

# CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS



## Securities Laws and Capital Markets



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

[www.icsi.edu](http://www.icsi.edu)

Motto

सत्यं वद। धर्मं चर।

“इष्टं करोतु तेन त्वत्कर्म करोतु तेन तेन तेन”

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



“ Dess Digital Meetings is very easy to use. Our directors and secretarial team are delighted with the experience of going digital and the ease of use ”

CS. Lancy Varghese Company Secretary  
JSW Steel Ltd.

Please contact:

**Dess Digital Meetings**

The Trusted Meetings Solution Used By The Leading Boards

☎ +91 97029 28562 | ✉ [info@dess.net](mailto:info@dess.net)

## President

- Ranjeet Pandey
- Vice President**
- Ashish Garg

## Members

(in alphabetical order)

- Dr. Ahalada Rao Vummenthala
- Anil Gupta (Govt. Nominee)
- Balasubramanian Narasimhan
- Chetan Babaldas Patel
- Deepak Kumar Khaitan
- Devendra Vasant Deshpande
- Gyaneshwar Kumar Singh (Govt. Nominee)
- Hitender Mehta
- Dr. (Ms.) Madhu Vij (Govt. Nominee)
- Manish Gupta
- Manoj Pandey (Govt. Nominee)
- Nagendra Dattathreya Rao
- Niraj Preet Singh Chawla
- Praveen Soni
- Ramasubramaniam C.
- S Santhanakrishnan (Govt. Nominee)
- Siddhartha Murarka
- Vineet K. Chaudhary
- Officiating Secretary**
- Ashok Kumar Dixit

## Editorial Advisory Board

### Chairman

- Chetan Babaldas Patel

### Members

(in alphabetical order)

- Anil Gupta
- AM Sherry
- Archana Shukla
- Dr. D K Jain
- G R Bhatia
- H M Dattatri
- Dr. Jai Prakash Sharma
- Jatin Jalundhwala
- Punit Handa
- R C Gupta
- Dr. Vinod Singhania

### Editor & Publisher

- Ashok Kumar Dixit

### Legal Correspondent

- T. K. A. Padmanabhan



ISSN 0972-1983

# CHARTERED SECRETARY

[ Registered under Trade Marks Act, 1999 ]

Vol. : XLIX ■ No. 12 ■ Pg 1-140 ■ December-2019

<b>From the President</b>	<b>14</b>
<b>Global Connect</b>	<b>18</b>
<b>Articles</b>	<b>27</b>
<b>Legal World</b>	<b>99</b>
<b>From the Government</b>	<b>107</b>
<b>News from the Institute</b>	<b>123</b>

QR Code/Weblink of Chartered Secretary Journal

<https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx>



## Annual Subscription

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

## Edited, Printed & Published by

**Ashok Kumar Dixit** for The Institute of Company Secretaries of India,  
**'ICSI House'**, 22, Institutional Area, Lodi Road, New Delhi- 110 003.  
 Phones : 41504444, 45341000, Grams : 'COMPSEC'  
 Fax : 91-11-24626727  
 E-Mail : [journal@icsi.edu](mailto:journal@icsi.edu)  
 Weblink : <http://support.icsi.edu>  
 Website : <http://www.icsi.edu>

Mode of Citation: CSJ (2019)(12)/--- (Page No.)

### Design & Printed at

#### M. P. Printers

B-220, Phase II, Noida-201305  
 Gautam Budh Nagar, U. P. - India  
[www.mpprinters.co.in](http://www.mpprinters.co.in)





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

## INAUGURAL SESSION





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

2019

COMPANY SECRETARIES 2022 VIS-À-VIS GLOBAL GOVERNANCE  
STANDARDS: NEED FOR UPSKILLING AND TRANSFORMATION



MOTIVATIONAL SESSION - LET'S BRIDGE THE GAP



START-UPS: MODERN CATALYSTS OF GROWTH AND EMPLOYMENT



PANEL DISCUSSION: LEADERSHIP BEYOND GENDER





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

## MOTIVATIONAL SESSION: IMPOSSIBLE TO I'M POSSIBLE



## EMERGING TECHNOLOGIES AND ARTIFICIAL INTELLIGENCE- BOON OR BANE



## NEXT GEN CS - TRANSFORM, PERFORM AND ELEVATE



## INVESTOR AWARENESS AND E-GOVERNANCE





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

NCLT: HARMONIZING DIVERSE PRACTICES AND EXPECTATIONS  
FROM PROFESSIONALS



NEW ICSI - WAY FORWARD: INTERACTION WITH COUNCIL





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

## VALEDICTORY SESSION





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

## BEST REGIONAL AWARD SOUTHERN INDIA REGIONAL COUNCIL



## NATIONAL BEST CHAPTER AWARD BHUBANESWAR (EIRC)



## BEST CHAPTER AWARD GRADE- A+ BENGALURU (SIRC)



## BEST CHAPTER AWARD GRADE- A INDORE (WIRC)



## BEST CHAPTER AWARD GRADE-B COIMBATORE (SIRC)



## BEST CHAPTER AWARD GRADE-C BHUBANESWAR (EIRC)





# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES (NOVEMBER 14-16, 2019) HELD AT JAIPUR, RAJASTHAN

**BEST CHAPTER AWARD GRADE-D  
AMARAVATI (SIRC)**



**BEST CHAPTER AWARD FOR CAP ACTIVITIES  
BENGALURU (SIRC)**



**BEST CHAPTER AWARD FOR  
CLASS ROOM TEACHING ACTIVITIES  
COIMBATORE (SIRC)**



**EMERGING CHAPTERS AWARD  
BELAGAVI (SIRC)**



**BEST CHAPTER FOR PLACEMENT SERVICES  
CHANDIGARH (NIRC)**



**BEST CHAPTER FOR  
STUDENT REGISTRATION  
GUWAHATI (NE)**



**BEST STUDY CENTRES AWARDS D M COLLEGE OF COMMERCE, MANIPUR**







THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

VISION

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

सत्यं वद। धर्मं चर।

ICSI Motto

इष्टकारं कुरु त्वत्के भविष्ये ह्यु कुरु कुरु।

MISSION

"To develop high calibre professionals  
facilitating good corporate governance"

## Setting up of ICSI Overseas Centre, USA



CS Ranjeet Pandey  
President, The ICSI

**T**he Institute in alignment with its vision "To be a global leader in promoting good corporate governance", is going forward for globalisation of the profession of Company Secretaries and advancement of global footprints of the Institute.

We wish to inform you that in the year 2017, with a view to strengthen the global outreach of the profession and for facilitating the students and members residing in United Arab Emirates (UAE), the Institute had set up the ICSI Overseas Centre, Dubai. The ICSI Overseas Centre, Dubai acted as a facilitation Centre of the Institute and by organising various capacity building programmes, made its presence felt by the professionals based at UAE, which in turn helped our members in getting professional and placement opportunities.

With a view to provide more effective services to the members and students of the Institute, the Institute in the year 2019 realised the need of converting this facilitation Centre into the formal set up of the Institute. Accordingly, the Institute has incorporated the ICSI Middle East (DIFC) NPIO at Dubai International Financial Centre, Dubai as formal set up of Institute.

On the same lines, we are pleased to inform you that the Institute has set up ICSI Overseas Centre, USA at 4 Slivers Lane, Plainsboro, New Jersey 08536 with the following Committee of Members:

- |                           |                         |
|---------------------------|-------------------------|
| 1. CS Lakshmi Kant Garg   | 2. CS Renuka Raman      |
| 3. CS Hiren Mistry        | 4. CS Praful Kochalia   |
| 5. CS Chandra Subramaniam | 6. CS Vinita Sithapathy |
| 7. CS Neena Narang        |                         |

The ICSI Overseas Centre, USA will act as facilitation Centre of the Institute. It will strengthen the global outreach of the profession and facilitate the students and members residing in USA in advancing their academic acumen, capacity building and in turn better professional and placement opportunities. The presence of this facilitation Centre of ICSI will pave way for expanding the dimensions of corporate governance in USA.

Connect with ICSI

[www.icsi.edu](http://www.icsi.edu) | [f](#) [t](#) [in](#) [v](#) [p](#) | Online Helpdesk : <http://support.icsi.edu>





01



02



03



04

- 1] ICSI delegation led by CS Ashok Kumar Dixit met Arvind Kejriwal (Hon'ble Chief Minister of Delhi).
- 2] Sushil Kumar Modi (Hon'ble Deputy Chief Minister of Bihar) addressing at "Stakeholders/Investors Summit-2019" on the theme "Ease of Doing Business" organised by ICSI Patna Chapter in association with ROC, Bihar on 29<sup>th</sup> November, 2019.
- 3] COP Training of ICSI RVO held on 29<sup>th</sup> November, 2019 at ICSI Headquarter, New Delhi.
- 4] Joint Seminar organised by SIRC of ICSI on 9<sup>th</sup> November, 2019 at Chennai. Sitting on dais from Left: CS A. Mohan Kumar, R Varadharajan (Hon'ble Member(Judicial), NCLT, Chennai), B S V Prakash kumar (Hon'ble Member(Judicial), NCLT, Chennai) and CS C Ramasubramaniam.





05



06



07



08



09



10

- 5] ICSI Signature Award MOU signed with IIM Bangalore on 25<sup>th</sup> November, 2019.
- 6] ICSI Teachers Conference organised by ICSI Bikaner Chapter on 10<sup>th</sup> November, 2019.
- 7] Opening of ICSI Study Centre at M P Shah Commerce College, Surendranagar, Rajkot (Gujarat).
- 8] ICSI Bhubaneswar Chapter delegation met Dr. Surya Narayana Patro (Hon'ble Speaker, Odisha Legislative Assembly, Govt. of Odisha).
- 9] ICSI Bhubaneswar Chapter delegation met Chairman-cum-Managing Director (In-charge), National Aluminium Company Limited, Bhubaneswar on 2<sup>nd</sup> December, 2019.
- 10] ICSI Bhubaneswar Chapter delegation met Hemant Kumar Sharma, IAS, Principal Secretary, Department of Industries, Govt. of Odisha on 27<sup>th</sup> November, 2019.



उत्तिष्ठत जाग्रत प्राप्य वरान्निबोधत,  
क्षुरासन्न धारा निशिता दुरत्यहुर्मग पथः तत् कवयो वदन्ति ।

(Arise, awake, and stop not till the goal is reached.)



Dear Professional Colleague,

**C**ome December and the nip in the air is visible and felt. The month has always found great attention in the well articulated words of poets and authors. Rather, one of definition of December reads “the month of joy, happiness and to finish what you started”. From a professional’s perspective, the last part of this definition holds much more significance than for anyone else. For us at ICSI, however, the month gone by and those to follow shall mark various new beginnings.

### 47<sup>th</sup> National Convention of Company Secretaries – Empowering New India: Reform, Perform, Transform

The past few editions of this Journal, including these columns had been building up the aura of the biggest annual event of Company Secretaries. Truth be told, the 47<sup>th</sup> National Convention of Company Secretaries in the heart of Pink City of Jaipur lived up to every bit of the hype and even more by being the biggest National Convention of Company Secretaries till date in the history of the ICSI. With a delegate registration of around 1800, participation of International delegates, deliberations on some of the most contemporary topics and issues and motivational speeches inspired from real life stories, the three-day long event seemed like a larger than life dream come true.

As President of this Institute, I would take this opportunity to thank CS Manish Gupta, Chairman, Sub-Organising Committee for his untiring efforts in bringing to order this

magnanimous event, CS NPS Chawla, Co-Chairman, Sub-Organising Committee and all my Council Colleagues for their constant support and motivation. I would also like to appreciate the painstaking efforts made by the members of Jaipur Chapter and Team-ICSI in making the event a grander success than fathomed.

### Independent Director’s Databank

Where on one hand we are preparing our members to play their roles in Empowering New India with better skills and greater diligence, the Ministry of Corporate Affairs through its think tank, the Indian Institute of Corporate Affairs has launched the Independent Director’s Databank to provide an easy to access and navigate platform for the registration of existing Independent Directors as well as individuals aspiring to become independent directors.

As professionals closely operating and functioning with corporates, we are well aware that Independent Directors are expected to play a significant role at the Board level and be the change agents of corporate governance. While conventionally Independent Directors have played a monitoring and advisory role, with the amended Rules in place, this is the starting point for their effectiveness requiring knowledge of statutes governing the corporates served by them. Evidently enough, in order to be the drivers of change in corporate boards, Independent Directors require a set of distinct skills and, most important, the attitude to make independent judgments. It feels a great sense



of pleasure to share that the ICSI is a partner institute in this initiative and we hope that our members shall look forth towards this as an emerging opportunity and expand their skill base to fit in these roles as well.

## Certificate Course on Forensic Audit

The 47th National Convention of Company Secretaries witnessed various new beginnings, the launch of a new course under the aegis of **Certificate Course on Forensic Audit in association with KPMG** being one of them. The objective of this course is to acquaint ICSI members and students in the Forensic audit domain considering the increase in financial frauds. This intent of the Course is to help the professionals who have been working in related domains gain appropriate skill, knowledge and acumen to dispense with their duties to their highest potential.

## IT Initiatives

Be it governance, self governance, capacity building, career management, technology has made its way into each and every aspect of functioning and operations of the ICSI. While Artificial Intelligence was a topic deliberated at length at the 47<sup>th</sup> National Convention of Company Secretaries with dedicated Technical Session, the Inaugural and Valedictory Sessions were witness to the mannerisms in which ICSI is embracing technology with open arms.

From launching a dedicated **Digital Platform for Certificate Courses** to provide complete end to end solution from Registrations to Certifications; to developing the **ICSI Placement Portal** to create synergies between prospective employers/ trainers and members/students. From strengthening and promoting self governance through the **Disciplinary Mechanism Software** to the third and last phase of **e-learning Solution**, we are all looking at a futuristic and technology driven institute.

## Jury Meeting of ICSI Awards for Excellence in Corporate Governance

The Vision and Mission of ICSI have been focussed upon being global leaders in promoting good corporate governance and to develop high calibre professionals facilitating good corporate governance. With corporate governance being the guiding star in all the initiatives of the Institute, the institution of the ICSI National Award for Excellence in Corporate Governance in 2001 seemed all the more appropriate. Sifting through the pages of history, these Awards have not only been looked forward by the corporates being at the receiving end but by us as well for the various stages of activity undertaken to recognise the best efforts of corporates, their Boards and their supporting professionals.

With the inclusion of CSR Excellence Awards a few years ago and the institution of the Best Secretarial

Report Award this year, the Jury Meeting for the ICSI Awards for Excellence in Corporate Governance was an admirable event. Chaired by **Hon'ble Justice Shri Dipak Misra, Former Chief Justice of India** and international participation marked by **Mr. Tom O. Omariba, President, Corporate Secretaries International Association**, the Jury for the Awards of 2019 indeed lent structure and substance to the Awards. I would like to extend my heartfelt gratitude towards each of the revered members of the Jury for taking time out from their hectic schedules and for their scrupulous judgement for the Awards. The wait for the Award Ceremony is indeed a restless one...

## National Conference of Corporate CS

What lies next in the series of events is a unique event dedicated to support the growing and upcoming of new age Company Secretaries readying themselves in the roles of Key Managerial Personnel or KMPs. The event which shall mark the beginning of series of events organised by the ICSI in an attempt to support the capacity building needs of our members is the **National Conference of Corporate CS** at the business hub of the nation, the island city of **Mumbai** on the **4<sup>th</sup> and 5<sup>th</sup> of January, 2020**.

I of my personal accord and on behalf the Institute would urge all the members to register in this one-of-its-kind event and grab as many takeaways as possible from its lush spread of Technical and Special Sessions. The two day event will be graced by the who's who of the corporate and political world to share their insights on the emerging dynamics of the role of Company Secretaries.

That said and done, the month of December holds utmost significance for the students of the Institute on account of the upcoming examinations. I wish all the students appearing for the **CS December, 2019 Examinations**, all the very best and I firmly believe that each one of you shall place in the best of your efforts to form part of this prestigious profession...

***"Most things in life that are worth a big pay off are worth the wait and the investment of hard work."***

Happy Reading !!!

Yours Sincerely



CS Ranjeet Pandey  
President, ICSI

# Recent Initiatives Taken by ICSI

## 47th National Convention of Company Secretaries

Organised under the theme 'Empowering New India – Reform, Perform, Transform', the 47th National Convention of Company Secretaries was held from 14th November, 2019 – 16th November, 2019 at the Jaipur Exhibition and Convention Centre, Jaipur, Rajasthan. The three day event was divided into multiple Technical and Special Sessions. The Inaugural Session was graced by Shri Ramcharan Bohra, Member of Parliament. The Valedictory Session of the Convention was graced by Dr. Sudhanshu Trivedi, National Spokesperson of Bharatiya Janata Party, Dr. Satish Poonia, State President, Bharatiya Janata Party, Rajasthan and Shri Ashish Chauhan, Managing Director and Chief Executive Officer, BSE Limited. The dignitaries while acknowledging the role played by Company Secretaries guided the members and the ICSI with their motivating words.

## Initiatives launched and Publications Released at the 47th National Convention:

### (a) **Digital Platform for Certificate Courses**

This platform facilitates the conduct of Certificate Courses in a completely automated environment including Registration, Fee Payment, Examination, Notifications and Certification. It is a complete end to end solution from Registration to Certification. The platform offers ease of access and is scalable to cater to needs of larger participants. It also facilitates the participants to collaborate for discussion relating to the respective courses.

### (b) **E-learning Solution –Third Phase**

The third phase of project E-learning solution will cater to the educational needs of Professional programme student of ICSI. E-learning is a web based comprehensive learning platform that enables all the stakeholders to improve learning outcomes through best of the available content, collaboration, and continuous online assessment.

E-learning modules enable ICSI students to have a privilege to anytime anywhere access to E-Books and Audios. It also facilitates them to collaborate for sharing of knowledge through discussion forums and many more such arrangements.

### (c) **Launch of New ICSI Placement Portal**

The ICSI launched its own Placement Portal on 14th November, 2019 during the 47th National Convention for Company Secretaries organised at Jaipur. Through the Placement Portal, one can post, search and apply for suitable jobs and trainings. Recruiters can also register to post Job Vacancies/ Trainings for eligible members/students to apply. A member can register at the Portal to search for suitable jobs and apply for the same based on preferences. The Placement Portal shall connect Members to Employers and help them create synergies. The Portal shall also connect students to organisations and help them find suitable Trainings and applicable jobs. Students may be directly contacted by organisations based on their profile for Training and/or applicable jobs.

### (d) **Third Edition of Peer Review Manual**

With a view to ensure that the objectives of the Peer Review is achieved in letter and spirit and the Reviewers are duly equipped with the thorough understanding of the procedures, manners, prescriptions, guidelines and other related aspects of conducting Peer Review, training programmes for Peer Reviewers are being organised. The revised edition of the Peer Review Manual has

been designed to assist the Peer Reviewers and Practice Units in carrying out the exercise of Peer Review. With the recent amendments in Guidelines for Peer Review of Attestation and Audit Services, the third edition of the publication seeks to guide the Members regarding the same.

### (e) **Certificate Course on Forensic Audit in association with KPMG**

The Institute has launched the Certificate Course on Forensic Audit in association with KPMG. The objective of this course is to acquaint ICSI members and students in the Forensic audit domain considering the increase in financial frauds. This will also help the professionals who have been working in related domains.

### (f) **Exposure Draft of Guidance Note on Auditing Standards**

The Institute had issued the first four of the ICSI Auditing Standards on 6th May, 2019. To set out the explanations, procedures and practical aspects in respect of the various provisions contained in the ICSI Auditing Standards the Auditing Standards Board (ASB) of the Institute has brought out Exposure Draft of the Guidance Note on the first three Auditing Standards (CSAS-1 to CSAS-3).

### (g) **Certificate Course on Arbitration, Mediation and Conciliation**

Company Secretaries having 10 years of experience in practice have been recognized to become an Arbitrator under the Arbitration and Conciliation (Amendment) Act, 2019. With the objective of capacity building of ICSI members, the ICSI is associating with the IMC International ADR Centre, Mumbai as well as with National Law School of India University (NLSIU), Bengaluru for conducting joint certificate course on Arbitration, Mediation and Conciliation.

### (h) **First phase of Disciplinary Mechanism Software**

The ICSI in the inaugural session of the 47th National Convention also launched an Online Portal for Disciplinary Cases before Board of Discipline and Disciplinary Committee. This portal will have Online facility for filing Complaint to Registered Users, payment of fee, Case Status Bar, Cause List/Next Date of Hearing, Display of all orders (interim as well as final), etc. The portal is an initiative of the ICSI to digitise entire case records both existing and new. Online Access Keys of the same shall be made available to Regulator(s) as a move towards promoting self-governance.

## 20th National Conference of Student Company Secretaries

The Institute organises various events for the students and National Conference is one such major event. National Conference has been given complete revamping this year to make it more cherishing and learning experience for the students. The 20th National Conference of Student Company Secretaries will be held at Kolkata on 12th January, 2020 (Sunday) to mark the 157th Birth Anniversary of Swami Vivekananda on the theme *Yuvotsav 2020: Future Meets Present*. ICSI Students, other students and members can also participate in the event. 20 different competitions will be held wherein teams from 71 Chapters and 4 Regional Councils can participate.

## Short-term training module

A new short term training module has been designed and developed for the purpose of providing uniformity to the various processes involved in various short term trainings organised by ICSI. Three levels have been created in the Module wherein the Dte of Training at Headquarters will set all the rules and eligibility criteria of various



training programmes as per the regulation and guidelines; RCs and Chapters will create training calendar, topic mapping, faculty mapping, manage attendance & feedback and issue completion certificate and Students can apply and book their seats in various training being organized by the RCs and Chapters by making necessary online payments. Since the training module is linked and being majorly handled by RCs and Chapters, keeping in view thereof, the Institute organized a webinar to give hands on training regarding the use of the module on 5<sup>th</sup> November, 2019.

## ICSI Bi-annual Convocation – 2019

The second round of the ICSI bi-annual Convocation for 2019 commenced with the eastern region convocation, held at Audrey House, Ranchi on 30th November, 2019 for awarding certificate of membership to Associate & Fellow members admitted during the period from 1st April, 2019 to 30th September, 2019 and to award prizes / medals to meritorious students (National) and winner students of national level competitions. Smt. Droupadi Murmu, Hon'ble Governor of Jharkhand, graced the occasion as the Chief Guest. A total of 62 members and 1 student received their certificates from the hands of the Hon'ble Governor.

## ICSI HR Conclave

HR conclave for the Eastern Region was held on Saturday, 9th November, 2019 at Kolkata. The first Session was conducted on the topic "Digitization of HR". For the Panel Discussion, deliberations were conducted on the theme "Future of HR". A total of Out of 44 HR Heads/Managers/Executives from different Corporate Houses/PSUs attended the programme.

## Mega Placement Drive 2019

Under the second phase of Mega Placement Drive, 2019; the Placement drive was conducted in Chennai on 22 November, 2019 and at WIRO (Mumbai) and NIRO (New Delhi) on 30th November, 2019. A total of 215 members and 68 Recruiters registered for the Drive.

## Placement Assistance Lounge at Ranchi Convocation on 30th November, 2019

A Placement Assistance Cell Lounge was set up at Audrey House Art Gallery, Ranchi, the venue for Ranchi Convocation on 30th November, 2019. Information about the ICSI Placement Portal was shared with Members. Queries of Members about various types of activities being taken by the Institute to assist its Members looking for employment, minimum-maximum salary range for freshers, availability of jobs in various parts of India, etc. were answered.

## Video lecture on topic "Tax Laws -Direct Tax - Computation of Income under the Five Heads of Income" organised across the country

The Institute has taken various initiatives for the students enrolled for Class Room Teaching. Recording video lecturers of eminent faculties is one of them. The video lectures are being uploaded at LMS (E learning) platform of the Institute. Sessions are also being conducted on important topics for such students by using these video lecturers which will help them in preparing for the examinations. The students of Commerce, Management and law colleges are also invited in these sessions to create awareness amongst them regarding CS Course and to further elevate brand ICSI. While the first such Session was

organised on 21st October 2019, the second session was organised on 26th November, 2019 across the country on the topic "Tax Laws -Direct Tax - Computation of Income under the Five Heads of Income". The session was attended in large numbers by Class Room Teaching Students and Students of Commerce/Management Colleges.

## Study Circle meetings for Class Room Teaching Students

The Institute is taking various initiatives for the students who are undergoing classes at Regional/Chapter Offices. Besides recorded video lecturers, focus is also laid on Study Circle meetings for Class Room Teaching students to help and facilitate them in preparing for the main examination. Most of the Regional/Chapter offices are conducting Study Circle meetings on the topics pertinent to the examination and faculties are also part of these meetings to clear the doubts of the students.

## Result of the Final Round of ALL INDIA COMPANY LAW QUIZ-2019

The Final Round of ALL INDIA COMPANY LAW QUIZ-2019 was held on 23<sup>rd</sup> November, 2019 at Ahmedabad. Based on the performance of the participants in the preliminary and Semi-Final Round of the competition, they were qualified for participating in the final round. The first three prizes were given to Ms. Nidhi Nanwal of Ahmedabad, Ms. Rashmishree R of Tirupur and Ms. Supriya Sharma of Kolkata from amongst students of Professional Programme. In the Executive level the first three prizes were given to Ms. Ashita Goyal of Indore, Ms. Sangita Tiwari of Korba, Mr. Narendra Kishore Lakhani of Raigad. For Foundation programme prizes were given to Mr. Shivam Agrawal of Bhopal, Ms. Reema Jain of Hyderabad and Mr. Satvik Tejasvi of Mumbai.

## ICSI Signature Award Scheme

In January, 2016, the Institute has launched an ICSI Signature Award Scheme under which top rank holders in B.Com. Final Examinations in reputed universities and also specialised programmes/ papers of IITs / IIMs are awarded a Gold Medal and a Certificate. On 25th November 2019, an MoU was signed by the ICSI with IIM Bangalore for instituting the ICSI Signature Award.

## Opening of one new Study Centre

In an attempt to enhance the infrastructural base of the Institute and to overcome the distance barrier for the students, the Institute of Company Secretaries of India had launched the Study Centre Scheme, the same has been successful in creating the much needed links between the Institute and its stakeholders, especially students. With the aim to provide better facilities to students, the Institute has opened 01 study centre recently to add to the already existing fleet of Study Centres. In the month of November, 2019, study centre has been opened at M P Shah Commerce College, Surendranagar, Rajkot (Gujarat)

## Mega Teachers Conference

A Mega Teachers Conference was organised by ICSI Bikaner Chapter on 10th November, 2019 where 250 Principals & Teachers from in and around Bikaner City participated. The Chief Guest & Speakers on the occasion were Prof. Bhagirath Singh (Vice Chancellor of M.G.S.U. Bikaner), Prof. H. D. Charan (Vice Chancellor of B.T.U Bikaner), Mr. Arun Kumar Sharma (Asstt. Director Secondary Education Rajasthan), Mr. Sunil Boda (Education ADEO, Secondary) and CS Susshil Daga (Treasurer of NIRC of ICSI).



Delegation of University of Sydney visited ICSI HQ at New Delhi.



ICSI delegation met with Mr. Rohit Vadhvana, First Secretary (Economic), High Commission of India, London



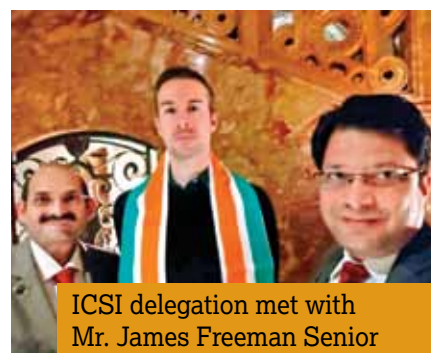
CS Hitender Mehta, Chairman, International Affairs Committee, ICSI with Mr. Dan Tehan, Minister of Education, Australia, Ms. Fiona O'Sullivan, Director, External Engagement and International, University of Sydney & Dr Michael Spence AC, Vice Chancellor, University of Sydney.



ICSI delegation met with Ms. Jane Galbraith, Head of Membership, ICSA-The Chartered Governance Institute, UK.



ICSI Members meet at London.



ICSI delegation met with Mr. James Freeman Senior Analyst, UK NARIC at London.





**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

# NATIONAL CONFERENCE OF CORPORATE CS

JANUARY 4 - 5, 2020 (SATURDAY - SUNDAY)

## The LaLiT

SAHAR AIRPORT ROAD, ANDHERI EAST, MUMBAI

**PCH - 08**

**Block your Calendar**

**CS Ranjeet Pandey**  
President, The ICSI

**CS Ashish Garg**  
Vice President, The ICSI

**CS Praveen Soni**  
Central Council Member,  
Program Director

**CS Ashish Karodia**  
Chairman, ICSI-WIRC,  
Program Coordinator

**CS Ashok Kumar Dixit**  
Officiating Secretary, The ICSI

# 47<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

**T**he 47<sup>th</sup> National Convention of the Company Secretaries, the biggest annual of company secretaries was held from 14<sup>th</sup> to 16<sup>th</sup> November, 2019 at the Jaipur Exhibition and Convention Centre at Jaipur, Rajasthan. Theme at 'Empowering New India: Reform, Perform, Transform', the event witnessed registration of more than 1800 delegates breaking all the records. The overwhelming response of the guests made the event a memorable one.

## DAY 1: Thursday, 14<sup>th</sup> November, 2019

### INAUGURAL SESSION

The Convention was inaugurated at **Jaipur** today, i.e., 14<sup>th</sup> November, 2019 at the hands of **Shri Ramcharan Bohra, Member of Parliament**, who congratulated the Institute for organising the National Convention in the city of Jaipur, after a span of 12 years. Acknowledging the role played by the company secretaries in Indian Corporate sector, has extended his wholehearted support in all future endeavours of the Institute.

CS Ashish Garg, Vice President, ICSI, CS Manish Gupta, Council Member, ICSI and Chairman, 47<sup>th</sup> National Convention Organising Committee, CS NPS Chawla, Council Member, ICSI and Co-Chairman, 47<sup>th</sup> National Convention Organising Committee, CS Gurvinder Singh Sarin, Chairman, NIRC and Programme Coordinator, CS Rahul Sharma, Chairman, Jaipur Chapter and Programme Facilitator and CS Ashok Kumar Dixit, Officiating Secretary, ICSI were also present at the event.

The publications Convention Souvenir, Third edition of Peer Review Manual, 100 Landmark Judgments of NCLAT - An insight into IBC were released at the hands of the Chief Guest. Apart from these the Disciplinary Mechanism Portal, ICSI Placement Portal, Certificate Course in Arbitration and Certificate Course in Forensic Audit were launched.

### Technical Session – I : Company Secretaries 2022 vis-à-vis Global Governance Standards: Need for upskilling and transformation

**Panellists:** CS Narayan Shankar, VP & CS, Mahindra & Mahindra Ltd.; CS B Murli, Director – Legal & CS, Nestle India Ltd.; FCS Joshua Willy Wambua, Council Member, ICSK, Kenya  
**Moderator:** CS Deepak Khaitan, Council Member, ICSI  
**Vote of thanks:** CS Siddhartha Murarka, Council Member, ICSI

The session deliberated upon the need for transforming the role of Company Secretaries in the light of altering dynamics of the Indian Business Scenario. How the board rooms, compliances, disclosures will be shaped; expectation of the Regulators, Skills required by Company Secretaries to evolve, the transformation to take place in the entire ecosystem were some of the aspects discussed. The importance of culture in the organisation, diversity in transformation, the era of digital knowledge, skill, knowledge, gender diversity, diversity of age in the walks of corporate life being the topmost issue for the 2022 vision were discussed and the need of global standards for the same was recognised.

**B2B session:** The Technical Session was followed by a session on **NSDL Issuer Services – Transforming Indian Financial Markets.**

### Motivational Session- Let's Bridge the gap

**Speaker:** Jasmine Khurana – Winner of Orange Flower Award for Humour (2017) at the women's web digital summit.

The great speaker and poet played with words thus bridging the gap by weaving in the banter of generations and took the event to the heights of motivation.

The event was followed by a cultural night comprising theme performance and comedy night.

## DAY 2: Friday, 15<sup>th</sup> November, 2019

### Technical Session – II : Start ups: Modern Catalysts of Growth and Employment

**Panellists:** Mr. Binod Kumar, Co-Founder, Wow Momos; Dr. Rajiv Roy, XLRI; CS B Narasimhan, Council Member, ICSI  
**Moderator:** CS Deepak Khaitan, Council Member, ICSI  
**Vote of thanks:** CS Chetan B. Patel, Council Member, ICSI

India has the third largest start-up ecosystem. New ideas and innovations have always taken over anything in the market. Start ups has always been able to provide a new flavour in the job market and a transformation and boost up to the economy. The discussion comprised real life events of the dignitaries on the dais in the context of need of start-ups for growth and development of any nation. The interaction from the audience made the discussion an interesting one.

### Panel Discussion : Leadership Beyond Gender

**Panellists:** Dr. Madhu Vij, Ms. Shazia Ilmi, Ms. Neeta Boochra  
**Moderator:** CS Preeti Malhotra, Past President, ICSI  
**Vote of thanks:** CS Vineet Chaudhary, Council Member, ICSI

The topic of leadership has been addressed and applied for millennia and this has always been a topic of discussion keeping in sight the emerging role and altering dynamics of the gender aspect in professional, political, cultural and personal arenas of the 21<sup>st</sup> century. A comparative analysis with global data facts and figures was made about the involvement and evolvment of women in all domains. With women representing over half of the global talent pool, it is clear that they should be the forefront of the economic and social scene. Achieving gender diversity in corporations, at all levels, is a long and demanding journey, which requires the involvement of the whole company and the strong commitment of top management. Therefore it is believed that beyond gender diversity, what always matters ultimately is leadership.

### Motivational Session : From Impossible to I'm Possible

**Speaker:** Deepa Malik, Indian athlete, First Indian women to win silver medal in Paralympics (2016), Padma Shri winner, Arjuna award for athletics, Rajiv Gandhi Khel Award in Para Athletics

With her inspirational real life story of a paralysed woman, she took the whole dome to new heights of motivation and filled everyone's heart with a sense of respect for her. Her words delivered a fine



message to never give up, forget all the limitations posed by age or gender, and to never settle for anything but the best.

**B2B session:** A small presentation on Digital Approach in Empowering New India was presented by Mr. Dilip S. Ganeriwal, CEO & Managing Director, Dess Computers Private Limited

### **Technical Session – III : Emerging Technologies and Artificial Intelligence – Boon or Bane**

**Speakers:** Mr. Pratyush Praveen, Practice Manager, in Lab Services for Data Science and AI at IBM India Pvt. Ltd., Mr. Jasni bin Abdul Jalil, Council Member, Malaysian Association of Company Secretaries (MACS), Mr. Narasimha Das, Associate Partner, Crowe Mak Limited, UAE, Mr. Kiran Chitale, Vice President, Barclays Global Service Centre Pvt. Ltd.

**Moderator:** CS Devendra V Deshpande, Council Member, ICSI  
**Vote of thanks:** CS Hitender Mehta, Council Member, ICSI

Artificial Intelligence is transforming the nature of almost everything which is connected to human life. Every technology has its advantages and disadvantages but advantages always outweigh disadvantages for the technology to survive in the market. The need of the hour is to see AI, not as one of the disruptive technologies, but a means that can be utilised to improve efficiencies, tweak business processes and drive growth immediately. During the session, Presentations were given by each speaker on topics like New and Emerging Technologies and Data Analytics, Artificial Intelligence and Block chain.

*The session was followed by the Award Ceremony and dinner.*

### **DAY 3: Saturday, 16th November, 2019**

### **Technical Session – IV : Next Gen CS – Let's Make Unconventional the Convention**

**Panellists:** Shri Deepak Kr. Kedia, IPS, Shri Sandip Shah, Lead IFSC, Gift City, Shri Krishnan Shakkottai, Advocate, Aarna Law, Shri Sanjay Dixit, IAS

**Moderator:** CS Nagendra D. Rao, Council Member, ICSI  
**Vote of thanks:** CS Ramasubramaniam C., Council Member, ICSI  
During the session, deliberations were conducted on the emerging opportunities for Company Secretaries of today and tomorrow. The recent opportunity accorded under the Arbitration Law for the Company Secretaries, the procedural aspects of arbitration and the skills, knowledge and role of the arbitrators, were discussed in great detail. The various segments where the company secretaries must look forward for their growth and upskilling in India and abroad as well were also pointed out.

### **Special Session – Investor Awareness and E-Governance**

**Speaker:** Mr. Manoj Pandey, IAS, Joint Secretary, Ministry of Corporate Affairs

**Introduction and Vote of Thanks:** CS Praveen Soni, Council Member, ICSI

The Indian economy has expanded at a rapid rate during the current decade and the corporate sector has been the biggest sector in this growth story. The ministry being one of the prime regulators has been working towards repositioning itself as a significant facilitator in creating a positive and healthy environment for doing business in India. The ministry

has taken various CSR initiatives, initiatives in investor education and protection fund for the betterment of the investors, initiatives for simplification of procedures by using the emerging technologies and various other legislative and regulatory initiatives. The speaker for the session shared the various initiatives undertaken by the Ministry of Corporate Affairs towards promoting investor awareness and protection.

### **Technical Session – IV : NCLT : Harmonising Diverse Practices and Expectations from professionals**

**Panellists:** Hon'ble Shri Balwinder Singh, Hon'ble Shri BSV Prakash Kumar, Hon'ble Shri Raghu Nayyar, Hon'ble Shri P S N Prasad

**Moderator:** Hon'ble Dr. A S Chandhiok, Former Additional Solicitor General of India

**Introduction and Vote of thanks:** CS N P S Chawla, Council Member, ICSI

The NCLT and NCLAT members took the last session of the 3 day event. The major takeaways were the role of Company Secretaries as the propagators of good governance and law abiders, the expectations from them for the strengthening the governance framework and promoting good governance practices thereby raising the compliance level in the economy.

### **VALEDICTORY SESSION**

The Valedictory Session of the Convention was graced by Dr. Sudhanshu Trivedi, National Spokesperson of Bharatiya Janata Party, Dr. Satish Poonia, State President, Bharatiya Janata Party, Rajasthan and Shri Ashish Chauhan, Managing Director and Chief Executive Officer, BSE Limited.

Commending the role played by the professionals of this brigade, Dr. Sudhanshu Trivedi said that, "Company Secretary is the custodian of truth. He is the soul of a company".

Dr. Satish Poonia, State President, BJP (Rajasthan) lauded that "Company Secretaries are playing a pivotal role in developing New India".

Reiterating the same thought, Shri Ashish Chauhan, MD & CEO, BSE said that, "Company Secretaries play a key role in ensuring that the corporates behave as per the wordings of the Companies Act".

Under the e-learning initiatives, the ICSI launched a Digital Platform for Certificate Courses to conduct these courses in a completely automated environment. Along with this, the Third and Last Phase of e-Learning Solution to cater to the educational needs of the Professional Programme students was also launched. The Exposure Draft on the Guidance Note on Auditing Standards was also released for the first three Auditing Standards.

CS Ashish Garg, Vice President, ICSI, CS Manish Gupta, Council Member, ICSI and Chairman, 47th National Convention Organising Sub-Committee, CS NPS Chawla, Council Member, ICSI and Chairman, 47th National Convention Organising Sub-Committee, CS Gurminder Singh Sarin, Chairman, NIRC and Programme Co-ordinator and CS Rahul Sharma, Chairman, Jaipur Chapter & Programme Facilitator.

CS Ashok Kumar Dixit, Officiating Secretary, The ICSI proposed the vote of thanks and concluded the three day Conference.

# ICSI CONVOCATION 2019 EASTERN REGION





# ICSI EXCELLENCE AWARDS, 2019 JURY MEETING



## Articles

P-27

**Settlement Procedure under the SEBI (Settlement Proceedings) Regulations, 2018**

29

**Shailashri Bhaskar**

To err is human. There are scenarios where a company or its directors or its promoters or its key managerial personnel might have delayed in complying with a requirement under the securities laws or made a wrong disclosure or not complied with the requirement at all. While some of the non-compliances could be technical having no far-reaching consequences, some of them could be deliberate and have a wider impact on the market and cause long term losses to the investors. It is for this reason that the regulatory authorities initiate action which could be civil or criminal in nature. In case a civil action is initiated under the securities laws by SEBI, the person who receives the show cause notice has an option to opt for Settlement. This article discusses the procedure to be followed in case settlement is opted and manner in which SEBI settles such cases.

**Restructuring of Listed Companies - Exchange and Regulatory aspects**

34

**Khushro Bulsara and Ashok Kumar Singh**

Securities Market Regulator (SEBI) has taken many steps to regulate the schemes of listed entities such as adding Clause 24(f) in the then applicable Listing Agreement in the year 2003 followed by SEBI circulars on Schemes in the year 2013 and so on. Presently the provisions relating to schemes of restructuring are included in SEBI (LODR) Regulations, 2015 and SEBI Circular dated March 10, 2017 as amended. The article analyses some of the key provisions of Restructuring in Listed Companies from exchange and regulatory perspectives.

**Commercial Paper - An Overview of Regulatory Framework**

40

**Sunil Dasari**

Corporate enterprises requiring burgeoning funds to meet their expanding needs will find it easier and cheaper to raise funds from the market by issuing Commercial Paper. Furthermore, use of this instrument provides greater degree of flexibility in business finance to the issuing company in as much as it can decide the quantum of CP and its maturity on the basis of its future cash flows. Normally retail investors do not invest directly in CPs as they are generally privately placed by the issuing companies with the institutional investors. Short-term interest rate environment, credit rating and market liquidity condition play an influential role in the Indian CP market activity. Indian Commercial Paper market is still in its nascent stage of evolution in terms of borrowing activity in primary CPs market and trading activity in the secondary CPs market. The market is growing slowly-but-steadily and is expected to grow at a better growth pace on account of guidelines issued by RBI and FIMMDA from time to time. The author, in this article has penned the Regulatory framework pertaining to Commercial Papers.

**Foreign Direct Investments – New Rules of the Game and interplay with the Capital Market**

45

**Abdullah Fakhri and Ankan Maiti**

The Ministry of Finance, Government of India, has, on 15 October 2019, notified the amendments proposed by the Finance Act,

2015, in section 6 of the Foreign Exchange Management Act, 1999 (FEMA) which governs capital account transactions and also the corresponding changes in the delegated legislative provisions conferring powers on the Central Government and the Reserve Bank of India (RBI) to make rules and regulations under FEMA, respectively. To give effect to these amendments, the RBI and the Central Government have introduced rules and regulations to govern foreign investment in 'debt' and 'non-debt' instruments respectively. In this article, the authors have analyzed the likely impact of these rules and regulations on foreign investments in India, including the classification of instruments into 'debt' and 'non-debt', key definitions under the new rules and changes brought about under the new regime, particularly with reference to the capital market, pricing guidelines etc. Since the amendments have brought about changes in the substantive provisions governing foreign investments, one would have to carefully evaluate their impact on existing as well as new corporate structures.

**Audit Committee of the Board – An overview of provisions under the Companies Act, 2013 and SEBI (LODR) Regulations, 2015**

49

**Dr. C V Madhusudhanan**

The efficacy of corporate governance lies primarily in the functioning of the committees of the Board of Directors and more importantly the functioning of the Audit Committee of the Board. Failure in governance many a times points finger on the lack of Board management and governance and further to failure in effective functioning the Audit Committee of the Board. Hence it is pertinent to understand the scope of the provisions applicable to the constitution and functioning of Audit Committee of the Board, both under the Companies Act, 2013 and also under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

**Analysis of SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018**

54

**Dr. Pritesh Niranjana Majumdar**

Though the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) was not really outdated, there existed a need to review and tweak certain aspects of the law. Accordingly, in 2017, SEBI constituted the Committee on Fair Market Conduct ("Committee") under the chairmanship of Mr. T.K. Viswanathan to, amongst other things, identify opportunities to improve the PIT Regulations. The Committee submitted its report ('Committee Report') to SEBI on August 08, 2018, which was placed on the SEBI website for public comments on Aug 09, 2018. Based on the above, SEBI notified the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (Amended Regulations) on December 31, 2018 which amended the PIT Regulations. The Amended Regulations were effective April 1, 2019 and have significant impact on the manner in which listed companies and intermediaries navigate the market conduct framework. The said amendments came into force on 1st April 2019. This article seeks to understand the various amendments to the PIT Regulations introduced by the SEBI.

**Capital Formation: Challenges & Opportunities**

60

**Mahavir Lunawat and Unmesh Zagade**

Capital formation plays a crucial role in the economic development of a country by providing required financial resources for the long-term sustainable development. Viable capital formation is therefore considered as an important element in the macro-financial policy tools, including for objectives such



as financial stability and the transmission of monetary policy. This article highlights the key challenges and opportunities in capital formation considering the current macro-economic scenario in India. While assessing the health of the economy through parameters such as Gross Domestic Product (GDP), Foreign Direct Investments (FDI) and tax structure, this article gives a quick round up of Equity Capital Markets, Private Equity deals and Wealth in Alternative assets as well. It features regulatory and policy changes happened in recent financial year that have shaped capital formation positively. It also covers the role of professionals in facilitating capital formation activities.

### Superior Voting Rights equity shares - An effective defensive weapon!

65 ➤

**Mithun B.Shenoy**

Most of the Acquisitions have been undertaken through hostile bid for the control over the company. Such acquisition happens seldom by acquiring shares of Investee Company directly from its shareholder despite protest from its Directors. Most debated case was takeover of M/s. Mindtree Limited by M/s. Larsen & Toubro Limited which is considered as first hostile takeover in the history of IT sector. It had thrown light to market regulator with regard to introduction of Superior Voting Rights (also known as Differential Voting Rights) shares that enables issue & listing of such shares under SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2019. This article highlights the history of aforesaid takeover and attempts to make the reader ponder on the concept of Superior Voting Rights shares in light of aforesaid takeover.

### Issuance of Depository Receipts- An Analysis

70 ➤

**Aditya George Cheriyan and Vijayaraghavan**

Depository Receipts ("DRs") are instruments listed on exchange(s) abroad, which represent an underlying listed Indian security. The permissible securities are deposited with a custodian in India and the Indian custodian holds the permissible securities on behalf of the foreign depository. The DRs, issued by the foreign depository post confirmation of receipt of the permissible securities by the Indian custodian, would be denominated in a foreign currency and listed on an international stock exchange. Each DR issued will represent a certain number of permissible securities of an Indian company at a ratio to be determined at the discretion of the Indian issuer. DRs has been an important instrument for listed Indian companies seeking to raise foreign funds. The Securities and Exchange Board of India ("SEBI") issued a circular dated 10 October 2019, introducing a "Framework for Issue of Depository Receipts" (the "SEBI Circular"). The SEBI Circular permits listed equity shares and debt securities of Indian companies which are in dematerialized form and rank pari passu with the securities of an Indian company which are already issued and listed on a recognised stock exchange in India. The issuance and/or transfer of permissible securities to the foreign depository for the issuance of DRs would have to comply with the requirements stipulated in the SEBI circular. The article analyses the evolution regulatory regime applicable to the issuance of DRs and the SEBI Circular and the compliances involved.

### Roadmap for an IPO - a transformational journey

74 ➤

**B.Renganathan and Sachin Khandelwal**

Usually companies decide to go public for raising funds, spread the risk of ownership among a large group of shareholders and obtain benefits of listing on exchanges. IPOs give market exposure whereby company's share listed on an exchange could

attract the attention of mutual and hedge funds, market makers and institutional traders. Exits by private equity investor through offer for sale can also be one of the reasons for IPO. The listing on a stock exchange also affords the company to increase its credibility with the public. A rigorous IPO readiness assessment is a vital step towards journey ahead which differs from company to company. This article brings out the necessity to navigate the IPO journey including preparedness of a company for launching the base for a big leap into the dynamics of the stock market.

### Inquiry & Inspection - A comparative study

79 ➤

**Henry Richard**

Inquiry and Inspection are effective tools in the hands of the Regulator to monitor and ensure that Corporate citizens comply with law and safeguard the interests of shareholders, creditors and other stakeholders. Dr J J Irani Expert Committee on company law, which is the precursor to the Companies Act 2013, had however, suggested caution to be exercised while utilizing these tools by the Regulator in view of the widely prevalent negative feeling about Inspector Raj. In this article, the author vividly examines the extent to which this concern of the Expert Committee has been addressed in sections 206 and 207 of the Companies Act 2013.

### Withdrawal of application admitted under Insolvency and Bankruptcy Code- A critical analysis on inconsistencies and ambiguities

83 ➤

**Bijoy P. Pulipra**

The improvement in the ranking of India in the World bank ease of doing business index owes a big thanks note to the Insolvency and Bankruptcy Code, 2016. The Code is envisaged as a complete piece of legislation which is destined to improve a better credit culture in India while maintaining the going concern concept of the Corporate Debtor. The Resolution Professional and committee of creditors are the key players in a successful resolution process. Both the offices have to work together to achieve the desired goal and uphold the real spirit of the law. Any hindrance in their path may adversely affect the speed of the process and thereby may negatively affect the confidence and trust of the stakeholders in the system. The Code is facilitating the withdrawal of the application after the admission. An untimely withdrawal may result in chaos and dampen the real spirit of the law. The article critically analysis the nature of duties of interim resolution professional, supplementary role of Committee of creditors in the resolution process and discusses the anomalies noticed in the Section 12 A of the code and regulation 30A of the IBBI(IRPCP) Regulations, 2016 and its effect on withdrawal process of admitted applications.

### Corporate Social Responsibility and Corporate Governance: Evidence for Sustainability

90 ➤

**Dr. Jai Prakash Sharma, Dr.Sunaina Kanojia and Harish Kumar**

Corporate Social Responsibility (CSR) and Corporate Governance (CG) are often used in connotation to attain sustainability for any organization. In this article, the interlinkages have been explored. This article attempts to gauge relationship between variables of corporate governance and CSR relying on the scale developed on the basis of GRI and SEBI's Business Responsibility Report and provide evidence therefrom. It unearths the relationship between CSR disclosures and promoter's shareholding, institutional investor, foreign ownership, board size and board independence on

a sample of 166 constituent companies of BSE 200 index with six years of tenure and 996 annual reports. Concentration of ownership in Indian companies is a widely known fact and also amongst the significant contributor to corporate governance per se. Board size, its independence and ownership pattern of Indian listed companies have been regressed with the CSR disclosure practices estimated from an index devised in this article. The evidence collated by applying multiple regression by Hausman test fixed effect model reflects that institutional shareholding and foreign shareholding have a positive and significant impact on CSR disclosures. Further, the results reveal that for better CSR orientation, the institutional and foreign ownership is strong contributor towards sustainability.

## Legal World

P-99

- **LMJ 12:12:2019** We are of the firm opinion that all the family members of an alive 'officer' or 'employee' of a company cannot be proceeded with and prosecuted under Section 630 of the Act. [SC]
- **LW 87:12:2019** The finding that since the exercise by the lessor (WBSIDC) of its right to determine the lease attained finality, the mortgagee (represented by the appellant) could not claim rights superior to that of the lessee. [SC]
- **LW 88:12:2019** The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4- Company i.e. the Corporate Debtor before the NCLT. [SC]
- **LW 89:12:2019** In the instant case, we do not find that any extreme urgent situation existed which warranted the respondent to pass an ex-parte interim order. [SAT]
- **LW 90:12:2019** Since the appellant has complied with some of the directions issued by the DAC such as submission of CA Certificate, fulfilment of the net worth criteria, we are of the considered view that the penalty imposed on the appellant is disproportionate in the given facts and circumstances. [SAT]
- **LW 91:12:2019** The change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office the assessee is also required to make an application for change of address in the departmental database of PAN. [SC]
- **LW 92:12:2019** Considering the large number of players operating in the relevant market, the OPs do not seem to have the ability to operate independently of the competitive forces. [CCI]
- **LW 93:12:2019** Merely because the petitioner was directing the manner in which work was expected to be carried out by the respondents, it could not imply that they were employees of the petitioner. [Del]
- **LW 94:12:2019** The definition of employee in the Act, 1972 also does not speak of any specific categories of the employees for its applicability, be it, regular, ad- hoc, part time, casual etc. etc.[Del]

## From the Government

P-107

- Relaxation of additional fees and extension of last date in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- UT of J&K and UT of Ladakh
- Extension of last date of filing of Form PAS-6
- Extension of last date of filing of form NFRA-2
- Corrigendum of regarding DRDO

- Companies (meetings of Board and its power) Second Amendment Rules, 2019
- Framework for issue of Depository Receipts
- Investment Policy of Clearing Corporations
- Guidelines for preferential issue of units and institutional placement of units by a listed Infrastructure Investment Trust (InvIT)
- Guidelines for preferential issue of units and institutional placement of units by a listed Real Estate Investment Trust (REIT)
- Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions and unlisted debt securities
- Collection and reporting of margins by Trading Member (TM) /Clearing Member (CM) in Cash Segment
- Modifications in the contract specifications of commodity derivatives contracts
- Continuous disclosures and compliances by listed entities under SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015
- Streamlining the Process of Public Issue of Equity Shares and convertibles- Extension of time lime for implementation of Phase II of Unified Payments Interface with Application Supported by Blocked Amount
- Introduction of Cross-Margining facility in respect of offsetting positions in co-related equity Indices
- Creation of segregated portfolio in mutual fund schemes
- Reporting of changes in terms of investment
- Operational Guidelines for FPIs & DDPs under SEBI (Foreign Portfolio Investors), Regulations 2019 and for Eligible Foreign Investors.
- e-KYC Authentication facility under section 11A of the Prevention of Money Laundering Act, 2002 by Entities in the securities market for Resident Investors
- Enhanced Due Diligence for Dematerialization of Physical Securities
- Enhanced Governance Norms for Credit Rating Agencies (CRAs)

## Other Highlights

P-123

- ★ MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2019
- ★ CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2019
- ★ ATTENTION ! ADVISORY FOR MEMBERS OF ICSI
- ★ ATTENTION! MEMBERS WHO HAVE NOT PAID THE ANNUAL MEMBERSHIP FEE BY LAST DATE 30-06-2019
- ★ RESTORATION OF CERTIFICATE OF PRACTICE
- ★ ATTENTION! DIGITAL I-CARD FOR MEMBERS
- ★ ATTENTION! MEMBERS HOLDING CERTIFICATE OF PRACTICE
- ★ RESTORATION OF MEMBERSHIP
- ★ OBITUARIES
- ★ ETHICS & SUSTAINABILITY CORNER
- ★ GST CORNER



# 1

## ARTICLES



- SETTLEMENT PROCEDURE UNDER THE SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018
- RESTRUCTURING OF LISTED COMPANIES - EXCHANGE AND REGULATORY ASPECTS
- COMMERCIAL PAPER - AN OVERVIEW OF REGULATORY FRAMEWORK
- FOREIGN DIRECT INVESTMENTS – NEW RULES OF THE GAME AND INTERPLAY WITH THE CAPITAL MARKET
- AUDIT COMMITTEE OF THE BOARD – AN OVERVIEW OF PROVISIONS UNDER THE COMPANIES ACT, 2013 AND SEBI (LODR) REGULATIONS, 2015
- ANALYSIS OF SEBI (PROHIBITION OF INSIDER TRADING) (AMENDMENT) REGULATIONS, 2018
- CAPITAL FORMATION: CHALLENGES & OPPORTUNITIES
- SUPERIOR VOTING RIGHTS EQUITY SHARES - AN EFFECTIVE DEFENSIVE WEAPON!
- ISSUANCE OF DEPOSITORY RECEIPTS- AN ANALYSIS
- ROADMAP FOR AN IPO - A TRANSFORMATIONAL JOURNEY
- INQUIRY & INSPECTION – A COMPARATIVE STUDY
- WITHDRAWAL OF APPLICATION ADMITTED UNDER INSOLVENCY AND BANKRUPTCY CODE- A CRITICAL ANALYSIS ON INCONSISTENCIES AND AMBIGUITIES

# 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 [nitin.jain@icsi.edu](mailto:nitin.jain@icsi.edu)
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

## Declaration-cum-Undertaking

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

Signature



# Settlement Procedure under the SEBI (Settlement Proceedings) Regulations, 2018

SEBI introduced the concept of settlement in the year 2006 by way of a circular and this was considered as a very popular non-stigma attached method of resolving non-compliances under the Securities laws. SEBI notified the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (2014 Regulations) in the year 2014 which replaced the earlier circular and following the notification dated November 30, 2018, SEBI has introduced the SEBI (Settlement Proceedings) Regulations, 2018 which are effective from January 01, 2019. This article discusses the provisions of the new regulations particularly summary settlement and settlement with confidentiality. These are new concepts which have been introduced.



**Shailashri Bhaskar\*, FCS**

Practising Company Secretary  
Mumbai

[shailashrib@gmail.com](mailto:shailashrib@gmail.com)

## INTRODUCTION

**S**ecurities and Exchange Board of India (SEBI) has the power to initiate necessary action in case of failure to comply with the various provisions of the SEBI Act, 1992 and Regulations issued there under like the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Prohibition of Insider Trading) Regulations, 2015, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Prevention of Fraud and Unfair Trade Practices relating to the Securities Markets) Regulations, 2003 to name a few. SEBI can initiate adjudication proceedings under the SEBI Act, Conduct an Enquiry or initiate Criminal Prosecution under Section 24 of the SEBI Act, 1992. These proceedings could culminate in the levying of monetary penalties, issue of necessary directions under Section 11 or 11B of the SEBI Act, which may include suspension or cancellation of registration, prohibition from associating or accessing the capital markets for a certain period of time amongst others.

Although SEBI has the power to adjudicate and levy penalties or initiate such other appropriate action as it thinks fit, any person against whom any proceedings have been initiated or is likely to be initiated has the option to file an application in writing to SEBI for settlement of the proceedings initiated or proposed to be initiated. The application shall be made under the SEBI (Settlement Proceedings) Regulations, 2018 and SEBI may agree to the proposal for settlement by taking into consideration the nature, gravity and impact of the default and after the procedure specified under the Settlement Regulations have been duly followed.

## WHY SETTLEMENT?

Settlement is considered as a preferred option because the amount can be settled without the admission of guilt. This is not treated as a penal action and there is no stigma attached when a person settles the matter with SEBI. Hence a body corporate or an individual who is worried about his reputation can opt for settlement as settlement process will not tarnish the reputation of the entity concerned. Entities can further record settlement amounts as normal business expenditure while such a benefit is not available when a fine or penalty is levied.

## PROCEDURE FOR SETTLEMENT

Any person against whom specified proceedings has been initiated (i.e. a show cause notice has been issued or a notice has been issued indicating that adjudication process is likely to be initiated) or is of the opinion that proceedings may be initiated can make an application to SEBI for settling the alleged default or violation or non-compliance. Alleged default has been defined in the Regulations as a probable contravention of the securities laws.

An application for settlement can be made voluntarily in case the applicant is aware of the non-compliance and is apprehensive of receiving a show cause notice.

SEBI may also issue a notice of settlement indicating the substance of the probable charges and enforcement actions before the issuance of show cause notice, in which case the applicant can file the application for settlement within 15 calendar days from the date of receipt of this notice of settlement.

In case the applicant has not filed the application voluntarily or after receipt of notice of settlement, he may receive a show cause notice from the Adjudicating Officer, in which case the application shall be made within 60 days from the date of service of show cause notice and in case any supplementary notice is issued, within 60 days from the date of service of such supplementary notice. The applicant can however file the application after the expiry of 60 days, but the settlement amount arrived at will be increased by 25% in case of a delay in filing such an application. The applicant can however not file any application beyond 120 days from the date of service of notice or supplementary notice as the case may be and any application received by SEBI after this period will be rejected and returned to the applicant. Any application that is made voluntarily can be made at any time by the applicant.

The application may also be filed while the matter is pending before the Adjudicating Officer or before the Securities Appellate Tribunal.

\* Former Deputy General Manager, SEBI

“Settlement is considered as a preferred option because the amount can be settled without the admission of guilt. This is not treated as a penal action and there is no stigma attached when a person settles the matter with SEBI. Hence a body corporate or an individual who is worried about his reputation can opt for settlement as settlement process will not tarnish the reputation of the entity concerned.

The application for settlement shall be in the format as prescribed in the Regulations and accompanied by a non-refundable fee of Rs.25,000/- for a body-corporate and Rs.15,000/- for others. The application shall be accompanied with waivers and undertakings specified in the Regulations. The format of undertakings and waivers is given in the regulations itself and it shall be executed on Rs.200/- stamp paper duly notarized. In case there are more than one applicant to the settlement application, the undertakings and waivers shall be signed by all the applicants. In case the applicant is an association or a firm or a body corporate or a limited liability partnership, the undertakings and waivers shall be executed by the person in charge of and responsible for the conduct of the business of such a firm or body corporate or association and shall be binding on such an applicant. The rejection or withdrawal of the application shall not affect the validity of these waivers or undertakings given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and SEBI shall be free to initiate such other proceedings as may be appropriate.

In case there are multiple actions which have been initiated against the applicant by SEBI, the applicant shall make a single application for all these alleged defaults and there will be no requirement to make separate application for each and every default.

The applicant shall ensure that the application for settlement submitted to SEBI is complete in all respects. The application shall be accompanied by the correct annexures which will include the certified PAN Card copy of the applicant(s), Annual Report for the last 3 years / Net worth Certificate as applicable, Certified copies of Income Tax Returns filed by the applicant(s) for the last 3 years, Copy of the show cause notice received by the applicant(s), Board Resolution authorizing the company to make the settlement application and appropriate Letters of Authority where applicable along with the and waivers and undertaking. An incomplete application will be returned by SEBI and in case the application is returned because the same is incomplete, the applicant can submit the application once again after correcting the discrepancies by submitting the correct and completed application within 15 days from the date of communication regarding the incomplete application from SEBI. No further opportunity is however provided and in case the application is returned a second time it will be treated as an application which is rejected.

In case an application for settlement is with regard to non-filing of disclosures, the application for settlement shall be considered only after the applicant makes all the disclosures and attaches copies of such disclosures made to the application for settlement.

The applicant while making the application shall make complete and true disclosures with regard to the alleged default and the application shall not contain any misstatements or untrue statements. In case there are proceedings which are pending or have concluded before any other forum or court or Tribunal in India or outside India for the same alleged default and certain facts have been admitted by the applicant before such an authority, it shall be deemed that the applicant has admitted to the same in the application or proceedings which are to be settled before SEBI.

Once a settlement application is filed, the final order with regard to the proceedings that are initiated against the applicant shall be kept in abeyance till the settlement application is disposed of. In case the application is filed voluntarily before the initiation of any proceedings by SEBI, such proceedings shall not be initiated till the application for settlement is disposed of. In case SEBI has initiated proceedings against several persons but the application is filed only by one or more persons, but not all of them, this filing will not stop SEBI from initiating, continuing or disposing of the proceedings against the non-applicants and any adverse finding or observations against the applicant(s) in such a proceeding shall be subject to the outcome of the application for settlement filed by the applicant.

## SCOPE FOR SETTLEMENT

The settlement regulations provide for the settlement of almost all the non-compliances or defaults under the SEBI Act and the various regulations notified thereunder. However, SEBI may not consider an application for settlement if an earlier application for the same alleged default has been rejected by SEBI, an audit or investigation or an inspection or inquiry with respect to this application is still pending (except in cases where the application is made invoking the provision of confidentiality) or where monies are to recovered under any Order which has been passed under the securities laws.

Further any specified proceedings may not be settled if in the opinion of SEBI the alleged default has a wide market impact, caused losses to a large number of investors or has affected the integrity of the market.

Further SEBI may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

SEBI takes into account whether the applicant has refunded or disgorged the monies due to the satisfaction of SEBI, provided an exit or purchase option to investors in compliance with the securities laws to the satisfaction of SEBI and has complied with securities laws or any order or direction passed under securities laws to the satisfaction of SEBI. SEBI may also consider other factors that it may deem necessary to consider an application for settlement.

## REJECTION OF APPLICATION

SEBI may reject an application if the applicant refuses to respond to any letter or other communication from SEBI on the application, does not submit any information or document sought by SEBI or delays the submission of such information or document sought, does not appear before the Internal Committee on more than one occasion, violates the undertakings and waivers given or does not remit the settlement amount within 15 calendar days from the date of demand. However, the period of



15 days may be extended by the panel of Whole Time Members after recording the reasons in writing.

## WITHDRAWAL OF APPLICATION

The applicant may withdraw the application for settlement any time till the receipt of the demand for payment of settlement amount. Once the application is withdrawn the applicant cannot file another application for settlement with respect to the same default unless the High Power Advisory Committee recommends the same for acceptance. In case such an application is accepted, the settlement amount arrived at finally will be increased by 50%, which means that in case the settlement amount is arrived at Rs.3,00,000/- the applicant shall pay an amount of Rs.4,50,000/-

## PROCEDURE

An application for settlement once found to be complete in all aspects shall be referred to an Internal Committee. The Committee shall determine whether the proceedings may be settled and also finalizes the settlement amount which shall be arrived at based on the factors specified in the Regulations and the calculation mechanism mentioned in the Regulations. The Internal Committee while arriving at the settlement amount may call for relevant information and documents pertaining to the alleged default which are in the possession of the applicant and call for a personal appearance before the Committee to arrive at the settlement terms. The personal meeting can be attended by the applicant in person, or through audio-video electronic means or through the medium of electronic video linkage as permitted by the Committee or through a duly authorized representative. The settlement terms as revised and agreed by the applicant must be submitted to SEBI within 10 working days from the date of the Internal Committee Meeting. The applicant also has the option to submit the revised settlement terms within 20 working days, but such a submission would lead to an increase in the recommended settlement amount by 10%.

Once the revised settlement terms are submitted by the applicant, the application, undertaking and waivers of the applicant, factors that are to be considered for arriving at the settlement, settlement terms or revised settlement terms as submitted by the applicant and any other relevant material available on record will be forwarded to the High-Powered Advisory Committee. The High Powered Advisory Committee will either recommend the application for settlement or send it back to the Internal Committee for revision of the settlement terms.

The recommendation of the High Powered Advisory Committee is forwarded to a Panel of Whole Time Members which considers the recommendations and accepts or rejects the same. Once the recommendations are accepted, the applicant is advised to remit the settlement amount within 15 calendar days, but which may be extended by another 15 calendar days. Any remittance made after 30 calendar days but before 90 calendar days shall be paid along with simple interest of 6% per annum on the settlement amount from the date of receipt of notice of demand till the date of payment of settlement amount. The amount cannot be remitted after 90 days from the date of receipt of notice of demand. Remittances are normally done only through a demand draft drawn in favour of Securities and Exchange Board of India, payable at Mumbai.

In case the Panel of Whole Time Members does not accept the terms of settlement, the application is returned to the Internal Committee for re-examination and arriving at a fresh settlement. In case the application for settlement is filed before the matter

“An application for settlement once found to be complete in all aspects shall be referred to an Internal Committee. The Committee shall determine whether the proceedings may be settled and also finalizes the settlement amount which shall be arrived at based on the factors specified in the Regulations and the calculation mechanism mentioned in the Regulations.

is referred to the Adjudicating Officer or voluntarily, the Panel of Whole Time Members shall pass the appropriate Settlement Order disposing of the relevant proceedings initiated or proposed to be initiated. In case the application is filed after the matter is referred to an Adjudicating Officer, the Adjudicating Officer shall dispose of the proceeding by passing an appropriate order on the basis of the approved settlement terms. In case the application is filed when the matter is pending before the Securities Appellate Tribunal, the terms of settlement or rejection of the terms as the case may be will be placed before the Tribunal or any other Court and the Tribunal or Court shall pass appropriate Orders.. The Settlement Order will contain in brief the details of the alleged default, the relevant provisions and the settlement terms.

Settlement Orders are published on the website of SEBI and are also sent personally to the applicant.

A Settlement Order which has been passed by SEBI shall not be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor affect the right of third parties arising out of the alleged default. Where any person has obtained a Settlement Order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not be admissible as evidence against such other person.

If the applicant fails to comply with the terms as specified in the Settlement Order any time after the Settlement Order is passed, or it has come to the notice of SEBI that the applicant has not made full and true disclosure of facts or the applicant has violated the undertakings or waivers given at the time of making the application, SEBI shall revoke and withdraw the Settlement Order that has been passed. In the event that a settlement order is revoked all proceedings for which the settlement order was passed shall be restored or re-initiated. The settlement amount that has been paid shall also not be refunded to the applicant in case an application is revoked.

## SETTLEMENT TERMS

As per the Regulations, the settlement terms may include a settlement amount which is monetary in nature and / or non-monetary terms in certain exceptional circumstances. The settlement terms shall be arrived at based on the guidelines specified in the Regulations, which is explained and illustrated with an example in this article. The non-monetary terms may include the following – suspension or cessation of business activities for a specific period, exit from management, disgorgement, refraining from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by SEBI for a specific period of time, cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, lock-in of securities,

implementation of enhanced policies and procedures to prevent future securities laws violations as well as agreeing to appoint or engage an independent consultant to review internal policies, processes and procedures, provide enhanced training and education to employees of intermediaries and securities market infrastructure institution and submit to enhanced internal audit and reporting requirements.

## GUIDELINES FOR ARRIVING AT THE SETTLEMENT AMOUNT

1. The Settlement Amount shall comprise of an Indicative Amount (IA) which is arrived at on the basis of the guidelines provided in the regulations and the various factors specified. The IA for first time applicants shall be a minimum of Rs.3,00,000/- and Rs.7,00,000/- for other applicants.
2. The IA is equal to  $A \times B$  + legal costs, where A is Proceeding Conversion Factor + Regulatory Action Factor. The Proceeding Conversion Factor (PCF) shall be 0.65 for voluntary applications, 0.75 for application made after receiving intimation that adjudication proceeding is going to be initiated, 0.85 for filing of application after receipt of show cause notice and so on.
3. In case the applicant has been involved as a party in any other regulatory order (Adjudication/ 11B/ Settlement) a value is to be assigned which shall be the Regulatory Action Factor (RAF) and RAF is X+Y (X and Y being enumerated in the Regulations), being the sum of all the values assigned to the Orders and regulatory directions issued by SEBI on the applicant in the past.
4. B, which is called the Applicable Benchmark Amount is equal to Base Value \* Base Amount, B '**B**' = **BV x BA**. 'Here **BV**' is the aggregate of the base values given to the relevant factors including the aggravating and mitigating factors in respect of a particular charge. BV is generally 1+ sum of applicable base values.
5. '**BA**': Base amount attributable to every count of the alleged default in accordance with these regulations. The BA for each default under the various regulations of SEBI i.e. ICDR, LODR, SAST, PIT and PFUTP are listed in the Settlement Regulation itself. In case the applicant is charged for non-disclosure under the SEBI (SAST) Regulations and the SEBI (PIT) Regulations, the highest of the Base Amount arrived at for such charges shall be reduced by 75%.
6. In cases where the guidelines applicable for calculating the IA cannot be applied or adapted due to the peculiar nature of the default or the facts and circumstances of the case or because the defaults are not covered in the tables given in the Regulations, the Internal Committee or the High Powered Advisory Committee or the Panel of Whole Time Members may arrive at the Settlement amount.
7. The amount which is finally approved by the Panel of Whole Time Members shall be the Settlement Amount.
8. The calculation of the settlement amount using examples is given below:

### Example 1

The promoters of the company made a delayed disclosure under Regulation 30(1)/30(2) of the SAST Regulations, 2011 for the financial years 2013-2014 with a delay of 250 days and for the financial years 2014-15 with a delay of 85 days. The disclosures for the rest of the years have been done without any delay. Three scenarios will be considered one where the application will be filed voluntarily, one after receipt of initiation of adjudication and three after adjudication has been initiated. No other regulatory action is pending against the applicant.

### Calculation of Base Amount: BA

Regulation	Number of days delay	No of Quarters	Base Amount	Per Quarter	Total
30(2)	250	3	2,00,000	5000	$2,00,000 + 5000 \times 3 = 2,15,000$
30(2)	85	1	-	-	-

Calculation of Base Value: BV which is 1+ applicable base values, which in this case is

- a. Alleged default was repetitive : 0.25
  - b. Reputation risk applicable to all applications : 0.25
- Therefore, the Base Value is 1.50
- c. Hence  $B = 2,15,000 \times 1.50 = 3,22,500$
  - d. There is no Regulatory Action Factor (RAF) – 0
  - e. Proceeding Conversion Factor : In case filed voluntarily 0.65, in case after intimation of initiation of show cause notice : 0.75 and after issuance of show cause notice : 0.85
  - f. So  $A = 0.65/0.75/0.85$
  - g. Hence IA in the three scenarios will be
    - i.  $IA = A \times B = 322500 \times 0.65 = 209625$ . However, minimum being Rs.300,000 the IA shall be Rs.3,00,000
    - ii.  $IA = A \times B = 322500 \times 0.75 = 241875$ . However, minimum being Rs.300,000 the IA shall be Rs.3,00,000
    - iii.  $IA = A \times B = 322500 \times 0.85 = 274125$ . However, minimum being Rs.300,000 the IA shall be Rs.3,00,000

### Example 2

X, a promoter of the company made a delayed disclosure under Regulation 29(2) of the SAST Regulations, 2011 and Regulation 7(2) of the SEBI (PIT) Regulations for acquiring 2.5% of the paid up share capital of the company. The shares were acquired on March 28, 2017 and the disclosure for the same was made only on March 30, 2019 Three scenarios will be considered one where the application will be filed voluntarily, one after receipt of initiation of adjudication and three after adjudication has been initiated. No other regulatory action is pending against the applicant. The calculation of the settlement amount would be as under:

### Calculation of Base Amount: BA

Regulation	Number of Days Delay	No of Quarters	Base Amount	Per Quarter	Total
29(2) of SAST	730	6	500000	10000	$500000 + 10000 \times 6 = 560000$
7(2) of PIT	730	6	600000	12500	$600000 + 12500 \times 6 = 675000$

Since the disclosure is under both the regulations, the higher of the two will get reduced by 75%. So the BA would be  $560000 + 168750 = 728750$

Calculation of Base Value: BV which is 1+ applicable base values, which in this case is

- Reputation risk applicable to all applications: 0.25
- Therefore the Base Value is 1.25
- Hence  $B = 728750 \times 1.25 = 910937.50$
- There is no Regulatory Action Factor (RAF) = 0
- Proceeding Conversion Factor: In case filed voluntarily 0.65, in case after intimation of initiation of show cause notice: 0.75 and after issuance of show cause notice: 0.85
- So  $A = 0.65/0.75/0.85$
- Hence IA in the three scenarios will be
- i.  $IA = A \times B = 910937.50 \times 0.65 = \text{Rs.}5,92,110$





ii.  $IA = A \times B = 910937.50 \times .75 = \text{Rs. } 6,83,203$

iii.  $IA = A \times B = 910937.50 \times 0.85 = \text{Rs. } 7,74,297$

Calculations are made depending on the violations, stage of application and the other factors relevant to the case.

### APPLICATION FOR SETTLEMENT WITH CONFIDENTIALITY

The Regulation also provides the benefit of confidentiality to the applicant, in which case the applicant shall admit for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or ongoing, against any other person in respect of a violation of securities laws. The applicant shall continue to make disclosures, co-operate fully, continuously and expeditiously with SEBI during the investigation, inspection, inquiry or audit and shall not conceal, destroy, manipulate or remove any relevant document.

The applicant shall make an application requesting confidentiality and SEBI on being satisfied may grant the benefit of confidentiality and communicate the same to the applicant.

The procedure as specified shall apply in toto to all applications for settlement made with confidentiality. When such an application is made, the identity of the applicant seeking confidentiality and the information, documents and evidence furnished by the applicant shall be treated as confidential.

### SUMMARY SETTLEMENT PROCEDURE

SEBI before initiating any proceeding against any person may issue a notice of summary settlement in the format specified in the Regulations. The notice will inform the person to file a settlement application along with the necessary undertakings and also pay the settlement amount indicated therein. The notice may also require the person to furnish an undertaking to comply with the other non-monetary terms as may be specified in the summary settlement notice.

The summary settlement notice is normally issued for delayed disclosures, disclosures not made in the specified format, non-disclosure by such companies which were exclusively listed on regional stock exchanges which have been given the exit order and such other defaults as may be determined by SEBI.

On receipt of the summary settlement notice, the person may within 30 calendar days file a settlement application in the specified format along with the non-refundable application fee and undertakings / waivers and also remit the settlement amount specified in the notice. In case the person is of the opinion that

SEBI before initiating any proceeding against any person may issue a notice of summary settlement in the format specified in the Regulations. The notice will inform the person to file a settlement application along with the necessary undertakings and also pay the settlement amount indicated therein. The notice may also require the person to furnish an undertaking to comply with the other non-monetary terms as may be specified in the summary settlement notice.

the settlement amount so calculated is wrong he may seek rectification of the calculation at the time of filing the settlement application. The final decision will be communicated by SEBI and on receipt of the settlement amount SEBI will pass necessary Settlement Orders.


In case the notice chooses not to avail the settlement process and file a settlement application SEBI will initiate necessary proceedings against the notice and in such a case the notice can file an application for settlement only after the disposal of the same by the Adjudicating Officer and the proceedings are pending before the Tribunal or Court.

### COMPARISON OF ADJUDICATION WITH SETTLEMENT

The dilemma that is there before a person who has received a show cause notice would be to opt for settlement or continue under adjudication. A comparative study between the two judicial processes is given below:

Sl. No	Particulars	Adjudication	Settlement
1	Process	Initiated by SEBI	Initiated by the applicant
2	Application Fee	No fees	Rs.15,000/- or Rs.25,000/- as the case may be
3	Deciding Authority	Adjudicating Officer	Internal Committee / High Power Advisory Committee / Panel of Whole Time Members
4	Nature of Penalty	Penalty / Fine – cannot be treated as an expense	Settlement Amount – can be treated as an expense
5	Calculation	Discretion of the Adjudicating Officer based on mitigating factors	As per the guidelines / formula specified in the Regulations
6	Stigma	Attached	No stigma attached. Can begin on a clean slate
7	Appeal	Can be appealed to the SAT	No such appeal is possible

### CONCLUSION

Settlement procedure is an option that is available in order to avoid the loss of reputation and the costly and messy state of affairs in long drawn litigations. However it is up to the applicant to choose this option based on the facts of the case, the estimated settlement amount and the expected fallout of any litigation. 

### SOURCE

SEBI (Settlement Proceedings) Regulations, 2018

# Restructuring of Listed Companies - Exchange and Regulatory aspects

Schemes of restructuring such as merger, demerger or other arrangement involving listed entities invariably affects the public shareholders. Over the last 15 years, SEBI through Stock Exchanges has proactively made regulatory changes in the landscape of restructuring in listed entities keeping in mind the ultimate interest of public shareholders. This article while presenting a snapshot of the way the regulations have evolved over the years has highlighted the important regulatory provisions prevailing now.



**Khushro Bulsara\*, ACS**

Chief General Manager-Listing Compliance & Legal Regulatory  
BSE Limited, Mumbai  
[khushro.bulsara@bseindia.com](mailto:khushro.bulsara@bseindia.com)



**Ashok Kumar Singh\*, ACS**

Assistant General Manager-Listing Compliance  
BSE Limited, Mumbai  
[ashok.singh@bseindia.com](mailto:ashok.singh@bseindia.com)

## BACKGROUND

Over the years, Corporate restructuring including mergers and acquisitions done by Indian Companies have helped them to grow inorganically and played a vital role in the growth of business, indirectly leading to growth in India's GDP. Big or small, all the Indian companies have an eye on restructuring / acquisitions for their growth and operation synergy perspective. However, when it comes to the schemes of arrangement by the listed companies there were certain perceived abuses of the process such as back door listing of unlisted companies, increase in promoters' holding without attracting the provisions of SAST Regulations, delisting of listed entities through scheme to bypass the SEBI Delisting Regulations etc. In order to address these issues and to protect the interest of the public shareholders of the listed entities, SEBI has taken several initiatives and on the basis of their review, made amendments to the rules related to schemes of arrangement periodically.

Some of such initiatives taken by SEBI in the field of schemes of Restructuring / arrangement by the listed companies along with the expectations that SEBI and Stock Exchanges has with the listed entities when they propose to come up with the schemes, are analysed in the following paragraphs: -

## BRIEF BACKGROUND OF REGULATORY REFORMS REGARDING SCHEMES OF LISTED ENTITIES

- I. **Year 2003** - Before the year 2003, schemes of arrangements entered by the listed entities were purely governed by the provisions of Companies Act, 1956 with no scrutiny or approval of the Stock Exchanges or SEBI. This led to various abuses to the securities market - some of them are mentioned hereunder:
  - a) **Increase in promoter holding without attracting open offer** - The valuation of the unlisted companies was sometimes not justified with the financials of such companies and therefore huge number of shares were issued to the shareholders of unlisted companies (mostly the promoters of the listed entity), at the cost of dilution of the stake of the public shareholders and that too by avoiding the route of open offer.
  - b) **Backdoor listing of unlisted companies** - It was observed that in few cases, relatively large unlisted companies were merging with small listed companies which has no/negligible business. In the process, big unlisted companies were getting listed on Stock Exchanges i.e. backdoor listing, without going through process of IPO wherein compliances and disclosure norms are quite stringent. In some cases, even name of listed company was changed to the name of unlisted company.
  - c) **Delisting of company without seeking approval** - In some cases, the listed company was amalgamating with the unlisted company and equity / preference shares issued to the shareholders of listed companies were not listed at Stock Exchanges. These schemes indirectly resulted in taking away the right to trade in the equity shares of the company and small shareholders are left with no liquidity option. In this way one can say that indirect delisting of listed company was achieved without following prescribed SEBI norms for delisting.
  - d) **Circumventing SEBI ICDR and SAST Regulations** - It is observed that in some cases, schemes were used to issue equity shares to selected group of people without following the pricing and other requirements of SEBI (ICDR) Regulations for preferential issue. Several times

\*The views expressed are personal views of the authors



“ It is observed that in some cases, schemes were used to issue equity shares to selected group of people without following the pricing and other requirements of SEBI (ICDR) Regulations for preferential issue. Several times this also resulted in increasing their holding beyond the threshold which attracts the open offer under SEBI (SAST) Regulations.

this also resulted in increasing their holding beyond the threshold which attracts the open offer under SEBI SAST Regulations (if acquisition of shares is made pursuant to a scheme, requirement of making an open offer is exempt).

The above abuses to the system forced a change in the regulatory system related to schemes with SEBI amending the then applicable “Listing Agreement” by introducing new Clause 24(f) and 24(h) which are reproduced hereunder:

#### **Clause 24(f)**

*“The company agrees that it shall file any scheme/ petition proposed to be filed before any Court or Tribunal under sections 391, 394 and 101 of the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the Court or Tribunal”*

#### **Clause 24(h)**

*The company agrees that in the explanatory statement forwarded by it to the shareholders u/s 393 or accompanying a proposed resolution to be passed u/s 100 of the Companies Act, it shall disclose the pre and post-arrangement or amalgamation (expected) capital structure and shareholding pattern, and the “fairness opinion” obtained from an Independent merchant bankers on valuation of assets / shares done by the valuer for the company and unlisted company*

Effect of above amendment in Listing Agreement was that the Stock Exchanges started scrutinizing schemes from the viewpoint of securities laws and Stock Exchange's compliance point of view and the loophole to circumvent the securities laws by listed companies through such opportunistic schemes was plugged. Further, in cases where inadvertent violation of securities laws was observed, the companies were asked to comply with the same and thereafter the Stock Exchange NOC was given. This has saved companies from the hardship that they would have faced in case of non-compliance.

## **II. Year 2013 – SEBI circulars on Schemes**

Till 2013, schemes of arrangements were processed only by the Stock Exchanges and SEBI had no role to play in approval of the schemes by the Stock Exchanges. In 2013 SEBI issued two circulars stating revised requirement for the Stock Exchanges and Listed Companies for Scheme of Arrangement filed under the Companies Act, 1956. Accordingly, SEBI has also started processing the schemes and giving its comments on the same. The highlights of changes brought in by said circulars are given hereunder:

- a) SEBI started processing the schemes and giving comments which are included in the Stock Exchange's observation letters.

- b) Stock Exchange are required to first send their observations to SEBI and thereafter after receipt of SEBI comments, issue observation letter to listed companies
- c) Concept of fairness opinion from the SEBI registered Merchant Bankers was introduced for schemes.
- d) Concept of taking approval only from the public shareholders through postal ballot and e-voting in certain cases was introduced. [Rule of approval by majority of minority]
- e) All scheme related documents were required to be uploaded in the Stock Exchange website as well as on company's website.
- f) The companies are required to submit complaint report to Stock Exchange.
- g) Concept of designated Stock Exchange (where company is listed at more than one Exchange) was introduced.

Effect of amendment was that SEBI started processing the schemes of listed entities and giving its comments before same is filed with High Court / NCLT. It has acted as a deterrent to mischievous companies. As the SEBI registered merchant bankers are now required to give fairness opinion on the schemes, it brought the independent experts in the process which are governed by SEBI. This has ensured that only compliant schemes are filed with the Exchanges. For schemes wherein promoter holdings were increasing, the concept of approval by majority of minority has acted as another check on disproportionate increase in promoter holding through schemes.

## **III. Year 2015 – SEBI LODR Regulations**

With the promulgation of Listing Regulations, the objective part related to approval of the scheme by the Stock Exchanges was included in the Regulation (Reg. 37) and the operational part was provided through a separate SEBI circular on schemes dated November 30, 2015.

## **IV. Year 2017 – Revised SEBI Circular on Schemes**

SEBI has revised its November 30, 2015 circular on schemes and issued a totally new circular dated March 10, 2017 which includes enhanced requirements and measures for investor protection. This circular as further amended on September 21, 2017 and January 03, 2018.

## **V. Securities Laws covering schemes of listed entities -**

Now, the regulatory position governing the schemes of merger, demerger and reverse merger is more or less settled. The present regulatory scenario covering the schemes of listed entities are given hereunder:

- a) The Companies Act, 2013
  - b) Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
  - c) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”)
  - d) SEBI Circular Ref. No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 (“SEBI Circular”)
- In addition to above certain powers have been given to SEBI under the Securities Contract (Regulations) Rules, 1957 (SCRR) related to listing of unlisted companies.

DECEMBER 2019 | CHARTERED SECRETARY 



This provision makes sure that while taking decisions related to voting on the proposed scheme, the shareholders of the listed entity, especially public shareholders, should have required minimum information related to unlisted entities involved in the scheme. This information is also necessary because post approval of the scheme, any shares issued by the listed entity to the shareholders of unlisted entity will eventually dilute the percentage holding of the existing public shareholders of the listed entity.

- b) The percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the “merged” company shall not be less than 25% calculated on fully diluted basis.

This is another important provision which makes sure that the pre-scheme public shareholders of the listed entity are holding at least 25% in the post-scheme share capital of the listed entity and they are not reduced to less than 25% in post scheme capital. It may so happen that there are public shareholders in the unlisted transferor company who are not related to the promoters of the unlisted company. But for the purpose of above provision they are not considered as public shareholders except if there is any SEBI registered QIB in the unlisted company then it can be counted along with the pre-scheme public shareholders of listed entity while checking compliance with above requirement.

It may happen that in cases where in post-scheme scenario the listed entity is not meeting the above requirement and therefore they may issue equity shares only up to the level that post scheme shareholding of public shareholders is 25% and balance consideration they may issue in the form of convertible securities such as convertible preference shares or convertible debenture to that immediate dilution in pre-scheme public shareholding may be postponed. However, on January 03, 2018 SEBI has amended its SEBI Circular on scheme which now provides that compliance with above requirement is to be checked on fully diluted basis assuming conversion of all the convertible securities into the equity shares of the listed entities.

- c) Unlisted entities can be merged with a listed entity only if the listed entity is listed on a Stock Exchange having nationwide trading terminals. The effect of this provision is that now companies listed exclusively on regional Stock Exchange can't frame scheme for merger of unlisted companies with itself.
- II. **Rule of majority of minority** – Another important check which SEBI has placed in the SEBI circular is the approval of the scheme by the majority of minority (i.e. public shareholders). The circular requires the approval of the scheme only by the public shareholders of the listed entities, through e-voting, in following cases:
- where pursuant to scheme shares are proposed to be issued to promoters of the listed entity; or
  - if the holding of public shareholders is falling by more than 5% pursuant to scheme.

However, in cases where it is not applicable, the company can seek exemption from this requirement by furnishing an undertaking certified by the auditor and duly approved by the Board of the company, clearly stating the reason for non-applicability of above requirement.

The above provisions make sure that in case the promoter holding is increasing pursuant to allotment under the scheme, (which is otherwise exempted from obligation to give open offer if it increases beyond threshold under SAST Regulation), the decision to approve such scheme is taken only by the public shareholders of the listed entity through ordinary resolution. On a similar note, if pursuant to allotment of shares under the scheme, the holding of public shareholders is falling by more than 5%, then also the decision to approve such scheme is taken only by the public shareholders through ordinary resolution wherein votes of promoters, even if cast, will not be counted.

In addition to above, in order to encourage more participation from the public shareholders in such resolutions, it is provided by SEBI that such resolution shall be passed through e-voting only.

- III. **Redressal of Complaints related to scheme**– The SEBI Circular has inbuilt mechanism of redressal of complaints related to scheme. As per SEBI Circular, the Listed entity shall submit to Stock Exchanges a ‘Report on Complaints’ which shall contain the details of complaints/comments received by it on the Draft Scheme from various sources (complaints/comments written directly to the listed entity or forwarded to it by the Stock Exchanges/SEBI) as per Annexure III of said Circular prior to obtaining Observation Letter from Stock Exchanges on Draft Scheme.

The complaint report is required to be submitted within 7 days of expiry of 21 days from the date of filing of Draft Scheme with Stock Exchanges and hosting the Draft Scheme along with other related documents on the websites of Stock Exchanges and the listed entity.

This provision is there to ensure that all the scheme related complaints are addressed in timely manner and are also made available to public by disseminating the complaint report on the Exchange website. Further, while giving its comment, SEBI also takes into consideration the issues raised by the complainant.

- IV. **Pricing in case of allotment of shares to a selected group of shareholders or the shareholders of unlisted companies**: It may be noted that in addition to provisions contained in Listing Regulations and SEBI Circular on schemes, the listed entities are also required to comply with the pricing provisions of SEBI (ICDR) Regulations, 2018 (ICDR) in cases where under the proposed scheme the allotment of shares by the listed entity is proposed only to a selected group of shareholders or the shareholders of unlisted companies. [Proviso to Reg. 158(1)(b)]. The relevant date for the calculation of such price is the date on which said scheme was approved by the Board of Directors of the company. The provisions of preferential issue regulations under Chapter V of ICDR are not applicable to the schemes approved by NCLT. However, in order to ensure that

in case the allotment of shares is envisaged to only a selected group of shareholders or the shareholders of unlisted companies, the pricing provisions applicable to the preferential issue of listed entities are complied with by the company. SEBI has amended the SEBI (ICDR) Regulations making pricing provisions applicable to such schemes.

**V. Provisions related to scheme of companies that are listed solely on regional Stock Exchange:**

For companies that are listed exclusively on the regional Stock Exchange and are not listed on any stock Exchange having nationwide trading terminal following provisions are applicable:

- a) In case scheme of amalgamating/ arrangement has been proposed by such companies listed exclusively on RSEs, one of the Stock Exchanges having nationwide trading terminals shall provide a platform for dissemination of information of such Schemes and other documents required under this circular. For such purpose, Stock Exchanges having nationwide trading terminals may charge reasonable fees from such companies.
- b) In addition to above, in cases wherein exemption from Rule 19(2) (b) of Securities Contracts (Regulation) Rules, 1957 is sought for listing of an unlisted entity through scheme of arrangement, the listed entity shall also obtain in-principle approval for listing of equity shares of such unlisted company on any Stock Exchange having nationwide trading terminals. This provision will ensure that the new company to be listed through schemes will not be listed only on RSEs where there is negligible / no trading resulting in lack of liquidity. These companies are required to be listed on Stock Exchange having nationwide trading terminals so that liquidity can be provided to the shareholders of such companies.

## PROVISIONS RELATED TO LISTING OF UNLISTED COMPANY PURSUANT TO SCHEME OF ARRANGEMENT

A listed issuer may submit the Draft Scheme of arrangement under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, thereby seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof, for listing of its equity shares on a recognized Stock Exchange without making an initial public offer, if it satisfies the following conditions:

- i. The equity shares sought to be listed are proposed to be allotted by the unlisted issuer (transferee entity) to the holders of securities of a listed entity (transferor entity) pursuant to a scheme of reconstruction or amalgamation (Scheme) sanctioned by NCLT under Section 230-234 of the Companies Act, 2013;
- ii. For listing of unlisted company through scheme, the unlisted company is not required to comply with the requirements of Rule 19(2)(b) of SCRR related to public offering of its shares through IPO and same is exempted by SEBI on compliance with certain requirements given in SEBI Circular.

However, in order to align the requirements specified for listing under schemes of arrangement with those specified under Rule 19(2)(b) of SCRR, SEBI has made the following provisions:

*At least twenty five per cent of the post-scheme paid up share capital of the transferee entity shall comprise of shares allotted to the public shareholders in the transferor entity;*

*Provided that an entity which does not comply with the above requirement may satisfy the following conditions:*

- i) *The entity has a valuation in excess of Rs. 1600 crore as per the valuation report;*
- ii) *The value of post-scheme shareholding of public shareholders of the listed entity in the transferee entity is not less than Rs.400 crore;*
- iii) *At least ten percent of the post-scheme paid up share capital of the transferee entity comprises of shares allotted to the public shareholders of the transferor entity; and*
- iv) *The entity shall increase the public shareholding to at least 25% within a period of one year from the date of listing of its securities and an undertaking to this effect is incorporated in the scheme*

iii. The transferee entity will not issue/ reissue any shares, not covered under the Draft Scheme of arrangement. This is an important provision which bars unlisted companies from issuing shares after the approval of scheme by the NCLT and before such company is listed when issuance of such shares was not envisaged under the scheme. This provision is there to protect the interest of the shareholders of the listed company.

iv. The entire process of listing of unlisted company pursuant to scheme is to be completed within **sixty days** from the date of receipt of order of NCLT by said company.

v. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity (is situated, giving important details about the company as specified in the circular.

It can be observed from above that for listing of unlisted companies through the scheme of arrangement also, SEBI has ensured that the shareholders of the listed demerged / transferor company are not reduced below twenty-five percentage in the post scheme capital of the unlisted company with which it will seek listing. It is also provided that compliance with said condition is to be checked on fully diluted basis assuming conversion of all convertible securities issued by unlisted company seeking listing.

It may be noted that SEBI has prescribed very tight timeline for listing of unlisted company through NCLT approved scheme of arrangement which is sixty days from the date of receipt of order of NCLT by said company. The reason for such timeline is that whatever time is consumed by the listed entity in getting its securities listed on the Stock Exchanges after the scheme has been approved by the NCLT, the investors of the listed company, who have received shares of the unlisted company as a consideration of the scheme of arrangement, are denied the liquidity opportunity. Further, since there are public shareholders in the listed entity, it becomes more important that trading in the unlisted company has commenced within shortest possible time post approval of the scheme by the NCLT. However, in an eventuality where listing and trading of unlisted company could not be commenced within said time, the company shall have very compelling reason and shall present their



“It may be noted that SEBI has prescribed very tight timeline for listing of unlisted company through NCLT approved scheme of arrangement which is sixty days from the date of receipt of order of NCLT by said company. The reason for such timeline is that whatever time is consumed by the listed entity in getting its securities listed on the Stock Exchanges after the scheme has been approved by the NCLT, the investors of the listed company, who have received shares of the unlisted company as a consideration of the scheme of arrangement, are denied the liquidity opportunity.



case before SEBI while seeking relaxation of Rule 19(2)(b) of SCRR for listing.

## ROLE OF COMPANY SECRETARY

Listing Regulations has opened another opportunity for the company secretaries in employment. Now, as per Regulation 6 of Listing Regulations, it is mandatory for all listed entities to appoint a qualified company secretary to act as Compliance Officer. This post of compliance officer can be in addition to the post of the Company Secretary in the company. Regulation 6 further provides that Compliance officer shall be responsible for:

- i. ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- ii. co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- iii. ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
- iv. monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors

Role of company secretary / compliance officer becomes more important when listed entity proposes to come out with the schemes of restructuring / arrangement. They are the key officers of the company on whose shoulders this responsibility is cast to ensure that entire process goes smoothly within the timeline fixed by the management. In order to ensure that, it is important that he/she is always updated with the latest developments in the securities market including in the field of

schemes. In order to help listed entities, BSE has uploaded its checklist on its website giving details of all the documents that are required for them to give their observation letter / No objection letter for schemes that are filed under Regulation 37 of Listing Regulations. Similarly, other Exchange have also uploaded their checklists on their websites. Company secretary / compliance officer are advised to go through these checklists thoroughly before filing the scheme with the Exchanges. They are also advised that only those schemes that are fully complied with SEBI and Stock Exchange requirements are filed with the Exchanges otherwise such schemes may be returned by them without being processed and the processing fees would be forfeited. In case of any doubt related to provisions of Listing Regulations, SEBI Circular or requirements under the checklist, they are advised to consult with the Stock Exchange in advance before filing the scheme with them.

## CONCLUSION

Corporate restructuring, mergers, amalgamations, takeovers are an integral part of the growth of any company. In case of listed entities, these attract many legal provisions discussed above which are embedded in the Companies Act, 2013, Listing Regulations, SEBI Circulars on schemes and Stock Exchange's requirements. It is important that schemes proposed to be filed by the listed entities with the Stock Exchanges are fully compliant with all the applicable statutory requirements else entire process may be delayed. In cases where shares are issued to the promoters or the holding of the public shareholders is reducing in the post scheme equity share capital of the company, Listed Entities are required to be extra careful *w.r.t.* compliance with the following requirements:

- i. the percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the "merged" company on a fully diluted basis shall not be less than 25%;
- ii. provisions related to approval of the scheme by the public shareholders through e-voting has been included in the scheme;
- iii. The provisions related to pricing have been duly complied with.

Further, in cases of schemes of demerger / amalgamation wherein the resulting unlisted company will be seeking listing, the listed entity shall ensure the following:

- i. The public shareholders of the listed demerged / transferor company hold minimum 25% in the post scheme equity share capital of unlisted company seeking listing calculated on fully diluted basis. If not, company is in compliance with the requirements of the circular.
- ii. The entire process of listing of unlisted company pursuant to scheme through relaxation of Rule 19(2)(b) of SCRR is to be completed within sixty days from the date of receipt of order of NCLT by said company.

It may be kept in mind that in current scenario, under Section 230(5) of the Companies Act, 2013, all schemes filed by the companies with the NCLT for approval, are forwarded by NCLT to SEBI, Stock Exchanges and other regulators seeking their comments in the same.

Therefore, in case any non-compliance observed by the Exchanges at this stage are reported to NCLT and Regional Directors – MCA by the Stock Exchanges, then the entire exercise comes to standstill till the issues are resolved. Therefore, it is very important for the listed entities to ensure that they are fully compliant with all the statutory provisions before filing any scheme with the NCLT.

# Commercial Paper - An Overview of Regulatory Framework

Issue of Commercial Paper as an instrument of money market is once again becoming popular. In this article, the author has explained in detail the conceptual framework and various practical aspects governing Issue of Commercial Paper (CP) including the role of various agencies involved in the process.



**Sunil Dasari**

Manager  
Bank of Maharashtra, Pune  
[gad\\_pcr@mahabank.co.in](mailto:gad_pcr@mahabank.co.in)

**T**he 'Money Market' is a market for short term funds, which deals in financial assets whose period of maturity is up to one year. Money market does not deal in Cash or Money as such but simply provides a market for credit instruments such as Bills of Exchange, Promissory Notes, Commercial Paper, Treasury Bills, etc. These Financial Instruments are close substitutes for money. These instruments help the Business Units, Banks / Financial Institutions, other organizations and the Government to borrow funds to meet their short-term liquidity mismatch.

Commercial Paper (CP) is a popular instrument for financing Working Capital requirements of Companies. The CP is an unsecured instrument issued in the form of promissory note. The instrument was introduced in 1990 to enable the Corporate Borrowers to raise short term funds. Corporates, Primary Dealers (PDs) and the Indian financial Institutions (FIs) that have been permitted to raise short term resources under the umbrella limit fixed by the RBI are eligible to issue CPs. It can be issued for period ranging from 7 days to one year. Commercial papers are transferable by endorsement and delivery. The highly reputed companies / financial institutions are major players in the Commercial Paper market.

## ELIGIBILITY CRITERIA TO ISSUE CPS

A Corporate would be eligible to issue CP provided:

- ✓ Companies, including Non-Banking Finance Companies (NBFCs) and All India Financial Institutions (AIFIs), are eligible to issue CPs subject to the condition that any fund-based facility availed of from bank(s) and/or financial institutions is classified as a standard asset by all financing banks/institutions at the time of issue.
- ✓ Other entities like co-operative societies / unions, government entities, trusts, limited liability partnerships and any other body corporate having presence in India with a net worth of Rs.100 crores or higher subject to the condition as specified above and

- ✓ Any other entity specifically permitted by the Reserve Bank of India (RBI) are also eligible to issue CP.

CP can be issued in denominations of Rs.5 lakh or multiples thereof. The total amount of CP proposed to be issued should be raised within a period of two weeks from the date on which the issuer opens the issue for subscription. CP may be issued on a single date or in parts on different dates provided that in the latter case, each CP shall have the same maturity date. Further, every issue of CP, including renewal, shall be treated as a fresh issue.

The aggregate amount of CP from an issuer shall be within the limit as approved by its Board of Directors or the quantum indicated by the Credit Rating Agency for the specified rating, whichever is lower. As regards FIs, they can issue CP within the overall umbrella limit prescribed in the Master Circular on Resource Raising Norms for FIs, issued by DBOD of RBI.

## ISSUER

- ✓ Every issuer must appoint an Issuing and Paying Agent (IPA) for issuance of CP.
- ✓ The issuer should disclose to the potential investors its financial position as per the standard market practice.
- ✓ After the exchange of deal confirmation between the investor and the issuer, issuing company shall issue physical certificates to the investor or arrange for crediting the CP to the investor's account with a depository.
- ✓ Investors shall be given a copy of IPA certificate to the effect that the issuer has a valid agreement with the IPA and documents are in order.

## CREDIT RATING

All eligible participants shall obtain the credit rating for issuance of Commercial Paper either from Credit Rating Information Services of India Ltd. (CRISIL) or the Investment Information and Credit Rating Agency of India Ltd. (ICRA) or the Credit Analysis and Research Ltd. (CARE) or the FITCH Ratings India Pvt. Ltd. or such other credit rating agency (CRA) as may be specified by the Reserve Bank of India from time to time, for the purpose. Credit Rating Agency has to fulfill the following requirements:

- ✓ Code of Conduct prescribed by the SEBI for CRAs for undertaking rating of capital market instruments shall be applicable to them (CRAs) for rating CP.
- ✓ Further, the credit rating agencies have the discretion to determine the validity period of the rating depending upon its perception about the strength of the issuer. Accordingly, CRA shall at the time of rating, clearly indicate the date when the rating is due for review.
- ✓ While the CRAs can decide the validity period of credit rating, CRAs would have to closely monitor the rating assigned to issuers vis-a-vis their track record at regular intervals and would be required to make its revision in the ratings public through its publications and website.



The minimum credit rating shall be 'A3' [As per rating symbol and definition prescribed by Securities and Exchange Board of India (SEBI)]. The issuers shall ensure at the time of issuance of CP that the rating so obtained is current and has not fallen due for review. The maturity date of the CP should not go beyond the date up to which the credit rating of the issuer is valid.

Eligible issuers, whose total CP issuance during a calendar year is Rs.1,000 crores or more, shall obtain credit rating for issuance of CPs from at least two CRAs registered with SEBI and should adopt the lower of the two ratings. Where both ratings are the same, the issuance shall be for the lower of the two amounts for which ratings are obtained.

### ISSUING AND PAYING AGENT

Only a Scheduled Bank can act as an Issuing and Paying Agent (IPA) for issuance of CP. This is to ensure that the guidelines prescribed are diligently followed by issuers and the object of investor protection is not diluted in any manner. Issuing and Paying Agent has to fulfil the following:

- ✓ IPA would ensure that issuer has the minimum credit rating as stipulated by the RBI and amount mobilized through issuance of CP is within the quantum indicated by CRA for the specified rating or as approved by its Board of Directors, whichever is lower.
- ✓ IPA has to verify all the documents submitted by the issuer viz., copy of board resolution, signatures of authorized executants (when CP in physical form) and issue a certificate that documents are in order. It should also certify that it has a valid agreement with the issuer.
- ✓ Certified copies of original documents verified by the IPA should be held in the custody of IPA.

CP, now, being a standalone product will be held in DEMAT mode by all. Due to complexity of legal framework and in order to protect the interest of various market players / participants for ensuring smooth flow of the transactions in the CP market, the Issuing and Paying Agent ("IPA") will play a prominent role and hence made more accountable.

### SUBSCRIBERS

CP will be issued at a discount to face value as may be determined by the issuer. Individuals, Banking Companies, other Corporate Bodies (Registered or incorporated in India) and unincorporated bodies, Non-Resident Indians (NRIs) and Foreign Institutional Investors (FIIs) etc. can invest in CPs. However, investment by FIIs would be within the limits set for them by Securities and Exchange Board of India (SEBI) from time-to-time. CP can be issued either in the form of a Promissory Note or in a Dematerialized form through any of the depositories approved by and registered with SEBI. Banks, FIIs and PDs can hold CP only in dematerialized form. No issuer shall have the issue of Commercial Paper underwritten or co-accepted.

### ACCOUNTING

CPs are actively traded in the OTC market. Such transactions, however, are to be reported on the FIMMDA reporting platform within 15 minutes of the trade for dissemination of trade information to market participation thereby ensuring market transparency. Initially the investor in CP is required to pay only the discounted value of the CP by means of a Crossed Account Payee cheque to the account of the issuer through IPA. On maturity of CP:

- a) When the CP is held in physical form, the holder of the

“Eligible issuers, whose total CP issuance during a calendar year is Rs.1,000 crores or more, shall obtain credit rating for issuance of CPs from at least two CRAs registered with SEBI and should adopt the lower of the two ratings. Where both ratings are the same, the issuance shall be for the lower of the two amounts for which ratings are obtained.



CP shall present the instrument for payment to the issuer through the IPA.

- b) When the CP is held in DEMAT form, the holder of the CP will have to get it redeemed through the depository and receive payment from the IPA.

### CREDIT ENHANCEMENT / GUARANTEE

CP being a 'Stand Alone' product, it would not be obligatory in any manner on the part of banks and FIIs to provide standby facility to the issuers of CP. However, Banks and FIIs have the flexibility to provide for a CP issue, credit enhancement by way of standby assistance / credit backstop facility, etc., based on their commercial judgment and as per terms prescribed by them. This will be subjected to prudential norms as applicable and subject to specific approval of the Board.

Non-bank entities including Corporates can provide unconditional and irrevocable guarantee for credit enhancement for CP issue provided:

- ✓ The issuer fulfils the eligibility criteria prescribed for issuance of CP.
- ✓ The guarantor has a credit rating at least one notch higher than that of the issuer, issued by an approved credit rating agency and
- ✓ The offer document for CP properly discloses the net worth of the guarantor company, the names of the companies to which the guarantor has issued similar guarantees, the extent of the guarantees offered by the guarantor company, and the conditions under which the guarantee will be invoked.

### RBI GUIDELINES

Fixed Income Money Market and Derivatives Association of India (FIMMDA), may prescribe, in consultation with the RBI, standardized procedures and documentation for operational flexibility and smooth functioning of CP market.

Every CP issue should be reported to the Chief General Manager, Reserve Bank of India, Financial Markets Department, Central Office, Fort, Mumbai through the Issuing and Paying Agent (IPA) within three days from the date of completion of the issue.

RBI revised Commercial Paper Directions, 2017. As per these are the directions to Issuers, Investors and Issuing and Paying Agent (IPAs). Accordingly, FIMMDA revised its operational guidelines on CPs.

## OVERVIEW OF COMMERCIAL PAPERS GUIDELINES

- 1) **Face Value:** CP will be issued at a discount to face value.
- 2) **Period:** The CP can be issued for a period not less than 7 days and not exceeding one year from the date of issue.
- 3) **Size:** Minimum denomination/marketable lot for CP will be Rs.5 lacs, and multiples thereof.
- 4) **Maturity:** Redemption date of a CP should be a Mumbai business day.
- 5) **Options:** Call / Put Options are not permitted under CP, but Buyback of CPs is permitted, subject to conditions.
- 6) **Underwriting:** No CP issue can be underwritten or co-accepted.
- 7) **Purpose:** The exact purpose shall be disclosed in the offer document at the time of issue of CP. (The purpose will have to be exact e.g. For meeting Stock in trade / Receivables, Repairs, Admin. expenses, Salaries, Creation of an Asset, Bridge Finance for ..... etc. and NOT as general Corporate purposes).
- 8) **Mode of Issue:** A CP shall be issued in the form of a promissory note and held in a dematerialized form through any of the depositories approved by and registered with SEBI.
- 9) **Caps:** The amounts sought to be raised under the CP should be within the limits approved by Board of directors of the issuer or within the ceiling stipulated by Credit Rating Agency whichever is lower.



“ Issuer should have an arrangement with Depository for its CP issuance. Depository requires an agreement to be executed with it along with its Registrar and Transfer Agent. The Issuer is required to comply with the formalities and procedure prescribed by Depositories.

10) **Rating:** If the CP issue has been rated by more than one rating Agency:

- ✓ Where the ratings are different, the lower of the two ratings along with the amount specified against the rating should be adopted.
- ✓ Where the ratings are the same but the amounts are different, the rating with the lower amount should be adopted.

- 11) **Validity of Rating:** CPs shall be issued within the validity for issuance mentioned in the Credit rating letter. The maturity date of the CP should fall within the validity period of rating.
- 12) **Mobilization:** All the CPs must be issued by way of private placements only.
- 13) **Investors:** Investments by related parties as defined in sec 2(76) of Companies Act, 2013 are not allowed.
- 14) **IPA:** The issuer shall appoint an IPA and enter into an IPA Agreement.
- 15) **Guarantee:** If a CP is supported by a standby assistance / backstop facility / irrevocable guarantee, the issuer must appoint an independent trustee.
- 16) **Stamping:** CP universally is an unsecured short-term debt paper. Considering different stamp duty structures applicable for Primary Market debt instruments (depending upon the State) and the fact that the stamp duty for Usance Promissory Note (UPN) of short-term maturity (up to one year) is lowest among all unsecured debt products, it is retained as UPN. Further stamping of UPN is under the purview of the Central Act.

## FIMMDA OPERATIONAL GUIDELINES ON CPS-PRIMARY MARKET

Eligible issuer will approach IPA for its entire CP programme or a specific tranche of the CP.

Issuer would enter into with IPA, an agreement which would be stamped in accordance with the state stamp duty applicable to the agreement as applicable in the state of execution.

Issuer should have an arrangement with Depository for its CP issuance. Depository requires an agreement to be executed with it along with its Registrar and Transfer Agent. The Issuer is required to comply with the formalities and procedure prescribed by Depositories.

Once this arrangement is in place, the Issuer can get ISIN created by submitting the “letter of intent” in the stipulated format along with other necessary documents as prescribed by the Depository. All securities held in specific ISIN number will have same maturity date and other characteristic features, irrespective of the fact when the security (CP) is created / issued. Importantly, ISIN should be in place and activated before a CP programme starts.

The ISIN is created based on the maturity date of the CP. The CP programme / tranche issued must be completed within a period of two weeks from the date of commencement of the issue. The ISIN number should be made known to the IPA for control purposes through Issuer / Registrar and Transfer Agent. IPA should have CP Securities Account wherein all DEMAT credits would flow in from the Registrar and Transfer Agent for onward transfer to the respective investor(s) account.

IPA should have an exclusive CP Funds Account (a separate account operable by the IPA) for each such issuer for crediting



the funds received from the investors on issue of the DEMAT CP. From this account, the funds will be transferred to the issuers' normal account.

Since several series of CPs of an issuer may simultaneously be open in the market, to keep track of funds received etc., it will be in order to maintain a separate current account called as "CP Funds Account--(Company)".

As soon as the CP is subscribed (by negotiation or by book building process), the Issuer exchanges Deal Confirmation Note with the investors. Issuer will submit full details to the IPA such as:

- ✓ Value Date of Deal.
- ✓ Name and address of the counter party.
- ✓ Contact person's name, telephone, fax numbers etc.
- ✓ Details of the DP account of investor / buyer such as client name, client ID, DP a/c No., DP ID etc. as contained in the Deal Confirmation Notes as also the jumbo CP.
- ✓ FV of CP to be delivered and consideration to be received.
- ✓ Letter / mail from the investor giving the depository details of the investor.
- ✓ Consolidated list of CPs to be issued for different value date.
- ✓ Confirmation that the Investors are not related parties as defined in section 2(76) of Companies Act, 2013.

Issuer will approach the IPA preferably a day before the actual issue of the CP, and submit original rating letter issued by CRA(s) for perusal and return the same.

It will also submit a single promissory note for total FV of the CPs (Jumbo Promissory Note) to be issued (Ref to ISIN may be given), duly stamped and executed. Issuers are encouraged to issue digitally signed usance promissory note. The stamping of the UPN would be as per the Indian Stamp Act. The stamp duty may be paid online and the Electronic - Secure Bank and Treasury Receipt (e-SBTR) may be submitted to IPA. In case the issuer is not in a position to make payment of stamp duty through e-SBTR, it can make the payment as per the manual process. The issuer can also submit a payment challan copy.

IPA, after verification of the consolidated UPN can prepare an IPA certificate and make available the same in electronic form on the website of the depositories for the CPs. IPAs are encouraged to shift to issue of digital signature certificates.

Upon the instructions of the Issuer, the Registrar and Transfer Agent will submit an instruction to depository to credit the DEMAT CPs to the IPA's CP Securities account. In no case Registrar and Transfer Agent is authorized to issue CPs for the credit of investors' account directly. It has to necessarily pass through the "IPA's CP Securities Account only."

Depositories should not accept instructions on its system for the direct credit of CPs by the Registrar and Transfer Agent(s) to investor(s) account, in the primary market. They are required to have in place a suitable mechanism to ensure this.

On value date, upon the receipt of the stated consideration by approved mode, the IPA will pass on delivery instructions to its DP to transfer the securities (giving the reference to ISIN No.) to investors' account as per Issuer's consolidated letter. Funds are deposited in the Issuer's account with IPA.

“Terms stated in the Deal Confirmation Note are binding on both parties, i.e. seller and buyer. RBI regulated entities who have signed the multilateral agreement need not exchange the physical deal confirmation letters for deals done amongst themselves.

The IPA will hold consolidated UPN by making suitable remarks on it, which reads as follows.

*"Issuer has created electronic security against the UPN with --- (Name of the Depository) bearing ISIN No: --- for the credit of investors' account with DPs stated in issuers letter dated ---and not available for trade in the secondary market."*

The CP in UPN form will not be cancelled when the security in DEMAT is created. However, the UPN with notings stated above on the face of it, will be kept with IPA and would thus not be available to the market for trading. The IPA shall ensure that the issuer has created electronic security against the UPN bearing the ISIN.

### FIMMDA OPERATIONAL GUIDELINES ON CPS-SECONDARY MARKET

Secondary market transactions would take place in the manner they are taking place in case of other debt instruments and would be without recourse to the transferor.

The trade settlement will take place on T+0 or T+1-day basis and settled through the clearing corporation of any recognized stock exchange or any other mechanism approved by RBI. One working day before the maturity date, only T+0 transactions will be allowed. On maturity date, no transfers / transactions will be allowed.

Terms stated in the Deal Confirmation Note are binding on both parties, i.e. seller and buyer. RBI regulated entities who have signed the multilateral agreement need not exchange the physical deal confirmation letters for deals done amongst themselves.

The holder of a CP is entitled to receive original / certified copies of Letter of Offer before settlement / view the same on website of depository.

The seller of CP must have the CP to the credit of his DP account, on contract date. Forward sale contracts / value date contracts are not allowed as per the current guidelines of RBI.

### TRADING DATA ON CPS

Corporates / Financial Institutions Trading Data of Rs.500 Crores and above (i.e., Total Traded Amount – TTA) of Commercial Papers reporting on FIMMDA Trade Reporting and Confirmation (FTRAC) System reporting platform (including failed / expired Trades) for the month of November, 2019 is as follows:

Description	Ma-turity Date	Re-sidual Days	Settle-ment Type	Deal Date	Trades	TTA (Rs. in Crs.)
HINDUSTAN PETRO-LEUM CORPORA-TION LIMITED 16D CP 22NOV19	22-Nov-19	1	T+0	21-Nov-19	4	1,000.00



CHENNAI PETROLEUM CORPORATION LTD. 61D CP 18NOV19	18-Nov-19	5	T+0	13-Nov-19	3	1,000.00
NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT 90D CP 07NOV19	7-Nov-19	1	T+0	6-Nov-19	9	975.00
RELIANCE JIO INFOCOMM LIMITED 91D CP 18NOV19	18-Nov-19	4	T+0	14-Nov-19	5	875.00
NTPC LIMITED 91D CP 29NOV19	29-Nov-19	7	T+0	22-Nov-19	5	800.00
RELIANCE RETAIL LIMITED 59D CP 15NOV19	15-Nov-19	9	T+0	6-Nov-19	2	602.50
REC LIMITED 274D CP 07FEB20	7-Feb-20	77	T+0	22-Nov-19	6	500.00
HINDUSTAN PETROLEUM CORPORATION LIMITED 20D CP 26NOV19	26-Nov-19	5	T+0	21-Nov-19	1	500.00
STEEL AUTHORITY OF INDIA LIMITED 91D CP 18NOV19	18-Nov-19	3	T+0	15-Nov-19	1	500.00
RELIANCE INDUSTRIES LIMITED 86D CP 15NOV19	15-Nov-19	2	T+0	13-Nov-19	4	500.00
RELIANCE RETAIL LIMITED 55D CP 11NOV19	11-Nov-19	3	T+0	8-Nov-19	6	500.00
INDIAN OIL CORPORATION LIMITED 63D CP 08JAN20	8-Jan-20	62	T+1	6-Nov-19	1	500.00
INDIAN OIL CORPORATION LIMITED 56D CP 08NOV19	8-Nov-19	3	T+0	5-Nov-19	1	500.00


Source: FIMMDA-CP Traded Data Achieve

## FIMMDA OPERATIONAL GUIDELINES ON BUYBACK OF CPS

Buybacks of commercial papers send a positive message about the liquidity profile of the companies / financial institutions. Issuers are allowed to buyback CPs at the prevailing market

price, subject to the buyback offer being extended to all investors in the CP where the terms of the buyback are identical to all issuers. Once the CP is bought back, it shall be extinguished. The requirement of approval from the board and intimation to the issuing and paying agent (IPA) has been done away with. Operational guidelines of FIMMDA on Buyback of CPs are:

- The buyback of a CP, in full or part shall be at the prevailing market price.
- The buyback offer should be extended to all investors in the CP issue. The terms of the buyback should be identical for all investors in the issue.
- The buyback offer may not be made before 30 days from the date of issue.
- The issuer shall inform the buyback to the IPA on the same day and the IPA will instruct the Registrar and Transfer Agent to extinguish the CP (which have been transferred to the issuer's DEMAT account as per Beneficiary Positions (BENPOS) Report and also publish the same on F-TRAC platform on the same day.

The IPA shall report the details of buy back on the RBI platform /F-TRAC platform (after these functionalities are made operational), by close of business hours, of the day of buyback. To conclude, as part of efforts to develop the money market, Commercial Papers (CPs) were introduced in India in 1990, with a view to enabling highly rated corporate borrowers to diversify their sources of short-term borrowings and also provide an additional financial instrument to investors. With more and more Corporates and NBFCs in India using CPs rather than the conventional channels of borrowing, RBI has come up with revised draft regulations that have a greater focus on disclosure from CP issuers, which will enable investors to make informed decisions. Short-term interest rate environment, credit rating and market liquidity condition play an influential role in the Indian CP market activity. 

## REFERENCES

- Reserve Bank of India Master Circular on Commercial Papers dated: 10.08.2017
- FIMMDA Operational Guidelines on Commercial Papers dated: 05.10.2017



# Foreign Direct Investments – New Rules of the Game and interplay with the Capital Market

The Finance Act, 2015 had proposed to shift the control over equity instruments from Reserve Bank of India (RBI) to the Central Government. These amendments have now been operationalized. On 17 October 2019, the RBI notified Foreign Exchange Management (Debt Instruments) Rules, 2019 in supersession of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 (FDI Regulations 2017). Further, on 17 October 2019, Ministry of Finance notified Foreign Exchange Management (Non - Debt Instruments) Rules, 2019 in supersession of FDI Regulations 2017 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018. The rationale, it seems, is to give the Government greater control over equity inflows in the country whereas debt regulation continues to be the RBI's domain. Reporting for equity, however, continues to remain with the RBI.



**Abdullah Fakhri, ACS**

Mumbai

[abdullahfakhri@gmail.com](mailto:abdullahfakhri@gmail.com)



**Ankan Maiti, ACS**

Mumbai

[ankanmaiti97@gmail.com](mailto:ankanmaiti97@gmail.com)

## BACKGROUND

The then Finance Minister, Late Shri. Arun Jaitley had said in his Budget speech of 2015 that “Capital Account Controls is a policy, rather than a regulatory, matter. I, therefore, propose to amend, through the Finance Bill, Section 6 of FEMA to clearly provide that control on capital flows as equity will be exercised by the Government in consultation with the RBI.”

This amendment came on the heels of the Tata-DoCoMo case in which the Ministry of Finance and the RBI were at loggerheads over the pricing guidelines governing exits in quasi-equity instruments. DoCoMo wanted to exit the Tata-Docomo joint venture at a pre-determined contractual price which was prohibited by the extant FDI Policy.

The amendments proposed in FEMA by the Finance Act, 2015 have finally seen the light of day in October 2019 by vesting in the Central Government (Ministry of Finance) and the RBI, the power to frame rules and regulations for ‘non-debt’ and ‘debt’ instruments respectively.

The sequence of recent amendments to the FDI regime in October 2019 is outlined below:

Sr. No.	Date	Particulars
1.	15 October 2019	Ministry of Finance notified the amendments to FEMA proposed by the Finance Act, 2015. <sup>1</sup>
2.	16 October 2019	Ministry of Finance notified the instruments which shall be considered as ‘Debt’ and ‘Non-Debt’ under FEMA. <sup>2</sup>
3.	17 October 2019	Ministry of Finance notified the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules 2019) <sup>3</sup> in supersession of the following FEMA Regulations: <ul style="list-style-type: none"> <li>Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 (FDI Regulations 2017); and</li> <li>Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.</li> </ul>
4.	17 October 2019	RBI notified the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (NDI Reporting Regulations 2019) <sup>4</sup> which provides for operational matters w.r.t. payment and reporting of non-debt instruments.
5.	17 October 2019	RBI notified the Foreign Exchange Management (Debt Instruments) Regulations, 2019 (Debt Regulations 2019) <sup>5</sup> to regulate foreign investments in India through Debt instruments. The Debt Regulations also supersede the corresponding provisions under the FDI Regulations 2017.

<sup>1</sup> Ministry of Finance (Department of Economic Affairs) Notification No. S.O. 3715(E) dated 15 October 2019

<sup>2</sup> Ministry of Finance (Department of Economic Affairs) Notification No. S.O. 3722(E) dated 16 October 2019

<sup>3</sup> The Foreign Exchange Management (Non-debt Instruments) Rules, 2019 notified by Ministry of Finance (Department of Economic Affairs) vide Notification No. S.O. 3732(E) dated 17 October 2019

<sup>4</sup> The Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 notified by RBI vide Notification No. FEMA 395/2019-RB dated 17 October 2019

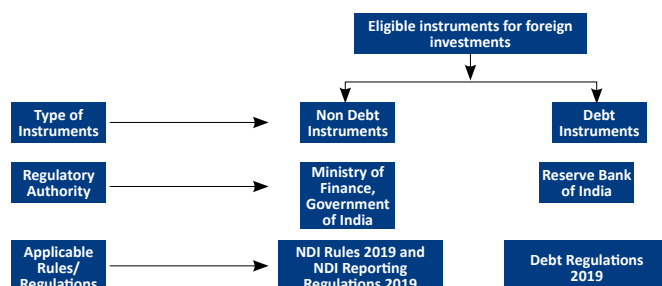
<sup>5</sup> The Foreign Exchange Management (Debt Instruments) Regulations, 2019 notified by RBI vide Notification No. FEMA 396/2019-RB dated 17 October 2019.

“The amendments proposed in FEMA by the Finance Act, 2015 have finally seen the light of day in October 2019 by vesting in the Central Government (Ministry of Finance) and the RBI, the power to frame rules and regulations for ‘non-debt’ and ‘debt’ instruments respectively.

This article analyses the possible impact of the amendments to FEMA on foreign investments in India particularly with reference to the likely impact on the capital market.

## FOREIGN INVESTMENT REGULATORY FRAMEWORK POST AMENDMENTS TO FEMA

The pictorial representation of the new foreign investment regulatory framework post the amendments to FEMA is elucidated below:



### Key definitions

Let us look at some of the key definitions under the NDI Rules 2019:

- Debt Instrument: The term ‘debt instrument’ has been defined as all instruments other than non-debt instruments defined in the NDI Rules 2019.
- Equity Instrument: The term “capital instruments” referred to in the FDI Regulations 2017 has been replaced with “equity instruments” which includes the following instruments issued by an Indian Company:
  - Equity shares
  - Convertible debentures (fully, compulsorily and mandatorily convertible debentures)
  - Preference shares (fully, compulsorily and mandatorily convertible preference shares); and
  - Share warrants
- Hybrid securities: The term “hybrid securities” has been now defined to mean hybrid instruments such as optionally or partially convertible preference shares or debentures and other such instruments as specified by the Central Government from time to time, which can be issued by an Indian company or trust to a person resident outside India.
- Investment Vehicle: means an entity registered and regulated under the regulations framed by the SEBI or any other authority designated for that purpose and shall include, namely: -
  - i. Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014;
  - ii. Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014
  - iii. Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012; and
  - iv. Mutual funds which invest more than 50% in equity governed by the SEBI (Mutual Funds) Regulations, 1996.

- Listed Indian company: means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and the expression “unlisted Indian company” shall be construed accordingly.

## CLASSIFICATION OF INSTRUMENTS INTO DEBT AND NON-DEBT INSTRUMENTS

The Ministry of Finance has classified the following instruments as ‘debt’ and ‘non-debt’ instruments. All other instruments not covered below will be considered as debt instruments.

Debt Instruments	Non-Debt Instruments
1. Government bonds; 2. Corporate bonds; 3. All tranches of securitisation structure which are not equity tranche; 4. Borrowings by Indian firms through loans; 5. Depository receipts whose underlying securities are debt securities.	1. All investments in equity in incorporated entities (public, private, listed and unlisted); 2. Capital participation in Limited Liability Partnerships; 3. All instruments of investment as recognised in the FDI policy as notified from time to time; 4. Investment in units of AIFs, REITs and InvIts; 5. Investment in units of mutual funds and Exchange-Traded Fund (ETFs) which invest more than 50% in equity; 6. The junior-most layer (i.e. equity tranche) of securitisation structure; 7. Acquisition, sale or dealing directly in immovable property; 8. Contribution to trusts 9. Depository receipts issued against equity instruments

## KEY AMENDMENTS UNDER THE NDI RULES 2019 AND THE DEBT REGULATIONS 2019

### A. NDI Rules 2019

- **Power to prescribe reporting requirements for Non-Debt instruments vested with RBI:** Though the power to notify the FDI norms for investment in Indian Companies through non-debt investments has been vested with the Central Government, the RBI shall specify the mode of payment, attendant conditions and reporting requirements for purchase or sale of equity instruments of an Indian company by a person resident outside India. These conditions have been laid down by the RBI under the NDI Reporting Regulations 2019.
- **Issue of equity instruments upon merger / reconstruction of companies:** Pursuant to a scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company sanctioned by the National Company Law Tribunal (NCLT), equity instruments may be issued to the existing holders of the transferor company, resident outside India if:
  - the transfer or issue is in compliance with the entry routes, sectoral caps or investment limits; and
  - the transferor company or the transferee company or the new company shall not engage in any sector prohibited for investment by a person resident outside India.
 Additionally, the NDI Rules 2019 also stipulate that where any of the companies involved in such scheme is listed on a recognised stock exchange in India, the scheme should be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.
- **Flexibility over determining conversion price for convertible instruments:** The requirement under the FDI Regulations 2017 to determine the price or conversion formula of a convertible instrument at the time of issuance has been done away with.
- **Ambiguity over pre-incorporation expenses / pre-operative expenses:** The NDI Rules 2019 do not



specifically define as to what constitutes “pre-incorporation / pre-operative expenses” as was provided for in the FDI Regulations 2017, i.e. “pre-incorporation / pre-operative expenses shall include amounts remitted to investee company’s account, to the investor’s account in India if it exists, to any consultant, attorney or to any other material/ service provider for expenditure relating to incorporation or necessary for commencement of operations.”

- **E-commerce entity definition restricted:** E-commerce entity as defined under the NDI Rules 2019 includes only company incorporated under Companies Act, 1956 or the Companies Act, 2013, whereas under the FDI Regulations 2017, foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India owned or controlled by a person resident outside India and conducting the e-commerce business was also considered as E-commerce entity.
- **Single Brand Retail Trading (SBRT):** The FDI relaxation provided for in the SBRT sector vide Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2018 and Press note 4 of 2019 issued by Department for Promotion of Industry and Internal Trade on 18 September 2019 as regards sectoral cap and liberalization of sourcing requirements and operating mechanics has not been presently included in the NDI Rules 2019.
- **Interplay with Securities laws and Capital Market**  
The NDI Rules 2019 contain several provisions which are expected to have a bearing on the capital market. Key provisions in this regard are summarized below:
  - **Mutual funds considered as “investment vehicles”:** As mentioned earlier in this Article, “investment vehicle” includes REITs, InvIts, AIFs and mutual funds which invest more than 50% in equity. The inclusion of equity mutual funds in investment vehicles is a stark departure from the earlier regime which did not consider mutual funds as “investment vehicles”.  
It is worth mentioning here that investment made by an investment vehicle into an Indian entity shall be reckoned as indirect foreign investment for the investee Indian entity if the Sponsor or the Manager or the Investment Manager:
    - (i) Is not owned and not controlled by resident Indian citizens or
    - (ii) Is owned or controlled by persons resident outside India. Equity mutual funds whose sponsor is owned or controlled by persons resident outside India will now have to comply with the sectoral caps and other conditions for indirect foreign investment as set out in the NDI Rules. This amendment may trigger a sell-off by certain mutual funds in the stock markets and its impact will have to be closely watched.
  - **Investment in domestic mutual funds by Non-resident Indians (NRIs) and Overseas Citizens of India (OCIs):** To attract investment in domestic mutual funds, NRIs and OCIs have been permitted to purchase or sell units of domestic mutual funds which invest more than 50% in equity both on repatriation and non-repatriation basis without any limit.
  - **Foreign Venture Capital Investors (FVCIs) investments in Indian start-ups:** In line with the Central Government’s push for attracting foreign investments in Indian Start-ups, FVCIs have been permitted to invest in equity, equity linked instruments or debt instruments of Indian start-ups (irrespective of the sector in which start-up is engaged in). However, if the investment is being made in an equity instrument of a start-up, the FVCI must comply with the sectoral caps, entry routes and other specified conditions.

“The inclusion of equity mutual funds in investment vehicles is a stark departure from the earlier regime which did not consider mutual funds as “investment vehicles”.

The ambiguity under the FDI Regulations 2017, with respect to ‘securities’ permissible for FVCI investment has been put to rest.

- **Investments by Foreign Portfolio Investors (FPIs):** The erstwhile FEMA regime provided for an individual FPI limit of 10% and aggregate limit of 24% of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company. Under the NDI Rules 2019, the sectoral caps applicable to the Indian companies as set out in Schedule I thereto, shall be considered as the aggregate FPI limit w.e.f. 1 April 2020.  
Indian Companies have been given the flexibility to increase or decrease the aggregate FPI investment limit in the Company, within the sectoral caps applicable to them. The aggregate limit as provided above, may be decreased by the Indian company (prior to 31 March 2020) or increased with the approval of its board of directors and its shareholders by a special resolution. It should be noted that once the aggregate limit has been increased to a higher threshold, the Indian company cannot reduce the same to a lower threshold.  
In case FPI investment thresholds are exceeded, such FPI entity would have 5 trading days to divest excess holding, failing which, investment would be categorised as FDI. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within 7 trading days from the date of settlement of the trades causing the breach.  
FPIs have also been permitted to invest in Category III AIFs and offshore funds for which no-objection certificate has been issued under the SEBI (Mutual Funds) Regulations, 1996 and which in turn invest more than 50% in equity instruments on repatriation basis, or in units of REITs and InvIts, on repatriation basis.

## B. Debt Regulations 2019

The provisions under the FDI Regulations 2017 governing foreign investment in instruments other than ‘capital instruments’ have now been separately covered under the Debt Regulations 2019. Some of the key changes to the provisions governing debt instruments are summarized below:

- **Eligible Debt Instruments for FPI investment**  
An FPI may purchase the following debt instruments on repatriation basis subject to the terms and conditions specified by the SEBI and the RBI:
  - a) Dated Government securities/ treasury bills;
  - b) Non-convertible debentures/ bonds issued by an Indian company;
  - c) Commercial papers issued by an Indian company;
  - d) Units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50% in equity;
  - e) Security Receipts (SRs) issued by Asset Reconstruction Companies;
  - f) Debt instruments issued by banks, eligible for inclusion in regulatory capital;
  - g) Credit enhanced bonds;
  - h) Listed non-convertible/ redeemable preference shares or debentures;

- i) Securitised debt instruments, including any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of assets with banks, Financial Institutions or NBFCs as originators;
  - j) Rupee denominated bonds / units issued by Infrastructure Debt Funds;
  - k) Municipal Bonds.
- **NRIs and OCIs can no longer purchase units of money-market mutual funds on non-repatriation basis:** Under the FDI Regulations 2017, NRIs and OCIs were allowed to purchase units of money market mutual funds on non-repatriation basis which has now been discontinued under the Debt Regulations 2019.
  - **NRIs and OCIs can no longer invest in shares of Public Sector Undertakings (PSUs) being disinvested by the Central Government on repatriation basis:** The Debt Regulations 2019 do not allow NRIs and OCIs to purchase shares of PSUs being disinvested by the Central Government, on repatriation basis, which was permissible under the FDI Regulations 2017.
  - **NRIs and OCIs can invest in Exchange Traded Funds (ETFs):** NRIs and OCI are now allowed to purchase or sell ETFs which invest less than or equal to 50% of their portfolio in equity on repatriation and non-repatriation basis.

#### Pricing Guidelines for equity instruments under the NDI Rules 2019 for investment on repatriation basis

Issue of equity instruments to a person resident outside India	Type of Company / issue	Pricing guideline
	Listed Indian Company	Price worked out in accordance with the relevant SEBI guidelines
	Company going through a delisting Process	As per the SEBI (Delisting of Equity Shares) Regulations, 2009
	Unlisted Indian Company	Valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant
	Shares issued pursuant to subscription to Memorandum of Association in compliance with Companies Act, 2013	At face value subject to entry route and sectoral caps. No valuation is required
Transfer of equity instruments from a Resident to a Non-Resident	<b>Price not less than the:</b>	
	Listed Indian Company	Price worked out in accordance with the relevant SEBI guidelines / price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable
	Company going through a delisting Process	Price worked out as per the SEBI (Delisting of Equity Shares) Regulations, 2009
	Unlisted Indian Company	Valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant
	The guiding principle would be that the person resident outside India is not guaranteed any assured exit price at the time of making such investment/ agreement and shall exit at the price prevailing at the time of exit.	



Transfer of equity instruments from a Non-Resident to a Resident	<b>Price not more than the:</b>	
	Listed Indian Company	Price worked out in accordance with the relevant SEBI guidelines / price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable
	Company going through a delisting Process	As per the SEBI (Delisting of Equity Shares) Regulations, 2009
	Unlisted Indian Company	Valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant
Transfer of equity instruments from a Non-Resident to another Non-Resident	There are no pricing guidelines prescribed under FEMA for transfer of equity instruments by a non-resident to another non-resident.	
In case of swap of equity instruments	Indian Company & Overseas entity issuing shares	Irrespective of the amount, valuation involved in the swap arrangement will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country
In case of issue of share warrants	Indian Company	Pricing and the price or conversion formula shall be determined upfront.

The above guidelines are applicable for investment in equity instruments on repatriation basis and shall not be applicable for investment on non-repatriation basis.

## CONCLUSION

The bifurcation of powers between the Ministry of Finance and RBI as regards non-debt instruments and debt instruments respectively, seeks to switch regulatory control on equity inflows from the RBI to the Central Government and to facilitate consultation between the regulators so that they see eye to eye as regards foreign capital inflows in India. Amendments to the new FDI rules may be on the cards considering some of the issues highlighted above.

Given that the new FDI Rules replace the FDI Regulations 2017 which have been around for less than two years, the industry and the capital market in India may have to adapt quickly to the new rules of the game!



# Audit Committee of the Board – An overview of provisions under the Companies Act, 2013 and SEBI (LODR) Regulations, 2015

The Audit Committee of the Board is an important pillar of governance. The primary task of the Audit Committee is to monitor the integrity of the financial reporting and to also check the efficacy of functioning of the internal financial controls and the risk management systems put in place. The Audit Committee also plays a major task in selection of auditors and in finalizing their terms of appointment and cessation.



**Dr. C.V. Madhusudhanan, FCS**

Partner, KSR & Co. Company Secretaries LLP  
Coimbatore  
[madhu@ksrandco.in](mailto:madhu@ksrandco.in)

*“Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society” - Sir Adrian Cadbury, UK Commission Report: Corporate Governance 1992*

## BACKGROUND

India's tryst with corporate governance started with the recommendations of the Kumarmangalam Birla Committee (1999) constituted by Securities and Exchange Board of India (SEBI), which led to introduction of Clause 49 to the then listing agreement executed with stock exchanges by the listed entities. Clause 49 necessitated the requirement of constituting the Audit Committee of the Board. The Narayanamurthy Committee (2005) constituted again by SEBI made major recommendations as to the independence of the Board and also provided that the Audit Committee of the Board should comprise of members who are financially literate and further made the Audit Committee of the Board responsible for risk management, improvement in quality of financial disclosures relating to related party transactions etc. thereby paving way for revision to Clause 49.

Clause 49 can be said to be equivalent of US Sarbanes Oxley Act, 2002. The governance process was enhanced time and again with a series of amendments to Clause 49 and finally substituting with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR).

Of late, corporate misdemeanours have started to explode on Indian corporate scene and in every such instance, the finger

points to governance failures of the Board and more importantly the failure of the Audit Committee of the Board in its duty of audit and financial oversight. Hence the focus has come back to the oft quoted buzz words in corporate regulation viz., corporate governance and its relevance in the Board management and more importantly the functioning of the Audit Committee of the Board.

The need for constitution of the Audit Committee of the Board was felt to be crucial in accounting, financial and audit oversight, not only for listed companies, but also for unlisted public companies and hence the erstwhile Companies Act, 1956 was amended vide the Companies (Amendment) Act, 2000 to introduce Section 292A providing for constitution of Audit Committee of the Board for unlisted public companies with a paid-up share capital of rupees five crores or more. It can be said without any iota of doubt that the transparency of accounting function with Board oversight can cure majority of the ills resulting from poor governance. In fact, it can be argued that the failure of governance starts with the opaqueness of accounting policies and book keeping and audit failures. Hence accounting and accountability form the prime foundation of effective governance.

## OECD PRINCIPLES OF CORPORATE GOVERNANCE- SPECIFIC TO DISCLOSURES

The Organisation for Economic Cooperation and Development (OECD) is an inter-governmental organization with 36 member countries, comprising predominantly of European countries and the US, formed way back in 1961, with a purpose to stimulate economic progress and world trade. The OECD way back in 1994, formulated and released its first set of corporate governance principles in the year 1999 and published a revised edition of the same in the year 2004. One of the important corporate governance principles enunciated is about Board's responsibility in mandating, inter alia, the formation of Board Committees for audit matters. In fact, the LODR is modelled on the basis of the corporate governance principles of OECD. OECD's corporate governance principles makes disclosure to stakeholders as cornerstone of governance. While requiring public disclosure of financial and operational results on quarterly, half-yearly and annual basis, it mandates the following documents to form part of such disclosure:

- (i) balance sheet
- (ii) profit and loss account
- (iii) cash flow statement and
- (iv) notes to the financial statement

Further, the disclosure norms require a company to disclose fully, any material related party transactions to the public, either

“The need for constitution of the Audit Committee of the Board was felt to be crucial in accounting, financial and audit oversight, not only for listed companies, but also for unlisted public companies and hence the erstwhile Companies Act, 1956 was amended vide the Companies (Amendment) Act, 2000 to introduce Section 292A providing for constitution of Audit Committee of the Board for unlisted public companies with a paid-up share capital of rupees five crores or more.



individually, or on a grouped basis, including as to whether the transactions have been executed at arms-length and on normal market terms. This is necessary as the public should know whether a company is being run keeping in mind the interests of all its stakeholders.

Further, the disclosure on risk management requires providing of information to enable stakeholders and the market at large to know the risk factors taken into account while preparing financial statements and operational reports. These risk factors or material risks may include:

- Risks specific to the industry or geographies in which the company operates
- Dependence on commodities
- Financial market risks including interest rate or currency risk
- Risk related to derivatives and off-balance sheet transactions
- Risks related to environmental liabilities

## NEED FOR AUDIT COMMITTEE OF THE BOARD

Board of directors is primarily responsible for formulation of accounting policy, preparation of accounts, complying with the accounting standards, ensuring oversight into maintenance of accounting records, laying down internal financial controls and ensuring its implementation, safeguarding the assets of the company against fraud and other irregularities and ensuring compliance of all applicable laws for a company. However, the Board of Directors with its varied responsibility to govern a company may lack both in specialization, focus and time in having an effective oversight and supervision over the accounting function and reporting to stakeholders. This necessitates the formation of a specialist committee of the Board often called as the Audit Committee of the Board (ACB). Thus, the ACB being

a sub-committee of the Board acts as one of the main pillars of the corporate governance charged with the oversight of financial reporting and disclosure which forms the foundation of efficient governance.

ACB is said to be effective and efficient, if it ensures integrity of financial reporting so as to foster reliability of corporate disclosures including the financial statements. A vibrant ACB is required to contribute for an efficient audit process, by including in its role, to oversee the internal financial controls in place and its effective functioning, putting in place an effective internal audit system so as to augur a corporate culture of discipline, transparency and risk management. An efficient and dynamic ACB will improve investor and stakeholder confidence and will boost the overall reliance on the corporate conduct and its disclosures. Especially, in widely held public companies, when the ownership is diversified, the ACB forms the bridge of trust for the Board of Directors and the shareholders. An engaging ACB is required for implementing independence of auditors, to provide clarity in audit observations and for reporting and presentation of financial statements in compliance with law, both in letter and spirit. This forms the hallmark for the sustenance of shareholder value on a long-term basis.

Section 292A under the erstwhile Companies Act, 1956 left the terms of reference to ACB completely to the discretion of the Board of Directors of the company concerned, and neither it provided for independence of members constituting it or the role they have to perform. However, it provided for periodical review of internal control systems, scope of audit including the observations of the auditors and review the half yearly and annual financial statements before submission of the same to the Board of Directors. The ACB was also vested with investigative powers and complete access to information contained in records of the company and also seek external professional advice, if need be. Further, the law provided that the recommendations of the ACB shall be binding on the Board and where the Board differs with the findings of the ACB, it has to provide reasons in writing.

Under the Companies Act, 2013 (the Act) the mandate for the ACB is broadened to a great extent so as to provide for constitution of ACB by every listed company and such other classes of companies as may be prescribed. Accordingly, in terms of Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014, every listed public company and company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 falling within the stated thresholds shall constitute ACB. In terms of the said Rule 4, the following companies are mandated to constitute ACB:

- Public companies having paid-up share capital of ten crore rupees or more; or
- Public companies having turnover of one hundred crore rupees or more; or
- Public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Hence apart from the paid-up share capital threshold, the turnover criteria and borrowing of public money in the form of loans, debentures and deposits exceeding fifty crore rupees has been set as threshold for requiring a listed or unlisted company to mandatorily constitute ACB so as to address the concept of public interest. While one may argue that meeting a mere paid-up capital threshold without meeting with the thresholds for turnover and borrowing might seem over regulation, companies have no



choice but to comply with the same as the law mandates the constitution of ACB on meeting any one of the stated thresholds. Under the erstwhile Section 292A, the recommendations of the ACB was binding on the Board and the Board was required to provide reasons in writing for not accepting such recommendations in its report to shareholders. However, Section 177 of the Act does not make the recommendations of the ACB binding on the Board, however, provides for the Board to record the reasons for its divergence from ACB recommendations in its report to shareholders.

## SCOPE OF ACB UNDER THE ACT

The Act mandates the composition of the ACB to comprise of minimum three directors with independent directors forming the majority. Further, majority of the ACB members including the Chairman of ACB should have the ability to read and understand financial statements. While the Act provides leeway to the Board of Directors to devise terms of reference for the functioning of the ACB as it deems fit, it however, provides for certain mandatory matters for the Board to include in its terms of reference while constituting ACB as under:

- (i) **Appointment of Auditors:** The ACB has to review the terms of appointment and remuneration to auditors of the Company before recommending their appointment to the Board. While reviewing the terms of appointment, the ACB is required to verify their independence, performance and effectiveness of audit process. It is advisable for the ACB to review the track record of the auditors vis-à-vis their previous engagements, if the appointment is considered for the first time in the company. ACB can interview the auditors and seek a presentation on their audit process to understand their capability and also efficacy of audit process before deciding their appointment or re-appointment. In addition to the statutory auditors, the ACB should review the terms of appointment of internal auditors and secretarial auditors. It is advisable for the ACB to prescribe the terms subject to which resignation of auditors will take effect if they were to resign midway their term. This will ensure the responsibility of auditors not to leave without fulfilling their duties at least up to the period they acted as auditors.
- (ii) **Approval of transactions with related parties:** This is one of the major functions of the ACB. Many of the recent scams have brought to light the lack of oversight of the ACB or its acquiescence while granting approvals specifically relating to related party transactions. It should be borne in mind that the ACB forms the primary authority for reviewing and approving or rejecting related party transactions. Approval by the ACB means prior approval always, except for certain specific circumstances, as provided under the Act or by means of omnibus approval.

The Act provides for omnibus approval by the ACB for related party transactions in respect of which Rule 6A of the Companies (Board and its Powers) Rules, 2014 requires certain specific information to be provided to ACB to enable it to review prior to taking a decision. The information that need to be provided to ACB in this regard are:

- a. Maximum value of transactions to be permitted per annum under omnibus route;
- b. Maximum value of per transaction that can be allowed;
- c. The extent and the manner of disclosures that need to be made to the ACB

- d. Review by ACB of its omnibus approvals of transactions granted in such intervals
- e. Transactions which ACB deems not eligible for omnibus approval.

The said Rule 6A further provides that while examining the proposal for omnibus approval, the ACB has to take into account the frequency of the transactions conducted in the past or proposed in future and the justification for the need for omnibus approval. The law spells out the need for the ACB to satisfy itself the requirement to grant omnibus approval. There is nothing overbearing on the ACB requiring it to provide omnibus approval, merely because the management wants it. The grounds for omnibus approval have to justify the choice of the related party over an unrelated third party and the frequency of the transactions. The omnibus approval should clearly contain the following ingredients:

- a. Names of related parties;
  - b. Nature and duration of the transaction;
  - c. Maximum amount up to which the transaction can be conducted;
  - d. Indicative base price or current contracted price and the formula for variation in the price, if any; and
- Apart from the above, any other information which the ACB might find it relevant for its consideration before taking its decision on the proposed transaction under omnibus



“ACB is said to be effective and efficient, if it ensures integrity of financial reporting so as to foster reliability of corporate disclosures including the financial statements. A vibrant ACB is required to contribute for an efficient audit process, by including in its role, to oversee the internal financial controls in place and its effective functioning, putting in place an effective internal audit system so as to augur a corporate culture of discipline, transparency and risk management. An efficient and dynamic ACB will improve investor and stakeholder confidence and will boost the overall reliance on the corporate conduct and its disclosures.

approval route may be called for by ACB. The ACB has to build a document dossier for each such approval, to demonstrate application of mind in its scrutiny of transactions, the justifications it relied on, and the basis for its decision making. The ACB has to strongly resist to be just a rubber stamp for proposals laid before it. The ACB should also record its decision in writing clearly as to the reasons why it has decided to approve or otherwise, the proposed transactions placed before it. The ACB can be considered to have done its work diligently if it can prove that detailed analysis preceded its decision making. Since majority of the ACB comprises of independent directors including its chairperson, such clarity in decision making can help members of the ACB to come clean on any regulatory questioning and to take advantage of the provisions of Section 149(12) of the Act.

- (iii) **Scrutiny of loans and investments:** Providing of loans and provision of guarantee or security by the company for the loans received by any other company or person, whether being a related party or not requires review of the ACB. While the ACB will be required to review the very need for providing such loans or provision of guarantee or security, the ACB should also review and approve the terms subject to which such loans are provided. Section 186(7) requires such loans to carry interest not lower than the prevailing yield of one year, three year, five year or ten year government security closest to the tenor of the loan. Further, investment in securities of other companies also requires oversight of the ACB and its approval.
- (iv) **Evaluation of internal financial controls and risk management systems:** ACB has an important task of reviewing the efficacy of internal financial controls and risk management systems put in place. ACB has to evaluate their effective functioning, time and again. Apart from business and economic risks, the ACB has to be wary of the regulatory risks arising out of non-compliance of applicable laws for a company. The ACB has the duty to recommend to the Board of Directors the appointment internal auditors for verifying internal financial controls, for verifying functions and activities in terms of Section 138 of the Act, secretarial auditors (if applicable or by volition), cost auditors etc. by finalizing the scope of audit, terms of reference to auditors and the remuneration payable to such auditors. ACB can put in place periodical reporting by the functional heads, KMPs or CEO of the compliance of the applicable laws to derive comfort.
- (v) **Review of financial statements:** The ACB is charged with scrutiny and review of financial statements of the company at periodical intervals before recommending the same to the Board of Directors for their approval. While reviewing the financial statements, the ACB may call for comments of auditors about the efficacy of the working of the internal control systems, review the comments and observations of the auditors in their reports. The auditors and KMPs have right to be heard before the ACB.
- (vi) **Valuation of undertakings or assets of the company:** ACB has to review the valuation process for the undertaking or specific assets of the company for various transactions. The valuation exercise could be for enabling borrowing or for issue of securities or for certain corporate restructuring transactions or even for sale of assets or undertaking of the

company. The ACB acts as a gate keeper in verifying the fairness of the valuation. One of the important considerations when it comes to valuation is the independence of the valuer. The ACB here can and should insist on ensuring that the valuer engaged for valuation is truly independent

- (vii) **Monitoring the end use of funds raised through public offers:** ACB has to monitor and report to the Board on the end use of the funds raised out of public issues and issue of securities through other means. Where monitoring agency is appointed for overseeing the application of funds arising out of public issues, the ACB will have to review end use of funds prior to reporting to the monitoring agency.

## INVESTIGATIVE POWERS OF ACB

The ACB has powers to investigate in to any matters falling within its scope or such matters as may be referred to by the Board of Directors. The ACB has complete access to books and records of the company concerned to enable its investigation. In order to aid its investigation, the ACB can seek professional advice. The Act vests ACB with the powers to summon senior management including the key managerial personnel or others to hear them out.

## VIGIL MECHANISM

The Act has mandated setting up of vigil mechanism in respect of companies which have accepted public deposits or has borrowings from banks and public financial institutions in excess of fifty crore rupees. The vigil mechanism is to enable directors and employees to report genuine concerns directly to the Chairperson or such member of the ACB which the Board of Directors nominate. The ACB has to oversee the vigil mechanism. If any member of the ACB has conflict of interest in a reported matter, then such member(s) has to recuse from such enquiry. Vigil mechanism or whistle blower mechanism is yet another hallmark of democratic values set in corporate governance as those who have no or limited access to top management are enabled to bring to the attention of ACB, if such issues warrant its attention. A strong ACB in terms of expertise and independence contributes to an effective vigil / whistle blower mechanism in an atmosphere which gives confidence to a genuine whistle blower.

## ACB UNDER LODR

While the Act itself mandates a listed company to constitute ACB, the LODR in addition to mandating the requirement for listed companies provides for the mechanics in constitution, meetings and role of ACB exhaustively. The LODR under Part C of Schedule II provides comprehensively the scope of ACB and the nature of documents, information that it is required to review. However, in respect of the provisions with regard to composition of ACB, terms of reference and information to be reviewed by ACB, the LODR prescribes a much wider scope.

## DIVERGENCE OF PROVISIONS ON ACB AND ITS FUNCTIONS IN THE ACT AND LODR

A plain reading of the provisions of the Act (Section 177 read with Rules 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 and LODR (Regulation 18 read with Part C of Schedule II) provides an impression that the provisions under LODR are more far reaching and exhaustive in nature in both the composition of the ACB and its roles and responsibilities. It is pertinent to note that unlike Section 292A of the erstwhile Companies Act, 1956, the provisions under Section 177 are



more exhaustive when it comes to terms of reference to ACB. However, one has to admit that the compliance process on matters concerning omnibus approval for transactions with related parties is exhaustively covered under the Act vis-à-vis LODR.

## POINTS OF DIFFERENCE IN COMPOSITION AND MEETINGS OF ACB

Points of Divergence	Companies Act, 2013	SEBI (LODR) Regulations, 2015
Independence of ACB	Majority to comprise independent directors*	Two-thirds to comprise of independent directors*
Financial Literacy	Majority of the members including Chairperson shall have ability to read and understand financial statements	All members should be financially literate with at least one member having accounting or related financial management expertise
Secretary to ACB	No provision	Company Secretary to be Secretary
Meetings	No provision, though matters of compulsory reference will need meetings to be held as they arise.	At least one meeting every quarter with gap between two meetings not exceeding 120 days
Quorum for meetings	No provision	Minimum one-third of members (of which minimum two shall be Independent Directors) or two directors both of whom being Independent Directors

\*the definition for independent director itself varies under the Act and LODR

## ADDITIONAL ROLE PRESCRIPTION BY LODR

While both the Act and LODR bat for oversight of the ACB in audit, financial governance, investigative powers and vigil mechanism, the LODR provides for additional scope which needs to be mandatorily dealt by the ACB vide Para C of Schedule III. The following are additional scope prescribed for ACB under LODR over and above those provided under Section 177(4) of the Act:

- Oversight of the company's financial reporting process and disclosure of its financial information to ensure that financial statements are correct, sufficient and credible.
- Reviewing with management the financial statements and audit report on specific subjects like changes required for accounting policies and practices, major accounting entries based on estimates (on the judgement by management), adjustments to accounting statements on audit findings, disclosure of related party transactions.
- Reviewing with management the quarterly financial statements before submission to the Board
- Reviewing uses and application of funds raised through various issue of securities (not limited only to public issues)
- Reviewing, with management, performance of statutory auditors, internal auditors
- Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department,

- staffing and seniority of the official heading the department, report structure coverage and frequency of internal audit.
- Follow up on findings of auditors including internal auditors
- Looking to reasons for substantial defaults in payments to shareholders and creditors including depositors
- Assessing and approving the terms of appointment of Chief Financial Officer before recommending the same to the Board.
- Reviewing utilization of loans and advances and investments (including loans, advancements) by holding company in subsidiary where such loans, advances or investments were to breach the threshold of hundred crore rupees or is equivalent to or in excess of 10% of the asset size of the subsidiary, whichever is lower

SEBI has vide Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 has laid out a detailed process for compliance by the listed company upon resignation of its auditor and also by the resigning auditor. SEBI has also mandated that the terms of appointment of statutory auditors should incorporate such conditions provided in the said Circular for the compliance by the auditor. The said terms are required to be incorporated by modification of their terms, even in respect of auditors who have already been appointed. Further, the practicing company secretary is required to verify the compliance of the above while certifying the Annual Secretarial Compliance Report for a listed company.

While the Act applies for both listed and unlisted public companies, the role of ACB cannot be different when it comes to financial oversight, audit and reporting vis-à-vis LODR. As regards unlisted public companies, while the Act may not mandate periodical reporting other than annual reporting of financial statements, there is nothing wrong in the ACB meeting every quarter to review the financial affairs of the company. At present, under the Act, the statutory thresholds for appointment of independent directors and constitution of Board Committees have been integrated but the same is not the case with implementing internal audit. A seamless integration of various provisions of the Act that deal with requirement to appoint independent directors, requirement of internal audit, requirement of constitution of ACB, institution of vigil mechanism will enable better regulatory supervision. At the least, the Act under Section 177 could provide that as regards listed companies, the provisions of the Section and the relevant Rules will apply to the extent where the LODR does not provide for the same.

One of the important recommendations of OECD principles of corporate governance is the reliable and timely reporting of corporate information. ACB being a specialist committee in charge of the core management function, namely financial governance and audit oversight, the ACB is said to play an indispensable role in validating the accuracy of financial information and its timely disclosure. A sound Board management lies in the effective and efficient play of ACB in governance.

## REFERENCES

- Companies Act, 1956
- Companies Act, 2013 - ebook.mca.gov.in
- Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
- OECD Principles of Corporate Governance - [www.oecd.org/corporate/principles-corporate-governance.htm](http://www.oecd.org/corporate/principles-corporate-governance.htm)

# Analysis of SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018

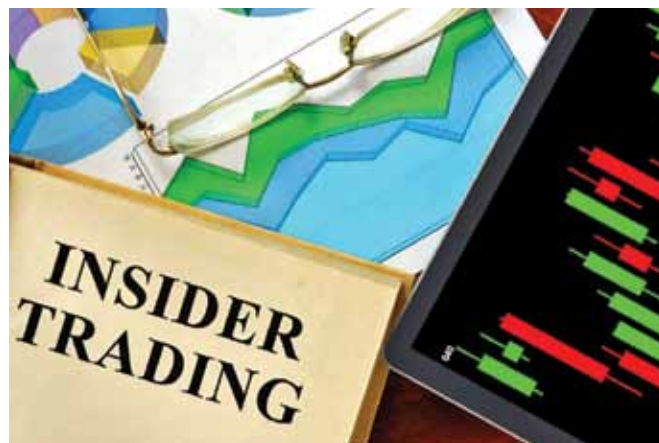
This article seeks to understand the various key amendments in SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018. It also touches upon the role of Company Secretaries in employment with regard to said amendments.



**Dr. Pritesh Niranjana Majmudar\*, FCS**

Senior Vice President & Head – Legal & Compliance  
DSP Investment Managers Private Limited  
Mumbai

[pritesh.majmudar@dspim.com](mailto:pritesh.majmudar@dspim.com)



**T**he Securities and Exchange Board of India (“SEBI”) vide the SEBI (Prohibition of Insider Trading) Amendment Regulations, 2018 (“Amended Regulations”) notified certain amendments to the SEBI (Prohibition of Insider Trading) Regulations 2015 (“PIT Regulations”) on December 31st 2018 based on the recommendations of an expert committee on Fair Market Conduct<sup>1</sup> (“Committee”). The said amendments came into force on 1st April 2019. This article seeks to strengthen the understanding of the various amendments to the PIT Regulations introduced by the SEBI.

The key changes brought about by the Amended Regulations, *inter alia*, are as follows:

- Clarity on certain terms such as ‘financially literate’, ‘proposed to be listed’ and ‘legitimate purpose’;
- creation of database of persons with whom Unpublished Price Sensitive Information (UPSI) is shared;
- additional defence when trading in possession of UPSI;
- additional disclosures for aiding SEBI in investigations and
- introduction of framework for institutional mechanism to ensure that the entities formulate a code of conduct and put in place an effective system of internal controls to ensure compliance with the various requirements specified in the PIT Regulations.

The present article attempts to provide a detailed analysis of the key provisions of the Amended Regulations.

Regulation number	Particulars of the Amendment Regulations	Analysis
Regulation 2 (1) (c)	Insertion of explanation under the definition of the term “Compliance Officer”.  <i>“Explanation—For the purpose of this regulation, “financially literate” shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.”</i>	The PIT Regulations provide the requirement that the Compliance Officer should be financially literate. The meaning of the phrase ‘financially literate’ has been explained and the same has been adopted from the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) to provide better clarity.
Regulation 2 (1) (ha)	Insertion of the definition of the term “proposed to be listed”  <i>“proposed to be listed” shall include securities of an unlisted company:</i>  <i>(i) if such unlisted company has filed offer documents or other documents, as the case may be, with the Board, stock exchange(s) or registrar of companies in connection with the listing;</i>  <i>or</i>	The PIT Regulations apply to securities that are listed and “proposed to be listed”. However, the term “proposed to be listed” was not defined.  In the absence of clarity, the phrase could have different interpretations and may include the securities of a company from the time of commencement of various dates such as board’s approval of IPO/ filing the draft red herring prospectus or red herring prospectus with SEBI/ or any other event.

<sup>1</sup> Report of Committee on Fair Market Conduct dated August 8, 2018

\*The views expressed are personal views of the author.



	<i>(ii) if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013;</i>	Further, since the definition of unpublished price sensitive information (UPSI) under the PIT Regulations is linked to information which on becoming generally available would affect the market price of securities, it is pertinent to determine the point in time when information relating to a company, which proposes to achieve listing, will be regarded as UPSI. Prior to filing of the draft red herring prospectus with SEBI, it is difficult to state with certainty that there is any concrete intention for a company to get listed on the stock exchange(s).  Therefore, in order to remove any ambiguity, the Amendment Regulations has inserted the said definition.
Regulation 2 (1) (n)	Deletion of appended sub-clause (vi) from clause 2 (1) (n) –  <i>"material events in accordance with the listing agreement"</i>	The material events as per LODR Regulations may or may not be price sensitive as per PIT Regulation. Also, since "listing agreement" has given way to "Listing Regulations", the reference to listing agreement is deleted. Further, the definition of UPSI is inclusive. Hence the said clause is deleted from the definition of the term 'unpublished price sensitive information' ('UPSI').
Regulation 3 (2A) and (2B)	Regulation 3 (2A) and (2B) have been added.  <i>"(2A) The board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8."</i>  <i><b>"Explanation–</b>For the purpose of illustration, the term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations."</i>  <i>"(2B) Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations."</i>	The term legitimate purpose was not defined under PIT Regulation and was open to various interpretations (strict or expansive). However, entities are expected to develop practices / policies for responsible treatment of UPSI. The legitimacy of any action under which UPSI is communicated / procured remains largely subjective and can only be determined after having examined circumstances under which the information was dealt. Further, once UPSI is shared for legitimate purposes, the company loses control over further use of that information by those who come into its possession. If such information is misused for insider trading, it becomes difficult to establish a connection between the company and the recipient of information. It would thus be prudent to have a physical and/or digital trail of information flows of such legitimately shared information. It would be prudent to intimate the persons receiving the UPSI of their obligation towards preventing mis-use of such information for insider trading, by way of an advance notice.  Hence the board of directors of a listed company is bound to make a policy for the determination of "legitimate purposes" for which disclosures of UPSI may be made. This policy is to be part of the "Code of Fair Disclosure and Conduct" to be formulated by the board of directors under the PIT Regulations.  Further, any person who is in receipt of UPSI pursuant to a "legitimate purpose" shall be deemed to an "insider" for the purposes of the PIT Regulations.
Regulation 3 (5)	Regulation 3 (5) has been added  <i>"(5) The board of directors shall ensure that a structured digital database is maintained containing the names of such persons or entities as the case may be with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such databases shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database."</i>	The listed company / market participant shall be required to maintain an electronic record containing name of person with whom UPSI is shared and the nature of UPSI.
Regulation 4 (1)	Insertion of the appended Explanation under Regulation 4 (1)  <i><b>"Explanation-</b> When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession;</i>	The legislative note to Regulation 4 (1) of the PIT Regulations indicates that the burden of proof is on the insider to prove his innocence. However, since legislative notes may generally be read as subservient to the main regulations, the enunciation of the strict accountability principle as part of the said regulation may, enhance the regulatory sanctity of the principle. Hence the said explanation has been added.
Regulations 4 (1) (ii) (iii) and (iv)	Regulation 4 (1) (ii) (iii) and (iv) are added  <i>"4 (1) (ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;</i>	Apart from other bona fide transactions conducted through block deal window mechanism, the exercise of employee stock options is also added as a defence, since the exercise price in such cases is pre-determined by the issuing company, in compliance with applicable laws.

	<p><i>Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.</i></p> <p><i>(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.</i></p> <p><i>(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable."</i></p>	<p>Further transaction carried out to comply with regulatory requirements or statutory obligations such as to achieve Minimum Public Shareholding Requirements as per the Securities Contracts (Regulation) Rules, 1957 have also included.</p>
Regulation 5 (2)	<p>The following provisos are added under Regulation 5 (2) (iii)</p> <p><i>"Provided that pre-clearance of trades shall not be required for any trades in accordance with the trading plan once trading plan has been approved by the compliance officer.</i></p> <p><i>Provided further that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with the trading plan approved by the compliance officer."</i></p>	<p>The following 2 clarifications have been provided:</p> <ol style="list-style-type: none"> <li>1.Pre-clearance of trade shall not be required in case the trading plan has been filed and approved.</li> <li>2.Adherence to trading window norms and restrictions on contra trade shall not be applicable for trading done in accordance with the approved trading plan.</li> </ol>
Regulation 9 (1)	<p>Regulation 9 (1) has been amended as follows:</p> <p><i>"9. (1) The board of directors of every listed company and market intermediary the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its employees and other connected persons designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.</i></p> <p><b>Explanation</b>—<i>For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities."</i></p>	<p>The erstwhile PIT Regulations had specified a common Code of Conduct applicable to listed companies, intermediaries and other persons who are required to handle UPSI during the course of their business operations.</p> <p>From a practical viewpoint, all provisions of the Code of Conduct may not be applicable equally to listed companies, intermediaries and other entities like auditors, law firms etc. In this regard minimum standard for the market intermediaries had to be prescribed.</p> <p>For instance, the requirement of trading window in which employees can trade in the company stock is applicable only to listed companies. This is not applicable for intermediaries which may have access to UPSI related to multiple companies with which they have business dealings.</p> <p>Thus, intermediaries are required to use grey lists or restricted lists of securities in which trading is restricted. Therefore, in order to bring clarity on the requirements applicable to listed companies and others, Regulation 9 (1) is amended to prescribe two separate Codes of Conduct prescribing minimum standards for:</p> <ol style="list-style-type: none"> <li>(i) Listed companies and</li> <li>(ii) Intermediaries &amp; fiduciaries</li> </ol> <p>Clarity regarding the term 'fiduciaries' have also been proposed to be provided.</p> <p>Therefore, even the fiduciaries are required to make, adopt and follow Code of Conduct as per the requirement of the amended Regulation 9 (1).</p> <p>It is pertinent to also note that SEBI-registered intermediaries are also required to follow Codes of Conduct under the respective regulations governing their activities. For instance, mutual funds are registered under the SEBI (Mutual Funds) Regulations, 1996 and are required to follow the Code of Conduct laid down for mutual funds in the said regulations. Similarly, brokers are registered under the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and are required to follow the code of conduct laid down under these regulations. This leads to multiplicity of Codes of Conduct to be followed by market intermediaries.</p> <p>The Codes of Conduct specified in the respective regulations governing the activity of a market intermediary fulfilled a different purpose and laid down conduct requirements which were specific to the role of the market intermediary, such as the fiduciary responsibility of an intermediary towards clients, maintaining high standards of fairness and integrity in their business etc. On the other hand, the Code of Conduct prescribed in the PIT Regulations dealt specifically with regulating trading in securities by persons who could have access to unpublished price sensitive information. Thus, the different codes of conduct had different roles and are retained.</p>

Regulation 9 (4)	<p>Regulation 9 (4) has been added as follows :</p> <p><i>"9 (4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-</i></p> <p><i>(i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;</i></p> <p><i>(ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;</i></p> <p><i>(iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;</i></p> <p><i>(iv) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;</i></p> <p><i>(v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information."</i></p>	<p>The code of conduct is made applicable to "designated person(s)" and immediate relatives of the "designated person(s)" only.</p> <p>"Designated person(s)" for listed company should at least include Promoter, CEO and upto two levels below CEO of such listed company and its material subsidiaries irrespective of their functional role in the company or ability to have access to UPSI.</p> <p>"Designated person(s)" for intermediaries should at least include Promoter (only individual and Investment companies), CEO and upto two levels below CEO of such intermediary or entities. "Designated person" should also include any other employees, of such intermediaries and other person who are designated on the basis of their functional role as having access to UPSI or otherwise have access to UPSI.</p> <p>Temporary employees and support staff, such as IT staff or secretarial staff, should also be covered as "Designated person(s)", on the basis of their ability to access the UPSI.</p>
Regulations 9A	<p>Regulation 9A has been added as follows:</p> <p><b>Institutional Mechanism for Prevention of Insider trading.</b></p> <p>9A. (1) <i>The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.</i></p> <p>(2) <i>The internal controls shall include the following:</i></p> <p><i>a) all employees who have access to unpublished price sensitive information are identified as designated employee;</i></p> <p><i>b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;</i></p> <p><i>c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;</i></p> <p><i>d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;</i></p> <p><i>e) all other relevant requirements specified under these regulations shall be complied with;</i></p> <p><i>f) periodic process review to evaluate effectiveness of such internal controls.</i></p> <p>(3) <i>The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub-regulations (1) and (2) of this regulation.</i></p> <p>(4) <i>The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.</i></p> <p>(5) <i>Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.</i></p>	<p>While the PIT Regulations provide for a preventive mechanism through the code of conduct and fair disclosure, sometimes, in the absence of proper implementation of the Codes, insider trading can take place.</p> <p>To have better implementation of preventive measures prescribed under the PIT Regulations, there was need to have a mechanism for institutional responsibility to prevent insider trading. The regulations should clearly specify the persons who would be held responsible in the event of failure to properly implement the preventive measures i.e. failure to formulate an effective code of conduct and put in place an adequate and effective system of internal control to ensure proper implementation of various requirements given in the PIT Regulations to prevent insider trading.</p> <p>Hence an Institutional Mechanism for prevention of insider trading is introduced.</p>



	<p>(6) The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.</p> <p>(7) If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company."</p>	
Schedule B Clause 14	<p>Clause 14 has been added to Schedule B.</p> <p>"Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:</p> <p>(a) immediate relatives (b) persons with whom such designated person(s) shares a material financial relationship (c) Phone, mobile and cell numbers which are used by them In addition, the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.</p> <p><b>Explanation</b>—The term "material financial relationship" shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer's annual income but shall exclude relationships in which the payment is based on arm's length transactions."</p>	<p>Investigation of insider trading is a challenging task and it is not easily possible to establish the link between the insiders who had access to UPSI and the persons who traded making use of such UPSI. The links may be tenuous as the persons who benefit from inside information may be school/college friends, relatives, ex-colleagues, professional contacts, or social contacts.</p> <p>At times, insider trading may also be done in the name of a front entity who may have no obvious link to the insider. Hence, mechanisms need to be built to enable establishment of such connections in case there is suspicion of insider trading. These mechanisms will not only help in investigating insider trading but may also prove to be a deterrent to insider trading.</p> <p>These mechanisms are primarily based on building a database of information within the listed company/ intermediary of persons who are connected to the "designated persons" as defined in the PIT Regulations so that, if required, a chain of connections can be traced quickly.</p> <p>In light of the above, clause 14 was introduced in Schedule B.</p>
Schedule C	<p>Schedule C has been added</p> <p><b>Schedule C</b> <b>Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries to Regulate, Monitor and Report Trading by Designated Persons</b></p> <ol style="list-style-type: none"> <li>1. The compliance officer shall report to the board of directors or head(s) of the organisation (or committee constituted in this regard) and in particular, shall provide reports to the Chairman of the Audit Committee or other analogous body, if any, or to the Chairman of the board of directors or head(s) of the organisation at such frequency as may be stipulated by the board of directors or head(s) of the organization but not less than once in a year.</li> <li>2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. The code of conduct shall contain norms for appropriate Chinese Wall procedures, and processes for permitting any designated person to "cross the wall".</li> <li>3. Designated persons and immediate relatives of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities.</li> <li>4. Designated persons may execute trades subject to compliance with these regulations. Trading by designated persons shall be subject to pre-clearance by the compliance officer(s), if the value of the proposed trades is above such thresholds as the board of directors or head(s) of the organisation may stipulate.</li> <li>5. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.</li> <li>6. Prior to approving any trades, the compliance officer shall seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.</li> <li>7. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been precleared have to be executed by the designated person, failing which fresh preclearance would be needed for the trades to be executed.</li> </ol>	<p>A complete set of minimum standards for market intermediary and fiduciaries has been inserted vide Schedule C. Key takeaways thereof are as follows:</p> <p>The Compliance Officer is required to submit periodic reports (which could detail about number of pre-clearances granted, waivers granted, breaches etc.) to the Chairman of the Audit Committee.</p> <p>Information should be handled only on 'need to know' basis within the organization.</p> <p>All trades by Designated Persons and their immediate relatives shall need to be pre-cleared.</p> <p>The Compliance Officer needs to maintain 'restricted list' which should be used while approving/rejecting trades.</p> <p>Prohibition of contra trades within 6 months by Designated Persons. However, Compliance Officer can grant exemption in this case and the reasons for such a grant need to be recorded in writing.</p>

	<p>8. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is a connected person of the listed company and is permitted to trade in the securities of such listed company, shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.</p> <p><i>Provided that this shall not be applicable for trades pursuant to exercise of stock options.</i></p> <p>9. The code of conduct shall stipulate such formats as the board of directors or head(s) of the organisation (or committee constituted in this regard) deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.</p> <p>10. Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, clawback etc., that may be imposed, by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (1) and subregulation (2) of regulation 9, for the contravention of the code of conduct.</p> <p>11. The code of conduct shall specify that in case it is observed by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (1) or subregulation (2) of regulation 9, respectively, that there has been a violation of these regulations, such intermediary or fiduciary shall inform the Board promptly.</p> <p>12. All designated persons shall be required to disclose name and Permanent Account Number or any other identifier authorized by law of the following to the intermediary or fiduciary on an annual basis and as and when the information changes:</p> <ol style="list-style-type: none"> <li>immediate relatives</li> <li>persons with whom such designated person(s) shares a material financial relationship</li> <li>Phone, mobile, and cell numbers which are used by them</li> </ol> <p>In addition, names of educational institutions from which designated persons have studied and names of their past employers shall also be disclosed on a one time basis.</p> <p><b>Explanation</b> – the term “material financial relationship” shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer’s annual income but shall exclude relationships in which the payment is based on arm’s length transactions.</p> <p>13. Intermediaries and fiduciaries shall have a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.”</p>	<p>Designated persons shall be required to disclose name and PAN number or equivalent identification of the following to the company on an annual basis and as and when the information changes:</p> <ul style="list-style-type: none"> <li>■ Immediate relatives;</li> <li>■ persons with whom such designated person(s) share a material financial relationship;</li> <li>■ persons residing at the same address as the designated persons for a consecutive period of more than one year;</li> <li>■ Phone / mobile /cell numbers which are accessible by them or whose billing address is residence address of the designated person;</li> <li>■ in addition, names of educational institutions from which designated persons have graduated from and names of their past employers shall also be disclosed on a one-time basis.</li> </ul> <p>The Code should provide a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.</p>
--	--	---

A Company Secretary in employment of a listed company or intermediary would, in a nut shell ensure the following:

- Draw up a policy for determining what would constitute ‘legitimate purpose’.
- Maintain a structure digital database to ascertain the details of person with whom information is shared.
- Formulate a code of conduct to regulate, monitor and report the trades of designated person and their relatives.
- Identify and categories employees within the organization as ‘designated person’ basis their role and functions.
- Create a preventive mechanism through the code of conduct an institutional responsibility to prevent insider trading.
- Create a database of prescribed information about the designated person so that if required a chain of connection can be traced quickly.

## CONCLUSION

As it is with all regulatory changes, the amended regulations are also expected to cause some upheaval, specifically in respect of the compliance obligations that it seeks to cast on listed companies and intermediaries. The heightened focus on individual rights and privacy in current times may also require organizations to put in place balanced, workable solutions in order to implement the requirement for designated persons to provide details of ‘material financial relationship’. The amended regulations mainly seems to provide clarification and fixation of roles/ responsibilities/ mechanism for effective implementation of the requirements of the PIT Regulations. The intent behind these comprehensive amendments has to be appreciated keeping in mind the need of regulation in light of the maturing of the capital markets in India.

# Capital Formation: Challenges & Opportunities

In the three years since the end of 2016, India has moved up by 67 places to number 63 out of 190 Countries in 2019 in the World Bank Business Report's "ease-of-doing-business" measure. Capital formation will play an instrumental role in economic growth of the country and to strengthen progressive businesses. While global slowdown is a cause of concern, India still holds relatively better position as global trade relationships expect to favour Indian Markets. India continued to retain its status as the fastest growing major economy of the world. Several reforms in Banking and Financial Services sector are expected to contribute to growth and this sector is poised to attract large capital as well. India will have competitive edge globally due to tax rate cuts. Investment in turnaround assets flowing from IBC mechanism. Increased thrust to boost start-up ecosystem expected to attract large investments. India is expected to become most attractive destination for foreign investments. China gets 2.72 times FDI inflows as compared to India which is expected to narrow down significantly in times to come. Formalisation of the economy is expected to fuel growth of the Indian markets. India is well positioned for growth in coming years.



**Mahavir Lunawat\*, FCS#**

Group Managing Director  
Pantomath Advisory Services Group

Mumbai

[mahavir.lunawat@pantomathgroup.com](mailto:mahavir.lunawat@pantomathgroup.com)



**Unmesh Zagade\***

Manager – Merchant Banking  
Pantomath Capital Advisors Private Limited

Mumbai

[unmesh.zagade@pantomathgroup.com](mailto:unmesh.zagade@pantomathgroup.com)

Indian economy witnessed effects of overall global slowdown in fiscal 2019 particularly in the second half of the year. At the start of the fiscal year, March 2019, the economy was on the verge of recovering from the demonetization and the implementation of a goods and services tax, but rising economic concerns around the financial sector and a slowdown in the economy impacted overall growth rate. This slowdown was mainly due to trade tensions between USA and China,



sluggish economic performance of some of the significant European countries and the resultant overall weakening of the financial market sentiment. However, the strength of the Indian economy continued to be relatively robust retaining its status as the fastest growing major economy of the world. FY18-19 happened to be relatively volatile year given the steady one side rally seen in FY17-18. Global events have dictated market directions more.

## GDP GROWTH IN INDIA: CUTS AND CURVES STORY

The fiscal year, March 2019 started with a GDP growth rate of 8.0% in the April – June quarter of 2018, led by consumption and investment spending. In the July –September quarter of 2018, while consumption growth decelerated, investment growth continued to be strong, resulting in overall GDP growth of 7.0%. In the October – December quarter of 2018, while investment growth remained robust, consumption growth decelerated further, resulting in overall GDP growth of 6.6%. Finally slumping to a six-year low of 5% in the April – June quarter of 2019. The July – September quarter of 2019, ended up with 26 quarter low 4.7%. It is expected to be 5.1% in the October – December quarter of 2019.

\*The views expressed are personal views of the authors

#Former Council Member, ICSI



Further, with growing concerns about the health of the financial sector weighed on demand, corporate and environmental regulatory uncertainty, the IMF revised India's GDP growth to 6.1% for FY2020 as against 7%. However, the IMF expects the Indian economy to expand by 7% in FY2021. It believes that growth will be supported by the lagged effects of monetary policy easing, a reduction in corporate income tax rates, recent measures to address corporate and environmental regulatory uncertainty, and government programs to support rural consumption.

## FOREIGN DIRECT INVESTMENT IN INDIA: ALL TIME HIGH IN FY 2018-19

Global Foreign Direct Investment (FDI) flows slid by 13% in 2018, to USD 1.3 Trillion from USD 1.5 Trillion the previous year – the third consecutive annual decline, according to UNCTAD's World Investment Report 2019. However, that's not the case with India with respect to FDI. India received highest ever FDI of USD 64.37 Billion in FY 2018-19 due to Foreign Direct Investment Policy, Liberalisation and several economic reforms in the last financial year.

According to a report by Department for Promotion of Industry and Internal Trade (DPIIT), FDI was up from USD 60.97 Billion received in the previous financial year. It has surged 78% in five years to hit an all-time high in FY 2018-19. FDI worth USD 286 Billion was received in last five years. It rose 28% to USD 16.3 Billion in the June quarter from USD 12.8 Billion in the year earlier.

FDI inflows are seen as a bellwether of the economy. India is more open to international investment than it has ever been. Barring multi-brand retail, India today allows FDI in nearly every major sector. India needs to address implementation issues and policy irritants that arise for companies looking to use the FDI route to invest in the country.

## NEW CORPORATE TAX RATE: MAKING INDIA GLOBALLY COMPETITIVE

India's corporate tax rate has been brought down gradually from ~40% in 1997 to ~25% now after latest revision. The new corporation tax rates come into effect as of this year and have been received well with estimates in the market predicting an across the board boost to bottom-line earnings of around 9%. Also, the cut for the new manufacturing companies from 25% to 15% makes India globally competitive at a time when investment in China is under threat. This also helps in improving India's tax competitiveness, making India's rate close to Emerging Market average of 23%. Further, 15% tax for new manufacturing firms could incentivize companies relocating out of China. Finally, giving government's strong signal that they are willing to spend their political capital to support industry.

India become competitive corporate tax nation					
Top 10 economies by global ranking & rate cuts initiative over the decade					
Country	2010 (%)	2019 (%)	Change %	GDP (\$ in Lac Cr)	Global Rank
USA	40.0	27.0	(33)	19.39	1
UK	28.0	10.9	(32)	2.62	5

India	33.9	25.0	(26)	2.60	7
Japan	40.6	30.6	(25)	4.87	3
Italy	31.4	24.0	(24)	1.93	8
Canada	31.0	26.5	(15)	1.65	10
France	33.3	31.0	(7)	2.58	6
China	25.0	25.0	0	12.24	2
Brazil	34.0	34.0	0	2.06	9
Germany	29.4	30.0	2	3.68	4

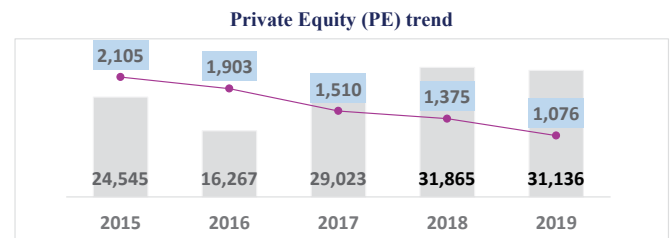
Source: World Bank

## CAPITAL FORMATION IN EQUITIES MARKET

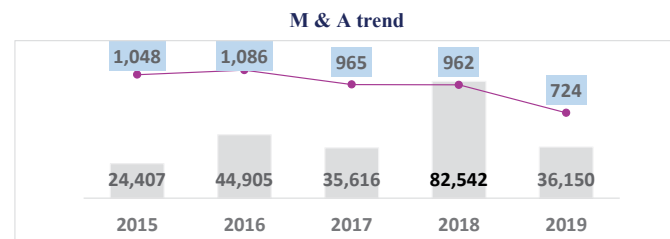
Equities Market has its fundamental role of capital formation on the one hand and savings mobilisation on the other through various modes of capital raising. Indian Capital Market has always been at the forefront of strengthening and supporting the progressive businesses alongside and investors. From conventional manufacturing companies to new start-ups, it has always endeavoured to create a vibrant capital raising environment.

### Funding Deal Dashboard

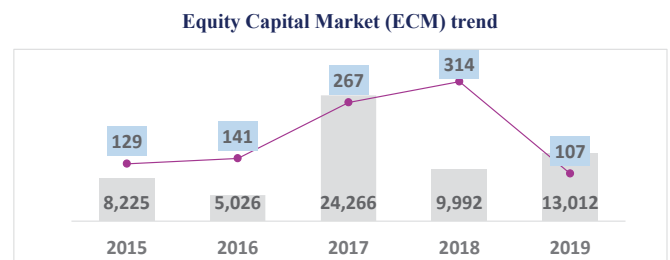
PE Activity at Record High with Decline in Equity Capital Market Deals



Source: Compiled by authors



Source: Compiled by authors



Source: Compiled by authors

## KEY TRENDS IN CAPITAL MARKET

- PE activity has been on record high
- ECM subdued since 2018, however recently it has improved
- Slowdown in ECM resulted in increased M&As as businesses look for strategic synergies
- In terms of recent PE deal activity, angel/seed contributes highest in terms of total deal value

### IPO HIGHLIGHTS FY 2018-19

18 IPOs mobilised INR 199 Billion in FY19 with an average Issue Size of INR 11 Billion

Number of IPOs in FY19	18
Total Funds Raised in FY19	INR 199 Billion
Average Issue Size	INR 11 Billion
Total Subscription received	INR 2,450 Billion
PE backed Companies (39%)	INR 77 Billion
Non-PE backed Companies (61%)	INR 122 Billion

Source: BSE and NSE

### 2019 IPO PERFORMANCE

Even in the down market, 10 out of 13 IPOs turned out favourable.

Sr. No.	IPO Date	Days IPOs	Issuer Company	Issue Price	Current Price	Return
1	Oct-19	11	IRCTC Limited	320	902	182%
2	Jul-19	113	IndiaMART InterMESH Limited	973	1,875	93%
3	Aug-19	78	Affle (India) Limited	745	1,363	83%
4	May-19	170	Neogen Chemicals Limited	215	389	81%
5	Apr-19	192	Polycab India Limited	538	827	54%
6	Apr-19	193	Metropolis Healthcare Limited	880	1,338	52%
7	Aug-19	67	Spandana Sphoorty Financial Ltd	856	1,090	27%
8	Apr-19	197	Rail Vikas Nigam Limited	19	24	24%
9	Feb-19	260	Chalet Hotels Limited	280	340	21%
10	Oct-19	10	Vishwaraj Sugar Industries Ltd	60	62	3%
11	Feb-19	263	Xelpmoc Design and Tech Limited	66	66	-1%
12	Mar-19	210	MSTC Limited	120	98	-19%
13	Aug-19	66	Sterling and Wilson Solar Ltd	780	588	-25%

Source: BSE and NSE

### SME CAPITAL MARKET HIGHLIGHTS

Particulars	FY19	As on November 30, 2019
Number of Listings:	118	520
Funds raised (Amt In INR Crores)	1936	6449
Migration to Main Board	17	97

Source: BSE and NSE

## INDIAN EQUITIES MARKET IS ON JUMP AGAIN

The Indian equities market has emerged as one of the best performers globally in 2018-19 despite several challenges including the liquidity crisis in the domestic non-banking financial companies (NBFCs), rupee faltering to new record low against dollar, global trade tensions and high international crude oil prices and the delay in BREXIT breakthrough, among others.

“FDI inflows are seen as a bellwether of the economy. India is more open to international investment than it has ever been. Barring multi-brand retail, India today allows FDI in nearly every major sector. India needs to address implementation issues and policy irritants that arise for companies looking to use the FDI route to invest in the country.

The S&P BSE SENSEX rose nearly 17 percent during in the financial year 2018-19, while the NSE's NIFTY 50 increased 15 percent. That marked the highest growth in any fiscal year since FY2009-10 for both the indexes. The Indian indices S&P BSE Sensex and NSE NIFTY50 both have outperformed major world indices in 2018-19. The NIFTY50 and SENSEX fared better than major global indices NASDAQ (9.53 percent) and S&P 500 (7.33 percent). However, the gains were capped as crude oil prices rose and fears grew over a tariff war-induced global slowdown.

After continuously falling from all-time high for past 3 months, the Indian Equity markets again started rising, with SENSEX up 3.6% in September 2019 and up 1% October 2019 till-date. However, if we plot from April 2018 till-date SENSEX is up 17.5%. However, for S&P BSE Mid Cap and BSE Small Cap it is not the same case.

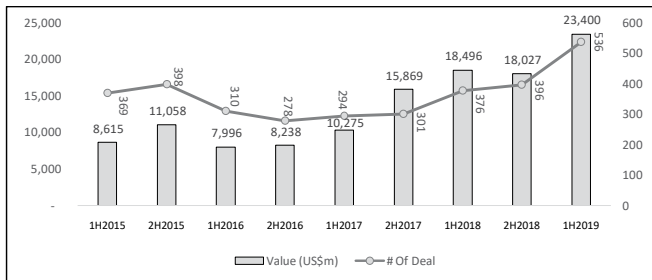
Recent September jump was on the back of the Government announcing a cut in headline corporate tax from 30% to 22% (and 15% for manufacturing companies). Both foreign institutional investors and domestic institutions were net buyers for the month at US\$955m and US\$1.7bn respectively. The Indian Rupee also reacted positively, appreciating by 1.5% against the US Dollar and 0.6% against Pound Sterling.

## PRIVATE EQUITY ACTIVITY HAS SURPASSED THE ALL TIME HIGH

Private equity in India is enjoying an excellent year, with the Indian PE/VC investment activity in 2019 having surpassed the all-time high of US\$36.5 Billion recorded in 2018. PE/VC investments in the first eight months of 2019 have breached the US\$36.7 Billion level, and given the deal momentum in various sectors, by the end of 2019, the total Indian PE/VC investment could potentially be in the range of US\$48 Billion to US\$50 Billion.

Further, on a half yearly basis, investments in 1H19 increased by 27% in terms of value compared to 1H18 and 30% compared to 2H18 (US\$23.4 Billion in 1H19 vs. US\$18.5 Billion in 1H18 and US\$18 Billion in 2H18). This is the best half-yearly performance ever. In terms of the number of deals, the increase is higher at 43% and 35% compared to 1H18 and 2H18, respectively (536 deals in 1H19 vs. 376 deals in 1H18 and 396 deals in 2H18). Both, the first and the second quarter of 2019 have recorded a strong growth in deal activity compared to the corresponding quarters in 2018.

PE investors are expected to forge ahead strongly despite growth slowdown, tight liquidity and market sentiment adding to the prevailing uncertainty.



Source: IVCA-EY Round-up June 2019

## WEALTH IN ALTERNATIVE ASSET

The Indian HNIs have been diversifying investments across a variety of channels outside the traditional products basket such as Fixed Deposits, Bonds and Gold. Today the rich in India have displayed a linking for alternative assets that satisfy their relatively higher appetites and also challenge their intellect. It is thus not surprising that Individual wealth in Private Equity Funds and Venture Capital Funds for last 2 Years is growing more than 40%. The individual wealth in Alternative Assets grew by 20.19% in FY19.

Asset Class	FY 19 Amount (INR Cr)	FY 18 Amount (INR Cr)	Y-o-Y Change FY19	Y-o-Y Change FY18
PE / VC Fund	38,278	24,955	53.56%	43.70%
Real Estate Funds	17,708	12,473	41.97%	21.05%
InvIT Fund	1,384	1,052	31.57%	-
Hedge Funds	10,398	8,811	17.92%	38.49%
Sovereign Gold Bond	7,960	6,960	14.37%	32.34%
Infrastructure Funds	1,290	1,147	12.47%	38.19%
Structured Products	43,086	38,541	11.79%	36.08%
High Yield Debt	26,360	27,336	-3.57%	26.60%
Gold ETF	2,661	2,798	-4.90%	-5.57%
<b>Total</b>	<b>1,49,118</b>	<b>1,24,073</b>	<b>20.19%</b>	<b>33.47%</b>

Source: Karvy India Wealth Report 2019

## PERFORMANCE OF WHICH SECTOR IS CURRENTLY REVEALING THE STATE OF ECONOMY?

Sales in the Auto and Auto Ancillary sector are experiencing a prolonged slowdown of over 6 months of slowing sales and growth reversal. It continues to remain under pressure in September 2019 as the buyers defers the purchases. However, the auto sector is hopeful to see some upsurge in sales as buyers return to showrooms because of deep discounting, good monsoons and festive seasons. This is evident from data available with the Ministry of Road Transport Ministry and Highway website that shows the registration in 31 States stood at 19.33 lakh units in September 2019 which is the highest monthly registration in over ten months. In November 2018, the numbers stood at 21.01 lakh registrations.

Alan Greenspan formulated the Innerwear Index that mirrored the state of economy. Innerwear Sales growth fell sharply in the June 2019 Quarter demonstrating the relevance of Innerwear Index. Quarterly performance of the top four listed innerwear firms were the weakest in a decade mainly due to shrinking of disposable income in the hands of Indian consumers. The innerwear category estimated at Rs. 27,931 Crore accounts for 10% of the total apparel market and is expected to grow at a compounded annual growth rate of 10% over the next decade to Rs 74,258 Crore. Innerwear is evolving from being functional to a segment with a fashion quotient. It's also shifting from a price-sensitive category to a brand-sensitive one.

Private consumption expenditure decelerated to 18-quarter low at 3.1% in Q1 of FY 2019-20. Growth in FMCG sector slowed to 13.6% in Q1 FY 2019-20 compared to 16% in Q1 FY 2018-19. An analysis of over 300 Listed Companies shows that their Q4 FY19 net Profits were down on average by 18% on year on year basis.

## REGULATORY AND POLICY CHANGES SHAPING THE CAPITAL FORMATION

**Auto Sector Reforms:** In order to boost the auto sector, Government will purchase vehicles bought in replacement of old vehicles. Also, additional depreciation of 15% on vehicles acquired from August 23rd till March 31st 2020 is given. Revision of registration fees deferred till June 2020. BS IV vehicles purchase till March 31st, 2020 to remain operational till registration.

**Start-up Reforms:** Angel Tax levied on start-ups registered with DPIIT has been withdrawn. Start-ups will be relieved as the angel tax had made it difficult to attract new funding. A dedicated cell under a member of CBDT for addressing the problems of start-ups will be set up. Tax on issuance of shares at a price exceeding FMV under Section 56 (2) (viib) will not be applicable for start-ups.

**Banking Reforms:** Recapitalisation of state-run banks which were under stress was a major boost for the markets. Along with recapitalisation of public sector banks, eventual easing of liquidity concerns, and a sustained rise in foreign fund inflows also supported the market. Government will infuse Rs 70,000 Cr into public sector banks. Government will also release INR 1 Lakh crore for PSU Banks under the one-time partial credit guarantee scheme for reviving NBFCs.

**Infrastructure Reforms:** Government intends to spend Rs 100 lakh crore on modern infrastructure in next 5 years.

**Tax Reforms:** Government of India reduced corporate tax from an effective 35% (with Surcharge and cess) to an effective 25.2%. It has also rolled out an effective tax rate of 17.0% for new manufacturing companies. Lower tax regime will result in higher foreign investments into India amongst other emerging markets and developed economies. Exemption from Minimum Alternate Tax (MAT) will be given for all Companies except for Companies availing exemptions and Tax holidays. The enhanced surcharge on Capital gains on sale of equity shares has been revoked.

Micro, small and medium enterprises will get their GST refunds in 30 days. Also, in future all GST Refunds shall be paid within 60 days from the date of application. This will ease liquidity for MSMEs who often have to wait for long to get GST refunds. Also, over the next three months, Sitharaman has promised to disburse delayed payments to the tune of Rs 60,000 crore. This



will give a breather to small firms that are looking for liquidity. In order to address complaints of harassment on account of issue of notices, summons, orders etc. by certain income tax authorities, on or after October 1, 2019, all notices, summons, orders etc. by the Income Tax authorities shall be issued through a centralised computer system and will contain a computer-generated unique Document Identification Number *i.e.* faceless scrutiny.

These Big Bang tax reforms as power booster to the economy with Concessional Tax regime will boost foreign investments, promote MSME and Start-up ecosystem. Reduction in corporate tax rate makes a good case for proprietorship, partnership firms and Limited Liability Partnerships to migrate to Company form of Structure. This will result in corporatisation and enhanced transparency.

**Regulatory Reforms:** SEBI continues to play proactive role in driving reforms and ease of doing business in the Indian Capital Markets. Regulator reduced minimum anchor allocation size from INR 10 Crores to INR 2 Crores for SME IPOs through SEBI (ICDR) Regulations 2018. Startup listing norms were released to boost start up economy. Introduction of Real Estate Investments Trusts (REIT) and Infrastructure Investment Trusts (InvIT), Issuance of Shares with Differential Voting Rights and Proposed framework for direct listing of Indian Companies Overseas reflects regulatory willingness to support the capital formation activities. SEBI is in process of streamlining the Process of Public Issue of Equity Shares and Convertibles with the introduction of Unified Payments Interface (UPI) to make IPO process hassle free.

## FUTURE OUTLOOK FOR FY 2019-20

Formalisation of the economy is expected to fuel growth of the Indian markets and strengthen it further. Private Equity investments are at the end of their investment cycles, looking for exits. Highest PE investments are being witnessed at the same time. All in all, poised for high activity level. While global slowdown is a cause of concern, India still holds relatively better position as global trade relationships expect to favour Indian Markets.

Several reforms in Banking and Financial Services sector are expected to contribute to growth and this sector is poised to attract large capital as well. Bank recapitalisation will drive the credit disbursal, increasing business activities. IBC will lead to productive assets into use; ensuring economic growth. India continued to retain its status as the fastest growing major economy of the world.

## OPPORTUNITIES FOR CAPITAL FORMATION

In the three years since the end of 2016, India has moved up by 67 places to number 63 out of 190 Countries in 2019 in the World Bank Business Report's "ease-of-doing-business" measure. This is a testament to the unrelenting economic reforms that Indian Leadership has been implementing.

Market Volatility should be looked up as an opportunity for capital formation. It opens up prospects to accumulate the stocks at prices comfortable with long term purpose. Instead of getting panicked by the volatility, one should always await such so called 'sale' in the markets where the quality stocks with proven growth potential are trading at slightly less than fair valuations. Using the volatility in the market, one should undertake what is called 'cost averaging' and create a way for long term investment.

Indian growth story has a long way to go; consumption driven demands from both rural and urban India are going to increase the consumption and discretionary spends; thereby boosting the economy. As global economies are doing well, the export related segments have ample scope for growth. India scores better due to cheaper labour cost, skilled workforce and Intellectual Property laws.

## ROLE OF PROFESSIONALS IN CAPITAL FORMATION

Formalisation of the economy is leading to more investments aiming towards productivity enhancements and economic growth. Professionals do have pivotal role to play in capital formation activities and facilitate such transactions smoothly. Apart from regular compliance and diligence related responsibilities, their role is indeed further extended to finance, taxation, risk management, corporate advisory. Reduction in corporate tax rate encourages proprietorship, partnership firms and limited liability partnerships to migrate to company structure. Professionals are expected to handhold to these newly formed companies to manage their compliances and related matters.

They can take up a role of strategic advisor to the companies going for crucial corporate restructuring such as merger, amalgamation, demerger etc. Transactions in equity capital markets requires services of Company Secretaries in the capacity of Compliance Officer. Increasing number of private equity deals call for due diligence activities to be conducted by governance professionals. The role of Insolvency Professionals will be crucial for facilitating investments in turnaround assets flowing from IBC Mechanism. Sustained FDI inflows mandate for stricter adherence to FEMA compliances; creating a transaction scope for professionals. Cross-border transactions also call for professional advice on appropriate corporate structure and tax advice, from domestic as well as global perspective. All in all, professionals have a wide ranging opportunities in facilitating capital formation in India, which in turn is instrumental in economic growth of the country.

## CONCLUSION

Despite concerns of slowdown towards the latter part of 2019, we saw twists and turns finally seem to be falling in place, and now, we have started seeing a good amount of interest building again for India in the global market. Talking about the very long-term prospect the overall economic outlook for India is still strong. It is strongly believed that this is a good time for patient investors to start build long term portfolios since market valuations seem to have discounted most of the pain in the economy. Also, over the coming years, there should be decent returns from Indian capital markets and more deals flowing in private markets.

India will have competitive edge globally due to tax rate cuts. Investment in turnaround assets flowing from IBC mechanism and increased thrust to boost start-up ecosystem is expected to attract large investments. India is expected to become one of the most attractive destination for foreign investments, if not the best. China gets 2.72 times FDI inflows as compared to India but this gap is expected to narrow down significantly in times to come. India is well positioned for growth in coming years. Indian capital markets are expected to remain robust due to the overall positive economic fundamentals and stable political environment. This will also provide further boost to the growth of the Indian capital markets.



# Superior Voting Rights Equity Shares - An Effective Defensive Weapon!

While India witnessed as Merger & Amalgamation (M&A) hub for corporate world, number of hostile takeover bids are limited. Globally, hostile takeovers have become an accepted fact in the business world. Recently, corporate law has gone drastic change with various amendments whereas few instruments have been introduced to regain control over the Company. In the competitive business environment, it is inevitable to have tactics to survive the company in the long run. Today, demand for growing business fund depending upon its nature and size. Corporate India predominantly a family owned business is very keen on raising capital without diluting the promoter's stake in the business. The Article illustrates history of L&T-Mindtree merger and attempt to unfold the concept the SR equity shares under Companies Act, 2013 and respective SEBI regulations in the light of above merger.



**Mithun B. Shenoy, ACS**

Company Secretary & Compliance officer  
Kitex Garments Limited, Kizhakkambalam  
[sect@kitexgarments.com](mailto:sect@kitexgarments.com)

## BACKGROUND

**P**ower to control a body corporate lays in its voting power and various allied rights viz., right to appoint majority of directors, participate in the policy decisions, control the management etc. A Hostile takeover per se, means series of transactions by unrelated acquirer(s) to control (major stake in shareholding) the Investee Company against the wishes of its promoters/ management. Such takeover occurs seldom in the Indian Industry as most of the body corporates are family owned business. Recently, engineering and construction major M/s. Larsen & Toubro Limited ("L&T") acquired major stake in global IT firm M/s. Mindtree Limited ("Mindtree") which is being considered as first hostile takeover in Indian IT sector. There have been few other instances of hostile takeovers in the history of Corporate India viz., India Cements Limited ("ICL") acquired Raasi Cements Limited ("RCL") through hostile bid in the year 1998, hostile takeover of Zandu by Emami in May 2008 etc. to name a few. This article traces the history of above said takeover ("L&T – Mindtree takeover") and examines viability of the concept of Differential Voting Rights shares/ Superior Voting Rights shares (hereinafter known as "SR equity shares") in the current scenario.

## HISTORY OF L&T-MINDTREE TAKEOVER

As an Initial step towards take off, L&T had acquired around 3.35 Crores Mindtree shares in the month of April, 2019 which is equivalent to 20.32% of its outstanding shares at Rs. 980 per share (amounting to Rs. 3,250 Crores approx.) from Café Coffee Day founder Late Mr. V. G. Siddhartha and his group entities viz., Coffee Day Enterprises Ltd. & Coffee Day Trading Ltd. Even though Mindtree promoters including Mr. Krishnakumar Natarajan, Mr. Subroto Bagchi, Mr. Rostow

Ramanan and Mr. N.S. Parthasarathy had tried defensive tactics (including buy back of shares which was dropped later) to prevent the then L&T-Mindtree takeover, L&T had come up with Public Announcement and Detailed Public Statement (DPS) in the month of March, 2019 for the open offer for the acquisition of up to 51.33 million Mindtree equity shares (for a total consideration of Rs. 5,030 Crores approx.) representing 31% of its voting share capital pursuant Regulations 3(1) and 4 read with Regulations 13, 14 & 15 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as amended. Thereafter, L&T had issued Letter of offer dated June 6, 2019 to all the shareholders (other than promoters and Person Acting in Concert (PAC)) of Mindtree inviting them to participate in the takeover bid. Tendering period for bid was between June 17, 2019 to June 28, 2019 (both days inclusive).

The offer for purchase above said shares from shareholders was oversubscribed by 1.2 times. L&T attained the control of 60.55% in Mindtree on buyout of 10.63% stake from Singapore based Foreign Portfolio Investors viz., Nalanda India Fund Limited & Nalanda India Equity Fund Limited. Recently, Mindtree's Board inducted senior management of L&T as its directors as a part of restructuring.

## SR EQUITY SHARES AS A STRATEGIC MEASURE

The Corporate world tends to change according to the recent trends to gain control over the target company. In the midst of tough competition, the need was felt to implement various strategic measures including company's funding demand to survive in the business. Many companies seek investments from foreign investors including Institutional Investors. In the present scenario, it is a pre-requisite to have good track record of capital structure in the Company. However, investors who have invested in the stocks are looking for a decent return. Recent trends in global scenario have led many companies to offer different instruments to the investors with an option to reap higher return for sacrificing their rights. Mobilizing funds through issue of SR equity shares has gained much importance among the investors.

SR equity shares shall be treated at par with the ordinary equity shares in every respect, including dividends, except in the case of voting on resolutions and are issued with:

- i. different voting rights i.e., shares are issued with higher voting rights for maintaining effective control; or
- ii. different dividend rights; or
- iii. other rights which may be either rights to participate in management, or rights available to equity shareholders in

the event the company issues bonus shares, right shares or rights available when they enter into a scheme of arrangement or amalgamation, open offer in accordance with SEBI regulations; or

iv. Combination of any of the above.

The statute permits shareholder with SR equity shares to enjoy all other rights such as rights shares, bonus shares etc. which an ordinary equity shareholder is entitled to. The main purpose of controlling voting rights is to keep hostile takeover at bay and allows the company to dilute equity shares without affecting the promoter's stake and retain effective control over the Company.

SR equity shares are more useful to the retail shareholders who:

- don't attend general meetings or exercise their voting rights as they don't know about company's function in detail and
- are happy to earn higher dividend.

They are not concerned about their voting rights which are normally exercised by those who have ultimate control of management. M/s. Tata Motors Ltd is the first Indian company to issue SR equity shares in the year 2008, mainly to fund the acquisition of Jaguar Land Rover. M/s. Jain Irrigation Systems Limited is the other Company in the micro-irrigation system to issue SR equity shares in the year 2011 in the form of bonus shares to its existing shareholders which provides 1 vote in the general meetings for every 10 SR equity shares held by them.

On other hand, SR equity shares are priced at a discount to the face value and offer an opportunity to receive higher dividends. For example, Tata Motors' SR equity shareholders is having voting rights in the ratio of 1 vote for every 10 shares held. However, they get higher dividend of 5% than ordinary equity shareholders. On July 2016, the company had paid Re. 0.30 a share as dividend to SR equity holders and Re. 0.20 a share to ordinary equity shareholders.

## PERFORMANCE OF ORDINARY EQUITY SHARES VS. SR EQUITY SHARES

Trading volume of SR equity shares is much lower as compared to ordinary equity shares as investors don't show the same keenness to buy these shares. The performance of Ordinary equity shares Vs. SR equity shares of few companies are enumerated in the below given table:

Sl. No.	Company Name	Ordinary equity share		SR equity shares		SR equity Market Price discount
		Market price*	Shares trades	Market price*	Shares trades	
1	Tata Motors Ltd.	126.10	7,88,978	56.20	1,18,480	55.43%
2	Jain Irrigation systems Ltd	11.95	1,23,965	9.30	60	22.18%
3	Future Enterprises Ltd	22.85	822	20.00	100	12.47%

\*Market Price of ordinary and SR equity shares on Oct 17, 2019

Table I

Normally, companies issue SR equity shares to implement significant projects for future expansion. This would be useful

“ The statute permits shareholder with SR equity shares to enjoy all other rights such as rights shares, bonus shares etc. which an ordinary equity shareholder is entitled to. The main purpose of controlling voting rights is to keep hostile takeover at bay and allows the company to dilute equity shares without affecting the promoter's stake and retain effective control over the Company.



to those who do not want control over the investee company but are looking to take part in its growth by making a big investment. SR equity shares have not been accepted by investors in India due to following reason:

- Lack of awareness among investors.
- Liquidity of SR equity shares is another issue as investors are not keen to invest. Table no. I above clearly portrays trading volume of both shares wherein SR equity shares did not see any increase in the volume and interest among investors.
- Higher Dividend payout shall be proportionally made to motivate investors for sacrificing lesser voting rights if SR equity shares are to be made more attractive. For example: On July 2016, the company had paid Re. 0.30 a share as dividend to SR equity holders and Re. 0.20 a share to ordinary equity shareholders. SR equity shareholders are getting less dividend advantage as against ordinary equity shares for sacrificing 10 voting rights. Generally, the incentive offered so far for SR equity shares have been seen to be less attractive to the investors to subscribe to SR equity Shares.
- Institutional Investors don't prefer to invest in SR equity shares due to corporate governance issues in big companies.

In the recent past, Amazon had acquired 49% of outstanding shares (17% stake in the company through Class A shares with one vote and the rest 32% through Class B shares having SR equity shares with no voting rights) in Witzig Advisory Services, the company that has bought MORE supermarket stores from the Aditya Birla Group.

## REGULATORY FRAMEWORK WITH RECENT CHANGES IN PROVISIONS OF SR EQUITY SHARES

### I. COMPANIES ACT, 2013

The provision governing issue of SR equity shares was first introduced under the Companies Act, 1956 ("the 1956



Act") through amendment in the year 2000 w.e.f. December 13, 2000. Sec 2(46A) of the 1956 Act defines shares with differential voting rights as a share that is issued with differential rights in accordance with the provisions of Sec 86. Subsequently, the Companies (Issue of share capital with differential voting rights) Rules, 2001 were published by erstwhile Department of Company Affairs through notification no. SO 167(E) dated 09.03.2001.

Sec 86 of the 1956 Act permitted new issue of share capital by company limited by shares to be only of two kinds namely: -

- (a) equity share capital:
  - i. with voting rights; or
  - ii. with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such condition as may be prescribed.
- (b) preference share capital

Section 43, 47 and 50 of Companies Act, 2013 ("the 2013 Act") confers inter-alia upon issue of shares with differential voting rights. Sec 43 of the 2013 Act lays down "kinds of shares", is substantially similar to Sec 2(46A), Sec 85 and 86 of the 1956 Act except with regard to scope and applicability.

Normally, if voting takes place through show of hands, each shareholder gets only one vote. But SR equity shares will be effective only through poll. Sec 47 of the 2013 Act talks about voting rights. As per sub section (1), subject to the provisions of section 43, section 50(2) and section 188 (1),

- (a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and
- (b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

As per sec 50 (2) of the 2013 Act, a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

As per Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 amended through Companies (Share Capital & Debentures) Amendment Rules, 2019 ("Cos Amendment Rules, 2019") dated August 16, 2019, company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, subject to certain provisions, which is a part of total share capital of the Company. The Ministry of Corporate Affairs ("MCA") had sought an opinion on procedures pertaining to issue of SR equity shares, from Primary Market Advisory Committee ("PMAC") and based on PMAC recommendations and stakeholder's suggestions, MCA on August 16, 2019 amended such provisions, some of the key changes are detailed below:

- the existing limit for issuance of equity shares with differential rights of 26% has been raised to 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;
- Condition highlighting the company having consistent

“ Normally, companies issue SR equity shares to implement significant projects for future expansion. This would be useful to those who do not want control over the investee company but are looking to take part in its growth by making a big investment.



track record of distributable profits for the last three years has done away with.

The above-mentioned amendments have been made with an intention of preventing a hostile takeover of start-ups and tech companies. Here it has to be noted that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.

Above rules applied only to the company limited by shares including any private company (private companies are exempted through notification dated June 5, 2015 where Articles of Association ("AoA") and Memorandum of Association ("MoA") of private company provide for the same). The aforesaid rules are not relevant to unlimited companies and companies limited by guarantee, both of whom cannot issue SR equity shares.

## II. SEBI Regulations

In the year 2009, Clause 28A of erstwhile listing agreement prohibited a listed company to issue shares that offers any person superior rights as to dividend, voting vis-à-vis rights on equity shares that are already listed.

Securities and Exchange Board of India (SEBI) vide its press release PR No. 16/2019 dated July 29, 2019 approved framework for issuance of SR equity shares. To give effect to the above framework, SEBI amended following regulations collectively known as "SEBI regulations" with effect from July 29, 2019:

- i. SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 ("LODR Regulations") through SEBI (Listing Obligations and

- Disclosure Requirements) (Fourth Amendment) Regulations, 2019, ("LoDR Amendment Regulations, 2019");
- ii. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations") through SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2019 ("ICDR Amendment Regulations, 2019");
- iii. SEBI (Buy-back of Securities) Regulations, 2018 ("Buy-back regulations");
- iv. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations") through SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2019 ("Takeover Amendment Regulations, 2019") and
- v. the SEBI (Delisting of Equity Shares) Regulations, 2009 ("Delisting Regulations").

## KEY AMENDMENTS UNDER SEBI REGULATIONS

### Eligibility criteria for issuing SR equity shares

As per Reg 6(3) of ICDR Amendment Regulations, 2019, Company with SR equity shares (where issuer has issued SR equity shares to its promoters/ founders) shall be allowed to make IPO of only ordinary equity shares subject to following conditions:

<b>Eligible Company</b>	<ul style="list-style-type: none"> <li>Issuer must be technology based company viz., intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition.</li> </ul>
<b>Maximum network</b>	<ul style="list-style-type: none"> <li>The SR equity shareholder should be a part of the promoter group whose collective net worth (such network excludes investment of SR equity shareholder in the shares of the issuer company) does not exceed Rs 500 Crores.</li> </ul>
<b>Promoter/ founders</b>	<ul style="list-style-type: none"> <li>SR equity shares were issued only to the promoters/ founders who hold an executive position in the issuer company.</li> </ul>
<b>Approval</b>	<ul style="list-style-type: none"> <li>Issue of SR equity shares had been authorised by special resolution passed at the general meeting.</li> </ul>
<b>Time period</b>	<ul style="list-style-type: none"> <li>The SR equity shares have been held for a period of atleast 6 months prior to the filing of the red herring prospectus.</li> </ul>
<b>Voting rights</b>	<ul style="list-style-type: none"> <li>The SR equity shares shall have voting rights which may vary from a minimum of 2:1 to a maximum of 10:1 compared to ordinary equity shares of the Company.</li> </ul>
<b>Pledge &amp; Lock In period</b>	<ul style="list-style-type: none"> <li>SR equity shares shall be listed on the stock exchanges after IPO subject to lock-in until later of following: (i) their conversion to ordinary equity shares or (ii) 3 years from the date of commencement of commercial production.</li> <li>Inter-se transfer of the SR equity shares among the promoters of the Issuer Company is not permitted during such lock-in period.</li> <li>no pledge or other encumbrance can be created on SR equity shares</li> </ul>
<b>other conditions</b>	<ul style="list-style-type: none"> <li>The SR equity shares shall have the same face value as the ordinary equity shares.</li> <li>The issuer shall have only 1 class of SR equity shares. The SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights.</li> <li>The SR equity shares of promoters, if any, shall be eligible towards computation of minimum promoters' contribution.</li> </ul>



As per Reg 2 (1)(eeea) of ICDR Amendment Regulations, 2019, "SR equity shares" means the equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer.

### Enhanced Corporate Governance – Board/Committee structure

As per Reg 17(1)(d), 18 (1)(b), 19 1(c), 20 (2A) and 21 (2) of LODR Amendment Regulations, 2019, Companies having SR equity shareholders shall have:

- i) At least  $\frac{1}{2}$  of the Board and  $\frac{2}{3}$ <sup>rd</sup> of the Committees (Nomination and remuneration committee, Stakeholders Relationship Committee, Risk Management Committee excluding Audit Committee) shall comprise of Independent Directors.
- ii) Audit Committee shall comprise of only Independent Directors.

### Voting Rights

Reg 41A of LODR Amendment Regulations, 2019 deals with provisions related to outstanding SR equity shares which are summarized as below:

- The total voting rights of SR equity shareholders (including ordinary equity shares) in the issuer upon listing, pursuant to an initial public offer, shall not at any point of time exceed 74%.
- The SR equity shares shall be treated as ordinary equity shares in terms of voting rights (i.e. 1 SR equity share shall only have 1 vote) in the following circumstances:
  - i. Appointment/ removal of independent directors and/ or auditor;
  - ii. Where a promoter is willingly transferring control to another entity;
  - iii. related party transactions in terms of these regulations involving an SR equity shareholder;
  - iv. voluntary winding up of the listed entity;
  - v. changes to the AoA or MoA of the listed entity, except any change affecting the SR equity share;
  - vi. initiation of a voluntary resolution process under the Insolvency Code;



“The Companies Act, 2013 prescribes approval of shareholders by way of ordinary resolution for the issue of SRequityshares whereas SEBI mandates in its regulations to have special resolution for such issue. Eligibility criteria for issuing SR equityshares under SEBI regulations applies only to the promoters of the company holding executive position which excludes promoter group companies/ entities.

- vii. utilization of funds for the purposes other than business;
- viii. substantial value transaction based on materiality threshold as specified under these regulations;
- ix. passing of special resolution in respect of delisting or buy-back of shares; and
- x. Other circumstances or subject matter as may be specified by the SEBI, from time to time.

#### Conversion of SR equity shares & Tenure of holding SR equity shares

SR equity shares allow promoters/ founders of Issuer Company to exercise control over business activities for a certain period. Sunset Clauses w.r.t. conversion of SR equity shares into ordinary equity shares as below:

##### Time based

- The SR equity shares shall be converted to Ordinary equity shares on the 5th anniversary of listing.
- Validity can be extended upto additional 5 years after passing resolution where the SR equity shareholders have not been permitted to vote.

##### Event based

- SR equity shares shall compulsorily get converted into ordinary equity shares on occurrence of certain events such as (a) demise of promoter or founder holding such shares, (b) resignation of SR equity shareholders, (c) Merger or acquisition where the control would be no longer with SR equity shareholder, (d) SR equity shares are sold by an SR equity shareholder who continues to hold such shares after the lock-in period but prior to the lapse of validity of such SR equity share.

Reg 10 (2A) of the Takeover Amendment Regulations, 2019 talks about exemption from the obligation to make an open offer under Reg 3, if there is an increase in the voting rights of any shareholder beyond the threshold limits without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares.

#### AMBIGUITY IN THE AMENDMENTS TO SEBI REGULATIONS

There are lots of ambiguities/ difficulties under SEBI Regulations w.r.t. issue of SR equity shares, some of which are detailed below. Primarily, while provisions governing the issue of SR equity shares apply only to Tech Company, SEBI regulations are silent about its applicability to non-tech Company. The said regulations don't define as to what constitute Tech Company. As promoter's shares are normally pledged with banker/ financial institution for taking loan, the restriction on creating pledge on SR equity shares may make such borrowing difficult for the promoters.

The Companies Act, 2013 prescribes approval of shareholders by way of ordinary resolution for the issue of SR equity shares whereas SEBI mandates in its regulations to have special resolution for such issue. Eligibility criteria for issuing SR equity shares under SEBI regulations applies only to the promoters of the company holding executive position which excludes promoter group companies/ entities.

Last but not least, SR equity shares once converted into ordinary equity shares on happening of certain events viz., demise, resignation of the holder, the shares held by the inheritor on transmission/ transfer would be treated as ordinary equity shares.

#### CONCLUSION

The recent changes in various SEBI regulations followed by amendments in the respective rules to Companies Act, 2013 ensure the promoters or founders of Tech Company with SR equity shares to secure growth and control over the business. The increase in existing limit of voting rights is also a welcome move that help promoter to bring in capital into Investee Company. A healthy competition will also be exercised if hostile takeovers are intercepted. Hence SR equity shares are considered to be defensive weapon in the hands of promoters/ founders. Company Secretary being a governance professional must be up to date and cautious about amendments in regulatory framework under corporate laws.

#### BIBLIOGRAPHY

1. SEBI press release PR No.16/2019 dated 27.06.2019
2. A Ramaiya "Guide to the Companies Act – Providing guidance to the Companies Act, 2013" – 18<sup>th</sup> edition
3. The Companies Act, 1956 and its respective rules
4. The Companies Act, 2013 and Companies (Share Capital and Debentures) Rules, 2014 as amended
5. SEBI (Substantial Acquisition of shares and Takeover) Regulations, 2011 as amended
6. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as amended
7. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as amended
8. SEBI (Buy-back of Securities) Regulations, 2018 as amended
9. Websites of BSE Ltd and NSE: [www.bseindia.com](http://www.bseindia.com) & [www.nseindia.com](http://www.nseindia.com)



# Issuance of Depository Receipts- An Analysis

Depository receipts has in the past served as a common mode of raising funds by Indian companies. However, in the recent past due to regulatory concerns, there have been a significant fall in the number of issuances of depository receipts on the back of Indian securities. The Securities and Exchange Board of India has on 10 October 2019 introduced the Framework for the Issuance of Depository Receipts on the back of listed equity shares and debt securities of Indian companies. The introduction of the framework has largely been perceived as a welcome measure and it is hoped that the framework will lead to renewed interest from Indian companies seeking to raise funds abroad. In this article, we shall trace the regulatory regime for the issuance of depository receipts abroad and analyse the salient features of the SEBI Circular and the compliances involved in a depository receipts issuance.



**Aditya George Cheriyan\***

Partner, Khaitan & Co  
Mumbai

[aditya.cheriyana@khaitanco.com](mailto:aditya.cheriyana@khaitanco.com)



**Vijayaraghavan\***

Associate, Khaitan & Co  
Mumbai

[vijayaraghavan@khaitanco.com](mailto:vijayaraghavan@khaitanco.com)

Issuance of depository receipts ("DRs") was a common mode of raising funds in the past by Indian companies in sectors such as banks, e-commerce, software services and healthcare. The main reason for Indian companies choosing the DR route to raise funds was because of the better valuations at times in overseas markets for companies with a niche business and access to a larger pool of sophisticated investors overseas. However, subsequently, due to regulatory concerns, DR Programs had taken a back seat. The Securities and Exchange Board of India ("SEBI") issued a circular dated 10 October 2019, introducing a "Framework for Issue of Depository Receipts" (the "SEBI Circular"). It is believed that with the introduction of this SEBI Circular, there will now be a renewed interest for Indian companies to raise funds through the issuance of DRs.

In this article, the regulatory regime for issuance of DRs by Indian companies abroad and the compliances surrounding issuance of DRs is analysed.

## 1. WHAT ARE DEPOSITORY RECEIPTS?

DRs are instruments listed on exchange(s) abroad, which represent an underlying listed Indian security. DRs typically derive their value from the underlying security.

A DR issuance or a 'DR program' involves either a fresh issuance or transfer of "permissible securities" of an Indian company to a foreign depository. The permissible securities are deposited with a custodian in India and the Indian custodian holds the permissible securities on behalf of the foreign depository. Once the Indian custodian confirms receipt of the permissible securities to the foreign depository, the foreign depository issues DRs to the relevant investor. The DRs issued would be denominated in a foreign currency and would be listed on an international stock exchange. Each DR issued will represent a certain number of permissible securities of an Indian company. This ratio can be determined at the discretion of the Indian issuer. An investor would typically have the option to convert their DRs at their discretion into the underlying security in accordance with the terms of the DR program. The establishment of a DR program requires co-ordination between an Indian listed company, a foreign depository bank, an Indian depository, investment banks, an Indian counsel, a foreign counsel and a listing agent in the jurisdiction(s) in which the DRs would be listed.

The SEBI Circular permits listed equity shares and debt securities of Indian companies which are in dematerialized form and rank *pari passu* with the securities of an Indian company which are already issued and listed on a recognised stock exchange in India ("Indian Stock Exchange") to be used as underlying 'permissible security' to issue DRs ("Permissible Securities"). For example, a listed company can issue listed equity shares or listed non-convertible debentures to a foreign depository as the underlying security over which the foreign depository will issue DRs to foreign investors abroad.

A foreign depository ("Foreign Depository") is typically a foreign bank which is regulated by a regulator in its jurisdiction and has the legal capacity to issue DRs in the relevant jurisdiction. The Foreign Depository should not be prohibited from acquiring the Permissible Securities under Indian foreign exchange laws. Meanwhile, a domestic custodian ("Custodian") is a custodian of securities, such as an Indian depository, a depository participant or bank having permission from SEBI to provide custodian services.

The most common DR programs are American Depository Receipts ("ADRs") and Global Depository Receipts ("GDRs").

\*The views expressed are personal views of the authors

ADRs are DRs listed on an American stock exchange whereas GDRs are DRs listed on exchanges outside the United States. Some of the common jurisdictions in the past for listing GDRs outside the United States are London, Luxemburg, Hong Kong and Singapore.

The SEBI Circular states that the permissible jurisdictions for the issuance of DRs (the "Permissible Jurisdictions") by listed companies would be the jurisdictions notified from time to time pursuant to the Prevention and Money-Laundering (Maintenance of Records) Rules, 2005 (the "PMLA Records Rules"). The Ministry of Finance, Government of India on 28 November 2019 notified the jurisdictions under the PMLA Records Rules. SEBI had subsequently on 28 November 2019 notified the list of Permissible Jurisdictions and the international exchanges where the DRs may be listed (the "SEBI Jurisdiction Circular").

## II. EVOLUTION OF THE REGULATORY REGIME TILL THE SEBI CIRCULAR

While there have been a few DR issuances over the last decade, DRs played a key role in the history of the Indian financial markets. Until SEBI permitted qualified institutions placements in 2006, DRs were an important instrument for listed and to be listed Indian companies seeking to raise foreign funds.

The Central Government had on 12 November 1993 notified the Foreign Currency Convertible Bonds and Ordinary Shares (Through Deposit Receipt Mechanism) Scheme, 1993 (the "1993 DR Scheme"). The 1993 DR Scheme initially permitted the issuance of DRs by unlisted companies in addition to listed companies provided that certain conditions of performance were met. However, amendments introduced by the Government of India on 31 August 2005, introduced the requirement of prior or simultaneous listing for Indian companies accessing depository receipts route to raise capital. Further, the 1993 DR Scheme only permitted the issuance of depository receipts against underlying equity shares or foreign currency convertible bonds, thereby limiting the foreign investor's choice of investing in Indian securities. Subsequently, the Ministry of Finance issued a Depository Receipt Scheme, 2014 ("2014 DR Scheme") which came into effect from 15 December 2014. The 2014 DR Scheme was subject to implementation by the relevant authorities, namely, the Reserve Bank of India ("RBI"), SEBI, the Ministry of Corporate Affairs and the Ministry of Finance.

However, until recently SEBI had refrained from implementing the 2014 DR Scheme. One of the key concerns of regulators was to identify the beneficial owner of the DRs. Regulators believed that difficulties in tracking the ultimate beneficiary could lead to money laundering and unsolicited takeovers. To tackle these concerns, the Central Government had on 18 September 2019 introduced amendments (the "PMLA Amendments") to provide for the determination, identification and verification of the beneficial owners of the DRs in jurisdictions notified by the Government of India ("PMLA DR Jurisdictions"), in accordance with the norms applicable in the jurisdiction where the DR was issued. This amendment paved way to SEBI issuing the SEBI Circular.

## III. JURISDICTION OF SEBI

DRs are issued by the Foreign Depositories in a Permissible Jurisdiction *albeit* against Indian securities. Questions have in the past been raised regarding the jurisdiction of SEBI over DR issuances. The Supreme Court of India had in *Securities and Exchange Board of India v. Pan Asia Advisors Ltd.*, held that the jurisdiction of SEBI extends to global depository receipt issuances

“Once the Indian custodian confirms receipt of the permissible securities to the foreign depository, the foreign depository issues DRs to the relevant investor. The DRs issued would be denominated in a foreign currency and would be listed on an international stock exchange. Each DR issued will represent a certain number of permissible securities of an Indian company. This ratio can be determined at the discretion of the Indian issuer.



against Indian shares. The Supreme Court considered SEBI's powers under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to take measures as it thinks fit to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and that DRs as covered under Section 2(h)(iii) (the definition of securities) of the Securities Contracts (Regulation) Act, 1956 ("SCRA") since DRs are rights or interests in the underlying securities. The Supreme Court noted that the existence of the global depository receipts depend upon the underlying ordinary shares (the underlying instrument in the case), which are deposited with the Indian Custodian. However, DRs shall also be subject to the regulatory norms applicable in the relevant jurisdiction.

## IV. SALIENT FEATURES OF THE SEBI CIRCULAR

The SEBI Circular has been introduced by SEBI under Section 11(1) of the SEBI Act. The SEBI Circular stipulates the requirements for the issuance of DRs in relation to companies listed on an Indian Stock Exchange ("Indian Listed Companies") and is applicable with respect to DR issuances by Indian Listed Companies after October 10, 2019.

Salient features of the SEBI Circular are set forth below:

**Eligibility:** In order to issue DRs, the following conditions need to be complied with: (a) the Indian Listed company should be compliant with the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"); (b) the Indian Listed Company and/or any of its promoters, promoter group, selling shareholders and/or directors should not be debarred from accessing the capital markets by SEBI, (c) the promoters or directors of the Indian Listed Company should not be fugitive economic offenders or promoters or directors of any other company which is debarred

from accessing the capital markets by SEBI, and (d) the Indian Listed Company and its promoters and directors should not be wilful defaulters.

In the event the Permissible Securities are to be transferred by a holder of the Permissible Security ("Selling Security Holders") to the Foreign Depository, then the Selling Security Holders should not be debarred from accessing the capital markets, categorized as wilful defaulters or be fugitive economic offenders.

**To be listed companies:** Companies which propose to make an initial public offering on an Indian Stock Exchange(s), may simultaneously propose to issue Permissible Securities or transfer Permissible Securities of Selling Security Holders to Foreign Depositories for the issuance of DRs, and may seek in-principle approval from the Indian Stock Exchange(s) as well as the relevant international exchange. However, the issue or transfer of Permissible Securities to the Foreign Depositories shall be subsequent to the receipt of the trading approval from the Indian Stock Exchange(s) for the initial public offering.

The post-offer share capital of a company undertaking an initial public offering of its equity shares are required to be locked in, in accordance with the ICDR Regulations. If the Permissible Securities are equity shares, it is unclear as to whether SEBI shall on a case to case basis separately exempt the equity shares to be transferred by Selling Security Holders to the Foreign Depository from such lock-in requirements.

**International Exchanges:** Unlike the 2014 DR Scheme, which provided flexibility with respect to the listing of the DRs, the SEBI Circular requires that the DRs be listed on a specified international exchange in the Permissible Jurisdiction (the "International Exchange").

The listing of DRs on an International Exchange is required to meet the highest applicable level or standards for such listing by foreign issuers. SEBI has notified the list of International Exchanges and the Permissible Jurisdictions, which include the NASDAQ and NYSE in the United States of America, the Tokyo Stock Exchange in Japan, the London Stock Exchange in the United Kingdom (excluding British Overseas Territories), the Euronext Paris in France and the India International Exchange and NSE International Exchange with respect to the International Financial Services Centre in India.

**Permissible holders:** Under the SEBI Circular, holder(s) of DRs, including the beneficial owner(s), must not be persons resident in India or non-resident Indians (the "Permissible Holders").

**Sponsored DRs:** Selling Security Holders are permitted to tender Permissible Securities held by them towards the issuance of DRs, provided that the DRs issued are within the limit approved by the shareholders of the Indian Listed Company by way of a special resolution. In the case of an initial issue and listing of DRs, the SEBI Circular requires Indian Listed Companies to provide all equity shareholders with an opportunity to tender their shares towards such listing of DRs. Such a DR program is colloquially known as a "sponsored DR program" since the Indian Listed Company bears the cost of setting up the DR program.

#### Obligations of listed companies

**Agreement with depository:** The Indian Listed Company is required to enter into an agreement with the Foreign Depository for the issuance of the DRs. The deposit agreement sets out the framework of the DR program and the various charges payable

by the Indian Listed Company for the corporate actions to be taken by the Foreign Depository.

**Offer document:** An initial document is required to be submitted through a lead manager registered with SEBI for the initial issue of DRs issued on the back of the Permissible Securities with SEBI and the Indian Stock Exchange(s) on which the underlying Permissible Securities are listed. The SEBI Circular states that SEBI shall provide its comments within 7 working days to the relevant Indian Stock Exchange(s) and the relevant Indian Stock Exchange(s) shall take SEBI's comments into consideration while granting in-principle approval within 15 days of the receipt of the application from the Indian Listed Company. The final document is required to be filed with the Indian Stock Exchange(s) and SEBI for record purpose. SEBI has not prescribed any disclosure standards for the DR offer documents and the disclosures in an offer document would be governed by the laws of the jurisdiction in which the DRs are listed.

**Intimation:** The DRs issued by the Foreign Depositories are required to be listed on an International Exchange. The International Exchange where the DRs are listed, may require the Indian Listed Company to make periodic and event based disclosures on the International Exchange. The SEBI Circular seeks to ensure parity between disclosures made on the International Stock Exchange and the Indian Stock Exchange(s). Accordingly, all public disclosures made by the Indian Listed Company on the International Exchange, are to be filed with the Indian Stock Exchange(s) within 24 hours of the date of filing of the public disclosure with the International Exchange.

**Voting rights:** The Indian Listed Company is required to ensure that the agreement entered into between the holders of the DRs, the Indian Listed Company and the Foreign Depository, provides that the voting rights on the Permissible Securities, if any, shall be exercised by the holder of the DRs through the Foreign Depository only pursuant to a voting instruction from a DR holder. The SEBI Circular ensures that the Foreign Depository only votes on the instruction of the relevant DR holder. The methodologies for voting by the Foreign Depository in the past have included instructions from the Indian Listed Company and the majority vote of the DR holders.

**Pricing:** The SEBI Circular stipulates that in the case of simultaneous listing of the Permissible Securities on Indian Stock Exchange(s) pursuant to a public offer, preferential allotment or qualified institutions placement under the ICDR Regulations and the DRs on an International Exchange, the price of issue or transfer of the Permissible Securities, shall not be less than the price for the public offer, preferential allotment or qualified institutions placement, as the case may be, to domestic investors under applicable laws.

It is further stipulated that where Permissible Securities are issued by an Indian Listed Company or transferred by the Selling Security Holders to the Foreign Depository for the purpose of issuance of DRs, the price shall be not less than the price applicable to a corresponding mode of issuance of the Permissible Securities to domestic investors under applicable laws.

While determining the price of the Permissible Securities, the Indian Listed Company and/or the Selling Security Holders would be required to ensure compliance with the Non-Debt Rules or the Debt Regulations, as the case may be.



**Obligations of Indian depository and Custodian:** Indian Depositories (in consultation with each other) are required to develop a system to ensure that the aggregate holding of holders of DRs along with their holding, if any, through offshore derivative instruments and holding as a foreign portfolio investor belonging to the same investor group does not exceed the limit on foreign holding under FEMA and applicable regulations of SEBI. Indian depositories are required to coordinate among themselves and with the Custodian to disseminate the outstanding Permissible Securities against which DRs are outstanding and the limit up to which Permissible Securities can be converted to DRs.

The Custodian is required to maintain records in respect of, and report to, Indian depositories all transactions in the nature of issue and cancellation of DRs, for the purpose of monitoring limits.

## CONCLUSION

Company secretaries have a vital role to play in the issuance of the Permissible Securities as well as the DRs. Company secretaries have a role to play in the corporate actions required for the issuance of the Permissible Securities as well as in the compliance by the Indian Listed Company of its disclosure obligations under the LODR Regulations as well as the norms of the relevant International Exchange.

In terms of Rule 4(1) of the GDR Rules, a resolution of the board of directors is required for the issuance of depository receipts. Further, prior to the issuance of the DRs, in terms of Section 41 of the Companies Act, 2013 read with Rule 4(2) of the Companies (Issue of Global Depository Receipts) Rules, 2014 (the "GDR Rules"), a special resolution of the shareholders of the Company would have to be passed to approve the issuance of depository receipts. Further, the Selling Security Holder may tender Permissible Securities towards the issuance of DRs, if there is headroom in the special resolution passed by the shareholders of the Indian Listed Company under Section 41 of the Companies Act, 2013 read with Rule 4(2) of the GDR Rules.

As per Rule 9(1) of the GDR Rules, the other provisions of the Companies Act, 2013 and the rules thereunder insofar as they relate to the public issuance of shares or debentures, shall not apply to the issuance of DRs. However, the applicability of the other provisions of the Companies Act, 2013 to a private placement of Permissible Securities for the issuance of DRs is to be examined.

In the event of an initial issuance of DRs, an in-principle application would have to be prepared. The secretarial team of the Indian Listed Company would also have to co-ordinate with a listing agent in the jurisdiction of listing of the DRs to ensure that all requirements for listing the DRs in such jurisdiction are fulfilled.

Under Rule 4(5) of the GDR Rules, the Indian Listed Company is required to place a compliance report after completion of the issue from a merchant banker, practicing chartered accountant or a practicing cost account before the board of directors or a committee of the board of directors, certifying that all compliances with respect to the issuance of the DRs have been completed.

Since, DRs are issued on the back of Permissible Securities of Indian Listed Companies, compliance with the LODR Regulations have to be maintained in line with the requirements and practice applicable to the issuance of other securities, including the

“SEBI has notified the list of International Exchanges and the Permissible Jurisdictions, which include the NASDAQ and NYSE in the United States of America, the Tokyo Stock Exchange in Japan, the London Stock Exchange in the United Kingdom (excluding British Overseas Territories), the Euronext Paris in France and the India International Exchange and NSE International Exchange with respect to the International Financial Services Centre in India.



requirement of giving prior intimation to the Indian Stock Exchange(s), of the board meeting where the proposal of raising funds through DRs is to be discussed and prompt intimation to the Indian Stock Exchange(s) of the outcome of the meeting. Details related to *inter alia* the pricing and allotment would have to be intimated to the Indian Stock Exchange(s) in accordance with the LODR Regulations.

Further, public disclosures may be required to be made on the International Exchanges in accordance with the laws of the Permissible Jurisdiction or requirements of the International Exchanges. Such disclosures would have to also be filed with the Indian Stock Exchange(s) within 24 hours of filing of the public disclosure with the International Exchanges. Further, it is to be examined if disclosures made to the Indian Stock Exchange need to be made to the International Stock Exchange as well.

Certain International Exchanges require periodic financial reporting to be made as per the generally accepted accounting principles in the local jurisdiction. In that event, when the Indian Listed Company is preparing their financials per the applicable Indian accounting principles, a separate set of financials would also have to be prepared by the Indian Listed Company to fulfil the requirements of the International Exchange.

# Roadmap for an IPO - a transformational journey

The Indian Initial Public Offer (“IPO”) has seen its fair share of ups and downs. A comprehensive action plan, timetable and communication structure are key ingredients for a successful IPO. Once a Company is listed it has access to more, and often deeper, sources of capital than an unlisted company. Listed companies not only monetize an equity interest in the company at the rich price-to-earnings multiples but also cash in a portion of the promoters’ equity without giving up control completely. Among others an Issuer raising money through IPO has to revamp its corporate governance architecture, disclose everything material, scrub its accounting controls and procedures, set up mechanisms for timely reporting, and prepare for life in the public market fishbowl.



## B Renganathan, FCS

Executive Vice President- Investment Banking &  
Company Secretary Edelweiss Financial Services Ltd.  
Mumbai

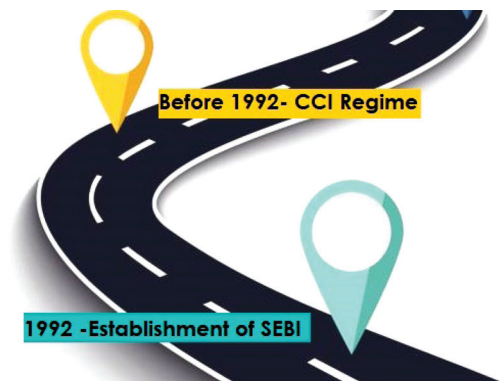
[b.renganathan@edelweissfin.com](mailto:b.renganathan@edelweissfin.com)



## Sachin Khandelwal, ACS

Senior Vice President –Investment Banking  
Edelweiss Financial Services Ltd.  
Mumbai

[sachin.khandelwal@edelweissfin.com](mailto:sachin.khandelwal@edelweissfin.com)



Before the enactment of SEBI Act, 1992, companies planning to raise money through IPO, were required to take the approval from CCI and such shares were issued only at par. The existing companies with substantial reserves could issue shares at a premium on the basis of formula fixed by CCI.

### Foreign Exchange Regulation Act (FERA) dilution:

The transformational change in the Indian primary market began in the year 1977, when the government mandated all the Indian subsidiaries of foreign companies to restrict the parent holding to 40%. This led to a spate of such companies offering the shares to the public and in the process getting them listed. During this period Colgate Limited and HUL offered their shares to the Indian public which was well received. However, companies like Coca Cola, IBM exited India as they refused to adhere provisions of FERA.

Further, in 1992, the government made its intention quite clear as is evident from the Budget speech delivered by the then Finance Minister in the Parliament, an extract of which is reproduced below:

*“The role of the Controller of Capital Issues in the Finance Ministry needs to be reviewed, especially in the context of the emerging industrial and financial scenario. The practice of Government control over capital issues, as well as over pricing of issues, has lost its relevance in the changed circumstances of today. It is therefore, proposed to do away with Government control over capital issues including premium fixation. Companies will be allowed to approach the market directly provided the issues are in conformity with published guidelines relating to disclosure and other matters related to investor protection. Government*

## I. HISTORICAL BACKGROUND

India for the first time built an elaborate system for primary market under the Capital Issues (Control) Act, 1947. The public issue of equity shares in the Indian primary market can be split into two eras viz:

- (i) Controller of Capital Issues (CCI) regime before 1992; and
- (ii) Securities Exchange Board of India (SEBI) regime from 1992 onwards.

*proposes to bring necessary legislation to implement this decision."*

With this, the CCI saga came to an end and SEBI became the governing body of securities market in India to regulate, develop and protect the interests of the investors. This enabled a free pricing mechanism for the issuers in an IPO as against controlled pricing mechanism through CCI. The issuer companies can now fix their issue price freely in consultation with the Merchant Bankers based on the assessment of market demand for the offered equity shares.

## II. GOING PUBLIC

It is the process of offering securities by an unlisted company ("Issuer") to the public for the first time- a milestone in the history of the Issuer. IPO is often regarded as a journey rather than a one-off event. It is an extensive transformational process for an unlisted company, one that requires a change in the mind-set of the company as it learns to run for the benefit of a wider group of stakeholders.

As per regulation 2(1)(w) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018("ICDR Regulations")

*"initial public offer (IPO)" means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer.*

## III. KEY AREAS OF CONSIDERATION

A comprehensive schedule is required to be drawn up involving meticulous planning and a focused approach to achieve the end goal i.e. getting securities listed. Broadly any IPO process undergoes three major stages viz. planning, execution and marketing / sale of securities to potential investors.



### i) Planning

Undertaking an honest assessment of itself by the Board of the Issuer is fundamental to determine what is needed to get the house in order before the Issuer opens the doors to public. Planning clearly starts with (a) understanding of various applicable Acts/Statutes and the kind of securities that can be offered (b) objects for which the money is intended to be raised and the quantum required (c) eligibility of the Issuer (d) percentage of dilution of Promoters/Promoter group holding (e) pre-IPO placement (f) corporate approvals and (g) the timing of the issue.

a) **Applicable Acts/Statutes** - Broadly the following Acts and Statutes govern the regulatory framework for an IPO:

**Companies Act, 2013** - Section 24 of the Companies Act, 2013, enables SEBI to administer the companies that are listed and intend to get listed. The Issuer must follow the provisions as mentioned in Chapter III of Companies Act, 2013 and the rules framed thereunder.

**ICDR Regulations** - ICDR Regulations predominantly lays down the path for the process to be followed for a public issue.

**The Depositories Act, 1996** - Every Issuer making a public offer shall issue the specified securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

**Securities that may be offered to Public** - The Issuer may offer "specified securities viz., equity shares and convertible securities (convertible debt instrument and convertible preference shares), as defined in Reg 2 (1) (eee) of ICDR Regulations.

The Issuer shall also be eligible to issue warrants in an IPO subject to the conditions mentioned in Regulation 13 of the ICDR Regulations.

**Debt securities** can also be issued to the public without its equity shares being listed by following the provisions of SEBI (Issue and Listing of Debt Securities) Regulations<sup>1</sup>.

b) **Objects of the offer/ issue** - The Issuer should be clear on the need for raising money, as the details of the same have to be spelt out explicitly in the offer documents. The Issuer has to note that not more than 25% of the money raised can be used for general corporate purposes. In case the Project for which the money is raised is also being funded through borrowings from Banks / Financial institutions, the details of the same and the extent to which the same has been tied up is also required to be incorporated in the offer documents. Post listing, the utilization of the money raised is required to be monitored and reviewed by the Audit Committee.

**Rejection of offer documents** - SEBI may reject an offer document where it has reasonable grounds to believe that the adequacy and quality of disclosures are not satisfactory or where an investor may not be able to assess the risks associated with the issue. Such grounds **include** vague objects, complex business model, unidentified promoters, etc. The companies whose draft offer documents are rejected are not allowed to access capital markets at least for a period of one year from the date of rejection<sup>2</sup>.

**Change in objects** :-It is pertinent to note that in case of change in objects or variation in the terms of contract referred to in the offer document, an exit offer shall be made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013. However no exit offer is required in case there are no identifiable promoters or shareholders in control of the listed issuer. The conditions and manner of providing exit opportunity to dissenting shareholders is provided under Schedule XX of ICDR Regulations. While the Companies Act, 2013 provides a leeway for change in the objects of the issue for which the money is being raised, the same should be used

1 Reg 2(1)(e) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008

2 General Order No. 01 of 2012 under Sec 11A of the Securities and Exchange Board of India Act 1992 SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012 prescribes the general framework for rejecting an offer document



more of an exception, as it has its own implications on the promoters, outlook of the company and the investors as well<sup>3</sup>.

### c) Eligibility criteria

#### Listing on Main Board of the Stock Exchanges

**ICDR Regulations:** Reg 5- The Issuer has to ensure that none of the directors, promoter or promoter group is debarred from accessing the capital markets, is in the wilful defaulters' list and is a fugitive economic offender.

Reg 6(1) is applicable to an Issuer who qualifies the conditions prescribed for net worth, net operating profit and net tangible assets on the basis of consolidated financial statements. The allocation in the net offer under this Regulation shall not be more than 50% to Qualified Institutional Buyers ("QIBs"). Reg 6(2) gives further flexibility to the Issuer in case it fails to qualify the conditions under Regulation 6(1). In such a scenario, the issue shall be made only through book-building process and the Issuer has to ensure allotment to at least 75% of the net offer to QIBs. The Issuer has to refund the full subscription money if this condition is not fulfilled.

Reg 6(3) provides that an Issuer whose business is intensive in the use of technology, information technology, intellectual property, data analytics, biotechnology or nano-technology to provide products, services or business platforms and which has issued equity shares with superior voting rights (SR) to its promoters/ founders who hold an executive position in the issuer company. Such Issuer, can make an initial public offer of only ordinary shares for listing after complying with the conditions laid down under this Regulation<sup>4</sup>.

**Offer for Sale:** - In case of IPO through an offer for sale, the shares tendered in the IPO should have been held by the sellers for a period of at least one year prior to the filing of draft offer document

**Listing on SME Platform:** An issuer whose post-issue paid-up capital after the IPO is less than or equal to Rs. 10 crores or whose post issue capital on the basis of face value is more than Rs. 10 crores and up to Rs. 25 crores, can get their shares listed on the SME Exchange, subject to the conditions as mentioned in Chapter IX of ICDR Regulations.

**Stock Exchange Norms:** Listing on Main Board: - The Issuer is also required to comply with the eligibility norms of the Stock Exchanges viz., the post-paid-up equity capital of the Issuer shall not be less than Rs. 10 crores and the market capitalization shall not be less than Rs. 25 crores.

### d) Percentage of dilution of Promoter/Promoter group holding-The Issuer is required to determine upfront the extent of offer that will be made to the public based on the criteria mentioned below SCRA and its Rules- Rule 19(2)(b) of the Securities

3 i. Brooks Laboratories Limited & Ors Vs Securities and Exchange Board of India, ii. P.G. Electroplast Ltd. & Ors Vs Securities and Exchange Board of India, iii. Bharatiya Global Infomedia Ltd. vs Securities and Exchange Board of India and iv. Datsons Labs Ltd. (formerly known as Aanjaneya Lifecare Limited) vs Securities Exchange Board of India

4 As per Regulation 2(1)(eeee) of ICDR Regulations SR equity shares' means the equity shares of an Issuer having superior voting rights compared to all other equity shares issued by that issuer

Contracts Regulation Rules, 1957 prescribes the minimum percentage of equity shares which are required to be offered to the Public

Post issue capital at issue price	Dilution
Less than or equal to Rs. 1600 Crores	At least 25% to be offered to public
Greater than Rs. 1600 Crores but less than or equal to Rs. 4000 crores	Such percentage of equity shares which is equivalent to Rs. 400 Crores shall be offered to public
Greater than Rs. 4000 Crores	At least 10% to be offered to public

In the event that the initial public shareholding is less than 25%, the Issuer shall be required to increase its public shareholding to 25% within a period of 3 years from the date of listing of the equity shares in the manner specified by SEBI.

**Lock-in of shares:** The Promoters' holding to the extent of 20% of the post issue capital shall be locked in for a period of 3 years, while the holdings of existing shareholders prior to the IPO shall be locked in for a period of 1 year.

**e) Pre-IPO Placement:** - Pre-IPO placement refers to an issuance of equity shares, or securities convertible into equity shares, by an Issuer after filing the Draft Red Herring Prospectus with SEBI and prior to the filing of Red Herring Prospectus. The Draft Red Herring Prospectus shall contain the maximum number of equity shares that may be issued and the maximum amount to be raised. Convertible securities issued through pre-IPO placement have to be converted into equity shares prior to filing of the Red Herring Prospectus. The Issuer may note that SEBI ICDR prohibits further securities for a period of 6 months from the date of listing unless the same has been disclosed in the offer document.

**f) Corporate Approvals:** - An IPO of equity shares through fresh issue requires approval from the Board of directors and shareholders of the issuer, pursuant to Section 179 (3) and Section 62 (1) ( c ) of the Companies Act, 2013, respectively. Approvals under other statutes such as FEMA or sectoral regulators have also to be factored. In case of Offer for Sale, the selling shareholders might be required to obtain certain approvals under applicable law. **Amendment to Articles of Association** - An Issuer company which has granted special, management or ownership rights, veto rights etc., to a particular set of shareholders is required to amend its Articles of Association by deleting such privileged rights.

## ii) Execution

**a) Key Parties to the IPO:** The Issuer appoints Merchant Bankers, legal counsels, the Registrar to the Issue, Syndicate members and Bankers to the Issue. It is important to note that a Merchant Banker who is an associate of the Issuer as per Regulation 21A of the SEBI Merchant Banking Regulations, 1992 shall be eligible only to market the issue.

- b) **Kick off meeting:** Before the actual due diligence exercise, a meeting of the company management, auditors, Merchant Bankers and legal counsels is convened to discuss the schedule of activities to be undertaken by each one of them and the timelines for filing the DRHP with SEBI.
- c) **Due Diligence:** The next step is commencement of the due diligence exercise which lays the foundation on which the disclosures are to be made in the offer documents. The code of conduct for Merchant Bankers require them to exercise due diligence, ensure proper care and exercise independent professional judgment in the course of their hand holding the Issuer company for its IPO. As the regulatory framework is silent on what may tantamount to due diligence, an inference can be made from various pronouncements which indicate a "Due Diligence" to be a reasonable diligence, a prudent man would exercise in the conduct of his own affairs<sup>5</sup>.
- d) **Disclosures in offer Document:** An issuer making a public issue of specified securities shall make the disclosures as specified in Schedule VI of ICDR Regulations and the Companies Act, 2013.
- e) **Checkpoints for due-diligence:**  
The Issuer should be well prepared in providing the necessary documents to Merchant Bankers for conducting the due diligence. The level of preparedness can be high if the Issuer is aware of the material disclosures which forms part of the offer document. To list a few, the Issuer should be mindful of few important disclosures as under:
- Identification of Promoters and Promoter group - The first step for the Issuer is to identify Promoters and Promoter group based on the criteria mentioned in ICDR Regulations.
  - Outstanding Litigations - Necessary documents of the Issuer/its directors/promoters/subsidiaries involving criminal proceedings, actions taken by regulatory and statutory authorities, disciplinary action including penalty imposed by SEBI or Stock Exchanges against the promoters in the last five financial years, claims related to direct and indirect taxes should be collated and kept ready for diligence purpose. For other pending litigations, a materiality policy as approved by the Board of Directors of the Issuer company is required to be in place as this forms part of disclosure in the offer document.
  - Approval and Permissions – It is necessary to ensure that all the required approvals, permissions and licenses are in place and their details shall be disclosed in the offer documents.
  - Secretarial Records - All essential records under the Companies Act including documents pertaining to history of build-up of capital since incorporation should be kept updated.
  - Group Companies - The Group Companies is defined under Regulation 2(1)(t) of ICDR Regulations. The financial records of the group companies for last three financial years and the details of any pending litigation involving the

group company which has a material impact on the issuer has to be ascertained. Apart from companies which are covered under Related Parties, the Board of the Issuer is also required to identify companies which may fall under the definition of Group Companies.

- **Financial Statements:** The disclosure of the Financial information in the offer document is divided into two parts viz., restated financial information and other financial information. The Restated Financial Information, comprises of the audited Consolidated Financial Statements in accordance with Ind AS for the last three years and the stub period, (if any).

The other financial information comprises particulars such as Earning per share, Return on Net worth, Net Asset Value per share, EBITDA etc., as per the Guidance Note issued by the Institute of Chartered Accountants of India.

Maintenance of Due Diligence records -The due diligence records are to be maintained by the Merchant Bankers for a period of 5 years.

### iii) Marketing and sale of securities to potential investors

**Category of investors:** Qualified Institutional Buyers, Non-Institutional Investors and Retail individual investors are the categories of investors who are eligible to subscribe to an offer. While the Lead Managers market the issue to QIBs, Syndicate Members focus on the other category of investors.

Anchor Investors are QIBs who make an application for a value of at least Rs. 10 crores before the issue opens. As the name denotes, the anchor investors take up shares at a fixed price to make other investors confident and improve the demand for the share.

**Pricing:** An IPO can typically be a fixed price issue or a book-built issue. In a book-built issue, the Price band is determined, but the actual issue price is discovered after the bidding period, through the "Dutch auction" mechanism. Generally, the key factors to the pricing of an IPO are as under:

- Financial performance of the company over the last 3 years
- Unique nature of the product or the services provided
- Comparative valuation of companies in the peer group
- Qualitative factors such as management pedigree, brands, and corporate governance.

Even after considering qualitative and quantitative factors, the pricing in an IPO can be totally different, as it also depends on the feedback from the brokers, institutional investors especially the QIBs, state of the market at the time of the IPO, risks associated with the Issuer etc., which may finally determine the indicative price band. Hence, the issue price will not always reflect the correct valuation of the Company, resulting in overpricing/underpricing in certain offerings.

**Publicity Restrictions** - ICDR Regulations prescribes restrictions on Issuer company, its associates and lead managers for any public communication. Public communication includes advertisements, publicity material

5 i. Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal V. Rajinder Singh Anand (2008) 5 SCC 117. ii. Imperial Corporate Finance & Services Private Limited Vs SEBI and iii. Almondz Global Securities Ltd. Vs SEBI.

and research reports etc. The restriction commences from one day prior to filing of draft offer document until listing of shares. This period is also referred to as **Blackout period**. During this period any Public communication shall contain only such information which is part of the draft offer document/offer document. Projection, estimates or description of any future business plan is strictly prohibited. Further any advertisement published should be consistent with the past practices followed by the Issuer. Any public communication other than product/service advertisements, need to specifically carry a disclaimer, mentioning about the proposed IPO and that the offer document is filed with the Regulator. The Merchant Banker has to submit a compliance certificate for the period between the date of filing the draft offer document and the date of closure of the issue, in respect of news/ media reports.

**Restrictions on distribution of Research Report** – Generally, Merchant Bankers distribute Pre-deal Research Reports regarding the Issuer to its clients prior to the launch of the Offering. This Pre-deal Research Report not only educates the investors about the issuer but also evinces interest in the offer. While these Reports are used as a marketing tool, they are subject to certain restrictions on its distribution.

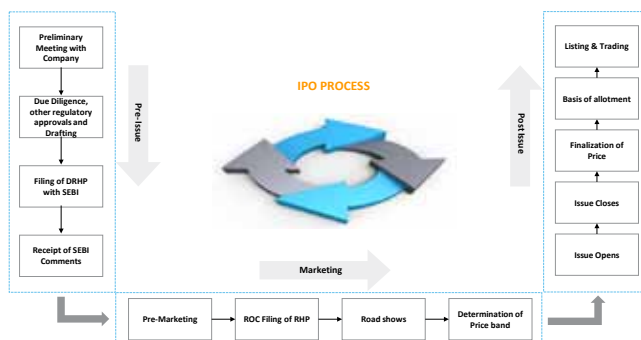
**Marketing Restrictions** - Regulation S & Rule 144A of the Securities Act, 1933(United States): If the Issuer company decides to market the issue to US investors, then the requirements of the Rule 144A of the Securities Act, 1933 have to be complied with. In such a case, the Merchant Bankers or their Syndicates have to either get themselves registered as a Broker-Dealer with Securities Exchange Commission or have to enter into a chaperoning arrangement with a US Broker- Dealer.

**Chaperoning Arrangement** - Pursuant to Rule 15a-6 of the Securities Exchange Act of 1934, foreign firms are permitted to market securities to U.S. investors without registering themselves as a US Broker-Dealer. The marketing in such an arrangement is done by entering into an agreement with a registered U.S Broker - Dealer. This arrangement is called chaperoning arrangement.

**Timelines of activities from closure of issue till listing** - SEBI in order to give Issuers faster access to the capital has mandated to list the securities within a period of 6 working days from the closure of the issue. This has become a reality due to ASBA facility and the recent introduction of UPI mechanism - a step towards digitizing the offline processes involved in the application process by moving the same online.

## IV.PROCESS

The following chart depicts the entire IPO process



Pre-IPO placement refers to an issuance of equity shares, or securities convertible into equity shares, by an Issuer after filing the Draft Red Herring Prospectus with SEBI and prior to the filing of Red Herring Prospectus. The Draft Red Herring Prospectus shall contain the maximum number of equity shares that may be issued and the maximum amount to be raised.

## V. MISCELLANEOUS

**Corporate Governance:** The Issuer should be in compliance with the corporate governance requirements contained in the Listing Regulations at the time of filing of the Draft Red Herring Prospectus with SEBI and the stock exchanges. Accordingly, an issuer shall be required to: (i) appoint independent directors; (ii) constitute various committees including the audit committee, stakeholders committee nomination and remuneration committee and formulate relevant policies as prescribed under the Listing Regulations.

**SEBI Prohibition of Insider Trading Regulations:** These Regulations are not only applicable to listed companies but also companies that intend to get their shares listed. Hence the Issuer should be ready for complying with the cauldron of the restrictions of these Regulations and initiate necessary actions such as formulating (i) Code of Conduct for Regulating, Monitoring and Reporting of Trading by Insiders; and (ii) Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information etc.. This will enable the Company to be compliant with the Regulations immediately after listing too.

## VI. CONCLUSION

Investor confidence is fundamental to the successful operation of the securities market and it stems largely from credible and reliable disclosures. SEBI has considerably strengthened its mechanism to ensure that the disclosures in the offer documents provide complete and material information to the investors to enable them to make suitable investment decisions. The recent changes are not only progressive for the Issuers but also for the Investors. Whilst the macro-economic environment plays an important role for a successful IPO, there are also other factors beyond the control of the Issuer such as global market situations, the local market sentiment, political environment and government's outlook towards the industry which act as a deterrent for any Issuer planning for an IPO.

## REFERENCES

1. The Companies Act, 2013
2. Securities Act of 1933 (United States)
3. Securities Exchange Act, 1934 (United States)
4. [www.sebi.gov.in](http://www.sebi.gov.in) for SEBI Act, 1992 and its Rules and Regulations thereof, SEBI and SAT orders
5. [www.sci.gov.in](http://www.sci.gov.in) for Supreme Court Judgement
6. [www.indiabudget.gov.in](http://www.indiabudget.gov.in) for the extracts from the Budget Speech of Finance Minister
7. [www.bseindia.com](http://www.bseindia.com)
8. [www.nseindia.com](http://www.nseindia.com)



# Inquiry & Inspection – A Comparative Study

Inquiry and Inspection are effective tools in the hands of the Regulator to monitor and ensure that Corporate citizens comply with law and safeguard the interests of shareholders, creditors and other stakeholders. Dr J J Irani Expert Committee on company law, which is the precursor to the Companies Act 2013, had however, suggested that caution be exercised while utilizing these tools by the Regulator in view of the widely prevalent negative feeling about Inspector Raj. In this article, the extent to which this concern of the Expert Committee has been addressed in sections 206 and 207 of the Companies Act 2013 has been vividly examined. The distinction between Inquiry and Inspection is clearly brought out and it is recommended that sections 206 and 207 of the Companies Act 2013 is reviewed so as to fully incorporate the very valid and efficacious recommendations of the Expert Committee into the said sections.



**Henry Richard, FCS**

Former Regional Director  
Ministry of Corporate Affairs, Hyderabad  
[richard.henry.in@gmail.com](mailto:richard.henry.in@gmail.com)

## BACKGROUND

**A**ny Regulator under any jurisdiction require efficacious and appropriate tools to monitor and ensure compliance of the law entrusted to the Regulator for administration. Company Law is no exception. The Companies Act 2013 provides for many tools for the Regulator, out of which Inquiry & Inspection are prominent. These tools are like two edged swords which can cut on both sides. This aspect is explained in a very lucid and vivid manner in Dr. J J Irani Expert Committee Report on company law, which is a precursor to the Companies Act 2013. It would be worthwhile to extract the relevant portion of the said Report for immediate reading.

*"A view was taken that inspection of Books of Accounts, taken up in isolation, would not serve much purpose. Indeed, in the present form as provided for under S209 A of the Act, there is a danger that such inspections may be taken as a part of administrative routine. There would be a considerable expenditure of time and energy both on the part of the inspecting agency as well as the company without accomplishing much. Compliance with law cannot be enabled by a presumption of violation. Nor can it be ensured by physically checking of entities involved. If that were the case it would be practically impossible to enforce any legal system. The benefits of having an elaborate framework of statute and rules would be lost if law enforcing agencies are required to also physically inspect the subject entities to be confident that they are complying with it. Compliance should be based on enlightened self-interest, requiring intrusion by law enforcement agencies only in limited, well established circumstances. It should not be the intention of the law to establish an "Inspector Raj"*

*The Committee was of the view that state intrusion into the affairs of a corporate entity should be regarded a sign of collapse of*

*its governance structure. However, if and when such intrusion takes place, it should be well directed, effective and should have deterrent effect. More damage would be done by frequent intrusion into the affairs of companies with little or low application of sanctions. Such interaction between the state and the corporate citizen would result in an unhealthy relationship, imposing undesirable transaction costs. Nor, should law provide excessive powers to enforcement agencies to completely disrupt or paralyze the functioning of a corporate entity through arbitrary exercise of statutory powers on mere suspicion or an engineered or a frivolous complaint. The Committee are therefore of the view that instead of separate provisions for both inspection and investigation under the Act, a single comprehensive process of investigation, to be taken up in a manner mandated by law and protecting the rights of the companies, may be provided for. This would enable Government to focus in a better and more result-oriented manner for enquiry into the defaults by the Companies.*

### Random Scrutiny

*The Committee felt that overregulation and excessive supervision could disrupt the functioning and the decision-making processes in a company. This would also tend to penalize actions taken in good faith by managements particularly of small companies who may not have access to expert professional advice. An atmosphere of suspicion is unlikely to result in improvements in corporate governance. Companies would be wasting resources in evasive tactics which would impose unnecessary costs in a competitive environment. The Committee is of the view that rather than inspection of the working of companies through the enforcement machinery merely to assess whether a company is compliant with the law, the law should place the liability for compliance on the managements and owners/controllers interests of the companies, combined with a system of oversight through random scrutiny of the filings of documents by the companies. This exercise should not only enable up to date filings but should also identify gaps in disclosures by the companies. On the basis of such random scrutiny, the Registrar may also have the power to call for information, documents or records as required under law. If, from such random scrutiny, sufficient grounds arise warranting investigation of the affairs of the company, the same may be considered by the Central Government....."*

The above observations of the Expert Committee clearly explain the negative impact on Good Corporate Governance if the tools of Inquiry and Inspection are indiscreetly used. The Expert Committee also warned that frivolous complaints from some disgruntled individuals without adequate substantiation should not trigger Inquiry or Inspection against good governed companies which would augment their compliance cost. Besides that, inquiry or inspection entails valuable resources as also time costs and

there is a need to ensure that these tools are used sparingly. Therefore, the Expert Committee has recommended a gradual progression from examination of documents filed by companies with the Registrar of Companies through a process of *Inquiry* and then proceed for *Inspection or Investigation* if the facts and circumstances warrant such Inspection or Investigation.

## INQUIRY

Webster's College Dictionary defines "*Inquiry*" as seeking for information, an investigation into an incident or question. Collins Thesaurus states "*Inquiry* means an instance of questioning, a request for information, a search for knowledge or the truth about something. Cambridge Dictionary simply states that *Inquiry* means "asking for information". The word "*Enquiry*" is generally used in common parlance, whereas the word "*Inquiry*" is used in official circles like a police investigation.

The erstwhile Companies Act 1956 had separate provisions and sections for *Inquiry*. All the provisions relating to *Inquiry* were contained in sections 234 and 234A of the Companies Act 1956. These provisions were self-contained and comprehensive. However, in the Companies Act 2013 (Hereinafter referred to as the Act), the provisions relating to *Inquiry* and *Inspection* were merged together in sections 206 and 207 of the Companies Act 2013. One of the objectives of the Companies Bill preceding the Companies Act 2013 was to reduce the size of the Companies Act and the same was achieved through such merger of sections. In effect the provisions relating to *Inquiry* are to some extent the same in the Companies Act 1956 as well as the Companies Act 2013.

The salient features of the provisions relating to *Inquiry* contained in sections 206 and 207 of the Act are briefly discussed below

Firstly, the Registrar of Companies while examining the documents filed with him by the company or on any information received by him, is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company to furnish such information or explanation or produce such documents within a specified time and it is the duty of the company and its officers to furnish the same. If there is failure of compliance on the part of the company or its officers, the penal provisions will be attracted.

The notice issued by the Registrar can call for any information or explanation or direct production of such documents. The word "document" has very wide meaning. Section 2 (36) of the Companies Act provides an inclusive definition which includes all kinds of documents including any papers. Section 2 (12) of the same Act defines paper or papers to include books of accounts. Therefore, an inquiry notice would also include an inspection of the books of accounts of the company. Thus, the new Companies Act 2013 has in effect done away with the distinction between inquiry and inspection. Whereas, the erstwhile Companies Act 1956 had a very clear distinction between inquiry and inspection and separate sets of sections dealt with inquiry and inspection. Sections 234 and 234A of the said Act dealt with inquiry and Section 209A dealt with inspection. Therefore, the recommendations of Dr. J J Irani Expert Committee on Inquiry and Inspection which suggested that there should be a gradual progression from Inquiry to Inspection or Investigation and any inspection or investigation should be ordered only when the circumstances warrant such action, have not been reflected in sections 206 and 207 of the new Companies Act 2013.

“ One of the objectives of the Companies Bill preceding the Companies Act 2013 was to reduce the size of the Companies Act and the same was achieved through such merger of sections. In effect the provisions relating to Inquiry are to some extent the same in the Companies Act 1956 as well as the Companies Act 2013.

Secondly, sub section (4) of section 206 of the Companies Act 2013 provides that the Registrar can issue a written order to the company calling for such information or explanation on the basis of information with him or provided to him or on a representation made to him by any person that the business of the company is being carried on for a fraudulent or unlawful purpose or is not in compliance with the provisions of the Act or the grievances of investors are not being addressed. It is important to note that the circumstances enumerated in this sub section are in present continuous. Therefore, the Registrar should satisfy himself before issuing a written order under this sub section that the circumstances enumerated therein do exist on the day of issuing the order. In the circumstances, the allegations or complaints received by him need to have certain substantive basis evidencing the fact that the fraudulent or unlawful activities are continuing on the date of the complaint and mere frivolous complaints should not be acted upon.

Thirdly, the responsibility to furnish the required information or explanation or documents rests on the company and its officers. The past officers are also responsible to furnish the required information or explanation to the best of their knowledge pertaining to their period.

Fourthly, if the Registrar does not receive the required information or explanation or documents within the specified time or on an examination of the documents furnished the Registrar is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, the Registrar by another written notice call on the company to produce such further books of account, books and papers for inspection. In this manner, a regular full-fledged inspection of the books of accounts will be commenced by the Registrar. The proviso to sub section (3) of section 206 of the Act states that the Registrar before issuing a notice for inspection under this sub section shall record the reasons in writing for issuing such a notice.

Fifthly, the Central Government may, if it is satisfied that the circumstances warrant, appoint a person other than the Registrar to carry out an Inquiry under section 206 of the Act.

Sixthly, the Registrar or the Inspector carrying out Inquiry may take copies of required documents as well as place or caused to be placed marks of identification in token of having made the inspection. These actions are required to create evidence for a successful legal prosecution which may be initiated subsequently on the basis of the Inquiry Report for violations of the provisions of the Act.

Seventhly, the Registrar or Inspector carrying out Inquiry under this section shall have the powers of a civil court under the Code of Civil Procedure 1908 relating to the production of the books of accounts and other documents at such place as required, summoning and examining the persons on Oath and inspecting the books at any place.

Eighthly, the Registrar or the Inspector shall submit a report to the Central Government on the Inquiry done along with relevant documents. The report may include a recommendation if necessary, to carry out an investigation into the affairs of the company. The Bombay High Court has observed in the matter of Narayanilal Bansilal vs Maneck Phirose Mistry and Another that “..... the report (of the Inspector) is nothing more than an expression of his (Inspector) opinion and there is neither finality nor authoritativeness about it. That finality and authoritativeness can only be given by the Central Government if the Central Government decides to launch prosecution accepting the opinion given by the Inspector...”

Lastly, the company and every officer of the company who is in default, and who does not comply with an order or notice of the Registrar or the Inspector under section 206 of the Act shall be liable for a fine which may extend up to rupees one lakh and with an additional fine which may extend up to rupees five hundred for every day of continuing default. In case a director or an officer of the company does not comply with the direction of the Registrar or Inspector issued under section 207 of the Act such director or officer shall be liable for imprisonment which may extend up to one year and with the fine of not less than rupees twenty-five thousand and may extend up to rupees one lakh. This offence is not compoundable under section 441 of the Act.

Moreover, the director or an officer of the company who has been convicted under this section shall vacate the office and shall not be eligible to hold an office in any company. There are variant views as to whether, this disqualification should be considered as an additional disqualification more than those stated in section 164 of the Companies Act 2013. Clause (d) of sub section (1) of section 164 of the Act states that a person convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. The general and broader view of the Judiciary under the Principles of Interpretation of Statutes vis-à-vis the Doctrine of Harmonious Construction has been explained by the Supreme Court as follows “.....when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that if possible, effect should be given to both. The consistency should be presumed and it should not be assumed that what is given with one hand by the legislature would be taken away by another...” The Doctrine of Reasonable Doubt has also been explained by the Supreme Court in the following words “.... a golden thread which runs through the web of the administration of justice is that if two views are possible on the evidence adduced in the case, the view which is favourable to the accused should be adopted...” (AIR 1973 SC 2773, 1974 CrLJ1, 1973 2SCC 808, 1974 ISCR 722). Therefore, one can take the view considering the observations of the Honourable Supreme Court of India that the disqualification arising under section 207 of the Act would be restricted to the period mentioned in section 164 of the Act vide supra

However, these punishments are not applicable to any past officers.

## INSPECTION

The Legal Dictionary defines “Inspection” as an examination for the purpose of gathering evidence. The Cambridge Dictionary defines inspection as an act of looking at something carefully or an official visit to an organisation to check that everything is correct and legal.

In the original Companies Act 1956, there were no specific provisions relating to inspection of the books of accounts by the Registrar of

Companies. First time the provisions relating to inspection of the books of accounts and other books and papers were introduced in sub section (4) of section 209 of the Companies Act 1956 through the Companies Amendment Act 1965. This amendment provided very minimal powers to the Registrar or the designated inspector carrying out the inspection. The company and the officers had the responsibility to produce the books of accounts and other books and papers for inspection and the Registrar or the Inspector could take copies of such documents and leave identification marks.

Subsequently, elaborate provisions were made by introducing a separate section for inspection through the Companies Amendment Act 1974. The new section 209A introduced in the Companies Act 1956 conferred the powers of the Civil Court on the Registrar or the Inspector regarding the production of documents, summoning of directors and officers of the company and recording of statements on Oath and inspection of any documents, books and papers. This section empowers the Registrar or an Inspector appointed under this section to call for the books of accounts and other documents of the company under inspection. The directors, officers and employees of the company should co-operate and produce the required documents and furnish required explanation or information. Failure to co-operate would entail monetary penalties and disqualification from holding the office of director or officer apart from imprisonment up to one year. The objectives of inspection have been elaborately enumerated in the Statement of Objects and Reasons appended to the Companies Amendment Bill 1974 and the subsequent amendment Bills which are briefly stated below

- a) Keeping a watch on the performance and efficiency of the company
- b) Whether the affairs of the company are being carried on in accordance with the provisions of the Companies Act
- c) Whether there are any falsification of accounts and appraise its profits or losses
- d) Whether the management has misused its fiduciary position for personal advantage
- e) Whether the funds of the company have been misappropriated
- f) To enable the government to diagnose whether the business of the company is being carried on fraudulently and for unlawful purpose and to defraud the shareholders, creditors and public at large
- g) Whether the auditors have carried out their duties properly and whether their certification that the books of accounts show a true and fair view is reasonable.
- h) To check compliance of Accounting Standards and the deviations and its effect on the relevant Financial Statements
- i) To examine compliance of corporate governance norms wherever applicable
- j) To check compliance of disclosure requirements in the Financial Statements and other documents
- k) Whether statutory filings have been properly complied with
- l) Whether required approvals of Statutory Authorities have been obtained wherever required
- m) Whether professional certification of documents and reports have been correctly and properly done by the concerned professionals such as Company Secretaries or Auditors.

The Bombay High Court has observed on the objective of Inquiry and Inspection in the matter of Narayanilal Bansilal vs Maneck Phirose Mistry and Another as under

“.....it is fallacious to suggest that the only object of the Inquiry and the only purpose of the report was to launch a prosecution under section 242 of the 1956 Act. It was left to the discretion of the



*Central Government under section 242 to launch or not to launch a prosecution and as we shall point out in another context, the report of the Inspector and the inquiry held by him serve under the Companies Act many more important purposes than the mere prosecution of a defaulting director.....Therefore, the main and primary function of this investigation is to look into the affairs of the company from its working, to see whether it is worked in the interest of the shareholders and to find out whether the privilege of incorporation has or has not been abused...."*

The provisions relating to inspection are found in sections 206 and 207 of the Companies Act 2013. Unlike the erstwhile Companies Act 1956, the provisions relating to Inquiry and Inspection are merged in sections 206 and 207 of the Companies Act 2013. These provisions are very similar to the provisions contained in section 209A of the Companies Act 1956. The new provisions have added a few additional matters, namely


- a) The responsibility to furnish information or explanation in response to the notice or order of the Registrar or Inspector under sections 206 and 207 of the Act has also been placed upon the *past officers*.
- b) If the Registrar decides to issue a notice of inspection of the books of accounts and other books and papers to the company under section 206 of the Act, *he should record the reasons for the same*.
- c) The Central Government may, having regard to the circumstances, by general or special order authorize *any Statutory Authority* to carry out inspection of the books of accounts and other books and papers of any company or class of companies
- d) The monetary penalties for non-compliance leviable on company and its officers have been substantially enhanced. The penalty on the company has been enhanced to rupees one lakh and rupees five hundred for every day of default and the penalty on officers enhanced in the range of rupees 25000 to 100000.

The scope of inspection was examined by the Kerala High Court in the matter of *C. V. Karupunni vs Joint Director, Inspection, Company Law Board* and it was held that "... Where the contention was that section 209A of the Companies Act 1956 fell under the head "Accounts" in Part IV and the right of inspection in relation to the company would be restricted to that of the books of accounts and that "other books and papers" may be construed *ejusdem generis*. Held that there is considerable force in the argument that the principles of *ejusdem generis* have to be applied in deciding the question as to the type of books and documents, the Inspecting Officers are entitled to inspect. In other words, the documents and papers referred to in sub section (1) of section 209A must be those which have the character of books of account. The submission that in the guise of carrying out an inspection of the books of accounts and other books and papers, the inspecting authorities cannot make a roving enquiry into all the affairs of the company merits serious consideration. The scope of inspection of the books of accounts and other books and papers under section 209A has its limit and has to be distinguished from the investigation of the company's affairs under section 237. In case, the person concerned requires to inspect books and documents other than the books of accounts and other books and papers, he should seek appropriate directions from the court..." The restriction detailed in the above judgement may not apply to sections 206 and 207 of the Companies Act 2013 in view of specific provision that the Inspector appointed under section 206 of the said Act can exercise the powers of the Registrar in the matter of Inquiry and the scope of Inquiry is not limited to the books of accounts but extends to all documents of the company.

Apart from the above, the procedure for inspection under the Companies Act 2013 have remained the same as under the erstwhile Companies Act 1956.

## CONCLUSION

Dr. J J Irani Expert Committee on Company Law which is a precursor to the Companies Act 2013 were examining the provisions relating to inspection at a time when there was widespread negative feeling among the Corporate Sector about *inspector raj*. The Expert Committee has adequately discussed this aspect in its report and the relevant extracts from the report has been stated *vide supra*. The Committee is of the view that this tool needs to be used sparingly and only when the circumstances warrant. The Committee has recommended a *gradual progression* from Inquiry to Inspection and the latter to be carried out only if warranted. The Committee also warned of acting on frivolous complaints from disgruntled persons which can adversely affect good governed companies.

A closer study of the provisions contained in sections 206 and 207 of the Act would reveal that these concerns expressed by the Expert Committee have not been adequately addressed. Firstly, the Committee recommended a *gradual progression* from Inquiry to Inspection and the latter to be carried out only if warranted. Whereas, sub section (1) of section 206 of the Act dealing with Inquiry outright provides that the Registrar or Inspector carrying out Inquiry against the company can call for any explanation or information from the company or direct the company to *produce any document*. The word "*document*" has a very wide connotation under the Act. Documents would also include the books of accounts and any book or paper. Thus, the Registrar or the Inspector carrying out Inquiry under section 206 of the Act would start with Inspection straightaway. The situation under section 234 of the erstwhile Companies Act 1956 was not so. Sub section (1) of section 234 of the said Act empowered the Registrar to call for only any information or explanation based on scrutiny of the documents filed with him by the company or on the basis of any complaint. There was no mention of any power to call for production of any document. The Registrar could invoke the power of inspection and direct production of books of Accounts and other books and papers under sub section (3) of section 234 only if the information or explanation furnished by the company are inadequate or the required information or explanation are not furnished. Thus, there was a *gradual progression* from Inquiry to Inspection. In the matter of vexatious complaints, section 234 of the erstwhile Companies Act 1956 provided that the Registrar can make available or convey the details of such complainant to the company so as to enable the company to take such appropriate action against the complainant as deemed proper and fit. No similar provision is found in sections 206 or 207 of the Companies Act 2013. Therefore, it is felt that a fresh look into the Expert Committee recommendation is required so as to make suitable changes in the present provisions contained in sections 206 and 207 of the Companies Act 2013 relating to Inquiry and Inspection with a view to avert or mitigate the negative impressions emanating from *inspector raj*. 

## REFERENCES

1. Narayanlal Bansilal vs Maneck Mistry & Another (AIR 1959 Bom 320), (1959(61) BOMLR 220), (ILR 1959 Bom 952)
2. C V Karupunni vs Joint Director, Inspection, Company Law Board. (1986, 59 Company Cases 814(Kerala))
3. AIR 1973 SC 2773, 1974 CrLJ1, 1973 2SCC 808, 1974 ISCR 722.
4. Dr J J Irani Expert Committee Report on Company Law
5. The Companies Act 1956
6. The Companies Act 2013
7. Civil Procedure Code 1908
8. Premier on Company Law – Volume-1 (ICSI)

# Withdrawal of application admitted under Insolvency and Bankruptcy Code- A critical analysis on inconsistencies and ambiguities

This article explores the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") to address mainly three questions; (1) Whether it is possible for an aggrieved party to approach the Appellate Forum ("NCLAT") to prevent the Interim Resolution Professional ("IRP") from constituting the Committee of Creditors ("CoC") after the admission of the application by the Adjudicating Authority ("AA"), for seeking time to settle the debt?; (2) Will an order passed by NCLAT preventing the IRP from constituting the CoC will affect the time-limit specified for the process under section 12 of the Code?. (3) Whether the Regulation 30A of the IBBI (IRPCP) Regulations, 2016 is inconsistent with the Section 12A of the Code?.



**Bijoy P. Pulipra, FCS**  
Practicing Company Secretary  
Thiruvananthapuram  
[bijoy@artismc.com](mailto:bijoy@artismc.com)

## DELAY IN RESOLUTION PROCESS- A CONCERN TO BE ADDRESSED

**T**he IBC has been brought in as a complete code and as panacea for all the issues noticed in the previous bankruptcy law regime. The entire resolution process is designed as a procedure driven time bounded exercise with little scope for judicial intervention. However, in real situation there are many hurdles to be crossed by IRP, such as ambiguity in the applicability of the provisions, lack of precedence, frequent amendments in the legislation, excessive judicial intervention, etc which may eventually lead to unexpected delay in the whole process. The Applicants are initiating the application under the Code as a last and final option to recover the defaulted due amount from the Corporate debtor. Though the Code envisioned to admit an application by AA within 14 days of filing of the application there are many practical issues which are delaying the admission process. In case of operational Creditors adequate notice is also being given to the Corporate Debtor before admitting the application. The application is being admitted by the AA after giving an opportunity of being heard to the Corporate Debtor. Above all the Section 12A of the Code permits the Applicant to withdraw the admitted application after obtaining the approval of the CoC. However, despite of all these, even after the admission of the application there are instances in which the IRP, through judicial intervention, have been prevented from constituting the CoC for enabling the parties to settle the admitted amount. It is interesting to note that the newly substituted sub-regulation 30A is inconsistent with the provisions of Section 12A of the Code, while prescribing the procedures to withdraw the admitted application and the said ambiguity is giving more

room for further delays in the resolution process. This article highlights the anomalies and lacunas that are to be addressed to enable smooth resolution process.

## ROLE OF IRP

The role of IRP is for first thirty days from the insolvency commencement date. During that short period, he has to set the stage for the equipping the Corporate Debtor to accept Resolution Plan by collating the claims through public announcement, verification and determination of the claims received and constitution of the CoC. Along with the above, the IRP is responsible to manage the affairs of the Corporate Debtor as a going concern and take control and custody over its assets. He is responsible to monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors. The IRP shall have to make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. The office of the IRP will cease on the date of first meeting of the CoC.

## COC - THE STARTING POINT OF RESOLUTION

As per provisions of section 13 of the Code, the date of commencement of the resolution process shall start from the date of admission of the application by the AA. Though an IRP is appointed by the AA on the date of admission, the actual Resolution Process will start only from the date on which the CoC is constituted. The CoC, comprising of all financial creditors of the Corporate Debtor, at its first meeting shall appoint a resolution professional. From that point onwards the CoC shall be consulted by resolution professional before taking any major decisions as set out in section 28 of the Code.

## CONSTITUTION OF COC - AN ESSENTIAL INGREDIENT FOR UP-KEEPING THE ESSENCE OF CODE

CoC plays a pivotal role in the Corporate Insolvency Resolution Process (CIRP) from the date of its constitution. As per sub-section(c) of section 18 of the Code, the IRP shall after collation of all claims received against the Corporate Debtor constitute a CoC. The CoC shall comprise of financial creditors of the corporate debtor. The IRP shall monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the COC. The COC shall be constituted by the IRP in accordance with the provisions of Section 21 of the Code.

As per Regulation 17 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 the IRP shall file a report certifying constitution of the CoC to the AA within two days of the verification of claims received under sub-regulation (1) of regulation 12. The IRP shall hold the first meeting of the CoC within seven days of the filing of such report. The Operational Creditors, Financial Creditors, Workmen and Employees shall submit claim with proof of claim to the IRP and such person may submit supplementary documents or clarifications in support of the claim before the constitution of the CoC.

## TIME IS OF ESSENCE OF THE CODE

It has been undoubtedly established by various judicial pronouncements that the time is of essence of the Code. The time starts running from the date of admission of the application by the AA and process have to be completed within the time-limit specified under Section 12 of the Code. The CIRP, as per section 12(1) of the Code to be completed within a period of one hundred and eighty days from the date of initiation of the process. If the said period of one hundred and eighty days needs to be further extended, then the resolution professional shall, based on the instruction of the CoC by way of a resolution passed with sixty-six percent vote shares at their meeting, have to submit an application to the AA for the purpose. On receipt of the application, the AA may by order extend the duration of the process by a maximum period of ninety days, if it is satisfied that the CIRP cannot be completed within the original time-limit of one hundred and eighty days. The said extension is permitted only once and there is no further scope for extending the time period beyond two hundred and seventy days (ie 180+90= 270 days). Though the time period is crystallized by the provisions of the Code, due to ambiguity in the provisions and due to developing nature of the jurisprudence, many interim orders were passed by AA and its Appellate Authorities, which had resulted in immense delay in completing the process. As a remedy to that, the Central Government had intervened and inserted a proviso to sub-section (3) to section 12 that corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of CIRP granted under the section 12 and time taken in legal proceedings in relation to such resolution process of the corporate debtor.

## DUTIES OF IRP IS MANDATORY OR DIRECTORY IN NATURE?

It is pertinent to note that the Section 18 and 21 have conspicuously used the words "shall" with respect to the duties of IRP in connection with the constitution of CoC. As per the language of the statute, the IRP is duty bound to constitute the CoC and convene the first meeting of the CoC within the time-limit specified under the regulations. When used in statutes the word "shall" is generally imperative or mandatory. However, the mere usage of the word "shall" cannot be invariably interpreted as "mandatory" under every circumstances. It can be sometimes interpreted as "directory" also depending on the intention of the legislature. It is well settled law that the word "shall" be construed in the light of the purpose of the Act or Rules that seeks to serve<sup>1</sup>. What is basic for a section or a chapter in a statute is provided: firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the

“ Permitting the withdrawal of application without the approval of the CoC will give a wrong signal to the stakeholders and prevent the Corporate Debtor from cooperating with the IRP during the crucial time period of thirty days. So it is not judicious to permit the applicant to withdraw the application after the Public Announcement is made but before the CoC is constituted.

preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last mentioned method consists of an application of the mischief rule laid down in *Heydon case* [*Heydon case, (1584) 3 Co Rep 7a : 76 ER 637*] long ago<sup>2</sup>."

So in order to understand the real meaning of the word "shall" used in the Section 12, 18, 21 of the Code and Regulations 7, 8, 9, and 17 of the IBBI (IRPCP) Regulations, 2016 the real intention behind the enactment of the Code have to be explored in detail. The Bankruptcy Law Reforms Committee ("BLRC") in the executive summary part of its report had categorically mentioned that the speed is of essence for the working of the bankruptcy code, for two reasons. First, while the "calm period" can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.<sup>3</sup> The said report had clearly pointed out the importance of identifying and addressing the sources of delay with an objective to complete the process within 180 days. The report pointed out two major sources of delays that can hamper the insolvency resolution process. Firstly, the delay can be occurred on account of delay in retrieving the accurate and undisputed information about existing credit, collateral that can be pledged etc. Secondly the report is pointing its fingers towards the adjudicatory mechanism as main source of delay. In order to address this the BLRC recommends that the National Company Law Tribunals be provided with necessary resources to help them in realising the objective of the Code.

The BLRC while designing the Code had laid down nine principles to create a base for the legislation. The provision for the timely, efficient and impartial resolution of insolvency and provision for ensuring transparent and predictable insolvency law that contains incentives for gathering and dispensing information are the principles that are relevant for this discussion. The BLRC, while discussing the principles for designing the Code, has pointed out that the law must ensure that time value of money is preserved and that delaying tactics in negotiations will not extend the time set for negotiations at the start. The committee in its report has highlighted the low time to resolution as one of the major three objectives for implementing the Code. The report clearly mandates the role of the Adjudicator under the Code.

<sup>1</sup> *Lakshmanasami Gounder vs C.I.T. Selvamani And Ors* on 1 November, 1991 1991 SCR, Supl. (2) 181 1992 SCC (1) 91

<sup>2</sup> *In D.R. Venkatachalam v. Transport Commr. [D.R. Venkatachalam v. Transport Commr., (1977) 2 SCC 273]*

<sup>3</sup> *The report of the Bankruptcy Law Reforms Committee. Vol I: Rationale and Design.*



The committee recommends that the Adjudicator will focus on ensuring that all parties adhere to the process of the Code.

As per the above it is very clear beyond ambiguity that the intention of the law maker is to carry out the Resolution Process in a highly time bounded manner and to complete the process within the specified time period. The Legislature envisages the time limits under the Code with an intention to weed out the ills and odds of the previous regime and carve out a better and efficient debt recovery and resolution mechanism. The low time for resolution is the key of the Code and all the sections are designed towards that direction in a very careful manner. From the above it can be inferred that the word “shall” used in the referred sections and regulations are “mandatory” in nature and cannot be diluted into “directory”.

## WITHDRAWAL OF APPLICATION ADMITTED UNDER SECTION 7,9,10.

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 has inserted the new section 12A on 6<sup>th</sup> June, 2018, to permit an applicant to withdraw a case after its admission. As per the Section 12A, the AA may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the CoC, in such manner as may be specified<sup>4</sup>. As per the said section the withdrawal will be permitted only if it is approved by the CoC with 90% of the voting share. Further, such withdrawal will be permissible only up to the date of publication of the notice inviting expression of interest.

However, as per newly substituted regulation 30A, with effect from 25<sup>th</sup> July, 2019, of the IBBI (IRPCP) Regulations, 2016, an application for withdrawal under section 12A can be made to the AA in two different time periods. The Application in Form FA for the withdrawal have to be submitted through IRP either before the constitution of the CoC or through Resolution Professional after the constitution of the CoC. The Regulation prescribes that if the application for withdrawal is received before the constitution of CoC, the IRP shall submit the application to the AA on behalf of the applicant, within three days of its receipt. If the said application is received after the constitution of the CoC, then the Committee shall consider the same within seven days of the receipt of it. If the said application is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the AA on behalf of the applicant, within three days of such approval. It is a very evident from the regulation 30A that the pivot point to determine the eligibility of the applicant to submit the application for withdrawal of the process is the date of constitution of the CoC. So the constitution of CoC is a determining factor while submitting the application for withdrawal. If the CoC is constituted within the time period mentioned in Section 21, then the application for withdrawal requires approval of the 90% vote share of the CoC.

There is a clear conflict between the provisions of Section 12A and the newly substituted Regulation 30A. The Section 12A permits the applicant to withdraw the application admitted under section 7 or section 9 or section 10, on an application made by the applicant only with the approval of ninety per cent voting share of the CoC. Whereas the Regulation 30A, which is a subordinate legislation to the Code, is primarily intended to

prescribe the procedures for the provisions laid down under the Code, is prescribing the procedures to withdraw the application admitted under section 7 or section 9 or section 10 even before the constitution of CoC. So it can be seen that the Regulation 30A prescribes the procedures and requirements for withdrawal of an admitted application which are inconsistent with the provisions of Section 12A.

A comparative chart of the newly inserted Regulation 30A with the substituted Regulation 30A is given below.

Sub Reg	30A. Withdrawal of application <sup>#</sup>	30A. Withdrawal of application <sup>##</sup>	Observation of changes
(1)	An application for withdrawal under section 12A shall be submitted to the Interim Resolution Professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A.	An application for withdrawal under section 12A may be made to the Adjudicating Authority – (a) before the constitution of the committee, by the applicant through the Interim Resolution Professional; (b) after the constitution of the committee, by the applicant through the Interim Resolution Professional or the resolution professional, as the case may be:  Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.	Though the sub-regulation (1) was earlier mentioning about the requirement to the submission of application for withdrawal to Interim Resolution Professional, the option for submitting the same before the constitution of CoC was not prescribed.  In the newly substituted regulation, clauses prescribing the options to submit the application before and after the constitution of CoC is clearly mentioned. The said regulation even permitting the withdrawal of the application after the issue of expression of interest.
(2)	The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.	The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee- (a) towards estimated expenses incurred on or by the Interim Resolution Professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or (b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).	There were no prescription for issuance of bank guarantee to meet the expenses incurred by the Interim Resolution Professional was mentioned in the original Regulation.  Whereas in the newly substituted Regulation, the clear demarcation of the same has been given.

<sup>#</sup> Inserted by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018, w.e.f 03-07-2018

<sup>##</sup> Substituted by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, w.e.f 25-07-2019

<sup>4</sup> Insolvency and Bankruptcy Code, 2016 (Ins. by Act No. 26 of 2018, sec. 9 (w.e.f. 6-6-2018))

(3)	The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.	Where an application for withdrawal is under clause (a) of sub-regulation (1), the Interim Resolution Professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.	In the original regulation the option was available only to submit the withdrawal application to the CoC for its approval before submitting before Adjudicating Authority.  However, in the amended Regulation 30A, the formalities for submission of the withdrawal application by IRP directly to the Adjudicating Authority is clearly mentioned.
(4)	Where the application is approved by the committee with ninety percent voting share, the resolution professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.	Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt. (5) Where the application referred to in sub-regulation	
(5)	The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4)."	Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.	
(6)		The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).	As per the amended regulation, the adjudicating authority may approve the application submitted by Interim Resolution Professional which is received prior to the constitution of the CoC.
(7)		Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the Interim Resolution Professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.	

“ The Regulation 30A, which is a subordinate legislation to the Code, is primarily intended to prescribe the procedures for the provisions laid down under the Code, is prescribing the procedures to withdraw the application admitted under section 7 or section 9 or section 10 even before the constitution of CoC.

In case of the withdrawal of the application with the approval of the CoC, the Regulation 30A sub-regulation (2) provides for a bank guarantee for the expenses under clauses (aa), (ab), (c) and (d) of regulation 31 and for the estimated expenses incurred on or by the IRP for purposes of regulation 33. The Regulation has not provided for the legal and other related expenses that are incurred by the Applicant at the time of filing of the Application before AA and Appellate authority, if any. The anomaly crept in while amending the Regulation 30A can negatively impact the very purpose of the enactment.

The IRP as a part of his mandate shall, through public announcement, invite the claims from the creditors in a time-bounded manner. Based on the claims received the IRP shall verify the claim and file the list of creditors with AA. Thereafter the IRP shall constitute the CoC and convene the first meeting of the CoC. So the time period of thirty days allocated to IRP is intended to constitute the CoC and take control over the affairs of the Corporate Debtor. This is essential to prevent further erosion of the value of the Corporate Debtor and maintaining it as a going concern. From the date of Public Announcement, the claims shall be received at the end of the IRP and technically speaking, the time required for constituting the CoC is only procedural in nature. Permitting the withdrawal of application without the approval of the CoC will give a wrong signal to the stakeholders and prevent the Corporate Debtor from cooperating with the IRP during the crucial time period of thirty days. So it is not judicious to permit the applicant to withdraw the application after the Public Announcement is made but before the CoC is constituted. Moreover, the intention of Section 12A of the Code is to take the ninety percent of CoC into confidence before withdrawing the admitted application. Option given under Regulation 30A to withdraw the application before the constitution of CoC will dampen the real spirit of the Code.

## CONCLUSION

The Code is to be read as a whole and the intention of the legislature has to be recited in its real meaning while interpreting the sections of the Code. Any dilution in the time-limits specified under the Code shall affect the speed of the process and thereby affect the very purpose of the legislation. An IRP is mandated to constitute the CoC within the time-limits specified under the Code and the AA have to ensure the strict implementation of the same in the best interest of the stakeholders. The Regulation 30A, which is a subordinate legislation cannot override the provisions of the Code, which is the collective wisdom of the law makers. The provisions of the Code are the directive proposed by the legislature and reflects the true intention of the law. The regulations are specific in nature and explains how the legislation is enforced. Regulation cannot make a new law superseding the sections of the Code and any such attempts shall be void. Hence the legislature may look into the anomaly caused in drafting the Regulation 30A and take appropriate measures to address the same.



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**CSBF**

**COMPANY SECRETARIES  
BENEVOLENT FUND**



Safeguarding and  
caring for your well being

COMPANY SECRETARIES BENEVOLENT FUND

**Saathi Haath Badhana**

साथी हाथ बढ़ाना

## What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

### Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

### Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

## Advantages of enrolling into CSBF

1

To ensure that your immediate family has some financial support in the event of your unfortunate demise

2

To finance your children's education and other needs

3

To ensure that you have extra resource during serious illness or accident

4

Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal ([www.icsi.edu](http://www.icsi.edu)) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

*Decide Now! Decide Wise!*

Connect with ICSI

[www.icsi.edu](http://www.icsi.edu) | [f](#) [t](#) [in](#) [v](#) [ig](#) | Online Helpdesk : <http://support.icsi.edu>



# PLUG & PLAY COMPLIANCE!

**Aparajitha**

Making Corporate India Comply

Deliver unmatched compliance solutions to your clients

20+ years Compliance Expertise

Across 44 Industries

Global e-Compliance Solutions

Aparajitha – Effortless Compliance management by Industry Experts

Contact us

+91 99524 06408  
+91 99949 39987

marketing@aparajitha.com  
www.aparajitha.com



**FINSHORE MANAGEMENT SERVICES LIMITED**

SEBI REGISTERED CATEGORY - I MERCHANT BANKER



LEAD MANAGER TO  
INDIA'S FIRST BSE STARTUP IPO

AWARDED AS TOP MERCHANT BANKER  
IN SME BY BSE FOR FY 2018-19

EMANELLED VALUER WITH NSE & BSE

HAVE UNDERTAKEN MORE THAN 500  
VALUATIONS INCLUDING MNCs

LEAD MANAGER TO  
THE LARGEST SME IPO

Creating Enterprise Managing Values

S. RAMAKRISHNA IYENGAR  
GAURAV BARICK

9831020743  
8130141874

ramakrishna@finshoregroup.com  
gaurav@finshoregroup.com

# CG CORNER



# Corporate Social Responsibility and Corporate Governance: Evidence for Sustainability

Corporate social responsibility (CSR) and corporate governance (CG) often used in connotation to attain sustainability for organisation herein have been explored to establish interlinkages. This paper attempts to gauge relationship between variables of corporate governance and CSR relying on the scale developed on the basis of GRI and SEBI's Business Responsibility Report and provide evidence there from. It unearths the relationship between CSR disclosures and promoter's shareholding, institutional investor, foreign ownership, board size and board independence on a sample of one hundred and sixty-six constituent companies of BSE 200 index with six years of tenure and 996 annual reports. Concentration of ownership in Indian companies is widely known fact and also amongst the significant contributor to corporate governance per se. Board size, its independence and ownership pattern of Indian listed companies have been regressed with the CSR disclosure practices estimated from an index devised in this paper. The evidence collated by applying multiple regression by Hausman test fixed effect model reflects that institutional shareholding and foreign shareholding have a positive and significant impact on CSR disclosures. Further, the results reveal that for better CSR orientation the institutional and foreign ownership is strong contributor towards sustainability.



**Dr. Jai Prakash Sharma, FCS**  
Chairman, Global Research Foundation  
for Corporate Governance  
New Delhi  
[jaiprakash2509@gmail.com](mailto:jaiprakash2509@gmail.com)



**Dr. Sunaina Kanojia**  
Associate Professor  
Delhi School of Economics  
University of Delhi, Delhi  
[sunainakanojia@gmail.com](mailto:sunainakanojia@gmail.com)



**Harish Kumar**  
Assistant Professor  
Department of Commerce  
Satyawati (Eve.) College, Delhi  
[yharish3618@gmail.com](mailto:yharish3618@gmail.com)

## BACKGROUND

In the past, organizations were considered to have met their responsibilities if they operated within the confines of the law, generated profits, and provided employment opportunities for members of society (Epstein and Freedman 1994). However, business organizations are also expected to be more socially responsible towards the community in which they are operating (Adebayo 2001) and corporate social responsibility has been added in their governance structure. Most of the studies relating to Corporate governance examine financial performance of the company with the corporate governance characteristics of the companies (Zhang et al. 2013), less emphasis has been given on Corporate social performance of the company. Studies in the area of CSR disclosure is concentrated on developed countries (Cowen et al. 1987) and very few studies have examined the CSR disclosure in the developing countries (Singh and Ahuja 1983). The recent corporate failures have reinforced the importance of good corporate governance practices and structures and it is now well acknowledged that corporate governance structures play an important role in enhancing organizations' performance and sustainability in long term (Iwasaki 2014). Sheifer and Vishny (1997) define "Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves

of getting a return on their investment". This definition focused on the concept of corporate governance in narrow sense. But it may be stated that in principles, corporate governance reflects the bigger term than this and here are some definitions which define the concept in a broader perspective. J Wolfensohn, president of the World Bank, as quoted by an article in Financial Times, June 21, 1999 defined as 'corporate governance is about promoting corporate fairness, transparency and accountability', Cochran and Wartick (1985) defines that corporate governance is an umbrella term that covers many aspects related to concepts, theories and practices of Board of Directors and their executives and non-executive directors. The 1950s saw the start of the modern times of corporate social responsibility when it was more commonly known as social responsibility. In 1953, Howard Bowen published his book, Social Responsibilities of the Businessman, and is largely credited with coining the phrase 'corporate social responsibility' and is known as the Father of CSR. Bowen asked: "what responsibilities to society are business people reasonably expected to assume?" Bowen also provided a definition of CSR: "CSR refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society". The dynamics of CSR in India changed dramatically with the coming of Companies Act 2013 which among other things made CSR expenditure mandatory. Initially CSR was mandated before the advent of section 135 of the Companies Act 2013 but it was only for Central Public Sector Enterprises (CPSEs) in the

This article is based on the paper presented by the authors in the ICGS Conference 2019 held from October 11 to 13, 2019 at Essex University, UK.



form of DPE Guidelines on CSR and Sustainability. Voluntary guidelines were also provided by Minister of Corporate Affairs as National Voluntary Guidelines (NVG) on Social, Environmental and Economic responsibilities of Business.

## REVIEW OF LITERATURE

The studies reported prior to year 2000 have presented few evidences towards the disclosure practices but their relationship with CSR outlays was perhaps not considered. Andrew et al (1989) carried out a survey of 119 companies based in Malaysia and Singapore using annual reports and found that only 26% companies made social disclosures and that the main category of disclosures was related to human resources. Porwal and Sharma (1991) carried out a study on social responsibility disclosure by public as well as private sector companies in India and concluded that large companies in both public and private sector disclosed more information than the smaller ones. It was only after the year 2000 that corporate governance started gaining significance and profit was displaced as the sole objective of the business. Haniffa and cook (2005) examined the association between CSR and culture and corporate governance by using content analysis method to measure the extent and level of CSR. Ricart et al. (2005) stated that by engaging in stakeholder dialogue, promoting core values, embedding sustainable development in strategy and by evaluating sustainable performance, a firm could make sustainability a vital part of corporate governance. Andrea Beltratti (2005) highlighted the interrelationship of CG and CSR and indicated a positive relationship between the CG and CSR as an effective corporate governance system would prevent illegal actions against stakeholders. (Ghazali 2007) examined the 87 non-financial companies to know the relationship between ownership structure and CSR and found that disclosures were ranging from 4.6% to 77.3% and directors' ownership negatively related to the CSR disclosures while government as a substantial shareholder positively related to the CSR disclosures.

Amiram Gill (2008) stated CSR has developed the notion of corporate governance as a vehicle for pushing management to consider broader ethical considerations.<sup>1</sup> Kolks (2008) examined how sustainability reporting of companies integrated corporate governance aspects. The paper stated that integration of sustainability reports with corporate governance would satisfy both company shareholder and company-society relationships.<sup>2</sup> Jamali et al. (2008) challenged the usefulness of Agency theory as the dominant paradigm in CG and CSR research, highlighting in turn the usefulness of alternative stakeholder and institutional theories based on in-depth interviews with the top managers.<sup>3</sup> Sharma and Chhabra (2010) studied the initiative taken by the selected Indian companies to determine their responsibility towards different stakeholders. The authors suggested that there is a need for mandatory legal framework for the companies to enforce the consistency, comparability and credibility in CSR reporting.<sup>4</sup> Bear et al. (2010) examined the impact of board diversity and gender composition on the CSR ratings and corporate reputation and extended current theory of demonstrating that the number of women in the board has a positive association with the strength ratings for CSR. The importance of embedding sustainability in

corporate governance was highlighted by Confederation of Indian Industry (CII) and CII - ITC centre of excellence (2011), the paper described that corporate scandals like Worldcom, Tyco, Enron, Satyam, etc., adversely affected stakeholders at large and thus have brought forward the need for corporations to integrate triple bottom line approach into framework of corporate governance. Jo and Harjoto (2012) examined empirically the association between US firms' corporate governance and CSR involvement by investigating their casual effects and found that firms' CSR engagement in diversity, employee relations, community and environment positively enhanced corporate financial performance.

Lorenzo Sacconi (2012) presented CSR as an extended model of CG wherein owners, entrepreneurs, managers and directors have fiduciary duties owed to shareholders. Rao and Tilt (2013) in their paper stressed on the importance of the studies linking gender diversity and CSR decision making process, which is lacking in the literature so far. They also cite another study, indicating sex based biasness or stereo-typing by male directors in the boards, limiting women directors' influence on decision making and thereby the sustainable outcomes.<sup>5</sup> Lin et al. (2014) investigated whether effective corporate governance mechanisms help improve firm level community engagement activities and empirical results confirmed that community engagement is found to be increasing as board structure and functionality improve.<sup>6</sup> Kolk and pinske (2016) analysed the extent to which corporate governance has been integrated in MNEs' disclosure practices on CSR and show that considerable numbers of MNEs have a separate corporate governance section in their CSR report and explicitly link corporate governance and CSR issues.<sup>7</sup> There have been studies which highlighted the context of CSR and CG in the sustainable growth of the organisation. Despite the studies reported, there does not appear to be any conclusive empirical evidences highlighting the ownership pattern and CSR disclosures in the corporations.

## HYPOTHESIS DEVELOPMENT

Corporate board outcomes are the result of the Ownership structure of the corporations. Demsetz and Lehn (1985) reported that ownership holding of 0.5 percent in a firm is sufficient to influence the corporate decisions. A number of studies have found significant relationship between the ownership structure including promoters' holding, institutional ownership, foreign ownership and CSR disclosure of the company (Gray and Chao). This paper has been developed to provide an in-depth investigation of the possible influence of ownership variables on CSR disclosure towards assessing the relative importance of corporate ownership on CSR practices in India. Further Board size and independence of the board have also been taken as governance variables in the study to gauge their appropriate interventions. The variables used and the justification of using them as independent or dependent or control variable has been provided in the succeeding para.

## PROMOTERS' SHAREHOLDING

Concentration of ownership in Indian companies is a widely known fact; here concentration of ownership means that shareholding pattern is not dispersed rather concentrated in the hands of some major shareholders. In Indian companies the major shareholders are promoters holding major chunk of the shares of the companies.

1. Gill, A. (2008). Corporate governance as social responsibility: A research agenda. *Berkeley J. Int'l L.*, 26, 452.
2. Kolk, A. (2008). Sustainability, accountability and corporate governance: exploring multinationals' reporting practices. *Business Strategy and the Environment*, 17(1), 1-15.
3. Jamali, D., Safieddine, A. M., & Rabbath, M. (2008), corporate governance and corporate social responsibility synergies and interrelationships. *Corporate Governance: An International Review*, 16(5), 443-459.
4. Sharma, J.P. and Anita Chhabra, "CSR activities: The initiative taken by Indian companies", *Chartered secretary*, December 2010, Vol. XL, No. 12, pp.1788-1796.

5. Rao, K. K., & Tilt, C. A. (2013). Corporate governance and corporate social responsibility: A Critical Review. *Asia Pacific Interdisciplinary Research in Accounting Conference*.
6. Lin, P. T., Li, B., & Bu, D. (2015). The relationship between corporate governance and community engagement: Evidence from the Australian mining companies. *Resources Policy*, 43, 28-39.
7. Kolk, A., & Pinkse, J. (2010). The integration of corporate social responsibility disclosures. *Corporate Social Responsibility and Environmental Management*, 17(1), 15-26.

There are some studies relating to ownership structures of the Indian corporations pointing out that shareholding pattern are widely held by promoters in India. One of the major studies by Rajesh Chakrabarti (2005) states that average promoters' shareholding in Indian companies in 2002 to be at 48.1%. In literature it is learned that higher the dispersion of the shares, higher the disclosure or expenditure regarding corporate social performance. Keim (1978) suggested that as the distribution of the ownership of firms becomes more dispersed, the demand placed on the firms by shareholders becomes higher. Therefore, it is expected that higher the ownership dispersion, higher the CSR engagement. Accordingly, the hypothesis that there is a negative relationship between the promoters' shareholding and the level of CSR expenditure in the sample companies.

### INSTITUTIONAL INVESTORS' OWNERSHIP

Once categorized Indian corporate as family funded, now demand more funds to provide growth of their business and that demand is being fulfilled by institutional investors from across the globe. Researches in this field propose that their share is on the rise, so the voting power in the companies. However, this led to the development of opposite arguments - Are the institutional investors really concerned about the corporate social performance.? Some researchers argued that there are two categories of institutional investors, a category of institutional investors pursues short term gain and do not respond to diverse stakeholders like employees, environment, employees and minorities. They act as merely traders and their main concern is quarterly earnings (Johnson and Greening 1999)<sup>8</sup>. There is an other category of institutional investors, that act as long-term investors and may be more concerned with a firm's social responsibility as it may impact their earnings over longer period of time. The results of (Jo and Harjoto 2012) also supported the relationship between CSR engagement and institutional investors' ownership. They gave reasons behind this that the institutional investors have a long-term stake in the firms' performance and can forego the short-term financial returns.

### FOREIGN OWNERSHIP

Foreign ownership is the shares held by the foreign investors, it includes foreign promoters, non-promoter foreign venture capital and non-promoter qualified foreign investors. The foreign investors investing in an emerging economy are usually the residents of developed countries where the rules and regulations regarding disclosures of CSR are stringent and companies tend to disclose each and every aspect. CSR disclosure is very high in developed countries compare to developing countries, and it can be inferred from many CSR ratings available for checking the performance of CSR of companies such as widely used KLD's CSR ratings. Thus, an organization with foreign ownership is likely to disclose more in terms of CSR. Khan et al (2012) also investigated the relationship between foreign ownership and CSR disclosures and find that there is a positive and significant relationship between these two variables. Haniffa and Cooke (2005) also find positive and significant relationship between the CSR disclosure and foreign ownership in Malaysia. In this study, the relationship between the foreign shareholding and CSR disclosure in Indian context is analysed.

### BOARD SIZE

Board of Directors represents the shareholders and other stakeholders of the company. They manage and control the company on the behalf of shareholders and look after their interest in a responsible manner. Various theories have been propounded by the management thinkers such as agency theory

8. Johnson, R. A., & Greening, D. W. (1999). The effects of corporate governance and institutional ownership types on corporate social performance. *Academy of management journal*, 42(5), 564-576.



of corporate governance, stakeholder theory and trusteeship model of governance. In these theories, nature of relationship between directors of Board and shareholders and stakeholders are presented in varied manner - like negative in the agency theory proposed by Jensen and Meckling (1976) and positive in the stakeholder theory and trusteeship model. Two different views emerge from the existing literature in this concept - one school of thought says board's size has a positive relationship between corporate outcomes (Dwivedi and Jain, 2005; Pearce and Zahra, 1992) and other one proposes that there is negative relationship attached with size of the board and corporate decisions and they find a negative relationship between board size and company's performance (O'Connell and Cramer, 2010; Eisenberg et al., 1998). In this article, an attempt is made to find out relationship between the board size and the disclosure level of CSR with the help of the next developed hypothesis.

### INDEPENDENCE OF THE BOARD

Board composition of a company is an internal governance mechanism (Walsh and Seward 1990). Independence of the board is one of the most researched and well-accepted attribute. Wang and Dewhirst (1992) found that outside directors have a strong orientation towards the stakeholders and recognize that their responsibility not only includes the need of the shareholders but also needs and expectations of other stakeholders of a firm. Taking a point of agency theory perspective, the presence of Non - executive independent director should mitigate the conflicts between Top management team and shareholders, and the governance mechanism of the company will improve. Therefore, it is expected that higher the number of non-executive independent directors as compared to internal directors in a company the higher the probability to improve the companies' social performance. To measure the degree of independence in the decision making of the board, independent directors has been considered as a variable to study the effect on the corporate social responsibility performance of the firms, following the convention from previous literature (e.g., Ryan and Wiggins 2004; Rosenstein and Wyatt 1990; Hong et al. 2015).

Hence, the following hypothesis:

**H01:** There is no significant relationship between CSR disclosures and promoter's shareholding, institutional investor, foreign ownership, board size and board independence.

**HA1:** There is a significant relationship between CSR disclosures and promoter's shareholding, institutional investor, foreign ownership, board size and board independence.



## RESEARCH METHODOLOGY

### Sample

Considering the objective to investigate, a sample of 200 companies listed on S&P BSE index of India has been taken. Classification and industry wise market capitalization of the chosen BSE index has been given in table 1. The net sample consists of 166 companies in total, combining both Financial (33) and Non-Financial companies (133). The data was either not consistently available for the rest of the 34 companies or the website was not updated by the company with the relevant and electronically readable format of annual reports and few companies have only started disclosing about the CSR activities after the Companies Act 2013 provided for it explicitly. 20% of the selected companies belong to financial companies and 80% of the chosen companies relate to the Non-financial companies. Finance business in this case includes Banking industry, Insurance industry, Re-finance industry etc.

### Data

The data has been collected from the secondary sources. The dependent variable, CSR disclosure scale has been prepared from the annual reports of the chosen companies. The annual reports have been collected from the websites of the companies and in case of some missing report; it is accessed from the website of moneycontrol.com which is a financial data provider. The time period of the study has been six years i.e., from financial year 2011-2012 to 2016-2017. Thus, total 996 annual reports have been studied and examined to construct the scale of CSR disclosure. The data of independent and control variables have also been collected from the secondary sources through CMIE proquest database, Excel and EViews software have been used in the study for estimation and analysis output.

### Description of the variables:

Dependent variable in the study is CSR disclosure scale which has been prepared consisting of 120 elements. Independent variables consist of three ownership variables namely Promoters' shareholding, foreign shareholding, (it includes foreign promoters, non-promoter foreign venture capital and non-promoter qualified foreign investors) and Institutional investors' shareholding. Two governance variables namely Board size and Board independence has also been considered. The study also uses five control variables namely Age of the company, Total assets, Total employees, Leverage, Return on assets. Being huge in numbers log values of the age of the company, total assets and total employees have been taken.

### CSR disclosure scale

Large numbers of prior researches have determined corporate social responsibility on the basis of information disclosed in annual reports (Abbott and Monsen 1979), (Kapoor and Sandhu 2010). Ghazali (2007) also assessed the extent of CSR disclosures in annual reports. Therefore, in the line of these studies a scale has been developed on the basis of information disclosed in the annual reports.

The GRI is the most widely recognized multi-industry reporting standard among the firms all over the world (Jamali, 2010)<sup>9</sup>. According to a survey of KPMG, 92% of the G250 (global fortune) companies report corporate responsibility according to GRI reporting framework. Lau et al, (2016) also adopted a CSR measure based on GRI 3.0 variables but adapted to Chinese context, an emerging economy<sup>10</sup>. So, the CSR disclosure scale is based on the Global Reporting Initiative (GRI) sustainability reporting standards 2016. However, the scale is based on GRI reporting framework, but it has all the major elements of SEBI BRR (business responsibility report) framework. The CSR scale consists of 120 items under the four heads namely; (1) Foundation reporting, (2) Economical reporting, (3) Environmental reporting, (4) Social reporting.

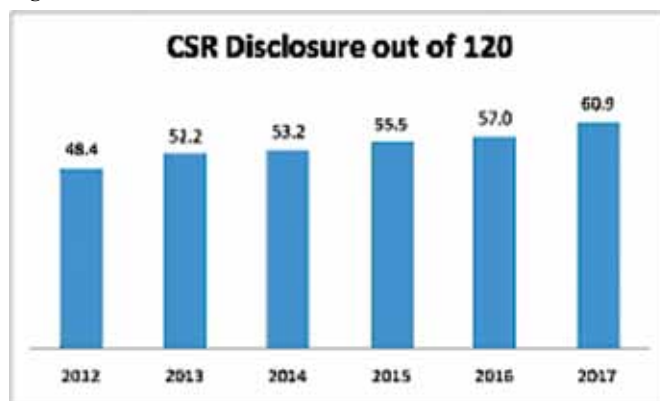
### Scoring method

Content analysis method has been used in the study. The approach of scoring of an element has been adopted on the basis of prior research (Cooke, 1989). The scoring method in the study is based on an unweighted average, which means that all the elements included in the scale are equally valued regardless of their importance or relevance. A dichotomous procedure was applied in which a company is awarded 1 if it discloses the particular element, 0 if it is not disclosed.

## RESULTS AND ANALYSIS

In order to analyse the data obtained, foremost is the disclosure practices mapped from the annual reports of the companies listed in S & P BSE 200 index to represent the increasing trend of the CSR disclosures.

Figure 1 CSR disclosure score



Source: Research Findings

Due to the amendments made in the Companies Act 2013, the expenditure on CSR and disclosures thereof has been on the rise as depicted in the fig 1.

9. Jamali, D. (2010). The CSR of MNC subsidiaries in developing countries: global, local, substantive or diluted? *Journal of Business Ethics*, 93, 181-200.
10. Lau, C., Lu, Y., & Liang, Q. (2016). Corporate social responsibility in China: A corporate governance approach. *Journal of Business Ethics*, 136(1), 73-87.



Further, to gauge the relation and test the null hypothesis, the assumptions of regression analysis have been checked in such as normality, heteroscedasticity, multicollinearity, autocorrelation, and stationarity. The Levin-Lin-Chu Unit Root test has been applied to check stationarity for all the dependent, independent and controlled variables to check that they are significant having a p-value < 0.05 and the findings are that it is less than 0.05 then reject the null hypothesis and conclude that the data is stationary. In the sample, all variables are having p-value less than 0.05. Table 1 represents the description of the variables and table 2 provides for the descriptive statistics.

**Table 1 Description of Variables**

S. No.	Abbreviation	Variable description
1.	CSRDISC	CSR disclosure scale
2.	PROM	promoters' shareholding in the company
3.	INSTSH	institutional shareholding in the company
4.	FORSH	Foreign shareholding
5.	BSIZE	total size of the board of directors
6.	INDBOARD	board independence as computed by total independent directors divided by total number of directors in the board.
7.	LOGAGE	age of the company taken as log value
8.	LOGTA	Total assets taken as log value
9.	LOGTE	Total employees, taken as log value
10.	ROA	Return on assets, computed as profit after tax (PAT) divided by total assets
11.	LEV	Leverage of the firm as computed by total debt divided by total assets

Source: Research Findings

**Table 2 Descriptive statistics for the model**

	csrdisc	prom	instsh	Forsh	bsize	ind-board	Lev	logage	logta	Logte	roa
Mean	54.52	51.07	29.39	10.90	13.11	5.78	0.23	3.57	14.08	8.53	0.08
Median	53.00	53.06	28.09	0.00	13.00	6.00	0.13	3.53	13.87	8.64	0.06
Maximum	85.00	90.00	88.39	81.03	28.00	19.00	8.21	4.93	19.42	12.87	0.96
Minimum	27.00	0.00	0.00	0.00	0.00	0.00	0.00	0.69	10.48	1.10	-0.81
Std. Dev.	8.83	20.90	14.90	22.01	3.55	2.18	0.44	0.68	1.64	1.70	0.10
Observations	996.00	996.00	996.00	996.00	996.00	996.00	996.00	996.00	996.00	996.00	996.00

Source: Research Findings

## HYPOTHESIS TESTING: MULTIPLE REGRESSIONS ANALYSIS

In this model analysis has been done of the impact of independent variables; Promoter shareholding, institutional shareholding, foreign shareholding, board size and independence of board with control variables as log of total assets, log of total employees, log of age, leverage and ROA of 166 companies for a period of 6 years on dependent variable as CSR disclosure index.

Model specification:  $CSRDISC_{it} = \beta_0 + \beta_1(PROM)_{it} + \beta_2(INSTSH)_{it} + \beta_3(FORSH)_{it} + \beta_4(BSIZE)_{it} + \beta_5(INDBOARD)_{it} + \beta_6(LEV)_{it} + \beta_7(LOGTA)_{it} + \beta_8(LOGTE)_{it} + \beta_9(LOGAGE)_{it} + \beta_{10}(ROA)_{it} + \epsilon_{it}$

In panel data there are two types of panel regression analysis available. Firstly, Random Effect Analysis and secondly, Fixed Effect Analysis. And the choice between these two is cleared by Hausman test conducted on Random Effect Model. In this testing, null hypothesis is postulated as Random effect model and alternate hypothesis is postulated as Fixed effect model. If statistically significant p-value is obtained, the fixed effect model will be used, otherwise random effect model. Thus, if the significance value i.e., < 0.05 then null hypothesis may be rejected, as shown in table 3. In this case it is significant having value 0.00, so null hypothesis is rejected and the Fixed Effect Model is chosen.

**Table no 3 Correlated Random Effects - Hausman Test**

Test Summary	Chi-Sq. Statistic	Chi-Sq. d.f.	Prob.
Cross-section random	322.07	10	0.0000

Source: Research Findings

Table no 4 exhibit the results wherein R square (R<sup>2</sup>) is 0.792 and Adjusted R<sup>2</sup> being 0.747 which implies that 79.2 percentage of variation in CSR disclosure is explained by independent and control variables. From the above table, it may be stated that F-Statistic < 0.05 which depicts that the model significantly shows the difference in group means.

While interpreting the impact of independent variables on the dependent variable, it was found that institutional shareholding and foreign shareholding have a positive and significant impact on CSR disclosures with p-value < 0.01 and  $\beta$  value as positive. Both institutional investors and foreign shareholding sends signal to the retail investors towards the fate of the company. Any transaction of institutional and foreign shareholders creates a ripple effect thereof. Thus, the null hypothesis for institutional and foreign ownership is rejected and alternate hypothesis for these two variables implying that there is significant relationship between institutional shareholding and foreign shareholding and CSR disclosure as provided from sample studied herein.

**Table No 4 Fixed Effect Model of Panel Regression Analysis**

Variable	Coefficient	Prob.
PROM	0.039364	0.1546
INSTSH	0.098980	0.0066*
FORSH	0.190899	0.0002*
BSIZE	-0.068854	0.4956
INDBOARD	-0.039437	0.7699
C	-110.4819	0.0000
R-squared	0.792	
Adjusted R <sup>2</sup>	0.747	
Prob.(F)	0.000000	

Source: Research Findings

\*shows significance value at 1% level, Source: Research Findings

However, it is not possible to reject null hypothesis in case of promoter shareholding, board size and board independence and it may be concluded that there is no significance relationship between promoter's shareholding, board size, independence of board and CSR disclosures in annual reports.



## SUMMARY AND CONCLUSION

The purpose of this study was to examine the relationship between CSR disclosure and corporate governance. The major strength of this study is to provide an independent index on which the Indian companies' social performance can be assessed. Statistical evidence shows that there is a reason to study these five variables as they are significant in explaining CSR disclosures of the firms. These results are consistent with the existing literature. It is observed that institutional investors are concerned with the long-term value of the company and are not much concerned about the short-term economic gains in the case of selected samples. Further, the contribution of CSR for long term sustainability is preferred by the promoters as well. The result is consistent with the prior literature (Aguilera, et al. 2006); this study also provides enough evidence to claim that institutional investors specially pension funds and insurance companies invest for long term and rewards CSR disclosure of companies. Foreign ownership impacts positively in this study, revealing that social performance disclosures' demand would be higher if foreign investors have higher ownership. It is also consistent with the prior study, (Craswell and Taylor, 1992). In addition to this, such announcements made by the companies are treated as their commitment to values and society and lead to build confidence amongst the shareholders towards the healthy prospects of the company.

The present paper has relevance in the Indian economy as results show that Institutional shareholding is a positive and significant variable in the model. Institutions should play their role in decision making as researches say that 0.5 % of ownership can change the board outcomes. Foreign ownership comes with the rich experiences of managing firms. Researches state that demand of higher social and environmental disclosure is higher in developed economies. The results of the findings also support this notion and in terms of FDI India is accumulating good amount of capital from foreign investors. Common investors can make an informed ethical investing by knowing about companies' CSR activities as in long term the chances of sustaining are higher

for these companies. Further, there is a trend that common investor prefers to buy the stock and stay invested where large institutions maintain their stake. Hence, when large institutions buy or sell their stakes, it indicates further buying or selling in the market. Another major implication of the study is that increasing outside directors' representation in the board has little impact on CSR disclosure unlike an established notion favouring independent board.

## CONVERGENCE OF CSR AND CORPORATE GOVERNANCE

Canadian Co-operative association sponsored Coro Strandberg of Strandberg Consulting to conduct an International thought-leaders study on the convergence of corporate governance and corporate social responsibility. Thirteen international thought leaders having diverse background and great experience in the corporate governance phenomena expressed their views on this topic. Thought leaders opined on mainly two level of convergence firstly at values level and secondly at the risk level. The views expressed advanced the opinion that corporate social responsibility and governance is converging at the values level of governance, a result of re-classification of the boundaries of corporate accountability to induce non-financial stakeholders' issues. And convergence is also increasing at the values or ethical based level, issues such as kind of product and service a company produces, how it is produced and environmental and social impacts of production, these decisions are taken in board room as a part of governance. Disclosures, accountability and transparency, board diversity and risk management were named by interviewees as key governance practices that best demonstrate corporate social responsibility principles. Interviewees also pointed out that Risk-management, diversity, disclosure, and compensation can be seen as enablers of corporate social responsibility.

## CSR – THE BALANCING ACT

Too often the community views the business corporations' aims as selfish gain rather than advancement of the general

welfare. This impression can be removed only if corporations fully adopt the corporate social responsibilities and help the society to develop and grow with the organization. Harjoto, M. A., & Jo, H. (2011) have also concluded by their empirical results that managers take help of CSR activities to resolve conflicts between the firm and various stakeholders and CSR engagement supplement firm value and performance<sup>11</sup>.



**Figure 2 CSR linking corporate governance to sustainability**

It is proposed that for a better CSR orientation, a foundation of good governance vide the institutional and foreign ownership is a strong contributor towards sustainability. This proposition is also supported by Jamali et al., (2008) they also suggested that corporate governance is a pillar of CSR.<sup>12</sup> Thus, it can be said that CSR is a part of the route for better governed companies to be sustainable and the organizations can use CSR to resolve conflicts with their stakeholders.

## IMPLICATIONS OF THE STUDY

The findings of the study contribute to the literature of CSR, corporate governance and sustainability and their interrelationship and will be of interest to managers, researchers and academicians. The study shows that it is important for a company to increase awareness on corporate social activities and also its disclosure in the annual report, which is the primary and easily accessible document of a company. Companies should disclose all the relevant information pertaining to company in the annual report itself. Institutional shareholding is a positive and significant variable in the analysis thus institutions should play their role in decision making and Government should strengthen the rules regarding the same. Foreign ownership comes with the rich experiences of managing sustainable firms with meeting the goal of all stakeholders of the society. It may also be stated that demand of higher social and environmental disclosure is higher in developed economies and investment in terms of FDI coming from developed countries is doing well in Indian context.

## LIMITATIONS OF THE STUDY

This study uses checklist type of disclosure to measure CSR, meaning that if firm is disclosing any relevant section, then given score is 1 otherwise 0. Thus, if one firm has disclosed any section many times, it has been ignored. There should have been weightage for that information too. And also, firms often use pictures, tables and diagrams to disclose some information, but in this analysis, it has been the particular words for check listing an item. More explanatory variables can be included in the study like audit committee, remuneration committee, CSR committee, shareholder grievance committee etc. The study can be done as two-dimensional. The limitation of this study is that it is one-dimensional – studying the interrelationship between CSR and corporate governance i.e., impact of corporate governance variables on the CSR disclosure index. Impact of CSR disclosure or company social performance

also can be studied. Apart from annual reports, there are various sources like website of company and advertisement of companies' social performance in newspapers and magazines and other descriptive reports by independent authority.

## REFERENCES

1. Abbott, W. F., & Monsen, R. J. (1979). On the measurement of corporate social responsibility: Self-reported disclosures as a method of measuring corporate social involvement. *Academy of management journal*, 22(3), 501-515.
2. Adebayo, E. (2001). Corporate social responsibility disclosure, corporate financial and social performance: An empirical analysis.
3. Aguilera, R. V., Williams, C. A., Conley, J. M., & Rupp, D. E. (2006). Corporate governance and social responsibility: A comparative analysis of the UK and the US. *Corporate Governance: An International Review*, 14(3), 147-158.
4. Andrew, B., Gul, F., Guthrie, J., & Tecoh, H. (1989). A Note on Corporate Social Disclosure Practices in Developing Countries: The Case of Malaysia and Singapore. *British Accounting Review*, 21(4): 371-376.
5. Bear, S., Rahman, N., & Post, C. (2010). The impact of board diversity and gender composition on corporate social responsibility and firm reputation. *Journal of Business Ethics*, 97(2), 207-221.
6. Beltratti, A. (2005). "The Complementarities between Corporate Governance and Corporate Social Responsibility." *The Geneva Papers on Risk And Insurance-Issues And Practise*, 30(3), 373-386.
7. Chau, G.K. and Gray, S.J. (2002), "Ownership structure and corporate voluntary disclosure in Hong Kong and Singapore", *The International Journal of Accounting*, Vol. 37, pp. 247-65.
8. Cooke, T. E. (1989). Disclosure in the corporate annual reports of Swedish companies. *Accounting and business research*, 19(74), 113-124.
9. Cowen, S. S., Ferreri, L. B., & Parker, L. D. (1987). The impact of corporate characteristics on social responsibility disclosure: A typology and frequency-based analysis. *Accounting, Organizations and society*, 12(2), 111-122.
10. Craswell, A. T., & Taylor, S. L. (1992). Discretionary disclosure of reserves by oil and gas companies: An economic analysis. *Journal of Business Finance & Accounting*, 19(2), 295-308.
11. Demsetz, H., & Lehn, K. (1985). The structure of corporate ownership: Causes and consequences. *Journal of political economy*, 93(6), 1155-1177.
12. Dwivedi, N., & Jain, A. K. (2005). Corporate governance and performance of Indian firms: The effect of board size and ownership. *Employee Responsibilities and Rights Journal*, 17(3), 161-172.
13. Eisenberg, T., Sundgren, S., & Wells, M. T. (1998). Larger board size and decreasing firm value in small firms. *Journal of financial economics*, 48(1), 35-54.
14. Enric Ricart, J., Ángel Rodríguez, M., & Sánchez, P. (2005). Sustainability in the boardroom: An empirical examination of Dow Jones Sustainability World Index leaders. *Corporate Governance: the international journal of business in society*, 5(3), 24-41.
15. Epstein, M. J., & Freedman, M. (1994). Social disclosure and the individual investor. *Accounting, Auditing & Accountability Journal*, 7(4), 94-109.

11. Harjoto, M. A., & Jo, H. (2011). Corporate governance and CSR nexus. *Journal of Business Ethics*, 100(1), 4567.

12. Jamali, D., Safieddine, A. M., & Rabbath, M. (2008). Corporate governance and corporate social responsibility synergies and interrelationships. *Corporate Governance: An International Review*, 16(5), 443-459.



16. Haniffa, R.M., & Cooke, T.E. (2005). The impact of culture and governance on corporate social reporting, *Journal of Accounting and Public policy*, 24(5): 391-430.
17. Hong, B., Li, Z., & Minor, D. (2016). Corporate governance and executive compensation for corporate social responsibility. *Journal of Business Ethics*, 136(1), 199-213.
18. [http://sustainabledevelopment.in/uploads/pdf/1445610852The\\_Next\\_In\\_Corporate\\_Governance.pdf](http://sustainabledevelopment.in/uploads/pdf/1445610852The_Next_In_Corporate_Governance.pdf)
19. <https://thinkingshift.wordpress.com/2007/03/27/the-evolution-of-csr/>
20. Iwasaki, I. (2014). Global financial crisis, corporate governance, and firm survival: The Russian experience. *Journal of Comparative Economics*, 42(1), 178-211.
21. J. Wolfensohn, Corporate Governance, *FINANCIAL TIMES* (London), June 21, 1999.
22. Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behaviour, agency costs and ownership structure. *Journal of financial economics*, 3(4), 305-360.
23. Jo, H., & Harjoto, M. A. (2012). The causal effect of corporate governance on corporate social responsibility. *Journal of business ethics*, 106(1), 53-72.
24. Keim, G: 1978, 'Managerial Behaviour and the Social Responsibilities Debate: Goals Versus Constraints', *Academy of Management Journal* 21(1), 57-68.
25. Khan, A., Muttakin, M. B., & Siddiqui, J. (2013). Corporate governance and corporate social responsibility disclosures: Evidence from an emerging economy. *Journal of business ethics*, 114(2), 207-223.
26. MohdGhazali, N. A. (2007). Ownership structure and corporate social responsibility disclosure: some Malaysian evidence. *Corporate Governance: The international journal of business in society*, 7(3), 251-266.
27. MohdGhazali, N. A. (2007). Ownership structure and corporate social responsibility disclosure: some Malaysian evidence. *Corporate Governance: The international journal of business in society*, 7(3), 251-266.
28. O'connell, V., & Cramer, N. (2010). The relationship between firm performance and board characteristics in Ireland. *European Management Journal*, 28(5), 387-399.
29. Pearce, J. A., & Zahra, S. A. (1992). Board composition from a strategic contingency perspective. *Journal of management studies*, 29(4), 411-438.
30. Porwal, L. S., and Sharma, N. (1991), social responsibility disclosures by Indian companies. *The Chartered Accountant*, 39(8), 630-635.
31. Rajesh, C. (2005). Corporate Governance in India—Evolution and Challenges. CFR working.
32. Rosenstein, S., & Wyatt, J. G. (1990). Outside directors, board independence, and shareholder wealth. *Journal of financial economics*, 26(2), 175-191.
33. Ryan Jr, H. E., & Wiggins III, R. A. (2004). Who is in whose pocket? Director compensation, board independence, and barriers to effective monitoring. *Journal of Financial Economics*, 73(3), 497-524.
34. Sacconi, L. (2011). A Rawlsian view of CSR and the game theory of its implementation (Part I): The multistakeholder model of corporate governance. In *Corporate Social Responsibility and Corporate Governance* (pp. 157-193). Palgrave Macmillan, London.
35. Sandhu, H. S., & Kapoor, S. (2010). Corporate social responsibility initiatives: An analysis of voluntary corporate disclosure. *South Asian Journal of Management*, 17(2), 47.
36. Shleifer, A., & Vishny, R. W. (1997). A survey of corporate governance. *The journal of finance*, 52(2), 737-783.
37. Singh, D.R. and Ahuja, J.M. (1983), "Corporate social reporting in India", *The International Journal of Accounting*, Spring, pp. 151- 69.
38. Strandberg, C. (2005). The convergence of corporate governance and corporate social responsibility. Canadian Co-operative Association.
39. Walsh, J. P., & Seward, J. K. (1990). On the efficiency of internal and external corporate control mechanisms. *Academy of Management review*, 15(3), 421-458.
40. Wang, J., & Dewhirst, H. D. (1992). Boards of directors and stakeholder orientation. *Journal of business ethics*, 11(2), 115-123.
41. Wartick, S. L., & Cochran, P. L. (1985). The evolution of the corporate social performance model. *Academy of management review*, 10(4), 758-769.
42. Zhang, J. Q., Zhu, H., & Ding, H. B. (2013). Board composition and corporate social responsibility: An empirical investigation in the post Sarbanes-Oxley era. *Journal of Business Ethics*, 114(3), 381-392.

## REQUIRED COMPANY SECRETARY

**VEENA TEXTILES LIMITED** HAVING ITS REGISTERED OFFICE AT 309 SALEM MAIN ROAD KOMARAPALAYAM-638 183 NAMAKKAL DISTRICT TAMILNADU REQUIRE A QUALIFIED WHOLE TIME COMPANY SECRETARY HOLDS MEMBERSHIP OF ICSI.

THE CANDIDATE SHOULD BE A **QUALIFIED WHOLE TIME COMPANY SECRETARY** HOLDS MEMBERSHIP OF ICSI. AND CAPABLE OF HANDLING ALL SECRETARIAL, SEBI, COMPANY LAW, STOCK EXCHANGE AND OTHER REGULATORY RELATED COMPLIANCE. INTERESTED CANDIDATES MAY E-MAIL THEIR RESUME TO **Veena\_vtl@yahoo.in** OR MAY SEND THEIR APPLICATION TO:

THE MANAGING DIRECTOR  
**VEENA TEXTILES LIMITED**  
REGISTERED OFFICE: 309 SALEM  
MAIN ROAD  
KOMARAPALAYAM -638 183  
NAMAKKAL DISTRICT  
TAMILNADU  
**Phone No: 04288 260815**  
**Veena\_vtl@yahoo.in**

## CAREER OPPORTUNITIES

The ICSI Institute of Insolvency Professionals (ICSI IIP), one of the front line regulators for Insolvency Professionals, is a wholly owned subsidiary of the Institute of Company Secretaries of India (ICSI) and registered as an Insolvency Professional Agency with the Insolvency and Bankruptcy Board of India (IBBI). The major activities of ICSI IIP (the Company) include enrollment, development, regulation and monitoring of Insolvency Professional enrolled with it. ICSI IIP invites applications for the following posts at its Headquarters based at New Delhi:-

Name of the Post	Pay Level as per 7 <sup>th</sup> CPC Pay Matrix (INR)	Gross Salary per Annum (INR in Lakh)	Maximum Age (as on 01.12.2019)	Total No. of Posts
<b>Joint Director (Legal, Compliance &amp; HR)</b>	Level 12 (78800-209200)	14.34	50 years	1
<b>Deputy Director (Legal, Compliance &amp; HR)</b>	Level 11 (67700-208700)	12.46	40 years	
<b>Joint Director (Education &amp; Training)</b>	Level 12 (78800-209200)	14.34	50 years	1
<b>Deputy Director (Education &amp; Training)</b>	Level 11 (67700-208700)	12.46	40 years	
<b>Executive (Monitoring &amp; Inspection)</b>	Level 8 (47600-151100)	8.55	35 years	1
<b>Assistant (Enrolment &amp; Membership)</b>	Level 4 (25500-81100)	4.8	35 years	1

For further details viz. qualification, experience, procedure for submission of application etc., please visit website [www.icsiip.com/careers](http://www.icsiip.com/careers) on and from 16.12.2019. Interested candidates may apply only through electronic mode (Online). Last date for submission of application (Online) is **31.12.2019**. The “ICSI IIP” reserves the right to increase/decrease or even not to fill up any posts as per its requirement.



[www.icsiip.com/careers](http://www.icsiip.com/careers)

# 3

## LEGAL WORLD



- J.K. (BOMBAY) LTD v. BHARU MATHA MISHRA & ORS. [SC]
- STRESSED ASSETS STABILIZATION FUND v. WEST BENGAL SMALL INDUSTRIES DEVELOPMENT CORPORATION & ANR [SC]
- ANAND RAO KORADA RESOLUTION PROFESSIONAL v. M/S VARSHA FABRICS (P) LTD. [SC]
- CAMEO CORPORATE SERVICES LTD v. SEBI [SAT]
- KSBL SECURITIES LTD v. SEBI [SAT]
- PRINCIPAL COMMISSIONER OF INCOME TAX v. M/S I VEN INTERACTIVE LTD. [SC]
- SAINATH AUTOLINKS PVT. LTD v.STATE BANK OF INDIA & ANR [CCI]
- AIRPORTS AUTHORITY OF INDIA v. A.S.YADAV & ORS. [DEL]
- NATIONAL BAL BHAWAN v. VANDANA [DEL]





## Corporate Laws

**LMJ 12:12:2019**

**I.K. (BOMBAY) LTD v. BHARU MATHA MISHRA & ORS. [SC]**

**Case No. Appeal (Crl.) 87 of 2001**

**K.T. Thomas & R.P. Sethi, JJ. [Decided on 18/01/2001]**

**Equivalent citations: 2001 (1) SCR 439; (2001) 104 Comp Cas 424.**

**Companies Act, 1956- section 630- ex-employee refusing to vacate the flat- prosecution initiated against him and his family members- High Court quashed the process issued to the family members- whether tenable- Held, Yes.**

### Brief facts:

Whether the family members of an employee or an ex-employee of a company can be proceeded with in a criminal court, convicted and sentenced for the commission of offence under Section 630 of the Companies Act is the question of law to be determined by us in this appeal. Relying upon the judgment of this Court in *Abhilash Vinod Kumar Jain (Smt.) v. Cox & Kings (India) Ltd. & Ors.*, [1995] 3 SCC 732, it has been argued on behalf of the company that the expression "officer or employee" appearing in Section 630 of the Act would include all his family members.

One Mata Harsh Mishra, who is the husband of respondent No. 1 and father of respondent No. 2, joined the employment of the appellant-company and he was allotted a flat for the purpose of his residence during the course of employment while he was in the service of the company. He resigned from the company and refused to vacate the flat. A complaint under Section 630 of the Act was filed by the appellant in the court of Judicial Magistrate, Thane, against him and the respondents 1 and 2 herein. The High Court quashed the process issued to the respondents vide the order impugned herein.

**Decision:** Appeal dismissed.

### Reason:

The divergence of opinion between various High Courts regarding interpretation of the expression "an officer or employee of a company" appearing in Sub-section (1) of Section 630 of the Act was resolved by this Court in *Baldev Krishna Sahi v. Shipping Corporation of India*, [1987] 4 SCC 361 holding that

the expression "officer or employee of a company" applies not only to existing officer or employee but also includes past officers or employees where such officer or employee; either (a) wrongfully obtains possession of any property, or (b) wrongfully withholds the same after the termination of his employment.

This Court further held that Section 630 of the Act is intended to provide speedy relief to the company where its property wrongfully obtained or wrongfully withheld by an "employee or an officer" or a past employee and officer" or "legal heirs or representative" deriving their colour and content from such an employee or officer, in so far as the occupation of the property belonging to the company, is concerned.

The penal law cannot be interpreted in a manner to cover within its ambit such persons who are left out by the legislature. The position of the legal heirs of the deceased employee cannot be equated with the family members of an erstwhile employee against whom, admittedly, the criminal prosecution is launched and pending. In criminal cases the law which entails conviction and sentence, liberal construction, with the aid of assumption, presumption and implications cannot be resorted to for the purpose of roping in the criminal prosecution, such persons who are otherwise not intended to be prosecuted or dealt with by criminal court. Accepting the contention of the appellant would amount to the violation of fundamental right of personal liberty as enshrined under Article 21 of the Constitution which declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The paramount object of Article 21 is to prevent the encroachment of the right of a person with respect to his life and liberty, save in accordance with the procedure established by law and in conformity with the provisions thereof. Personal liberty envisaged under this Article means freedom from physical restraint of a person by incarceration or otherwise. Agreeing with the plea of the appellant would also be against the public policy, inasmuch as under similar circumstances the companies would be authorised to resort to harassment tactics by having recourse of arraigning minors and old members of the family of its officer or employee in office or even past.

We are of the firm opinion that all the family members of an alive 'officer' or 'employee' of a company cannot be proceeded with and prosecuted under Section 630 of the Act. The order impugned does not suffer from any illegality, requiring our interference. There is no merit in this appeal, which is accordingly dismissed.

**LW 87:12:2019**

**STRESSED ASSETS STABILIZATION FUND v. WEST BENGAL SMALL INDUSTRIES DEVELOPMENT CORPORATION & ANR [SC]**

**Civil Appeal No. 4139 of 2008**

**Arun Mishra, Vineet Saran & S. Ravindra Bhat, JJ. [Decided on 21/10/2019]**

**Companies Act, 1956- section 535- liquidation of company- Lessors right to cancel lease and resume the property- termination of lease- whether such leased property excluded from winding up-Held, Yes.**

### Brief facts:

The company Wellman Smith Owen Engineering Corporation (since under liquidation) was allotted industrial premises on two different occasions. Acting in terms of the lease, it secured advances that it obtained from IDBI through equitable mortgages of the leasehold property. Wellman went into liquidation, since its sickness was irremediable despite attempts made to revive its industrial activities under SICA. The official liquidator appointed by the court took charge of the assets. WBSIDC's application seeking possession of the leasehold properties was allowed concurrently. Both the learned Single Judge and the Division Bench, upheld WBSIDC's plea that since the conditions of lease had not been complied with, as far as cessation of industrial or manufacturing activity went, the leasehold rights were terminated. As a result, the properties were held to be excluded from the winding up process.

**Decision:** Appeal dismissed.

### Reason:

This court is of the opinion that the reasoning and conclusion of the High Court do not call for interference. The finding that since the exercise by the lessor (WBSIDC) of its right to determine the lease attained finality, the mortgagee (represented by the appellant) could not claim rights superior to that of the lessee, is in consonance with settled law as laid down in *Photo Rotherham Mulchandani v. Karnataka Industrial Areas Development Board (2015) 5 SCC 244*.

There can be no dispute, nor was it contended that a donee or a grantee (as the status of the lessee company in liquidation as in this case) can have no rights in excess of that possessed by the donor or the grantor. The mortgagee (whose shoes SASF has stepped into) of the lessee (Wellman) can have no right greater or better than that of the lessee in terms of the deed of lease. The observations in *Phatu Rochiram Mulchandani (supra)* apply to the facts of this case. The appeal, therefore fails and is dismissed, without order as to costs.

## LW 88:12:2019

**ANAND RAO KORADA RESOLUTION PROFESSIONAL v. M/S VARSHA FABRICS (P) LTD. [SC]**

**Civil Appeal Nos. 8800 & 8801 of 2019 @ SLP (C) Nos. 23349 & 23350 of 2019**

**Indu Malhotra & R. Subash Reddy, JJ. [Decided on 18/11/2019]**

**Insolvency and Bankruptcy Act, 2016- moratorium fixed- High court orders sale of certain properties of the corporate debtor in writ proceedings- whether tenable- Held, No.**

### Brief facts:

In the writ petitions filed by the workers Union, the High Court passed order directing the labour commissioner to determine the dues to the workers and accordingly labour commissioner quantified the same and certain properties of the corporate debtor was put on auction sale. Meanwhile, one financial creditor initiated corporate insolvency proceedings against the corporate debtor and the NCLT fixed the moratorium. The sale of the properties was to be made during the period of moratorium and the resolution professional challenged the orders of the High Court.

The Appellant – Resolution Professional filed the present Civil Appeals to challenge the Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court in W.P. (Civil) No. 7939/2011 on the ground that since the CIRP against Respondent No. 4 had commenced, the proceedings before the High Court in W.P. (Civil) No. 7939/2011 ought to be stayed.

**Decision:** Appeal allowed.

### Reason:

Section 238 of the IBC gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets.

In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4–Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.

If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders. As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.

It is open for Respondent No. 13 – Hirakud Workers' Union to file an application under Regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for payment of arrears, salaries and other dues before the competent authority.

## LW 89:12:2019

### CAMEO CORPORATE SERVICES LTD v. SEBI [SAT]

Appeal No. 566 of 2019

Tarun Agarwala, Dr.C.K.G. Nair & M.T. Joshi. [Decided on 26/11/2019]

**Negligence by RTA- shares transferred based on bogus documents- heavy penalty imposed with interim stay to operate in the market- whether interim stay warranted-Held, No.**

#### Brief facts:

The appellant is aggrieved by the ex parte ad interim order dated October 18, 2019 and confirmatory order dated November 7, 2019 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) has filed the present appeal.

The appellant is the Registrar to the Issue and Transfer Agent ('RTA' for short) of Indo National Ltd. Based on a complaint received by SEBI on the SCORES platform alleging that while clearing and sorting out the old documents, the complainant discovered certain shares of Indo National Limited held by his grandfather and accordingly applied to the appellant seeking information on transferring the said shares in his name. The investigation commenced by SEBI revealed several such incidents. It has been found, by the WTM, that the appellant was negligent and did not exercise appropriate due diligence while processing various requests and prima facie found violating Clauses 2,3 and 16 of the Schedule III of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 ('Regulations of 1993' for short). Accordingly, the WTM issued an ex parte ad interim order prohibiting the appellant from accepting fresh clients in respect of its activities till further directions.

**Decision:** Partly allowed.

**Reason:** Having heard the learned counsel for the parties and having perused the ex parte ad interim order and the confirmatory order we find that except in the case of the complainant where there is a prima facie case of a person impersonating the grandfather of the complainant all other discrepancies either relate to mismatching of photographs or signatures or that the PAN card being fake and not been verified from the Income Tax website / NSDL and accordingly a prima facie case of lack of basic due diligence was made out against the appellant. What is noticeable is that

apart from the complainant's case no other investor has come forward to make a complaint relating to the wrongful transfer of the share certificates illegally to a third party. The discrepancies pointed out by SEBI do not reveal that the appellant made any gain by this wrongful transfer nor there is any finding of a loss being caused to an investor. Thus, exercising the powers under Section 11 and 11B restraining the appellant from accepting fresh clients for a period of three months for failing to exercise due diligence appears to be harsh and unwarranted in the facts and circumstances of the given case.

Thus, ex-parte interim order may be made when there is an urgency. As held in *Liberty Oil Mills & Ors. vs. Union of India & 18 Ors.* [AIR (1984) SC 1271] decided on May 1, 1984, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or corner the market. In the said decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instil and restore confidence in the capital market.

The aforesaid principle of law is squarely applicable in the instant case. In our opinion, the impugned order is harsh and unwarranted. We are of the opinion that there was no real urgency in passing an ex parte ad interim restraint order which virtually amounts to passing a final order especially when a detailed enquiry has been ordered.

In our opinion, the respondent is empowered to pass an ex-parte interim order only in extreme urgent cases and that such power should be exercised sparingly. In the instant case, we do not find that any extreme urgent situation existed which warranted the respondent to pass an ex-parte interim order. We are of the opinion that the impugned order is not sustainable in the eyes of law as it has been passed in gross violation of the principles of natural justice as embodied in Article 14 of the Constitution of India. The restraint order is in our opinion unjustified.

In view of the aforesaid, the impugned order insofar as it restrains the appellant from accepting fresh clients is quashed. Other directions issued by the WTM of SEBI will continue to operate against the appellant. The appeal is partly allowed. In the circumstances of the case, there shall be no orders as to costs.

## LW 90:12:2019

### KSBL SECURITIES LTD v. SEBI [SAT]

Appeal No. 471 of 2018

Tarun Agarwala, Dr.C.K.G. Nair & M.T. Joshi. [Decided on 26/11/2019]

**National Stock Exchange- disciplinary action committee- violations committed by the broker- heavy penalty imposed- whether tenable-Held, No.**



**Brief facts:**

This appeal has been preferred against the order of the Disciplinary Action Committee ("DAC" for convenience) of the National Stock Exchange of India Limited ("NSE" for convenience) dated, whereby the application to review the earlier order of the DAC dated August 02, 2018 was rejected. In the result, the impugned order reiterates the monetary penalty of Rs. 15 lakhs and suspension of trading membership of the appellant from all segments of NSE for 5 days.

**Decision:** Partly allowed.

**Reason:**

Having heard the learned counsel for the parties and having perused various documents produced before us we note that there is sufficient evidence against the appellant to prove that certain violations have been committed by it. The magnitude of money involved is also large in terms of Rs.19 crores worth of client securities being pledged, acceptance of deposits to the tune of Rs. 21.56 crores and non-settlement of funds belonging to 601 clients etc. However, since the appellant has complied with some of the directions issued by the DAC such as submission of CA Certificate, fulfilment of the net worth criteria, we are of the considered view that the penalty imposed on the appellant is disproportionate in the given facts and circumstances. However, we are also of the considered view that the violations are not light enough to let off the appellants scot-free as contended by them. In the result, while upholding the monetary penalty of Rs.15 lakh imposed on the appellant we modify the direction relating to suspension of the appellant from all segments of the exchange NSE for 5 days to that of a direction not to enroll or register any fresh clients for a period of one month. This period of one month shall commence from the seventh day of the date of this order. Appeal is partly allowed as above, no orders on costs.



## Tax Laws

**LW 91:12:2019**

**PRINCIPAL COMMISSIONER OF INCOME TAX v. M/S I VEN INTERACTIVE LTD. [SC]**

**Civil Appeal No.8132 of 2019 @ SLP(C) No.3530/2019**

**U.U. Lalit, Indira Banerjee & M.R. Shah, JJ. [Decided on 18/10/2019]**

**Income tax Act, 1961- assessment- change of address- communication made to AO- PAN data**

**base was not changed- notice issued to the old address- assessments made- whether correct- Held, Yes.**

**Brief facts:**

The assessee changed its registered office and intimated the same to the income tax officer but not changed the address in the PAN data base. Assessment notices were sent on E-module to the assessee to the address recorded in the PAN data base. As no one appeared from the assessee the AO completed the assessment. This was challenged by the assessee before the commissioner of appeals, ITAT and the High court. The High court held that the assessment made by the AO is bad in law as the notice of assessment was not sent to the assessee to the new address. The Revenue challenged this order before the Supreme Court.

**Decision:** Appeal allowed.

**Reason:**

Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under EModule scheme. It is required to be noted that notices under Section 143(2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so.

Now so far as the submission on behalf of the assessee that with respect to the Assessment Years 200405 and 200506, communications and the assessment orders were sent at the new address and therefore the Assessing Officer was in the knowledge of the new address is concerned, the same has been sufficiently explained by the Revenue.

In view of our findings, recorded hereinabove, the impugned judgment and order passed by the High Court as well as the orders passed by the learned C.I.T (Appeals) and the I.T.A.T holding the assessment order bad in law on the aforesaid ground cannot be sustained and the same deserve to be quashed and set aside. As the learned C.I.T (Appeals) has not considered the other grounds on merits and has not considered the appeal on merits, the matter is required to be remanded to the learned C.I.T (Appeals) to consider the appeal on merits, in accordance with law.



## Competition Law

**LW 92:12:2019**

**SAINATH AUTOLINKS PVT. LTD v.STATE BANK OF INDIA & ANR [CCI]**

**Case No. 15 of 2019**

**A.K.Gupta, Sangeeta Verma, B.S. Bishnoi. [Decided on 28/10/2019]**

**Competition Act, 2002- business loan- delay in supplying reconciliation figures- declaration as NPA- imposition of penalty-whether abuse of dominance- Held, No.**

### **Brief facts:**

The Informant has submitted that it opened a Supply Chain Finance Unit ('SCFU') account with OP-2. As per the terms and conditions of the said SCFU account, Maruti Suzuki would dispatch cars to the Informant after receipt of payment from OP-2; thereafter, the Informant would deposit the sales proceeds of cars into the said account.

The grievance of the informant is that due to non-supply of certain information by OPs with respect to the reconciliation of the SCFU account, it has to pay a penalty of Rs. 2.13 crore to OP 2.

Based on the above averments and allegations, the present Information has been filed by the Informant against the OPs, alleging contravention of the provisions of Section 4 of the Act. The Informant has made the following prayers:

- i. An inquiry be ordered against the OPs on the basis of the present complaint.
- ii. During the pendency of the present complaint, the OPs be directed to reimburse the disputed amount of Rs. 2.13 Crores along with 24% interest per annum.

- iii. To declare the demand of Rs. 2.13 crores vide notice dated 23.07.2018 as illegal.
- iv. To levy a penalty of Rs. 3 crores against the OPs and in favour of the Informant for creating conditions for mental torture and harassment along with 24% interest to be compounded every month.

**Decision:** Dismissed.

### **Reason:**

The Commission has perused the Information filed by the Informant, documents annexed therewith and also relevant information available in public domain.

The Commission notes that the Informant is primarily aggrieved with the alleged delayed intimation of reconciliation exercise done by OPs, on account of which he was made liable to pay an amount of Rs 2.13 crores.

The Commission is of the opinion that, keeping in view the facts projected by the Informant against the OPs and in light of the regulatory classifications adopted by the Government/ RBI, the relevant product market in the present case be delineated as 'market for provision of loans to MSMEs' and the relevant geographic market in the present matter as 'State of West Bengal'. In view of the above discussion, the relevant market in the instant matter is 'market for provision of loans to MSMEs in State of West Bengal'.

The Commission notes that the Informant has not provided any evidence to show the dominant position of the OPs except for stating that State Bank of India, being the bank of the Central Government and governed by State Bank of India Act, enjoys dominant position in the commercial market. As against this, from the information available in public domain (i.e. State Level Bankers Committee data pertaining to West Bengal), the Commission notes that market share of OPs in MSME loan category in State of West Bengal for the period 2018-19 is around 11%. Furthermore, banking sector in West Bengal seems to be characterized with presence of several national level banks such as State Bank of India, HDFC Bank, Punjab National Bank, ICICI Bank, Allahabad Bank, Bank of India, Canara Bank, Central Bank of India, Syndicate Bank, UCO Bank, Axis Bank, Yes Bank etc. Thus, considering the large number of players operating in the relevant market, the OPs do not seem to have the ability to operate independently of the competitive forces. In the absence of dominance, the issue of abuse of dominant position against the OPs does not arise.

In view of the foregoing, the Commission is of the view that no case of contravention of the provision of Section 4 of the Act is made against OPs and the matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



## Industrial & Labour Laws

**LW 93:12:2019**

**AIRPORTS AUTHORITY OF INDIA v. A.S.YADAV & ORS. [DEL]**

**W.P.(C).No. 5168/2005 & CM No.47971/2019**  
**Rekha Palli, J. [Decided on 28/11/2019]**

**Industrial Disputes Act,1947- contract between petitioner and service provider- respondent workers are employed by the service provider- termination of service contract- dismissal of workmen by service provider- industrial dispute preferred against the petitioner- whether tenable-Held, No.**

### **Brief facts:**

The petitioner entered into an agreement with M/s Ex Servicemen Air Link Transport Services Ltd. (hereinafter referred to as 'EATS') to run the services of retrieving passengers' luggage trollies at the Delhi Airport, which agreement was extended from time to time. As per the terms of this license, EATS was to be paid a fixed license fee and was required to engage at least eight porters to carry out the work assigned to it. Later on, after some years, the above agreement was terminated and consequently, the services of the respondent- workmen who had been engaged by EATS were terminated, whereupon they raised an industrial dispute against the petitioner, and not EATS. The impugned award has been passed in the proceedings, directing the petitioner to reinstate the respondents with back wages.

**Decision:** Appeal allowed.

### **Reason:**

I have heard the learned counsel for the parties and with their assistance perused the record.

The petitioner's entire case is that as per the respondents own averments in their demand notice, statement of claim and their evidence before the Labour Court, they had admitted that they were employed by EATS, which admissions have not been appreciated by the Labour Court while rendering its findings.

In these circumstances, it would be appropriate to refer to the respondents' averments in their documents, which show that the respondents consistently maintained a stand before the Labour Court, especially in their statement of claim and their evidence by way of affidavit, that they were confirmed employees of EATS and that their services had been terminated by EATS, in connivance with the petitioner. The

respondents also claimed that since the work being carried out by them was perennial in nature, under the immediate supervision of the petitioner's officers, they should be treated as employees of the petitioner. However, interestingly, there is not even a whisper in the respondents' claim or evidence before the Labour Court that the contract between the petitioner and EATS was a sham or a camouflage.

In the light of this position emerging from the record that the respondents had specifically claimed being employed by EATS, which in turn had been engaged by the petitioner to provide select services at the airport, it was neither open for the respondents to subsequently plead otherwise, nor could the Labour Court hold the contract between the petitioner and EATS as a sham contract. In this regard, reference may be made to the decision in *Steel Authority of India Ltd. v. Union of India & Ors. (2007) 1 SCC (L&S) 630* wherein the Supreme Court reiterated that once a definite stand had been taken by the employees before the Labour Court that they had been working under the contractor, it would not be open for them to take a contradictory plea later on that they were also workmen of the principal employer.

In the present case, since the respondents had taken a specific plea that they were employees of EATS, they are precluded from subsequently urging that they were direct employees of the petitioner.

I also find merit in the petitioner's contention that merely because the Labour Court found that the petitioner had engaged the respondents as contract labour through EATS without a licence for such engagement under the Contract Labour (Regulation and Abolition) Act, 1970 ('CLRA Act' in short), the respondents could not be automatically treated as the petitioner's employees. The provisions of the CLRA Act do not contemplate creation of a direct employer-employee relationship between the principal employer and the contract labour merely because the principal employer did not have a valid license for engaging contract labour under the Act. In my view, non- adherence of the provisions of the CLRA Act could, at best, lead to prosecution of the petitioner's responsible officers but could not be a ground to hold that the contract between the petitioner and the EATS was a sham, especially in the absence of any such plea by the respondents.

I also find merit in the petitioner's contention that the Labour Court has failed to appreciate that the respondents were unable to establish that they met the necessary criteria to be declared as direct employees of the petitioner, since neither was it their case that the petitioner was paying their salaries nor was it their case that the petitioner had the power to initiate disciplinary action against them. I find that merely because the petitioner was directing the manner in which work was expected to be carried out by the respondents, it could not imply that they were employees of the petitioner.

For the aforesaid reasons, the impugned Award cannot be sustained and is, accordingly, set aside. However, in the peculiar facts of the present case, even though



the respondents had filed affidavits before this Court undertaking to refund the differential amount between the last drawn wages and minimum wages in case the writ petition were to be allowed, it is directed that no recovery on this count shall be made by the petitioner from the respondent-workmen. The writ petition is allowed in the aforesaid terms.

**LW 94:12:2019**

**NATIONAL BAL BHAWAN v. VANDANA [DEL.]**

**W.P.(C).No. 10027/2019 along with batch of petitions.**

**A.K.Chawla, J. [Decided on 27/11/ 2019]**

**Payment of Gratuity Act, 1972- registered society- funded by central government- employees not paid gratuity- employer contended they are government servants and not entitled to gratuity under the Act- whether correct- Held, No.**

**Brief facts:**

The instant seven (07) writ petitions have come to be preferred by the petitioner-National Bal Bhawan assailing the order dated 11.02.2019 passed by the Assistant Labour Commissioner (Central), Delhi, whereby, the petitioners have been granted gratuity along with simple interest as provided for under Section 7 (3A) of the Payment of Gratuity Act, 1972 (in short, 'the Act, 1972'). In view of the fact that a common question of law as regards the applicability of the Act, 1972 is agitated, all the petitions are taken up for hearing together.

**Decision:** Petition dismissed.

**Reason:**

In plain words, the respondents cannot be said to be holding a post under the Central Government. They are also not shown to be governed by any other Act or by any Rules providing for payment of gratuity. In the given factual conspectus, how can the respondents be said to be excluded from the applicability of the Act, 1972 adverting to the definition of 'employee' as defined in Sub-Section (e) of Section 2 of the Act, 1972, cannot be understood.

In the written submissions filed on behalf of the petitioner, the reliance is placed upon the observations made in '*Ajay Hasia etc. vs. Khalid Mujib Sehravardi & Ors.*' to contend that when the Central Government has control on the working of the society, it is merely a projection of the Government inasmuch as it is the voice of the State. There cannot be any dispute about the observation so made but the context in which it comes cannot be overlooked. The said observations were made in the context of a legal entity, to consider, as to whether such body was to be construed to be an instrumentality or an agency of the State as enshrined under Article 12 or not. There cannot be any difference of opinion in holding that the petitioner is an instrumentality or agency of the State, but, equally, it cannot be forgotten that the petitioner is an autonomous body registered under the Societies

Registration Act. A Society or a Corporate Body, which is created by a Statute or wholly funded by the funds provided by the Union / State and / or its affairs are substantially to achieve the public functions, is to be treated to be an instrumentality or agency of the State for the purposes of maintaining an action under Article 226 of the Constitution of India and nothing beyond. The independent character of such Body or Society does not change otherwise. The contention raised to the contrary is thus, wholly misconceived and is rejected.

Undisputedly, the respondents were offered appointment by the petitioner in its own rights. There is a relationship of employer and employee amongst the petitioner and the respondents is also not in question. Petitioner is an establishment under the Act, 1972, also not being in question and sub-Section (e) of Section 2 of the Act, 1972 not coming to the aid to the petitioner, there is no reason as to why the respondents would not be covered within the purview of the Act, 1972.

In the other limb of submissions, the petitioner contended that the respondents were part time employees and therefore, the Act, 1972 was not applicable to the respondents, the petitioner fails to point out any statutory provision, rule or regulation, in support of such submissions. The Court does not find merit even in the submission so made. An employee is an employee, whether on casual, ad-hoc or part time basis. The definition of employee in the Act, 1972 also does not speak of any specific categories of the employees for its applicability, be it, regular, ad- hoc, part time, casual etc. etc.

The combined reading of sub-Section (e) and sub-Section (s) of Section 2 of the Act, 1972 leaves no doubt that the gratuity is payable to the employees defined under the subject Act and is to be assessed on the basis of the wages / emoluments, within the ceiling limit as provided there-under.

All of the respondents, undisputedly, have rendered their uninterrupted services for more than five (05) years to be eligible for the gratuity under the Act, 1972. Most of them have rendered services for almost 30 years or more and they have come to be declined the entitlement of gratuity, that too, by a Society, which is stated to be wholly funded by the Central Government. They are not entitled to pension as they are not the regular employees under the Central or the State Government nor the society on its part is shown to have any such scheme. Fact however remains that the payment of gratuity is a statutory liability under the Act, 1972. Thus, for the respondents' services having been availed for over the years, most of them having been the employees of the petitioner for decades, denial of gratuity to them, is to leave them in lurch, when they superannuated. What to talk of bread and butter, they are left even without bread, a basic necessity for survival. It is a reflection of total insensitivity to their just cause, which, the petitioner has failed to advert to, ignoring the genesis of the beneficial legislation like the Act, 1972. For the foregoing reasons, the writ petitions are dismissed with cost.

# 4

## FROM THE GOVERNMENT



- RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE IN FILING OF FORMS MGT-7 (ANNUAL RETURN) AND AOC-4 (FINANCIAL STATEMENT) UNDER THE COMPANIES ACT, 2013- UT OF J&K AND UT OF LADAKH
- EXTENSION OF LAST DATE OF FILING OF FORM PAS-6
- EXTENSION OF LAST DATE OF FILING OF FORM NFRA-2
- CORRIGENDUM OF REGARDING DRDO
- COMPANIES (MEETINGS OF BOARD AND ITS POWER) SECOND AMENDMENT RULES, 2019
- FRAMEWORK FOR ISSUE OF DEPOSITORY RECEIPTS
- INVESTMENT POLICY OF CLEARING CORPORATIONS
- GUIDELINES FOR PREFERENTIAL ISSUE OF UNITS AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED INFRASTRUCTURE INVESTMENT TRUST (INVT)
- GUIDELINES FOR PREFERENTIAL ISSUE OF UNITS AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED REAL ESTATE INVESTMENT TRUST (REIT)
- DISCLOSURES BY LISTED ENTITIES OF DEFAULTS ON PAYMENT OF INTEREST/ REPAYMENT OF PRINCIPAL AMOUNT ON LOANS FROM BANKS / FINANCIAL INSTITUTIONS AND UNLISTED DEBT SECURITIES
- COLLECTION AND REPORTING OF MARGINS BY TRADING MEMBER (TM) /CLEARING MEMBER (CM) IN CASH SEGMENT
- MAPPING OF UNIQUE CLIENT CODE (UCC) WITH DEMAT ACCOUNT OF THE CLIENTS
- MODIFICATIONS IN THE CONTRACT SPECIFICATIONS OF COMMODITY DERIVATIVES CONTRACTS
- CONTINUOUS DISCLOSURES AND COMPLIANCES BY LISTED ENTITIES UNDER SEBI (ISSUE AND LISTING OF MUNICIPAL DEBT SECURITIES) REGULATIONS, 2015
- STREAMLINING THE PROCESS OF PUBLIC ISSUE OF EQUITY SHARES AND CONVERTIBLES- EXTENSION OF TIME LIME FOR IMPLEMENTATION OF PHASE II OF UNIFIED PAYMENTS INTERFACE WITH APPLICATION SUPPORTED BY BLOCKED AMOUNT
- INTRODUCTION OF CROSS-MARGINING FACILITY IN RESPECT OF OFFSETTING POSITIONS IN CO-RELATED EQUITY INDICES
- CREATION OF SEGREGATED PORTFOLIO IN MUTUAL FUND SCHEMES
- REPORTING OF CHANGES IN TERMS OF INVESTMENT
- OPERATIONAL GUIDELINES FOR FPIS & DDPS UNDER SEBI (FOREIGN PORTFOLIO INVESTORS), REGULATIONS 2019 AND FOR ELIGIBLE FOREIGN INVESTORS.
- E-KYC AUTHENTICATION FACILITY UNDER SECTION 11A OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 BY ENTITIES IN THE SECURITIES MARKET FOR RESIDENT INVESTORS
- ENHANCED DUE DILIGENCE FOR DEMATERIALIZATION OF PHYSICAL SECURITIES
- ENHANCED GOVERNANCE NORMS FOR CREDIT RATING AGENCIES (CRAS)



## Corporate Laws

### 01 Relaxation of additional fees and extension of last date in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- UT of J&K and UT of Ladakh

[Issued by the Ministry of Corporate Affairs vide ENo. 01/34/2013 CL-V dated 28.11.2019.]

1. In continuation to General Circular No.13/2019 dated 29.10.2019 and keeping in view of the requests received from various stakeholders stating that due to disturbances in internet services and the normal work was affected in the UT of J&K and UT of Ladakh and sought extension of time for filing of financial statements **for the financial year ended 31.03.2019**. Therefore, it has been decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC-4 XBRL and e-form MGT-7 upto **31.01.2020**, for companies having jurisdiction in the **UT of J&K and UT of Ladakh** without levy of additional fee.

2. This issues with the approval of the competent authority.

**K. M. S. NARAYANAN**  
Assistant Director (Policy)

### 02 Extension of last date of filing of Form PAS-6

[Issued by the Ministry of Corporate Affairs vide ENo. 01/21/2013 CL-V dated 28.11.2019.]

1. This Ministry has received representations regarding extension of the last date of filing of Form PAS-6 under rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
2. The matter has been examined and it is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry.
3. This issues with approval of the competent authority.

**K. M. S. NARAYANAN**  
Assistant Director (Policy)

### 03 Extension of last date of filing of form NFRA-2

[Issued by the Ministry of Corporate Affairs vide E No. 1/4/2016-CL-1 dated 27.11.2019.]

1. The Ministry of Corporate Affairs has received several representations regarding extension of the last date of filing

of Form NFRA-2, which is required to be filed under rule 5 of the National Financial Reporting Authority Rules, 2018.

2. The matter has been examined and it is stated that the time limit for filing Form NFRA-2 will be 90 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).
3. This issues with the approval of Competent Authority

**K. M. S. NARAYANAN**  
Assistant Director (Policy)

### 04 Corrigendum of regarding DRDO

[Issued by the Ministry of Corporate Affairs vide E No. 13/18/2019-CSR dated 19.11.2019. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]

In the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 776(E), dated the 11<sup>th</sup> October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 11<sup>th</sup> October, 2019, at page 2, in line 14, for "Defence Research and Development Organisation (DRDO)", read "Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT),"

**GYANESHWAR KUMAR SINGH**  
Joint Secretary

### 05 Companies (meetings of Board and its power) Second Amendment Rules, 2019

[Issued by the Ministry of Corporate Affairs vide E No. 1/32/2013-CL-V-Part dated 18.11.2019 Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i)]

In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 15, in sub-rule (3), in clause (a),-  
(a) in sub-clauses (i) and (ii), the words "or rupees one hundred crore, whichever is lower", shall be omitted;  
(b) in sub-clause (iii), for the words "amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower", the words "amounting to ten per cent or more of the turnover of the company" shall be substituted; and



- (c) in sub-clause (iv), the words “or rupees fifty crore, whichever is lower”, shall be omitted.

**K.V.R. MURTY**  
Joint Secretary

## 06 Framework for issue of Depository Receipts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD2/DCAP/CIR/P/2019/146 dated 28.11.2019.]

1. The framework for issuance of Depository Receipts ('DRs') by a Listed Company was notified by SEBI vide Circular dated October 10, 2019.
2. The said Circular, *inter-alia*, provided that a Listed company shall be permitted to issue permissible securities or transfer Permissible Securities of existing holders, for the purpose of issue of DRs, only in Permissible Jurisdictions and said DRs shall be listed on any of the specified International Exchange(s) of the Permissible Jurisdiction.
3. The Circular also provided that 'Permissible Jurisdiction' shall mean jurisdictions as may be notified by the Central Government from time to time, pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, and 'International Exchanges' shall mean exchanges as may be notified by SEBI from time to time.'
4. In this regard, the Central Government vide notification dated November 28, 2019, has notified the list of Permissible Jurisdictions in pursuance of notification dated September 18, 2019. Accordingly, for the purpose of Para 2.7 of the abovementioned Circular dated October 10, 2019, a list of Permissible Jurisdictions and International Exchange(s) is placed at **Annexure A**.
5. Stock Exchanges and Depositories are advised to:
  - a) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above circular; and
  - b) bring the provisions of this circular to the notice of the issuers, domestic custodians and also to disseminate the same on the website.
6. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) at "Legal Framework→Circulars".

**AMIT TANDON**  
General Manager

## List of Permissible Jurisdictions and International Exchanges

1. United States of America - NASDAQ, NYSE
2. Japan - Tokyo Stock Exchange
3. South Korea - Korea Exchange Inc.
4. United Kingdom excluding British Overseas Territories- London Stock Exchange
5. France - Euronext Paris
6. Germany - Frankfurt Stock Exchange
7. Canada - Toronto Stock Exchange
8. International Financial Services Centre in India - India International Exchange, NSE International Exchange

## 07 Investment Policy of Clearing Corporations

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD2/DCAP/CIR/P/2019/145 dated 28.11.2019.]

1. SEBI vide circular SEBI/HO/MRD/DRMNP/CIR/P/2016/54 dated May 04, 2016 on "Investment Policy, Liquid Assets for the purpose of Calculation of Net Worth of a Clearing Corporation and Transfer of Profits" *inter alia* permitted the Clearing Corporations to make investments in Fixed Deposits with Banks (only those banks which have a net worth of more than INR 500cr. and are rated A1 (or A1+) or equivalent), Central Government Securities and Liquid schemes of debt mutual funds (subject to a limit of ten percent of the total investible resources held by the Clearing Corporation, at any point in time).
2. Upon a review of investment avenues available for Clearing Corporations and based on the feedback received, it has been decided to permit the Clearing Corporations to make investments in Overnight Funds; however, the combined investments made by Clearing Corporations in Liquid Funds and Overnight Funds shall not exceed a limit of ten percent of the total investible resources. Further, the investments in Overnight Funds shall also be considered as 'Liquid Assets', for the purpose of calculation of Net worth of a Clearing Corporation.
3. The provisions of this circular shall come into force with immediate effect.
4. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.
5. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the category "circular"

**AMIT TANDON**  
General Manager

## 08 Guidelines for preferential issue of units and institutional placement of units by a listed Infrastructure Investment Trust (InvIT)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2019/143 dated 27.11.2019.]

Regulation 2(1) (zo) of Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT

Regulations”), defines a “preferential issue” as an issue of units to a select persons on a private placement basis.

This circular details the guidelines in respect of a preferential issue of units and institutional placement of units by a listed InvIT.

#### **GUIDELINES**

1. “Institutional Placement” shall mean a preferential issue of units by a listed InvIT only to Institutional Investors, as defined under InvIT Regulations.

#### **Conditions for issuance**

2. A listed InvIT may make a preferential issue of units or institutional placement of units under these guidelines, if it satisfies the following conditions:

- 2.1. A resolution of the existing unitholders approving the issue of units, in accordance with Regulation 22(5) of the InvIT Regulations has been passed.

- 2.2. Units of the same class, which are proposed to be allotted have been listed on a stock exchange for a period of at least six months prior to the date of issuance of notice to its unit holders for convening the meeting to pass the resolution in terms of clause 2.1 above:

Provided in case of issuance of units through “institutional placement” the minimum listing period required shall be 12 months.

- 2.3. The InvIT has obtained in principle approval of the stock exchange(s) for listing of the units proposed to be issued under these guidelines.

- 2.4. The InvIT is in compliance with all the conditions for continuous listing and disclosure obligations under the InvIT Regulations and circulars issued thereunder.

- 2.5. None of the respective promoters or partners or directors of the sponsor(s) or investment manager or trustee of the InvIT is a fugitive economic offender declared under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018).

- 2.6. The InvIT shall not make any subsequent institutional placement until the expiry of six months from the date of the prior institutional placement made pursuant to one or more special resolutions.

#### **Manner of issuance of units**

3. Any issuance of units under these guidelines shall be done in the following manner:

- 3.1. The units shall be allotted in the dematerialized form only and shall be listed on the stock exchange(s) where the units of the InvIT are listed.

- 3.2. Any offer or allotment through private placement shall not be made to more than 200 investors (excluding institutional investors) in a financial year.

- 3.3. Other than to the extent of the issue of units that is proposed to be made for consideration other than cash, full consideration for the units issued shall be paid by the prospective allottees prior to the allotment of the units, through banking channels. All such monies shall be kept by the Trustee in a separate bank account in the name of the InvIT and shall only be utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.

- 3.4. The minimum allotment and trading lot for units issued shall be equivalent to the minimum allotment and trading lot as applicable to the units of the same class, under the extant provisions of the InvIT Regulations or circulars issued thereunder.

- 3.5. Post allotment, the InvIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within seven working days from the date of allotment:

Provided that where the InvIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means within twenty days from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT and the investment manager and its director or partner who is an officer in default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

- 3.6. The InvIT shall file an allotment report with SEBI within seven days of allotment of the units, providing details of the allottees and allotment made. Placement document, if applicable, shall also be filed with the Board along with the allotment report.

- 3.7. The issue of units shall comply with the conditions and manner of allotment for preferential issue and institutional placement as provided in Annexure – I and Annexure – II & III, respectively.

4. The earlier circular no. SEBI/HO/DDHS/CIR/P/2018/89 dated June 5, 2018 stands repealed.

5. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the InvIT Regulations.

6. This Circular is available on the website of the Securities and Exchange Board of India at [www.sebi.gov.in](http://www.sebi.gov.in) under the sub-category “Circulars” under the category “Legal”.

**RICHA G. AGARWAL**

Deputy General Manager

*Annexure not published here for want of space. Readers may log on to [www.sebi.gov.in](http://www.sebi.gov.in) for Complete Notification.*

## **09 Guidelines for preferential issue of units and institutional placement of units by a listed Real Estate Investment Trust (REIT)**

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2019/142 dated 27.11.2019.]**

Regulation 2(1) (zd) of Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”), defines a “preferential issue” as an issue of units to a select persons on a private placement basis.

This circular details the guidelines in respect of a preferential issue of units and institutional placement of units by a listed REIT.

**GUIDELINES**

1. "Institutional Placement" shall mean a preferential issue of units by a listed REIT only to Institutional Investors, as defined under REIT Regulations or circulars issued thereunder.

**Conditions for issuance**

2. A listed REIT may make a preferential issue of units or an institutional placement of units under these guidelines, if it satisfies the following conditions:
  - 2.1. A resolution of the existing unitholders approving the issue of units, in accordance with Regulation 22(6) of the REIT Regulations has been passed.
  - 2.2. Units of the same class, which are proposed to be allotted have been listed on a stock exchange for a period of at least six months prior to the date of issuance of notice to its unit holders for convening the meeting to pass the resolution in terms of clause 2.1 above:  
Provided in case of issuance of units through "institutional placement" the minimum listing period required shall be 12 months.
  - 2.3. The REIT has obtained in principle approval of the stock exchange(s) for listing of units proposed to be issued under these guidelines.
  - 2.4. The REIT is in compliance with all the conditions for continuous listing and disclosure obligations under the REIT Regulations and circulars issued thereunder.
  - 2.5. None of the respective promoters or partners or directors of the sponsor(s) or manager or trustee of the REIT is a fugitive economic offender declared under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018).
  - 2.6. The REIT shall not make any subsequent institutional placement until the expiry of six months from the date of the prior institutional placement made pursuant to one or more special resolutions.

**Manner of issuance of units**

3. Any issuance of units under these guidelines shall be done in the following manner:
  - 3.1. The units shall be allotted in the dematerialized form only and shall be listed on the stock exchange(s) where the units of the REIT are listed.
  - 3.2. Any offer or allotment through private placement shall not be made to more than 200 investors (excluding institutional investors) in a financial year.
  - 3.3. Other than to the extent of the issue of units that is proposed to be made for consideration other than cash, full consideration for the units issued shall be paid by the prospective allottees prior to the allotment of the units, through banking channels. All such monies shall be kept by the Trustee in a separate bank account in the name of the REIT and shall only be utilized for adjustment against allotment of units or refund of money to the applicants till the time such units are listed.
  - 3.4. The minimum allotment and trading lot for units issued shall be equivalent to the minimum allotment and trading lot as applicable to the units of the same class, under the extant provisions of the REIT Regulations or circulars issued thereunder.
  - 3.5. Post allotment, the REIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within seven days from the date of allotment: Provided that where the REIT fails to list the units within the specified time, the monies received shall be

refunded through verifiable means within twenty days from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the REIT and the manager and its director or partner who is an officer in default shall, on and from the expiry of the twentieth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

- 3.6. The REIT shall file an allotment report with SEBI within seven days of allotment of the units providing details of the allottees and allotment made. Placement document, if applicable, shall also be filed with the Board along with the allotment report.
- 3.7. The issue of units shall comply with the conditions and manner of allotment for preferential issue units and institutional placement as provided in Annexure – I and Annexure – II & III, respectively.
4. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the REIT Regulations.
5. This Circular is available on the website of the Securities and Exchange Board of India at [www.sebi.gov.in](http://www.sebi.gov.in) under the sub-category "Circulars" under the category "Legal".

**RICHA G. AGARWAL**  
Deputy General Manager

*Annexure not published here for want of space. Readers may log on to [www.sebi.gov.in](http://www.sebi.gov.in) for Complete Notification.*

## 10 Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions and unlisted debt securities

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated 21.11.2019.]**

1. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations") currently require disclosure of material events / information by listed entities to stock exchanges. Specific disclosures are required under the SEBI LODR Regulations in certain matters such as delay / default in payment of interest / principal on debt securities such as Non-Convertible Debt (NCDs), Non-Convertible Redeemable Preference Shares (NCRPS) etc. It has been observed that similar disclosures are generally not made by listed entities with respect to loans from banks and financial institutions.
2. Corporates in India are even today primarily reliant on loans from the banking sector. Many banks and financial institutions are presently under considerable stress on account of large loans to the corporate sector turning into stressed assets / Non-performing Assets (NPAs). Some companies have also been taken up for initiation of insolvency and bankruptcy proceedings.
3. In order to address this critical gap in the availability of information to investors, listed entities shall comply with the requirements of this circular.



**A. Applicability:**

- i. The circular shall be applicable to all listed entities which have listed any of the following: specified securities (*equity and convertible securities*), NCDs and NCRPS.
- ii. The disclosures shall be made to the stock exchanges when the entity has defaulted in payment of interest / instalment obligations on loans, including revolving facilities like cash credit, from banks / financial institutions and unlisted debt securities.
- iii. 'Default' for the purpose of this circular shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable (*'pre-agreed payment date'*).  
Provided that for revolving facilities like cash credit, an entity would be considered to be in 'default' if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.

**B. Timing of disclosures:**

- i. To begin with, listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks / financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30<sup>th</sup> day of such default.
- ii. In case of unlisted debt securities i.e. NCDs and NCRPS, the disclosure shall be made promptly but not later than 24 hours from the occurrence of the default. This is in line with the existing disclosure requirements specified for listed debt instruments. Disclosures shall be made in the format(s) specified in Paras 3 (C1) and (C2) below.

**C. Disclosure formats:**

**C1.** The following details shall be disclosed by listed entities for each instance of default, as specified in Para 3 (B) above:

**a. For loans including revolving facilities like cash credit from banks / financial institutions:**

Sr. No	Type of disclosure	Details
1.	Name of the Listed entity	
2.	Date of making the disclosure	
3.	Nature of obligation	
4.	Name of the Lender(s)	
5.	Date of default	
6.	Current default amount ( <i>break-up of principal and interest in INR crore</i> )	
7.	Details of the obligation (total principal amount in INR crore, tenure, interest rate, secured / unsecured etc.)	
8.	Total amount of outstanding borrowings from Banks / financial institutions (in INR crore)	
9.	Total financial indebtedness of the listed entity including short-term and long-term debt (in INR crore)	

**b. For unlisted debt securities i.e. NCDs and NCRPS:**

Sr. No	Type of disclosure	Details
1.	Name of the Listed entity	
2.	Date of making the disclosure	
3.	Type of instrument with ISIN	
4.	Number of investors in the security as on date of default	
5.	Date of default	
6.	Current default amount ( <i>break-up of principal and interest in INR crore</i> )	
7.	Details of the obligation (amount issued, tenure, coupon, secured/unsecured, redemption date etc.)	
8.	Total amount issued through debt securities (in INR crore)	
9.	Total financial indebtedness of the listed entity including short-term and long-term debt (in INR crore)	

**C2.** Disclosures specified in the table below shall be made by listed entities, if on the last date of any quarter:

- a. Any loan including revolving facilities like cash credit from banks / financial institutions where the default continues beyond 30 days or
- b. There is any outstanding debt security under default.

Sr. No	Particulars	in INR crore
1.	<b>Loans / revolving facilities like cash credit from banks / financial institutions</b>	
A.	Total amount outstanding as on date	
B.	Of the total amount outstanding, amount of default as on date	
2.	<b>Unlisted debt securities i.e. NCDs and NCRPS</b>	
A.	Total amount outstanding as on date	
B.	Of the total amount outstanding, amount of default as on date	
3.	<b>Total financial indebtedness of the listed entity including short-term and long-term debt</b>	

The above disclosure shall be made within 7 days from the end of each quarter.

4. As far as disclosures pertaining to default of listed NCDs / listed NCRPS / listed Commercial paper are concerned, the same would continue to be made as per the present provisions of the SEBI Regulations and Circulars issued thereunder.
5. Disclosures as applicable in terms of this circular, including quarterly disclosure, shall be made beginning January 01, 2020 in the format specified in Paras 3 (C1) and 3 (C2) above.
6. SEBI circular no. CIR/CFD/CMD/93/2017 dated August 4, 2017 is rescinded.
7. This circular is issued under Section 11(1) of the SEBI Act, 1992 and Regulation 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
8. This circular is available on the SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the category - "Legal→Circulars".

**PRADEEP RAMAKRISHNAN**

General Manager

Annexure not published here for want of space. Readers may log on to [www.sebi.gov.in](http://www.sebi.gov.in) for Complete Notification.

# 11

## Collection and reporting of margins by Trading Member (TM) /Clearing Member (CM) in Cash Segment

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated 19.11.2019.]

1. Attention is drawn to SEBI circular no. MRD/DoP/SE/Cir-07/2005 dated February 23, 2005 on 'Comprehensive Risk Management Framework for the Cash Market'.
  2. SEBI has also put in place a 'Mechanism for regular monitoring of and penalty for short-collection/ non-collection of margins from clients' in Derivatives segment by issuing the following circulars:
    - 2.1. Circular No. CIR/DNPD/7/2011 dated August 10, 2011
    - 2.2. Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016 directed to all National Commodity Derivatives Exchanges, and
    - 2.3. Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/88 dated August 01, 2019.
  3. Further, SEBI vide circular no. SEBI/HO/MIRSD/DOP/CIR/P/2019/14 dated January 11, 2019 implemented uniform membership structure in Cash segment as Trading Member (TM), Self-clearing Member (SCM), Clearing Member (CM) and Professional Clearing Member (PCM) as prevalent in the equity derivatives segment.
  4. In cash segment, the VaR margin is collected by Clearing Corporation (CC) upfront from trading member/clearing member by adjusting against the available liquid assets of TM/CM at the time of trade. However, the quantum, form and mode of collection of the margin from the client is left to the discretion of TM/CM. In order to align and streamline the risk management framework of both cash and derivatives segments, with respect to collection of margins from the clients and reporting of short-collection/ non-collection of margins, following guidelines are issued:
    - 4.1. Collection of margins from the clients by TM/CM in cash segment:
      - 4.1.1. The 'margins' for this purpose shall mean VaR margin, extreme loss margin (ELM), mark to market margin (MTM), delivery margin, special /additional margin or any other margin as prescribed by the Exchange to be collected by TM/CM from their clients.
      - 4.1.2. Henceforth, like in derivatives segment, the TMs/ CMs in cash segment are also required to mandatorily collect upfront VaR margins and ELM from their clients. The TMs/CMs will have time till 'T+2' working days to collect margins (except VaR margins and ELM) from their clients. (The clients must ensure that the VaR margins and ELM are paid in advance of trade and other margins are paid as soon as margin calls are made by the Stock Exchanges/TMs/CMs. The period of T+2 days has been allowed to TMs/ CMs to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed 2 days to pay margin due from them.)
      - 4.1.3. As prescribed in clause 7 of SEBI circular MRD/DoP/SE/Cir-07/2005 dated February 23, 2005, the TM/CM shall be exempted from collecting upfront margins from the institutional investors carrying out business transactions and in cases where early pay-in of securities is made by the clients.
    - 4.1.4. If the TM/CM had collected adequate initial margins from the client to cover the potential losses over time till pay-in, he need not collect MTM from the client.
    - 4.1.5. As like in derivatives segments, the TMs/CMs shall report to the Stock Exchange on T+5 day the actual short-collection/ non-collection of all margins from clients.
  - 4.2. Penalty structure for short-collection/non-collection of margins and false/incorrect reporting of margin collection from the clients by TMs/CMs:
    - 4.2.1. For short-collection / non-collection of client margins, the Stock Exchanges shall take the disciplinary action as per the framework specified in SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.
    - 4.2.2. For false/incorrect reporting of margin collection from the clients by TMs/CMs, the Stock Exchanges shall take disciplinary action as per the framework specified in SEBI circular CIR/HO/MIRSD/DOP/CIR/P/2019/88 dated August 01, 2019.
5. The provisions of paragraph 4.1 of this circular shall come into force with effect from January 01, 2020 and provisions of paragraph 4.2 of this circular shall come into force with effect from April 01, 2020.
6. Stock Exchanges and Clearing Corporations are directed to:
  - 6.1. bring the provisions of this circular to the notice of their members along with illustration as required and also disseminate the same on their websites.
  - 6.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above directions in co-ordination with one another to achieve uniformity in approach.
  - 6.3. communicate to SEBI, the status of the implementation of the provisions of this circular in their monthly development reports.
7. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Section 10 of Securities Contract (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
8. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework".

**RAJESH KUMAR D**  
General Manager

# 12

## Mapping of Unique Client Code (UCC) with demat account of the clients

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/136 dated 15.11.2019.]

1. Vide SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/P/2018/153 dated December 17, 2018, Early Warning Mechanism was put

in place to detect the diversion of client's securities by the stock broker at an early stage so as to take appropriate preventive measures. Early Warning circular, *inter-alia*, specified that Stock Exchanges / Clearing Corporations / Depositories, shall devise a mechanism to detect diversion of clients' securities and to share information among themselves in respect of:

- 1.1. Diversion of pay-out of securities to non-client/other client accounts.
  - 1.2. Mis-matches between gross (client-wise) securities pay-in and pay-out files of a stock brokers generated by the Clearing Corporation which shall be compared with actual transfer of securities to/from the client's depository accounts by the Depository. The cases of any mismatch found out by the Depository shall be informed to the concerned Stock Exchange / Clearing Corporation.
2. In order to facilitate ease in reconciliation, it was considered necessary to map clients' Unique Client Code (UCC) with their demat accounts. A mechanism for mapping of UCC with demat accounts of the clients was discussed with Stock Exchanges and Depositories. Pursuant to the discussion with Stock Exchanges and Depositories, it has been decided that for mapping of UCC with the demat account of the clients, following mechanism shall be implemented:
    - 1.1. UCC allotted by the trading member (TM) to the client shall be mapped with the demat account of the client.
    - 1.2. A client may trade through multiple TMs in which case each such UCC shall be mapped with one or more demat account(s).
    - 1.3. Stock Exchanges shall share the UCC data with the Depositories which shall include the PAN, segment, TM/CM code and UCC allotted. Such UCC data shall be shared with the Depositories on a one-time basis by November 30, 2019, and subsequently incremental data in respect of new UCCs created, shall be shared on a daily basis.
    - 1.4. Depositories shall map the UCC data in the demat account based on the PAN provided in the UCC database.
    - 1.5. Clients may make a request to their depository participants to delink or add UCC details which shall be processed by the Depository through depository participants. Before any addition of UCC in the demat account, the Depositories shall validate the same with the Stock Exchanges / client.
    - 1.6. Stock Exchanges and Depositories shall have a mechanism in place to address clients' complaints with regard to UCC mapping with their demat accounts.
    - 1.7. Stock Exchanges and Depositories shall have a mechanism in place to ensure that inactive, non-operational UCCs are not misused and also a mechanism to ensure that inactive, non-operational UCCs are weeded out in the process of mapping clients' UCC with their demat account.
  2. Stock Exchanges and Depositories shall map the existing UCCs with the demat account of the clients latest by December 31, 2019.
  3. Stock Exchanges and Depositories are directed to:
    - 3.1. bring the provisions of this circular to the notice of their members and participants, as the case may be, and also disseminate the same on their websites;
    - 3.2. communicate to SEBI, the status of the implementation

of the provisions of this circular in their monthly development report.

4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

**D RAJESH KUMAR**

General Manager

## 13 Modifications in the contract specifications of commodity derivatives contracts

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DOP/CIR/P/2019/135 dated 14.11.2019.]

1. SEBI vide its circular ref. no. SEBI/HO/CDMRD/CIR/2016/88 dated September 20, 2016 had *inter-alia* prescribed at Para 3(c) provisions regarding permission to allow modifications in contract specifications at the exchange level.
2. In order to streamline the process and after consultation with the exchanges, it has been decided to categorise the modifications in contract specification parameters in the following three categories:
  - a. **Category A:** Non-material modifications which can be made at the exchange level in yet to be launched and running contracts.
  - b. **Category B:** Material modifications which can be made at the exchange level in yet to be launched contracts or running contracts which have nil open interest. These modifications shall require approval from Product Advisory Committee and approval of Regulatory Oversight Committee to be obtained post facto.
  - c. **Category C:** Material modifications which can be made only after approval from SEBI. These modifications shall require deliberations and approval from Product Advisory Committee and Regulatory Oversight Committee before seeking permission from SEBI.
3. The list of various contract specification parameters as per the above stated categories along with the timelines for advance intimation of modification to SEBI and market participant is given at **Annexure I**.
4. The permission to modify contract specification parameters of commodity derivatives contracts is subject to the condition that before introduction of any modification in contract specifications the Exchanges shall inform SEBI and market participants along with reasons for the modifications as per the timeline mentioned in **Annexure I**. However, this shall not apply to certain modifications which are required to be effected immediately considering the exigencies of the situation as per surveillance measure.
5. The Circular ref. no. SEBI/HO/CDMRD/CIR/2016/88 dated September 20, 2016 stands amended to this effect.
6. The provisions of this circular shall be effective from December 01, 2019.



7. This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
8. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) in under the category 'Circulars' and "Info for Commodity Derivatives".

**PRIYANKA MAHAPATRA**  
Deputy General Manager

**Annexure I**  
**Categorisation of contract specification**  
**parameters in commodity derivatives contracts**

Category	Type of Modification	Parameter	Number of days of advance intimation to be given to SEBI and market participants
<b>Category A</b>	Non-material modifications which can be made at the exchange level in yet to be launched and running contracts	<ul style="list-style-type: none"> <li>■ Symbol</li> <li>■ Description</li> <li>■ Contract Commencement Day(Y/L)</li> <li>■ Quotation/Base value (Y/L)</li> <li>■ Maximum Order Size</li> <li>■ Tick Size (Minimum Price Movement)</li> <li>■ Strike Interval (Y/L)</li> <li>■ Number of Strikes</li> <li>■ Initial Margin</li> <li>■ Extreme Loss Margin</li> <li>■ Delivery Period Margin</li> <li>■ Pre-expiry Margin</li> <li>■ Other Margins</li> <li>■ Underlying Quotation (Y/L)</li> </ul>	10 days
<b>Category B</b>	Material modifications which can be made at the exchange level in yet to be launched contracts or running contracts which have nil open interest. These modifications shall require approval from Product Advisory Committee and approval of Regulatory Oversight Committee to be obtained post facto.	<ul style="list-style-type: none"> <li>■ Last Trading Day / Due Date/Expiry Date#</li> <li>■ Trading Unit</li> <li>■ Price Quote (Basis)</li> <li>■ Delivery Centre</li> <li>■ Delivery Unit</li> <li>■ Additional Delivery Centre(s)</li> <li>■ Quality Specifications</li> <li>■ Quantity Variation</li> <li>■ Tolerance Limit</li> <li>■ Trading Session</li> <li>■ Premium/Discount</li> <li>■ Underlying Price Quote (basis)</li> <li>■ Maximum Allowable Open Position</li> </ul>	30 days

<b>Category C</b>	Material modifications which can be made only after approval from SEBI. These modifications shall require deliberations and approval from Product Advisory Committee and Regulatory Oversight Committee before seeking permission from SEBI.	<ul style="list-style-type: none"> <li>■ Contract Launch Calendar</li> <li>■ Trading Period</li> <li>■ Daily Price Limit</li> <li>■ Delivery Logic</li> <li>■ Settlement of Contract/ Settlement Logic/ Final settlement Method Exercise of Options</li> <li>■ Mechanism of Exercise</li> <li>■ Due Date Rate (Final Settlement Price)</li> <li>■ Tender Period</li> <li>■ Start Date of Near Month Staggered Delivery Period/ Tender Period</li> <li>■ Option Type</li> </ul>	30 days
-------------------	--	--	---------

(Y/L)-Modification can only be carried out in yet to be launched contracts

#-Changes in due date/expiry date may be required to be done in the running contracts in the event of sudden closure of markets on expiry date. SEBI Circular ref. no. SEBI/HO/CDMRD/DRMP/CIR/P/2016/90 dated September 21, 2016 prescribes that Exchange may advance expiry date of running contract in case physical market is closed in the notified basis centre on the expiry day of the contract, due to festivals, strikes, erratic weather conditions, etc. Decision about advancing expiry of running contract shall be intimated to the trade participants at least 10 days before the revised expiry date.

## 14 Continuous disclosures and compliances by listed entities under SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/CIR/P/134/2019 dated 13.11.2019.]**

- SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (ILDM Regulations) prescribe disclosures to be made by issuers making public issues of debt securities or seeking listing of municipal debt securities issued on private placement basis to the Stock Exchange(s). SEBI vide Circular No. CIR/IMD/DF1/60/2017 ("hereinafter to be referred as ILDM Circular") dated June 19, 2017 had specified continuous disclosures and compliance by issuers of debt securities under ILDM Regulations.
- Subsequently, ILDM regulations have been amended to, inter alia, widen the definition of issuers, revise timelines for submission of annual and half yearly financial results, structure payment mechanism through escrow accounts, etc.
- Regulation 29 of ILDM regulations provides that the Board shall have the power to issue directions through guidance notes or circulars. Accordingly, it has been decided to specify as under:
  - Clause 2.1 of the ILDM circular regarding disclosure of financial information is substituted to read as under :

**“2.1 Disclosure of Financial Information**

While disclosing its financial information to the Stock Exchange(s), listed entities shall comply with the following:

**2.1.1. Half Yearly Unaudited Financial results**

- (a) The listed entities shall prepare and submit half yearly un-audited financial results to the stock exchange as soon as the same are available but within forty five days of the end of the first half year.

**2.1.2. Annual Audited Financial Results**

- (a) The listed entities shall submit annual audited financial results for the financial year, within sixty days from the end of the financial year along with the audit report. Provided that listed entities, who are being audited by CAG, may adopt the following two step process for audit of its accounts
- (i) The first level audit shall be carried out by CAG appointed audit firm (auditor). The auditor so appointed shall conduct audit of accounts of the listed entity and such audited annual financial results shall be submitted to the Stock exchange(s) within sixty days from the end of the financial year.
- (ii) The final annual audited financial results as audited by CAG and after approval of the same by the Standing Committee and/or the Governing Body or Board of Directors of the listed entities, as applicable, shall be submitted to the Stock exchange(s) within nine months from the end of the financial year.

**2.1.3. Preparation and Submission of Financial Results**

While preparing financial results, the listed entities shall comply with the following

- (a) The half yearly un-audited financial results and annual audited financial results shall contain comparative information for the immediately preceding corresponding half year or financial year respectively.
- (b) The half yearly un-audited financial results and annual audited financial results submitted to the Stock exchange(s) shall be taken on record by Standing Committee or General Body or Board of Directors or Board of Trustee, as applicable or equivalent.
- (c) The listed entities shall disclose debt equity ratio, debt service coverage ratio, interest service coverage ratio etc along with the half yearly and annual financial results.

**2.1.4. Annual Report**

The annual report shall contain the following

- (a) Balance sheet
- (b) Income and expenditure account
- (c) Statement of cash flows (a summary of cash flow over a given period of time)
- (d) Receipts and payments accounts (detailed as per the account head)
- (e) Notes to Account
- (f) Financial performance indicators
- (g) Auditor's report
- (h) Municipal commissioner's report on the Annual Financial Statements and the qualifications and comments made in the report of the auditor; and
- (i) Standing committee's action taken report on the qualifications and comments made in the Report of the Auditor and the Report of the Municipal commissioner.”

- (b) The following shall be added after para (16) in the Annexure 1 of Clause 2.2.2(b) of ILDM Circular on disclosing material and price sensitive information.  
“17. any material adverse changes affecting ability to service municipal debt securities”

- (c) Clause 2.2.2.(c) of the ILDM Circular regarding timely payment of interest or principal obligations or both is substituted to read as under:

**“(c) Timely payment of interest or principal obligations or both**

The listed entities shall submit a certificate to the stock exchange(s) intimating the status of payment of interest or principal or both within five working days of the same becoming due in respect of municipal debt securities.”

- (d) Clause 2.3.2. of ILDM Circular regarding Credit rating is modified to read as under:-

**“2.3.2. Credit Rating**

- (a) Every credit rating shall be reviewed at least once a year, by a registered credit rating agency.
- (b) In the event of credit rating being downgraded by two or more notches below the rating assigned at the time of issue, the listed entities shall disclose the reasons for downgrade in rating and the steps, if any, it intends to take to recover the rating.
- (c) Any change in credit rating shall be promptly disseminated on the Stock exchange(s) where such securities are listed.”
- (e) Clause 2.3.3. (e) of ILDM Circular regarding periodic disclosure shall be deleted.

- 4. In addition to the above modifications, it has been decided to further specify as under:-

**9.1 Escrow Payment Mechanism**

The listed entities are required to create following escrow accounts for the purpose of payment obligations due to the investors.

**4.1.1. No lien escrow account**

- (a) The listed entities shall deposit tax revenues, user charges and/or grants etc., as detailed in the offer document/private placement memorandum, to this account.

**4.1.2. Interest payment account**

- (a) The listed entities shall, throughout the tenure of the municipal debt securities, maintain an amount equivalent to one year interest obligation in this account. The amount received in the “No lien escrow account” may be transferred to this account to maintain the required balance.
- (b) In case of any shortfall of funds in this account, the listed entities are required to maintain the minimum balance from other accounts.

**4.1.3. Sinking fund account**

- (a) A Sinking fund account shall be created for redemption of municipal debt securities.
- (b) The listed entities shall transfer the principal amount

due for repayment, as per the timelines and amount specified in the offer document or preliminary placement memorandum. The amount received in the "No lien escrow account" may be transferred to this account to maintain the required balance in the "Sinking fund account".

#### 4.1.4. General Account

(a) The surplus funds in the "No lien escrow account" after meeting minimum balance in the "Interest payment account" and "Sinking funding account" can be transferred to General account on a monthly basis after obtaining certificate from debenture trustee that the listed entities has discharged its debt obligations in a timely manner.

4.1.5. All the above accounts except "General account" shall be monitored by the debenture trustee.

4.1.6. The listed entities shall within 45 days from the end of the quarter, disclose the balances in the aforesaid accounts along with notes pertaining to transfers made to/from these accounts to stock exchange(s) for dissemination.

4.1.7. The amounts available in the escrow accounts may be invested in Government Securities or Treasury Bills or Fixed deposit with Scheduled commercial bank or liquid mutual fund or gilt fund or debt mutual funds or debt ETFs with a lien in favour of the debenture trustee.

#### 9.2 Interim use of issue proceeds

(a) The listed entities may invest the issue proceeds in Government Securities or Treasury Bills or Fixed deposit with Scheduled commercial bank or liquid mutual fund or gilt fund or debt mutual funds or debt ETFs with a lien in favour of the debenture trustee pending utilization of funds for the stated objects.

#### 9.3 Utilization of funds for projects and status of implementation of projects

(a) The listed entities shall submit a report containing status of implementation of project(s) which is being financed along with reasons for delay, if any and the amount of utilizations of issue proceeds for execution of the projects as stated in the offer document/ placement memorandum, as applicable, on a half yearly basis along with financial results to the stock exchange(s).

#### 9.4 Day Count Convention

(a) The day count convention for calculation of interest payment for listed municipal debt securities shall be Actual/ Actual. The manner of calculation of Actual/ Actual for municipal debt securities shall be as specified in Clause I of SEBI Circular no. CIR/IMD/DF/18/2013 dated October 29, 2013 and Circular no. CIR/IMD/DF-1/122/2016 dated November 11, 2016 issued for debt securities listed under ILDS Regulations.

5. The provisions of this circular shall come into force with immediate effect.

6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 29 of ILDM Regulations to protect

the interests of investors in securities and to promote the development of, and to regulate the securities markets.

7. This Circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework → Circulars".

**RICHA G. AGARWAL**

Deputy General Manager

## 15 Streamlining the Process of Public Issue of Equity Shares and convertibles- Extension of time lime for implementation of Phase II of Unified Payments Interface with Application Supported by Blocked Amount

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/DCR2/CIR/P/2019/133 dated 08.11.2019.]

1. This refers to SEBI circular SEBI/HO/CFD/DIL2/CIR/P/2018/138 dated November 1, 2018, vide which SEBI had introduced the use of Unified Payments Interface (UPI) as a payment mechanism with Application Supported by Blocked Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants), with effect from January 01, 2019. Implementation of the same was to be carried out in a phased manner to ensure gradual transition to UPI with ASBA.

2. Vide SEBI Circular SEBI/HO/CFD/DIL2/CIR/P/2019/76 dated June 28, 2019, Phase II was implemented from July 01, 2019. In Phase II, for applications by retail individual investors through intermediaries, the process of physical movement of forms from intermediaries to Self-Certified Syndicate Banks (SCSBs) for blocking of funds was discontinued and only the UPI mechanism with existing timeline of T+6 days was mandated, for a period of 3 months or floating of 5 main board public issues, whichever is later.

3. Since then, two big public issues have used the facility of UPI 2.0, wherein it was seen that the platform has become increasingly acceptable given the number of applications received in ASBA with UPI as a payment mechanism. Presently, 47 and 5 self-certified syndicate banks are eligible to act as issuer banks and sponsor banks in UPI respectively.

4. National Payments Corporation of India (NPCI) has assessed the situation with respect to infrastructure at banks and their logistics and suggested further tweaking of systems, procedures and timelines for various activities for smoother operations of ASBA with UPI as a payment mechanism. Similar contraction of timelines is required to be carried out by the intermediaries in the securities market.

5. In order to ensure that the transition to UPI in ASBA is smooth for all the stakeholders, it has been decided, after consultation with various intermediaries and NPCI, to extend the timeline for implementation of Phase II of the aforesaid Circular till March 31, 2020.

6. The revised timelines for the existing T+6 environment are placed at Annexure 1.



7. In terms of regulation 23(5) and regulation 271 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, these timelines and processes shall continue to form part of the agreements being signed between the intermediaries involved in the public issuance process and lead managers shall continue to coordinate with intermediaries involved in the said process.
  8. All entities involved in the process are advised to take necessary steps to ensure compliance with this circular.
  9. The modalities and the date for T+3 listing shall be intimated later.
  10. The aforesaid Circulars dated November 1, 2018 and June 28, 2019, shall stand modified to the extent stated under this Circular.
  11. This circular is being issued in exercise of the powers under section 11 read with section 11A of the Securities and Exchange Board of India Act, 1992.
  12. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) in under the categories "Legal Framework" and "Issues and Listing".
- i. on a monthly basis on the 15<sup>th</sup> of every month
  - ii. on the day of change in the constituents of the equity indices
  - c. If the equity indices pairs fail to fulfil any of the abovementioned eligibility criteria, cross margining benefit shall not be given after the upcoming monthly expiry.
4. Computation of cross margin
    - a. To begin with, a spread margin of 30% of the total applicable margin on the eligible off-setting positions, shall be levied.
    - b. Cross margining benefit shall be computed at client level on an online real time basis and provided to the trading member / clearing member, as the case may be, who, in turn, shall pass on the benefit to the client.
  5. All other conditions as specified in circular SEBI/DNPD/Cir-44/2008 dated December 02, 2008 shall continue to be applicable on off-setting positions in futures on equity indices pairs.
  6. Clearing Corporations shall apply to SEBI for approval for providing of cross margining benefit on co-related equity indices which fulfil the eligibility criteria. The application shall be accompanied with the data on eligibility criteria specified above.
  7. Stock Exchanges and Clearing Corporations are directed to:
    - a. put in place the adequate systems and issue the necessary guidelines for implementing the above decision.
    - b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
    - c. specify the legal agreements between the clearing entities for the purpose of margin utilisation in case of liquidation/default, etc.
    - d. bring the provisions of this circular to the notice of the trading members / clearing members / custodians and also to disseminate the same on the website.
    - e. communicate to SEBI the status of implementation of the provisions of this circular through Monthly Development Report.
  8. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
  9. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) at "Legal Framework→Circulars".

**NARENDRA RAWAT**

General Manager

*Annexure not published here for want of space. Readers may log on to [www.sebi.gov.in](http://www.sebi.gov.in) for Complete Notification.*

## 16 Introduction of Cross-Margining facility in respect of offsetting positions in co-related equity Indices

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DOP1/CIR/P/2019/128 dated 08.11.2019.]**

1. SEBI vide its circular SEBI/DNPD/Cir-44/2008 dated December 02, 2008 allowed cross margining across cash and exchange traded equity derivatives segments.
2. In order to facilitate efficient use of collateral by market participants, it has been decided to extend cross margining facility to off-setting positions in highly co-related equity indices.
3. **Eligibility Criteria**
  - a. Cross margin benefit shall be provided on off-setting positions in futures on equity indices pairs which satisfy the below mentioned conditions:
    - i. A positive correlation of more than 0.90 for a period of six months between the values of the equity Indices and
    - ii. At least 80% of constituents of one of the index is present in the other index and
    - iii. The constituents of smaller index based on free float market capitalization shall have at least 80% weightage in the larger index based on free float market capitalization.
  - b. For cross margining benefit to continue the above mentioned eligibility criteria shall be checked by Clearing Corporations as under:
    - i. on a monthly basis on the 15<sup>th</sup> of every month
    - ii. on the day of change in the constituents of the equity indices
  - c. If the equity indices pairs fail to fulfil any of the abovementioned eligibility criteria, cross margining benefit shall not be given after the upcoming monthly expiry.
4. Computation of cross margin
  - a. To begin with, a spread margin of 30% of the total applicable margin on the eligible off-setting positions, shall be levied.
  - b. Cross margining benefit shall be computed at client level on an online real time basis and provided to the trading member / clearing member, as the case may be, who, in turn, shall pass on the benefit to the client.
5. All other conditions as specified in circular SEBI/DNPD/Cir-44/2008 dated December 02, 2008 shall continue to be applicable on off-setting positions in futures on equity indices pairs.
6. Clearing Corporations shall apply to SEBI for approval for providing of cross margining benefit on co-related equity indices which fulfil the eligibility criteria. The application shall be accompanied with the data on eligibility criteria specified above.
7. Stock Exchanges and Clearing Corporations are directed to:
  - a. put in place the adequate systems and issue the necessary guidelines for implementing the above decision.
  - b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
  - c. specify the legal agreements between the clearing entities for the purpose of margin utilisation in case of liquidation/default, etc.
  - d. bring the provisions of this circular to the notice of the trading members / clearing members / custodians and also to disseminate the same on the website.
  - e. communicate to SEBI the status of implementation of the provisions of this circular through Monthly Development Report.
8. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
9. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) at "Legal Framework→Circulars".

**AMIT TANDON**

General Manager

## 17 Creation of segregated portfolio in mutual fund schemes

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/127 dated 07.11.2019.]**

1. In partial modification to SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018 on

'Creation of segregated portfolio in mutual fund schemes', it has been decided to permit creation of segregated portfolio of unrated debt or money market instruments by mutual fund schemes of an issuer that does not have any outstanding rated debt or money market instruments, subject to the following:

- a. Segregated portfolio of such unrated debt or money market instruments may be created only in case of actual default of either the interest or principal amount. As per SEBI circular dated December 28, 2018, credit event is considered for creation of segregated portfolio, however for the purpose of this circular 'actual default' by the issuer of such instruments shall be considered for creation of segregated portfolio.
  - b. AMCs shall inform AMFI immediately about the actual default by the issuer. Upon being informed about the default, AMFI shall immediately inform the same to all AMCs. Pursuant to dissemination of information by AMFI about actual default by the issuer, AMCs may segregate the portfolio of debt or money market instruments of the said issuer in terms of SEBI circular dated December 28, 2018.
  - c. All other terms and conditions as stated in SEBI circular dated December 28, 2018 shall remain the same.
2. Paragraph C-3 of the aforesaid circular stands modified as under:  
*"Creation of segregated portfolio shall be optional and at the discretion of the AMC. It should be created only if the Scheme Information Document (SID) of the scheme has provisions for segregated portfolio with adequate disclosures. All new schemes to be launched after the date of this circular shall have the enabling provisions included in the SID for creation of segregated portfolio"*
  3. The aforesaid provisions shall be effective from the date of this circular.
  4. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of regulations 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

**HRUDA RANJAN SAHOO**  
Deputy General Manager

## 18 Reporting of changes in terms of investment

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF4/CIR/P/2019/126 dated 06.11.2019.]**

1. Please refer to Para 9 of SEBI Circular No. SEBI/HO/IMD/DF4/CIR/P/2019/102 dated September 24, 2019 on conditions to be adhered to by Mutual Funds, while making any change to terms of an investment. In partial modification to the above circular, Para 9.1.1. shall read as follows:

*Any changes to the terms of investment, including extension in the maturity of a money market or debt security, shall be reported to valuation agencies and SEBI registered Credit Rating Agencies (CRAs) immediately, along-with reasons for such changes.*

2. The aforesaid provision is applicable from the date of issuance of this circular.
3. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

**LAMBER SINGH**  
Deputy General Manager

## 19 Operational Guidelines for FPIs & DDPs under SEBI (Foreign Portfolio Investors), Regulations 2019 and for Eligible Foreign Investors.

**[Issued by the Securities and Exchange Board of India vide Circular No. IMD/FPI&C/CIR/P/2019/124 dated 05.11.2019.]**

1. SEBI (Foreign Portfolio Investors) Regulations, 2019 ("the Regulations") have been notified and have come into force with effect from September 23, 2019.
2. In order to operationalise the Regulations, it has been decided to issue necessary guidance under regulation 44 of the Regulations to ensure efficient transition from SEBI (Foreign Portfolio Investors) Regulations, 2014.
3. The guidance is being issued in form of the Operational Guidelines which are annexed herewith.
4. The existing Circulars, FAQs, operating guidelines, other guidance issued by SEBI from time to time shall stand withdrawn with the issuance of the Operational Guidelines.
5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.
6. A copy of this circular is available at the web page "Circulars" on our website [www.sebi.gov.in](http://www.sebi.gov.in). Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

**ACHAL SINGH**  
General Manager

## 20 e-KYC Authentication facility under section 11A of the Prevention of Money Laundering Act, 2002 by Entities in the securities market for Resident Investors

**[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/Ho/MIRSD/DOP/CIR/P/2019/123 dated 05.11.2019.]**

1. SEBI simplified the account opening process for investors vide Circular No. CIR/MIRSD/16/2011 dated August 22,

2011. Further, SEBI vide circular MIRSD/SE/Cir-21/2011 dated October 05, 2011 issued guidelines for uniform KYC requirements for investors while opening accounts with any intermediary in the securities market.

2. SEBI vide Circular No. CIR/MIRSD/09/2012 dated August 13, 2012 clarified that after consultation with Unique Identification Authority of India (UIDAI), Government of India, it was decided that the Aadhaar Letter issued by UIDAI shall be admissible as Proof of Address in addition to its being recognized as Proof of Identity.
3. Subsequently, vide circular No. CIR/MIRSD/09/2013 dated October 08, 2013, SEBI clarified that in consultation with UIDAI and the market participants, it was decided to accept e-KYC service launched by UIDAI also, as a valid process for KYC verification. The information containing relevant client details and photograph made available from UIDAI as a result of e-KYC process shall be treated as sufficient Proof of identity and Address of the client. Also vide circular No. CIR/MIRSD/29/2016 dated January 22, 2016, SEBI clarified that the usage of Aadhaar card as issued by the UIDAI is voluntary.
4. Hon'ble Supreme Court, in its judgement dated September 26, 2018, had struck down Section 57 of the Aadhaar Act as "unconstitutional" which means that no company or private entity can seek Aadhaar identification from clients or investors.
5. The Aadhaar and Other Laws (Amendment) Ordinance, 2019 was promulgated on March 02, 2019 through which a new Section 11A was inserted in chapter IV of the Prevention of Money-Laundering Act, 2002. The Aadhaar and Other Laws (Amendment) Act, 2019 was notified in the Gazette of India on July 24, 2019.
6. The Department of Revenue (DoR), Ministry of Finance issued a circular dated May 09, 2019 on procedure for processing of applications under section 11A of the Prevention of Money Laundering Act, 2002 ("PMLA"), for use of Aadhaar authentication services by entities other than the Banking companies. In terms of the said circular, if the Central Government is satisfied with the recommendations of the Regulator and Unique Identification Authority of India ("UIDAI") and reporting entity complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ("Aadhaar Act"), and it is necessary and expedient to do so, it may by notification, permit such entity to carry out authentication of the Aadhaar number of clients using e-KYC authentication facility.
7. The said circular also inter-alia specifies that, applications by the concerned entities under Section 11A of the PMLA for use of Aadhaar authentication services shall be filed before the Regulator, who after scrutiny shall forward the applications to UIDAI along with its recommendation. UIDAI shall scrutinize the applications received and send its recommendation to the Department of Revenue for notification under Section 11A of the PML Act. The Central Government, if satisfied with the recommendations of the Regulator and the UIDAI that the applicant fulfils all conditions under Section 11A, may by notification permit such applicant to perform authentication under clause (a) of sub-section (1) of Section 11A. At any point, after issue of such notification, based on a report of the appropriate Regulator or UIDAI or otherwise, if it is found that the reporting entity no longer fulfils the requirements for performing authentication under clause (a) of sub-section (1) of section 11A, the Central Government may withdraw the notification after giving an opportunity to the reporting entity.
8. Accordingly, entities in the securities market, as may be notified by the Central Government, shall be allowed to undertake Aadhaar Authentication under section 11A of the PMLA. SEBI Registered intermediaries for reasons such as online on-boarding of clients, customer convenience, increased efficiency and reduced time for client on-boarding would prefer to use Aadhaar based e-KYC facility to complete the KYC of the client.
9. These entities would be registered with UIDAI as KYC user agency ("KUA") and shall allow all the SEBI registered intermediaries / mutual fund distributors to undertake Aadhaar Authentication of their clients for the purpose of KYC through them.
10. The SEBI registered intermediaries / mutual fund distributors, who want to undertake Aadhaar authentication services through KUAs, shall enter into an agreement with any one KUA and get themselves registered with UIDAI as sub-KUAs. The agreement in this regard shall be as may be prescribed by UIDAI.
11. Upon notification by the Central Government / registration with UIDAI, the KUAs and sub-KUAs shall adopt the following process for Aadhaar e-KYC of investors (resident) in the securities market.
  - A. Online Portal based Investor (Resident) e-KYC Process (Aadhaar as an OVD)**
    - a. Investor visits portal of KUA or the SEBI registered intermediary which is also a Sub-KUA to open account/invest through intermediary.
    - b. For Aadhaar e-KYC, investor is redirected to KUA portal. Investor enters the Aadhaar Number or Virtual Id and provides consent on KUA portal. Adequate controls shall be in place to ensure that Aadhaar Number is not stored anywhere by the Sub-KUA or KUA.
    - c. Investor will receive OTP in mobile number registered with Aadhaar. Investor enters the OTP sent by UIDAI on KUA portal for Aadhaar e-KYC.
    - d. KUA will receive the e-KYC details from UIDAI upon successful Aadhaar authentication which will be further forwarded to Sub-KUA in encrypted format (using KUAs own encryption key) and will be displayed to the investor on portal. Sharing of e-KYC data by the KUA with Sub-KUA may be allowed under Regulation 16(2) of Aadhaar (Authentication) Regulation, 2016. Sub-KUA shall clearly specify the name of the KUA and Sub-KUA, and details of sharing of data among KUA and Sub-KUA while capturing investor consent.
    - e. Investor will fill the additional detail as required under KYC format.
    - f. SEBI registered Intermediary will upload additional KYC details to the KUA.



## B. Assisted Investor (Resident) e-KYC process (Aadhaar as an OVD)

- a. Investor approaches any of the SEBI Registered Entity/ Sub-KUAs i.e. Mutual Fund Distributors or appointed persons for e-KYC through Aadhaar.
- b. SEBI registered entities (Sub-KUAs) will perform e-KYC using registered / Whitelisted devices with KUAs.
- c. KUA will ensure that all devices and device operators of Sub-KUA are registered / whitelisted devices with KUA.
- d. Investor will enter Aadhaar No. or Virtual Id and provides consent on the registered device.
- e. Investor provides biometric on the registered device.
- f. SEBI registered intermediary (Sub-KUA) fetches the e-KYC details through the KUA from UIDAI which will be displayed to the investor on the registered device.
- g. Investor will also provide the additional detail as required.

12. The KUA/ sub-KUA while performing the Aadhaar authentication shall also comply with the following:

- a. For sharing of e-KYC data with Sub-KUA under Regulation 16(2) of Aadhaar (Authentication) Regulations, 2016, KUA shall obtain special permission from UIDAI by submitting an application in this regard. Such permissible sharing of e-KYC details by KUA can be allowed with their associated Sub-KUAs only.
- b. KUA shall not share UIDAI digitally signed e-KYC data with other KUAs. However, KUAs may share data after digitally signing it using their own signature for internal working of the system.
- c. e-KYC data received as response upon successful Aadhaar authentication from UIDAI will be stored by KUA and Sub-KUA in the manner prescribed by Aadhaar Act/Regulations and circulars issued by UIDAI time to time.
- d. KUA/Sub-KUA shall not store Aadhaar number in their database under any circumstances. It shall be ensured that Aadhaar number is captured only using UIDAI's Aadhaar Number Capture Services (ANCS).
- e. The KUA shall maintain auditable logs of all such transactions where e-KYC data has been shared with sub-KUA, for a period specified by the Authority.
- f. It shall be ensured that full Aadhaar number is not stored and displayed anywhere in the system and wherever required only last 4 digits of Aadhaar number may be displayed.
- g. As per Regulation 14(i) of the Aadhaar (Authentication) Regulation, 2016, requesting entity shall implement exception-handling mechanisms and backup identity authentication mechanism to ensure seamless provision of authentication services to Aadhaar number holders.
- h. UIDAI may conduct audit of all KUAs and Sub KUAs as per the Aadhaar Act, Aadhaar Regulations, AUA/ KUA Agreement, Guidelines, circulars etc. issued by UIDAI from time to time.
- i. Monitoring of irregular transactions - KUAs shall develop appropriate monitoring mechanism to record irregular transactions and their reporting to UIDAI.

- j. Investor Grievance Handling Mechanism - Investor may approach KUA for their grievance redressal. KUA will ensure that the grievance is redressed within the timeframe as prescribed by UIDAI. KUA will also submit report on grievance redressal to UIDAI as per timelines prescribed by UIDAI.

## 13. Onboarding process of KUA/Sub-KUA by UIDAI:

- a. As provided in the DoR circular dated May 09, 2019, SEBI after scrutiny of the application forms of KUAs shall forward the applications along with its recommendation to UIDAI.
- b. For appointment of SEBI registered intermediary / MF distributors as Sub-KUAs, KUA will send list of proposed Sub-KUAs to SEBI and SEBI would forward the list of recommended Sub-KUAs to UIDAI for onboarding. An agreement will be signed between KUA and Sub-KUA, as prescribed by UIDAI. Sub-KUA shall also comply with the Aadhaar Act Regulations, circulars, Guidelines etc. issued by UIDAI from time to time.
- c. Each sub-KUA shall be assigned a separate Sub-KUA code by UIDAI.

14. The KUA/sub-KUA shall be guided by the above for use of Aadhaar authentication services of UIDAI for e-KYC.

15. For non-compliances if any observed on the part of the reporting entities (KUAs/ Sub-KUAs), SEBI may take necessary action under the applicable laws and also bring the same to the notice of DoR / FIU for further necessary action, if any. Reporting entity (KUAs/Sub-KUAs) shall also adhere to the continuing compliances and standards of privacy and security prescribed by UIDAI to carry out Aadhaar Authentication Services under section 11A of PMLA. Based on a report from SEBI / UIDAI or otherwise, if it is found that the reporting entity no longer fulfills the requirements for performing authentication under clause (a) of section 11A(1) of PMLA, the Central Government may withdraw the notification after giving an opportunity to the reporting entity.

16. Upon notification by the Central Government permitting the entities recommended by SEBI to undertake Aadhaar based authentication, the Circulars issued in the past by SEBI for e-KYC using Aadhaar based authentication shall stand modified/ revised in compliance with this Circular.

17. This Circular is issued by SEBI in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992.

**D. RAJESH KUMAR**

General Manager

## 21 Enhanced Due Diligence for Dematerialization of Physical Securities

[Issued by the Securities and Exchange Board of India vid Circular No SEBI/HO/ MIRSD/RTAMB/CIR/P/2019/122 dated 05.11.2019.]

1. In terms of Regulation 40 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements)

(IV Amendment) Regulations, 2018 (**LODR**), transfer of securities held in physical mode is not permitted w.e.f. April 01, 2019. Standardised norms with respect to documentation / procedure for transfer of physical securities were issued vide SEBI circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2018/139 dated November 06, 2018.

2. To augment the integrity of the system in processing of dematerialization request in respect of the remaining physical shares, the Depositories and the listed companies / RTAs are directed to implement the following due diligence process:

- I. All Listed companies or their RTAs shall provide data of their members holding shares in physical mode, viz the name of shareholders, folio numbers, certificate numbers, distinctive numbers and PAN etc. (hereinafter, **static database**) as on March 31, 2019, to the Depositories, latest by December 31, 2019. The common format for this data shall be specified jointly by the Depositories and be communicated to Issuer companies / their RTAs.

- II. Depositories shall capture the relevant details from the static database as per clause I above and put in place systems to validate any dematerialization request received after December 31, 2019. Accordingly, the depository system shall retrieve the shareholder name(s) recorded against the folio number and certificate number in Static Data for each DRN request received after this date and validate the same against the demat account holder(s) name as available in the records of the Depositories.

- III. In case of mismatch of name on the share certificate(s) vis-à-vis name of the beneficial owner of demat account, the depository system shall generate flag / alert. In instances, where such flags / alerts have been generated, the following additional documents explaining the difference in name, as prescribed in paragraph 2 (b) of the cited SEBI circular of November 06, 2018, shall be sought, namely

- i. Copy of Passport
- ii. Copy of legally recognized marriage certificate
- iii. Copy of gazette notification regarding change in name
- iv. Copy of Aadhar Card

- IV. In the case of complete mismatch of name on the share certificate(s) vis-à-vis name of the beneficial owner of demat account, the applicant may approach the Issuer company/RTA for establishing his title/ownership.

3. Depositories shall;
  - a) make necessary amendments to the relevant byelaws, rules and regulations for the implementation of the above directions, as may be applicable
  - b) bring the provisions of this circular to the notice of their participants and also disseminate the same on their websites; and
  - c) communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Report.

4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

5. The Stock Exchanges are advised to bring the provisions of this circular to the notice of Listed Entities and also to disseminate the same on their websites.

**MANJESH ROY S.**

General Manager

## 22 Enhanced Governance Norms for Credit Rating Agencies (CRAs)

**[Issued by the Securities and Exchange Board of India vid Circular No SEBI/HO/MIRSD/CRADT/CIR/P/2019/121 dated 04.11.2019.]**

In order to further enhance governance and accountability of Credit Rating Agencies (CRAs), the following directions are being issued:

1. In partial modification of para 3B of Annexure A of SEBI circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016 regarding MD/CEO being a member of rating committee, it has been decided that:
  - A. MD/CEO of a CRA shall not be a member of rating committees of the CRA.
  - B. Rating committees of a CRA shall report to a Chief Ratings Officer (CRO).
  - C. One third of the board of a CRA shall comprise of independent directors, if the board is chaired by a non-executive director. In case the board of the CRA is chaired by an executive director, half of the board shall comprise of independent directors.
  - D. The board of a CRA shall constitute the following committees:
    - (i) Ratings Sub-Committee
    - (ii) Nomination and Remuneration Committee
  - E. The Chief Ratings Officer (CRO) shall directly report to the Ratings Sub-Committee of the board of the CRA.
  - F. The Nomination and Remuneration Committee shall be chaired by an independent director.
2. During the rating process, CRAs shall record minutes of the meeting with issuer management and incorporate it in the rating committee note.
3. CRAs shall meet the audit committee of the rated entity, at least once in a year, to discuss issues including related party transactions, internal financial control and other material disclosures made by the management, which have a bearing on rating of the listed NCDs.
4. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

**SURABHI GUPTA**

General Manager

# 5

## NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2019
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2019
- ATTENTION ! ADVISORY FOR MEMBERS OF ICSI
- ATTENTION! MEMBERS WHO HAVE NOT PAID THE ANNUAL MEMBERSHIP FEE BY LAST DATE 30-06-2019
- RESTORATION OF CERTIFICATE OF PRACTICE
- ATTENTION! DIGITAL I-CARD FOR MEMBERS
- ATTENTION! MEMBERS HOLDING CERTIFICATE OF PRACTICE
- RESTORATION OF MEMBERSHIP
- OBITUARIES





## Institute News

### MEMBERS RESTORED DURING THE MONTH OF OCTOBER 2019

S. NO.	A/F	MEM. NO.	NAME	REGN.
1	A	43384	MS. MITALI KETAN SHAH	WIRC
2	A	6002	SH. TARUN GOYAL	NIRC
3	A	27447	MR. ASHISH KUMAR VIJAY	NIRC
4	A	36364	MR. RAHUL BANSAL	NIRC
5	A	36774	MR. PHADTARE NISHANT DHANAJI	WIRC
6	A	3367	SH. NEROTTAM B VYAS	WIRC
7	A	25630	MS. ARCHANA SHANBAUG	WIRC
8	A	46061	MR. BARAMDEO HIRALAL SHARMA	WIRC
9	A	9766	SH. SUDHIR GOUTTAMDAS AGARWAL	WIRC
10	A	5629	SH. VINAY KUMAR JAJU	NIRC
11	A	26782	MS. TEJAL JAYANT WAJE	WIRC
12	A	12104	SH. M NAGESWARA RAO	SIRC
13	A	12299	SH. PARBODH KUMAR GUPTA	SIRC
14	A	23401	MR. ARAZ ANWAR ALI S	SIRC
15	A	52562	MR. PURSHOTHAMA P	SIRC
16	A	26969	SH. VIKRAM SINGH YADAV	NIRC

### CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF OCTOBER 2019

SL. NO.	NAME	ACS/ FCS NO.	COP NO.	REGN.
1	MS. SANJU RATHI	A-30626	11221	EIRC
2	MS. SHIWANI MAHESHWARI	A-42718	16247	NIRC
3	SH. GURUBHAGAVATULA NARASINGA RAO	A-7554	7334	SIRC
4	SH. S. DURAI RAJ	A-15275	7492	WIRC
5	MS. SHIKHA RUSTAGI	A-35418	21465	NIRC
6	MS. ANCHAL BERIWALA	A-44364	17254	EIRC
7	MS. LAKSHMI KAKUMANI SANDHYA	A-16597	8538	SIRC
8	MS. KIRTI GOEL	A-35187	19396	NIRC
9	MS. RITU ARORA	A-30730	12110	NIRC
10	MS. HIRAL ANKITKUMAR SHAH	A-31512	12484	WIRC
11	MS. VANEETA KHANNA	A-46971	17216	WIRC
12	MS. MEGHA SHARMA	A-43876	19790	NIRC
13	MS. MAITHRI VIJAYAKUMAR	A-42941	16126	SIRC
14	MS. KAVITHA N MOORTHY	A-14955	16938	SIRC
15	MS. RITU YATENDER VERMA	A-41397	22295	WIRC

16	MS. SHIVALI AGRAWAL	A-55952	21312	EIRC
17	MS. MEGHA AGGARWAL	A-54988	22265	NIRC
18	MS. ASHWINI MANGALAMPALLE	A-44418	21580	SIRC
19	MS. BHAWNA	A-48335	21203	NIRC
20	MR. LALIT ASHOKKUMAR JAIN	A-31125	11457	WIRC
21	MR. ASHISH KUMAR AGRAWAL	A-36479	13611	SIRC
22	MS. SUHANI SIMLOTE	A-55555	20638	WIRC
23	MS. KIRTI SHARMA	A-41645	18787	EIRC
24	MS. RAJKUMAR NISHITHA	A-39803	15365	SIRC
25	MR. GOURAV MEHTA	A-52049	19541	WIRC
26	MR. NARENDRA MEKA	A-38355	14301	SIRC
27	MS. PALAK SHARMA	A-54344	22240	NIRC
28	MR. RITESH KUMAR SINGH	A-46330	21824	EIRC
29	MS. PUJA ANAND	A-42452	21200	EIRC
30	MS. NAINA GOYAL	A-39018	15360	NIRC
31	MS. KAVITHA ELUMALAI	A-28330	21241	SIRC
32	MS. SAPNA DUA	A-30961	17778	NIRC
33	MS. GUNJAN TYAGI	A-37888	15795	SIRC
34	MR. VARGHESE THOMAS	A-47712	17819	SIRC
35	MS. DEEPTHI NAGA	A-14729	20112	SIRC
36	MR. RAHUL KUMAR	A-32729	20656	NIRC
37	MR. MUKESH KUMAR MITTAL	A-52942	19890	EIRC
38	MS. URESHA AMIT RATANPAL	A-25360	22173	WIRC
39	MS. NOOPUR SHARMA	A-24276	10909	SIRC
40	MR. VIKASH KUMAR	A-46316	20644	EIRC
41	MS. SHRISTI JAIN	A-41555	15506	NIRC
42	MS. HEMLATA JITENDRA JAIN	A-25394	10465	WIRC
43	MR. JUGAL KISHOR SHARMA	A-47609	18962	NIRC
44	MS. SAMTA KUMARI SIMMY	A-23237	15959	NIRC
45	MR. SIRIGALA UPENDRA REDDY	A-53804	19875	SIRC
46	MS. POONAM GOLHANI	A-42190	21400	WIRC
47	MS. NISHA	A-50459	22041	NIRC
48	MR. AMARNATH TRIPATHY	A-29453	21507	EIRC
49	MS. PRERNA PRIYA	A-32539	19332	EIRC
50	MS. AVNI CHOUHAN	A-42794	19777	NIRC
51	MR. MANISH KUMAR ARORA	A-43833	22233	NIRC
52	MS. NIDHI KALRA	A-25148	19476	NIRC
53	MS. DARSHANA SHAMPASAD KHANDELWAL	A-51895	18894	WIRC
54	MR. RAUNAK LOHIA	A-55518	20691	EIRC
55	MS. ANJALI VIJAYVERGIYA	A-57220	21637	NIRC
56	MS. SAKSHI SAREEN	A-53583	21800	NIRC
57	MR. YOGESH AGARWAL	A-34979	12954	NIRC
58	MS. ISHITA SARAOGI	A-33627	19997	SIRC

59	MS. VINI GUPTA	A-23312	16862	NIRC
60	MS. BHAVIKA BEHRUNANI	A-39110	21734	NIRC
61	MR. JEYABALAN RAJGANESH	A-39765	20222	SIRC
62	MS. SAKSHI GANDHI	A-42604	15750	NIRC
63	MS. CHITRA VASANTHA SASIDHARAN	A-20901	9138	SIRC
64	MR. MANDAR DEEPAK AWASARE	A-45256	16935	WIRC
65	MS. SHAWETA ARORA	A-42045	17291	NIRC
66	SH. RAJEEV SAXENA	F-7565	13158	NIRC
67	SH. SANJAY VIJAY SAWANT	F-4649	11664	WIRC
68	MR. AJAY KUMAR JAIN	F-10382	11459	NIRC
69	SH. R MURALIMOHAN	F-8582	16369	WIRC
70	SH. SUNIL KUMAR BANSAL	F-9838	9239	NIRC
71	MRS. ANKITA VARUN SHAH	F-9281	10837	WIRC
72	MR. ASHOKAN ACHUTHAN	F-9462	20364	WIRC
73	SH. BIKASH RANJAN TARADAR	F-5694	20076	WIRC
74	MS. RATAN KAPADIA	F-1395	957	WIRC

## ATTENTION !

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiates and issuance of Certificate of Practice, kindly refer to the link <https://www.icsi.edu/member>



## ATTENTION !

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: [https://www.icsi.in/student/Portals/0/Manual/KYM\\_Usermanual.pdf](https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf)



## ATTENTION ! ADVISORY FOR MEMBERS OF ICSI

Members would henceforth be required to declare their PAN (mandatory) and Aadhaar / UID Number (optional) at the time of making online payment of annual membership fees and while applying for Fellow membership of the Institute in Form-B.

Further, offline Membership fee / Certificate of Practice fee / Restoration fee is not being accepted in any office of the Institute from 1st June, 2019. Only online fees is being accepted from 1st June, 2019 onwards.

Members may also note that as per Regulation 3 of the Company Secretaries Regulations, 1982, they are required to communicate to the Institute any change in their Professional Address within one month of such change.

Team ICSI

## ATTENTION! MEMBERS WHO HAVE NOT PAID THE ANNUAL MEMBERSHIP FEE BY LAST DATE 30-06-2019

The last date for payment of annual membership fee was 30-06-2019. The members who have not paid their annual membership fee by the last date are required to restore their membership by paying the requisite additional entrance and restoration fees totalling Rs. 2655/- (inclusive of GST@18%) alongwith the applicable annual membership fee with GST@18% payable. Members are required to submit Form-BB for restoration of membership duly filled and signed. For specific assistance raise a ticket at <http://support.icsi.edu>

## ATTENTION!

List of members whose names stand removed from the Register of Members owing to non-receipt of annual membership fee of FY 2019-20 till 30th June, 2019 is placed under Latest @ICSI, What's New at the link: [https://www.icsi.edu/media/webmodules/DefaultList\\_List.pdf](https://www.icsi.edu/media/webmodules/DefaultList_List.pdf)



Members whose names stand restored w.e.f 1-7-2019 is placed under Latest @ICSI, What's New at the link: [https://www.icsi.edu/media/webmodules/Members\\_whose\\_names\\_stand\\_restored\\_wef\\_01072019.pdf](https://www.icsi.edu/media/webmodules/Members_whose_names_stand_restored_wef_01072019.pdf)



## ATTENTION! MEMBERS

The CD containing List of Members of ICSI as on 1st April, 2019 is available in the Institute on payment of Rs. 280/-\* for members and Rs. 560/-\* for non-members (\*including GST@12%). Request along with payment may please be sent to Joint Secretary (SG), Directorate of Membership, ICSI House, C-36, Sector-62, Noida-201309. For queries if any, please write to [member@icsi.edu](mailto:member@icsi.edu)

For specific assistance raise a ticket at <http://support.icsi.edu>

## NOTIFICATION

20th September, 2019

## NOTIFICATION (MEMBERSHIP) NO. 01 OF 2019

## Allotment of new unique code in case of change of state of practicing firms

Members of the Institute may note that as per the decision of the Council, a new Unique Code will be allotted to practising units in case there is a change in the place of the practice unit from one state to another. It will be the responsibility of the practicing firm to intimate the Institute about such a change within thirty days after the change is effected. It will be mandatory for all such firms to use the old unique code along with the new code for a period of three years from the date of allotment of new code in all their communications/correspondences for the purpose of link and reference.

ICSI

## RESTORATION OF CERTIFICATE OF PRACTICE

The process of Restoration of Certificate of Practice is now enabled for the members who could not pay the COP fees by the due date i.e. 30-09-2019. Please note that you can restore your Certificate of Practice during the same financial year i.e. on or before 31st March, 2020. Accordingly, after 31st March, 2020, the Certificate of Practice cannot be restored and a fresh certificate of practice has to be obtained.

The certificate of practice fee and restoration fee payable is as follows:

Particulars	Associate (admitted till 31.03.2018)	Associate (admitted on or after 01.04.2018)	Fellow
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360
Restoration fee**	Rs. 295	Rs. 295	Rs. 295

\* Fee inclusive of applicable GST@18%.

\*\* Fee inclusive of applicable GST@18% and applicable as certificate of practice fee is not received by 30<sup>th</sup> September, 2019

## MODE OF REMITTANCE OF RESTORATION OF COP FEE: ONLINE ONLY

**Procedure for filling Online Form D:**

1. Kindly go to Manage Account. Select Online Form D. Fill the form and keep a copy of the same for your records. Fill the form stepwise
2. First fill the Personal detail and click the save as draft
3. Second go to Area of practice, select the radio buttons of your area of interest and click the save as draft
4. In Verification details click the save as draft (this page is important) and please fill all the mandatory fields which is marked as blue
5. Last page is Declaration, fill the place option and click the save as draft option.
6. At the end please click the 'Final save & Print' button and keep a copy of form-D for your records\*

\*(once the form D is submitted, modifications cannot be done)

**Procedure for payment of Restoration of COP fee:**

1. Go to Manage Account and select the first option "Requests relating to COP"
2. Select the button Restoration of COP
3. Select the button online form D (at the Top)
4. You will get a message "You have already submitted the declaration for the financial year"
5. Please write in the Comment box (mandatory box)
6. Remit the payment online\*

\*(Members admitted on or after 01.4.2018 shall pay Rs. 2065/- while members admitted before 01.04.2018 shall pay Rs. 2655/- (all amount inclusive of GST @ 18%).



For any support you may reach out to us at <http://support.icsi.edu>.



## ATTENTION! DIGITAL I-CARD FOR MEMBERS

You may be aware that the National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. Targeted at the idea of paperless governance, DigiLocker is a platform for issuance and verification of documents & certificates in a digital way, thus eliminating the use of physical documents. Digital Locker also makes it easier to validate the authenticity of documents as they are issued directly by the registered issuers. Organizations that are registered with Digital Locker can push electronic copies of documents and certificates directly into citizens' lockers.

Members of ICSI can now access their digital I-Card anytime, anywhere. This is convenient and time saving. ICSI has launched this initiative on 5th Oct 2019 in the presence of Honourable President of India by making available Identity Cards online for its members.

You may access the DigiLocker in the following manner:

- Go to <https://digilocker.gov.in> and click on Sign Up
- You may download mobile app from mobile store (Android/IOS)

How to Login:

- Signing up for DigiLocker is easy - all you need is your mobile number.
- Your mobile number will be authenticated by sending an OTP (one-time password) followed by selecting a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

How to Access your digital Documents:

On successful validation of credential go to the "Pull Documents" in Issued document section, select the partner name "The Institute of Company Secretaries of India" & document type "Identity Card" and enter the document details asked for and fetch the same.

## ATTENTION! MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2019. The CDs are available at Noida office of the Institute and will be provided free of cost to the members holding Certificate of Practice on receipt of request. Request may please be sent to the Directorate of Membership at e-mail id: [saurabh.bansal@icsi.edu](mailto:saurabh.bansal@icsi.edu)

## RESTORATION OF MEMBERSHIP

The members can restore their membership online only by making an application in Form BB (available on the website of the Institute [www.icsi.edu](http://www.icsi.edu)) together with payment of the annual membership fee for the year 2019-2020 including GST@18% (Associates admitted on or after 1-4-2018 – Rs. 1770/-, Associates admitted till 31-03-2018 – Rs. 2950/- and Fellow – Rs. 3540/-) with the entrance fee of Rs. 2360/- and restoration fee of Rs. 295/-.

### MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute's website [www.icsi.edu](http://www.icsi.edu) through members' login portal. Payment made through any other mode will not be accepted.

### Steps to make online payment for Restoration of Membership

- Login to portal • [www.icsi.edu](http://www.icsi.edu)
- Click **Online services** in the Menu and then click on Member
- Fill the User name: Enter your membership no. (eg. A1234)
- Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email id and mobile number is correctly registered (you can check at <https://www.icsi.edu/member/members-directory/>) in the Institute's record. You may use ICSI service portal at • <http://support.icsi.edu>. One of the reasons of not getting the password on retrieval could be that you may have blacklisted ICSI email account: • [dnr@icsi.edu](mailto:dnr@icsi.edu). To whitelist the same, you may send a request to • [member@icsi.edu](mailto:member@icsi.edu) that you have inadvertently blacklisted ICSI email account and desire to whitelist the same.
- After login, go to **Members Option** (from top menu) then click on **Manage Account Restoration of Membership for FY2019-20 only** (on the left side under Place your Request)
- Click on proceed for payment.

For specific assistance raise a ticket at <http://support.icsi.edu>



## OBITUARIES

**Chartered Secretary deeply regrets to record the sad demise of the following Members:**

**CS A S Unny (19.01.1933 – 17.05.2015)**, an Associate Member of the Institute from Ernakulam.

**CS Kailash Chand Jatwala (21.08.1956 – 19.08.2019)**, a Fellow Member of the Institute from Mumbai.

**CS Prathap Kumar Suryanarayana Pande (01.08.1955 – 04.11.2019)**, a Fellow Member of the Institute from Bangalore.

**CS Minender Poshetty Boga (30.09.1982 – 21.09.2019)**, an Associate Member of the Institute from Thane Distt.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

#### VISION

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

#### ICSI Motto

सत्यं वद धर्मं चर। इष्टं कुरु कुरु। कुरुते नृप कुरुते ब्रह्म।

#### MISSION

"To develop high calibre professionals  
facilitating good corporate governance"

# 20<sup>th</sup>

## NATIONAL CONFERENCE OF STUDENT COMPANY SECRETARIES



Business Idea Pitch (2 Minute Mein)

Arm Wrestling (Kisme Kitna Hai Dum)

I M Possible (Mumkin hai)

Chess (Shatranj Ke Khiladi)

Quiz (Prashnavali)

Legal Puzzle (Ulta Pulta)

Best out of Waste (Rangoli)

Moot Court (Nyay ka Mandir)

Musical Chairs (Kissa Kursi Ka)

Hindi Songs (Har Dil Ki Pukaar)

Walk for a Cause (Kadam Badhaye Jaa)

Photography (Kamare ki Nazar Se)

Creative Writing (Kalam ki Takat)

Debate (Tol Mol ke Bol)

Elocution (Bol Bindaas)

Number Game (Sankhya Bal)

Tug of War (Ekta Mein Shakti)

Clean Clean (Swachhta Abhiyaan)

Eastern Dance (Payal ki Jhankaar)

Best Participant (Uttam Sarvottam)



Main Event - 12<sup>th</sup> January, 2020 (Sunday) | Prelims & Off Stage Competitions - 11<sup>th</sup> January, 2020 (Saturday) | Venue - Kolkata (City of Joy)

**Fees :** Early Bird (upto 20.12.2019) For Students of ICSI – Rs.500/- Others Rs.900/- (Thereafter Rs.600/- & Rs.1000/-)



#### With Best Wishes

**CS Ranjeet Pandey**  
President, ICSI

**CS Ashish Garg**  
Vice-President, ICSI & Chairman, TEFC of ICSI

**CS Deepak Kumar Khaitan**  
Council Member, ICSI & Programme Director

**CS Siddhartha Murarka**  
Council Member, ICSI & Programme Coordinator

**CS Rajesh Chura**  
Chairman EIRC of ICSI & Programme Facilitator

**CS Ashok Kumar Dixit**  
Officiating Secretary, ICSI

#### For Suggestions & Questions, please contact

**Tapas Kr Roy**  
Regional Director, ICSI EIRO  
033-22901065/ tapas.roy@icsi.edu

**S.Sreejesh**  
Assistant Director, ICSI EIRO  
033-2283-2973/ s.sreejesh@icsi.edu

**Rukmani Nag**  
Executive Assistant, ICSI EIRO  
033-22901065/ rukmani.nag@icsi.edu

#### Enroll Now

**For participating in competitions,  
contact your nearest Chapter/  
Regional Office**

**For delegate registration,  
please visit- <http://bit.do/tirBZ>**

# 6

## MISCELLANEOUS CORNER



■ ETHICS & SUSTAINABILITY CORNER

■ GST CORNER

■ BOOK REVIEW "A TREATISE ON CONTRAVENTIONS UNDER COMPANIES ACT, SECURITIES LAWS AND FEMA"



# What lies beyond Greatness?

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

**F**rom time immemorial, human beings have endeavoured to achieve greatness. They excelled in arts, science, sports, physical prowess, mental wizardry and in political, economic, social, cultural and religious activities. The world has idolized, eulogized and remembered those who achieved greatness. We may look at great persons as those who stood above the rest in some way or the other. Greatness is also linked to the way an action is valued by the majority and how much benefit, joy, knowledge or power it brings to others.

If greatness is considered to be related to one's skills, then it can be achieved by constant training and practise. But sometimes, it comes from innate qualities and talents. Some great persons are born in the times of great crisis such as leaders like Mahatma Gandhi. They have certain qualities in them, about which they are aware and also know or come to know how to make use of those at the time of crisis. As a result, they become pioneers, geniuses, founders, leaders, toppers, winners, achievers and unusual performers.

Whatever is perceived as great, is linked to a lot of factors such as temporal, geographical, cultural, political, social, religious and economic. The way something is seen as great has a lot to do with the value systems and self-interests of the people who decided to give it the label of greatness. For instance, for a cricket enthusiast, the way a batsman scores a century is great but a person who has no interest in it feels the whole thing to be a waste of time. For right-wingers, Hitler was a hero, while Lenin was hailed once as a great symbol of socialist republic. A mother would consider healthy food as great for the child's growth which might be considered boring the child himself, who would wish to have more of fast food. Hence, greatness is a delicate structure that floats on the surface of time driven by tides of popularity, compulsive factors and value systems of the period. The deeds and achievements that have a universal impact and hold good for a long time are indeed great. Many inventions and discoveries will fall under this category as well as several political, social, and cultural movements. Then we have other types of greatness that have some degree of impact according to time, space, talent, ideology, culture etc.

What is truly great will be truly good, benevolent, selfless and inspiring for the masses. The word 'true' means that which lasts forever; that which cannot be influenced by time, space or any other factor. What is not 'truth' will fall under discretions of right and wrong and thus will be relative. In fact, truly great actions or events would be classified as beyond greatness because such actions originate from a consciousness or awareness that is above the bondage of actions and its results. Which means that truly great acts or events were not done with the intention of becoming great; the doer of such actions will never claim the label of being great. The base of such actions is one's natural, innate qualities. Furthermore, such actions will be beyond selfish desires and biased values.

- Whether the doer makes effort or not, his thoughts, words and actions will always be great because his natural tendency is to effortlessly operate from his virtue set. Such actions are as if demonstration of a beautiful art and will inspire others positively and in return generate respect and regard for the doer. This respect and regard flows as blessings towards the doer and so, whether the doer wishes or not, he definitely gets the benefit of his act in the form of applause, praise, good wishes, cooperation and a lot more.
- When actions are performed with a natural blend of qualities and genuinity of intention, without any expectations, the full energy of the doer is focused on the act, enhancing the productivity of the act and thus the quality of the results.
- More than anything, such actions will be beyond the fear of failure or want of success. Sometimes, it so happens that we perceive success of an act as something else than what it is supposed to be. And un-attainment of that perceived success brings dis-heartedness and results in lack of motivation and increase of fear. But when there is no fear, it means there is no losing. Then the act is done for the willingness to do it. So, when there is no loss, whether



[bkashaorc@gmail.com](mailto:bkashaorc@gmail.com)



■ The way something is seen as great has a lot to do with the value systems and self-interests of the people who decided to give it the label of greatness



■ The word 'true' means that which lasts forever; that which cannot be influenced by time, space or any other factor. What is not 'truth' will fall under discretions of right and wrong and thus will be relative

■ This truly makes us Human Being as we 'be' what we are while doing anything, rather than becoming Human Doings, who just 'do' without the awareness of being. The more we are on the pendulum of doing an act, we will continue to oscillate between joy and resentment.



the act resulted in what was expected or not, the doer will always have a sense of satisfaction of doing the act itself and enjoying it while doing and feeling the sense of success in this.

- This truly makes us Human Being as we 'be' what we are while doing anything, rather than becoming Human Doings, who just 'do' without the awareness of being. The more we are on the pendulum of doing an act, we will continue to oscillate between joy and resentment. And then we are easily influenced by the opinions of others, losing our self- respect. Rather, getting positive opinions becomes our sole motive to do the 'great' act. This is similar to adding a drop poison in the glass of nectar, so then that no more remains nectar. So, true means 100% true, which means being aware of the virtues of the self while doing the act.
- Also, such acts would not be limited by the ego and other limitations of the doer. The doer will have a far- reaching, universal impact as the positive energy of the act will flow ahead of the act itself and create a goodwill amongst those who are yet to be touched by the act, creating a base for acceptance. This produces maximum benefit for the maximum number, for a long- lasting period. While if the feeling of ego or being incapable creeps into the consciousness of the doer, it acts as a negative force working against the act of generosity and infecting its energy. If the act was done out of ego, the beneficiary of such an act feels the heaviness of being helped by someone and will either not wish to be helped by such a person in future, or not value that very act at the moment. What is greatness if it is achieved at the cost of hurting or manipulating others or by simply doing things that bring no benefit to others? This is creating a triple loss for the doer- firstly of spending time, energy and resources for doing the act, secondly not getting the desired result of fame and thirdly leading to a faulty and heavy- weighted relationship. If the act was done out of the feeling or limitation of being incapable, we can easily understand that the doubt created by doer would have blocked his full energy. This either results in the prophesized failure and strengthens the feeling of incapability, or success by fluke. Even if it is success, it could have been much better if the act would have been performed out of self awareness and without the feeling of being beyond greatness.

Can we humans ever fathom and attain such level of perfection? The principles and the theory are simple but the practise would demand the highest level of faith, courage, wisdom, vision and virtues. Firstly, those who achieve such perfection will never do it with the desire to be great; they will do things for the sake of expressing goodness to the maximum extent. A saying goes: "Don't try to be great, just be good and you will be great!"

There is, therefore, the need to go beyond greatness.

- First principle to follow for this, is to surrender the ego, the consciousness of "I" and to do every task as a trustee. This means to act as an instrument of the Supreme, who is getting things done through me. This would enable us to stay beyond expectations, fears, selfish desires, bias, preference and aversion.
- The more our actions are based on the purest feelings of joy, love, truth, and the more we act beyond any desire for fruit of our actions, we are able to rise beyond greatness. If I truly love someone, my actions will not be dependent on what he/ she feels about me, but on how I feel about him/ her. If I remain truly honest in my dealings, it will be because I value honesty and not to prove it to others that I am honest. Thus, we start acting inside- out and do not allow our external environment to influence our internal environment. Our whole being, acting and feeling would consist of only pure self- respect, love for God and unconditional love for humanity. Such perfection is defined as a state of existence when one remains unaffected by praise or insult, joy or sorrow, success or failure.
- Here, we also need to understand our true virtues vis-à-vis our values. Value simply mean what I give preference to, or what holds a greater importance for me. If today I value something because I find people around me giving more importance to it, then it is likely that tomorrow I may value something else depending on the change of the mindset of others around me. Or if not, I will value it only as much as others feel it is important. This is why we see a changing trend in the value- system in the society. While, on the other hand,



virtues are different than values. Virtues are what we are intrinsically made up of. Just like the body is made up of 5 elements namely- Earth, Water, Air, Fire and Space; our being is made up of certain eternal virtues. Irrespective of what is the color of our skin, color of our hair, color of our eyes, height, weight, body structure, etc, the body is still made up of 5 elements. That is why our basic bodily composition and needs are the same, i.e. we all need these 5 elements to sustain life. Similarly, the knowledge about the self as a spiritual entity- soul, opens doors to understand that our being is made up of 7 virtues, namely- Knowledge, Purity, Peace, Love, Happiness, Bliss and Power (can be remembered by the formula: KP<sup>2</sup>LHBP). So, some may be more love-full, others may be more disciplined by the virtue of knowledge and purity, while some will be more happy- go- lucky sort of personality, but the basic composition and hence the basic need of all of us is either these virtues directly or a derivation and combination of these. Therefore, if we value these virtues in us and in others, it will always be considered as beyond evaluation or comparison by others as it will be valued by others too. However, we often confuse knowledge with information, purity with external cleanliness, peace with absence of verbal conversation or solace, love with attachment or attraction, happiness with fun, bliss with innocence and power with authority. This misleads us into the trap of external value system which continues to change as per the time and space.

Such kind of greatness originating from the core of our being will touch the heart and soul of every human and also reflect upon the quality of the entire creation- elements, nature, flora, fauna et al. They would be universal and eternal in the sense that such actions would gradually bring about the metamorphosis of the entire creation to a state of perfection called Heaven. It is believed that when there was Golden Age on Earth, the deities walked this planet and embodied such perfection that even today people feel blessed by looking at their idols. Their eternal glory comes from actions that were pure, selfless and detached from ego. They lived and acted as God's instruments.

This can be easily attained by the awakening that the 7 virtues intrinsically and eternally ingrained in the soul are not related to the body; rather at the level of the body, value differs on the basis of temporal, geographical, cultural, political, social, religious and economic conditions. So, if greatness were to be linked or limited to the level of the above prejudices, it will be termed as ignorance of the truth resulting in body consciousness. Being beyond greatness is to be really soul conscious and universally great i.e. considering the self to be the spirit in reality, which is commonly known but rarely understood as 'spirituality'. Next step is to intake these virtues just as we intake the 5 elements from our environment for sustenance of life. The source to intake and maintain a balance of these virtues within, is not the external physical environment, but the Supreme Source or the Almighty God Father. The more we connect to the Supreme in Rajyoga Meditation, the more we are able to soak in these virtues from that ocean of virtues and start overflowing unconditionally, to bestow them on others through our thoughts, vibrations, words and actions and go beyond the measurement of greatness.

■ The knowledge about the self as a spiritual entity- soul, opens doors to understand that our being is made up of 7 virtues, namely- Knowledge, Purity, Peace, Love, Happiness, Bliss and Power



■ The more we connect to the Supreme in Rajyoga Meditation, the more we are able to soak in these virtues from that ocean of virtues and start overflowing unconditionally, to bestow them on others through our thoughts, vibrations, words and actions and go beyond the measurement of greatness.



**GST REVENUE COLLECTION FOR  
NOVEMBER, 2019**

**T**he gross GST revenue collected in the month of November, 2019 is Rs. 1,03,492 crore of which CGST is Rs. 19,592 crore, SGST is Rs. 27,144 crore, IGST is Rs. 49,028 crore (including Rs. 20,948 crore collected on imports) and Cess is Rs. 7,727 crore (including Rs. 869 crore collected on imports). The total number of GSTR 3B Returns filed for the month of October up to 30th November, 2019 is 77.83 lakh. The government has settled Rs. 25,150 crore to CGST and Rs. 17,431 crore to SGST from IGST as regular settlement. The total revenue earned by Central Government and the State Governments after regular settlement in the month of November, 2019 is Rs. 44,742 crore for CGST and Rs. 44,576 crore for the SGST. After two months of negative growth, GST revenues witnessed an impressive recovery with a positive growth of 6% in November, 2019 over the November, 2018 collections.

During the month, the GST collection on domestic transactions witnessed a growth of 12%, highest during the year. The GST collection on imports continued to see negative growth at (-)13%, but was an improvement over last month's growth of (-)20%. This is the eighth time since the inception of GST in July 2017 that monthly collection has crossed the mark of Rs. one lakh crore. Also, November 2019 collection is the third highest monthly collection since introduction of GST, next only to April 2019 and March 2019 collections.

Source: <https://pib.gov.in>

**Notification No. 52/2019 – Central Tax,  
dated 14th November, 2019**

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 453 (E), dated the 28th June, 2019, namely:—

In the said notification, in the second paragraph, the following proviso shall be inserted, namely:—

“Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017 effected during the quarter July-September, 2019 till 30th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 31st day of October, 2019.

**Notification No. 53/2019 – Central Tax,  
dated 14th November, 2019**

In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 28/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 454 (E), dated the 28th June, 2019, namely:—

In the said notification, in the first paragraph, the following proviso shall be inserted, namely:—

“Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 15th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 11th day of August, 2019.

**Notification No. 54/2019 – Central Tax,  
dated 14th November, 2019**

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.455(E), dated the 28th June, 2019, namely:—

In the said notification, in the first paragraph, after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that the return in FORM GSTR-3B of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 20th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 20th day of September, 2019.

## Notification No. 55/2019 – Central Tax, dated 14<sup>th</sup> November, 2019

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 452 (E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, after the second proviso, the following proviso shall be inserted, namely: –

“Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to September, 2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 15th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 20th day of September, 2019.

## Notification No. 56/2019 – Central Tax, dated 14<sup>th</sup> November, 2019

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:– 1. (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2019. (2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

Detail Reference: <http://cbic.gov.in/resources/htdocs-cbec/gst/notfctn-56-central-tax-english-2019.pdf;jsessionid=584D5BF26FF822A1CFD51C4D0A16C893>

## Notification No. 57/2019 – Central Tax, dated 26<sup>th</sup> November, 2019

In exercise of the powers conferred by second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.28/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-

section (i) vide number G.S.R.454(E), dated the 28th June, 2019, namely:– In the said notification, for the proviso to the first paragraph, the following proviso shall be substituted, namely: – “Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 30th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 15th Day of November, 2019

## Notification No. 58/2019 – Central Tax, dated 26<sup>th</sup> November, 2019

In exercise of the powers conferred by second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2019 – Central Tax, dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.769(E), dated the 09th October, 2019, namely:– In the said notification, in the first paragraph, the following proviso shall be inserted, namely: –

“Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 30th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 11th Day of November, 2019.

## Notification No. 59/2019 – Central Tax, dated 26<sup>th</sup> November, 2019

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:– In the said notification, in the first paragraph, for the third proviso, the following proviso shall be substituted, namely: – “Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the

said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to October, 2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 30th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 10th Day of November, 2019

### **Notification No.60/2019 – Central Tax, dated 26<sup>th</sup> November, 2019**

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.455(E), dated the 28th June, 2019, namely:– In the said notification, in the first paragraph, for the fourth proviso, the following proviso shall be substituted, namely: – “Provided also that the return in FORM GSTR-3B of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 30th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 20th Day of November, 2019

### **Notification No. 61/2019 – Central Tax, dated 26<sup>th</sup> November, 2019**

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019, namely:– In the said notification, in the first paragraph, the following proviso shall be inserted, namely: – “Provided that the return in FORM GSTR-3B of the said rules for the month of October, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 30th November, 2019.”

2. This notification shall be deemed to come into force with effect from the 20th Day of November, 2019

### **Notification No. 62/2019 – Central Tax, dated 26<sup>th</sup> November, 2019**

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards, as the class of persons who shall follow the following special procedure till the 31st day of December, 2019 (hereinafter referred to as the transition date), as mentioned below.

2. The said class of persons shall:– (i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of October, 2019 and November, 2019 as below: (a) October, 2019: 1 st October, 2019 to 30th October, 2019; (b) November, 2019: 31st October, 2019 to 30th November, 2019; (ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 31st October, 2019 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act; (iii) have an option to transfer the input tax credit (ITC) from the registered Goods and Services Tax Identification Number (GSTIN), till the 30th day of October, 2019 in the State of Jammu and Kashmir, to the new GSTIN in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October by following the procedure as below: (a) the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration; (b) the ITC shall be transferred on the basis of ratio of turnover of the place of business in the Union territory of Jammu and Kashmir and in the Union territory of Ladakh; (c) the transfer of ITC shall be carried out through the return under section 39 of the said Act for any tax period before the transition date and the transferor GSTIN would be debiting the said ITC from its electronic credit ledger in Table 4 (B) (2) of FORM GSTR-3B and the transferee GSTIN would be crediting the equal amount of ITC in its electronic credit ledger in Table 4 (A) (5) of FORM GSTR-3B.

3. The balance of State taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Ladakh from the 31st day of October, 2019, shall be transferred as balance of Union territory tax in the electronic credit ledger.

4. The provisions of clause (i) of section 24 of the said Act shall not apply on the said class of persons making inter-State supplies between the Union territories of Jammu and Kashmir and Ladakh from the 31st day of October, 2019 till the transition date.



## Notification No. 26/2019- Central Tax (Rate), dated 22<sup>nd</sup> November, 2019

In exercise of the powers conferred by sub-section (3) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary so to do, hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017. In the said notification, in the Table, against serial number 26, in column (3), in item (ic), the following Explanation shall be inserted, namely: -

“Explanation- For the purposes of this entry, the term “bus body building” shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975.”

## Notification No. 25/2019- Integrated Tax (Rate), dated 22<sup>nd</sup> November, 2019

In exercise of the powers conferred by sub-section (3) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary so to do, hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 683(E), dated the 28th June, 2017. In the said notification, in the Table, against serial number 26, in column (3), in item (ic), the following Explanation shall be inserted, namely: -

“Explanation- For the purposes of this entry, the term “bus body building” shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975.”

## Notification No. 26/2019- Union Territory Tax (Rate), dated 22<sup>nd</sup> November, 2019

In exercise of the powers conferred by sub-section (3) of section 8 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary so to do, hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Union Territory Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 702(E), dated the 28th June, 2017. In the said notification, in the Table, against serial number 26, in column (3), in item (ic), the following Explanation shall be inserted, namely: -

“Explanation- For the purposes of this entry, the term “bus body building” shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975.”

## Circular No. 123/42/2019– GST, dated 11th November, 2019

### Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017

To ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in succeeding paragraphs.

The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers.

Source: [http://cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-123\\_New.pdf](http://cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-123_New.pdf)

## Circular No. 124/43/2019 – GST, dated 18th November, 2019

### Optional filing of annual return under notification No. 47/2019- Central Tax dated 9th October, 2019

It is provided that the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date for the financial year 2017-18 and 2018-19, in respect of those registered persons. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the said Act, hereby clarifies the issues raised as below:-

- a. As per proviso to sub-rule (1) of rule 80 of the CGST Rules, a person paying tax under section 10 is required to furnish the annual return in **FORM GSTR-9A**. Since the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees, it is clarified that the tax payers under composition scheme, may, at their own option file **FORM GSTR-9A** for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of **FORM GSTR-9A** for the said period.
- b. As per sub-rule (1) of rule 80 of the CGST Rules, every registered person other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically in **FORM GSTR-9**. Further, the said notification has made it optional to furnish the annual

return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees. Accordingly, it is clarified that the tax payers, may, at their own option file **FORM GSTR-9** for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of **FORM GSTR-9** for the said period.

Section 73 of the said Act provides for voluntary payment of tax dues by the taxpayers at any point in time. Therefore, irrespective of the time and quantum of tax which has not been paid or short paid, the taxpayer has the liberty to self-ascertain such tax amount and pay it through **FORM GST DRC-03**. Accordingly, it is clarified that if any registered tax payer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through **FORM GST DRC-03**.

#### **Circular No. 125/44/2019 – GST, dated 18th November, 2019**

##### **Fully electronic refund process through FORM GST RFD-01 and single disbursement**

After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file the refund application in **FORM GST RFD-01A** on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, i.e. issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc. was also being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31.12.2018 was issued wherein it was specified that the refund application in **FORM GST RFD01A**, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

Source: <http://cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-125.pdf>

#### **Circular No. 126/45/2019-GST, dated 22nd November, 2019**

##### **Scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017**

The matter has been examined. The entries at items (id) and (iv) under heading 9988 read as under:

(3)	(4)	(5)
(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	—
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ic), (id), (ii), (iia) and (iii) above	9	—

Job work has been defined in CGST Act as under. “Job work means any treatment or processing undertaken by a person on goods belonging to another registered person and the expression ‘job worker’ shall be construed accordingly.”

In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

#### **Order No. 08/2019-Central Tax, dated 14th November, 2019**

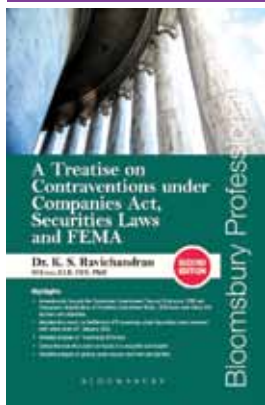
WHEREAS, sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year;

AND WHEREAS, for the purpose of furnishing of the annual return electronically for every financial year as referred to in sub-section (1) of section 44 of the said Act, certain technical problems are being faced by the taxpayers as a result whereof, the said annual return for the period from the 1st July, 2017 to the 31st March, 2018 and for the period from 1st April, 2018 to the 31st March, 2019 could not be furnished by the registered persons, as referred to in the said sub-section (1) and because of that, certain difficulties have arisen in giving effect to the provisions of the said section.

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:— 1. Short title.—This Order may be called the Central Goods and Services Tax (Eighth Removal of Difficulties) Order, 2019. 2. For the Explanation in section 44 of the Central Goods and Services Tax Act, 2017, the following Explanation shall be substituted, namely:—

“Explanation.- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st December, 2019 and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.”

Source : <http://cbic.gov.in/htdocs-cbec/gst/index-english>



## “A Treatise on Contraventions under Companies Act, Securities Laws and FEMA”

Authored By:  
**CS(Dr.) K.S. Ravichandran,**

Forwarded by  
**Dr. S. Chandrasekaran;**  
**Mr. T.S. Krishnamurthy, IRS;**  
**Mr. K.K. Balu, (Ret. Vice Chairman of CLB);**  
**CS Savitri Parekh; &**  
**Adv. R. Sankarnarayan**

**Published by: Bloomsbury Professional, India**  
**Price: Rs. 2295**

**T**he present edition titled “A Treatise on Contraventions under the Companies Act, Securities Laws and FEMA” is a comprehensive book which covers entire aspects relating to contraventions that may be committed by a company, its directors and Key Managerial Personnel’s (KMPs) under various provisions of the Companies Act, Securities Laws and FEMA. The idea of the author. As he has stated in his preface, appears to cover in his book the provisions of these laws that come within the purview of Secretarial audit under Section 204 of the Companies Act, 2013. The Author has systematically and in a very proficient manner has summarized various complicated issues relating thereto in this book which make this edition very unique and useful for the corporate, its directors, KMPs and the Auditors of such companies.

The Book has been divided into four parts. Part I covers detailed notes and analysis of the various provisions of the Companies Act, 2013 relating to the offences, penalties and compounding and prosecutions thereof. Part II deals with the Criminal Procedure Code applicable under the Companies Act, Securities Law and FEMA. Part III deals with contraventions under the Securities Laws, Regulations and procedures thereunder relating to the settlement proceedings, adjudication of penalties compounding of offences, appeal before the higher forum, etc. and Part IV dealing with the adjudication of penalties under FEMA, Appellate Tribunal under FEMA, etc. Chapter 1 to 8 deals with the offences relating to the contravention of the Companies Act. In this part and Chapters the Author has given ready reckoner for compoundable and non-compoundable offences in a tabular manner, comparisons of duties of directors-position in India, UK, Australia and South Africa, detailed analysis of *mensrea*, *consent or connivance*, *vicarious liability of directors and officers continuing offences*, punishment for frauds, in a tabulation form as well is detailed analysis, duties of the auditors for reporting of frauds, compounding of offences under section 441 by the Registrar, Regional Director, Tribunal and the Special Courts. It also covers the adjudication and penalties under section 454 by the Registrar as well as by other authorities and the procedures thereof. Most significant for the company secretaries, are the chapters of the book that guides them in the nuances of compounding of offences, adjudication of penalties and in certain cases obtaining relief by invoking the exclusive jurisdiction of High Courts which scheme undergo significant change under the Companies Act, 2013 and vested with the National Company Law Tribunal/Regional Director/Adjudicating authority(ROC) as earlier it was with the District/High Court under the Companies Act, 1956 in addition to the change in section numbers. Thus, the most important and needed parts are chapter 7 & 8 which deals with the relief to directors, officers and professional/independent directors of the Company and quashing of criminal complaints against them.

Trial Procedures under the Criminal Code, analysis of bailable and non - bailable offences is also given. Chapter 5 deals with the inspection, investigation, search and seizure which is very much relevant in the present scenario. Chapter 6 deals with the matter relating to complaint and complainant. In the chapter relating to investigation, the author has given a lot of information and explanation which exposes his experience and practical knowledge in this field and the cases he had argued before the Tribunal and other forums.

Chapters from 9 to 14 deal with the SEBI Act, 1992- procedures, penalties and prosecutions, appointment of the investigation officer, adjudication of penalties, appeal against the orders of the SEBI before the SAT and Supreme Court, etc. Collective investment schemes and adjudication of penalty for contravention thereof. Yet another important chapter is 11 which deals adjudication under the securities laws and sensitive nature of orders of Adjudicating Officers. Settlement Regulations, 2018, and the detailed procedures for application for settlement, settlement terms, guidelines for arriving at settlement terms under Schedule II, factors that may be considered by SEBI, summary settlement procedure, etc. The next Chapter 14 deals with the composition of certain offences, compoundable and non compoundable offences, compounding procedures, factors for compounding to be kept in mind, etc. From the way the author has dealt with the subject of adjudication of penalties, it is very easy to understand the scheme of the enactments and regulations under Securities laws so that company secretaries could appear before adjudicating officers and present their case / their company’s / clients’ cases.

Chapters 15 to 18 deals with the FEMA, 1999, penalties, powers to compound contraventions, compounding powers of the RBI, Informant Directorate, appeal to the Appellate Tribunal under FEMA, prosecution against offences under FEMA, etc.

I consider that the Author has provided valuable contribution in his second edition with his practical knowledge and experience in his long journey of the professional career, therefore this book will be highly insightful for companies, its directors, which includes professional and independent directors, KMPs, auditors and other senior employees facing various show cause notices from the Regulators under the Companies Act, SEBI and FEMA.

The author is complemented and appreciated for his second edition and I wish him for all success.

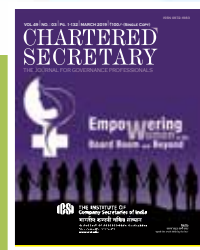
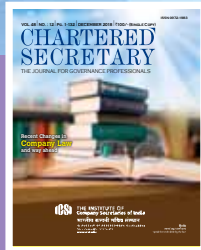
**CS (Dr.) D.K. Jain**  
**Member of the Editorial Advisory Board**



# CHARTERED SECRETARY

Advertisement

## Tariff



(With Effect from September 2018)

BACK COVER (COLOURED)			COVER II/III (COLOURED)		
Non – Appointment			Non – Appointment		
Per Insertion	₹ 1,00,000		Per Insertion	₹ 70,000	
4 Insertions	₹ 3,60,000		4 Insertions	₹ 2,52,000	
6 Insertions	₹ 5,28,000		6 Insertions	₹ 3,69,000	
12 Insertions	₹ 10,20,000		12 Insertions	₹ 7,14,000	
FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 50,000	₹ 15,000	Per Insertion	₹ 25,000	₹ 7,500
4 Insertions	₹ 1,80,000	₹ 54,000	4 Insertions	₹ 90,000	₹ 27,000
6 Insertions	₹ 2,64,000	₹ 79,200	6 Insertions	₹ 1,32,000	₹ 39,600
12 Insertions	₹ 5,10,000	₹ 1,53,000	12 Insertions	₹ 2,55,000	₹ 76,500
PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES		
Per Insertion	₹ 15,500	₹ 4,500	For ‘Situation Wanted’ ads	100	
(Subject to availability of space)			For Others	200	
MECHANICAL DATA					
Full Page - 18X24 cm		Half Page - 9X24 cm or 18X12 cm		Quarter Page - 9X12 cm	

- ♦ The Institute reserves the right not to accept order for any particular advertisement.
- ♦ The Journal is published in the 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 20<sup>th</sup> of any month for inclusion in the next month's issue.

For further information  
write to:  
The Editor  
CHARTERED SECRETARY



**THE INSTITUTE OF  
Company Secretaries of India**  
**भारतीय कम्पनी सचिव संस्थान**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)





# Improve Board Performance

Put self-assessment at your fingertips

**Does your board culture and composition need an adjustment? Are policies and procedures following the necessary governance best practices?**

As part of our Governance Cloud ecosystem, Diligent Board Evaluations makes it easy for leaders to contribute their insights and perspectives to board self-assessments.

**Board evaluations and reporting have never been so easy.**

Integrated into Diligent Boards, no more spreadsheets and paper documents, real-time updates done in a few clicks. Stunning visuals and reports prepared viewable in a secured environment. Every aspect has been built with Diligent's experience with corporate, non-profit, healthcare and financial/banking boards worldwide.

