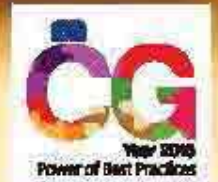


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# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



Focus on...

## SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015



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# 10

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- 1▶ Meeting of ICSI President with Hon'ble Union Minister, Ministry of Railways – CS Mamta Binani presenting a bouquet to Suresh Prabhu (Hon'ble Union Minister, Ministry of Railways).
- 3▶ Meeting of ICSI President with Hon'ble Union Minister, Ministry of Textiles - CS Mamta Binani interacting with Smriti Z Irani (Hon'ble Union Minister, Ministry of Textiles).
- 5▶ Meeting of ICSI President with Hon'ble Union Minister of State for Finance and Corporate Affairs – CS Mamta Binani seen interacting with Arjun Ram Meghwal (Hon'ble Union Minister of State for Finance and Corporate Affairs).
- 8▶ Meeting of Central Council Member, ICSI with Union Minister of State, Ministry of Law and Justice; and Ministry of Electronics and IT - CS Vineet K Chaudhary presenting a bouquet to P P Chaudhary (Hon'ble Union Minister of State, Ministry of Law and Justice; and Ministry of Electronics and IT).
- 9▶ Meeting of Council Member, ICSI with Member of Parliament, Bijnor Constituency, UP - CS Vineet K Chaudhary presenting a bouquet to Raja Bharatendra Singh (MP, Bijnor Constituency, UP).

- 2▶ Meeting of ICSI delegation with Hon'ble Union Minister, Ministry of Rural Development, Panchayati Raj, Drinking Water and Sanitation - Sitting from Left (clock wise) - Narendra Singh Tomar (Hon'ble Union Minister, Ministry of Rural Development, Panchayati Raj and Drinking Water and Sanitation), CS Anamika Chaudhary, CS Alka Kapoor, CS G P Madaan, CS (Dr.) Shyam Agrawal and CS Pavan Kumar Vijay.
- 4▶ Group Photo – Smriti Z Irani seen with CS Mamta Binani and others in the picture.
- 6▶ ICSI President's Meeting with Member of Parliament – CS Mamta Binani seen with Meenakshi Lekhi (Member of Parliament).
- 7▶ ICSI President's Meeting with Secretary, Ministry of Ayush - CS Mamta Binani seen with Ajit M Sharan (Secretary, Ministry of Ayush).
- 10▶ Meeting of ICSI delegation with Chairman, Khadi and Village Industries Commission (KVIC) – CS Mamta Binani seen presenting a bouquet to Vinai Kumar Saxena (Chairman, KVIC, Ministry of MSME). CS Ashok K Dixit is also present on the occasion.





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- 11▶ Meeting of ICSI delegation with Chairman, CCI – Sitting from Left: CS Dinesh C Arora, CS Mamta Binani and Devender Kumar Sikri (Chairman, CCI).
- 13▶ Signing ceremony to explore mutual cooperation between The Institute of Company Secretaries of India and Malaysian Association of Company Secretaries – Standing from Left: Tuan Haji Johari bin Haji Zakariah (Deputy President, MACS), Tuan Haji Osman bin Ujang (Council Member, MACS), Lau Haw Chong (President, MACS), CS Mamta Binani (President, ICSI), His Excellency T.S. Tirumurti (High Commissioner of India to Malaysia) and CS Ahalada Rao V (Council Member, ICSI).
- 15▶ WIRC - Bhayander Chapter - Full Day Seminar on Corporate Laws, M & A and White Collar Crimes – Seen in the picture from Left: CS Manoj Mimani, CS Manish Baldeva, CS Sunil Agarwal, CS Praveen Soni, CA Nitesh Mehta (faculty) and CS Rakesh Gupta.
- 17▶ NIRC – Faridabad Chapter – Seminar cum PDP on GST – An Opportunity for Professionals – Sitting from Left: CS Praveen Ranka, CS P K Mittal and CA Nagesh Bajaj.

- 12▶ Meeting of ICSI delegation with Member, CCI on 30.9.2016 – Sitting from Left: CS Vineet K Chaudhary, CS Mamta Binani, CS Dinesh C Arora and CS (Dr.) M S Sahoo(Member, CCI).
- 14▶ National Seminar on NCLT & NCLAT – Convergence of Corporate Jurisdiction held at Hyderabad - Standing from Left: CS R. Venkata Ramana, CS Mahadev Tirunagari CS Kavitha Rani, CS Ahalada Rao V, Vijay Kumar Jhalani, CS R. Ramakrishna Gupta and CS Saurabh Kalia (Sastra Legal, New Delhi).
- 16▶ EIRC - CS Sandip Kumar Kejriwal presenting a memento to Manorama Kumari (Member (Judicial), NCLT, Kolkata Bench) at the valedictory session of MSOP. Others seen in the picture from Left: CS Ashok Purohit, CS Siddhartha Murarka, and DVNS Sarma.
- 18▶ WIRC – Ahmedabad Chapter – Pre-convention Meeting with Members - Sitting on the dais from Left: CS Tushar Shah, CS Ashish Doshi, CS Mamta Binani, CS Vineet Chaudhary and CS Jignesh Shah.





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19> NIRC - Seminar jointly with Varanasi Chapter of NIRC on Judicial Forum - NCLT & NCLAT & GST - Prof. Asha Ram Tripathi (Head & Dean, Faculty of Commerce, BHU) addressing. Others sitting from Left: CS Ranjeet Pandey, CS Nesar Ahmad, CS Manish Gupta, CS Amit Gupta and CS Ajay Jaiswal.

21> SIRC - One day seminar on Drafting and Vetting of Contracts -Aarthi Sivanandh (Partner, J Sagar Associates, Chennai) addressing. Others sitting from Left: CS Srinivasan T A and CS Mohan Kumar A.

23> WIRC -Rajkot Chapter - Joint programme on GST with Rajkot Chamber of Commerce and Industry- Sitting on the dais from Left: CS Paras J Viramgama, CS Piyush R Jethva, CS Purvi G Dave, Advocate Nayan Sheth (Guest Faculty), Shivalbhai L Barashiya (President, RCCI) and Arunbhai C Mashru (Chairman, Taxation Committee, RCCI).

25> SIRC -Coimbatore Chapter -CS Corp Smart 2016 -15th Students Conference on CS Profession - Empowering the Smarters - CS A.R.Ramasubramania Raja, addressing. Others sitting on the dais from Left: Srikanth Thamban, CS R. Maheswaran, Dr.P.R.Muthuswamy, (Principal, Dr.N.G.P Arts & Science College, Coimbatore), Chief Guest Dr. S.P. Viswanathan (President, Empereal KGDS Renewable Energy Pvt. Ltd) and R. Kalayani.

20> NIRC - Full Day Program jointly with Chandigarh Chapter of NIRC on NCLT - Prepare to Excel - Sitting from Left: CS Manish Aggarwal; CS Satwinder Singh, CS Manish Gupta, Chief Guest D K Singh (OL - Chandigarh, MCA, Attached to High Court of Punjab & Haryana), CS G S Sarin and CS Nitin Kumar.

22> A view of the invitees, dignitaries and delegates at the one day seminar.

24> WIRC - Thane Chapter - Competition Advocacy Programme - Nandan Kumar (JD, CCI) addressing.

26> A view of the student participants at the Conference.





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27► WIRC – Pune Chapter – Full day programme on All About Contracts – CS Hrishikesh S Wagh addressing. Others sitting on the dais from Left: CS Kiran Chitale, CS Vivek Sadhale and CS Rohit A Gokhale.

29► ICSI – CCGRT – Half-day Workshop on SME Exchange –Present on the occasion among others CS Shailashri Bhaskar (4th from left), CS Kaushik Jhaveri (6th from left) and Dr.Rajesh Agrawal (7th from left).

32-35► Swachhta Drive as a part of Swachh Bharat Mission held at ICSI HQ – CS Mamta Binani addressing Team ICSI on the occasion.

36► A glimpse of Swachhta Rally around HQ at New Delhi to create awareness about cleanliness among the general masses.

28► EIRC – Bhubaneswar Chapter - Celebration of 35th Foundation Day of the Chapter - Sitting on the dais from Left: CS Priyadarshi Nayak, CS Asho Kumar Mishra, Jagadananda (Founder Secretary, CYSD & former Information Commissioner, Odisha) and CS Surendra Nath Mallick.

30 & 31► NIRC – Allahabad Chapter - Seminar on GST - A view of the speaker and the participants at the seminar.

37► Precious You – CS Mamta Binani addressing during the monthly webcast talk for ICSI students.



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***Dear Professional Colleagues***

***Sub.: ICSI National Convention Memoir***

It gives me immense pleasure to share with you that the Institute has brought out a Memoir 'Golden Leafs of ICSI National Conventions 1972-2015' first of its kind initiative, covering over four decades of National Conventions to commemorate the glorious success of these mega events. It offers a valuable insight into the yester years of ICSI National Conventions and gives a glimpse of every Convention and highlights the excerpts from the speeches of the distinguished speakers.

It shows the hard work and contributions of all distinguished Past Presidents, Past and Present Council Members, Regional and Chapter Leaders and Past Secretaries and the Secretariat in making these Conventions a success. Therefore this publication is dedicated to all the pioneers and contributors to the Profession of Company Secretaries. I am sure this publication will receive the patronage from all the readers and members across the world and will be treasured for the future generations.

I once again thank one and all for each bit of everything that you have kindly dedicated to the Institute. You can kindly view the e-version of the Memoir on the link: [http://www.icsi.edu/webmodules/ICSI\\_Goldenebook/ICSI\\_GOLDEN\\_LEAF.html](http://www.icsi.edu/webmodules/ICSI_Goldenebook/ICSI_GOLDEN_LEAF.html)

***Regards***

***CS Mamta Binani  
President, ICSI***



# Golden Leafs

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NATIONAL CONVENTIONS

1972 - 2015



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SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 » P-19

### Rakesh Wadhwa

SEBI (LODR) Regulations, 2015 was a sincere effort on the part of SEBI with the aim to consolidate and streamline various listing agreements entered by listed entities & Stock Exchanges into one Document to regulate the listed entities in order to retain their status as listed company. The legal recognition and enforceability through the regulations will bind the companies to comply with the regulations in its true sense. There are various stakeholders like listed entity, government, shareholders, prospective investors, professionals, analysts who are affected by the SEBI (LODR) Regulations. But it is clear that the professionals especially company secretaries, who are responsible for ensuring compliances under the Regulations will be a strong pillar to bring success towards the objective of SEBI.

Reposing Investors' Confidence – Listing Regulations – An answer to Corporate Frauds and Malpractices » P- 27

### S Sudhakar

An act of corporate fraud occurs when the fraudsters find an opportunity and make a series of decisions with a view to obtaining benefits in an illegal way. One of the ways to deal with the corporate frauds and malpractices is to tighten the Regulatory and Statutory provisions so that no opportunity is available to the fraudsters. Several measures were taken by the Stock Exchanges and SEBI while enforcing the erstwhile listing agreement. These provisions were consolidated and further strengthened and fortified in the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015. Listing Regulations have taken several measures to repose investor confidence. Elaborate procedures have been prescribed to protect the interest of security holders and also to ensure that frauds and malpractices do not take place.

Corporate Governance Under SEBI(LODR) Regulations, 2015 vis-a-vis The Companies Act, 2013 » P- 30

### Shailashri Bhaskar

Corporate Governance is here to stay. All companies whether listed or unlisted have to adopt the principles and comply with the same. SEBI which had introduced the Corporate Governance principles as Clause 49 in the Listing Agreement first amended the Clause so as to bring it in line with the principles laid down in the Companies Act, 2013. The compliances with regard to Corporate Governance for a listed entity are currently included under Regulations 17 to 27 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 which came into effect from December 01, 2015. This article aims to make a comparative study between the principles as contained under the Companies Act, 1956 and under the SEBI (LODR) Regulations, 2015 and emphasizes the need that a listed entity is required to comply with that principle which is the stricter of the two, i.e. the Act or the Regulations.

Related Party Transactions under SEBI (LODR) Regulations, 2015 wider in scope than section 188 of the Companies Act, 2013 » P- 34

### Dr. D K Jain & Surilee Saraf

The Listing and Disclosure Regulations issued by the SEBI in 2015 contain provisions dealing with related party transactions and the scope of these Regulations appear to be wider than the provisions on the subject contained in the Companies Act, 2013. Greater focus has been placed by the regulators on the issue of investor protection, particularly that of the minority shareholders. Comparative analyses of these provisions have been attempted in the article.

Related Party Transactions under the new regime of Companies Act 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 » P-41

### Suhita Mukhopadhyay

Related Party Transactions briefly refers to a business dealings or arrangement between two parties who are connected by a special relationship prior to the deal. The Companies Act, 2013 read with applicable Rules framed thereunder, the SEBI Listing Agreement, the SEBI Listing Regulations (LODR) which were published on 2<sup>nd</sup> September 2015 along with Indian Accounting Standard (AS 18), provide a composite code for regulating transactions with related parties. The related party disclosure has gained tremendous significance not only in terms of the provisions of SEBI Regulations, Companies Act and Accounting Standards, but also in terms of the provisions of the Income Tax Act, 1961 with the recently introduced sections and rules for transfer pricing, in relation to transactions with associated enterprises. There were several facets in the law relating to related parties which had assumed draconian proportions and therefore needed to be in sync with the economic environment. The Companies Act 2013 and the present Listing Regulations will provide a big relief as it causes removal of provisions which are ex-facto oppressive to an environment to do business. The article focuses on the Related Party transactions under the new Regime.

SEBI LODR Regulations, 2015 - Finance perspective » P-47

### G Prasanna Bairy

SEBI LODR Regulations, 2015 has streamlined the compliance requirements as regards listing obligations. It has brought uniformity in compliance requirements besides elaborating the obligations. At the same time it has cast such a huge responsibility on listed entity, KMPs, other concerned officials that no wonder one might have to read "LODR" as "LORD". In the light of the above, an attempt has been made in the article to highlight the important aspects of the Regulations, points of difference between the Regulations as compared to erstwhile listing agreement, time and event based compliances, mandatory committees, policies etc.

Disclosure of Material Events/ Information under the LODR Regulations: How to Determine 'Materiality'? » P-54

### Diksha Jain

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 seek to provide a comprehensive legal framework for disclosure requirements applicable to various listed



entities. The aim of these regulations is to bring better enforceability and parity while making disclosures. Towards this end, Regulation 30 under these regulations specifies certain events/ information as 'material' which shall compulsorily be disclosed by the listed entities. The Regulation mentions two kinds of 'material event/ information', *firstly*, those considered as 'Deemed Material' and *secondly*, those that are considered material as per the policy/ guidelines made by the listed entity in this regard. However, in the absence of the definition of the term 'material event/ information' under these regulations or the Companies Act, 2013, it becomes important to examine how materiality may be determined if the event/ information does not fall under the two categories mentioned above.

**Disclosures of UPSI under the SEBI (LODR) Regulations, 2015** ➤ P-58

**Sathyanarayana Reddy P & Dr. V. Balachandran**

At the core of any regulation that regulates and prohibits insider trading lies the concept of Unpublished Price Sensitive Information (UPSI). UPSI is essentially information that is not generally available which on becoming generally available, would materially affect the price of securities to which it relates. Chapter-IV of the SEBI (Prohibition of Insider Trading) Regulations, 2015 deals with the Code of Fair Disclosure of Unpublished Price Sensitive Information. An attempt has been made in this article to analyse the concept of "material events in accordance with the listing agreement" and the wider meaning of "securities" that would fall within the ambit of SEBI (PIT) Regulations, 2015 in alignment with the "disclosures of price sensitive information" required under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The recommendations for prevention of abuse of privileged information by the International Organization of Securities Commissions (IOSCO), London, UK are worthy of consideration.

**LODR in Public Glare** ➤ P-63  
**Namita Tripathi**

"LODR" is formulated to align with the regulatory requirements arising out of the dynamic changes in the capital market. After the applicability of LODR, listed entities are quite vigilant and cautious while complying with the rules and regulations of LODR. LODR increases the legal force behind provisions, prescribing post-listing obligations & disclosure requirements & also opens up new avenues for shareholders to enforce post-listing requirements. Under LODR, various compliances have to be made within the stipulated time period & if the compliance part has not been done within the time as specified in the prescribed regulation, there are heavy penal provisions provided therein. Further, LODR has shouldered many responsibilities to the Professionals like Company Secretary. It has opened the blocked path by furnishing great opportunities to them. In order to justify with the entrustment of additional responsibilities, CS would be required to make extra efforts & invest substantial time to update themselves & also make in-depth analysis of Listing Regulation. However, there are few ambiguities for the compliance as demanded by the LODR, which made the companies to face the hardships.

**Regulation 30 of LODR Regulations, 2015: Continuous Disclosure Requirements for Listed Entities** ➤ P-67

**Tanushree Dave**

Regulation 30 i.e., Continuous Disclosure Requirements for Listed Entities of Securities and Exchange Board of India

(Listing Obligations and Disclosure Requirements) has been prepared in such a manner which has covered almost every event(s), every regular compliance, details of KMPs etc. to be notified to the exchange within the prescribed time. This will certainly bring uniformity, transparency, consistency in the whole corporate system. The burning question of Related Party Transactions, materiality, threshold limits, compliances are all being covered in these regulations on a wider scope. In order to align with the Companies Act, 2013 the Regulations substituted the old mandate of approving Related Party Transactions through special resolution, thereby permitting listed entities to approve the same through an ordinary resolution. But, the restriction on voting by related parties is not done away with. Regulation 23(4) read with 23(7) states that while approving material related party transactions, all related parties whether or not concerned with the particular transaction, must abstain from exercising their votes. Therefore, the approval process under the Regulations takes away major exceptions and continue to remain stricter in comparison to the Companies Act, 2013.

Part-II Articles

**Understanding Proposed GST Law** ➤ P-74  
**Dr. Sanjiv Agarwal**

India is on the verge of entering into the most important indirect tax reform of the century as it moves forward towards Goods and Services Tax (GST) regime at a fast pace. Soon, GST may become a reality in 2017. With this, India will join the league of 160 plus nations who are already practising GST. As a new tax, GST once introduced shall subsume over a dozen indirect taxes levied by Union of India and State Governments, major ones being - Central Excise Duty, Service Tax and Value Added Tax. GST is a tax levied on goods and services imposed at each point of sale or rendering of service with facility of set off of input taxes at each stage in the value chain. While the mode GST law and draft rules / forms are now in public domain, this article is an attempt to explain certain basic facets of proposed GST such as charge of tax, taxable person, place of business etc. GST is expected to change the economy on a positive note, improve business operations and bring down the prices. Once implemented, it will be a win-win for all stakeholders.

**Goods and Services Tax – Business Transformation & Drivers of Economic Growth** ➤ P-77  
**Sanjay Malhotra**

Introduction of Goods and Service Tax - "One Nation One Tax" would not only lead to change in Indirect Tax Structure, but impact the Business Processes also. Supply Chain Management System comprising Strategic Sourcing, Operations, Logistics, Warehousing, Sales through Intermediaries, etc. needs to be reviewed and moulded accordingly in light of Model GST Law. Working Capital / fund management needs to be managed as Minimal Tax Exemptions would exist in GST Law. Imports and Exports to be reviewed from GST perspective also. Uniform Taxation across States would make most of businesses to assess the sourcing strategy whether to source within state or inter-state as Input tax credit shall be available in entire value chain, whether to retain warehouses or to move to direct sales from manufacturing units. Most Important aspect of GST is "Digital Environment" (Paperless transactions), wherein the data relating to Input Tax Credit, Tax on sales, purchase, TDS, etc. is available online in GSTIN website. "No Dual Control" for stakeholders having aggregate turnover up to Rs. 1.50 cr. would reduce the transaction cost thus adding to growth in Nation's GDP.

Service Tax on services provided by Government & Local Authorities

» P-80

### Vineet Chopra

Services sector of India is the fastest growing sector, which encapsulates many areas like IT, telecom, logistics, finance, education, tourism, professional services, etc. It is contributing significantly to the GDP. With a view to broaden the service tax base, more and more services are included in its fold, recent one is the services provided by the Government and local authorities. These services are now made liable to service tax, consequently, now cost to avail Government services will be more expensive. Professionals like Company Secretaries are frequently availing services of the Government and local authorities for regulatory and other business requirements. An effort has been made in this article to examine various aspects of taxability of Government services.

Appeals to NCLAT from orders of NCLT – Whether on Points of law only or on both facts and law? » P-83

### Delep Goswami & Anirrud Goswami

With regard to filing of appeals to the NCLAT from the orders of NCLT, there is an ongoing debate amongst the corporate professionals as to whether such appeals will be restricted to only points of law or on both points of law as well as facts. This is based on the wordings of Section 421 of the Companies Act, 2016 read with Rule 22 of the NCLAT Rules and Form No. NCLAT-1 which are in contrast to the provisions of erstwhile Section 10F of the Companies Act, 1956. Further, as per Section 424 of the Companies Act, 2013, the NCLAT shall not be bound by the procedure laid down in the Civil Procedure Code, but shall be guided by the principles of natural justice and as stated therein the NCLAT is empowered to regulate its own procedure. The article addresses these aspects of law.

## RESEARCH CORNER

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Harmonizing Theory of Planned Behaviour and Technology Acceptance Model in Explaining the Adoption of the E-filing System » P-89

### Sumit Kumar Maji & Kalyan Pal

The paper examined the validity of Theory of Planned Behaviour (TPB) as proposed by Ajzen (1985) and Technology Acceptance model (TAM) as suggested by Davis et al., (1989) in explaining the e-filing adoption amongst the people in the context of Burdwan District, West Bengal, India. In attaining the objectives of the study, primary data were collected by administering structured questionnaire to the e-filing system users. The analysis of the primary data so collected showed that the e-filing system acceptance gets mainly affected by the perceived ease of use and e-filing website service quality. However the perceived risk was found to be adversely affecting the e-filing adoption process. The findings of the study conformed to the theoretical arguments put forwarded in TPB and TAM.

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▶ LMJ: 12:10:2016 The inescapable conclusion is that it is the Indian Company which is in occupation and is carrying on business in the premises in question rendering the appellant liable for eviction.[SC] ▶ LW: 59:10:2016 CCI holds Jayprakash Associates to have indulged in abuse of dominance and orders investigation by DG.[SC] ▶ LW: 60:10:2016 We exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial. [SC] ▶ LW: 61:10:2016 The Commissioner exceeded his jurisdiction in re-appreciating the evidence adduced before the Enquiry Officer and in substituting his own judgment to that of the Disciplinary Authority. [SC] ▶ LW: 62:10:2016 Value of contracts given to sub-contractors cannot be included in the total turnover of the assessee.[SC] ▶ LW: 63:10:2016 As the expenditure is incurred to protect his business interest the same is required to be allowed.[ITAT-MUM] ▶ LW: 64:10:2016 Retail sale price which is printed on the neck of the bottle, though not indicated on the label, is in consonance with the Rules and it could not be construed as a violation. [Kant] ▶ LW: 65:10:2016 In the considered opinion of this Court, an important part of cause of action arose within the territorial jurisdiction of Delhi Courts and so, trial court has erred in solely relying upon the jurisdictional clause in the Invoice although it did not oust the jurisdiction of the other courts. [Del] ▶ LW: 66:10:2016 Photocopying of text books does not result in copyright infringement.[Del]

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- Company Secretaries Benevolent Fund
- List of Practising Members/Companies Registered for Imparting Training
- Regional News
- Guidelines for Change in Name of Proprietorship Concern/ Firm of Company Secretary(ies)
- Revision in the Annual Membership fee, Entrance Fee and Certificate of Practice fee for Associate and Fellow Members
- Revolving Fund Schemes for becoming life members of CSBF
- Ethics & Code of Conduct Corner
- Ethics & Sustainability Corner
- GST Corner
- CG Corner
- 44<sup>th</sup> National Convention





विद्या नम नरस्य रूपामधिकम प्रहन्न गुप्तं धनं  
विद्या भोगकरी यशः सुखकारी विद्या गुरुणाम गुरुः।  
विद्या बन्धुजनो विदेशगमने विद्य परं देवतं  
विद्या रजसु पूज्यते नहि धनं विद्या विहीनः पशुः॥

(Education beautifies man-A hidden treasure of wealth, cause of fame, happiness and fulfillment of all worldly desires, Master of all masters; appreciated among the family members as well as in foreign countries, a cause of highest bliss; honored by the King where wealth is not honored. A person without education is an animal indeed.)



## Esteemed Professional Colleagues

For any Company, which believes in implementing Corporate Governance practices that go beyond just meeting the letter of law, it becomes obvious to meet with the regulations, which in case of India are, the Companies Act, 2013 and lately mandated elements of SEBI Listing Obligations and Disclosure Requirements Regulations, 2015 which have an enhanced focus on Corporate Governance. The LODR, 2015 Regulations are applicable to any entity (whether a company or not) accessing the stock exchange, for listing equity shares, debt securities, preference shares, depository receipts, securitized debt instruments, mutual fund units, and other securities as may be specified by SEBI. One regulation to rule them all; new LODR Regulations, 2015 will compel more transparency in listed entities.

One of the apt regulation in LODR, 2015 related to our profession is Regulation 6, which mandates a Company to appoint a Qualified Company Secretary as a Compliance Officer, who shall be responsible for ensuring conformity with regulatory compliance, co-ordination and reporting to the Board, compliance with applicable laws, monitoring grievance redressal, ensuring that correct procedures have been followed, that would result in making accurate and correct disclosures by the listed entity.

As LODR has opened a new avenue of growth in our profession, therefore, Team ICSI earnestly pinned down that making LODR, 2015 as 'centriole' of this issue would be very propitious for esteemed members and professionals. Looking at the stew of pieces of research we have received for this issue, I promise that you will feel enriched after leafing through this special issue.

Moving ahead, the month of September happened to be a vivacious month with lots of initiatives taken by ICSI to further our profession. As the captain of ICSI ship, I feel privileged to take

your goodselves on the voyage of ICSI towards excellence in the month gone by:

### Meetings

Taking forward our initiatives for exploring opportunities towards joint participation in flagship Government initiatives, ICSI met the following dignitaries:

- Sh. Suresh Prabhu, Hon'ble Minister of Railways
- Mrs. Smriti Zubin Irani, Hon'ble Minister of Textiles
- Sh. Narendra Singh Tomar, Hon'ble Minister of Rural Development, Panchayati Raj, Drinking Water and Sanitation
- Sh. Arjun Ram Meghwal, Hon'ble Union Minister of State for Finance and Corporate Affairs
- Sh. P. P. Chaudhary, Hon'ble Minister of State, Law & Justice, Electronics and Information Technology
- Ms. Meenakshi Lekhi, Hon'ble Member of Parliament
- Sh. Bharatendra Singh, Hon'ble Member of Parliament
- Sh. Ajit M Sharan, Secretary, Ministry of Ayush
- Sh. Vinai Kumar Saxena, Chairman, Khadi & Village Industries Commission (KVIC), Ministry of MSME
- Sh. Devender Kumar Sikri, Chairperson, Competition Commission of India
- Sh. Madhusudan Sahoo, Chairperson, Insolvency and Bankruptcy Board of India

### Appointment of CS Madhusudan Sahoo as the Chairperson of the Insolvency and Bankruptcy Board of India (IBBI)

Moving to put in place a bankruptcy framework in India, the Appointments Committee of the Cabinet (ACC) appointed CS Madhusudan Sahoo as the Chairperson of the Insolvency and Bankruptcy Board of India (IBBI). CS Sahoo is also a member at

anti-trust regulator Competition Commission of India and was earlier a member at capital markets regulator Securities and Exchange Board of India. IBBI is mandated to regulate functioning of Insolvency Professionals, Insolvency Professional Agencies and Information Utilities under the Insolvency and Bankruptcy Code, 2016. ICSI extends its heartiest congratulations to CS Madhusudan Sahoo on assumption of his new responsibilities and wishes him every success in his new role. We are sure that his exceptional leadership acumen will provide exceptional leadership to the Board (IBBI) and we at ICSI, pledge our every support to him for paving the way for setting up of a complementary eco-system for successful implementation of the Bankruptcy Code in India.

### Proposing to extend Secretarial Standards at Panchayat Level

ICSI delegation met Sh. Narendra Singh Tomar, Hon'ble Union Minister and the Secretary, Ministry of Rural Development, Panchayati Raj, Drinking water and Sanitation and apprised him about the Secretarial Standards formulated by ICSI through its Secretarial Standards Board. ICSI apprised him that it is keen to raise Good Governance flag high at village level and wishes to formulate Secretarial Standards for meetings of Panchayats as a unique and pioneering step towards integration, harmonisation and standardization of diverse practices prevalent in the meetings of the Panchayats.

### Meeting with Ambassador of India in Jakarta, Indonesia and Chairman, ICSA

The ICSI delegation met Her Excellency Nengcha Lhouvum, Ambassador of India in Jakarta, Indonesia and Sh. Hardijanto Saroso, Chairman, Indonesian Corporate Secretary Association (ICSA) on September 13 and apprised them of initiatives of the Institute towards growth & development of the profession of Company Secretaries, promotion of Good Corporate Governance and Make in India drive of the Government of India.

### Suggestions/ Representations Submitted

With a view to explore opportunities for contribution by the profession and partake in ensuring better governance, the Institute submitted its suggestions and representations to the following:

- Ministry of Finance for GST
- Ministry of Labour and Employment
- Ministry of Electronics and Information Technology
- Ministry of Mines
- Insurance Regulatory and Development Authority of India
- Ministry of New and Renewable Energy
- Tax Commissioner(s) of different States.

### Let us Register for 44th National Convention

It is our pleasure to announce that the most awaited 44<sup>th</sup> National Convention of Company Secretaries is going to be held at Mahatma Mandir, Gandhinagar, Gujarat from November 17 to 19, 2016. The registrations are open for this much awaited mega event of the ICSI. We take pleasure in inviting esteemed members and students to enrich themselves by participating in this Convention. Extended details may be accessed from web link [https://www.icsi.edu/National\\_Convention.aspx](https://www.icsi.edu/National_Convention.aspx)

### Release of Brochure of Global Congruence on Corporate Governance

ICSI is hosting its first ever Global Congruence to promulgate International Corporate Governance Day on December 08 - 09, 2016 at Hyderabad, the Curtain Raiser Brochure is on ICSI website. The objective of the Congruence is to re-iterate and create further sensitization with respect to adoption of Good Governance practices. We request whole CS fraternity to make this event a grand success as it is a sententious step towards creating international consensus for the International Corporate Governance Day.

### 1st CSR Excellence Awards, 2016

*It is easy to dodge our responsibilities, but we cannot dodge the consequences of dodging our responsibilities.* The same is true for corporate sector also, realizing importance of which companies have started taking their CSR responsibilities with sobriety. To commend efforts of such companies performing exceptionally under CSR umbrella, the ICSI has initiated '1st ICSI CSR Excellence Awards'. You are requested to encourage the companies you represent to get nominated for this award before October 10.

### INSOL Seminar at Jakarta

INSOL International is a world-wide federation of national associations of professionals specializing in turnaround and insolvency. The Institute participated at one day Seminar organized by INSOL International in Jakarta, Indonesia on September 14. The Seminar provided a forum for exchange of information and ideas among insolvency practitioners, judges and regulators from various jurisdictions.

### MACS Conference

The Institute participated in the Malaysian Association of Company Secretaries (MACS) Conference, 2016 organized on September 27 – 28 at Kuala Lumpur. Myself, on behalf of ICSI, addressed the participants on 'The Role of the Company Secretary as the Chief Governance Officer-The India's Experience'. The Conference served as a premier platform to enhance knowledge about latest regulatory changes and developments in area of Corporate Laws, Governance and Compliance in India.

### 2nd HR Conclave – A New Push to ICSI Placement Endeavours

ICSI is trying its level best to boost the employment opportunities for our members by unleashing diverse expert roles played by any Company Secretary besides handling compliance functions. In this view, the 2<sup>nd</sup> ICSI HR Conclave was held at Hotel ITC Grand Maratha, Mumbai on September 23 with Hindustan Times Media (*Shine.com*). This Conclave witnessed participation of around 230 HR Heads from leading companies, MNC's, Banks, PSU's, Consultancies such as Oracle, KPMG, PWC, Capgemini, Godrej, Tata Communications Ltd. Wockhardt, Valvoline Cummins, Tata Power, Panacea Biotech, Boehringer Ingelheim, Exide Life, Aditya Birla Retail etc. I am sure that this Conclave will manumit the ocean of employment opportunities for our esteemed members.

### Release of e-book- 'Golden Leafs of ICSI National Conventions 1972-2015'

During 17<sup>th</sup> PCS Conference at Kasauli, the Institute had released 'Golden Leafs of ICSI National Conventions 1972-2015' with a view



to commemorate the glorious success of Conventions in the past. In September, the e-book of this publication was also released.

## GST Master Classes

ICSI conducted a series of Master Classes on GST through webinars. Appreciating the overwhelming response, the Institute launched its Second Series on September 30. This online series encapsulates deliberations on the detailed provisions of the Model GST law like Input tax credit, Transitional provisions under GST, IGST, Returns, records, Show cause, Adjudication, Revision, Review & Appeals, TDS, TCS, Refund etc. The detailed schedule of the Series is available under the GST Corner of the Institute's website.

## FAQs on GST

Central Board of Excise and Customs (CBEC) has released a comprehensive set of FAQs providing an insight into the provisions of the proposed GST law structure. To disseminate the same among ICSI stakeholders, we have uploaded these FAQs under the GST Corner of the Institute's website. The esteemed readers may go through them to enhance their understanding about the intricacies of the proposed law.

## Certificate Course on Valuation

*Knowledge has to be improved, challenged, and increased constantly, or it vanishes - Peter Drucker.* Keeping this in mind, the Institute has launched Online Certificate Course in Valuation (CCV) in association with National Institute of Financial Management, Faridabad (NIFM) in July, 2016. We are gratified to apprise you all that the first batch of this Course commenced on September 10 which will definitely sharpen the skill sets of its takers.

## Diploma in Internal Audit (DIA)

*Real knowledge is to know the extent of one's ignorance - Confucius.* Section 138 of the Companies Act, 2013 introduced the concept of Internal Audit to the forefront. In this backdrop, the Institute has launched Diploma in Internal Audit in association with National Institute of Financial Management, Faridabad with a view of endowing its members with the specialized knowledge in the area of Internal Audit. We are glad to share that the first batch of this Course commenced on September 24.

## Short Term Course on International Business Taxation

Appreciating the response of members to online Courses, we delightfully apprise you of a new online 15 days short term Course in International Business Taxation which is designed to provide the members, students and professionals with a visible means of having acquired specialized knowledge in all aspects of International Taxation.

## Annual General Meeting of CSBF

I feel content to announce that the Managing Committee of the Company Secretaries Benevolent Fund (CSBF) has decided to raise the quantum of financial assistance to the dependent(s) of its life members from Rs. 5 Lakh to Rs. 7.5 lakh w.e.f. 1<sup>st</sup> January, 2017 in the unfortunate event of the death of the life member. This has fulfilled a long-standing appeal of the life members and has been made possible by the persistent efforts of the Managing Committee. I would, hence, urge all esteemed members to take life membership of the CSBF by making a onetime online/offline payment.

## CS Olympiad

*Spread your wings and let the fairy in you fly!* To tap the hidden potential and talent among the students all over the country, ICSI mooted the concept of CS Olympiad during the year 2015. Major objectives of launching the CS Olympiad were to enhance visibility of the profession of Company Secretaries among prospective students, creating synergy with thousands of Schools located in different parts of the country and attracting best talent to the profession. I am delighted to share with you all that the response to the first ever CS Olympiad from the students as well as schools is beyond our expectations. More than 36,000 students from over 1,430 schools enrolled for the CS Olympiad. The first phase of CS Olympiad was successfully conducted on 15 September, 2016 and the second phase is scheduled to be conducted on 4 October. The Institute partnered with Science Olympiad Foundation (SOF) which is pioneer in conducting Olympiads in India.

## Study Centre Scheme

*There are two lasting bequests we can give our children: One is roots, the other is wings.* In its continuous endeavour to provide accomplished services to our students, the Institute is paying attention to the regions where Chapter offices are lacking yet and has set up 27 Study Centres across the nation in association with leading Colleges/Universities. In this drive, 'Tinsukia' and 'Assam' Study Centres will go a long way in facilitating the students in North Eastern region.

## Capacity Building Seminar on NCLT and NCLAT

*Ignorance is the curse of God; knowledge is the wing wherewith we fly to heaven.*

To bail out our members and students for gaining insight into updated provisions of law about NCLT and NCLAT, a capacity building seminar was organised at Hyderabad on September 10.

## Khadi, the Dream project of Government of India

*For every minute I spin, there is in me the consciousness that I am adding to the nation's wealth. So said the Father of our Nation Mahatma Gandhi about the humble fabric 'Khadi'.* It is not just a cloth, but a complete movement started by Gandhiji. The Khadi movement aimed at boycotting foreign goods and promoting Indian goods, thereby improving India's economy. Mahatma Gandhi began promoting the spinning of khadi for rural self-employment and self-reliance in 1920s, thus, making Khadi, an integral part and icon of the Swadeshi movement. Appreciating the importance of Khadi, the Institute stationed a KVIC Van at ICSI Head Quarters to spread awareness about the role played by Khadi & Village Industries Commission (KVIC) in nation building and to facilitate ICSI stakeholders to buy the Khadi products at their doorsteps.

## Swacchta Drive

*Cleanliness is Godliness* is the Mantra of Gandhiji, Father of the Nation. The Government of India launched Swachh Bharat Abhiyan on 2 October 2014 with a vision to dedicate Clean India on 150<sup>th</sup> Birth Anniversary of Mahatma Gandhi on 2 October 2019. For pouring our drop in the ocean under the aegis of the Ministry of Corporate Affairs, ICSI carried out Swacchta Drive on September 05 and 30 at ICSI Head Quarters to create awareness about cleanliness among the general masses.

## Epilogue

This month is really a blessed and auspicious month that witnesses its start from the holy Navratri's and marks its end by festival Diwali. This time, I would be sharing some life lessons I derive from these festivals:

### Navratri: Nine Holy Days of Divinity

- Lesson of weeding out negativity**  
 During the first three days of Navratri, goddess Durga is worshipped in her terrifying, destructive and powerful avatara. During these three days, we pray to goddess Durga to destroy our imperfections and to make us pure to inherit divine and spiritual energy.
- Lesson of Achieving Success**  
 Next three days, Goddess Durga is worshiped in her prosperity-bestowing avatara, the *Shakti* or Goddess Laxmi, therefore, the positive attitude replaces the entire negativity. With positive and optimistic attitude, we, the devotees pray for relegating all obstacles and bringing success in our journey of life. Goddess Laxmi doesn't represent money only, but she showers traits like peace, calmness, love and compassion in her devotees. With these qualities, we may achieve success and prosperity in our lives.
- Lesson of Acquiring Knowledge**  
 Knowledge is very important for a human. Saraswati is the goddess of knowledge, the *Shakti*, which bestows wisdom. Fifth, seventh and eighth day, devotees worship goddess Saraswati. Without doing away with negative tendencies and acquiring wealth of love, inner peace and calmness, one cannot glom on to the divine knowledge. We, first have to purify ourselves to get on the path of wisdom. Goddess Saraswati bestows the *Shakti* (energy) to the devotees so that they can attain knowledge.
- Importance of Females**  
 Navratri is the festival of goddesses. Females have always been placed at a top level in Indian mythology. In Navratri, Kanya Pooja is performed on the last day where nine young girls are worshipped as the nine forms of goddess Durga. The concept of gender diversity in boardrooms fetches strength from here.
- Lesson of Self Discipline**  
 Devotees observe fast for all nine days during Navratri. Fasting is not just for spirituality but it makes us self-disciplined also. It trains our mind and body to be ready for any hardship in life. It teaches us not to surrender ever.

### Diwali: A Spiritual Time to Light Lamps of Wisdom

This month will also witness a magnificent goodbye from all of us by celebrating the most awaited festival of us Indians, Diwali, the festival of lights on October 30. The light is not just bursting the crackers but also to imbibe the richness and wealth into our lives for the new time that will come. The light is not just part of closing out old books, but dispose of our negative traits such as anger, hate and jealousy. So, apart from celebrating, Diwali makes us to learn:

- Accept that Riches and Wealth can be Instrumental**  
 The common myth is that money is the root of all evils and mobilizing huge wealth should not be encouraged because it is root of five evils i.e. *Kaam, Krodh, Lobh, Moh, Ahankar*.

Actually, money by itself is neither good nor evil. It's simply energy that is stored to be used, and only becomes a force in the world depending on who is spending it. Naming here, Bill Gates and Warren Buffet, two of the world's richest people, who accumulated wealth and gave unimaginable charities to make this world a better place to live. In this sense, wealth and riches can provide opportunity for us to do good by using such wealth to be able to do more in this world.

- Outer Lights Point to 'Inner Lights' and Helps to Keep Them Burning**  
 The magnetism of the Diwali celebration is the glory of its lights. Besides external lights of Diya's and candles, the actual light pointed to is the 'inner light'. Are we paying heed to our own inner light that goes beyond the physical nature of ourselves? How are we feeding the spiritual nature of who we are, how are we nourishing our soul? How are we employing this in our relationship with others, especially our soul mate and our children?
- Believe that Good Can Triumph Evil**  
 It is too easy to get caught up in things out of control and to lose hope. However, hope really is there and our spiritual practices can help us to be able to reach back out for hope. We may be experiencing feelings of depression but spirituality can help us exactly at this time if we allow ourselves to believe that things can be positive in the times to come. When we do this, we experience a deeper sense of peace than simply absence of conflict.
- Gifts are a Good Way to Express Your Love and Affection**  
 Gift giving is an auspicious beginning of the Indian new year that Diwali brings in. Let us identify who are the significant people in our lives to whom we need to express love and affection? And, are we giving our loved one such gift which can't be measured in money terms?
- Celebrate the Commonality in Your Spiritual and Religious Traditions**  
 Diwali represents a festival which is shared in common by several world religions and some of the principles within it are shared by even more world religions. Let us focus on how we can share our faith with each other. This will allow us to be connected on a deeper level.

As we go through this celebration this October, let us focus on the lights in our lives. How is inner light shining brightly in our life? What does that inner light point to? What can we commit to doing to be able to grow ourselves: to grow in our relationships? To share with others? May we be blessed with riches and use our wealth well with others. In so doing, we may find wholeness and peace in our life.

Happy reading!!  
Best wishes

Yours sincerely

*Mamta Bini*

October 05, 2016  
New Delhi

(CS MAMTA BINANI)  
president@icsi.edu



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# ARTICLES



- SEBI (LISTING OBLIGATIONS & DISCLOSURE REQUIREMENTS) REGULATIONS, 2015
- REPOSING INVESTORS' CONFIDENCE – LISTING REGULATIONS – AN ANSWER TO CORPORATE FRAUDS AND MALPRACTICES
- CORPORATE GOVERNANCE UNDER SEBI (LODR) REGULATIONS, 2015 VIS-A-VIS THE COMPANIES ACT, 2013
- RELATED PARTY TRANSACTIONS UNDER SEBI (LODR) REGULATIONS, 2015 WIDER IN SCOPE THAN SECTION 188 OF THE COMPANIES ACT, 2013
- RELATED PARTY TRANSACTIONS UNDER THE NEW REGIME OF COMPANIES ACT 2013 AND SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS 2015
- SEBI LODR REGULATIONS, 2015 - FINANCE PERSPECTIVE
- DISCLOSURE OF MATERIAL EVENTS/ INFORMATION UNDER THE LODR REGULATIONS: HOW TO DETERMINE 'MATERIALITY'?
- DISCLOSURES OF UPSI UNDER THE SEBI (LODR) REGULATIONS, 2015
- LODR IN PUBLIC GLARE
- REGULATION 30 OF LODR REGULATIONS, 2015: CONTINUOUS DISCLOSURE REQUIREMENTS FOR LISTED ENTITIES
- UNDERSTANDING PROPOSED GST LAW
- GOODS AND SERVICES TAX – BUSINESS TRANSFORMATION & DRIVERS OF ECONOMIC GROWTH
- SERVICE TAX ON SERVICES PROVIDED BY GOVERNMENT & LOCAL AUTHORITIES
- APPEALS TO NCLAT FROM ORDERS OF NCLT – WHETHER ON POINTS OF LAW ONLY OR ON BOTH FACTS AND LAW?

# Articles in Chartered Secretary

## Guidelines for Authors

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

### Declaration-cum-Undertaking

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

(Signature)



# SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015



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## INTRODUCTION

“Listing agreement” shall mean an agreement that is entered into between a recognised stock exchange and an entity, on the application of that entity to the recognised stock exchange, undertaking to comply with the conditions for listing of designated securities; Securities Exchange Board of India (“SEBI”) has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) on September 2, 2015 which came into force from the 90th day of its notification i.e. on December 1, 2015. These regulations were introduced to consolidate and streamline the provisions of multiple existing listing agreements across various types of securities listed on stock exchange into one single document and to avoid confusion in disclosure norms such as pre-listing as well as post-listing requirements.

On and from the date of commencement of these Regulations, all previous circulars stipulating or modifying the provisions of the listing agreements including those specified in these Regulations, shall stand rescinded. SEBI has rescinded all the previous listing

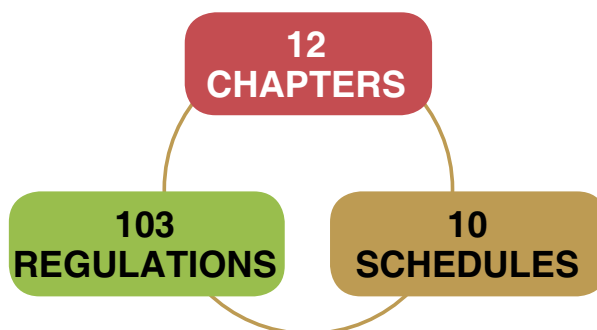
The SEBI LODR Regulations have been introduced to consolidate and streamline the provisions of multiple existing listing agreements across various types of securities listed on stock exchange into a single comprehensive document and to avoid confusion in the disclosure norms such as pre-listing as well as post-listing requirements.

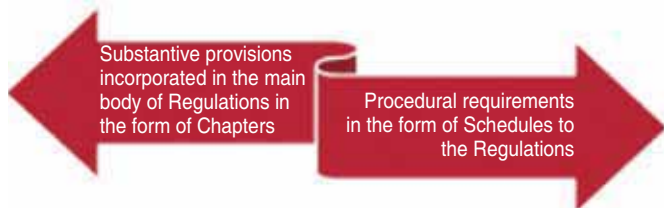
agreements entered by entities for various kinds of securities & 128 circulars issued from time to time. Now, SEBI (LODR) Regulations, 2015 is a single document which consolidates the disclosure requirements for all kinds of securities issued by entities & listed on the stock exchange(s).

Accordingly, as per these Regulations, every issuer or the issuing company desirous of listing its securities on a recognised stock exchange shall execute a listing agreement with such stock exchange.

Where issuer or the issuing company has previously entered into agreement(s) with a recognised stock exchange to list its securities shall execute a fresh listing agreement with such stock exchange within 6 months of the date of notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

These Regulations have been structured and designed in such a way so that they are aligned with the provisions of the Companies Act, 2013. SEBI (LODR) Regulations are divided into:

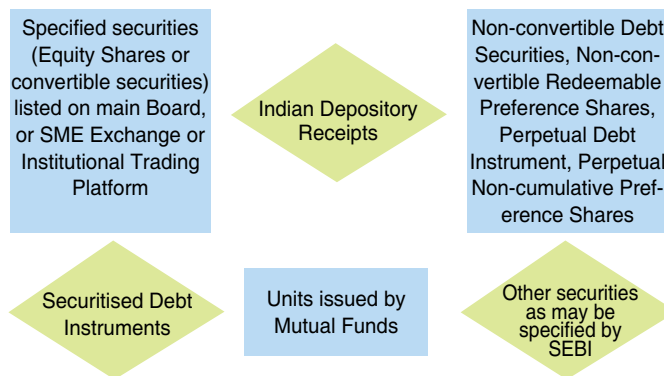


**Regulations are sub-divided into two parts:**

This article covers important provisions of Chapters I-IV, VI and XI which are widely applicable to most of the listed companies.

**APPLICABILITY OF REGULATIONS**

Listed entities which have listed any of the designated securities on recognized stock exchange:

**IMPORTANT DEFINITIONS UNDER CHAPTER I**

**Associate:** Under Regulation 2(1)(b) of SEBI (LODR) Regulations, 2015 the term 'associate' means any entity which is an associate under Section 2(6) of the Companies Act, 2013 or under the applicable Accounting Standards. Section 2(6) of the Companies Act, 2013 states that "associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company having such influence and includes a joint venture company." or AS 23 issued by ICAI, on "Accounting for Investments in Associates in Consolidated Financial Statements" states thus:

An associate is an enterprise in which the investor has significant influence and which is neither a subsidiary nor a joint venture of the investor.

*Significant influence* is the power to participate in the financial and/or operating policy decisions of the investee but not control over those policies.

This definition shall not be applicable for the listed entities which are to abide by the provisions of the SEBI (Mutual Funds) Regulations, 1996.

- \* **Main Board-** According to Regulation 2(1) (r) of SEBI (LODR) Regulations, 2015 main board means the Board defined under SEBI (ICDR) Regulations, 2009. According to Regulation 106N (1) (a) of the SEBI (ICDR) Regulations, 2009 it means "a recognized stock exchange having nationwide trading terminals, other than SME exchange."
- \* **Related Party-** Regulation 2(1) ( ( zb)) says that the term 'related party' means "related party as defined under

Section 2(76) of the Companies Act, 2013 or under the applicable accounting standards."

This definition shall not be applicable for the listed entities which are to abide by the provisions of the SEBI (Mutual Funds) Regulations, 1996.

- \* **Small and Medium Enterprises (SME)** - Regulation 2(1) (zi) states that SME, shall mean "any entity having nationwide terminals which are permitted by the Board to list the specified securities but does not include the Main Board.

**BASIC PRINCIPLES GOVERNING DISCLOSURES UNDER CHAPTER II****◆ Rights of shareholders-**

The main motive of the entity is to protect the rights of shareholders through participation and voting in general meetings with regard to decisions affecting corporate changes.

**◆ Timely information-**

The listed entity shall provide all types of

information such as day, date, time, venue and agenda of the meeting, etc., in a sufficient and timely manner to the shareholders.

- ◆ **Equitable treatment-** The listed entity shall ensure equitable treatment to all types of shareholders whether foreign or minority or majority shareholders.
- ◆ **Role of stakeholders in corporate governance-** The entity shall take all the necessary steps to encourage co-operation between the entity and the stakeholders by providing relevant and reliable information on timely and regular basis & also giving privilege to the stakeholders to freely communicate their concern about unethical practices, if any.
- ◆ **Disclosure & Transparency-** The listed entity shall ensure timely and accurate disclosure on all material matters such as financial statements, ownership, management, etc. to its stakeholders.
- ◆ **Responsibilities of the Board of Directors-** The Board of Directors are responsible to make disclosures regarding their interest in other entity (ies), review and monitor strategy and work in a transparent manner.

Regulation 4(3) states that in case of any ambiguity or incongruity between the principles and relevant regulations, the principles specified in this Chapter shall prevail.

**COMMON OBLIGATIONS OF LISTED ENTITIES UNDER CHAPTER III**

Chapter III deals with regulations which are in the nature of compliance of provisions applicable to all listed entities such as appointment/change of Company Secretary/compliance officer/KMPs, responsibilities & obligations of promoters, Board of Directors or KMPs towards various stakeholders, appointment/change of Transfer Agent, preservation of documents, filing of information with STx only through electronic platform, Grievance Redressal Mechanism, fee & other charges payable to Stock Exchange(s), fine on non-compliance of regulations of SEBI (LODR).

Regulation 4(2) provides that the listed entity which has listed its



specified securities i.e. equity shares and convertible securities shall comply with the corporate governance provisions as specified in Chapter IV of SEBI (LODR) Regulations, 2015.

## OBLIGATIONS OF LISTED ENTITIES UNDER CHAPTER IV

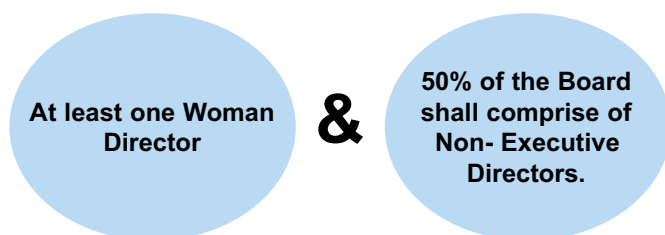
### Applicability of the provisions of this Chapter

Listed entities which have listed their specified securities i.e. equity shares and convertible securities on any recognized Stock exchange(s) either on the main Board or SME Exchange or on Institutional trading platform.

Some of the important regulations of this Chapter are discussed in the following paragraphs.

### Board Of Directors

Regulation 17 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that the listed entity shall have a combination of executive as well as non-executive directors as under:



Major Responsibilities of the Board are:

- » Periodically review compliance reports which cover all the laws, applicable to the Company.
- » Board of Directors shall lay down Code of Conduct for members of the Board as well as senior executives of the entity.

### Committees Required To Be Constituted Under SEBI (LODR) Regulations, 2015

Committees	Min. No. of Members	Chair-person	No. of meetings	Role
Audit Committee (Regulation 18)	3 Directors out of which two-thirds shall be independent Directors	Shall be Independent Director	Members shall meet at least 4 times in a calendar year & not more than 120 days shall elapse between 2 meetings.	To review the management & auditor's performance, financial statements etc.
Nomination & Remuneration Committee (Regulation 19)	At least 3 directors, all shall be non-executive director & 50% shall be independent directors	Shall be Independent Director	No such requirement	To give recommendation to the Board regarding appointment / reappointment of the Board of Directors & Independent Directors and to evaluate the performance of them

The listed entity shall formulate a vigil mechanism for the Board of directors and employees of the company to report genuine concerns. This mechanism shall provide safety against victimization of the concerned persons who avail mechanism & shall provide direct access to the chairperson of the audit committee in exceptional cases.

Stakeholders Relationship Committee (Regulation 20)	No minimum criteria. BOD shall decide other members	Shall be Non-Executive Director	No such requirement	To consider and resolve grievances of security holders
Risk Management Committee (Regulation 21) <i>(Applicable on top 100 listed companies)</i>	No minimum criteria but majority shall be the members of the Board of Directors	Shall be the member of Board	No such requirement	To monitor & review risk management plan

### Vigil Mechanism (Regulations 22)

The listed entity shall formulate a vigil mechanism for the Board of directors and employees of the company to report genuine concerns. This mechanism shall provide safety against victimization of the concerned persons who avail mechanism & shall provide direct access to the chairperson of the audit committee in exceptional cases. Rule 7 of the Companies (Meetings of the Board and its Powers) Rules, 2014 also provides for the establishment of vigil mechanism for specified companies.

### Related Party Transactions:

Regulation 23 of SEBI (LODR) Regulations, 2015 provides that the listed entity shall formulate a policy on materiality of related party transactions which ensures that proper approval from the management has been taken before entering into transactions between the Company and its related parties. The Company is required to disclose each year in the financial statements certain transactions between the Company and Related Parties as well as policies concerning transactions with Related Parties. Such policy is required to be uploaded on the website of the Company. SEBI has neither prescribed the contents of such policy nor provided any model policy on materiality. So, the Board of Directors and Audit Committee are free to make policy according to their norms.



- » It is mandatory to take approval from the Audit Committee for all related party transactions.
- » Audit Committee may give omnibus approval, on being satisfied that such approval is in the interest of the listed entity.
- » Such omnibus approval shall be reviewed on quarterly basis and shall be valid for one year only.
- » Shareholders prior approval is required in specific circumstances for certain type of transactions pursuant to Section 188(1) of the Companies Act, 2013 read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.

#### Exemptions from Compliance of Related Party Transactions under Regulation 23(5)

Transactions entered into between two government companies

Transactions entered into between a holding company and its wholly owned subsidiary company

Regulation 24 of SEBI (LODR) Regulations, 2015 provides for Corporate Governance requirements for Subsidiary of a Listed Entity:

- » Appointment of Independent Director in the Unlisted Material Subsidiary in India.
- » Review of financial statements of unlisted subsidiary company by the audit committee.
- » Minutes of Board meeting of unlisted subsidiary company shall be placed before the board.
- » Unlisted subsidiary shall periodically bring to the notice of the Board of the Directors of the listed entity all significant transactions (10% of total revenue or expenses or total assets or total liabilities of the immediate preceding accounting year).
- » Restrictions of disposal of shares in its material subsidiary

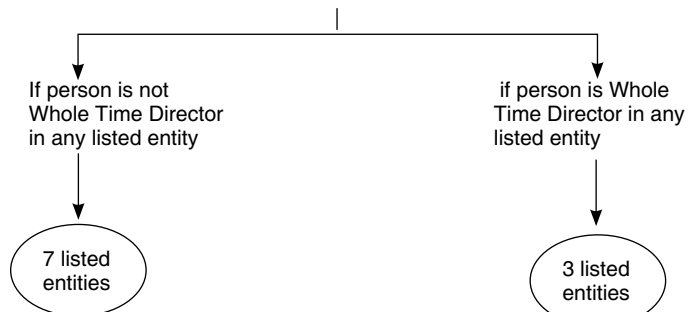
- » without special resolution passed by the listed entity.
- » Restriction on selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary without special resolution passed by the listed entity.
- » Applicability of Regulation 24 to the listed subsidiary in so far as its subsidiaries are concerned.

#### Independent Directors

Independent Director shall be a person who is independent pursuant to Section 149(6) of the Companies Act, 2013.

Regulation 25 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides the following:

- ❖ Maximum number of companies in which an Independent Director can be appointed



- » The tenure of independent director is the same as that prescribed in the Companies Act, 2013 and rules made thereunder i.e. 5 consecutive years and shall be eligible for re-appointment on passing of special resolution along with disclosure in the Board's Report for one more term of 5 years.
- » They shall hold at least one meeting in a year and all Independent Directors shall be present in such meeting.
- » Listed entity shall familiarize Independent Directors about the nature of the business of the entity, their rights and responsibilities and other relevant information by organizing programmes for them.

#### Regulation 26: Directors & Senior Management

- » A director shall not be a member in more than 10 committees or act as chairperson of more than 5 committees across all listed entities in which he is a director (exclusive of membership on committees of private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013).
- » All members of the BODs and senior management personnel shall affirm compliance with the code of conduct of Board of Directors and senior management on an annual basis.
- » Non-executive directors shall disclose their shareholding, held by them directly or indirectly in the listed entity in which they are proposed to be appointed as directors, in the notice of the general meeting called for appointment of such director.
- » Senior management shall make disclosure to the BODs relating to the material, commercial & financial transactions where they have interest.

#### Regulation 27: Corporate Governance Report (Schedule II and Schedule V Para C)



**Non Applicability**

Listed entities which have listed their equity shares and convertible securities on the SME (Small and Medium Scale Enterprises) Exchange.

Corporate Governance is about maximizing shareholder value legally, ethically and sustainably. According to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 Directors of the Company have to present Corporate Governance Report at the end of every quarter and every financial year before their shareholders to maintain transparency between the Company and the shareholders and in order to enhance and retain investor's trust. Some of the following information has to be disclosed in the report:-

- » Details of Board of Directors- Composition, category, number of meetings held in the year, attendance of each Director, number of shares held and relationship between Director *inter-se* and website where details of familiarization programme is available.
- » Details of all Board committees (as per the applicability) - Name of members of the Committee, number of meetings held in the year, attendance of each member and their roles and policy.
- » Performance Evaluation- Evaluate the performance of all the Board of Directors (executive, non-executive directors, independent directors as well as chairperson) and committees of the Company.
- » Disclosure of Related Party Transactions- The Company shall disclose all the related party transactions whether at arm's length basis or not.
- » Whether applicable Accounting Standards have been followed or not.
- » Details of General meetings- Details about last three annual general meetings, whether any resolution has been passed through postal ballot or not any details of Extraordinary General Meeting, held, if any.
- » Means of Communication in which financial results of the Company has been published.

» *General shareholder information:* Day, date, time & place of Annual General Meeting, dates on which all quarterly results have been submitted to the STX, book closure period, details of the stock exchange in which securities of the Company is listed, Stock code and the stock market data during the year, etc.

**Certificates to Be Given With the Corporate Governance Report**

*Minimum & Continuous Public Shareholding requirement (Regulation 38 and Rule 19 (2) and 19A of Securities Contracts (Regulation) Rules, 1957)*

Every listed company other than Public Sector Company requires a minimum public shareholding of at least 25% after listing of its shares and Public Sector Company is required to maintain a minimum shareholding of at least 10% at all times. A company whose shareholding gets reduced below the specified limit, shall have to increase it within a period of 12 months from the date of such reduction.

Provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue. Regulation 39 deals with the issue of allotment letter, share certificates, duplicate share certificates and/or transfer/transmission of shares in consonance with the provisions of

Corporate Governance is about maximizing shareholder value legally, ethically and sustainably. According to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Directors of the Company have to present Corporate Governance Report at the end of every quarter and every financial year before their shareholders to maintain transparency between the Company and the shareholders and in order to enhance and retain investor's trust.

the Companies Act, 2013.

**SPECIFIC DISCLOSURES TO BE MADE BY THE LISTED ENTITIES IN THEIR BOARD REPORT IN ADDITION TO THE PROVISIONS OF SECTION 134 OF THE COMPANIES ACT, 2013.****Information Required To Be Disseminated By Listed Entity on Its Website**

Regulation 46 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandates the listed entities to disseminate the following information on its website:

- a. details of its business profile;
- b. terms and conditions of appointment of independent directors;
- c. composition of various committees of board of directors;
- d. code of conduct of board of directors and senior management personnel;
- e. details of establishment of vigil mechanism/ Whistle Blower policy;
- f. criteria of making payments to non-executive directors, if the same has not been disclosed in annual report;
- g. policy on dealing with related party transactions;
- h. policy for determining 'material' subsidiaries;
- i. all the details of familiarization programmes imparted to independent directors;
- j. the email address for grievance redressal and other relevant details;
- k. contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
- l. financial information including:
  - i. notice of meeting of the board of directors where financial results shall be discussed;
  - ii. financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
  - iii. complete copy of the annual report including balance

- sheet, profit and loss account, director's report, corporate governance report etc;
- m. shareholding pattern; (on quarterly basis- for last 5 years);
- n. details of agreements entered into with the media companies and/or their associates, etc;
- o. schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;
- p. new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;
- q. all information and reports including compliance reports filed by the listed entity.

#### Others:

- » The listed entity shall frame a policy for determination of materiality and duly approved by its board of directors, which shall be disclosed on its website.
- » The Board of Directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under this regulation and the contact details of such personnel shall also be disclosed to the stock exchange(s) and as well as on the listed entity's website.
- » The listed entity shall update any change in the contents of its website within two working days from the date of such change in content.
- » The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

### PERIODICAL COMPLIANCES APPLICABLE TO LISTED ENTITIES OF EQUITY SEGMENT

The listed entities shall follow quarterly, half yearly as well as annual compliances and abide by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

#### Quarterly Compliances

S. No	Regulation/ Heading	Particulars of Regulation	Time Period
1.	13 (3)- Grievance Redressal Mechanism	A statement giving the particulars of the investor complaints at the beginning, during and at the end of the quarter	Within 21 days from the end of quarter
2.	27 (2)- Corporate Governance Report	Compliance Report on Corporate governance Shall be signed by either compliance officer or chief executive officer	Within 15 days from the end of quarter

3.	29 (1)- Board Meeting intimation	When the board is meeting for approving financial results i.e. quarterly, half yearly or yearly	Five days in advance before the date of meeting
4.	31- Shareholding pattern	Shall submit shareholding pattern separately for each class of securities	Within 21 days from the end of quarter
5.	32 (1)- Statement of Deviations	Statement of Deviations in Public issue, right issue, preferential issue till such time the issue proceeds have been fully utilized or purpose for which these proceeds were raised is achieved.	Together with the financial results and in Annual Report
6.	Regulation 55 A of SEBI (D & P) Regulations, 1996	Reconciliation of Share Capital Audit on quarterly basis	Within 30 days from the end of quarter
7.	33(3)-Quarterly Financial Results	Submission of Financial Results (Audited/ Unaudited with Limited Review)	Within 45 days from the end of quarter and in case of the last quarter the audited financial results within 60 days from the end of quarter

#### Half yearly compliances

S. No	Regulation/ Heading	Particulars of Regulation	Time Period
1.	7 (3)- Share Transfer Agent	Shall submit a compliance certificate to the exchange, signed by both the compliance officer and the authorized representative of the share transfer agent.	Within 30 days from the end of half year
2.	52 Half- yearly financial statements	Submission of quarterly and year to end standalone Financial results. (Unaudited with Limited Review)	Within 45 days from the end of half year
3.	40(9)	Shall produce a Certificate from a PCS certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls /allotment monies	Within 30 days from the end of half year



• **Annual /event based compliances**

S. No	Regulation/Heading	Particulars of Regulation	Time Period
1.	14	Listing Fee	Within 30 days from the commencement of financial year for the current year
2.	33 (3) Annual Financial Results	Submission of audited standalone financial results for the financial year along with the audit Report	Within 60 days from the end of the financial year.
3.	34-Annual Return/ Report	Submit the approved and adopted annual report in the AGM	Within 21 days from the date of AGM
4.	36 (1) (2)- Information to shareholders	Annual Report with e-voting details	21 days prior to the AGM
5.	42-Record Date or Date of closure of transfer books	Shall intimate the record date/ date of closure of transfer books	7 working days (excluding date of intimation and record date)
6.	47-Newspaper Advertisement	Notices given to shareholders by advertisement with record date, e-voting details and scrutinizers details etc.	21 days before the date of AGM
7.	44-Voting by shareholders	Shall provide the facility of remote e-voting & Details regarding Voting results	At least for 3 days and e-voting closed 1 day prior to general meeting
8.	44 (3)- Voting Results	When listed entity provide e-voting facility to its shareholders for passing resolutions.	Submit voting results to the STX, within 48 hours of conclusion of its General Meeting.
9.	35A-	Scrutinizer's Report	Within 2 days of conclusion of meeting
10.	7(5)	Intimation of appointment of RTA	Within 7 days of appointment of RTA
11.	28 (1)	In-principle approval	Prior to issuance of security
12.	29	Prior intimation of Board Meeting for Buyback, voluntary delisting etc.	At least 2 clear working days in advance
13.	29	Prior intimation of Board Meeting for alteration in nature of securities.	At least 11 clear working days in advance
14.	30	Disclosure of Price Sensitive information	Promptly, (within 24 hours)
15.	31	Shareholding pattern prior to listing of securities	One day prior to listing of securities
16.	42	Record date for declaring dividend and/or cash bonus	At least 5 clear working days in advance

## REGULATION 47-NEWSPAPER NOTICE PUBLICATION

- » Notice of meeting of the Board of directors where financial results shall be discussed
- » Financial results along with the modified opinion if any expressed by the auditor
- » Statement of deviation on quarterly basis, after review by audit committee
- » Notice given to shareholders for AGM and/or EGM

A reference shall be given in the newspaper publication to the link of the website of listed entity & stock exchange(s), where the entity is listed where further details are available.

The listed entity shall publish the information in the newspaper simultaneously with the submission of the same with the Stock Exchange except the financial results which shall be published within 48 hours of conclusion of the Board meeting in which results are approved.

The publication under the regulation shall be made in one English Language national daily newspaper and one in the regional language, where the registered office of the listed entity is situated. Newspaper publication requirements are not applicable to the entities listed on SME Exchange.

### CHAPTER VI

This Chapter is the combination of regulations of Chapter IV and Chapter V.

**Regulation 63(1) - Applicability:** This Chapter is applicable to the listed entities which have listed its specified securities and non-convertible debt securities or non-convertible preference shares or both on any recognized stock exchange.

❖ Regulation 63(2) states that the listed entity under this chapter shall additionally comply with the following regulations:

- The listed entity shall inform in advance to the stock exchange with regard to its intention to raise funds through new non-convertible debt securities or non-convertible redeemable preference shares it proposes to list either through a public issue or private placement.
- At least two working days advance intimation to stock exchange(s) with respect to Board meeting in which recommendation of issue of non-convertible debt securities or non-convertible preference shares or any other matter affecting the rights of non-convertible debt securities or non-convertible preference shares is proposed to be considered.
- ❖ Prompt Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.
- ❖ Financial Results
  - The audited financial results shall be submitted along with audit report and form A with unmodified opinion or Form B with modified opinion.
  - The listed entity while submitting half yearly/annual financial results shall disclose following items:
    1. Credit Rating and change thereof
    2. Asset cover available
    3. Debt-equity ratio
    4. Previous due date for payment of interest/dividend and whether paid or not

5. Next due date for payment of interest/dividend and redemption amount.
6. Debt service coverage ratio
7. Interest service coverage ratio
8. Outstanding redeemable preference shares (Qty and value)
9. Capital/Debenture redemption reserve
10. Net worth
11. Net Profit after Tax
12. Earnings per share

A certificate signed by debenture trustee stating that it has taken a note of the contents, shall accompany with the information to be submitted with the Stock Exchange.

#### Asset Cover (Regulation 54)

- The listed entity shall maintain 100% asset cover sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.
- The listed entity shall disclose to the Stock Exchange in quarterly, half yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.
- Reg. 56-Each rating obtained by the listed entity with respect to non-convertible debt securities shall be viewed at least once a year by credit rating agency registered by the Board.
- Reg. 57-The listed entity shall submit a certificate to the stock exchange within 2 days of the interest or principal or both becoming due that it has made timely payment of interest or principal obligations or both in respect of the non-convertible debt securities.
- The listed entity shall provide an undertaking to the stock exchange(s) on the annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 have been complied.
- The listed entity shall ensure timely payment of interest or dividend of non-convertible redeemable preference shares or redemption payment.
- The listed entity which has submitted any information to the Stock Exchange in compliance with the disclosure required under Chapter IV of these regulations, need not re-submit such information.

## CHAPTER XI-ACTION IN CASE OF DEFAULT

Regulation 98(1) deals with penal provisions in case of default of SEBI (LODR) Regulations, 2015.

Every listed entity or any other person, who contravenes the provisions of these regulations, shall be liable for following actions by respective stock exchange, in addition to the penalties specified in the Securities Laws (SEBI, SCRA, Depositories Act, 1996 and Companies Act, 1956/2013):

1. Imposition of fines
2. Suspension of trading
3. Freezing of trading and/or promoter group holding of designated securities in coordination with depositories
4. Any other action as may be specified by the Board from time to time

The following table lists the defaults and the Penalty therefor:

Reg. No.	Description	Fine payable for 1 <sup>st</sup> non-compliance	Fine payable for subsequent non-compliance.
27 (2)	Non-submission of Corporate Governance Report within specified time	Rs. 1000/- per day till the date of compliance	Rs. 2000/- per day till the date of compliance
31	Non-submission of Shareholding Pattern within specified time	Rs. 1000/- per day till the date of compliance and if non-compliance continues for more than 15 days, additional fine of .1% of paid up capital of the entity or Rs. 1.00 crore whichever is less	Rs. 2000/- per day till the date of compliance and if non-compliance continues for more than 15 days, additional fine of .1% of paid up capital of the entity or Rs. 1.00 crore whichever is less
33	Non-submission of Financial Results within specified time	Rs. 5, 000/- per day till the date of compliance and if non-compliance continues for more than 15 days, additional fine of .1% of paid up capital of the entity or Rs. 1.00 crore whichever is less	Rs. 10,000/- per day till the date of compliance and if non-compliance continues for more than 15 days, additional fine of .1% of paid up capital of the entity or Rs. 1.00 crore whichever is less
34	Non-submission of Annual Report within specified time	if non-compliance continues for more than 5 days,  Rs. 1, 000/- per day till the date of compliance	Rs. 2, 000/- per day of non-compliance till the date of compliance

If the non-compliant entity fails to pay the fine despite receipt of the notice, the respective SEs, may initiate appropriate action for enforcement and/or prosecution.

### CONCLUSION:

The objective of the SEBI (LODR), Regulations, 2015 is to consolidate and streamline various listing agreements for various types of securities listed in the capital market into one document in order to overcome the variations in the terms in the listing agreement(s) and provisions of the Companies Act, 1956/2013 and to provide a platform for online up-dation of various compliances in order to increase in transparency and bring about paperless compliance system in order to avoid delays in the disclosures. The SEBI (LODR) Regulations provide comprehensive disclosure framework that companies will be compelled to comply with in order to maintain their status as listed company. CS

# Reposing Investors' Confidence – Listing Regulations – An answer to Corporate Frauds and Malpractices



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In generic terms, a fraud is “any kind of act that is cunning, deceitful, in bad faith and aimed at harming or swindling someone else. An act of corporate fraud occurs when the fraudsters find an opportunity and make a series of decisions with a view to obtaining benefits in an illegal way. One of the ways to deal with the corporate frauds and malpractices is to tighten the Regulatory and Statutory

plays a pivotal role.

According to Regulation 7 the listed entity shall ensure that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with SEBI. In case of in-house share transfer facility, as and when the securities holders exceed one lakh, the listed entity shall register with SEBI as

The SEBI Listing Regulations, 2015 have taken several measures to repose investor confidence. Elaborate procedures have been prescribed to protect the interest of security holders and also to ensure that frauds and malpractices do not take place. A lot of importance has been given to Share Transfer Agent and Share Transfer related activities which have been described in this article.

provisions so that no opportunity is available to the fraudsters. Several measures were taken by the Stock Exchanges and SEBI while enforcing the erstwhile listing agreement. These provisions were consolidated and further strengthened and fortified in the SEBI Listing Regulations 2015, which were notified on September 2, 2015 and came into force effective December 1, 2015

Listing Regulations have taken several measures to repose investor confidence. Elaborate procedures have been prescribed to protect the interest of security holders and also to ensure that frauds and malpractices do not take place. Lot of importance has been given to Share Transfer Agent and Share Transfer related activities.

## SHARE TRANSFER AGENT

In a listed entity a share transfer agent plays a very important role in handling share / security related activities. Whether such shares or securities are held in electronic form or physical form share transfer agent

category II share transfer agent.

On the appointment of a share transfer agent an agreement is to be entered into. In case of any change or appointment of new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity. Within seven days of entering into the agreement the listed entity shall intimate such appointment to the stock exchanges. The agreement shall be placed before the Board of Directors in the subsequent Board meeting. Within one month of the end of each half of the financial year, the listed entity shall submit a compliance certificate to the exchanges, certifying compliance requirements relating to the appointment of a share transfer agent or registration as category II share transfer agent. Such compliance certificate shall be signed by the compliance officer of the listed entity and the authorised representative of the share transfer agent.

In case of change in the share transfer agent the listed entity shall enter into a tripartite agreement with existing share



transfer agent and the new share transfer agent. This implies that for appointment of a new share transfer agent the consent of the existing share transfer agent is required. This gives a protection to the share transfer agent to play his role effectively and efficiently.

Every listed entity shall make disclosures of any events or information which is material to the stock exchanges. Events mentioned in Para A of part A of Schedule III shall be disclosed without any application of the guidelines for materiality specified i.e. such events are deemed to be material. Appointment and discontinuation of share transfer agent is one such deemed to be material event and is to be intimated to the stock exchanges within 24 hours.

The aforesaid provisions clearly indicate the amount of importance given by the listing regulations to the appointment of share transfer agent.

## STAKEHOLDERS RELATIONSHIP COMMITTEE

According to Regulation 20 of the Listing Regulations, the listed entity shall constitute a Stakeholder Relationship Committee to specifically look into mechanism of redressal of grievances of shareholders, debenture holders and other security holders. The Chairperson of this Committee shall be a non-executive director and the Board of Directors shall decide other members of this Committee. The Committee is concerned with all concerns of all security holders and shall consider and resolve the grievances of the security holders including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

## GRIEVANCE REDRESSAL MECHANISM

According to Regulation 13 of the Listing Regulations, the listed entity shall ensure that it is registered on the SCORES platform or such other electronic platform or system of the Board as shall be mandated by SEBI to handle the investor complaints. Adequate steps are to be taken for expeditious redressal of investor complaints. The listed entity shall file with the recognised stock exchanges(s) on a quarterly basis within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received and disposed of during the quarter and the closing balance at the end of the quarter. Such statement shall be placed before the Board of directors.

## TRANSFER OR TRANSMISSION OR TRANSPOSITION OF SECURITIES

According to Regulation 40 of the Listing Regulations, the listed entity shall comply with the clear cut requirements as specified, for effecting transfer or transmission of securities inter-alia as under:

- 1) Delegate the power of transfer of securities to a Committee or compliance officer or to the share transfer agent to attend to transfer of securities at least once in a fortnight. A report on such delegated authority shall be placed before the Board of directors in each of their meeting.
- 2) Within a period of 15 days from the date of receipt of proper documentation for transfer of securities, the transfer of securities shall be registered. In case of transmission of

securities the same is to be given effect within seven days in case the securities are in electronic mode and within twenty one days in case the securities are in physical mode.

- 3) In case the listed entity has not transferred the securities within fifteen days or in case the listed entity failed to communicate its valid objections within such period, the listed entity shall compensate the aggrieved party for the opportunity losses caused during such interim period and shall also provide all benefits which have accrued during such interim period.
- 4) No registration of transfer of securities shall take place in case of any statutory, prohibitory or attachment order from a competent authority restraining the transfer of securities.
- 5) In case the transferor objects to the transfer and is able to serve on the listed entity a prohibitory order of a court of competent jurisdiction, the securities shall not be transferred.
- 6) Within one month of the end of each half of the financial year a certificate shall be obtained from a practicing company secretary, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls / allotment monies and such certificate shall be filed with the stock exchanges.

## SCHEDULE VII – TRANSFER OF SECURITIES

Procedural requirements are specified in Schedule VII of the Listing Regulations, which shall be complied with by the listed entities.

## REQUIREMENT OF PAN

For securities market transactions and / or for off-market or private transactions involving transfer of shares in physical form, the transferee as well as the transferor shall furnish copy of PAN card to the listed entity for registration of such transfer of securities. The requirement of PAN submission by both the transferor and the transferee bring all transactions on board.

## DIFFERENCE IN SIGNATURE (MINOR OR MAJOR) OR NON-AVAILABILITY OF SIGNATURE

More or less for the first time the issue of difference in signature or non-availability of signature was formally addressed. In case of shares which were listed long back this issue of signature mismatch which may be minor or major and the non-availability of signature do arise. Listed entities used to take care of these issues as per their internal procedures and determined safeguards. By addressing these issues the Listing Regulations have prescribed and standardised the procedure as under:

- 1) In case of minor differences in the signature of the transferor, the listed entity shall promptly intimate the transferor via speed post about the difference in signature and within fifteen days if an objection with a valid proof is not lodged, the securities shall be transferred. If no objection is received within fifteen days and the listed entity does not suspect a fraud or forgery then the transfer of securities may be registered.
- 2) In case of major difference or non-availability in the signature of the transferor, the listed entity shall promptly send via

speed post an objection memo in respect of material signature difference / non-availability of signature and an advice to ensure submission of requested documents such as – affidavit to update transferor's signature, an original unsigned cancelled cheque and banker's attestation of transferor's signature and address and contact details. On submission of documents the transfer of securities may be registered unless the listed entity does not suspect fraud or forgery in the matter.

## TRANSMISSION OF SECURITIES

In case of transmission of securities held in dematerialised mode, where securities are held in single name without a nominee, up to a threshold limit of rupees five lakhs per beneficiary account, simplified documentation as per bye-laws of the depositories shall be complied with.

In case of transmission of securities held in physical mode held in single name with a nominee, duly signed transmission request with original or copy of the death certificate, duly attested by notary public and a self-attested copy of PAN card of nominee would be sufficient.

In case of transmission of securities held in physical mode held in single name without a nominee, up to a threshold limit of rupees two lakhs, an affidavit, indemnity and a NOC from the legal heirs or copy of family settlement agreement shall be submitted. In case the value of securities exceeds the threshold limit of rupees two lakh per listed entity as on the date of the application, succession certificate or probate of will or letter of administration or court decree shall be submitted. The listed entity may increase the threshold limit of rupees two lakh in the interest of shareholders.

## PAYMENT OF DIVIDEND OR INTEREST OR REDEMPTION OR REPAYMENT PROCEEDS

According to Regulation 12 and Schedule I of the Listing Regulations, the listed entity shall use any of the electronic mode of payment facility approved by the Reserve Bank of India and where it is not possible 'payable-at-par' warrants or cheques may be issued. Where the amount exceeds rupees one thousand five hundred, the warrants or cheques shall be sent by speed post. Though the Regulations have not mentioned any alternative to speed post, in view of the non-availability of the speed post facility throughout the length and breadth of the country, where ever speed post facility is not available the same may be sent by Registered post. The objective is that the instrument has to reach the investor safely. Listed entity shall mandatorily print the bank accounts details of the investors on such payment instruments and where the bank details are not available the listed entity shall mandatorily print the address of the investor on such payment instructions.

## CHANGE IN NAME OF THE LISTED ENTITY

Many a times in the past after the IPO the listed entities used to change their names and several times the investors were not able to keep track of the same and used to incur losses in this process. Promoters used to mobilise the funds for one project and after IPO they used to divert the funds to some other project and used to change the name of the company also. Regulation 45 of the

Listing Regulations, allows such change in the name of the listed entity, only subject to compliance of certain conditions. The listed entity shall comply with the following conditions to change its name:

- 1) A time period of at least one year has elapsed from the last name change;
- 2) At least fifty percent of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name; or
- 3) The amount invested in the new activity / project is at least fifty percent of the assets of the listed entity.

In case any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months.

On satisfaction of the above conditions only the listed entity shall file the name availability application with the Registrar of Companies. On receipt of name availability confirmation from Registrar of Companies before filing application for change of name, the listed entity shall seek approval from stock exchange by submitting a certificate from a chartered accountant stating compliance with the conditions mentioned above.

## UNCLAIMED SECURITIES

According to Regulation 39 and Schedule VI of the Listing Regulations, while dealing with securities issued pursuant to the public issue or any other issue, physical or otherwise, which remain unclaimed and / or lying in the escrow account the listed entity shall comply with the following:

- 1) Three reminders shall be sent to the address given in the application form or as captured in the depository date base.
- 2) The unclaimed shares in the demat account shall be transferred to a demat suspense account opened with any depository participant by the listed entity.
- 3) In case the shares are lying in physical form all such shares shall be transferred to one folio in the name of "Unclaimed Suspense Account" and shall dematerialise such shares with one of the depository participants.
- 4) Such shares shall not be transferred in any manner whatsoever except for the purpose of allotting the same to the allottee as and when they approach the listed entity.
- 5) As and when the allottee approach the listed entity claiming the shares, after verifying his credentials, shares may be released from the suspense account.
- 6) Any corporate benefits such as bonus, split etc. shall be credited to such suspense account and the voting rights on such shares shall remain frozen till the rightful owner claims the shares.

The above process safeguards the misappropriation or mis-utilisation of such unclaimed shares. CS

# Corporate Governance Under SEBI(LODR) Regulations, 2015 *vis-a-vis* The Companies Act, 2013



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The provisions relating to Corporate Governance were introduced as Clause 49 of the erstwhile Equity Listing Agreement on February 21, 2000. The clause 49 was amended along with the changing requirements and the first major amendment was carried out with effect from October 01, 2014 to bring it in alignment with the provisions of the Corporate Governance principles contained in the Companies Act, 2013. When the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the LODR Regulations or Listing Regulations) were notified, the listing agreement was

capital not exceeding Rs.10 crores and networth not exceeding Rs. 25 crores as at the last day of the financial year. Hence a listed entity whose paid up capital is less than Rs.10 crores and networth is less than Rs.25 crores (both the conditions being applicable) as at the end of March 31 of the financial year need not comply with the requirements stipulated under Regulations 17 to 27 of the Listing Regulations. However if one or both of the conditions or threshold becomes applicable, the company would be required to comply with the Regulations within a period of 6 months from the date on which the provisions become applicable.

The provisions relating to Corporate Governance are contained in Regulations 15 to 27 of the Listing Regulations. While most of the requirements under the LODR Regulations are in line with the provisions of the Companies Act, 2013, some of the requirements are stricter and hence a listed entity would be required to comply with the stricter of the two. The article makes a comparison between the LODR Regulations, 2015 and the Companies Act, 2013 and highlights the differences between the Regulations and the Act on Corporate Governance.

replaced with a simplified listing agreement and the provisions relating to Corporate Governance as amended till that date with certain other modifications are included under Regulations 15 to 27 of the Listing Regulations. While most of the requirements under the LODR Regulations are in line with the provisions of the Companies Act, 2013, some of the requirements are stricter and hence a listed entity would be required to comply with the stricter of the two. The following is a comparison between the LODR and the Companies Act, 2013 and highlights the differences between the Regulations and the Act on Corporate Governance.

## APPLICABILITY

Regulations 17 to 27 (pertaining to Corporate Governance) shall not apply to a listed entity having a paid up equity share

The Regulations further state that the provisions with regard to the Companies Act, wherever applicable shall however continue to apply.

There is no such exemption given under the Companies Act, 2013 and the requirements with regard to the Corporate Governance would be applicable to all companies specified under the Act.

## COMPOSITION OF THE BOARD OF DIRECTORS

Regulation 17 of the Listing Regulations states that the Board of a listed entity shall have an optimum combination of executive and non-executive directors with at least one woman director and 50% of the Board shall comprise of non-executive directors. In case the chairperson of the Board of Directors is a non-executive director, then



1/3<sup>rd</sup> of the Board shall comprise of independent directors and where the Chairperson is an executive director, ½ of the Board shall comprise of independent directors. In case the non-executive chairperson is a promoter or related to the promoter or any other person occupying management position in the Board of Directors or at one level below the Board of Directors, at least ½ of the Board of Directors shall comprise of independent directors.

The Companies Act, 2013 however specifies that companies which are listed shall have at least 1/3<sup>rd</sup> of its Board of Directors as independent directors without making a distinction between the requirements for appointment of the number of independent directors when a Chairperson of the Board of Directors is an executive or a non-executive director. However The Companies (Appointment and Qualification of Directors), Rules 2014 specifies that public companies having a paid up capital of Rs.10 crores or turnover of Rs.100 crores or outstanding loans, debentures and deposits exceeding Rs.50 crores as at the last date of the latest audited financial statements shall have at least 2 independent directors.

## WOMAN DIRECTOR

As Regulation 17 is applicable only to those companies when meet the pre-conditions or thresholds, the provisions regarding the appointment of a woman director would be applicable only to that set of listed entities to which Regulation 17 itself would be applicable. The Companies Act however does not give any exemption and hence all listed entities would be required to appoint at least one woman director on its Board.

## MEETING OF BOARD OF DIRECTORS

The Listing Regulations and the Companies Act, 2013 stipulate that the Board of Directors shall meet at least 4 times in a year and the maximum gap between any two meetings shall not exceed 120 days.

## CODE OF CONDUCT FOR THE BOARD OF DIRECTORS

The Listing Regulations specify that the Board of Directors shall draw up a Code of Conduct for all the members of the Board and the senior management personnel of the listed entity. The Regulations further stipulate that the Code shall incorporate the duties of the independent directors as laid down in the Companies Act, 2013. The Regulations also require that the members of the Board shall confirm compliance to the Code in the first meeting of the Board held every financial year. The Annual Report of the Company shall also contain a confirmation to this effect by the Directors duly certified by the Chief Executive Officer. The Companies Act, 2013 does not however contain any provisions with regard to a Code of Conduct.

## SUCCESSION PLANNING

The Listing Regulations lay down the minimum information that is to be placed before the Board and Regulation 17(4) specifically stipulates that the Board of Directors of the listed entity shall satisfy themselves that plans are in place for orderly succession for appointment to the Board of Directors and the senior management. Hence it is a requirement that there shall be an item in the Agenda of the Board in at least one of the meetings during the year to include details of succession planning. Such a requirement is however not stipulated under the Companies Act, 2013.



## AUDIT COMMITTEE

Regulation 19 of the Listing Regulations, discusses the provisions with regard to the Audit Committee. The Regulations stipulate that the Committee shall have a minimum of 3 directors as its members and 2/3<sup>rd</sup> of the members shall be independent directors. Section 177 of the Companies Act, 2013 however stipulates that a listed entity shall have an audit committee which shall consist of a minimum of three directors with the independent directors being the majority. While the Companies Act stipulates that the majority of the Audit Committee including the Chairperson shall be persons with ability to read and understand financial statements, the Listing Regulations states that all the members of the Committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Financially literate has been defined to mean the ability to read and understand basis financial statements and having accounting or related financial management expertise is defined to mean having requisite professional certification in accounting or any other comparable experience or background which results in the individual's financial sophistication including being a CEO or CFO or such other senior officer with financial oversight responsibilities.

Further the Listing Regulations have also mandated a quorum for the Audit Committee meetings, which shall be either two members or 1/3<sup>rd</sup> of the members of the Committee, whichever is greater with at least 2 independent directors. In other words, if the Audit Committee has 3 members of which 2 are independent, both the independent directors should be present to constitute quorum for an Audit Committee meeting. The Companies Act, 2013 however does not contain such a stipulation.

## NOMINATION AND REMUNERATION COMMITTEE

Both the Listing Regulations and the Companies Act, 2013 contain identical provisions with regard to the composition of the Nomination and Remuneration Committee. There is a slight difference in the role of the Nomination and Remuneration Committee as enumerated in the Listing regulations as compared to the Policy as stipulated under the Companies Act, 2013 as the Regulations specify that the Committee shall devise a policy on the diversity of the Board of Directors. Another important difference

between the two is that the Regulations stipulate the presence of the Chairperson of the Committee being present at the Annual General Meeting of the Company to answer shareholder queries. The Companies Act stipulates that the policy shall be included in the Board Report, while no such requirement has been made in the Listing Regulations.

### STAKEHOLDERS RELATIONSHIP COMMITTEE

As per the Listing Regulations all listed entities must have a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders, the Companies Act, 2013 specifies that a Stakeholders Relationship Committee shall be constituted if a company consists of more than 1000 shareholders, debentures, deposit holders and any other security holders at any time during a financial year. The stipulation with regard to a minimum number is absent in the Regulations and further deposit holders are not considered by the Regulations.

### RISK MANAGEMENT COMMITTEE

The Listing Regulations states that the Board of Directors shall constitute a Risk Management Committee for the top 100 listed entities determined on the basis of market capitalization as at the end of the immediate previous financial year. On the other hand Section 134(3) of the Companies Act, 2013 states that all the companies must have a risk management policy, which shall be responsible for identification of risks which in the opinion of the Board may threaten the existence of the Company.

### RELATED PARTY TRANSACTIONS

The Companies Act, 2013 stipulates that a company shall enter into a contract or an arrangement with a related party with respect to sale, purchase or supply of any goods or materials, selling or otherwise disposing of or buying property of any kind, leasing of property of any kind, availing or rendering of any services, appointment of any agent for purchase or sale of goods, materials, services or property, appointment of a related party to any office or place of profit in the company, its subsidiary or associate company and underwriting the subscription of any securities or derivatives thereof of the company shall be entered only with the consent of the Board of Directors given by way of a resolution at a Meeting of the Board of Directors. Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 stipulates that all related party transactions shall require the approval of the Audit Committee after the same is approved by the Board of Directors. The Regulations however state that all the related party transactions shall require the prior approval of the Audit Committee. Hence, any transaction by the Company, in addition to what is specified under Section 188 of the Companies Act, 2013 with a related party as defined under Section 2(76) of the Companies Act, 2013 shall require prior approval of the Audit Committee. Ratification of the same by the Audit Committee or Post facto approval by the Audit Committee after the transaction has been entered into is not accepted and would be treated as a non-compliance of the Regulations. Omnibus approval by the Audit Committee for Related Party Transactions has been provided in both the

Regulations and the Act. While the provisions for omnibus approval are the same, the Regulations state that where the need for related party transaction cannot be foreseen and the details regarding the same are not available the audit committee may grant omnibus approval for such transactions subject to their value not exceeding Rs 1 crore per transaction and the Rule has not specified any limit for the value of transaction seeking omnibus approval. Further the Regulations state that the approval shall be valid for a period not exceeding one year and fresh approvals shall be taken after the expiry of one year, but Rule 6A states that the approval shall be valid for one financial year and fresh approval shall be taken after the expiry of the financial year.

The listed entity, as per the Listing Regulations shall formulate a policy on materiality of related party transactions and on dealing with the Related Party Transactions. The policy shall also be hosted on the website of the company. There is no such similar requirement under the Companies Act, 2013.

The Regulations further state that a transaction shall be considered material if the transaction or transactions to be entered into individually or taken together with the previous transaction during a financial year exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. While a blanket limit has been specified by the Regulations, the Act lays down individual limits for each of the related party transaction specified under Section 188 of the Act. Further while material related party transactions to be entered into by the company would require prior approval of the shareholders in the general meeting by way of an Ordinary Resolution, the Regulations contain a restrictive clause that all the related parties shall not vote on the resolution. The Companies Act, 2013 however states that only parties to the material related party transaction shall not vote on the resolution.

The Regulations require the disclosure of all Related Party Transactions in the quarterly Corporate Governance Compliance Report submitted to the Stock Exchange while such a similar requirement has not been stipulated in the Companies Act, 2013.

### OBLIGATIONS WITH RESPECT TO INDEPENDENT DIRECTORS

As per the Listing Regulations, a person shall not serve as an independent director in more than seven listed entities, provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than 3 listed entities. However, as per the Companies Act, 2013 the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

As per the Listing Regulations, any independent director who is appointed as such shall be issued a letter of appointment and such letter shall be hosted on the website of the company within one working day of the appointment. Such a requirement is not specified in the Companies Act, although the term of appointment and the maximum period during which the independent director

can serve as such on the Board of the listed entity is identical in both the Regulations and the Companies Act, 2013.

The Listing Regulations specifically mention the requirement for the independent directors to undergo familiarization programmes in the nature of the industry in which the company operates, business mode of the listed entity, roles, rights and responsibilities of the independent directors and the attendance particulars of the independent director in these training programs are also to be hosted on the website of the listed entity. Such a requirement is conspicuous by its absence in the Companies Act, 2013.

As per the Listing Regulations, any independent director who resigns or is removed from the Board of Directors of the listed entity shall be replaced by a new independent director by the listed entity at the earliest but not later than the immediate next meeting of the Board of Directors or three months from the date of such vacancy whichever is later. However as per Schedule IV of the Companies Act, 2013 which discusses the code for independent directors, an independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director within a period of not more 180 days from the date of such resignation or removal.

## CONCLUSION

The differences that are outlined above can be summarized as under

:

Particulars	Listing Regulations	Companies Act, 2013
Applicability	Not applicable to those companies whose paid up capital is less than Rs. 10 crores and net worth is less than Rs.25 crores.	No such exemption.
Composition of Board of Directors	½ of the Board or 1/3 <sup>rd</sup> of the Board depending on whether the Chairman is Executive or Non-Executive.	No such distinction. Specifies that 1/3 <sup>rd</sup> shall be independent.
Woman Director	Only to such companies to whom corporate governance Regulations are applicable.	Applicable to all listed entities.
Code of Conduct	To devise such a code and to confirm adherence in the first Board meeting of the financial year.	No such requirement.
Succession Planning	Must include as an agenda item in at least one Board meeting of the year.	No such requirement has been stipulated.
Audit Committee-Constitution	Minimum 3 members with 2/3 <sup>rd</sup> being independent.	Minimum 3 with majority being independent.
Audit Committee - Qualification	All shall be financially literate and one member shall have accounting or related financial management expertise.	Majority including Chairperson shall be able to read and understand financial statements.

Audit Committee - Quorum	2/3 <sup>rd</sup> of the members or 2 members of which 2 shall be independent directors.	No stipulation for quorum.
Nomination and Remuneration Committees	Role shall also include a policy for diversity in the Board of Directors.	No such stipulation.
Stakeholders Relationship Committee	To all listed entities. Does not include deposit holders.	Applicable if there are more than 1000 equity shareholders, debenture holders, deposit holders and other security holders.
Risk Management Committee	Applicable only to top 100 companies by Market Capitalisation.	To all listed entities - to include a Risk Management Policy in the Annual Report.
Related Party Transactions	Covers all transactions with a related party. Prior Approval of the Audit Committee a must.	Covers transactions as specified under Section 188. Approval of the Board of Directors a must.
Omnibus Approvals	A limit of Rs. one crore per transaction stipulated. Validity of the approval is for a year.	No limit specified. Validity of the approval is for a financial year.
Material Related Party Transactions	A blanket limit of 10% of the annual consolidated turnover of the previous year specified. All the related parties cannot vote on the resolution.	Transaction wise limit has been specified. Only to the parties to the transaction cannot vote on the transaction.
Independent directors – Limit	7 listed entities.	10 public companies
Contract	To be hosted on the website within one working day.	No such requirement.
Resignation or removal	To be filled up by the next board meeting or 90 days whichever is later.	Within 180 days of the resignation or removal.
Familiarisation programmes	Required for the independent directors and attendance particulars to be hosted on the website.	No such requirement has been specified.



# Related Party Transactions under SEBI (LODR) Regulations, 2015 wider in scope than section 188 of the Companies Act, 2013



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## BACKGROUND

The Indian Government is becoming stringent in respect of transactions by corporates with related party because several scandals in the U.S. and other parts of the world have cited 'related party transactions' (RPT) as a means to manage earnings as well as divert resources from their companies. The large scale accounting frauds in Enron, Tyco, Parmalat, and Satyam are glaring examples of the

listed entities.

Greater focus has been placed by the regulators on the issue of investor protection, particularly that of the minority shareholders. Controlling shareholders/managers indulge in various forms of dealings, such as executive perquisites, excessive compensation, transfer pricing, appropriation of corporate opportunities, and self-serving financial transactions such as directly entering into contracts for commercial transaction, equity issuance,

The Listing and Disclosure Regulations issued by the SEBI in 2015 contain provisions dealing with related party transactions and the scope of these Regulations appear to be wider than the provisions on the subject contained in the Companies Act, 2013. Greater focus has been placed by the regulators on the issue of investor protection, particularly that of the minority shareholders. Comparative analyses of these provisions is what has been attempted herein.

same. The potential to abuse RPTs is a cause for concern all over the world to both Regulators as well as investors. If RPTs are widespread and misused, it may lead to serious consequences, including the very survival of the company. RPTs not only reduce the returns to outside shareholder and stakeholders but also raise doubts on the effectiveness of corporate governance, which in turn hinders growth in the equity market and the overall economic progress of a country.

Over the last decade, corporate governance has assumed great importance all around the world. Indian regulators are closely following corporate governance developments around the world and periodically introduce some of the best practices followed or introduced in other countries. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations, 2015] as notified by the SEBI has mandated several governance regulations and disclosures for

investments, loans to related parties etc resulting in misappropriation of corporate assets for the benefit of the promoters, directors and their associates and relatives at large.

In India RPTs are governed by following legislations:

- The Companies Act, 2013
- SEBI (LODR) Regulations, 2015
- Accounting Standard 18/IND AS-115
- Income Tax Act and Rules

## DEFINITION OF 'RELATED PARTY'

In view of the fact that various definitions are applicable under various statutes, there is a confusion in the minds of the corporates and professionals as to which definition needs to be considered under the SEBI (LODR) Regulations, 2015 to comply with RPT requirements. Some of them are as follows.

### Companies Act, 2013

A related party as defined in section 2(76) of the Act with reference to a company, means:

- a director or his relative;

- ii. a key managerial personnel or his relative;
- iii. a firm, in which a director, manager or his relative is a partner;
- iv. a private company in which a director or manager or his relative is a member or director;
- v. a public company in which a director or manager is a director and holds along with his relatives, more than two percent of its paid up share capital;
- vi. any body corporate whose Board of directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii. any person whose advice, directions or instructions a director or manager is accustomed to act;  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- viii. a company which is the holding, subsidiary or associate company of such company or a subsidiary of a holding company to which it is also a Subsidiary;
- ix. such other persons as prescribed under rule 3 of the Companies (Specification and Definitions Details) Rules, 2014, which includes a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

As per Section 2(77) of Act, a person shall be treated as a "Relative" to another if;

- (i) they are members of the same HUF;
- (ii) they are husband and wife;
- (iii) they are related to each other in any of the following manner :
  1. Father (provided that the term father includes step-father)
  2. Mother (provided that the term mother includes step-mother)
  3. Son (provided that the term son includes step-son)
  4. Son's wife
  5. Daughter
  6. Daughter's husband
  7. Brother (provided that the term brother includes step-brother)
  8. Sister (provided that the term sister includes step-sister)

## INDIAN AS- 18/IND AS 115

The Indian Accounting Standards 18 (AS-18) /IND-AS 115 cover the disclosure requirement of RPTs. Parties are considered to be related, if one party has the ability to control the other party or, if one party can significantly influence the other in making financial and/or operating decisions during a particular reporting period. However, there are certain tests which are used for determining the relation of the persons with company which are as follows:-

- i. Enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control of, the reporting enterprise.
- ii. Associates and joint ventures of the reporting enterprise and the investing party or venture.
- iii. Individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual.
- iv. Key managerial personnel (KMP) and relatives of such personnel.
- v. Enterprises over which any person described in (iii) or (iv) above is able to exercise significant influence.



## SEBI (LODR) REGULATIONS, 2015

Previously, Clause 49 of the Listing Agreement was dealing with RPTs which required the details of material individual transactions with related parties that are not in the normal course of business along with a statement of all RPTs to be placed before the audit committee.

Regulation 2(1)(zb) of the SEBI (LODR) Regulations, 2015 has considered the term 'related party' as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards."

In order to provide clarity, SEBI has issued FAQs on 29th January, 2016 in which it has clarified that "the definition of related party should be viewed under the Companies Act, 2013 as well as Accounting Standards. If the condition is met under either of the two, then such party should be classified as a related party."

Regulation 23 of the SEBI (LODR) Regulations, 2015 has been made effective from the date of notification, i.e. 2nd September, 2015 and all the listed entities have to comply with the requirements of Regulation 23 in true spirit.

## RELATED PARTY TRANSACTIONS

It must be understood as to what kind of transactions will be treated as RPT under SEBI (LODR) Regulations, 2015. Generally speaking it can be said that any transaction entered with related party will be called as RPT but the Companies Act, 2013 says the same thing in quite technically in Sections 188, 189 and Schedule III of the Companies Act, 2013 read with the Rules framed there under. Following list of transactions will be called as RPTs:-

- a. Sale, purchase or supply of any goods or materials
- b. Selling or otherwise disposing of, or buying, property of any kind
- c. Leasing of property of any kind
- d. Availing or rendering of any services
- e. Appointment of any agent for purchases or sale of goods, materials, services or property;
- f. Such related party's appointment to any office or place of profit in the company its subsidiary company or associate company
- g. Underwriting the subscription of any securities or derivatives thereof, of the company.

## COMPARISON OF THE PROVISIONS OF SECTION 188 WITH LODR REGULATIONS, 2015

Requirement of approval of members within a period of three months under the Companies Act, 2013			Requirement of previous approval of members under the SEBI (LODR) Regulations, 2015		
Sec.	Nature of transaction	Threshold Limit under Rule 15(3)	Regulation	Nature of Transaction	Threshold Limit
188 (1) (a) & (e)	Sale, purchase or supply of any goods or materials, directly or through appointment of agent	Exceeding 10% of Turnover of the company or Rs.100 Crore whichever is lower.	2(1) (zc)	RPT means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:  Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised SE (s); It is to be noted that, in this the word transfer of resources is utilized which also includes the infusion of share capital, Loans granted and other things which is excluded in the list of transactions provided under the Companies Act, 2013.	Regulation 23 provides that a transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.
188 (1) (b) & (e)	Selling or otherwise disposing of, or buying, property of any kind, directly or through appointment of agent	Exceeding 10% of Net worth of the company or Rs.100 Crore whichever is lower.			
188 (1) (c)	Leasing of property of any kind	Exceeding 10% of Net worth of the Company or 10% of Turnover of the company or Rs.100 Crore whichever is lower.			
188 (1) (d) & (e)	Availing or rendering of any services, directly or through appointment of agent	Exceeding 10% of Turnover of the company or Rs.50 Crore whichever is lower.			
188 (1) (f)	Appointment to any office or place of profit in the company, its subsidiary company or associate company	Monthly remuneration exceeding Rs.2.5 lacs			
188 (1) (g)	Underwriting the subscription of any securities or derivatives thereof, of the company	Exceeding 1% of Net Worth of the company			
<b>Approval of Board of directors at the Meeting within a period of three months</b>					
188 (3)	Except with the consent of the Board of Directors given by a resolution at a meeting of the Board within a period of three months of the date of contract and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect RPT as covered under section 188(1)(a) to (g)		23(2)	All RPTs shall require prior approval of the audit committee.	



<b>Omnibus Approval of the Audit Committee under the Companies Act, 2013</b>		<b>Omnibus Approval of the Audit Committee under SEBI (LODR) Regulations, 2015</b>	
Rule 6A	<p>All RPTs shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for RPT proposed to be entered into by the company subject to the following conditions, namely:—</p> <p>(1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:—</p> <p>(a) maximum value of the RPT, in aggregate, which can be allowed under the omnibus route in a year;</p> <p>(b) the maximum value per RPT which can be allowed;</p> <p>(c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;</p> <p>(d) review, at such intervals as the Audit Committee may deem fit, RPT entered into by the company pursuant to each of the omnibus approval made;</p> <p>(e) RPT which cannot be subject to the omnibus approval by the Audit Committee.</p> <p>(2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely:—</p> <p>(a) repetitiveness of the RPT (in past or in future);</p> <p>(b) justification for the need of omnibus approval.</p> <p>(3) The Audit Committee shall satisfy itself on the need for omnibus approval for RPT of repetitive nature and that such approval is in the interest of the company.</p> <p>(4) The omnibus approval shall contain or indicate the following:—</p> <p>(a) name of the related parties;</p> <p>(b) nature and duration of the RPT;</p> <p>(c) maximum amount of RPT that can be entered into;</p> <p>(d) the indicative base price or current contracted price and the formula for variation in the price, if any; and</p> <p>(e) any other information relevant or important for the Audit Committee to take a decision on the proposed RPT:</p> <p>Provided that where the need for RPT cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such RPT subject to its value not exceeding rupees one crore per RPT.</p> <p>(5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.</p> <p>(6) Omnibus approval shall not be made for RPT in respect of selling or disposing of the undertaking of the company.</p> <p>(7) Any other conditions as the Audit Committee may deem fit.]</p>	23(3)	<p>Audit committee may grant omnibus approval for RPTs proposed to be entered into by the listed entity subject to the conditions, namely-</p> <p>(a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on RPT of the listed entity and such approval shall be applicable in respect of RPTs which are repetitive in nature;</p> <p>(b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;</p> <p>(c) the omnibus approval shall specify:</p> <p>(i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,</p> <p>(ii) the indicative base price / current contracted price and the formula or variation in the price if any; and</p> <p>(iii) such other conditions as the audit committee may deem fit:</p> <p>Provided that where the need for RPT cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding Rupees one crore per transaction.</p> <p>(d) the audit committee shall review, at least on a quarterly basis, the details of RPTs entered into by the listed entity pursuant to each of the omnibus approvals given.</p> <p>(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:</p>

<b>Exemptions for RPTs under section 188</b>		<b>Exemption for RPTs under SEBI (LODR) Regulations 2015</b>		
Third Pro-viso to sec. 188  (1)  Last pro-viso of sec. 188  (1)	Nothing in section 188(1) shall apply to any transaction entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis:  Requirement for passing the resolution of members shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.	Reg. 23(5)	Exemption from the approval of Audit Committee, omnibus Approval by the Audit Committee and general meetings as covered under sub Regulations (2), (3) and (4) of Regulation, 23.	(a) Transactions entered into between two Govt. companies; (b) Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. Explanation.- For the purpose of clause (a), "Govt. company" means Govt. company as defined in section 2(45) of the Companies Act, 2013.
<b>Applicable on past and prospective RPTs</b>		<b>Applicability on prospective RPTs</b>		
188  (3)	Consent of the Board of Directors given by a resolution at a meeting of the Board may be taken within a period of three months of the date of contract with a related party with respect RTP as covered under section 188(1)(a) to (g)	23(6)	The provisions of this regulation shall be applicable to all prospective transactions.	
<b>Only such member who is related party is not entitled to attend and vote</b>		<b>All the related parties are not entitled to attend and vote</b>		
2nd Pro-viso to sec. 188  (1)	No member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party	23(4)         23(7)	All material RPTs shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not. For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.	

## REQUIREMENT OF COMPLIANCES IN RELATION TO RPTs BY A LISTED ENTITY

The listed entity needs to ensure compliance of not only Regulations 23 of the SEBI (LODR) Regulations, 2015 but also to check that it is complied with under the provisions of sections 188 and 189 of the Companies Act, 2013.

### **Provisions to be observed strictly by the listed entities**

There are certain provisions, of the Companies Act, 2013 which

are liberal than the SEBI (LODR) Regulations and it becomes very difficult to observe the same and to make compliance in letter and spirit as desired under the SEBI (LODR) Regulations, 2015; some of the instances are as under.

### *Scope of the Related Party and RPTs*

The scope of related party is wider under the SEBI (LODR) Regulations, 2015 than under the Companies Act; in addition to the related parties defined under section 2(76) of the Companies Act, 2013 the parties covered under the Accounting Standards-18/IND AS-115 also need to observe the requirements. Thus transactions

with the Managing Director, whole-time directors, Chief Financial Officer, and associates etc as covered under AS-18/IND AS-115 also come under RPT scanner; however, these are governed by other provisions of the Companies Act, 2013 like section 197, 197 read with Schedule V, section 203 etc.

*Entitlement to attend and vote at the Meeting*

The Second Proviso to section 188(1) provides that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. Regulation 23(4) provides that the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

SEBI FAQ dt.08.01.2016 clarifies that the requirements under Regulation 23(4), are applicable for listed entities subject to the provisions of Regulation 15. Hence, for applicable entities, the regulations clearly provide that all material RPTs shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party for the particular transaction or not.

*Whether appointment of the managerial personnel under sections 196 and 197 covered as RPT under the SEBI (LODR) Regulations, 2015?*

Section 188 of the Companies Act, 2013 does not require approval for appointment or re-appointment of the managing or whole-time director as these appointments are subject to the provisions of sections 196 and 197 but in view of the applicability of the AS-18, these are also covered under the RPTs. Whether or not the amount of remuneration proposed is material, when the resolution is put before the general meeting, if the appointee is a shareholder, whether he himself and his relatives can attend and vote on the resolution at the general meeting? Some of the professionals argue that since the resolution is out of scope of section 188 and the remuneration payable is also not material, the restrictions under Regulation 23(4) of the SEBI (LODR) are not applicable, whereas some professionals are of the view that as per the format prescribed for declaration of results of the general meeting by the SEBI, listed entities have to show whether “the promoter or promoter group are interested in the agenda/resolution”?, If it is affirmed, which is also confirmed in the explanatory statement given under section 102 of the Companies Act, 2013, it is bound to say “Yes” only, and if the answer is yes, then the concerned appointee and his relatives as covered under section 2(76) are not entitled to attend the meeting when the resolution is considered and cannot vote for the particular agenda item in the general meeting also and if they attend and vote, their votes need to be declared invalid and rejected by the scrutinizer.

*Whether appointment of Managing or whole-time directors needs previous approval of the Audit Committee*

According to sections 196 and 197 of Companies Act, 2013 read with Schedule V the appointment and re-appointment of the managing director and whole-time directors are subject to the approval of the Nomination and Remuneration Committee of the Board and the Audit Committee has no role to play. However Regulation 23(2) of the SEBI (LODR) Regulations provides that all RPTs shall require prior approval of the audit committee. Therefore, to make compliance by the listed entity it is first required to take approval of the Nomination and Remuneration Committee, then from the Audit Committee then the Board of Directors and finally

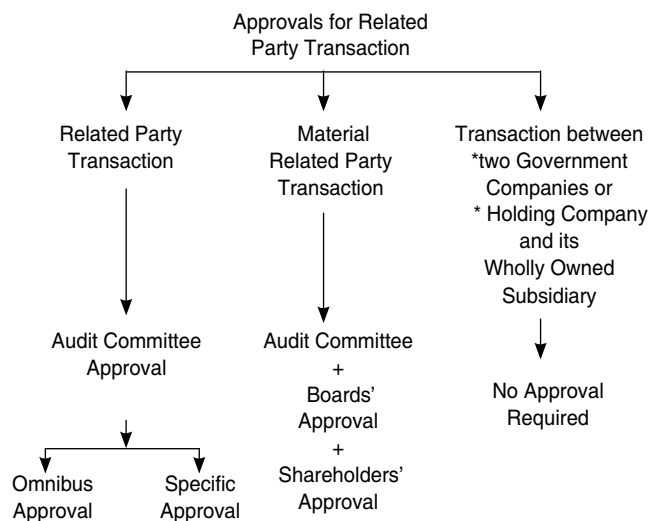
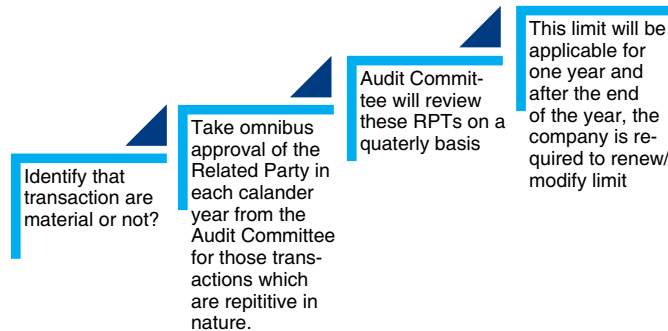
the approval of the members at the general meeting.

**Applicability of the Accounting Standards**

Regulation 48 provides that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

**Approvals before entering into transactions with Related Party**

SEBI (LODR) Regulations, 2015 has prima facie liberalized the approvals for undertaking transactions with the related parties and Regulation 23 of the SEBI (LODR) Regulations, 2015 specifies the following procedure to be adopted before entering into any RPT:



**Other Compliances of the SEBI (LODR) Regulations**

**Policy of materiality and RPTs**

Regulation 23(1) provides that all the listed entities are required to create the Policy of Materiality and it is required to be posted on the website of the company and the same is required to be intimated to the concerned Stock exchange where the securities are listed. While determining and drafting this one has to keep in mind the following :-

- i. What will be material?
- ii. What will be the events which are deemed to be material events?
- iii. Who will be authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange?
- iv. What will be the time limit for disclosures of event or information to the stock exchange?



**Disclosure of RPTs in the Corporate Governance Report**

Under Regulation 27 of the SEBI (LODR) Regulations, 2015, the listed entities are required to disclose the RPTs by way of note in the quarterly Corporate Governance Report filed with the stock exchange where the company is listed. It needs to be noted that if the same is not disclosed, it will be treated as if no report is filed.

**Placing of the statement of RPTs entered by the company which are at the arm's length basis and in the routine course of Business before the Audit Committee**

The following statement may be placed before the meeting of the Audit Committee for review:

S. No.	Name of the Related Party	Nature of Relation with the Directors/ KMP/ Company	Nature of Transaction	Value of contract or arrangement till previous Quarter/s	Transactions during the current Quarter	Cumulative amount till the end of the Quarter	Reference for the approval of the ACM/ BM/GM and remarks if any.

It may be further be confirmed by the CFO/CEO to the Audit Committee that there were no material transactions entered by the company with any related party attracting the provisions of RPTs under section 188 of Companies Act, 2013 and the SEBI (LODR) Regulations, 2015 and AS-18/IND AS-115, which requires approval of the members.

**Responsibilities of the Board of directors**

Regulations 4(2)(f)(ii)(6) provides that the Board of directors of the listed entity shall have the key function of monitoring and managing potential conflicts of interest of management, members of the Board of directors and shareholders, including misuse of corporate assets and abuse in RPTs.

**Disclosure Policy on dealing with RPTs on website**

Regulation 46 provides that the listed entity shall maintain a functional website containing the basic information about the listed entity and shall disseminate the policy on dealing with RPTs on its website.

**Disclosure in the Annual Report**

Regulation 53(f) read with the Part A of the Schedule V provides that the listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures". Annual report of the listed entity shall contain disclosures as specified in Companies Act, 2013 along with the following:

Sr. no	In the accounts of	Disclosures of amounts at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year.
1	Holding Company	<ul style="list-style-type: none"> <li>Loans and advances in the nature of loans to subsidiaries by name and amount.</li> <li>Loans and advances in the nature of loans to associates by name and amount.</li> <li>Loans and advances in the nature of loans to firms/ companies in which directors are interested by name and amount.</li> </ul>

2	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company
3	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of the Companies Act, 2013. The above disclosures shall be applicable to all listed entities except for listed banks.

Under Companies Act, 2013 the particulars of every contract or arrangement with related parties entered into under section 188(1) shall be made in the Board's Report along with the justification for entering into such contract or arrangement, in Form AOC-2.

**Other Disclosures**

Disclosures on materially significant RPTs that may have potential conflict with the interests of listed entity at large and web link where policy on dealing with RPTs.

**The role of the audit committee**

The Role of the Audit Committee shall include reviewing, the management, the annual financial statements and auditor's report thereon before submission to the board for approval with particular reference to the disclosure of any RPT and statement of significant RPTs submitted by management.

**CONCLUSION**

All company secretaries and compliance officers of listed entities, their auditors, audit committee and Board of directors need to have thorough understanding of the RPTs. The scrutinisers of the poll and remote e-voting need to be vigilant in providing their report to make complete and adequate compliance of Regulation 23 and other applicable regulations of the SEBI (LODR) Regulations, 2015 as well as the provisions of sections 188 and 189 of the Companies Act, 2013. Further since so much of data and information are now required to be hosted on the website of the Company and BSE, like shareholding pattern, financial results, annual report, various policies, etc which is being strictly watched by the regulators, taxation authorities, stakeholders and competitors, all the disclosure and information must be adequate, complete and accurate in all respect.

**SOURCE:**

- The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 SEBI (LODR) Regulations, 2015.
- Section 188 of the Companies Act, 2013 and Rule 15 of the Companies (Meetings and Powers of the Board) Rules, 2014 - SEBI FAQ dated.08.01.2016.

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# Related Party Transactions under the new regime of Companies Act 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015



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## INTRODUCTION

Several scandals in the US and other parts of the world have cited Related party Transactions (RPTs) as a means to manage earnings as well as divert resources from their Companies. Some glaring examples of Accounting Frauds are Enron, Satyam, Tyco, Lehman Brothers. The biggest ever accounting scandal in

between two parties who are connected by a special relationship prior to the deal.

The Companies Act, 2013 (hereinafter referred to as "the Act") read with applicable Rules framed thereunder, the SEBI Listing Agreement, the SEBI Listing Regulations (LODR) which were published on 2nd September 2015 and effective after 90 days of the publication along with Indian Accounting Standard

With a view to ensure better governance, the Companies Act 2013 has introduced effective provisions on related party transactions by companies. The new LODR Regulations also have provisions dealing with such related party transactions. This article throws more light on these provisions.

Japanese corporate history happened in Toshiba Corp. The potential to abuse RPTs had become a cause of concern to both regulators and investors. Anecdotal evidence and academic studies show that the transfer of resources by overpaying for the acquisition of assets, hiding losses, and understating debts in their financial statements to cover-up the fraud are quite wide spread practices. RPTs not only reduce the returns to external investors but also prove to be a serious blow to effectiveness of corporate governance, which in turn hinders the growth in the equity market and the overall economic progress of a country.

The United Nations Conference on Trade and Development (UNCTAD) guidance on good corporate governance recognizes that disclosure of related party transactions and any related party relationships where control exists should be disclosed as well as disclosure of the decision-making process for approving related party transactions.

Related Party Transactions briefly refers to a business dealings or arrangement

(AS 18), provide a composite code for regulating transactions with related parties. The related party disclosure has gained tremendous significance not only in terms of the provisions of SEBI Regulations, Companies Act and Accounting Standards, but also in terms of the provisions of the Income Tax Act, 1961 with the recently introduced sections and rules for transfer pricing, in relation to transactions with associated enterprises.

## MEANING OF RELATED PARTY

Section 2(76) of the Companies Act, 2013 ("the Act") defines the word "related party":

- i. a director or his relative;
- ii. a key managerial personnel or his relative;
- iii. a firm, in which a director, manager or his relative is a partner;
- iv. a private company in which a director or manager or his relative is a member or director;
- v. a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

With the intent to harmonize the provisions with the Companies Act 2013, the requirement of shareholder approval for material related party transaction has been relaxed from Special Resolution to Ordinary Resolution. The provisions of Clause 49 of the erstwhile Listing Agreement have by and large been replicated in the LODR as well.

- vi. any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii. any person on whose advice, directions or instructions a director or manager is accustomed to act:  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- viii. any company which is—
  - (A) a holding, subsidiary or an associate company of such company; or
  - (B) a subsidiary of a holding company to which it is also a subsidiary;
- ix. such other person as may be prescribed;

Rule 3 of Companies (Specification of definitions details) Rules, 2014 states that “For the purposes of sub-clause (ix) a director other than an Independent Director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.”

The MCA vide exemption Notification dated 5th June, 2015 exempted private companies from clause (viii) of Section 2(76) for the purpose of Section 188 of the Act.

After this exemption notification in case of private companies holding, subsidiary or associate companies will not be related parties for the purpose of Section 188 unless they fall in any other category as specified in Section 2(76). Section 2(76) is extremely comprehensive and encompasses a multitude of relationships and its tentacles are widespread.

## ACCOUNTING STANDARD 18

**Related party** - Parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

**Related party transaction** - a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.

This Standard deals only with related party relationships described as below:

- (a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes

- holding companies, subsidiaries and fellow subsidiaries);
  - (b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;
  - (c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;
  - (d) key management personnel and relatives of such personnel; and
  - (e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.
- Control –
- (a) ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or
  - (b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or
  - (c) a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise.

**Significant influence** - participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies. Significant influence may be exercised in several ways, for example, by representation on the board of directors, participation in the policy making process, material inter-company transactions, interchange of managerial personnel, or dependence on technical information. Significant influence may be gained by share ownership, statute or agreement.

Some of the common examples of Related Party Transactions recognized under AS18 are

1. Purchase or sale of goods.
2. Purchase or sale of fixed assets.
3. Rendering or receiving of services.
4. Agency arrangements.
5. Leasing or Hire Purchase agreements.
6. License Agreements.
7. Finance including loan or equity contribution in cash or kind.
8. Management Contracts including for deputation of employees.

## THE SEBI REGULATIONS

SEBI modified the concept of related party transactions by the amendment made to clause 49 of the listing agreement which came into effect from 1st October 2014. The amended definition of “related party” stated that an entity would be related to the company, if such an entity is a related party (i) under section 2(76) of the Act; or (ii) under the applicable accounting standards.

Cause 2(1) (zb) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (LODR) means a Related Party as defined under section 2(76) of the Companies Act 2013 or under the applicable accounting standards.

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on recognized stock exchanges.

Related Party Transaction as per the Regulations means:

- a) Transfer of Resources



- b) A transfer of Services or  
c) A transfer of obligations

Between a Listed Entity and a Related Party, regardless of whether a price is charged and a “transaction” with a related shall be construed to include a single transaction or a group of transactions in a contract.

The following provision of LODR has become applicable from immediate effect:

“Passing of an ordinary Resolution instead of Special Resolution in case of material related party transactions subject to related parties abstaining from voting on such resolutions in terms of Regulation 23(4).”

As per Regulation 23 of LODR the listed Entity requires to formulate a policy on materiality of related party transactions and dealing with related parties similar to provision existing in the Listing Agreement. A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

It also provides for seeking approval from Shareholders in General Meeting by passing an Ordinary Resolution for approving material related party transactions subject to the stipulation that such related parties shall be abstained from voting on such resolution.

The provisions on Related Party Transactions under LODR may be summarized thus:

- a) Audit Committee to give prior approval for all Related party Transactions - Regulation 23(2).
- b) All material related party transactions shall require approval of the shareholders through a Resolution.- Regulation 23(4)
- c) Related parties shall abstain from voting on such resolutions, whether the entity is a related party to the particular transaction or not - Regulation 23(4). This means that if a certain related party is not interested in the transaction even then by virtue of the Listing Regulations, the dis-interested related party also will have to abstain from voting. This point differs with Section 188 of the Companies Act, 2013 whereby the Ministry of Corporate Affairs clarified vide General Circular No. 30/2014 dated 17.07.2014, that only the related party in the context of the contract or arrangement need to abstain from voting. Thus in unlisted companies (other than private companies) a related party is only in the context of the RPT for which shareholders’ resolution is sought. Related parties in private companies have no restriction on voting — in spite of being interested, they can still vote. With the intent to harmonize the provisions with the Companies Act 2013, the requirement of shareholder approval for material related party transaction has been relaxed from Special Resolution to Ordinary Resolution. The provisions of Clause 49 of the erstwhile Listing Agreement have by and large been replicated in the LODR as well.
- d) All existing material related party contracts or arrangements entered into prior to the date of notification of these Regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.
- e) Non Applicability: The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

- (i) Transactions entered into between two government companies
- (ii) Transactions entered into between a Holding Company And Its Wholly Owned Subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
- f) As per regulation 27(2) details of all material transactions with related parties shall be disclosed in compliance report. The listed entity shall submit a Quarterly Compliance Report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s) within 15 (fifteen days) from close of the quarter.
- g) As per regulation 46(2)(g) the listed entity shall disseminate on its website policy on dealing with related party transactions. Unlike their listed counterparts, unlisted companies do not require to formulate any policy on materiality and dealing with the RPT.
- h) As per regulation 53 (f) the annual report of the listed entity shall contain disclosures related party disclosures as specified in Para A of Schedule V. As per the LODR one of the Key functions of the Board of Directors include- “Monitoring and managing potential conflicts of interest of management, members of the Board of Directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

## ROLE OF AUDIT COMMITTEE

As per Regulation 23(2) of the Listing Regulations 2015, Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

- (i) The audit committee shall lay down the Criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- (ii) The audit committee shall Satisfy Itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- (iii) The omnibus approval shall specify:
  - The name(s) of the related party,
  - Nature of transaction,
  - Period of transaction,
  - Maximum amount of transactions that shall be entered into,
  - The indicative base price / current contracted price and
  - The formula for variation in the price if any; and
  - Such other conditions as the audit committee may deem fit:
- (iv) Special Condition: Where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value Not Exceeding Rupees One Crore per Transaction.
- (v) It is the duty of the audit committee to review, at least on a Quarterly Basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given. Omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year. Similar provision may be found in Section 177(4)(iv) proviso

of the Companies Act, 2013 read with Rule 6A of the Companies (Meeting of Board and its Power) Rules 2014 which has been notified vide Notification no. G.S.R. 971(E) dated 14.12.2015 effective from 15.12.2015, wherein the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

## RELATED PARTY AND RELATED PARTY TRANSACTION UNDER COMPANIES ACT 2013

As earlier defined in this Article, Section 2(76) of the Companies Act, 2013 ("the Act") defines the word "related party":

### Identification of Related Party Transaction

Section 188 of the 2013 Act (corresponding to section 297,314 of the Companies Act 1956 ) read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules 2014 deals with the related party transactions with respect to:

- I. Sale, purchase or supply of any goods or materials
- II. Selling or otherwise disposing of, or buying, property of any kind
- III. Leasing of property of any kind
- IV. Availing or rendering of any services
- V. Appointment of any agent for purchase or sale of goods, materials, services or property
- VI. Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and
- VII. Underwriting the subscription of any securities or derivatives thereof, of the company.

In contrast, the SEBI Regulations (LODR) defines the related party transactions as a transaction involving "transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged."

The Companies Act, 2013 has widened the scope of related party transaction. The Companies Act, 1956 covered only purchase or sale of goods or supply of services and subscription of any shares or debentures of the company under the related party transaction. However, Companies Act, 2013 has brought immovable properties and leasing of property also under the ambit of related party transaction.

### Approval of Board of directors

Section 188(1) of the 2013 Act provides for approval of related party transactions:

"(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to:

- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Availing or rendering of any services
- Appointment of any agent for purchase or sale of goods, materials, services or property
- Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and
- Underwriting the subscription of any securities or derivatives thereof, of the company

Provided that no contract or arrangement, in the case of a

company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution.

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Notification F No1/2/2014-CL.V dated 05.06.2015 provides that the First and Second Provisos shall not apply to –

- a) A Government Company in respect of contracts or arrangements entered into by it with any other Government Company ;
- b) A Government Company other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a) , in case such Company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company , or as the case may be , the State Government before entering into such contract or arrangement.

Second Proviso to section 188(1) of the Act shall not apply to a Private Company.

To find whether all the transactions with related party have to bear the scrutiny and compliances of Section 188 of Act one may have to look to the third proviso to Section 188 (1) of the Act which is in the nature of exemption clause - the same is reproduced below:-

"Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis."

The Companies Amendment Act 2015 effective from 29.05.2015 inserted the following proviso after the third Proviso.

" Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding Company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval."

### Approval of the company by Ordinary resolution:

MCA has amended the Companies (Meetings of Board and its Powers) Rules 2014 vide the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 on 14th December 2015. In Sub Rule (3) of Rule 15 the word "Special Resolution" has been substituted with the word resolution"wherever occurred. Hence with the prior approval of Shareholders through Ordinary Resolution transactions which are to be entered into:

- (a) As contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, the below mentioned criteria is taken –
  - i. Sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
  - ii. Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent of net worth of the company or rupees one hundred crore, whichever is lower, as

mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

- iii. Leasing of property of any kind exceeding ten per cent of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;
- iv. Availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

**Explanation.**—It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (b) For appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or
- (c) For remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

**Explanation.-** (1) The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.

No member of the company shall vote on such resolution, if he is a related party, to approve any contract or arrangement which may be entered into by the company. However, MCA has exempted the private companies from this requirement vide notification dated 5th June, 2015. This implies, that if a private company enters into any contract or arrangement with a related party requiring prior approval of the Company, the related parties are now allowed to vote on such a resolution. This is a big relief to the private companies as having disinterested members was not at many times possible in private companies where there are few members who are mostly related to each other.

The Explanatory Statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars namely:-

- (a) Name of the related party ;
- (b) Name of the director or key managerial personnel who is related, if any;
- (c) Nature of relationship;
- (d) Nature, material terms, monetary value and particulars of the contract or arrangement;
- (e) Any other information relevant or important for the members to take a decision on the proposed resolution.

Section 189 of the Act specifies that every Company shall keep one or more registers in Form MBP-4 giving separately particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies. After entering the particulars, such register shall be placed before the next Board Meeting and Signed by all the directors Present at the meeting. Entry shall be made in chronological order, authenticated by Company secretary of Company and person authorized by board. The register shall be kept at the registered office of the Company and preserved permanently. Members may also take extracts from this register.

Exemption:



- No entry required to be done in register if contract is for sale, purchase or supply of goods, material or services, the value of such materials or the cost of such services does not exceed Rs. 5 lakh in the aggregate in any year.
- Any contract or arrangement by banking company for the collection of bills in the ordinary course of its business.

## TRANSITIONAL REQUIREMENTS

Neither the 2013 Act nor the Board Rules contain any specific transitional provisions. The MCA vide circular no 30/ 2014 dated 17th July, 2014 clarified that contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

The Companies (Amendment) Act, 2015 passed by Parliament thus made following changes on related party transaction:

- Empowering Audit Committee to give omnibus approvals for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.
- The amendments include replacing “special resolution” with “ordinary resolution” for approval of related-party transactions.
- Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval.

### Cases not requiring prior approval

Transactions entered into by the company in its ordinary course of business and undertaken at an arm’s length basis do not require any prior approval.

The word “ordinary course of business” is not defined in the Companies Act, 2013 or in Rules made thereunder. Ordinary course of business covers the usual transactions, customs and practices of a certain business. But no clear definition of the term is there in the Act so that any subjectivity can be ruled out. A variety of factors may be taken to determine whether



the transaction is in ordinary course or not like size, volume, frequency, purpose of transaction etc.

The Division Bench of Orissa High Court in the case of Dilip Kumar Swain v. Executive Engineer, Cuttack Municipal Corporation MANU/OR/0136/1996 has defined “ordinary course of business” in the following words:

“In the context Section 32(2) of Indian Evidence Act, 1872 (in short, ‘Evidence Act’) may the Expression “in the ordinary course of business” means “on the ordinary course of a professional avocation or current routine of business” which was usually followed by the person whose declaration it is sought to be introduced. Expression “in the ordinary course of business” means in the usual course of routine of business. It is used to detect current routine of business. It is trite law that definition or interpretation given in respect of a particular entry has to be judged in the background of that statute itself and cannot always throw a guiding light in respect of other statutes. It has to be judged in the background and context in which it is used in a particular statute”.

#### **Arm’s length transaction – Meaning**

A transaction is generally described as not being on an arm’s length basis when a buyer and a seller act independently and have no relationship with each other. The concept is used to ensure both parties in the deal are acting in their own interest and are not subject to any pressure from the other party. Determination of arm’s length price under Companies Act, 2013 is for avoiding any conflict of interest. Section 188 does not require the ‘registered valuer’ certification to determine ‘arms length’ price. However one may evaluate the same on case by case basis. In many cases whether the transaction is at arms length price may be clear from the face of the transaction itself without any further analysis.

The Three Member Bench of Income Tax Appellate Tribunal, in the case of IndusInd Bank v.. Addl Commissioner of Income Tax MANU/IU/0262/2012, has defined “arms length transaction” in the following words:

“The amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller is an arm’s length transaction.”

If a transaction fulfills both the criteria no approval will be required under section 188 of the Act.

RPT in listed companies is not exempt even if executed at arm’s length and in the ordinary course of business. This is a very critical difference.

#### **Disclosure in the Board’s Report**

The 2013 Act requires that every contract/ arrangements entered into under section 188(1) is referred in the board’s report, along with justification for entering into such transaction. From a reading of 188(2), it seems clear that only transactions covered under the section 188(1) require disclosure in the board report. Transactions meeting the exemption criteria in third proviso, viz., transactions entered into by a company in its ordinary course of business and at arms’ length price, are completely outside the scope of section 188(1). Hence, the 2013 Act does not require disclosure of such transactions in the board report.

The MCA has prescribed Form AOC-2 in the Accounts Rules for disclosure of related party transactions in the board report. The form includes disclosure for (i) all (both material and immaterial) related party transactions which are not on arms’ length basis, and (ii) material related party transactions which are on an arms’ length basis. It seems that in prescribing disclosures at (ii) above, Form AOC-2 has gone beyond disclosures required under the

2013 Act. Since the Form notified by the MCA has prescribed specific disclosures, a company may, out of abundant caution, disclose material related party transactions even if they are entered into on an arms’ length basis. This disclosure regarding related party transactions in the board report is applicable to both listed and non-listed companies.

#### **Consequences of contravention**

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a ordinary resolution in the general meeting-

- and if it is not ratified by the Board; or
- by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered:

such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it – Section 188(3).

Where any contract has been entered, and any loss has been suffered due to such contract, the company has power to initiate any proceeding against director or employee who has entered into such contract or arrangement. [ Section 188(4)].

#### **Penal Provisions**

Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,—

- in case of listed company, be punishable with imprisonment upto one year or with fine not less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and
- in case of any other company, be punishable with fine not less than twenty-five thousand rupees but which may extend to five lakh rupees.

## **CONCLUSION**

The Companies Act, 2013 has dispensed with Central Government approvals for related party transaction which was mandatory under the 1956 Act for companies having paid-up share capital of rupees one crore or more which is a booster for Industries. The Parliament has passed the Companies (Amendment) Act, 2015 which has replaced “special resolution” with “ordinary resolution” for approval of related-party transactions by minority shareholders and also exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders. This will enable group companies in transacting inter se business. For ease in doing business, now the audit committee will be empowered to give omnibus approvals for related party transactions to be entered into by the company. There were several facets in the law relating to related party transactions which had assumed draconian proportions and therefore needed to be in sync with the economic environment. The Companies (Amendment) Act, 2015 and the present Listing Regulations will provide a big relief consequent to the removal of provisions which are ex-facto oppressive to an environment of doing business with ease.. The next stage is the process of understanding the new rules.. It is not an endpoint, nor is it a beginning, but we hope it is an important step forward for companies and individuals as well as for the nation. CS

# SEBI LODR Regulations, 2015 - Finance perspective



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SEBI notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations or LODR Regulations) on 2nd September 2015. These Regulations have replaced the erstwhile Listing Agreement. The LODR Regulations are applicable from the ninetieth day from the date of publication in the official gazette i.e., 1st December 2015. Existing listed entities are required to execute a fresh agreement with stock exchanges within 6 months from the date of notification of SEBI LODR Regulations i.e., 1st March 2016.

There were separate agreements for Equity, Debt and IDR under the Listing Agreement. SEBI LODR Regulations have brought uniformity by specifying a common listing agreement for Equity, Debt, IDR and Mutual Funds (which were not covered by erstwhile Listing Agreement). In this article, the focus is more on regulations which are applicable to Equity.

The LODR Regulations, 2015 issued by the SEBI has brought in uniformity in compliance requirements and is a complete code in itself. The compliance requirements are onerous and non-compliance can attract heavy penalty. It is, therefore, imperative for the listed entities, KMPs, other concerned officials and more particularly Finance/Secretarial team to thoroughly understand all the applicable provisions so as to avoid penalty and negative publicity.

## IMPACT OF LISTING REGULATIONS - ANALYSIS

What are the important differences between erstwhile Listing Agreement and SEBI LODR Regulations, 2015? What are the moot points to be borne in mind by Finance/Secretarial team as regards SEBI LODR Regulations, 2015? As regards compliance, what are the important dates to be remembered? An attempt is made in this article to address these issues.

### Points of difference - Listing Agreement v. LODR Regulations, 2015

There are some significant changes in compliance requirements under LODR Regulations as compared to erstwhile Listing Agreement. Changes which are merely procedural are not discussed here.



Important differences between erstwhile Listing Agreement and LODR Regulations are highlighted in the Table given below:

Points of Difference	Listing Agreement	LODR Regulations, 2015
Stock Exchange specific	Different stock exchanges had different agreement formats.	Agreement is uniform across the stock exchanges.
Multiple agreements	Separate listing agreements were there for Equity, Debt, IDR. There was no listing agreement for Mutual Funds.	Uniform listing agreement for Equity, Debt, IDR and Mutual Funds.
Signing of the agreement	It was not necessary for the Stock Exchange to sign the agreement.	Stock Exchange has to sign the agreement.
Simplification/Facilitation	Agreement used to get finalised at the head quarters of respective stock exchange.	Regional representative of Stock Exchange is authorised to vet, sign and execute the agreement.
Duties and obligations of Stock Exchanges (SEs)	Duties and obligations of SEs were not specified.	Chapter X exclusively deals with duties and obligations of recognised SEs
Certificate from PCS to be procured by share transfer agent/ in-house share transfer facility - regarding share transfer formalities	Certificate shall certify that all share certificates have been issued within 15 days of lodgement for transfer, sub-division etc.  Certificate shall be submitted to SE by the company within 24 hours of receipt of the same [Clause 47(c)].	Certificate shall certify that all share certificates have been issued within 30 days of lodgement for transfer, sub-division etc. ( <i>in line with Companies Act, 2013</i> ).  Certificate to be filed with SE simultaneously [Regulation 40(9) & (10)].
Approval of financial results	Quarterly financial results could have been approved by an authorised committee other than <i>Audit committee</i> [Clause 41(II)(a)].	Board alone can approve the financial results in a duly convened meeting [Regulation 33(2)(a)].
Unaudited financial results	It was not mandatory for limited review report to accompany the unaudited financial results. It could have been submitted subsequently i.e., any time within 45 days from the end of quarter [Clause 41(I)(c)(i)].	Limited review report shall accompany the unaudited financial results [Regulation 33(3)(c)(i)].
Exemptions to entities listed in SME exchange	No exemptions were available as SME segment is a new concept	Some exemptions are granted to entities listed in SME segment - Regulation 31(1), 33(5) etc.
Intimation to SE about the meetings of Board of Directors for considering the financial results	It was necessary to give 7 days prior notice to SE [Clause 41(III)(a)].	It shall suffice if 5 days advance notice is given to SE [Proviso-Regulation 29(2)].

Book closure/ Record date	It was mandatory to close the Transfer Books at least once during AGM if not closed during the year [Clause 16]	Book Closure/Record date is mandatory only for some specified purposes as stated in Regulation 42(1) [Regulation 42]
Disclosure of events or information	There were no clear guidelines as regards disclosure of material events or information.	Clear guidelines as regards disclosure of events or information are provided [Schedule III].
Annual Information Memorandum	No such concept was there.	SEBI may require the listed entities to submit 'Annual Information Memorandum' to SE [Regulation 35].

### Time Based Compliances for the calendar year 2016

Important time based compliances under LODR Regulations are highlighted hereunder :

Regulation No.	Particulars of documents	Due Date of compliance
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-01-2016
27(2)(a)	Filing Quarterly Compliance Report on Corporate Governance with SE signed by compliance officer or CEO	15-01-2016
31(1)(b)	Filing Shareholding pattern with SE other than by entities who have listed in SME exchange (Quarterly)	21-01-2016
13	Filing Statement relating to investor complaints with SE after placing before the Board of Directors (Quarterly)	21-01-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-01-2016
33(3)(a)	Filing Quarterly and year-to-date standalone/ consolidated financial results with the SE by entities other than those listed in SME Exchange	14-02-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-02-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	29-02-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-03-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-03-2016
26(3)	Obtaining confirmation from all the members of Board of Directors and senior management personnel regarding compliance with code of conduct	31-03-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-04-2016
27(2)(a)	Filing Quarterly Compliance Report on Corporate Governance with SE signed by compliance officer or CEO. Additional details for the entire year (Annexure II - Circular No. 5/2015 dated 24th September 2015) to be furnished.	15-04-2016
31(1)(b)	Filing Shareholding pattern with SE other than by entities who have listed in SME exchange (Quarterly)	21-04-2016



31(1)	Filing Shareholding pattern with SE by entities who have listed in SME exchange (Half-Yearly)	21-04-2016
13	Filing Statement relating to investor complaints with SE after placing before the Board of Directors (Quarterly)	21-04-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-04-2016
7(3)	Submission of Compliance Certificate as regards share transfer signed by the compliance officer & representative of share transfer agent with SE (Half-Yearly)	30-04-2016
40(9)	Submitting Certificate from PCS produced by share transfer agent/in-house share transfer facility (certifying issue of share certificates within 30 days of lodgement) with SE (Half-Yearly)	30-04-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-05-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-05-2016
33(3)(d)	Filing Annual Audited standalone/consolidated financial results, audit report and Statement on Impact of Audit Qualifications (if applicable) with the SE by entities other than those listed in SME Exchange - modified wef 01-04-16	30-05-2016
33(5)	Filing Audited annual standalone/consolidated financial results, Statement of Assets and Liabilities by an entity listed in SME Exchange with the SE	30-05-2016
56(1)(d)	Filing Certificate from PCS or practicing CA regarding maintenance of 100% asset cover is respect of listed convertible debt securities with the SE	31-05-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-06-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-06-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-07-2016
27(2)(a)	Filing Quarterly Compliance Report on Corporate Governance with SE signed by compliance officer or CEO	15-07-2016
31(1)(b)	Filing Shareholding pattern with SE other than by entities who have listed in SME exchange (Quarterly)	21-07-2016
13	Filing Statement relating to investor complaints with SE after placing before the Board of Directors (Quarterly)	21-07-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-07-2016
33(3)(a)	Filing Quarterly and year-to-date standalone/consolidated financial results with the SE by entities other than those listed in SME Exchange	14-08-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	14-08-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-08-2016

36	Sending Notice of AGM and other relevant documents to shareholders AGM is presumed to be held on 30-09-2016	07-09-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	14-09-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-09-2016
Sch. V, Clause E	Corporate Governance compliance certificate from PCS or statutory auditors (to be annexed to Directors' Report) - AGM is presumed to be held on 30-09-2016	30-09-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-10-2016
27(2)(a)	Filing Quarterly Compliance Report on Corporate Governance with SE signed by compliance officer or CEO. Additional details (as per Annexure III - Circular No. 5/2015 dated 24th September 2015) to be furnished.	15-10-2016
31(1)(b)	Filing Shareholding pattern with SE other than by entities who have listed in SME exchange (Quarterly)	21-10-2016
31(1)	Filing Shareholding pattern with SE by entities who have listed in SME exchange (Half-Yearly)	21-10-2016
13	Filing Statement relating to investor complaints with SE after placing before the Board of Directors (Quarterly)	21-10-2016
34(1)	Filing Annual Report with SE after it is approved at AGM - AGM is presumed to be held on 30-09-2016 and five days are presumed to be holidays	26-10-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-10-2016
7(3)	Submission of Compliance Certificate as regards share transfer signed by the compliance officer & representative of share transfer agent with SE (Half-Yearly)	31-10-2016
40(9)	Submitting Certificate from PCS produced by share transfer agent/in-house share transfer facility (certifying issue of share certificates within 30 days of lodgement) with SE (Half-Yearly)	31-10-2016
33(3)(a)	Filing Quarterly and year-to-date standalone/consolidated financial results, Statement of Assets and Liabilities with the SE by entities other than those listed in SME Exchange	14-11-2016
33(5)	Filing Half-Yearly standalone/consolidated financial results, Statement of Assets and Liabilities by an entity listed in SME Exchange with the SE	14-11-2016
56(1)(d)	Filing Certificate from PCS or practicing CA regarding maintenance of 100% asset cover is respect of listed convertible debt securities with the SE	14-11-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-11-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-11-2016



40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	15-11-2016
40(2)	Attending to formalities pertaining to Transfer of securities (Fortnightly)	30-11-2016

Note : Some of the above dates might fall on Sundays/holidays and hence to be planned well in advance.

#### Event based compliances - Trigger Points

Important event based compliances are as under :

- (1) The listed entity may manage the share transfer facility in-house or appoint a SEBI registered share transfer agent. If the share transfer activity is carried out in-house and if the number of security holders in listed entity exceeds 1,00,000, the listed entity shall either register with SEBI as Category II share transfer agent or appoint Registrar to an issue and share transfer agent registered with SEBI [Regulation 7(1)].
- (2) In the case of appointment or change in appointment of share transfer agent, the listed entity should ensure that tripartite agreement is entered between listed entity, old share transfer agent and new share transfer agent in accordance with SEBI guidelines. However if the existing share transfer facility is managed in-house, listed entity shall enter into agreement with new share transfer agent [Regulation 7(4)]. The agreement shall be placed in next meeting of the Board of Directors [Regulation 7(6)].
- (3) Appointment of new share transfer agent shall be intimated to Stock Exchange (SE) within 7 days of entering into agreement [Regulation 7(5)].
- (4) The listed entity shall formulate the appropriate policy for the preservation of documents. Documents shall be preserved either permanently or for 8 years based on the regulatory requirements [Regulation 9].
- (5) Dividend, interest and redemption/repayments shall be remitted using electronic payment facility approved by RBI. If it is not possible to remit such payments electronically, 'payable-at-par' cheques or warrants may be issued [Regulation 12].
- (6) Board composition, meetings, time gap between meetings shall be in accordance with Regulation 17. The board of directors shall lay down the code of conduct for all the members of board as well as senior management of the listed entity.
- (7) The listed entity shall constitute the Audit Committee [Regulation 18] and Stakeholders Relationship Committee [Regulation 20]. The board of directors shall constitute the Nomination and Remuneration Committee [Regulation 19] and Risk Management Committee [Regulation 21].
- (8) The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns. Adequate safeguards shall be provided to persons availing this mechanism [Regulation 22].
- (9) Approval to Related Party Transactions (RPTs) shall be in accordance with Regulation 23. All the existing material RPTs (transactions exceeding 10% of annual consolidated turnover of the listed entity) entered prior to notification of LODR Regulations and which are going to continue after such notification shall be approved by the shareholders in the first general meeting held after notification of the regulations [Regulation 23(8)].
- (10) At least one independent director of the listed entity shall be a director of an unlisted material subsidiary [Regulation 24(1)]. There are some other obligations cast on the listed entity and material subsidiary under Sub-Regulations (2) to (7).  
'Material Subsidiary' means a subsidiary of listed entity whose income or net worth exceeds 20% of the consolidated income or net worth respectively, of the listed entity and all its subsidiaries in the immediately preceding accounting year [Regulation 16(c)].
- (11) Provisions relating to tenure, maximum number of independent directorships, holding of meetings, liability, resignation and removal etc., of independent directors shall be complied with in accordance with Regulation 25.
- (12) A director shall not be a member of more than 10 committees or act as chairperson of more than 5 committees. While calculating the above numbers, membership/chairperson of 'Audit Committee' and 'Stakeholder Relationship Committee' alone across all the Public Limited Companies i.e., both listed as well as unlisted should be considered [Regulation 26(1)].
- (13) Every director shall intimate the listed entity about his committee positions in other entities as well as notify the changes as and when they occur [Regulation 26(2)]. Some other compliance/disclosure requirements as regards code of conduct, shares held by non-executive directors in the listed entity, disclosure of conflict of interest by senior

management are contained in Sub-Regulations (3), (4), and (5).

- (14) The listed entity shall give prior intimation to SE about meeting of the board of directors wherein certain specified proposals are due to be considered (Regulation 29).

Such proposals are as under :

Proposals likely to be considered/Items of business	Prior intimation (in no. of days)
(a) Financial results - quarterly, half-yearly, or annual as the case may be;	5 (day s)
(a) Proposal for buyback of securities. (b) Proposal for voluntary delisting by the listed entity from the stock exchanges. (c) Fund raising by way of FPO, Rights issue, ADR/ GDR/FCCB. (d) AGM/EGM/Postal Ballot for obtaining shareholder approval for fund raising. (e) Declaration/recommendation of dividend, issue of convertible securities or the passing over dividend. (f) Proposal for declaration of bonus securities where such proposal is communicated to the board of directors as part of the agenda papers (if the proposal is not part of agenda papers, no advance intimation need to be given to SE).	2 (working days)
(a) Alteration in the form or nature of any securities listed in the SE or in the rights or privileges of the holders thereof. (b) Alteration in the date on which, the interest on debentures/bonds, or the redemption amount of redeemable shares/debentures/bonds shall be payable.	11 (working days)

*Note: While calculating the no. of days as above, date of intimation and date of meeting shall be excluded.*

- (15) The listed entity shall disclose the material events to SE in accordance with Schedule III [Regulation 30(1)]. The listed entity shall frame a policy for determination of materiality in accordance with regulations.

The listed entity shall authorise one or more KMP for the purpose of determining materiality of an event or information for the purpose of disclosing the same to SE and contact details of such KMP shall be disclosed to SE and well as displayed in website of the listed entity [Regulation 30(5)].

- (16) The listed entity shall disclose all the events as specified in Part A of Schedule III to the SE within 24 hours of occurrence. Failure to disclose within 24 hours for such events warrants explanation to SE. Events specified in sub-para 4 of Para A of Schedule III shall be disclosed within 30 minutes of the conclusion of board meeting [Regulation 30(6)].

Disclosure as regards such material events shall be updated on regular basis till such event is resolved/closed. All such disclosures shall be hosted in the website of the listed entity for a minimum period of 5 years.

- (17) Listed entity shall submit a statement showing holding of securities and shareholding pattern separately to SE in the format specified by SEBI as under :
- One day prior to listing of securities in SE(s)
  - Within 10 days or any capital restructuring of the listed

entity resulting in a change exceeding 2% of the total paid-up share capital [Regulation 31(1)].

- (18) Listed entity shall ensure that 100% shareholding of the promoters and promoter group is continuously maintained in dematerialized form in the manner specified by SEBI [Regulation 31(2)]. It shall comply with circulars or directions of SEBI in this connection.
- (19) Listed entity shall submit to SE a statement containing details of deviations/variations in the use of proceeds of public /rights/preferential issue. It has to make necessary disclosures in Directors' Report. Report/comments of monitoring agency (if any) shall be submitted to SE (Regulation 32).
- (20) Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report shall be reviewed by the SE [Regulation 33(6) & Regulation 95] - Amended from 01-04-2016.
- (21) The listed entity shall submit to SE an Annual Information Memorandum in the manner specified by SEBI from time to time (Regulation 35). Annual Information Memorandum format is not yet notified.
- (22) The listed entity shall comply with minimum public shareholding requirements (Regulation 38).
- (23) The listed entity shall issue certificates/receipts/advices, as applicable in case of subdivision, split, consolidation, renewal, endorsements, issue of duplicate/new certificates etc., within 30 days of lodgement [Regulation 39(2)].
- (24) Information pertaining to loss of share certificates and issue of duplicate certificates shall be submitted to SE within 2 days of getting information [Regulation 39(3)].
- (25) Request for transfer of securities shall be effected or objections if any, shall be communicated to the transferor or transferee within 15 days from the date of receipt of request for transfer.

Request for transmission shall be processed within 7/21 days respectively for securities in dematerialized/physical mode respectively [Regulation 40(3)].

- (26) The listed entity shall give notice in advance to SE as regards record dates/closure of transfer books as under :

Purpose of Record Date/Book Closure	Advance Notice in no. of working days
Declaration of dividend/cash bonuses	5
(a) Issue of right or bonus shares; (b) Issue of shares for conversion of debentures/other convertible securities; (c) Shares arising out of rights attached to debentures/other convertible security (d) Corporate actions - mergers, de-mergers, splits and bonus shares if listed entity's shares are part of the index or derivatives are available on entity's shares; (e) Such other purposes as may be specified by SE.	7

- Note :** (i) Gap between two record dates should be at least 30 days.  
(ii) Days as stated above should be exclusive of date of intimation & record date/book closure date.
- (27) E-voting results shall be submitted to SE within 48 hours of



‘ If the listed entity has changed its activities which are not reflected in its name, it shall change the name in line with activities within six months from the change of activities in line with Companies Act, 2013 [Proviso to Regulation 45(1)]. Before filing the application for name change with ROC, the listed entity shall seek approval from SE by submitting a certificate from CA certifying the compliance with the necessary conditions [Regulation 45(3)].

the conclusion of AGM.

- (28) If the listed entity has changed its activities which are not reflected in its name, it shall change the name in line with activities within six months from the change of activities in line with Companies Act, 2013 [Proviso to Regulation 45(1)]. Before filing the application for name change with ROC, the listed entity shall seek approval from SE by submitting a certificate from CA certifying the compliance with the necessary conditions [Regulation 45(3)]. Both new and old names shall be displayed in the listed entity's website for a period of one year [Regulation 46(2)(p)].
- (29) Listed entity shall disclose the prescribed particulars in its functional website. Any change in the contents of the website shall be updated within 2 working days from the date of such change [Regulation 46(3)(b)].
- (30) Listed entity shall publish the following information in the newspaper simultaneously with the submission of the same to SE(s):
- ▶▶ notice of board meeting,
  - ▶▶ financial results,
  - ▶▶ statement of deviation/variation in the utilisation of proceeds of public issue and
  - ▶▶ notices given to shareholders by advertisement
- Financial results shall be published within 48 hours of the conclusion of board meeting at which the financial results were approved [Regulation 47(3)].
- (31) The SE shall redress/facilitate the redressal of the complaints of holders of listed securities from time to time (Regulation 96).
- (32) The SE shall monitor the compliance by the listed entity as per LODR Regulations and submit a report to SEBI (Regulation 97).
- (33) The SE is empowered to do necessary actions such as imposition of fines, suspension of trading etc. if the listed entity contravenes the provisions of LODR Regulations (Regulation 98).
- (34) Top hundred listed entities based on market capitalisation

as on 31st March of every financial year shall submit Business Responsibility Report (describing the initiatives taken by them from environmental, social and governance perspective) in the format specified by SEBI as a part of Annual Report. Recently SEBI has extended this requirement to top 500 listed entities.

## POLICIES TO BE FRAMED UNDER LODR REGULATIONS

Important Policies to be framed by the listed entity are as under:

- (1) Risk Policy [Regulation 4(2)(f)(ii)(1)].
- (2) Policy for preservation of documents (Regulation 9).
- (3) Policy on Board Diversity [Part-D, Schedule II(3)].
- (4) Policy for determining 'material' subsidiary [Explanation to Regulation 16(1)(c)].
- (5) Policy on materiality of related party transactions [Regulation 23(1)].
- (6) Policy on dealing with related party transactions [Regulation 23(1)].
- (7) Whistle Blower Policy [Regulation 22 & 46(2)(e)].
- (8) Policy for determining the materiality of events/information [Regulation 30(4)(ii)].
- (9) Policy relating to remuneration of the directors, KMP and other employees [Part-D, Schedule II(1)].
- (10) Dividend Distribution Policy by top 500 listed entities based on market capitalization (as on March 31 of every financial year) [Regulation 43A inserted by SEBI (LODR) (Second Amendment) Regulations, 2016].

## COMMITTEES TO BE CONSTITUTED UNDER LODR REGULATIONS

Provisions relating to constitution of committees are highlighted below:

Provisions	Audit Committee	Nomination and Remuneration Committee	Stakeholder Relationship Committee	Risk Management Committee
Whether mandatory	Yes.	Yes.	Yes.	Board of Directors of top 100 listed entities need to constitute Risk Management Committee.
Terms of reference, roles and responsibilities	As per Part C of Schedule II.	As per Part D of Schedule II.	As per Part D of Schedule II.	Board to define the roles and responsibilities
Number of Members	Minimum 3 directors.	Minimum 3 directors. All the members to be non-executive directors. However, chairperson of the listed entity (executive or non-executive) may become a member.	Board to decide on the members.	Majority of members should be members of Board of directors. Senior executives of the listed entity may become the members.
Independent directors	Two thirds of the members to be independent directors.	At least 50% shall be independent directors.	Not Specified.	Not Specified.

<b>Chairman of the committee</b>	Independent director.	Independent director.	Non-executive director.	Any director of listed entity.
<b>Presence of Chairman of the Committee at the AGM</b>	Mandatory & shall answer shareholder queries.	May attend AGM to answer shareholder queries (chairperson to decide on this).	Not required. (As per Section 178 of the Companies Act, attendance at AGM is mandatory).	Not required.
<b>Expertise of members</b>	All the members shall be financially literate and at least one member shall have accounting or related financial management expertise.	Not Specified.	Not Specified.	Not Specified.
<b>Secretary</b>	The Company Secretary shall act as secretary.	Not Specified.	Not Specified.	Not Specified.
<b>Meetings of the Committee</b>	To hold 4 meetings in a year.	Not Specified.	Not Specified.	Not Specified.

## SPECIAL PROVISIONS RELATING TO SCHEME OF ARRANGEMENT (REGULATIONS 11, 37 AND 94)

The listed entity has to ensure that any scheme of arrangement/ merger/amalgamation/reconstruction/reduction of capital etc., to be presented to any Court or Tribunal does not in any violate, override or limit the provisions of securities laws or the requirements of stock exchanges (Regulation 11).

Transaction flow as regards the scheme of arrangement is enumerated below :

- (1) The listed entity intending to undertake a scheme of arrangement or is involved in the scheme of arrangement (in terms of Sections 391-394 and Section 101 of the Companies Act, 1956 or Sections 230-234 and Section 66 of Companies Act, 2013 whichever applicable) shall file the draft scheme of arrangement with SE for obtaining 'Observation Letter' or 'No-objection Letter' before filing the same with any Court or Tribunal in accordance with regulations of SEBI/SE specified from time to time.
- (2) The SE upon receipt of the draft scheme of arrangement and other documents prescribed by SEBI, shall forward the same to SEBI in the manner prescribed.
- (3) The SE has to satisfy itself whether the draft scheme of arrangement is in compliance with securities laws. Within 30 days of the receipt of draft scheme of arrangement, the SE shall submit 'Objection Letter' or 'No-Objection Letter' on the draft scheme of arrangement to SEBI. If SE needs any clarifications, it may ask the listed entity to furnish the same. Alternatively it may seek an opinion from independent chartered accountant to clarify the doubts. Within 7 days of the receipt of satisfactory reply from listed entity or opinion of the independent chartered accountant, the SE shall submit

'Objection Letter' or 'No-Objection Letter' on the draft scheme of arrangement to SEBI.

- (4) SEBI will offer its comments on the draft scheme of arrangement to SE.
- (5) The SE shall issue 'Observation Letter' or 'No-objection Letter' to the listed entity within 7 days of the receipt of comments from SEBI, after suitably incorporating the SEBI comments. Validity of 'Observation Letter' or 'No-objection Letter' is 6 months from the date of issuance.
- (6) The listed entity shall place the 'Observation Letter' or 'No-objection Letter' while filing the draft scheme of arrangement with Court or Tribunal for the purpose of seeking approval of such Court or Tribunal. (Validity of 'Observation Letter' or 'No-objection Letter' is 6 months from the date of issuance).
- (7) The SE shall bring the objections or observations, as the case may be to the notice of Court or Tribunal at the time of approval of the scheme of arrangement.
- (8) The listed entity shall comply with other requirements as may be prescribed by SEBI.
- (9) The Court or Tribunal may approve the scheme of arrangement.
- (10) The listed entity shall submit the necessary documents to SE as may be prescribed by SEBI from time to time.
- (11) The SE shall submit its recommendations to SEBI on the documents submitted by the listed entity.

## QUALITATIVE PARAMETERS / LACK OF BENCHMARKS FOR VALIDATION

Chapter II of LODR Regulations enshrines the broad principles in relation to disclosures and obligations of listed entities. Regulation 4(1) lists out the principles to be observed by listed entity while making disclosures as well as complying with the regulations. Many of these principles are qualitative in nature and cannot be defined with precision. This may lead to certain amount of subjectivity as the compliance with the principles or otherwise depends on the perception of the person evaluating the same. Hence, listed entities may face some difficulties in complying with these requirements. Similarly there is a practical difficulty in complying with Clause (3) of Schedule (Read with Regulation 12). This clause requires the address of investor to be printed on dividend/interest warrants if the bank account details of investor are not available. If the address is too long, it may not fit in the space.

### Clarifications/Frequently Asked Questions (FAQs) from SEBI

SEBI has released three Frequently Asked Questions (FAQs) for the purpose of clarifying the doubts as regards LODR Regulations. Last FAQs were released on 29th January 2016. Some of the doubts were cleared through FAQs.

SEBI, vide Circular No. 12 dated 30-11-2015, has instructed the Stock Exchanges to impose fines for non-compliance with certain provisions of LODR Regulations.

## CONCLUSION

As understood from the above analysis, SEBI LODR Regulations, 2015 has streamlined the compliance requirements as regards listing obligations. It has brought about uniformity in compliance requirements besides elaborating the obligations. It is a complete code in itself containing the XII Chapters and X Schedules. The compliance requirements are onerous and non-compliance can attract heavy penalty. Hence, it is imperative for the listed entity, KMPs, other concerned officials and more particularly Finance/ Secretarial team to thoroughly understand all the applicable provisions so as to avoid any eventuality and negative publicity. CS

# Disclosure of Material Events/ Information under the LODR Regulations: How to Determine 'Materiality'?



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## INTRODUCTION

Majority of jurisdictions regulate corporate governance and disclosure requirements for listed companies through stock exchange listing regulations. In India, listing requirements have traditionally been enshrined in the listing agreement entered into between the issuer company and the stock exchanges on which the

SEBI (LODR) Regulations were notified on September 02, 2015 and became effective after 90 days from the date of notification except Regulations 23(4) and 31A which became effective on the date of notification.

One of the important changes in these regulations has been the introduction of Regulation 30 which requires the disclosure of material events/ information

With the introduction of the SEBI (LODR) Regulations, 2015 an attempt has been made to mandate disclosures by a listed entity in an adequate, accurate and timely manner. Though various guidelines and principles exist to determine materiality, these are non-binding in nature. Thus, listed entities still exercise some discretion in disclosing events not considered as 'Deemed Material Events' under Regulation 30.

issuer company's stocks are listed. This makes the basic framework of listing requirements in India as contractual in nature, the genesis of a such a contract being found in the Securities Contracts (Regulation) Act, 1956 (SCRA) and Securities Contracts (Regulation) Rules, 1957 (SCRR). Given the contractual nature of these requirements in India, the enforcement of the listing agreement in India has been filled with difficulties. Though Section 23E was introduced in the SCRA in 2004 imposing penalties of upto Rs. 25 crores, these regulatory sanctions were not completely successful and evoked mixed results. Therefore, SEBI decided to replace the Equity Listing Agreement with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. These regulations known as the LODR Regulations, are intended to consolidate and streamline the provisions of existing listing agreements thereby ensuring better enforceability. Another object was to align the listing requirements with the new Companies Act, 2013. The

by the Listed Entity. This article deals with the materiality requirement under Regulation 30 of the LODR Regulations which mandates the disclosure of events or information considered as 'material'. Black's Law Dictionary defines it as 'When it is revealed to the public, any company or product information that is likely to change a security's perceived value.' In the absence of a definition of the term 'material event information' under the Regulations, it seeks to examine the principles/ guidelines are available to determine materiality.

## CLAUSE 36 OF THE LISTING AGREEMENT

Regulation 30 under the (SEBI) LODR Regulations, 2015 corresponds to Clause 36 of the Listing Agreement. Clause 36 of the Listing Agreement required a listed entity to disclose to Stock Exchange(s), details of all events which have a bearing on the performance/ operations of the listed entity and 'Price Sensitive



Information.' Key material events prescribed under clause 36 were as follows:

- a) Change in general character/ nature of business
- b) Disruption of operations due to natural calamity
- c) Commencement of commercial production/ operations
- d) Developments with respect to pricing/ realization arising out of change in the regulatory framework
- e) Litigation/ dispute with a material impact
- f) Revision in ratings
- g) Any other information having bearing on the operation/ performance of the listed entity as well as price sensitive information.
- h) Specific disclosures on events/ information which may be material/ price sensitive as prescribed under other clauses of the listing agreement.

Thus, Clause 36 provided an indicative list of events/ information considered as material.

## REGULATION 30 OF THE (SEBI) LODR REGULATIONS, 2015

Regulation 30 requires that every listed company shall disclose any event or information which in the opinion of the Board of Directors of the listed company is material. It categorizes the event/ information into two categories:

1. Events specified under Part A of Part A of Schedule III of the Listing Regulations: These are considered as Deemed Material Events. The list is exhaustive in nature and specifies the events which shall and must be disclosed by the listed entity to the stock exchanges. These events are to be disclosed without the application of any guidelines for determining materiality.
2. Events specified under Part B of Part A of Schedule III of the Listing Regulations: These are the events/ information, the materiality of which depends on the policy framed by the Listed Entity. The Listed Entity should lay down the policy/ guideline approved by the Board of Directors determining the materiality of an event/ information in accordance with the criteria mentioned under Regulation 30(4).  
The three criteria mentioned are:
  - a) The omission of an event/ information which is likely to result in discontinuity or alteration of event or information already publicly available.
  - b) The omission of an event/ information which is likely to result in a significant market reaction if the said omission came to light at a later date
  - c) Any other matter which the Board deems as material.

Thus, the Board of Directors of the listed company will lay down the policy/ guidelines for testing the materiality of an event/ information for the purpose of making disclosures to the Stock Exchange. Such policy/ guideline shall be disclosed on the website of the listed entity.

Also, Regulation 30(12) mentions a residuary category wherein any other event/information not specified in the above categories needs to be disclosed to the Stock Exchange.

### Responsibility to disclose

As per Regulation 30(5), one or more Key Managerial Personnel (KMP) authorised by the Board of Directors of the listed entity for determining the materiality of an event/ information shall

If the listed entity has changed its activities which are not reflected in its name, it shall change the name in line with activities within six months from the change of activities in line with Companies Act, 2013 [Proviso to Regulation 45(1)]. Before filing the application for name change with ROC, the listed entity shall seek approval from SE by submitting a certificate from CA certifying the compliance with the necessary conditions [Regulation 45(3)].

disclose such event/ information to the Stock Exchange. The contact details of such KMP shall be disclosed to the stock exchanges and also on the listed entity's website.

### Time Frame for making disclosures

The Listed Entity is required to disclose the material events/ information to the Stock Exchange within 24 hours of the occurrence of the event or the information. The outcome of the meeting of the Board of Directors shall be disclosed within 30 minutes of the conclusion of the Board Meeting. If the disclosure is made after 24 hours, then the explanation for such delay shall also be provided.

### Other disclosures required to be made under Regulation 30

The listed entity is required to make disclosures updating material developments on a regular basis with respect to the disclosures referred to in this regulation until the event is resolved/ closed with relevant explanations. [Regulation 30(7)].

The listed entity is required to disclose on its website all the events and information which have been disclosed to the stock exchanges under Regulation 30 for a minimum period of five years and thereafter as per the archival policy of the listed entity as disclosed on its website. [Regulation 30(8)].

The Listed entity is also required to disclose all events or information with respect to subsidiaries which are material for the listed entity. [Regulation 30(9)].

The listed entity is also required to provide adequate and specific reply to all queries raised by stock exchanges with respect to any event or information. In this regard, the stock exchanges are also required to disseminate information and clarification as soon as reasonably practicable. [Regulation 30(10)].

The listed entity may at its own initiative also confirm or deny any reported event or information to stock exchanges. [Regulation 30(11)].



## KEY CHANGES INTRODUCED UNDER REGULATION 30

comparison of Clause 36 under the Listing Agreement and Regulation 30 under the new LODR Regulations, 2015 shows that the changes introduced are aimed at reducing the scope of discretion while determining materiality, thereby reducing disparity in disclosures. The then clause 36 mentioned an indicative and a broad list of 'material events' which left it to the discretion of a listed entity to determine whether a particular event would have a material bearing on its performance or whether a particular information is price sensitive. This made the requirements under clause 36 in practice as voluntary in nature leading to inadequate disclosures by the listed entities. On the other hand, the new Regulation 30 has specified certain events as 'Deemed material events' and shall be compulsorily disclosed to the stock exchanges. For other events, it requires that a policy to determine materiality should be framed by the listed entity, which shall be approved by the Board of Directors and if an event/ information fulfils the criteria mentioned in the policy, it must be disclosed. Thus, the element of mandatory disclosures has been introduced which was absent under Clause 36.

Further, a time limit for making disclosures has been introduced in the LODR Regulations, 2015 which was absent from the Listing Agreement. Also, the policy so framed to determine materiality is required to be displayed on the website of the listed entity. Moreover, the ultimate responsibility to make disclosures has been cast upon the Board of Directors of the listed entity. Thus, Regulation 30 has also introduced the concepts of transparency and accountability in a stricter sense which will result in more accurate and adequate disclosures in a timely manner.

## DISCUSSION PAPER ON REVIEW OF CLAUSE 36 AND RELATED CLAUSES OF LISTING AGREEMENT

Observing the disparities in disclosures made under Clause 36 and other clauses of the Listing Agreement, SEBI issued a

Discussion Paper on August 19, 2014. The Discussion paper aimed to provide clarity on the term 'materiality'. The paper emphasizes the need for continuous, adequate, timely and accurate disclosure of information on a regular basis to achieve parity while enabling investors to make informed decisions. Apart from suggesting the amendments to be made in the then clause 36 (most of which have now been incorporated in Regulation 30 under the LODR Regulations), the paper also provides guidelines to determine materiality. These guidelines can also be used while determining materiality under the new Regulation 30.

According to the guidelines provided in the Discussion Paper, materiality has to be decided on a case to case basis depending on specific facts and circumstances relating to event/ information. Further, the paper prescribes two criteria for determining if a particular event/ information is material in nature:

- 1) **Quantitative Criteria:** This criteria shall become applicable to an event/ information where the value involved or the impact exceeds 5% of the gross turnover or revenue or total income, or exceeds 20% of the net worth, the lower threshold to be taken as a trigger. The threshold should be determined on the basis of audited consolidated financial statements of last audited financial year. If the company has not prepared the same, the threshold may be determined on the basis of standalone financial statements.
- 2) **Qualitative Criteria:** This criteria shall become applicable to an event/ information:
  - a) The omission of which is likely to:
    - Result in a discontinuity of information already available publicly
    - Result in significant market reaction if the said omission came to light at a later date
  - b) If in the opinion of the Board of Directors of listed entity, the event/ information is considered material.

The discussion paper also suggests that in circumstances where 'quantitative test' may not be applicable, 'qualitative test' may be applied to determine materiality. It further mentions that when a particular event/ information satisfies either the 'qualitative' or 'quantitative' criteria, the listed entity shall be under an obligation to disclose the same to the stock exchange.

It further mentions two more tests to determine if an event/ information is 'price sensitive', which may also be relevant to determine 'materiality':

- a) **Price Impact Test:** Any information which relates directly or indirectly to a listed entity and which if published is likely to materially affect the price of shares of the listed entity.
- b) **The Reasonable Investor Test:** Whether the information in question is likely to be used by a reasonable investor as part of the basis of his investment decisions and therefore likely to have a significant effect on the price of shares of the listed entity.

The guidelines also mention that the determination of materiality of event/ information would vary from one company to another according to its size, profits, assets and capitalization, the nature of its operations and many other factors. Thus, the listed entity itself would be in the best position to determine materiality of any event/ information.

## SEBI CIRCULAR DATED 9TH SEPTEMBER 2015- WHEN CAN AN EVENT/ INFORMATION BE SAID TO HAVE OCCURRED?

This circular was issued under Regulation 30 read with Regulation 101(2) of the Listing Regulations, 2015. It provides guidance on when can event/ information can be said to have occurred. Sometimes, the listed entity may be confronted with the question as to when can an event/ information be said to have occurred. The answer to this question would depend upon:

- a) **The stage of discussion, negotiation or approval:** Here, the events/ information can be said to have occurred upon receipt of approval from Board of Directors, e.g. further issue of capital by rights issuance. In certain events, after the approval of both Board of Directors and Shareholders. However, for certain events, e.g. decision on declaration of dividends, considering the price sensitivity involved, disclosure shall be made on receipt of approval of the event by the Board of Directors, pending shareholders' approval.
- b) **Where no such discussion, negotiation or approval is involved:** Here, the events/ information can be said to have occurred when the listed entity becomes aware of the same, or as soon as, an officer of the entity has or ought to have reasonably come into possession of the information in the course of performance of his duties.

## 'MATERIAL' AND 'MATERIALITY'- JUDICIAL INTERPRETATIONS

In the matter of IPO of Onelife Capital Advisors Ltd., it was held that though the words 'material' and 'materiality' have not been defined, as understood in the market parlance,

'material' means anything which is likely to impact an investors investment decision. The test to determine whether a fact is material depends upon the facts and circumstances of each case. In the case of DLF Limited v. SEBI, it was held that disclosure which is one which, if concealed, would have a devastating effect on the decision making process of the investors, and without which the investors could not have formed a rational and fair business decision of investment in the IPO. In the SEBI order in the matter of M/s. New Delhi Television Limited, it was noted that a listed entity has the responsibility to comply with the disclosure requirements in accordance with the letter, spirit, intention and purpose so that the investors could take a decision whether to buy, sell or hold the securities. Non-compliance/ delayed compliance with disclosure requirements by a listed entity undermines the regulatory objectives and jeopardizes the achievement of underlying policy goals.

## CONCLUSION

Thus, it can be seen that with the introduction of the SEBI (LODR) Regulations, 2015 an attempt has been made to mandate disclosures by a listed entity in an adequate, accurate and timely manner. Though various guidelines and principles exist to determine materiality, these are non-binding in nature. Thus, listed entities still exercise some discretion in disclosing events not considered as 'Deemed Material Events' under Regulation 30. Thus, there is a need to incorporate a definition or a threshold for determining what is 'material' in the SEBI (LODR) Regulations, 2015 as well as under the Companies Act, 2013.

The rationale behind mandating disclosures of material event/ information related to a listed entity is to ensure that a true and fair picture of the current status of the entity is presented. The principal reason for recognising such principles and enforcing is to ensure full and fair disclosure to safeguard the interest of the investors before making investment decisions. The companies should understand this point, and comply with these disclosure requirements in their true letter and spirit. This, in the long run, is beneficial for the company itself. [CS](#)

## REFERENCES

1. In the matter of IPO of Onelife Capital Advisors Ltd. Order of the Hon'ble Whole Time Member of SEBI dated August 30, 2013.
2. DLF Limited v. SEBI (Appeal No. 331 of 2014) (SAT) Order dated 13.03.2015.
3. SEBI order in the matter of M/s. New Delhi Television Limited [Adjudication Order No. AO/PJ/JAK/1 of 2015].
4. SEBI Discussion Paper on review of clause 36 and related clauses of Equity Listing Agreement dated August 19, 2014.
5. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
6. SEBI circular CIR/CFD/CMD/4/2015 dated 9th September 2015.
7. NSE Guidance Note on clause 36 of the Listing Agreement dated September 30, 2014.



# Disclosures of UPSI under the SEBI (LODR) Regulations, 2015



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### INTRODUCTION

“Unpublished Price Sensitive Information” has been defined under Regulation 2(1)(n) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and a similar definition has been given for “Non-Public Price-Sensitive Information” in Clause (b) of the Explanation to sub-section (1) of section 195 of the Companies Act, 2013. The types of matters that would ordinarily give rise to unpublished price sensitive information listed in SEBI (PIT) Regulations, 2015 are not exhaustive, but only illustrative

deals with prohibition on insider trading of securities and if any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to 5 years or with fine which shall not be less than Rs.5 lakh but which may extend to Rs.25 crore or 3 times the amount of profits made out of insider trading, whichever is higher, or with both. A similar provision is contained in Section 15G of SEBI Act, 1992.

In terms of clause (b) of Explanation to sub-section (1) of section 195 of the Companies Act, 2013 “Price-Sensitive

This article analyses the concept of “material events in accordance with the listing agreement” and the wider meaning of “securities” that would fall within the ambit of SEBI (PIT) Regulations, 2015 in alignment with the “disclosures of price sensitive information” required under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

in nature. Regulation 4 prohibits an insider from trading in securities that are listed or proposed to be listed when in possession of UPSI, which is the soul and essence of the SEBI (PIT) Regulations, 2015.

Liberal interpretations, on what constitutes ‘materiality’ and whether to disclose the event / information to the Stock Exchanges, taken by listed entities has resulted in inadequate disclosure levels in the securities market. Such liberal interpretations have also led to lack of uniformity in disclosures by various listed companies. One of the reasons for such disparity appears to be lack of sufficient clarity on ‘materiality’ and ‘price sensitive information’. To conclude, whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have removed this ambiguity and provided more clarity with respect to disclosures of “Price Sensitive Information”.

### DEFINITION AND USAGE OF “UPSI” UNDER THE COMPANIES ACT, 2013

Section 195 of the Companies Act, 2013

Information” means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

As per Sub-clause (i) of clause (a) of Explanation to sub-section (1) of section 195 of the Companies Act, 2013 insider trading means an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any “non-public price sensitive information” in respect of securities of company.

According to Sub-clause (ii) of clause (a) of Explanation to sub-section (1) of section 195 of the Companies Act, 2013 insider trading encompasses an act of counselling about procuring or communicating directly or indirectly any “non-public price-sensitive information” to any person.

Under sub-section (8) of section 149 of the Companies Act, 2013 the company and independent directors shall abide by the

provisions contained in Schedule IV, in which Sub-point No. (13) of Point No. III, imposes a duty under the Code for Independent Directors, by which the independent director shall not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, “unpublished price sensitive information”, unless such disclosure is expressly approved by the Board of Directors or required by law.

### USAGE OF “UPSI” UNDER THE SEBI ACT, 1992

Section 15 G of the Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) deals with penalty for insider trading by abuse of unpublished price-sensitive information by any insider in the following instances, for which he shall be liable to a penalty which shall not be less than Rs.10 lakh but which may extend to Rs.25 crore or 3 times the amount of profits made out of insider trading, whichever is higher. A similar provision is contained in section 195 of the Companies Act, 2013.

- (a) Clause (i) of Section 15G of the SEBI Act, 1992 - if any insider who either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information.
- (b) Clause (ii) of Section 15G of the SEBI Act, 1992- if any insider who communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law.
- (c) Clause (iii) of Section 15G of the SEBI Act, 1992- if any insider who counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information.

### USAGE OF “UPSI” UNDER THE SECRETARIAL STANDARD-1

Paragraph 1.3.7 of Secretarial Standard on Meetings of the Board of Directors (SS-1) issued by the ICSI envisages that the Notes on items of business which are in the nature of Unpublished Price Sensitive Information (UPSI) may be given at a shorter period of time than 7 days, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any. Shorter period of time in this case means any period less than 7 days; it also includes tabling at the Meeting. Majority of Directors for this purpose means majority of the total strength of the Board. Exemption from 7 days period has been given in respect of notes on items of business which are in the nature of UPSI.

### DEFINITION AND USAGE OF “UPSI” UNDER THE SEBI (PIT) REGULATIONS, 2015

#### Generally Available Information

Under Regulation 2(1) (e) “generally available information” means information that is accessible to the public on a non-discriminatory basis. It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

#### Unpublished Price Sensitive Information

According to Regulation 2(1)(n) “unpublished price sensitive

“ The definition of UPSI has been strengthened by providing a test to identify price sensitive information, aligning it with listing agreement and providing a platform of disclosure. Earlier, the definition of price sensitive information had reference to company only, now it has reference to both a company and securities. Clarity has been brought to the definition of UPSI by aligning it with listing agreement and making the definition inclusive.”

information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily be including but not restricted to, information relating to the following: –

- Financial results
- Dividends
- Change in capital structure
- Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions
- Changes in key managerial personnel
- Material events in accordance with the listing agreement

### MATERIAL EVENTS IN ACCORDANCE WITH THE LISTING AGREEMENT / REGULATIONS

Regulation 2(1) (n) (vi) of the SEBI (PIT) Regulations, 2015 refers to “material events in accordance with the listing agreement”. In the absence of a definition and specification of what constitutes a material event, the same shall be construed and adopted from the “disclosures of material and price sensitive information” as required under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

Since “generally available information” is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an “insider” regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading.

It is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or

had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

## PRINCIPLES OF CODE OF PRACTICES AND PROCEDURES FOR FAIR DISCLOSURE OF UPSI

- Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
- Uniform and universal dissemination of unpublished price sensitive information to avoid selective disclosure.
- Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
- Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
- Appropriate and fair response to queries on news reports and requests for verification of market rumors by the regulatory authorities.
- Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
- Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
- Handling of all unpublished price sensitive information on a need-to-know basis.

## CODE OF FAIR DISCLOSURE OF UPSI

Regulation 8(1) requires the board of directors of every company, whose securities are listed on a stock exchange, to formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information. It is required of every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities.

Regulation 8(2) necessitates that every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed. The definition of UPSI has been strengthened by providing a test to identify price sensitive information, aligning it with listing agreement and providing a platform of disclosure. Earlier, the definition of price sensitive information had reference to company only, now it has reference to both a company and securities. Clarity has been brought to the definition of UPSI by aligning it with listing agreement and making the definition inclusive.

## DISCLOSURE OF "UPSI" UNDER THE SEBI LODR REGULATIONS, 2015

Section 21 of Securities Contracts (Regulation) Act, 1956 provides that where the securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that

stock exchange. The listing agreement, although a contract, was made a statutory requirement, thereby making it mandatory for every listed entity in India to comply with it.

Section 11A (2) of the SEBI Act, 1992 empowers SEBI to specify the requirement for listing and transfer of securities and matters incidental thereto. Section 12A of the Securities Contracts (Regulation) Act, 1956 empowers SEBI to issue directions to any company whose securities are issued or proposed to be listed in a recognized stock exchange in the interest of investors, or orderly development of securities market.

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations, 2015), which were notified on 2nd September, 2015 and became effective from 1st December, 2015 are comprehensive Regulations in respect of various types of listed securities. The Listing Regulations had consolidated and streamlined the provisions of existing listing agreements, thereby, ensuring better enforceability. The Listing Regulations would be applicable for the following types of securities:

- Specified Securities such as Equity Shares and Convertible Securities - Listed on Main Board, SME Exchange and Institutional Trading Platform
- Non-convertible Debt Securities, Non-Convertible Redeemable Preference Shares, Perpetual Debt Instrument, Perpetual non-cumulative preference shares
- Indian Depository Receipts
- Securitized Debt Instruments
- Units issued by Mutual Funds
- Any other securities as may be specified by the Board

Earlier, the definition of price sensitive information had reference to company only whereas now it has reference to both a "company" and "securities" as well. According to Regulation 2(1) (i) of the SEBI (PIT) Regulations, 2015 "securities" shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 or any modification thereof except units of a mutual fund. As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 "securities" include the following:

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate
- Derivatives
- Units or any other instrument issued by any collective investment scheme to the investors in such schemes
- Security receipt as defined in clause (zg) of section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Units or any other such instrument issued to the investors under any mutual fund scheme
- Government securities
- Such other instruments as may be declared by the Central Government to be securities
- Rights or interest in securities

Any security that fits in the definition of the term under the Securities Contracts (Regulation) Act, 1956 and is amenable to price discovery on a market platform would be amenable to insider trading. Such a security may be issued by any entity or a company that issues shares, debentures or other securities etc. and listed derivatives that are not issued by any company but is an interest in securities issued by a listed company etc. would attract SEBI (PIT) Regulations, 2015.

The instruments to which the prohibition applies, would include all types of "securities", a term which has been defined in the



Securities Contracts (Regulation) Act, 1956. Hence, the scope of the Regulations would cover plain vanilla instruments such as shares, debentures and bonds, as well as more sophisticated instruments such as hybrids and derivatives. As such, any security listed on any public platform for price discovery would come within the scope and reach of the provisions of the SEBI (PIT) Regulations, 2015.

On 13th October, 2015 SEBI notified the format of uniform Listing Agreement by circular No. CIR/CFD/CMD/6/2015 which requires a listed entity which has previously executed a listing agreement with a recognized stock exchange(s) to execute a fresh listing agreement with such recognized stock exchange(s) within 6 months from the date of notification of Listing Regulations, 2015. By executing a fresh listing agreement the "material events in accordance with the listing agreement" as envisaged under Regulation 2(1)(n)(vi) of the SEBI (PIT) Regulations, 2015 shall be the material events or information as specified in Part-A to Part-D of Schedule-III to Listing Regulations, 2015. These are elucidated in the following paragraphs.

### **DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES**

Regulation 30(1) (2) & (3) of Listing Regulations, 2015 deals with material events or information and disclosure of such events as specified in Para A and Para B of Part A of Schedule III. The events that have to be necessarily disclosed without applying any test of materiality are indicated in Para A of Part A of Schedule III of the Listing Regulations. Para B of Part A of Schedule III indicates the events that should be disclosed by the listed entity, if considered material.

The SEBI has issued Circular CIR/CFD/CMD/4/2015 dt.9th September, 2015 on the subject of "Continuous Disclosure Requirements for Listed Entities" to all listed entities and recognized stock exchanges with 2 Annexures thereto. Annexure-I of this circular indicates the details that need to be provided while disclosing events given in Para A and Para B of Schedule III. The guidance on when an event / information can be said to have occurred is placed at Annexure II.

#### *Disclosures of Information having bearing on performance/operation of listed entity and/or price sensitive information*

##### **Non-Convertible Debt Securities & Non-Convertible Redeemable Preference Shares**

Regulation 51(1) & (2) of Listing Regulations, 2015 requires the listed entity to promptly inform to the Stock Exchange of price sensitive information as specified in Part B of Schedule III.

#### *Disclosures of Material Events or Information:*

##### **Indian Depository Receipts**

Regulation 68(1) & (2) of Listing Regulations, 2015 requires the listed entity to inform to the Stock Exchange(s) of all events which are material and all information which is price sensitive as specified in Part C of Schedule III.

#### *Disclosures of Information having bearing on performance/operation of Listed Entity and/or price sensitive information:*

##### **Securitized Debt Instruments**

Regulation 83(1) & (2) of Listing Regulations, 2015 requires the listed entity to inform to the Stock Exchange(s) of all information having bearing on the performance/operations of the listed

entity and price sensitive information as specified in Part D of Schedule III.

### **RECOMMENDATIONS FOR PREVENTION OF ABUSE OF PRIVILEGED INFORMATION (UPSI) BY THE IOSCO, LONDON, UK**

The International Organization of Securities Commissions (IOSCO), which is the global Standard setter for securities markets regulation states that consideration should be given to the "adequacy, accuracy and timeliness of both financial and non-financial disclosures that are material to investors' decisions. These disclosures may pertain to specified transactions, periodic reports and ongoing disclosure of and reporting of material developments. The disclosure of current and reliable information necessary to make informed investment decisions is directly related to investor protection and to fair, efficient and transparent markets."

#### **Responsibility for preventing the misuse of privileged information should be a priority for Boards as well as Supervisory Authorities**

Ensuring proper handling of material non-public information and sanctioning misuse of privileged information should be a priority for both companies and their Boards, on the one hand, and for Supervisory Authorities on the other. Laxity within the corporation, a weak legal/regulatory framework and ineffective enforcement combine to destroy confidence in listed firms and the public capital markets, resulting in higher cost of finance (governance discount), poorer price discovery, decreased liquidity and inefficient capital allocation.

#### **Boards should strengthen corporate policies and practices on privileged information**

Issuers, in particular their Boards, should pay greater attention to the adequacy of internal policies and practices relating to the handling of privileged information. Boards should regard the control of privileged information and the prevention of its misuse as a key element of risk management. Companies and their Boards shall not regard internal policies and practices with respect to privileged information as merely a matter of technical compliance. Failure to regularly review existing policies and practices, and to monitor their effectiveness, exposes firms to potentially serious compliance, reputational and financial risks. Boards that do not adequately oversee the adequacy of their company's policies, practices and systems regarding the handling of privileged information may be exposing their companies and Board members themselves to administrative and civil liability.

#### **Standards and codes should provide more detailed guidance to companies on appropriate policies and practices with respect to privileged information**

Consistent with and reinforcing the recommendation that Boards pay great attention to privileged information as a matter of risk management, issuers of codes of best corporate governance practices and similar sources of standards should examine whether such standards provide sufficient guidance to firms with respect to the Board's and management's responsibility for the adequacy of internal policies and practices relating to the handling of privileged information and the prevention of its misuse. At the minimum, members of the Board of Directors and

senior management need to take into account which individuals and entities are covered by the presumption of access to privileged information or identified as insiders in the design and oversight of a company's policies, practices and controls with respect to privileged information.

### **Supervisory Authorities should promote internal company policies and practices that complement regulation and enforcement**

Supervisory Authorities should pay greater attention as to how corporate governance standards, policies and practices can better complement and reinforce the effectiveness of the legal/regulatory framework and enforcement in use of privileged information. Differences in the legal responsibility of corporations and their Boards for ensuring against misuse of privileged information, that Boards and management shall be diligent in their oversight of the quality of internal policies and practices, for minimum reinforcement by external enforcement (i.e., by the Supervisory Authority) with internal practices more reflective of effective corporate governance. Exchanges and SROs should consider adopting policies or a code of conduct for their members regarding the use of privileged information.

### **Trading by company insiders should be as transparent as possible**

Investor confidence increases as the public capital market has greater access to timely information about trading by corporate insiders. As a consequence, a number of jurisdictions surveyed require reporting of trades in company shares by managers, directors and controlling shareholders. A few markets prohibit trading by insiders around key disclosure dates, such as prior to the release of quarterly financial information or include in their legal frameworks a "short-swing" profit rule requiring insiders to return to the company any profits earned through the purchase and sale of shares within suspiciously short periods. Where information on trading by insiders is not completely or timely provided to the market, and/or where such persons are free to trade around key disclosure dates, companies and standard setters should consider the value of voluntary disclosure, black-out period policies and short-swing profit rules.

### **Supervisory Authorities should share experiences with regulation and enforcement**

Supervisory Authorities shall recognize that preventing the misuse of privileged information, and sanctioning it when it does occur, is a difficult challenge. Even with the best available tools, limitations on availability and timeliness of information impede prevention, and evidentiary requirements complicate enforcement actions. Supervisory Authorities can benefit from considering how their peers in other jurisdictions address the issue of misuse of privileged information.

### **Supervisory Authorities should regularly review the adequacy of their investigatory toolset**

Supervisory Authorities should regularly review their investigatory toolset in order to be in a better position to access information necessary to effectively prosecute privileged information cases. Comparing powers with those available to other Supervisory Authorities is helpful. Furthermore, systems to detect and report suspicious trading activity should be considered by those Supervisory Authorities not yet equipped with efficient tools of detection.


### **Disclosure of company policies and practices should be encouraged**

Internal corporate policies and practices, and adequate mechanisms to ensure they are followed, are a first line of defense against the misuse of privileged information. The periodic review and updating of such policies and practices is an essential ingredient of proper corporate governance. As a matter of transparency, to generate external discipline on the governance of listed firms, and to increase momentum for improving standards market-wide, listed companies should disclose their policies and practices with respect to handling of privileged information, and any instances where violations have been uncovered. Consistent with regard for the quality of practices and the adequacy of disclosure, an officer should be assigned responsibility for the supervision in this area and should report directly to the Board of Directors.

### **Insiders should disclose entities over which they exercise or influence investment decisions**

To increase transparency and foster market confidence, and to assist in the enforcement of existing laws and regulations regarding the misuse of privileged information, companies and standard setters should encourage officers, directors and significant shareholders to disclose all entities (including companies, trusts, funds, accounts and other investment vehicles) over which they exercise or influence investment decisions. National codes of best practice, by-laws and board charters should be reviewed with an eye toward increasing the ability of companies, the Supervisory Authority and the market to identify the vehicles whose trading and investment decisions are made or materially influenced by those who may be in possession of privileged information.

## **CONCLUSION**

Regulations should also reflect the dynamism of the changing market scenario. Corporate governance tools can be an effective way to deal with the improper use of price sensitive information. Careful handling of material non-public information and mechanisms to discourage its misuse by insiders are important elements of an effective corporate governance regime. The guidance provided on list of events which may be material and/or price sensitive, determination of materiality thresholds, information which may be considered as price sensitive. It provides indicative list of information which may be disclosed on occurrence of events / information that are /is material and/or price sensitive etc. incorporated with clarity and in detail in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Given the high prevalence of misuse of price sensitive information in India and SEBI's low track record of prosecution of insider trading offenders, it is hoped that the new Listing Regulations, 2015 would impact price discovery of securities in the stock market and prevent abuse of Unpublished Price Sensitive Information. 

## **REFERENCES**

- The Companies Act, 2013
- The Securities and Exchange Board of India Act, 1992
- The Securities Contracts (Regulation) Act, 1956
- The SEBI (Prohibition of Insider Trading) Regulations, 2015
- The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

# LODR in Public Glare



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### INTRODUCTION

SEBI(Listing Obligations and Disclosure Requirements) Regulations, 2015 herein after referred as "LODR", was published in the Official Gazette on 2nd September, 2015 and had become effective from 90 days from the date of the publication in the Official Gazette, i.e. 1st December, 2015, with the aim to consolidate and streamline the provisions of erstwhile Listing Agreement for different segments of capital market such as equity shares (including convertible), non-convertible debt securities etc. Also, efforts have been made to align the provisions with the provisions of the Companies Act, 2013.

Regulation 23(4) states that all material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such

The age old Listing Agreement between the stock exchange and the company whose securities are to be listed on the Exchange has been dispensed with consequent to introduction of LODR Regulations issued by the SEBI. Company secretaries have important and wider role under the Regulations.

resolutions whether the entity is a related party to the particular transaction or not. Regulation 31A is about Disclosure of class of shareholders and conditions for reclassification. Further information about, the promoter and promoter group shall be disclosed separately on the website of Stock Exchange having nationwide terminal.

After the applicability of LODR, listed entities are quite vigilant and cautious while complying with the rules and regulations of LODR. One has to keep a watch over the latest notification(s) or circular(s) published or issued by SEBI. Further, LODR has enhanced the role and widened the scope of professionals like Company Secretaries, who can be appointed as Compliance Officers on the basis of their qualification.

### SUMMARY OF NEW PROVISIONS AND SUBSTANTIAL DIFFERENCES

Listing Agreement between listed entities and exchange(s) has now become redundant, as the contractual agreement between the two has been replaced by the LODR. LODR increases the legal force behind the provisions, prescribing post-listing obligations and disclosure requirements and also opens up new avenues for shareholders to enforce post-listing requirements.

The LODR require listed entities to make disclosures of material events and information based on the policy framed by them for determination of materiality.





**New Provisions- LODR**

S. No.	New provisions/ substantial changes	Rationale
1	Additional requirements which have been made applicable to SMEs	In order to ensure uniformity in disclosure requirements, the provisions of various clauses of equity listing agreement have also been made applicable to SMEs.
2	Filing of Information	In order to promote electronic filing through technologically updated platform.
3	Promoter Shareholding in dematerialized form	Incorporated in line with SEBI Circulars on 100% promoter Shareholding in Dematerialised Format
4	Power of Stock Exchange in case of non-compliance	Generic Provision for empowering the Stock Exchange in case of Non Compliance by Listed Entities.
5	Fines to be imposed by Stock Exchanges	To enhance the monitoring of listing requirements, the stock exchanges are empowered to impose fines for non-compliance with specific provisions in terms of Circulars/ Guidelines issued from time to time by SEBI.
6	Liability for contravention of the Act, rules or the regulations, Inspection and Disciplinary Proceedings & Directions by the Board	These are the standard regulatory requirements for better enforceability of regulations
7	Monitoring of Compliance/Non Compliance & Adequacy/ Accuracy of the Disclosures	Enabling provision for monitoring by Stock Exchanges in manner and form prescribed by SEBI through Circulars/ Guidelines issued from time to time.
8	Annual Information Memorandum	Proposed to be incorporated as enabling provision for giving effect to the proposed Annual Information Memorandum.
9	Prior Intimations	Intimation of Fund raising events such as preferential issue, debt issue, ADR/GDR/FCCB, QIP, Rights issue and FPO included additionally for Uniformity.

**Major /Substantial Changes from Listing Agreement to LODR**

Old Clause	New Regulation	Particulars		Changes
		Old Listing Agreement	New Listing Regulation	
41(I)(f)	Schedule III, Part A, Para A (4) (h)	The financial results shall be submitted to the SE within 15 minutes of conclusion of the meeting of the Board in which they were approved	Disclose to the SE, within 30 minutes of the closure of BM, held to consider the financial results.	Disclosure to be given within 30 minutes of the BM

41(III) (a)	29(1)(a) & proviso to 29(2)	Give prior intimation to SE of the date and purpose of meetings of the Board or Committee in which the financial results will be considered at least 7 clear calendar days prior to the meeting (excluding the date of the intimation and date of the meeting)	Give prior intimation to SE about the BM in which financial results viz. quarterly, half yearly, or annual, as the case may be, is due to be considered at least 5 days in advance (excluding the date of the intimation and date of the meeting)	5 days' notice is required instead of 7 days
41(III) (b)	47(1)(a)	Publish notice in newspaper simultaneously with the submission of the same to the SE	Financial Results shall be within 48 hours of the conclusion of the Board Meeting.	In case of Financial Results, notice shall be published within 48 hours of the Conclusion of the Meeting.
49(V)	17(8)	The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance shall provide certificate to the BODs	The CEO and the CFO shall provide the compliance certificate to the BODs.	MD or manager have been deleted

**COMPLIANCES TO BE MADE UNDER LODR**

Under LODR, various quarterly; half yearly ; annual compliances and event based compliances have to be made within the stipulated time period with the stock exchange(s) and if the Compliance part has not been done within the time as specified in the prescribed regulation, heavy penalties have been prescribed. In order to avoid the penalties one has to be cautious on the compliance part.

**Quarterly Compliance**

Regulation	Particulars	Timeline	When to Comply			
Regulation 13(3)	Statement of Grievance Redressal Mechanism	Within 21 days from the end of the quarter	By 21- July	By 21- Oct.	By 21- Jan.	By 21- April

Regulation 27(2)(a)	Corporate Governance Report	Within 15 days from the close of the quarter	By 15 -July	By 15 -Oct.	By 15 -Jan.	By 15-April
Regulation 31	Shareholding Pattern	Within 21 days from the end of the quarter	By 21-July	By 21-Oct.	By 21-Jan.	By 21-April
Regulation 33(3)(a)	Financial Result along with Limited Review Report/ Auditor's Report	Within 45 days from the end of the quarter	By 14-Aug	By 14-Nov.	By 14-Feb.	-
	Reconciliation of Share Capital Audit Report	Within 30 days from the end of the quarter	By 30-July	By 30-Oct.	By 30-Jan.	By 30-April

By implementing XBRL reporting, there is faster, more reliable and more accurate handling of data along with improved analysis and better quality of information and decision-making. Human effort can switch to higher, more value-added aspects of analysis, review, reporting and decision-making. Once data is received in XBRL, reusing of data for internal and external reports can be possible with minimum efforts.

### Half Yearly Compliance

Regulation	Particulars	Timeline	When to Comply			
Regulation 7(3)	Share Transfer Agent	Within 1 month of the end of each half of the Financial Year.		By 30-Oct.		By 30-April
Regulation 40 (10)	Transfer or transmission or transposition of securities	Within 1 month of the end of each half of the Financial Year.		By 30-Oct.		By 30-April

### Annual Compliance

Regulation	Particulars	Timeline	When to Comply
Regulation 14	Fees and other charges to be paid to the recognized stock exchange(s)	Within 1 month of the end of 31 <sup>st</sup> March	By 30-April
Regulation 33(3)(d)	Financial Results along with Auditor's Report	Within 60 days of the end of the Financial Year.	By 30-April
Regulation 34(1)	Annual Report	Within 21 working days of being approved and adopted at the AGM	

### Event Based Compliance

Regulation	Particulars	Timeline
Regulation 7(5)	Intimation of appointment of Share Transfer Agent	Within 7 days of an Agreement with RTA
Regulation 28(1)	In-principle approval of recognized stock exchange(s)	Before issuing securities
Regulation 29(2)(b) to (f)	Prior intimation of Board meeting for Buyback, Dividend, Raising of Funds, Voluntary Delisting etc.,	At least two working days in advance, excluding the date of the intimation and date of the meeting

Regulation 29 (2) (a)	Prior intimation of Board meeting for Financial Results	At least five days in advance (excluding the date of the intimation and date of the meeting)
Regulation 29(3)	Prior intimation of Board Meeting for alteration in nature of securities etc.	At least eleven working days in advance
Regulation 30 (6)	Disclosure of events or information	Disclose to stock exchange(s) all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information
Regulation 31(1)(a)	Shareholding Pattern prior to listing of securities	One day prior to listing of securities on the stock exchange
Regulation 31(1)(c)	Shareholding Pattern in case of capital restructuring	Within 10 days of any change in the capital exceeding two per cent of the total paid-up share capital
Regulation 39(3)	Loss of share certificates and issue of duplicate certificates	Within two days of getting information
Regulation 44(3)	Voting Results	Within 48 hours of conclusion of General Meeting
Regulation 46	Website	The listed entity shall maintain a functional website containing the basic information about the listed entity

### FILING IN XBRL MODE

With a view to make the disclosures more accurate and efficient, the facility of XBRL based reporting is available to the listed entities and the following compliances can be made through XBRL mode

Regulation	Particulars	Whether mandatory or not
Regulation 27(2)(a)	Corporate Governance Report	Mandatory

Regulation 31	Shareholding Pattern	Mandatory
Regulation 33	Financial Result	Mandatory
	Reconciliation of Share Capital Audit Report	Optional
Regulation 44(3)	Voting Results	Optional

Accordingly, compliance filings in respect of Corporate Governance Report (Regulation 27), Shareholding Pattern (Regulation 31) and Financial Result (Regulation 33) are required to be made mandatorily by all listed entities, through XBRL mode only. Filing of compliance under Regulation 27, Regulation 31 and (Regulation 33) effected in modes other than XBRL format shall not be considered as submission. However, compliance filings in respect of Reconciliation of Share Capital Audit Report and Voting Result (Regulation 44(3)) are optional. Listed Entities may voluntarily file the aforesaid through XBRL mode. By implementing XBRL reporting, there is faster, more reliable and more accurate handling of data along with improved analysis and better quality of information and decision-making. Human effort can switch to higher, more value-added aspects of analysis, review, reporting and decision-making. Once data is received in XBRL, reusing of data for internal and external reports can be possible with minimum efforts.

## LODR- JOURNEY SO FAR

Since the enforcement of LODR, lots of changes have been brought about in corporate compliances. Now, the Listed Entities have to be more vigilant while complying with the regulations, as there are much information which have to be hosted on the website of the Listed Entity such as newspaper clipping of notice published is required to be hosted on the website, but many of the Listed Entities are still not aware of about it. Likewise, there are other matters of which one should be aware of and it would be possible only by thorough and in-depth analysis of LODR.

Through mandatory XBRL Mode of filing of Corporate Governance, Financial Results and Shareholding Pattern the data of different departments and division can be compiled quickly, cheaply and efficiently using XBRL.

One has to be vigilant while complying with the regulations and also keep a watch on the amendments and/or circulars, if any issued by the SEBI or Exchange(s). Further, in case of any confusion or any query in any matter of LODR or filing of any compliance part, it is better to co-ordinate with the respective exchange(s), as the troubleshooters will definitely give you the solution to sort out the same.

## GIST OF THE AMENDMENTS TO LODR

- Notification issued by SEBI [ SEBI/LAD-NRO/GN/2015-16/27 ] on 22nd Dec., 2015, which came into force on 1st April, 2016 states that \*Top Five hundred Listed entities shall submit the business responsibility report describing the initiatives taken by them from an environmental perspective in the format prescribed by SEBI from time to time.

\* Earlier it was submitted by Top hundred Companies.

**Note:** Other than top five hundred entities and SME may voluntarily submit the business responsibility report.

- Notifications issued by SEBI [SEBI/ LAD-NRO/GN/2016-17/001] on 25th May, 2016, which came into force on 1st April, 2016 provided for the following:
  - The requirement of filing Form A/Form B along with the

Annual Financial results has been dispensed with.

- A statement on impact of audit qualifications is required to be submitted, in case of Audit Reports with modified opinions (i.e. Qualified Audit Reports).
  - The management of the Listed Entity shall have the option to explain its view on the audit qualifications.
  - A declaration has to be furnished to the stock exchange(s), while publishing the annual audited financial results, in case of audit report with unmodified opinion.
  - Schedule VII of the LODR regulations has been deleted.
  - The aforesaid requirements are applicable for both Listed Equity Shares and also Listed Non-Convertible Debt Securities and Non-Convertible Redeemable preference Shares.
- SEBI notification no. SEBI/ LAD-NRO/GN/2016-17/008 issued on 8th July, 2016, which has come into effect on the same date states that the top five hundred listed entities based on market capitalization shall formulate a dividend distribution policy, which shall be disclosed in their annual reports and on their websites. Further, the parameter of the policy is also specified in the notification.
 

**Note:** Other entities may voluntarily formulate the dividend distribution policy.

## LODR- OPPORTUNITY KNOCKS AT THE PROFESSIONAL'S DOOR

LODR has assigned many responsibilities to professionals like Company Secretaries. A Listed Entity shall appoint a qualified Company Secretary as a Compliance Officer, who will be responsible to ensure compliance with regulatory provisions in true letter and spirit.

In order to justify the entrustment of additional responsibilities, Company Secretaries would be required to make extra efforts and invest substantial time to update themselves and also gain in-depth knowledge of Listing Regulations.

## CONCLUSION

LODR Regulations have been formulated to align listing requirements with the regulatory requirements arising out of the dynamic changes in the capital market. There was a need to enhance the enforceability of the regulatory provisions contained in the Listing Agreement and also to comply with the mandate of the Parliament given under section 12A of SCRA and section 11A of SEBI Act. LODR has even proved its mettle by addressing the concerns of excessive delegation in the garb of flexibility with respect to various areas.

However, there are some ambiguities in the compliances mandated by the LODR. These are:

- 100 per cent shares of promoters in Demat form;
- 50 per cent shares of Non-Public Promoters in Demat form;
- PAN number of shareholders holding more than one percent of shares in the Listed Entity has to be disclosed in the Shareholding Pattern.

What if a deceased person having no PAN number is holding more than one per cent of shares in the company?

What if the Mutual Fund, which had invested in the Listed Entity had been taken over by some other company, who themselves are not having any information about the investment made by the Mutual Fund in the Listed Entity ? These questions need answer. CS

## REFERENCES:

- SEBI(LODR) REGULATIONS, 2015
- SEBI(LODR) AMENDMENT REGULATIONS, 2015
- www.nse.com
- www.bseindia.com



# Regulation 30 of LODR Regulations, 2015: Continuous Disclosure Requirements for Listed Entities



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The Securities and Exchange Board of India notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) on September 02, 2015 which came into force from 1st December, 2015.

Subsequent to the Listing Regulations, SEBI issued Circular under aforesaid Listing Regulations related to Continuous Disclosure Requirements for Listed Entities – Under Regulation 30 of Listing Regulations vide SEBI Circular No.: CIR/CFD/CMD/4/2015 dated September 09, 2015 under which Listed Entities are required to disclose certain events/information to the Stock Exchange(s) and being Compliance Officer/Company Secretary of a listed entity we have to ensure the timely compliance of the same.

Following are the triggering events that are deemed to be material and which require specified information to be disclosed to the Stock Exchange (s) as specified in Para A of Part A of Schedule III of Listing Regulations.

(Other Simultaneous Compliances for complying with the above mentioned events are covered elsewhere in this Article.)

Under Regulation 30 of the LODR Regulations, Listed Entities are required to disclose certain events/ information to the Stock Exchange(s). Being the Compliance Officers the Company Secretaries of listed entities have to ensure the timely compliance of the same. This article lists out the disclosures in detail.

## 1. ACQUISITION(S) (INCLUDING AGREEMENT TO ACQUIRE) OR SCHEME OF ARRANGEMENT

**This includes the following:**

- i. Amalgamation/ merger/ demerger/restructuring
- ii. Sale or disposal of any unit(s), division(s) or subsidiary of the listed entity
- iii. Any other restructuring.



<b>What all is to be disclosed in case of Acquisition(s) (including agreement to acquire)</b>	
a.	Name of the target entity, details in brief such as size, turnover etc.
b.	Whether the acquisition would fall within related party transaction(s) and whether the promoter/ promoter group/ group companies have any interest in the entity being acquired? If yes, nature of interest and details thereof and whether the same is done at “arms length”;
c.	Industry to which the entity being acquired belongs.
d.	Objects and effects of acquisition (including but not limited to, disclosure of reasons for acquisition of target entity, if its business is outside the main line of business of the listed entity).
e.	Brief details of any governmental or regulatory approvals required for the acquisition.
f.	Indicative time period for completion of the acquisition.
g.	Nature of consideration - whether cash consideration or share swap and details of the same; Cost of acquisition or the price at which the shares are acquired.
i.	Percentage of shareholding / control acquired and / or number of shares acquired .
j.	Brief background about the entity acquired in terms of products/line of business acquired, date of incorporation, history of last 3 years turnover, country in which the acquired entity has presence and any other significant information (in brief).

<b>What all is to be disclosed in case of Amalgamation/ Merger</b>	
a.	Name of the entity(ies) forming part of the amalgamation/merger, details in brief such as, size, turnover etc.
b.	Whether the transaction would fall within related party transactions. If yes, whether the same is done at “arms length”.
c.	Area of business of the entity(ies).
d.	Rationale for amalgamation/ merger.
e.	In case of cash consideration – amount or otherwise Share Exchange Ratio.
f.	Brief details of change in shareholding pattern (if any) of listed entity.

<b>What all is to be disclosed in case of De-merger</b>	
a.	Brief details of the division(s) to be demerged .
b.	Turnover of the demerged division and as percentage to the total turnover of the listed entity in the immediately preceding financial year / based on financials of the last financial year.
c.	Rationale for demerger.
d.	Brief details of change in shareholding pattern (if any)of all entities.
e.	In case of cash consideration – amount or otherwise share exchange ratio.
f.	Whether listing would be sought for the resulting entity.

<b>What all is to be disclosed in case of Sale or disposal of unit(s) or division(s) or subsidiary of the listed entity</b>	
a.	The amount and percentage of the turnover or revenue or income and net worth contributed by such unit or division of the listed entity during the last financial year .
b.	Date on which the agreement for sale has been entered into
c.	The expected date of completion of sale/disposal .
d.	Consideration received from such sale/disposal .
e.	Brief details of buyers and whether any of the buyers belong to the promoter/ promoter group/group companies. If yes, details thereof .
f.	Whether the transaction would fall within related party transactions? If yes, whether the same is done at “arms length”.
g.	Additionally, in case of a <b>slump sale</b> *, indicative disclosures provided for amalgamation/merger, shall be disclosed by the listed entity with respect to such slump sale.

\*Note: “**Slump Sale**” shall mean the transfer of one or more undertakings, as a result of the sale for a lump sum consideration, without values being assigned to the individual assets and liabilities in such sales.

<b>What all is to be disclosed in case of Other Restructuring</b>	
a.	Details and reasons for restructuring
b.	Quantitative and/ or qualitative effect of restructuring .
c.	Details of benefit, if any, to the promoter/promoter group/group companies from such proposed restructuring .
d.	Brief details of change in shareholding pattern (if any) of all entities.

## 2. TRIGGERING EVENTS FOR DISCLOSURE OF INFORMATION IN RESPECT OF THE SECURITIES

### 1. Issuance of Securities

<b>What all is to be disclosed in case of Issuance of Securities</b>	
a.	Type of securities proposed to be issued (viz. equity shares, convertibles etc.);
b.	Type of issuance: <ol style="list-style-type: none"> <li>1. Further Public Offering</li> <li>2. Rights Issue</li> <li>3. Depository receipts (ADR/GDR)</li> </ol> <p>In case of issuance of depository receipts (ADR/GDR) or FCCB the listed entity shall disclose following additional details to the stock exchange(s):</p> <ol style="list-style-type: none"> <li>i. Name of the stock exchange(s) where ADR/GDR/FCCBs are listed (opening – closing status) / proposed to be listed</li> <li>ii. Proposed no. of equity shares underlying the ADR/GDR or on conversion of FCCBs</li> <li>iii. Proposed date of allotment, tenure, date of maturity and coupon offered, if any of FCCB's</li> <li>iv. Issue Price of ADR/GDR/FCCBs (in terms of USD and in INR after considering conversion rate)</li> <li>v. Change in terms of FCCBs, if any</li> <li>vi. Details of defaults, if any, by the listed entity in payment of coupon on FCCBs &amp; subsequent updates in relation to the default, including the details of the corrective measures undertaken (if any)</li> </ol> <ol style="list-style-type: none"> <li>4. Qualified Institutions Placement</li> <li>5. Preferential Allotment etc.</li> </ol> <p>Following Additional details to the stock exchange shall be disclosed in case of Preferential Allotment :</p> <ol style="list-style-type: none"> <li>vii. Names of the investors</li> <li>viii. Post allotment of Securities - outcome of the subscription, issue price / allotted price (in case of convertibles), number of investors</li> <li>ix. iii. in case of convertibles - intimation on conversion of securities or on lapse of the tenure of the instrument</li> </ol>
c.	Total number of securities proposed to be issued or the total amount for which the securities will be issued (approximately);
d.	In the case of Bonus Issue etc. Following Additional details to the stock exchange shall be disclosed: <ol style="list-style-type: none"> <li>x. Whether bonus is out of free reserves created out of profits or share premium account</li> <li>xi. Bonus Ratio</li> <li>xii. Details of share capital - pre and post bonus issue</li> <li>xiii. Free reserves and/ or share premium required for implementing the bonus issue</li> <li>xiv. Free reserves and/ or share premium available for capitalization and the date as on which such balance is available</li> <li>xv. Whether the aforesaid figures are audited</li> <li>xvi. Estimated date by which such bonus shares would be credited/dispatched</li> </ol>
e.	In case of issuance of Debt Securities or other Non Convertible Securities Following additional details to the stock exchange shall be disclosed: <ol style="list-style-type: none"> <li>xvii. Size of the issue</li> <li>xviii. Whether proposed to be listed? If yes, name of the stock exchange(s)</li> <li>xix. Tenure of the instrument - date of allotment and date of maturity</li> <li>xx. Coupon/interest offered, schedule of payment of coupon/interest and principal</li> <li>xxi. Charge/security, if any, created over the assets</li> <li>xxii. Special right/interest/privileges attached to the instrument and changes thereof</li> <li>xxiii. Delay in payment of interest / principal amount for a period of more than three months from the due date or default in payment of interest / principal</li> <li>xxiv. Details of any letter or comments regarding payment/non-payment of interest, principal on due dates, or any other matter concerning the security and /or the assets along with its comments thereon, if any</li> <li>xxv. Details of redemption of preference shares indicating the manner of redemption (whether out of profits or out of fresh issue) and debentures</li> </ol>
f.	Any cancellation or termination of proposal for issuance of securities including reasons thereof.

### II. Split/Consolidation of Shares

<b>What all is to be disclosed</b>	
a.	Split/Consolidation Ratio
b.	Rationale behind the same



c.	Pre and Post share capital – authorized, paid-up and subscribed
d.	Expected time of completion
e.	Class of shares which are consolidated or subdivided
f.	Number of shares of each class pre and post split or consolidation
g.	Number of shareholders who did not get any shares in consolidation and their pre-consolidation shareholding.

**III. Buyback of Securities**

<b><i>What all is to be disclosed</i></b>	
a.	Number of securities proposed for buyback
b.	Number of securities proposed for buyback as a percentage of existing paid up capital
c.	Buyback price
d.	Actual securities in number and percentage of existing paid up capital bought back
e.	Pre & post shareholding pattern.

**IV. Any restriction on transferability of securities**

<b><i>What all is to be disclosed</i></b>	
a.	Authority issuing attachment or prohibitory orders
b.	Brief details and reasons for attachment or prohibitory orders
c.	Name of registered holders against whom restriction on transferability has been placed
d.	Total number of securities so affected
e.	Distinctive numbers of such securities if applicable
f.	Period for which order would be applicable (if stated)

**V. Alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.:**

<b><i>What all is to be disclosed</i></b>	
a.	Forfeiture of shares
b.	Reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to
c.	Proposal to issue any class of securities
d.	Alterations of capital, including calls
e.	Change in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the listed entity.

**3. REVISION IN RATING(S)**

<b><i>What all is to be disclosed</i></b>	
a.	The details of any new rating assigned from a credit rating agency
b.	Revision in rating
c.	Reasons provided by the rating agency for downward revision as well

**4. OUTCOME OF MEETINGS OF THE BOARD OF DIRECTORS**

<b><i>What all is to be disclosed</i></b>	
The listed entity shall intimate to the Exchange(s), within 30 minutes of the closure of the meeting, held to consider or decide the following:	
a.	Dividends and or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched
b.	Any cancellation of dividend with reasons thereof
c.	Decision on buyback of securities
d.	Decision with respect to fund raising proposed to be undertaken
e.	Increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares would be credited/dispatched
f.	Seissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to
g.	Short particulars of any other alterations of capital, including calls;

h.	Financial results;
i.	Decision on voluntary delisting by the listed entity from stock exchange(s);
<b>New Concept:</b> <i>The intimation of outcome of meeting of the board of directors shall also contain the time of commencement and conclusion of the meeting.</i>	

## 5. DETAILS ABOUT THE AGREEMENTS

This will include: Shareholder Agreement(s),  
 Joint venture agreement(s),  
 Family settlement agreement(s) (to the extent that it impacts management and control of the listed entity),  
 Agreement(s)/treaty(ies)/contract(s) with media companies which are binding and not in normal course of business,  
 Revision(s) or amendment(s) and termination(s) in the abovementioned agreement(s).

<b>What all is to be disclosed</b>	
a.	Name(s) of parties with whom the agreement is entered
b.	Purpose of entering into the agreement
c.	Shareholding, if any, in the entity with whom the agreement is executed
d.	Significant terms of the agreement (in brief) special rights like right to appoint directors, first right to share subscription in case of issuance of shares, right to restrict any change in capital structure etc.
e.	Whether, the said parties are related to promoter/promoter group/ group companies in any manner. If yes, nature of relationship.
f.	Whether the transaction would fall within related party transactions? If yes, whether the same is done at "arms length"
g.	In case of issuance of shares to the parties, details of issue price, class of shares issued
h.	Any other disclosures related to such agreements, viz., details of nominee on the board of directors of the listed entity, potential conflict of interest arising out of such agreements, etc.
i.	In case of termination or amendment of agreement, Additional details to the stock exchange shall be disclosed: <ol style="list-style-type: none"> <li>name of parties to the agreement;</li> <li>nature of the agreement;</li> <li>date of execution of the agreement;</li> <li>details of amendment and impact thereof or reasons of termination and impact thereof.</li> </ol>

## 6. FRAUD/ DEFAULTS

Frauds/default by

- Promoter ; or
- Key Managerial Personnel ; or
- By the listed entity ; or
- Arrest of key managerial personnel ; or
- Arrest of promoter .

<b>What all is to be disclosed</b>			
At the time of unearthing of fraud or occurrence of the default / arrest:		Subsequent intimation to the stock exchange(s), details regarding the fraud/default/arrest including:	
a.	Nature of fraud/default/arrest	a.	Actual amount involved in the fraud /default (if any)
b.	Estimated impact on the listed entity	b.	Actual impact of such fraud /default on the listed entity and its financials
c.	Time of occurrence	c.	Corrective measures taken by the listed entity on account of such fraud/default.
d.	Person(s) involved		
e.	Estimated amount involved (if any)		
f.	Whether such fraud/default/arrest has been reported to appropriate authorities.		

## 7. CHANGES IN THE DESIGNATION OF DIRECTORS

Exchanges have to be informed whenever there is change in the designation of the:

- Directors
- Key Managerial Personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.)
- Auditor
- Compliance Officer.

<b>What all is to be disclosed</b>	
a.	Reason for change viz. appointment, resignation, removal, death or otherwise

b.	Date of appointment/cessation (as applicable) & term of appointment;
c.	Brief profile (in case of appointment)
d.	Disclosure of relationships between directors (in case of appointment of a director).

## 8. APPOINTMENT /DISCONTINUATION OF SHARE TRANSFER AGENT

<b>What all is to be disclosed</b>	
a.	Reason for appointment or discontinuation;
b.	Date on which above would become effective.

## 9. CORPORATE DEBT RESTRUCTURING ("CDR")

<b>What all is to be disclosed</b>	
a.	Whether CDR is voluntary and reasons for opting or referred by lenders/creditors
b.	Details of the loan to be subjected to restructuring under CDR
c.	Brief details of the CDR proposal (if any)
d.	The following updates to be provided at the time of the execution and at various stages of the implementation of the CDR scheme <ul style="list-style-type: none"> <li>i. upon execution of any agreement in relation to the CDR proposal, disclosure of details such as date of execution, parties to the agreement and principal terms</li> <li>ii. details of final CDR package as approved by RBI and the lenders</li> <li>iii. lenders involved</li> <li>iv. brief summary of the CDR scheme including details of the securities, interest payment, repayment schedule, negative and other restrictive covenants.</li> </ul>

## 10. ONE TIME SETTLEMENT (OTS) WITH A BANK

<b>What all is to be disclosed??</b>	
a.	Reasons for opting for OTS
b.	Brief summary of the OTS.

## 11. REFERENCE TO BIFR AND WINDING-UP PETITION FILED BY ANY PARTY / CREDITORS

<b>What all is to be disclosed</b>	
a.	Reasons for such a reference/petition
b.	Impact of such reference/petition on listed entity.

## 12. ISSUANCE OF NOTICES ETC.

This includes the following

- i. Notices
- ii. Call letters
- iii. Resolutions
- iv. Circulars sent to shareholders/ debenture holders/creditors or any class of them,
- v. Advertisements in the media.

Apart from above following details too shall be disclosed:

- i. Date of Notice, Call letters, Resolutions etc.
- ii. Brief details viz. agenda (if any) proposed to be taken up, resolution to be passed, manner of approval proposed etc.

## 13. PROCEEDINGS

- i. Annual General Meetings
- ii. Extraordinary General Meetings

<b>What all is to be disclosed</b>	
a.	Date of the meeting
b.	Brief details of items deliberated and results thereof
c.	Manner of approval proposed for certain items (e-voting etc.).

## 14. AMENDMENTS

Amendments made to the following :

- i. Memorandum of Association
- ii. Articles of Association, (in brief).



## 15. SCHEDULES

- i. Analyst or institutional investor meet and
- ii. Presentations on financial results made the above mentioned

### Note:

- Apart from above information(s) there are certain other details which a listed entity needs to disclose for events on which the listed entity may apply materiality in terms of Para B of Part A of Schedule III of Listing Regulations.(Refer Circular)
- And, apart from these events, the listed entity may make disclosures of event/information as specified by the Board from time to time.

## OTHER SIMULTANEOUS COMPLIANCES FOR COMPLYING WITH THE ABOVE MENTIONED REGULATIONS

- A. Formulation of a Policy for determination of materiality, duly approved by the Board of Directors, which shall be disclosed on the Company's website.
- B. Authorization of one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under this regulation and the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website.
- C. Dissemination of the information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:  
And if the same is disclosed after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay.
- D. Disclosures which have been disclosed to stock exchange(s) under this regulation shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity.
- E. Disclosure of all events or information with respect to subsidiaries which are material for the listed entity.
- F. Specific and adequate reply by the listed entities to all queries raised by stock exchange(s) with respect to any events or information
- G. The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).
- H. Any event which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on the listed entity, then the entity is required to make adequate disclosures in regard thereof.

## HOW TO IDENTIFY MATERIALITY

The Listing Regulations, 2015 defines RPTs as transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged. Further, "transaction" must be interpreted to include a single or a group of transactions under a particular contract.

Whereas as per Section 188 of the Companies Act,2013, a transaction with related party is not an RPT and does not require prior board or shareholders' approval as long as it is at an "arm's-length" basis occurring in the "ordinary course of business". In the light of the scope of RPTs under Listing Regulations, 2015, the exemption is taken away irrespective of the size of the listed entity and the value of the transaction is in question. Hence, any transaction which is a RPT will require not only prior audit committee approval as mandated under Regulation 23(2), but also require board approval. However, shareholders' approval will be only necessitated if the transaction is a material RPT.

## WHAT IS MATERIALITY

Any transaction with a particular related party (taken individually or combined with other transactions during the financial year) which exceeds 10% of listed company's annual consolidated turnover shall be considered a material Related party Transaction.

Regulation 23(1) requires every listed entity to formulate a policy on materiality of RPTs. It appears that a listed company may determine the variety of RPTs which will be classified as material ones.

Since such materiality cannot transgress the threshold prescribed under the Companies Act; Companies must take them into consideration while framing the policy on material RPTs. Even the Companies may follow different interpretation but the threshold prescribed in the Regulations remain same which will bring uniformity across the Companies and thus, providing more transparency to the system.

In order to align with the recent amendment in Companies Act, the Regulations substituted the old mandate of approving RPTs through special resolution, thereby permitting listed entities to approve RPTs through an ordinary resolution. But, the restriction on voting by related parties is not done away with, despite the clarification issued by the Ministry of Corporate Affairs which allows non-interested related parties to vote for approving a particular RPT. Regulation 23(4) read along with 23(7) states that while approving material RPTs, all related parties whether or not concerned with the particular RPT, must abstain from exercising their votes. Therefore, the RPTs approval process under the Regulations take away major exceptions and overall continue to remain stricter in comparison to the Companies Act.

The provisions now include defining a policy to determine materiality of related party transactions, prior approval of Audit Committee, omnibus approval by Audit Committee, approval of shareholders by ordinary resolution, carve out from applicability of provisions for related transactions between two government companies, a holding company and its wholly owned subsidiary, etc.

As often said , Change is the only Constant. It is need of the hour to adapt to such amendments and changes for the betterment of the corporate culture.

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# Understanding Proposed GST Law



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The spread of Value Added Tax (VAT), also called Goods and Services Tax (GST) has been the most important development in taxation world over in the last half-century. Limited to less than ten countries in the late 1960s, it has now been implemented by over 160 countries worldwide, making it the world's most commonly used tax. In these countries, it typically accounts for one-fifth of total tax revenue. The recognized capacity of VAT is to raise revenue in a neutral and transparent manner. At the same time as VAT was spreading across the world, international trade in goods and services was expanding rapidly as part of

These differences result not only from the existence of exemptions and special arrangements to meet specific policy objectives, but also from differences of approaches in the definition of the jurisdiction of consumption and therefore of taxation. In addition, there are a number of variations in the application of value added taxes, and other consumption taxes, including different interpretation of the same or similar concepts; different approaches to time of supply and its interaction.

## INDIRECT TAXES IN INDIA

A strong indirect tax system is

GST is expected to play a key role in bringing about more transparency into the tax system. A very strong infrastructure network would be required to administer GST which would include facility for online payment of tax and e-filing of returns. The GST as a new levy could be a very effective tool and breakthrough in indirect tax reforms, provided it is made simple and assessee-friendly – not like the present tax system.

globalization developments and revolution. Most countries have adopted similar principles for the operation of their value added tax system, but there remain many differences in the way it is implemented.

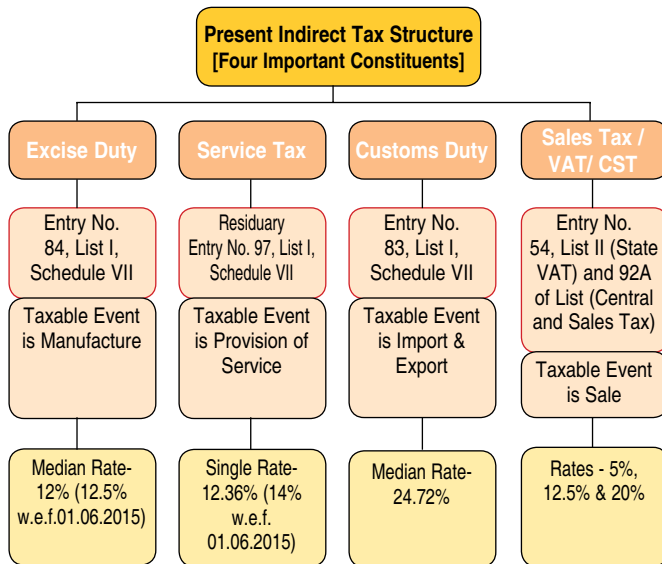


fundamental to the development of a nation's economy. In stepping up the tax effort in India, indirect taxes have played an increasingly important role. Presently, the contribution of Indirect Tax is about 68 percent of the total tax revenues of the Central Government. The term 'indirect taxes' generally refers to taxes levied on the basis of production, sale or purchase of goods such as import and export duties, excises, and sales taxes. Indirect taxes include taxes levied on production of goods, rendering of services, entertainment taxes, electricity duties, tax on passenger fares and freights etc. They are called indirect taxes and can be passed on to someone else (e.g. customers) whereas direct taxes are supposed to be borne by those on whom they are levied. For the Central Government, Central Excise, Customs and Service Tax are the two main components of indirect taxes. For states, Value Added Tax (VAT) is the major indirect tax,

The present tax structure for indirect

\*Also ACIS (UK). Former Chairman, NIRC of ICSI.

taxation can best be understood by the following chart:



The idea of having a unified indirect tax in India in the form of Goods and Service Tax (GST) itself is now 10 year old with announcement in the Parliament in 2006. GST is supposed to be a full fledged Value Added Tax (VAT) with total integration of taxes in supply of goods and services that will reduce the cascading effect of taxes, i.e., taxes on taxes. The Empowered Committee (EC) of State Finance Ministers, credited with contributing significantly to the introduction of VAT in India, was given the task to steer the GST as well. With the Constitutional Amendment in September, 2016, GST will now be steered by the GST Council. In Indian context, the proposal is to have a dual GST with defined functions and responsibilities of the Union and States. It is proposed that an appropriate mechanism that would be binding on both, the Centre and the States has to be worked out with the harmonious rate structure.

## WHAT IS GOODS AND SERVICES TAX (GST)?

GST stands for "Goods and Services Tax", and is proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level. Its main objective is to consolidate all indirect tax levies into a single tax, except customs (excluding SAD) replacing multiple tax levies, overcoming the limitations of existing indirect tax structure, and creating efficiencies in tax administration. Simply put, goods and services tax is a tax levied on goods and services imposed at each point of sale or rendering of service. Such GST could be on entire goods and services or there could be some exempted class of goods or services or a negative list of goods and services on which GST is not levied. GST is an indirect tax in lieu of tax on goods (excise) and tax on service (service tax). The GST is just like State level VAT which is levied as tax on sale of goods. GST will be a national level value added tax applicable on goods and services.

A major change in administering GST will be that the tax incidence is at the point of sale as against the present system of point of origin. According to the Task Force under the 13th Finance Commission, GST, as a well designed value added tax on all goods and services, is the most elegant method to eliminate distortions and to tax consumption.

## TAXANOMY OF PROPOSED TAX PROVISIONS

Model law comprises of following two laws –

- Goods and Service Tax Act, 2016
- Integrated Goods and Service Tax Act, 2016

According to the model law released, GST rates will be specified in the Schedule to the Act. Online or e commerce transaction would also be under the GST ambit.

### Model GST Law

The Model GST law consists of :

- 162 + sections divided into 25 Chapters
- 4 schedules
- Rules relating to Valuation under GST
- Draft Integrated GST Act (IGST) consisting of 33 sections divided into 11 Chapters.

### Model IGST Law

The Model IGST Act comprises of the following

- 11 Chapters
- 33 Sections
- 8 Definitions

This legislation will be called the integrated Goods and Services Tax Act, 2016 (in short IGST), an Act to levy, collect and administer IGST in India and will apply to whole of India.

All forms of 'supply' of goods and services such as sale, transfer, barter, exchange, license, rental, lease and import of services of goods and services made for a consideration within the state will attract CGST (central levy) and SGST (state levy). On inter-state supply of goods, IGST shall be applicable. GST would be applicable on 'supply' of goods and services.

To understand GST law, one needs to understand basic concepts of the law on which tax the new tax law is based. An attempt has been made to explain these terms hereunder.

## PLACE OF BUSINESS [SECTION 2(75)]

'Place of business' includes-

- a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or
- a place where a taxable person maintains his books of account; or
- a place where a taxable person is engaged in business through an agent, by whatever name called;

The place of business would accordingly include the following places –

- place from where business is ordinarily carried on,
- warehouse,
- godown,
- any other place used for storing goods or place to provide or receive goods or services by taxable person,
- place where books of accounts are maintained by taxable person (it may be place of business of agency or any professional),
- place from where a taxable person is engaged in business through agent by whatever name called.(like commission agent, C&F agent, consignment agent etc)

The definition given is an inclusive definition and not a comprehensive one. It will include any one or more or all of the aforementioned places.

Place of business is not defined in the present Central Excise or Service Tax law.

## PRINCIPAL PLACE OF BUSINESS [SECTION 2(78)]

'Principal place of business' means the place of business specified as the principal place of business in the certificate of registration where the taxable person keeps and maintains the accounts and records as specified under section 42.

For a place of business to be a 'principal place of business', following conditions are essential –

- (i) It should be a place of business
- (ii) It should be specified as such in registration certificate
- (iii) Taxable person should keep and maintain the accounts and records as required in section 42 at such place

Section 42 provide for maintenance of accounts and other record by registered person at his principal place of business, the true and correct account of –

- Production or manufacture of goods
- Inward or outward supply of goods / services
- Stock of goods
- Input tax credit availed
- Output tax payable and paid
- Such other particulars as prescribed

Section 42 also provides that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned.

## TAXABLE PERSON [SECTION 2(96)]

Taxable person has been defined to have a meaning as assigned to it in section 9 of the model law.

According to section 9, taxable person means a person who carries on any business at any place in any state or India or and who is registered or required to be registered for the purpose of GST law as per Schedule –III to the Act.

Taxable person would therefore, cover both - one who are registered as taxable person under the Act and two, persons who are not so registered but required to be so registered. Thus, even unregistered person would be called a taxable person liable as such under the Act.

Following points are worth noting in relation to taxable person –

- a) Taxable person in a person who carries on any business.
- b) Taxable person may carry such business at any place in India or any state in case of SGST
- c) Taxable person should be registered or required to be registered under Schedule-III of the Act.
- d) An agriculturist [defined in section 2(8)] is not considered as a taxable person
- e) A person should be considered as a taxable person only if his aggregate turnover exceeds Rs. 10 lakh in a financial year [Rs. 5 lakh in case of North East States including Sikkim]
- f) Central Government, State Government or local authority shall be considered as taxable person in respect of activities/ transactions (other than as specified in Schedule-IV) where they are engaged as public authority.

Schedule-IV of the Act contains list of activities or transactions in respect of which the Central Government, a State Government or any local authority shall not be regarded as a taxable person. Examples of such services are services in relation to statutory functions (pass port, visa, driving license, birth or death certificate; functions under article 243W or 243G of

Constitution; health care, education, tax, right to use natural resources, merchant overtime charges, registration under any law; services in relation to diplomatic / consular / emigration / currency / import or export / public order etc.

Following persons shall not be considered as taxable persons–

- a) person providing services as an employee to his employer in terms of employment or under any legal tie creating employee –employer relationship.
- b) person in business of exclusively supplying goods or services not liable to tax.
- c) person liable to pay tax under reverse charge [section 7(3)] receiving services of value not exceeding a specified limit in a year for personal use (not for use in course of or furtherance of his business).

## CHARGE OF TAX

According to section 7 on levy and collection of CGST or IGST and section 4 (in case of IGST), it has been provided that –

- a) A tax shall be levied known as CGST / SGST/ IGST.
- b) In case of intra-state supplies of goods and / or services, CGST/ SGST shall be levied.
- c) In case of inter-state supplies of goods and/or services, IGST shall be levied.
- d) The rate of tax shall be as specified in Schedule (yet to be decided).
- e) Tax shall be collected in the prescribed manner.
- f) Tax shall be paid by levy taxable person or by such person as may be prescribed (in case of reverse charge).

## EPILOGUE

GST is expected to play a key role in bringing about more transparency into the tax system. Instead of fiscal concessions, concessions to select industries on grounds such as environmental protection etc. could be provided in a transparent manner through cash refunds or otherwise. While unified rate may be there, states may be allowed to charge rates most suitable to them such as on alcohol, petroleum products, etc. A very strong infrastructure network would be required to administer GST which would include facility for online payment of tax and e-filing of returns. The GST as a new levy could be a very effective tool and break-through in indirect tax reforms, provided it is made simple and assessee-friendly – not like the present tax system.

Not only GST is expected to change the complexion of indirect taxation in India, it will also bring down the prices of goods and services across the board. The consensus among the states (>30) and between the Centre and states hold the key. Once consensus is reached, GST may see the light of the day in a year's time, even during any time of the year, it being a transaction based tax.

While there is no doubt that GST must see the light of the day (most likely to be from 1st April, 2017 now), it should also address the problems in present day taxation i.e., it should seek to achieve rationalization, boost transparency, offer flexibility to Union and states and broaden the much needed tax base. If GST comes into operation, it would achieve the status of integrated and most comprehensive set off tax structure in India leading to enhanced economic activities and tax buoyancy. GST would offer a complete set off and there will be no tax cascading effect as there will be no tax on tax, an ideal proposition for all. Even the Government won't mind as tax revenues would go up substantially (VAT is a live case). CS



# Goods and Services Tax – Business Transformation & Drivers of Economic Growth



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**G**oods and Services Tax – “One Nation, One Tax” is the largest Tax Reform in the Indian Tax system which would besides Uniformity in Indirect Taxes also result in Business Transformation. All the Stakeholders (Manufacturer, Producer, Job Worker, Intermediary, Society, End Consumer, Government (Central & State) would stand to Gain. It’s estimated that the GDP of nation would grow by 2%. Central Taxes i.e. Excise Duty, Services Tax, Countervailing Duty, Special Duty of Customs, CST, Cesses shall be subsumed into **CGST** (Central Goods and Services Tax), whereas State Taxes

deliveries of goods to manufacturers as a result of which productivity suffers and revenue to Government exchequers also suffers.

Uniform Taxation in Goods and Services Tax would do away with the check posts in states thus reducing the transportation time for delivery of goods to manufacturers which further add to increased productivity resulting into growth in nation’s GDP. Industry can look forward to operate on JIT (Just in Time Manufacturing Concept) for delivery of Raw Materials on account of reduced logistics time, which may have positive impact on reduction in inventory cost too.

Goods and Service Tax is major shift from Paper Based system to Electronic Media as all the transactions would be executed over the Internet in GSTIN website. The article while explaining the benefits of GST has also touched upon the challenges that will be in the power sector, Impact of GST on Imports / Exports/ Foreign Trade Policy, etc.

i.e. VAT, Entry Tax, Purchase Tax, etc. (except taxes levied by Local bodies in State Government) shall be subsumed into **SGST** (State Goods and Services Tax). Goods and Services Tax is major shift from “**Paper Based system to Electronic Media**” as all the transactions would be executed over the Internet in GSTIN website. Step-In to various Central & State Governments would drastically reduce as the transactions from Seeking Registration No. to filing of Returns, Claiming Tax Refunds, etc. shall be executed online. All these tantamount to Reduction in Transaction Cost & Time for registered Taxable persons.

## **INCREASE IN TURNAROUND TIME FOR LOGISTICS SECTOR - BENEFICIAL FOR INDUSTRY TO MOVE TOWARDS “JIT”**

At present, vehicles detention time at various State Check Posts range from 5-10 hours thus leading in delayed

**Electrical /Electronic/ Appliances Industry** and other sectors wherein Excise Duty is 12.50% and VAT rate is 14.50%, (Total Tax: 27%) would be the gainers as the GST Council will come out with Standard GST Rate of 18-22%, thus resulting Reduction in the prices of Goods for End Consumer.

## **REDUCTION IN WAREHOUSE COST**

Majority of the Industrial players have set up their warehouses in those states wherein their product is chargeable to “NIL” or concessional rate of VAT/CST. The same makes them competitive to sell their product in the local market rather than directly executing Sale from factory on account of CST i.e. Central Sales Tax being part of product cost. CST is not allowed to be set off against the sales tax payable on finished goods, whereas in GST regime, IGST leviable in case of Inter State Sales is allowed as Input Tax Credit to be set-off against IGST, CGST & SGST.

## Uniform Taxation in Goods and Services Tax would do away with the check posts in states thus reducing the transportation time for delivery of goods to manufacturers which further add to increased productivity resulting into growth in nation's GDP.

For e.g. **Textile Players** i.e. those manufacturing “Cotton Yarn” have established warehouses in Delhi for sale of their products as the VAT on Cotton Yarn is subject to “NIL” rate as compared to charging of CST (Central Sales Tax) of 2%.

In GST regime, all states will have uniform rate of GST thus making the most of Industrial Houses to cater sales directly to their buyers from factory, which would further lead to closure of Warehouses to save on warehouse and freight cost.

Stock Transfers and clearances to Consignment agent has been brought under Tax Net, which would impact the working capital of the company. Chief Financial Officer and Marketing head to review and plan accordingly to have continuity in business transactions and manage fund flow.

### INVOICING STRUCTURE UNDER GOODS AND SERVICES TAX

Mentioned Below is the Invoice Structure under Present Indirect Tax Structure and in GST Regime, which needs to be configured well in advance by the Industry/ registered Taxable person so as to have smooth flow and continuity in business transactions from the appointed date under GST.

Present Tax- Local sale		GST- Intra State Sales		Present – Interstate		GST- Inter State Sale	
Basic Price	10,000	Basic Price	10,000	Basic Price	10,000	Basic Price	10,000
Less : Trade Discount	1,000	Less : Trade Discount	1,000	Less : Trade Discount	1,000	Less : Trade Discount	1,000
Net Price	9,000	Net Price	9,000	Net Price	9,000	Net Price	9,000
Excise Duty @ 12.50%	1,125	CGST @ 12.50%	1,125	Excise Duty @ 12.50%	1,125	IGST @ 17.50%	1,575
VAT @ 5%	506	SGST @ 5%	450	CST @ 2%	450		
Total Price	10,631	Total Price	10,575	Total Price	10,575	Total Price	10,575

**Note:** CGST rate is considered equivalent to Present Excise

Duty & SGST rate equivalent to Present VAT for showing calculation in GST regime. GST Council will decide the GST rates by November, 2016. IGST rate for calculation purposes is taken as equivalent to sum of present Excise Duty & CST rate.

- Input Tax Credit is not admissible for “CST” (Central Sales Tax) in present tax structure, which shall be subsumed in “IGST” and accordingly “Input Tax Credit” is admissible
- No Cascading Impact of Taxes in GST as the Central & State Taxes is levied on the same base value, whereas in present Taxation system, State Taxes are chargeable on Value of Goods including Central Taxes
- Goods and Service Tax may have 3 tax slabs i.e. Lower rate, Standard Rate and Merit Rate. Standard GST rate is expected to range between 18-22%.

### MINIMAL TAX EXEMPTIONS IN GST

- Tax Exemptions shall be reduced to very few commodities which may pertain to “agriculture produce, life saving drugs, medicines, school level education etc
- No Concessional Tax rates against “C / D / E-1 & E-2, CT-1, CT-3 forms shall be available and all clearances shall be chargeable to Normal Tax Rate. C/D/E-1 forms are meant at present for Inter-State Sales or Sales in Transit, whereas CT-3 is meant for deemed exports to EOU (Export Oriented Units)
- No Dual taxation i.e. in GST transaction is chargeable either as supply of goods or Service and not both as is done presently in case of Job-Work / Software etc., wherein Service Tax & VAT/CST is charged
- Textile Sector, considered as one of the largest Labour Intensive Sector enjoys the Indirect Tax exemptions i.e. Excise Duty Exemption at present, which would be taken away in GST regime. Would there be any impact on cost of Garments for the End Consumer or the seller reduces their margins again a Business Call
- State Taxes in the Textile Sector chain breaks in the present system i.e. Cotton & Cotton yarn is subject to VAT/ CST whereas “fabric” is tax free and is the Raw Material for Garment Industry whose products i.e. garments are further taxable. In this entire chain the Tax cost for the Garment manufacturer increases which would reduce in GST regime as the tax continuity remains in entire Value Chain
- GST is chargeable on the Value of supply of goods in each chain, thus the present levy of Excise Duty on MRP based would also go away.

## REDUCTION IN LITIGATION COST

- Present Indirect Tax system specifically Excise Duty is the area which is prone to Litigation on Classification Issues, Manufacturing and Marketability front. The same shall be done away in GST as the Tax is payable on “Supply” instead of “Manufacture”.

## CHALLENGES FOR POWER SECTOR

- No clarity in Goods and Service Tax on Power Sector. Electricity is passed through 3 phases i.e. Generation, Transmission & Distribution. Electricity Duty is charged on distribution of power to End Customers. Service Tax is exempted at present on Generation and Transmission of Electricity
- State Governments procure Coal, Pet Coke at present against “Form C or D” (Concessional CST rate of 1% or 2% depending upon states). In GST no concessional tax criteria exists, which would made State Governments to pay Tax at Full rate i.e. if IGST rate is declared as 18%, the same needs to be paid thus increasing the Raw Material cost
- Besides above, Service cost on account of maintenance of State Government power projects, transportation cost for procurement of raw material would also increase due to increase in IGST rate beyond present rate of 15%.

Would above impact the Electricity Tariff to End Consumer, GST Council needs to consider.

## NO DUAL CONTROL OF CENTRAL & STATE GOVERNMENTS IN TAX ASSESSMENTS

- GST Council has in their meeting held on September 23, 2016 mutually agreed upon for Threshold Tax Exemption limit of Rs. 20 Lacs p.a. (for north eastern states, the same is Rs. 10 Lacs) and the base year shall be taken as F.Y. 2016-17
- Registered Taxable Persons whose Turnover is upto Rs. 1.50 Cr shall be assessed by State Tax Authorities and Central Government would not have any Control.

Taxable Person has to be under Dual Control at present for Tax assessment and audits from Central & State Tax authorities, which is subject to single control either by State / Centre in GST regime.

## CHALLENGES IN AVAILING INPUT TAX CREDIT UNDER GST

- Input Tax Credit shall not be admissible unless the Tax charged by the Supplier in Invoice, has ACTUALLY

been paid into respective Government treasury in Cash / Utilisation of Input Tax credit. (This is the most challenging and harsh provision as the receiver of goods should be punished for fault of supplier of goods / services if that person fails to deposit tax / return).

- GST Council should review the above mechanism and put the supplier of goods / services on penal mode instead of disallowing the Tax Credit to recipient of goods for no fault of him.
- Recipient would be disallowed credit if the supplier of goods fails to pay tax, or furnish return, or furnish correct date in Electronic return for supply of goods. This is injustice with the recipient of goods and GST Committee to design GST provisions in such a manner so that it should punish the culprit and don't hang the innocent person due to crime committed by another person.

## IMPACT OF GST ON IMPORTS / EXPORTS / FOREIGN TRADE POLICY

Impact of Goods and Service Tax on Imports and Exports in India is the area which calls for review of various statutory compliances, IGST Rates, Export Benefits, Import Exemptions, Position of EOU in present v. GST Regime, Supplies to SEZ/ STPI/Mega Power Projects/Projects under ICB (International Competitive Bidding)...

Industry at large needs to review the Impact of GST on Imports from Working Capital perspective, Input / Capital Cost of Imports, Decision making, Imports v. Indigenous sourcing.....

- Export Duty Credit Scrip i.e. MEIS, FMS, FPS, IEIS, SEIS is not acceptable under GST for payment of duty on procurement of Indigenous Inputs / Capital Goods or for payment of IGST in case of Imports
- Imports against Advance Authorization / EPCG is exempted from Custom Duties which will be restricted to basic Custom Duty as present GST Model Law does not define the Duty Exemption in respect of IGST levied in case of Imports.

Ministry of Commerce should come out with Transitional Provisions also in consultation with GST Council or Ministry of Finance so that the Importers / Exporters may not suffer and put to disadvantage situation in GST regime. CS

# Service Tax on services provided by Government & Local Authorities



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## INTRODUCTION

In the Budget 2015-16, services provided by the Government or local authority to business entities was made taxable from a date to be notified later. With effect from 1<sup>st</sup> April 2016 'any service' provided by Government or local authority is made subject to service tax (ST) with few exceptions. In order to analyse the applicability, it is relevant to study the definition of the terms 'service', 'declared services', exclusions, negative list of services, exemption notification and clarification issued

claim,  
a. service by employee to employer,  
a. fees taken by court or tribunal.  
Here unincorporated association or a body of persons and member thereof shall be treated as distinct persons.

## NEGATIVE LIST

Section 66D of the Act provides a list of services termed as Negative list of services, which are not taxable. Services not found in this list or excluded from it shall be subject to service tax if otherwise not prescribed as exempted.

Fee charged by the Government / local authority for allowing or approving certain activities or to enjoy certain privileges, facilities, rights or special benefits has now been made liable for payment of service tax, subject, of course to certain exceptions. The implications of this recent measure have been discussed herein.

by Department vide circular no. 192/02/2016-ST dated 13.04.2016

The basic criteria to determine whether an activity is 'service' or not is to examine whether:

- a. a particular activity is falling under the definition of 'service';
- b. if not 'service' then whether it is 'declared service';
- c. whether it is provided by a 'person' to 'another';
- d. for 'consideration'; and
- e. is it specified under the Negative List or
- f. is it specified under the Mega Exemption Notification

Place of provision of services is also relevant to determine the taxing jurisdiction for a service.

## SERVICE

Section 65 B(44) of the Act defines service as an 'activity' carried out by a 'person' for another for 'consideration' and includes 'declared services' under section 66E but excludes certain specified services like :

- a. transfer of title of goods in immovable property by way of sale, gift or in any other manner,
- a. transaction in money and actionable

## SERVICES EXCLUDED FROM NEGATIVE LIST

Section 66 D (a) of the Act excludes following services provided by Government or a local authority from negative list, therefore, these services shall be taxable.

- i) services by department of posts by way of speed post, express parcel post, life insurance and agency services provided to person other than Government;
- ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- iii) transport of goods or passengers;
- iv) 'any service' other than above provided to business entities.

## GOVERNMENT / LOCAL AUTHORITY

In terms of provisions of section 65B (26A) of the Finance Act, 1994 (the Act) Government means the Departments of the Central Government, State Government and Union territory, however it shall not include any entity whether created by a statute or otherwise the accounts of which are not required to be kept in accordance with article 150 of the Constitution of India or the rules made thereunder.

As per section 65B(31) of the Act 'Local



Authority' means a Panchayat, a Municipality, a Municipal Committee, a District Board, a Cantonment Board, a regional council or a district council, a development board, as referred under the prescribed article or schedule of the Constitution of India or as constituted under the prescribed laws.

However, local bodies or other autonomous entities created by Parliament or State Legislature are neither Government nor local authorities. Thus, if an entity is not Government or local authority it will be out of purview of these provisions.

## REVERSE CHARGE MECHANISM

As per notification no. 30/2012 dated 20<sup>th</sup> June 2012 as amended from time to time read with section 2(d)(E) of the Service Tax Rules, 1994 liability for payment of ST on taxable services provided or agreed to be provided by Government or local authority to any business entity located in taxable territory shall be on recipient of such service excluding for clause (i) to (iii) of section 66 D (a) referred in previous para and for service of renting of immovable property by Government or local authority. Thus, for services other than this, the liability for payment of ST shall be on service recipient on reverse charge basis.

## EXEMPTION

Exempted services means the services which though otherwise taxable but notified as exempted by way of notification. Total 63 (10 services added on 13-4-2016) types of services are exempted under the Mega Exemption Notification no. 25/2012 dated 20-6-2012 as amended from time to time.

Following taxable services provided by Government or a local authority to business entities are exempted:-

1. a business entity with a turnover upto Rs. 10 lakhs in the preceding financial year except services specified under section 66D (a) (i), (ii) and (iii) of the Act and renting of immovable property. Refer entry at sr. no. 48 of Notification no. 25/ 2012 dated 20-6-2012 (66D (i), (ii) and (iii) provides for services like postal services, insurance or agency services provided by department of Posts, services in relation to aircraft or a vessel, services by way of transport of goods or passengers).
2. By Government or a local authority to another Government or a local authority except services specified under section 66D (a) (i), (ii) and (iii) of the Act.
3. Services provided by Government or a local authority to an individual by way of grant of passport, visa, driving license birth or death certificate.
4. Services by Government or local authority where gross amount charged doesn't exceed Rs. 5000/- except for services specified under section 66D (a) (i), (ii) and (iii) of the Act.
5. In case of continuous supply of services, exemption shall be for gross amount charged upto Rs. 5000/- in a financial year.
6. Fines and liquidated damages payable to Government or local authority for non-performance of a contract entered into with Government or local authority.
7. Services provided by Government or local authority by way of registration required under any law for the time being in force or services by way of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;
8. Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture;
9. Services by Government, a local authority or a governmental

authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution of India;

10. Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before 1st April, 2016. Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource;
11. Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, as the case may be;
12. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

Further, following taxable services provided to Government or a local authority are also exempted.

Construction, installation, erection, commissioning, fitting out, repair, maintenance, renovation or alteration of

- a. historical monuments, archaeological site or remains of national importance, archaeological excavation or specified antiquity.
- b. canal, dam, or other irrigation works,
- c. pipeline conduit or plant for water supply, water treatment or sewerage treatment or disposal

Following taxable services provided to Government or a local authority are also exempted if contract had been entered into prior to the 1<sup>st</sup> March 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date (exempted upto 31<sup>st</sup> March 2020)

- d. a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession
- e. a structure meant pre-dominantly for use as an educational, a clinical or an art or cultural establishment;
- f. a residential complex pre-dominantly meant for self-use or the use of their employees or other person specified in explanation 1 to section 65B(44) (Members of Parliament, State Legislative, Panchayats, Municipalities, local authorities, persons holding post in pursuance of the Constitution of India, Chairperson or a member or a director in a body established by Central / State Government / local authority, etc.)

## FEES CHARGED BY GOVERNMENT / LOCAL AUTHORITY

Fee is charged by the Government / local authority for allowing or approving certain activities or to enjoy certain privileges, facilities, rights or special benefits. It is now made taxable except for the cases referred in below table or specified in negative list, exemption list. Examples of such taxable services may be inspection fee for approval, government fees (other than for registration under any law), security services provided by government, royalty, charges for extracting minerals, charges against allocation of coal blocks, telecom spectrum, etc.

However, fees for registration required under any law or taxes, duties or penalties where the element of service / consideration is not present and which are imposed without the consent of payer with

an objective to generate revenue or in the nature of penalty for infringement of any law are not for any 'service' and hence not liable to service tax.

The Department has issued a clarification on 13-4-2016 which is summarised as under:-

	Issue	Clarification
	Nature of Services provided by Government / local authority :	
1.	To another Government or local authority	Exempted except services covered under sub-clauses (i), (ii) and (iii) of clause (a) of section 66 D of the Act
2	To individual	Exempted services are grant of passport, visa, driving license, birth or death certificates
		Services where gross amount charged upto Rs. 5000/- have been exempted except services covered under sub-clauses (i), (ii) and (iii) of clause (a) of section 66 D. In case of continuous services, it will be exempted if value is upto Rs. 5000/- in a financial year.
3	Taxes, cesses or duties	Not subject to service tax
4	Fines and penalties	Fines, penalties for violation of laws are not subject to service tax, however, fines and liquidated damages for non-performance of contract entered into with Government or local authority have been exempted.
5	Services provided in lieu of fee charged	Any activity against consideration constitute a service and is taxable irrespective of fact whether it is statutory or mandatory under law. Service tax is leviable on any payment, in lieu of any permission or license granted.
		However, services by way of registration required under the law, services by way of testing, calibration, safety check, certification relating to protection or safety of workers, consumers, public at large have been exempted
6	Allocation of natural resources to individual farmers for agriculture	Exempted for individual farmers but taxable for other than individual farmers.
7	Change of land use, commercial building, approval, utility services.	Regulation of land use, construction of buildings and other services listed in 12 <sup>th</sup> Schedule to the Constitution which have been entrusted to Municipalities under Article 243W are exempted.
8	Functions entrusted to a Panchayat under Article 243G of the Constitution	Exempted
9	Yearly instalments due after 01-4-2016 in respect of spectrum assigned before 01-4-2016	ST is payable on such instalments, however, the same have been exempted to the extent of ST payable on one time charges, payable in full upfront or in instalments, for assignment of right to use any natural resources except any periodic payment required to be made by the assignee such as Spectrum User Charges, license fee, monthly payment with respect to coal extracted from coal mine or royalty payable on the same.
10	Interest charged by Government or local authority where the payment for assignment of natural resources is allowed to be made under deferred payment option	Such interest shall be included in the value of taxable service.

## POINT OF TAXATION WITH RESPECT TO SERVICES PROVIDED BY GOVERNMENT OR LOCAL AUTHORITY

Section 67A has been amended vide Notification no. 24/2016 dated 13<sup>th</sup> April 2016 to provide that rate of service tax will be on the basis of time as per Point of Taxation Rules.

With respect to services provided by Government or local authority to any business entity, the point of taxation shall be the earlier of dates on which

- any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by Government or local authority demanding such payment; or
- Payment for such services is made.

## CENVAT CREDIT

A manufacturer or service provider shall be eligible to avail CENVAT Credit of service tax if the payment of service tax falls under the definition of 'Input services' provided under rule 2(1) of CENVAT Credit Rules 2004.

First proviso to rule 4 (7) of CENVAT Credit Rules provides that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid.

Fifth proviso to rule 4 (7) have been amended vide notification no. 24/2016 C.E (N.T.) dated 13.04.2016 to allow CENVAT Credit even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource.

Sixth, Seventh and eighth proviso to rule 4(7) has been amended to provide that CENVAT Credit of Service Tax on one time charges (whether paid upfront or in instalments) paid in a year, may be allowed to be taken evenly over a period of three years.

Where the manufacturer of goods or provider of output service, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year.

However, the service tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year in which the same is paid. Likewise, service tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid.

Further, as per clause (e) of sub rule (1) of rule 9, credit may be availed on the basis of challan evidencing payment of service tax by the service recipient.

Thus, it can be seen that the coverage of service tax has now become too wide and assesses need to carefully examine the applicability of law, tax incidence and ensure timely compliance in order to avoid litigation and penal provisions. CS

# Appeals to NCLAT from orders of NCLT – Whether on Points of law only or on both facts and law?



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### INTRODUCTION

With the constitution of the NCLT with effect from 1st June, 2016, and the setting up of 10 Benches in 10 regions of the country plus the Principal Bench of NCLT at New Delhi, expeditious disposal of cases relating to company related disputes has already begun and this has generated lot of positive impact on corporate litigations.

Significantly, since under Section 432 of the Companies Act, 2013 (in short, 'the Act of 2013'), Practicing Company Secretaries ('PCS'), *inter alia*, have a right to appear

the Act of 2013 concerning making of petitions before the NCLT or its appeal to the NCLAT have not yet been enforced, this article does not cover those aspects, but touches upon some of the key and important areas that need attention by the professionals, especially when appeals are preferred from NCLT Orders to the NCLAT.

A section of the professionals dealing with corporate litigation are of the view that proceedings before the NCLAT in respect of appeals filed from NCLT Orders will be far more wider because according to this view, appeals to the NCLAT can be

With regard to filing of appeals to the NCLAT from the orders of NCLT, there is an ongoing debate amongst the corporate professionals as to whether such appeals will be restricted to only points of law or on both points of law as well as facts. This is based on the wordings of Section 421 of the Companies Act, 2016 read with Rule 22 of the NCLAT Rules and Form No. NCLAT-1 which are in contrast to the provisions of erstwhile Section 10F of the Companies Act, 1956. Further, as per Section 424 of the Companies Act, 2013, the NCLAT shall not be bound by the procedure laid down in the Civil Procedure Code, but shall be guided by the principles of natural justice and as stated therein the NCLAT is empowered to regulate its own procedure. This article addresses these aspects of law.

before the NCLT and argue the cases on behalf of their clients, the ball has already started rolling and there is a sudden euphoria for PCSs in mastering the provisions of law and rules that deal with not only the proceedings before the NCLT but also before its appellate tribunal, namely, the NCLAT.

As provisions of the Insolvency and Bankruptcy Code, 2016 (in short, 'IB Code') have not yet been enforced insofar as petitions before the NCLT is concerned, and even though many of the provisions of

preferred both on facts and law. To them, this is a significant departure from the earlier situation when appeals were preferred to the High Court from the Orders of the erstwhile Company Law Board ('CLB') – which were limited only to question of law – as can be seen from Section 10F of the Companies Act, 1956 (in short, 'the Act of 1956') which stated that "Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law

Corporate analysts argue that while appeals from erstwhile CLB to the High Court could be filed on the points of law only, such a stipulation is missing in Section 421(1) of the Act of 2013. They argue that the Legislature, while framing the provisions of section 421 of the Act of 2013, did not confine it to the earlier provisions of Section 10F of the Act of 1956 restricting appeals only to the points of law only.

Board to him *on any question of law arising out of such order...*” (emphasis supplied)

Section 10F of the Act of 1956 also provided that:

“...The High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.”

In other words, the period within which an appeal from the CLB Order was to be filed before the concerned High Court was 60 days, plus scope of extension of another 60 days to be given by the High Court upon satisfaction by the appellant giving sufficient cause for delay in filing the appeal within 60 days of the Order of the CLB. Additionally, there was no time limit which was specified in the Act of 1956, within which the High Court hearing the appeal from the Order of the CLB was to dispose of the appeal. This led to pendency and unreasonable delay in settling the rights of the parties covered in the appeal.

In contrast to Section 10F of the Act of 1956, Section 421 of the Act of 2013 dealing with appeals from the Order of NCLT stipulates as under:

**“421(1)** Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

**421(2)** No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

**421(3)** Every appeal under Sub-Section (1) shall be filed within a period of 45 days from the date on which a copy of the Order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees as may be prescribed...”

Corporate analysts argue that while appeals from erstwhile CLB to the High Court could be filed on the points of law only, such a stipulation is missing in Section 421(1) of the Act of 2013. They

argue that the Legislature, while framing the provisions of section 421 of the Act of 2013, did not confine it to the earlier provisions of Section 10F of the Act of 1956 restricting appeals only to the points of law only. In other words, they argue that both facts and points of law can be raised in appeals to the NCLAT as per the Act of 2013 in Form–NCLAT-1 read with Rule 22 of the NCLAT Rules. It is further argued that a cardinal rule of interpretation of the provisions of a statute is that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words of expressions used is permissible. As has been highlighted by corporate watchers that the provisions in the Act of 2013 have been brought in with a view to introduce expediency and pragmatism, keeping in view the changing global scenario and India’s thrust for economic prosperity.

In support of such an approach in respect of appeals to NCLAT, the corporate analysts further argue that even Section 424 of the Act of 2013 stipulates that while disposing of any appeals, the NCLAT will not be bound by the procedure laid down by the Civil Procedure Code, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of the Act of 2013 and of any rules made thereunder, the NCLAT shall have the power to regulate their own procedure. Thus this provision gives flexibility to the NCLAT to adopt and adapt procedures suited to proceedings before it and will not be restricted by the detailed procedure envisaged in the Civil Procedure Code, 1908.

Another positive departure from the Act of 1956 with regard to appeals from the orders of the erstwhile CLB can be seen in the provisions of the Act of 2013 with regard to appeals to NCLAT from the orders of NCLT which stipulates that such appeal will have to be filed within 45 days and proviso to Sub-Section (3) of Section 421 of the Act of 2013 stipulates that the NCLAT may entertain an appeal after the expiry of the period of 45 days of the NCLT Order, but within a further period not exceeding 45 days, if the NCLAT is satisfied that the appellant was prevented by sufficient cause from filing the appeal within 45 days from the date of the NCLT Order. Therefore, in contrast to the earlier regime, already a period of 15 days has been shortened, which is a positive move.

Yet another significant departure in the Act of 2013 *vis-à-vis* the Act of 1956 is that Section 422 of the Act of 2013 has specific stipulation with regard to expeditious disposal of cases by the NCLT as well as by the NCLAT. With regard to appeals to the NCLAT from the Orders of NCLT, it is stipulated in Sub-Section (1) of Section 422 that every appeal filed before the NCLAT shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Appellate Tribunal for disposal of such appeal within 3 months from the date of its filing before the Appellate Tribunal. This is a significant departure and a welcome move on the part of the Legislature to assure speedy disposal of cases before the NCLT as well as NCLAT and to deter seeking adjournments on frivolous grounds.

As was the case with the High Court in respect of entertaining appeals from the Orders of the erstwhile CLB, in the Act of 2013, sub-section (2) of Section 422 thereof stipulates *inter alia*, that where an appeal is not disposed of within 3 months, the Appellate Tribunal shall record the reasons for not disposing of



the appeal within the period so specified and the Chairperson may, after taking into account the reasons so recorded, extend the period by such period not exceeding 90 days, as he may consider necessary. In other words, the total time period allowed to the NCLAT for disposing of appeals is a total period of 3 months from the date of the filing of the appeal and in case the Chairperson of the NCLAT has to give an extension of time after the first 3 months, he can do so taking into account the reasons for such delay in disposal recorded by the Appellate Tribunal. Therefore, instead of an indefinite period to wait for the disposal of the appeal, now appeals from the Orders of the NCLT have to be disposed of within a maximum total period of 180 days (including the extension granted) and this is a significant departure and will boost the morale of the corporate litigants.

Another significant departure from the earlier system of corporate litigation is that by virtue of the provisions of Section 430 of the Act of 2013, in respect of any matter which the NCLAT is empowered to determine by or under the Act of 2013 or any other law for the time being in force, no civil court shall have jurisdiction to entertain any suit or proceeding in respect thereof and the civil court cannot grant injunction by any code or other authority in respect of the action taken or to be taken in pursuance of any power conferred by or under the Act of 2013 or any other law for the time being in force by the NCLAT. This will curb the tendency of the litigants to rush to the civil court for obtaining stay order/injunction, etc. in respect of matters under the Act of 2013 in respect of which the NCLT has jurisdiction and wherefrom appeals lie to the NCLAT alone.

Sub-section (4) of Section 424 of the Act of 2013 makes it clear that all proceedings before the NCLAT shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code, 1860, and the NCLAT shall be deemed to be a civil court for the purposes of Section 195 and Chapter XVI of the Code of Criminal Procedure, 1973.

Rule 11 of the NCLAT Rules deal with the “inherent powers” of the NCLAT and it states that nothing in the NCLAT rules shall be deemed to limit or otherwise affect the inherent powers of the NCLAT to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the NCLAT.

NCLAT is empowered to deal with “interlocutory applications” which can be filed by the Appellants and as per Rule 31 of the NCLAT Rules, every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters can be filed for consideration of the NCLAT.

With regard to the powers and functions of the Registrar of the NCLAT, Rule 16(f) of the NCLAT Rules stipulates that the Registrar of NCLAT shall have, *inter-alia*, the powers of functions with regard to receiving application for seeking orders concerning the admission and inspection of documents.

Rule 53 of the NCLAT Rules stipulates that despite of service of notice on the respondent, if he fails to appear on the date fixed for hearing of the appeal, the NCLAT may proceed to hear the appeal *ex-parte* and pass order on merits. Proviso to the said Rules stipulates that it is open to the NCLAT to seek the assistance of any authorised representative, as it deems fit in



case the matter involves intricate and substantial questions of law having wide ramifications.

Rule 54 of the NCLAT Rules stipulates that the respondent, if so directed, shall file objections or counter within the time allowed by the NCLAT and the objections or counter shall be verified as an appeal and wherever new facts are sought to be introduced with the leave of the NCLAT for the first time, the same shall be affirmed by a supporting affidavit. Thus, the Rules of NCLAT enable the Respondent to even introduce new facts for the first time, with the leave of the NCLAT. This option would enable the NCLAT to deal with even new facts for the first time, at the appeal stage.

Another important aspect worth noting in respect of appeals filed before the NCLAT relates to “Discovery, production and return of documents”, which are basically allowed under the Civil Procedure Code (“CPC”) at the original stage of consideration of the petition, are also permitted to be exercised by the parties before the NCLAT. Rule 73 of the NCLAT Rules stipulates that except otherwise provided in the NCLAT Rules, discovery or production and return of documents shall be regulated by the provision of the CPC. Rule 73(2) of NCLAT Rules further stipulates that an application for summons to produce documents shall be on plain paper setting out the documents, the production of which is sought, the relevancy of the documents and in case where the production of a certified copy would serve the purpose, whether application was made to the proper officer and the result thereof. Rule 73(3) of NCLAT Rules stipulates that a summons for production of documents in the custody of a public officer, other than a Court, shall be addressed to the concerned Head of the Department, or such other Authority, as the case may be, specified by the NCLAT. This facility may result in examination of fresh/new facts which the called-for documents may throw light on.

Another important provision in the NCLAT Rules relates to “examination of witnesses and issue of commissions” and this extends the scope of fresh facts based on the evidence given by the witnesses and these are in addition to consideration of points of law which are generally considered in appeals. Part XIII, Rules 77 to 85 of the NCLAT Rules deal with the procedure for examination of witnesses and issue of commissions. Rule 77 stipulates that provisions of section 424 of the Companies Act,

Rule 77 stipulates that provisions of section 424 of the Companies Act, 2013 and relevant provisions of Order XVI and XXVI of the CPC shall apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.

2013 and relevant provisions of Order XVI and XXVI of the CPC shall apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents. Thus, such rules which are basically applied in the original stage of consideration of the petition, seem to have been allowed even in the cases of appeals being heard by the NCLAT. Rule 74 of the NCLAT Rules further stipulates that notwithstanding anything contained in the NCLAT Rules, the NCLAT may, *suo-motu*, issue summons for production of public document or other documents in the custody of a public officer.

With regard to the issue as to whether appeals to NCLAT will be only on points of law or on facts and law both, it would be worthwhile to look into the provisions of Section 11 of the Civil Procedure Code (CPC) which stipulates that :-

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court.”

The aforesaid Section 11 of the CPC has eight Explanations which explain the thrust of the said provision.


Dealing with this aspect, the Supreme Court of India in its judgement dated 26th February, 1970 in the case of Mathura Prasad Bajoo Jaiswal & Others v. Dossibai N.B. Jeejeebhoy had the occasion to decide on the scope of aforesaid Section 11 of the CPC, wherein the Supreme Court referred to impugned judgement from which the appeal was preferred before the Supreme Court and noted that the High Court had held that a decision of a competent Court may operate as *res-judicata* in respect of not only an issue of fact, but mixed issues of law and fact, and even abstract questions of law. It was also noted by the High Court that a decision relating to the jurisdiction of the court to entertain or not to entertain a proceeding is binding and conclusive between these parties in respect of the same question in a later proceeding. But the doctrine of *res-judicata* belongs to the domain of procedure and it cannot be exalted to

the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact, and relating to the right in dispute between the parties has been determined thereby.

A decision of a competent court on a matter in issue may be *res-judicata* in another proceeding between the same parties. The “matter in issue” may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a Competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is *res-judicata*: the reasons for the decision are not *res-judicata*. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter of issue. When it is said that previous decision is *res-judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res-judicata*. A previous decision on a matter in issue is a composite decision: the decision of law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res-judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

Also, on the question of raising for the first time an issue which was not raised at the trial stage, the Supreme Court of India in VLS Finance Limited v. Union of India and Others (Civil Appeal No.2102 of 2004 decided on 10th May, 2013) stated that in its opinion, in a case in which the facts pleaded give rise to a pure question of law going to the root of the matter, the Supreme Court possesses discretion to go into that, especially when the Appellant for the first time prayed before the appeal Court for adjudication on an issue of fact and when no fact needs to be adjudicated and the point being a pure question of law going to the root of the matter, the same can be permitted to be raised before the appeal Court for the first time.

## CONCLUSION

Appeals to NCLAT from the orders of NCLT are now being filed and heard by the NCLAT. Governed by the provisions of the Act of 2013, such appeals may raise not only the questions of law, but may raise questions of fact and what stand the litigants take and how the NCLAT adjudicates such questions will go a long way in smoothening the process of deciding the complex and complicated questions concerning the corporate sector and its management. In any case, only time will tell as to how this issue will get settled in due course of time. 

# 2

## RESEARCH CORNER



- HARMONIZING THEORY OF PLANNED BEHAVIOUR AND TECHNOLOGY ACCEPTANCE MODEL IN EXPLAINING THE ADOPTION OF THE E-FILING SYSTEM
- ALL INDIA RESEARCH PAPER COMPETITION
- 1ST GLOBAL CONGRUENCE
- INTERNATIONAL RESEARCH PAPERS INVITATION





*Dear Professional Colleagues*

*Greetings from ICSI*

GST Constitutional (122<sup>nd</sup> Amendment) Bill, 2014 became the GST Constitutional (101<sup>st</sup> Amendment) Act, 2016 with the assent of Hon'ble President. Further, with the setting up of GST Council and recently completion of it's first meeting, GST is now on the threshold of implementation.

The GST regime will create a unified indirect tax regime and harmonise Indian economy with that of the world. GST follows "One Tax One Nation" concept and will facilitate "ease of doing business" and "Make in India" initiative.

It gives me immense pleasure to inform you that the "Master Classes on GST" fetched a tremendous response and in this view, Institute has launched a second series of Webinars on GST in continuation of the previous series covering issues like Input Tax Credit, TDS, Adjudication, IGST etc. The schedule for the same is as under :

*Schedule of Master Classes on Goods and Services Tax  
(02.00 P.M to 04.00 P.M)*

<i>Sl. No.</i>	<i>Day &amp; Date</i>	<i>Topic</i>
1	Friday, 30 Sep, 2016	Input Tax Credit
2	Friday, 7 Oct, 2016	Transitional provisions under the Model GST Law
3	Friday, 14 Oct, 2016	Integrated Goods & Services Tax
4	Friday, 21 Oct, 2016	Returns & Records under the Model GST Law
5	Friday, 28 Oct, 2016	Show cause, Adjudication, Revision, Review & Appeals
6	Friday, 4 Nov, 2016	TDS, TCS & Refund under Model GST Law
7	Friday, 11 Nov, 2016	Taxation of Branded Services, E-Commerce & Jobwork under Model GST Law

I earnestly, call upon all the members and students to gear up for the upcoming professional opportunities and participate in the webinars by visiting at <http://webcast.vouchpro.in/gstseries2016/>.

I am sure this webinar series will receive an equally encouraging response from the students, members and the public at large. It will definitely create more awareness and enhance the understanding about the nuances of proposed GST law and supplement the capacity building measures of the Institute in this area.

Stay tuned!

Regards

CS Mamta Binani  
President



# Harmonizing Theory of Planned Behaviour and Technology Acceptance Model in Explaining the Adoption of the E-filing System



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## INTRODUCTION:

Adoption of the Information, communication and technology (ICT) in delivering different services in an effective and efficient manner has become the order of the day (Ojha et al., 2009). Be it a private organization or a Government one, everyone is striving to achieve competitive advantage by way of making the services available to the public accurately, timely and in cost effective manner. Use of electronic platform or internet to cater to the service of public is not very old. In the present era of e-commerce the Governments of different countries are making relentless efforts to move to a regime of e-governance where majority of the services will be made readily available by means of using ICT (Azmi & Kamarulzaman, 2010). In the context of 'Digital

The paper examined the validity of Theory of Planned Behaviour (TPB) as proposed by Ajzen (1985) and Technology Acceptance model (TAM) as suggested by Davis et al., (1989) in explaining the e-filing adoption amongst the people in the context of Burdwan District, West Bengal, India. In attaining the objectives of the study, primary data were collected by administering structured questionnaire to the e-filing system users. The analysis of the primary data so collected showed that the e-filing system acceptance gets mainly affected by the perceived ease of use and e-filing website service quality. However the perceived risk was found to be adversely affecting the e-filing adoption process. The findings of the study conformed to the theoretical arguments put forwarded in TPB and TAM.

India' also we are witnessing the urge of the Government of India (Gol) to use ICT to deliver different services, providing access to various facilities, information etc. However such an extensive use of the e-platform by the Gol is not very new. In 2006, the National e-Governance Plan (NeGP) was initiated under which an effort was made to use the internet to deliver public utility services. E-filing of Income Tax Return, E-payment of taxes etc were also amongst the various plans which were introduced by the Gol under the NeGP. Although when the e-filing system was introduced it was voluntary in nature and gradually it is becoming compulsory. Use of technology in the income tax system has become inevitable because the application of ICT will ensure accuracy, reliability, transparency and cost effectiveness. E-filing of ITR and introduction of ICT in taxation enables thousands of tax payers in India to quickly file ITR, making quick and easy payment of taxes, getting automatic acknowledgement from the Income Tax department and faster refund of income tax if any. On the other side the use of electronic platform helps the Income Tax (IT) Department to execute their function much more effectively as compared to older times. From the IT Department's perspective, maintenance of taxpayer's database has become easier, use of ICT has helped the department to reduce operational cost, recruitment of man power has also lessened, assessment has become easier, arithmetical accuracy of all the ITRs is ensured and making communication to the

taxpayer has also revolutionized. Thus introduction of the e-filing and e-tax payment system is a win-win scenario for both the tax payers and the Gol. But if a web based electronic system is introduced, it does not necessarily mean that it will be automatically accepted by the people because the adoption of any new system goes through a complex psychological or behavioural process within the human beings. For instance when the e-filing system was introduced in America in 1986, very few tax payers adopted the new system and during 1986 to 2007, only 52% of the tax payers used this system (Azmi & Kamarulzaman, 2010). There is sufficient evidence in the existing literature that the e-filing of ITR gets affected due to the psychological, behavioural, demographic, social and other factors and identification of the determinants of the acceptance of the e-filing system is of paramount importance to formulate appropriate strategies to improve the existing system by the government as well (Wang, 2003). In explaining and predicting the human behaviour, many theoretical models have been propagated by the scholars across the globe. Fishbein and Ajzen (1975) introduced Theory of Reasoned Action (TRA) where they have proposed that subjective norms (social influence) and attitude (the degree to which the actual behaviour is positively or negatively valued by the individual) forms the basis of behavioural intentions and ultimately the actual behaviour. However in 1985, Ajzen improvised TRA and introduced Theory of Planned Behaviour (TPB). In TPB, along with the 'subjective norm' and 'attitude', another important variable named 'perceived behavioural control' was added. 'Perceived behavioural control' implies the understanding of an individual's ability to undertake a course of action to encounter a particular situation or event (Bandura, 1977). This improvised model was widely used by the behavioural scientists across the world in explaining the electronic system adoption by the people. Another model which was also popularly used by the researchers to justify the technology adoption was Technology Acceptance Model (TAM) as proposed by Davis et al. in 1989. According to TAM, the acceptance of new electronic system gets affected by the 'perceived ease of operation', 'perceived utility' and other 'external' and 'social' or 'exogenous' variables. If due to the use of the new technology, there is an improvement of the performance of the job i.e. there is positive perceived utility and ease of operation along with the other exogenous factors, the new system will have acceptance to the taxpayers.

**TABLE 1: GROWTH OF E-ITRs:**

F.Y	ITR-1	ITR-2	ITR-3	ITR-4S	ITR-4	ITR-5	ITR-6	ITR-7
2009-10	656544	960384	211074	-	2235221	512419	498335	-
2010-11	1983618	1040281	327409	-	4552028	616007	530899	-
2011-12	4439001	1773659	522579	1628312	6712032	765054	593047	-
2012-13	6409881	2240995	625890	2947568	7772966	851327	638184	-
2013-14	10676604	3213262	721831	4250709	9035055	960120	713736	110477
2014-15	13010682	3614874	769081	5450081	9343539	1065650	752070	168017
2015-16	17946687	2236078	888598	8135210	10646974	1252465	778069	285451
<b>Overall Growth(%) in last 7 F.Y</b>	52.01**	20.07*	22.65**	38.31**	22.92**	14.30**	7.92**	47.46*
**Significant at 0.01, *Significant at 0.05								
<b>Source: <a href="http://incometaxindiaefiling.gov.in/eFiling">http://incometaxindiaefiling.gov.in/eFiling</a></b>								

In Table 1 an attempt was made to assess the year on year rate of growth of the ITR wise receipt of the e-ITRs. The analysis of the Table 1 suggested that during 2010-11 the growth rate of ITR-1, ITR-3, and ITR-4 were extremely high so far as the entire period from 2009-10 to 2015-16 is concerned. The growth rate of use of ITR-1, ITR-2, ITR-3, ITR-4S, ITR-4 ITR-5, ITR-6 and ITR-7 were 52.01%, 20.07%, 22.65%, 38.31%, 22.92%, 14.30%, 7.92% and 47.46% respectively.

The studies conducted by Chang et al. (2005), Gallant et al. (2007), Hsu & Chiu (2004), Hung et al. (2006), Ojha et al. (2009), Lu et al. (2010) Azmi et al. (2012), Chen et al. (2015) have used TPB and TRA to explain and predict human behaviour in the adoption of e-filing system. The present study will also make modest effort to throw some light on the level of satisfaction of the e-filing system users and its determinants by integrating TPB and TAM.

### OBJECTIVES OF THE STUDY:

The main purposes of this study are:

- I. To ascertain the effectiveness of the e-filing system by means of determining the satisfaction level among the e-filing system users.
- II. To unearth the different significant factors affecting the level of satisfaction and the behavioral intention of the e-filing system users.

### DATA AND RESEARCH METHODOLOGY:

The current study is primary survey based analytical work by its very nature. In the context of behavioural studies, scholars across the globe have used structured questionnaire in order to obtain the opinion of the respondents in relation to some issues. Thus for the purpose of this study also a structured questionnaire was developed for undertaking primary survey. A questionnaire generally contains various questions or statements in respect of which the respondents need to give their responses. For the purpose of

this study there were a number (28) of statements relating to the various dimensions with regard to the evaluation of the level of satisfaction and its determining factors. The responses towards the different statements contained in the questionnaire of the respondents were assessed using 5 point Likert's scale where the responses ranged from strongly disagree (1) to strongly agree (5). Since the study was concentrated towards the different factors influencing the level of satisfaction of the e-filing system users, thus only those persons were selected as the respondents who had the experience of the use of e-filing system. Therefore in light of the given argument primary survey was conducted among the Company Secretaries, Chartered Accountants, Cost Accountants, Income Tax lawyers and other e-filing service providers who were practicing in the Asansol and Burdwan city of Burdwan District, West Bengal, India. For the purpose of this study snowball sampling technique was used and a total of 120 questionnaires were physically served (at Asansol-80 sets and at Burdwan-40 sets). Finally, Out of the 120 distributed questionnaires, only 42 sets i.e. 35% responses were collected which was next used for proceeding to the next step of analysis. The primary survey was conducted during 1st may 2016 to 25th may 2016. The primary data so collected has been analyzed by using simple statistical techniques such as frequency distribution, charts, measures of central tendency, measures of central dispersion, Principal component Analysis and Ordered probit regression etc to shed some light on the level of satisfaction amongst the e-filing system users and the determinants of such level of satisfaction.

Findings & Analysis:

**TABLE 2: PERCEIVED EASE OF OPERATION (PEO)**

Statements	Mean	S.D.
Learning of e-filing was easy	4.048	0.582
Adequate information was provided in the e-filing website	4.071	0.513
ITR forms are very easy to understand	3.881	0.861
Pre-fill option made the forms easy to fill up	4.214	0.782
E-filing is easy and flexible than paper ITR forms	4.390	0.494

In Table 2, an effort was made to assess the contribution of the different factors towards the PEO. It is one of the most important determinants of the adoption of technology by the human beings as proposed by Davis et al. (1989) in TAM. In the evaluation of the PEO, five different factors were identified which were incorporated in the structured questionnaire. From the in depth analysis of Table 2, it can be seen that in respect of all the five statements with regard to PEO, the calculated value of mean was found either to be very close to 4 or more than 4 which indicates that in respect of each and every statements most of the respondents have either agreed or strongly agreed. In terms of PEO, majority of the respondents opined that the learning of e-filing system was easy and they have also found it flexible than the paper ITR forms. The ITR forms are very easy to understand and the pre-fill option inbuilt in the java based forms were the major contributories towards augmenting the PEO of the e-filing system. Apart from these the opinion survey among the tax professionals also revealed that adequacy and availability of the various useful information and web links in the e-filing official website were of immense help for enhancing the PEO of the e-filing system.

**TABLE 3: PERCEIVED UTILITY (PU)**

Statements	Mean	S.D.
E-filing helps complying with the IT Act effectively	4.214	0.717
E-filing enables quick Payment/Refund/Assessment	4.357	0.533
It enables me to become efficient in my profession	4.024	0.517

PU is another important factor affecting the acceptance of technology by the human being in the context of TAM (Davis et al. 1969). In the current study an attempt was made to explore the level of PU of the e-filing system amongst the professionals. It is propagated in the TAM that unless and until a new system is perceived to be useful to the human beings, it would not be easily adopted by the users. In the assessment of PU, from table 3, it can be observed that in respect of all the dimensions in relation to the e-filing, most of the respondents have agreed or strongly agreed (as indicated by high mean value and low S.D.). It can be deduced that the e-filing system was perceived to be very useful because it enables the e-filing system user to employ with the IT Act effectively and efficiently. In addition to that the electronic system of IT return filing results in easy payments of taxes, refund of taxes and assessment of such returns thus in time. Thus it can be suggested that the e-filing system offers a number of advantages and as a result of that there is high PU of the e-filing system to the tax practitioners. This high level of PU also acts as a stimulus in the adoption or acceptance of the e-filing of ITR mechanism.

**TABLE 4: COST EFFECTIVENESS (CE)**

Statement	Mean	S.D.
The cost associated with e-filing is low/justified	3.810	0.707

From Table 4, it can be seen that majority of the respondents have agreed (Mean=3.810 ± 0.707) that the perceived cost by mental accounting is justified or low. Such a positive perception of the perceived cost of the e-filing system has a notable favourable implication towards the level of satisfaction of the e-filing system users and their behavioural intentions.

**TABLE 5: E-FILING WEBSITE SERVICE QUALITY (EWSQ)**

Statements	Mean	S.D.
E-filing website can be used/navigated very smoothly	4.048	0.539
The forms and other information can be assessed or downloaded easily	4.262	0.497
The feedback mechanism is very prompt and useful	3.786	0.606
Opening e-filing account was very easy	3.952	0.697
Making payment of tax through e-filing website is easy	4.143	0.608
The website is always up-to-date and never hangs	3.167	0.961

Since the electronic filing of income tax returns are done through the e-filing website, the satisfaction level of e-filing system user and the adoption of this kind of system to a large extent depends upon the quality of e-filing website. In the determination of the EWSQ, various issues relating to the quality of the official website of the e-filing were incorporated as statement in the questionnaire. This dimension was given separately extra attention because of its importance in the e-filing system. In respect of almost each and every statement most of the respondents have agreed (Mean range 3.167 to 4.262 with S.D. 0.497 to 0.961). From the assessment of Table 5 it can be concluded that the e-filing website was perceived to be very useful as it can be navigated very smoothly, registration for e-filing can be done easily, the forms and information accessed with ease. The respondents have also suggested that the quality of the website also gets amplified because the feedback mechanism is very strong and the payment of taxes by the website was perceived to be extremely easy by them. However, in respect of all these positive aspects, the respondents remained neutral (Mean  $3.167 \pm 0.961$ ) on the point that "website is always up-to-date and never hangs". Thus it can be said that there exists a little bit of concern regarding the website in this direction. The opinion of the respondents that the website gets slowed down at the rush hours specially when the date of submission of ITR returns comes closure.

**TABLE 6: PERCEIVED DANGER/RISK (PD)**

Statements	Mean	S.D.
The data provided can be hacked	3.262	0.734
Making payment of tax online exposes me to a risk of loss of financial data	3.000	1.082
Failure of link (internet) results in loss of time, effort and cost	4.167	0.824

PD has a significant implication towards the e-filing system adoption process. The current study also tried to determine the PD associated with the e-filing system. The analysis of the opinion study revealed that there exists some degree of apprehension with regard to a loss or hacking of various personal as well as financial information. Apart from these the failure of link was also identified as one of the significant negative factors that reduces the level of satisfaction of the e-filing system users.

**TABLE 7: PERCEIVED SOCIAL INFLUENCE (PSI)**

Statements	Mean	S.D.
Most of my friends/colleagues/relatives file ITR using online portal	4.048	0.795
Filing return offline (paper mode) makes me outdated amongst others	4.143	0.608

In adoption of any new system the role of social influence can never be undermined. In the study of human behaviour, it has been shown by the researchers that the influence of the members of the family and society plays a vital role. Thus for the purpose of this study also an attempt was made to ascertain whether there was any social influence or not. The analysis of the opinion suggested that majority of the respondents have agreed that there was high degree of PSI on them to adopt the e-filing system.

**TABLE 8: BEHAVIOURAL INTENTIONS (BI)**

Statements	Mean	S.D.
I would always prefer use of online mode than offline (paper) mode	4.381	0.539
I will recommend online to others	4.310	0.680

BI is the outcome of attitude of the person's perceived behavioural control and social norms in accordance with the theory of planned behaviour (Ajzen, 1985). Because of the high level of PEO, PU, EWSQ, and PSI there is a high level of satisfaction amongst the e-filing system users (Mean  $4.190 \pm 0.505$ ) which in turn also influence the BI. From Table 8 it can be seen that in terms of both the statements the mean score is above 4 which implies that there is a positive BI among the respondents surveyed for the purpose of this study.

**TABLE 9: PERCEIVED SATISFACTION LEVEL (PSL)**

Statement	Mean	S.D.
I am satisfied with the overall e-filing experience	4.190	0.505



It is evident from Table 9 that majority of the respondents revealed that they were highly satisfied with the e-filing system as indicated by a mean score of  $4.190 \pm 0.505$ . It has already been observed from the entire analysis that there existed a positive belief about the PEO, PU, and EWSQ which ultimately made favourable contribution to the augmentation of the overall PSL.

**TABLE 10: ORDERED PROBIT REGRESSION RESULT:**

Independent Variables	Coefficient	Z	P>Z
PEO	0.1008949	0.14	0.885
EWSQ	1.915092**	2.38	0.017
PD	-0.5099855	1.38	0.167
PSI	0.0021235	0.00	0.997
CE	0.6539609*	1.87	0.062
<b>Dependent Variable: Perceived Satisfaction Level (PSL)</b>			
** Correlation is significant at the 0.05 level, * Correlation is significant at the 0.10 level			
<b>Source: Author's own calculation based on primary data.</b>			

For the purpose of this study, in order to convert various dimensions of the explanatory factors into one unique index the Principal Component Analysis (PCA) technique was used whereby the various dimensions under a particular factor were converted into a single index by assigning the data driven weights obtained from the PCA without losing much information. This enables the researcher to interpret the results meaningfully. Later on in the second stage these indexes were regressed against the PSL of the e-filing system users using 'Ordered Probit Regression Analysis' to evaluate the impact of these explanatory factors on the PSL. From Table 10, it can be seen that the PSL of the e-filing users gets positively affected by the PEO, EWSQ, PSI and CE whereas the perceived risk associated with the e-filing process bears a negative association with the PSL. Out of the total explanatory variables the two most influencing factors were EWSQ and the CE as the corresponding regression co-efficient were found to be statistically notable at 5% and 10% level respectively.

## CONCLUSION:

Improvement in the quality of governance can be ensured by making effective use of ICT. The current study tried to integrate TPB and TAM to explore the e-filing system adoption in the context of India. The findings of the study revealed that the respondents surveyed for the purposes of the study were very much satisfied with the e-filing system. Such a high level of satisfaction was driven by the PEO, EWSQ and CE of the e-filing system. However the outcome of the study also pointed out that the e-filing system users were little bit disappointed with the website link failure and slowness. Apart from this there was also an apprehension about the loss of financial and personal information while using the e-filing system amongst the respondents. Thus the IT Department is to ensure that the e-filing website does not get slowed down and there is no scope of any financial data loss or hacking. The output of the current study can be of great help to the IT authority for improving the existing system further. CS

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**THE INSTITUTE OF  
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CENTRE FOR  
CORPORATE  
GOVERNANCE,  
RESEARCH &  
TRAINING (CCGRT)

PCH- 4

# ICSI-CCGRT

## ANNOUNCES

Unique

### All India Research Paper Competition on Electronic Waste Prevention, Management and Preservation



ICSI-CCGRT is pleased to announce unique “All India Research Paper Competition on “E-Waste (Management) Rules, 2016” with an objective of creating proclivity towards research among its Members, both in employment and practice.

The purpose of research is to identify specific questions and try to find out a comprehensive and definitive answer. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

#### Prologue

Enhanced use and dependence on Electrical and Electronic Equipment (EEE), like, Mobile Phones, Personal Computers, Laptops, Servers, Data Storage Devices, Photocopying Machines, Televisions, Washing Machines etc. have resulted into generation of large quantities of e-Waste. The EEE have

valuable materials and hazardous / toxics substances in their components. After their useful life, they may not cause any harm if stored safely in households / stores, however, if the e-Waste is opened up and efforts are made for retrieval of useful components or material in an unscientific manner of if the material is disposed in open, then it may cause health risks and damage to environment.

In light of the above facts noteworthy measures have been initiated by the Government of India, i.e. e-waste (Management & Handling) Rules, 2011 and E-Waste (Management) Rules, 2016. The Ministry of Environment, Forest and Climate Change has notified the E-Waste Management Rules, 2016 in supersession of the e-waste (Management & Handling) Rules, 2011. The applicability of e-waste (Management & Handling ) Rules, 2011 were- Producer, consumer or bulk consumer, collection center, dismantler and recycler; Only to Electrical and

Electronic Equipment (EEE) as listed in Schedule 1, which got expanded to manufacturer, dealer, refurbisher and Producer Responsibility Organization (PRO) in E-Waste (Management) Rules, 2016; Components, consumables, spares and parts of EEE in addition to equipment as listed in Schedule I and Compact Fluorescent Lamp (CFL) and other mercury containing lamp brought under the purview of rules. The other important developments of E-Waste (Management) Rules, 2016 are- Collection is now exclusively Producer's responsibility, which can set up collection center or point or even can arrange buy back mechanism for such collection. No separate authorization for such collection will be needed, which will be indicated in the EPR Plan of Producers; Single EPR Authorization for Producers is now being made CPCB's responsibility to ensure pan India implementation. Procedure for seeking the authorization and for effective implementation has now been elaborated with various kinds of flexibilities provisions etc.

### Objectives:

- To make a detailed study on need of the new law.
- To develop an understanding with reference to important terms, such as, Extended Producer Responsibility (EPR); Target based approach for collection under EPR; E-waste exchange; Responsibilities of Manufacturer etc.
- To comprehend the responsibility of State Government.
- To understand the concept of transportation of e-waste.
- To analyze the significance of Urban Local Bodies (Municipal Committee / Council / Corporation) in channelization of orphan products to authorized dismantler or recycler.

### Themes on which Research Papers are invited

- Probable barriers in implementation of E-Waste (Management) Rules, 2016.
- Efficacy of Collection mechanism based approach
- Implications of implementing PAN India EPR Authorization by CPCB, replacing the state wise EPR authorization.
- Assessment of the E-Waste Collection Target
- The roles of key stakeholders- Producer, Manufacturer, Consumer or bulk consumer and Dealer or retailer or e-retailer .
- Critical issues pertaining to storage of E-Waste.
- Transportation of E-Waste- Cost and other critical facets.
- Penalties / Punishments for mishandling of E-Waste
- Hazards of E-Waste
- Key takeaways from other forms of waste management- Solid Waste Management and Bio-Medical Waste
- A comparative study of E-Waste Management Practices among BRICS Member Countries or ASEAN countries and important takeaways from them.
- The needed vicissitudes in various mercantile laws for effective implementation of E-Waste (Management) Rules, 2016

### Research Paper / Manuscript Guidelines

- Original papers are invited from Company Secretaries in employment & practice, Academicians, Research Scholars and other Professionals.

- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/ fax number along with the title of the paper on the front page.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.
- The text should be typed double-spaced only on one side of A4 size paper in MS Word, Times New Roman, 12 font size with one-inch margins all around.
- The author/s' name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 30th of November, 2016 by 12 noon (IST).
- Participants should email their research papers on the following email id: ccgrt@icsi.edu

### Further Information for Authors / Participants

- The decision of the Reviewing Committee will be final and binding on the participants.
- The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI. Further, the authors whose papers will be selected will receive Program Credit Hours (PCH).
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- The papers will be scrutinized by an Expert Committee.
- For any query / assistance, kindly contact at: ccgrt@icsi.edu/+91-22-41021515/1501
- 4 PCH will be awarded to the authors, whose research papers will be selected.

**CS Ahalada Rao V**  
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ICSI-Research Committee

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ICSI-CCGRT Management Committee

*Is Corporate Governance – Alien to common man?*

*Is Corporate Governance – Restricted only to Listed Companies?*

*Is Corporate Governance – Effective tool for functionality improvement?*

*Is Corporate Governance – Connecting Prime Pillar of the global economic harmony?*

*Is Corporate Governance – Harbinger of happiness to humanity?*

Let's join hands for evolving the solutions for the above in



**1<sup>ST</sup> GLOBAL CONGRUENCE  
TO PROMULGATE  
INTERNATIONAL CORPORATE GOVERNANCE DAY**

**Thursday & Friday 8<sup>th</sup> - 9<sup>th</sup> December 2016**

Commencing on 8<sup>th</sup> December 2016 at 11:30 AM &

Concludes on 9<sup>th</sup> December 2016 at 6:00 PM

at

**HYDERABAD INTERNATIONAL CONVENTION CENTRE**

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**PROLOGUE BROCHURE**





## President's Message

Dear Professionals Colleagues,

Global industry across all sectors is experiencing extraordinary transformation. Globalization is driving radical changes across the global markets - deregulation, increased competition, convergence of traditional business models are transforming us all into one global village. Good corporate governance is one such important aspect of globalization, which transcends boundaries and is evolving day in and day out. There are significant developments in corporate governance practices worldwide such as role of independent directors, diversity, board practices and sustainability indicating the enhanced focus of stakeholders, independent audit committee, executive compensation, fraud reporting etc., which needs to be further analysed.

With the current global changes and with the objective to re-iterate and create further sensitization with respect to adoption of good governance practices, the Institute has conceptualised the idea of having a day declared as “International Corporate Governance Day”. “International Corporate Governance day” shall serve as a platform to discuss and enumerate the possible methods and procedures for the adoption by corporates beyond the horizons of the respective countries.

As an important initiative, and to profess and create international consensus for “International Corporate Governance Day”, the Institute is hosting its first ever Global Congruence to promulgate International Corporate Governance Day. The Congruence will be held on 8th – 9th December, 2016 in the city of Hyderabad, India.

Your participation will not only add to the fruitful deliberations, but also give you an opportunity for mutual exchange of ideas and views and sharing of experience with corporate governance stalwarts from across the world.

I urge upon professionals, academicians, Corporate Governance experts, people from industry to join the movement and make the event of Global Congruence a grand success.

Looking forward to meet you at Global Congruence. We value your esteemed presence!

Regards,

CS Mamta Binani  
President  
[president@icsi.edu](mailto:president@icsi.edu)

## International Corporate Governance Code

Corporate Governance is a major component of wealth creator for owners. It is must for giving the citizens and all other stake holders a sustainable growing standard of life.

Moreover there is a general tendency to follow written codes or laws only and not going beyond that. The growth of the corporate has gone to a mammoth level and if there is no self-regulation this can create havoc in the near future. So, there is a necessity for the entire world to have a holistic code which describes each and every scenario and also which is applicable to every form of business entity like Firms, Societies, Trusts, NGOs etc., irrespective of their size and nature.

The challenge is to create a system of governance that promotes, supports and sustains economic development extending to all types of business forms, unlisted companies, firms, societies etc.

The emphasis on governance reforms is growing around the world. Therefore there is a necessity to bring wholesome changes into corporate governance by way of **International Corporate Governance Code (ICGC)** which can give a proper convergence model to the world.

The code should not be in the form of ticking the checklist with statutory imposition. There should be self-governing evaluation from within the business entities. The code should lay down some kind of “Corporate Governance Credits” and boost those companies and provide a platform for those companies to gain recognition in the market about their good corporate governance behaviour etc.

International Corporate Governance Code shall cater to the needs of the present era seamless corporate world which is transcending boundaries beyond the country of its business establishment.

## International Corporate Governance Day

Corporate Governance is important to achieve harmony in the challenges faced by the corporate sector in the working environment both internally and externally.

The conscience of the Corporate Governance should be all pervasive: internally right from the Board level personnel to the last rung of employees and it should also exist externally right from the Regulator to Investor to a Common Man.

With a view to provide more significance to the universally acceptable International Corporate Governance Code there is a need to have an international day for corporate governance. It will give more significance to the code and work for the better evaluation of the code from year on to year.

**“International Corporate Governance Day”** is a symbolic representation of systematic procedures, processes and their compliances.

An International day will create awareness for global promotion of Corporate Governance and its recognition beyond the horizons of the respective countries and also would bring significance to the concept in terms of common understanding

In all a great beginning has been made and built upon over the decades.

Greater thrust and progress is expected to be gained going forward. A focused approach by observing a ‘INTERNATIONAL CORPORATE GOVERNANCE DAY’ is bound to make a difference here.



This entails

- Annual revisiting of progress on Governance
- Reiterating and strengthening Governance bonds between countries of world by developing standard Governance practices.
- Examining and course corrections based on the experiences of member countries on Governance
- Developing Sustaining models on governance for future development.

## 1<sup>st</sup> Global Congruence to promulgate International Corporate Governance Day

As an important initiative to profess and create international consensus for “International Corporate Governance Day” there is a necessity to bring all the nations together under one platform. Hence, the Institute is hosting its first ever **Global Congruence to promulgate International Corporate Governance Day**. The Congruence will be held on 8th – 9th December 2016 in the pearl city of Hyderabad, India.

This congruence will have the participation from prominent representatives to discuss the challenges from various categories of global investors, stakeholders and regulatory bodies across the world as under:

- |  |  |
|--|--|
| 1. Organizations working in corporate governance | 2. Governments of various countries                                    |
| 3. Corporate houses across the globe             | 4. Various statutory Regulators  |
| 5. Professionals                                 | 6. Academicians from various Universities and Educational institutions |
| 7. Researchers                                   |  |

The cohesive discretion lies with the United Nations to declare a day as International Corporate Governance day, wherein the involvement and representation of all nations are required to carry forward this noble thought.

## Objectives of the Congruence

1. Honour the Pioneer leaders who made their contribution to the growth of Corporate Governance globally
2. Provide a framework for international cooperation and create synergies for the design and implementation of joint or individual assistance projects
3. Raise global awareness for the need to promote better corporate governance, increase visibility for reforms efforts and provide a vantage point for progress assessment
4. Promote comparative empirical and analytical work to advance our understanding of Corporate Governance and its impact on economic performance
5. Declare a day as “International Corporate Governance Day”

## Indicative -Sessions

### Technical Session I

#### Evolving of modern governance models from ancient practices

The speakers will deliberate on the ancient practices used to be followed in various countries and their linkage with governance with following sub themes:

- Significance of the measures / activities followed in old days relating to governance - Importance of Corporate Governance – a new paradigm shift from the old days.

- Gaps to be filled in to strengthen Corporate Governance in various countries.
- Business ethics in ensuring Corporate Governance.
- Various dimensions of Corporate Governance.

### Technical Session II

#### Corporate Governance: Robust Fortification Tool

The Speakers will deliberate on how the governance can be used as a tool to restrict or eradicate the scams with following sub themes:

- Innovative Governance Solutions.
- Cases of violation of corporate governance.
- Corporate governance should work as self-regulation or to be regulated by a regulator – Various international scenarios .
- Scope to extend the corporate governance to various forms of business entities like unlisted companies, firms, societies, trusts etc.

### Technical Session III

#### Corporate Governance: Fostering Posterity & Prosperity

The Speakers will deliberate of the importance of Corporate Governance in fostering the economies of various countries with following sub themes:

- Corporate Governance – Technological advancements.
- Corporate Governance – Improves operational efficiency, Instrument of competitive strategies.
- Corporate Governance – Tool for Economic stability of the nation.
- International Corporate Laws and Corporate Governance.
- Sustainability – An essential pillar of governance.

### Technical Session IV

#### Universally accepted International Corporate Governance Code: A prerequisite of good governance

The speakers will deliberate on the necessity of having a universally accepted International Corporate Governance Code with following sub themes:

- Convergence of uniform Corporate Governance model in various jurisdictions.
- Lessons to be learnt from Global Economic Crisis from the perspective of Corporate Governance.
- Corporate Governance through the eyes of Secretarial Standards issued by ICSI.
- Concept of proposing a day as an “International Corporate Governance Day” - various benefits by observing a day internationally allocated towards Corporate Governance.
- Revolutionizing International Corporate Governance Day.

The above mentioned are only indicative themes and sub-themes: we invite your suggestions on the themes and sub themes for the Global Congruence. The suggestions may reach us by 30 October 2016 at [icgc@icsi.edu](mailto:icgc@icsi.edu) or [globalcongruence@icsi.edu](mailto:globalcongruence@icsi.edu). Based on the suggestions from you final brochure shall be circulated again.

ICSI also invites International Research Papers for its Global Congruence on International Corporate Governance Day on or before **30 October 2016**. For details visit [www.icsi.edu](http://www.icsi.edu)



## FEE STRUCTURE

(Fee is inclusive of Service Tax)

Categories	On or Before 30 October 2016	On or Before 30 November 2016	On or Before 08 December 2016
<b>Professionals (CS/CA/CMA/Advocates)</b>	INR 3000	INR 3500	INR 4000
<b>Students *</b>	INR 1500 or USD 75	INR 1750 or USD 100	INR 2000 or USD 125
<b>Research Scholar*</b>	INR 4000 or USD 175	INR 4500 or USD 200	INR 5000 or USD 225
<b>Other delegates (Industry/Others)</b>	INR 5000 or USD 225	INR 5500 or USD 250	INR 6000 or USD 300

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\*Separate kit will be provided for the Students/Research Scholars

\*\*Apart from the above, a separate discount is available for Congruence Partners and also on group bookings containing 3 or more participants in all the above categories.

\*\*\* All Foreign delegates should pay the fee in US Dollars

### PROGRAMME CREDIT HOURS:

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<b>CS Vineet K Chaudhary</b> <i>Council Member, ICSI</i>	<b>CS Ahalada Rao</b> <i>Council Member &amp; Chairman Core Committee on ICGC &amp; ICGD</i>	<b>CS Mahadev Tirunagari</b> <i>Chairman, ICSI Hyderabad Chapter</i>



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**THE INSTITUTE OF  
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**Invites**

**International Research Papers for its  
Global Congruence to promulgate  
International Corporate Governance Day  
to be held on 8th & 9th December 2016  
Hyderabad International Convention Centre,  
Hyderabad, India**



Institute of Company Secretaries of India (The ICSI) is envisaging playing a lead role in corporate governance by promulgating the concept of “International Corporate Governance Code – ICGC”. The objective is to cater the needs of present era corporate world which is spearheading across various nations not only sticking to the country in which it has its business establishment. This is the code which will become acceptable universally by all the corporate across the globe.

Accordingly for attaining this major objective of ICGC we need to provide significance to the concept. This significance can be achieved by following a dedicated day for corporate governance which will be observed internationally. And hence ICSI is mooted the idea of “International Corporate Governance Day – ICGD” by involving global investors, global stakeholders and regulatory bodies across the world.

The purpose of research is to identify specific questions and try to find out a comprehensive and definitive answer. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

### **Prologue- Need for ICGC & ICGD and Global Congruence**

All nations are having vivid procedures and norms for corporate in relation to the governance matters. In spite of all those governance norms, the corporate world is witnessing scams and scandals. This implies that there is still some gap to bridge in order to have an effective and efficient corporate world.

The challenge before us is to create a system of governance that promotes, supports and sustains economic development and not only restricting to listed entities, but extending to all unlisted companies, firms, societies and all business forms. The emphasis on governance reforms is growing around the world.

Governance is such an important aspect, without which none can achieve harmony in the working patterns and further to this it has to evolve day in and day out in accordance with the changing requirements both internally and globally in each and every aspect.

The need of the hour is to provide more significance to the universally acceptable International Corporate Governance Code and to have an International day for Corporate Governance in order to create awareness and celebrating determination towards international promotion and recognition beyond the horizons of the respective countries.

On the occasion of “International Corporate Governance Day”, the member participants can dwell upon various anomalies and can reverberate the sound policies and procedures for governance in the corporate in their respective countries.

As an important initiative, ICSI would like to profess and create international consensus for “ICGD” and to make this a reality, there is a necessity to bring all the nations through their representatives to a single place and conduct one Summit called as “01st Global Congruence on International Corporate Governance Day”.

### **Objectives:**

- To comprehend the genesis and importance of Corporate Governance
- To put forth the concept of having an International Corporate Governance Code - ICGC
- To analyze various best practices in Corporate Governance across world
- To know the impact of non-adherence of best governance practices
- To ameliorate various Treatise and Conventions available in Corporate Governance
- To analyze and interpret various International Judgments in

- Corporate Governance
  - To understand the significance of OECD Principles.
  - To study the Corporate Governance Policies embraced in various Developed and Developing economies.
  - To understand the relevance of various Mercantile Laws, Capital Markets & Securities Laws in ensuring corporate governance.
  - To emphasize the significance for ICGC by promulgating International Corporate Governance Day – ICGD
- To achieve the above objectives the following indicative tracks on which the Research Papers are invited

### Tracks:

- Significance of the measures/activities followed in olden days relating to governance - Importance of Corporate Governance – a new paradigm shift from the olden days
- Corporate governance should work as self-regulation or to be regulated by a regulator – Various international scenarios
- Scope to extend the corporate governance to various forms of business entities like unlisted companies, firms, societies, trusts etc
- Corporate Governance – Technological advancements
- Corporate Governance – Improves operational efficiency, Instrument of competitive strategies
- Corporate Governance – Tool for Economic stability of the nation
- Charm of Corporate Governance loosing – Steps to be taken to uplift Corporate Governance with futuristic outlook
- Concept of proposing a day as an “International corporate governance day” - various benefits by observing a day internationally allocated towards Corporate Governance
- Cases of violation of corporate governance.
- International Corporate Laws and Corporate Governance.
- Gaps to be filled in to strengthen Corporate Governance in various countries.
- Business ethics in ensuring Corporate Governance.
- Various dimensions of Corporate Governance.
- Lessons to be learnt from Global Economic Crisis from the perspective of Corporate Governance.
- Corporate Governance through the eyes of Secretarial Standards issued by ICSI
- Innovative Governance Solutions
- Sustainability – An essential pillar of governance
- Convergence of uniform Corporate Governance Model in various jurisdictions
- Revolutionizing International Corporate Governance Day

### Research Paper / Manuscript Guidelines

- Original papers are invited from, Academicians, Research Scholars, Professionals, Industrial experts and Company Secretaries in employment & practice.
- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/fax number along with the title of the paper on the front page.
- Authors are required to comply with the APA style of referencing only. For details on APA referencing style, please visit <http://www.apastyle.org>.
- Full text of the paper should be submitted in MS Word using

Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.

- The text should be typed double-spaced only on one side of A4 size paper in MS Word, Times New Roman, 12 font size with one-inch margins all around.
- The author/s' name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 30 October 2016
- Participants should email their research papers on the following email id: [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu); [globalcongruence@icsi.edu](mailto:globalcongruence@icsi.edu)

### Further Information for Authors / Participants

- The manuscripts will be subjected to a blind review process
- The decision of the Reviewing Committee will be final and binding on the participants.
- The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI. Further, the authors whose papers will be selected will receive an Appreciation Letter from the institute and Program Credit Hours (PCH).
- ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
- ICSI may pay honorarium as per the guidelines for selected papers on publication in the Chartered Secretary Journal which is blind refereed with ISSN 0972-1963
- The papers will be scrutinized by an Expert Committee and only high quality papers will be published in the Journal
- Few papers are selected for publication in the Souvenir to be published on the occasion of Global Congruence on International Corporate Governance Day having ISBN registration
- For any query / assistance, kindly contact at: [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu) / +91-22-41021515/1501

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# 3

# LEGAL WORLD



- SINGER INDIA LTD V. CHANDER MOHAN CHADHA & ORS [SC]
- DHARAM VIR & ADITYA UMANG VIR V. JAIPRAKASH ASSOCIATES LTD [CCI]
- S.B.I & ORS V. NEELAM NAG [SC]
- MANAGEMENT OF TNSC LTD V. M. CHANDRASEKARAN [SC]
- LARSEN & TOUBRO LIMITED V. ADDITIONAL DY.COMMISSIONER OF COMMERCIAL TAXES & ANR [SC]
- NIMESH N. KAMPANI V. ASST. CIT, CIRCLE-4(2) MUMBAI [ITAT-MUM]
- DANONE NARANG BEVERAGES PVT LTD V. STATE OF KARNATAKA [KANT]
- HARIT POLYTECH PVT LTD V. COLT CABLES PRIVATE LTD & ANR [DEL]
- THE CHANCELLOR, MASTERS & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS V. RAMESHWARI PHOTOCOPY SERVICES & ANR [DEL]



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### ***Dear Professional Colleagues***

We are pleased to share that, to build competency and augment skill sets of our esteemed members in varied subjects of contemporary interest, the Institute launched two online Courses in association with National Institute of Financial Management (NIFM):

#### **Certificate Course in Valuation**

Commenced on September 10, 2016, the Course has the foremost objective of sharpening the skill sets of our esteemed members in the area of valuation and open up vast areas of opportunities for members in practice as well as in employment.

#### **Diploma in Internal Audit (DIA)**

Commenced on September 24, 2016, the Course is set to endow members with the specialized knowledge in the area of internal audit and further develop their skills to conduct internal audit including compliance and operational audits.

Both the online Courses fetched an overwhelming response and got cent percent registrations in the first batch, I congratulate all the members who registered for the first batch and urge them to gain most out of this learning opportunity offered by the Institute. For others who could not join the first batch, we will soon be announcing commencement of second batch of the Courses.

Further, appreciating the response to the online Courses, we delightfully apprise you of yet another initiative of the Institute in the area of Capacity building and share the brochure of the 15 days short term **Online Course in International Business Taxation** designed to provide a visible means of having acquired specialized knowledge in all aspects of the international taxation, this time it is for members, students as well as non-members.

I urge members and students to register for the Course, using the link : <https://www.icsi.in/student/DelegateRegistration/tabid/137/ctl/ViewEventDetails/mid/454/EventId/46/Default.aspx> and plunge into this vast ocean of knowledge and opportunities.

Regards

**CS Mamta Binani**  
*President*



*'Taxes are on everyone's mind almost 24\*7 since they influence our daily lives. Reading famous quips about taxes won't help you pay less, but at least you'll get a good chuckle on the way to the poor house.'*

-Jeffery L. Yablon



### Introduction

*Globalisation of economies, signing and review of free trade agreements coupled with increase in the number of cross border transactions, mergers, acquisitions, tax treaties, transfer pricing etc. have rendered vivid intricacies to the tax regime across the globe. While appreciating the need of whetting the skills of professionals in the area of International Taxation, the Institute of Company Secretaries of India has decided to launch the 15 days Online Course on International Business Taxation with the aim of facilitating professionals in augmenting their skill sets and specialized knowledge in the area of International Taxation.*

### Learning Objectives

- To provide a visible means of enhancing specialized knowledge in all aspects of the International taxation.
- To inculcate a problem-solving approach with a view to assist management decision-making and managing the practice of International taxation.
- To enable the members to gain acumen and thorough knowledge relating to various aspects of International taxation.

### Course Coverage

#### Genesis of Taxation

- Constitutional issues- Concept of Direct and Indirect Taxation

#### Customs Valuation and Tariff

- Concept of Special Valuation
- Concept of SEZ
- Taxation under SEZ
- Special Valuation Board for Customs, Valuation in respect of imports and exports MNC

#### Taxation of Non-Residents and Foreign Companies

- Income Deemed to Accrue or Arise in India - Section 9
- Tax on interest in case Non-Residents and Foreign Companies - Section 115A
- Special provisions for computing income by way of Royalties etc., fees for Technical Services in case of Non-Residents and Foreign Companies - Section 44DA
- Tax on Income from Bonds or Global Depository Receipts purchased in foreign currency or Capital Gains Arising from their transfer - Section 115AC
- Tax on Income of Foreign Institutional Investors from securities or Capital Gains arising from their transfer latest in judiciary
- GST in respect of international trade
- Criteria for determining residential status of individual and companies

#### Double Taxation Relief

- Concept of Double Taxation Relief
- Types of Relief
- Double Taxation Relief under the Income Tax Act, 1961
- Taxation of business process outsourcing units in India
- Concepts of Permanent Establishment
- Taxing Foreign Income
- Meaning of Important Terms

#### Transfer Pricing and Other Provisions to Check Avoidance of Tax

- Meaning of the term "Arm's Length Principle"
- Significance of Arm's Length Principle
- Practical difficulties in application of Arm's Length Principle
- Guidelines for applying the Arm's Length Principle
- Methods for calculating the Arm's Length Price
- Applying Arm's Length Principle to Intangibles
- Applying Arm's Length Principle to Intra Group Services
- The Indian Scenario
- Transfer of income to non-residents
- Transaction in securities
- Introduction to specific anti-avoidance measures in respect of transactions with person located in Notified Jurisdictional Area

### Foreign Collaborations

- Introduction
- Tax Liability based on residential status
- Choice of place where income is to be received
- Choice of Method of accounting
- Choice of Form of Business Organization
- Taxability of different kinds of income
- Tax treatment of payments made for expenses etc.
- Other factors
- Assessment of foreign collaborators
- Deduction of tax at source from non-resident's income

### Taxation of E-commerce Transactions

- What is e-commerce?
- Issues and problems in taxing e-commerce transaction
- How business is transacted through e-commerce
- Permanent Establishment in e-commerce transaction
- Determination of the nature of income
- Conclusion

### Other Important Concepts of International Taxation

- Place of Effective Management ("POEM")
- General Anti Avoidance Agreement ("GAAR")
- Advance Pricing Agreement ("APA")
- Base Erosion Profit Shifting ("BEPS")
- Advance Ruling

### Who Should Attend

**All members of Institute of Company Secretaries of India, Student and non-members interested to develop and enhance the knowledge in the area of international taxation.**

**Fee ₹. 5,000/- (Inclusive of Service tax). The fee will be paid online.**

### Online Test

**An online test will be conducted at the end of the course. It will comprise of 50 objective type questions of 2 marks each.**

### Certificate

A participant who clears online examination shall be awarded a certificate by the Institute of Company Secretaries of India. In case participant is unable to qualify in the first attempt, he will be given one more attempt to appear and qualify the online test in the subsequent batch of the course.

### Training Methodology

Duration of the Course will be 15 days. In order to give sufficient knowledge on International taxation, web based classes of 24 hours will be conducted, preferably on Saturday & Sunday. The first batch of the course will commence on October 15, 2016 as per the below schedule:

Dates	Session
October 15, 2016	Session 1
October 16, 2016	Session 2
October 22, 2016	Session 3
October 23, 2016	Session 4

### Course Facilitator

CS Timir Baran Chatterjee is a Fellow Member of the Institute of Company Secretaries of India with more than 30 years of experience in the areas of Finance, Tax, Legal and Corporate Affairs, Fund Management, Insurance and Risks Management. He has done MBA in International Business from Indian Institute of Foreign Trade (IIFT) and is a B.Com (Hons.) Graduate with M.Com. He is also a member of the Institute of Cost and Management Accountants of India, the Indian Council of Arbitration and Institute of Internal Auditor (USA).

Mr. Chatterjee is presently the Chief Corporate Officer (Legal and Corporate Affairs) of DIC India Limited, Director of DIC Fine Chemical Private Limited and CHNHB and Visiting Faculty at various Institutes including the Institute of Company Secretaries of India, Institute of Chartered Accountants of India, IIFT, Calcutta University, ICFAI Business School, IISWBM and Indian Defence Academy.

### Registration Procedure

Registration shall be open throughout the year. Participants, interested in the course, shall apply online through Institute's website.

For further details please, visit [www.icsi.edu](http://www.icsi.edu) or contact **Director, Dte. of Professional Development, Perspective Planning & Studies** at [academics@icsi.edu](mailto:academics@icsi.edu) or **011-45341095/74**



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CS :LMJ: 12:10:2016

SINGER INDIA LTD v. CHANDER MOHAN CHADHA & ORS  
[SC]

Civil Appeals No. 387 & 388 of 2004

R.C. Lahoti, G. P. Mathur & C. K. Thakker, JJ. [Decided on 13/08.2004]

Equivalent citations: (2004) 122 Comp Cas 468(SC); (2004) 62 CLA 213 (SC); AIR 2004 SC 4368.

Companies Act, 1956 read with Delhi Rent Control Act- shop let out to American company- the company merged with Indian company- landlord initiated eviction proceedings on the ground of sub-letting- contested that the transfer was due to merger which is by operation of law- whether tenable-Held, No.

## Brief facts:

Respondent landlord let out one Shop to M/s. Singer Sewing Machine Company, incorporated under the laws of the State of New Jersey, USA, (hereinafter referred to as 'American Company'), vide a registered lease deed dated 11.7.1966. In the year 1982, the landlord filed an eviction petition on the ground, *inter alia*, that the American Company, without obtaining any written consent from the landlord, had parted with the possession of the premises in dispute in favour of Indian Sewing Machine Company Limited, and it was the said company which was in exclusive possession of the premises and thereby it was liable for eviction in view of Section 14(1)(b) of the Delhi Rent Control Act (hereinafter referred to as the 'Act'). The eviction petition was contested by the appellant on the ground, *inter alia*, that a direction was issued to the American Company to reduce its share capital to 40 per cent in order to carry on business in India in view of Section 29 of Foreign Exchange Regulation Act, 1973 (hereinafter referred to as 'FERA'). Accordingly, Company Petition was filed by the Indian Company before the Bombay High Court under which a scheme of amalgamation was sanctioned whereby the undertaking in India of the American Company was amalgamated with the Indian Company. It was submitted that the Indian Company is no other entity except the legal substitute of the American Company and in substance there is no case of sub-tenancy.

The Additional Rent Controller, Delhi dismissed the eviction petition, but this was reversed by the Rent Control Tribunal in the appeal preferred by the landlord and eviction petition was allowed. The Second Appeal preferred by the appellant was dismissed by the High Court. During the pendency of the appeal before the Rent Control Tribunal, the name of M/s. Indian Sewing Machine Company was changed as Singer India Limited which is the appellant herein.

Decision: Appeal dismissed.

## Reason:

The effect of parting of possession of the tenanted premises as a result of sanction of scheme of amalgamation of companies under Section 394 of the Companies Act by the High Court has also been considered in two decisions of this Court. In M/s. General Radio and Appliances Co. Ltd and others v. M.A. Khader 1986 (2) SCC 656, which is a decision by a bench of three learned Judges, the premises had been let out to M/s. General Radio and Appliances Co. Ltd. On account of a scheme of amalgamation sanctioned by the High Court, all property, rights and powers of every description including tenancy right, held by M/s. General Radio and Appliances Co. Ltd. had been blended with M/s. National Ekco Radio & Engineering Co. Ltd. Thereafter the landlord instituted proceedings for eviction on the ground of unauthorized sub-letting. It was held that the order of amalgamation was made by the High Court on the basis of the petition filed by the Transferor Company in the Company Petition and, therefore, it cannot be said that this is an involuntary transfer effected by the order of the Court. It was further held that appellant No. 1 Company was no longer in existence in the eyes of law and it had effaced itself for all practical purposes. The appellant No. 2 Company i.e., the Transferee Company, was not a tenant in respect of the suit premises and it was appellant No. 1 Company which had transferred possession of the suit premises in favour of the appellant No. 2 Company. The Court further took the view that under the relevant Act, there was no express provision that in case of any involuntary transfer or transfer of the tenancy right by virtue of a scheme of amalgamation sanctioned by the High Court, such a transfer will not come within the purview of Section 10(ii) (a) of Andhra Pradesh Building (Lease, Rent and Eviction) Control Act. On this finding, it was held that the appellant was liable for eviction. Cox & Kings Ltd. & Anr v. Chander Malhotra 1997 (2) SCC 687 is also a decision by a bench of three learned Judges and arose out of proceedings for eviction under Section 14(1)(b) of Delhi Rent Control Act. Here, the premises were given on lease to Cox & Kings (AGENTS) Limited, a company incorporated under the United Kingdom Companies Act (for short, "Foreign Company"). A petition for eviction was filed on several grounds and one of the grounds was of sub-letting to Cox & Kings Limited, a company registered under the Indian Companies Act (for short an "Indian Company"). It was urged that the transfer of leasehold interest from the Foreign Company to the Indian Company was by compulsion, it was an involuntary one and, therefore, it was not a case of sub-letting within the meaning of Section 14(1) (b) of the Act. It was held that under FERA, there was no compulsion that the premises demised to the Foreign Company should be continued or given to the Indian Company. On the other hand, under the agreement executed between the Foreign Company and the Indian Company, incidental to the assignment of the business as a growing concern, the Foreign Company also assigned the monthly and other tenancies and all rented premises of the assignor in India to the Indian Company. The Court, accordingly, concluded that though by operation of FERA the Foreign Company had wound up its business, but under the agreement it had assigned the leasehold interest in the demised premises to the Indian Company which was carrying on the same business in the tenanted premises without obtaining the written consent of the landlord and, therefore, it was a clear case of sub-letting.

These cases clearly hold that even if there is an order of a Court

sanctioning the scheme of amalgamation under the Companies Act where under the leases, rights of tenancy or occupancy of the Transferor Company get vested in and become the property of the Transferee Company, it would make no difference in so far as the applicability of Section 14(1)(b) is concerned, as the Act does not make any exception in favour of a lessee who may have adopted such a course of action in order to secure compliance of law.

It was next contended that on amalgamation Singer Sewing Machine Company (American Company) merged into Indian Sewing Machine Company (Indian Company) shedding its corporate shell, but for all practical purposes remained alive and thriving as part of the larger whole. He has submitted that this Court should lift the corporate veil and see who are the directors and shareholders of the Transferee Company and who are in real control of the affairs of the said company and if it is done it will be evident there has been no sub-letting or parting with possession by the American Company. It is not open to the Company to ask for unveiling its own cloak and examine as to who are the directors and shareholders and who are in reality controlling the affairs of the Company. This is not the case of the appellant nor could it possibly be that the corporate character is employed for the purpose of committing illegality or defrauding others. It is not open to the appellant to contend that for the purpose of FERA, the American Company has effaced itself and has ceased to exist but for the purpose of Delhi Rent Control Act, it is still in existence. Therefore, it is not possible to hold that it is the American Company which is still in existence and is in possession of the premises in question. On the contrary, the inescapable conclusion is that it is the Indian Company which is in occupation and is carrying on business in the premises in question rendering the appellant liable for eviction.

OP did not complete the construction and deliver possession of the flat. The Informants have further alleged that the terms and conditions of the application form containing 'Standard Terms and Conditions of Allotment of One Estate Home/ Villa/ Townhome/ Apartment/ Sea Court/ Sun Court/ Crescent Court' are unfair and abusive in nature in terms of Section 4 of the Act. Some of the clauses which are unfair, one sided and loaded in favour of the Opposite Party are Clause 2.2, Clause 2.4, Clause 4.3, Clause 5.7, Clause 7.2 and Clause 7.3. The Informants have submitted that the agreement does not contain a proportionate liability clause to fasten commensurate penalty/charge on the Opposite Party for breach in discharge of its obligations. Based on the above averments and allegations, the Informants have filed the instant information seeking various reliefs as detailed in the prayer clause of the information.

**Decision:** Investigation by DG ordered by majority decision.

### Reason:

The Commission has perused the material available on record besides hearing the learned counsel for the parties.

In the present case, the Informants have essentially alleged abuse of dominant position by the Opposite Party.

The land on which the said project is being developed has been transferred to the OP by local authorities as part of the concession agreement that was entered into for development of Yamuna Expressway. The said land has been transferred with mixed use rights by the authority for real estate development and the entire land is located at a single location spread over 452 acres which is known as Jaypee Greens, Greater Noida. It is observed that the OP has various residential options within Jaypee Greens, Greater Noida being offered to the buyers at various price bands. OP has advertised the said residential project by mentioning all the aforementioned facilities as part of the said project indicating that what is offered is not a standalone apartment. The Commission observes that as the said residential project and all the aforementioned facilities are being developed by the OP, and as the said residential project and the amenities mentioned above are being offered together, it indicates that the services offered by the OP are not only different but are neither interchangeable nor substitutable with the services of a real estate developer offering a standalone apartment in a project. In sum, residential units in an integrated township are not substitutable with residential units in a cooperative society or a group housing scheme or any other residential units built in standalone projects as such residential projects do not include all the facilities that an integrated township offers. In such a scenario, a consumer who opts to buy a residential unit in an integrated township will not prefer a residential unit elsewhere. The distinguishing and intrinsic characteristics of Integrated Township make the residential units located in such townships a distinct 'relevant product' which is not substitutable with residential units in other standalone residential projects/towers. Accordingly, the Commission is of the *prima facie* view the relevant product market is "provision of services for development and sale of residential/ dwelling units in integrated townships". The relevant geographic market, therefore, seems to be 'Noida and Greater Noida'. Hence, *prima facie*, the relevant market in the present case appears to be "provision of services for development and sale of residential/ dwelling units in integrated townships in Noida and Greater Noida". At this stage, it would be appropriate to refer to the case of Sunil Bansal etc. v. Jaiprakash Associates Ltd. etc., Case Nos. 72 of 2011, 16, 34 and 53 of 2012, and 45 of 2013 (Jaypee cases) decided by the Commission vide its final order passed on 26.10.2015. The Commission through its majority order held the relevant market as



LW: 59:10:2016

DHARAM VIR & ADITYA UMANG VIR v. JAIPRAKASH ASSOCIATES LTD [CC]

Case No. 08 of 2015

S. L. Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta, M. S. Sahoo & G. P. Mittal [Decided on 14/09/2016]

Competition Act, 2002- integrated township- non-delivery of possession of flats even after 5 years- escalation in the price- whether constitutes abuse of dominance and adopting anti competition agreement- Held, Yes.

### Brief facts:

The Informants have, on 25.09.2006, jointly applied for allotment of one apartment at 'Crescent Court' at Jaypee Greens, Greater Noida, a project of the OP. They even paid the consideration in full. Yet the

the market for 'provision of services for development and sale of residential apartments in Noida and Greater Noida regions'. While delineating the relevant market, it was opined by the Commission that integrated township was not a distinct product market as it was an evolving concept and at this stage of development of markets, it could not be said with certitude that 'integrated township' constituted a separate product market from standalone residential projects.

The Commission has carefully examined the decision rendered in Jaypee cases. After bestowing thoughtful consideration, the Commission is of the considered opinion that the relevant market was not determined in the majority order correctly. With due deference to the majority decision, the Commission disagrees with the reasoning adopted therein. For the reasons given in the minority order and the observations made hereinabove in this order, the Commission is of the *prima facie* opinion that the relevant market in the present matter would be "provision of services for development and sale of residential/ dwelling units in integrated townships in Noida and Greater Noida".

In the relevant market defined supra, the minority order in Jaypee cases, on the basis of number of dwelling units, financial resources and land resources as well as vertical integration, found the OP to enjoy a dominant position. For the reasons given in the said order, the Commission is also of *prima facie* opinion that the OP is in a dominant position in the relevant market in the present case as well. On a careful perusal of the various terms as detailed above, *prima facie*, it appears that the above clauses are unfair, onerous, one-sided and tilted favourably towards the Opposite Party and call for a detailed investigation.

Accordingly, the Commission holds that *prima facie* the Opposite Party appears to have contravened the provisions of Section 4 of the Act. Resultantly, the Director General (DG) is directed to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order.

was justified in directing stay of the disciplinary proceedings initiated by the appellant-Bank against the respondent until the closure of recording of prosecution evidence in the criminal case instituted against the respondent, based on the same facts?

The respondent was appointed in the clerical cadre of the appellant-Bank. At the relevant time, she was working as an Assistant (Clearing). Allegedly, some time on 29th May 2006, the respondent by her acts of commission and omission caused loss to the Bank in the sum of Rs. 44,40,819/- by granting credit to one Laxman Parsad Ratre (who was an employee of Bhilai Steel Plant).

After registration of the FIR and investigation by the local police, Criminal Complaint No. 1043/2006 was registered before the Magistrate for offences punishable under Sections 409, 34 of IPC, which then proceeded to frame charges against the respondent on 12th June 2007.

Thereafter, the appellants initiated disciplinary proceedings against the respondent on 23rd October 2008. The respondent did not cooperate and instead protested the initiation of such disciplinary proceedings against her and filed a writ petition bearing Writ Petition No.4629/2009. The learned Single Judge adverted to Clause 4 of the Memorandum of Settlement, which grants protection to the employees of the appellant-Bank from facing departmental proceedings until the completion of the trial of the criminal case, allowed the Writ Petition and directed the appellants to forbear from proceeding with the disciplinary proceedings until completion of the trial.

This decision was challenged by the appellants by way of Writ Appeal No.80/2010 before the Division Bench. The Division Bench affirmed the view taken by the learned Single Judge and negated the stand taken by the appellant in her favour.

**Decision:** Appeal partly allowed.

## Reason:

We have heard the learned counsel for the parties at some length. The only question that arises for consideration, is no more *res-integra*. It is well-settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straight jacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis.

Reverting to the facts of the present case, indisputably, the alleged misconduct has been committed as far back as May 2006. The FIR was registered on 5th December, 2006 and the charge-sheet was filed in the said criminal case on 6th February, 2007. The contents of the charge-sheet are indicative of involvement of the respondent in the alleged offence. Resultantly, the criminal Court has framed charges against the respondent as far back as 12th June, 2007. The trial of that case, however, has not made any effective progress. Only 3 witnesses have been examined by the prosecution, out of 18 witnesses cited in the charge-sheet filed before the criminal Court. Indeed, listing of criminal case on 133 different dates after framing of charges is not solely attributable to the respondent. From the information made available by the Additional Superintendent of Police on affidavit, it does indicate that at least 26 adjournments are directly attributable to the accused in the criminal case. That is not an insignificant fact. This is in spite of the direction given by the Division Bench on 28th June, 2010, to the concerned criminal Court to proceed with the trial on day-to-day basis. The progress of the criminal case since then, by no means, can be said to be satisfactory. The fact that the prosecution has named 18 witnesses does not mean that all the witnesses are material witness for



## Industrial & Labour Laws

LW: 60:10:2016

S.B.I & ORS v. NEELAM NAG [SC]

Civil Appeal No.4715 of 2011

T.S. Thakur & A.M. Khanwilkar, JJ. [Decided on 16/09/2016]

Indulgence in fraud- criminal proceedings instituted- disciplinary proceedings also started- whether disciplinary proceedings to be kept in abeyance till the completion of trial- Held, Yes.

## Brief facts:

The short question involved in this appeal is: whether the High Court



substantiating the factum of involvement of the respondent in introducing the co-accused for opening a new bank account, to misplace the clearing instruments relating to various customers or for the payment released to the undeserving customer causing huge financial loss to the bank.

In the peculiar facts of the present case, therefore, we accede to the contention of the appellants that the pendency of the criminal case against the respondent cannot be the sole basis to suspend the disciplinary proceedings initiated against the respondent for an indefinite period; and in larger public interest, the order as passed in *Stanzen Toyotetsu India Private Limited v. Girish V. & Ors* [Stanzen's case] be followed even in the fact situation of the present case, to balance the equities.

The next question is: whether Clause 4 of the Settlement would denude the appellants from continuing with the disciplinary proceedings pending against the respondent.

On the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely merely because of the pendency of criminal case against the delinquent employee. On the other hand, it is an enabling provision permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material. As can be culled out from the last sentence of Clause 4, which applies to a case where the criminal case has in fact proceeded, as in this case, for trial. The term "completion of the trial" thereat, must be construed as completion of the trial within a reasonable time frame. This clause cannot come to the aid of the delinquent employee - who has been named as an accused in a criminal case and more so is party to prolongation of the trial.

Notably, in the present case inspite of a peremptory direction of the Division Bench given on 28th June 2010 to the concerned criminal Court to proceed with the trial on day-to-day basis, as noted above, no effective progress has been made in that trial (except recording of evidence of three prosecution witnesses out of eighteen witnesses) so far. In the last six years, evidence of only two additional prosecution witnesses has been recorded. The respondent has not pointed out any material on record to even remotely suggest that she had tried her best to dissuade the criminal Court from adjourning the trial, in breach of direction given by the Division Bench of the High Court to proceed on day-to-day basis and to conclude the trial within one year from 28th June, 2010. Pendency of criminal trial for around 10 years, by no means, can be said to be a reasonable time frame to withhold the disciplinary proceedings. We are fortified in taking this view on the principle underlying the former part of the same clause, which envisages that if the Authority which has to start the prosecution refuses (read fails) to do so within one year from the commission of the offence, the departmental action can proceed under the provisions as set out in Clauses 11 and 12 of the Settlement.

In the fact situation of the present case, it is possible to take the view that the first part of Clause is attracted. In that, respondent has been put on trial in connection with the alleged offence, by framing of charges on 12th June 2007. That has happened after one year from the commission of the offence.

Be that as it may, the remedy of writ being an equitable jurisdiction and keeping in mind the larger public interests (at least in cases of involvement of the employees of the Public Sector Banks in offence of breach of trust and embezzlement), the arrangement predicated in the case of *Stanzen* (supra) would meet the ends of justice. For, the disciplinary proceedings instituted against the respondent

cannot brook any further delay which is already pending for more than 10 years.

Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The Trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary.

LW: 61:10:2016

MANAGEMENT OF TNSTC LTD v. M. CHANDRASEKARAN  
[SC]

Civil Appeal Nos. 6765-66/2014

T.S. Thakur & A.M. Khanwilkar, JJ. [Decided on 02/09/2016]

Industrial Disputes Act- driver causing accident due to rash driving- disciplinary authority recommending dismissal- Labour commissioner refusing the recommendation- whether tenable-Held, No.

### Brief facts:

The respondent was employed as a driver by the appellant. While on duty on 15.01.2003, on vehicle TN-38- 0702, during a trip from Kovai Ukkadam to Pollachi, near Vadakkupalayam he caused an accident with a car coming from the opposite direction resulting in fatal injuries to persons travelling in that car. Disciplinary enquiry was instituted against the respondent *inter alia* on the charge of driving the bus in a rash and negligent manner. The Disciplinary Authority after giving opportunity to the respondent passed order of dismissal on 13.10.2003.

The Labour Commissioner, acting on the application filed by the Respondent under Section 33(2) (b) of the Industrial Disputes Act, 1947, refused to accord approval for dismissal of the respondent. Being aggrieved by this decision, the appellant-Management as well as the Respondent preferred Writ Petitions.

The Single Judge opined that the view so taken by the Commissioner was well founded and did not warrant any interference. Accordingly, the Single Judge dismissed the writ petition preferred by the appellant and allowed the writ petition preferred by the respondent and issued direction to the appellant Corporation to reinstate the respondent with back-wages and continuity of service and all other attendant benefits. Having failed in its Letters Patent Appeal, Petitioner approached the Supreme Court.

Decision: Appeal allowed.

### Reason:

In the present case, the sole reason which weighed with the Commissioner was that no independent witness was produced - not even a single passenger of the bus was examined by the Department. The decision relied by the appellant squarely deals even with this reasoning. It has been held that, in the case of *State of Haryana & Others v. Rattan Singh* (2005) 3 SCC 241 the Court



held that mere non-examination of passenger does not render the finding of guilt and punishment imposed by the Disciplinary Authority invalid. The burden to prove that the accident happened due to some other cause than his own negligence, is on the employee, as expounded in the case of *Thakur Singh v. State of Punjab* (1977) 2 SCC 491 referred to in the reported decision.

Applying the principle stated in *Cholan Roadways Ltd. (Supra)*, what needs to be considered is about the probative value of the evidence showing the extensive damage caused to the bus as well as motorcar; the fatal injuries caused to several persons resulting in death; and that the nature of impact raises an inference that the bus was driven by the respondent rashly or negligently. The material relied by the Department during the enquiry supported the fact that the respondent was driving the vehicle at the relevant time and because of the high speed of his vehicle the impact was so severe that the two vehicles were extensively damaged and the passengers travelling in the vehicle suffered fatal injuries resulting in death of five persons on the spot and four persons in the hospital besides the injuries to nine persons. These facts stood established from the material relied by the Department, as a result of which the doctrine of *res ipsa loquitur* came into play and the burden shifted on the respondent who was in control of the bus to establish that the accident did not happen on account of any negligence on his part. Neither the Commissioner nor the High Court considered the matter on that basis nor posed unto themselves the correct question which was relevant for deciding the application under Section 33(2) (b). On the other hand, the order of punishment dated 13th October, 2003, *ex facie*, reveals that the report of the Enquiry Officer referring to the relevant material established the factum and the nature of accident warranting an inference that the respondent had driven the bus rashly and negligently. Further, the observation in the unreported decision of the Division Bench of the same High Court was not relevant for deciding the application under Section 33(2) (b). Significantly, the order of punishment also adverts to the past history of the respondent indicative of respondent having faced similar departmental action on thirty two occasions, including for having committed minor as well as fatal accidents while performing his duty.

In our opinion, the Commissioner exceeded his jurisdiction in re-appreciating the evidence adduced before the Enquiry Officer and in substituting his own judgment to that of the Disciplinary Authority. It was not a case of no legal evidence produced during the enquiry by the Department, in relation to the charges framed against the respondent. Whether the decision of the Disciplinary Authority of dismissing the respondent is just and proper, could be assailed by the respondent in appropriate proceedings. Considering the fact that there was adequate material produced in the Departmental enquiry evidencing that fatal accident was caused by the respondent while driving the vehicle on duty, the burden to prove that the accident happened due to some other cause than his own negligence was on the respondent. The doctrine of *Res ipsa loquitur* squarely applies to the fact situation in the present case.

Ordinarily, we would have remitted the matter back to the Commissioner for consideration afresh, but as the matter is pending for a long time and as we are satisfied that in the fact situation of the present case approval to the order of punishment passed by the appellant against the respondent should have been granted, we allow the application under Section 33(2)(b) preferred by the appellant but with liberty to the respondent to take recourse to appropriate remedy as may be available in law to question the said order of dismissal dated 13th October, 2003.



## Tax Laws

LW: 62:10:2016

LARSEN & TOUBRO LIMITED v. ADDITIONAL  
DY.COMMISSIONER OF COMMERCIAL TAXES & ANR [SC]

Civil Appeal No. 2956 of 2007 with Civil Appeal No. 2318 of 2013 and Civil Appeal No. 7241 of 2016

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 05/09/2016]

Karnataka Sales Tax Act, 1957 – works contract- turnover tax- assessee sub-contracted works to subcontractor- value of sub-contracted works included in the total turnover of the assessee for turnover tax purposes- whether tenable- Held, No.

### Brief facts:

Same parties are entangled in these three appeals which arise out of the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the 'Karnataka Act'). Two appeals are preferred by the assessee, viz. Larsen & Toubro Ltd., and one appeal is filed by the Revenue, i.e. the Sales Tax Department of Karnataka.

The assessee sub-contracted works contract and the tax on the same was paid by the sub-contractor. The Department imposed turnover tax on the assessee including the value of the works contract sub-contracted. The contention of the assessee was that value of the contract given to sub-contractors should not be taxed again by including the same in the total turnover for the purpose of turnover tax.

**Decision:** Assessee's appeal allowed; Revenue's appeal dismissed.

### Reason:

The appellant/assessee, made a fervent plea for not including such payments made to the sub-contractor, as component of total turnover, because of the reason that the sales tax is payable on the transfer of property and the 'turnover' also meant aggregate amount for which goods are bought or sold, etc. Therefore, transfer of property in goods was the necessary concomitant in ascertaining the sale and, thus, in the process calculating the turnover/total turnover. It was submitted that there was no sale of goods involved in the execution of a works contract as in such contracts the property does not pass as movables. Tracing the history of works contract, the learned senior counsel submitted that in the case of *The State of Madras v. Gannon Dunkerley & Co. (Madras) Limited* AIR 1958 SC 560, while speaking of a building contract, this Court held that the property in goods involved in the execution of a works contract does not pass as movables but on the theory of accretion on the principle *quicquid plantatur solo, solo cedit*, i.e. whatever is attached to the soil, becomes part of it. He argued that this Court, in *Builders' Association of India & Ors. v. Union of India &*

Ors (1989) 2 SCC 645, reiterated that in a works contract property in goods passes out as movable but on the theory of accretion. It was further submitted that the property passes by accession just once which, by a fiction, is taxed as a sale. The Article also identifies the transferor and transferee effecting the deemed sale and deemed purchase. The taxable person is the contractor executing the works contract so that the main contractor, who assigns the work to another person to execute the work, cannot be a transferor, nor any property in goods vest in the main contractor, when the contract is executed by a sub-contractor.

Proceeding further, by taking the aforesaid line of argument, the learned senior counsel submitted that if the point of view of the Revenue is accepted, it would amount to double taxation inasmuch as sub-contractors were also registered dealers who had paid sales tax under the Karnataka Act and by including the payments made to them in the total turnover of the assessee, tax was sought to be levied on the same amount all over again. On the aforesaid premise, the learned senior counsel for the assessee submitted that precisely this argument in law has been accepted by this Court in the Andhra Pradesh judgment. He referred to the discussion contained in the said judgment *in extenso*.

The Revenue, *per contra*, heavily relied upon the reasoning given by the High Court in the judgment which has taken the view in favour of the Revenue. He submitted that one had to keep in mind the distinction between Section 5-B and Section 6-B of the Karnataka Act by pointing out that when it comes to levy of turnover tax, it speaks of 'total turnover', whereas tax payable under Section 5-B is on the 'taxable turnover'. He submitted that since we are concerned with the levy of tax under Section 6-B of the Karnataka Act, total turnover becomes relevant and, therefore, the value of the work entrusted to the sub-contractors is includible at the hands of the assessee. He further submitted that the High Court was right in pointing out that sales tax is leviable at a single point, whereas turnover tax is leviable at a multi-point, both at the hands of the main contractor and sub-contractor and, therefore, the question of double taxation does not arise.

After bestowing our due consideration to the respective submissions, we find that the position taken by the assessee has to prevail, which appears to be meritorious. This result follows even from the bare perusal of the Karnataka Act and Rules.

The question which is raised before us is whether the turnover of the sub-contractors (whose names are also given in the original writ petition) is to be added to the turnover of L&T. In other words, the question which we are required to answer is whether the goods employed by the sub-contractors occur in the form of a single deemed sale or multiple deemed sales. In our view, the principle of law in this regard is clarified by this Court in Builders' Assn. of India as under: (SCC p. 673, para 36)

"36 ... Ordinarily unless there is a contract to the contrary in the case of a works contract, the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building." (emphasis supplied by us)

As stated above, according to the Department, there are two deemed sales, one from the main contractor to the contractee and the other from sub-contractor(s) to the main contractor, in the event of the contractee not having any privity of contract with the sub-contractor(s). If one keeps in mind the above quoted observation of this Court in Builders' Assn. of India the position becomes clear, namely, that even if there is no privity of contract between the contractee and the sub-contractor, that would not do away with the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reasoning is based

on the principle of accretion of property in goods. It is subject to the contract to the contrary. Thus, in our view, in such a case, the work executed by a sub-contractor, results in a single transaction and not as multiple transactions. This reasoning is also borne out by Section 4(7) which refers to the value of goods at the time of incorporation in the works executed.

In our view, if the argument of the Department is to be accepted, it would result in plurality of deemed sales which would be contrary to Article 366(29-A) (b) of the Constitution as held by the impugned judgment of the High Court. Moreover, it may result in double taxation which may make the said 2005 Act vulnerable to challenge as violative of Articles 14, 19(1) (g) and 265 of the Constitution of India as held by the High Court in its impugned judgment."

This *raison d'être* shall apply, in full force, while answering the question even in the context of the Karnataka Act.

We, therefore, hold that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6-B of the Karnataka Act. As a consequence, the two appeals which are filed by the assessee are allowed and the appeal preferred by the Revenue is dismissed.

LW: 63:10:2016

NIMESH N. KAMPANI v. ASST. CIT, CIRCLE-4(2) MUMBAI  
[TAT-MUM]

I.T.A. No. 3316/Mum/2013

R. C. Sharma & Pawan Singh. [Decided on 16/06/2016]

Income tax Act- allowable expenditure- professional independent director- incurred legal expenditure in defending cases- whether allowable as business expenditure- Held, Yes.

### Brief facts:

The assessee debited an amount of Rs.55,65,938/- under the head "legal fees and related expenses". In respect of this expenditure, the assessee explained to the Assessing Officer that the assessee was Director on Board of many companies including on the Board of M/s. Nagarjuna Finance Ltd. This company M/s. Nagarjuna Finance Ltd. received fixed deposit from the public. This company was charged with default in repayment of fixed deposits and interest thereon. The assessee had been mentioned as one of the accused among several others for non-payment of these fixed deposits by M/s. Nagarjuna Finance Ltd. The Andhra Pradesh Government had filed suit against directors of M/s. Nagarjuna Finance Ltd. including against the assessee. To defend himself, the assessee had appointed various advocates to represent his case before various courts viz., District Court, High Court, Supreme Court. The appellant paid fees to the advocates and other expenses incurred. The details of such expenses were furnished by the assessee to the Assessing Officer. The assessee argued before the Assessing Officer that the expenditure was incurred to protect his business interest and, therefore, the same should be fully allowable u/s.37 (1) of the Act. As per A.O. the expenditure were personal in nature, he therefore disallowed the same. By the impugned order, the Id. CIT (A) confirmed the action of the A.O. against which the assessee is in further appeal before us.

Decision: Appeal allowed.

## Reason:

We have considered the rival contentions and found from the record that the assessee is merchant broker. During the year net profit of Rs.15.50 crores was offered to tax. Against of the income so offered the assessee has claimed legal fees and related expenditure of Rs.55,65,938/-, which was disallowed by the A.O. on the plea of personal expenses. From the record we found that that the expenditure is incurred by the assessee in his character as a professional and is not an expenditure which is personal in nature. The assessee has in his professional capacity been a director of various limited companies has earned professional fees for the services rendered to these companies. He was a director of Nagarjuna Finance Limited (NFL) from 14-12-1982 to 28-04-1999. The assessee has earned professional income during all the years, he was, a director of NFL.

The assessee serves as an Independent Director on the Board of several leading Indian Companies such as Apollo Tyres Limited, Britannia Industries Limited, Deepak Nitrite Limited and KSB Pumps Limited and also a member of various Governing Boards of Centre for Policy Research, Indian Institute of Capital Markets, CII, SEBI etc. He regularly gets sitting fees and commission from many of these Companies. The assessee was also an independent Director on the board of Nagarjuna Finance Limited. Nagarjuna Finance Limited had collected Fixed Deposits from the public. Nagarjuna Finance Limited was charged with default in repayment of fixed deposits and interest thereon. Mr. Nimesh Kampani has been mentioned as one of the accused among several others, for non-payment of these fixed deposits by Nagarjuna Finance Limited. The Andhra Pradesh Government had since filed suit against directors of Nagarjuna Finance Limited including Mr. Kampani. To defend himself, Mr. Kampani has appointed various advocates to represent his case before various courts viz, District Court, High Court of Andhra Pradesh, Supreme Court of India. As the expenditure is incurred to protect his business interest the same is required to be allowed u/s. 37(1) of the Act. Accordingly we direct the A.O. to allow legal expenses of Rs.40,72,750/-. In the result, the assessee's appeal is allowed in part.

on the neck of the bottle- confirmed as rules compliant by the Director, legal metrology- Inspector initiating prosecution proceedings against the company- whether tenable-Held, No.

## Brief facts:

The petitioner is engaged in the manufacture and distribution of packaged natural mineral water under the brand name of 'Qua'. It is claimed that the bottles distributed by the petitioner have labels affixed on the bottle, containing all the pre-printed information required to be provided, which is common to every bottle upon which such label is affixed, including the address of the manufacturer, nutritional information, volume of the liquid contained, etc. However, it is stated, that since the production batch numbers, date of manufacture and the retail price, which vary from one batch of the bottles to the next, or from time to time, is said to be directly printed on the bottle while on the manufacturing line. This is known as 'online printing' and is said to be a common practice followed by most reputed manufacturers of bottled water.

It then transpires, that the Indian Beverage Association is said to have made a representation, to the Director, Legal Metrology, seeking a clarification with respect to the display of the MRP on the neck or crown of the packaged drinking water. While bringing to his attention that the MRP is displayed by means of ink-jet coding machines installed at the plants. The Director confirmed that the display of MRP on the neck or crown of the bottle is rule compliant. However, the Inspector, Legal Metrology considered that the petitioner had violated the provisions of Section 18 of the Legal Metrology Act, 2009 (Hereinafter referred to as the 'LM Act', for brevity) read with Rules 2(h) and 8 of the Legal Metrology (Packaged Commodities) Rules, 2011 (Hereinafter referred to as the "LMPC Rules", for brevity). Prosecution proceedings were instituted against the Petitioner who is its director.

**Decision:** Petition allowed.

## Reason:

It is the case of the first respondent that in terms of Rule 4 read with Rule 6(1)(e) of the LMPC Rules, the label affixed on the package ought to contain the retail sale price of the package, which is admittedly not forthcoming and hence the alleged violation.

It is the case of the petitioner that Rule 2(h) defines "principal display panel", which in relation to a package means, the total surface area of the package and the information required to be furnished under the Rules, could be grouped together and given in one place or the pre-printed information could be grouped together and given in one place and on-line information grouped together in another place. And that every declaration to be made under the Rules should appear on the principal display panel, in terms of Rule 8.

Hence, it is contended that the retail sale price which is printed on the neck of the bottle, though not indicated on the label, is in consonance with the Rules and it could not be construed as a violation.

Rule 4, which provides for the regulation for pre-packing and sale of commodities in packaged form - lays down that, no person shall permit any pre-packed commodity to be sold, distributed or delivered 'unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under the Rules.' (emphasis supplied). The words 'or on a label' would be in consonance with Rule 2 (h). Rule 8(2) of the said Rules is only an enabling provision for soft drinks, ready to serve fruit beverages or the like, packed in returnable bottles. This enabling provision cannot be read as a restrictive provision, especially when Rule 8(1) allows declarations



LW: 64:10:2016

DANONE NARANG BEVERAGES PVT LTD v. STATE OF KARNATAKA [KANT]

Writ Petition No. 13060 of 2013 (GM-RES)

Anand Byrareddy, J. [Decided on 30/08/2016]

Legal Metrology Act read with Packaged Commodities Rules- MRP given

to be made on the entire principal display panel.

Even assuming that there was a violation by the petitioner company in not having printed the retail sale price on the label of the package, whether the goods could be seized in the premises of the petitioner company, would have to be answered in the negative in view of the Explanation to Rule-4.

Further, it is noticed that the allegation is against a company. A criminal complaint against an officer of the company without arraigning the company as an accused is not maintainable. (See: *Aneeta Hada v. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661) The complaint would also have to state whether the officer of the company concerned was either in charge of or was responsible for the day to day management and conduct of business of the company. A mere statement that a person is an officer of the company, against which certain allegations are made, is insufficient to make the officer liable, in the absence of specific allegations in his role in the management of the company. (See: *PepsiCo India Holdings (P) Ltd. v. Food Inspector*, (2011) 1 SCC 176). In the light of the above, the proceedings purported to have been initiated against the petitioner - company is misconceived and the consequent seizure of the goods of the petitioner is clearly illegal.

The department of the first respondent not having woken up to the situation even after a clarification was issued by the Director, Legal Metrology, New Delhi, indicates a callous and cavalier attitude. Consequent upon the seizure, the entire goods having lost their shelf life is a loss directly attributable to the Legal Metrology Department. The Court of the Magistrate having entertained the criminal proceedings in the face of the glaring circumstance that the company was not made a party to the proceeding, when the principal accused is in fact the company, rendered the proceedings bad in law.

Accordingly, the writ petition is allowed. The impugned order at Annexure - A is set aside. The complaint and proceedings in case no. CC 829/2012, on the file of the Court of Metropolitan Magistrate, Traffic Court- I are quashed.

The Department of Legal Metrology, Government of Karnataka, shall pay costs in a sum of Rs.15,000/- to the petitioner - company.

**LW: 65:10:2016**

HARIT POLYTECH PVT LTD v. COLT CABLES PRIVATE LTD & ANR [DEL]

FAO 48/2016

Sunil Gaur, J. [Decided on 22/09/2016]

Civil Procedure Code, 1908-Territorial jurisdiction- invoice specifies "subject to Jaipur jurisdiction"- payments to be made in Delhi- suit filed in Delhi- whether Delhi courts have jurisdiction- Held, Yes.

### Brief facts:

Appellant's suit for recovery of Rs.7,99,143.20/- is disposed of by trial court. While directing that the plaint be returned to appellant-plaintiff for presentation before the competent court of territorial jurisdiction. While deciding the jurisdictional issue, trial court has also decided the main issue regarding the entitlement to the suit amount. It has been held by trial court in the impugned order that appellant-plaintiff is entitled to recover the suit amount as the stand of appellant-plaintiff is un-rebutted on account of respondent-defendant failing to appear before trial court to cross-examine appellant-plaintiff's witness. The nature of transaction between the

parties is noticed by trial court in the impugned order. It would suffice to note that the invoice in question contains jurisdictional clause, which read "subject to Jaipur jurisdiction".

**Decision:** Appeal allowed.

### Reason:

It is not in dispute that appellant-plaintiff, though stationed in Delhi and has its banker in Delhi, but had supplied the goods from its registered office at Jaipur to respondent at Mumbai and that respondent-defendant had made the last payment to appellant-plaintiff at Delhi.

Upon hearing the submissions advanced by both sides and on perusal of impugned order, the decisions cited and the material on record, I find that there is no challenge to the finding returned by trial court on the main issue of appellant-plaintiff's entitlement to the suit amount. The only challenge is to finding on the jurisdictional issue. A bare perusal of pleadings of the parties and the evidence led reveals that important cause of action arose in Delhi as payments in respect of transaction in question were received in Delhi. Supreme Court in *R.S. D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.*, AIR 1993 SC 2094 has reiterated that since the jurisdiction of other courts is not specifically ousted, therefore, the court where the payment was received would have the territorial jurisdiction to entertain the suit.

On the territorial jurisdictional issue, the apt observations of Supreme Court in *A. B. C. Laminart Pvt. Ltd. & Anr. v. A. P. Agencies, Salem* AIR 1989 SC 1239 was that "Part of cause of action arises where money is expressly or impliedly payable under a contract."

In the considered opinion of this Court, an important part of cause of action arose within the territorial jurisdiction of Delhi Courts and so, trial court has erred in solely relying upon the jurisdictional clause in the Invoice although it did not oust the jurisdiction of the other courts. Thus, the findings of the trial court in impugned order on jurisdictional issue are hereby set aside and it is held that Delhi courts have the territorial jurisdiction to entertain the suit. The jurisdictional issue is accordingly answered in favour of appellant-plaintiff and against respondent- defendant.

Since the findings on the main issue of appellant's entitlement to the suit amount remain unrebutted, therefore, in view of the aforementioned finding on jurisdictional issue No.2, appellant/plaintiff's suit of Rs.7,99,143.20/- is hereby decreed with costs and with interest at the rate of 9% per annum from the date of institution of the suit till realization.

While maintaining the finding on issue No.1 and in view of above finding on issue No.2, appellant's suit is accordingly decreed.

**LW: 66:10:2016**

THE CHANCELLOR, MASTERS & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS v. RAMESHWARI PHOTOCOPY SERVICES & ANR [DEL]

CS (OS) 2439/2012

Rajiv Sahai Endlaw, J. [Decided on 16/09/2016]

Copyrights Act, - infringement of copy right- photocopying of portions of book for preparation of its course material by university- allowing photocopying the same in mass scale to distribute the same to students through contractor- whether results in infringement of copyright- Held, No.



## Brief facts:

The five plaintiffs, namely i) Oxford University Press, ii) Cambridge University Press, United Kingdom (UK), iii) Cambridge University Press India Pvt. Ltd., iv) Taylor & Francis Group, U.K. and, v) Taylor & Francis Books India Pvt. Ltd., being the publishers, including of textbooks, instituted this suit for the relief of permanent injunction restraining the two defendants namely Rameshwari Photocopy Service (carrying on business from Delhi School of Economic (DSE), University of Delhi) and the University of Delhi from infringing the copyright of the plaintiffs in their publications by photocopying, reproduction and distribution of copies of plaintiffs' publications on a large scale and circulating the same and by sale of unauthorised compilations of substantial extracts from the plaintiffs' publications by compiling them into course packs / anthologies for sale.

The plaintiffs, in the plaint, have given particulars of at least four course packs being so sold containing photocopies of portions of plaintiffs' publication varying from 6 to 65 pages. It is further the case of the plaintiffs that the said course packs sold by the defendant No.1 are based on syllabi issued by the defendant No.2 University for its students and that the faculty teaching at the defendant No.2 University is directly encouraging and recommending the students to purchase these course packs instead of legitimate copies of plaintiffs' publications. It is yet further the case of the plaintiffs that the libraries of the defendant No.2 University are issuing books published by the plaintiffs stocked in the said libraries to the defendant No.1 for photocopying to prepare the said course packs.

Decision: Suit dismissed.

## Reason:

Applying the tests as aforesaid laid down by the Courts of (i) integral part of continuous flow; (ii) connected relation; (iii) incidental; (iv) causal relationship; (v) during (in the course of time, as time goes by); (vi) while doing; (vii) continuous progress from one point to the next in time and space; and, (viii) in the path in which anything moves, it has to be held that the words "in the course of instruction" within the meaning of Section 52(1)(i) supra would include reproduction of any work while the process of imparting instruction by the teacher and receiving instruction by the pupil continues i.e. during the entire academic session for which the pupil is under the tutelage of the teacher and that imparting and receiving of instruction is not limited to personal interface between teacher and pupil but is a process commencing from the teacher reading herself/himself for imparting instruction, setting syllabus, prescribing text books, readings and ensuring, whether by interface in classroom/tutorials or otherwise by holding tests from time to time or clarifying doubts of students, that the pupil stands instructed in what he/she has approached the teacher to learn. Similarly the words "in the course of instruction", even if the word "instruction" have to be given the same meaning as "lecture", have to include within their ambit the prescription of syllabus the preparation of which both the teacher and the pupil are required to do before the lecture and the studies which the pupils are to do post lecture and so that the teachers can reproduce the work as part of the question and the pupils can answer the questions by reproducing the work, in an examination. Resultantly, reproduction of any copyrighted work by the teacher for the purpose of imparting instruction to the pupil as prescribed in the syllabus during the academic year would be within the meaning of Section 52 (1)(i) of the Act.

The matter can be looked at from another angle as well. Though I have held Section 52(1)(a) to be not applicable to the action of the

defendant no.2 University of making photocopies of copyrighted works but the issuance by the defendant no.2 University of the books purchased by it and kept in its library to the students and reproduction thereof by the students for the purposes of their private or personal use, whether by way of photocopying or by way of copying the same by way of hand would indeed make the action of the student a fair dealing therewith and not constitute infringement of copyright. The counsel for the plaintiffs also on enquiry did not argue so. I have wondered that if the action of each of the students of having the book issued from the library of defendant No.2 University and copying pages thereof, whether by hand or by photocopy, is not infringement, whether the action of the defendant no.2 University impugned in this suit, guided by the reason of limited number of each book available in its library, the limited number of days of the academic session, large number of students requiring the said book, the fear of the costly precious books being damaged on being subjected to repeated photocopying, can be said to be infringement; particularly when the result/effect of both actions is the same. The answer, according to me, has to be in the negative.

Copyright, especially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public. For this reason only, Section 14(a)(ii) as aforesaid, applies the principle of "exhaustion" to literary works and which, this court in Warner Bros. Entertainment Inc. Vs. Mr. Santosh V.G. MANU/DE/0406/2009 has held, to be not applicable to copyright in an artistic work or in a sound recording or in a cinematographic film. Once it is found that the doctrine of exhaustion applies to literary work as the works with which we are concerned are, it has but to be held that it is permissible for the defendant No.2 University to on purchasing book(s) and stocking the same in its library, issue the same to different students each day or even several times in a day. It is not the case of the plaintiffs that the said students once have so got the books issued would not be entitled to, instead of laboriously copying the contents of the book or taking notes therefrom, photocopy the relevant pages thereof, so that they do not need the book again.

I thus conclude that the action of the defendant no.2 University of making a master photocopy of the relevant portions (prescribed in syllabus) of the books of the plaintiffs purchased by the defendant no.2 University and kept in its library and making further photocopies out of the said master copy and distributing the same to the students does not constitute infringement of copyright in the said books under the Copyright Act.

The next question is, whether the action of the defendant no.2 University of supplying the master copy to the defendant no.1, granting licence to the defendant no.1 to install photocopiers in the premises of the defendant no.2 University, allowing the defendant no.1 to supply photocopies made of the said master copy to the students, permitting the defendant no.1 to charge therefor and also requiring the defendant no.1 to photocopy up to 3000 pages per month free of cost for the defendant no.2 University and whether the action of the defendant no.1 of preparation of such course packs and supplying the same to the students for charge, constitutes 'publication' within the meaning of Section 52(1)(h) or would tantamount to infringement by the defendant no.1 or the defendant no.2 University of the copyright of in the said books. In my opinion, it would not.

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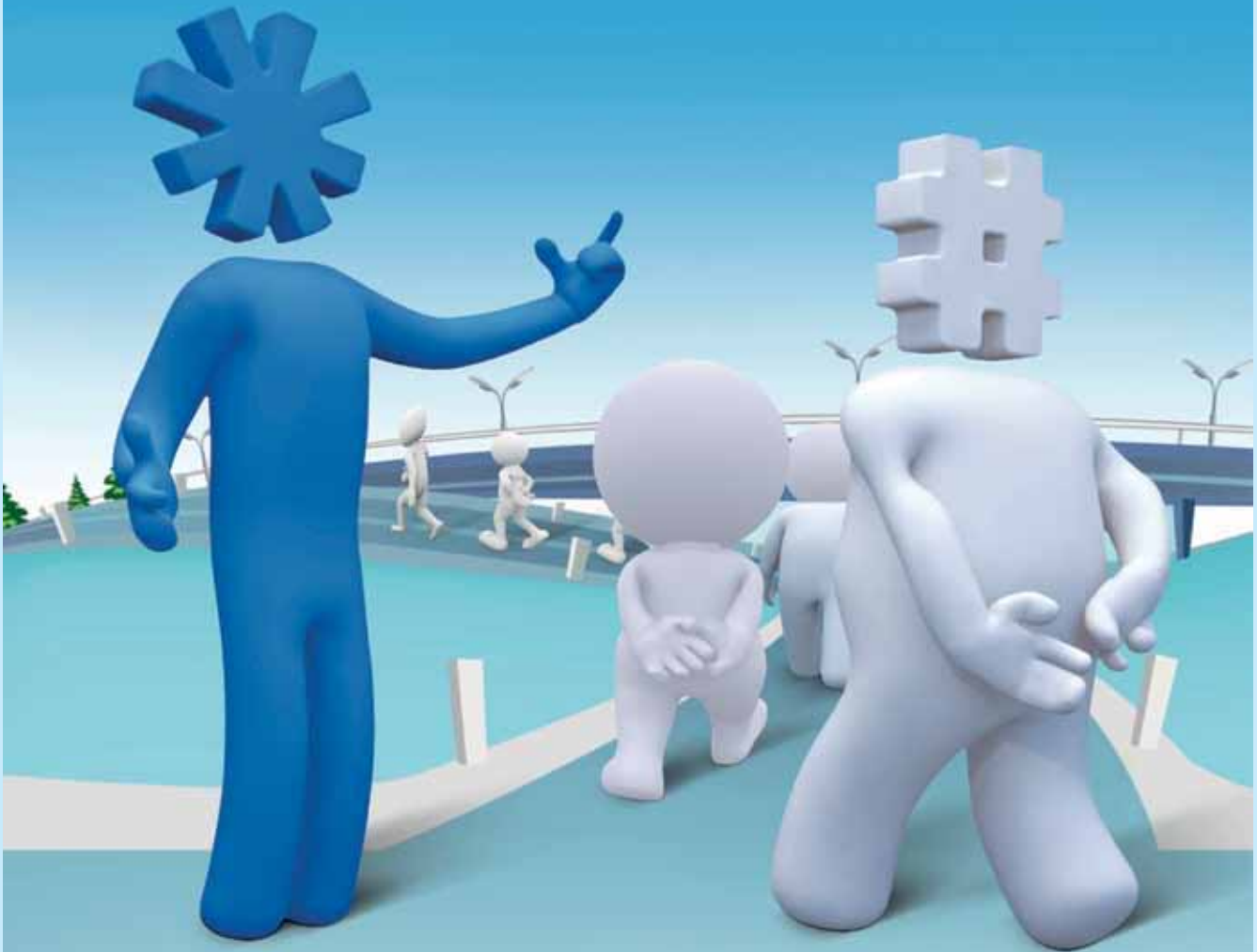
## FROM THE GOVERNMENT



- COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2016
- AMENDMENTS TO SCHEDULE V OF THE COMPANIES ACT, 2013
- COMPANIES (MEDIATION AND CONCILIATION) RULES, 2016
- DATE OF COMING INTO FORCE OF CERTAIN SECTIONS OF THE COMPANIES ACT, 2013
- RELAXATION OF ADDITIONAL FEES FOR FILING FORM IEPF-1
- DATE OF COMING INTO FORCE OF CERTAIN SECTIONS OF THE COMPANIES ACT, 2013
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# Corporate Laws

## 01

### Companies (Management and Administration) Amendment Rules, 2016.

[Issued by the Ministry of Corporate Affairs vide Folio No: [F. 1/34/2013CL-V-Part-I, dated 23.09.2016.]

In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby make the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Management and Administration) Amendment Rules, 2016.  
(2) They shall come into force on the date of their publication in the official Gazette.
2. In the Companies (Management and Administration) Rules, 2014 (hereafter referred to as principal rules), in rule 3,-  
(a) in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:-  
"Provided that in the case of a company existing on the commencement of the Act, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No. MGT-1 and in case additional information, required as per provisions of the Act and these rules, is provided by the members, such information may also be added in the register as and when provided."  
(b) in sub-rule (2), for the proviso, the following proviso shall be substituted, namely:-  
"Provided that in the case of a company existing on the date of commencement of the Act, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in form No. MGT-1 and in case additional information, required as per provisions of the Act and these rules, is provided by the members, such information may also be added in the register as and when provided."
3. In the principal rules, in rule 9,-  
(a) in sub-rule (1), the words "in duplicate" at both places where they occur, shall be omitted.  
(b) in sub-rule (2), the words "in duplicate", at both places where they occur, shall be omitted.
4. In the principal rules, for rule 13 the following rule shall be substituted, namely:-  
"13. Every listed company shall file with the Registrar, a return in **Form No. MGT.10**, with respect to changes in the shareholding position of

promoters and top ten shareholders of the company, in each case, representing increase or decrease by two percent or more of the paid-up share capital of the company, within fifteen days of such change."

5. In the principal rules, in rule 17, in sub-section (2), in the Explanation, for the words "on working day", the words "on any day except national holiday" shall be substituted.
6. In the principal rules, in rule 20, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means:

Provided that a *Nidhi*, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means:

Explanation.- For the purpose of this sub-rule, "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 such rules as are prescribed by the Central Government for regulation of such class of companies."

7. In the principal rules, in rule 22, sub-rule (7) and sub-rule (14) shall be omitted.
8. In the principal rules, in rule 25, in sub-rule (1), in clause (e), the words "or such other place as may be approved by the Board" shall be omitted.
9. In the principal rules, for Form MGT-6, the following Form, shall be substituted, namely:-

AMARDEEP SINGH BHATIA

Joint Secretary

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## 02

### Amendments to Schedule V of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide Folio No: [F. No. 1/5/2013 CL-V, Published in the G.O.I., Part-II Section-3(ii) dated 12.09.2016.]

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

2. In Schedule V of the Companies Act, 2013,-  
(a) in Part I, in Appointments,-  
(i) in para (a), for sub-paragraph (vi), the following sub-paragraph shall be substituted, namely:-  
"(vi) the Companies Act, 2013 (18 of 2013) or any previous company law"  
(b) in part 11, for section II, the following section shall be substituted, namely:-

“ Section II

**Remuneration payable by companies having no profit or inadequate profit without Central Government approval**

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:-

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	60 lakhs
(ii) 5 crores and above but less than 100 crores	84 lakhs
(iii) 100 crores and above but less than 250 crores	120 lakhs
(iv) 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores.

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution,

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

(B) in case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company-, Provided further that the limits specified under items (A) and (B) of this section shall apply, if-

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
- (ii) the company has not committed any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person and in case of a default, the company obtains prior approval from secured creditors for the proposed remuneration and the fact of such prior approval having been obtained is mentioned in the explanatory statement to the notice convening the general meeting;
- (iii) an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per the limits laid down in item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting

of the company for a period not exceeding three years.

(iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:-

- I. General information:
  - (1) Nature of industry
  - (2) Date or expected date of commencement of commercial production
  - (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
  - (4) Financial performance based on given indicators
  - (5) Foreign investments or collaborations, if any.
- II. Information about the appointee:
  - (1) Background details
  - (2) Past remuneration
  - (3) Recognition or awards
  - (4) Job profile and his suitability
  - (5) Remuneration proposed
  - (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
  - (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.
- III. Other information:
  - (1) Reasons of loss or inadequate profits
  - (2) Steps taken or proposed to be taken for improvement
  - (3) Expected increase in productivity and profits in measurable terms
- IV. Disclosures  
The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:
  - (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
  - (ii) details of fixed component and performance linked incentives along with the performance criteria;
  - (iii) service contracts, notice period, severance fees; and
  - (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Explanation: For the purposes of Section 11 of this part, "Statutory Structure" means any entity which is entitled to hold shares in any company formed under any statute. "

3. This notification shall come into force from the date of its publication in the official gazette.

AMARDEEP SINGH BHATIA  
Joint. Secretary

## 03 Companies (Mediation and Conciliation) Rules, 2016

[Issued by the Ministry of Corporate Affairs vide [F. No.1/36/2013-CL. V, dated 09.09.2016.] Published in the (G.O.I Extraordinary, Part-II Section-3(i) dated 09.09.2016)

In exercise of the powers conferred under section 442 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby

makes the following rules, namely :

1. **Short Title and Commencement .-**(1) These rules may be called the Companies (Mediation and Conciliation) Rules, 2016.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions.-** (1) In these rules, unless the context otherwise requires,-  
(a) "Act" means the Companies Act, 2013 (18 of 2013);  
(b) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director ;  
(c) "Annexure" means the annexure attached to these rules ;  
(d) "Form" or "e-Form" means a form set forth in the Annexure which shall be used for the matter to which it relates ;  
(e) "Panel" means the Mediation and Conciliation Panel.  
(2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or the rules.
3. **Panel of mediators or conciliators .-** (1) Regional Director shall prepare a panel of experts willing and eligible to be appointed as mediators or conciliators in the respective regions and such panel shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be notified by the Central Government.  
(2) The Regional Director may invite applications from persons interested in getting empanelled as mediator or conciliator and possessing the requisite qualifications specified in Rule 4.  
(3) A person who intends to get empanelled as mediator or conciliator and possesses the requisite qualifications shall apply to the Regional Director in Form MDC-1.  
(4) Application received under sub-rule (3), if rejected by the Regional Director, the Regional Director shall record the reasons in writing for the same.  
(5) The Regional Director shall invite applications from persons interested in getting empanelled as mediator or conciliator every year during the month of February and update the Panel which shall be effective from 1st of April of every year:  
Provided that for Financial Year 2016-17, the Regional Director may call for applications from the persons interested in getting empanelled as mediator or conciliator, within 60 days from the date of publication of these rules and prepare the panel for the current financial year within a period of 30 days.
4. **Qualifications for empanelment.-** A person shall not be qualified for being empanelled as mediator or conciliator unless he-  
(a) has been a Judge of the Supreme Court of India ; or  
(b) has been a Judge of a High Court ; or  
(c) has been a District and Sessions Judge ; or  
(d) has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force ; or  
(e) has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience ; or  
(f) is a qualified legal practitioner for not less than ten years ; or  
(g) is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary ; or  
(h) has been a Member or President of any State Consumer Forum; or  
(i) is an expert in mediation or conciliation who has successfully

undergone training in mediation or conciliation.

5. **Disqualifications for empanelment.-** A person shall be disqualified for being empanelled as mediator or conciliator, if he -  
(a) is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending ;  
(b) has been convicted for an offence which, in the opinion of the Central Government, involves moral turpitude ;  
(c) has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government ;  
(d) has been punished in any disciplinary proceeding, by the appropriate disciplinary authority ; or  
(e) has, in the opinion of the Central Government, such financial or other interest in the subject matter of dispute or is related to any of the parties, as is likely to affect prejudicially the discharge by him of his functions as a mediator or conciliator.
6. **Application for appointment of Mediator or Conciliator and his appointment -**  
(1) (a) Parties concerned may agree on the name of the sole mediator or conciliator for mediation or conciliation between them;  
(b) Where, there are two or more sets of parties and are unable to agree on a sole mediator or conciliator, the Central Government or the Tribunal or the Appellate Tribunal may ask each party to nominate the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal may appoint the mediator or conciliator, as may be deemed necessary for mediation or conciliation between the parties.  
(2) The application to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, for referring the matter pertaining to any proceeding pending before it for mediation or conciliation shall be in Form MDC-2 and shall be accompanied with a fee of one thousand rupees.  
(3) On receipt of an application under sub-rule (2), the Central Government or the Tribunal or the Appellate Tribunal shall appoint one or more experts from the panel.  
(4) The Central Government or the Tribunal or the Appellate Tribunal, as the case may be, before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel, if it deems fit in the interest of parties.
7. **Deletion from the Panel .-** The Regional Director may by recording reasons in writing and after giving him an opportunity of being heard, remove any person from the Panel.
8. **Withdrawing name from Panel.-** Any person who intends to withdraw his name from the Mediation and Conciliation Panel may make an application to the Regional Director indicating the reasons for such withdrawal and the Regional Director shall take a decision on such application within fifteen days of receipt of such application and update the Panel accordingly.
9. **Duty of mediator or conciliator to disclose certain facts.-** (1) It shall be the duty of a mediator or conciliator to disclose to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, about any circumstances which may give rise to a reasonable doubt as to his independence or impartiality in carrying out his functions.  
(2) Every mediator or conciliator shall from the time of his appointment and throughout continuance of the mediation or conciliation proceedings, without any delay, disclose to the parties about

existence of any circumstance referred to in sub-rule (1).

- 10. Withdrawal of appointment .-** The Central Government or the Tribunal or the Appellate Tribunal as the case may be, upon receiving any disclosure furnished by the mediator or conciliator under rule 9, or after receiving any other information from a party or other person in any proceeding which is pending and on being satisfied that such disclosures or information has raised a reasonable doubt as to the independence or impartiality of such mediator or conciliator, may withdraw his appointment and in his place, appoint any other mediator or conciliator in that proceeding :  
Provided that the mediator or conciliator may, offer to withdraw himself from such proceeding and request the Central Government or the Tribunal or the Appellate Tribunal as the case may be to appoint any other mediator or conciliator.
- 11. Procedure for disposal of matters.** (1) For the purposes of mediation and conciliation, the mediator or conciliator shall follow the following procedure, namely :-
- (i) he shall fix, in consultation with the parties, the dates and the time of each mediation or conciliation session, where all parties have to be present ;
  - (ii) he shall hold the mediation or conciliation at the place decided by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, or such other place where the parties and the mediator or conciliator jointly agree ;
  - (iii) he may conduct joint or separate meetings with the parties ;
  - (iv) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite party or parties:
- Provided that in suitable or appropriate cases, the above mentioned period may be reduced at the discretion of the mediator or conciliator;
- (v) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.
- (2) Where there is more than one mediator or conciliator, the mediator or conciliators may first concur with the party that agreed to nominate him and thereafter interact with the other mediator or conciliator, with a view to resolve the dispute.
- 12. Mediator or Conciliator not bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 .-** The mediator or conciliator shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 while disposing the matter, but shall be guided by the principles of fairness and natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.
- 13. Representation of parties.-** The parties shall ordinarily be present personally or through an authorised attorney at the sessions or meetings notified by the mediator or conciliator:  
Provided that the parties may be represented by an authorised person or counsel with the permission of the mediator or conciliator in such sessions or meetings and the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall be entitled to direct or ensure the presence of any party to appear in person:  
Provided further that the party not residing in India may, with the permission of the mediator or conciliator, be represented by his or her authorised representative at the sessions or meetings.
- 14. Consequences of non-attendance of parties at sessions or meetings on due dates.-** If a party fails to attend a session or a meeting fixed by the mediator or conciliator deliberately or wilfully for two consecutive times, the mediation or conciliation shall be deemed to have failed and mediator or conciliator shall report the matter to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- 15. Administrative assistance.-** In order to facilitate the conduct of mediation or conciliation proceedings, the mediator or conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.
- 16. Offer of settlement by parties.-** (1) Any party to the proceeding may, "without prejudice" offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator or conciliator.  
(2) Any party to the proceeding may make a, "with prejudice" offer to the other party at any stage of the proceedings with a notice to the mediator or conciliator.
- 17. Role of Mediator or Conciliator.-** The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasising that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties :  
Provided that on consent of both the parties, the mediator or conciliator may impose such terms and conditions on the parties for early settlement of the dispute as he may deem fit.
- 18. Parties alone responsible for taking decision.-** The parties shall be made to understand that the mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement nor the mediator or conciliator give any assurance that the mediation or conciliation shall result in a settlement and the mediator or conciliator shall not impose any decision on the parties.
- 19. Time limit for completion of mediation or conciliation.-** (1) The process for any mediation or conciliation under these rules shall be completed within a period of three months from the date of appointment of expert or experts from the Panel.  
(2) On the expiry of three months from the date of appointment of expert from the Panel, the mediation or conciliation process shall stand terminated.  
(3) In case of mediation or conciliation in relation to any proceeding before Tribunal or Appellate Tribunal which could not be completed within three months, the Tribunal or as the case may be, the Appellate Tribunal, may on the application of mediator or conciliator or any of the party to the proceedings, extend the period for mediation or conciliation by such period not exceeding three months.
- 20. Parties to act in good faith.-** All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute.



- 21. Confidentiality, disclosure and inadmissibility of information .-** (1) When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate :
- Provided that when a party gives information to the mediator or conciliator subject to a specific condition that the information may be kept confidential, the mediator or conciliator shall not disclose that information to the other party.
- (2) The receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation before the Central Government or the Tribunal or the Appellate Tribunal or as the case may be, or any other authority or any person or group of persons.
- (3) The parties shall maintain confidentiality in respect of events that transpired during the mediation and conciliation and shall not rely on or introduce the said information in other proceedings as to-
- (i) views expressed by a party in the course of the mediation or conciliation proceedings ;
  - (ii) documents obtained during the mediation or conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator or conciliator.
  - (iii) proposals made or views expressed by the mediator or conciliator ;
  - (iv) admission made by a party in the course of mediation or conciliation proceedings.
- (4) There shall be no audio or video recording of the mediation or conciliation proceedings.
- (5) No statement of parties or the witnesses shall be recorded by the mediator or conciliator.
- 22. Privacy.-** The mediation or conciliation sessions or meetings shall be conducted in privacy where the persons as mentioned in rule 13 shall be entitled to represent parties but other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.
- 23. Protection of action taken in good faith .-** No mediator or conciliator shall be held liable for anything, which is done or omitted to be done by him, in good faith during the mediation or conciliation proceedings for civil or criminal action nor shall be summoned by any party to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, to testify regarding information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation or conciliation proceedings.
- 24. Communication between mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal.-** In order to preserve the confidence of parties in the Central Government or the Tribunal or the Appellate Tribunal as the case may be and the neutrality of the mediator or conciliator, there shall be no communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in the subject matter : Provided that, if any communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is necessary, it shall be in writing and copies of the same shall be given to the parties or the authorised representative :
- Provided further that communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall be limited to communication by the mediator or conciliator:
- (i) about the failure of the party to attend ;
  - (ii) about the consent of the parties ;
  - (iii) about his assessment that the case is not suited for settlement through the mediation or conciliation;
  - (iv) about settlement of dispute between the parties.
- 25. Settlement agreement .-** (1) Where an agreement is reached between the parties in regard to all the issues or some of the issues in the proceeding, the same shall be reduced to writing and signed by the parties and if any counsel has represented the parties, the conciliator or mediator may also obtain the signature of such counsel on the settlement agreement.
- (2) The agreement of the parties so signed shall be submitted to the mediator or conciliator who shall, with a covering letter signed by him, forward the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- (3) Where no agreement is reached at between the parties, before the time limit specified in rule 19, or where the mediator or conciliator is of the view that no settlement is possible, he shall report the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in writing.
- 26. Fixing date for recording settlement and passing order .-** (1) The Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall fix a date of hearing normally within fourteen days from the date of receipt of the report of the mediator or conciliator under rule 25 and on such date of hearing, if the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is satisfied that the parties have settled their dispute, it shall pass an order in accordance with terms thereof.
- (2) If the settlement disposes of only certain issues arising in the proceeding, on the basis of which any order is passed as stated in sub-rule (1), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall proceed further to decide the remaining issues.
- 27. Expenses of the mediation and conciliation.-** (1) At the time of referring the matter to the mediation or conciliation, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, may fix the fee of the mediator or conciliator and as far as possible, a consolidated sum may be fixed rather than for each session or meeting.
- (2) The expense of the mediation or conciliation including the fee of the mediator or conciliator, costs of administrative assistance and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- (3) Each party shall bear the costs for production of witnesses on his side including experts or for production of documents.
- (4) The mediator or conciliator may, before the commencement of the mediation or conciliation, direct the parties to deposit equal share of the probable costs of the mediation or conciliation including the fees to be paid to the mediator or conciliator.
- (5) If any party or parties do not pay the amount referred to sub-rule

(4), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall on the application of the mediator or conciliator, or any party, issue appropriate directions to the concerned parties.

(6) The mediation or conciliation shall commence only on the deposit of amount referred to in sub-rule (4) and in case amount is not paid before such commencement, the mediation or conciliation shall be deemed to have terminated.

**28. Ethics to be followed by Mediator or Conciliator.-** The mediator or conciliator shall-

- (a) follow and observe the rules strictly and with due diligence ;
- (b) not carry on any activity or conduct which shall reasonably be considered as conduct unbecoming of a mediator or conciliator ;
- (c) uphold the integrity and fairness of the mediation or conciliation process;
- (d) ensure that the parties involved in the mediation or conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process ;
- (e) satisfy himself or herself that he or she is qualified to undertake and complete the assignment in a professional manner ;
- (f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias ;
- (g) avoid, while communicating with the parties, any impropriety or appearance of impropriety ;
- (h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator or conciliator ;
- (i) conduct all proceedings related to the resolutions of a dispute, in accordance with the relevant applicable law ;
- (j) recognise that the mediation or conciliation is based on principles of self-determination by the parties and that the mediation or conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement ; and
- (k) maintain the reasonable expectations of the parties as to confidentiality and refrain from promises or guarantees of results.

Provided that if any party finds conduct of mediator or conciliator violative of ethics laid down in this rule, the party may immediately bring it to the notice of the Regional Director.

**29. Resort to arbitral or judicial proceedings .—**The parties shall not initiate, during the mediation or conciliation under these rules, any arbitral or judicial proceedings in respect of a matter that is the subject-matter of the mediation or conciliation, except that a party may initiate arbitral or Judicial proceedings, where, in his, opinion, such proceedings are necessary for protecting his rights.

**30. Matters not to be referred to the mediation or conciliation.—**The following matters shall not be referred to mediation or conciliation, namely :—

- (a) the matters relating to proceedings in respect of inspection or investigation under Chapter XIV of the Act; or the matters which relate to defaults or offences for which applications for compounding have been made by one or more parties.
- (b) cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc.
- (c) cases involving prosecution for criminal and non-compoundable offences.
- (d) cases which involve public interest or interest of numerous persons who are not parties before the Central Government or the Tribunal or the Appellate Tribunal as the case may be.

**FORM MDC-1**

[See rule 3(3) of the Companies (Mediation and Conciliation) Rules, 2016]  
Application for Empanelment of Mediator or Conciliator on the Panel

To  
The Regional Director \_\_\_\_\_

I ..... S/o or D/o or W/o\* ..... resident of

..... (address) am hereby pleased to offer my services as Mediator or Conciliator so as to take up any assignment or matters referred by the Central Government at the places furnished hereunder:

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_ 4. \_\_\_\_\_

I possess requisite qualifications and experience in the following fields for the past \_\_\_\_ years. In this regard, my resume or an illustrative memoranda as to my qualifications, experience, notable achievements with relevant proofs and declaration are enclosed hereto in two sets duly attested.

Area of Experience in brief :

\_\_\_\_\_  
\_\_\_\_\_

I shall abide by the Companies (Mediation and Conciliation) Rules, 2016 and such other relevant rules or Code of Conduct or Guidelines as may be specified from time to time.

I state that upon the receipt of the intimation of offer of empanelment, the necessary documentation shall also be executed.

I request you to consider my application for empanelment in the Panel.

Place :

Dated :

Encl :

(Seal)

\*Strike off whichever is not applicable.

Signature

**FORM MDC-2**

[See rule 6(2) of the Companies (Mediation and Conciliation) Rules, 2016]  
Application for referring the matter to the Panel

To  
The (Designated Officer)

The Central Government/Tribunal/Appellate Tribunal.

I ..... S/o or D/o or W/o\* ..... resident of

..... (address) being a party in the proceeding before Central Government/Tribunal/Appellate Tribunal under section \_\_\_\_\_ of the Act bearing reference number \_\_\_\_\_ (if any) hereby apply for referring the matter to the Mediation and Conciliation Panel.

The requisite fee has been paid vide ..... (details of fees paid).

Place :

Dated :

SIGNATURE

\* Strike off whichever is not applicable

AMARDEEP SINGH BHATIA  
Joint. Secretary

## 04 Date of coming into force of certain sections of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide F. No. A-45011/14/2016-Ad-IV, Published in the G.O.I. Extraordinary, Part-II, Section-3(ii), dated 09.09.2016.]

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints 9th September, 2016 as the date on which the provisions of section 227, clause (b) of sub-section (1) of section 242, clauses (c) and (g) of sub-section (2) of section 242, section 246 and sections 337 to 341 (to the extent of their applicability for section 246), of the said Act shall come into force.

AMARDEEP SINGH BHATIA

Joint. Secretary

Note: Schedule V of the Companies Act, 2013 came into force with effect from the 1st April, 2014.

## 05 Relaxation of additional fees for filing Form IEPF-1

[Issued by the Ministry of Corporate Affairs vide General Circular No 10/2016, dated 07.09.2016.]

1. The Ministry had deployed the V2R2 version of MCA21 on 28th March, 2016. Consequently, the Form 1- INV as prescribed under the Companies Act, 1956 was not available for filing on the MCA21 portal since 25th March, 2016. In view of this and deployment of the new Form IEPF-1 (which replaces earlier Form 1-INV) after the notification of Investor Education and Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016 [IEPF (AATR) Rules] with effect from 7th September, 2016, it is clarified that companies that have not filed the requisite information in Form 1INV can now file the information in Form IEPF-1. Further, as a onetime measure, for companies with due date for filing of the form 1- INV falling between the period 25th March 2016 to 6th September, 2016, the companies may file the form IEPF- 1 without additional fees on or before 06.10.2016.
2. This Issues with the approval of the Competent Authority.

Monika Gupta

Deputy Director

## 06 Date of coming into force of certain sections of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide Folio No: F. No. 5/27/2013-IEPF (Part), dated 05.09.2016.]

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints

7th September, 2016 as the date on which the provisions of section 124, sub-sections (1) to (4), (6) [with respect to the manner of administration of the Investor Education and Protection Fund] and (8) to (11) of section 125 of the said Act shall come into force.

AMARDEEP SINGH BHATIA

Joint. Secretary

### Government of India Ministry of Finance Department of Economic Affairs

#### Press Release on the Report of the Committee to draft Code on Resolution of Financial Firms

The Finance Minister in Para 90 of his Budget Speech 2016-17, had announced:

1. "A systemic vacuum exists with regard to bankruptcy situations in financial firms. A comprehensive Code on Resolution of Financial Firms will be introduced as a Bill in the Parliament during 2016-17. This Code will provide a specialised resolution mechanism to deal with bankruptcy situations in banks, insurance companies and financial sector entities. This Code, together with the Insolvency and Bankruptcy Code 2015, when enacted, will provide a comprehensive resolution mechanism for our economy".
2. Pursuant to the above budget announcement, a Committee was set up under the Chairmanship of Shri Ajay Tyagi, Additional Secretary, Department of Economic Affairs, Ministry of Finance on 15th March 2016 with representatives from the Ministry of Finance, the financial sector regulatory authorities and the Deposit Insurance and Credit Guarantee Corporation with instructions to submit a Report and a draft Code.
3. The Committee has submitted its Report and a Draft Bill known as „The Financial Resolution and Deposit Insurance Bill, 2016. A copy of the Report of the Committee and the Draft Bill along with an explanatory note explaining the key legal provisions of the Bill are hosted on the home page of the Ministry of Finance at >www. finmin.nic.in<.
4. All stakeholders concerned / public are requested to forward comments / suggestions that they may wish to submit on the Draft Bill by 14th October 2016 by e-mail to > parveen.k63@gov.in < or in hard copy to Shri Parveen Kumar, Under Secretary (FSLRC), Department of Economic Affairs, Ministry of Finance, Room No. 48, North Block, New Delhi-110001. The decision of the Government with respect to the Report and the Draft Bill will be taken later after receipt of public / stakeholders comments and after following due procedure thereafter.

F. No. A.11017/1/2015-FSLRC

New Delhi, Dated: 28.9.2016

(Anwar H. Shaik)  
Director (FSLRC)

# COMPANY SECRETARIES BENEVOLENT FUND



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

## CSBF

- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 11,000

## Eligibility

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

## How to join

- By making an application in Form A (available at [www.icsi.edu/csbf](http://www.icsi.edu/csbf)) along with one time subscription of ₹ 7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute's web portal: [www.icsi.edu](http://www.icsi.edu). Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹ 7500 drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Offices of the Institute/ Regional Offices/ Chapters.

## Benefits

- ₹ 5,00,000 in the event of death of a member under the age of 60 years
- Upto ₹ 2,00,000 in the event of death of a member above the age of 60 years
- Upto ₹ 40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹ 60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

## Contact

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

For more details please visit [www.icsi.edu/csbf](http://www.icsi.edu/csbf)



# 5

## NEWS FROM THE INSTITUTE & REGIONS



- MEMBERS ADMITTED/RESTORED
- CERTIFICATE OF PRACTICE ISSUED
- LICENTIATE ICSI ADMITTED
- COMPANY SECRETARIES BENEVOLENT FUND
- LIST OF PRACTISING MEMBERS/COMPANIES REGISTERED FOR IMPARTING TRAINING
- REGIONAL NEWS



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

Foundation Day Celebration  
(Vandemataram & Musical Pro-  
gramme by Harmony)



Prize Distribution and Felicitation  
of Top 10 Rank Holders of June  
2016 from All Over India

Celebration of ICSI with this year's Theme : "Forward March" 

### Chief Guest

**Shri Derek O' Brien, MP, Rajya Sabha & Leader,  
All India Trinamool Congress Parliamentary Party**

### Guests of Honour

**Shri Dwarika Prasad Tantia**  
Chairman  
GPT Infraprojects Ltd.

**Shri Sajan Kumar Bansal**  
Managing Director  
Skipper Ltd.

**Shri Sajjan Bhajanka**  
Chairman  
Century Plyboards (I) Limited

**Dr. Rajesh Kumar, IPS**  
ADGP CID West Bengal

### Special Guest

**CS R. Krishnan, Founder President, ICSI**  
in the august presence of  
**CS Mamta Binani, President, ICSI**

**Time :**

**05.30 PM Onwards**

**Venue :**

**Gorky Sadan Auditorium, 3, Gorky Terrace, Kolkata - 700 017 (on Elgin Road -  
Camac Street Crossing)**





## Members Admitted

Sl. NO.	NAME	MEMB NO.	REGN.
<b>FELLOWS*</b>			
1	SH. KEDARISSETTY ATCHUTA NOOKA SUBBA RAO	FCS - 8807	SIRC
2	SH. RAVINDRA SINGH	FCS - 8808	NIRC
3	MS. AKRITI MAHAJAN	FCS - 8809	NIRC
4	SH. PRAKASH M	FCS - 8810	SIRC
5	SH. VASANTH KUMAR	FCS - 8811	SIRC
6	MR. BHAVESHKUMAR ARJUNKUMAR RAWAL	FCS - 8812	WIRC
7	MS. AVANI SURESH POPAT	FCS - 8813	WIRC
8	SH. GIRRAJ KUMAR GUPTA	FCS - 814	NIRC
9	MR. UPENDRA KUMAR PATTNAIK	FCS - 8815	EIRC
10	MS. EKTA VIPUL THAKKAR	FCS - 8816	WIRC
11	MR. SUSHANT SHASHANK SATHE	FCS - 8817	WIRC
12	MS. SAPNA GUPTA	FCS - 8818	NIRC
13	SH. MAULIK BHARAT KUMAR GANDHI	FCS - 8819	WIRC
14	MS. NAVNEET SAHARAN	FCS - 8820	NIRC
15	MR. VAIBHAV YASHWANTRAO JACHAK	FCS - 8821	WIRC
16	SH. AMAN GUPTA	FCS - 8822	NIRC
17	MRS. SHUBHLAXMI BANSOD	FCS - 8823	WIRC
18	MR. V RAMRAJ VITTAL	FCS - 8824	SIRC
19	SH. PRAKASH REDDY PENTAREDDY	FCS - 8825	SIRC
20	MS. RASHIMA KAPOOR	FCS - 8826	NIRC
21	MS. DEEPIKA BAJAJ	FCS - 8827	WIRC
22	MR. ANIL KUMAR AGRAWAL	FCS - 8828	WIRC
23	MS. SREELEKHA S	FCS - 8829	SIRC
24	MR. DEEPAK AMARSHI VARIYA	FCS - 8830	WIRC
25	MR. KUNAL DUTT	FCS - 8831	WIRC
26	MRS. ANSHUL AGARWAL	FCS - 8832	NIRC
27	MS. DIVYA ARORA	FCS - 8833	EIRC
28	SH RAKESH MAMNANI	FCS - 8834	NIRC
29	SH. AMIT BHARGAVA	FCS - 8835	NIRC
30	SH. NITIN BHUSARI	FCS - 8836	WIRC
31	SH. KAMAL DEEP TANDON	FCS - 8837	NIRC
32	MS. SANGEETA BAGGA	FCS - 8838	NIRC
33	MRS. DIPAVALI ANAND PANCHAMIA	FCS - 8839	WIRC
34	MR. VIRAL SHRINATH TRIPATHI	FCS - 8840	WIRC
35	SH. ANJANEYULU CHALLA	FCS - 8841	SIRC
36	MS. ARPITA MEHROTRA	FCS - 8842	NIRC
37	MS. JYOTI SHARMA	FCS - 8843	NIRC
38	MR. RAGHAV AGARWAL	FCS - 8844	NIRC
39	MR. KULBHUSHAN PARASHAR	FCS - 8845	NIRC
40	SH. GAURAV KUMAR SHARMA	FCS - 8846	NIRC
41	SH. TANMAY KUMAR SAHA	FCS - 8847	EIRC

42	MR. RAHUL ANAND	FCS - 8848	NIRC
43	MRS. BHAKTI ASHISH TALIKOT	FCS - 8849	WIRC
44	MS. MANDAVI	FCS - 8850	NIRC
45	MR. PREMNARAYAN RAMANAND TRIPATHI	FCS - 8851	WIRC
46	MS. SHRUTI HARESH SHAH	FCS - 8852	WIRC
47	SH. PRADEEP KUMAR JAIN	FCS - 8853	SIRC
48	MS. CHITRANSHI AGARWAL	FCS - 8854	NIRC
49	SH. V SIVAKUMAR	FCS - 8855	SIRC
50	MR. AAKASH JAIN	FCS - 8856	EIRC
51	SH PRADIIP KUMAR OJHA	FCS - 8857	EIRC
52	SH. YOGESH KUMAR MISHRA	FCS - 8858	WIRC
53	MR. JAIPAL REDDY NAIDI	FCS - 8859	SIRC
54	SH. PARAMESHWAR GANAPATI BHAT	FCS - 8860	SIRC
55	SH. RUPESH KUMAR MISHRA	FCS - 8861	NIRC
56	MS. MONIKA BHARDWAJ	FCS - 8862	NIRC
57	SH PARVESH DHAWAN	FCS - 8863	WIRC
58	SH. SURJAN SINGH	FCS - 8864	NIRC
59	SH. SHISHIR KUMAR	FCS - 8865	NIRC
60	MR. VIVEK SHARMA	FCS - 8866	NIRC
61	MS. JYOTSANA BHATIA	FCS - 8867	NIRC
62	MR. BABU K	FCS - 8868	SIRC
63	MRS. SONALI MISHRA	FCS - 8869	EIRC
64	SH. SAURABH ARORA	FCS - 8870	NIRC
65	MR. NISHANT SHRIPADBHAI JAVLEKAR	FCS - 8871	WIRC
66	SH PRASANNA SUBBARAO	FCS - 8872	SIRC
67	SH. SHIBAJI BAKSI	FCS - 8873	EIRC
68	MS. PRATIBHA AGGARWAL	FCS - 8874	NIRC
69	MR. AJIT BISTANGOUDAR	FCS - 8875	SIRC
70	MR. VISHAL SONI	FCS - 8876	NIRC
71	MS. POONAM MALPANI	FCS - 8877	NIRC
72	MS. ROOPANDE DEVENDRA MEHTA	FCS - 8878	WIRC
73	SH. BAL KRISHAN PRADHAN	FCS - 8879	WIRC
74	MR. JITENDRA MATHUR	FCS - 8880	NIRC
75	MRS. SURBHI GANDHI	FCS - 8881	WIRC
76	MRS. VIDHYA BAID	FCS - 8882	EIRC
77	MS. PIYALI DEB	FCS - 8883	EIRC
78	MS. SHIVANI GAUTAM	FCS - 8884	NIRC
79	SH. M VAIDYANATHAN	FCS - 8885	SIRC
80	MS. APARNA BISWAS	FCS - 8886	EIRC
81	SH. ARJUN SURYANARAYAN AMANCHI	FCS - 8887	WIRC
82	SH. DEVAKI VASUDEVARAO	FCS - 8888	SIRC
83	MS. SNEHA JAIN	FCS - 8889	SIRC
84	SH. RAJESH JAIN	FCS - 8890	NIRC

### ASSOCIATES\*

1	MR. GYANESH KUMAR MISHRA	ACS - 46816	NIRC
2	MR. AVDHESH KUMAR GUPTA	ACS - 46817	NIRC
3	MS. BHAVIKA SHAH	ACS - 46818	NIRC
4	MS. DEEPIKA MAHADEO ANDURLEKAR	ACS - 46819	WIRC
5	MS. UMA BADLANI	ACS - 46820	WIRC
6	MS. SURABHI GUPTA	ACS - 46821	WIRC
7	MS. DARSHANA AJAY SONI	ACS - 46822	WIRC
8	MS. SHIRIN MUNAWAR BANDEKAR	ACS - 46823	WIRC
9	MS. AKSHATA SHIRINIVAS JOSHI	ACS - 46824	WIRC
10	MS. SHALINI SINGH	ACS - 46825	EIRC
11	MS. NEHA BALAI	ACS - 46826	NIRC
12	MR. BAJRANG TARAR	ACS - 46827	NIRC

\*ADMITTED DURING THE PERIOD FROM 20.8.2016 TO 19.9.2016

\*ADMITTED DURING THE PERIOD FROM 20.8.2016 TO 19.9.2016

13 MS. ISHA GOEL	ACS - 46828	NIRC	71 MS. SHIKHA SAXENA	ACS - 46886	NIRC
14 MS. ARVINDER KAUR	ACS - 46829	NIRC	72 MR. MUKUND BERIWAL	ACS - 46887	NIRC
15 MR. ANAND CHURA	ACS - 46830	NIRC	73 MR. RAVI SHEKHAR RAI	ACS - 46888	NIRC
16 MR. BHARAT SONI	ACS - 46831	NIRC	74 MS. APOORVA GUPTA	ACS - 46889	NIRC
17 MS. SHRISTI DUTTA	ACS - 46832	NIRC	75 MR. ASHISH BANSAL	ACS - 46890	NIRC
18 MS. POOJA CHUGH	ACS - 46833	NIRC	76 MS. RASHI JAIN	ACS - 46891	NIRC
19 MR. BHARAT NARULA	ACS - 46834	NIRC	77 MS. BHAWANA	ACS - 46892	NIRC
20 MS. POOJA DABRAL	ACS - 46835	NIRC	78 MR. MOHIT MEHTA	ACS - 46893	NIRC
21 MS. MONIKA KAMRA	ACS - 46836	NIRC	79 MR. GOURAV LUGANI	ACS - 46894	NIRC
22 MS. MEGHA KHANDLWAL	ACS - 46837	NIRC	80 MS. ALKA	ACS - 46895	NIRC
23 MR. VINOD	ACS - 46838	NIRC	81 MR. DEEP SHUBHAM	ACS - 46896	NIRC
24 MS. DEEPIKA MISHRA	ACS - 46839	NIRC	82 MS. CHANDNI VIJ	ACS - 46897	NIRC
25 MS. SAAKSHI MANCHANDA	ACS - 46840	NIRC	83 MS. NEHA GOYAL	ACS - 46898	NIRC
26 MS. ANKITA ARYA	ACS - 46841	NIRC	84 MS. RADHIKA CHANDAK	ACS - 46899	NIRC
27 MS. RADHIKA	ACS - 46842	NIRC	85 MR. SACHIN HUKUMCHAND SHARMA	ACS - 46900	WIRC
28 MR. JAYANT GUPTA	ACS - 46843	NIRC	86 MS. CHANDANI KHANDLWAL	ACS - 46901	NIRC
29 MR. SACHIN BALASAHEB HUKKIRE	ACS - 46844	SIRC	87 MS. VIDHYA G	ACS - 46902	SIRC
30 MS. MADHAVI R SIMHA	ACS - 46845	SIRC	88 MR. SUNIL BABU S	ACS - 46903	SIRC
31 MS. PALAK BHARAT TOLIA	ACS - 46846	SIRC	89 MS. SUSHMA K S	ACS - 46904	SIRC
32 MS. VIDHI KHILNANI	ACS - 46847	WIRC	90 MS. PRIYANKA GOUTHAM MEHTA	ACS - 46905	SIRC
33 MR. DHARMESH VIJAY KUMAR SARVAIYA	ACS - 46848	WIRC	91 MS. RUPALI DINKARRAO GADGIL	ACS - 46906	WIRC
34 MS. BHAVINI KENIL GANDHI	ACS - 46849	WIRC	92 MS. RACHANA SHREEBHAGWAN AGARWAL	ACS - 46907	WIRC
35 MR. RAVIKANT NARENDRA CHATURVEDI	ACS - 46850	WIRC	93 MS. TANIYA DAS	ACS - 46908	NIRC
36 MR. CHIRAG KANTILAL SANCHETI	ACS - 46851	WIRC	94 MR. GAURAV JAIN	ACS - 46909	WIRC
37 MS. RUKHSAR BEGAM	ACS - 46852	WIRC	95 MR. PADMANABH MAHESH ATHAVALE	ACS - 46910	WIRC
38 MR. SARVESH SANTOSH AJGAONKAR	ACS - 46853	WIRC	96 MR. SANDIIP HARICHAND ADWANI	ACS - 46911	WIRC
39 MR. ATUL KUMAR ASHOK KUMAR SHUKLA	ACS - 46854	WIRC	97 MS. NIKITA GAJANAN PAWAR	ACS - 46912	WIRC
40 MS. DHWANI YOGESHBHAI CHANDARANA	ACS - 46855	WIRC	98 MS. CHARMI DEVRAJ CHHADVA	ACS - 46913	WIRC
41 MS. NIKITA SHARMA	ACS - 46856	WIRC	99 MS. SHWETA PRAHLADBHAI PATEL	ACS - 46914	WIRC
42 MS. SHREYA SUKUMAR SHETTY	ACS - 46857	WIRC	100 MS. SHAH REEMA SANJAY	ACS - 46915	WIRC
43 MR. AAKASH DILIPBHAI MEWADA	ACS - 46858	WIRC	101 MR. JAY MANOJ BHATT	ACS - 46916	WIRC
44 MS. DINAL ARVIND SHAH	ACS - 46859	WIRC	102 MS. POONAM LAXMINARAYAN VIJAYVARGIYA	ACS - 46917	WIRC
45 MS. PRIYANKA NAGAR	ACS - 46860	WIRC	103 MR. ARUN KUMAR	ACS - 46918	NIRC
46 MS. ASTHA MAHESHWARI	ACS - 46861	WIRC	104 MR. THAKER DARSHAK	ACS - 46919	WIRC
47 MR. KAMLESH NAGINBHAI PATEL	ACS - 46862	WIRC	105 MS. PRIYANKA SHEKHAR SHIRODKAR	ACS - 46920	WIRC
48 MS. SHIVANG GHANSHYAM GOYAL	ACS - 46863	WIRC	106 MR. DEVANSHU PRAFUL PAREKH	ACS - 46921	WIRC
49 MS. UNNATI JITEN DAVE	ACS - 46864	WIRC	107 MR. JAY JUGAL KISHOR GUJRAL	ACS - 46922	WIRC
50 MS. GOPI VIJAYBHAI DAVE	ACS - 46865	WIRC	108 MR. SATEJ PRAKASH DARDE	ACS - 46923	WIRC
51 MS. MOXA HARESHBHAI SHAH	ACS - 46866	WIRC	109 MS. UPASANA JIGNESH DOSHI	ACS - 46924	WIRC
52 MS. DISHA VIPUL SHAH	ACS - 46867	WIRC	110 MS. MONIKA RATHORE	ACS - 46925	WIRC
53 MS. KHUSHMEETA ANIL KUMAR BAFNA	ACS - 46868	WIRC	111 MS. JIGNASA BHARAT WAGHELA	ACS - 46926	WIRC
54 MR. ABHISHEK GUPTA	ACS - 46869	WIRC	112 MS. AJITA NILESH UDESHI	ACS - 46927	WIRC
55 MS. SIDDHI SANJAY JAIN	ACS - 46870	WIRC	113 MS. HEENA AJAY JOSHI	ACS - 46928	WIRC
56 MR. LALIT KUMAR GUPTA	ACS - 46871	WIRC	114 MS. KRUSHI ARVIND KUMAR SHAH	ACS - 46929	WIRC
57 MS. SANGITA RAGHUNATH PATIL	ACS - 46872	WIRC	115 MS. KRISHNA SUNIL TRIVEDI	ACS - 46930	WIRC
58 MR. MUKESH JAIN	ACS - 46873	NIRC	116 MR. ANOOP KUMAR PANDEY	ACS - 46931	NIRC
59 MR. DHRUV JIGNESH MEHTA	ACS - 46874	WIRC	117 MS. NEHA ROHILLA	ACS - 46932	NIRC
60 MS. PRERANA VINODKUMAR GAIROLA	ACS - 46875	WIRC	118 MR. DEEP YATIN SHAH	ACS - 46933	WIRC
61 MR. PARVEZ ABDUL RAZZAK KHOT	ACS - 46876	WIRC	119 MR. YOGESH KAUSHIK	ACS - 46934	NIRC
62 MS. URVASHI BHATIA	ACS - 46877	NIRC	120 MR. BHADRESH ASHWINKUMAR BHATT	ACS - 46935	WIRC
63 MS. NAVLEEN KAUR	ACS - 46878	NIRC	121 MS. AARTI KUMARI	ACS - 46936	EIRC
64 MR. NAVIN RAJENDRA DIXIT	ACS - 46879	WIRC	122 MS. RICHA RUSTAGI	ACS - 46937	NIRC
65 MR. SURAJ CHOUDHURY	ACS - 46880	EIRC	123 MR. PANKIL MALHOTRA	ACS - 46938	NIRC
66 MR. GAURAV KUMAR	ACS - 46881	EIRC	124 MR. B RAJARAMAN	ACS - 46939	SIRC
67 MR. SAURABH SHASHWAT	ACS - 46882	NIRC	125 MS. SHWETA JHAWAR	ACS - 46940	NIRC
68 MR. SOURAV	ACS - 46883	EIRC	126 MR. AMIT KUMAR	ACS - 46941	NIRC
69 MS. PRIYANKA VYAS	ACS - 46884	NIRC	127 MS. PARUL JAIN	ACS - 46942	NIRC
70 MS. ISHRAT KAUR	ACS - 46885	NIRC	128 MR. KAMRAN SIDDIQUI	ACS - 46943	NIRC



129	MR. ABHINAV KHANNA	ACS - 46944	NIRC	187	MS. ALISHA PUJARA	ACS - 47002	EIRC
130	MS. SNEHA KALYANI	ACS - 46945	NIRC	188	MS. ANCHAL JAIN	ACS - 47003	EIRC
131	MS. SAHANA VENKATRAMAN HEGDE	ACS - 46946	SIRC	189	MR. PIYUSH CHANGAL	ACS - 47004	EIRC
132	MS. MADHURA SHRIKANT MULEY	ACS - 46947	WIRC	190	MR. RAHUL KANODIA	ACS - 47005	EIRC
133	MS. POOJA AJAY NAVAL	ACS - 46948	WIRC	191	MR. SUNIL KUMAR GUPTA	ACS - 47006	EIRC
134	MS. SNEHAL PRAKASHBHAI JAGTAP	ACS - 46949	WIRC	192	MS. SUKANYA BAJAJ	ACS - 47007	EIRC
135	MR. UPENDRA KUMAR SINGH	ACS - 46950	SIRC	193	MS. SONAKSHI BAJORIA	ACS - 47008	EIRC
136	MR. MOHAMMAD ATHAR	ACS - 46951	WIRC	194	MR. PRATEEK NAHATA	ACS - 47009	NIRC
137	MS. MAMTA RAMNAYAN YADAV	ACS - 46952	WIRC	195	MS. NIDHI AGARWAL	ACS - 47010	NIRC
138	MS. SANA MUSHTAK KARVINKAR	ACS - 46953	WIRC	196	MS. SMITA AGRAWAL	ACS - 47011	NIRC
139	MS. JYOTI KUMARI KHETRIWAL	ACS - 46954	EIRC	197	MS. PRIYANKA VERMA	ACS - 47012	NIRC
140	MS. SAMRITI SHARMA	ACS - 46955	NIRC	198	MR. DAVENDRA KUMAR	ACS - 47013	NIRC
141	MR. ASHISH SONI	ACS - 46956	WIRC	199	MR. ABHINAV	ACS - 47014	NIRC
142	MS. POONAM VINODRAI BHIMAJIYANI	ACS - 46957	WIRC	200	MS. MEGHA MEHTA	ACS - 47015	NIRC
143	MS. TRIPTI MANDHYANI	ACS - 46958	NIRC	201	MR. SAHIL GAUR	ACS - 47016	NIRC
144	MS. BHAVIKA SHARMA	ACS - 46959	NIRC	202	MS. SONIA	ACS - 47017	NIRC
145	MS. PARIDHI JAIN	ACS - 46960	NIRC	203	MR. JAGDISH CHANDRA	ACS - 47018	NIRC
146	MS. EKTA THAWANI	ACS - 46961	NIRC	204	MR. ANSHUMAN CHATURVEDI	ACS - 47019	NIRC
147	MS. ARTI SITANI	ACS - 46962	NIRC	205	MS. ANUPAM TRIPATHI	ACS - 47020	NIRC
148	MR. GURDEEP SINGH	ACS - 46963	WIRC	206	MS. AAKRITI BHATIA	ACS - 47021	NIRC
149	MR. THAKKAR KULDIP KAMLESHBHAI	ACS - 46964	WIRC	207	MS. ANKITA GAUTAM	ACS - 47022	NIRC
150	MR. ABHISHEK TAMRKAR	ACS - 46965	WIRC	208	MS. PRIYA SHARMA	ACS - 47023	NIRC
151	MR. SHAKEEL AHMED	ACS - 46966	EIRC	209	MS. APEKSHA BANSAL	ACS - 47024	NIRC
152	MS. RICHA PAHWA	ACS - 46967	WIRC	210	MS. VASHU MITTAL	ACS - 47025	NIRC
153	MS. SHREYOSHI DASGUPTA	ACS - 46968	NIRC	211	MS. NUPUR RATHORE	ACS - 47026	NIRC
154	MS. ANU SAXENA	ACS - 46969	NIRC	212	MR. AKHIL B VIJAY	ACS - 47027	SIRC
155	MR. AMAN SAH	ACS - 46970	NIRC	213	MS. YASHVI GOLCHHA	ACS - 47028	SIRC
156	MS. VANEETA	ACS - 46971	NIRC	214	MR. KUNAL ASHOK BORKAR	ACS - 47029	WIRC
157	MS. AAKRITI JAIN	ACS - 46972	NIRC	215	MS. ZALAK ATUL SHAH	ACS - 47030	WIRC
158	MR. DHEERAJ THAWANI	ACS - 46973	NIRC	216	MS. BHATIWARA AMIKSHAH SURYAPRAKASH	ACS - 47031	WIRC
159	MR. CHETAN SINGH PHARTIYAL	ACS - 46974	NIRC	217	MR. RAJ KISHORBHAI KANANI	ACS - 47032	WIRC
160	MS. JASLEEN KAUR BHATIA	ACS - 46975	NIRC	218	MR. ABHISHEK KANT SUNIL KANT CHOUDHARY	ACS - 47033	WIRC
161	MR. NITESH KARWA	ACS - 46976	WIRC	219	MS. SWATI JAGATI	ACS - 47034	WIRC
162	MS. MISHA SONI	ACS - 46977	NIRC	220	MS. B SWAPNA RAJARAM BANSODE	ACS - 47035	WIRC
163	MS. AARTI JAIN	ACS - 46978	NIRC	221	MR. BIPIN NARENDRAPRATAP SINGH	ACS - 47036	WIRC
164	MS. SEEMA	ACS - 46979	NIRC	222	MS. SHAH ROSHNI DHARMENDRA BHAI	ACS - 47037	WIRC
165	MS. CHESHTA BATRA	ACS - 46980	NIRC	223	MS. GURPREET KAUR	ACS - 47038	EIRC
166	MS. SHIVANI SHARMA	ACS - 46981	NIRC	224	MS. NEELAM DAGA	ACS - 47039	EIRC
167	MS. SWATHI V M	ACS - 46982	SIRC	225	MS. DIVYA MOHTA	ACS - 47040	EIRC
168	MS. ANIMOL P V	ACS - 46983	SIRC	226	MR. SANDIP SINGH	ACS - 47041	EIRC
169	MS. PEREKA SWATHI	ACS - 46984	SIRC	227	MS. KEERTI MAHESHWARI	ACS - 47042	NIRC
170	MS. K AKHILA RAJENDRA	ACS - 46985	SIRC	228	MS. MONIKA NAHAR JAIN	ACS - 47043	EIRC
171	MR. SPARSH MAHESH GUPTA	ACS - 46986	WIRC	229	MS. DEEPALI LALCHAND MENGHWANI	ACS - 47044	WIRC
172	MS. PUJA KIRIT SHAH	ACS - 46987	WIRC	230	MR. AMIT KUMAR GHOSH	ACS - 47045	EIRC
173	MS. MITTALI UDAYPARULKAR	ACS - 46988	WIRC	231	MR. JITENDRA KANSAL	ACS - 47046	NIRC
174	MS. DIPALI NATVAR VORA	ACS - 46989	WIRC	232	MS. MANPREET KAUR	ACS - 47047	NIRC
175	MS. KAKSHA PRAESH SHAH	ACS - 46990	WIRC	233	MS. TANVI HITEN VASA	ACS - 47048	WIRC
176	MS. DISHA DEEPAK SHAH	ACS - 46991	WIRC	234	MS. SHAH BIJAL SUDHIRBHAI	ACS - 47049	WIRC
177	MS. SUPRIYA SHIVMURTI GUPTA	ACS - 46992	WIRC	235	MS. SHIKSHA AGARWAL	ACS - 47050	EIRC
178	MR. KISHAN KUMAVAT	ACS - 46993	WIRC	236	MR. GAURAV MAHESHWARI	ACS - 47051	NIRC
179	MS. VARSHA MANGALSINH RAJPUT	ACS - 46994	WIRC	237	MR. SAGAR KEDAR WAGLE	ACS - 47052	WIRC
180	MS. MAMTA JAIN	ACS - 46995	NIRC	238	MS. RASHMI NARSARIA	ACS - 47053	EIRC
181	MS. KAVITA RAGHUVANSHI	ACS - 46996	WIRC	239	MS. NIMISHA KASAT	ACS - 47054	NIRC
182	MR. KAVAN VIMAL SHUKLA	ACS - 46997	WIRC	240	MR. CHETAN HARISHCHANDRA SHIGAVAN	ACS - 47055	WIRC
183	MR. NEERAJ RUHELA	ACS - 46998	NIRC	241	MR. SHASHANK JOSHI	ACS - 47056	EIRC
184	MS. SAKSHI GOEL	ACS - 46999	NIRC	242	MS. MADHU BOHRA	ACS - 47057	EIRC
185	MS. KHUSHBOO GOYAL	ACS - 47000	EIRC	243	MR. MD RAJA	ACS - 47058	EIRC
186	MR. RAHUL KUMAR JAIN	ACS - 47001	EIRC	244	MR. ABHIRUP DHAR	ACS - 47059	EIRC

245	MR. ABHISHEK KUMAR MISHRA	ACS - 47060	EIRC	303	MS. AVANI DIPAKBHAI LAKHANI	ACS - 47118	WIRC
246	MR. PINTU PRASAD JAISWAL	ACS - 47061	EIRC	304	MS. SHEELA CHEDILAL GUPTA	ACS - 47119	WIRC
247	MR. KARTICK SAW	ACS - 47062	EIRC	305	MS. JUHI JAYESHBHAI PAREKH	ACS - 47120	WIRC
248	MR. YOGINDRA YADAV	ACS - 47063	EIRC	306	MS. RACHANA KANHAIYALAL SALAWAT	ACS - 47121	WIRC
249	MR. VISHAL KOTHARI	ACS - 47064	EIRC	307	MS. ANKITA SHYAMLAL ASAWA	ACS - 47122	WIRC
250	MR. SUMAN KUMAR MISHRA	ACS - 47065	EIRC	308	MS. VIDHI ANIL SALOT	ACS - 47123	WIRC
251	MS. RUCHIKA BAGRI	ACS - 47066	EIRC	309	MS. PRATIMA RAGHUVeerPRASAD GUPTA	ACS - 47124	WIRC
252	MS. SIKHA SARAF	ACS - 47067	EIRC	310	MR. SACHIN MISHRA	ACS - 47125	NIRC
253	MR. SOURAV KHEDIWAL	ACS - 47068	EIRC	311	MR. TARBUNDIYA MAHENDRA KUMAR BHIKHABHAI	ACS - 47126	WIRC
254	MS. KHUSHBU KHANDELWAL	ACS - 47069	EIRC	312	MS. VARSHA GANESH PATEL	ACS - 47127	WIRC
255	MS. KAKULI CHOWDHURY	ACS - 47070	EIRC	313	MR. HIMANSHU KUMAR	ACS - 47128	EIRC
256	MS. ARTI MISHRA	ACS - 47071	EIRC	314	MS. ANCHAL AGRAWAL	ACS - 47129	NIRC
257	MS. SWETA PRIYA	ACS - 47072	WIRC	315	MS. RITIKA GOEL	ACS - 47130	NIRC
258	MR. RAJIV RATHI	ACS - 47073	EIRC	316	MR. SAURABH ARORA	ACS - 47131	NIRC
259	MS. SWATI MODI	ACS - 47074	EIRC	317	MR. KANWALJEET SINGH CHAUHAN	ACS - 47132	WIRC
260	MS. PRIYANKA ARYA	ACS - 47075	EIRC	318	MS. ANJANA	ACS - 47133	NIRC
261	MR. MD EZAZUL HAQUE ANSARI	ACS - 47076	EIRC	319	MR. RAJEEV KUMAR	ACS - 47134	NIRC
262	MR. JINESH SHAH	ACS - 47077	EIRC	320	MS. SUDHA JHUNJHUNWALA	ACS - 47135	EIRC
263	MS. POONAM AGARWAL	ACS - 47078	EIRC	321	MS. TRAPTI AGGARWAL	ACS - 47136	NIRC
264	MS. PRERNA VERMA	ACS - 47079	EIRC	322	MS. KIRAN GUPTA	ACS - 47137	NIRC
265	MS. DIVYA SHARMA	ACS - 47080	NIRC	323	MS. RUPAL NARULA	ACS - 47138	NIRC
266	MS. PURNIMA UDINIYA	ACS - 47081	NIRC	324	MS. RAJNI SHARMA	ACS - 47139	NIRC
267	MR. ASHISH KUMAR SAXENA	ACS - 47082	NIRC	325	MR. DILIP KUMAR CHOUDHARY	ACS - 47140	NIRC
268	MS. SONIA	ACS - 47083	NIRC	326	MS. SHILPI RAGHAV	ACS - 47141	NIRC
269	MR. ARJUN TYAGI	ACS - 47084	NIRC	327	MS. DIVYA SAXENA	ACS - 47142	NIRC
270	MS. MANDIRA MATHUR	ACS - 47085	NIRC	328	MS. SHEEBA SAXENA	ACS - 47143	NIRC
271	MR. NALIN SANCHETI	ACS - 47086	NIRC	329	MS. JASBIR KAUR	ACS - 47144	NIRC
272	MS. SUKANYA	ACS - 47087	NIRC	330	MR. AKASH VIJ	ACS - 47145	NIRC
273	MR. SHEETAL PRASHAD SINGHAL	ACS - 47088	NIRC	331	MS. MONIKA GUPTA	ACS - 47146	NIRC
274	MS. CHAITALI BHATNAGAR	ACS - 47089	NIRC	332	MS. RUCHI PATHAK	ACS - 47147	NIRC
275	MR. BHAVIK SETHI	ACS - 47090	NIRC	333	MR. NAVEEN	ACS - 47148	NIRC
276	MS. MANISHA JAIN	ACS - 47091	NIRC	334	MR. SANDAN MEHRA	ACS - 47149	NIRC
277	MR. SUNNY GUPTA	ACS - 47092	NIRC	335	MS. EMANY MEENAKSHI SOWMYA	ACS - 47150	NIRC
278	MS. DEEPALI KHUBCHANDANI	ACS - 47093	NIRC	336	MS. ANUJA PODDAR	ACS - 47151	SIRC
279	MR. GOVIND RAO	ACS - 47094	NIRC	337	MR. PAWAN HARINARAYAN KASAT	ACS - 47152	WIRC
280	MR. GAJENDRA SINGH SHEKHAWAT	ACS - 47095	NIRC	338	MR. MANOJ JAYAWANT PANASARE	ACS - 47153	WIRC
281	MR. ISHAN MAHAJAN	ACS - 47096	NIRC	339	MS. PRERNA SHAILENDRA SINGH	ACS - 47154	WIRC
282	MS. PREETI GOEL	ACS - 47097	NIRC	340	MR. NITESH TUKARAM MHATRE	ACS - 47155	WIRC
283	MS. AYUSHI MITTAL	ACS - 47098	NIRC	341	MR. VIVEK SINGH	ACS - 47156	WIRC
284	MS. BABITA CHOUDHARY	ACS - 47099	NIRC	342	MS. ASHWINI ANIL MHATRE	ACS - 47157	WIRC
285	MR. VIPUL JAIN	ACS - 47100	NIRC	343	MS. SHIVANI MAKARAND ABHYANKAR	ACS - 47158	WIRC
286	MR. MOHD AMEEN RIZVI	ACS - 47101	NIRC	344	MS. SHIVANGI MAKARAND ABHYANKAR	ACS - 47159	WIRC
287	MS. PRATIBHA KHANDELWAL	ACS - 47102	NIRC	345	MS. MIRA GOPAL SONI	ACS - 47160	WIRC
288	MS. DIVYA SOOD	ACS - 47103	NIRC	346	MR. DHIRAJ RAMASAW GUPTA	ACS - 47161	WIRC
289	MS. ANISHA AGRAWAL	ACS - 47104	NIRC	347	MS. MEENAL MAHESH PODDAR	ACS - 47162	WIRC
290	MR. PARAS KOUSHIK	ACS - 47105	NIRC	348	MS. PRAGATI PRAMOD NATHANI	ACS - 47163	WIRC
291	MS. PRABHSIFT KAUR	ACS - 47106	NIRC				
292	MS. SMRITI TIRTHANI	ACS - 47107	NIRC				
293	MR. DHAVAL SURESHKUMAR RAYCHURA	ACS - 47108	WIRC				
294	MS. MANALI BHARAT SHAH	ACS - 47109	WIRC				
295	MS. SHEETAL MANOJKUMAR MERAI	ACS - 47110	WIRC				
296	MS. RUTA PRAMOD SABNIS	ACS - 47111	WIRC				
297	MS. POOJA RAUNAK ANAND	ACS - 47112	WIRC				
298	MR. SURESH BHIKU LOKHANDE	ACS - 47113	WIRC				
299	MS. MUBARAKA HUSSAIN SAILANAWALA	ACS - 47114	WIRC				
300	MR. JEET RAJIV JANI	ACS - 47115	WIRC				
301	MS. NAVALKAR SANGEETA SHRINIVAS	ACS - 47116	WIRC				
302	MS. KARISHMA JODHANI	ACS - 47117	WIRC				

**RESTORED\***

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	18801	MANOJ KUMAR MISHRA	NIRC
2	A	33273	SANDEEP KUMAR	NIRC
3	A	19061	KARUN BATTI	WIRC
4	A	29586	SHRIKANT SHASHIKANT MALANI	WIRC
5	A	7086	GOPAL R MENGHANI	WIRC
6	A	28209	SHIPRA MAHESHWARI	NIRC
7	A	13794	RUMA SUCHANTI	EIRC
8	A	7103	IYER S V RAMANI	EIRC

\*RESTORED FROM 01.8.2016 TO 31.8.2016

9	A	23956	SWAGATA MUKHERJEE	SIRC				
10	F	4345	LAKSHMIKANT GARG	F/NIRC				
11	A	27447	ASHISH KUMAR VIJAY	NIRC				
12	F	2237	JAGDISH CHANDRA SONI	F/WIRC				
13	A	19607	GAURAV AGARWAL	NIRC				
14	A	21558	VIDHU KAPOOR	F/NIRC				
15	A	24842	VISHAKHA AHUJA	NIRC				
16	A	12468	SHARAD KOTHARI	NIRC				
17	F	5358	RAKESH SHARMA	NIRC				
18	A	23511	SOMNATH KAGADE	WIRC				
19	A	14950	DALJEET SINGH SANDO	WIRC				
20	A	12591	YASHASVI SHARMA	SIRC				
21	A	29257	K V SEKAR	SIRC				
22	A	27798	GEETHA SHASHIDHAR	SIRC				
23	A	11491	NAWIN KUMAR LAHOTY	EIRC				
24	A	21845	MANDAR SUBHASH BHATAVADEKAR	WIRC				
25	A	16521	AMRAO JAIN	NIRC				
26	A	8635	B SWAMINATHAN	F/WIRC				
27	A	21702	TARUN KUMAR SHARMA	NIRC				
28	A	35784	DEEPIKA VARADHARAJAN PARTHASARATHY	SIRC				
29	A	3311	AJAY VASANTIAL MEHTA	WIRC				
30	F	3289	GOVIND DAS MOORJANI	NIRC				
31	A	15710	ASHISH BHARDWAJ	NIRC				
32	A	12674	K.J. MATHEW	SIRC				
33	A	16213	SHILPA YASHAVANT VICHARE	WIRC				
34	A	12073	VIJAY KUMAR	NIRC				
35	A	13745	PAYAL LAL DAS	NIRC				
36	A	25023	NIRUPAM PAUL	EIRC				
37	A	33868	SHAILJA BHANDULLA	NIRC				
38	A	16147	ASHU SABHARWAL	NIRC				
22			MS. VALLARI RASHMIKANT PATEL	ACS - 27244	WIRC		16983	
23			MS. TANU SACHDEVA	ACS - 31751	NIRC		16984	
24			MR. TARUN KUMAR GARG	ACS - 34806	NIRC		16985	
25			MR. VED PRAKASH	ACS - 36837	NIRC		16986	
26			MS. RANI RAI	ACS - 39581	WIRC		16987	
27			MR. PRADEEP NEELKANTHSA BADI	ACS - 40803	SIRC		16988	
28			MS. MEGHA SHARMA	ACS - 43272	NIRC		16989	
29			MS. DHWANI RAJESHBHAI PANCHAL	ACS - 45118	WIRC		16990	
30			MS. SRUTHI GIREESH	ACS - 45491	SIRC		16991	
31			MS. KHUSHBOO GUPTA	ACS - 45609	EIRC		16992	
32			MS. MALLIKA SETH	ACS - 39628	NIRC		16993	
33			MS. DEEPIKA JAIN	ACS - 41190	NIRC		16994	
34			MS. RADHIKA VIVEK JOSHI	ACS - 46489	WIRC		16995	
35			MS. BINA BHAGERIA	ACS - 35166	EIRC		16996	
36			MR. AYUSH JAIN	ACS - 42142	NIRC		16997	
37			SH. BIJU KUZHIVELIPURATH ELIAS	FCS - 4353	SIRC		16998	
38			MRS. ARPITA ADITYA JOSHI	ACS - 26102	WIRC		16999	
39			MS. MANJUSHA CHENOLI RAYAMPATT	ACS - 31738	SIRC		17000	
40			MS. PARUL ANUJ DADHICH	ACS - 46295	WIRC		17001	
41			DR SHIV KUMAR TAYAL	FCS - 5146	NIRC		17002	
42			SH. ASHOK Y SHEDSHALE	ACS - 7087	WIRC		17003	
43			MS. SHRUTI PATODIA	ACS - 43055	EIRC		17004	
44			MR. KANJIRATHINKAL VINCENT VIJU	ACS - 46588	SIRC		17005	
45			MS. DEEPA PODDAR	ACS - 28494	SIRC		17006	
46			SH. V S SRIDHAR	ACS - 8555	SIRC		17007	
47			MRS. NEHA SONI	ACS - 24258	WIRC		17008	
48			MRS. KRISHNA HARDIK BHAVSAR	ACS - 38257	WIRC		17009	
49			MS. HEENA MADAN	ACS - 40297	NIRC		17010	
50			MS. ANKITA AGARWAL	ACS - 40836	EIRC		17011	
51			MS. PRATIBHA SHARMA	ACS - 41120	NIRC		17012	
52			MR. ASHWIN DWARAKANATH BHAT	ACS - 41669	SIRC		17013	
53			MS. SONIA KAHLOON	ACS - 41804	WIRC		17014	
54			MS. SURABHI JAIN	ACS - 45022	EIRC		17016	
55			MS. POOJA NAMDHARANI	ACS - 45052	NIRC		17017	
56			MS. NANDINI AMIT CHAVAN	ACS - 45504	WIRC		17018	
57			MR. GAUTAM KUMAR	ACS - 46243	NIRC		17019	
58			MS. ALISHA WADHWA	ACS - 46270	NIRC		17020	
59			MS. CHETNA SOOD	ACS - 46503	NIRC		17021	
60			MS. SONU	ACS - 46348	NIRC		17022	
61			MR. ANKUSH KUMAR GUPTA	ACS - 46533	NIRC		17023	
62			MS. DEVIKA SATHYANARAYANA	ACS - 16617	SIRC		17024	
63			MR. NEELABH KAUSHIK	ACS - 46681	WIRC		17025	
64			MS. VAISHNAVI SUBRAMANIA RAJA	ACS - 46499	SIRC		17026	
65			SH. KEDARISSETTY ATCHUTA NOOKA SUBBA RAO	FCS - 8807	SIRC		17027	
66			MS. KOMAL MANISH SUBA	ACS - 18782	WIRC		17028	
67			MS. GEETIKA KESWANI	ACS - 29138	NIRC		17029	
68			MR. DEVESH DAGA	ACS - 44482	EIRC		17030	
69			MR. ABHISHEK JHUNJHUNWALA	ACS - 45009	EIRC		17031	
70			MS. SHWETA JAIN	ACS - 45865	NIRC		17032	
71			MR. ARPIT BASLAS	ACS - 46623	NIRC		17033	
72			MR. HARIOM	ACS - 46630	NIRC		17034	
73			RIDDHI KRUNAL SHAH	ACS - 20168	WIRC		17035	
74			SH. ABHINAY KUMAR	ACS - 21214	NIRC		17036	
75			MS. SHAZIA KHATOON	ACS - 18201	WIRC		17037	

## CERTIFICATE OF PRACTICE\*

Sl. No.	NAME	MEMB NO.	REGN	COP NO.
1	MR. PAWAN KUMAR MAHUR	FCS - 8462	NIRC	16961
2	MRS. AMITA S. KARIA	ACS - 28106	WIRC	16962
3	MS. MEHAK ARORA	ACS - 31977	NIRC	16963
4	MS. TRUSHA MUKESHKUMAR PARIKH	ACS - 35878	WIRC	16964
5	MR. ANAND SAGAR SIVARAMANATHAN	ACS - 39762	SIRC	16965
6	MS. RUCHIKA AGARWAL	ACS - 41280	EIRC	16966
7	MS. HITIKA KWATRA	ACS - 42641	NIRC	16967
8	MS. SEJAL YADAV	ACS - 43059	NIRC	16968
9	MR. PRAKHAR JAIN	ACS - 43529	NIRC	16969
10	MS. PINKI GARG	ACS - 44564	EIRC	16970
11	MS. MADHUSMITA SAHU	ACS - 45147	EIRC	16971
12	MR. GOURANSH CHAWLA	ACS - 45390	NIRC	16972
13	MS. AKANSHA JAIN	ACS - 46226	NIRC	16973
14	MR. AMIT PODDAR	ACS - 46311	EIRC	16974
15	MR. NAVEEN JAISWAL	ACS - 46318	EIRC	16975
16	MS. POOJA JAIN	ACS - 46354	NIRC	16976
17	MS. DHARA UDIT SHAH	ACS - 46383	WIRC	16977
18	MS. SONAM AGARWAL	ACS - 46428	EIRC	16978
19	MR. SAIPRASATH	ACS - 46506	SIRC	16979
20	SH. RANGANATHA RAO VITTAL	ACS - 1707	SIRC	16980
21	SH. ANIRBAN RAKSHIT	ACS - 19021	EIRC	16982

\*ISSUED DURING THE MONTH OF AUGUST, 2016

76	MS. SNEHA RATHI	ACS - 43564	NIRC	17038	129	MS. SWATI SUBRAYA HEGDE	ACS - 45690	SIRC	17091
77	MR. ASIM KUMAR MANDAL	ACS - 46621	NIRC	17039	130	MS. PREETI MALIK	ACS - 45883	NIRC	17092
78	SH. SOMNATH KAGADE	ACS - 23511	WIRC	17040	131	MS. PRIYANKA RANA	ACS - 46145	NIRC	17093
79	MR. VAIBHAV SUHAS VELANKAR	ACS - 30561	WIRC	17041	132	MR. PUSHKAR LAL JAT	ACS - 46278	NIRC	17094
80	MS. KINJAL KOTAK RAJNIKANT	ACS - 45558	WIRC	17042	133	MS. P MANICKAVALLI	ACS - 46290	SIRC	17095
81	MS. SHIKHA MUNJAL	ACS - 46656	NIRC	17043	134	MS. NIDA SIDDIQUI	ACS - 46303	WIRC	17096
82	MS. MEGHNA RAVIRAJ KARIA	ACS - 18122	WIRC	17044	135	MS. GARGI MUKHERJEE	ACS - 46310	EIRC	17097
83	MS. DEEPALI SRIVASTAVA	ACS - 26084	NIRC	17045	136	MR. ANIL YADAV	ACS - 46321	EIRC	17098
84	MS. VARSHA	ACS - 36765	NIRC	17046	137	MR. LAXMAN SHANKAR GAIKWAD	ACS - 46484	WIRC	17099
85	MS. VAISHALI ANAND	ACS - 37639	NIRC	17047	138	MS. NITI SETHI	ACS - 3211	NIRC	17100
86	SH. SAURABH TANEJA	FCS - 8056	NIRC	17048	139	SH. AMIT ANAND	ACS - 13409	NIRC	17101
87	MS. MAMTA RAJPUT	ACS - 37754	NIRC	17049	140	MS. BABITA	ACS - 36417	NIRC	17102
88	MR. SANDEEP MOHAN K	ACS - 38358	SIRC	17050	141	MR. RAKESH ROSHAN SETHI	ACS - 37121	EIRC	17103
89	MS. NIKITA KEDIA	ACS - 40115	EIRC	17051	142	MS. NIKITA PODDAR	ACS - 43809	EIRC	17104
90	MS. KINJAL JAIN	ACS - 42051	SIRC	17052	143	MR. PINTU KUMAR BISWAL	ACS - 45148	EIRC	17105
91	MR. CHETAN CHHANGANI	ACS - 42937	NIRC	17053	144	MR. KARTIK VISWANATHAN	ACS - 45240	WIRC	17106
92	MS. BHUMIKA MEHNDIRATTA	ACS - 43603	NIRC	17054	145	MS. SHALU AGARWAL	ACS - 45786	NIRC	17107
93	MR. ABHIJIT TANAJI MALUSARE	ACS - 44204	WIRC	17055	146	MS. SURBHI DOSHI	ACS - 45817	WIRC	17108
94	MR. KULDEEP DHAPKARI	ACS - 46198	WIRC	17056	147	MS. DAKSHITA GARG	ACS - 46627	NIRC	17109
95	MR. ABHISHEK GOSWAMI	ACS - 46351	NIRC	17057	148	MR. KUSH KUMAR	ACS - 46698	NIRC	17110
96	MS. A S SUPRIYA	ACS - 46472	SIRC	17058	149	MR. VARUN KAPOOR	ACS - 37377	NIRC	17111
97	MR. MANOJ KUMAR SHIVPRASAD JI KALANI	ACS - 46483	WIRC	17059	150	MR. BAJRANG TARAR	ACS - 46827	NIRC	17112
98	MS. JYOTI SHARMA	ACS - 46535	NIRC	17060	151	MS. DEEPIKA MISHRA	ACS - 46839	NIRC	17113
99	MS. BHANVI CHOUDHARY	ACS - 46548	NIRC	17061	152	MR. GAURAV JAIN	ACS - 46909	WIRC	17114
100	MS. SMRUTI SUDHAKAR DEHERKAR	ACS - 46593	WIRC	17062	153	MS. SALONI JAIN	ACS - 43092	NIRC	17115
101	MS. NIDHI LOHARUKA	ACS - 46615	EIRC	17063	154	MS. PRIYANKA RUIA	ACS - 31957	EIRC	17116
102	MR. ARUN KUMAR	ACS - 46620	NIRC	17064	155	MS. BABITA KAUR BAGGA	ACS - 33637	SIRC	17117
103	MS. RICHA BHATIA	ACS - 46654	NIRC	17065	156	MS. VINEETA ARVINDKUMAR SHAH	ACS - 33683	WIRC	17118
104	MS. PRIYANKA VITTHAL MUNDRA	ACS - 46696	WIRC	17066	157	MS. HEMA MENGHANI	ACS - 42849	NIRC	17119
105	MR. SUALEHEEN	ACS - 46700	NIRC	17067	158	MR. RAJESH KUMAR GUPTA	ACS - 43494	EIRC	17120
106	MR. KRUNAL RAJENDRA KUMAR PUROHIT	ACS - 46794	WIRC	17068	159	MR. DHIRAJ KUMAR	ACS - 43662	NIRC	17121
107	SH BIRABHADRA ACHARYA	FCS - 7748	EIRC	17069	160	MS. JAGRITI AGGARWAL	ACS - 45455	NIRC	17122
108	SH. SHALIN MUKESH PATEL	ACS - 22687	WIRC	17070	161	MR. VIKASH PAREEK	ACS - 30619	EIRC	17123
109	MR. DUSMANTA KUMAR BARICK	ACS - 28512	EIRC	17071	162	MS. ANJLI	ACS - 46118	NIRC	17124
110	MR. ANKIT KUMAR SINGH	ACS - 31089	NIRC	17072	163	SH. N G VIDVANS	ACS - 10744	WIRC	17125
111	MR. NARENDRA SINGH	ACS - 31317	NIRC	17073	164	MS. PRIYANKA DAMANI	ACS - 40286	EIRC	17126
112	MR. PRATHAMESH SUHAS JOGLEKAR	ACS - 33316	WIRC	17074	165	SH. SRINIVAS THATIKONDA	FCS - 6543	SIRC	17127
113	MS. NEHA YADAV	ACS - 36913	EIRC	17075	166	MRS. JAYSHREE NARENDRA KAKANI	ACS - 21475	WIRC	17128
114	MR. ARPIT GOYAL	ACS - 37085	NIRC	17076	167	MS. RADHIKA NIKHIL BHALWANKAR	ACS - 33320	WIRC	17129
115	MS. SEEPIKA GUPTA	ACS - 37984	NIRC	17077	168	MS. POOJA SMIT SHAH	ACS - 35945	WIRC	17130
116	MS. NIKITA GUPTA	ACS - 38625	EIRC	17078	169	MS. PALLAVI AMARYA	ACS - 38411	NIRC	17131
117	MS. PREETI JAIN	ACS - 41759	NIRC	17079	170	MS. ANNAPU REDDY CHAITANYA	ACS - 39540	SIRC	17132
118	MS. MARILYN JACOB	ACS - 42445	SIRC	17080	171	MR. VIRALKUMAR MANHARBHAI SONI	ACS - 42125	WIRC	17133
119	MR. SHAILESH KIRAN SOMANI	ACS - 43293	WIRC	17081	172	MS. ARATHI S	ACS - 46416	SIRC	17134
120	MS. CHARU TYAGI	ACS - 43741	NIRC	17082	173	MR. DHARMESH VIJAY KUMAR SARVAIYA	ACS - 46848	WIRC	17136
121	MS. SWATI HISARIA	ACS - 44071	EIRC	17083	174	MS. MADHURI NICONKUMAR MISTRY	ACS - 37347	WIRC	17137
122	MS. BABUSHA AGARWAL	ACS - 44219	NIRC	17084	<b>CANCELLED*</b>				
123	MR. PRATEEK KUMAR LALAWAT	ACS - 44296	NIRC	17085	SL. No	NAME	MEMB No.	COP No.	REGN
124	MS. KIRAN MAHESHWARI	ACS - 44491	WIRC	17086	1	MRS. MANORMA ARYA	ACS 27584	10125	NIRC
125	MR. HARDIK MANOHAR	ACS - 44504	SIRC	17087	2	MR. DEEPAK KUMAR SINGHAL	ACS 37129	14144	NIRC
126	MR. NISARG UMESHKUMAR SHARMA	ACS - 44590	WIRC	17088	3	MS DEEPIKA K	ACS 40527	16283	SIRC
127	MS. MANISHA KUMARI PATIDAR	ACS - 44872	NIRC	17089	4	MS. DEEPIKA	ACS 38855	15497	NIRC
128	MS. KOMAL MUNDRA	ACS - 45408	NIRC	17090	5	MS. PRIYANKA GUPTA	ACS 40553	15266	NIRC

\*DURING THE MONTH OF AUGUST, 2016



6	MS. SHARDA BALAJI	ACS 11702	7836	SIRC
7	MR. SAROJANAND MISHRA	ACS 24283	12211	NIRC
8	MS. JASMEEN MARWAH	ACS 43727	16064	NIRC
9	MR. ASHISH GUPTA	ACS 33450	12343	WIRC
10	MR. MAHESH KUMAR VERMA	FCS 7630	5618	NIRC
11	MS. ARUNA PANDEY	ACS 30943	15053	NIRC
12	MR. PRAMOD H MAHENDALE	FCS 4604	12851	WIRC
13	MS. TANUJA SHARMA	ACS 40671	16914	NIRC
14	MS. TAMANNA MUDGAL	ACS 32498	12903	NIRC
15	MRS. SARITA BAID	ACS 22683	10724	NIRC
16	MR. A M SRIDHARAN	ACS 21799	9215	SIRC
17	MR. YATANDRA SINGH PAL	ACS 36295	16365	NIRC
18	MR. ANKUR MISHRA	ACS 41218	15379	EIRC
19	MR. SURYA J RAMANI	ACS 40887	15224	SIRC
20	MRS. NEHA TULSYAN	ACS 29161	10552	WIRC
21	MR. SOHAL YADAV	ACS 40906	16284	NIRC
22	MR. D ASHOK	ACS 31755	14465	WIRC
23	MR. YOGESH NARAYANBHAI LIMBACHIYA	ACS 43689	16850	WIRC
24	MR. MAYUR CHHABRA	ACS 39732	15363	NIRC
25	MR. RAVI KUMAR BAJAJ	ACS 14745	6181	WIRC
26	MS. URVASHI KOTHARI	ACS 36709	13934	WIRC
27	MS. KANCHAN BHATIA	ACS 40838	16011	NIRC
28	MS. KAMINI MAHER	ACS 34799	15324	NIRC
29	MS. DEEPALI GARG	ACS 45006	16904	NIRC
30	MS. PRIYA BALBIR CHAND AGARWAL	ACS 31659	12019	NIRC
31	MS. YOGINEE SUHAS CHAUKAR	ACS 28862	12969	WIRC
32	MR. KOMAL SHARMA	FCS 8204	8508	NIRC
33	MS. SARANYA R	ACS 35827	13375	SIRC
34	MS. SANGEETHA IYER	ACS 33916	16419	SIRC
35	MS. NEHA OJHA	ACS 36822	16215	NIRC
36	MS. YAMINI BANKA	ACS 38242	14792	NIRC
37	MS. POONAM GARG	ACS 30550	14414	NIRC
38	MS. PARUL SHARMA	ACS 15872	8093	NIRC
39	MS. POOJA SHUKLA	ACS 25207	9167	EIRC
40	MS. NEHA KHATRI	ACS 28969	11465	NIRC
41	MS. PRAGYA	ACS 33177	15072	NIRC
42	MS. KRITIKA MOHATA	ACS 41213	16546	EIRC
43	MS. RADHA SUPRIYA MULAKALA	ACS 28588	11769	SIRC
44	MR. AVIK CHAKRABORTY	ACS 45014	16951	EIRC

## LICENTIATE ICSI

S. No.	LICENTIATE NAME	REGN.
<b>ADMITTED*</b>		
1	6865 MS. HEMAMALINI S C	SIRC
2	6866 MS. SHAILY GARG	NIRC
3	6867 MR. PRASHANT KUMAR K	SIRC
4	6868 MS. SURBHI JAIN	NIRC
5	6869 MS. MEGHA TOLA	NIRC
6	6870 MS. HIMANSHI ADHIKARI	NIRC
7	6871 MR. NIMIT MUNDHRA	EIRC
8	6872 MS. PUSHPANJALI GUPTA	NIRC
9	6873 MS. CHARU JAIN	NIRC
10	6874 MR. GAUTAM RAJKUMAR AGRAWAL	WIRC
11	6875 MR. DEEPAK GARG	NIRC
12	6876 MS. CHAITRI SANADHYA	NIRC

\*DURING THE MONTH OF AUGUST, 2016

## Guidelines for Change in Name of Proprietorship Concern/Firm of Company Secretary(ies)

In case an existing proprietary concern/ firm of Company Secretary (ies) desires to change its name, the following conditions shall be fulfilled:

- An application for change in name of the firm (preferably mentioning its Unique Code Number) shall be submitted along with the Form for giving particulars of Offices and Firms duly filled- in.
- All the existing partners of the firm must sign the application and the Form duly filled- in.
- In the case of a proprietary firm, an application along with the Form for giving particulars of Offices and Firms (mentioning its Unique Code Number) is to be submitted duly filled-in and signed by the proprietor.
- The application for approval of the firm name along with the Form should be sent to the Directorate of Membership, ICSI.
- The new proposed name will be approved under the provisions contained in Regulations 169 and 170 of the CS Regulations, 1982.
- The letter granting approval of a trade / firm name will be sent at the address mentioned in the Form for giving particulars of Offices and Firms.
- The Proprietorship concern/firm of Company Secretary (ies) which has requested for change in name, upon approval shall mention "formerly known as (old name)" for a period of one year from the date of approval of the changed name.

## ATTENTION MEMBERS

The Institute has brought out a CD containing List of Members of the Institute as on 1st April, 2016. The CDs are available at the headquarters of the Institute for a cost of Rs. 250/- for members and Rs. 500/- for non-members. Request along with the payment may please be sent to the Membership section at email id rajeshwar.singh@icsi.edu.

For queries if any, please contact on telephone no: 011-45341063.

## ANNUAL MEMBERSHIP FEE

### Revision in the Annual Membership fee, Entrance Fee and Certificate of Practice fee for Associate and Fellow Members w.e.f. 1st April, 2017

The Council of the Institute has decided revision in Annual Membership fee, Entrance fee and Certificate of Practice fee for Associate and Fellow Members w.e.f. 1st April, 2017, as under:

Particulars	Associate		Fellow	
	Existing fee	Revised fee	Existing fee	Revised fee
Annual Membership fee	Rs. 1125	Rs. 2500	Rs. 1500	Rs. 3000
Entrance fee	Rs. 1500	Rs. 2000	Rs. 1000	Rs. 2000
Certificate of Practice fee	Rs. 1000	Rs. 2000	Rs. 1000	Rs. 2000

**The existing facility for payment of fee in advance/concessional fee shall remain in vogue for the revised fee structure.**

## ATTENTION MEMBERS

### Revolving Fund Schemes for becoming life members of CSBF

The Managing Committee of Company Secretaries Benevolent Fund (CSBF) has launched the following schemes for enrolling the members of the Institute as life members of the CSBF. The members may take benefit out of these schemes.

#### Employer's Revolving Fund Scheme for their employees:

Under this scheme, the Companies, Practising Company Secretaries (PCS) and other organizations where the members of the Institute are working may create a Revolving Fund, to provide financial assistance out of this fund to their employee(s) by paying his/her one time subscription amount (Rs.7500/-) to CSBF to enable them to become life member of the CSBF. This amount so disbursed as financial assistance to the member may be deducted from the monthly salary of the member employee in instalments or as per the mutually agreed terms between the employer and the employees. The employer companies, PCS and other organizations will be given proper recognition by CSBF and their names will be hosted at the webpage of CSBF as well as published in the Chartered Secretary journal.

#### General Revolving Fund Scheme for the Members of the Institute :

This scheme will be administered by the Individual Members ("Contributory Member") of the Institute to enable the eligible members ("Beneficiary Member") of the Institute to become members of CSBF. The financial assistance will be provided at the discretion of the contributory member but in no case it should be more than 80% of the one-time subscription amount (Rs.7500/-) to be paid by the beneficiary member for becoming a Life member of CSBF. Members having less than five years standing as an Associate member shall only be eligible for this scheme. The financial assistance so provided by the Individual Members will be refunded in instalments as per the terms and conditions mutually agreed between them. The Contributory Members will be given proper recognition by CSBF and their names will be hosted at the webpage of CSBF as well as published in the Chartered Secretary journal.

#### Revolving Fund Scheme administered by CSBF:

Under this scheme any company, individual (member or non-member) or entity may contribute any amount towards the Revolving Fund Scheme to be administered by the CSBF. The CSBF will administer this revolving fund scheme for the new members of the Institute to enable them to become member of the CSBF. Members having less than five years standing as an Associate shall only be eligible for this scheme. This scheme shall be administered out of the contributions received by the CSBF specifically for this scheme only and earmarked for the scheme: "CSBF Membership Assistance Fund". Beneficiary Members shall have to contribute at least 20% of the one-time subscription amount to be paid by them for becoming a Life-member of CSBF. They shall refund the amount to the Fund in not more than four quarterly instalments by way of Post dated cheques within a period of one year. Amount refunded by the beneficiaries would be credited to the CSBF. Beneficiary Members shall be required to submit an undertaking to refund the amount.

*Note: In the above schemes, no interest or other amount shall be charged from the members seeking financial assistance.*

# Revised Guidelines for name of a Proprietorship concern / Firm / Trade

## The Guidelines of the Council for name of a Proprietorship concern / Firm / Trade under Regulation 169 of the Company Secretaries Regulations, 1982.

1. A trade or firm or concern name shall be restricted to the name(s) of the proprietor/ partners or a name which is already in use.
2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manner:
  - (i) **For Sole proprietorship concern:**
    - (a) Name comprising first name and/or middle name and/or surname of the member, in any order, with or without commonly used suffix or prefix
    - (b) Initials of the first name and/or middle name and/or surname, in whichever order
    - (c) Combination of (a) and (b) above, in any order
    - (d) Parts of or prevalent abbreviations of or acronyms of commonly used names alongwith any combination referred to in (c) above
  - (ii) **For Partnership firm:**
    - (a) Full surnames of two or more partners
    - (b) Full first names of two or more partners
    - (c) Combination of first names and / or middle names and/or surnames of two or more partners with or without commonly used suffix or prefix
    - (d) Combination of initials of first names and/or middle names and/or surnames of the two or more partners
    - (e) Combination of (c) and (d) above, in any order
3. General
  - (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of office of firms.
  - (ii) A trade/firm name shall not contravene the provisions of The Names and Emblems (Prevention of Improper Use) Act, 1950 or any modification/re-enactment thereof.
  - (iii) The trade or firm name may be suffixed by the suffixes "& Co.", "& Company" or "& Associates". However, any suffixes that may be considered undesirable by the Council shall not be allowed.
  - (iv) The word "and"/ "&" could be used in between the first name/middle name/ surname including initials thereof, of the partners of the firm.
  - (v) A firm name may also be allowed without the use of the suffixes "& Co.", "& Company" or "& Associates" provided full first names and/or full middle names and/or full surnames of the partners are used. Also, in such cases, the word "&"/"and" is compulsorily to be used either in between the full first names and/or full middle names and/or full surnames of the partners or before the last full first name/full middle name/full surname of the partners.
  - (vi) The name of a sole proprietorship concern shall not be allowed without the use of suffixes "& Co." / "and Company" / "& Associates".
  - (vii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
  - (viii) Descriptive trade/firm names viz. Fire, Smash, Leader, Champion, Mastermind, Super, Supreme etc. shall not be allowed.
  - (ix) Trade/firm names denoting publicity shall not be allowed. Any trade/firm name, regardless of reason or logic, using the initials, acronyms or full forms of any profession whether used individually and/or collectively and/ or in any order, shall not be allowed. The use, therefore, of CA, CS, CMA, MBA, CACMA, CACS, CSCA, CSCMA, CMACS, CMACA, Secretary, Accountant, Management, Chartered Accountant, Cost Accountant, Chartered Secretary etc., shall not be allowed. However, trade/firm names matching with the group name/theme shall be allowed, if the same is not in contradiction with any other criteria.
  - (x) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
  - (xi) In case any change in the status of the firm from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
  - (xii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members' upto a period of three years of the closer of the firm. In the event of removal of name of a practising member, after the expiry of the period of three years, the said trade/firm may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
  - (xiii) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of firm/trade name in accordance with the same, he may be permitted to adopt or coin a firm/trade name out of the names of his/her family members provided that such name was not already registered by some other members. The terms "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
  - (xiv) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170.
  - (xv) Approval accorded by the ICSI for any trade/firm name shall not tantamount to any protection by the ICSI in case of any dispute arises affecting to Intellectual Property Rights between any trade/firm with any other brand, entity, business etc., outside the profession and in relation to the name in dispute. The responsibility and liability in such cases shall solely be of the concerned trade/firm and at its own risk and costs and not of the ICSI. The ICSI shall not be any party to any kind of dispute that may arise in this regard.

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*236th meeting of the Council held on  
29-30th March, 2016*



List of Practising  
Members Registered  
For The Purpose of  
Imparting Training During  
The Month of August, 2016

**ANSHUL GARG**

C-5/45 STREET NO. 1/5, (A) C BLOCK, BHAJANPURA, NEAR THANA ROAD,  
DELHI-110053

**ANSHUL JAIN**

B-1501, SHASTRI NAGAR, PINCODE:110052, DELHI

**ARVIND KUMAR KUSHWAHA**

# 500 SECTOR 25A, DAMESH COLONY, ST.NO : 10, PINCODE:147301, MANDI  
GOBIND GARH

**ASHISH GUPTA**

A-137 SHASTRI NAGAR, PINCODE:110052, NEW DELHI

**ASHISH SHARMA**

1/1625 (GROUND FLOOR), MANSAROVER PARK, (OPPOSITE VAISHNO MANDIR),  
PINCODE:110032,

**ATLURI RAMESH**

427, PRAGATHI NAGAR, KUKATPALLY, PINCODE:500072, HYDERABAD

**AZHAR ASSIM SHAIKH**

ASHIYANA BLDG, KALAS, JADHAV WASTI, ALANDI ROAD, OPP SURAJ MINI  
MARKET PINCODE:, PUNE-411015

**BHASKAR SOMAN**

A-12.6TH FLOOR, SHREERAM RESIDENCY SUVARNABAUG COLONY, KOTHRUD,  
PUNE-411038

**CHANDAN NARANG**

FLAT NO. 204, SAI APARTMENTS, CHANDRA PARK, OPPOSITE NSIT, DWARKA,  
NEW DELHI-110078

**CHANDOLU BHAVANI**

8-4-369, L/409, LALITA TOWERS, ERRAGADDA PINCODE : 500018, HYDERABAD

**DEEPIKA DUREJA**

323/9, NEAR NEW SUBZI MANDI, PANIPAT-132103

**DEEPIKA LODHI**

H. NO. 595-C, DEVLII, NEW DELHI-110062

**DEVENDRA KUMAR JAIN**

UG-26,JOHARI PALACE, NEAR T.I. MALL, M.G. ROAD, INDORE-452001

**EKTA KUMARI**

D C -6, P C COLONY, KANKARBAGH, PINCODE:800020, PATNA

**EMIL ALEX**

MODDI TI, 2ND CROSS, K G COLONY, OFF BEML HOSPITAL ROAD G M PALYA,  
BANGALORE-560075

**G KRISHNA**

#203, 2ND FL,VANDANA SUNSHINE APPTS, (ADJ. TO SOBHA QUARTZ APTS),  
GREEN GLEN LAYOUT, BELLANDUR, BANGALORE-560103

**HARSHA PUGALIA**

MILAN STORE, HATIA GALI, JHANDA CHOWK, JHUMRI TELAIYA, KODERMA-825409

**KARUNA KAMAL KUMAR JAIN**

C-601, ROYAL REGENCY TOWER, OPP.WHITE LOTUS INTERNATIONAL SCHOOL,  
VESU SURAT-395007

**KOMAL KAMAL KUMAR JAIN**

C-603 ROYAL REGENCY, OPP. WHITE LOTUS INTERNATIONAL SCHOOL, VESU,  
SURAT-395007

**KOSHAL AGARWAL**

152/1, BENERAS ROAD, 2ND FLOOR, SALKIA, HOWRAH-711106

**KRISHNA MURTHY P R**

NO. 113, SRIJA KOLACHALAM, COMPOUND OPP. OLD BUS STAND,

BALLARI-583101

**LALAN KUMAR SINGH**

3RD FLOOR, BHARTIYA KALA KENDRA, BUILDING 1, COPERNICUS ROAD, NEW  
DELHI-110001

**M PAREKH**

VACHNAMRUT TOWER 9/403, ATLADRANEAR PRANUKM SWANY, HOSPITAL (OLD),  
ATLADRA, VADODARA-390012

**MAYANK JAIN**

207, 2ND FLOOR, PALASIA TOWER, NEAR 56 DUKAN, INDORE

**MOHIT VANAWAT**

412, 3RD FLOOR, LODHA COMPLEX, NEAR SASTRI CIRCLE PINCODE:313802,  
UDAIPUR

**NARAYAN RAMESH DESAI**

NO 29/9, 3RD FLOOR, 22ND MAIN, NEAR PES COLLEGE, NAGENDRA BLOCK, BSK 1  
STAGE, BANGALORE-560050

**NEETU YADAV**

156, 2ND FLOOR, BLOCK C-7, SECTOR-8, ROHINI, DELHI-110085

**NEHA GYANCHAND JAIN**

BEHIND KUMAR TRANSPORT, NEAR BALAJI, TEMPLE, JUNA MOTOR STAND,  
ITWARI, NAGPUR-440002

**NEHA JOSHI**

C-52/5, JANTA GARDEN, PANDAV NAGAR, NEW DELHI-110091

**NISHA VIJAY PATIL**

PLOT NO. 26, FIRST CROSS STREET, ELANGO NAGAR, VIRUGAMBAKKAM,  
CHENNAI-600092

**NITIN JAISWAL**

1 A /96 PHANERA SINGH CHOWK, NIIT FARIDABAD, FARIDABAD-121001

**NURANI HARIHARAN VENKATARAMAN**

69-70, ANSARI STREET, RAMNAGAR, COIMBATORE, COIMBATORE-641009

**P SAJEE NAIR**

SREE NARAYAN, SRA-S24, TC 29/585, SEEVELI NAGAR, KAITHAMUKKU PO,  
THIRUVANANTHAPURAM-695024

**PAGATUR ASHOKKUMAR VISHNUKUMAR**

NO. 113, SRIJA KOLACHALAM, COMPOUND OPP. OLD BUS STAND,  
BELLARY-583101

**PARIDHI PATNY**

C/O HARSH PATNY, WARD NO. 8, NEAR CANAL BRIDGE, CHAMPA ROAD,  
JANJGIR-495668

**PAWAN KUMAR BAIRWA**

55, LAXMI NAGAR - A, GONER ROAD, PINCODE:302031, JAIPUR

**PAYAL BANSAL**

18, A SHIVAJI NAGAR, NEAR RSS OFFICE, UDAIPUR-313001

**PRASAD GIRIDHAR PARAB**

466/A, LALJI ANANDJI BUILDING, 1ST FLOOR, ROOM NO. 19, DR. AMBEDKAR  
ROAD, LALBAUG, MUMBAI-400012

**PRIYANKA JAIN**

B-87 RK PURAM, GOVIND PURAM, GHAZIABAD-201013

**R PRIYANKA KOTADIA**

20/8, THANDAVRAYA PALLAI ST, SOWARPET, CHENNAI-600079

**RAJESH KUMAR**

C/O: RAJESH KUMAR 908, 9TH FLOOR GAUR GANGA-2, VAISHALI SECTOR-4  
GHAZIBAD-201010

**RASHMI SHARMA**

7, PRAFULLA SARKAR STREET, ROOM NO. TF-15, FLOOR -3, OPP. ANAND BAZAAR,  
PATRIKA BLDG., KOLKATA-700072

**RAVI SHANKAR SHARMA**

16, BASANT COLONY, ASHOK MARG, ANNA SAGAR LINK ROAD, AJMER-305001

**RAVINDER KUMAR SHARMA**

HOUSE NO. 86, BLOCK H, NEW SEELAMPUR, NEW DELHI-110053

**RAZIA TABASSUM**

16/167 -H BAPA NAGAR, KAROL BAGH, NEW DELHI-110005



**SACHIN KUMAR**

OFFICE NO. -11, 2ND FLOOR, BAISOYA COMPLEX, NAYA BANS, SECTOR -15  
PINC0DE:201301, NOIDA

**SARRAH HUSSAIN KATAWALA**

4, JANKI MARKET, SITA BULDY, NAGPUR-440012

**SATISH VARDICHAND JAIN**

PLOT NO. 201, ZEBRA APARTMENTS, 33-B, HILL ROAD, BANDRA WEST,  
MUMBAI-400050

**SEEMA KUNDU**

PLOT NO.-32-A, SECOND FLOOR, OPP. TO PILLAR NO.773, DWARKA MOR METRO  
STATION NEW DELHI-110059

**SHALINI**

FLAT NO. 101, ASHOK VIKASH APARTMENT, YARPUR, PATNA-800001

**SHASHIKALA HEMANTH**

NO.162, LAKSHMANA KRUPA, 6TH CROSS, 2ND MAIN, MEI LAYOUT  
NAGASANDRA POST, BANGALORE-560 073

**SHILPI GUPTA**

PLOT NO. 247, ROAD NO. 78, JUBILEE HILLS, PINCODE:500033  
HYDERABAD

**SHRUTHI NANDAKUMAR**

NO. 123, 75TH D CROSS, 12TH B MAIN 6TH BLOCK, RAJAJINAGAR,  
BANGALORE-560010

**SHWETA K. KHARANGATE**

OFFICE NO. 506, 5TH FLOOR, #85 METHA HOUSE, NEAR HOTEL ANNAPURNA,  
VASCO DA GAMA-403802

**SONU GOEL**

E-7/12, LGF, MALVIYA NAGAR, NEW DELHI-110017

**SUMIT KUMAR**

40 WESTON STREET, 2ND FLOOR, ROOM NO. 20, KOLKATA-700013

**SURESH CHANDRA NAINWAL**

E-343-A, STREET NO. 5, 2ND PUSTA, JAGJEET NAGAR, DELHI-110053

**SURITI SETH**

64, POULTRY ESTATE, AGRA ROAD, JAMDOLI, JAIPUR-302031

**ULKA KRISHNA KULKARNI**

B-01, MADHOOR MANGAL AVENUE PH II, KAMGAR NAGAR ROAD, SATPUR,  
NASHIK-422007

**VIJU VINCENT K**

NO. TC-23/326/53/2, FIRST FLOOR, NP TOWER, WEST FORT, THRISSUR-680004

**VRUSHALI AKSHAYA KETKAR**

A-15 SHAKUN, SHAHAJI RAJE MARG, VILE PARLE (E), MUMBAI-400057



List of Companies  
Registered for  
Imparting  
Training during the  
month of August, 2016

**AADRI INFIN LIMITED**

NO.004, GROUND FLOOR, MIDAS, SAHAR PLAZA COMPLEX, ANDHERI-  
KURLA ROAD, ANDHERI (EAST), MUMBAI-400059

**ABBOTT HEALTHCARE PRIVATE LIMITED**

4 CORPORATE PARK, SION-TROMBAY ROAD, CHEMBUR, MUMBAI-400071

**ANTARIKSH SOFTTECH PRIVATE LIMITED**

#11/1, KHR HOUSE, PALACE ROAD, BENGALURU, BANGALORE-560052

**APR & ASSOCIATES LLP**

A-233, GROUND FLOOR, BUNKAR COLONY, ASHOK VIHAR, PHASE-IV  
DELHI

**AUDENTIUS CORPORATE ADVISORS LLP**

C-192, LOWER G/F, ARJUN NAGAR, NEW DELHI-110029

**CHETTINAD LOGISTICS PVT LTD**

306A, THE CAPITAL, PLOT NO. C-70, G BLOCK, BANDRA KURLA COMPLEX,  
BANDRA (E), MUMBAI

**COVESTRO (INDIA) PRIVATE LIMITED**

BAYER HOUSE, CENTRAL AVENUE, HIRANANDANI ESTATE,  
THANE (W) - 400607

**D THAKKAR CONSTRUCTIONS PRIVATE LIMITED**

1105, UNIVERSAL MAJESTIC, BEHIND RBK INTERNATIONAL SCHOOL, PL  
LOKHANDE MARG, CHEMBUR(W), MUMBAI

**FORD CREDIT INDIA PRIVATE LIMITED**

5TH FLOOR, 4B CAMPUS, RMZ MILLENIA, DR. MGR ROAD, PERUNGUDI,  
CHENNAI

**GHATGE PATIL TRANSPORTS LIMITED**

517/ E, OLD PUNE BANGALORE ROAD, KOLHAPUR(76)

**GSPL INDIA TRANSCO LIMITED**

GSPL BHAVAN, NORTH WING, PLOT NO. E-18, GIDC ELECTRONICS ESTATE,  
NR. K-7 CIRCLE, SECTOR-26, GANDHINAGAR

**HINDUSTAN SHIPYARD LIMITED**

GANDHIGRAM POST OFFICE, GANDHIGRAM, SCINDIA JUNCTION,  
VISAKHAPATNAM

**HJA & ASSOCIATES LLP**

F-24, 3RD FLOOR, WEST PATEL NAGAR, DELHI

**JSK INDUSTRIES PVT. LTD.**

9 A K NAIK MARG CST, MUMBAI, 400001, MUMBAI

**KAVYANIDHI COMMODITIES PRIVATE LIMITED**

413-414, HUBTOWN VIVA, SALE BUILDING NO. 1, W.E. HIGHWAY,  
JOGESHWARI EAST, MUMBAI

**KONCEPT RETAIL SERVICES PRIVATE LIMITED**

HOLIDAY INN, ASSET AREA NO. 12 HOSPITALITY DISTRICT, AERO CITY,  
OPPOSITE- MAHIPALPUR, DELHI

**MAHAGUN (INDIA) PRIVATE LIMITED**

THE CORENTHUM, TOWER B , 4TH FLOOR, NOIDA

**SAVVY UNISPACE PRIVATE LIMITED**

7/B, CENTER POINT, PANCHAVATI, AHMEDABAD

**SHRINATH ROTOPACK PRIVATE LIMITED**

PLOT NO.35D, IDA,KATTADAN, KATTADAN, TELANGANA-500077

**SKF TECHNOLOGIES (INDIA) PRIVATE LIMITED**

PLOT NO. 2, BOMMASANDRA INDUSTRIAL AREA, HOSUR ROAD,  
BANGALORE

**VIDHAN MARKETING PVT LTD**

DIAMOND ARCADE, ROOM 313, 68 JESSORE ROAD, KOLKATA

**VIPUL VIDHYUT PRIVATE LIMITED**

OFFICE NO. C-2, FOURTH FLOOR, AISHWARYA CHAMBERS, G.E ROAD,  
TELIBANDHA, RAIPUR

**YOUR DIGISIGN PRIVATE LIMITED**

B-392, FIRST FLOOR, NIRMAN VIHAR, DELHI

**ATUL LIMITED**

ATUL HOUSE, G I PATEL MARG, AHMEDABAD

**DHAMPURE SPECIALITY SUGARS LIMITED**

24, SCHOOL LANE, NEAR WORLD TRADE CENTRE, NEW DELHI

**JK INDUSTRIES LIMITED**

PADA NO 3, BALKUM, THANE (WEST)

**MADHAV INFRA PROJECTS LIMITED**

MADHAV HOUSE, PLOT NO. 04, NR. PANCHRATNA BUILDING, SUBHANPURA,  
VADODARA

**NIRVIKARA PAPER MILLS LIMITED**

A/7, TRADE WORLD, KAMALA CITY, SENAPATI BAPAT MARG, LOWER PAREL  
(W), MUMBAI - 400 013

**PRABHAT TELECOMS (INDIA) LIMITED**

UNIT NO. 402, WESTERN EDGE 1, WESTERN EXPRESS HIGHWAY, BORIVALI  
(EAST), MUMBAI

# Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE  
COMPANY SECRETARIES BENEVOLENT FUND\*




SL No.	LM No.	NAME	MEMB No.	CITY	SL No.	LM No.	NAME	MEMB No.	CITY
<b>EIRC</b>					<b>SIRC</b>				
1	11441	MS. SUNITA SINGH	ACS - 36367	KOLKATA	16	11438	MR. SANJAY AVADHANI	ACS - 44540	BANGALORE
<b>NIRC</b>					17	11439	MR. RAMPRASAD NAGARAJ MADHUGIRI	ACS - 45302	BANGALORE
2	11437	MR. BAJRANG TARAR	ACS - 46827	RAISINGH NAGAR	18	11440	MR. NAGA DURGA RAO DOKKU	ACS - 41434	HYDERABAD
3	11442	MR. SHASHANK SHEKHAR	ACS - 38931	NEW DELHI	19	11443	MR. KIRAN KODURI	ACS - 45072	TENALI
4	11445	MR. SANDEEP AHUJA	ACS - 46309	NEW DELHI	20	11444	MR. RAJENDRAN NAIR S	ACS - 46476	THIRUVANANTHAPURAM
5	11447	MR. ARPIT BASLAS	ACS - 46623	AGRA	21	11446	MS. SRAVANTHI BADAMI	ACS - 37580	HYDERABAD
6	11448	MS.MANDAVI	FCS - 8850	GHAZIABAD	22	11449	MR. K SURIYANARAYANAN	ACS - 46373	CHENNAI
7	11452	MS. SONALI MAHESHWARI	ACS - 26335	GURGAON	23	11451	MS. ANNAPU REDDY CHAITANYA	ACS - 39540	SECUNDERABAD
8	11454	MS. REHANUMA KHAN	ACS - 25291	UDAIPUR	24	11453	MR. UPENDRA KUMAR SINGH	ACS - 46950	JAMUI DISTT
9	11455	MR. JITENDRA KANSAL	ACS - 47046	GHAZIABAD	25	11459	MS. LINI C T	ACS - 43438	THRISSUR
10	11457	MR. ASHUTOSH SHUKLA	ACS - 46761	SITAPUR	26	11460	MS. SNEHA SHARMA	ACS - 31306	CHENNAI
11	11458	MS. DEEPANSHI JAIN	ACS - 40127	GHAZIABAD	27	11465	MR. SRINIVAS PALLAPU	ACS - 45680	WARANGAL
12	11462	MS. NEHA JAIN	ACS - 30822	GHAZIABAD	<b>WIRC</b>				
13	11463	MS. ANJALI AILAWADHI	ACS - 43350	PANIPAT	28	11450	SH. ARUN KUMAR DASH	ACS - 18701	THANE DISTT
14	11466	MS. VANITA ARORA	ACS - 30408	FARIDABAD	29	11456	MR. GAUTAMBHAI KALUBHAI VIRHADIYA	ACS - 31820	AHMEDABAD
15	11468	MS. RHYTHM SEHRA	ACS - 42614	DELHI	30	11461	MRS. ANUJA KEDAR MULEY	ACS - 21243	VADODARA
					31	11464	MR. SACHIN VISHWAS KATKAR	ACS - 39421	KOLHAPUR
					32	11467	MR. KOTECHA GUNJAN KISHOR	ACS - 45699	KESHOD

\* ENROLLED DURING THE PERIOD 20.08.2016 TO 19.09.2016



## NEWS FROM THE REGIONS

### EASTERN INDIA REGIONAL COUNCIL

Programme	QR Code/Weblink
Half Day Workshop on Stress Management held on 3.9.2016 at ICSI-EIRC, House, Kolkata.	
NCLT Session on "Background, Constitutional Validity & Recent Developments, Class Action Suits, Revival and Rehabilitation of sick companies, Power of NCLT under various sections" held at ICSI-EIRC House, Kolkata on 3.9.2016.	
GST Session on "Business Processes under GST, Levy of Tax and Exemptions, Refund and Returns, TDS Provisions" held at ICSI-EIRC House, Kolkata on 3.9.2016.	<a href="https://www.icsi.edu/eiro/Archive.aspx">https://www.icsi.edu/eiro/Archive.aspx</a>
GST Session on "Overview of The GST model in India" held at ICSI-EIRC House, Kolkata on 5.9.2016.	
NCLT Session on "Conversion from Public Company to Private Company; Change in Financial Year; Consolidation of Shares and Compounding of Offences" held at ICSI-EIRC House, Kolkata on 6.9.2016.	
GST Session on "Registration & Threshold limit in GST, Time and point of supply under GST & Tax" held at ICSI-EIRC House, Kolkata on 7.9.2016.	
NCLT Session on "Basic Legal Concepts and Essentials & Procedures of Drafting and filling of Application/ Petitions" held on 8.9.2016 at ICSI-EIRC House, Kolkata.	
GST Session on "Valuation and Input Tax Credit, GST Valuation (Determination of the Value of supply of Goods and Services) and Input, Tax Credit under Model GST Law – transfer, recovery, distribution held on 10.9.2016 at ICSI-EIRC House, Kolkata.	

ICSI-EIRC's Joint Programme with Patna Chapter on "GST" held on 11.9.2016 at Rajgir, Bihar.

GST Session on "Place of provision of services" held at ICSI-EIRC House, Kolkata on 15.9.2016.

NCLT Session on "Class Action Suit, Court Craft & Art of Appearance" held on 16.9.2016 at ICSI-EIRC House, Kolkata.

NCLT Session on "Prevention of Oppression and Mismanagement; Appeals to NCLAT" held on 17.9.2016 at ICSI-EIRC House, Kolkata. 2016.

GST Session on "Changing paradigm in Indirect Taxes in India and Understanding its impact on Supply Chain Management" held at ICSI-EIRC House, Kolkata on 17.9.2016.

1. NCLT Session on "NCLAT-Scope and Jurisdiction" held at ICSI-EIRC House, Kolkata on 19.9.2016

<https://www.icsi.edu/eiro/Archive.aspx>

GST Session on "Transitional Provisions" held at ICSI-EIRC House, Kolkata on 20.9.2016.



NCLT Session on "Compromise, Arrangement, and Mergers Winding up – Drafts, Role of NCLT, Role of ROC/ RD, other procedures" held at ICSI-EIRC House, Kolkata on 22.9.2016.

Half Day Workshop on GST on Getting Ready for GST - Changes Called For held on 24.9.2016 at ICSI-EIRC House, Kolkata.


Joint Programme of EIRC with all Chapters under EIRC held on 7th August, 2016 at Puri.

Independence Day Celebrations at ICSI-EIRC

28th Regional Conference for Student Company Secretaries on theme "Together Towards Tomorrow" held on 20 and 21.8.2016 at ICSI-EIRC House and National Library, Kolkata.

Seminar on Corporate Governance, NCLT and GST held on 26.08.2016 at The Park, Kolkata.

**BHUBANESWAR CHAPTER**

Programme	QR Code/Weblink
Celebration of Ganesh Chaturthi	<a href="https://www.icsi.edu/bhubaneswar/NewsEvents.aspx">https://www.icsi.edu/bhubaneswar/NewsEvents.aspx</a> 
Celebration of 35th Foundation Day of the Chapter	
Image building activities	
Talk on "GST : Boosting India's Growth" on 24/09/2016	









**NORTHERN INDIA REGIONAL COUNCIL**

Programme	QR Code/Weblink
PCS Help Line on NCLT & NCLAT held on 7.9.2016	NA
Seminar jointly with Varanasi Chapter of NIRC on Judicial Forum - NCLT & NCLAT & GST held on 9.9.2016	
Full Day Program jointly with Chandigarh Chapter of NIRC on NCLT – Prepare to Excel held on 10.9.2016	
Special Session on Income Declaration Scheme, 2016 held on 14.9.2016	
Seminar on Regulatory Compliance, Audit And Diligence held 17.9.2016	
Campus Placement held on 19.9.2016	
PCS Help Line on "NBFC & Housing Finance Companies" held on 21.9.2016	
Workshop on GST - Impact & Preparedness held on 24.9.2016	



**ALLAHABAD CHAPTER**

Programme	QR Code/Weblink
Seminar on GST held on 18.9.2016	NA

**SOUTHERN INDIA REGIONAL COUNCIL****BENGALURU CHAPTER**

Programme	QR Code/Weblink
Study Circle Meeting – Members	<a href="https://www.icsi.edu/bhubaneswar/NewsEvents.aspx">https://www.icsi.edu/bhubaneswar/NewsEvents.aspx</a> 
Full Day Seminar	<a href="http://bit.ly/2cmPZIk">http://bit.ly/2cmPZIk</a> 
3 Days Certified Advocacy Skills Programme	<a href="http://bit.ly/2cZdRWs">http://bit.ly/2cZdRWs</a> 
Interaction with NCLT Members	<a href="http://bit.ly/2cZdFpT">http://bit.ly/2cZdFpT</a> 
42nd Annual Day Celebrations	<a href="http://bit.ly/2c8hHYq">http://bit.ly/2c8hHYq</a> 
Independence Day Celebrations	<a href="http://bit.ly/2cvXY8U">http://bit.ly/2cvXY8U</a> 
Indoor and Outdoor Games	<a href="http://bit.ly/2cXf6Cm">http://bit.ly/2cXf6Cm</a> 
Chapter Activity Report _ August 2016	<a href="http://bit.ly/2cE5PS8">http://bit.ly/2cE5PS8</a> 

**SALEM CHAPTER**


Programme	QR Code/Weblink
Group Discussion on GST	<a href="http://www.icsi.edu/salem/Activities/StudyCircleMeetGroupDiscussion.aspx">http://www.icsi.edu/salem/Activities/StudyCircleMeetGroupDiscussion.aspx</a> 
Half Day Seminar on Overview & Salient Features of Model GST Law	<a href="http://www.icsi.edu/salem/Activities/SeminarPDPs.aspx">http://www.icsi.edu/salem/Activities/SeminarPDPs.aspx</a> 




## THIRUVANANTHAPURAM CHAPTER

Programme	QR Code/Weblink
Workshop on New Companies Act, 2013, Jointly with Trivandrum Management Association on 5.8.2016	NA
Seminar on Income Declaration Scheme held on 13.8.2016	NA
Half-day Seminar on "National Company Law Tribunal" held on 27.8.2016	NA
Onam Celebration was conducted at Chapter premises. Athapookkalam competition, onasadhya, onam games, tug of war was conducted on 10.9.2016.	NA


## WESTERN INDIA REGIONAL COUNCIL AHMEDABAD CHAPTER

Programme	QR Code/Weblink
"Study Circle Meeting on Critical Issues in Companies Act, 2013" held on 9.9.2016	<a href="http://www.icsi.edu/Portals/25/01.09.2016%20TO%2010.09.2016.pdf">http://www.icsi.edu/Portals/25/01.09.2016%20TO%2010.09.2016.pdf</a> 


## BHAYANDAR CHAPTER

Programme	QR Code/Weblink
Full Day Seminar on "Corporate Laws, M & A and White Collar Crimes" held on 25.09.2016	<a href="http://www.icsi.edu/bhayander/NewsEvents.aspx">http://www.icsi.edu/bhayander/NewsEvents.aspx</a> 

## PUNE CHAPTER

Programme	QR Code/Weblink
Campus Placement	<a href="http://www.icsi.edu/portals/32/Chartered_Secretary_01_09_2016_to_10_09_2016.pdf">http://www.icsi.edu/portals/32/Chartered_Secretary_01_09_2016_to_10_09_2016.pdf</a> 
Full day program on "all about contracts"	
Study Circle Meeting on "preparation of annual filing"	

## VADODARA CHAPTER

Programme	QR Code/Weblink
Two Days Conference held on 3 and 4.9.2016 at Vadodara	<a href="http://www.icsi.edu/Portals/37/Write-up_3-4Sep.%202016.pdf">http://www.icsi.edu/Portals/37/Write-up_3-4Sep.%202016.pdf</a> 

## ICSI – CCGRT

Programme	QR Code/Weblink
Half-day Workshop on SME Exchange held on 9.9.2016 at NSE Auditorium, Mumbai.	NA

# SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out the following special issues of Chartered Secretary during the remaining period of 2016:

1. Competition Law (November 2016 issue) and
2. Social Audit and CSR (December 2016 issue).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

### The articles may kindly be forwarded to:

The Director (Publications), the ICSI, 22, Institutional Area, Lodhi Road, New Delhi – 110003.

e-mail: [ak.sil@icsi.edu](mailto:ak.sil@icsi.edu)

## ANNOUNCEMENT

In line with the Green Initiatives and the Ministry of Corporate Affairs Circular No. 18/2011 (No. 17/95/2911-CL.V dated April 29, 2011) requiring companies to send Balance Sheet and Auditors Report etc. to their members through electronic mode and pursuant to the decision of the Council of the Institute, the Annual Report of the Council for the Financial Year 2015-16 has been sent to all the members of the Institute through electronic mode on 29th September, 2016. The Annual Report has also been hosted on the website of the Institute on link-

[https://www.icsi.edu/WebModules/LinksOfWeeks/Annual\\_Report\\_2015-16.pdf](https://www.icsi.edu/WebModules/LinksOfWeeks/Annual_Report_2015-16.pdf)



# CHARTERED SECRETARY Advertisement Tariff

(With Effect from 1<sup>st</sup> April 2012)

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### MECHANICAL DATA

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- \* The Institute reserves the right not to accept order for any particular advertisement.
- \* The journal is published in the 1<sup>st</sup> week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:  
The Editor,  
"CHARTERED SECRETARY",



ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003  
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# 6

## MISCELLANEOUS CORNER



- ETHICS & CODE OF CONDUCT CORNER
- ETHICS & SUSTAINABILITY CORNER
- GST CORNER
- CG CORNER
- 44<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

**FREQUENTLY ASKED QUESTIONS ON PROFESSIONAL AND OTHER MISCONDUCT IN RELATION TO MEMBER OF THE INSTITUTE IN PRACTICE BASED ON PART I OF THE SECOND SCHEDULE TO THE COMPANY SECRETARIES ACT, 1980**

**Q1. Can a Company Secretary in Practice disclose information acquired by him during the course of his professional engagement?**

**Ans.** No, a Company Secretary in Practice cannot disclose information acquired by him during the course of his professional engagement, to any person other than his client who has engaged him, without the consent of his client, or otherwise than as required by any law for the time being in force. Disclosure of such information would amount to professional misconduct under Item (1) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

Any communication acquired by a Company Secretary in practice in the course of his professional engagement on behalf of his client, any communication or any advice given by him to his client in the course and for the purpose of his engagement is a privileged communication and should not be disclosed without the express consent of his client, the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional engagement.

**Q2. Can a Company Secretary in Practice certify or submit in his name a report of an examination of the matters relating to company secretarial practice without examination of such statements?**

**Ans.** No, a Company Secretary in Practice cannot certify or submit in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in Practice. Such certification or submission without examination would amount to professional misconduct under Item (2) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

**Q3. Can a Company Secretary in Practice permit use of his or his firm's name in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast?**

**Ans.** No, a Company Secretary in Practice cannot permit his name or the name of his firm to be used in connection with any report or statement contingent upon future

transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast. If a Company Secretary in Practice permits so, he shall be deemed to be guilty of professional misconduct under Item (3) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

A Company Secretary in Practice should not certify any possible happening or non happening or give a report about the future e.g. it would be improper for a Company Secretary in Practice to certify the future earning capacity, future shareholding pattern, future profitability or similar future figures and numbers.

**Q4. Can a Company Secretary in Practice express his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest?**

**Ans.** No, a Company Secretary in Practice cannot express his opinion on any report or statement given to any business or enterprise in which he or his firm, or a partner in his firm, has a substantial interest. If a Company Secretary in Practice does so, he shall be deemed to be guilty of professional misconduct under Item (4) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

**Q5. What happens if a Company Secretary in Practice fails to disclose a material fact known to him in his report or statement, where such disclosure is necessary in a professional capacity?**

**Ans.** If a Company Secretary in Practice fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity, he shall be deemed to be guilty of professional misconduct under Item (5) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

**Q6. What happens if a Company Secretary in Practice fails to report a material mis-statement known to him and with which he is concerned in a professional capacity?**

**Ans.** If a Company Secretary in Practice fails to report a material mis-statement known to him and with which he



is concerned in a professional capacity, he shall be deemed to be guilty of professional misconduct under Item (6) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

**Q7. What happens if a Company Secretary in Practice does not exercise due diligence, or is grossly negligent in the conduct of his professional duties?**

**Ans.** If a Company Secretary in Practice does not exercise due diligence, or is grossly negligent in the conduct of his professional duties he shall be deemed to be guilty of professional misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

A Company Secretary in Practice has to exercise due diligence while discharging his professional duties. Before certifying any form on behalf of the client, the Company Secretary is expected to check the original statutory and other relevant records and satisfy himself fully before certification. In cases where he is aware of any dispute between the Directors and/ or shareholders of the company, he is required to be more vigilant and should exercise extra caution in verifying all the facts and details from the original records of the client. Gross negligence may be determined upon facts and circumstances of each case.

**Q8. What happens if a Company Secretary in Practice fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion?**

**Ans.** If a Company Secretary in Practice fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion, he shall be deemed to be guilty of professional misconduct under Item (8) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

**Q9. What happens if a Company Secretary in Practice fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice?**

**Ans.** If a Company Secretary in Practice fails to invite attention to any material departure from the generally

accepted procedure relating to the secretarial practice he shall be deemed to be guilty of professional misconduct under Item (9) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

It is the duty of a Company Secretary in Practice to invite attention to material departure from generally accepted secretarial practice. Where the standard secretarial practice in respect to any matter is not recommended by the Institute, a Company Secretary in Practice should follow the existing well recognized secretarial practices and invite attention to departure which is material.

**Q10. What happens if a Company Secretary in Practice fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time?**

**Ans.** If a Company Secretary in Practice fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time he shall be deemed to be guilty of professional misconduct under Item (10) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

It is the duty of a Company Secretary in Practice to ensure that the money of his client is separately accounted for and that such money is specifically used only for the purpose for which it is paid by its client. It is also the duty of a Company Secretary in Practice to ensure use of such money of its client within reasonable time only.

## OBITUARIES

*Chartered Secretary deeply regrets to record the sad demise of the following Members:*

**CS Satya Prakash Gupta**, (25.01.1932 -28.06.2016), a Fellow Member of the Institute from Mumbai.

**CS M M Sampat**, (09.11.1936 -17.09.2013), an Associate Member of the Institute from Mumbai.

**CS N K Bhide**, (31.10.1935 -17.06.2015), an Associate Member of the Institute from Dombivli(E)

**CS N Rengachari**, (13.03.1931 – 03.02.2012), an Associate Member of the Institute from Chennai.

*May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.*

*May the Departed souls rest in peace.*

# CELEBRATING REAL FREEDOM FOR SUSTAINABILITY

(Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurgaon)

India had celebrated Independence Day last month with hearts filled with patriotism. All over the nation there was a wave of pride and praise for the country and our brave freedom fighters, as they surrendered their lives to give the country, the gift of freedom, so that their countrymen could live happily, peacefully, fearlessly, as per their terms and wishes. India has been freed from the clutches of foreign rule way back in 1947. Like-wise, there has been a deep and elaborate history of slavery in almost all the ancient civilizations that had colonial rule that we had all known. After a lot of efforts, movements and revolts, the evil of slavery was termed illegal, banned and abolished.

We, in India have been living in a 'Free' country since almost 7 decades. The Constitution of India provides every citizen 6 Fundamental Rights, one of these is the Right to Freedom and another is the Right to Freedom of Religion. Right to Freedom includes freedom of speech, expression, assembly, movement, residence... etc and Right to Freedom of Religion includes the freedom to practice and propagate religion, freedom to manage religious affairs... etc. We are fortunate to receive these through our country's constitution since the day India became free (present generation has the fortune to get them as their birth-right). But along with these Rights, comes a responsibility to use them wisely. Today all of us have these Rights, although how many of us understand and fulfil the responsibility behind them, is a big question. Another point to ponder is whether abolishment of slavery or being in a free country gives us the privilege of being 'free' and experience true freedom, and sustain it? We can see that often people claim their Right to speech and expression but try to curb other's rights for the same. Also some fight for their Right to Freedom of Religion, but in a way that snatches the Right to Freedom of Religion of others. If freedom of one person becomes bondage for others, can we call it real freedom?

To keep experiencing freedom, one has to abide by some rules and responsibilities. Just like a kite can rise up the sky when bound to the string, we can also achieve happiness and success in life, if along with freedom, we pay its cost i.e. be responsible. If we perceive that the string is restricting the kite to rise up and cut it, then instead of going up the kite falls astray.

To understand real freedom, let us first explore its complete meaning. Freedom has many dimensions. The most obvious one is physical freedom. When a person is free from any captivity, free from slavery, free to work as per his will, free from forced labour, free to move and reside etc. he can be considered to be physically free. Although, today we have this kind of freedom, is this

enough for us to live happily and securely?

The Hindi word for freedom is 'Swatantra' which is made up of two words 'swa' and 'tantra'. 'Swa' means self and 'tantra' means governance or control. Hence swatantra means self-control or self-governance and to be truly free is to be self sovereign. Today, we have quite lacked the understanding of this word. We take this as, when there is no foreign rule, we are free. While real freedom is being the master of our own self. Here comes the aspect of another type of freedom- the spiritual freedom. Today, if asked whether our mind is in our control, majority of us would nod in disagreement. We call it 'our' mind but even then we are not able to do justice to our role of 'master of the mind'. On the contrary, it is our mind or the thoughts created by our mind that are controlling our responses in terms of feelings, words and actions.

To understand this, Consider the case of a chariot where the master of the chariot is sitting on his seat and the chariot driver is controlling the horses through bridle. When the master is alert, he can guide the driver of the chariot who then controls the horses accordingly, to reach the destination. If the master who knows where to go falls asleep, the driver of the chariot gets no guidance for which direction to follow. How can he then control the horses? Under such circumstances, when the horses are not controlled by the driver through the bridle, they can choose their path at their free will. One of the horses would like to go where the grass is green while another would like to go to drink water. As a result, the chariot either reaches nowhere or reaches a place other than destined.

The root of this analogy lays in a deep spiritual truth. We commonly refer to ourselves as Human Beings. If I realize the components of my identity, I would agree to the truth that I am a 'Being' in this 'Human' experience. 'Human' here refers to the body made up of 'humus' which is the top layer of the soil- the major component amongst the 5 elements which the body is made up of. Other elements apart from Soil (Earth) which contribute to the physical existence of the humans are: Water, Air, Fire and Sky. Although these elements support lives, but even the most appropriate combination of these 5 elements cannot generate life until the 'Being' i.e. the Spiritual Consciousness or Energy brings life into the 'Human'.

Relating to this analogy of the chariot, 'I'- the Being, is the chariot master while the body is 'MY' chariot. Thus there is a difference between 'I' and the things or objects or entities I call 'MY' or 'MINE'. When I am in full consciousness of being the spiritual entity- 'I' (the Being), I am awakened. On the other hand, when I confuse myself with what is 'MY'

and consider myself to be the body or the chariot or the Human, then the 'I' gives up its original identity and gets attached to limited entities like the body, a role, a name, a position, a status, so on and so forth.

The spiritual entity controls the body i.e. a coordination of various physical systems, through a subtle system comprising of mind and intellect; where our physical systems and senses are the horses and the intellect is the chariot driver which directs the sense organs through the bridle of the mind. When I am self sovereign, which means that the self (the Being) is awakened and in full consciousness of being different from the body, I can analyze and judge what is righteous and what is not using the intellect. Intellect if understood deeply, is nothing but "in (internal)- tell (self talk)- act (action)". Which means, before doing anything, I communicate with myself about whether it is right or not. Accordingly, I- the chariot master, use my intellect- the driver, which through the bridle of mind controls my sense organs to do the act which is righteous in order to reach to my destination or destiny of peace, security, happiness etc. This ensures that I maintain my self-sovereignty or swatantrata or freedom of the self- to do what I want to get done through my senses. If the self- the spiritual being, falls asleep, the intellect becomes incapable to take correct decisions and hence can't direct the mind to control the senses. The senses, like wild horses are left uncontrolled to choose their own path at their whims and fancies. So, if I don't want to say something, knowing that it is wrong, still I don't have control over my words. I realize my mistake only after I have said that. Also, though I don't want to think over a matter, even then I can't stop myself from thinking the same. This makes me feel like a victim entangled in the web of waste and negative thoughts. Similarly, I don't want to see the weaknesses of others or hear about it but I am compelled to do so as I no longer have control over myself. The slogan of the Father of the Nation- Gandhi ji, which states: "see no evil, hear no evil, talk no evil", which means to be swatantra, is defied, as these senses slip on the path of negativity. When the intellect is unable to give the right advice and stop the senses going astray, it feels helpless, loses the confidence over the self and feels that to be on the path of righteousness is extremely difficult. After reaching to the point of total chaos, the spiritual being or the chariot master wakes up to find himself on the wrong destination and blaming the destination (destiny) for it. I feel like a bird trapped in its self-made cage. Being in this cage of negativity and waste, when I look around, I see only negativity everywhere. This is when I complain that the entire world is full of only negative people. And when I find others too on the same destination, I pacify myself thinking that maybe this is the right way how things are to be done in the present times and submit to the state of chaos, certifying it as normal. Therefore, we hear people say- 'truthfulness and trust do

not pay off in the current times' or 'one cannot get things done though love' or 'if you want things to be done your way, show them your power' or 'honesty is no policy'...

And then the other half of the story begins- where I can't think, speak or do what I want to and what is natural to me but I need the support of my ego, anger, false power, to preserve my false identity. When I associate myself to this false identity so deeply (it could be name, fame, role, position or even this body) and others accept me as this false identity, I become a slave to these senses which took me here, to keep me where I have reached while I have totally lost the sight of the destination. Such a lack of control leads to addictions that can be at any level- addiction to fame, social media, gadgets, chemicals etc. Apart from this, it builds up our desires as an enclutched self remains far from inner satisfaction. This in other terms means, that I- the master of the chariot, have completely submitted myself to the horses- my senses. As a result, I become an easy prey to others who can misguide me, control my emotions, and turn me ON or OFF at any moment as I no longer have a connection with my mind and intellect.

Thus to be truly free is to experience not just physical freedom but also spiritual freedom, by which we mean that our mind is free from everything that is harmful to us as well as others, and in full coordination with the intellect, which in turn is empowered enough to take right decisions by the true understanding of what is right. Like a bird if freed, can fly high in the sky, similarly a mind which is free from all waste and negative thoughts feels light and can achieve new heights. If we elevate ourselves from waste and negative then we would be able to see the beautiful view of new horizons of hope, goodness and positivity around and that is when we shall be able to spark a change - first in ourselves and later in this world.

Like, to free the country many uprisings had occurred, similarly to break these mental bondages, we may experience various uprisings of thoughts and emotions. These uprisings also lead to a state of inner conflict. The inner conflict between a self possessed with negativity and the other side of the self which wants to be free, can be resolved with spiritual awakening and the practice of Rajyoga Meditation. 'Rajyoga'- which literally translates to 'connection (Yoga) with the Supreme' to become the 'ruler (Raja) of the self', is a technique of meditation to obtain freedom that is sustainable, resulting into sustainable behaviour and systems. Such a self sovereign person with mind free from vices automatically gets respect and love from others and would have much harmonised relations. Moreover, when we are free from desires we shall have satisfaction in whatever we do and get, and even if we aspire for more achievements we will be stable if we face a failure. This is where one can claim to be truly swatantra.

## GST Updates

1. The Constitutional Amendment Bill became an Act i.e. The Constitution (101st Amendment) Act, 2016 on 08.09.2016 on President's assent and Gazette Notification.
2. With sixteen states ratifying the Bill by September 1, 2016, further the following states have also ratified the Constitutional (122nd Amendment) Bill—
  - Rajasthan ( September 2, 2016)
  - Puducherry (September 2,2016)
  - Andhra Pradesh (September 8, 2016)
  - Arunachal Pradesh (September 8, 2016)
  - Meghalaya (September 9, 2016)
  - Punjab (12th September 2016)
  - Tripura (September 26, 2016)
3. GST Council has been constituted on 12.09.2016 (vide Gazette Notification No. 2915(E) dated 10-09-2016).
4. The provisions of section 12 of Constitutional Amendment Act, 2016 came into force w.e.f.12-09-2016 and remaining provisions of Constitutional Amendment Act, 2016 came into force w.e.f.16-09-2016.
5. The first meeting of GST Council was held on September 22-23 , 2016 wherein the following action points were finalised :
  - Threshold limit fixed at Rs. 20 lakhs in general /Rs.10 lakhs for North eastern States
  - All cesses to be subsumed in GST
  - State Authorities will have jurisdiction over assesseees with annual turnover of upto Rs 1.5 crores
  - A consensus arrived on compounding or composition scheme whereby traders with gross turnover of up to Rs 50 lakh will pay 1-2% tax
  - Adopted a cross-empowerment model for tax administration under which tax administrators will use a formula to decide which assessee they will audit or register. The taxpayer will then have to interact with one authority only- either Central or State to avoid dual control.
- GSTC to work on a compensation law and compensation formula; Base year of compensation to States to be 2015-16.
6. The second meeting of GST Council was held on September 30 , 2016 wherein the following action points were finalised :
  - Five set of rules with regard to registration, payments, return, refund and invoices were taken up for consideration and have been approved.
  - Regarding treatment of existing tax incentives by the Centre, some exemptions from excise duty have been given to 11 North-East and hill states. GST will be levied on the same and later would be reimbursed from the budget.
  - Discussions on service tax assessment and the formula for calculating compensation for states would be taken up in the next meeting scheduled on October 18-20, 2016.

## GST in News

- GSTN to take Rs. 550 cr. loan from IDFC bank
- GST Council gets Cabinet nod, first meet on September 22 and second meet on September 30, 2016
- Government plans Rs. 4000- Crore overhaul of 80 check posts for GST
- Telecom companies want Sops to stay under GST
- CBEC issues FAQ's on GST
- Mr Arun Goyal , IAS has been appointed as Additional Secretary of GST Council
- CBEC is likely to take up 50% posts in GST Secretariat
- Government has issued Draft GST Procedural Rules and formats for public comments. Council to finalise them.
- Union Cabinet clears Rs 2,256 crore Project "Saksham" for GST Integration, to be incurred over next 7 years
- Partial GST software likely to be operational by October, 2016
- GST Council third meet from October 18-20 , 2016



## Features of Draft Rules on GST issued by Ministry of Finance on September 26 and 27, 2016

Select highlights of the Draft Rules put in public domain are as follows:

### *Draft Rules on Registration*

- Persons already registered as assesseees under an “earlier law” such as Central Excise or Service Tax or other taxes and having a Permanent Account Number (PAN) will be given a provisional registration for the period of six(6) months
- New applicants would be expected to provide details of their PAN, mobile number and e-mail address and application to be verified in three working days
- Non-resident applicants to seek registration at least five days before they start their business activities in the country and to pay full tax liability in advance
- 26 forms have been floated including forms for show cause notice for cancellation of registration, order for amending registration, application for revocation of cancelled registration etc.
- No fee is payable for filing application for registration

### *Draft Rules on Invoice/ Bills*

- The draft format for Electronic Reference Number of Invoice has been provided
- 30-day time limit for raising invoice from the date of supply of services but no time limit provided for supply of goods
- Bill of Supply will be issued by suppliers when non-taxable goods or services are supplied or by suppliers under Composition Scheme
- Certain essential details for supplementary invoice, debit note, credit note, ISD invoice are also provided

### *Draft Rules on Payment*

- Electronic Tax Liability Register, E-Register for Cash Payments, E-Register for Credits
- Tax can be paid through net banking, credit or debit card, NEFT/RTGS, Over the Counter (only upto Rs. 10,000)

- Generation of unique ID for every transaction – to be correlated with Tax Liability Register
- Tax, interest, penalty and fees can be paid by debiting E-Register for cash Payments

### *Draft Rules on Returns*

- Monthly returns are for output supply, input supply and summary accounts and would cover state SGST,CGST as well as IGST
- GST returns to contain details of profit as per the profit and loss accounts of the company
- GST returns for composition supplier, Non- resident taxable person, casual taxable person, e-commerce operator and ISD.

### *Draft Rules on Refund*

- In case of SEZs , the recipient of goods and services has to file an application for refund
- Stipulation of provisional refund within seven days of receipt of refund application. Such provisional refund, though, is only contemplated if the compliance rating of the supplier is at least five (out of a score of 10), a concept which is new in GST law.

## **GST: Some Interesting Facts**

- GST Council is the Constitutional body now responsible for GST in India
- Only Canada has dual GST, similar to India called as Harmonized Sales Tax –Labrador, Nova Scotia etc.
- India’s competitiveness ranking likely to rise after GST rollout.
- Project ‘Saksham’ will integrate GST through single window interface for facilitating trade.

## **Opportunities for Members**

GST will offer lots of new areas of practice and employment opportunities. Professionals may use the GST space as a turning point in profession / career as it brings immense work related opportunities including practice, employment and knowledge management.

## Developments – August and September 2016

### Securities and Exchange Commission of Pakistan (SECP) approves principles of corporate governance, ISLAMABAD

The SECP has approved principles of corporate governance for non-listed companies (NLCs) to make business environment trustworthy, transparent and accountable.

The principles will change the governance paradigm for NLCs by enabling the corporate sector to adopt the best international practices. They are voluntary guidelines that will set out the corporate governance landscape for over 60,000 NLCs operating in Pakistan by providing a governance toolkit to improve their internal and external governance structures. The principles are aimed at achieving excellence in corporate governance by promoting framework for the NLCs to make them more ethical and sustainable. The implementation of principles for NLCs is part of the landmark project of the SECP for corporate sector development and growth in order to meet its policy objectives as a vibrant corporate sector regulator.

The principles have two parts: Part 1 principles are applicable to all NLCs except small companies, whereas Part 2 principles are applicable to public interest and large companies. The principles are not applicable to public sector companies that are governed under the Public Sector Companies (Corporate Governance) Rules, 2013.

The Part 1 principles provide broad guidelines with regard to constitutive documents, board of directors and their meetings, remuneration of board members, internal control mechanism, training of board and general meetings. The Part 2 principles are sophisticated corporate governance measures that are relevant to public interest and large-sized companies. These may be considered by NLCs that are preparing themselves for future public listings.

The part 2 principles includes having a sufficient number of non-executive and independent directors, separation of role of chairman and chief executive, forming of board committees with appropriate terms of reference, periodic appraisal of the board, a statement of compliance with the principles of good governance, publishing an annual report that is tailored to the needs of its shareholders and its other stakeholders etc.

#### Source:

<http://dailytimes.com.pk/business/23-Aug-16/secp-approves-principles-of-corporate-governance>

The principles are available at <http://www.secp.gov.pk/wp-content/uploads/2016/04/Principles-of-Corporate-Governance-24-8-16.pdf>

### Financial Stability Board (FSB) has launched peer review of the G20/OECD principles of corporate governance

The Financial Stability Board (FSB) is an international body that monitors and makes recommendations about the global financial system. The members of FSB are international organisations like IMF, World Bank, OECD, BIS and central banking and financial institutions of various countries. The FSB has launched a peer review on the implementation of the G20/Organisation for Economic Co-Operation and Development (OECD) Principles of Corporate Governance (Principles). The review takes stock of how FSB

member jurisdictions have applied the principles to publicly listed, regulated financial institutions, identifying effective practices and areas where good progress has been made while noting gaps and areas of weakness. It will also inform work that is underway to revise the OECD's Assessment Methodology that is used by the World Bank as the basis for country assessments undertaken as part of its Corporate Governance Report of Standards and Codes initiative and will provide input to governance-related aspects of the FSB's broader work on conduct for financial institutions.

The summarised terms of reference, published on the FSB website, provide more details on the objectives, scope and process of this review. A questionnaire to collect information from national authorities has been distributed to FSB members. The responses will be analysed and discussed by the FSB later this year. The peer review report will be published in early 2017.

As part of the peer review, the FSB is inviting feedback from financial institutions, industry and consumer associations as well as other stakeholders on the areas covered including: the design of corporate governance frameworks, including legal and regulatory powers, to promote transparent and fair markets, and the efficient allocation of resources; how the corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders; ways in which the corporate governance framework can recognise the rights of stakeholders and encourage active co-operation between the financial institution and stakeholders in creating wealth, jobs, and the sustainability of financially firms; how the corporate governance framework can ensure that timely and accurate disclosure is made on all material matters regarding the financial institution, including its financial situation, performance, ownership, and governance; and how the corporate governance framework can ensure the strategic guidance of the financial institution, the effective monitoring of management by the board, and the board's accountability, including to the shareholders.

#### Source:

<http://www.ftseglobalmarkets.com/news/fsb-launches-peer-review-of-the-g20-oecd-principles-of-corporate-governance.html>

#### Remember!!

- 5 October - World Teachers' Day
- 13 October - International Day for Disaster Reduction
- 20 October - World Statistics Day
- 24 October - United Nations Day
- 24 October - World Development Information Day

#### Feedback & Suggestions

Readers may give their feedback and suggestions on this page to Ms. Banu Dandona, Joint Director, ICSI ([banu.dandona@icsi.edu](mailto:banu.dandona@icsi.edu))

#### Disclaimer:

The contents under 'Corporate Governance Corner' have been collated from different sources. Readers are advised to cross check from original sources.

# 44<sup>th</sup> National Convention of Company Secretaries

Mahatma Mandir Convention Centre  
Gandhinagar, Gujarat  
**17-19 November, 2016**  
Thursday-Friday-Saturday



**POWERING GOVERNANCE - EMPOWERING STAKEHOLDERS**  
**CS - THE GOVERNANCE PROFESSIONAL**

Image of map is only for reference & map is not to scale



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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## Invitation

Dear Professional Colleagues

We cordially invite you to attend and participate in the 44th National Convention of Company Secretaries which is being organized by the Institute from **Thursday, November 17, 2016 to Saturday, November 19, 2016 at Mahatma Mandir, Gandhinagar, Gujarat** on the Theme "Powering Governance – Empowering Stakeholders : CS - The Governance Professional." With a view to make reflective analysis of the theme, the Convention seeks to deliberate on the following sub-themes:

1. Opening Plenary
2. Looking Glass to 2022 – India at 75 - Role of Professionals
3. Towards Meaningful Life
4. CEOs Speak - Emulate Governance from Corporate Leaders
5. Digital Drive – Empowering Knowledge Economy
6. Learning from the Experience of Royal Majesties
7. Enhancing Skills – Finding the Way beyond Compliance
8. Closing Plenary

The Convention will begin with the Opening Plenary at 2.00 P.M. on Thursday, November 17, 2016 and will conclude with closing plenary at 2.30 P.M. on Saturday, November 19, 2016.

Eminent persons and experts in their respective fields from the Government, Regulators, Profession, Academia and Corporate Sector will kindly address the Convention.

With the focus straddled on exchange of professional knowhow, views and experiences from varied sectors of the economy, both from India and abroad, Institute will also be keen to provide the impetus for exchange of pleasantries.

We take pleasure in inviting your esteemed selves to kindly organise to register for the much awaited event of ICSI, the National Convention, 2016. It will be one of its kind and the venue and theme reverberates the sanctity of the event.

It will be worth to register not only yourselves but also the executives of your organization as delegate(s) for this Convention. Also do register your spouse, children and other guests. It will be a remembrance for them to be there. Lots of games and activities for keeping your precious spouse and children happily engaged is being organised.

A Souvenir containing theme articles, program details, messages of good wishes and other interesting features will also be brought out to commemorate this annual event of the Institute.

May we take the liberty to request your goodself to organise through your good offices for advertisements, sponsorships and contributions in whichever manner convenient.

Details about the registration procedure, participation fees along with the tentative program schedule, advertisement/sponsorship card and list of the hotels and their tariffs are set out in the brochure placed on ICSI website.

Looking forward to your gracious presence at the 44th National Convention at Gandhinagar, Gujarat, with your family and friends.

Each incremental step, big or small, enables the person to inch closer and closer to its destination. Your esteemed selves contribution in every manner holds lot of significance and importance to us.

Thanking you

With kind regards

Yours sincerely

CS Mamta Binani  
President, ICSI

CS Ashish C. Doshi  
Council Member, ICSI and Chairman  
44th National Convention  
Organizing Sub-Committee

CS Ashish Garg  
Council Member, ICSI and Co-Chairman  
44th National Convention  
Organizing Sub-Committee

CS Dinesh C Arora  
Secretary





# 44<sup>th</sup> National Convention of Company Secretaries

## Tentative Programme Schedule

DAY 1 - Thursday, November 17, 2016	
11.00 AM onwards	Registration of Delegates & Lunch
2.00 PM to 3.30 PM	Opening Plenary
3.30 PM to 4.00 PM	Tea
4.00 PM to 6.00 PM	Technical Session-I
6.00 PM to 7.00 PM	B2B Session
7.30 PM onwards	Cultural Programme and Dinner
DAY 2 - Friday, November 18, 2016	
7.00 AM to 8.00 AM	Yoga Session
10.00 AM to 11.30 AM	Special Session
11.30 AM to 12.00 Noon	Tea
12.00 Noon to 1.30 PM	Technical Session-II
1.30 PM to 3.00 PM	Traditional Lunch
3.00 PM to 4.30 PM	Technical Session-III
4.30 PM to 5.00 PM	Tea
5.00 PM to 6.00 PM	Technical Session-IV
8.00 PM onwards	Cultural Programme and Dinner
DAY 3 - Saturday, November 19, 2016	
6.30 AM to 8.00 AM	Run for a Cause
9.30 AM to 11.00 AM	Interactive Session (For Members of ICSI only)
11.00 AM to 12.30 PM	Technical Session-V
12.30 PM to 2.30 PM	Closing Plenary
2.30 PM onwards	Lunch

### Participants

Company Secretaries, Corporate Directors and Senior Management Executives in the Corporate and Financial Services Sector, Practising Professionals in Secretarial, Financial, Legal and Management Disciplines, Researchers and Academicians would benefit from participation in the Convention.

### Faculty

Eminent persons from the Government and industry, including professionals, management experts and academicians will address the participants. There would be brainstorming sessions and interactions too.

### Papers for Discussion

Members who wish to contribute papers for publication in the

souvenir or for circulation at the Convention are requested to send the same through email at [conference@icsi.edu](mailto:conference@icsi.edu) in word format only with the caption 'Paper for 44th National Convention' on or before October 10, 2016. The paper should not normally exceed 15 typed pages (font size Verdana 11 point - single space/single column and without any diagrams/sketches/downloaded pictures from internet). The Articles Screening Committee will consider the articles so received and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects. An honorarium of Rs.2,500 will be kindly paid by the Institute for each paper selected for publication in the souvenir or circulation at the Convention. Esteemed Members are requested to mention their Income Tax PAN number while submitting the articles, in order to enable us to expedite the payment of honorarium.

### Registration Procedure

#### A. Delegate Fees (Non-Residential)

Type of Delegate	Early Bird-I Payment (Received upto September 30, 2016) Inclusive of Service Tax	Early Bird-II Payment (Received upto October 31, 2016) Inclusive of Service Tax	Other Payment (Received from November 01, 2016) Inclusive of Service Tax
Members of ICSI/ICAI/ICAI-COST	INR 6000	INR 7000	INR 7500
Company Secretaries in Practice	INR 5500	INR 6500	INR 7000
Accompanying Spouse / Guest / Children / Senior Members (60 years & above)	INR 5000	INR 6000	INR 6500
Students of ICSI	INR 3500	INR 4000	INR 4500
Non-Members	INR 6500	INR 7500	INR 8000
Foreign Delegates	USD 200	USD 225	USD 250

The Delegate Fee is payable in advance and is not refundable once the nomination is received.

#### Delegate Registration through online mode:

Delegates are requested to register for the convention by visiting the link



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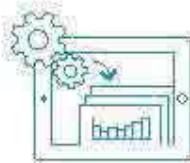


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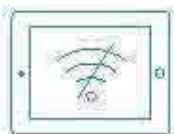
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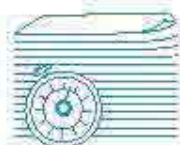
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