and classified based on their severity, probability and detectability. They are further classified into low, medium and high from a business perspective. Then the rule of risk appetite is applied and the acceptability levels are ascertained. ‘Internal Systems and Processes’ are reviewed and re-engineered to reach acceptable levels of risk containment. This whole process evolves over a period of time and consumes huge resources in terms of money and man hours.
The Internal control mechanisms comprise Passive Measures (like Policies, and standard operating procedures), Active Measures (like diligence in actions, operational surveillance and enforcement of policies and processes) and Reporting (to the top management, Board of Directors, and Authorities). Once these systems are in place, the GRC mechanism of an organization functions like a well-oiled machine.

A formal GRC structure like the one depicted here, is a distant dream even for the mid-sized firms, leave alone the smaller ones. In the times to come, it is more likely than not, the new generation entrepreneurs will adopt good GRC practices to ward off the inherent incidence of multiple risks that stare at SMEs.

MINISTRY OF CORPORATE AFFAIRS (MCA) – NO LONGER A SLEEPING GIANT

SEBI is known for strict enforcement of its diktats, whereas MCA with its plethora of statutory powers vested by the Companies Act, 1956, and later 2013, was not revered to be a task master. But many may not have realized that generally statutory bodies and regulators rise up the occasion to contain systemically detrimental practices, as depicted by the graphic below.

The unethical practices triggered by certain entities create sympathetic vibrations amongst peers and the peers get into a competitive mood. These constitute a ‘market practice’ and invites scrutiny by the authorities. Law gets modified to contain these malpractices and later rigorous enforcement and punitive actions follow. Historically most business laws have evolved this way!

A few people found that promoting shell companies is an easy way to launder money. A few, perhaps with the blessings of the powers that be, made fortunes through this dubious cobweb. This led to further ‘innovations’ in unethical practices like fudged export and import invoicing, terrorist funding and several other chronic offences. All such practices that deteriorate the health of our economy were guillotined in one stroke by ‘striking off’ more than 2 Lakh companies. Consequently, the DINs of all the directors involved were also blocked by the Government, raising several eyebrows.

It is observed from the data published by the Ministry of Corporate Affairs for the years 2015-16, 2016-17 and 2017-18 that the number of prosecutions ending in acquittals has reduced depicting a tightening of the judicial and quasi-judicial system. The total fines imposed have shot up drastically during the year 2017-18 whereas the increase in the buildup of costs awarded to ROC has been moderate. It is also noteworthy to observe that the average number of cases registered against prosecuted companies has shown a marginal increase. Are we to assume that the government machinery has been tightened or that the number of violations per company has increased? The appended chart speaks.

ENHANCING STANDARDS, CONTAINING COSTS

The supervision of statutory and regulatory compliance broadly rests on 3 pillars, namely:

(i) Compulsive establishment of internal processes and systems to ensure compliance with regulatory and statutory requirements coupled with internal supervisions/audit of such compliances.

(ii) Reporting Mechanism to the Regulatory Authorities including (i) reporting to the regulator by the regulated entities and (ii) collection of evidences from the market through surveillance and other means of information collected by the regulator.

(iii) Onsite regulatory inspection for verification of compliance standards, a traditional way of supervision.

Insofar as the cost of compliance is concerned, the first pillar is a cost center for the enterprise and the second and third pillars are cost centers for the authorities. Statutes and Regulations

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5 Annual Report for the year ending March 31, 2018
are evolved out of the market ecosystem and stems out of the necessity of preventing misuse of the system. Abusive practices that could be detrimental to the market in specific and the economy in general need to be stopped and prevented.

Any compliance standard that needs to be enforced initially, and maintained thereafter, involves cost. The higher the standards, the higher the degree of enforcement, the higher will be cost of compliance. These costs attribute to the regulator and the regulated as well. In fact the cost factor shall not be a traded off against the standards of compliance, or the enforcement thereof. Such nearsightedness is bound to have a colossal impact on the ecosystem.

A Study by Ponemon Institute Inc., US - January 2011, reveals that the cost of non-compliance comprise 27% direct costs, 43% indirect costs, and 30% cost of opportunities lost. This proves that the cost of non-compliance is crippling while the cost of compliance is affordable6. The cost of compliance comprise routine matters like implementation of policies process and systems, Vigil and surveillance mechanisms, enforcement of the policies, processes etc. on an ongoing basis, independent audit, and also training programs and creation of awareness in the system. The costs of non-compliance comprise fines and penalties including imprisonment, business disruption and consequent loss of productivity and reputation and ultimately revenue loss.

LISTING ASPIRATIONS OF MID-SIZE COMPANIES

With over 300 SMEs successfully listed in the BSE, the transformation from a family owned or family managed structure to a public accountability is taking shape in a big way. The unlisted privately owned companies contribute the bulk of industrial output and have a significant share in the unlisted market capitalization. Ownership in such firms is often concentrated within the controlling family. Members of these families hold their controlling rights through cross shareholdings and indirect ownership for various purposes ranging from taxation to wealth management. These enterprises need to learn the art of public accountability and protection of minority interests, before they get listed. The tendency to non-disclosure or ‘work around’, despite statutory compulsions, need to be curbed. In short, a transparent board culture that caters to the basic tenets of GRC needs to evolve in these companies as they dream going public.

Companies that wish to get listed in the SME Boards of BSE and NSE, need to plan their way up in a systematic manner. The progressive enhancements suggested are (in the order of implementation), (i) setting right the books of accounts removing fictitious entries and giving a true and fair picture of the state of affairs, (ii) Brands associated with the products and services be registered and other intellectual properties protected, (iii) streamline and update all corporate statutory records and streamline internal controls for GRC, (v) prepare a calendar of compliance and make regular governmental filings (iv) start giving utmost importance to stakeholder’s interests and commitment to business ethics, (vi) scout for angel investment, or arrange committed investment through the public issue, and finally (vii) appoint a merchant banker and take the company to the exchange. This is a 3 year project in itself if intended to be systematically and professionally executed.

GRC INTEGRATION WITH BUSINESS: KEY TO SUCCESS

Access to equity capital is a genuine problem for SMEs. Availability of a sound equity capital base is essential as it enhances the risk appetite of new ventures. Absence of equity capital pose a serious challenge to development of mid-size industries, particularly those promoted by first-generation entrepreneurs with the requisite expertise and knowledge. Most SMEs, especially the Start-Ups have negative cash flows. Without collaterals, they find it difficult to access debt capital or bank financing.

Venture Capital is often a more appropriate financing instrument for Start-Ups with innovative ideas. BSE has set up separate dedicated platform for listing and trading of shares of Start-Up companies making it easier for them to raise equity capital. A robust GRC process makes the enterprise less vulnerable to business woes and ensures transparency and proper end use of funds.

Globally, GRC management is becoming increasingly integrated into business processes, beyond traditional areas. Today, GRC encompasses regulatory compliance, audit, third-party management, ethics, privacy, quality management, environmental health, cyber security, business resilience, corporate social responsibility and several other factors. In a 2015 Survey conducted by Open Compliance & Ethics Group (OCEG), Arizona, United States, over 50 percent of organizations surveyed stated they are executing an integrated GRC vision and over 80 percent claimed that benefits realized have met or exceeded their expectations. An effective GRC program helps to accelerate organizational readiness and improve business performance by focusing equally on people, processes and technology. Successful programs effectively address the core elements of strategy, design and implementation. Well governed companies have registered better performance in financial terms. Adoption of best practices in Governance has led to:

(i) Improved access to external financing resulting in greater efficiencies due to greater knowledge of investors with regard to the company’s strategies,

(ii) Lower cost of capital,

(iii) Improved operational performance through more efficient management and better asset allocation and

(iv) Better financial performance and company valuation.

A McKinsey Survey in 2002 conducted across all countries including Eastern Europe, Africa, and Asia concluded that corporate valuations were higher and investors were willing to pay higher share premiums ranging up to 30040 percent for better governed companies. A Credit Lyonnais South Asia (CLSA) 2015 study on emerging markets has shown that best corporate governance practices in emerging markets had 8 percentage points higher Economic Value Added (EVA) than

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the average of all firms. An ABN/AMRO Study of Brazil based firms with Corporate Governance Ratings showed that their P/E ratios were 20% higher, Return on Equity (RoE) at 45% and Net Margins 76% higher than those with below average GRC practices. A Study by L. Brown and M. Caylor of Georgia State University in 2004 has shown that well governed companies outperformed poorly governed ones by 18.7% in terms of Return on Investment (RoI) and 23.8% for RoE. Companies with good GRC practices are better equipped to cope with crises. A Study by J Derwall and H Vervijmeren, ‘Corporate Governance and the Cost of Equity Capital: Evidence from GMI’s Governance Ratings’ in 2007 on US companies concluded that firms with better governance could command shareholders’ and lenders’ willingness to provide capital at a lower cost.

**AUTOMATION AND OUTSOURCING GRC ENABLES BUSINESS FOCUS**

SMEs are predominantly regarded by lending institutions as high-risk borrowers because of family ownership, insufficient assets, low capitalization, inadequate internal controls and systems, vulnerability to market fluctuations and high mortality rates. Information asymmetry arising from SMEs’ lack of appropriate accounting records, added with unhygienic business plans makes it formidable for creditors to fathom the creditworthiness of SME proposals.

Automation and outsourcing of non-core activities like GRC, on which the management is unlikely to have core domain competence could well take the pressure off the entrepreneur to be GRC oriented, thereby allowing him to focus more on developing his core business. The top management can concentrate on core functions like improving customer engagement, research & development and providing high value services. This can have a positive impact on overall business performance. Further, if non-core functions are outsourced, the business becomes leaner with lesser people to manage, less office space required, and lesser problems to deal with. This also means leaner internal control systems and technology which in turn further simplifies the operations of the business, reduces cost and reduces the need for managers to invest as much time on non-core areas.

Several independent professional firms are equipped with a wealth of domain knowledge, expertise and automated tools for establishing governance mechanisms, enabling transparent disclosures, providing efficient compliance processes and above all educating the stakeholders on the advantages of being a well governed entity. Technology based GRC solutions achieve very high standards in board governance and regulatory compliance and at the same time reduce the cost of compliance. It is heartening to find that many professionally manager new generation SMEs have started outsourcing their non-core competencies to professionals and other agencies and increased outsourcing is having a significant and positive impact on such enterprises.

Further, shared access to amenities like testing centers, utilities, security, training to workers, and marketing assistance provide substantial benefits in terms of technology, operational efficiency and growth. It is heartening to learn that the new generation entrepreneurs are open to using shared GRC solutions. Firms in the MSME sector which earlier faced difficulties in achieving economies of scale, specialization and innovation due to their small size are now increasingly benefitting from the concept of outsourcing.

**EASE OF COMPLIANCE – AN IMMEDIATE REQUIREMENT**

Harmonization at multiple levels/segments of governmental reporting brings in uniformity of system and ease of compliance. For example, in the case of entities regulated by SEBI, IRDA, PFRDA and above all RBI follow distinct and independent systems of periodic regulatory reporting. MCA requires another set of reporting on all areas of corporate compliance. While annual returns are a common necessity for all regulators, creation of a “Common Electronic Compliance Repository” by the Central Government and linking all regulators this Repository will considerably ease compliance processes, both for the regulator and the regulated. Further, while easing the reporting process, this measure will obviate deliberate reporting of distorted data to multiple regulators. Multiplicity of labour laws and state-wise compliance is another core area that need harmonization.

The existing MCA back office infrastructure is capable of capturing and reporting several types of breaches and misreporting by the Directors, Company Secretaries and Auditors. One may fail to understand, as to why this is not being done!

While Compliance Officers are responsible for the execution of the various compliances at a micro level, the Board of Directors is responsible for the enforcement of systemic mechanisms, processes and internal controls. FIU India has prudently understood this concept and has called upon the regulated entities to nominate a Designated Director, making him responsible for the compliance with AML Laws. Similarly MCA and other authorities can amend laws to ensure that one Director is nominated to be responsible for certain important compliances like filing of Annual Returns etc., rather than making the entire Board responsible in a generic manner. This would bring in more accountability at the top level management. Taking a cue from the provisions of section 447 of the Companies Act 2013, a dereliction of responsibility by a Designated Promoter Director need to be made liable with severe consequences.

Compliance Officers are, conceptually, extended arm of the regulator within the organization. However, a Compliance Officers, being a paid employee of the regulated entity, is mostly under duress from the business segment to gloss over various violations. Lost business opportunities due to compliance issues are treated as “Cost of Compliance” and the Compliance Officer is often put to blame. Blowing of the whistle subjects him to career ‘apartheid’ and results in being ostracized by the industry. In the case of listed companies, exiting independent directors and auditors need to disclose the actual reason to the stakeholders. It will be prudent to consider incorporating a similar provision in the Companies Act for exit of company secretaries also.

**CONCLUSION**

A billion plus burgeoning population need to be sustained. Change and evolution are inalienable factors of corporate growth. The task of future job creation belong to the mid-size corporate segment. This segment needs to stay clear of factors that impede growth. GRC is the only mantra that will help strengthen this segment. It is mature to presume that sooner than later, technology will usher in an era of good governance with lending shoulder from the governmental agencies.
Board Composition, Conduct and Outcome: Is a Paradigm Shift Imperative?

In modern times even when a tweet by a CEO influences the destiny of the organization, the Board of Directors which is the visible face of a corporate cannot turn deaf ear to the louder calls for diversity. A Board which embraces diversity in perspectives and people, starting from its chair to the frontline workforce, can be considered as well-equipped to proactively respond to the turbulent changes it is challenged with in current times. Directors, get ready to play the game with the diversity dice, play it smart...

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Change is the very basic nature of the world. Look around, change happens every second. There is virtually nothing around us which does not undergo change. Change is inescapable. In fact, change is what imparts vibrancy to the whole world.

The term ‘change’ takes a whole new dimension when it comes to the business world. In business, what not have changed? Let us begin with what could be converted into a business idea way back then...Traditionally, business acumen meant fulfilling the existing material demands of a particular locality, by starting a business of the apt size. Expansion to this, meant only in size. Then, we witnessed the businesses taking advantage of the transportation and infrastructure advancements and undergo geographical/territorial expansion of operations. Gradually, the business houses understood their potential to venture into newer areas related to their core competencies, and later on, proceeded to ones which are totally distinct. With this began the era of ‘diversification’.

Diversification increased the scope of businesses to unimaginable lengths and breadths. With the advent of technology, and with new methods for resource pooling, there is no limit for businesses to grow. While this ‘everything is possible’ business environment has helped businesses to grow, grow, and grow exponentially, it has also brought along with it a whole gamut of new challenges for any organisation. An organisation brimming with changes in every operational sphere, automatically demands changes in the way it is being managed also. Because, it is not just about the changes, it is the dizzying pace with which changes happen, which makes management more complex.

Back when the promoter, who would be the CEO of the Company, pooled a group of like-minded people to be the Board of Directors, to help him take the business forward in the right direction, business remained an individual initiative and its management fairly simple. Now, the picture is different. With institutional investing, and with impactful investing, corporates are no longer stand alone entities. They are an integral part of the society, and as such cannot be independent of the environment surrounding them. With institutional investors, social auditors, environmental activists and regulatory bodies keeping many an eagle eye over business activities, the management of corporates have become very challenging. To add to the adventure are the fast paced technological changes, the digital disruption, the cyber security risks and the global connectivity.

Gone are the times when, Board meetings were venues for the CEOs to get the nod of the directors for their plans. Howsoever well-intentioned this approach was, it lacks the multi-dimensional approach demanded by the ever-changing and challenging current business scenario in which an organisation operates. While change has taken over every aspect of the way a business is done, how can it spare the top tier, i.e., the Board of Directors, who steers the entire organisation forward?

While diversity in boardrooms should have happened spontaneously as a natural offshoot of the turbulent changes which the business world has been witnessing in terms of technology and otherwise, the facts do not seem to agree, strangely. There has been a reluctance to introduce any changes in the way a Board is constituted or the manner its business gets conducted. This hesitation is understandable to some extent due to the common human nature that it is easier to let things the way they are. But the pertinent question here is, can any management afford to turn a deaf ear towards the loud calls for Boardroom diversity for too long? The answer is an emphatic NO. The most dangerous attitude of the current times for any management could be “We have been doing it this way”.

The Board is the visible face of an organisation, next to its CEO. Thus, it is but common business sense that the Board of a Company reflects interests of its stakeholders, customers, clients, and also the broader society which its operations impact. It is for this purpose that regulatory mandates on independent directors, women directors etc. were introduced. The regulations helped to evoke some corporate attention to Board diversity. However, have these responses been sufficient to improve the Board functioning to the desired extent? Sadly, the answer is in negative.

The significant reason why Boardroom diversity is not taken up as a priority is that the concept and its relevance are not understood properly. Let us consider the different variants of diversity that is possible in a Boardroom:
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PEOPLE DIVERSITY (SOCIAL DIVERSITY):

1. **Gender Diversity**: The most commonly taken step towards diversifying any Board is to appoint a few women directors. Gender diversity is a regulatory mandate in many countries.
2. **Ethnicity**: Diversity with regard to race and nationality is particularly important for global conglomerates.
3. **Age**: Board is generally skewed towards higher age groups. There is a generally accepted notion of higher age being a sign of more experience and professional maturity. But these are not just the only requirements of the current times. Younger directors are more current. They can connect well with the millennial workers and consumers. Markets are ever changing. Younger blood on the Board can easily grasp the signals of futuristic changes sent out by the market, well in time. They are given to disruptive thinking and can be great contributors of creative and innovative ideas.

The above social diversity factors relate to particular categories of people. Social diversity is more visible.

PROFESSIONAL DIVERSITY (PERSPECTIVE/COGNITIVE DIVERSITY):

What are the factors that a Board should consider, to improve its efficiency, other than absorbing different categories of people? Apart from the social determinants mentioned above, there can be a whole set of professional aspects which should not be overlooked, to make Board more creative and efficient.

1. **Experience**: By experience is meant, experience relevant to the operations of the organisation. With business innovations taking place in all complex ways, it is essential for the organisation to have on its Board, members having relevant experience to manage the ever increasing pace of change.
2. **Knowledge**: Directors who are subject matter experts are indispensable for any effective Board.
3. **Ideas**: Board members should be capable of disruptive thinking. Diversity should be of the ideas.

Newer and multiple perspectives in the discussions is what help achieve the real intent of Board diversity. Board meetings should witness collaborative and dynamic discussions to take strategic decisions. A professionally diverse Board is a positive signal that the organisation is in the right path of progress.

BOARD DIVERSITY - A PRACTICAL APPROACH

Board diversity is a vibrant topic these days. There is a clamour from all quarters, internally and externally, to diversify every organisation’s Board. Let us accept it. It has to be done. Now, what is the practical way to approach this?

An attempt is made here to draw a framework as to how to give structure and shape to the diversity plan of a Board and how to make it really work.

The first step should be acquiring the mental willingness to embrace diversity. Every Board should understand that in times of ever increasing changes and their pace, the benefits which diversity could bring is multifold. The existing Board should also accept the fact that organisation cannot survive too long with a homogeneous approach, in a heterogeneously turbulent business environment. Diversity is the key, the only key, to progressiveness.

COMPOSITION:

1. The Board should evaluate its current composition objectively. If diversity had not been adopted as a deliberate policy of the Board so far, there is a good chance that some bias (though unintended) would have crept in. For example, suppose a vacancy arises in the Board, the normal step for the CEO to take is to approach someone he already knows or onboard someone from his known network, whom he believes can get along well with him and the existing Board. If all appointments are made this way, sooner, the Board will talk in unison, act in unison; multiple voices will get merged into one. Board will be as good (or bad) as its most aggressive member or its Chair.

Therefore, the Board members should evaluate the current position candidly. Do not hesitate to run a diversity audit of the current Board. If the score is low, act promptly. Break the status quo.

2. Discuss diversity among the Board members, next. Initially, there could be a hesitation to move away from the comfort zone. But, once the matter is openly discussed, the fellow members would soon be convinced about its inevitable need at all levels of the organisation. Brainstorm the different dimensions to the diversity concept so that the entire Board is comfortable to the idea and its execution.

3. Diversity cannot be an exercise pertaining to a particular hierarchical level. It has to blanket the entire organisation. Understand this. Ensuring diversity of the whole organisation is ultimately, Board’s responsibility and task. Hence, make diversity the priority mission.

4. Extend diversity discussions to the top management tiers and the employees at all levels throughout the organisation. Invite ideas from executives and staffs. The more participative policy making is, the easier it is to get it implemented.

5. Give a concrete shape and structure to the diversity policy, so that it automatically gets reflected in the day-to-day functioning of the organisation. Redesign the policies and procedures of recruitments, communication and reporting throughout the organisation, in such a manner that they align with the diversity vision of the management.

6. Once the diversity vision is accepted and set in place in the form of executory policies, the next challenge is to make it really happen, foster it and sustain it within the Board. Board diversity begins with Board recruitments. Encourage the recruiting team to widen its search beyond the already known network. The C-suites are brimming with efficient and highly valuable resources. Take advantage of the wider options for obtaining the best candidates.

7. Do not commit the mistake of making the selection process a ‘check the box’ exercise. While the different categories
Board Composition, Conduct and Outcome: is a Paradigm Shift Imperative?

Having a Board with a few diverse directors will not automatically ensure that an organisation gets the benefits of diversity. Diversity is not a cosmetic thing. What does this mean? Diversity should not only be adopted in appointments, it must also be practised in the Boardroom; it should be visible in its discussions. A diverse Board is one which elicits diverse perspectives from its members. Bringing in different perspectives is the supreme objective of diversity. This can be achieved only if there is a climate of trust and openness inside the Boardroom.

CONDUCT:

Every Board must have a term and age limit for its directors. This automatically takes care of Board renewal.

Having a Board with a few diverse directors will not automatically ensure that an organisation gets the benefits of diversity. Diversity is not a cosmetic thing. What does this mean? Diversity should not only be adopted in appointments, it must also be practised in the Boardroom; it should be visible in its discussions. A diverse Board is one which elicits diverse perspectives from its members. Bringing in different perspectives is the supreme objective of diversity. This can be achieved only if there is a climate of trust and openness inside the Boardroom. All the members should equally feel free to express their opinions and ideas to fellow Board members. There should be mutual trust that all views expressed and questions asked are intentioned for the best interests of the organisation. Different perspectives should be welcomed and discussed in Board meetings.

Boards may have different characters. Some may be very open and offer a welcoming climate to all members equally. Others will be more patriarchal with one or two members taking over the discussions. In an open climate, every member feels free to express his/hers views naturally. In the second type, where one aggressive member mutes others, expressions will not come out spontaneously. In such Boards, the Board Chair must take the initiative and welcome passive or meek members to speak up and elicit their viewpoints. This is the only way to bring diverse opinions to the table. An effective Board is one which respects difference in opinions, argue it out respectfully, accept different dimensions and approaches to handling a problem, and find the most optimal solution in the supreme best interest of the organisation.

Therefore, every Board (or at least the Chair or the CEO) should have an objective assessment of its nature, whether open or otherwise, and play it accordingly so as to reap the full benefits of diversity. The more egalitarian the Board culture is, the more effective diversity practices would be.

Once the necessary corrections are carried out within the organisation, do not hesitate to publicise it. Let diversity vision appear as part of the organisation’s mission statement, let it appear on the Company’s website, in the Annual Report to the shareholders, in its corporate governance reporting, in the job advertisements and in Company’s portals everywhere. This is a clear message that the Board is serious about the diversity initiatives and can invoke positive responses from all the groups at stake. Board diversity is not at all about window dressing. However, if the entire interior is made good, why not decorate the windows as well? After all, windows only can give a peek into what is inside.

OUTCOME:

With the exploding changes taking place in the environment in which an organisation is functioning, the Board of Directors cannot confine themselves to profit discussions any more. Yes, financial performance is important. Equally pertinent is the ability of the business to adapt itself to the changing needs and demands the external and internal environments evoke. The business has to be relevant to the times, and be futuristic as well. With the dizzying pace with which technology is advancing, and with global value chains participation increasing, the potential of doing business has grown incredulously vast. Boardrooms are venues to collectively think the unthinkable, conceptualise what appears to be currently unreal, and actualise the

like gender, age, ethnicity etc. are important, equally or more pertinent are the professional elements. Afterall, an organisation’s destiny is determined by how professionally managed its Board is.

8. Match each of the social factors with the professional elements like knowledge, management expertise, experience, etc. The more the combination of diversity factors achieved, the better the results. For example, a woman director should not be selected just for her gender. Such token appointments mars the basic intent of diversity. Contrastly, look out for woman director of relatively young age with necessary qualifications and experience who will add benefit to the organisation. Understand this much needed difference in the approach.

9. Maintaining diversity in board is a sustained effort. The business environment is changing day by day. The Board of Directors must continuously assess the changes happening in the activities of the organisation, predict the futuristic changes, the areas or sections of society which is impacted, the different set of skills needed in view of the changes (current, expected and also, the unexpected), the available skill set and, thereafter assess the gap. This gap is the new diversity factor that is called for and should be addressed appropriately. Board diversity can be sustained only through such continuous assessment exercises.

10. Diversity is not only about bringing in more diverse members. It also requires refreshing the Board composition regularly.

Every Board (or at least the Chair or the CEO) should have an objective assessment of its nature, whether open or otherwise, and play it accordingly so as to reap the full benefits of diversity. The more egalitarian the Board culture is, the more effective diversity practices would be.
undoable. Board has to act ahead of time, not only to have a competitive advantage, but also to survive and sustain, in the dynamic world which surrounds it. Board decisions must cover fresh insights, foreseen and unforeseen conflicts, and current and future scenarios looked at from all possible, different perspectives.

Boards are subject to a higher degree of scrutiny from all sides. The problems which the current Board have to tackle is too much for a single brain to resolve. The Board does not know from which side a new opportunity might knock or from which angle a new risk is going to pop up. A group of directors having diverse backgrounds will be able to effectively handle the SWOTs, and be ready for the uncertainties dotting an organisation’s path ahead.

The main pullback factor for this is the mental reluctance to take up something new and different. People are generally happier the way things are. This attitude is the major hurdle to introducing and practising anything new within the organisation. Once this mental block is removed, the diversity bandwagon will offer an enjoyable ride for the Board. The only way to achieve this is to realise the intent behind it. Once the positive benefits are assured, who would not welcome change?

Secondly, understand that Board diversity is not gender diversity. Gender Diversity cannot in itself bring any Board diversity. It is true that the diversity regulations introduced across the globe pertain to gender, to begin with. This is so because regulations often reflect deeper problems existing in the society and are meant to have wider impact at multiple levels. Mandates on having women directors in the Board is aimed more at ensuring women representation at the corporate management levels (as is in other spheres of society), where also, in spite of possessing and proving professional capabilities, women are inadvertently stopped from breaking the glass ceiling. The very fact that women representation had to be brought about by way of a regulatory mandate in itself is disappointing. This shows how unwelcoming the corporate management circle has been, to the female gender and how underrepresented the category is, despite the positive contributions it can offer to the affairs of the Board.

Even when it comes to regulatory mandate, organisations adopt the attitude of simply filling the quota, just to show that they abide by the rules. What businesses must understand is that, no efficient and able woman director candidate is really interested in decorating a Board merely with her gender. What she really looks forward to, is to be able to add vibrancy to the Board functioning through her knowledge, skill sets and, professional and managerial astuteness. Therefore, companies, please respect the intent of the regulation, look beyond the words. Stop interpreting Board diversity as gender diversity. Elect qualified women directors, respect their presence and perspectives, and make use of their skill sets.

The corporate claim that diversity (even gender diversity in its literal meaning) is not possible for lack of appropriate candidates do not hold valid at all. There is a whole ocean of talents out there to select from, if only the corporate managements stretch their efforts a little bit. Today, the world is witnessing unbelievable technological disruptions, which takes SWOT analyses to incredibly complex levels. Disruptive thinking and digital technologies can only help one brace for the future. Focus on obtaining the best of expertise available, onto the Board. Let all the social factors like gender, age, ethnicity etc. complement the professional expertise and skill sets. If this approach is adopted, the Board will witness that it gets a combination of all relevant elements to make it super efficient. For example, a search for most technologically talented candidates will automatically fetch more younger female members from different global backgrounds to the Board. Age, gender, ethnicity diversities creep in on their own.

Make the best use of the skill sets of the Board members through a collaborative open approach where the aim of every discussion should be to bring out the optimal solution to the situation in hand. Remember, the outcome of any Board business is not just meant to increase the profits, these days. Along with that, it has to maintain a satisfied and contented base of customers, clients, investors, workforce, society, at the same time, keeping a futuristic face to its business. The Board is expected to offer, sustain and improve balance and steadiness to an organisation which is on a roller coaster ride in the ever changing external and internal environments. The only best way to do this is to reshape itself holistically well in time.

PLAY IT SMART...

It is no surprise that Boardroom diversity is a hot topic in management circles, academic seminars, professional meetups and stakeholder groups. It is high time the Directors drag it to the Boardroom. Welcome the change boldly. Let diversity paint color to the four walls of the room, add life and vibrancy to the still air therein. Let newer and newer ideas light up the Boardroom, to be polished or quashed by their own meritocracy. Let variety prevail...because...after all...Diversity is smart business!

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Social Stock Exchanges

From an Indian perspective, announcement about Social Stock Exchange is a revolutionary thought, though the concept is not new to the world. Investing for social impact will be given a new fillip by the introduction of Social Stock Exchange. There is a huge potential for Social Stock Exchange to offer sustainable benefits to the stakeholders in India. However, the challenges have to be overcome and the path for implementation should be charted out after brainstorming and discussions with stakeholders and professionals on this subject. It is now up to the Company Secretaries to make a significant impact in this emerging area.

The Union Budget 2019-20 was awaited with a lot of expectations when the new elected government took office for its second term following a massive mandate from the Indians. There were quite a few new points but by and large, most of the points dealt with in the Union Budget 2019-20 presented on 5th July, 2019 was in essence a continuation of the ongoing action plan of the government resuming office. However, the most noteworthy part of the budget speech was at para 34 - The reference to a new concept of “Social Stock Exchange”. This has to be connected to Para 6 of the Budget Speech, which refers to Vision for the Decade, where three significant points having social relevance were flagged namely,

- A) Building Physical and Social Infrastructure
- B) Digital India reaching every sector of the economy
- C) Healthy Society - Ayushman Bharat, Well-nourished women & children. Safety of citizens

While reading out her budget speech, Mrs. Nirmala Sitharaman, Finance Minister 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.” – A hugely significant statement of intent, indicating a serious attempt to move towards achieving the Vision for the Decade.

The initial response to this announcement of Social Stock Exchange was perhaps a muted one, probably because of not fully comprehending the potential of such intent on the part of the Government for India. This leads us to make an effort to understand the concept, its potential, its relevance and the way forward.

CONCEPT OF SOCIAL STOCK EXCHANGE

Markets and socialism have been strange bedfellows since the start of the industrial revolution, and in India, until recently, most of us have considered them mutually exclusive states of affairs. Typical corporate practices have until recently been following a shareholder concept rather than a stakeholder concept. “Stakeholder” as compared to “Shareholder” is much larger and wider and also includes the “Society” and the “Environment”.

The realisation that Corporates have their responsibility towards society also concurrently is now gradually beginning to settle in the minds of the progressive segment of the Indian Corporates. But there is still a long way to go.

A social stock exchange (SSE), broadly, is understood as a platform that allows investors to buy shares in a social enterprise that has been vetted by the exchange.

SSEs, could perform the following functions: -

a) Serving as a mediator between social enterprises that need funding and investors who are willing to invest their money;

b) Providing a platform for trading of securities issued by social enterprises, with sufficient liquidity;

c) Providing investors with procedures for simpler investment in social projects;

d) Informing the public and creating awareness on issues of social entrepreneurship;

e) Increase the transparency of social projects;

f) Providing objective information about social projects placed on the exchange;

g) Providing a platform for implementation of the projects of these social enterprises;

h) Providing for empanelment of intermediaries like Brokers, Agents etc and prescribing norms for them;

i) Provision of rules and regulations for investment, trading and related compliances.
SSE’s can help the investors in the following ways: -

a) make the procedure of social-enterprise investment simpler;
b) increase the transparency of social projects;
c) help to save time and cost of project searching;
d) provide immediate liquidity;
e) reduce the financial and administrative costs;
f) provide objective information about social projects placed on the exchange;
g) Increase the social value of investments;
h) Helps to obtain not only the financial but also the social impact of investment.

SSE’s can help the Social Entrepreneurs in the following ways: -

a) Help to create the opportunity to get investment;
b) Ensure stable functioning of the organization;
c) Raise the value of their social activities;
d) Help to raise the company’s value;
e) Increase capability of the company of being recognized and making them visible;
f) Help to improve their rating;
g) Significantly stimulate organizations to permanent improvement because of need of social and financial accounting and
h) Increased Trust in social enterprises helps to enhance their reputation.

Benefits to the Society at large:-
Any kind of social activity, whether in form of service or monetary type, gives best results, only if done voluntarily. But nevertheless, a positive step from the current Government will definitely help in a massive change in mind set.

Social activity can never be one-time activity. It is and should be on a regular basis and with impact on an ongoing basis.

To do a social activity there must be some basic analysis done like the gap to be filled, the mechanism to fill the gap and the final result to see whether the intention behind the activity is actually taking shape in the manner as thought of and how the results are to be measured. This is where another not very new concept of Triple Bottom Line Accounting, which emphasizes not only on one P (Profits), but also two other P’s namely People and Planet. The connect is provided by SSE, who will insist on such analytics as part of their Measure of Performance (MOP) and link the same with Social Return on Investment (Social ROI).

The whole concept of social work is taken to another level by creating a Social Stock Exchange. This concept provides access to the world’s first regulated exchange dedicated to businesses and investors seeking to achieve a positive social and environmental impact through their activities. Social Stock Exchange will help to develop market infrastructure which will connect social impact businesses with investors looking to generate social or environmental change as well as financial returns from their investment.

It is well known as social impact businesses because enterprises which have sustainable development goals will create an impact in Society. Social stock Exchanges will be instrumental in development of robust revenue and business growth that have focused on social and environmental issues and are best equipped to generate positive, long term social change. A social stock exchange will give a platform that allows investors to buy shares in a social enterprise that has been vetted by the exchange.

Social stock exchanges will be the trading platforms who will be listing only social businesses and through which investors can buy shares in a social business just as investors focused solely on profit would do in the traditional stock market. An investor would come to an SSE to find a social business with a mission according to his or her preference. This is great news for all players in the industry (including governments, multilateral financing institutions, community organizations, development agencies, and social entrepreneurs). Social Stock Exchange is the only venue of its kind in the world to give impact businesses of all sizes the opportunity to access public financial markets, thus maximising their capital raising and growth potential. This would allow social businesses to attract capital and set them apart as a special “asset class” like traditional for-profit investments.

**GLOBAL EXPERIENCE – SSEs**
Any discussion about SSE will be incomplete without a reference to the Woman who started the first social stock exchange in the world - Ms Durreen Shahnaz, who is the founder of Impact Investment Exchange and the first Bangladeshi woman on Wall Street, has a big dream to connect the under-served communities of the back streets to the Wall Streets of the world. In her capacity as the CEO and founder of Impact Investment Exchange (IIX), which is known as a global organisation
functioning with dedication for building a more inclusive world and creating a solid base for sustainable peace, Ms Durreen Shahnaz has been a great inspiration.

This Bangladeshi-American entrepreneur, professor, and public speaker has devoted considerable time and efforts for promoting equal and sustainable growth by revolutionising the capital markets. Through IIX, her efforts in developing impact investment in Asia and the Pacific region have created huge impact on millions of lives worldwide. Her efforts to help underserved communities and empower women are continuing.

Other than IIX, presently there are very few countries where there are social stock exchanges, namely, Canada, the UK, Singapore, South Africa, Brazil, and Kenya.

The Brazilian Stock Exchange (BMF & Bovespa), created in 2003, is the first initiative of SSE, called Bolsa de Valores Sociais Ambientais – BVSA. This organisation has been recognised as being a novel model by UNESCO and recommended by the United Nations for other stock exchanges worldwide via Global Compact, an initiative for encouraging private sector, United Nation’s agencies, and social players to contribute for the advance of the corporate social responsibility so that a global economy can be built in a sustainable and inclusive way.

UK: Social Stock Exchange opened in June 2013. The exchange does not yet facilitate share trading, but instead serves as a directory of companies that have passed a “social impact test”; it also acts as a research service for would-be social impact investors.

Canada: Social Venture Connexion opened in September 2013. It holds itself up as a “trusted connector”. It provides social businesses with access to interested impact investors, service providers, high visibility, and a means to value their triple bottom line at affordable prices.

Singapore: Impact Exchange opened in June 2013 and is the only public SSE. It aims to function similarly to the UK SSE by providing information about valued social businesses and impact investing funds. Interestingly, it also includes non-profit entities in its list of issuers, which can issue debt securities such as bonds.

Kenya: The Kenya Social Investment Exchange, launched in 2011, connects vetted social enterprises with impact investors, both foreign and domestic. A listed social enterprise has to demonstrate social impact as well as financial sustainability beyond the funding period.

South Africa: SASIX was the second global SSE. It opened in June 2006 in an attempt to provide much needed finance to unknown social businesses. It works like a conventional social stock exchange and offers ethical investors a platform to buy shares in social projects according to two classifications: sector and province.

Each model is very much different from the other. The UK SSE currently acts as an information provider to the general public, publishing standardized and comparable social impact data on its site. A prerequisite is that all companies (currently only 12) must be registered on the London Stock Exchange and pass a social impact test. Independent experts conduct the test and publish a SSE Impact Report covering these areas:

- Social or environmental mission of the social business
- Target beneficiaries
  - How the business’s products, services, and operations deliver that social impact?
  - How a company involves and consults with all its stakeholders?
  - The evidence of social impact, and how it is collected, measured, and reported?

The Canadian SSE is probably the closest to a full-fledged stock exchange but is open only to institutional investors. Laudably, it is backed by the Government of Ontario, has objective criteria for valuation to publish reports, and provides easy legal registration for social businesses.

The Singapore SSE is similar to the Canadian one in terms of measurement criteria but is yet to qualify any companies for investment.

Meanwhile, the Brazilian and South African SSEs are more akin to online match making platforms than investment platforms. On South Africa’s, for example, interested investors can browse and select social businesses based on project type, mission, and location.

Valuation and collective risk aversion (given that social businesses are often judged poorly based on their relatively lower financial returns) provided the necessary impetus for all of these SSEs as platforms that would serve a new social investment market with all its attendant actors and that would value social businesses appropriately.

THE STAGE IN INDIA

India has one of the largest NGO sector in the world. The country has more than 33 lakh registered NGOs compared to 11 lakh registered corporates. However, the funding to these organizations is not very transparent and branches of some foreign NGOs divert the funding to other causes that are often detrimental to the national interest and development agenda. Some genuine organizations which are working for the welfare of the community face a shortage of funds.

NGOs are supposed to be the backbone of India’s vibrant civil society. Up until 2014, inefficiency in welfare delivery due to successive corrupt and inefficient governments, has been one of the main constraints in delivering to all sections of the society goods and services of basic necessity (Roti, Kapda, Makaan) despite promises to this effect in every election manifesto and budget. This has led to the burgeoning NGO sector in the country. Over a period of time, many NGOs have become efficient and important part of the economy. There has been significant improvement in the welfare delivery to last person in the society, but NGO’s still have a major role to play. The efficiency and experience of NGOs will be handy and relevant for taking effective steps to improve the living condition of people. This is why the government has involved professional NGOs in many sectors for a better outcome.

The social sector plays a vital role in supporting various social and economic needs in India. In the Indian context, when it comes to economic growth, whereas there are significant achievements, the socio-economic disparities are seen to be continuously widening. In most cases, social sector organizations face resource constraints and are not always equipped to replicate the successes of modern business approaches. Lack of
For growth to be sustainable, it should translate to and be inclusive of all segments and sectors of the society, as also the environmental concerns have to be addressed. Thus, an integrated 3-D growth plan, focussing not just on economics, but also on society and environment, has always been the need. The social sector has already started to explore the market-based approach to tackle the challenges of inclusive growth and sustainable development. But more needs to be done by the business houses to make inclusive growth sustainable.

Impact investing looks at raising funds and making investments in entrepreneurs who work to solve socio-economic challenges using market economy. Social impact investing drives entrepreneurs to build self-sustaining systems to serve a wide array of the population and provide returns (both social and capital) on such investments.

How has the regulator addressed the needs of the social sector in terms of the deliverables and the regulatory framework so far?

AIF – Social Venture Funds
Social Venture Funds are a type of Category 1 Alternate Investment Fund, regulated by the SEBI (Alternate Investment Funds) Regulations, 2012

Social venture funds tend to be different from the usual venture capital funds or private equity funds not just in the investments that they make, but also in the nature of commitments that they receive from their investors. Some of the distinguishing characteristics that a social venture fund could have are:

- Investors make grants rather than investments;
- Investors may not have expectations of returns;
- The Fund itself provides grants and capital support considering social impact of such capital support;
- The Fund during investing may target par returns or below par returns instead of competitive IRR in the usual business sense;
- Social venture funds also tend to be aligned towards environmental, infrastructure and socially relevant sectors which would have an immediate impact in the geographies where the portfolio companies operate.

As per information released by SEBI as at 31.3.2019, Social Venture Funds have
- Raised Commitments – Rs. 1314.64 Crores
- Raised Funds – Rs. 859.46 Crores
- Made Investments made – Rs. 797.30 Crores

Corporate Social Responsibility (CSR) under Companies Act, 2013
Section 135 of the Companies Act, 2013 speaks about mandatory requirement for certain companies who fulfil the criteria as mentioned under Sub Section (1) of Section 135 to comply with the provisions relevant to Corporate Social Responsibility. As mentioned by United Nations Industrial Development Organization (UNIDO), CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (“Triple Bottom-Line- Approach”), while at the same time addressing the expectations of all stakeholders. While proposing the Corporate Social Responsibility Rules under Section 135 of the Companies Act, 2013, the Chairman of the CSR Committee mentioned the Guiding Principle as follows: “CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies.”

Thus, CSR is not charity or mere donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company’s operations and growth. There is a list of activities given in Companies Act, 2013 for which CSR funds could be used. Probably, CSR provisions in Companies Act, 2013 was the first major step towards making Corporates accountable and directing them towards sustainability. In 2014, India became the first country in the world to have a mandatory CSR contribution legislation. France, Denmark, South Africa and China have a mandatory reporting obligation on the amount spent on CSR activities. CSR is more than fulfilling a duty to the society; it also brings competitive advantage.
A significant challenge could be how to distinguish a social enterprise from a normal enterprise. There are no clearly defined criteria. This is the first thing that has to be done clearly as Social Stock Exchange is sought to be meant only for Social Enterprises.

Section 8 companies:
Section 8 Company under the Companies Act, 2013 erstwhile known as the Section 25 Company under the Companies Act, 1956 is registered for charitable or not-for-profit purposes. It is similar to a Trust or Society except that a Section 8 Company is to be registered with Ministry of Corporate Affairs (MCA) and Societies and Trusts are registered with the Charity Commissioner’s office under the State Government regulations. Whereas the Income Tax Act, 1961 vide 12A Clause gives all categories equal treatment, in terms of exempting their income and granting 80G certificates, whereby donors to non-profit organisations may claim a rebate against donations made, a section-8 company can be established “for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, and protection of environment or any such other object”. The scope of section 8 companies extends beyond charity.

This is an option available to Indians to take license under Section 8 and do social activity which is within the scope of mandatory CSR. CSR is a mandatory requirement for certain class of companies based on thresholds of Net Worth, Turnover or Profits. The principle involved is that funds for CSR will flow from companies, which according to these criteria is available with companies making profits. The Companies Act, 2013 has liberated provisions related to non-profit Companies by allowing conversion of Section 8 Companies into a Private Limited company except One Person Company though after permission of Regional Director.

Foreign Contribution Regulation Act, 2010 (FCRA)
The Foreign Contribution (Regulation) Act, 2010 and rules framed under it (the “FCRA” or “Act”) regulate the receipt and usage of foreign contribution by non-governmental organisations (“NGOs”) in India.

The Act permits only those NGOs having a definite cultural, economic, educational, religious or social programme to accept foreign contribution, that too after such NGOs either obtain a certificate of registration or prior permission under the Act.

NGO’s not eligible for registration can seek prior approval under FCRA for foreign funding. This permission is granted only for a specific amount of foreign funding from a specified foreign source for a specific purpose. It remains valid till receipt and full utilisation of such amount.

The Act imposes various conditions on the use of foreign funds and some of them are as follows:

1. All funds received by a NGO must be used only for the purpose for which they were received.
2. Such funds must not be used in speculative activities identified under the Act.
3. Except with the prior approval of the Authority, such funds must not be given or transferred to any entity not registered under the Act or having prior approval under the Act.
4. Every asset purchased with such fund must be in the name of the NGO and not its office bearers or members.

Every NGO registered or having prior approval under the Act must file an annual report with the Authority in the prescribed form. This report must be accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for the relevant financial year. For financial years where no foreign contribution is received, a ‘NIL’ report must be furnished with the Authority.

CHALLENGES

Setting up the SSE:- Setting up a SE is not that difficult. But the challenge is in making it work and creating liquidity. Everyone understands that “Well begun is half done”. But what is not immediately understood is that “Half begun is not well done”. We have seen this happening once with the OTCEI in 90’s and failing. Now we have the SME platforms. Despite efforts to boost investment in SME platform, the most important aspect on which attention is needed is boosting liquidity. In fact, it has been suggested that if we make SME exchange work better through enhanced liquidity, there will be more listings and with performance, the SME’s would grow which in turn could improve the standing of the promoters and entrepreneurs of the SME’s in turn contributing to inclusive growth which is anyway a social cause.

Distinction between Social Enterprise and Normal Enterprise:- A significant challenge could be how to distinguish a social enterprise from a normal enterprise. There are no clearly defined criteria. This is the first thing that has to be done clearly as Social Stock Exchange is sought to be meant only for Social Enterprises.

Eligibility of Voluntary Organisations:- There has to be clarity about the kind of voluntary organisations that would be eligible to get listed in a SSE. If all Section 8 companies and non-profit societies are eligible, then this will also include BCCI, one of the richest sports bodies and every other money-making entity including private schools and private colleges,
that are registered as a Section 8 Company or as a Society under Societies Registration Act, 1860. Lot of discussions and brainstorming, including a public consultative process should be the basis for evolving the regulatory framework for SSE.

**Need to ring fence the SSE:** Some experts have flagged the need for ring-fencing the SSE from fraud. There are already talks in the grapevine of people looking to convert their black money into white on the social exchange. This leads to a trust deficit and a significant challenge to deal with. However, if the SSE is built with transparency and on the basis of principles of good governance, there is no reason why the SSE will not attract investors who are otherwise averse to social enterprises.

**WAY FORWARD**

This government has been continuously taking proactive steps for projects with social impact and having features of significant financial inclusion. It has adopted consultative approach and opportunity is given to all stakeholders to express their views on the subject. There is no doubt that this has given positive results. However, given the task on hand, the challenges are mind boggling and a more open approach involving the core professionals on the subject when it comes to implementation of steps will probably give greater comfort to the government in its endeavour.

Some of the issues that need to be addressed in the way forward are:-

**Paradigm Shift:** There should be realisation that
a) society can grow only if business makes economic sense; and
b) Business can grow only if it factors activities for society’s welfare as part of its business and without endangering the environment in which it operates.

This is somehow seen to be missing. The present scenario makes both economic growth and society welfare activities on a standalone basis, suspect from a sustainability viewpoint.

For growth to be sustainable, it should translate to and be inclusive of all segments and sectors of the society, as also the environmental concerns have to be addressed. Thus, an integrated 3-D growth plan, focussing not just on economics, but also on society and environment, has always been the need. The social sector has already started to explore the market-based approach to tackle the challenges of inclusive growth and sustainable development. But more needs to be done by the business houses to make inclusive growth sustainable.

**Scale and Focus:** Impact investment into social entrepreneurial approaches, with appropriate scale, scope and focus can go a long way in complementing social sector organizations in bringing about sustainable development. Given the priority sector requirements and significant constraints in public spending, there are multiple market opportunities for investments and collaborations for social entrepreneurs to develop innovative and differentiated businesses to foster inclusive growth.

**Research and Development:** Impact investments in social sectors on a sustaining basis requires huge quantum of funds. CSR spends can be a source of funds for such R&D in social sector conforming to certain prescribed criteria. Further, Social Venture Funds may be allowed to fund research projects conforming to prescribed criteria and such funding / investment may be treated as part of its obligation to invest 75% of its investible funds.

**Sustainable Development Goals:** Significant effort has to be made for development of financial metrics for setting quantifiable sustainable development goals and measurement of actual performance in pursuit of these goals on a continuing basis. Extending the principles of Triple Bottom Line (TBL) on the basis of established parameters for social projects will give confidence to the stakeholders. This is considered very crucial for the success of SSE.

Extending Section 12A of Income Tax Act, 1961: - A re-look at the scope of Section 12A is suggested. At present, the beneficial treatment is extended only for “Charitable purpose”, which is defined in Section 2(15) of the said Act. There is no doubt that Charity to the poor and the needy has to be encouraged. But Charity by its very nature has limitations of being a relatively short-term measure as compared to sustainable social projects which have a long-term impact. Also, in an ideal society, no section of the society should be at the mercy of Charity forever. This is the vision of our government. It is here that projects that have social impact and offers inclusive growth become relevant and deserve better tax treatment than what they are getting now. This measure will go a long way in boosting socially relevant projects in India, by motivating impact investors to invest more. However, extending tax benefits or concessions to such social projects should be properly calibrated with proper checks and balances so that misuse and abuse is prevented.

The authors intend this to be a starting point for further discussions and brainstorming on this new subject, which also offers exciting opportunities for CS profession to achieve excellence.

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CSR: Just the beginning, a long way to go

Indian legacy of CSR carries from provision of mid-day-meals to the other extreme of fundamental research by industry prior to India’s independence. The pure voluntary flavour of Indian CSR has recently been blended with a mandatory element in it. At one end of the spectrum, CSR can be viewed simply as a collection of good citizenship activities being engaged by various companies. At the other end, it can be viewed as a way of doing business that has significant impact on society. For this latter vision to be enacted in India, it will be necessary to build CSR into a movement. Organization in present world cannot be successful without taking into account the social responsibility. CSR has been a vital component for any organization to have perpetual success and to create brand. The concept of CSR is now firmly rooted on the global business agenda.

Corporate Social Responsibility (CSR) carries from provision of mid-day-meals to the other extreme of fundamental research by industry prior to India’s independence in the form of institutions such as Tata Institute of Fundamental Research. This legacy too carries in the form of educational foundations named after generous donors and philanthropists. Experience all over the world suggests that while government’s efforts are necessary, they are not sufficient to provide optimal levels of merit goods. This deficiency gets dovetailed by private sector, where a company may see CSR activity both as a virtuous action of a responsible corporate citizen and a value creating proposition for strategic brand building exercise. The pure voluntary flavour of Indian CSR has recently been blended with a mandatory element in it. Unlike other countries where only the CSR reporting is mandatory, India now has both reporting and spending mandatory under the Companies Act, 2013.

CSR policy would function as a built-in, self-regulating mechanism whereby business would monitor and ensure their adherence to law, ethical standards, and international norms. Business would embrace responsibility for the impact of their activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere. CSR as a strategy is becoming increasingly important for India because of three identifiable trends. First of all, changing expectations of society. Secondly, increasing affluence whereby affluent consumers can afford to pick and choose the products they buy and Globalization whereby media brings mistakes by companies immediately to the attention of the public.

CSR AS VALUE CREATION

The debate on CSR as shared value creation is trapped between management scholars and business ethics scholars, focusing merely on the distribution of values from an outcome-oriented perspective. The result is a juxtaposition of shared value from either a corporate or a societal perspective, providing only little attention to the actual communication processes supporting the creation of shared value.

CSR is a modern method of answerability and responsibility of the business world towards society. The concept of CSR is well-known on the mutual dependence between an organization and society, as well as the factors that is responsible for this relationship. CSR by means of the elements of organization such as strategy, resource and process, business propositions, and stakeholder interactions create value for corporations and society and also can represent an excellence image in both internal and external environment through enhancing accountability for society.

CSR - RETHINKING THE PHENOMENON

Origin of CSR can be traced from the ancient scriptures and it is not a concept borrowed from the foreign country. Theory of “Trusteeship” coined by Late Shri M. K. Gandhi is the cornerstone of the modern concept - CSR. Looking to the overall need for the holistic growth and development of India, since CSR is in the larger interest, implementation of the same by compulsion through legal compliance seems justifiable to certain extent. ISO certification and CSR standards are the future lessons that can be helpful for sharpening the overall attitude for taking CSR in its right perspective. Now, it’s a right time to ensure that while dealing with CSR, approach should be that of participatory and not a contributory. Let, CSR be part of company strategy and budget and be treated like an actionable business agenda. CSR agenda should carry the stakeholder approach by a corporate and not a charity oriented approach.

CSR – LEGAL FRAMEWORK

Since 2009, the issue of mandatory CSR was being discussed in various forums. Eventually, the bill along with mandatory CSR norms became an integral part of the Companies Act, 2013.

The Companies Act, 2013 makes it mandatory for certain companies to spend a certain minimum amount on CSR activities. The Act applies to companies which have had a net profit of Rs. 5 crore or more or net worth of Rs. 500 crore or more; or a turnover of Rs. 1000 crore or more in any financial year. Such companies must spend a minimum of 2 per cent of the average net profit made during the three immediately preceding financial years. The Act applies to a holding company, its subsidiary, and even a foreign company with a branch or project office in India. As per section 198 of the Act, in calculating net profit, among many other things, depreciation and interest on loans and debentures will be deducted but the income tax payable by the company will not be.

When the new Government took charge in May 2014, companies were expecting that there would be drastic changes in the Companies Act, 2013 and the Government may withdraw the...
provisions of mandatory CSR spending, stipulated in the section 135. But it did not happen, and companies had to plan for spending their prescribed CSR amount as per the provisions of the Act.

The CSR activities of a company fall into three channels of CSR practices - a) focusing on philanthropy, b) improving operational efficiency, and c) transforming the business model. Of the three, the first one can easily be related to the CSR eligible activities specified in the Companies Act, 2013.

CSR POLICY & COMMITTEE

Every company that meets the set out criteria has to constitute a CSR Committee of its Board. The Committee must consist of 3 or more members from the directors of the Company Board. Moreover, at least one of the members of the committee has to be Independent Directors.

The CSR Committee thus constituted must formulate and recommend a CSR Policy for the company to the Company Board. The CSR Policy must indicate the activities to be undertaken by the company, within the activities covered under the Schedule VII of the Companies Act, 2013 and recommend the amount of expenditure to be incurred on the activities, institute a transparent monitoring mechanism for the implementation of the policy and monitor the CSR policy from time to time.

A report by the Board of Directors must be attached to the statements laid before the general meeting of the company disclosing issues related to CSR. This will include declaring composition of the CSR Committee and due approval and disclosure of the policy contents. The report will also contain details of such policy and implementation initiatives already undertaken during the year. If the company fails to spend the legally required amount on CSR activities, the Board must specify reasons for not spending.

The Board must ensure that the activities included in the CSR policy are undertaken by the company, the expenditure by the company meets the 2 per cent requirement as per the Act, and that the company gives preference to local area and areas around which it operates. The Board may decide to undertake CSR activities through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under Section 8 of the Companies Act, 2013. If the CSR activities are done through a trust / society / company which is not established by the company, its holding or subsidiary or associate company; then it shall have an established track record of 3 years in undertaking similar programmes / projects. In this case, the company must specify the project / programme and modalities of fund utilization, monitoring and reporting mechanism.

All CSR activities that fall under Schedule VII must be undertaken in India alone. Companies may build CSR capacities of their own personnel and / or of the implementing agencies through institutions with established track record of at least 3 financial years. The CSR policy of the company must also specify that any surplus arising out of the CSR activities shall not form part of the business profit of the company. Moreover, the CSR activities that benefit only the employees of the company and their families shall not be considered as CSR activities. Furthermore, contributions of any amount directly or indirectly to any political party under section 182 of the Act shall not be considered as CSR activity.

CSR AND RISK MANAGEMENT

Businesses are recognizing that adopting an effective approach to CSR can reduce the risk of business disruptions, open up new opportunities, drive innovation, enhance brand and company reputation and even improve efficiency. CSR is often referred to as business responsibility and an organisation's response on environmental, ethical, social and economic issues. Positive actions that reduce the negative impact of an organisation on these issues can be seen as a way of managing risk.

Trying to find connections and dependences between CSR and risk management without deeper analysis, it may seem that these concepts are remote and do not have much in common. However, as it was presented earlier, one of CSR goals is to minimize negative influence, which may be perceived in the light of risk, using means used in a process of risk management. Risk management itself is not a unified process. Its construction largely depends on the risk it refers to. Similarly, CSR risk must be managed using appropriate instruments. These are usually the methods of operational risk management or more definite nonfinancial, reputational risk. Reasons why companies decide to manage risk in the area of CSR are connected with wanting to improve the image and maintain good reputation.

Summing up connections and dependences between CSR and risk management it is worth to try to define the role of risk management within CSR. With reference to CSR, risk management needs to be understood as strategy, policy and processes, whose goal is to address potential ethical, social and environmental factors. These factors, by influencing stakeholders, are to organization’s disadvantage. In such context, CSR is one of the main means of managing risk of social factors and their influence on financial aspect of an organization.

Each process of risk management is based on set framework, established methodology. CSR risk management in a greater part can be efficiently implemented in already existing in a company process of risk management. This will not only influence on minimizing likelihood of risk but will also be a positive signal for all stakeholders. Creating a model of CSR risk management we can adopt two approaches: top-down and bottom-up. In top-down approach international contracts (especially on the area of human rights and natural environment protection), national law and other regulations which organization must comply with, are factors which decide on paying attention to CSR in risk management. Such an approach is particularly advisable for organizations whose activities are in close relations with these factors. Bottom-up approach is more adequate for organizations, where the main factor is commitment of stakeholders.

The process of CSR risk management will include conventional elements:

RISK IDENTIFICATION

The first stage is risk identification. Information about potential risks can be found in risk registers, annual reports and governance documents. Nonmaterial risks must be carefully looked at. Prepared list of risks should be looked through regarding gaps and lacks and completed with results of analysis, which will reduce the chance of overlooking significant risk. The next step should be risk mapping, based on expert knowledge and external data, such as benchmarks or available risk classifications. On this stage attention should be paid especially to risks characteristic for areas where an organization operates and to influence of risks on reputation capital. CSR risk identification should be made on the basis of efficient and complete procedures, which must be documented and familiar to everybody involved in the process.
RISK ASSESSMENT
Risk is a combination of likelihood and consequence of appearance, which is a threat for an organization. Thus risk assessment is subjective and depends on its perception. Perception of risk by stakeholders may significantly differ from organization one. It may be said that subject matter of CSR is to take actions so that stakeholders perceive threats properly. CSR risk evaluation, which is mostly composed of assessing likelihood of risk realization and its influence on organization, should be taken regarding an event carrying risk and its influence on stakeholders and their perception of this event. It may happen that risk manager’s evaluation of likelihood of risk and its influence will be much lower than evaluation done by stakeholders. It is also advisable to prepare a few evaluations of the same risk for each group of stakeholders, pointing to the right level of their importance. To evaluate stakeholders we can use the scale of stakeholders’ commitment. CSR risk that refers to stakeholders whose scale of involvement is high should be a matter of particular interest, because it may result in serious losses. Apart from losses we need to remember about likelihood of its appearance and adequacy of control measures.

CONTROL MEASURES (RISK MANAGEMENT STRATEGY)
Proper preparation of strategy to mitigate risk requires considering using many control measures. That is why control measures, assessed regarding their adequacy in relation to a goal reached, are used. Thus, adequacy of control measures should be more significant than their number. It is crucial (especially when it comes to stakeholders’ perception of strategy) to justify appropriately and provide documentary evidence for the choices made. It should show the power of approach used. Identifying possible scenarios of risk realization should result in preparing appropriate strategy for each scenario or assessing funds needed to finance losses connected with realizing the scenario. While preparing for scenario realization, one has to bear in mind its likelihood and mutual relations between events. This is how it can be shown whether given scenarios can happen simultaneously and to what extent.

EVALUATION AND MONITORING
To complete the process of CSR risk management it is necessary to evaluate it and monitor its level. It will allow us to check efficiency of strategy we are using and risk control means. On this stage will be used CSR management means, particularly codes of ethics, whistle-blowing policy, procedures or social audit. Proper evaluation of used means is a crucial signal and has not only managing function but also has large impact on reducing the level of risk and on stakeholders perception. Constant monitoring of risk allows to react in a proper way, when the level of risk approaches unacceptable level. On this stage Key Risk Indicators (KRI) and Key Performance Indicators (KPI) are especially useful. They allow to create means of reporting risk, which make it possible to show graphically managing information. To provide appropriate channel of information flow it is crucial to establish the right format of reporting, presenting goals and level of their realization. CSR nowadays is perceived not only in the aspect of improving organization image but is actively used in the process of risk management. This process is composed of a few stages. First of all, we need to identify issues which are significant for stakeholders, to determine their importance whose level justifies including in the process of risk management. This stage is usually assigned to a department which is in charge of CSR and knows stakeholders’ expectations best. The next step is risk evaluation, done by a few departments like legal department, HR department or department dealing with environmental issues. These departments identify means which can help to avoid risk or reduce its consequences. After using proposed methods there is a process of improving the system, with accordance to Demming cycle, which is Plan-Do-Check-Act. It allows to keep adequacy of control means and control of the level of risk. It is not easy to include CSR risk in the process of risk management, but it seems that changes happening in society and stakeholders expectations force organizations to take appropriate actions. It allows to have a broader view on an organization and its impact on surroundings. Organization is not only judged by its results but also as a part of environment, society and as collective entity. Therefore CSR is becoming a part of organization strategy, which is realized, among others, through process of risk management. This process helps to reach goals and realize established strategy. Thus including CSR in process of risk management is voluntary, but also forced by stakeholders attitude, who are more and more aware, more reactive and more efficiently influence organizations. It seems that risk management is now the best means helping to cope with changes happening in society. Including CSR in the process of risk management and its popularizing is only a matter of time.

THREEFOLD ARGUMENTS ON MANDATORY CSR
The mandatory CSR were potentially viewed to have negative impact and hence questionable in principle from a range of political views - the left, the right, and the centre.

Arguing from the left of the centre, it seemed that government had abdicated its own responsibility. Instead of asking companies to spend 2 per cent on CSR activities, it could have raised corporate tax by 2 per cent, prioritized the socially beneficial activities, and spent accordingly in its own right. Arguing from the right of centre, it seemed that mandating 2 per cent expenditure was like increasing corporate tax by 2 per cent. Already a 33 per cent corporate tax in India is higher than the global average of 24 per cent. Mandatory CSR seemed to make Indian investment scenario less competitive. Arguing from a centrist perspective, it seemed absurd to tax for CSR, for CSR is an inspirational activity which cannot mandate someone to act voluntarily.

The mandatory CSR provisions had no impact on stock prices of most firms who get covered by the Act. This is an indication that the industry stakeholders had not viewed mandatory CSR norms as coercive and a regressive measure. Actual CSR spending blending a mandatory element to what essentially was a virtuous voluntary act has given rise to an interesting issue.

It is possible that companies may anchor their CSR expenditures on the mandated minimum spending norms and such spending may turn out to be lower than what the expenditure would have been if there were no mandated minimum spending norms in place. An early estimate of the magnitude of the CSR spending is about Rs. 25,000 crore.

CSR – THE INDIAN STORY
Indian CSR has traditionally been a matter of classical, paternalistic philanthropy, financially supporting schools, hospitals and culture institutions. However, far from being an add-on motivated by altruism and personal glory, the philanthropic drive has been driven by business necessity. With minimal state welfare and infrastructure provision in many areas, companies had to ensure that their workforce had adequate housing, healthcare and education and simultaneously the country grows at a fast pace.

CSR SPENDING BY MAJOR INDIAN COMPANIES
Total CSR spend by top Indian companies may cross Rs 500 bn
by March 2019. The CSR compliance is also likely to improve and fall in the range of 97 to 98 per cent by financial year 2019-20, according to a research done by development sector platforms CSRBOX and NGOBOX.

The top 500 companies, which contribute to over 90 per cent of the total CSR spend, are estimated to spend over Rs 110 billion on social initiatives in FY 2019. In terms of sectors, education is expected to be the most favoured area of CSR investment in the coming years.

In terms of states, Maharashtra receives the biggest chunk of the total CSR fund spent in the country, followed by Rajasthan, Karnataka and Gujarat, together accounting for one third of the country’s total CSR spends, the report said. The north-eastern states of Nagaland, Meghalaya, Mizoram and Tripura have received lowest CSR funding so far.

The report revealed that an upward trend was seen year after year when it comes to CSR compliance by companies, however, the size of funding for each initiative has shown downward movement, suggesting the fact that firms are looking at more number of projects to diversify their CSR portfolio. It has been quite an eventful year in the CSR domain. So active was this field that a High Level Committee on CSR 2018 has been re-constituted under the Chairmanship of Injeti Srinivas, Secretary, MCA to review the existing framework and guide and formulate the roadmap for a coherent policy on CSR. The scope of the committee includes reviewing existing CSR framework as per Act, Rules and Circulars issued from time to time, recommending guidelines for enforcement of CSR provisions, suggesting measures for adequate monitoring and evaluation of CSR by companies, examining and recommending audit (financial, social and performance) for CSR, etc. Corporations can expect major upheavals once the report is out in early 2019.

**CSR FOCUS OF PSUs**

Public Sector Units (PSUs) will now identify central themes for CSR activities every year, with 60% of their CSR expenditure dedicated to the thematic programmes, as per new guidelines issued by Department of Public Enterprises. The norms call for aspirational districts to be accorded preference by Central Public Sector Enterprises (CPSE) for their CSR activities. The NitiAayog has identified 112 aspirational districts. For the current year 2018-19, school education and healthcare may be taken up as the theme for focused intervention, the guidelines said.

The CPSE undertaking CSR activity in aspirational districts would designate a senior level functionary as nodal officer to liaise closely with the district administration of concerned aspirational district. The Ministry of Corporate Affairs had in April, 2018 established the Centralised Scrutiny and Prosecution Mechanism (CSPM) for enforcement of CSR provisions on a pilot basis. Acting on its inputs, the Ministry has issued preliminary notices to nearly 300 companies for not complying with the CSR spending requirement under the Companies Act, 2013 for the year 2015-16. The companies have been asked to provide reason for non-compliance with the CSR provisions. This practice is likely to get more stringent.

**CSR GAINING MANDATORY STATUS**

When the provision for corporate social responsibility was introduced by Companies Act 2013, the then Minister Sachin Pilot went public to say, the provision will follow what is globally known as “comply or explain” (COREX). That is, companies will not be mandated to spend on CSR – the board report will only give reasons for not spending.

Now, the rigour being added takes CSR spending to a completely different level:

- If companies are not able to spend the targeted amount, then they are required to contribute the unspent money to the Funds mentioned in Scheduled VII, for example, PM’s National Relief Fund.
- Companies may retain amounts only to the extent required for on-going projects. There will be rule-making for what are eligible on-going projects. Even in case of such on-going projects, the amount required will be put into a special account within 30 days from the end of the financial year, from where it must be spent within the next 3 years, and if not spent, will once again be transferable to the Funds mentioned in Schedule VII.
- Failure to comply with the provisions makes the company liable to a fine, but very seriously, officers of the company will be liable to be imprisoned for upto 3 years, or pay a fine extending to Rs 5 lacs.

According to the Companies (Amendment) Bill 2019, companies will have to deposit their unused funds meant for CSR activities to a fund set up by the government for better utilization of resources for public welfare. The proposed amendment requires businesses to transfer the CSR amount allocated in specific years to a dedicated fund set up by the government if the company could not utilize it for three years. This would bring accountability to the CSR activities of businesses.

Through this proposed amendment, India has become the first country to make CSR spending mandatory through a law. Indian companies spend around ₹15,000 crore a year on CSR.

**THE FUTURE OF CSR**

At one end of the spectrum, CSR can be viewed simply as a collection of good citizenship activities being engaged by various companies. At the other end, it can be a way of doing business that has significant impact on society. For this latter vision to be enacted in India, it will be necessary to build CSR into a movement.

Public and private organizations will need to come together to set standards, share best practices, jointly promote CSR, and pool resources where useful. An alliance of interested stakeholders will be able to take collective action to establish CSR as an integral part of doing business.

In today’s informative world where information is readily available to general public, CSR has been an important part of any organization to be successful. Organization in present world cannot be successful without taking into account the social responsibility. CSR has been a vital component for any organization to have perpetual success and to create brand. The concept of corporate social responsibility is now firmly rooted on the global business agenda.

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Recent Landmark judgments under the Insolvency and Bankruptcy Code, 2016

It has been almost three years since the commencement of the Insolvency and Bankruptcy Code, 2016 (the Code). While the legislation is still in an evolutionary stage, there have been several decisions of the Tribunals/ Courts providing interpretational clarity, reiterating some of the principles already envisaged under the Code and laying down certain new ones. This article analyses some of the recent judgments under the Code which are expected to set a precedent for future cases.

Prior to the enactment of the Code, the legal and institutional machinery in India for dealing with debt default faced various challenges including procedural delays and was not on par with global standards. The recovery action by creditors, either through the Contract Act or through special laws such as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), did not have desired outcomes. Similarly, action through the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the winding up provisions of the Companies Act, 1956 were neither able to aid quick recovery for lenders nor aid restructuring of entities which had created uncertainty amongst the lenders.

The Code was thus enacted to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons (Company/LLP), partnership firms and individuals in a time-bound manner and for maximisation of value of assets of such persons.

Some of the salient features of the Code are as follows:

- Clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
- DRT and NCLT to act as Adjudicating Authorities and deal with the cases related to insolvency, liquidation and bankruptcy process in respect of individuals and unlimited partnership firms, and in respect of companies and limited liabilities entities respectively.
- Establishment of the IBBI to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
- Insolvency professionals would handle the commercial aspects of insolvency resolution process. Insolvency professional agencies would develop professional standards, code of ethics and be the first level regulator for insolvency professional members leading to development of a competitive industry for such professionals.
- Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
- Enabling provisions to deal with cross border insolvency.

The Code also contains provisions that amend the provisions of other laws including the Companies Act, 2013.

BACKGROUND

The Insolvency and Bankruptcy Code, 2016 (the Code) was notified in May 2016. It deals with matters relating to reorganisation, liquidation and insolvency resolution of corporate persons (Company/LLP), partnership firms, as well as individuals. Its main object is to facilitate time-bound insolvency resolution process while protecting the interests of the creditors. The Code envisages achieving the said objectives by:

- Establishment of the Insolvency and Bankruptcy Board of India (IBBI);
- Registration of Insolvency Professional Agencies and Insolvency Professionals;
- Dissemination of information by information utilities;
- Adjudication of matters by the National Company Law Tribunal (NCLT) and DRT (Debt Recovery Tribunal)

The Code also contains provisions that amend the provisions of other laws including the Companies Act, 2013.
it into liquidation. When decisions are taken in a time-bound manner, there is a greater chance that the entity can be saved as a going concern, and the productive resources of the economy (the labour and the capital) are put to best use.

**LANDMARK JUDGMENTS**

Summarised below are some of the material judgements passed during the last one year under the Code and their expected impact on the insolvency process:

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<th>Sr. No.</th>
<th>Parties</th>
<th>Forum</th>
<th>Principle(s) laid down</th>
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| 1.      | Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. | Supreme Court | • Upheld the constitutional validity of the Code  
• Classification between “financial creditor” and “operational creditor” in the Code is neither discriminatory, nor arbitrary nor is it violative of Article 14 of the Constitution of India on a host of parameters |
| 2.      | Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors | Supreme Court | • The term “management” appearing in section 29A of the Code refers to de jure management, which would ordinarily vest in the board of directors. “Control” has been held to be de jure or de facto proactive or positive control, and not merely negative control  
• The eligibility of a resolution applicant under section 29A of the Code is required to be tested at the time of submission of the Resolution Plan by the resolution applicant |
| 3.      | K. Sashidhar vs. Indian Overseas Bank | Supreme Court | The requirement of approval of Resolution Plan by vote of not less than 75 percent (66 percent w.e.f. 6 June 2018) of voting share of financial creditors forming part of the CoC is mandatory and neither NCLT / National Company Law Appellate Tribunal (NCLAT) nor the Resolution Professional can question the commercial rationale for rejection of the Resolution Plan by CoC |
| 4.      | Binani Industries Ltd. vs. Binani Cement Ltd. & Ors | NCLAT | Operational creditors of bankrupt companies cannot be discriminated against during insolvency proceedings |
| 5.      | Mr. Brijesh Kumar Agarwal vs. Punjab National Bank & Anr. | NCLAT | Passage of time under the Limitation Act, 1963, should not be considered a bar on initiating proceedings under the Code |

**I. SUPREME COURT (SC) UPHOLDS THE CONSTITUTIONAL VALIDITY OF THE CODE**

The Code was thus enacted to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons (Company/LLP), partnership firms and individuals in a time-bound manner and for maximisation of value of assets of such persons.

**Facts of the case:**

- The petitioners filed instant petitions challenging the constitutional validity of various provisions of the Code.
- The petitioners argued that the members of the NCLT and certain members of the NCLAT, apart from the President, have been appointed contrary to the Court’s judgment in Madras Bar Association v. Union of India [2015] 57 taxmann.com 289/131 SCL 26 (SC) [“Madras Bar Association (III)"], and that, therefore, this being so, all orders that are passed by such members, being passed contrary to the judgment of the Court in the aforesaid case, ought to be set aside.
- The petitioners also challenged the legislative scheme contained in section 7 of the Code, stating that there is no real difference between financial creditors and operational creditors. According to them, both types of creditors would give either money in terms of loans or money’s worth in terms of goods and services. Thus, there is no intelligible differentia between the two types of creditors, regard being had to the object sought to be achieved by the Code, namely, insolvency resolution, and if that is not possible, then ultimately, liquidation.
- The petitioners argued that the resolution professional, having been given powers of adjudication under the Code and Regulations, grant of adjudicatory power to a non-judicial authority is violative of basic aspects of dispensation of justice and access to justice.
- It was stated that the vested rights of erstwhile promoters to participate in the recovery process of a corporate debtor have been impaired by retrospective application of section 29A of the Code. Section 29A of the Code, in any case, is contrary to the object sought to be achieved by the Code, in particular, speedy disposal of the resolution process as it will inevitably lead to challenges before the Adjudicating Authority and Appellate Authority, which will slow down and delay the insolvency resolution process. In particular, so far as section 29A(c) of the Code is concerned, a blanket ban on participation of all promoters of corporate debtors, without any mechanism to weed out those who are unscrupulous and have brought the company to the ground, as against persons who are efficient managers, but who have not been able to pay their debts due to various other reasons, would not only be manifestly arbitrary, but also be treating un-equals as equals.
- Another argument that was made was that under section 29A(c) of the Code, a person’s account may be classified as a non-performing asset (NPA) in accordance with the guidelines of the Reserve Bank of India (RBI), despite him not being a willful defaulter. Also, the period of one year referred to in clause (c) is again wholly arbitrary and without any basis either in rationality or in law. It was also stated that persons who may be related parties in the sense that...
they may be relatives of the erstwhile promoters are also debarred, despite the fact that they may have no business connection with the erstwhile promoters who have been rendered ineligible by section 29A of the Code.

Issues at hand:
- Whether most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, and, therefore, financial creditors are clearly different from operational creditors and there is obviously an intelligible differential between the two which has a direct relation to objects sought to be achieved by Code?
- Whether Resolution Plan cannot pass muster under section 30(2)(b), read with section 31 of the Code unless a minimum payment is made to operational creditors, being not less than liquidation value and, therefore, it cannot be said that operational creditors are discriminated against or that article 14 of Constitution has been infracted either on ground of equals being treated unequally or on ground of manifest arbitrariness?
- Whether resolution professional appointed by CoC is given administrative powers as opposed to quasi-judicial powers?

Order:
- The Code is a ‘beneficial legislation’ that puts the corporate debtor back on its feet and is not a mere recovery legislation for creditors. The SC has delved in detail into the Preamble of the Code, and observed that the resolution process under the Code is not adversarial to the corporate sector but is in fact protective of its interests.
- The SC dismissed the key contention of the petitioners by ruling that the classification between “financial creditor” and “operational creditor” in the Code is neither discriminatory, nor arbitrary nor is it violative of Article 14 of Constitution of India on a host of parameters including the fact that financial creditors are mainly secured creditors who usually lend a big sum of money to a corporate, whereas operational creditors are unsecured creditors who supply goods and services. The SC noted this inherent difference between the two classes of creditors (operational/financial) and also upheld the primacy of the financial creditors in preserving the corporate debtor as a going concern.
- It was held that the interest of operational creditors is fairly protected by the Code and that they are not discriminated against. The SC also upheld constitutional validity of Section 12A of the Code that requires approval by Financial Creditors holding at least 90 percent voting share in CoC, to permit withdrawal of an application already admitted by the NCLT.
- The SC upheld the validity of one of the most controversial provisions of the Code, i.e. Section 29A that bars promoters in most cases from bidding/participating in the resolution process.

Impact:
- Dismissing challenge to various sections of the Code, the SC observed in conclusion that the Code so far has proven to be a successful ‘experiment’ that has resulted in the flow of financial resources to the commercial sector on account of debts being repaid. To quote from the Judgment, “The defaulter’s paradise is lost. In its place, the economy’s rightful position has been regained.”
- The judgment is expected to provide the much needed confidence and certainty to lenders in the economy.

II. SC DEFINES “CONTROL” IN A MATTER UNDER THE CODE

The SC in the case of Arcelor Mittal India Private Limited vs Satish Kumar Gupta & Ors, delivered a judgment on the interpretation of section 29A of the Code (explained below), which was introduced in the Code on 23 November 2017, and subsequently amended by the legislature with effect from 6 June 2018.

Section 29A of the Code provides for a series of disqualifications for resolution applicants/promoters, persons acting jointly or in concert with such persons, and their connected persons. The term “connected person” is a defined term and covers a wide range of persons, from those who are promoters, or who manage or control the resolution applicant, or the business of the corporate debtor, during the implementation of the Resolution Plan, to holding companies, subsidiaries, related parties and associate companies of such persons. Such persons who are disqualified under section 29A are not allowed to submit a Resolution Plan.

Facts of the case:
- NCLT Ahmedabad Bench passed an order admitting a petition filed under section 7 of the Code for financial debts owed to State Bank of India and the Standard Chartered Bank by the corporate debtor Essar Steel (ESIL). Arcelor Mittal India (AMIPL) submitted an expression of interest (EOI) for submitting a Resolution Plan and so did Numetal Limited (Numetal).
- Resolution Professional found both AMIPL and Numetal to be ineligible as a resolution applicant under section 29A of the Code.
- Insofar as AMIPL was concerned, the Resolution Professional found that Arcelor Mittal Netherlands B.V. (AM Netherlands) was a ‘connected person’ of AMIPL. AM Netherlands was ‘promoter’ of Uttam Galva Steels (an account under the control of AMIPL) acquiring 29.05 percent of the shareholding of AMIPL. AM Netherlands’s account was classified as an NPA by Canara Bank and Punjab National Bank. Though AM Netherlands had sold its shareholding in Uttam Galva to the other promoters, as the plan submission date, AM Netherlands had not obtained the stock exchange approvals relating to declassification as a promoter of Uttam Galva and continued to be classified as a promoter of Uttam Galva. In light of above, AMIPL was held ineligible under the provisions of section 29A(c) of the Code and pursuant to same, the Resolution Plan of AMIPL was rejected and would not be placed before the CoC.
- Similarly, holding Numetal to be ineligible, the Resolution Professional found that Numetal was incorporated 7 days before submission of the EOI as joint venture between Aurora Enterprises Limited (AEL), Crinium Bay, Indo International Limited and Tyazhpromexport. Aurora Enterprises Limited
(AEL) was completely held by Rewant Ruia (through various companies and a trust). Said Rewant Ruia was son of Ravi Ruia, who was promoter of ESIL. Therefore, in relation to the Resolution Plan in respect of ESIL which contemplates the acquisition of ESIL by Numetal by way of a merger of ESIL with a wholly owned subsidiary of Numetal, Rewant Ruia would be deemed to be acting in concert with his father Ravi Ruia.

- Appeals were filed by both Numetal and AMIPL before the NCLAT. Before these appeals could be decided, in compliance with the order passed NCLT, the CoC, after hearing both AMIPL and Numetal, disqualified both.
- In the appeals that were filed before it, the NCLAT, insofar as Numetal’s resolution plan was concerned held that though at the time of submission of first resolution plan, AEL which was wholly owned by Rewant Ruia was one of four shareholders of Numetal; thus, Numetal was not eligible to submit ‘Resolution Plan’ in terms of section 29A. However, as on date of submission of fresh resolution plan as ‘AEL’ was no more the shareholder of ‘Numetal Ltd.’ and all the remaining three shareholders aforesaid being eligible, Numetal was eligible.
- Insofar as AMIPL’s resolution plan was concerned, the NCLAT upheld order of the NCLT. However, the NCLAT held that ‘AM India Ltd.’ was entitled to the benefit of second proviso to section 30(4) of the Code. One opportunity was given to the ‘Resolution Applicant’ i.e. AMIPL to make payment of all overdue amount with interest thereon and charges relating to Non-Performing Accounts of both the ‘Uttam Galva’ and the ‘KSS Petron’ in their respective accounts within three days. If such amount was deposited in the accounts of both Non-Performing Accounts of ‘Uttam Galva’ and ‘KSS Petron’, the CoC would consider the Resolution Plan submitted by ‘AMIPL’ along with other Resolution Plans.
- The matter was appealed before the Supreme Court.

**Issue at hand:**
Whether section 29A(c) of the Code is a see-through provision; therefore, care must be taken to ensure that persons who are in-charge of corporate debtor for whom such resolution plan is made, do not come back in some other form to regain control of company without first paying off its debts?

**Order:**
Since it is clear that both sets of resolution plans that were submitted to the Resolution Professional, are hit by section 29A(c) of the Code, and since the proviso to section 29A(c) of the Code will not apply as the corporate debtors related to AMIPL and Numetal have not paid off their respective NPAs, ordinarily, these appeals would have been disposed off by merely declaring both resolution applicants to be ineligible under section 29A(c) of the Code.

The CoC, requested to give one more opportunity to the parties to pay off their corporate debtors’ respective debts in accordance with section 29A of the Code, as the best resolution plan can then be selected by the requisite majority of the CoC, so that all dues could be cleared as soon as possible.

Acceding to this request, in order to do complete justice under Article 142 of the Constitution of India, and also for the reason that the law on section 29A of the Code was being laid down for the first time by this judgment, one more opportunity was given to both resolution applicants to pay off the NPAs of their related corporate debtors within a period of two weeks from the date of receipt of this judgment, in accordance with the proviso to section 29A(c) of the Code. If such payments are made within the aforesaid period, both resolution applicants can resubmit their resolution plans to the CoC.

**Impact:**
- The term “management” appearing in section 29A of the Code refers to de jure management, which would ordinarily vest in the board of directors and would include managers, managing directors and officers as defined in the Companies Act, 2013.
- “Control” has been held to be de jure or de facto proactive or positive control, and not merely negative control. For example, the power to appoint directors on the board of a company would amount to control as it is a positive power. However, the power to veto certain actions taken by the board or shareholders would not.
- The eligibility of a resolution applicant under section 29A of the Code is required to be tested at the time of submission of the resolution plan by the resolution applicant.

**III. SC CLARIFIES THAT NCLT/NCLAT HAS NO JURISDICTION TO ENQUIRE INTO COMMERCIAL RATIONALE OF REJECTION OF THE RESOLUTION PLAN BY THE FINANCIAL CREDITORS UNDER THE CODE AND APPROVAL BY 75 PERCENT (66 PERCENT W.E.F. 6 JUNE 2018) VOTING SHARE OF FINANCIAL CREDITORS IN COC IS MANDATORY FOR APPROVAL OF RESOLUTION PLAN**

The SC has by its judgement dated 5 February 2019 on an appeal against the ruling of NCLAT in the matter of K. Sashidhar vs. Indian Overseas Bank, held that the requirement of approval of resolution plan by vote of not less than 75 percent (66 percent w.e.f. 6 June 2018) of voting share of financial creditors forming part of the CoC is mandatory and neither NCLT/NCLAT or the Resolution Professional can question the commercial rationale for rejection of the Resolution Plan by CoC.
Facts of the case:

- Kamineni Steel & Power Pvt. Ltd. (Corporate Applicant) had voluntarily filed an application under section 10 of the Code for admission of Corporate Insolvency Resolution Process (CIRP) for the Corporate Applicant with NCLT, Hyderabad Bench.
- The Interim Resolution Professional appointed had formed a CoC, wherein Indian Overseas Bank, Central Bank of India and Bank of Maharashtra (Dissenting Banks) were also a part thereto.
- During the CIRP, a one-time settlement was agreed to by the CoC as a part of the resolution plan cleared by a group of creditors with 66.67 percent voting power.
- However, the Dissenting Banks with a combined voting power of 29.13 percent had dissented from the Resolution Plan.
- The contention of the Dissenting Banks was that Resolution Plan shall not be considered approved unless it has been approved by at least 75 percent (66 percent w.e.f. 6 June 2018) of voting share of financial creditors forming part of the CoC.
- NCLT rejected the contention of the Dissenting Banks and stated that Section 30(4) of the Code merely stated that the Resolution Plan, may, be approved by a vote not less than 75 percent (66 percent w.e.f. 6 June 2018) of voting share of the financial creditors and the Code is silent as to whether such percentage is out of the total voting share of the financial creditors or those present during meetings of the respective CoC of financial creditors.
- NCLT further stated that the threshold of 75 percent (66 percent w.e.f. 6 June 2018) has to be read with various circulars issued by Reserve Bank of India from time to time and accordingly, NCLT approved the one-time settlement as agreed to by Corporate Applicant as part of a Resolution Plan as cleared by a group of creditors only with 66.67 percent voting power.
- The Dissenting Banks appealed to NCLAT against order of NCLT approving the one-time settlement on the ground of threshold of 75 percent approval of CoC was not satisfied as required under the Code.
- The NCLAT agreed with the arguments placed by the Dissenting Banks and held that the Resolution Plan did not garner support of at least 75 percent of voting share of CoC as required under the Code and struck down the decision of the NCLT and remanded the proceedings to NCLT for initiation of liquidation process.
- Corporate Applicant appealed against the above NCLAT order and approached the SC for relief.

Issues at hand:

- Whether neither adjudicating authority (NCLT) nor appellate authority (NCLAT) has been endowed with jurisdiction to reverse commercial wisdom of dissenting financial creditors and that too on specious ground that it is only an opinion of minority financial creditors?
- Whether fact that substantial or majority percent of financial creditors had accorded approval to Resolution Plan would be of no avail, unless approval was by a vote of not less than 75 percent (66 per cent w.e.f. 6 June 2018,) of voting share of financial creditors?
- Whether since no alternative Resolution Plan was approved by requisite percent of voting share of (66 percent w.e.f. 6 June 2018) financial creditors before expiry of statutory period of 270 days (including the extended period of 90 days), inevitable sequel was to pass an order directing

initiation of liquidation process against concerned corporate debtor in manner specified in Chapter III of Code?

Order:

- The SC observed that the action of liquidation process is avoidable, only if approval of the Resolution Plan is by a vote of at least 75 percent (as in October, 2017) of voting share of the financial creditors.
- The SC further observed that the scope of enquiry and the grounds on which the decision of ‘approval’ of the Resolution Plan by the CoC can be interfered with by the NCLT, has been set out in Section 31(1) read with Section 30(2) of the Code and by the NCLAT under Section 32 read with Section 61(3) of The Code.
- It was held that there is no corresponding provision which empowers the resolution professional, the NCLT or NCLAT, to reverse the ‘commercial decision’ of the CoC.
- SC rejected the contention that the stipulation of 75 percent approval by CoC as applicable at the relevant time in October 2017, is only directory and not mandatory. The argument was based on the expression ‘may’ occurring in Section 30(4) of the Code. It was held by the SC that the 75 percent (66 percent w.e.f. 6 June 2018) approval condition is mandatory and any other interpretation would result in re-writing the provisions of the Code.
- SC commented on the amendment brought into force from November 2017, which inserted the words ‘after considering its feasibility and viability, and such other requirements as may be specified by IBBI’. SC explained that the Code does not empower the IBBI to specify requirements for exercising commercial decisions by the financial creditors in the matters of approval of the Resolution Plan or liquidation process.
- SC rejected the contention that NCLAT was obligated to consider the revised threshold of 66 percent which was introduced while the appeal was pending before the NCLAT.
- SC observed that opposition to the proposed Resolution Plan based on purely commercial and business reason is non-justiciable and not open to challenge before the NCLT/NCLAT.
- Based on the above findings, SC dismissed the appeal and upheld the decision of NCLAT.

Impact:

Deciding the merits of the Resolution Plan is the domain of the CoC. Neither the resolution professional nor the NCLT/ NLCAT would have the power to enquire into commercial rationale of rejection of the Resolution Plan by the financial creditors under the Code. This is similar to the principles laid down in schemes of arrangement under the Company law where the Court will not ordinarily get into the technicalities of valuation, rationale of the scheme etc.

IV. OPERATIONAL CREDITORS OF BANKRUPT COMPANIES CANNOT BE DISCRIMINATED AGAINST DURING INSOLVENCY PROCEEDINGS

In a landmark order of Binani Industries Ltd vs Binani Cement Ltd & Ors, the NCLAT has ruled that operational creditors of bankrupt companies cannot be discriminated against during insolvency proceedings.

Facts of the case:

- The Resolution Professional had filed an application under...
the Code for approval of the Resolution Plan submitted by Rajputana Properties Private Limited (earlier bidder) for Binani Cement Limited. The said Resolution Plan was approved by a majority vote of the CoC.

- There were a number of objections filed against the said Resolution Plan and certain creditors of the CoC who were forced to vote in favour of the Resolution Plan, recorded a protest note(s) alleging that they had not been dealt with equitably when compared with other financial creditors who were corporate guarantee beneficiaries of the Corporate Debtor.
- NCLT, Kolkata Bench (NCLT) noticed that the Resolution Plan submitted by the Ultratech Cement Limited (Ultratech), including revised offer submitted was not properly considered by CoC for wrong reasons.
- NCLT held that the Resolution Plan submitted by the earlier bidder was discriminatory and contrary to the scheme of the Code and was rejected. CoC was directed to consider other Resolution Plans, including the Resolution Plan submitted by Ultratech.
- An appeal was preferred against the NCLT decision relating to rejection of the Resolution Plan as was approved by the CoC. The NCLT order was also challenged whereby the Resolution Plan of Ultratech was ordered to be considered.

**Issue at hand:**
Whether the Resolution Plan submitted by the earlier bidder was discriminatory and against the provisions of the Code?

**Order:**
- The NCLAT while deciding the issue considered the objectives of the Code, one of which is maximization of value of assets of the Corporate Debtor and to promote entrepreneurship, availability of credit and balance the interests.
- While the CoC consists of financial creditors, the NCLAT recognized the principle that the liabilities of all creditors who are not a part of the CoC, must also be met in the Resolution Plan.
- The Code defines a Resolution Plan as a plan for insolvency resolution of the Corporate Debtor as a going concern. It does not spell out the shape, color and texture of resolution plan, which is left to the imagination of the stakeholders. The Resolution Plan is not a ‘sale’, it is not an ‘auction’, nor is it a ‘recovery’ or a ‘liquidation’.
- From an examination of the Resolution Plan submitted by the earlier bidder, it was evident that certain financial creditors have been provided with 100 percent of their verified claim, while lesser percentage has been given to others. Discrimination has been made on the ground that some of the financial creditors who have direct exposure to the corporate debtor or some of the financial creditors to whom the corporate debtor was a guarantor. Further, as far as the operational creditors (other than workmen) are concerned, it can be seen that unrelated parties have been provided with 35 percent of their verified claim.
- However, related parties have not been provided with any amount.
- The Code or the Regulations framed by the IBBI do not prescribe differential treatment between the similarly situated operational creditors or the financial creditors on one or the other grounds.
- The CoC had not considered the Resolution Plan submitted by Ultratech which had taken care of maximization of the assets of the ‘Corporate Debtor’ and also balanced the claim of all the stakeholders of the Corporate Debtor.
- The NCLAT while dismissing the appeal filed by Binani Industries Limited, approved the Resolution Plan submitted by Ultratech which was approved by the CoC, as it met the requirements as prescribed under the Code.

**Impact:**
The NCLAT has made it clear that there can be no discrimination amongst the financial creditors who are on an equal footing or between financial creditors and operational creditors. A good Resolution Plan must balance the interests of all creditors.

**V. NCLAT DISMISSES PETITION REGARDING APPLICABILITY OF LIMITATION ACT ON INSOLVENCY PROCEEDINGS**

NCLAT vide its order dated 5 July 2018 had dismissed the appeal of Appellant, Mr. Brijesh Kumar Agarwal, Director and Shareholder of Kunj Forgings (P) Ltd. (Corporate Debtor) regarding application of Limitation Act on the Insolvency proceedings by Punjab National Bank. The facts of the judgement are summarized below:

**Facts of the case:**
- An appeal was made to the NCLAT by Kunj Forgings (P) Ltd. (Corporate Debtor) against the NCLT Allahabad Bench order dated 17 May 2018, whereby the application under section 7 of the Code preferred by the Punjab National Bank (Financial Creditor) has been admitted.
- The appellant contended that application filed by the Financial Creditor against the Corporate Debtor is barred by the Limitation Act, 1963.

**Issue at hand:**
Whether the Limitation Act, 1963 applies to applications under the Code?

**Order:**
- The appellant’s submission cannot be accepted in view of the fact that there is a continuous cause of action. NCLAT held that even if it is accepted that the Limitation Act is applicable, in such a case, Article 137 of Part II of the Limitation Act will be applicable, where the three-year period for filing an application/appeal shall start from the date of right to apply.
- In the present case, the right to apply under Section 7 of the Code accrued to the Financial Creditor on 1 December 2016, when the IBC came into force. Before the same, it had no right to apply under Section 7 of the Code. Therefore, even if the Limitation Act is made applicable, the application is not barred by limitation.

**Impact:**
Passage of time under the Limitation Act, 1963, should not be considered a bar on initiating proceedings under the Code. This view should be a relief to creditors.

**CONCLUSION**
The Code, in its short lifespan so far, has been the proverbial ‘breath of fresh air’ which was much needed by stakeholders in India to speed up the insolvency resolution process in case of defaulting entities. Setting up of more benches of the NCLT is expected to further ease the burden of pending cases. While grey areas are a part of most legislations, it is up to the Courts / Tribunals to provide interpretational clarity, more so in the case of evolving legislations such as the Code. The recent judgment of the Hon’ble SC upholding the validity of the Code is a step in the right direction and is expected to boost confidence amongst lenders.
Law relating to Collective Investment Schemes on Shared ownership of real Assets

Collective investment schemes (CIS) are under strict regulation of SEBI; however, it is often not clear whether a mere collective investment in property, or sharing of ownership of real assets, will be a CIS. Also, the demarcating line between a “deposit” and an “investment” scheme may not be clear. The article explores these questions on the strength of UK and US principles.

The law relating to Collective Investment Schemes has always been, and perhaps will remain, enigmatic, because these provisions were designed to ensure that enthusiastic operators do not source investors’ money with tall promises of profits or returns, and start running what is loosely referred to as Ponzi schemes of various shades. De facto collective investment schemes or schemes for raising money from investors may be run in elusive forms as well – as multi-level marketing schemes, schemes for shared ownership of property or resources, or in the form of cancellable contracts for purchase of goods or services on a future date. Legislative measures to curb such financial transactions such as the Banning of Unregulated Deposit Schemes Act notwithstanding, there is an increasing array of transactions that camouflage the intent of running investment schemes.

While regulations will always need to chase clever financial fraudsters, who are always way ahead of the regulator, this article focuses on schemes of shared ownership of properties. Shared economy is the cult of the day; from houses to cars to other indivisible resources, the internet economy is making it possible for users to focus on experience and use rather than ownership and pride of possession. The basic structure of schemes for shared property ownership has been explained1. This article focuses on the shared property devices and the sweep of the law relating to collective investment schemes in relation thereto. The key issue highlighted in the article is that pooling of money into a collective ownership may well be hit by provisions about collective investment schemes. There appears to be mushrooming of shared ownership schemes for various assets – equity shares, real estate, commodities, etc., but the legality of these schemes in light of applicable law collective investment schemes needs to be analyzed.


BASIS OF THE LAW RELATING TO COLLECTIVE INVESTMENT SCHEMES

The legislative basis for collective investment scheme regulations is sec. 11AA (2) of the SEBI Act. The said section provides:

Any scheme or arrangement made or offered by any company under which,

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.

The major features of a CIS may be visible from the definition. These are:

1. **A schematic for the operator to collect investors’ money**: There must be a scheme or an arrangement. A scheme implies a well-structured arrangement whereby money is collected under the scheme. Usually, every such scheme provides for the entry as well as exit, and the scheme typically offers some rate of return or profit. Whether the profit is guaranteed or not, does not matter, at least looking at the definition. Since there is a scheme, there must be some operator of the scheme, and there must be some persons who put in their money into the scheme. These are called “investors”.

2. **Pooling of contributions**: The next important part of a CIS is the pooling of contributions. Pooling implies the contributions losing their individuality and becoming part of a single fungible hotchpot. If each investor’s money, and the investments therefrom, are identifiable and severable, there is no pooling. The whole stance of CIS is collective investment. If the investment is severable, then the scheme is no more a collective scheme.

3. **Intent of receiving profits, produce, income or property**: The intent of the investors contributing money is to receive results of the collective investment. The results may be in form of profits, produce, income or property. The usual feature of CIS is the operator tempting investors with guaranteed rate of return; however, that is not an essential feature of CISs.

4. **Separation of management and investment**: The management of the money is in the hands of a person, say, investment manager. If the investors manage their own investments, there is no question of a CIS. Typically, investor is someone who becomes a passive investor and does not have first level control (see next bullet). It does not matter whether the so-called manager is an investor himself, or may
While regulations will always need to chase clever financial fraudsters, who are always way ahead of the regulator, this article focuses on schemes of shared ownership of properties. Shared economy is the cult of the day; from houses to cars to other indivisible resources, the internet economy is making it possible for users to focus on experience and use rather than ownership and pride of possession.

be the operator of the scheme as well. However, the essential feature is there being multiple “investors”, and one or some “manager”.

5. **Investors not having regular control over the investments**:
As discussed above, the hiving off of the ownership and management of funds is the very genesis of the regulatory concern in a CIS, and therefore, that is a key feature.

The definition may be compared with section 235 of the UK Financial Services and Markets Act, which provides as follows:

(1) In this Part “collective investment scheme” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—
- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

It is conspicuous that all the features of the definition in the Indian law are present in the UK law as well.

Hong Kong Securities and Futures Ordinance [Schedule 1] defines a collective investment scheme as follows:

**Collective investment scheme** means—
- (a) arrangements in respect of any property—
- (i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
- (ii) under which—
  - (A) the property is managed as a whole by or on behalf of the person operating the arrangements;
  - (B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
- (C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
- (iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive—
  - (A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or
  - (B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
- (b) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice.

One may notice that this definition as well has substantially the same features as the definition in the UK law.

**JUDICIAL ANALYSIS OF THE DEFINITION**

Part (iii) of the definition in Indian law refers to management of the contribution, property or investment on behalf of the investors, and part (iv) lays down that the investors do not have day to day control over the operation or management. The same features, in UK law, are stated in sec. 235 (2) and (3), emphasizing on the management of the contributions as a whole, on behalf of the investors, and investors not doing individual management of their own money or property. The question has been discussed in multiple UK rulings. In Financial Conduct Authority vs Capital Alternatives and Others, [2015] EWCA Civ 284, [2015] 2 BCLC 502⁵, UK Court of Appeal, on the issue whether any extent of individual management by investors will take the scheme of the definition of CIS, held as follows: “The phrase “the property is managed as a whole” uses words of ordinary language. I do not regard it as appropriate to attach to the words some form of exclusionary test based on whether the elements of individual management were “substantial” - an adjective of some elasticity. The critical question is whether a characteristic feature of the arrangements under the scheme is that the property to which those arrangements relate is managed as a whole. Whether that condition is satisfied requires an overall assessment and evaluation of the relevant facts. For that purpose it is necessary to identify (i) what is “the property”, and (ii) what is the management thereof which is directed towards achieving the contemplated income or profit. It is not necessary that there should be no individual management activity - only that the nature of the scheme is that, in essence, the property is managed as a whole, to which question the amount of individual management of the property will be plainly relevant”.

issue of whether the property is collective managed, or managed by respective investors, the following paras from UK Financial Conduct Authority were cited with approval:

The purpose of the ‘day-to-day control’ test is to try to draw an important distinction about the nature of the investment that each investor is making. If the substance is that each investor is investing in a property whose management will be under his control, the arrangements should not be regarded as a collective investment scheme. On the other hand, if the substance is that each investor is getting rights under a scheme that provides for someone else to manage the property, the arrangements would be regarded as a collective investment scheme.

Day-to-day control is not defined and so must be given its ordinary meaning. In our view, this means you have the power, from day-to-day, to decide how the property is managed. You can delegate actual management so long as you still have day-to-day control over it."

The distancing of control over a real asset, even though owned by the investor, may put him in the position of a financial investor. This is a classic test used by US courts, in a test called Howey Test, coming from a 1946 ruling in SEC vs. Howey6. If an investment opportunity is open to many people, and if investors have little to no control or management of investment money or assets, then that investment is probably a security. If, on the other hand, an investment is made available only to a few close friends or associates, and if these investors have significant influence over how the investment is managed, then it is probably not a security.

THE FINANCIAL WORLD AND THE REAL WORLD

As is apparent, the definition in sec. 235 of the UK legislation has inspired the draft of the Indian law. It is intriguing to seek as to how the collective ownership or management of real properties has come within the sweep of the law. Evidently, CIS regulation is a part of regulation of financial services, whereas collective ownership or management of real assets is a part of the real world. There are myriad situations in real life where collective business pursuits, or collective ownership or management of properties is done. A condominium is one of the commonest examples of shared residential space and services. People join together to own land, or build houses. In the good old traditional world, one would have expected people to come together based on some sort of “relationship” – families, friends, communities, joint venturers, or so on. In the interweb world, these relationships may be between people who are invisibly connected by technology. So the issue, why would a collective ownership or management of real assets be regarded as a financial instrument, to attract what is admittedly a piece of financial law.

The origins of this lie in a 1984 Report4 and a 1985 White Paper5, by Prof. LCB Gower, which eventually led to the enactment of the 1986 UK Financial Markets law. Gower has discussed the background as to why contracts for real assets may, in certain circumstances, be regarded as financial contracts. According to Gower, all forms of investment should be regulated “other than those in physical objects over which the investor will have exclusive control. That is to say, if there was investment in physical objects over which the investor had no exclusive control, it would be in the nature of an investment, and hence, ought to be regulated. However, the basis of regulating investment in real assets is the resemblance the same has with a financial instrument, as noted by UK Supreme Court in the Asset Land ruling: “the draftsmen resolved to deal with the regulation of collective investment schemes comprising physical assets as part of the broader system of statutory regulation governing unit trusts and open-ended investment companies, which they largely resembled.”

The wide sweep of the regulatory definition is obviously intended so as not to leave gaps open for ingenious operators to find gaps in the law and exploit the same. However, as the UK Supreme Court in Asset Land remarked: “The consequences of operating a collective investment scheme without authority are sufficiently grave to warrant a cautious approach to the construction of the extraordinarily vague concepts deployed in section 235.”

The intent of CIS regulation is to capture such real property ownership devices which are the functional equivalents of alternative investment funds or mutual funds. In essence, the scheme should be operating as a pooling of money, rather than pooling of physical assets. The following remarks in UK Asset Land ruling aptly capture the intent of CIS regulation: “The fundamental distinction which underlies the whole of section 235 is between (i) cases where the investor retains entire control of the property and simply employs the services of an investment professional (who may or may not be the person from whom he acquired it) to enhance value; and (ii) cases where he and other investors surrender control over their property to the operator of a scheme so that it can be either pooled or managed in common, in return for a share of the profits generated by the collective fund.”

CONCLUSION

While the intent and purport of CIS regulation world over is quite clear, but the provisions have been described as “extraordinarily vague”. In the shared economy, there are numerous examples of ownership of property being given up for the right of enjoyment. As long as the intent is to enjoy the usufructs of a real property, there is evidently a pooling of resources, but the pooling is not to generate financial returns, but real returns. If the intent is not to create a functional equivalent of an investment fund, normally lure of a financial rate of return, the transaction should not be construed as a collective investment scheme.

The demarcating line between a “deposit scheme” regulated under the Banning of Unregulated Deposits Act and an “investment scheme” that may be regarded as CIS must also be noted. A deposit is essentially a money-for-money transaction – money is collected, to be returned as money. In an investment transaction, there is an investment in a financial or non-financial asset, but the intent is to generate returns. While guaranteed rate of return is a bait thrown by promoters of CIS, but the existence of such returns may be a common or illustrative feature, but not necessarily quint-essential.

As Fintech-enabled and net-based property ownership schemes proliferate, it is essential to ensure that these structures do not operate as ways to produce returns on the basis of pooled resources. The consequences of not being with the regulation may be serious, both for the operator of the scheme and for the investors.
Significant Beneficial Ownership- A Pandora’s Box?

Of late, the Ministry of Corporate Affairs has been coming out with various compliance requirements. One of the most important requirements, emanating from the Companies (Amendment) Act, 2017 and which is aimed at piercing the corporate veil, is the declaration of Significant Beneficial Ownership. Although the objective is laudable, it appears that not much attention is given to ground realities as well as proper drafting, which is essential for proper compliance of any law. A possibility also exists that the data submitted could be used by other regulators from an altogether different perspective leading to absurd conclusions.

While Beneficial ownership is not a new concept, the concept of ‘Significant Beneficial Ownership’ (SBO) is introduced by the Companies Act, 2013 and then amended section 90 by the Companies (Amendment) Act, 2017. It has introduced a definition of beneficial interest which is applicable to both section 89 and 90 of the Companies Act, 2013 (CA 2013 or the Act). Further, it has replaced the entire section 90 and introduced certain provisions for disclosure of substantial beneficial ownership. Before we deal with the same, let’s see some background.

Financial Action Task Force (FATF) was established in 1989 by G7. According to FATF, Beneficial owner means the natural person(s) who ultimately owns or controls a customer and/ or the natural person on whose behalf a transaction is being conducted. It also includes persons who exercise ultimate effective control over a legal person or arrangement. Further, it is explained that ‘ultimately owns or controls’ and ‘ultimate effective control’ refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. (Ref. Guidance on transparency and beneficial ownership)

FATF had made recommendations (Note 24) which requires each country to develop mechanism to ensure that adequate, accurate and timely information is made available on beneficial ownership and control of companies and other legal persons (beneficial ownership information) that are created in the country. The purpose was to prevent misuse of legal person/corporate vehicle (in short lifting the corporate veil) and to fight against issue of money laundering and funding for terrorist activities. The latter is a global concern. India committed to FATF to put in place SBO rules long back. In view of this commitment, Company Law Committee has recommended the following amendments to the CA 2013 in order to curb money laundering practices and to identify the natural person controlling a corporate entity:

A) Provide a definition of Beneficial Interest in a share and beneficial ownership in a Company;
B) Companies and individuals be obligated to provide information on beneficial ownership held in the Company;
C) Companies be mandated to maintain register of beneficial ownership and provide periodic information to registry (MCA21);
D) Companies not complying with the provisions be liable to penalty and criminal prosecution.

Accordingly, the Companies (Amendment) Act, 2017 has made some provisions, which we will analyse now. Readers may please note that for the purpose of this article, only relevant portions of the section and the rules are considered and entire section and the rules are not reproduced.

As mentioned above, an inclusive definition was inserted as sub section (10) in section 89 of CA 2013 (applicable to both section 89 and 90) as follows:

Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of person alone or together with any other person to:
i) exercise or cause to be exercised any or all of the rights attached to such share; or
ii) receive or participate in any dividend or other distribution in respect of such share

Let’s analyse the provisions of section 90 read with the Companies (Significant Beneficial Owners) Rules, 2018, as amended, which deal with the concept of Significant Beneficial Ownership.

The term ‘Significant Beneficial Owner’ (SBO), has been defined one in section 90 and another in the Rules.

Section 90 refers to SBO as every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company.

Rule 2(1)(h) defines this term as follows: “significant beneficial owner” in relation to a reporting company means an individual referred to in subsection (1) of section 90, who acting alone or together, or through one or more persons
While there is no issue in dealing with a revocable trust, in case of a specific trust, where there will be more than one beneficiary, it is not clear whose name should be taken as SBO. It is not clear whether it is the major beneficiary or in case of equal share, all the beneficiaries will be deemed to be SBO or all beneficiaries will be deemed to be acting together. Further challenge will arise in case of a charitable or discretionary trust as to which trustee should be deemed to be SBO.

or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

(i) holds indirectly, or together with any direct holdings, not less than ten per cent of the shares;
(ii) holds indirectly, or together with any direct holdings, not less than ten per cent of the voting rights in the shares;
(iii) has right to receive or participate in not less than ten per cent of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:

While the section talks about beneficial interest (as mentioned in section 89(10)), rules explicitly provide for the same to include holding of not less than ten per cent of the shares or voting rights or right to distributable dividend or other distribution. Both the section and the rule also provide for right to exercise or actual exercising of significant influence or control.

As mentioned above, the intention of all this exercise is to find out the beneficial owner who is not visible on or identifiable from the records of the company. Hence, the explanation1 clearly excludes the individuals who are holding the shares of the reporting company directly only.

Explanation I provides that ‘For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner’.

It is pertinent to note that sub clause (iv) provides for significant influence or control, which can be exercised without any shareholding. It will be discussed this in a later part.

Explanation II lays down the criteria for determining the direct holding of an individual namely, (i) the shares in the reporting company representing such right or entitlement are held in the name of the individual or (ii) the individual holds or acquires a beneficial interest in the share of the reporting company under subsection (2) of section 89, and has made a declaration in this regard to the reporting company.

Explanation III is critical as it lays down the criteria for indirect holding, which is the intention behind all this exercise. It reads as under:

Clause (i) provides that if an individual is holding majority stake i.e more than 50% in the body corporate which is a member of the reporting company or in the ultimate holding company of
that body corporate, then it is treated as his indirect holding in the reporting company. However, this wording is deceptive in as much as the definition provides for the holding of an individual acting alone or together or through one or more persons or trust. Explanation V explains the term ‘acting together’

Explaination V. For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be ‘acting together’. In spite of such explanation, it will be a challenging task and can lead to various disputes as to who are acting together. While section 90 makes it mandatory for the individual who is SBO, to make a declaration, the rules also make it mandatory for the reporting company to find out who is SBO! If for example, husband and wife or family members are holding shares in the said body corporate, can we say both or all of them are acting together or they have common intent? In either case, you will have to do a lot of explaining in future or it may lead to various allegations and disputes in future.

If the entity is a Hindu Undivided Family, it is fairly simple as the Karta will be deemed to be the beneficial owner.

In case of a partnership entity, some confusion is created by the wording as it includes a firm. If it is Limited Liability partnership, the individual who is a partner; or holds majority stake in the body corporate which is a partner of the partnership entity; or holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity will be the SBO. But if it is a firm, in my opinion, no disclosure would be necessary. In the reporting company’s records, the names of partners, in any case would have been entered. There is no question of entering the name of the firm as a member. Since in the eyes of the reporting company, the partners are the direct owners of the shares, the question of disclosure of indirect interest does not arise.

While there is no issue in dealing with a revocable trust, in case of a specific trust, where there will be more than one beneficiary, it is not clear whose name should be taken as SBO. It is not clear whether it is the major beneficiary or in case of equal share, all the beneficiaries will be deemed to be SBO or all beneficiaries will be deemed to be acting together. Further challenge will arise in case of a charitable or discretionary trust as to which trustee should be deemed to be SBO. In such cases, no pecuniary interest of the trustees will be involved but still they have to file the form claiming such interest. Here also it is not clear whether a single trustee or all the trustees should claim that they are SBO or they should be treated as acting together. It is also not clear that if a trustee claims that he is an SBO, then whether the income tax department will treat the income arising from such shares as the income of the said trustee. The Tax department can claim that the charitable trust is a sham and is created for tax avoidance because the trustee has claimed that he is an SBO!

In case of pooled investment vehicle, the persons mentioned hereinabove in sub clause (v) shall be the SBO.

Explanation VI provides that for the purpose of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as ‘shares’. While appreciating the Government’s concern that these instruments can be used to exercise control after shares are issued post conversion, A person can fail to understand how any one can treat them as ‘shares’ before conversion. These are quite distinct and different instruments having an altogether different characteristics and having nil or conditional voting rights. Another challenge would be how to calculate the threshold limit of ten percent by including these instruments. Should we take the number of say debentures and simply add to existing shares or should we consider the number of shares which will come into existence post conversion? And what happens if the exact conversion ratio is not mentioned in some instrument or is to be determined in future?

Now we will deal with another absurd term, ‘significant influence’. Significant influence means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies. Before we analyse this, let’s see the definition of the term ‘control’ because significant influence is not control. ‘Control’ shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. (sec 2(27) of the Act). Thus, management or policy decisions are covered by the term, ‘control’. Now the residual financial and operating policy decisions are sought to be covered by the term, ‘significant influence’. And it is not power to decide but ‘power to participate’ which is enough to make you an SBO! All the management level persons and even some of the consultants will be covered by this definition as they have power to participate in financial or operating policy decisions.

As mentioned above, the person having significant influence or control need not hold any shares in the reporting company as is evident from the discussion above. However, section 90(7) read with rule 7 requires the company to apply to the National
One of the most important and equally absurd provision is that a Company shall give notice to any person whom the Company knows or has reasonable cause to believe- (emphasis added) a) to be a significant beneficial owner (SBO) b) to be having knowledge of the identity of a SBO or another person likely to have such knowledge or c) to have been SBO of the company during the three years immediately preceding the date on which the notice is issued.

Thereafter, it is mandatory for the person to give the information within 30 days from the date of the notice. If he fails to give the information or gives information which is not satisfactory, the company has to approach NCLT within fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

A general person with his limited knowledge fails to understand how an artificial person like company can ‘know’ or ‘believe’ certain information. Is it the knowledge or belief of the Board of Directors or Managing Director or any Key Managerial Personnel or even an employee? Secondly, it is expected that the company should undertake these kinds of investigation activities rather than doing their own business? Most importantly, in a litigation, especially like the one involving oppression and mismanagement, a variety of allegations are made by the disputants. If someone alleges that some influential person is holding benami shares in a company in the matter before NCLT, it becomes the knowledge of the company, irrespective of the fact that it may not be true. But under the law, if the company has knowledge, it is supposed to send a notice to such influential person and that person has to reply within thirty days. This example is given just to show how these provisions will lead to absurd situations. It is suggested to make this provision specific like knowledge of the Board of Directors through Board processes or something on similar lines.

Now let’s see some other important points which may lead to litigation or prosecution/ investigation by other government agencies.

Under Income tax law, there is a concept called Ultimate Beneficial Owner (UBO). If the person declared under the tax law as UBO is different from the person who has declared himself as SBO and if tax department starts questing on this issue, people may have to do a lot of explaining.

Similarly, there is a provision of deemed dividend in case of certain specified persons. If by virtue of this declaration, a person could be treated as such specified person due to clubbing of both direct and indirect holding, he has to do a lot of explaining.

Presently, the provisions of GAAR are kept on hold. However, sooner or later, they are bound to come into effect. After coming into effect, those provisions may question the rationale of the corporate planning itself by which various forms of organizations were used by the individuals to have indirect holding.

It will be interesting to see how the tax authorities view these declarations from the point of view of related party transactions or transfer pricing.

Last but not the least, in some cases, it is possible that the Benami Transactions (Prohibition) Act, 1988 could also be invoked.

Given the attitude, enthusiasm and activism of all the regulators coupled with the loose drafting which is prone to litigation, it will be a challenging task for the companies and professionals in the days to come. This exercise may open a Pandora’s box and may lead to disputes and litigation.
Budget 2019: Marching towards a USD 5 Trillion Economy

The Economic Survey 2019, presented by the Honourable Chief Economic Advisor focussed on moving the clock on a sustained path of GDP growth while keeping an eye on the fiscal deficit. While the macro parameters laid down by the Economic Survey appeared to indicate that the various metrics which measure growth are under control, there has been a distinct sense of slowdown experienced by various sectors including Real Estate, Automobiles etc and the hence there has been a concern expressed in certain quarters on whether we are headed for a slowdown in economic activity. The Union Budget addresses these concerns in an emphatic manner mentioning that the economy would be able to grow despite the slowdown in global trade and the trade measures adopted by various countries. The Budget has reiterated the commitment to move to a USD 5 Trillion Economy by 2024 from USD 2.7 Trillion now and the policy measures announced in the Budget would enable a long-term vision to be adopted to reach that goal.

<table>
<thead>
<tr>
<th>Key Areas highlighted by the Economic Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
</tr>
<tr>
<td>GDP Growth</td>
</tr>
<tr>
<td>Oil Prices</td>
</tr>
<tr>
<td>Trade Policies</td>
</tr>
<tr>
<td>Investment</td>
</tr>
<tr>
<td>Jobs</td>
</tr>
<tr>
<td>Banking</td>
</tr>
<tr>
<td>Minimum Wage System</td>
</tr>
</tbody>
</table>

**UNION BUDGET 2019**

Considering the findings of the Economic Survey and the various policy measures that the Government wanted to focus in its second term, the Union Finance Minister (FM) presented the Budget in July 2019. At the outset, the FM stated that while the budget was in respect of 2019-20, it was made keeping in mind a ten year time vision to take the country ahead on the path of progress. At this stage it is necessary to focus on the following GDP indicators:

<table>
<thead>
<tr>
<th>Year</th>
<th>Achievement/Target (USD Trillion)</th>
<th>Global Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>1.89</td>
<td>11th</td>
</tr>
<tr>
<td>2019</td>
<td>2.70</td>
<td>6th</td>
</tr>
<tr>
<td>2024</td>
<td>5.00</td>
<td>3rd</td>
</tr>
</tbody>
</table>

* The views expressed are personal views of the author.
While significant improvements in infrastructure have been achieved over the past few years, there is a need for a renewed focus on the same as infrastructure creation and maintenance is the bedrock of any economy, not only leading to GDP growth but also acting as a key catalyst in employment generation and driving consumption.

It is interesting to note that in terms of purchasing parity, India is already the 3rd largest economy and has only USA and China ahead. However, since the purchasing parity method is subject to country-specific adjustments, the internationally accepted method of current-value GDP comparison has been adopted by India. The Budget identifies certain key focus areas which will enable the economy to progress to the above goal.

**INFRASTRUCTURE**

While significant improvements in infrastructure have been achieved over the past few years, there is a need for a renewed focus on the same as infrastructure creation and maintenance is the bedrock of any economy, not only leading to GDP growth but also acting as a key catalyst in employment generation and driving consumption. Since 2016, the earlier practice of having a separate railway budget has been dispensed with and hence the proposals relating to investments in railway infrastructure including rolling stock form part of the Union Budget. The key proposals involve:

<table>
<thead>
<tr>
<th>Area</th>
<th>Budget Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grid Development</td>
<td>Blueprint for gas grids, water-ways, i-ways and regional airports. National Highway Programme to be restructured as National Highway Grid using a financeable model</td>
</tr>
<tr>
<td>State Roads</td>
<td>The second phase of the Bharatmala project will focus on state roads</td>
</tr>
<tr>
<td>Aviation</td>
<td>Focus on Maintenance Repair Overhaul(MRO) segment in order to become self-sufficient in aviation</td>
</tr>
<tr>
<td>Railways</td>
<td>The investment requirement over the next ten years has been estimated at Rs.50 lakh Crores. The sector will see increasing use of the Public-Private-Partnership (PPP) model in respect of investments in track infrastructure, rolling stock and passenger freight services.</td>
</tr>
</tbody>
</table>

**RURAL AND AGRICULTURE**

The Budget recognised the need to focus on rural areas and on agriculture as these continue to be the large contributors to the GDP and employment. It is also essential to note that while these measures may not be of direct relevance to corporates, they are key factors in stimulating consumption in rural areas by having a multiplier effect on income and employment. The key measures announced include:

<table>
<thead>
<tr>
<th>Area</th>
<th>Budget Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity</td>
<td>Electricity for all by 2022</td>
</tr>
<tr>
<td>Water</td>
<td>Water for all by 2024</td>
</tr>
<tr>
<td>Roads</td>
<td>Upgrade 1.25 lac kms by 2024</td>
</tr>
<tr>
<td>Farming</td>
<td>10,000 new farm produce organisations. Promote zero budget farming</td>
</tr>
<tr>
<td>Artisans</td>
<td>100 new clusters to be set up for artisans across the country</td>
</tr>
</tbody>
</table>

The priorities and specific areas of focus mentioned above would require the economy to go on an investment/spending overdrive keeping in mind the need to cap the fiscal deficit at 3.3% for the year. Hence the changes proposed in taxation are required to serve the twin purposes of resource mobilisation to finance the budget scheme expenditure and keep employment generation as a key driver in reaching the GDP targets mentioned above.

The changes proposed on the direct taxation front largely continue the earlier reforms in income tax in order to continue the growth in income tax collections by having stability in tax rates and collections. There are several measures which are designed to plug tax leakages and increase the base of taxpayers.

**CORPORATE TAX**

The tax rate for domestic companies having a turnover of Rs.250 Crores was kept at 25%. In this budget, it is proposed to extend this rate to companies having a turnover of Rs.400 Crores. For other domestic companies, the tax rate continues to be at 30% basic tax with a surcharge and cess leading to an Effective Tax Rate (ETR) of 34.94%. In respect of foreign companies the tax rate continues to be 40%, leading to an ETR of 43.68%. The Minimum Alternate Tax (MAT) remains at 18.5% (plus surcharge and cess) and the tax on dividends distributed or paid by domestic companies’ remains at 15% (plus applicable surcharge of 12% and cess). In respect of partnerships and LLP’s, the tax rates remain at 31.2% in respect of income below Rs.1 Crore and 34.94% on incomes exceeding that. The intention appears to have stable tax rates that are not frequently changed in order to enable businesses to have clarity on their tax liabilities.

**INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)**

A slew of tax measures have been announced in order to make IFSC more attractive, these include extension of capital gains exemption to Category III AIF’s (Alternate Investment Fund), tax exemption on income earned by NRI’s (Non Resident Indians) investing in IFSC, tax exemption on income distributed by Mutual Funds located in IFSC. In addition, it has been stated that the tax deduction will be allowed at 100% for any ten consecutive years out of a period of 15 years commencing after the unit is set-up.

**PERSONAL TAX**

While the tax rates have remained the same, the budget has increased the surcharge for two categories of high-income earners only keeping the rates constant for all other taxpayers.

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Existing ETR</th>
<th>Proposed ETR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto Rs.50 lacs</td>
<td>31.20%</td>
<td>31.20%</td>
</tr>
<tr>
<td>Rs.50 lacs to Rs.1 Crore</td>
<td>34.32%</td>
<td>34.32%</td>
</tr>
<tr>
<td>Rs.1 Crore to Rs.2 Crore</td>
<td>35.88%</td>
<td>35.88%</td>
</tr>
<tr>
<td>Rs.2 Crore to Rs.5 Crore</td>
<td>35.88%</td>
<td>39.00%</td>
</tr>
<tr>
<td>Above Rs.5 Crore</td>
<td>35.88%</td>
<td>42.74%</td>
</tr>
</tbody>
</table>

Individual taxpayers have also been provided additional deductions over and above that contained in Section 80 C and other relevant sections in respect of houses and Electric Vehicles as mentioned below:

<table>
<thead>
<tr>
<th>Deduction provided under Section:</th>
<th>In respect of houses below Rs.45 lacs bought with a loan sanctioned in 2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Deduction u/s 24</td>
<td>Rs.2.00 lacs</td>
</tr>
<tr>
<td>Additional deduction proposed u/s 80 EEA</td>
<td>Rs.1.50 lacs</td>
</tr>
<tr>
<td>Total deduction available</td>
<td>Rs.3.50 lacs</td>
</tr>
</tbody>
</table>
There is also a new deduction of Rs.1.50 lacs u/s 80 EEB proposed on the interest paid on loan taken for purchase of an Electric Vehicle (EVs) after April 2019. There are also significant changes made on the indirect tax front on EVs as mentioned subsequently.

**STEPS TO EXPAND THE INCOME TAX BASE AND AVOID LEAKAGES**

<table>
<thead>
<tr>
<th>Area</th>
<th>Proposed Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 139</td>
<td>Expanded to include</td>
</tr>
<tr>
<td></td>
<td>➢ Deposits exceeding Rs.1 Crore in a current account</td>
</tr>
<tr>
<td></td>
<td>➢ Incurred expenditure exceeding Rs.2 lacs for foreign travel</td>
</tr>
<tr>
<td></td>
<td>➢ Incurred electricity expenses exceeding Rs.1 lac per annum</td>
</tr>
<tr>
<td>PAN/Aadhar</td>
<td>Interchangeability of PAN and Aadhar introduced with mandatory provisions in respect of specified financial transactions</td>
</tr>
<tr>
<td>TDS on cash withdrawals</td>
<td>Introduced at 2% on withdrawals exceeding Rs.1 Crore from banks, co-operative banks and post offices by any person</td>
</tr>
<tr>
<td>Section 194M</td>
<td>TDS at 5% introduced on sums paid exceeding Rs.50 lacs in a year by individual/HUF for contractors work or professional fees, if the individual is not required to deduct TDS u/s 194 C or 194 J.</td>
</tr>
</tbody>
</table>

**EASE OF DOING BUSINESS FOR START-UPS**

The Budget has identified creation of a simple policy and tax framework for start-ups and their ecosystems as one of the key focus areas.

The ‘angel tax’, levied on share premium valuations above the fair market value, has been a source of major concern to entrepreneurs and investors alike. To allay these concerns, the FM has stated that the start-ups and investors would not be subject to scrutiny, for past or future transactions, adding that an e-verification mechanism will be put into place to address any concerns over identity of investors or the source of funds.

Further, income tax assessing officers (AOs) need to obtain prior approval from their supervisory officers before conducting an inquiry or verification of the income tax return filed by the start-ups.

Further, the provisions relating to carry forward and set off of losses in start-ups will be relaxed, enabling them to carry forward such losses if, either 51% of shareholding/ voters or 100% of shareholders remain the same. In addition, exemption of capital gains, from net consideration when sale of residential property is utilized for start-up equity investment, will be extended for two more years. There is also a proposal to allow 100% Foreign Direct Investment in insurance intermediaries – which have some prominent start-ups and also an intention to ease local sourcing norms for Foreign Direct Investment (FDI) in single brand retail trading.

**INDIRECT TAXES**

In the past there were several measures on the indirect tax front which would be announced in the Budget. However, with the introduction of Goods and Services Tax (GST) in July 2017, the GST Council has empowered with making changes to the GST rates and legislation, leaving room only for recommendations on GST in the Union Budget.

In respect of Customs, the Budget moves ahead with the make-in-India initiative announced earlier by increasing the rates of Customs Duties on certain final products and reducing the rate on certain inputs which are required for domestic manufacturing. With this intention, the Customs duties on certain auto parts has been increased from 7.5%/10% to 10%/15%. There is similarly an increase in the rates for printed books and newspapers from Nil to 5% and 10% respectively. Several electronic items such as optical fibres, loudspeakers and split air conditioners have seen a hike from 10%/15% to 15%/20%. These are expected to provide a fillip to domestic manufacturing.

In order to mobilise resources for the development plans proposed by the Budget, there is also a proposal to increase the duties on petrol/diesel and tobacco products.

There is a specific focus in the budget on reducing the tax on Electric Vehicles (EVs). While the EV ecosystem in India is at a preliminary stage, the Budget considered it necessary to promote the manufacture and sale of EVs in India by taking the following measures:

- Reduce the Customs duties on various EV parts such as E-drive assembly, on-board charger, charging gun to Nil from the applicable rates.
- Recommend to the GST Council to bring the GST rates on EVs uniformly to 5%.

The GST Council has taken note of these suggestions and has already announced a reduction of the GST rates on EV’s to 5%.

Some of the policy suggestions provided by the Union Government to the GST Council, include:

- Clarify that interest is applicable on delayed payments of GST only to the extent of the net payment and not on the gross payment.
- Formation of a National Appellate Authority of Advance Rulings which would come to the rescue of the taxpayer in case of conflicting decisions by various state authorities on the same subject.
- The National Anti-Profiteering Authority (NAPA) should be given the powers to impose a penalty of 10% of the profiteered amount.

There is also a proposal to have a Dispute Resolution Scheme for settling pending disputes in respect of Excise Duty and Service Tax. The key features are:

<table>
<thead>
<tr>
<th>Applicable to matters pending on 30th June 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does not apply to voluntary disclosures of Excise and Service Tax liabilities</td>
</tr>
<tr>
<td>The relief provided in respect of the pending tax amounts is very attractive and ranges from 40% to 70%</td>
</tr>
<tr>
<td>There is a complete waiver of interest and penalties.</td>
</tr>
</tbody>
</table>

This scheme is expected to generate considerable interest from taxpayers as the relief provided is very attractive; however there is a need to peruse the fine print of the scheme once announced and apply it to each pending matter.

**CONCLUSION**

The Budget has provided a comprehensive view of the various economic factors that the Government plans to focus in the current year and also lays down a long term road-map in several areas with a clear aim to take India ahead to the third position in the world economy by 2024.
Bridging the gap in CSR Spending

The Ministry of Corporate Affairs has incorporated provisions in the Companies Act, 2013, which direct companies crossing threshold mentioned in Section 135(1) to spend at least 2 per cent of their average net profit earned over the last three financial years on CSR in every financial year. This study is undertaken to examine the changes in the CSR spending of listed companies in India during the FY 2015 to FY 2017.

INTRODUCTION

Corporate Social Responsibility (CSR) has gained momentum due to the rapid growth of economy, expansion of foreign and institutional investor base, increased presence of the media and active role of social institutions. The organizations are sociological entities who obtain resources from society and therefore it becomes their moral duty to fulfill the expectations of society for sustainable returns in future. Howard Bowen (1953) defined CSR as “the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society”.\(^1\) However there has been over-emphasis on the objective of profit maximization across companies, which led to unhealthy practices and is also the foremost source of corporate scandals worldwide. It adversely affected countries, economies and entire societies have suffered setbacks. Therefore the conventional theory of maximizing shareholders’ returns is inapt in the current scenario, and organizations are to satisfy all stakeholders and not merely its shareholders in order to achieve superior performance.

Though companies spend on CSR activities but the extent of their involvement and the amount they spend was not satisfactory to deal with social welfare issues of poverty, unemployment, illiteracy etc. Thus the CSR activities of Indian companies came under the scrutiny of policy makers. Consequently to support society, alleviate health-care provisions, promote education and develop infrastructure in India, the legislation on CSR spending was issued by the Companies Act, 2013, effective from April 1, 2014 with the objective to enhance socially responsible investments by companies for economic as well as social development of country. This would address the notion of responsible business and propel India towards path of equitable growth. The companies are expected to engage themselves in CSR activities according to the provisions of section 135 of the Companies Act, 2013.

LEGAL FRAMEWORK: ENACTMENT OF CSR LAW IN INDIA

To ensure that companies contribute in the country’s development agenda through equitable distribution of growth, Ministry of Corporate Affairs, Government of India released Voluntary Guidelines on CSR in 2009 to streamline their responsibilities towards the overall benefit of society at large. It urges businesses to embrace the “triple bottom-line” approach whereby its financial performance can be harmonized with the expectations of society, the environment and the many stakeholders it interfaces with in a sustainable manner\(^2\). These voluntary guidelines did not appear to have much effect,

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the companies did not widen their exposure in CSR activity (Afsharipour, 2011; Van Zile, 2012)\(^3\), and hence the state had to intervene to make companies’ behave in socially responsible manner.

Initially the Government had planned to enforce mandatory CSR spending requirement for Indian companies, but it was heavily opposed by companies. The Indian corporate leaders as well as large private sector companies were highly against the mandatory contributions to CSR, and claimed that the policy to forced CSR in companies may lead to ‘tick box’ behaviours, inefficient resource usage and even corruption (Prasad, 2014, Karnani, 2013)\(^4\). After discussions over two years, the Companies Bill containing provisions on CSR was tabled in Parliament on July 11, 2011, which received Presidential assent on August 29, 2013.

Finally the guidelines on CSR spending were incorporated in the corporate law through enactment of Section 135 and Schedule VII of the Companies Act, 2013 with effect from the financial year 2015. Accordingly, the board of companies that have net profit exceeding Rs 5 crore or net sales exceeding Rs 1,000 crore or net worth exceeding Rs 500 crore in the immediately preceding financial year, shall ensure that companies spends, in every financial year, at least 2 per cent of their average net profit earned over the last three preceding years in pursuance of its CSR policy. These efforts are expected to enhance firm’s social responsiveness which will boost stakeholder confidence, and benefit companies in gaining reputation and also enable them to compete globally.

However, companies which do not have prior CSR experience and are affected by law in initial years can provide explanation for not spending the required amount, if no suitable opportunity on CSR could be identified. The rising number of companies’ providing explanation created alarm and forced corporate affairs ministry to take action against non compliance. The penal action against 254 companies was initiated for violations in the first year of implementation of law\(^5\), show cause notices were also sent to those who have not spent 2% of their profits on social welfare activities. This led MCA to propose amendment in the provisions of Section 135, wherein companies will have to transfer the unspent amount within thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer\(^6\). The proposed amendment signals the continuous appraisal of the legislation to bridge the gap between actual and expected CSR spending of Indian corporate sector.

**OBJECTIVE OF THE STUDY**

The study is undertaken with the objective to explore the extent of change in CSR spending of listed companies in India over three year period from financial year 2015 to financial year 2017. The guidelines on corporate social responsibility have been recently introduced in the Companies’ Act 2013, thus it becomes pertinent to study the compliance of companies with the requirement to spend 2% of their average profit of last three financial years on CSR. This would give insight into the changes in the level of CSR spending in Indian companies and the extent of compliance as well as non compliance therein.

**RESEARCH DESIGN**

Among 5477 Indian listed firms as on March 31, 2017, based on the eligibility criteria laid down under Section 135(1) of The Companies Act, 2013, 719 companies are required to spend at least 2% on CSR in all three financial years from 2015 to 2017. The analysis of CSR spending by these companies and extent of compliance with the requirement on CSR spending is presented using charts and tables, based on data extracted from the Prowess database maintained by Center for Monitoring Indian Economy.

**ANALYSIS AND FINDINGS**

**Trend in CSR Spending**

The expenditure incurred by companies on CSR over the period 2015 to 2017 was analyzed to examine changes made in their

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CSR spending over the years.

![Pie chart showing trend in CSR spending during 2015-2017]

Source: Authors’ computation

Figure 1

Figure 1 shows that among 719 companies, more than half of the sample firms (60%) have either increased or decreased their CSR spending over the years. The level of CSR in remaining 40% has remained same during 2015-2017, out of which a large proportion of 19% have consistently spent less than 2% on CSR including Axis Bank Ltd., Berger Paints India Ltd. and Bharti Airtel Ltd. On the other hand, only 9% of companies have exceeded the 2% target and another 9% have just complied with the 2% ceiling each year. The companies such as Ambuja Cements Ltd., Coal India Ltd., Reliance Industries Ltd. and Wipro Ltd. have spent amount in excess of 2%, but Balmer Lawrie & Co. Ltd. and Britannia Industries Ltd. are among those who have spent just 2% every year. A more detailed analysis on changes made by companies in their CSR policy is undertaken in bar chart in Figure 2.

![Bar chart showing CSR spending by companies from 2015 to 2017]

Source: Authors’ computation

Figure 2

Figure 2 divides the CSR exposure of companies in four blocks, Block I, II and III representing companies with nil expenditure, those which have spent less than 2% of net profits and those which just met the 2% target respectively, showing marginal decline over the three years. There is substantial increase of 67% from 2015 to 2017 in the number of companies (Block IV) which have exceeded the 2% ceiling. This clearly indicates inclination of companies towards increasing CSR. Companies spending exactly 2% have also marginally increased in 2017. However CSR spending in some companies has reduced over the years, like J K Tyre & Inds. Ltd. Hence further analysis is done to identify the transition in companies’ CSR spending over the years.

**UPSWING IN CSR SPENDING**

The level of CSR spending at companies is either showing upward trend or moving downwards in 2017 as compared to 2015.

![Bar chart showing change in CSR spending by companies from 2015 to 2017]

Source: Authors’ computation

Figure 3

Figure 3 shows enormous jump in the number of companies (193) which have increased their CSR spending over those (96) that have reduced from 2015 to 2017. 137 companies have escalated their CSR exposure beyond compliance from either less than or equal to the target percentage. Among these companies, 57% are those which were not even complying with 2% requirement earlier including Bajaj Auto Ltd., G A I L (India) Ltd. and Asian Paints Ltd. whereas rest were just meeting the target. On the other hand, companies like Emami Ltd., Gati Ltd. are among those 38 companies which were spending greater than 2% on CSR in 2015 but failed to comply in 2017. Additionally, Century Plyboards (India) Ltd. and Reliance...
Capital Ltd. constitute 29 companies which have reduced their CSR spending to exactly 2% in 2017. Among companies with nil CSR spending in 2017, 34% are those that could not invest due to losses suffered in the respective year like Warren Tea Ltd. Contrary to this, in spite of earning profits, 93% of the 56 companies didn’t invest on CSR activities in 2015. They started spending on CSR only in response to the legislation, for instance, there is significant change in CSR policy of Signet Industries Ltd. which has crossed the 2% threshold moving beyond its nil expenditure in 2015. Hence, overall large numbers of companies have raised their CSR spending in 2017, as a result of which amount of CSR spending among the sample firms has increased over the years.

The Reliance Industries Ltd. topped the list in all years, it is the market leader with highest CSR spending throughout. There is striking increase in the expenditure incurred by Jai Corp Ltd. in 2017 as compared to 2015 which led it to jump in “Top 10 companies” list. The aggregate amount spent by above 10 companies together constitutes 37.5% of aggregate CSR expenditure incurred by total sample.

LEGAL COMPLIANCE TOWARDS SOCIAL WELFARE

Overall, the aggregate CSR expenditure incurred by companies has increased since 2015 in response to law, with noteworthy increase in the number of companies which have spend greater than 2% on CSR in 2017. However, companies need to be cautious while selecting CSR activities so that they lead to substantial social benefits. Though majority of companies have exceeded their CSR spending beyond 2% ceiling, yet 43% companies are still in non compliance with the provisions of Section 135. The companies need to embed societal concerns in their business activity and gear themselves to go beyond legal compliance for contributing positively towards welfare of society at large.

CONCLUSION

The empirical analysis of 719 Indian listed companies undertaken during the period 2015 to 2017 with the objective to explicitly investigate the changes made in companies’ CSR spending shows increase in the amount spent by companies on CSR activities over the years since inception of law. Indian companies were not keen to invest in CSR, hence there was unsatisfactory allocation of funds on CSR activities which forced government to issue law on CSR. However the concern to make companies behave in socially responsible manner still remains. The companies have failed to appreciate the important role played by stakeholders in its business operations. The legal obligation to carry forward the unspent amount (as proposed) to next financial year as proposed by MCA is therefore desirable, this would prevent companies from shirking their social responsibility and would lead to increase in their CSR activity in future. Stringent action is called for to develop the weak enforcement environment, in order to improve CSR spending with the aim of upliftment of the weaker sections of society in India.
The publication titled ICSI Premier on Company Law (With Commentary on Companies Act, 2013) is one such attempt of the Institute to provide not only the law in all its exactness but supplement it with Commentaries and case laws on the critical issues faced by the stakeholders including the Professionals in practical application of the law.

The book while highlighting the conceptual aspects of the law contains lucid commentary on all Possible facets provided by a team of experts in the area of Company Law. The Premier Encompassing each and every aspect of the law and inculcating the most recent of developments shall prove to be a credible resource for reference as well as resolution in times of conflicting issues Faced by professionals and corporate alike.

**Premier On Company Law – Volume I**
Publication: ICSI  
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**Premier On Company Law – Volume II**
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Volatility, Valuation and Forecasting

Volatility and valuation of Securities or Financial Assets in forecasting models has, since long, been linked. But forecasting models in most of the research do not include volatility. In other words, the literature defining volatility in forecasting levels of future cash flows or earnings is very scanty. The intention behind this paper is to provide paramedic readership by proposing the GARCH model of volatility estimation in forecasting future cash flows or earning levels.

INTRODUCTION

The coming decade will be for Valuers. As the economies become globalized, the capital becomes more mobile between countries. Starting from running business by creating a value to joint ventures, mergers and acquisitions, restructuring etc., all these aspects are gradually getting momentum.

Valuation is needed by asset managers to mark their books and hence, appraise their investors of the value of their positions. Valuation is needed by regulators to make sure that bank and other systemically important entities are staying within safe bounds. Hence, valuation had/has gaining importance in the world. Indeed, expertise in the valuation of nonperforming loans/assets has become an essential element of Mergers and Acquisitions (M&A), more particularly banking M&A.

In the presence of market imperfections where cash flow volatility is associated with underinvestment, valuation exercise becomes more difficult because buyers and sellers face greater risks and obstacles. Gradually, due to various ups and downs in the world economic environment, those risks and obstacles have emerged as a more serious task which needs to be addressed at the earliest.

In such a scenario, the need of the hour is a good valuation methodology(ies). Methods not only vary but also often involve making arbitrary adjustments based on feeling and limited empirical evidence. There is little agreement among academicians and researchers, investment bankers, and industry practitioners about how to conduct valuations with uniform or universally acceptable method(s). When deciding which valuation method to use to value a business, it is easy to become overwhelmed by the number of valuation techniques available in literature. Among the available valuation methods, some are fairly straightforward while others are more complicated.

PROCESS OF CONDUCTING VALUATION

The process of valuation is long, subjective and difficult to understand. The process flow of a valuation exercise is figured below:

![Figure: Valuation Process Flow]

THE PROBLEM

One potential concern while using forecasting models in valuation is that these models traditionally include only historical cash flow and earning levels by neglecting the role of volatility in forecasting levels of future cash flows or earnings. Thus, forecasting models that incorporate historical volatility could
yield significantly more accurate and less biased forecasts than forecasting models that exclude volatility. Hence, a group of experts, like Minton, Schrand and Walther (2002) in a research publication have suggested that one could expect greater improvements in forecasting performance from incorporating volatility in the forecasting model when a firm is more likely to experience underinvestment. They have simply included ‘variance’ as the estimate of volatility. This study proposes some models that include volatility in forecasting estimates.

**MODEL-1: VOLATILITY IN FORECASTING MODEL**

Minton, Schrand and Walther have suggested on the effect of volatility on future cash flow and earnings levels of an organization. They considered two variables such as Quarterly Operating Cash Flow (OPCF) and Operating Income (OPINC) for estimating firm’s performance. OPCF is the operating income after depreciation adjusted for working capital accruals whereas OPINC is the operating income before depreciation. Both the variables are then scaled down by the firm’s average assets for the year. The simple models without including volatility are as derived in equation (1) and (2) below:

\[
OPCF_{t+1} = \alpha + \beta_1 OPCF_t + \beta_2 OPINC_t + \varepsilon \ldots (1)
\]

\[
OPINC_{t+1} = \alpha_1 + \beta_3 OPCF_t + \beta_4 OPINC_t + \varepsilon_1 \ldots (2)
\]

In both equations, on LHS, the variables are estimated at \( t+1 \) period. It can be seen that both models include operating cash flow and operating income. Parameters such as on RHS of both the equations, represent stochastic disturbance term. Such estimates do not include volatility in the estimation.

Historical volatility can be measured as the coefficient of variation over the previous period data in use. A more sophisticated model to measure volatility is the ‘Autoregressive Conditional Heteroscedasticity’ (ARCH) ‘q’ model suggested by Engle (1982). Prior to ARCH model, the most common way to estimate volatility was to determine the standard deviation using a fixed number of most recent observations. But as a matter of fact, ‘variance’ is not always constant (i.e., homoscedastic), rather it is a heteroscedastic process. In such estimations, it is not advisable to assume zero weights for observations prior to the fixed time frame. The ARCH model was the first attempt to overcome these assumptions by assigning the weights to parameters to be estimated thereby determining the most appropriate weights to forecast the variance. A simple generalized ARCH (q) model can be of the form as derived in equation (3) as:

\[
\sigma_t^2 = k + \sum_{j=1}^{q} A_j \varepsilon_{t-j}^2 \quad (3)
\]

In reality, it requires to estimate many parameters while estimating volatility of return series. Again, the problem of parsimony among other problems such as specification of the value of ‘q’ and the violation of non-negativity constraints led to development of a more generalized framework named as ‘Generalized Autoregressive Conditional Heteroscedasticity’, GARCH (p, q) model.

Engle (1982) explained that it is possible to simultaneously model the mean and variance of a given time series data. As a primary step to understanding the logic of Engle’s methodology, it is required to remember that conditional forecasts are vastly superior to unconditional forecasts. To elaborate, let us estimate the stationary ARCH model \( y_t = \alpha_0 + \alpha_1 y_t + \varepsilon_t \) and forecast \( y_{t+1} \). The conditional forecast of \( y_{t+1} \) is discussed in equation (4) as under:

\[
E_t y_{t+1} = \alpha_0 + \alpha_1 y_t \quad \ldots (4)
\]

If this conditional mean is used to forecast \( y_{t+1} \), the forecast error variance will be \( E_t [ (y_{t+1} - \alpha_0 - \alpha_1 y_t)^2 ] = E_t \varepsilon_{t+1}^2 = \sigma^2 \).

Whereas, if unconditional forecasts are used, which is always the long-run mean of the \( y_t \) sequence will be equal to \( \alpha_0 \left(1 - \alpha_1 \right) \) The unconditional forecast error variance will take the form as derived in equation (5):

\[
E_1 (y_{t+1} - \alpha_0) (1 - \alpha_1) = E_1 (\sigma^2 + \alpha_0^2 + \alpha_0 \alpha_1 + \ldots) = \sigma^2 / (1 - \alpha_1^2) \ldots (5)
\]

Now, since \(1 (1 - \alpha_1^2) > 1 \), the unconditional forecast has a greater variance than the conditional variance. Thus, conditional forecasts (since they take into account the known current and past realizations of the series) are preferable.

Similarly, if the variance of \( \{\varepsilon_t\} \) is not constant, one can estimate any tendency for sustained movements in the variance using ARMA model. For example, let \( \{\hat{\varepsilon}_t\} \) denote the estimated residuals from the model \( y_t = \alpha_0 + \alpha_1 y_{t-1} + \varepsilon_t \), so that conditional variance of \( y_{t+1} \) will be as derived in equation (6) below:

\[
\text{var}(y_{t+1} | y_t) = E_t[(y_{t+1} - \alpha_0 - \alpha_1 y_t)^2] = E_t \varepsilon_{t+1}^2 \quad \ldots (6)
\]

The ARCH model has been deemed a sufficient contribution to financial analysis to warrant a Noble prize in economics. But, unfortunately, like most models, it has its own problems. The greatest limitation of the model is that, it typically requires
5-8 lags of the squared shock to adequately model conditional variance. Bollerslev (1986) extended the Engle’s (1982) original work by developing a technique that allows the conditional variance to be an ARCH process. In other words, this work improves the original ARCH specification by adding lagged conditional variance, which acts as a smoothing term. Hence, GARCH models typically fit as well as a high-order ARCH yet remain parsimonious.

GARCH model builds on advances in the understanding and modeling of volatility in the last decade. It takes into account excess kurtosis (i.e., fat tailed behaviour) and volatility clustering, two important characteristics of financial time series. It proves accurate forecasts of variances and covariances of asset returns through its ability to model time-varying conditional variances. To explain the model, let us start with the error process discussed as in equation (7):

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

where \( \sigma^2_b = 1 \) …(7)

and \( h_t = k + \sum_{i=1}^{p} G_i h_{t-i} + \sum_{j=1}^{q} A_j \varepsilon^2_{t-j} \)

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

\[ E\varepsilon_t = Eb_t \sqrt{h_t} = 0 \] …(8)

The most important point here needs to be noted that the conditional variance of \( \{ \varepsilon_t \} \) is given by \( \{ \varepsilon_{t-i} \varepsilon^2_{t} = h_i \} \). Thus, the ‘conditional variance’ of \( \{ \varepsilon_t \} \) is given by \( h_t \) derived in equation (8) derived above.

This generalized ARCH (p,q) model- popularly known as GARCH (p,q)- allows for both autoregressive and moving average components in the hetroskedastic variance. When ‘p’ is set to be zero i.e., p=0, and q=1, it is a clear case of first order ARCH model as derived at equation (3) and is simply a GARCH (0,1) model. When all \( G_i \) are equal to zero, the GARCH(p,q) model is an equivalent to an ARCH (q) model. Thus, the benefits of GARCH (p,q) model reflects a clear vision. A higher order ARCH model may have a more parsimonious GARCH representation that is much higher to identify and estimate. This is particularly true since all co-efficient developed in equation (7) must lie inside the unit circle. Hence, clearly the more parsimonious model will entail fewer coefficient restrictions.

The key feature of GARCH (p,q) model is that the conditional variance of disturbances of the \( \{ y_t \} \) sequence constitutes an Autoregressive Moving Average (ARMA (p,q)) process. Hence, it is to be expected that the residuals from a fitted ARMA model should display this characteristic pattern. To make the interpretation more clear let us explain as, suppose one estimate \( \{ y_t \} \) as an ARMA process. If the model of \( \{ y_t \} \) is adequate, the Auto Correlation Function (ACF) and the Partial Auto Correlation Function (PACF) of the residuals should be indicative of a white-noise process. However, the ACF of the squared residuals can help to identify the order of the GARCH (p,q) process. Since \( E_{t-1} \varepsilon_t = h_t \), it is possible to rewrite the derived equation (7) as follows in equation (9):

\[ E_{t-1} \varepsilon^2_t = k + \sum_{i=1}^{p} G_i h_{t-i} + \sum_{j=1}^{q} A_j \varepsilon^2_{t-j} \] …(9)

The above derived equation (9) looks much like an ARMA (q,p) process in the \( \{ \varepsilon^2_t \} \) sequence. The parameters estimated in the study measures as defined usual. By using the GARCH model as discussed above, the new model will be as developed in equation (10) and (11):

\[ OPCF_{t+1} = \alpha + \beta_1 OPCF_{t} + \beta_2 OPINC_{t} + G_1 + A_1 + \varepsilon \] …(10)

\[ OPINC_{t+1} = \alpha_1 + \beta_3 OPCF_{t} + \beta_4 OPINC_{t} + G_2 + A_2 + \varepsilon_1 \] …(11)

Where \( G_i \) and \( A_j \) are GARCH and ARCH parameters estimat-
ed over a period of time and $G_i$ and $A_j$ are GARCH and ARCH values respectively estimated for OPINC.

The results are interpreted as that the entire sum values of $G_i + A_j$ (where $i$ and $j$ are for each model) for all GARCH specifications are less than one. Hence, it satisfies the stationarity condition. It is also observed that the sum of all the GARCH specifications is very close to one which indicates a long persistence of shocks in volatility. This implies a ‘long memory’. Again, the large values of $G_i$’s indicate that shocks to conditional variance may take a long time to die out. The low values of error coefficients $A_j$’s for all the GARCH specifications suggests that market surprises induce relatively small revisions in future volatility. With the increase in lags of errors in GARCH specifications, effect on the value of the lag can also be found. It indicates that, when the GARCH series is measured with various lags in error it is having significant effect on the estimation of depth and incidence of volatility. From the coefficients of ARCH models it can be seen that the values are found to be relatively high than GARCH specifications. This suggests that seasonality has impact on the data set but the chances of revision are also small.

**MODEL-2: INCORPORATING MACROECONOMIC VARIABLES**

James and Koller (2000) have focused on incorporating macroeconomic variables into cash flows as a means of valuation. They have identified some major macro economic variables that need to be considered, these are: inflation rate, growth in the gross domestic product, foreign-exchange rates, and interest rates. These variables must be linked in a way that reflects economic realities. It is also required to determine how changes in macroeconomic variables drive each component of the cash flow. Since cash flow items likely to be affected are revenue, expenses, working capital, capital spending, and debt instruments, these items need to be linked in the model to the macro economic variables so that when the macro economic scenario changes, cash flow items adjust automatically.

**CONCLUSION**

Valuation has gained importance in the last ten to fifteen years. Today, valuation experts are using more scientific methods. The degree of valuation accuracy is gradually improving. The Regulators, Registered Valuers Organisations and professional who are involved in the process understand what actions can lead to “valuation risk” and how to mitigate it by imposing common valuation standards. The Ministry of Corporate Affairs has already formulated a ‘Committee to Advise on Valuation Matters’, more particularly on valuation standards and various policies. There is a lot of emphasis on the requirements of a valuation model.

There is no doubt that forecasting models that are incorporating volatility as an independent variable while estimating valuation will definitely be more accurate and less biased than corresponding models that excludes volatility as an explanatory variable. Furthermore, GARCH model as a model of estimating volatility takes into account excess kurtosis (i.e., fat tailed behaviour) and volatility clustering, two important characteristics of financial time series. It proves accurate forecasts of variances and covariances of asset returns through its ability to model time-varying conditional variances. However, more detailed empirical research in this regard is required to get at a concrete conclusion.

**BIBLIOGRAPHY**

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APL

THE ANDHRA PETROCHEMICALS LIMITED

Requires

For their Registered Office, Venkatarayapuram, Tanuku

COMPANY SECRETARY

Person should be a fresh candidate having Membership of Institute of Company Secretaries of India. Person having post qualification experience of 3 years can also apply. Additional qualification of Chartered Accountancy will be an added advantage.

Salary will be attractive and commensurate with experience and qualifications. Benefits include H.R.A./Rent free unfurnished accommodation, Provident Fund, Leave Travel Concession, Group Insurance, Gratuity and liberal Leave facilities etc.

Candidates possessing the above requirements may apply to the undersigned within 10 days along with a recent passport size photograph giving complete Bio-Data including salary drawn and salary expected.

Contact Telephone Number and e-mail:

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The Andhra Petrochemicals Ltd.,
Email: info.tnk@andhrapetrochemicals.com, Website: www.andhrapetrochemicals.com
CIN: L23209AP1984PLC004635
HEAVY ENGINEERING MAZDOOR UNION v. THE STATE OF BIHAR & ORS [SC]
AHLUWALIA CONTRACTS (INDIA) LTD v. RAHEJA DEVELOPERS LTD [NCLAT]
HARI SANKARAN v. UNION OF INDIA [SC]
SSMP INDUSTRIES LTD v. PERKAN FOOD PROCESSORS PVT. LTD [DEL]
RECKITT BENCKISER (INDIA) PVT LTD V. REYNERS LABEL PRINTING INDIA PVT LTD & ANR [SC]
STATE OF MADHYA PRADESH & ORS v. LAFARGE DEALERS ASSOCIATION & ORS [SC]
M/S SOWIL LTD v. BENTLEY SYSTEMS INDIA PVT LTD [CCI]
CONSUMER EDUCATIONAL AND RESEARCH SOCIETY & ORS v. UNION OF INDIA; MINISTRY OF RAILWAYS & ORS [CCI]
HEAVY ENGINEERING MAZDOOR UNION v. THE STATE OF BIHAR & ORS [SC]

Civil appeal No.1463 of 1968

J.M. Shelat & V.Bhargava, JJ. [Decided on 12/03/1969]


Companies Act, 1956- government company-entire share capital is held by central government- whether it is an agent of the central government-Held, No.

**Brief facts:**

Though the dispute in this case relates to the interpretation of the term ‘appropriate government’ for the purposes of Industrial Disputes Act, the moot question involved was whether a government company in which the central government had 100% share becomes an agent of the government.

Appellant’s entire share capital is contributed by the Central Government and all its shares have been registered in the name of the President of India and certain officers of the Central Government. Certain disputes having arisen between the company and its workmen, into which the State Government of Bihar referred two questions to the Industrial Tribunal for its adjudication. Before the High Court it was conceded that the company was not an industry carried on by the Central Government but the contention was that considering the fact that the entire share capital was contributed by the Central Government and extensive powers were conferred on it, the company must be regarded as an industry carried on under the authority of the Central Government. That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association. An incorporated company, as is well known, has a separate existence and the law recognises it as a juristic person, separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the persons subscribing to its memorandum of association and others joining it as members are regarded as a body corporate or a corporation aggregate and the new person begins to function as an entity. (Salomon v. Solomon & Co. [1897] A.C.22.). Its rights and obligations are different from those of its shareholders. Action taken against it does not directly affect its shareholders. The company in holding its property and carrying on its business is not the agent of its shareholders. An infringement of its rights does not give a cause of action to its shareholders. Consequently, it has been said that if a man trusts a corporation he trusts that legal person and must look to its assets for payment; he can call upon the individual shareholders to contribute only if the Act or charter creating the corporation so provides. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess only a nominal interest in its property or hold it in trust for him. (cf. Halsbury’s Laws of England, 3rd Ed. Vol. 9, p. 9). Such a company even possesses the nationality of the country under the laws of which it is incorporated, irrespective, of the nationality of its members and does not cease to have that nationality even if in times of war it falls under enemy control. (cf. Janson v. Driefontain Consolidated Mines [1902] A.C. 484 and Kuenigi v. Donnersmarck [1955] 1 Q.B. 515.

The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being, as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government. A notice to the President of India and the said officers of the Central Government, who hold between them all the shares of the company, would not be a notice to the company; nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function,
the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company’s memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the State as in Graham v. Public Works Commissioners [1901] 2 K.B. 781 where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. (see The State Trading Corporation of India Ltd. v. The Commercial Tax Officer, Visakhapatnam [1964] 4 S.C.R. 99 and Tamlin v. Hannaford [1950] 1 K.B. 18. Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. (cf. London County Territorial and Auxiliary Forces Association v. Nichols [1948] 2 All. E.R. 432. In this connection the meaning of the word ‘employer’ as given in s. 2 (g) of the Act may be looked at with some profit as the legislature there has used identical words while defining (an employer). An employer under cl. (g) means, in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in that behalf or where no such authority is prescribed, the head of the department. No such authority has been prescribed in regard to the business carried on by the respondent company. But that does not mean that the head of the department which gives the directions as aforesaid or which supervises over the functioning of the company is the employer within the meaning of s. 2(g). The definition of the employer, on the contrary, suggests that an industry carried on by or under the authority of the Government means either the industry carried on directly by a department of the Government, such as the posts and telegraphs, or the railways, or one carried on by such department through the instrumentality of an agent.

We find that the view which we are inclined to take on the interpretation of s. 2(a) is also taken by the High Courts of Calcutta, Punjab and Bombay. In our view the contention that the appropriate Government to make the aforesaid reference was the Central Government and not the State Government has no merit and cannot be sustained.

**LW 56:08:2019**

**AHLUWALIA CONTRACTS (INDIA) LTD v. RAHEJA DEVELOPERS LTD [NCLAT]**

Company Appeal (AT) (Insolvency) No. 703 of 2018

S.J. Mukhopadhaya, A.I.S. Cheema & Kanthi Narahari. [Decided on 23/07/2019]

Insolvency and Bankruptcy Act, 2016- operational creditor sent demand notice to corporate debtor- corporate debtor initiated arbitration proceedings after the receipt of demand notice- operational creditor filed petition before NCLT- petition rejected on the ground that arbitration proceeding is pending- whether correct-Held, No.

**Brief facts:**

The Appellant Operational Creditor filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) against the Respondent Corporate Debtor. The Adjudicating Authority, by impugned order, after discussing the case on merit, rejected the application on the ground that the claim of the Appellant falls within the ambit of ‘disputed claim’. It is pertinent to notice that the Respondent initiated arbitration proceedings only after the receipt of demand notice from the appellant. The Adjudicating Authority also observed that the arbitration proceedings in respect of the same cause of action has been initiated.

**Decision: Appeal allowed.**

**Reason:**

In an application under Section 9, it is always open to the Corporate Debtor to point out pre-existence of dispute. It is to be shown that the dispute was raised prior to the issuance of demand notice under Section 8(1). In Mobilox Innovations Pvt. Ltd v. Kirusa Software (P) Ltd, (2017) 1 SCC Online SC 353, the Hon'ble Supreme Court held that the ‘existence of the dispute’ and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice.

From the aforesaid decision, it is clear that the existence of dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the ‘operational debt’ is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid ‘operational debt’, the application under Section 9 cannot be rejected and is required to be admitted.

From the aforesaid findings, it is clear that ‘claim’ means a right to payment even if it is disputed. Therefore, merely the ‘Corporate Debtor’ has disputed the claim by showing that there is certain counter claim, it cannot be held that there is pre-existence of dispute, in absence of any evidence to suggest that dispute was raised prior to the issuance of demand notice under Section 8(1) or invoice.

In the present case, it is not in dispute that the arbitration proceeding was initiated by the Respondent after about one month from the date of issuance of demand notice under Section 8(1). Therefore, the ‘Corporate Debtor’ cannot rely on arbitration proceeding to suggest a pre-existing dispute. There is nothing on the record to suggest that the ‘Corporate Debtor’ raised any pre-existing dispute relating to quality of work performed by Appellant. The ground of delay in execution of work cannot be noticed to deny admission of application under Section 9, the ‘Corporate Debtor’ having allowed the Appellant to execute the work and certified all the bills.

The Adjudicating Authority wrongly rejected the claim on the ground that the claim raised by the Appellant falls within the ambit of disputed claim. Merely disputing a claim cannot be a ground, as held by Hon’ble Supreme Court in Inventive Industries Ltd. v. ICICI Bank and Anr (2018) 1 SCC 407 wherein it is observed that “claim means a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).”

The Adjudicating Authority also failed to appreciate that the arbitration proceeding.
proceeding was initiated on 24th May, 2018 i.e. much after the issuance of the demand notice under Section 8(1) on 28th April, 2018 thereby wrongly held that an arbitration proceeding is pending. 24. From the record as we find that the Respondent has defaulted to pay more than Rs. 1 Lakh and in absence of any pre-existing dispute, and the record being complete, we hold that the application under Section 9 preferred by the Appellant was fit to be admitted.

For the reasons aforesaid, we set aside the impugned judgment dated 19th September, 2018 and remit the case to the Adjudicating Authority for admitting the application under Section 9 after notice to the ‘Corporate Debtor’ to enable the ‘Corporate Debtor’ to settle the matter prior to the admission.

LW 57:08:2019
HARI SANKARAN v. UNION OF INDIA [SC]
Civil Appeal No. 3747 of 2019
M.R. Shah & Indu Malhotra, JJ. [Decided on 04/06/2019]

Companies Act, 2013- section 130- application by central government for reopening and recasting of accounts- objection by ex-director of the company- NCLT allowed the application- on appeal NCLAT concurred with NCLT- whether correct-Held, Yes.

Brief facts:
Feeling aggrieved and dissatisfied with the impugned Order dated 31.01.2019 passed by the National Company Law Appellate Tribunal, by which the learned Appellate Tribunal has dismissed the said appeal preferred by the appellant herein – Ex-Director of respondent No. 2 – Infrastructure Leasing & Financial Services Limited (hereinafter referred to as ‘the IL&FS’) and has confirmed the order passed by the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as ‘the learned Tribunal’) dated 01.01.2019 by which the learned Tribunal allowed the said application preferred by the Central Government under Section 130(1) & (2) of the Companies Act, 2013 (hereinafter referred to as the ‘Companies Act’) and has permitted recasting and re-opening of the accounts of IL&FS, IL&FS Financial Services Limited (hereinafter referred to as the “IFIN”) and IL&FS Transportation Networks Limited (hereinafter referred as the “ITNL”) for the last five years, the original appellant has preferred the present appeal.

Decision: Appeal dismissed.

Reason:
At the outset, it is required to be noted that by the impugned order and in exercise of powers under Section 130 of the Companies Act, the learned Tribunal has allowed the said application preferred by the Central Government and has directed/permitted reopening of the books of accounts and recasting the financial statements of IL&FS and other two companies for the last 5 years, viz., F.Y 20122013 to 20172018. The order passed by the learned Tribunal has been affirmed by the learned Appellate Tribunal. Therefore, the short question which is posed for consideration before this Court, whether in the facts and circumstances of the case, can it be said that the order passed by the learned Tribunal is illegal and/or contrary to Section 130 of the Companies Act?

Ongoing through the order passed by the learned Tribunal passed under Section 130 of the Act, it appears that the learned Tribunal is conscious of the relevant provisions of the Act, more particularly Section 130 of the Companies Act and more particularly the conditions precedent to be complied with/satisfied while directing/permitting reopening of the books of accounts and recasting of the financial statements of the company. From the order passed by the learned Tribunal under Section 130 of the Companies Act, it appears that the learned Tribunal has considered the preliminary report submitted by the ICAI and SFIO and the observations made in the aforesaid reports/preliminary reports. That there after having satisfied that the conditions precedent for invoking powers under Section 130 of the Companies Act, stated in Section 130 (i) OR (ii) of the Companies Act are satisfied, thereafter the learned Tribunal has passed an order allowing the application under Section 130 of the Companies Act for reopening the books of accounts and recasting the financial statements of IL&FS and other two companies, viz, for the last 5 years.

Considering the facts narrated hereinabove and the preliminary reports of SFIO and ICAI which came to be considered by the learned Tribunal and considering the specific observations made by the learned Tribunal while passing the order under Section 241/242 of the Companies Act and considering the fact that the Central Government has entrusted the investigation of the affairs of the company to SFIO in exercise of powers under Section 242 of the Companies Act, it cannot be said that the conditions precedent while invoking the powers under Section 130 of the Act are not satisfied. We are more than satisfied that in the facts and circumstances of the case, narrated hereinabove, and also in the larger public interest and when thousands of crores of public money is involved, the Tribunal is justified in allowing the application under Section 130 of the Companies Act, which was submitted by the Central Government as provided under Section 130 of the Companies Act.

Now so far as the submission on behalf of the appellant that all the three provisions, viz., Section 130, Sections 211/212 and Sections 241/242 operate in different fields and in different circumstances and they are in the different Chapters and therefore any observation made while passing the order/orders with respect to a particular provision may not be considered while passing the order under relevant provisions is concerned, it is required to be noted that all the three provisions are required to be considered conjointly. While passing an order in a particular provision, the endeavour should be to see that the order/orders passed under other provisions of the Companies Act are given effect to, and/or in furtherance of the order/orders passed under other Sections. Therefore, the observations made while passing order under Section 241/242 of the Companies Act can be said to be relevant observations for passing the order under Section 130 of the Companies Act. At this stage, it is required to be noted that even otherwise in the order passed by the Tribunal under Section 130 of the Companies Act, there is a specific observation made by the learned Tribunal with respect to mismanagement of the affairs of the company, and even with respect to the relevant earlier accounts prepared in a fraudulent manner.

In view of the above and for the reasons stated above, we see no reason to interfere with the impugned order dated 01.01.2019 passed by the learned Tribunal under Section 130 of the Companies Act for reopening of the books of accounts and recasting the financial statements of the Infrastructure Leasing & Financial Services Limited; IL&FS Financial Services Limited and IL&FS Transportation Networks Limited for the last five years, viz. from Financial Year 201213 to the Financial Year 201718, which came to be confirmed by the learned Appellate Court vide impugned judgment and order dated 31.01.2019. Consequently, the present appeal fails and deserves to be dismissed and is accordingly dismissed.
SSMP INDUSTRIES LTD v. PERKAN FOOD PROCESSORS PVT. LTD [DEL]

CS (COMM) 470/2016

Prathibha M Singh, J. [Decided on 18/07/2019]

Insolvency and Bankruptcy Code, 2016- section 14- moratorium on legal proceedings- plaintiff corporate debtor under IBC proceedings-defendant operational creditor filed counter claim- whether the counter claim should be stayed-Held, No.

Brief facts:
An interesting issue has arisen in this matter in respect of the interpretation of Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereinafter the ‘Code’). The Plaintiff has filed the present suit seeking recovery of Rs.1, 61, 47,336.44. The Defendant has filed its written statement/counter claim in which it avers that it is, in fact, entitled to recover a sum of Rs.59,51,548/- and no amount is due and payable by it to the Plaintiff. The Plaintiff Company has since gone into insolvency and a Resolution Professional has been appointed. The question has arisen as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the Code.

Decision: Counter claim need not be stayed.

Reason:
The claim of the Plaintiff is much higher i.e. a sum of Rs.1, 61, 47,336.44, than what is claimed by the Defendant. The transaction between the parties would require to be adjudicated on the basis of correspondence and the agreement, which have been placed on record. This Court would have to first determine the question as to whether any amount at all is payable to the Plaintiff. Even if the counter claim is decreed fully and the claim of the Plaintiff is also allowed, the Plaintiff would, in fact, be entitled to recover and not the Defendant. The possible outcome of the suit and the counter claim is in the realm of uncertainty. The question as to the amount that would be liable to be paid by either party to the other is not something that can be predicted at this point. The entitlement of the Defendant to the amount claimed from the Plaintiff is also not concrete and settled. There is no doubt that adjudication of the plaint and counter claim are interlinked with each other.

A ld. Single Judge of this Court in Power Grid Corporation of India v. Jyoti Structures Ltd., (2018) 246 DLT 485 has held that embargo of Section 14(1)(a) of the Code would not apply in all circumstances. A perusal of the judgment shows that until and unless the proceeding has the effect of endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor, it would not be prohibited under Section 14(1) (a) of the Code.

In Jharkhand Bijli Vitrana Nigam Ltd. v. IVRCL Ltd & Anr. [Company Appeal (AT) (Insolvency) No. 285/2018 Decided on 3rd August, 2018], the NCLAT has, in similar circumstances, held that until and unless the counter claim is itself determined, the claim and the counter claim deserve to be heard together and there is no bar on the same in the Code.

The Court has considered the plaint and the written statement/counter claim. The adjudication of the plaint, defences in the written statement and the amounts claimed in the counter claim would have to be considered as a whole in order to determine as to whether the suit or the counter claim would be liable to be decreed. A counter claim would be in the nature of a suit against the Plaintiff which in this case is the ‘corporate debtor’. Under Section 14(1) (a) of the Code, strictly speaking, a counter claim would be covered by the moratorium which bars ‘the institution of suits or continuation of pending suits or proceedings against the corporate debtor’. A counter claim would be a proceeding against the corporate debtor. However, the counter claim raised in the present case against the corporate debtor i.e., the Plaintiff, is integral to the recovery sought by the Plaintiff and is related to the same transaction. Section 14 has created a piquant situation i.e., that the corporate debtor undergoing insolvency proceedings can continue to pursue its claims but the counter claim would be barred under Section 14(1) (a). When such situations arise, the Court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed and the Court cannot blindly stay the counter claim and refer the defendant to the NCLT/RP for filing its claims.

The nature of a counter claim is such that it requires proper pleadings to be filed, defences and stands of both parties to be considered, evidence to be recorded and then issues have to be adjudicated. The proceedings before NCLT are summary in nature and the RP does not conduct a trial. The RP merely determines what payment can be made towards the claims raised, subject to availability of funds. The NCLT/RP cannot be burdened with the task of entertaining claims of the Defendant which are completely uncertain, undetermined and unknown. Moreover, the question as to whether the Defendant is in fact entitled to any amounts, if determined by the NCLT, prior to the adjudication of the plaintiff’s claim for recovery, would result in the possibility of conflicting views in respect of the same transaction. Under these circumstances, this court is of the opinion that the Plaintiff’s and the defendant’s claim ought to be adjudicated comprehensively by the same forum. At this point, till the defence is adjudicated, there is no threat to the assets of the corporate debtor and the continuation of the counter claim would not adversely impact the assets of the corporate debtor. Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, Section 14 could be triggered. At this stage, due to the reasons set out above, the counter claim does not deserve to be stayed under Section 14 of the Code. The suit and the counter claim would proceed to trial before this Court.
**Brief facts:**
The singular question involved in this application seeking appointment of a sole arbitrator, is whether respondent No.2 a company established under the laws of Belgium, could be impleaded in the proposed arbitration proceedings despite the fact that it is a non-signatory party to the agreement executed between the applicant and respondent No.1 a company established under the Companies Act, 2013 merely because it (respondent No.2) is one of the group companies of which respondent No.1 also is a constituent.

The legal position as to when a non-signatory to an arbitration agreement can be impleaded and subjected to arbitration proceedings is no more res integras. In the case of Chloro Controls India Private Limited Vs. Severn Trent Water Purification Inc. and Ors. (2013) 1 SCC 641, a three Judge Bench of the Court opined that ordinarily, an arbitration takes place between the persons who have been parties to both the arbitration agreement as well as the substantive contract underlying it. Invoking the doctrine of “group of companies”, it went on to observe that an arbitration agreement entered into by a company, being one within a group of corporate entities, can, in certain circumstances, bind its non-signatory affiliates. That exposition has been followed and applied by another three Judge Bench in Cheren Properties Ltd v. Kasturi and Sons Limited & Ors. (2018) 16 SCC 413.

In the present case, the question is whether the indisputable circumstances go to show that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties, namely, respondent No.1 and respondent No.2, respectively, qua the existence of an arbitration agreement between the applicant and the said respondents.

**Decision:** Agreement not binding on non-signatory party.

**Reason:**
In the backdrop of the averments in the application and the correspondence exchanged between the parties adverted to by the applicant, it is obvious that the thrust of the claim of the applicant is that Mr. Frederik Reynders was acting for and on behalf of respondent No.2, as a result of which the respondent No.2 has assented to the arbitration agreement. This basis has been completely demolished by respondent No.2 by stating, on affidavit, that Mr. Frederik Reynders was in no way associated with respondent No.2 and was only an employee of respondent No.1, who acted in that capacity during the negotiations preceding the execution of agreement. Thus, respondent No.2 was neither the signatory to the arbitration agreement nor did have any causal connection with the process of negotiations preceding the agreement or the execution thereof, whatsoever. If the main plank of the applicant, that Mr. Frederik Reynders was acting for and on behalf of respondent No.2 and had the authority of respondent No.2, collapses, then it must necessarily follow that respondent No.2 was not a party to the stated agreement as a consequence whereof, the provisions for making reference to the sole arbitrator, on the assumption that it is an international commercial arbitration, cannot be taken forward. As respondent No.1 is a company having been established under the provisions of the Indian Companies Act and having its registered office in India, the applicant can pursue its remedy against respondent No.1 for appointment of a sole arbitrator to conduct arbitration proceedings, as a domestic commercial arbitration.

Indeed, the applicant had vehemently relied upon the circumstances and correspondence post-contract but that cannot be the basis to answer the matter in issue. The respondent No.2 has justly relied upon the exposition in Godhra Electricity Co. Ltd. and Anr. Vs. State of Gujarat and Anr.,5 to buttress the argument that post negotiations in law would not bind the respondent No.2 qua the arbitration agreement limited between applicant and respondent No.1. In any case, even this plea is based on the assumption that Mr. Frederik Reynders was associated with and had authority to transact on behalf of respondent No.2, which assertion has (1975) 1 SCC 199 been refuted and rebutted by respondent No.2. It is clearly stated that Mr. Frederik Reynders was neither connected to nor had any authority of respondent No.2, but was only an employee of respondent No.1 and acted only in that capacity.

The arbitration application is dismissed as against respondent No.2. However, we appoint Mr. Justice Badar Durrez Ahmed (Former Chief Justice, Jammu & Kashmir High Court) as the sole arbitrator to conduct domestic commercial arbitration at New Delhi, between the applicant and respondent No.1 on the terms and conditions as specified in the Act of 1996.

**LW 60:08:2019**

**STATE OF MADHYA PRADESH & ORS v. LAFARGE DEALERS ASSOCIATION & ORS [SC]**

Civil Appeal No.5302 of 2019 (Arising out of SLP (C) No. 23592 of 2014) with batch of appeals

Ranjan Gogoi, Abdul Nazir, & Sanjiv Khanna, JJ. [Decided on 09/07/2019]

State reorganisation – bifurcation of state of Madhya Pradesh into MP and Chhattisgarh- resultant tax implications- whether successor State of Chhattisgarh can claim continuance of the tax exemption or benefit of deferment of sales tax under the tax law of the State of Madhya Pradesh-Held, No.

**Brief facts:**
This judgment would dispose of the afore-captioned appeals which relate to the legal effect of bifurcation of the State of Madhya Pradesh into the successor State of Madhya Pradesh and the State of Chhattisgarh by the Madhya Pradesh Reorganisation Act, 2000 (“Reorganisation Act”, for short) on exemption or benefit of deferment of sales tax granted under the Madhya Pradesh Commercial Tax Act, 1994 with the applicable rules. The question to be answered is whether the industrial unit in the reorganised State of
Madhya Pradesh and under the new State of Chhattisgarh would continue to avail the benefit of such exemption or deferment even after the bifurcation in both the states, irrespective of the location of the industrial unit which would be in one of the two states.

Civil Appeal Nos. 460, 461, 7073 of 2005 and 2343 of 2007 arise from the judgments of the Division Bench of the Madhya Pradesh High Court, Jabalpur Bench, upholding judgment of the learned Single Judge dismissing the Writ Petition by the manufacturer/dealer of cement inter-alia recording that on enforcement of the Reorganisation Act, two separate states viz., the State of Madhya Pradesh and the State of Chhattisgarh had come into existence as postulated by the Constitution of India and hence, benefit of the exemption or deferment of sales tax would be restricted and confined to the boundaries/limits of the state in which the unit was located and would not operate beyond the limits of the state boundary. It was observed that any trade and movement of goods between the two states henceforth would be inter-state trade and not intra-state trade and the provisions of the Reorganisation Act had not removed and eclipsed this legal position but had a limited effect to treat the laws in operation in the State of Madhya Pradesh as equally applicable to the State of Chhattisgarh.

The other set of appeals arising from Special Leave Petition (Civil) Nos. 10520 of 2013, 1334, 10165, 23297 of 2014, 6729 and 16550 of 2016 have been preferred by the State of Madhya Pradesh and the State of Chhattisgarh impugning decisions of the High Court of Madhya Pradesh, which have in view of the pronouncement of this Court in Commissioner of Commercial Taxes, Ranchi and Another v. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others(2004) 6 SCC 689 taken a contrary view and held that not with standing the creation of the two states, exemption or deferment of tax notifications issued before the bifurcation would continue to apply in the new state and that for the purpose of sales tax, the two states were deemed to be one because of the legal fiction envisaged vide Sections 78 and 79 of the Reorganisation Act.

Decision: Post-reorganisation of States, tax exemption available to the new State under the undivided State Law, will not be available thereafter.

Reason: Having considered the contention of the parties and in the context of Sections 78, 79, 80, 85 and 86 of the Reorganisation Act, we feel that the stand taken by the State of Madhya Pradesh and the State of Chhattisgarh is correct and merits acceptance.

We have quoted the relevant portions of the judgment in the case of Swarn Rekha Cokes and Coals Pvt. Ltd. (supra) and have no difficulty in agreeing to the dictum as enunciated in paragraphs 26, 27 and 28, but find it difficult to agree with the ratio recorded in paragraph 29. The effect of Sections 84 and 85 of the Bihar Reorganisation Act, 2000 was to ensure continuity of laws enacted by the unified State of Bihar in the new State of Jharkhand which had been created by transfer of territories which earlier formed part of the State of Bihar. These sections incorporating a deeming fiction were to ensure that the new State of Jharkhand would continue to be governed by the pre-existing laws as, otherwise, there would be a disorderly and chaotic situation where the new State would not be governed by any law. This is the true effect of the legal fiction created by Section 84 of the Bihar Reorganisation Act, 2000, i.e., the reorganisation of the state would not affect the applicability of the existing laws in the state to all territories included within it before and even after the reorganisation. The said fiction does not postulate and cannot be extended to imagine that for the purpose of sale transactions or even for other purposes, the new state did not have any political and constitutional existence as a separate state and that till a new law was enacted, the two States were to be treated as one political State as it was before the reorganisation. The sale transactions which were hitherto intra-state sales being within the unified State of Bihar, would become inter-state transactions once the two new States had come into existence. Provisions do not stipulate that such transactions would continue to be treated as intra-state transactions notwithstanding creation of the new State.

With respect to reasoning given in paragraph 30 in Swarn Rekha Cokes and Coals Pvt. Ltd. (supra), we would acknowledge that creation of a new State was an unforeseen event and could give rise to unusual situations, but this cannot be a ground and reason to treat inter-state sales between the two successor states as intra-state sales. This would be contrary to the Constitution and even the Statute i.e., the Reorganisation Act. Whenever a new State is created, there would be difficulties and issues would arise but these have to be dealt within the parameters of the constitutional provisions and the law and not by negating the mandate of the Parliament which has created the new state in terms of Article 3 of the Constitution. Creation of the new political State must be given full legal effect. We would, therefore, respectfully overrule the contrary observations and ratio recorded in paragraphs 29 and 30 in Swarn Rekha Cokes and Coals Pvt. Ltd. (supra) in light of the legal position elucidated and explained above.

Accordingly, the appeals arising from Special Leave Petition (Civil) Nos. 10520 of 2013, 1334, 10165, 23297 of 2014, 6729 and 16550 of 2016 preferred by the State of Madhya Pradesh and the State of Chhattisgarh are allowed and the Civil Appeal Nos. 460, 461, 7073 of 2005 and 2343 of 2007 preferred by the private parties/assessee are dismissed in terms of the aforesaid observations, findings and directions.

**LW 61:08:2019**

**M/S SOWIL LTD v. BENTLEY SYSTEMS INDIA PVT LTD [CCI]**

Case No. 08 of 2019

A.K. Gupta, U.C. Nahta & Sangeeta Verma. [Decided on 02/07/2019]

**Competition Act, 2002- section 3 & 4- licensing of software and renewal thereof- rejection by licensor of partial licensing – whether anti competition - Held, No.**

**Brief facts:**

The Informant appears to be aggrieved by the alleged one sided conditions in the SELECT Agreement entered with the OP by virtue of which the Informant, despite its requirements of 03 licenses had to renew all the 08 licenses on payment basis for the year 2018-
19. The Informant states that it has executed the above agreement under protest, and has approached the Commission to look into the unfair and monopolistic practices of the OP.

**Decision:** Dismissed.

**Reason:**
In the instant case, the licenses held by the Informant are related to designing of highway construction, railway design works, metro rail construction, bridges, tunnels etc. The software used by the Informant are essentially the ones that enable the civil engineers, designers, drafters, and surveyors to deliver high-quality designs and prepare construction documentation at a faster pace and significantly add to productivity. Clearly the above-mentioned features differentiate the software used in the civil construction works from the design softwares used in other fields.

Based on the foregoing, the Commission is of the view that the relevant product market in the present case is the market for “supply of CAD software services in civil engineering works”. The relevant geographical market is entire “India” as there is nothing on record to suggest that the price and condition of competition for supply of software services used for civil engineering purposes, varies from one region to another. Thus, the relevant market for the purposes of this matter is the market for the “supply of CAD software services in civil engineering works in India”.

The Commission observes that there are many software companies such as AutoDesk, Carlson, Site3D, SierraSoft, Trimble etc. providing CAD based software solutions that are developed for the purposes of civil engineering thereby making the relevant market competitive. Such competitive landscape with the presence of many players in the relevant market, does not put the OP in a position to be able to operate independently of the competitive forces prevailing in the relevant market or affect the competitors or consumers in its favour.

The Commission further notes that Informant has relied on certain Tenders and RFP documents floated by the government agencies to suggest that only OP’s software have to be used for participation in the tender process as a pre-condition. However, the same is not supported by the documents relied on by the Informant.

Upon perusal of the above extract of the RFP of Northern Railways, the Commission observes that the name of the OP’s product was mentioned along with other products viz., AutoDesk’s Civil 3D or other similar software for designing of railway projects without any exclusivity. Further, the OP in this regard has submitted that the Informant has wrongly clubbed the product of AutoDesk Civil 3D with the product of OP to give the impression that the OP is the market leader. Based on the above, it is observed that the aforesaid products are developed by different entities therefore the contention of the Informant that possessing licenses of OP’s product is essential to participate in RFP’s is misconceived and hence rejected.

Therefore, the Commission is of the considered view that the OP does not enjoy dominance in the relevant market. Once dominance could not be established, examination of the abuse of dominance by the OP does not arise. In view of the above discussion, the Commission finds that no case of contravention of the provisions of Section 3 or Section 4 of the Act has been made out and the matter is accordingly ordered to be closed forthwith under the provisions of Section 26(2) of the Act.

**LW 62:08:2019**

**CONSUMER EDUCATIONAL AND RESEARCH SOCIETY &
ORS V. UNION OF INDIA, MINISTRY OF RAILWAYS & ORS**

[CCI]

**Case No. 20 of 2019**
A.K. Gupta, U.C. Nahta & Sangeeta Verma. [Decided on 28/06/2019]

**Competition Act, 2013- section 4- abuse of dominance- Indian railways- missing the connected train due to late arrival of the connecting train- refusal of refund of ticket- whether abuse of dominance-Held, No.**

**Brief facts:**
The present case the issue is with respect to connected trains and the missing of the connected train by the passenger travelling in the connecting train. The informant was to travel from Patna to New Delhi and thereafter from New Delhi to Ahmedabad. The informant missed the New Delhi to Ahmadabad train as the train from Patna arrived at New Delhi two hours past the departure of Ahmadabad train. The request for refund of the ticket was rejected by the Railways (OP) based on Reservation and Cancellation Rules.

**Decision:** Dismissed.

**Reason:**
The Commission notes that due to the statutory and regulatory framework, dominance of Indian Railways in the market of transportation of passengers through railways across India is not disputed.

The Commission notes that OP-2 vide its letter dated 29.05.2017, addressed to OP-1 (with a copy to IPs) had informed that “No Refund of fare shall be admissible on the tickets having confirmed reservation in case the ticket is not cancelled or TDR not filed online up to four hours before the scheduled departure of the train”.

The Commission notes that the Railway Passengers (Cancellation of Tickets and Refund of Fare) Rules-2015, has been notified in the Gazette by the Central Government in exercise of its powers under the provisions of the Railways Act, 1989. As per provisions of rule No. 8(7) of the said rule, “No Refund of fare shall be admissible on the tickets having confirmed reservation in case the ticket is not cancelled or TDR not filed online up to four hours before the scheduled departure of the train”.

In the face of existence of statutory rules to deal with the grievance of IPs, no anti-competitive conduct can be said to have arisen in the present case, warranting an investigation into the matter. If there is deficiency in service on the part of OPs, it is for the IPs to initiate proceedings before an appropriate forum.

In view of the foregoing, the Commission is of the opinion that there exists no prima facie case, and the information filed is closed forthwith under Section 26(2) of the Act. At the same time, the Commission feels that Indian Railways may consider review of the existing rules of refund of fare and make the same more consumer friendly so that the passengers are not inconvenienced due to deficiency in services on its part, including delays on account of running the trains.
FROM THE GOVERNMENT

- Relaxation of additional fees and extension of last date of filing of Form BEN-2 under the Companies Act, 2013
- Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019
- Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019
- Establishment of ROC Guwahati under Section 396
- Companies (Adjudication of Penalties) Rules, 2014 Amendment Notification
- Jurisdiction of ROC Guwahati
- Nidhi (Amendment) Rules, 2019
- Companies (Significant Beneficial Owners) Second Amendment Rules, 2019
- Commencement Notification
- Notification of Special Court under Sub-section (1) of Section 435 of the Companies Act, 2013
- Streamlining the process of public issue of equity shares and convertibles: Implementation of Phase II of Unified Payments Interface with Application Supported by Block Amount
- Staggered Delivery Period in Commodity Futures Contracts
- Guidelines for Liquidity Enhancement Scheme (LES) in Commodity Derivatives Contracts
- Procedure and Formats for Limited Review / Audit Report of the Listed Entity and Those Entities whose Accounts are to be Consolidated with the Listed Entity
- Modification of Circular Dated July 18, 2017 on Disclosure of Divergence in the Asset Classification and Provisioning by Banks
- Modification of Circular Dated September 24, 2015 on Format for Compliance Report on Corporate Governance to be Submitted to Stock Exchange(s) by Listed Entities
01 Relaxation of additional fees and extension of last date of filing of Form BEN-2 under the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide General Circular No. 08/2019 dated 29.07.2019.]

1. The Ministry of Corporate Affairs has received several representations regarding extension of the last date for filing of e-Form No.BEN-2 without additional fees on account of Companies (Significant Beneficial Owners) Second Amendment Rules, 2019 notified vide C.S.R. No. 446 (E) dated 01.07.2019. The matter has been examined and it is hereby informed that the time limit for filing e-Form No.BEN-2 is extended upto 30.09.2019 without payment of additional fee and thereafter fee and additional fee shall be payable.

2. This issues with approval of the competent authority.

CHANDAN KUMAR
Deputy Director (Policy)

02 Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019

[Issued by the Ministry of Corporate Affairs vide F. No. 01/l6/2013 CL-V dated 25.07.2019. To be published in the Gazette of India Extraordinary, Part - II, Section-3, Sub Section (i)]

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

1. (1) These rules may be called the Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, for item VII, the following item shall be substituted, namely:—

1. (i) FEE FOR FILING e-Form DIR-3 KYC or DIR-3 KYC-WEB under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.

(ii) Fee payable if the individual failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB through web service, as the case may be, in the current financial year (in delayed case).

(iii) Fee payable if the individual failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB through web service, as the case may be, for the immediate previous financial year (in delayed case).

CHARTERED SECRETARY

[Rs. 5000]

03 Companies (Appointment and Qualification of Directors) Third Amendment Rules 2019

[Issued by the Ministry of Corporate Affairs vide F. No. 1/22/2013-CL-V dated 25.07.2019. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]

In exercise of the powers conferred by the second proviso to sub-section (1), sub-section (4) and clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019.

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

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the said rules), in rule 11, in sub-rule (2) and sub-rule (3), after the letters, words and figure “e-form DIR-3-KYC” the words, letters and figures “or the web service DIR-3-KYC-WEB” as the case may be” shall be inserted.

3. In the said rules, in rule 12A-,

(i) for the words “who has been allotted”, the words “who holds” shall be substituted;

(ii) for the words, letters and figures “submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year”, the words, letters and figures “submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year” shall be substituted;

(iii) after the proviso, the following provisos shall be inserted, namely:-

“Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:
Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only:
Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be,
be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.”.

4. In the said rules, in the Annexure, after e-form DIR-3 KYC, the following web-form shall be inserted, namely:-

```
“DIR-3-KYC -WEB

[For use in the Companies (Appointment and Qualification of Directors) Rules, 2014]

1. Director Identification Number (DIN) 
2. Director’s name 
3. Father’s Name 
4. Whether a citizen of India O Yes O No
5. Nationality 
6. Whether resident in India O Yes O No
7. Date of birth (DD/MM/YYYY) 
8. Gender O Male O Female O Transgender
9. Income tax PAN 
10. Aadhaar number 
11. Voter’s Identity card number 
12. Passport number 
13. Driving license number 
14. Personal Mobile Number 
15. Personal Email ID 
16. Permanent residential address 

17. Present residential address
```

K. V. R. MURTY
Joint Secretary

05 Companies (Adjudication of Penalties) Rules, 2014-Amendment Notification

[Issued by the Ministry of Corporate Affairs vide F No. 1/16/2013 CL-V dated 25.07.2019. To be published in the Gazette of India Extraordinary, Part - II, Section-3, Sub Section (ii) ]

1. In exercise of the powers conferred by section 454 of the Companies Act, 2013 (18 of 2013) read with the Companies (Adjudication of Penalties) Rules, 2014, the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Corporate Affairs, published vide number S.O. 831 (E), dated the 24th March, 2015, namely:-

In the said notification, in the Table, against serial number 11, in the third column under the heading “Designation”, for the words “Registrar of Companies, Shillong”, the words “Registrar of Companies Guwahati.” shall be substituted.

2. This notification shall come into force from the date of its publication in the Official Gazette.

K. V. R. MURTY
Joint Secretary

06 Jurisdiction of ROC Guwahati

[Issued by the Ministry of Corporate Affairs vide F No. 1/16/2013 CL-V dated 25.07.2019. To be published in the Gazette of India Extraordinary, Part - II, Section-3, Sub Section (ii) ]

1. In exercise of the powers conferred by sub-section (1) of section 396 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Corporate Affairs, published vide number G.S.R 832(E), dated the 3rd November, 2015 namely:-

In the said notification, in the Table, against serial number 6, in column (1), for the word “Shillong” the word “Guwahati” shall be substituted.

2. This notification shall come into force from the date of its publication in the Official Gazette.

K. V. R. MURTY
Joint Secretary

07 Nidhi (Amendment) Rules, 2019

[Issued by the Ministry of Corporate Affairs vide F No. 1/24/2013-CL-V(Part) dated 01.07.2019. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) ]

In exercise of the powers conferred by sub-section (1) of section 406 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, to amend the Nidhi Rules, 2014, namely:-

1. (1) These rules may be called the Nidhi (Amendment) Rules, 2019.
   (2) They shall come into force with effect from 15th August, 2019.
2. In the Nidhi rules, 2014 (hereinafter referred to as “said rules”), in rule 2, after clause (c), the following clause shall be inserted, namely:

(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act.

3. In the said rules, in rule 3, after clause (d), the following clause shall be inserted, namely:

‘(da) “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.’.

4. In the said rules, after rule 3, the following rule shall be inserted, namely:

3A. Declaration of Nidhis. The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette:

Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:-

(a) one year from the date of its incorporation; or
(b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5:

Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein:

Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

5. In the said rules, in rule 4, -

(i) in sub-rule (1), the words, “to be incorporated under the Act” shall be omitted;
(ii) in sub-rule (5), the words “Company incorporated as a” shall be omitted.

6. In the said rules, in rule 5, -

(i) in sub-rule (1), for the words “from the commencement of these rules”, the words “from the date of its incorporation” shall be substituted;
(ii) in sub-rule (3), before the Explanation, the following proviso shall be inserted, namely:-

“Provided that the Regional Director may extend the period upto one year from the date of receipt of application.”;
(iii) in sub-rule (4), after the words, brackets and figure “contained in sub-rule (1)”, the words, brackets and figures “and gets itself declared under sub-section (1) of section 406” shall be inserted.

7. In the said rules, in rule 7, in sub-rule (1), after the words “shall issue” the words “fully paid up” shall be inserted.

8. In the said rules, in rule 12,

(i) in sub-rule (1) after clause (b), the following clause shall be inserted namely:-

“(ba) The date of declaration or notification as Nidhi”;
(ii) in sub-rule (2), in clause (a), for the words “Registrar of Companies”, the words “Registrar of the National Company Law Tribunal” shall be substituted.

9. In the said rules, in rule 23, in sub-rule (2),-

(i) for the words “concerned Regional Director”, the words, “Central Government” shall be substituted;
(ii) for the words “such Regional Director”, the words, “Central Government” shall be substituted;
(iii) in the proviso, for the words “Regional Director”, the words, “Central Government” shall be substituted.

10. In the said rules, after rule 23, the following rules shall be inserted, namely:

23A. Compliance with rule 3A by certain Nidhis:- Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later:

Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

23B. Companies declared as Nidhis under previous company law to file Form NDH-4:- Every company referred in clause (a) of rule 2 shall file Form NDH-4 alongwith fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:

Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019:

Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

11. In the said rules, after the Form NDH-3, the following form shall be inserted, namely:

<table>
<thead>
<tr>
<th>FORM NDH-4</th>
<th>Form for filing application for declaration as Nidhi Company and for updation of status by Nidhis.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Refer the instruction kit for filling the form.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(a)</strong> Corporate Identification Number (CIN)</td>
<td><strong>(b)</strong> Global Location number (GLN) of Company</td>
</tr>
<tr>
<td><strong>(b)</strong> Name of the company</td>
<td><strong>(c)</strong> Address of Registered office of the company</td>
</tr>
<tr>
<td><strong>(d)</strong> Website</td>
<td><strong>(e)</strong> Phone</td>
</tr>
<tr>
<td><strong>(f)</strong> Fax</td>
<td><strong>(g)</strong> Email ID of the company</td>
</tr>
<tr>
<td><strong>(h)</strong> ‘Equity paid-up capital’</td>
<td></td>
</tr>
</tbody>
</table>

4. Number of members as on date of application/ updation of status

5. Do the objects of the company as per its memorandum and article of association cover only those activities permitted for approved Nidhi companies - Yes - No

6. If no, give details of any activities in the memorandum of association (MoA) not permitted by Nidhi Rules, 2014.
Companies (Significant Beneficial Owners) second Amendment Rules, 2019

[Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2018 CL-V dated 01.07.2019. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 90 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Significant Beneficial Owners) Rules, 2018, namely:-

1. (1) These rules may be called the Companies (Significant Beneficial Owners) second Amendment Rules, 2019. (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the principal rules, for Form No. BEN-2, the following Form shall be substituted, namely:—

Form No. BEN-2

(Pursuant to section 90(4) of The Companies Act, 2013 and rule 4 and rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018)

Return to the Registrar in respect of declaration under section 90

Declaration

To the best of my knowledge and belief, the information given in this application and in attachments is correct and complete.

I have been authorised by the board of directors’ resolution dated [DD/MM/YYYY] to sign and submit this application

To be digitally signed by

Director or manager or secretary or CEO or CFO of the company

Designation

DIN of the director, PAN of the manager or CEO or CFO or membership number of company secretary

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matter incidental thereto and I have verified the above particulars (including attachments) from the original/registered records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

1. The said records have been properly prepared, signed by the required officials of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
2. All the required attachments have been completely and legibly attached to this form.

To be digitally signed by

DSC Box

Whether associate or fellow □ Associate √ Fellow

Membership number

Certificate of Practice number

Note: Attention is also drawn to provisions of Section 477, section 489 and 499 of the Companies Act, 2013 which provide for punishment for fraud, punishment for false statement and punishment for false evidence respectively.

K.V.R. MURTY
Joint Secretary
FROM THE GOVERNMENT

9 Commencement Notification

[Issued by the Ministry of Corporate Affairs vide F. No. 1/1/2018-CL-I dated 01.07.2019. Published in the Gazette of India Extraordinary, Part - II, Section-3, Sub Section (iii)]

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 15th August, 2019 as the date on which the provisions of section 81 of the said Act shall come into force.

K. V. R. MURTY
Joint Secretary

10 Notification of Special Court under sub-section (1) of Section 435 of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide F. No. 01/12/2009-CL-I (Vol.IV) dated 17.07.2019. Published in the Gazette of India Extraordinary, Part - II, Section-3, Sub Section (i)]

In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court, Bombay, hereby designates the following Court mentioned in column (2) of the Table below as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said Act, namely:-

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Court</th>
<th>Jurisdiction as Special Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Court of District Judge-1 and Additional Sessions Judge, Pune</td>
<td>State of Maharashtra.</td>
</tr>
</tbody>
</table>

K. V. R. MURTY
Joint Secretary

11 Streamlining the Process of Public Issue of Equity Shares and convertibles- Implementation of Phase II of Unified Payments Interface with Application Supported by Block Amount


1. This refers to SEBI circular No. SEBI/HO/CFD/DIL2/CIR/P/2018/138 dated November 01, 2018, vide which SEBI had introduced the use of Unified Payments Interface (UPI) as a payment mechanism with Application Supported by Block Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants), with effect from January 01, 2019. Implementation of the same was to be carried out in a phased manner to ensure gradual transition to UPI with ASBA.

2. Accordingly, Phase II of the aforesaid Circular dated...
November 01, 2018 has become effective from July 01, 2019. Thereafter, for applications by retail individual investors through intermediaries, the existing process of, investor submitting bid- cum-application form with any intermediary along with bank account details, and movement of such application forms from intermediaries to Self-Certified Syndicate Banks (SCSBs) for blocking of funds, has been discontinued i.e. Channel III at Para 5.1 of Circular dated November 01, 2018 has been discontinued. For such applications only the UPI mechanism would be the permissible mode i.e. Channel IV at Para 5.1 of the said Circular.

**Status of SCSBs on UPI**

3. Applications through UPI in IPOs can be made only through the SCSBs / mobile applications (apps) whose name appears on the SEBI website – www.sebi.gov.in at the following path: Home » Intermediaries/Market Infrastructure Institutions » Recognised Intermediaries » Self Certified Syndicate Banks eligible as Issuer Banks for UPI

A list of SCSBs and mobile application, which, as on the date of this Circular, are live for applying in public issues using UPI mechanism is provided at Annexure ‘A’. The said list shall be updated on SEBI website.

An investor shall ensure that when applying in IPO using UPI, the name of his Bank appears in the list of SCSBs displayed on the SEBI website which are live on UPI.

Further, he/she shall also ensure that the name of the app and the UPI handle being used for making the application is also appearing in the aforesaid list.

4. An application made using incorrect UPI handle or using a bank account of an SCSBs or bank which is not mentioned in the aforesaid list is liable to be rejected.

5. Investors whose bank is not live on UPI as on the date of this Circular, may use the other alternate channels available to them viz. submission of application form with SCSB or using the facility of linked online trading, demat and bank account (Channel I or II at Para 5.1 of Circular dated November 01, 2018).

6. Frequently asked questions (FAQs) regarding use of UPI in public issue process can be accessed at the following path on the SEBI website – www.sebi.gov.in :

   Home » FAQs » FAQs on Primary Market Issuances » Use of Unified Payments Interface (UPI) with ASBA in public issue process

7. All entities involved in the process are advised to take necessary steps to ensure compliance with this circular.

8. This circular is being issued in exercise of the powers under section 11 read with section 11A of the Securities and Exchange Board of India Act, 1992.

9. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

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**NARENDRA RAWAT**

General Manager

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**Annexure-A**

**List of Self Certified Syndicate Banks on UPI 2.0**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>SCSBs live on UPI 2.0</th>
<th>Mobile Application to be used by investor</th>
<th>UPI Handles active</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Allahabad Bank</td>
<td>BHIM</td>
<td>@upi</td>
</tr>
<tr>
<td>2</td>
<td>Andhra Bank</td>
<td>BHIM</td>
<td>@upi</td>
</tr>
<tr>
<td>3</td>
<td>Axis Bank Ltd</td>
<td>BHIM BHIM AXIS Pay @ axisbank</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Bandhan Bank</td>
<td>BHIM</td>
<td>@upi</td>
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*As on July 26, 2019*
12 Staggered Delivery Period in Commodity futures contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2019/83 dated 26.07.2019.]

1. SEBI vide circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/90 dated September 21, 2016 had inter-alia specified the staggered delivery framework for commodity futures contracts. The applicable staggered delivery periods for various commodity futures contracts as on the date of the above circular were also continued. It is observed that currently there is no uniformity in the length of staggered delivery period for commodity futures contracts across exchanges even for the same commodities.

2. Based on the representations received from exchanges and deliberations thereon, following revised norms for staggered delivery (replacing the norms with respect to the staggered delivery (para 3(a)) prescribed vide circular dated September 21, 2016) are prescribed:

2.1. Definition: Staggered delivery period is the period, beginning few working days prior to expiry of any contract and ending with expiry, during which sellers/buyers having open position may submit an intention to give/take delivery.

2.2. All compulsory delivery commodity futures contracts (agriculture commodities as well as non-agriculture commodities) shall have a staggered delivery period.

2.3. The minimum duration of staggered delivery period shall be at least five working days.

2.4. Exchanges shall have the flexibility to set higher duration of staggered delivery period for any commodity futures contract, as deemed fit, taking into account various factors such as historical open interest, volume near expiry etc. In this regard, for the benefit of the market participants, all the exchanges shall jointly prepare and publish a detailed framework outlining various circumstances and factors which would generally require longer duration of staggered delivery period in any commodity.

2.5. In the interest of trade and public, SEBI or exchange may exercise its due discretion in modifying the aforesaid staggered delivery period at any time.

2.6. Framework:

- Seller/buyer having open position shall have an option, of submitting an intention of giving/taking delivery, on any day during the staggered delivery period.

- On each day (except for the expiry day), Exchange shall allocate intentions received to give delivery during the day, to buyers having open long position as per random allocation methodology to ensure that all buyers have an equal opportunity of being selected to receive delivery irrespective of the size or value of the position. However, preference may be given to buyers who have marked an intention of taking delivery, which may be based on aspects such as location, quality etc.

- Pay-in and pay-out for the allocated deliveries shall happen within 2 working days after allocation.

- All open positions after expiry of the contract shall result in compulsory delivery and be settled at Final Settlement Price (FSP) of the respective contract and pay-in and pay-out shall happen latest by the 2nd working day after expiry.

2.7. Exchanges shall start imposing pre-expiry margin (as prescribed vide SEBI circular CIR/CDMRD/DRMP/01/2015 dated October 01, 2015) latest by the start of the staggered delivery period.

3. To comply with the provisions of this circular, Exchanges shall appropriately modify the contract specifications (if required) and implement the changes in all contracts (whether running or yet to be launched) expiring after three months from the date of this circular.

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

5. Exchanges are advised to:

i. to make necessary amendments to the relevant bye-laws, rules and regulations.

ii. bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.

iii. communicate to SEBI, the status of the implementation of the provisions of this circular.

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

VIKAS SUKHWAL
General Manager

13 Guidelines for Liquidity Enhancement Scheme (LES) in Commodity Derivatives Contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2019/84 dated 26.07.2019.]


2. The manner in which exchanges can provide LES under the extant circular No. CIR/MDR/DP/14/2014 dated April 23, 2014 is as under:

5.1. Discount in fees, adjustment in fees in other segments or cash payment -

The incentives during a financial year shall not exceed 25% of the net profits or 25% of the free reserves of the stock exchange, whichever is higher, as per the audited financial statements of the preceding financial year.

5.2. Shares, including options and warrants, of the stock exchange - The shares that may accrue on exercise of warrants or options, given as incentives under all liquidity enhancement scheme, during a financial year, shall not exceed 25% of the issued and outstanding shares of the stock exchange as on the last day of the preceding financial year. Further, the stock exchange shall ensure that this is in compliance with the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 at all times.

3. An exchange in early years of its formation/commencement of business may not be able to generate profits or have free reserves from business operations. In this regard, it has now been decided to exempt such exchanges, during their first five years of operation from the date of SEBI’s approval for commencement /recommencement of their business, from the
applicability of clauses 5.1 and 5.2 of said SEBI circular No. CIR/MRD/DP/14/2014 dated April 23, 2014, subject to adherence to the following conditions:
3.1. The yearly incentives that such an exchange can earmark for LES shall not exceed 25% of the audited net-worth of the said exchange as on the last day of the previous financial year.
3.2. Such exchange shall create a reserve specifically to meet its LES incentives/expenses and transfer funds to such reserve accordingly. However, such reserves shall not be included in the calculation of Exchange net worth.
3.3. Such exchange however shall continuously comply with the minimum net-worth requirement as per Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018.

4. The provisions of this circular shall be effective from the date of this circular.

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

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

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

VIKAS SUKHWAL
General Manager


[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/ISD/ISD/CIR/P/2019/82 dated 19.07.2019.]

1. In terms of Regulation 9(1) and 9(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (the Regulations), the Board of Directors of every listed company and the Board of Directors or head(s) of the organization of every intermediary and fiduciary are required to formulate a Code of Conduct for designated persons and their immediate relatives and monitor its compliance and promptly inform SEBI about any violations of the Code of Conduct in accordance with Clause 13 of Schedule B (in case of a listed company) or Clause 11 of Schedule C (in case of an intermediary or fiduciary) of the Regulations as applicable.

2. In compliance with the above requirement, SEBI has been receiving various references from listed companies regarding violations related to Code of Conduct under the Regulations. Many of such references provide incomplete or inadequate details about the nature of violation, designation and functional role of designated persons who have committed the violation, frequency of such violations in the past, the actions taken and reasons thereof etc. Such information is crucial for examining the reported violations and taking any further necessary action, if required.

3. Since listed companies, intermediaries and fiduciaries are empowered to take action against the designated person for violations of the respective Code of Conduct in accordance with Clause 12 of Schedule B (in case of a listed company) and Clause 10 of Schedule C (in case of an intermediary or fiduciary) of the Regulations, the aforesaid entities shall ensure that appropriate action is taken whenever such violations are observed after recording reasons in writing.

4. With an objective to standardize the process relating to dealing with such violations of the Code of Conduct, all listed companies, intermediaries and fiduciaries shall:
   a. Report such violations by the designated persons and immediate relatives of designated persons in the standardized format to SEBI, as placed at Annexure A.
   b. Maintain a database of the violation of code of conduct by designated persons and immediate relatives of designated persons that would entail initiation of appropriate action against them.

5. The provisions of this circular shall come into effect from the date of the circular.

6. 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 regulations 4(3) and 11 of the Regulations and 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”.

DEEPTI AGRAWAL
Deputy General Manager

Report by (Name of the listed company/ Intermediary/ Fiduciary) for violations related to Code of Conduct under SEBI(Prohibition of Insider Trading) Regulations, 2015.

[For listed company: Schedule Bread with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015]

For Intermediary/ Fiduciary: Schedule C read with Regulation 9(1) and 9(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015]

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<td>Designation of DP</td>
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<tr>
<td>6</td>
<td>Functional Role of DP</td>
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7. Whether DP is Promoter /Promoter Group/holding CXO level position (e.g. CEO, CFO, CTO etc.)

8. Transaction details
   a) Name of the scrip
   b) No of shares traded (which includes pledge) and value (Rs) (Date-wise)

9. In case value of trade(s) is more than Rs 10 lacs in a calendar quarter-
   a) Date of intimation of trade(s) by concerned DP/director/promoter/promoter group to Company under regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015
   b) Date of intimation of trade(s) by Company to stock exchanges under regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015

10. Details of violations observed under SEBI (Prohibition of Insider Trading) Regulations, 2015

11. Action taken by Listed company/Intermediary/ Fiduciary

12. Reasons recorded in writing for taking action stated above

13. Details of the previous instances of violations, if any, since last financial year

14. Any other relevant information

Yours faithfully,

Date and Place 

Name and signature of Compliance Officer
PAN: Email id:
Mobile Number :

15. Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity

16. Modification of circular dated July 18, 2017 on ‘Disclosure of divergence in the asset classification and provisioning by banks’

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CFD/CMD1/80/2017 dated 17.07.2017.]

1. Vide Circular No. SEBI/CIR/CFD/ CMD/80/2017 dated July 18, 2017, it was specified that banks which have listed specified securities shall disclose to the stock exchanges, divergences in the asset classification and provisioning wherever the additional provisioning requirements assessed by RBI/ the additional Gross NPAs identified by RBI exceeded a certain threshold.

2. The aforesaid SEBI circular was derived from RBI’s Notification No. RBI/2016-17/283; DBR.BP.BC.No.63/21.04.018/2016-17 dated April 18, 2017, which required listed banks to make disclosures in the asset classification and provisions in the “Notes to Accounts” to the Financial Statements.

3. It is noted that RBI has now modified the disclosure requirements varying the aforesaid thresholds, vide its Notification No. RBI/2018-19/157; DBR.BP.BC.No.32/21.04.018/2018-19 dated April 1, 2019.

4. In line with the revised RBI requirements, all banks which have listed specified securities shall disclose to the stock exchanges divergences in the asset classification and provisioning, if either or both of the following conditions are satisfied:
   a. the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period, and
   b. the additional Gross NPAs identified by RBI exceed 15 per cent of the published incremental Gross NPAs for the reference period.

5. The Circular No. SEBI/CIR/CFD/CMD/80/2017 dated July 18, 2017 shall stand modified to the extent as specified above. Other requirements specified in the circular shall remain unchanged.

6. This circular shall come into force with immediate effect.

7. The Stock Exchanges are advised to bring the provisions of this circular to the notice of banks which have listed specified securities and to disseminate the same on their websites.

8. This circular is issued under Regulation 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

9. The circular is available on SEBI website at www.sebi.gov.in under the category ‘Legal→Circulars’.

PRADEEP RAMAKRISHNAN
General Manager
Modification of circular dated September 24, 2015 on ‘Format for compliance report on Corporate Governance to be submitted to Stock Exchange (s) by Listed Entities’

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/78 dated 16.07.2019.]

1. Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”), specifies that a listed entity shall submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) within fifteen days from close of each quarter.

2. Vide Circular No. CIR/CFD/CMD/5/2015 dated September 24, 2015, SEBI had specified the format for compliance report on Corporate Governance by listed entities.

3. The Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak made several recommendations. Most amendments necessary to implement these recommendations have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide notification dated May 9, 2018. Some of these amendments necessitate changes to the format of the quarterly compliance report.

4. The formats for Compliance Report on Corporate Governance as per Annexure I, II and III to this circular are being prescribed:- Annex - I - on quarterly basis;

Annex - II - at the end of a financial year (for the whole of financial year);
Annex - III - within six months from end of a financial year. This may be submitted along with the second quarter’s report.

5. Accordingly, the Circular No. CIR/CFD/CMD/5/2015 dated September 24, 2015 shall stand modified only to the extent to the format for compliance report on Corporate Governance. The format specified in the Annexure to this circular shall replace the format specified in the Annexure to the circular dated September 24, 2015.

6. In view of the revised timelines under the amended regulations, the circular shall come into force with effect from the quarter ended September 30, 2019.

7. The Stock Exchanges are advised to bring the provisions of this Circular to the notice of listed entities and also to disseminate the same on its website.

8. This Circular is issued in exercise of the powers conferred under Section 11 and Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulation 27(2) and Regulation 101(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

9. This Circular is available on SEBI website at www.sebi.gov.in under the categories “Listing Regulations” and “Legal”.

PRADEEP RAMAKRISHNAN
General Manager

Annex1, Annex2 and Annex3 not published here for want of space. Readers may log on to www.sebi.gov.in for complete notification.
RELEASE OF EDUCATIONAL MATERIAL ON VALUATION OF SECURITIES OR FINANCIAL ASSETS

In pursuance of Rule 5 of the Companies (Registered Valuers and Valuation) Rules, 2017, the Insolvency and Bankruptcy Board of India ("IBBI"), being the Authority, has specified the curriculum of Educational Courses for the Asset Class "Securities or Financial Assets".

We are pleased to share with you that the Educational Material on Valuation of Securities or Financial Assets has been released.

Topics Covered:
- Macroeconomics
- Finance and Financial Statement Analysis
- Professional Ethics and Standards
- General laws
- Financial Reporting under Indian Accounting Standards (Ind AS)
- Overview of Valuation
- Valuation Approaches
- Valuation Application
- Regulations relevant to Financial Assets Valuation
- Judicial Pronouncements on Valuation
- Case Studies

For details, visit: http://www.icsirvo.in/Home/BookStore.
MEMBERS RESTORED DURING THE MONTH OF JUNE 2019
CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF JUNE 2019
CONGRATULATIONS
KNOW YOUR MEMBER (KYM)
ADVISORY FOR MEMBERS OF ICSI
ATTENTION MEMBERS
THE LAST DATE FOR PAYMENT OF CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2019-20
RESTORATION OF MEMBERSHIP
OBITUARIES
### Members Restored During the Month of June 2019

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<td>SH. SANJAYA KUMAR ROUT</td>
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<td>MS. RUCHI SEKSARIA</td>
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<td>MS. SAKSHI JAIN</td>
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<td>22671</td>
<td>SH. TEJOMURTULA RAMOJI</td>
<td>SIRC</td>
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</tbody>
</table>
### NEWS FROM THE INSTITUTE

**WIRC**

**MR. KULKARNI AMIT MUKUND**

**MS. RASHMI TULSAN**

**MR. ADITYA KUMAR PANDEY**

**MS. PAYAL RATHI**

**SH. HARJIT SINGH SIDHU**

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NEWS FROM THE INSTITUTE

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AUGUST 2019 | CHARTERED SECRETARY
ATTENTION!

ADVISORY FOR MEMBERS OF ICSI

Members would henceforth be required to declare their PAN (mandatory) and Aadhaar / UID Number (optional) at the time of making online payment of annual membership fees and while applying for Fellow membership of the Institute in Form-B.

Further, offline Membership fee / Certificate of Practice fee is not being accepted in any office of the Institute from 1st June, 2019. Only online fees is being accepted from 1st June, 2019 onwards.

Members may also note that as per Regulation 3 of the Company Secretaries Regulations, 1982, they are required to communicate to the Institute any change in their Professional Address within one month of such change.

Team ICSI
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 2019-2020 including GST@18% (Associates admitted on or after 1-4-2018 – Rs. 1770/-, Associates admitted till 31-03-2018 – Rs. 2950/- and Fellow – Rs. 3540/-) with the entrance fee of Rs. 2360/- and restoration fee of Rs. 295/-.

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 through members’ login portal. Payment made through any other mode will not be accepted.

Steps to make online payment for Retoration of Membership

- Login to portal www.icsi.edu
- Click Online services in the Menu and then click on Member
- Fill the User name: Enter your membership no. (eg. A1234)
- Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email id and mobile number is correctly registered (you can check at https://www.icsi.edu/member/members-directory/) in the Institute’s record. You may use ICSI service portal at http://support.icsi.edu. One of the reasons of not getting the password on retrieval could be that you may have blacklisted ICSI email account: dnr@icsi.edu. To whitelist the same, you may send a request to member@icsi.edu that you have inadvertently blacklisted ICSI email account and desire to whitelist the same.
- After login, go to Members Option (from top menu) then click on Manage Account à Restoration of Membership for FY2019-20 only (on the left side under Place your Request)
- Click on proceed for payment.

For specific assistance raise a ticket at http://support.icsi.edu

ATTENTION!

MEMBERS who have not paid the annual membership fee by last date 30-06-2019

The last date for payment of annual membership fee was 30-06-2019. The members who have not paid their annual membership fee by the last date are required to restore their membership by paying the requisite additional entrance and restoration fees totalling Rs. 2655/- (inclusive of GST@18%) alongwith the applicable annual membership fee with GST@18% payable. Members are required to submit Form–BB for restoration of membership duly filled and signed. For specific assistance raise a ticket at http://support.icsi.edu

ATTENTION!

MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2019. The CDs are available at Noida office of the Institute and will be provided free of cost to the members holding Certificate of Practice on receipt of request. Request may please be sent to the Directorate of Membership at e-mail id: saurabh.bansal@icsi.edu

ATTENTION!

Know Your Member (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf
ATTENTION! MEMBERS HOLDING CERTIFICATE OF PRACTICE

The submission of Hard copy of Form-D for Issue/Renewal/Restoration of COP through post/in person (hard copy) has been discontinued w.e.f. 01.04.2019. The members are requested to submit Form D through online mode only through ICSI online services. The steps for online services are as follows: Go to Manage Account -> clicking request relating to COP a click the radio button Issue/Renewal/restoration of COP, select Online Form D, remit Rs. 1770/2360. A print out of the form submitted online may be kept for record purpose.

Payment of Annual Membership fee is necessary prior to making payment for COP. The last date for payment of COP renewal fee is 30.09.2019. In case your annual membership fee is not received by 30.06.2019, the COP will be automatically cancelled.

THE LAST DATE FOR PAYMENT OF CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2019-20

The certificate of practice fee for the year 2019-2020 has become due for payment w.e.f. 1st April, 2019. The last date for the payment of fee is 30th September, 2019.

The certificate of practice fee payable is as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Associate (admitted till 31.03.2018)</th>
<th>Associate (admitted on or after 01.04.2018)</th>
<th>Fellow</th>
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</thead>
<tbody>
<tr>
<td>Certificate of Practice fee*</td>
<td>Rs. 2360</td>
<td>Rs. 1770</td>
<td>Rs. 2360</td>
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<tr>
<td>Restoration fee**</td>
<td>Rs. 295</td>
<td>Rs. 295</td>
<td>Rs. 295</td>
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</tbody>
</table>

* Fee inclusive of applicable GST@18%.
** Fee inclusive of applicable GST@18% and applicable if certificate of practice fee is not received by 30th September, 2019.

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 through members’ login portal. Payment made through any other mode will not be accepted.

Steps to make online payment of Renewal of COP

- Login to portal www.icsi.edu
- Click Online services in the Menu and then click on Member
- Fill the User name: Enter your membership no. (eg. A1234)
- Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email id and mobile number is correctly registered (you can check at https://www.icsi.edu/member/members-directory/) in the Institute’s record. You may use ICSI service portal at http://support.icsi.edu. One of the reasons of not getting the password on retrieval could be that you may have blacklisted ICSI email account: dnr@icsi.edu. To whitelist the same, you may send a request to member@icsi.edu that you have inadvertently blacklisted ICSI email account and desire to whitelist the same.
- After login, go to Members Option (from top menu) then click on Manage Account -> Request relating to Certificate of Practice -> Renewal of COP (on the left side under Place your Request
- Click on proceed for payment.

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 Shyam Sunder Gupta (16.08.1938 – 28.01.2019), a Fellow Member of the Institute from Delhi.

CS Pankaj Chandrakant Dhamne (25.10.1981 – 13.05.2019), a Fellow Member of the Institute from Pune.

CS M S Lakshmanan (12.06.1930 – 26.07.2014), a Fellow Member of the Institute from Pune.

CS Sibaram Tripathi (27.02.1957 – 24.03.2019), an Associate Member of the Institute from Bhubaneswar.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.
<table>
<thead>
<tr>
<th>Day</th>
<th>Executive Programme (Old Syllabus)</th>
<th>Executive Programme (New Syllabus)</th>
<th>Professional Programme (Old Syllabus)</th>
<th>Professional Programme (New Syllabus)</th>
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<td>22.12.2019 Sunday</td>
<td>NO EXAMINATION</td>
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<td>25.12.2019 Wednesday</td>
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<tr>
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<td>NO EXAMINATION</td>
<td>Financial and Strategic Management (Module-II) (OMR Based)</td>
<td>Ethics, Governance and Sustainability (Module–I)</td>
<td>Resolution of Corporate Disputes, Non-compliances and Remedies (Module–II)</td>
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<td>30.12.2019 Monday</td>
<td>NO EXAMINATION</td>
<td>NO EXAMINATION</td>
<td>Elective 1 out of below 5 subjects (Module–III) [Open Book Exam.]</td>
<td>Elective 1 out of below 8 subjects (Module–III) [Open Book Exam.]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(i) Banking Law and Practice</td>
<td>(i) Banking-Law and Practice</td>
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<td>(ii) Capital, Commodity and Money Market</td>
<td>(ii) Insurance-Law and Practice</td>
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<td>(iii) Insurance Law and Practice</td>
<td>(iii) Intellectual Property Rights – Laws and Practices</td>
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<td>(iv) Intellectual Property Rights – Law and Practice</td>
<td>(iv) Forensic Audit</td>
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<td>(v) International Business Laws and Practices</td>
<td>(v) Direct Tax Law and Practice</td>
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<td>(vi) Labour Laws and Practice</td>
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<td>(vii) Valuations and Business Modelling</td>
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<td>(viii) Insolvency – Law and Practice</td>
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</table>
WE ARE
HIRING...
JOIN US TO EXCEED YOUR
POTENTIAL AND MAKE A
DIFFERENCE

Corporate Professionals, a group of research oriented and skilled professionals, is pioneer in delivering innovative and distinguished corporate business solutions through a unique model of integrated financial and legal consulting services since 2003.

Within the group, is nestled a boutique law firm, rendering quality services in the field of Company Law, Insolvency Law, Securities Laws & FEMA, Corporate Restructuring, Corporate Taxation, Global Business Setup, Compliance Management, Documentation, and Regulatory Approvals. The Group also offers Investment Banking, Transaction Advisory, Valuation and Business Modelling services through Corporate Professionals Capital Private Limited, a SEBI Registered (Category-I) Merchant Banker.

The Group has expertise in dealing with complicated transactions and has completed nearly 10000 assignments of more than 1000 Corporate Houses. To serve its growing clientele, the Group is looking to fill up the following positions at its Headquarters at New Delhi:

DEPARTMENT - Corporate Affairs and Compliances

1. POSITION - Associates (3)

   JOB DESCRIPTION
   Working as a part of compliance and assurance team engaged in advising listed and unlisted entities.

   QUALIFICATION, EXPERIENCE AND EXPECTATIONS
   ACS preferably with degree in Law. Around 3-4 years of post-qualification experience of advisory role in Corporate Laws, Securities Laws etc. Experience of working in a listed company would be preferred.

   Should have excellent academic record along with good writing and communication skills

2. POSITION - Senior Associate (1)

   JOB DESCRIPTION
   Leadership role with direct reporting to the Partner. Role and responsibilities will include independent handling of clients assignments, ensuring compliances, etc.

   It is a challenging position requiring exposure to wide array of laws including Company law, Securities law and FEMA.

   QUALIFICATION, EXPERIENCE AND EXPECTATIONS
   ACS/FCS preferably with degree in Law. Around 8-10 years of post-qualification experience in an advisory firm. Experience of working in a listed company would be preferred.

   Should have excellent academic record along with good writing and communication skills.

“Salary commensurate with experience/industry standard”
Interested candidates with good drafting and communication skills may post their resume @ https://www.corporateprofessionals.com/careers/
3  POSITION - Senior Associate (1)

JOB DESCRIPTION
Working as a part of compliance and assurance team engaged in advising clients in matters related to FEMA, RBI, NBFC, Fintech etc.

QUALIFICATION, EXPERIENCE AND EXPECTATIONS
ACS/FCS preferably with degree in Law. Around 5 years of post-qualification experience. Should have worked in various areas related to FEMA, RBI, NBFC, Fintech etc. and dealt with RBI and other related authorities.

DEPARTMENT - Capital Market Services

4  POSITION - Associate - (1)

JOB DESCRIPTION
Working closely with Stock Exchanges, Analysis and application of Listing Regulations, Takeover Code, Insider Trading Regulations, etc.

Having hands on experience in Merchant Banking activities, viz. IPO/FPO, SME IPO, Rights Issue, Buybacks & Delisting, etc.

QUALIFICATION, EXPERIENCE AND EXPECTATIONS
ACS with 2-3 years post qualification experience preferably in merchant banking/SME IPO.

DEPARTMENT - Transaction Advisory & Legal Documentations

5  POSITION - Associate - (1)

JOB DESCRIPTION
Proficiency in drafting legal documents, contracts, business and commercial agreements, etc.

QUALIFICATION, EXPERIENCE AND EXPECTATIONS
CS with degree in Law possessing 2-3 years of experience in dealing with Joint Ventures, Acquisitions etc. and having proficiency in drafting and vetting of commercial agreements.

DEPARTMENT - Valuation & Biz Modelling

6  POSITION - Associate - (1)

JOB DESCRIPTION
Working on Financial Models, Valuation Models and preparation of Valuation reports. Valuation Research of Deals taking place in market and Industry Research

QUALIFICATION, EXPERIENCE AND EXPECTATIONS
CS/CA/CFA qualified/semiqualified with work experience of 2 years in Equity research, Equity valuation and biz modelling.

Candidate with research orientation and possessing good presentation skills would be preferred.

DEPARTMENT - Investment Banking

7  POSITION - Associate - (2)

JOB DESCRIPTION
Understanding deal and M&A transactions and experience of equity research, making of pitchbook, presentation on Information Memorandum.

QUALIFICATION, EXPERIENCE AND EXPECTATIONS
CS/CA/CFA/MBA (Finance) having worked at least for two years in Investment Banking and has hands on

Candidates who have already applied need not apply again.

Contact Person: Mr. T.R. Manik, Contact No. +91 11 40622266/9810474225
Apathy, Sympathy or Empathy – What do YOU do?
Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

Imagine someone walking onto a frozen pond. They reach the centre and the ice breaks and they fall in. There is someone standing by the edge of the pond watching. They have choices as to how they respond. They can walk away and let the person drown, they don’t care. Or they could just stand and spectate, feeling sorry for the drowning person but still not trying to help them. Or they could attempt to pull them out of the ice. But to do so they must not get too close as they may fall in themselves. So, they must keep a distance while attempting to help.

When we walk away from anyone who is drowning in their own emotions this is known and APATHY. It means we don’t really care to acknowledge the suffering of the other never mind help them out of their suffering. The reason may be:

- We feel it’s none of our business, we are not paid for it
- We don’t know the person drowning and why should we trap ourselves in something which we are not concerned with
- We feel that the person is faking getting drowned, it may be a trap for us, so that we may fall into the broken ice
- and many more….

In all the above cases of speculations, we are either acting ignorant, or mean- assuming that we will never face a situation in life where we may need help.

But more often, our response to situations is not as cold-blooded as above. We mostly come out in SYMPATHY, especially if they are a friend. When a friend comes to us in an angry state, they want us to hear their anger. It’s as if they have all their anger in a little brown bag and they want us to look in their bag as we believe that’s what friends are for! Not only that but they probably want us to get angry with them, on the same person on whom they are getting angry, as we believe that’s what friends are for! And as we do it, we essentially come out in sympathy with them and add to their anger. Which is much like a fire engine going to the sight that has caught fire and instead of water coming out of the hose, it is the petrol that comes out and we both go up in our emotional flames together. Sympathy is not empathy, but it’s one of the most common confusions in the arena of emotional intelligence. Sympathy is primarily feeling sorry for someone. It is to create sorrow in oneself in response to the perceived plight of another person. It’s just another of ego’s games as the self ‘identifies’ with the situation and the emotions of the other and thereby creates similar emotional suffering. The saddest part of our understanding is that many of us have learned to believe that we have to be in the same emotional state as the other in order to recognize, understand and help the other through their emotional turmoil. ‘If we are happy in their happiness, we are good friends! And we cry in their sadness, then we are even better!!’ This is simply a misconception, brilliantly sustained under all the above cases of speculations, we are either acting ignorant, or mean- assuming that we will never face a situation in life where we may need help.

To empathise is ‘detached involvement’. It sounds like an oxymoron but it just means we don’t get sucked into the emotion and the emotional story of the other while at the same time staying engaged with them. The engagement takes the form of asking and listening for the facts, feelings and meaning of the story of whatever triggered their emotional state. This allows them to articulate the emotions that they are feeling; and as they do, we have to be detached from their emotions so that our mind stays calm and we be at the strong centre of our self, rather than flowing with their emotions and becoming biased by their story. In case we flow with...
The first step, as already discussed, is to listen to or when a person is seeking empathy, the most superficial of others the plight and not just talk about their emotional state. We learn to believe that if we don’t then it’s a sign that we do not care. But staying detached when others bring their emotions to us just means we don’t descend to their emotional state and add to their emotional disturbance. It means we remain calm and stable support until they are once again able to steady the ship of their own feelings, which always happens …eventually.

Empathy can be extended through an unbiased vision of the truth: Also, in order to empathise, we should not stick any labels on any person. Once we start labelling other people as how we look at them, we tend to categorize them as good or bad according to their labels. When it comes to empathy, we often find it easy to empathise with those who’s labels are in the category ‘good’ and for others, we sometimes really don’t care. This, truly speaking, is not empathy at all. To empathise is to be equal towards all without any discrimination of worthy or un-worthy, good or bad, friend or competitor, etc. This will be a sigh of relief for them as they are not comfortable in that turbulent state and seek some way out of it.

Empathy suits only the powerful, who can actually ‘do’ something for the weaker in that situation and not just talk about the plight of others and show superficial care. Someone’s emotions or get ‘attached’ to the story, role or perception of the story-teller, we start believing it to be true and land up in the same boat of perception. From this same boat, the view we see outside is the same as what the other person is viewing. It is then not possible for us to show the other person another view which may be visible from the other side of the shore. Thus, the key is to be involved in understanding what they are seeing and remaining detached in telling them what the other view is.

Practice listening/sensing without reacting: The first step, as already discussed, is to listen to or see or sense the plight of others without being judgmental or reacting. We must not allow our mind to complete their story while they are speaking or add our perception while watching their situation. This practice of being neutral/unbiased/open and non-judgemental helps us in understanding the whole situation as whole.

Being ‘powerful’ and a true bestower of power: When a person is seeking empathy, the most important thing that they need (more than mere sympathy) is the power to deal with the situation. Be it the power of acceptance, or power of peace, power of love, power to adjust, power to tolerate, power to face etc. The reason that someone is sharing their problem is us is that they expect ‘us’ to give them that missing power, after we have done a patient hearing. Now, instead of being carried away in their emotional tsunami, if we are able to be the anchor to which they can hold-on amidst their turbulence, this will be a sigh of relief for them as they are not comfortable in that turbulent state and seek some way out of it.

One who is weak can only sympathise and show care but cannot really help the other person to come out of the situation. In reality, empathy suits only the powerful, who can actually ‘do’ something for the weaker in that situation and not just talk about the plight of others and show superficial care.

So, our responsibility at that time is to identify the missing power, become an embodiment of that missing power and then become a selfless, unconditional and unlimited bestower of that missing power in such a way that the other person is able to imbibe that power for himself and get rid of that problem or plight forever. If we are able to identify but not become an embodiment of that power, we will not be able to satisfy that person in problem. We may show them the way but give them the power to walk that way or make them dependent on us for the next time they face such a problem and can sometimes rather add to their problem and emotional disturbance.

Therefore, through the technique of Rajyog Meditation we establish the permanent link with the Supreme Source-GOD and remain charged-up with all the powers which we may use ourselves and can give to others and be truly an empathic soul.
Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries

FAQs on Peer Review

1. What is Peer Review?
   Ans. Peer Review is a process used for examining the work performed by one’s equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

2. What is the meaning of Practice Unit?
   Ans. Practice Unit means members in practice, whether practicing individually or a firm of Company Secretaries.

3. What are the practice areas covered under the scope of Peer Review?
   Ans. The Review would only be in respect of the following services:
   - Signing / Certification of Annual Returns
   - Issuance of Certificate under Regulation 40 (9) of SEBI (LODR) Regulations, 2015
   - Issuance of Secretarial Audit Reports in terms of Section 204 of the Companies Act, 2013 / Regulation 24A of SEBI (LODR) Regulations, 2015.
   - Issuance of Annual Secretarial Compliance Reports
   - Internal Audits under Section 138 of the Companies Act, 2013
   - Audit Reports under Clause 76 of SEBI (Depositories & Participant Regulations) 2018 issued
   - Certificate issued under Regulation 56 of LODR Regulation 34(3) read with Schedule V, Para C, Clause (b) (i)
   - Compliance Certificates issued under Clause E, Schedule V of SEBI (LODR) Regulations, 2015
   - Internal Audit of Registrar and Share Transfer Agent (RTA) under SEBI Circular No. SEBI/HO/ MIRSD/CIR/P/2018/73
   - Internal Audit of Credit Rating Agencies under SEBI Circular No. SEBI/MIRSD/CRA/Cir-01/2010
   - Internal Audit for operations of the Depository Participants
   - Issuance of half yearly bank due diligence certificates

4. What are the advantages of the Peer Review to the Practice Unit (PU)?
   Ans. It is expected to
   A) enhance the quality of attestation services.
   B) enhance credibility and provide competitive advantage.
   C) provide a forum for Guidance and knowledge sharing.
   Apart from this, a Peer Reviewed Unit is entitled to get additional of 5 Secretarial Audits / Annual Secretarial Compliance Reports, per partner / PCS.

5. (A) How the Practice Units are selected to be Peer Reviewed?
   Ans. The Practice Units are selected on random basis for being Peer Reviewed.
   (B) Can I apply on voluntary basis to get my firm Peer Reviewed?
   Ans. Yes.
   (C) Can any of my clients ask the Institute to get me peer reviewed? If yes who would bear the cost of Peer Review in this case.
   Ans. Yes, the client can ask Board to get the Practice Unit Peer Reviewed and the cost of Peer Review shall be borne by the client in this case.

6. How much will it cost me to get Peer Reviewed?
   Ans. You shall pay to the Peer Reviewer the fee of Rs. 10,000/- to the Peer Reviewer (inclusive of TA/DA and any out of pocket expenses) as may be prescribed by the Peer Review Board from time to time.

7. If I have been Peer Reviewed can I disclose this on my website?
   Ans. Only the fact of being Peer Reviewed can be stated. However, neither the Certificate nor the Peer Review Report may be display on the website.

8. Can I become a Peer Reviewer?
   Ans. Any member of the Institute who fulfills the...
following criterion may apply to be empanelled as a Peer Reviewer—
(a) possesses at least 10 years of post membership experience
(b) is currently in practice as a Company Secretary.

9. Will the information disclosed by me be kept confidential by the reviewer?
   Ans. The Peer Reviewer is bound by a Confidentiality Agreement with the Peer Review Board. If the Reviewer misuses the information disclosed by you he may be subject to disciplinary action by the Institute.

10. Is the Peer Reviewer exposed to any liability?
    Ans. The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

11. After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?
    Ans. No. Peer Review is only a broad examination of the systems and procedures followed by the Practice Unit. The fact that you have been Peer Reviewed does not provide immunity from Disciplinary Action.

12. If I am selected for Peer Review is it mandatory for me to offer myself for Peer Review?
    Ans. Yes

13. Do I need to disclose the records of my clients to the reviewers?
    Ans. No

14. Will ICSI be issuing any Certificate after Peer review?
    Ans. Yes.

15. What will the validity of Peer Review Certificate issued?
    Ans. The validity of the Peer Review Certificate is five years from the date of its issue. However, in case the PU is being reviewed within two year of its incorporation, the validity shall be two years.

16. Will ICSI put up the names of the PU which have undergone PR on ICSI website?
    Ans. Yes

17. I have been Peer Reviewed once, will I be Peer Reviewed again?
    Ans. Yes, if the Peer Review Board so decides or upon expiring validity of the Certificate issued.

18. Can I choose my Peer Reviewer?
    Ans. The Peer Review Board would send you a panel of at least three reviewers and you may choose any one name out of the panel sent to you.

19. Can I reject all the reviewers mentioned in the panel and ask for another reviewer from the same State or region?
    Ans. Yes

20. If I want a Peer Reviewer from outside my State or region what should I do?
    Ans. You may make a special request to the Peer Review Board to provide names of such Peer Reviewers. However, in such a case you would have to bear the extra cost that would be incurred for TA / DA etc.

21. What do I do if I am not satisfied with the Report of the Peer Reviewer?
    Ans. You may refer your case to the Peer Review Board.

22. If I am not satisfied with the order of the Peer Review Board can I appeal to the Council?
    Ans. Yes. You may appeal against the Order of the Peer Review Board to the Central Council of the Institute.

23. Can I refuse to get myself Peer Reviewed?
    Ans. No. Any refusal to get Peer Reviewed shall be misconduct under the Code of Conduct.

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**YASH MANAGEMENT & SATELLITE LIMITED**

**APPOINTMENT OF COMPANY SECRETARY**

**LOCATION: MUMBAI**

Yash Management & Satellite Limited is seeking to hire the services of a company secretary to comply with the requirement of Companies Act 2013 and SEBI (Listing Obligation and Disclosure Requirement) 2015.

- Candidates having 0-1-year experience may apply.
- Interested candidate please mail their resume at yashman@hotmail.com.
GST Revenue collection for July, 2019

The total gross GST revenue collected in the month of July, 2019 is ₹ 1,02,083 crore of which CGST is ₹ 17,912 crore, SGST is ₹ 25,008 crore, IGST is ₹ 50,612 crore (including ₹ 24,246 crore collected on imports) and Cess is ₹ 8,551 crore (including ₹ 797 crore collected on imports). The total number of GSTR 3B Returns filed for the month of June up to 31st July, 2019 is 75.79 lakh.

The revenue in July, 2018 was ₹ 96,483 crore and the revenue during July, 2019 is a growth of 5.80% over the revenue in the same month last year. During April-July 2019 vis-à-vis 2018, the domestic component has grown by 9.2% while the GST on imports has come down by 0.2% and the total collection has grown by 6.83%. ₹ 17,789 crore has been released to the states as GST compensation for the months of April-May, 2019.

Source: http://pib.gov.in

- **Decisions taken at 36th GST Council Meeting held on 27th July, 2019**

  1. GST rate related changes on supply of goods and services w.e.f. 1st August, 2019
     - The GST rate on all electric vehicles be reduced from 12% to 5%.
     - The GST rate on charger or charging stations for Electric vehicles be reduced from 18% to 5%.
     - Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities be exempted from GST.

  2. Changes in GST law
     - Last date for filing of intimation, in FORM GST CMP-02, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 (by exclusive supplier of services), to be extended from 31.07.2019 to 30.09.2019.
     - The last date for furnishing statement containing the details of the self-assessed tax in FORM GST CMP-08 for the quarter April, 2019 to June,2019 (by taxpayers under composition scheme), to be extended from 31.07.2019 to 31.08.2019.

  - **Notifications/Circulars**

- **Amendments in Central Goods and Services Tax Rules, 2017**

  In exercise of the powers conferred by section 164 of the Central Goods and Service Tax Act, 2017 (12 of 2017), the Central Government vide its notification dated 18th July, 2019 has amended the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the ‘Principal rules’) through the Central Goods and Services Tax (Fifth Amendment) Rules, 2019 (hereinafter referred to as the ‘Amendment rules’) which shall come into force save as otherwise provided, on the date of their publication in the Official Gazette.

  As per the Amendment Rules, in the Principal Rules, the following Rules have been amended:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>Rule 12</td>
<td>Grant of registration to persons required to deduct tax at source or to collect tax at source</td>
</tr>
<tr>
<td>Rule 46</td>
<td>Tax Invoice</td>
</tr>
<tr>
<td>Rule 54</td>
<td>Tax Invoice in special cases</td>
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Apart from the above rules, new forms have been inserted namely:-

- FORM GST PCT-06 - Application for surrender of his enrolment as GST practitioner
- FORM GST PCT-07 - Order to cancel the enrolment of GST practitioner who applied for surrender of his enrolment.
- FORM GST EWB-05 - Application for unblocking of the facility for generation of E-Way Bill
- FORM GST EWB-06 - Order for permitting / rejecting application for unblocking of the facility for generation of E-Way Bill

- **GST on subscription/contribution charged by a RWA from its members**

CBIC vide Circular No.109/28/2019- GST dated 22nd July, 2019 clarified on above mentioned matter as following:

Supply of service by RWA (unincorporated body or a nonprofit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs.7500/- per month per member.

RWA shall be required to pay GST on monthly subscription/contribution charged from its members, only if such subscription is more than Rs.7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs.20 lakhs or more.

RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.

A person owns two or more flats in the housing society or residential complex: As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.

The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.

- **Circulars**

- **Supply of Information Technology enabled Services (ITeS services)**

  In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, vide circular No. 107/26/2019-GST dated 18th July, 2019, the Board, in exercise of its powers conferred by
section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs:

The definition of intermediary inter alia provides specific exclusion of a person i.e. that of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as intermediary even where the supplier of services qualifies to be “an agent/ broker or any other person” if he is involved in the supply of services on his own account.

Information Technology enabled Services (ITeS services), though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions.

Scenario -I: The supplier of ITeS services supplies back end services. In such a scenario, the supplier will not fall under the ambit of intermediary under section 2(13) of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier “A” supplying services, on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of section 2(13) of the IGST Act.

Scenario -II: The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under section 2(13) of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier “A” supplying backend services as mentioned in this scenario to the customer “C” of his client “B” would be intermediary in terms of section 2(13) of the IGST Act.

Scenario –III: The supplier of ITeS services supplies back end services, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under section 2(13) of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier “A” supplying services as well as support services listed in Scenario -II above to his client “B” and / or to the customer “C” of his client is intermediary or not in terms of section 2(13) of the IGST Act would have to be determined in facts and circumstances of each case and would be determined keeping in view which set of services is the principal / main supply.

Goods sent/taken out of India for exhibition or on consignment basis

In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, vide circular No. 107/27/2019-GST dated 18th July, 2019, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs:

The activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as it does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time.

Since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in section 16 of the IGST Act.

Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?

The registered person dealing in specified goods shall maintain a record of such goods as per the format given in Annexure to the Circular.

Documentation required for sending / taking the specified goods (for exhibition or on consignment basis) out of India

The said activity is in the nature of “sale on approval basis”

The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.

The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

When is the supply of specified goods sent / taken out of India said to take place?

The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in section 31(7) of the CGST Act.

The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.

If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.

Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?

The sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.

The sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.
International Laws & Regulations

1. **The Intersection of Governance and Antitrust Law**

A new Federal Trade Commission (FTC) drives attention of the boards and corporate strategy executives towards the potential on antitrust issues that may arise from interlocking director arrangements with competitors.

These arrangements have long been a popular means by which health care systems seek to foster collaborative arrangements. Perhaps their most frequent use is as a “get to know each other” step—i.e., a limited governance connection intended as a prelude to other, more integrated arrangements. They are also used in certain types of corporate restructurings, spin-off transactions and acquisitions. Section 8 of the Clayton Act not only prohibits a person from acting as an officer or director of two competitors, but also prohibits any one firm from appointing two different people to sit as its agents as officers or directors of competing companies. Unlike the merger rules Section 8 is a strict liability provision, meaning violations are *per se* and do not depend on actual harm to competition.

There is a clear message from the antitrust enforcement agencies that companies should monitor market developments to ensure that changes do not create unexpected interlocks. Health system executives and directors involved in strategic transaction development will want to coordinate with the general counsel on possible Section 8 issues when considering arrangements involving governance terms.


2. **UAE Regulates Internet of Things**

The UAE Telecommunications Regulatory Authority has published a new policy regulating services and devices associated with the Internet of Things. The IoT Policy’s introduction reflects a growing regional trend to regulate specific market sectors and technologies in response to their increasing prevalence and perceived risks they present. Some of the key compliance requirements are as follows:

- **Registration:** All IoT service providers are required to obtain an IoT Service Registration Certificate from the TRA, in addition to the existing type approval. This also applies to offshore service providers offering IoT services to UAE-based customers.
- **Onshore representation:** IoT service providers must have a local presence in the UAE or an official representative in the UAE who can liaise with the TRA on their behalf.
- **Data protection:** The IoT Policy requires compliance with data protection concepts adopted from the European data protection regime, namely: data minimisation obligations; limitations on the purpose for which data can be used; and the obligation to put in place minimum security requirements for the protection of data captured.
- **Data localisation:** Certain data of government entities are required to be kept within the geographic boundaries of the UAE (e.g., “Secret, Sensitive and Confidential” data). Other categories of data may be transferred overseas provided certain minimum criteria are satisfied.
- **IoT connectivity:** IoT service providers who provide “connectivity” for IoT ecosystems over a “wide area” using the Public Switched Telecommunications Network (PSTN) are obliged to notify the TRA of those activities in advance so that the TRA can take a view on whether or not those activities should be regulated under the IoT Policy. This could in theory capture providers of applications designed to interact with and manage the data collected from IoT-enabled devices.


3. **Uzbekistan Enacts Renewable Energy Law**

The Republic of Uzbekistan has adopted its first statute providing comprehensive regulation of its renewable energy sector. The country’s previous legislation in this area consisted mainly of different Presidential resolutions, often relating to particular projects. The purpose of the Renewable Energy Law is to help diversify Uzbekistan’s economy and to lessen its reliance on fossil fuel based energy by developing and regulating a renewable energy sector. The Law focuses both on the use of renewable sources of energy (“Renewables”) and on the production of equipment used in the renewable energy sector (“Equipment”). Under the Law, the term “Renewables” includes naturally replenished energy sources, such as sunlight, wind, geothermal heat, natural water waves and biomass.


**CG Caselets**

1. **Impact of Equifax, Facebook Settlements**

Health care industry boards should give close attention to the governance implications of recent privacy settlements entered into by Equifax and Facebook. Their unique facts and circumstances notwithstanding, the settlements send an important message on regulatory expectations for board oversight of consumer privacy concerns. They also provide useful suggestions on how to structure meaningful governance interaction with existing information security programs. For example:

- **Enterprise Risk:** The settlements send a clear message of increased government enforcement response to privacy
Board Engagement: Both settlements are suggestive of increased government expectations in all commercial sectors for board oversight of information security and privacy matters.

Privacy Committee: Health care boards may wish to evaluate whether the creation of a Facebook-styled board-level privacy committee would materially contribute to information security oversight.

Compliance Oversight: Board oversight of compliance may require a special privacy focus. Coordination between traditional compliance officers and information security officers may necessitate enhanced board supervision.

Individual Accountability: Settlement provisions requiring certifications by the board and the CEO are consistent with a broader regulatory focus on individual accountability and attributing greater responsibility to boards for corporate wrongdoing.


2. Intersection of Patient Safety and Governance

The July 1, 2019, release of the outside counsel investigative report analyzing significant and widely publicized patient safety allegations at a Florida-based children’s hospital illustrates the critical connection between quality of care and corporate governance. The report’s recommendations include (but are not limited to) a series of governance recommendations intended to enhance the oversight exercised by the hospital’s board and its system partners on quality of care and patient safety matters, including:

- Increasing reporting and access to board patient safety and quality committees by clinical and quality staff.
- Empowering the quality and patient safety director to collaborate with the board chair on review of patient safety and quality matters.
- Better orienting board members to their role in hospital quality and safety.
- Increasing the number of board and committee members with health care expertise.

Emphasis on board oversight of patient safety aligns with the focus placed on enforcement by the Centers for Medicare and Medicaid Services, state health departments and accrediting organizations. Considering these recommendations and recent patient safety developments at other health systems, counseling the board quality of care committee on its responsibility to engage on the governance implications of its oversight duties is key.


3. Conflicts in M&A Approval Process

A recent conflicts controversy involving a small district hospital’s consideration of affiliation opportunities offers an important reminder of broader governance issues that can threaten the logistics of the approval process. The issue at hand was the relationship of board size to the approval process—i.e., a five-member board with two members unable to vote because of conflict of interest. The expressed concern related to the exceptional burden on the remaining directors and the related impact on the affiliation process.

Similar issues can arise in the context of much larger boards. Conflicts of interest can disable board members otherwise key to the decision-making process. Members of the executive leadership team who have a financial or job security/advancement relationship to the transaction or the potential partner may be compromised from significant participation in the process. Large boards with spotty director attendance patterns may face significant challenges in achieving necessary quorum for key transaction meetings. The ability of the full board to rely on negotiating committees will depend in part on the expertise, degree of engagement and lack of conflict of committee members. All of this underscores the importance of identifying governance logistics well in advance of commencing any affiliation or other major board decision-making process, especially with respect to the identification and management of potentially critical conflict issues. The successful navigation of these governance issues will favourably affect the board’s ability to sustain its ultimate decision under state law, and to support the ability of individual directors to claim business judgment rule protection for their decisions.


Antitrust compliance programs promote vigorous competition in a free market economy by creating a culture of good corporate citizenship within a company that seeks to prevent antitrust violations. Although an antitrust compliance program may not prevent every violation, an effective compliance program should be able to detect and address potential antitrust violations. Moreover, effective antitrust compliance programs not only prevent, detect, and address antitrust violations, they also further, remedial efforts and help foster corporate and individual accountability by facilitating a corporation’s prompt self-reporting and timely and thorough cooperation in the Antitrust Division’s investigations. Indeed, a truly effective antitrust compliance program gives a company the best chance to obtain the significant benefits available under the Division’s Corporate Leniency program. This guidance document focuses on the evaluation of compliance programs in the context of criminal violations of the Sherman Act such as price fixing, bid rigging, and market allocation. It is intended to assist Division prosecutors in their evaluation of antitrust compliance programs at the charging and sentencing phases of an investigation. Although the evaluation of antitrust compliance programs is an important factor in the prosecutorial decision-making process at both charging and sentencing, a number of other important factors not addressed by this compliance
specific guidance also must be considered. It also draws on the United States Sentencing Guidelines’ evaluation of effective compliance programs. See U.S.S.G. § 8B2.1.

Online Available: https://www.justice.gov/atr/page/file/1182001/download

Consultation Papers

1. **UK: Risk Coalition consults on new risk guidance for financial services sector**
   The Risk Coalition - a network of not-for-profit professional bodies and membership organisations committed to raising standards of risk governance and risk management in the UK - has published for consultation its Principles and guidance for board risk committees and risk functions in the UK financial services sector The consultation closes on 20 September and the final guidance is expected in December 2019.

   **Online Available:** https://riskcoalition.org.uk/consultation

2. **UK: FRC consults on revised Ethical and Auditing Standards**
   The Financial Reporting Council of UK released an exposure draft on Revised Ethical Standard 2019. The FRC’s Ethical Standard applies in the audit of financial statements and other public interest assurance engagements in both the private and public sectors. It is read in the context of the Statement “The Financial Reporting Council – Scope and Authority of Audit and Assurance Pronouncements” which sets out the application and authority of the FRC’s Ethical Standard.

   **Online available:** http://corporatelawandgovernance.blogspot.com/2019/07/uk-frc-consults-on-revised-ethical-and.html

3. **UK: CIIA consults on draft Internal Audit Code of Practice**
   The Chartered Institute of Internal Auditors has published for consultation a draft of its new Internal Audit Code of Practice. The Code is intended to become a benchmark of best practice for boards, audit committees and regulators.

   The Code contains 30 recommendations, the first of which sets out the primary role of internal audit: “to help the board and executive management to protect the assets, reputation and sustainability of the organisations”. The second states that the scope of the internal audit should be unrestricted: “There should be no aspect of the organisation which internal audit should be restricted from looking at as it delivers on its mandate”.

   There are seven consultation questions; the first question seeks views on the scope of the Code: should it focus primarily on publicly listed companies or should large private companies and third sector organisations be included?

   **Online Available:** http://corporatelawandgovernance.blogspot.com/2019/07/uk-ciia-consults-on-draft-internal.html

4. **UK: Insolvency Service call for evidence on the regulation of insolvency practitioners**
   The Insolvency Service has published a call for evidence concerning the regulatory framework for insolvency practitioners, in particular the introduction of regulatory objectives and other changes made by Part 10 of the Small Business, Enterprise and Employment Act 2015.


5. **UK: The Financial Services Future Regulatory Framework Review**
   The Financial Services Future Regulatory Framework Review has now started with the publication, of a call for evidence document. The document introduces the Review and seeks views on its first phase: the coordination of regulatory activities by HM Treasury and the other UK regulators, including how firms and the regulators can work together to make authorisation, supervision and enforcement more efficient.


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**Study Centre Scheme**

In an attempt to enhance the infrastructural base of the Institute and to overcome the distance barrier for the students, the Institute of Company Secretaries of India had launched the Study Centre Scheme and needless to say, the same has been successful in creating the much needed links between the Institute and its stakeholders, especially students. With the aim to provide better facilities to students, the Institute has opened 01 study centre recently at Ananda Chandra College of Commerce, Jalpaiguri, West Bengal to the already existing fleet of 104 Study Centres.
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