

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

PROSPECTUS AND  
ALLOTMENT OF SECURITIES

SHARE CAPITAL AND  
DEBENTURES

ACCEPTANCE OF  
DEPOSITS BY COMPANIES

REGISTRATION OF  
CHARGES

MANAGEMENT AND  
ADMINISTRATION

DECLARATION AND  
PAYMENT OF DIVIDEND

ACCOUNTS OF  
COMPANIES

AUDIT AND  
AUDITORS

**Rules under The Companies Act, 2013**



**THE INSTITUTE OF  
Company Secretaries of India**

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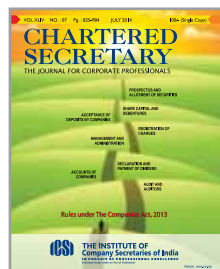


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**M. S. Sahoo** for The Institute of Company Secretaries of India,  
 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110 003.  
 Phones : 41504444, 45341000, Grams : 'COMPSEC'  
 Fax : 91-11-24626727  
 E-Mail : info@icsi.edu  
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- 01 >> 15th National Conference of Practising Company Secretaries – Inaugural Session - Chief Guest P.K. Malhotra (Secretary, Ministry of Law and Justice) addressing. Others sitting on the dais from Left: CS M. S. Sahoo, CS Atul Mehta, CS R. Sridharan, CS Vikas Y Khare, CS Anil Murarka and CS Ragini Chokshi.
- 03 >> National Seminar on Laws and Economics of Competition – Ashok Chawla (Chairperson, CCI) addressing. Others sitting from Left: CS Sanjay Grover, CS R. Sridharan, Vinod Dhall (Former Chairman, CCI) and CS Vikas Y Khare.
- 05 >> Programme on Capital Market: The Growth Engine held at Mangalore – Inauguration – Chief Guest R K Dubey (CMD, Canara Bank) seen lighting the lamp. Others standing from Left: CS Ullas Kumar Melinamogaru, CS (Dr.) Baiju Ramachandran, CS Sudhir Babu C, CS R. Sridharan, CS M. S. Sahoo and CS Sutanu Sinha.

- 02 >> 15th National Conference of Practising Company Secretaries – Valedictory Session - Chief Guest G. Padmanabhan (Executive Director, Reserve Bank of India) addressing. Others sitting on the dais from Left: CS Sutanu Sinha, CS Anil Murarka, CS R. Sridharan, CS Vikas Y Khare, CS Atul Mehta, CS Ragini Chokshi and CS M. S. Sahoo.
- 04 >> Intensive Training Programme on Companies Act, 2013 & Rules made thereunder – CS Deepa Khatri, addressing. Others sitting on the dais from Left: CS Sutanu Sinha, CS P. K. Mittal and CS Atul Mittal.
- 06 >> Programme on Capital Market: The Growth Engine held at Ahmedabad - P K Laheri (IAS (Retd.) and Former Chief Secretary, Government of Gujarat) addressing. Others sitting on the dais from Left: CS Rajesh Tarpura, CS Umesh Ved, Dr. C K G Nair (Adviser, Ministry of Finance) and CS Rutul Shukla.





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07 >> SIRC – Visakhapatnam Chapter - One Day Seminar on The Companies Act, 2013 - Engage, Execute & Exercise Precaution - CS R. Sridharan inaugurating the Seminar. Seen in the picture among others standing from Left: CS Visweswara Rao A, CS (Dr.) Baiju Ramachandran and CS C Sudhir Babu.

09 >> EIRC - Full-Day Seminar on Discussion on The Companies Act, 2013 - Critical Provisions-Inauguration - Chief Guest Sanjay Jhunjhunwala (MD & CEO, Mani Group of Companies, Kolkata) lighting the lamp. Others standing from Left: CS K. K. Chhaparia, CS Siddhartha Murarka, CS Arun Kumar Khandelia, CS Deepak Kumar Khaitan, CS Mukesh Chaturvedi, CS B. Narasimhan, CS S. K. Agrawala, CS Anjan Kumar Roy and CS K. Ananda Rao.

11 >> A view of the CBE (Computer Based Examination) in progress at NOIDA Centre.

08 >> SIRC - Coimbatore Chapter – Press Meet - CS R Sridharan addressing. Others sitting from Left: CS (Dr.) Baiju Ramachandran, CS C Sudhir Babu, CS R Dhanasekaran and CS G Vasudevan.

10 >> WIRC – Annual Regional Conference – Nehal Vora (Chief Regulatory Officer, BSE India) addressing. Others sitting from Left: CS Hitesh Kothari, CS Ragini Chokshi, CS R Sridharan, CS Vikas Khare, CS Umesh Ved, CS Atul Mehta and CS Ashish Garg.

12 >> Launching of ICSI Call Centre - Standing from Left: CS Sutanu Sinha, CS Atul H. Mehta, CS P K Mittal, CS R Sridharan, CS Vikas Y Khare, CS Gopalakrishna Hegde, CS Sudhir Babu C and CS M S Sahoo.





# at a Glance

## Articles [A 310-386]

P-835

**Disclosure of Interest and Related Party Transactions: Some Intricate Issues**

» P-835

**U K Chaudhary & Manisha Chaudhary**

The Companies Act, 2013 vide sections 184 and 188 has made elaborate provisions to control related party transactions and ensure that related party transactions are not used as a tool to divert resources and funds of the company for personal benefit of directors or controlling shareholders.

**New Private Placement Norms: A New Regime of Funds Raising by India Inc.**

» P-839

**Pavan Kumar Vijay**

For any corporate when it comes to modes of raising funds through issue of securities, the law provides three broad modes - Public Issue, Rights Issue or Private Placements. Of all the modes, Private Placements have always been one of the most favoured modes used by companies. The article discusses the provisions relating to private placements under the Companies Act, 2013.

**Compounding of Offences – Companies Act, 2013**

» P-846

**Pradeep K Mittal**

As in the Companies Act, 1956, the new Act of 2013 also has provisions enabling compounding of certain offences. The new provisions, certain guidelines propounded by the Courts under the earlier law and the procedural aspects relating to application for compounding have all been briefly explained here.

**Companies Act, 2013  
Enlightened Enactment or  
Regressive Law?**

» P-854

**Dr. S. D. Israni**

While the objective of enacting a new company legislation in place of the 1956 Act was to bring about the much needed simplification, it appears that the said objective has not been realized completely since some of the new provisions have complicated the law instead of simplifying it. This article takes a look at some of the notable shortcomings of the new law.

**CSR Under Companies Act, 2013:  
An Analysis**

» P-859

**Dr. V. Balachandran & Sudheendhra Putty**

Social Responsibility has become a part and parcel of every corporate now. CSR is generally understood to be the way a company achieves a balance or integration of economic, environmental, and social imperatives while at the same time addressing shareholder and stake holder expectations. Section 135 of the Companies Act, 2013 mandated that every company having net worth of Rs.500 crore or more or turnover of Rs.1000 crore or more or a net profit of Rs.5 crore or more during any financial year is required to constitute a CSR Committee of the Board consisting of three or more directors out of which at least one director shall be an independent director. On 27.02.2014, the Ministry of Corporate Affairs, Government of India has announced the Corporate Social Responsibility (Policy) Rules 2014 under Section 135. Additionally, Schedule VII of the Act enlisting the CSR activities has also been notified. An attempt has been made in this article to unfold the significance of the rules framed by the Ministry of Corporate Affairs.

**Return of Allotment of  
Shares and Other Securities**

» P-868

**Dr. K.S. Ravichandran**

While Section 39 of the Companies Act is concerned with the return of allotment arising from a public offer of securities, section 42 deals with the return of allotment arising from a private placement of securities. No such return of allotment is required to be filed where the company makes a rights issue of shares.

**Getting to grips with e-Voting in  
General Meetings**

» P-872

**Vinod Kothari**

As companies get ready in implementing electronic voting at general meetings, practices are in the process of evolution. The practices must be such as make shareholder democracy more meaningful, rather than chaotic or cumbersome. The idea of the lawmaker is certainly benevolent – to make remote participation in general meetings possible, and thereby, enhance shareholder participation.

**The Companies  
(Audit and Auditors) Rules, 2014**

» P-879

**T. Ramappa**

The discussion in this article is about the statutory auditor, appointed at the general meeting of the company under section 139 of the Companies Act, 2013 and to distinguish an auditor from an internal auditor and a cost auditor. To understand the way the Rules made by the Central Government under section 469 of the Act for the purpose of carrying out the provisions of the Act, the basic provisions relating to the functions of the auditor, his statutory duties and related matters as set out in the Act have all been explained.

**Independent Directors:  
Emerging to Emerged**

» P-885

**Vijaya Sampath & Sonia Abrol**

With a view to bring about better corporate governance practices and prevent recurrence of financial and other scams the new Companies Act has mandated appointment of independent directors by all listed companies. This article highlights the salient features of the new provisions and requirements.

**'DIN' For Director's Appointment  
Will Enable Tracking Accused Company  
Directors to Face Prosecution**

» P-890

**Delep Goswami**

The mandatory requirement of every appointee director to obtain 'Director's Identification Number' (DIN) to be issued by the Central Government will help the regulating/prosecuting agencies, to identify and trace the company directors to face prosecution.

**Impact of The New Rules Under  
Companies Act, 2013**

» P-895

**N.L. Bhatia & Dhruvil Shah**

Parliament has moved away from the old format of retaining substantial and procedural provisions in the statute. It has retained only substantial powers in the Act and procedural matters have been transferred to delegated rules. Thus more than 70 per cent of the provisions of the statute would be dealt by the Government without seeking prior approval of the Parliament. Thus they have adopted a new approach of retaining substantial provisions in



the Act and delegating the procedural aspects to the Rule making body. The procedural aspects would be easy to modify to keep pace with the fast changing economic and other requirements. The Companies Act, 2013 has been enforced in great haste. Many provisions require review and reconsideration. Even the matter of general meeting, e.voting and deliberation at the meeting is full of controversy and pending before the Bombay High Court. In a short span of less than three months MCA has issued about 16 Circulars, 6 Notifications 4 removals of difficulties Order. Another area where difficulty is experienced relates to frequent revision of prescribed forms resulting in delay in submission / resubmission. The need of the hour is to urgently bring an end to controversial issues in consultation with professionals and corporates.

### The Companies Rules 2014 : A Critique



#### J. Krishnamurthy

Subordinate or delegated legislation lays out the road map for proper implementation of an enactment by a State or the Centre. The delegated legislation sub-serves the objectives behind the main legislation and remains within the broad framework of the main or parent Act. Else, it is liable to be struck down by courts as invalid. The new company rules notified by the Ministry of Corporate Affairs recently are subjected to a critical evaluation from the perspective of the company secretaryship profession.

### Rules relating to Loans, Guarantees & Security: Procedural aspects and Disclosures



#### Narendra Singh

The law relating to giving of loans and providing guarantees and security by companies in relation to loans as contained in the Companies Act, 2013 are substantially different from the provisions of the old Act. The procedure relating to the loans and guarantees/security as contained in the new Act and the new Rules are narrated here.

### Appointment of Functional Directors in Unlisted Central Public Sector Enterprises(CPSEs): Provisions of The Companies Act, 2013



#### Anil Kumar Sehgal

Government Companies are of two types (i) Private Limited Companies (ii) Public Limited Companies, some of which are listed Companies. This Article examines the effect of relevant provisions of Companies Act, 2013 and rules made thereunder on the appointment of Functional Directors namely Managing Directors and Whole-time Directors in Private Limited and unlisted Public Limited Central Public Sector Enterprises (CPSEs) taking into account that exemptions enjoyed under the relevant provisions by such CPSEs under Companies Act, 1956 do not exist in Companies Act, 2013. Also, appointment of "Key Managerial Personnel" has been examined with reference to provisions of Companies Act, 2013 and rules made thereunder.

### Legal World [LW 62-71]

P-912

► **LW: 56:07:2014** The contesting respondents are held bound by the result of the said meeting. The petitioner is at liberty to enforce the result of the meeting in terms of the report of the Chairman of the Extra-Ordinary General Meeting referred to hereinabove in the manner known to law.[Kant] ► **LW: 57:07:2014** The opposite party No. 1 is a government company and examination of any allegation of corruption or favouritism per se on its part or on the part of its officers is beyond the purview of the jurisdiction of the Commission. [CCI] ► **LW: 58:07:2014** We direct that the compensation payable to the appellant shall now be computed by taking into account the average of the price, at which the two transactions by sale deeds.[SC] ► **LW: 59:07:2014** After having held that it was not

having jurisdiction the proper course for the said Court was to return the plaint to the appellant/plaintiff for its due presentation in the proper Court i.e. High Court at UK having jurisdiction.[Bom] ► **LW: 60:07:2014** The Court ought to decline reference to arbitration only where the Court can reach the conclusion that the contract is void on a meaningful reading of the contract document itself without the requirement of any further proof. [SC] ► **LW: 61:07:2014** The objective of filing certified copy is to ensure that there is no dispute apropos existence of the arbitration clause. However, it would be pedantic to insist upon compliance of the said provision in a situation like the present where the agreement containing the arbitration clause itself forms the basis of the suit and the said clause itself is clearly admitted by the respondent.[Del] ► **LW: 62:07:2014** Formation of an opinion is assailable in a legal forum, and therefore, it has to be in writing. It may be on the file and may not be required to be communicated to the employee.[SC] ► **LW: 63:07:2014** Supply and installation of lift in building is a transaction of "works contract". [SC] ► **LW: 64:07:2014** The proceeds generated from the sale of scrap would not be included in the "total turnover". [SC]

### From the Government [GN 97-116] P-922

► The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014 ► The Companies (Acceptance of Deposits) Amendment Rules, 2014 ► Date of coming into force of Section 74 (2) & (3) of the Companies Act 2013 ► The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014 ► The Companies (Meetings and Powers of Board) Amendment Rules, 2014 ► The Companies (Declaration and Payment of Dividend) Amendment Rules, 2014 ► Establishment of Office of Official Liquidator at Hyderabad ► Establishment of Office of Registrar of Companies at Hyderabad ► Clarifications on Rules prescribed under the Companies Act, 2013 -Matters relating to appointment and qualifications of directors and Independent Directors - reg. ► Clarification regarding maintaining register in new format [sub-section (9) of section 186] - reg. ► Applicability of PAN requirement for Foreign Nationals ► Filing of MGT-10- clarification regarding ► Clarification for filing of Form No. INC-27 for conversion of company from public to private under the provisions of Companies Act, 2013-reg. ► Clarifications on Rules prescribed under the Companies Act, 2013 -Matters relating to share capital and debentures- reg. ► Clarification with regard to voting through electronic means -reg ► Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013. ► Clarification with regard to format of annual return applicable for Financial Year 2013-14 and fees to be charged by companies for allowing inspection of records ► Clarification relating to incorporation of a company i.e. company Incorporated outside India ► Clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013 ► Clarification on applicability of requirement for resident director. ► Extension of jurisdiction of Local Office of the Board at Hyderabad ► Review of the Securities Lending and Borrowing (SLB) Framework ► Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) ► Investments by FPIs in Non-Convertible/Redeemable preference shares or debentures of Indian companies ► Base Issue Size, Minimum Subscription, Retention of Over-Subscription Limit and further disclosures in the Prospectus for Public Issue of Debt securities ► Guideline on disclosures, reporting and clarifications under AIF Regulations ► Participation of FPIs in the Currency Derivatives segment and Position limits for currency derivatives contracts Regulations ► SEBI Circulars No. CIR/CFD/DIL/3/2013 dated January 17, 2013, CIR/CFD/DIL/7/2013 dated May 13 and CIR/CFD/POLICYCELL/14/2013 dated November 29, 2013 - Extension of time line for alignment

### Other Highlights

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- Members Admitted / Restored
- Certificate of Practice Issued / Cancelled
- Licentiate ICSI Admitted
- News From the Regions
- News From the ICSI - CCGRT
- Company Secretaries Benevolent Fund
- Our Members
- Prize Query



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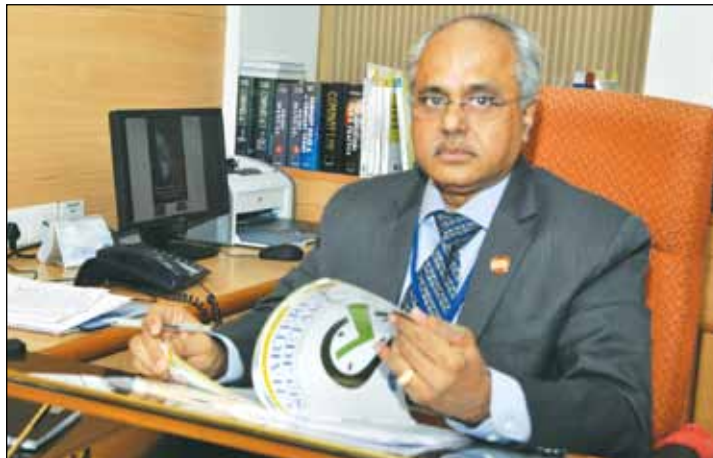
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6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
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***“To know, is to know that you know nothing. That is the meaning of true knowledge.”***

**-Socrates**

***“To know what you know and what you do not know, that is true knowledge.”***

**-Confucius**



**Dear Professional Colleagues,**

The wireless but integrated flat world provides opportunities and challenges for professionals never seen before. These call upon the professionals to operate in the zone of unknown unknowns and render innovative, value added, application of mind oriented solutions with promptitude and accuracy matching the expectations of clients or employers. The range of services keeps on expanding even as traditional services are being taken over by machines. As a consequence the role of professionals gets continuously redefined. The profession of company secretaries is no exception – it has metamorphosed from record keeper, compliance manager, business manager, board adviser, governance officer, strategist, solution provider, key managerial personnel, etc. He is now the key provider of business solutions on real time basis.

The Companies Act, 2013 has delineated distinct role for company secretaries either in practice or employment and confers distinction on them. They are broadly three kinds of key managerial personnel, namely chief executive officer, chief finance officer and company secretary. While any professional can be a chief executive officer or a chief finance officer, only a member of the Institute can be a company secretary. Further, the functions of company secretary

are very precisely specified in the statute, while those of other key managerial personnel are not. The Act and the Rules made thereunder require the company secretary to report to Board about compliance with the provisions of all laws applicable to the company, ensure compliance with secretarial standards and discharge a wide range of governance responsibilities. Though not so explicitly stated in the statute, company secretary is the defacto chief governance officer of the company. The Rules require every public company with a paid up capital of Rs.10 crores and above to have all three kinds of key managerial personnel on whole time basis. However, every company with a paid up capital of at least Rs.5 crores shall have a whole time company secretary. The Gazette Notification dated 9th June, 2014 issued in this regard is published elsewhere in this issue.

On realisation of the growing importance of compliance in governance, the law mandates secretarial audit for big companies and such audit can be carried out only by members of the Institute. This mandate alongwith the provisions of pre-certification of e-forms, certification of annual returns, representation services before Tribunals, internal audit, valuation, voluntary liquidation, etc.



## From the President

have catapulted practising company secretaries as governance professionals and opened up opportunities for them to many value added services. This would, of course, require much higher level of diligence, skill and expertise and accountability.

The emerging paradigm requires company secretaries to do competency mappings at regular intervals to remain relevant at all times and to deliver the cutting edge services. They need to display professionalism, perhaps hitherto unseen, unheard and unspoken, to meet the challenges of the new law. When calibration of competencies is change driven, the task becomes enormous as it is difficult to quantify, understand and estimate the extent and speed of change. This identification of opportunities and calibration of competencies, through effective and continuous benchmarking should go hand in hand with real time response. This cannot be achieved in isolation and calls for effective knowledge management. Creating a professional value chain through sharing of knowledge would create a pool of resources that would result in overall competitive advantage for the profession. I would request all my colleagues to effectively contribute and benefit through information value chain, by sharing their innovative solutions.

To master or thrive on changing dynamic world, we need to embrace perpetual growth and development through continuous learning, and constant improvement in the areas where we practise, learn and professionalize in the emerging areas, so that the diversification of profession happens at the individual and the institutional level. The Institute has been taking various initiatives to create platform for such information value chain in the form of professional development programmes. It has scheduled hundreds of professional programmes all over the country to build the capacity of members. In particular, it is organising master classes on the Companies Act, 2013 across the length and breadth of the country through regional offices and chapter offices. It has developed detailed backgrounders covering the various chapters of the Companies Act, 2013 for use in these master classes.

I am conscious of the difficulties being encountered by the members in implementation of the new company law. While the rules are being notified and modified and various clarifications are being issued by MCA to address the difficulties, the Institute has set up a dedicated e-mail id ( [companiesact2013@icsi.edu](mailto:companiesact2013@icsi.edu)) for receiving operational difficulties and views relating to Companies Act, 2013 and Rules made thereunder. It has also set up another e-mail id, viz., [efiling@icsi.edu](mailto:efiling@icsi.edu) for receiving queries on MCA-21 e-filing. Several pertinent and relevant queries have been received from the stakeholders. The issues requiring clarification from MCA have been taken up with them. Certain queries have been clarified by the Institute in form of Frequently Asked Questions (FAQs) placed on its website.

Mr. M. J. Joseph, Additional Secretary, Ministry of Corporate Affairs invited the Presidents of the three professional Institutes to discuss facilitation of implementation of the provisions in the Companies Act, 2013 relating to Corporate Social Responsibility, Database of

Independent Directors, and One Person Company and Organizing Investor Awareness Programmes across the country. The Institute has committed to organize 400 Investor Awareness Programmes over July – September 2014 to be organised by the Institute through its Regional Offices, Chapter Offices and resource persons. I urge upon all of you to meet the commitment of the Institute and attend in large numbers to make these programmes a success. As regards One Person Company, the Institute has brought out a ready reckoner which was released at the 15th National PCS Conference at Mumbai and is available on the website. It is also having a session on One Person Company in its nationwide capacity building programmes being organized through Regional Offices and Chapter Offices. The August issue of the Chartered Secretary will carry in-depth articles on One Person Company.

The 15th National Conference of Practising Company Secretaries with the theme "PCS: The Facilitator of Corporate Growth" held at Mumbai on June 27-28, 2014 was a resounding success. Mr. P. K. Malhotra, Secretary, Ministry of Law and Justice, Government of India inaugurated the Conference. In his inaugural address, he expressed that with rights comes the duties and obligations and that the good corporate governance leads to good business regime. He said that company secretaries are the backbone of every company and they should rise to the occasion. The valedictory address, which is published elsewhere in this issue, was delivered by Shri G. Padmanabhan, Executive Director, Reserve Bank of India. Many eminent speakers deliberated on aspects such as Governance and E-Governance, Enhancing Quality of Professional Services, Exploring New Areas of Practice, Independent Director & Related Issues, Corporate Valuer, Related Party Transactions, Secretarial Audit & Annual Returns. The videos of these deliberations are available on the Institute's website. The Conference was attended by over 300 paid delegates. Mr. P. K. Malhotra Chief Guest of the occasion released four publications, namely, (i) Competition Law in India (In Nutshell with Checklist); (ii) One Person Company (Ready Reckoner); (iii) Guidance Note on Annual Return (Release 1.1); and (iv) Guidance Note on Secretarial Audit. Mr. Malhotra also released a Souvenir - cum- Backgrounder of the Conference. I wish to thank CS Anil Murarka, Chairman, PCS Committee and CS Atul Mehta, Chairman, PCS Conference Committee for making this conference a grand success.

The Institute has taken yet another capacity building initiative in the form of the fortnightly e-journal called "e-CS Nitor" for sharing and dissemination of knowledge among the members and students on the emerging topics and ideas. This e-journal for the year 2014 is devoted to the Companies Act, 2013. The technical resources for the e-Journal come mostly from the Directorates of the Institute. This carries articles of relevance for the profession from members. Apart from articles of thematic significance, there will be readers' column for exchange of ideas and views. I appeal to the members of the Institute to contribute to this venture for mutual benefit.

The capital market plays a pivotal role in the development of economy. The healthier the capital market, the better the



prospects of economic development. Hence, a developed, dynamic and vibrant capital market immensely contributes to economic growth and development. It was in this backdrop that the Institute organized Capital Markets Programme on the theme 'Capital Market – The Growth Engine' at Ahmedabad on June 21, 2014 and at Mangalore on June 25, 2014. The Programme at Ahmedabad was inaugurated by Shri P. K. Laheri, IAS (Retd.), Former Chief Secretary, Government of Gujarat. Dr. C. K. G. Nair, Adviser, Ministry of Finance was the key note speaker at the programme. The Programme at Mangalore was inaugurated by Shri R.K.Dubey, Chairman & Managing Director, Canara Bank, while CS M. S. Sahoo, Secretary of the Institute was the key note speaker. Distinguished experts, including senior officers of SEBI, addressed a very learned audience at both the places. I wish to place on record my sincere appreciation to my colleagues on the Council, particularly CS Atul Mehta, Chairman, Financial Services Committee, CS Umesh Ved, Programme Director at Ahmedabad, CS Sudhir C. Babu, Programme Director at Mangalore, and Chairmen of Regional Councils and Chapters for extending their whole hearted support in making these two Capital Markets Programmes a grand success.

On the eve of the Capital Market Programme at Mangalore, I had an interaction meeting with students and members on 24th June, 2014. Many interesting issues were discussed. A few members felt that the small companies need not have full time company secretary and these could be served by practising company secretaries. The Chapter was urged to conduct oral coaching classes for our students more often and also professional development programmes for members outside Mangalore.

I attended a seminar on "Raising of Capital and Related Party Transactions" under the Companies Act, 2013 organised jointly by the SIRC and Coimbatore Chapter on June 2, 2014 at Coimbatore. I also availed the opportunity to address the press and media and interact with the members and students of Coimbatore. I also attended annual regional conference of the Western India Regional Council on the theme "Ministerial to Managerial: Challenges and Opportunities" which had very rich deliberations on Board and Board Committees, Managerial Remuneration, CS as Key Managerial Personnel, Clause 49 of the Listing Agreement, Related Party Transaction, and other critical issues of the Companies Act, 2013. It was a unique opportunity for me to meet my professional colleagues from western region and to discuss concerns, challenges and opportunities for the profession of company secretaries with them.

The Institute in its endeavor to make global presence in the area of governance has associated with various international organizations and sister institutions abroad, including the International Corporate Governance Network (ICGN) of which Institute is a member as well as country correspondent for India since January, 2013. To strengthen the Institute's presence at global platform, I alongwith CS Sudhir Babu C. and CS Sanjay Grover, Council Members, attended the ICGN Annual Conference

on "Expectations for investors and companies in the face of 21st century challenges" at Amsterdam during June 16-18, 2014. While the conference discussed the global issues and challenges in corporate governance, it brought together the participants interested in corporate governance from around the globe including the leading institutional investors from USA, Asia and Europe alongside regulators, policy makers and leading commentators which provides us the opportunity to appreciate and interact with the global personalities and institutional bodies and to make ICSI presence at the International forums.

The securities market is critical for corporate performance and economic development. Quite a large number of our members – both in employment and in practice - are engaged in rendering services in securities market. The company secretaries of listed companies are compliance officers under the listing agreement. SEBI is in the process of recasting the listing agreement into listing regulations and developing systems and procedures for disclosure of price sensitive information. CS Atul Mehta, Chairman of the Financial Services Committee of the Institute along with company secretaries of leading listed companies had two rounds of discussions with senior officials of SEBI and provided very useful inputs which were greatly appreciated by SEBI.

I am glad to inform you that UP VAT authorities have amended the definition of the term "Accountant" given under Rule 2 (e) of the Uttar Pradesh Value Added Tax Rules, 2008 on 27th June 2014 to include company secretaries and accordingly company secretaries are now eligible to practice and appear before the VAT Authorities in the State of U.P.

At the invitation of Ministry of Finance, CS Vikas Khare, Vice President along with a few other Council Members made a pre-budget presentation to Chairman, Central Board of Direct Taxes on June 9, 2014. In particular, they impressed upon the Ministry to retain the definition of 'Accountant' in the Direct Tax Code. I also met the concerned Joint Secretary to pursue the matter.

With a view to build capabilities of our members in niche areas, the Institute has been taking several initiatives. It hosted a National Seminar on Laws and Economics of Competition on 13th June, 2014 at Delhi which was inaugurated by Shri Ashok Chawla, Chairman of the Competition Commission of India (CCI). Key note address was delivered by Shri V. K. Dhall, former Chairman of CCI. The distinguished speakers included Shri Peter Augustine and Shri S. L. Bunker, Members of CCI, Justice S. N. Dhirga, Professor Ajay Shah and many others. At the inaugural session of the seminar, the Institute launched a Post Membership Qualification on 'Competition Law' for members of the profession at the hands of Shri Chawla. The course aims at capacity building of company secretaries in the area of legal, procedural and practical aspects of competition law and matters related thereto. I urge the members to take advantage of this course particularly in view of the fact that the competition is a fast emerging area of practice and holds huge potential for the profession.



## From the President

With a view to render prompt and accurate service to our students, we moved to fully online registration and enrolment services from January, 2014. In order to harness further gains from technology, the Institute conducted computer based examination for the foundation level in June 2014. About 22,000 students took this examination. This enabled us to declare results of this level on 25th June, 2014, exactly two months before the usual date for declaration of results. This enabled students to take admission to executive level and to move in the course faster. Further, students had open book examination in five elective papers of the professional level in June 2014 examination.

With a view to groom all round competent professionals, who can take leadership positions, the Institute has launched a three year full time residential company secretary course at CCGRT, Mumbai. Thirty one students have been admitted to the course after selection through an all India competitive written examination, interview and group discussion. The course commenced on 1st July, 2014.

While use of technology has drastically improved level of our services towards our students and members and reduced the number of grievances received by us, the Institute has launched a Helpline which is available from 7AM to 11PM on all days. I urge the students and members to use the Helpline in case of need on telephone 011-33132333.

I am pleased to inform that in order to streamline the process of taking thoughts, ideas and suggestions for reforms and changes in the sphere of governance, to the next stage and seek better coordination, a special section "Interact with the Hon'ble PM" has been created on the website of the Prime Minister's Office, to serve as place to receive the various ideas and suggestions. I request all of you to make full use of this website to send your thoughts, ideas and suggestions for reforms and changes in the sphere of governance.

I am also pleased to inform that the Ministry of Corporate Affairs has set up an Eco-system Innovation Centre (EIC) with the objective of encouraging stakeholders to offer constructive suggestions and new ideas for simplifications of Rules/ Forms notified under the Companies Act, 2013. A Web link for receiving Feedback and Suggestions has been enabled on the MCA homepage under the

caption "Stakeholders Corner". I request all of you to make full use of this website to send your thoughts, ideas and suggestions for further improvements to MCA Work Process.

The Companies Act, 2013 requires companies to appoint independent directors from a database of independent directors maintained by an agency approved by Central Government. In consultation with and under the guidance of the Central Government, the three professional institutes, namely, the Institute of Company Secretaries of India, the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India are jointly in the process of setting up a database. I strongly feel that our members are best equipped to become independent directors. You may, therefore, consider empanelling yourself in the database of independent directors. The Institute has plans to provide training to groom our members to play the role of independent directors effectively.

Friends, building future of a profession would need an unclouded commitment on the part of the professionals. This should move beyond motivation to generating personal volition to building up the future. As professionals, company secretaries need to discover and identify choices they have which might have been insufficiently exploited and pursued. As strategic managers, they should be more aware of their choices and make conscious use of them in order to extend their freedom to act. The need of the hour is to be responsive and innovative in providing creative solutions to corporates meeting the aspirations of dynamic environment.

With kind regards,

1st July, 2014

Yours sincerely,

(CS R. SRIVIDHARAN)  
president@icsi.edu

## 42<sup>nd</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

**Days:** Thursday-Friday-Saturday | **Venue:** Science City, Dhapa, Kolkata

**Dates:** 21-22-23 August, 2014 | **Theme:** CS – Change. Challenge. Opportunity.

Kindly block these dates in your diary. Other details about the National Convention being hosted on ICSI website shortly.



**U. K. Chaudhary\*, FCS**

Senior Advocate  
Supreme Court of India  
New Delhi

[ukchaudhary@hotmail.com](mailto:ukchaudhary@hotmail.com)

**Manisha Chaudhary**

Advocate  
Managing Partner, UKCA and Partners  
Advocates and Solicitors  
New Delhi

[manisha.chaudhary@ukca.in](mailto:manisha.chaudhary@ukca.in)

## Disclosure of Interest and Related Party Transactions: Some Intricate Issues

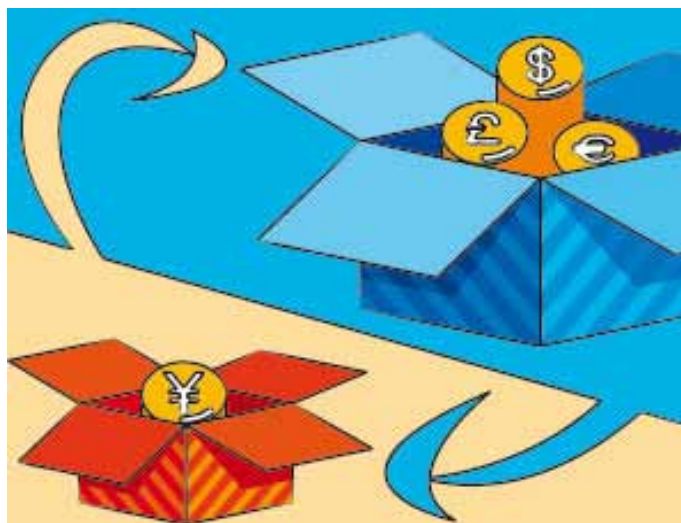
- The Companies Act, 2013 vide sections 184 and 188 has made elaborate provisions to control related party transactions and ensure that related party transactions are not used as a tool to divert resources and funds of the company for personal benefit of directors or controlling shareholders.

The Companies Act, 2013 (the 'Act') at first glance manifests sweeping changes in the corporate governance system of our country and highlights the intention of the Government to change from the control based or regulatory regime to a disclosure based and transparent regime. The Act, amongst other things, focuses on good corporate governance practices, amongst other things, by (i) Increasing the roles and responsibilities of the Board of Directors and Independent Directors, (ii) Protecting shareholders interest, and give them *inter alia* special rights to sue; (iii) Enhancing the disclosures and transparency; (iv) Increasing accountability of company's management and auditors and (v) Encouraging Corporate Social Responsibility (CSR) etc.

The expanded vistas of the disclosure of interest by an interested director which assumes immense importance under the Act is a tool through which board members recognize their fiduciary duty to the shareholders and the company and operate in an accountable and transparent manner so that there is no conflict of interest of a director with his duty considering his fiduciary role *vis-a-vis* the company. The Act, amongst other things, focuses on good corporate governance practices by bringing in a disclosure

based regime and built in deterrence through self-regulation. The Act significantly changes the way in which Companies shall be governed.

Section 184 (which is almost similar to its corresponding Section 299 of the Companies Act 1956) relates to newly appointed directors having to disclose their concern or interest in any



\*Past President, The Institute of Company Secretaries of India.



# Article

DISCLOSURE OF INTEREST AND RELATED PARTY TRANSACTIONS: SOME INTRICATE ISSUES

➤ Section 184 not only supports the directors to have interests in other contracts or arrangements, but also has some strict provisions, which hover over the directors thereby compelling them to do the right thing and follow the best practices. If any director does not disclose the interest in the first meeting, the contract/ arrangement shall be voidable at the option of the company and the director would also be subject to punishment of imprisonment and fine.

company, body corporate, firm, association of individuals at the very first meeting of the Board of Directors in which he participates and thereafter by all directors at the first meeting of the Board of Directors in every financial year or at the first meeting following any change in disclosures already made. Further the section also provides for specific disclosures, which have to be made by directors with regard to their direct or indirect concerns or interests (within certain parameters as provided for in the section itself) in respect of contracts or arrangements or any proposed contracts or arrangements being discussed at any board meeting. This section also contains penal clauses in case of defaults on the part of the Directors.

The section's overall scope is very wide as the disclosure of concern or interest by directors is not only the responsibility, but also a duty imposed on the Board of Directors of the company. "Disclosure of interest" is an important information for the Board, the Company and other shareholders, which has to be duly recorded by the Board of Directors under Rule 8(5) of Companies (Meetings of the Board and its Powers) Rules, 2014 under Chapter 12 of the Act and to further enable the Board to pass the requisite resolutions at the meetings of the Board. At the same time, Rule 9(1) and (2) of Companies (Meetings of the Board and its Powers) Rules, 2014 under Chapter 12 of the Act renders the same to be a duty of each Director to duly disclose such concern or interest.

Some clarifications however, are necessary to further elucidate a situation and dispel doubts wherein a contract or arrangement is entered into by a company, without a disclosure of concern or interest by director who is not present at the meeting, or with participation by a director who is interested but not aware of any such interest in any way, directly or indirectly, in the contract of arrangement. In such circumstances, it is possible to take a view that such an interested director may make the disclosure at the

first available opportunity, as and when such director becomes aware of the same and the company may then take a decision, as to whether to continue with the contract or arrangement or to declare it void, under its option of contract being voidable.

Sub-section (2) of section 184 emphasizes on the situation wherein if any director holds more than 2% shares in any body corporate, and any other entity in which he is interested directly or indirectly or in which he is a promoter or manager or Chief Executive Officer, individually or together with other directors is bound to make such disclosures as mentioned above. However, as per Rule 16(1)(a) of Companies (Meetings of the Board and its Powers) Rules, 2014 under Chapter 12 of the Act, if a director himself or together with any other director holds less than two Percent of the paid-up share capital, then such a disclosure shall not be required to be entered in the register, wherein every company shall maintain a record of the interest of the Director in any Body Corporate or other entities.

Section 184, nevertheless, has emerged as more stringent than its corresponding Section under the Companies Act, 1956, as it makes any director who contravenes the provisions to be liable for a punishment of an imprisonment for a term that may extend to one year or a fine between Rs. 50,000 to Rs. 1,00,000 to be paid or both.

The basic objective of Section 184 is to enhance transparency in the companies with the disclosures made in the very beginning of the year or time of appointment by their directors and thereafter as required under the Act. This section does not limit the powers of the directors, or creates obstruction in their interests in any contracts or arrangements or proposed contracts or arrangements, but, for the sake of transparency and fairness, conditions them to make disclosures in the first meeting and thereafter, if required. Section 184 not only supports the directors to have interests in other contracts or arrangements, but also has some strict provisions, which hover over the directors thereby compelling them to do the right thing and follow the best practices. If any director does not





- There is tremendous emphasis on the approval process for related party transactions. The mandatory code of conduct for independent directors stipulates that they should pay sufficient attention and ensure that adequate deliberations are held before approving RPTs, and assure themselves that the same are in the interest of the company.

disclose the interest in the first meeting, the contract/arrangement shall be voidable at the option of the company and the director would also be subject to punishment of imprisonment and fine. Thus under this Section, the onus of discharge of responsibility lies on the Director and not on the Company.

Another important aspect is that Section 184 in its normal course of action may in relation to a director's direct and indirect interest be read with Section 188 of the Act, which refers to related party transactions.

The term 'Related party' determining this section, as per Section 2 (76) of Companies Act, 2013 includes the primary entities like director or his relative, a key managerial personnel or his relative, a firm wherein director, manager or his relative is a partner, a private company in which a director or manager is a member or director, and likewise others as set out in the section. A related-party transaction can also play a beneficial role by saving transaction costs and improving the operating efficiency of a company on one hand, but on the other hand it could be seriously misused against the interest of the company and to the detriment of public shareholders and other stakeholders, also.

In India, regulations related to Related Party Transactions ("RPTs") are found in the erstwhile Companies Act, 1956, the Companies Act, 2013, the Indian Accounting Standard 18, the Auditors Report Order, and Clause 49 of the Listing Agreement. The Income Tax Act 1961 also contains provisions related to transfer pricing issues on such transactions. Recent changes in Income Tax (domestic transfer pricing), Companies Act, 2013 and Clause 49 are significant steps by regulators towards addressing risks arising from RPTs, that have until now been somewhat inadequately addressed and concern from adverse related party transactions are not particularly redressed. There are some more important issues which also need clarification, particularly in case of companies with captive consumption of raw material and unfinished products in integrated manufacturing complex, controlled by various companies/firms by the same set of shareholders and directors where raw material and semi-finished goods are transferred and used on daily basis for manufacture of final products or for exports.

The central government may thus make some rules for mitigating such difficulties. It may be appreciated that such arrangement or transactions are done on daily basis and in such cases it is not possible to obtain Board or shareholders approval in each case separately.

Changes introduced through Clause 49 and Companies Act, 2013 are an attempt to improve the corporate governance framework in India and respond well to the global practices in this regard. These changes have expanded definition of related party; coverage of type of such transactions; have brought in the concept of approval of audit committee or board of directors or the shareholders for all related party transactions. Implementation effectiveness would be result of application of these new regulations by various stakeholders.

The new regime for RPTs seems complex because the definition of 'related party' has changed significantly. The scope of transactions has been significantly enhanced and proposes to cover sale, purchase, and leasing of any property of any kind (including immovable property).

There is tremendous emphasis on the approval process for related party transactions. The mandatory code of conduct for independent directors stipulates that they should pay sufficient attention and ensure that adequate deliberations are held before approving RPTs, and assure themselves that the same are in the interest of the company.

Section 188 provides for the matters that require the consent of Board of Directors of company or prior approval in case of special resolution, which is defined under Section 114 of the Act. It also mentions that the agenda of the Board meeting at which the resolution is proposed to be moved shall disclose the name of the related party and nature of relationship; the particulars and material terms of the contract or arrangement, any advance paid or received for the contract or arrangement, if any, etc. It also mentions that the interested directors cannot participate in case of special resolutions under this section. In this regard, some difficulty







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DISCLOSURE OF INTEREST AND RELATED PARTY TRANSACTIONS: SOME INTRICATE ISSUES

will arise in cases, where same set of directions and shareholders "control" the related parties (i.e. companies/firms). It will be difficult, rather impossible to pass Board or shareholders resolution in such related companies, unless some extra measures are taken, such as appointing more uninterested directors and shareholders for requisite quorum. However, the flexibility of this section is depicted as it also includes that nothing would apply to any transactions entered into by the company in its ordinary course of business other than transactions, which are not on arm's length basis. 'Arm's length transaction' herein means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. Another feature depicting flexibility of this Section is that the limit is further marked in Rule 15(3) of Companies (Meeting of the Board and its Powers) Rules 2014 under Chapter 12 of the Act, contracting the paid-up share capital to Rs. 10 Crores. Even though the objective is to make the Act's approach to be sizeable, the line is drawn herewith, as the section seeks to provide that every such contract or arrangement shall be referred to in the Board's report to the shareholders along with the justification. The Arms length transaction, thus are intricate, as such transactions may require some evidence that is tangible in order to prove the bonafide in case of dispute, particularly in class action suit or petition complaining oppression and mismanagement and the same may be true for transaction in ordinary course of business of company.

The liberal character of the section is exhibited by doing away with the approval needed by the Central Government for related party transactions. Under the Act, a company is now allowed to proceed against a director or any other employee for recovery of any loss sustained by it as a result of a contract/arrangement entered into by such person in contravention of the provisions and therefore, the extensive reporting of related party transactions to the regulators and shareholders will entail transparency in the process. Non-executive and independent directors are entitled to immunity from prosecution only when they can demonstrate evidence of due diligence. Companies will have to gear up to face greater scrutiny and questioning by independent directors. The management would have to design a format and structure for recording discussions in Board meetings, which will help in asking the right questions and provide evidence of due diligence as well. This may even lead to class action suit, in case of any dereliction of duty.

A new concept of 'interested member' has been introduced in this section. If an interested member is covered under the definition of 'related party', he/ she cannot vote. This is to check misuse of shareholding power by controlling shareholders, and to prevent stifling of the minority by the majority. Since major transactions have to be approved by shareholders through special resolution, denial of voting rights to interested members would sometime mean approval by majority consisting of the minority shareholders. It may however, be noted that even after passing of necessary resolution, as above, legal actions, such as class action suit or petition for oppression and mismanagement cannot be ruled out completely.

Further under Rule 15 (2) of the Companies (Meeting of the Board and its Powers) Rules 2014 under Chapter 12 of the Act, in case of wholly owned subsidiaries, resolution passed by the parent company shall be sufficient thereby recognizing the corporate democracy of majority rule as applicable to such a subsidiary.

Similar to section 184, this section also puts out itself to be profound, but at the same time restrains the directors from entering into any contract or arrangement not in compliance with the provisions of the section, making it voidable at the option of the Board in case the approving authority does not ratify it. The strictness also bounds the directors under this section by penalizing them for entering into or authorizing any contract or agreement in violation of the provisions in case of listed or unlisted company.

Therefore, the Act, vide Sections 184 and 188 has made elaborate provisions to control such related party transactions and ensure that related party transactions are not used as a tool to divert resources and funds of the company for personal benefit of directors or controlling shareholders. CS

## Appointment

# REQUIRE

A QUALIFIED COMPANY SECRETARY

for the post of the Company Secretary of the Company.

The candidate should be an Associate Member of the Institute of Company Secretaries of India having 0-2 years of relevant experience.

Application can be sent to -  
Kajal Synthetics And Silk Mills Limited  
29, Bank Street, 1st Floor, Fort  
Mumbai - 400 001.





**Pavan Kumar Vijay\*, FCS**

Founder & Managing Director  
Corporate Professionals Group  
New Delhi

[pkvijay@indiacp.com](mailto:pkvijay@indiacp.com)

# New Private Placement Norms: A New Regime of Funds Raising by India Inc.

➤ In the light of recent happenings like the one at Sahara, the new Companies Act has incorporated stringent provisions relating to mobilization of funds by corporates by way of private placement and the like. This article makes an incisive evaluation of the new provisions.

## PREFACE

*It is rightly said that "Money makes the world go around and around....."In today's era, the entire gamut of business's prosperity stands upon the availability of funds... At the right time and at a right place and in right quantum!*

**F**or any corporate, when it comes to fund raising, the available means can be equity or debt, depending upon the requirement of fund, size, stage of business, its payout capacity, industry or business risks and so on. A few variations of these two may be quasi-debt instruments such as redeemable preference shares. Substantial amount of debt funds are raised in the form of secured loans from banks and financial institutions, NBFCs, inter-corporate loans and public deposits. However, when it comes to modes of raising funds through issue of securities, the law provides three broad modes for corporates - Public Issues (raising funds from a large and wide range of persons), Rights Issue (or raising money from its existing shareholders on proportionate basis) or Private Placements (or raising money from selected view persons).

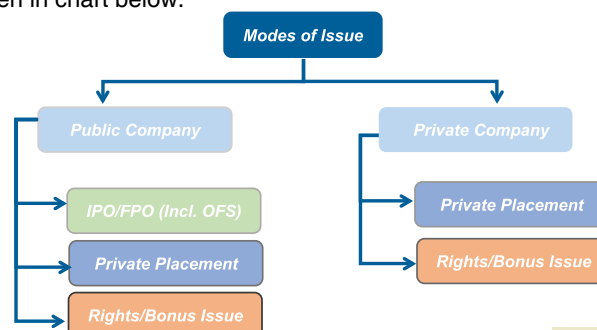
Of all the modes, Private Placements have always been one of the most favored modes used by companies. The main reason behind this favouratism is the ease available to companies and their

\*Past President, The Institute of Company Secretaries of India.

managements, in terms of less legal hassles, choice available for selecting the allottees or amounts to be raised etc. Till the promulgation of Companies Act, 2013, the Companies Act, 1956 and SEBI guidelines and regulations governed and mandated the conditions for private placements, depending upon the nature of the company and their status as to being private limited or public limited or listed ones.

## BEGINNING OF A NEW ERA - THE COMPANIES ACT 2013

Under the new Companies Act there are three major sections which governs issue of securities by private placement by any company. First, there is Section 23 which prescribes the modes of issue of securities which a company uses to issue securities. The Private Placement is an available mode for both public as well as private companies. The available modes of issue of securities may be seen in chart below:



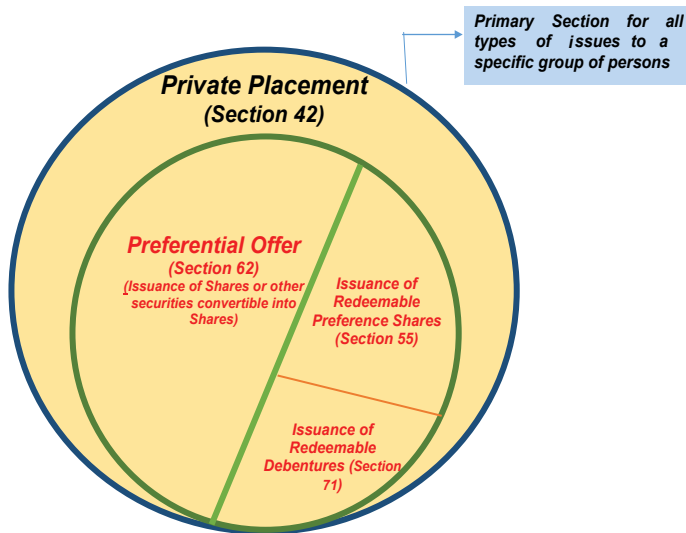


# Article

NEW PRIVATE PLACEMENT NORMS: A NEW REGIME OF FUNDS RAISING BY INDIA INC.

Second, there is Section 42, read with the Companies (Prospectus and Allotment of Securities) Rules, 2014, which prescribes detailed procedural guidelines for offer or invitation of securities by way of private placement. The ambit of this section is very wide and covers offer of all kind of securities be it equity shares, convertible preference shares/debentures, redeemable preference shares or debts instruments.

## The ambit of Private Placement as per Companies Act, 2013



## LEGAL POSITION OF PRIVATE PLACEMENTS:

Before we go any further to discuss the provisions relating to Private Placements under the CA '13, it is necessary to understand the meaning and connotation of the terms that have direct implication on understanding how lawmakers have plugged all the lacunas in the extant legal regime. Until the promulgation of CA '13, the term 'Private Placement' was not defined under any law though the Securities And Exchange Board of India (Issue Of Capital And Disclosure Requirements) Regulations, 2009 ("ICDR Regulations") do define the term "Preferential Allotment" as any allotment to one or more shareholder(s) or person(s) instead of all the existing shareholders.

The Unlisted Public Companies (Preferential Allotment) Rules, 2003 as amended in 2011 provided that:

*"Preferential allotment" means allotment of shares or any other instrument convertible into shares including hybrid instruments convertible into shares on preferential basis made pursuant to the provisions of sub-section(1A) of section 81 of the Companies Act, 1956.*

For the 1<sup>st</sup> time in Indian legal history, the term "Private Placement" has been defined under the CA '13. Section 42 of the Act defines

**"Private Placement"** to mean any offer of securities or invitation to subscribe **securities** to a select group of persons by a company (other than by way of public offer) through issue of private placement offer letter.

In most simple words, private placement refers to an offer or invitation to subscribe of securities to a select group of people on preferential basis. Meaning thereby, any issue/ allotment other than a Public Issue or a Rights Issue shall be a private placement.

To ensure proper regulation and reporting of issue of all kind of instruments for raising funds by companies the term "securities" has been used in this section in place of shares.

Securities

Securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956

As per Clause (h) of Section 2, Securities include:

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ia) derivative;
- (ib) units or any other investments issued by any collective investment scheme to the investors in such schemes;
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be securities; and preferable
- (iii) rights or interest in securities.

Thus, CA '13 promises better protection of stakeholders by tightening the provisions relating to private placement and creating transparency in the processes. Some of the key provisions, governing Private Placements have been given hereunder:

- Under New Companies Act, at present the process and provisions relating to Private Placement is common for all class of companies, be it private, public or listed company. SEBI has power to prescribe additional procedural or disclosure requirements and may regulate the listed companies.
- An offer of securities or invitation to subscribe securities shall be made through a **private placement offer letter** (in Form PAS-4) to a selected group of persons by a company (other than by way of public offer) only if the proposed offer has been **approved by the shareholders** of the Company, by way of a **Special Resolution**.
- The Explanatory Statement to the General Meeting Notice should contain the **basis or the justification for the**



### **proposed issue price.**

- This Offer Document is needed to be **serially numbered** and addressed specifically to the concerned person. It can be **sent either in writing or in electric mode**, within a time period of 30 days.
- In case the company makes an offer or invitation for **non-convertible debentures**, **the Company may pass a special resolution only once in a year for all the offers or invitations for such debentures during the year.**
- The offer or invitation shall be made to **not exceeding 200 persons in aggregate in a financial year**, individually, for each kind of security (equity share, preference share or debenture). For the calculation of the limit of 200, any offer to Qualified Institutional Buyers or to the employees under a scheme of employee stock option, shall not be considered. **[PAS Rule 14 (2)]**
- Further, it has also been mandated that the **value of such offer or invitation shall not be of less than Rs. 20,000/- of the face value of the securities, per person.****[PAS Rule 14 (2)]**
- The above mentioned limit of 200 allottees and Rs 20,000/- Face Value of Investment shall not be applicable to:
  - NBFC Companies; and
  - Housing finance companies;

Provided they comply with the Regulations made in respect of offers on private placement basis, by RBI or National Housing Board (NHB).

However, if RBI or NHB have not specified any similar regulations, even such companies would be required to comply with the provisions of these Rules.
- **No fresh offer or invitation of any securities shall be made unless allotments in respect of all earlier offers of any other security are completed.**
- The subscription money may be **paid through cheque or demand draft or other banking channel but not by cash**, that too **only from the proposed allottee's bank account**. In case of joint holders, the payment is needed to be received from the 1<sup>st</sup> holder's bank account.
- The **allotment of securities should be completed within 60 days of the receiving application money for private placement**. If the company is not able to complete allotment within 60 days, then it shall refund the money within 15 days of the expiry of such 60 days or else repay along with interest @ 12% p.a. calculated from the sixtieth day.
- **The application money shall be kept in separate bank account** and shall not be utilized for any purpose other than for adjustment against allotment of securities or for repayment of money where the company is unable to allot securities.
- **Complete record** of private placement offers and acceptances shall be maintained by the company in Form PAS 5.

- The Record of Private Placement in Form PAS 5 along with the Form PAS 4 are **needed to be filed with the Registrar of Companies and in case of listed entities, with SEBI, as well, within a period of 30 days of circulation of relevant private placement offer letter.** As per the rules, the date of the private placement offer letter shall be the date of circulation of the offer letter. Under the existing SEBI Regulations on preferential allotment, no documents were required to be filed with SEBI and the Stock Exchanges were the only regulators to give in principle listing approvals. But, pursuant to the CA '13, now the Offer Document would be filed with SEBI as well.
- Issue of any kind of advertisement or utilize any media, marketing or distribution channels or agents to inform the public at large about the offer is prohibited.
- Now the return of allotment shall be filed with the Registrar (in Form PAS 3) by the company making allotment of all kinds of securities including complete list of all the security holders mentioning their full details, including name, address, mail id, date of allotment etc., within 30 days of allotment.

The above requirements and procedural compliances as prescribed in section 42 of CA '13 and Rule 14 of Companies (Prospectus and Allotment of Securities) Rules 2014 are common to all class of securities, be it equity, preference shares or debt instruments. However, the law also prescribes certain additional requirements/ compliances in case the securities being issued are equity shares or securities convertible into equity shares on preferential basis. These additional requirements are prescribed in Section 62 of CA '13 read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014.

## **PREFERENTIAL OFFER OF EQUITY SHARES OR OTHER CONVERTIBLE SECURITIES**

As per Explanation to Rule 13 of the Companies (Share Capital





# Article

NEW PRIVATE PLACEMENT NORMS: A NEW REGIME OF FUNDS RAISING BY INDIA INC.

➤ The lawmakers have clearly demonstrated that preferential offer of equity or convertible securities of any company shall be with proper planning and with full disclosures. Many of the requirements are in line with the provisions of Chapter VII of the SEBI (ICDR) Regulations, 2009. However, in certain aspects especially with regard to disclosures to the proposed allottees through Offer Documents as well as monitoring of money flow, the new Act and rules thereunder has gone far beyond.

and Debentures) Rules, 2014, 'Preferential Offer' means an issue of *shares or other securities*, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

It is pertinent to note that "Shares or other securities" mean equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

For issuance of equity shares or other securities convertible into equity on preferential basis, in addition to the requirements of Section 42 as discussed above, companies are required to comply with the provisions of Section 62 as well as Rule 13 of Companies (Share Capital and Debentures) Rules, 2014. Where the preferential offer of shares or other securities is being made by any listed entity then the provisions of Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 shall not be applicable but such companies shall comply with SEBI prescribed Regulations in this respect.

## THE KEY PROVISIONS GOVERNING PREFERENTIAL OFFER HAVE BEEN GIVEN HEREUNDER:

- The offer must be authorized by Articles of Association of the Company
- Prior approval of Shareholders is required to be obtained *via* Special Resolution for issuance of shares on preferential basis

- No partly paid securities shall be issued
- Allotment to be made within 12 months from the date of Special Resolution
- Mandatory disclosures in the Explanatory Statement to the Notice calling General Meeting, *inter-alia*, includes the following:
  - a) Object of the issue
  - b) intention of the promoters, directors & KMPs
  - c) Change in control, if any, consequent to the preferential offer
  - d) Justification for the allotment proposed to be made for consideration other than cash
  - e) Details of the proposed allottees along with post preferential shareholding
  - f) Basis on which price is arrived along with the report of **Registered Valuer**

*Till the time provision related to an independent valuer are not notified, valuation can be done by an Independent Merchant Banker or by Independent Chartered Accountant in Practice having minimum experience of 10 years. (as amended on 18.06.2014).*

In light of the aforesaid provisions, it can be construed that the lawmakers have clearly demonstrated that preferential offer of equity or convertible securities of any company shall be with proper planning and with full disclosures. Many of the requirements are in line with the provisions of Chapter VII of the SEBI (ICDR) Regulations, 2009. However, in certain aspects especially with regard to disclosures to the proposed allottees through Offer Documents as well as monitoring of money flow, the new Act and rules thereunder has gone far beyond.







## ISSUANCE OF REDEEMABLE PREFERENCE SHARES

In line with the erstwhile provisions, the CA'13 prescribes the issuance of Redeemable Preference Shares for **the maximum term of 20 years**. The Rule 10 of Companies (Share Capital and Debentures) Rules, 2014 allows companies who are primarily engaged in the business of setting up and dealing with infrastructure projects to issue preference shares redeemable **within 30 years** provided an option to redeem minimum 10 percent of such preference shares per year be given to such preference shareholders from the 21st year onward or earlier.

Some of the key provisions, governing issuance of Redeemable Preference Shares have been given hereunder:

- Prior approval of shareholders *via* Special Resolution is required for issuance of Redeemable Preference Shares
- Enhanced disclosure requirement in the Explanatory Statement to the Notice calling General Meeting of the Shareholders
- Specific requirement of making disclosures of certain parameters in the shareholders' resolution that have a direct bearing on the interest of shareholders
- Maintenance of Register in respect of such preference shareholder(s) in terms of Section 88 of the CA'13.

## ISSUANCE OF REDEEMABLE DEBENTURES

Some of the key provisions, governing issuance of Redeemable Debentures have been given hereunder:

- The Company may issue secured Debentures for a tenure not exceeding 10 years. Rule 18 of Companies (Share Capital and Debentures) Rules, 2014 as amended on 18.06.2014 allows following class of companies to issue redeemable debentures with a tenure exceeding 10 years but up to 30 years:
  - Companies engaged in Infrastructure Projects
  - Infrastructure Finance Companies
  - Infrastructure Debt Fund Non-Banking Financial companies
  - Such issue shall be secured by the creation of a charge on the properties and assets of the Company having sufficient value to repay the debentures and interest thereon
- Creation of Debentures Redemption Reserve (DRR) out of the profits of the Company available for payment of dividend, equivalent to atleast 50% of the amount raised through the Debenture issue before debenture redemption commences
- DRR to be utilized only for the redemption of Debentures
- Every Company required to create DRR shall on or before the 30<sup>th</sup> day of April in each year, invest or deposit, a sum

constituting 15% or more of the amount maturing during the year ending on 31<sup>st</sup> March of succeeding year, in any one or more of the following modes:

- (a) Deposits with any scheduled bank, free from any charge or lien
- (b) Unencumbered securities of the Central Government or State Government
- (c) Permissible unencumbered securities and bonds under Section 20 of the Indian Trusts Act, 1882
- The amount so deposited or invested as above shall be utilized only for redemption of matured debentures

## PENAL PROVISIONS FOR CONTRAVENTION WITH THE STIPULATIONS OF PRIVATE PLACEMENTS

The new Act has drastically increased the penal provisions relating to an offer or accepts monies in contravention with the provisions of Section 42, its promoters & directors shall be liable for a penalty which may extend to:

- (a) The amount involved in the offer or invitation; or
  - (b) Rupees 2 Crores,
- } whichever is higher

And

The Company shall also refund all monies to subscribers within 30 days of the order imposing the penalty.





# Article

NEW PRIVATE PLACEMENT NORMS: A NEW REGIME OF FUNDS RAISING BY INDIA INC.

- The Companies Act, 2013 is likely to curb malpractices in private placement and also ensure greater coordination between SEBI and MCA by regulating such offers

## BACKGROUND AS TO WHY THE NEED ARISES FOR FRAMING THE STRINGENT PRIVATE PLACEMENT NORMS

In the extant legal regime, there existed certain grey areas, which were being misused from time to time, by the companies and their promoters, thereby compromising the interest of innocent stakeholders. The highlights of the private placement provisions under Companies Act, 1956 and its impact on the economy as a whole are outlined as follows:

- No specific provisions on private placement existed in the Act of 1956, apart from the requirements of Section 81(1A). Beyond this, unlisted companies were required to follow Unlisted Public Companies (Preferential Allotment) Rules, 2003 as amended in 2011 while listed companies were required to follow the guidelines or regulations of SEBI. However, these were applicable to only public companies that to only in relation to the issue of equity shares or convertible securities.
- Section 67(3) of the Companies Act, 1956 did put a restriction on the number of persons to whom the shares shall be allotted under single offer or invitation on preferential basis to 49. While a private placement could have been made only to a maximum of 49 persons at one go, but there existed no provision to prevent companies from convening multiple board meetings to approve such allotments. As a result, companies started calling several meetings and made allotments to 49 allottees at each such meeting, thereby manipulating the law.
- Apart from the above mentioned provisions, Companies Act 1956 was primarily silent as to determination of issue price, collection and utilization of money, disclosures to the proposed allottees etc. To quite an extent, it was this 'no legal provision' regime, which led to cases like Sahara and many others, not even known, to happen, thus resulting in loss of public money, amounting to thousands of crores of rupees and loss of investor confidence.

We all are very well aware about the case of Sahara group who raised crores of rupees from the public, through private placement of optionally fully convertible debentures. Over the last two years, the controversy over the money raised by Sahara group

companies played out with the market regulator SEBI where it termed the said funds raised as 'private placement' and beyond the jurisdiction of SEBI. The regulator ordered the Sahara group companies – Sahara India Real Estate Corporation (now known as Sahara Commodity Services Corporation Ltd) and Sahara Housing Investment Corporation to refund Rs. 19,400 crore raised from 2.21 crore investors. The Sahara group companies stated that the funds were raised through private placement of optionally fully convertible debentures, which were outside the definition of 'securities' specified in SEBI regulations. These companies also contended that since they were unlisted companies, the issue of these debentures was outside the jurisdiction of SEBI. SEBI, however contended that the method of raising capital violated various regulations and given that the offer was made to more than 50 persons at a time, it could not be termed as a private placement and was required to abide with the conditions prescribed by SEBI for such issuance. The Securities Appellate Tribunal (SAT) and the Supreme Court has also upheld the SEBI order regarding refunding money to investors.

While Sahara was a high profile case, and came to lime light, the Regulators realized that there must have been several other instances as well, where companies have manipulated and misused laws and regulations on private placement.

Thus, to plug all the loopholes that existed under the extant 1956 Act, the legislature thought it prudent to make stringent conditions, so that the managements are left with no excuses to flout the laws. Accordingly, the Regulators have come out with various Amendments, including the promulgation of Companies Act 2013 (CA '13/ the Act).

## HOW CA '13 ENSURES GOVERNANCE REGIME?

- The Companies Act, 2013 is likely to curb malpractices in private placement and also ensure greater coordination between SEBI and MCA by regulating such offers.
- Provisions of the Act that will curb malpractices are as under:
  - **Use of term 'securities' instead of 'shares'** - Use of the term shares in the Companies Act, 1956 restricted regulations of issuances of various other instruments by Company to raise funds. **Companies manipulated this loophole by using other terminology or nomenclature for instruments used to raise funds, thereby easily escaping the regulatory oversight.** Having understood the practices, the government decided to cover issue of all types of securities in the Companies Act and thus minimize the chances of manipulation.
  - **Restriction on number of persons to whom a private placement offer can be made in a financial year** –The number of persons to whom invitation or offer for private placement can be made in a financial year has been restricted to 200 in aggregate for a financial year, with an



investment size of not less than Rs 20,000/- face value has been mandated.

- **Use of banking channels for private placement:** Since the subscription money will have to be paid through a cheque or demand draft or other normal banking channels, opportunities to launder money will go down.
- **Requirement to complete allotment in 60 days:** It has been specified that allotment under private placement should be made within 60 days of receiving the application money. This proposal will curb a common practice under which companies used to accept funds as application money without adequately complying with rules and regulations for accepting deposits. These companies would accept application money from any person, use the money for various purposes and then refund them, as there was no time-table for allotment of shares or refund of funds raised.
- It has been specifically provided that where the private placement does not comply with the provisions of the Act, it shall be treated as a public offer and that all provisions of the Securities Contracts (Regulation) Act 1956 and SEBI would apply. This will ensure greater coordination between the two regulators.

## MAJOR CONCERN OF THE CORPORATES WITH THE PROMULGATION OF NEW REGIME

1. Nowadays, one of the major dilemmas that Corporate Houses are facing as to how to deal with the application money outstanding in the books of accounts as on 1<sup>st</sup> April, 2014?

As per Section 42(6) of the CA'13, "a company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the Company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the Company fails to repay the application money within the aforesaid period, it shall be liable to repay the money with interest at the rate of twelve percent per annum from the expiry of the sixtieth day".

Similarly, the new law requires the application money received pursuant to private placement to be kept in a separate account and to be used only after allotment for appropriation against the securities so issued or for refund if no allotment is made.

These above two obligations are practically not possible to comply with, in case the application money is already in the books as on 1<sup>st</sup> April 2014. Similarly, there is no possibility of preferential allotment against unsecured loans outstanding as

on 1<sup>st</sup> April 2014 due to these mandatory requirements.

The cardinal principle of harmonious construction as well as Clause 6 of General Clauses Act, 1897 clearly states that unless a different intention appears, the repeal or replacement of any law shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

On applying the principles of harmonious construction, it can be construed that the intent of the statute is to regulate the private placements made under this Act and not the application money received under old law. However, keeping in view the provisions of sections 23, 42 and 62 read with rules made thereunder the companies are finding it impossible to comply with these requirements when the money had come much before and are already used. The hardship is more genuine to the private companies, which were totally unregulated.

2. Under Section 42(7), a requirement has been included that in case of private placement, offer shall be made only to such persons whose names are recorded by the company prior to invitation to subscribe, and such persons should receive the offer in their name. It may be practically very difficult to undertake Qualified Institutional Placements under the SEBI ICDR Regulations, due to this requirement.
3. SEBI presently allows listed Companies to issue option warrant which gives holders to subscribe equity shares within 18 months. However, Companies Act, 2013 indirectly restricts the issuance of such warrants as the term securities does not explicitly cover these warrants. In such a scenario, whether the listed entities can still opt for issuance of warrants convertible into Equity Shares within a span of 18 months? Would it not tantamount to outstanding share application money? If so, then the warrants would require to be converted within 60 days instead of 18 months.
4. From the perspective of timing and ease of capital raising via private placement route, the requirement of offer letter is onerous, especially in case of very small number of allottees and for private companies which tend to make allotments to its promoter, directors and their relatives and friends who are very well aware about the Company and its prospects.

Besides the above few concerns, the new law relating to private placement is quite forward looking and encompasses the basic concept of high level of corporate governance and transparency which the legislature has tried to inculcate in the functioning of India Inc. through this new Companies Act. The Act gives sufficient power to the Central Government to regulate and manage companies through rules in this every dynamic corporate environment. It is well expected that the government shall take necessary measures to modify/clarify the provisions wherever there is genuine hardship to the industries.

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**Pradeep K. Mittal, FCS\***

PKMG Law Chambers  
Delhi

[pkmittal171@gmail.com](mailto:pkmittal171@gmail.com)

## Compounding of Offences – Companies Act, 2013

- As in the Companies Act, 1956, the new Act of 2013 also has provisions enabling compounding of certain offences. The new provisions, certain guidelines propounded by the Courts under the earlier law and the procedural aspects relating to application for compounding have all been briefly explained here.

**T**he provisions pertaining to compounding of offences, under the new Companies Act, 2013, is given in Section 441. The provisions of section 441, for easy reference, are reproduced herein below:-

441. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by –

- (a) the Tribunal; or
- (b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorized by the Central Government, on payment or credit, by the company or as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of Section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

- (2) Nothing in sub-section (1) shall apply to an offence committed by a Company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation: For the purposes of this section, -

- (a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;
- (b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

- (3) (a) Every application for the compounding of an offence shall

\*Council Member, The ICSI.





be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be.

- (b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date of which the offence is so compounded.
- (c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorized by the Central Government against the offender in relation to whom the offence is so compounded.
- (d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
- (4) The Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.
- (5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorized by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.
- (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -
  - (a) any offence which is punishable under this Act, with imprisonment or fine, or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;
  - (b) any offence which is punishable under this Act with

imprisonment only or with imprisonment and also with fine shall not be compoundable.

- (7) No offence specified in this Section shall be compounded except under and in accordance with the provisions of this Section.

## NATURE OF OFFENCES WHICH CAN BE COMPOUNDED

- 2. The offences, which are punishable with fine, only can be compounded either by Regional Director (hereinafter called "RD") or by the National Company Law Tribunal (hereinafter called NCLT). In other words, the offences, which are punishable with imprisonment only or imprisonment and also with fine cannot be compounded. Further, the offences punishable with imprisonment or fine or with imprisonment or fine or both, shall be compoundable with the permission of the Special Court as provided under Clause (a) of Sub-Section (6) of Section 441 of the Act.

## WHERE PETITION SHALL LIE

- a) If the fine does not exceed Rs. 5 lakhs, the offence can be compounded by the RD or any other officer as may be authorized by the Central Government.
- b) If the offence is punishable with fine exceeding Rs 5 lakhs, the same can be compounded by the NCLT.
- c) Any offence punishable with imprisonment or fine or with imprisonment or fine or with both shall be compoundable with the permission of Special Court.
- 3. A detailed "Table" indicating the sections, subject matter, amount of fine imposable by the Authority/Tribunal/Special Court before whom the petition shall lie, is given separately as per **ANNEXURE-I**.

## RESTRICTION ON COMPOUNDING

- 4. The third proviso to sub-section (1) of Section 441 says that
  - (a) The offence cannot be compounded in case either the investigation has been initiated or is pending.
  - (b) The offence cannot be compounded in case similar offence committed has been compounded and period of three years has not expired.
  - (c) Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with the fine; cannot be compounded.



# Article

COMPOUNDING OF OFFENCES – COMPANIES ACT, 2013

- The Third proviso to Section 441 of Companies Act, 2013 says that in case where either the investigation has been initiated or is pending, the offence cannot be compounded. However, in Section 621A of Companies Act, 1956, there was no such embargo.

## WHAT IS NEW IN SECTION 441

5. The “Third” proviso to Section 441 of Companies Act, 2013 says that in case where either the investigation has been initiated or is pending, the offence cannot be compounded. However, in old Section 621A of Companies Act, 1956, there was no such embargo. In other words, offence could have been compounded notwithstanding the fact that either the investigation has been ordered or is pending against the company.

Explanation (a) to Sub-Section (2) of Section 441:

After the expiry of three years from the date of compounding of offence, if the second or subsequent offence had been committed, the same shall be treated as the first offence.

## HOW THE APPLICATION TO BE MADE

6. As per sub-section 3(a) of Section 441, every application of compounding of offence shall be made to the Registrar of Companies, who, in turn, shall forward the same along with his comments to the NCLT or RD or any other officers, as may be authorized by the Central Government for the purpose of adjudication. There is no change under the new provisions.

## CONSIDERATION TO BE KEPT IN MIND WHILE LEVYING FINE

7. The Delhi High Court in the case of *N C Bakshi v. Delhi District & Cricket Association Ltd* 2013(112) CLA 347 Delhi, has observed as under:-

*Since the offence was committed by the company for the breach of the conditions of the license granted to the company under Section 25 of the Companies Act, Section 629A of the Companies Act rightly stood attracted. No specific penalty having been provided for contravention of sub-section (5) with regard to the conditions and regulations of the licence; accordingly the Company and its officers shall in default be punishable under Section 629A; Section 629A not creating any offence but only providing a penalty for*

*such contravention of the Act for which no specific penalty is provided.*

*Discretion was properly exercised by the CLB in imposing a penalty of Rs. 1,00,000/- on the company and Rs. 50,000/- on each of the members of the Council who had paid remuneration/honorarium to its members without prior approval of the Central Government. It was a fair exercise of the its discretion based on reasoned findings..*

8. The Delhi High Court in the case of *Prayaga Construction India (P) Ltd v. Competent Holding (P) Ltd* MANU/DE/4910/2012 has held that where compounding petition under Section 621A of the Companies Act, 1956 is pending before CLB/RD, the Scheme of Merger/Amalgamation under Section 391 of the Companies Act, 1956 could be sanctioned/approved.

9. The Company Law Board in the case of *M/s Reliance Industries Limited* cited as MANU/CL/0010/1997 has observed as under:-

*I have considered the various submissions made. From the facts stated it is clear that there is a failure on the part of the company to deliver share certificates lodged for registration of transfer within two months of their lodgment and thus the company, RCS, and the aforesaid officers of the company have rendered themselves liable for penal action under Section 113(2) of the Companies Act. The filing of the compounding application itself implies admission of default by the applicants. It is noted that the Company Law Board is empowered under Section 621A of the Companies Act to compound the offence wherein default is punishable with fine. In the case of a default under Section 113(1) of the Companies Act, 1956, read with Section 113(2) of the said Act, the company and every officer in default is liable for fine.*

10. The Company Law Board in the case of *Amadhi Investment Ltd* 2009(149) Comp Cas, 612 has made the following observations:-

*Taking into consideration the submissions of counsel for the petitioner, I am of the opinion that neither the Registrar of Companies nor the Central Government or SEBI have discretion to reject the compounding request made by accused officers in default. I agree with the opinion expressed in the book “Guide to the Companies Act by A. Ramaiya” where it is stated that discretion to purchase peace by compounding of offence or face prosecution and prove innocence in the court of law, is with the accused officers in default and once they opt for a particular posture neither the government nor the Registrar of Companies has any chance except to go with their decision.*

11. The Delhi High Court in the case of *VLS Finance Ltd v. Union of India* 2005(123) Comp Cas 433 = MANU/DE/1001/2003 has observed as under:-



- Section 441(6)(a) of the Act says that offences punishable with imprisonment or fine or with imprisonment or fine or with both, shall be compoundable with the permission of Special Court, in accordance with the procedure laid down in that Act for compounding of offence. It is not clear as to which Court or Authority will compound such offences.

*Therefore, it appears from the aforesaid provisions that an offence committed by a company or any officer not being an offence punishable with imprisonment only or imprisonment and also with fine can be either before or after institution of any prosecution compounded by the Company Law Board. The criminal court is also invested with a similar power to compound an offence as provided for under sub-section (7), after institution of a prosecution.*

*Almost an identical issue came up for consideration before the Company Law Board in Hoffland Finance Ltd., In re., which is reported in 1997 Comp Cas (Vol.90) 38. After taking notice of the various relevant provisions including that of Section 621A, the Company Law Board held as follows:*

*"The position which emerges from the above discussion is that, sub-section (1) confers powers on the Regional Director to compound offences punishable with fine only subject to certain limitation. It confers powers on the Company Law Board to compound offences which are punishable with fine only, those punishable with fine or imprisonment and those which are punishable with fine or imprisonment or with both, and sub-section (7) confers upon the court, concurrent jurisdiction to compound offences which are punishable with fine or imprisonment or both and that while the Company Law Board/Regional Director would follow the procedure laid down in the Companies Act, the court will follow the procedure laid down in the Criminal Procedure Code.*

*Accordingly, we hold that the exercise of powers by the Company Law Board under 621A(1) is independent of exercise of powers by the court under sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine, can be compounded by the Company Law Board without any reference to sub-section (7), even in cases where the prosecution is pending in a criminal court."*

12. An interesting question has arisen as to whether the CLB can compound the offence under the Companies Act, 1956 without the consent of the Court, where the prosecution has been filed by the SEBI for violation of Companies Act, 1956 and prosecution is pending before Court, the CLB has negated the contention of Counsel for SEBI and held as under:-

*In the light of the above settled legal position, I am unable to appreciate and accept the contentions of learned counsel for SEBI that the CLB would have no jurisdiction to compound offences punishable with imprisonment or fine or with both, in view of Sub-section (7) of Section 621A, which confers jurisdiction exclusively upon the criminal court and that the criminal court has already assumed jurisdiction with initiation of the prosecution for such offences and therefore do not merit any consideration. Accordingly, this issue is answered in the affirmative.*

## POST COMPOUNDING OBLIGATION

13. Wherein the offence has been compounded, either before or after the institution of any prosecution, an intimation shall be given to the Registrar of Companies within seven days from the date on which, the offence is so compounded. In case the offence has been compounded before the institution of any prosecution, no prosecution shall be filed either by ROC or by any shareholder or by any person authorized by the Central Government. It is needless to point out that the period of seven days shall be reckoned with from the date on which the order is made available to the petitioner/applicant.
14. The Section 441(6)(a) of the Act says that the offences punishable with imprisonment or fine or with imprisonment or fine or with both, shall be compoundable with the permission of Special Court, in accordance with the procedure laid down in that Act for compounding of offence. It is not clear as to which Learned Court or Authority will compound such offences because the Sub-Section (6) says permission from Special Court but which Learned Court or Authority will compound such offence, in my humble and respectful view, is not clear. The sub-section (6) only envisage permission from Special Court and it does not envisage compounding by the Special Court – otherwise the language in sub-section (6) would have compoundable by the Special Court instead of permission by Special Court as the word "compoundable" by NCLT or RD has been used in Sub-Section (1) of Section 441. Ideally speaking, it would have been better if the NCLT would have been made single competent authority to compound the offences instead of Regional Director who neither have judicial bent of mind nor adequate judicial time to deal with such cases and matters remain pending for fairly long time.



# Article

COMPOUNDING OF OFFENCES – COMPANIES ACT, 2013

## ANNEXURE-I

### LIST OF COMPOUNDABLE OFFENCES UNDER THE COMPANIES ACT, 2013

Offences compoundable by Regional Director	Offences compoundable by the NCLT	Offences compoundable by Special Court
<b>11(2)</b> - Failure of company in complying with the requirements relating to commencement of business.	<b>8(11)</b> - default in complying with the requirements relating to formation of companies with charitable objects etc.	<b>8(11)</b> - Default in complying with the requirements relating to formation of companies with charitable objects etc.
<b>16(3)</b> - Default of company in complying with the directions issued under sub-section (1) relating to rectification of name of company.	<b>40(5)</b> - Default of company in complying with the provisions of this section relating to securities to be dealt with in stock exchanges.	<b>26(9)</b> - Contravention of provisions relating to issue of a prospectus.
<b>26(9)</b> - Violations of provisions relating to issue of a prospectus.	<b>46(5)</b> - Fraudulently issuing duplicate share certificates by a company.	<b>40(5)</b> - default in complying with the provisions of this section relating to securities to be dealt with in stock exchanges.
<b>53(3)</b> - contravention of provisions relating to issue of shares at discount.	<b>66(11)</b> - Default in publishing the order of confirmation of the reduction of share capital by the Tribunal.	<b>48(5)</b> - Failure in complying with the provisions regarding variation of shareholders' rights.
<b>56(6)</b> - Failure of company to comply with the provision relating transfer and transmission of securities under sub-section (1) to (5).	<b>67(5)</b> - Default in complying with provisions relating to purchase by company or loans by company for purchase of its own shares.	<b>53(3)</b> - Contravention of provisions relating to issue of shares at discount.
<b>59(5)</b> - Default in complying with the orders made by Tribunal relating to rectification of register of members.	<b>74(3)</b> - Failure to repay the deposit or part thereof or any interest thereon within the time prescribed or such further time as may be permitted by the Tribunal.	<b>59(5)</b> - Failure in complying with the order of Tribunal relating to rectification of register of members.
<b>64(2)</b> - Default in filing a notice related to alteration, increase or redemption of share capital along with the altered memorandum with the Registrar.	<b>117(2)</b> - Failure in filing with the Registrar the copy of notice or agreement within stipulated time.	<b>68(11)</b> - If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board relating to buy back of securities.
<b>67(5)</b> - Contravention of provisions relating to purchase by company or loans by company for purchase of its own shares.	<b>124(7)</b> - Default in transfer of amount of accumulated profits to unpaid dividend account and violating other provisions of section 124.	<b>71(11)</b> - default in complying with the order of Tribunal relating to redemption of debentures.
<b>68(11)</b> - Failure in complying with the provisions of this section or any regulation made by the Securities and Exchange Board relating to buy back of securities.	<b>143(15)</b> - Failure of auditor to intimate to Central Government regarding fraud against the company by officers or employees.	<b>74(3)</b> - If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal.
<b>86</b> - Violation of any provision relating to Registration of Charges (Chapter VI).	<b>185(2)</b> - Contravention of the provisions of sub-section (1) relating to loans, guarantee or security.	<b>86</b> - Contravention of any provision of Chapter VI relating to registration of Charges.
<b>88(5)</b> - Failure to maintain register of members/debenture-holders/ other security holders as may be prescribed.	<b>245(7)</b> - Committing default in complying with the order of Tribunal under this section.	<b>92(5)</b> - Failure to file annual return before the expiry of the period specified under section 403 with additional fee.
<b>89(5)</b> - Failure to file declaration not holding beneficial interest in any share.	<b>314(8)</b> - Default in complying with the provisions of this Section except sub-section (5).	<b>128(6)</b> - Failure to keep proper books of account.
<b>89(7)</b> - Failure to file return relating to beneficial interest in any share before the expiry of the time specified U/S 403(1)(i) proviso.	<b>316(2)</b> - Failure to send quarterly report on winding up and call meeting by company liquidator.	<b>129(7)</b> - Failure to keep proper financial statement.
<b>92(6)</b> - If a company secretary in practice certifies the annual return not in conformity with the requirements of this section or the rules made there under.		<b>134(8)</b> - Default in complying with the provisions regarding financial statement and Board's report.





LIST OF COMPOUNDABLE OFFENCES UNDER THE COMPANIES ACT, 2013		
Offences compoundable by Regional Director	Offences compoundable by the NCLT	Offences compoundable by Special Court
<b>99</b> -Default in holding a meeting of the company u/s 96 /97 /98 or in complying with any directions made by the Tribunal.		<b>137(3)</b> - Failure to file financial statements with the Registrar.
<b>102(5)</b> - Default in complying with the provisions of this section relating to statement to be attached to the notice.		<b>147(1)</b> - Failure of company to comply with the provisions of sections 139 to 146 with regard to auditors.
<b>105(3)</b> - If default is made in complying with sub-section (2) pertaining to proxies.		<b>159</b> - Contravention of the provisions u/s 152, 155 and 156.
<b>105(5)</b> - If invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued.		<b>167(2)</b> - Functioning as a director after vacation of office.
<b>121(3)</b> -Failure to file Report on annual General meeting.		<b>178(8)</b> - Default in complying with the provisions u/s 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship committee.
<b>124(7)</b> - Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124.		<b>184(4)</b> - Failure to disclose of director's interest and Participation in Board meeting by interested director.
<b>137(3)</b> - Failure to file financial statements with the Registrar.		<b>185(2)</b> - Contravention of the provisions of sub-section (1) relating to loans, guarantee or security.
<b>140(3)</b> - Non-Compliance by auditor of sub-section (2) relating to filing of resignation information.		<b>187(4)</b> - Contravention of the provisions of this section relating to investment of company held in its name.
<b>147(1)</b> - Failure of company to comply with provisions of sections 139 to 146 with regard to auditors.		<b>188(5)(i)</b> - Contravention of this section relating to Related party transaction in case of listed Company.
<b>157(2)</b> - Failure to furnish DIN to Registrar.		<b>194(2)</b> - Forward dealing in Securities of the company by Key Managerial personnel or director.
<b>165(6)</b> - Acting as a director of more than 20 companies.		<b>195(2)</b> - Contravention of this section (195) relating to Insider trading of securities by Key Managerial personnel or director.
<b>166(7)</b> - Default in complying with the provisions of this section relating to directors duties.		<b>221(2)</b> - Any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1).
<b>172</b> - Contravention of the provisions of Chapter XI relating to appointment and qualifications of directors.		<b>222(2)</b> - Securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1).
<b>178(8)</b> - Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship Committee.		<b>232(8)</b> - Contravention of the provisions by the transferor and transferee company in case of merger or amalgamation.
<b>188(5)(ii)</b> - Related party transaction in case of other company.		<b>242(8)</b> - Contravention of the order of Tribunal relating to alterations in memorandum or articles.



# Article

COMPOUNDING OF OFFENCES – COMPANIES ACT, 2013

LIST OF COMPOUNDABLE OFFENCES UNDER THE COMPANIES ACT, 2013		
Offences compoundable by Regional Director	Offences compoundable by the NCLT	Offences compoundable by Special Court
<b>186(13)</b> - Contravention of the provisions of this section relating to loans and investment.		<b>243(2)</b> - Acting as managing or other director or manager, whose agreement has been terminated or set aside.
<b>187(4)</b> - Contravention of the provisions of this section relating to investment of company held in its name.		<b>274(4)</b> - Failure to file statement of affairs.
<b>191(5)</b> - Contravention of the provisions of this section relating to payment to director for loss of office in connection with transfer of property.		<b>284(2)</b> - Failure to extend full cooperation to the company liquidator.
<b>197(15)</b> - Contravention of the provisions of this section relating to managerial remuneration in case of absence or inadequacy of profits.		<b>305(4)</b> - Without reasonable grounds giving declaration of solvency in case of proposal to wind up voluntarily.
<b>203(5)</b> - Contravention of the provisions of this section relating to appointment of Key Managerial personnel.		<b>306(5)</b> - Default in calling the meeting of the creditors; to prepare a statement of the position of the company's affairs alongwith a list of creditors, estimated amount of claim and filing the resolution with Registrar.
<b>204(4)</b> - Contravention of the provisions of this section relating to Secretarial Audit for bigger companies.		<b>347(4)</b> - contravention of any rule framed or an order made under sub-section (3).
<b>206(7)</b> - Failure to furnish any information during inspection or inquiry.		<b>348(7)</b> - Wilful default by company liquidator.
<b>221(2)</b> - Any removal, transfer or disposal of funds, assets, or properties of the company in violation of the order of the Tribunal under sub-section (1).		<b>392</b> - Contravention of the provisions of Chapter XXII by a foreign company.
<b>222(2)</b> - securities in any company are issued/ transferred/acted upon in violation of an order of the Tribunal under sub-section (1).		<b>405(4)</b> - Failure to furnish information or statistics etc. by the companies required by the Central Government.
<b>232(8)</b> - Contravention of the provisions by the transfer and transferee company in case of merger or amalgamation.		<b>441(5)</b> - Failure to comply with the order made by Tribunal or Regional Director in relation to Compounding of offences.
<b>238(3)</b> - Failure to register the offer of Schemes involving transfer of shares.		<b>454(8)</b> - Failure to pay the penalty imposed by the adjudicating officer or Regional Director.
<b>242(8)</b> - Contravention of the order of Tribunal relating to alterations in memorandum or articles.		
<b>247(3)(Proviso)</b> - Contravention of the provisions of this section by the valuer.		
<b>249(2)</b> - Filing of application in restricted cases for removal of name.		
<b>302(4)</b> - default by official liquidator in forwarding a copy of the order of dissolution of company by tribunal within the period specified in sub-section (3).		



LIST OF COMPOUNDABLE OFFENCES UNDER THE COMPANIES ACT, 2013		
Offences compoundable by Regional Director	Offences compoundable by the NCLT	Offences compoundable by Special Court
<b>306(5)</b> - Default in calling the meeting of the creditors; to prepare a statement of the position of the company's affairs along with a list of creditors, estimated amount of claim and filing the resolution with Registrar.		
<b>307(2)</b> - Default in publication of resolution to wind up voluntarily.		
<b>312(2)</b> - Failure to give notice of appointment of Company Liquidator to Registrar.		
<b>314(5)</b> - Failure to prepare quarterly statement of accounts by company liquidator in voluntary winding up and file with the Registrar under sub-section (5).		
<b>318(8)</b> - Failure to complying with the provisions of this section relating to final meeting and dissolution of company.		
<b>342(6)</b> - Failure or neglect to give assistance required under sub-section (5).		
<b>344(2)</b> - Failure to give statement that the company is in liquidation.		
<b>348(6)</b> - Contravention of the provisions of information as to pending liquidation.		
<b>356(2)</b> - Failure to file certified copy of the order of Tribunal relating to dissolution of company void with the Registrar.		
<b>392</b> - Contravention of the provisions of Chapter XXII by a foreign company.		
<b>405(4)</b> - Failure to furnish information or statistics etc. by the companies required by the Central Government.		
<b>450</b> - No specific penalty or punishment is provided in the Act.		
<b>451</b> - Repeated default within 3 years.		
<b>452(1)</b> - Punishment for wrongful withholding of property.		
<b>453</b> - Improper use of the words "limited" and "private limited".		
<b>454(8)</b> - Failure to pay the penalty imposed by the adjudicating officer or Regional Director.		
<b>464(3)</b> - Being a member of a company formed exceeding certain numbers.		
<b>469(3)</b> - Contravention of the Rules framed by Central Government.		

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**Dr. S. D. Israni\*, FCS**

Advocate & Sr. Partner  
SD Israni Law Chambers  
Mumbai

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

## Companies Act, 2013 Enlightened Enactment or Regressive Law?

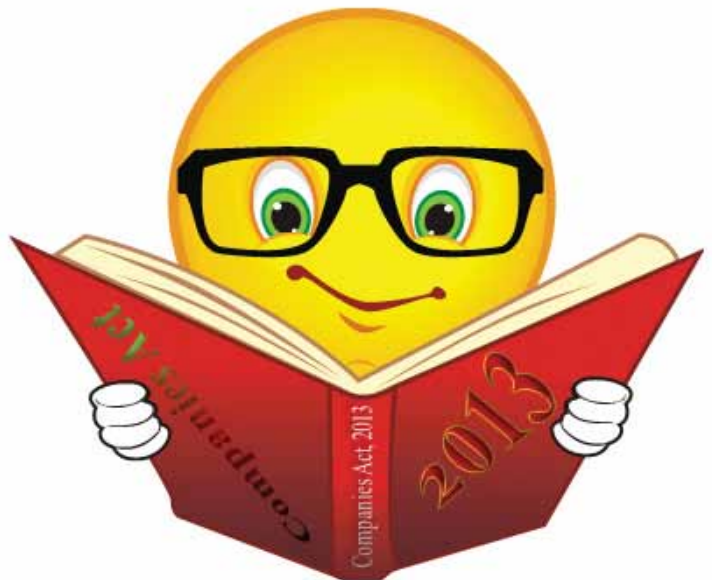
- While the objective of enacting a new company legislation in place of the 1956 Act was to bring about the much needed simplification, it appears that the said objective has not been realized completely since some of the new provisions have complicated the law instead of simplifying it. This article takes a look at some of the notable shortcomings of the new law.

### LAW IN THE MAKING

It was with a sense of fulfilment that the entire corporate sector in particular and the businessmen and professionals at large were looking forward to the enactment of the new Companies Act, 2013 that would take the place of the old Act of 1956. After all, the new company law had been in the making for the last more than a decade and all concerned persons were waiting eagerly for the new law to emerge on the scene.

It had been a painfully long process with several committees being constituted over the years starting with the Naresh Chandra Committee for simplification of Company Law applicable to Private and Small companies in 2003, of which the author had the honour of being a member. During the last five years we have been witness to the phenomenon of a new Companies Bill being laid almost every year starting with the Companies Bill, 2008, which became Bill of 2009, followed by a new Bill in 2011 and eventually the Bill of 2012 that finally got enacted as the Companies Act, 2013.

The original Companies Bill of 2008 having undergone so many avatars, one would have expected a very well drafted piece of legislation that would meet the needs of the changing times in the manner befitting our society. The unduly long time taken in



\*Former Member, Central Council of The ICSI.





bringing the new Company law legitimately generated a feeling that we will have a modern company law complete in all respects.

However, inspite of the fact that the new Companies Act took ages in coming, instead of solving the existing problems faced by the companies and simplifying the law and procedure, has brought in more pain and despair for most of the companies in India.

## SHORT AND SIMPLE ACT

One of the promises made by the then Minister for Corporate Affairs was that the new Act will have fewer sections and the law and procedure will also be simplified.

### What is the reality?

Prima-facie, it would appear that the new Act indeed has fewer sections as it comprises of only 470 sections against 658 in the earlier Companies Act. However, it would be pertinent to note that while the number of sections has been curtailed to 470, many of the sections of the old Act have been combined into a single section. But more importantly, the new Act cannot be read in isolation as rules form an equally important part of the Act. Incidentally, there are also more than 330 rules that need to be constantly referred to while reading any provision of the Act.

Hence, effectively speaking, taking the Act and the rules together there are nearly 900 provisions now against the nearly 700 sections of the old Act. So much for reducing the number of sections.

Similarly, far from simplifying the law, the new Act and rules have raised several issues and created more hurdles in the functioning of the companies.

## PERILS OF DELEGATED LEGISLATION

The Companies Act, 1956 used to pose problems at times particularly in the context of absolute financial limits specified in the Act. Moreover, it was also realised that when everything is mentioned in the statute itself, then for effecting even a small change the Government has to go through the entire legislative process, which is not only tedious but also time consuming. Past experience indicated that it took on an average two to two and a half years to get an amendment passed through the legislative process.

As a result, it had been difficult for the Government to respond swiftly to the changing needs of the corporate sector. Therefore, to overcome this difficulty it was advised that in certain respects powers should be delegated to the Executive so that the Government can effect changes when deemed necessary. Incidentally, the new Act seems to have gone to the other extent by providing for 330 rules. In other words, huge powers have been delegated to the Executive and the ill effects of the same have been evident in the last few weeks.

The major fear of such vast delegation of powers to rule makers is that it goes much beyond the purview of the section itself by encroaching upon the domain of substantive law; law undergoing a change through circulars and notifications, rather than the legislative process.

Hence, there is a need for striking a proper balance between maintaining stability of law and providing flexibility for effecting changes to meet the needs of the situation. Otherwise, a time would come when the rules may change the law itself and gain primacy over the substantive law.

## EVERY DIRECTOR IS SUSPECT

It is sad but true that the new Companies Act appears to be based on the premise that all the directors of companies are suspect, so they cannot be trusted nor one can depend on them. Hence, to overcome this disability or limitation the boards have to be virtually manned by Independent directors. While there can be no denying that there are promoters / managements who misuse the law for personal gains; they treat company assets as personal property. There is every reason to bring such persons to book and hold them accountable for their misdeeds.

However, what we find is that instead of going hammer and tongs after such culprits who are the bane of the corporate sector, the law makers have taken the easy way out by making it tough for all those who want to use the company form of organization.

While the enhanced role of Independent directors and fixed tenure for them indicates the Government belief that it is the only way to run companies honestly, it would be better if the Government also focuses on holding defaulters accountable through speedy and effective judicial process.

## COMPANY LAW FOR WHOM? IS IT ANTI PRIVATE COMPANIES?

It is a matter of fact that of all the companies registered in India a very large majority comprises of private companies. In fact, a very large number of private companies are small companies owned and managed by family members or friends and their relatives. As per the Government's own statistics, as on 31.12.2012, a total of 12,89,229 companies were on the Register (consisting of 11,67,226 private limited companies and 1,22,003 public limited companies).

Out of the above, 8,72,957 companies were active, comprising of 8,06,666 private limited and 66,291 public limited companies. (Source: MCA Annual Report 2012-13).

In other words, private companies account for over 90% of the total number of companies registered in the country. Similarly, the number of private companies that are active account for over



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➤ A classic example of over regulation is when an innocuous mistake, an inadvertent error or submission of incorrect information is treated as equivalent to false statement and treated as fraud with attendant penal consequences. In Section 7 sub-sections (5), (6) & (7) relating to incorporation of company are examples where submission of incorrect information will invite provisions applicable to fraud.

92% of the total active companies. Ironically, the new law instead of being alive to the needs of 90% of the companies could spell a death knell for private companies as most of the exemptions have been done away with.

It is also recognized that a private company is a glorified partnership, as upheld by the Company Law Board in various cases over the years. Therefore, it has come as a shock for private companies who were looking forward to a simplified regime under the new Act. Some of the major problems now being faced by private companies as a result of the new Act are highlighted in the subsequent paragraphs.

The benchmark of the law cannot be as that applicable to a listed company that utilises public funds but should be tailor made to cater to the needs of the small companies. The Companies Act, 2013 seems to be anti-private companies in its approach.

## OVER REGULATION – ANTI-DOTE TO BUSINESS

Business invariably thrives in an open and transparent economic environment, so it is very important to provide environment conducive to business. While it is nobody's case that the companies should not be regulated or that there should not be adequate regulation; what is important is that in the zeal to keep control over suspect companies, the regulations do not end up treating every company guilty unless proved otherwise.

If there are fewer but effective regulations it would be easier even for the regulators to keep a check on the functioning of the companies; too many regulations not only hamper the business, but also kill the entrepreneurial initiative.

A classic example of over regulation is when an innocuous mistake, an inadvertent error or submission of incorrect information is

treated as equivalent to false statement and treated as fraud with attendant penal consequences. In Section 7 sub-sections (5), (6) & (7) relating to incorporation of company are examples where submission of incorrect information will invite provisions applicable to fraud.

Similarly, section 405 provides that submission of incorrect or even incomplete information in material respect can invite a jail sentence. Unless the submission of incomplete or incorrect information is deliberate, such a default should not be treated on par with fraud.

Hence, the Government needs to find a balance between effective regulation vis-à-vis freedom to do business in India. Unfortunately, the new Act is a let down on this score and needs to be changed.

## IMPRACTICAL PROVISIONS

A good enactment should contain provisions that further the objective of that Act and do not act as impediments. The Companies Act, 2013 has many such provisions which are highly impractical and would result in closing down of business. Few of them have been highlighted below:

### Raising of Funds by Private Companies

A private company predominantly raises funds from its members and directors. The new law has not only made it cumbersome but also very difficult for a private company to raise funds from its own members. In fact, the law is virtually treating a private company on par with a public company, even as a private cannot raise funds from the public. Sections 42 and 62 of the Companies Act, 2013 need to be drastically amended.

### Providing loans, security or Guarantee to Subsidiary Company

Section 185 of the new Act has brought in such a damaging





➤ The hall mark of any good piece of legislation is the clarity and simplicity of drafting. Unfortunately, the Companies Act, 2013 provides several examples of poor drafting resulting in contradictions and anomalies leading to avoidable confusion and unintended consequences. For example section 135 of the new Act relates Corporate Social Responsibility (CSR). The section requires every company falling within the ambit to appoint a Committee of the Board comprising of at least three directors including one independent director.

provision for companies that they are barred from providing any loans or giving security or guarantee in connection with the loan if a director of the lending company is also a director of the borrowing company. Every subsidiary company would have common directors who would also be on the board of the holding company.

The new law prohibits any such assistance from the holding company to the subsidiary company. It is easy to imagine the adverse consequences of such a measure on the business of the companies. Earlier, there was a specific exemption to this effect in the section itself. Hence, there is an urgent need to restore this exemption or to remove the new section from the statute.

The law needs to distinguish between the loans which are given for the benefit of directors and loans that are given or security that is provided or guarantee given in the course of business on commercial terms to a firm or a company in which a director may be concerned or interested. By prohibiting all such transactions, the interest of genuine companies will be very adversely impacted. Hence, section 185 needs to be replaced or the necessary exemption provided in the new section.

### Inter Corporate Loans & Investments (Section 186)

The terms and conditions of any such loan or investment should be left to the wisdom of the directors and not mandated by law. This is another example of lack of confidence in the directors. There could be several factors that could come in play for a company while deciding the terms for giving a loan or making an investment or providing a guarantee.

### Related Party Transactions

Section 188 of the new Act dealing with related party transactions contains a provision that is creating serious practical difficulties for most of the private companies and closely held unlisted public companies.

According to the new section, related parties cannot participate in voting while seeking members approval, but in so many companies all the shareholders are related parties and as such ineligible to vote.

Consequently, it is not possible for such companies to pass a resolution under section 188 as no unrelated parties are available. What should such companies do? This has already started impacting several companies causing them immense hardships.

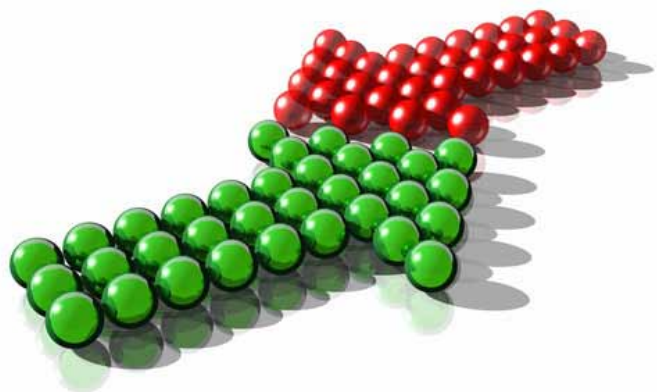
Even the criteria for classifying whether a contract or arrangement falls within the ambit of section 188 needs a relook as there are serious shortcomings in the same.

### Contradictions / Anomalies

The hall mark of any good piece of legislation is the clarity and simplicity of drafting. Unfortunately, the Companies Act, 2013 provides several examples of poor drafting resulting in contradictions and anomalies leading to avoidable confusion and unintended consequences. For example section 135 of the new Act relates Corporate Social Responsibility (CSR). The section requires every company falling within the ambit to appoint a Committee of the Board comprising of at least three directors including one independent director.

However, the fact is that a private company requires having a minimum of two directors and is not required to have an independent director; so how does a private comply with this provision?

When confronted with this situation, the Ministry took the easy way out by providing in the relevant rules that if a company is required to have only two directors then the committee can comprise of two directors. Similarly, the said rule states if the company is not





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required to appoint an independent director, then the committee need not have an independent director.

Changing the law by effecting change in the rules is not a correct way of addressing the issue of bad drafting. This amounts to encroaching on the powers of the Legislature.

There are contradictions in the provisions of section 42 and 62 of the Act that need to be rectified.

Contradictions / anomalies in the rules 20 and 22 relating to voting through electronic means and Postal Ballot.

## ABSENCE OF TRANSITION PERIOD

The manner in which the different sections of the new Act were notified has left many a professional also speechless. When major changes in any law are proposed it is always advisable to have a transition period. In this case, the entire Companies Act of 1956 was being substituted by a new enactment and no transition period was provided at all.

When the Act was notified it was stated that different provisions would be notified later. The general belief was that enough transition period will be provided to the companies to familiarize themselves with the new law. This would have enabled all the companies to gear up their systems and be prepared to comply with the changed provisions of the new law.

Here it would be pertinent to refer to the order of Bombay High Court in the matter of Godrej Industries Ltd., delivered on 8<sup>th</sup> May, 2014. While considering an application in the context of a merger scheme, Justice G.S.Patel questioned the validity about some 21

rules keeping in view the manner in which they were notified by the MCA. The Court had serious objection about notifying by issuing a single sheet signed by an official of MCA, without actually notifying the said rules in the official gazette.

Hence, the impression that has been conveyed is that the Ministry was in a great hurry to implement the new, notwithstanding several shortcomings which needed to be addressed before the same were notified.

## CONFLICT BETWEEN MCA AND SEBI

SEBI as a regulator has certain exclusive powers to regulate the functioning of listed companies, but in that process many times there have been contradiction with the provisions of the Companies Act. SEBI has issued circulars from time to time which provide for stringent compliances by listed companies, although the same may not be required under the Companies Act.

The latest example being with respect to Postal Ballot and E-voting. While the Companies Act, 2013 did not make it mandatory to provide for E-voting along with a Postal Ballot, SEBI made it compulsory for all listed companies to provide for postal ballot as well as E-voting. The Recently the Bombay High Court in Godrej Case (supra) expressed strong views with respect to the several grey areas in the Companies Act, 2013 and the SEBI Circulars and Notifications.

Similarly, MCA vide its circular dated 17<sup>th</sup> June, 2014 has clarified that providing e-voting facility by companies will not be mandatory till 31<sup>st</sup> Dec. 2013. However, SEBI is yet to change its view and as a result listed companies are forced to provide e-voting facility even as MCA has made it non-mandatory.

Therefore, there is an urgent need for better co-ordination between the two regulators so that they can work seamlessly and this would result in elimination of avoidable irritants and uncertainties.

## RELIEF / REMEDY

The Government needs to provide immediate relief to the corporate sector from the harsh and impractical provisions of the new Act. This can be done either by staying the operation of the entire new Act or alternatively putting on back burner all the offending provisions for the time being. In the meantime, the Government should appoint a task force to consider all such issues within a fixed time frame of 2/3 months.

## CONCLUSION

In conclusion I would like to quote Clarence Darrow, who said that, "Law should be like clothes. They should be made to fit the people they are meant to serve." Hence, the Government needs to ensure that the Companies Act, 2013 becomes an enlightened enactment and not a regressive law. CS





**Dr. V. Balachandran, FCS**

Professor of Corporate Secretaryship  
School of Management, Alagappa  
University, Karaikudi  
Tamil Nadu

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



**Sudheendhra Putty, FCS**

Ph.D. Research Scholar  
Alagappa University, Karaikudi  
Tamil Nadu

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

# CSR Under Companies Act, 2013: An Analysis

- Section 135 of the Companies Act, 2013 has mandated that every company having net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or a net profit of Rs. 5 crore or more during any financial year should constitute a CSR Committee of the Board and spend a specified percentage of their profits on social upliftment programmes. The Ministry of Corporate Affairs, Government has framed the Corporate Social Responsibility (Policy) Rules 2014 and Schedule VII of the Act has enlisted the CSR activities. An attempt has been made in this article to unfold the significance of these Rules.

## INTRODUCTION

**T**oday, businessmen are aware that society is the biggest force which controls the entire business operations, right from acquisition of land to final produce. They now feel that they cannot operate in societal isolation. Profit still being the major determinant for business houses, it is extremely difficult to strike a balance between the conflicting needs of business in earning profit and society's need to take care of its many constituents. The success of a business depends on the growth of the society because the goods and services of business are ultimately consumed by the society. So, an organization must initiate steps which will ultimately lead to economic upliftment of the people. At the initial stages, investment for such welfare measures may appear to be a losing proposition. In the long run, it will have a twin positive effect -the image of the organization will be enhanced and there will be an economic resurgence of the people through adoption of such welfare measures which will create a new set of consumers for their products.





# Article

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➤ Business organizations should come out with liberal contribution for setting up research laboratories for product quality improvement. In addition, business houses should shun unethical practices such as price rigging of the product through hoarding and creating scarcity, quality deterioration due to adulteration, and resorting to advertisements which lead to formation of biased attitude. As business is now considered to be a part of social order, it itself will determine its ethical standards through cross-current interactions.

The term CSR has various dimensions. There is no single definition. In fact, different personalities have defined CSR in different ways and thus the concept of CSR has been widened and discussed at various forums at the global level. According to the World Bank Group, the term corporate responsibility is defined as *“the commitment of business to behave ethically and to contribute to sustainable economic development by working with all relevant stakeholders to improve their lives in ways that are good for business, the sustainable development agenda and society at large”*. The definition set by the European Union is “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.

According to the definition of the United Nations (1987), CSR is the overall contribution of business to sustainable development; it being defined as: “a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for future generations.”

## CORPORATES - A PART OF SOCIETY

A society cannot function without a set of values. Society is undergoing social change. Business system is a product of customs and beliefs of the society in which it exists. Ethical considerations decide whether the business is on par with the society's needs. In today's recession in businesses world over survival itself is at stake and a corporate cannot afford to think of anything else but its products, customers, and stakeholders. Therefore, it is imperative that corporates have to realign their priorities on par with the societal needs. Accordingly, corporates are expected

to be more ethical and responsible. A corporation represents a mixture of diverse social interests. The interests belong not only to the present living generations but also to the future including the generation which is yet to come. It has enormous economic and social prowess.

## GOVERNMENT'S INTROSPECTION TOWARDS SOCIETY

Governance is an essential requirement for socio-economic development and for overall inclusive growth. As such it is a matter of paramount importance for governments, corporates and civil society at large. There are two main drivers which have led to an integration of governance with Corporations. First, an increasing incidence of unethical practices and debacles taking place in the corporate domain and secondly the faces of deregulation, disintermediation, institutionalization, globalization and tax reforms have made the minority shareholder more aware and powerful. Governments, in order to promote social welfare, expect from the business community a qualitative improvement of the product. This necessitates huge investment in research and development, which government alone cannot afford. Accordingly, business organizations should come out with liberal contribution for setting up research laboratories for product quality improvement. In addition, business houses should shun unethical practices such as price rigging of the product through hoarding and creating scarcity, quality deterioration due to adulteration, and resorting to advertisements which lead to formation of biased attitude. As business is now considered to be a part of social order, it itself will determine its ethical standards through cross-current interactions. The corporate sector is a key component of the socio-economic structure of any country and principled and genuine corporates are fully aware of their social responsibility. The Government, basically a political institution, also has most of its functions directed towards social welfare.

According to **Peter Drucker** “The 21st century will be the century of the social sector organization. The more economy, money, and information become global, the more community will matter.” A business has a lot of responsibility to the community around its location and to the society at large. In the changed environment, companies have lot of opportunities to serve various stakeholders.

For the first time in the history of Indian corporates, the Central Government has redefined the role of CSR. In the present era of stiff and intense competition, it is imperative on the part of corporates to generate and sustain goodwill among their stakeholders and the community at large. Today, the stakeholders are intelligent and they are aware of their various rights. They can file complaints easily in courts in case their rights are wronged. Further, information technology has sharpened the skills of stakeholders. In the changed economic environment, corporates have a greater responsibility to society as a whole.



## PERSPECTIVES ON CSR

There are divergent views on CSR. Economists like Adam Smith and Milton Friedman were of the opinion that the only responsibility of business was to perform its economic functions efficiently and provide goods and services to society and earn for itself maximum profit. It was better to leave social functions to other institutions like the government. According to Adam Smith, it is the profit-driven market system and price mechanism that drives business organisations to promote social welfare, though they work for private gain.

Prof. Samuelson strongly advocates a spirit of social responsibility as an inherent feature of any modern business organization because he believes firmly that business organizations are part and parcel of the society and hence, they have to serve primarily the social interests rather than work for narrow economic gains. Moreover, governments cannot and need not be the sole custodian forever to ensure promotion of welfare for the masses.

## JUDICIAL PRONOUNCEMENTS PERTAINING TO CSR

Indian Courts have already stressed the social character of companies on many occasions. In *Panchrnahals Steel Ltd v. Universal Steel Traders* [1976] 46 Comp. Cas. 706, 718, the Gujarat High Court pointed out that a company has a three-fold reality-economic, human and public. Again in *National Textile Workers' Union P.R. Rarnakrishnan* [1983], the Supreme Court emphasized that a company is a social institution with duties and responsibilities towards the community in which it functions. It is assumed that social welfare of the people is the sole responsibility of the State. The State meets this expectation in two ways: by direct action through various schemes launched by it, and by encouraging others, including the corporates, to take the lead in some areas and share some of the responsibilities of social welfare.

## TRIPLE BOTTOM LINE

In traditional business accounting, the 'bottom line' refers to the sum of revenue minus expenses, which is either 'loss' if negative, or 'profit' if positive. The term originated because profit is always shown as the very 'bottom line' on a statement of revenue and expenses. Over the last 50 years, environmentalists and social justice advocates have struggled to bring a broader definition of 'bottom line' into public consciousness, by introducing full cost accounting. For example, if a corporation shows a monetary profit, but their asbestos mine causes thousands of deaths from asbestosis, and their copper mine pollutes a river, and the government ends up spending taxpayer money on health care and river cleanup, how do we perform a full societal cost benefit analysis?

The concept of a triple bottom line (abbreviated as TBL or 3BL, adds two more 'bottom lines'; namely, social and environmental concerns. The three together are often paraphrased as "Profit, people, planet", or referred to as "the three pillars"). With the ratification of the United Nations and ICLEI, TBL standard for urban and community accounting in early 2007, this became the dominant approach to public sector full cost accounting. Similar UN standards apply to natural capital and human capital measurement to assist in measurements required by TBL.

## GOVERNMENT'S INITIATIVES TOWARDS CSR

- (1) The Government of every country formulates and executes a set of policies and programmes for the welfare of the society. These policies are executed through legislation. Today there are so many laws that at every turn a business- man meets law; modern businessmen need legal advice constantly. Modern business is more in the nature of a legal contract than a social contract. The corporate sector is a key component of the socio-economic structure of any country and principled and genuine corporates are fully aware of their social responsibility.
- (2) Policies of the Government are executed through legislative enactments, rules, regulations, systems and procedure, policies, plans, guidelines, and directives that constitute the politico-legal environment in which business has to find a way of existing and flourishing. The Government shall encourage corporates to assume a participatory role in schemes of social reforms formulated by the Government by offering suitable incentives to them.





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➤ Corporate social responsibility means giving back to society what it gets from society. Corporate social responsibility is about capacity building for sustainable livelihoods. CSR means the obligation of companies to stress on their social, ethical and environmental performance as on their financial performance. The concept is broad enough to include things ranging from excessive managerial pay, employee retention during downturns and disposal of effluents to participation in community projects and funding of social causes. CSR refers to companies taking account of the social and environment, and not just financial consequences of their actions.

- (3) The Ministry of Corporate Affairs had released Voluntary Guidelines on CSR in 2009 as the first step towards mainstreaming the concept of Business Responsibilities. Keeping in view the feedback from stakeholders, it was decided to revise the same with a more comprehensive set of guidelines that encompasses social, environmental and economical responsibilities of business.
- (4) The National Voluntary Guidelines on Socio-Economic and Environmental Responsibilities of Business brought out by the Ministry of Corporate Affairs have encouraged the corporate sector in their efforts towards inclusive development. The guidelines were released by the Ministry of Corporate Affairs on 8 July 2011. The Central Government, through these guidelines, has spelt out clearly the role of corporates in national building for bringing about a Welfare State. The guidelines are given in the form of nine principles and core elements. These are enumerated below:

PRINCIPLE 1: Businesses should conduct and govern themselves with ethics, transparency and accountability

PRINCIPLE 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

PRINCIPLE 3: Businesses should promote the well being of all employees

PRINCIPLE 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

PRINCIPLE 5: Businesses should respect and promote human rights

PRINCIPLE 6: Business should respect, protect, and make efforts to restore the environment

PRINCIPLE 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

PRINCIPLE 8: Businesses should support inclusive growth and equitable development

PRINCIPLE 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

## COMPANIES (CSR POLICY) RULES, 2014

The Ministry of Corporate Affairs, has issued Companies (CSR Policy) Rules 2014 on 27.2.2014. The term CSR policy relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company. The CSR (Policy) Rules, 2014 mandate companies to formulate a CSR policy including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programmes. Further, the CSR policy of the company shall specify that the surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of the company. The Central Government through the CSR (Policy) Rules has given directions to the companies that the Board of Directors of the company shall after taking into account the recommendations of CSR Committee, approve the CSR policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website as per the particulars specified.

## PHILOSOPHY BEHIND THE PROVISIONS

Social responsibility is an integral part of business and society. Social responsibility should enhance the competitiveness of business and maximize the value of wealth creation to society. Corporate social responsibility means giving back to society what it gets from society. Corporate social responsibility is about capacity building for sustainable livelihoods. CSR means the obligation of companies to stress on their social, ethical and environmental performance as on their financial performance. The concept is broad enough to include things ranging from excessive managerial pay, employee retention during downturns and disposal of effluents to participation in community projects and funding of social causes. CSR refers to companies taking account of the social





and environment, and not just financial consequences of their actions. CSR is a process with the aim to embrace responsibility for the company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere who may also be considered as stakeholders.

## Guiding principles

CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies. The guiding principles as enshrined in the Draft Corporate Social Responsibility Rules, 2013, stated as follows:

1. CSR is not charity or mere donations.
2. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth.
3. CSR projects/programmes of a company may also focus on integrating business models with social and environmental priorities and processes in order to create shared value.

## CSR UNDER THE COMPANIES ACT, 2013

### Companies within the ambit of CSR Obligations

According to Section 135(1) of the Companies Act, 2013, CSR requirements are applicable to every company (qualifying company) which is having: (1) net worth of 500 crore or more, or (2) turnover of 1,000 crore or more, or (3). a net profit of 5 crore or more *during any*

*financial year*. The words used in section 135(1) of the Companies Act are 'during any financial year' and not 'at any time during any financial year'. This implies that the applicability of CSR obligations will have to be determined independently for every financial year.

**Net worth:** According to Section 2(57) of the Companies Act, 2013, the term net worth means the aggregate value of the paid up share capital and all reserves created out of the profits and securities premium account after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off. Further, the net worth will not include there serves created out of revaluation of assets, reserves created out of the write-back of depreciation and the reserves created out of amalgamation.

**Turnover:** According to section 2(91) of the Companies Act, 2013, the term turnover means the aggregate value of the realisation of amount made: (i) from the sale, supply or distribution of goods, or (ii) on account of services rendered or (iii) both by the company during a financial year.

**Net profit:** According to Rule 2(f) of Companies (CSR Policy) Rules, 2014, the term net profit means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise and (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act. However, net profit in respect of financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956 shall not be required to be re-calculated in accordance with the provisions of the Act. However, in case of foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared interms of clause (a) of section 381(1) (a) read with section 198 of the Act.





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## Mandatory CSR Obligations

The Companies Act, 2013 mandatorily requires every qualifying company:

1. To constitute a CSR Committee of the Board
2. To formulate a CSR Policy based on CSR Committee's recommendations
3. To undertake activities included in CSR Policy
4. To spend at least 2% of average net profits on CSR

## Constitution of CSR Committee

Section 135(1) of the Companies Act, 2013 requires every qualifying company to constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. According to Rule 2(d) CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act.

## Responsibility of CSR Committee

Section 135(3) of the Companies Act, 2013 states that the CSR Committee shall:-

- (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

## Responsibility of the Board of Directors

As per section 135(4) of the Companies Act, 2013, the Board of every qualifying company referred to in sub-section (1) shall (a) after taking into account the recommendations made by the

CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and (b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company. Under section 135(5) of the Act, the Board of every company referred to in sub-section (1), shall ensure that the qualifying company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. However, the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities. In case the company fails to spend such amount, the Board shall in its report made u/s 134(3) specify the reasons for not spending the amount.

## Analysis of Companies (CSR Policy) Rules, 2014

As per Rule 2(c) of Companies (Corporate Social Responsibility Policy) Rules, 2014 notified on 27.2.2014, "Corporate Social Responsibility (CSR)" means and includes but is not limited to: (i) Projects or programs relating to activities specified in Schedule VII to the Act; or (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

## CSR Policy

Rule 2(e) of Companies (Corporate Social Responsibility Policy) Rules, 2014, states that "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company. The CSR Committee constituted under section 135(1), shall prepare the CSR

Policy of the company which shall include the following: (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and (b) monitoring process of such projects or programs.

However, the CSR activities do not include the activities undertaken in pursuance of normal course of business of a company. Further, that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related





to the activities included in Schedule VII of the Act.

## Companies that are required to comply with CSR policy Rules

**Rule 3:** Rule 3(1) of Companies (CSR Policy) Rules provides that every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Act having its branch office or project office in India, which fulfills the criteria specified in section 135(1) of the Act shall comply with the provisions of section 135 of the Act and these rules. However, net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act.

**Rule 3(2):** Further, Rule 3(2) states that every company which ceases to be a company covered under section 135(1) of the Companies Act, 2013 for three consecutive financial years shall not be required to (a) constitute a CSR Committee and (b) comply with the provisions contained in sub-sections (2) to (5) of the said section, till such time it meets the criteria specified in section 135(1) of the Act.

**Rule 4(1):** The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

**Rule 4(2):** The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise: However (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects; (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

## Pooling of resources for CSR activities

**Rule 4(3):** A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.

**Rule 4(4):** Subject to provisions of section 135(5) of the Act, the CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure. It implies that the Indian society must be benefitted out of the CSR projects.

**Rule 4(5):** The CSR projects or programs or activities that benefit

only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

**Rule 4(6):** Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed five percent of total CSR expenditure of the company in one financial year.

**Rule 4(7):** Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

**Rule 5:** Rule 5 of Companies (CSR) Policy Rules, 2014 deals with formation of CSR Committees. According to Rule 5(1), the companies mentioned in rule 3 shall constitute CSR Committee as enumerated below:

- (i) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director pursuant to section 149(4) of the Act, shall have its CSR Committee without such director;
- (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;
- (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1) (d) of the Act and another person shall be nominated by the foreign company.

**Rule 5(2):** The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

**Rule 6:** Rule 6 of Companies (CSR Policy) Rules deal with CSR Policy. According to Rule 6(1), the CSR Policy of the company shall, *inter alia*, include the following, namely:—

- (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
- (b) monitoring process of such projects or programs.

However, the CSR activities do not include the activities undertaken in pursuance of normal course of business of a company. Further, the Board of Directors shall ensure that activities included by a company in its CSR policy are related to the activities included in Schedule VII of the Act.

## Surplus arising out of CSR activities

According to Rule 6(2), the CSR policy of the company shall specify



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that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

## CSR Expenditure

**Under Rule 7,** CSR expenditure shall include all expenditure including contribution to corpus for projects or programs relating to CSR activities approved by the board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of schedule VII of the Act.

## Disclosure in Board's report

The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee [Section 135(2)].

**CSR Reporting in Board's Report:** Rule 8(1) requires that the Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure to the CSR Policy Rules, 2014. Further, in case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR [Rule 8(2)].

## Rule 9: Display of CSR activities on its website

The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure of CSR Policy Rules, 2014.

## Greater opportunities for corporates to benefit society

In the changed economic environment, corporates have a greater responsibility to society as a whole. Schedule VII was amended by Notification F.No.1/15/2013 – CL.V, dated 27.2.2014 in respect of activities which may be included by companies in their CSR policies. This notification came into force with effect from 1.4.2014.

Accordingly, companies have abundant opportunities and can do take up CSR activities such as:

- (i) eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and

livelihood enhancement projects;

- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water;
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (vi) measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- (viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (x) rural development projects.

**Format for the Annual Report on CSR Initiatives to be included in the Board Report by the Qualifying Companies:** The Annexure to the Companies (Corporate Social Responsibility Policy) Rules, 2014, prescribe the following reporting format:

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years.
4. Prescribed CSR Expenditure (two per cent of the amount as in item 3 above).
5. Details of CSR spent during the financial year:
  - (a) Total amount to be spent for the financial year;
  - (b) Amount unspent, if any;
  - (c) Manner in which the amount spent during the financial year is detailed below:





1	2	3	4	5	6	7	8
Sr No.	CSR project or activity identified	Sector in which the Project is covered	Projects or Programmes (1) Local area or other (2) Specify the State and district where projects or programs was undertaken	Amount outlay (budget) project or programs wise	Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs. (2) Overheads:	Cumulative expenditure upto to the reporting period,	Amount spent: Direct or through implementing agency*
2.							
3.							
	<b>TOTAL</b>						

\*Give details of implementing agency:

- In ease the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
- A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

SD /-	SD/-	SD/-
(CEO/MD/ Director	(Chairman CSR committee	(Person specified u/s 380(1)(d) (wherever applicable)

charitable contributions, employee volunteer programs, corporate involvement in community education, employment and provision of homes to the homeless, product safety and quality, greater material re-cycling like better product durability and functionality; greater use of renewable resources; integration of environmental management tools into business plans, including life cycle assessment and costing, environmental management standards, and eco labeling. However, CSR activities should not be construed as a cover to conceal the irregularities or violation of norms by corporates.

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## Appointment

## COMPANY SECRETARY REQUIRED

for MansoonTrading Company Limited

A Non Banking Financial Company (NBFC) engaged in the business of investment, finance and allied activities. The incumbent should be an ACS with 0-2 years of relevant working experience. Apply with confidence within 15 days stating age, qualification, experience and details of salary drawn and expected to:-

**The Director, Mansoon Trading Company Limited**  
Commerce House, 4th Floor, 3, Currimbhoy Road, Ballard Estate, Mumbai – 400001.

## CONCLUSION

The Government is a political institution but it has a social purpose. It enacts, formulates guidelines and executes societal policies. It provides the ways and means of maximizing social benefits and minimizing social costs. The Government itself has a social value and culture. Policies of the Government are executed through legislative enactments, rules, regulations, systems and procedure, policies, plans, guidelines, and directives that constitute the politico-legal environment in which business has to find a way of existing and flourishing. It is the earnest hope of the Government of India that the corporates shall come forward to adopt CSR activities best suited to their company's philosophies and businesses. Laws are required to protect consumers, workers, managers, owners, shareholders, and the society at large. The success depends upon the extent of co-operation and co-ordination among the various social, economic and legal organizations, institutions and bodies. The concept of corporate social responsibility is now firmly rooted on the global business agenda. But in order to move from theory to concrete action, many obstacles need to be overcome. Some of the positive outcomes that may arise when businesses adopt a policy of social responsibility are benefits to the community,



**Dr. K. S. Ravichandran, FCS**

KSR & Co., Company Secretaries LLP  
Chennai and Coimbatore

[rirs@eth.net](mailto:rirs@eth.net)

## Return of Allotment of Shares and Other Securities

- While Section 39 of the Companies Act is concerned with the return of allotment arising from a public offer of securities, section 42 deals with the return of allotment arising from a private placement of securities. No such return of allotment is required to be filed where the company makes a rights issue of shares.

### TYPES OF COMPANIES AND TYPES OF ISSUE OF SHARES

**S**ection 23 of the Companies Act, 2013, states that a public company can issue securities by a public offer of securities or through a private placement within the meaning of Part II of Chapter III or by a rights issue or bonus issue as per the provisions of this Act. Sub-section (2) of Section 23 says that a private company may issue securities through a private placement within the meaning of Part II of Chapter III or by a rights issue or bonus issue as per the provisions of this Act. Thus the essential difference between a public company and private company in the matter of issue of securities lies in the fact that a public company has additional option of making a public issue of securities by complying Part I of Chapter III of the Act. Part I of Chapter III contains provisions enabling offer for sale to public of securities held by certain members of the company. When existing securities are offered to public through an offer for sale, there will not be any allotment of securities.

### TYPES OF ISSUES OF SHARES UNDER SECTION 62 AND 63 OF THE ACT

Section 62 of the Companies Act specifies different types of issue

of securities. It contains provisions for rights issue, issue of shares under any employee stock options scheme, private placement of securities. It also encompasses within its ambit the issue of shares arising from conversion of loans into shares. Clause (a) of sub-section (1) of Section 62 prescribes the requirements relating to rights issue of shares, clause (b) prescribes the requirements relating to issue of shares arising from an Employee Stock Option Scheme [ESOS] and clause (c) prescribes the requirements to be complied with for issuing states to any persons, whether or not those persons include the persons referred to in clause (a) or





clause (b), either for cash or for a consideration other than cash. Sub-sections (3) to (6) of Section 62 of the Act contains provisions relating to the issue of shares arising from conversion of certain loans into equity. Section 63 of the Act contains the enabling provisions and conditions with respect to bonus issue of shares.

While Sections 23 and 42 speak about issue of 'securities', Section 62 would apply only with respect to increasing the subscribed share capital of a company by issue of shares. 'Securities' is a word wider in connotation than the word 'shares'. As Section 62 merely speaks only about issue of 'shares', it indicates the intention of the legislature that, inter alia, a right issue or an ESOS or any further issue falling under clause (c) of sub-section (1) of Section 62 of the Act or a bonus issue falling under Section 63 of the Act can only be of shares and no other securities. As such a company cannot make a rights issue or bonus issue of 'Debentures'.

## MARKETABLE SECURITIES

There is a reference to the expression 'Securities' in Sections 23 and 42. The expression 'securities' as defined in Section 2(81) of the Act means securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 [SCRA]. As per SCRA, 'Securities' inter alia, include (i) shares, scrips, stocks, bonds, debentures, debenture stock or other "marketable securities" of a like nature in or of any incorporated company or other body corporate. The use of the expression "other marketable securities" clearly indicates that the specific expression 'marketable securities' would qualify all the preceding general words. In other words, strictly construed even "equity shares" for the purpose of Section 23 or as the case may be Section 39 or 42 must be "marketable securities". The *ejusdem generis* principle would not apply unless "general words" follow "specific words". The expression "marketable securities", being "Specific Words" would qualify the general words such as "shares" "scrips", "stocks", "bonds", "debentures" and "debenture stock". Thus in the light of the above discussion, allotment of securities under Part I and Part II of Chapter III could only mean those securities which are "marketable securities".

## CONCEPT OF RIGHTS ISSUE

A rights issue is certainly different from any other mode of issue of further shares. If that had not been so, Section 23 of the Act would not have expressly and separately stated that a public company or a private company can issue shares by way of a rights issue. The expression 'rights issue' has not been defined. Though the concept of 'rights issue' is essentially and originally a concept of the Companies Act, only the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)

Regulations, 2009 defines the expression 'rights issue'. As per Clause 2(zg) of the said Regulations, 'rights issue' means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose. This is the concept captured in Section 62(1)(a) read with Section 62(2) of the Act which was earlier contained in Section 81(1) of the Companies Act, 1956. This concept has not undergone any change under the new Act.

## RIGHTS ISSUE UNDER SECTION 62 OF THE ACT

So far as rights issue of shares is concerned, whether a private company or a public company, it is clear that Section 23 and Section 62 will apply. A rights issue does not involve all the complicated procedure which has to be followed in the case of a private placement within the meaning of the explanation given under Section 42 of the Act.

Section 42 of the Act contains provisions relating to private placement of securities. Explanation II under sub-section (2) of Section 42 states that a 'private placement' means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this Section. Section 42 has no relevance to a 'rights issue' at all.

Clause (a) of sub-section (1) of Section 62 states succinctly what a rights issue means. Rights issue involves issue of further shares by offering shares to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as





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RETURN OF ALLOTMENT OF SHARES AND OTHER SECURITIES

➤ Merely because some of the shares comprised in the unsubscribed portion of a rights issue are being offered to some of the shareholders or to others who are not shareholders at all on the basis of the discretion granted to the Board of Directors of a company under sub-clause (iii) of clause (a) of sub-section (1) of Section 62, such an issue would not attract the mischief of clause (c) of sub-section (1) of Section 62 of the Act.

nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:

- (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
- (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company;

Sub-section (2) of Section 62 states that the notice for the purpose of a rights issue should be dispatched through registered post / speed post / electronic mode to all the existing share holders at least 3 days before the opening of the issue.

## DISCRETION OF THE BOARD OF DIRECTORS

Under clause (d) of sub-section (1) of Section 81 of the Companies Act, 1956, the unsubscribed portion of shares in a rights issue was fully under

the control of the Board of Directors of a company. The Board of Directors had the absolute discretion to dispose of those shares in such manner as they deem fit in the best interests of the company. Similarly sub-clause (iii) of clause (a) of sub-section (1) of Section 62 states that the shares comprised in the unsubscribed portion of the rights issue could be disposed of in such manner which is not disadvantageous to the shareholders and the company. If shares are issued at a proper and fair price, dilution of stake of any shareholder or increase of shareholding of any shareholder cannot be considered to be disadvantageous to any shareholder or the company.

When the Board of Directors offers shares comprised in the unsubscribed portion of a rights issue it is not necessary to comply with the requirements of clause (c) of sub-section (1) of Section 62 of the Act. The words “whether or not those persons referred to in clause (a)” appearing in clause (c) of sub-section (1) of Section 62 of the Act by implication and *ipso facto* indicates that those persons include the persons to whom the shares comprised in the unsubscribed portion of a rights issue may be issued on the basis of the absolute discretion granted by the statute to the Board of Directors of the Company. Merely because some of the shares comprised in the unsubscribed portion of a rights issue are being offered to some of the shareholders or to others who are not shareholders at all on the basis of the discretion granted to the Board of Directors of a company under sub-clause (iii) of clause (a) of sub-section (1) of Section 62, such an issue would not attract the mischief of clause (c) of sub-section (1) of Section 62 of the Act.

## RETURN OF ALLOTMENT

Section 39(4) of the Act states that, whenever a company makes an allotment of shares or securities, it must file with the Registrar







a return in such manner as may be prescribed. Going by the placement of this provision under Part I of Chapter III, this return must ideally apply only when an issue of securities takes place by a public offer.

Sub-section (9) of Section 42 states that whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed. Going by the placement of this provision under Part I of Chapter III, this return must ideally apply only when an issue of securities takes place by a private placement.

Rule 12 of the Rules, with the caption 'Return of Allotment', states that whenever a company having a share capital makes any allotment of its securities, the company must file with the Registrar of Companies a return of allotment in Form PAS 3. Rule 14 of the Rules deals with private placement of securities. Rule 14(4) states that return of allotment of securities under Section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS-3.

A look at prescribed Form No. PAS 3 shows that Para 3 pertains to particulars of allotment of securities for cash; Para 4 pertains to particulars of allotment of securities for a consideration other than cash; Para 5 pertains to bonus issue of shares and Para 6 contains provision for furnishing additional particulars with respect to private placement of securities. Para 7 is just a record showing the share capital structure post allotment. This Para pertains only to share capital. It does not refer to any change arising from issue of "securities" other than "shares". Para 8 pertains to debt structure post allotment of securities.

Depending upon whether the company is public company or a private company, Section 23 read with Clause (a) of sub-section (1) of Section 62 and sub-section (2) of Section 62 of the Act, would show that a public company or a private company can make a 'rights issue' of shares. Yet Form No. PAS-3 does not make any reference to 'rights issue' at all. Form No. PAS 3 does not even refer to Sections 23 or 63 which are the sections pertaining to a 'bonus issue' though Form No. PAS 3 contain a Paragraph for furnishing particulars of allotment of bonus of shares. Thus conspicuous by its absence is the reference to a 'rights issue' in the Form No. PAS 3. In fact in the entire Rules, there is nowhere any reference to 'rights issue' at all. In the result, it is clear that no return of allotment is required to be filed if a company makes a "rights issue" of shares.

## STATUTE MUST CONFER POWER TO MAKE RULES

Going by the various provisions of the Act mentioned at the beginning of the Companies (Prospectus and Allotment of

Securities) Rules, 2014. The Rules which confer upon the Government the powers to prescribe Rules, one would be able to see that neither Section 23 nor Section 62, nor Section 63 contains any provision requiring the filing of a return of allotment nor conferring power upon the Central Government to make rules with respect to return of allotment. The Rule making power must necessarily be derived from a substantive provision of law. These Rules refer only to Sections 39 and 42. As already stated Section 39 is concerned with the return of allotment arising from a public offer of securities and Section 42 is concerned with the return of allotment arising from a private placement of securities.

Sub-section (2) of Section 63 contains a reference to any condition that may be prescribed with respect to capitalizing of profits or reserves and this provision cannot be said to be empowering the Central Government with respect to filing of a return of allotment of bonus shares. Thus the absence of reference to Sections 23, 62 and 63 in the Rules and in the Form PAS 3 is not without any valid reason. There is no provision delegating any power to the Government in this respect in those sections and hence there is no reference to those sections.

Section 469 of the Act contains a general provision which states that the Central Government may, by notification, make rules for carrying out the provisions of this Act. That Rule 12 and Form PAS 3 makes a reference to bonus issue could only be ascribed to the general power of the Central Government under Section 469 of the Act. In any case, the position does not change with respect to the conclusion hereinbefore stated that though the Act enables the making of a rights issue, it does not stipulate anywhere the requirement for filing a return of allotment of shares in pursuance of a rights issue made within the meaning of clause (a) of sub-section (1) of Section 62 read with Section 23 of the Act. A 'rights issue' would also certainly result in increase in share capital and without a proper provision for the filing the return of allotment, the master data of a company with respect to share capital will not get altered.

## CONCLUSION

In Form No. PAS 3, a provision must be inserted to state specifically whether the issue of shares is a 'Rights Issue' and if so what is date of compliance sub-clause (i) of clause (a) of sub-section (1) of Section 62 and whether any shares have been issued to any person other than existing shareholders or in excess of their original entitlement under the rights issue as per the letter of offer and if so whether there is any change in shareholding pattern. At the same time, the Paragraphs in PAS 3 pertaining to private placement must be automatically disabled when the option "rights issue" is selected. Though even in respect of a 'rights issue' a company would be filing with the Registrar of Companies the resolution of the Board of Directors issuing shares to comply with clause (c) of sub-section (3) of Section 179 of the Act read with Section 117 of the Act, such compliances will not result in alteration of master data.

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**Vinod Kothari, ACS**

Vinod Kothari & Company  
Practicing Company Secretaries  
Kolkata

[vinod@vinodkothari.com](mailto:vinod@vinodkothari.com)

## Getting to grips with e-Voting in General Meetings

- As companies get ready in implementing electronic voting at general meetings, practices are in the process of evolution. The practices must be such as make shareholder democracy more meaningful, rather than chaotic or cumbersome. The idea of the lawmaker is certainly benevolent – to make remote participation in general meetings possible, and thereby, enhance shareholder participation.

**S**ection 108 of the Companies Act entitles the Central Government to prescribe the class of companies where the facility of voting by electronic means will be provided in general meetings of companies. In pursuance of this power, the Central Government has enacted Rule 20 of the Management and Administration Rules to provide that every listed company, or a company having not less than 1000 shareholders, will mandatorily provide the option of electronic voting to its shareholders<sup>1</sup>.

Obviously, the section has left companies with loads of questions and very few answers. The section has already come into force on 1<sup>st</sup> April 2014<sup>2</sup>. Many companies would either have already approved their general meeting notices shortly, or will be doing the same in course of next few days. Hence, the question is of utmost significance.

Among other things, the major questions that arise are:

- <sup>1</sup> Revised Listing agreement clause 35B also requires e-voting to be mandatorily offered. This clause, applicable to all listed companies, is already effective.
- <sup>2</sup> By Companies (Management and Administration) Amendment Rules 2014, dated 23<sup>rd</sup> June 2014, the e-voting facility has been made mandatory only for a general meeting held on or after 1<sup>st</sup> January 2015. However, in case of listed companies, SEBI's amendment by insertion of Clause 35B in the Listing Agreement mandates listed companies to provide e-voting facility immediately.



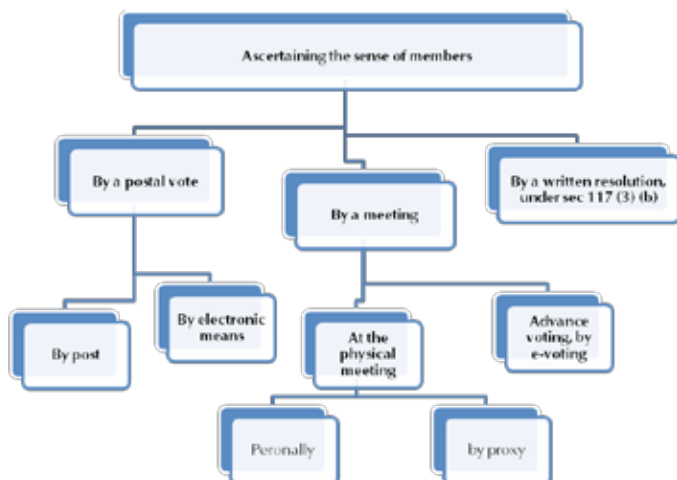


- Is there a voting at the meeting, as well as voting electronically?
- If there is only electronic voting, then what is being done at the meeting?
- On the contrary, if there is voting in both the means, then how does voting happen at the meeting?, and so on.

Some of these questions were answered by MCA, vide its Circular, though the author does not agree with MCA's interpretation of the provisions of the law or e-voting practices, particularly as regards show of hands. E-voting may be a new concept in India, but has been around in several other countries for some time now. Hence, this article assimilates the e-voting rules from other countries to impart sense to the e-voting process in India.

## VARIOUS WAYS OF ASSESSING THE SENSE OF MEMBERS

The process of meeting or getting the votes is, after all, a method of ascertaining the wishes or the sense of the members. Currently, there are several ways of getting sense of the members:



All of these are devices to make the democratic process of corporate governance more meaningful by allowing shareholders more say in corporate decision-making. Lately, corporate laws and governance principles in most countries are trying to enable wider participation in company "meetings". The traditional concept of "meetings", meaning a coming together of members, obviously does not hold good in an age of technology. Besides, proxy voting has become the cult in corporate meetings with the advent of institutional shareholders.

## MEETING OF MINDS

UK lawmakers as well as Courts have always been prepared to be pragmatic and adopt contemporaneous practices on company meetings. Decades ago, the ruling in *Re, Duomatic Ltd.*, (1969)

1 All ER 161 had accepted a written shareholders' resolution as equivalent to resolution passed in a meeting.

Lately, the use of technology has openly been accepted by courts. In *Wagner v International Health Promotions* (1994)<sup>15</sup> ACSR 419, a board meeting was held through telephone. In delivering his decision, Santow J addressed the true meaning of expression "the directors meeting together" and stated as follows: "I agree that the words 'meet together' connote a meeting of mind made possible by modern technology and not of bodies".

Much before remote communication became the order of the day, in *Byng v. London Life Assurance Limited* [1990] 1 Ch 170 the Court accepted that there was a valid meeting when people seated in different rooms were connected by use of audio-visual devices.

## EU REGULATIONS ON ELECTRONIC VOTING

Known by various names such as electronic voting, remote voting, direct voting etc., the concept of voting without a "meeting" has been there for quite a while.

Among the important legislative steps taken to enable shareholding voting by remote means was the European Union's directive 2007/36/EC, dated 11<sup>th</sup> July 2007<sup>3</sup>. This Directive mandated companies to allow general meetings via electronic means, and allow cross-border shareholders to vote. Note that cross-border voting was considered essential to a border-less economic community such as the European Union. Rule 9 of the Directive provided: "Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary



3 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>



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for the verification of identity and the security of electronic communications.”

Article 8 provides the detailed rules for electronic voting. It provides as follows:

Participation in the general meeting by electronic means

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:
  - (a) real-time transmission of the general meeting;
  - (b) real-time two-way communication enabling shareholders to address the general meeting from a remote location;
  - (c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.
2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.

This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision making process within the company for the introduction or implementation of any form of participation by electronic means.

As may be noted, the Directive provides the option of either a real-time two-way participation electronically, or an electronic transmission of the meeting, both of which will be interactive. But in case of votes cast before or after the meeting electronically, there is no benefit of interaction. It appears that most companies covered by the EU regulations are actually offering the facility of e-voting *before* the meeting.

The most obvious question is – if voting happens before the meeting, then how do shareholders get the benefit of interaction? The very purpose of the meeting is canvassing the proposals, discussion thereon, and finally, the voting. Voting is the culmination of the process of decision-making. If the shareholders would have voted already, then what takes care of the shareholders’ need of interaction?

This question is answered by Directive 9 of the EU Regulations, which allows shareholders the right of asking questions pertaining to any item on the agenda of the meeting. In essence, therefore, the discussion on the agenda item happens by way of shareholder questions, and then shareholders who opt not to attend at the

meeting would have cast their vote electronically, usually before the meeting.

## US REGULATIONS

Light-regulation regimes such as Delaware permit companies to use remote participation. Companies may not hold physical meetings at all and opt for what is known as virtual-only shareholder meetings (VSMs), or may hold *hybrid* meetings, where some shareholders may attend personally, and some may opt to attend remotely<sup>4</sup>. Several other states too allow VSMs. A 2012 report by Harvard Law School Forum on Corporate Governance and Financial Regulation<sup>5</sup> lists 22 states that permit VSMs.

However, a 2010 policy of the Council of Institutional Investors states that “Companies should hold shareowner meetings by remote communication (so-called “virtual” meetings) only as a supplement to traditional in-person shareowner meetings, not as a substitute.

Companies incorporating virtual technology into their shareowner meeting should use it as a tool for broadening, not limiting, shareowner meeting participation. With this objective in mind, a virtual option, if used, should facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees.”

Thus, the essence of US regulations seems to be to permit hybrid meetings, where shareholders’ right to attend physically at meetings is not prohibited; remote participation is only an option, not a compulsion.

## OTHER JURISDICTIONS

Several countries have lately been permitting the use of technology



<sup>4</sup> Section 211 of the Title 8, Corporations law, Delaware.

<sup>5</sup> <https://blogs.law.harvard.edu/corpgov/2012/07/19/online-shareholder-participation-in-annual-meetings/>





➤ the intent of the law is to make shareholder participation in general meetings more meaningful, and therefore, to make corporate decision-making more participative. The idea is not to render corporate meetings chaotic and unmanageable. If all resolutions are mandatorily put to physical voting by poll, is it serving any purpose, if the sense of the meeting could be ascertained by a much simpler and convenient device – show of hands – which has existed over decades? Of course, there is always an option with both the chairman as also the eligible members to demand or order a poll.

in company meetings. It seems very anachronistic to think of companies necessarily insisting on members to meet.

In Australia, section 249S of the Australian Corporations Act provides that:-

“A company may hold a meeting of the member at two or more venues using any technology that give the members as a whole a reasonable opportunity to participate.”

In Malaysia, the legal provision is almost a replica of the Australian law. Section 145A of the Companies Act 1965 provides as follows:

“A company shall hold all meetings of its members within Malaysia and may hold a meeting of its members within Malaysia at more than one venue using any technology that allows all members a reasonable opportunity to participate”

## THE INDIAN RULE

India has enacted rules for mandatory e-voting in general meetings vide Rule 20 of the Management and Administration Rules. Amendments to the Listing Agreement also mandate the said requirement in case of all listed companies. However, as the Rules were made effective from 1<sup>st</sup> April, 2014, companies have been left with loads of questions on how to conduct meetings coupled with advance electronic votes. Common response has been to dispense with show of hands at all, and put all resolutions at the meeting to vote by poll. This also seems to be the recommendation of the ICSI's draft of Secretarial Standard 2, Para 6.3 whereof seems to rule out show of hands in case where e-voting is offered. The same is the view of the MCA vide its Circular dated 17<sup>th</sup> June,

2014<sup>6</sup> ('Circular') which attempts to provide clarity on issues pertaining to voting through electronic means. The Circular also mandates that show of hands will be ruled out altogether. This interpretation will make company meetings a chaotic and marathon affair, as all resolutions will have to be put to vote by poll.

Generally, this impression seems to have come from section 107 (1). However, it is important to note that sec. 107 (1) states the most obvious: it states there will be no show of hands where voting is carried electronically. Voting is carried electronically *before* the meeting, and not *at* the meeting. In case of electronic voting, the voting system splits itself into two: advance voting before the meeting, which is electronic, and proxy or personal voting at the meeting. There is no question of voting by show of hands in the electronic voting process, but where voting is happening at the meeting, there is nothing to mandate every resolution to be put to vote by poll.

The practice of show of hands as *ex facie*, convenient and practical way of assessing the mood of the meeting is prevalent in several countries. These countries have also implemented electronic voting. Therefore, the potential predicament that we are facing in India must have already been faced in these jurisdictions. For example, the Chartered Secretaries Australia has put up a guidance on electronic voting (there, called direct voting), which clearly suggests how to conduct and collate the results of a show of hands with those of remote voting<sup>7</sup>.

We must appreciate that the intent of the law is to make shareholder participation in general meetings more meaningful, and therefore, to make corporate decision-making more participative. The idea is not to render corporate meetings chaotic and unmanageable. If all resolutions are mandatorily put to physical voting by poll, is it serving any purpose, if the sense of the meeting could be ascertained by a much simpler and convenient device – show of hands – which has existed over decades? Of course, there is always an option with both the chairman as also the eligible members to demand or order a poll.

## SOME QUESTIONS ON E-VOTING

There are several questions that arise in context of e-voting. The answers below have also taken into account the author's views on the subject, based on study of international jurisdictions making them fit into Indian law.

### 1. Is e-voting mandatory?

Yes, for listed companies, and other companies having not less than 1000 members. Note that several private companies too, having issued employee stock options, may have 1000 or more members.

<sup>6</sup> [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_20\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_20_2014.pdf)  
<sup>7</sup> See [http://www.governanceinstitute.com.au/media/37721/Guide\\_implementing\\_direct\\_voting.pdf](http://www.governanceinstitute.com.au/media/37721/Guide_implementing_direct_voting.pdf)



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## 2. Is e-voting mandatory for class meetings, or meetings of debenture-holders?

In view of the language of Rule 20, it seems the e-voting mandate is applicable only in case of general meetings. Hence, the mandatory provisions do not apply in case of class meetings, or in case of meetings of debenture-holders.

## 3. Can a shareholder opt to either e-vote, or attend the meeting?

The MCA Circular in this regard has provided that where a company allows e-voting at a general meeting, voting by show of hands would not be allowed in view of Section 107 (1) of the Act, 2013. However where a person has e-voted, he still reserves the right to participate in the meeting but will not be able to vote in the meeting again and his e-vote would be treated as final.

On the question of whether a shareholder's right to attend and vote at the meeting rather than by advance voting can be taken away, the global position seems well settled. Remote voting in general meetings is only to broaden shareholder participation and not limit the same. It is a facility, and not a curb. Section 108 provides for a member the right to exercise his vote through electronic means. The language of Rule 20 also says "facility to exercise their right to vote at general meetings". Clause 35B of the Listing Agreement also speaks of a facility, though 35B (ii) says those shareholders who cannot vote electronically may be allowed to vote by postal ballot.

The idea of the law is to give a facility, and not to take it away. The right to attend, speak and question the directors is a fundamental right of shareholders. After all the directors are the appointees of the shareholders, and they cannot use the electronic wall of separation to shield or shelter themselves from the shareholders. If the law is so interpreted as to take away the shareholders' right to attend and vote at the meeting, it would be a bad law.

We have seen the AGM notices of several European companies<sup>8</sup>, and we note that they consistently allow members the right to choose either to attend the meeting or to vote electronically. Of course, a shareholder who has elected to vote electronically foregoes his right to vote at the meeting, but the right to attend the meeting personally has not been taken away. The scenario may be different in the case of virtual shareholder meetings (VSMs) such as in Delaware, but those meetings allow for a 2-way participation by the shareholders, such that there is an interactive virtual meeting.

The same view has been upheld in India as well by the Bombay High Court in its recent ruling in the matter of *Wadala*

*Commodities Limited v. Godrej Industries Limited*<sup>9</sup>. In the said ruling it very rightly pointed out that "What corporate governance demands is the government of the tongue, not the tyranny of a finger pressing a button".

It further goes on to say that "...the shareholder has an inalienable right to ask questions, seek clarifications and receive responses before he decides which way he will vote. It may often happen that a shareholder is undecided on any particular item of business. At a meeting of shareholders, he may, on hearing a fellow shareholder who raises a question, or on hearing an explanation from a director, finally make up his mind. In other cases, he may hold strong views and may desire to convince others of his convictions. This may be in relation to matters that are not immediately obvious to the shareholder merely on receipt of written information or a notice".

While pronouncing its judgement, the Court observed that "Greater inclusiveness demands the provision of greater facilities, not less; and certainly not the apparent giving of one "facility while taking away a right".

## 4. If our views were to be considered, would a show of hands be compatible with electronic voting, where voting is by number of shares?

The author notes the fact that the MCA Circular has ruled out show of hands in case of companies that offer e-voting facility. However, taking cue from several countries such as Australia where e-voting co-exists with show of hands, the author will like to make a case that it would be sensible for regulations to allow the most convenient way of taking votes at meeting, that is, show of hands.

The author is aware that there will be a huge change of mindset if companies were to allow physical voting in meetings



<sup>8</sup> For example, <http://new.abb.com/investorrelations/annual-general-meeting/questions-on-electronic-voting>

<sup>9</sup> The full text of the ruling is available at: [http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvan\\_VkZ2VtZW50cy8yMDE0LyZmbmFtZT1PU0NTRDQ0NzE0LnBkZiZzbWZsYWc9TG==](http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvan_VkZ2VtZW50cy8yMDE0LyZmbmFtZT1PU0NTRDQ0NzE0LnBkZiZzbWZsYWc9TG==)



alongside electronic voting. In a physical meeting, the easiest way to ascertain the consent has been show of hands, which is essentially shareholder count, rather than shares-count. A poll is conducted only where either company itself opts for it, or a poll is validly demanded. There is no question of “show of hands” in case of electronic vote – see section 107 (1). At the same time, in the electronic vote count, the counting obviously will be by number of shares. So, how does one add up the results of the two – as the two are not capable of being added?

With a little bit of gap-filling in the regulatory language, it is very easily possible to synthesize electronic voting with show of hands.

First of all, when section 107 (1) says voting shall not be on a show of hands in case of electronic vote, it is saying but the obvious. There is no question of any show of hands in case of electronic voting. But that does not mean head count, that is, the counting of number of shareholders rather than number of shares, is not possible in an electronic vote. The so-called show of hands is actually nothing but a head count, which is the easiest and the most commonly-used way. Thus, the results of a head count in electronic vote may easily be added with those of the physical voting, to see whether the resolution is carried or not. If poll is at all demanded or ordered by the chairman, the results of electronic voting show the number of shares as well, to which the results of the poll at the meeting may be added.



Note that the show of hands voting is always based on a subjective assessment of the Chairman. It is not practical to actually count the number of hands going up at any large meeting. Hence, the Chairman takes a view based on the weight of the hands going up for and against. Likewise, he would have already had the results of the electronic vote, by head count as well as votes count. In case he has any doubt as to the clarity of the sense of the meeting, he may always prefer a poll. If the sense of the meeting and electronic voting is clear enough, he may declare the results of the voting.

Let us take an illustrative example here:

E-voting (exact)				Voting at the meeting				Comments	Result
For		Against		For		Against			
No. of share-holders	No. of shares	No. of share-holders	No. of shares	Show of hands (apprx.)	Poll (exact)	Show of hands (apprx.)	Poll (exact)		
1000	100000	100	10000	500	NA	50	NA	Results of both are clear and decisive	Passed
1000	100000	100	10000	50	NA	500	NA	The excess of number of shareholders voting for, over those voting against, in e-vote is 900. This is exceeding the total number of shareholders voting at the meeting. Hence, even if all shareholders at the meeting opposed the resolution by show of hands, it would have still been carried.	Passed
100	100000	1000	10000	500	NA	50	NA	By head count test on e-vote, the resolution is getting lost. Hence the chairman must order a poll	Order a poll
100	100000	1000	10000	500	50000	50	10000	After counting the results of e-vote and the poll, the total number of shareholding strength for the resolution exceeds the total number of shareholding strength against.	Passed by poll
100	100000	1000	10000	500	10000	50	50000	After counting the results of e-vote and the poll, the total number of shareholding strength for the resolution exceeds the total number of shareholding strength against.	Passed by poll



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GETTING TO GRIPS WITH E-VOTING IN GENERAL MEETINGS



The inter-relation between voting by poll and voting by show of hands has been graphically represented below:



## 5. Can a member voting electronically demand a poll?

If, going by the MCA Circular, one takes a view that there will be no show of hands at the meeting, it transpires that every resolution will be put to vote on a poll, at the outset. Hence, the question of a demand for poll does not arise. In other words, the poll is ordered by the chairman, and does not have to be demanded by anyone at all.

## 6. Does this mean that there will be no voting in the meeting at all?

Going by the Circular, every resolution put before the meeting will put to vote on a poll. Those members who have voted electronically will not be allowed to vote on the poll. Those attending by person or proxy will be allowed to vote on poll. As is usual practice with companies, poll may not be taken on the date of the general meeting itself – the law allows poll to be conducted within 48 hours. The results of the poll will

be aggregated with the results of e-voting to decide the fate of the resolution.

## 7. Is the right to appoint a proxy available to a member voting electronically?

The whole concept of proxy voting is applicable where a member is not able to attend personally. The entire concept is not applicable to remote voting, whether by postal ballot or by e-voting.

## 8. Is quorum applicable in case of members voting electronically?

Quorum is the minimum number of members to constitute the minimum strength required to render sense to a plural decision-making. A meeting is not “sufficient meeting of minds” if the minimum number is not present. In our view, it is basic to the whole concept of plural decision-making. Hence, a quorum should be deemed applicable in case of electronic voting too.

## 9. Is quorum applicable to the physical meeting? Will the members voting remotely also be added?

It would be proper to count the members present in the meeting, and those voting remotely, together. Both are contributing to the process of decision-making. Hence, there is no question of excluding either type.

## 10. The MCA has made amendment in the Rules to make e-voting mandatory only from 1<sup>st</sup> January 2015. However, it appears that the Listing Agreement currently mandates companies to offer e-voting. How to reconcile these conflicting provisions?

While any lack of coordination between the MCA and SEBI is undesirable, it is not to be noted that the Listing Agreement had introduced e-voting for larger companies much before the Companies Act 2013 was enacted. Hence, the divergence between the requirements of the Listing Agreement and those of the Companies Act is not new. Having said that, there will only be a handful of companies – unlisted companies having more than 1000 shareholders – who will be able to make use of the deferral of mandatory e-voting by the MCA Circular.

## CONCLUSION

As companies engage in implementing electronic voting at general meetings, we are all trying to evolve practices. The practices must be such as make shareholder democracy more meaningful, rather than chaotic or cumbersome. The idea of the lawmaker is certainly benevolent – to make remote participation in general meetings possible, and thereby, enhance shareholder participation. The provisions of the law must not be interpreted either to make meetings meaningless, or to render the conduct of the meeting unwieldy. The suggestions made by the author above imbibed from international practices, to carry forth the objective of the law.

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**T. Ramappa, ACS**

Advocate  
Chennai

*jupitar527@bsnl.in*

# The Companies (Audit and Auditors) Rules, 2014

- The discussion in this article is about the statutory auditor, appointed at the general meeting of the company under section 139 of the Companies Act, 2013 and to distinguish an auditor from an internal auditor and a cost auditor. To understand the way the Rules made by the Central Government under section 469 of the Act for the purpose of carrying out the provisions of the Act, the basic provisions relating to the functions of the auditor, his statutory duties and related matters as set out in the Act have also been explained.

## THE DUTIES OF AN AUDITOR: THE AUDIT REPORT

**T**he basic work of the auditor is set out in section 143(2). It is to make a report to the members of the company on the accounts examined by him and on every financial statement required by or under this Act to be laid before the company in general meeting. The report shall, after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) state that, to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Under section 143(4), where any of the matters required to be included in the auditor's report, under this section, is answered in the negative, or with a qualification, the report shall state the reasons therefor.





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➤ Though the opening part of section 139(1) states that the auditor appointed at the first annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth meeting, and may only be presumed to give the auditor a fixed term of office and the comfort that may be expected to go with it, the proviso to section 139(1) requiring that the company shall place the matter relating to such appointment for ratification by the members of the company at every annual general meeting makes the fixed term illusory.

## THE BASICS

Certain basic positions are to be kept in mind in trying to understand the work of the auditor, in making his report to the members of the company. The most important point is that the auditor's duty in making the report is only to the members of the company, who appointed the auditor for this specific purpose, and that duty of the auditor is under contract. He does not owe any duty to any other under the contract. He may, in special circumstances, to be proved, be liable in negligence. Then, he should consider the accounts, the financial statements to be placed before the annual general meeting of the company. In that consideration, he shall take into account the matters specified under section 143(2). After having done that, he should state, *as his opinion*, that to *the best of his*



*information and knowledge*, the said accounts, financial statements give a *true and fair view* of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. This is a subjective opinion, but reached after having taken into account the considerations set out under section 143(2). It should be noted that the scope for subjectivity would be would be greatly reduced when the auditor acts according to the mandate of section 143(2).

The entire work of examination of the books of account and vouchers of the company for the purpose of his inquiring into the matters set out in section 143(1)(a) to (f) towards this end constitute the work of an auditor of the company.

## NEW DUTIES FOR THE AUDITOR

The 2013 Act has added some new duties to the work of the auditor. One is by Rule 11 of the 2014 Rules requiring certain additional matters to be included in the auditor's report, which are about impact of pending litigations on the financial position of the company and certain other matters. Rule 12 relating to the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor. Section 143(12) of the Act has cast an obligation on the auditor to report to the Central Government, where he has sufficient reason to believe that an offence involving fraud, is being committed against the company the officers or employees of the company and for steps to be taken by the auditor before making the report to the Central Government. The details of the mode of discharging this obligation are stated in Rule 13.

## ELIGIBILITY, QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS: SECTION 141

This section states in great detail the qualifications and disqualifications of one who may be considered for appointment as an auditor of a company. Section 141(3) mentions who are not eligible to be appointed as an auditor of the company.

## INDEPENDENCE OF THE AUDITOR - A SIGNIFICANT OMISSION

In the long list it should have been provided that one of the requirements would be that the auditor would be independent of the audited entity in every way. It is not expressly stated in the section. The independence of the auditor is the most valuable protection to the company and the auditor. In all jurisdictions it is specifically provided for.

Section 139(2) directing that no listed company or such class or classes of companies as may be prescribed shall appoint or



➤ While the main issue is the selection of the auditor, based on his experience in the relevant industry to which the company considering the appointment belongs, the length of the auditor's experience, the references from other companies of the same size and range of operations and the terms on which the auditor is prepared to accept the offer, the proviso to sub-rule [1] could have been avoided, as such matters would be apparent on the preliminary paper work of considering the choices.

re-appointment of an individual or a firm as auditor for more than one and two terms of five consecutive years, respectively, and the provisos to section 139(2) declaring the ineligibility of the auditor and the firm, for reappointment as auditor in the same company for five years from the completion of its term have nothing to do with the independence of an auditor. The purpose of the rotation of the auditor is not stated and it is not also connected to the independence of the auditor, which should have been specifically stated in some section. The provisions of section 177(4)(ii) requiring the audit committee to review and monitor the auditor's independence and performance, and effectiveness of audit process is not the same thing as stating that there should be total independence and when that will be considered to have been provided for.

Though the opening part of section 139(1) states that the auditor appointed at the first annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth meeting, and may only be presumed to give the auditor a fixed term of office and the comfort that may be expected to go with it, the proviso to section 139(1) requiring that the company shall place the matter relating to such appointment for ratification by the members of the company at every annual general meeting makes the fixed term illusory. Since the remuneration of an auditor may be fixed in the general meeting of a company or in such manner as may be determined therein, the position is clear that there is no statutory provision for the independence of an auditor.

## ELIGIBILITY, QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS: SECTION 141

The following clauses of section 141(3) are also not directly connected

to the purpose of ensuring the independence of the auditor:

(b) an officer or employee of the company (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed; (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel; (i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

These are only disqualifications for one to be appointed as an auditor and do not deal with the issue of declaring that an auditor should be independent of the audited entity and should not have any role to play in the decision-making process of the audited entity.

## THE 2014 RULES RELATING TO AUDIT AND AUDITORS

### Manner and procedure of selection and appointment of auditors : Rule 3

Rule 3: (1) In case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company:

Provided that while considering the appointment, the Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of





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Chartered Accountants of India or any competent authority or any Court.

- (2) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.
- (3) Subject to the provisions of sub-rule (1), where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.
- (4) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.
- (5) If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.
- (6) If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.
- (7) The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting:

Provided that such appointment shall be subject to ratification in every annual general meeting till the sixth such meeting by way of passing of an ordinary resolution.

**Explanation:-** For the purposes of this rule, it is hereby clarified that, if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

While the main issue is the selection of the auditor, based on his experience in the relevant industry to which the company considering the appointment belongs, the length of the auditor's experience, the references from other companies of the same size and range of operations and the terms on which the auditor is prepared to accept the offer, the proviso to sub-rule (1) could have been avoided, as such matters would be apparent on the preliminary paper work of considering the choices. Rule 4(1) (d) requiring the auditor to include in his certificate the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct, would seem to be out of place.

When the audit committee consists of a minimum of three directors, and with independent directors constituting the majority and by virtue of section 177(4) every audit committee shall act in accordance with the terms of reference specified in writing by the board, which shall *inter alia*, include (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company, it is difficult to conceive of a situation, when the board and the audit committee are working in close coordination and on account of the legal position stated above, of a disagreement between the board and the audit committee. It is unlikely to arise in actual practice. In the same way, a situation envisaged in the Explanation, of the members of the company not ratifying the appointment of the auditor and leaving to the board the appointment of another auditor, according to the procedure laid down in the Act would also appear to be remote. What would be the grounds on which the members may refuse to ratify and would the auditor agree to an uncertainty as above?

## MANNER OF ROTATION OF AUDITORS BY THE COMPANIES ON EXPIRY OF THEIR TERM : RULE 6<sup>1</sup>

- (1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
- (2) Where a company is required to constitute an Audit Committee,

<sup>1</sup> The tables of illustrations given in the Rules explaining rotation in the case of an auditor and a firm, are not annexed here, for reasons of space.







the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.

(3) For the purpose of the rotation of auditors-

- (i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;
- (ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

*Explanation. I* - For the purposes of these rules the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

*Explanation. II* - For the purpose of rotation of auditors,- (a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation; (b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

The expression 'rotation of auditors', should have been, for purposes of clarity, referred to at the end of the penultimate proviso to section 139(2) that the auditors referred to above shall be rotated on the expiry of the periods stated in section 139(2). This will be necessary as the term 'rotation of auditors' has not been referred to in section 139(2) and it cannot be introduced for the first time through Rule 6. Section 139(3)(a) permits, in a different context, the members of a company to rotate the audit firm appointed by it, the auditing partner and his team to be rotated at such intervals as may be resolved by them. For these reasons, the position may be



explained clearly. The Sarbanes Oxley Act, 2002 of the USA, uses the term 'mandatory rotation' which refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

## NOTICE OF RESIGNATION BY THE AUDITOR: RULE 8

Rule 8 requires that when an auditor has resigned, he shall give notice of the resignation in Form ADT-3. Item 5 of this Form requires the auditor to give reasons for the resignation. As s 140(2) clearly states that the auditor who has resigned shall indicate the reasons and other fact as may be relevant with regard to his resignation, any reason for the resignation, not affecting the work as the auditor, as prejudicially affecting the company, may not be relevant. For example, he may resign purely personal grounds and it would not be necessary for anyone to be informed about it. Rule 10 lists the further disqualifications of an auditor

## FURTHER MATTERS TO BE INCLUDED IN AUDITOR'S REPORT: RULE 11

*"Rule 11 - Other matters to be included in auditor's report"*

The auditor's report shall also include their views and comments on the following matters, namely:- (a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement; (b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts; (c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company".

This is a new provision and beneficial to the companies, the shareholders, creditors and others who may have some financial interest in the company. Pending litigation may be between the company and any other entity or between the company and any government agency, for example, on tax liability. Needless to add, foreseeable losses, on account of issues known to the company and recognizable as such by the auditor should be provided for, to show the company's liabilities that may affect the company's financial position.

## DUTIES AND POWERS OF THE COMPANY'S AUDITOR WITH REFERENCE TO THE AUDIT OF THE BRANCH AND THE BRANCH AUDITOR: RULE 12

Rule 12 (1), for the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained



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in sub-sections (1) to (4) of section 143. Rule 12 (2), the branch auditor shall submit his report to the company's auditor. Rule 12 (3), the provisions of sub-section (12) of section 143 read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

The opening part of the Rule affirms that the duty of the branch auditor is the same as that of the auditor of the company as set out in section 143(1) to (4). Then the branch auditor shall submit his report to the company's auditor. Sub-rule 3 casts the obligation to report fraud under section 143(12) on the branch auditor also.

## REPORTING OF FRAUDS BY AUDITOR: RULE 13

Section 143(12), a new provision has cast an obligation on the auditor to report to the Central Government of his reasonable belief that an offence involving fraud<sup>2</sup> is being or has been committed against the company by its officers or employees.

It is as follows:

"Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. Sub-section (13) protects the auditor for acts done in good faith".

Rule 13 sets out the procedure for the auditor acting under section 143(12).

"Reporting of frauds by auditor -

(1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below:

- (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;
- (ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days of receipt of such reply or observations;

(iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

- (2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.
- (3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.
- (4) The report shall be in the form of a statement as specified in Form ADT-4.
- (5) The provision of this rule shall also apply, *mutatis mutandis*, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

It should be obvious that this is a serious responsibility and no experienced auditor would jump to conclusions on incomplete records or insufficient information. And more importantly, before forwarding his report to the board or the audit committee, he should necessarily investigate the transactions and ask for further documents or information which he would consider necessary to give him a coherent total picture. Before charging a company's officers or employees with fraud, the auditor must, on a study of the documents and information, have strong credible evidence of fraud against the company. Of course, good faith, in the reporting of fraud, under section 143(12) is a defence under sub-section (13), but this will have to be established by the auditor and where the auditor's inquiry has been only perfunctory, this defence will not be available.

Section 10A(b) of the Securities Exchange Act, 1934 of the USA, is a good guide for the auditor at the threshold stage. The substance of sub-section (1) is that where an auditor, in the course of conducting an audit, to which the provision applies, detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the firm shall, in accordance with generally accepted auditing standards (emphasis supplied) as may be modified or supplemented from time to time by the Commission, determine the issue. The issue to be determined is whether it is likely that an illegal act has occurred; and if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages.

The point is that the auditor would be advised to go by generally accepted auditing standards.

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<sup>2</sup> Defined under section 447 through the Explanation to the section.

**Vijaya Sampath, FCS**

Senior Partner  
Lakshmikumar & Sridharan  
New Delhi

[vijaya.sampath@lakshmisri.com](mailto:vijaya.sampath@lakshmisri.com)

**Sonia Abrol**

Principal Associate  
Lakshmikumar & Sridharan  
New Delhi

[sonia.abrol@lakshmisri.com](mailto:sonia.abrol@lakshmisri.com)

# Independent Directors: Emerging to Emerged

➤ With a view to bring about better corporate governance practices and prevent recurrence of financial and other scams the new Companies Act has mandated appointment of independent directors by all listed companies. This article highlights the salient features of the new provisions and requirements.

**T**he term “independent director” as the name indicates, is an individual, appointed as a Board director and has no monetary relationship of any nature directly or indirectly with the company and is therefore considered as a person capable of exercising objective judgment on matters relating to the company and balances the conflicting interests of all stakeholder, acting at all times in the interest of the company.

Companies had independent directors even under the erstwhile Companies Act, 1956 (“Old Act”), but the Companies Act, 2013 (“New Act”), takes the role and scope to a new level of governance and transparency as well as lays down in clear and unambiguous terms, the requirements, duties, rights and obligations of independent directors and sets the expectation on eligible persons who qualify in age, experience and expertise to serve on the Boards of companies in India.

A few high-profile scams due to corporate governance failures in India and attendant criticism from stakeholders across the globe temporarily dented the image of India Inc and perhaps influenced the stringent requirements prescribed under the new law. For listed companies the additional requirement of compliance with clause 49 of the listing agreement has been further reinforced with amendments to the listing agreements that have imposed stricter norms to ensure that over time, governance practices in Indian

companies will be on par with the best in the world.

## DEFINITION AND MEANING

Section 149 (6) of the new Act defines an “independent director as a person

- who is not a managing, whole-time or nominee director
- of integrity and experience in the Board’s view and
- With relation to a company, its holding, subsidiary or associate (“Entity”)
  - Was/is not a promoter or related to any director or promoter of any of them
  - Has/had no financial transaction/relationship of any sort with any Entity or their promoters or directors for current and previous two financial years
  - Is not a CEO or director of a NGO that receives 25% funding from the company, its promoters or directors
  - Holds by himself/herself or with relatives in excess of 2% shareholding/voting interest in the company
  - Relatives of such director have no pecuniary transaction with any Entity for the current or two previous financial years exceeding 2% of their gross turnover or income exceeding INR 5 million
  - Relative/ director not a KMP, employee of any Entity for the preceding 3 years



# Article

INDEPENDENT DIRECTORS: EMERGING TO EMERGED

➤ The appointment process of independent directors shall be independent of the company management and while selecting independent directors the board must ensure that there is appropriate balance of skills, experience and knowledge in the board so as to enable the board to discharge its functions and duties effectively.

- Relative/director was not a partner or employee for 3 preceding years of a firm of auditors, company secretaries, cost auditors of any Entity
- Relatives/director not a partner, employee for preceding 3 years of legal or consulting firm that was involved in any monetary transaction with an Entity exceeding 10% gross turnover of such firm.

## NUMBER AND THRESHOLD LIMITS: WHO NEEDS TO APPOINT AND HOW MANY

Any public company that has a paid up capital of INR 100 million or more or a turnover of INR 1 billion or has in the aggregate outstanding loans, debentures or deposits exceeding INR 500 million is required to appoint at least 2 independent directors, though the number may increase to meet other criteria. Such companies also need to have an audit committee and a nomination and remuneration committee.

The provisions of clause 49 of the listing agreement have also been revised to align with the Act effective 1 October 2014. This provides in addition to the above criteria that a person cannot be an independent director in more than seven listed companies, which is further reduced to three if such person is a whole time director in a listed company. The amendment prescribes a maximum of two tenures of five consecutive years with a cooling off period of three years and companies are to issue formal letters of appointments to independent directors with terms that have to be disclosed on the website of the company and the stock exchanges forthwith. Any vacancy in such position has to be filled in within 3 months or the next Board meeting, though this is not mandatory if the Board already has the minimum prescribed number of independent directors.

While the new Act prescribes that the Boards of every listed company shall comprise of at least one third independent directors (to be complied within a year) the listing agreement requires that if the chairman is not a regular chairman, is an executive director,

a promoter or his/her relative or related to a person in the Board or in the management one level below the Board, at least half the Board needs to be independent directors effective 1 October 2014. While one can take the view that the Act is legislation and hence superior to the listing agreement or directive of SEBI, it is not practical since the stock exchanges have the right to take penal action and delist a company for non compliance of its "agreement".

## MANNER OF APPOINTMENT AND TENURE

Independent directors are not liable to retire by rotation but are required to be appointed by the shareholders on recommendation of the Board who have to justify the appointment and terms in the explanatory statement. The subsequent appointment will require a special resolution. If for some reason, the meeting is adjourned without approving such appointment, they will have to demit office unless elected at a subsequent meeting.

The government also envisages a "data bank" of eligible directors to be maintained by notified institutions from which companies can select independent directors though the liability of due diligence vests with the company. While the purpose of making the selection wide and neutral is to be lauded, the practical aspect of expecting very senior and talented individuals applying to data banks for empanelment remains a question mark.

Although the new Act prescribes a maximum of two tenures of five consecutive years, clause 49 also requires a cooling off period of three years before being considered for reappointment in the same company as an independent director.

In response to many queries, the government has recently clarified that-

- (a) An independent's previous tenure will not be counted as long as such director is appointed under the new norms by 31 March 2015.
- (b) A person may be appointed for a tenure of less than five years at a time but will then be entitled to two tenures only and not 10 years.
- (c) Since the new norms are quite different, all independent directors will have to be newly appointed by the Board and shareholders before 31 March 2015. Since directors are appointed at general meetings only, all independent directors will be appointed at the forthcoming annual general meetings in most companies or in a general meeting convened for this purpose. Unless the tenure of each of the directors is different (unlikely since the Board has to justify the appointment including tenure in the explanatory statement) this may create a piquant situation of all the independent directors having a uniform tenure and retiring after completing their terms on the same date and the Board reconstituting its entire line up of independent directors once every five/ten years.





The appointment process of independent directors shall be independent of the company management and while selecting independent directors the board must ensure that there is appropriate balance of skills, experience and knowledge in the board so as to enable the board to discharge its functions and duties effectively. A formal letter of appointment is required to be given to all independent directors including the current directors who are appointed during the year. The letter should contain among other things the term of appointment, the expectation of the board from the appointed director, the board-level committee(s) in which the director is expected to serve and its tasks, the fiduciary duties that come with such an appointment along with accompanying liabilities, provision for directors and officers (D and O) insurance, if any, the code of business ethics that the company expects its directors and employees to follow, the list of actions that a director should not do while functioning as such in the company and the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the boards and other meetings and profit related commission, if any.

Interestingly, the terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours and shall also be posted on the relevant company's website.

It is also relevant to note that their reappointment is subject to evaluation of performance by the Board excepting the interested director. This adds a new dimension to transparency since Boards would find it exceedingly difficult to make public their evaluation of a colleague's performance if the rating is not high and provide this as an explanation for not recommending reappointment or for lesser tenure. Under the new Act, directors are required to state the reason for their resignation from the Board and the same has to be reported in the Director's report.

## REQUIREMENTS AND RESTRICTIONS

Independent directors are not entitled to employee stock option, which by its very name is clearly meant only for employees and executive directors. In addition to sitting fee, directors are entitled to commission up to the limits set out in the Act in addition to reimbursement of actual expenses incurred for traveling to Board meetings but not for any other remuneration. The Ministry has recently clarified that *"pecuniary relationship does not include receipt of remuneration, as independent director, from the holding, subsidiary or associate company" or any service availed that would be available on the same terms to any member of the public (telephone services etc).*

The minimum and maximum eligible age is 21 and 70 years respectively though this can be extended by a special resolution. All directors have to obtain a director's Identification No (DIN) prior to appointment or else they are disqualified to be appointed. A director who does not attend meetings for 12 months automatically

vacates office even if he/she has sought leave of absence.

## PERFORMANCE EVALUATION

Performance of independent directors is to now be a closely monitored by the board of directors and the evaluation criteria in this regard finds a place in the annual reports of listed companies.

Under both new clause 49 and the new Act, independent directors are to meet at least once in a year without the presence of the non-independent directors at such meetings where among other things, the independent director will review the performance of the other directors of the company as well as of the chairman of the company and assess the quality, quantity and timeliness of flow of information between the company management and the board that is necessary for the Board to effectively and reasonably perform their duties. Likewise, performance of independent directors is evaluated by the Board and the criteria for the same has to be noted in the Board's report to the members.

Annual reports of listed companies are to also provide details of training imparted to independent directors on a variety of aspects of the company and their role in the same. Clearly, while the powers of the independent director are far more fortified under the current regime, the quantum of responsibility has amplified and it is now all the more important for a director to possess necessary skills and experience to perform the functions diligently.

The disclosure requirements of performance of the members of the Board in the Board report is a double edged sword and while a thumbs-up for transparency may create interpersonal issues in Board dynamics and perhaps even legal problems.

## BOARD COMMITTEES: COMPOSITION AND ROLE

The new Act emphasizes on the relevance of appointing independent directors as members and chairpersons in various Board committees. Companies that need to appoint independent directors (public companies with a paid up capital of INR 100 million or more or a turnover of INR 1 billion or has in the aggregate outstanding loans, debentures or deposits exceeding INR 500 million) have also to form committees for various matters.

*Audit committees* must comprise at least three directors with a majority of independent directors and an independent director as chairman all members being financially literate. Audit committees are entrusted with various critical fiscal duties including assisting the board in the appointment of the auditors, issuing approval for related party transactions, examining financial statements and auditor's report, reviewing auditor's independence, providing valuation for the undertakings or assets of the company, evaluating the internal financial controls, monitoring the utilization of funds raised through public offers and conducting investigation into



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any issues relating to these functions, if required, with a view to preventing fraudulent acts and omissions by companies. A vigil mechanism for reporting breach by employees and others is also required to be set up with protection to genuine complainants.

Corporate Social Responsibility Committee is a new requirement to recommend and later monitor the CSR policy, projects and spending and reporting. The minimum number is three directors with at least one independent director as its members. CSR approved activities include health, social, economic and environment development, education, sanitation, eradication of poverty, gender equality and other matters that may be notified from time to time. Since the entire concept of mandatory CSR (explain or spend principle) is new, this committee will be the cynosure of all eyes and the success of CSR schemes an indicator of their performance.

*Nomination and remuneration committee* needs three or more non-executive directors of which one-half must be independent. The chairman of the Board may be a member but cannot chair the committee. Major agendas of this committee include identifying suitably qualified persons for directorships, recommending appointment and removal of directors, evaluating director's performances, formulating suitable remuneration policies and establishing criteria for determining qualifications, positive attributes and independence of directors.

*Stakeholder relationship committee* is required in every public company that has at least 1000 shareholders or debenture holders comprising at least three directors with the majority as well as the chairman being independent directors. The objective of this committee is oversight over the grievance redressal mechanism of shareholders.

## DUTIES AND LIABILITY

Under the new Act, a large number of issues may be discussed and approved only at Board meetings, which means that major decisions of the company have to be mandatorily approved by the Board. Some of the new matters inter alia include appointment

and removal of key managerial personnel, appointment of internal auditors and secretarial auditors, noting the appointment or removal of persons one level below the Board, buying and selling of non trade investments in excess of 5% of the paid up capital and free reserves, diversification of business, acquisition of controlling stake in a company, approving financial statements and Board report. Further, one third of the Board can now insist that a particular matter can be decided only at Board meetings and not by circulation. The agenda for meetings has to sent out at least 7 days in advance, though a shorter notice/agenda is permitted if one independent director is present at the meeting. If there are no independent directors present at a particular Board meetings, decisions taken at such meetings on the above matters shall be final only upon ratification by at least one independent director, even though the quorum was complete even without the presence of any independent director.

Duties of directors may be broadly classified as follows:

### (a) *Fiduciary duties*

- a. Duty of care to exercise appropriate diligence and make informed decisions
- b. Duty of loyalty to act in good faith and honesty of purpose
- c. Duty of acting always in the interest of the company
- d. Balancing the conflicting interests of all stakeholders

### (b) *Business judgment rule*

- a. It is assumed that independent directors of a company will act in good faith and this provides a level of immunity from liability for loss incurred by companies in business decisions unless there is an allegation/incidence of misconduct or fraud
- b. Directors are guilty and liable for acts of omission or commission on any matter that they knew and participated deliberately or should have known and were negligence, hence failed to know
- c. Directors always need to ask the relevant questions, seek information and entitled to ask whether such information is complete, accurate and timely since only this will enable them to take informed and considered decisions objectively without bias or undue favour.

The new Act has provided a level of comfort to independent directors from unnecessary harassment and prosecution for matters that are beyond their control as long as they acted in good faith with the organization's interest and above all sought information and clarification and relied on management for information regarding decisions.

Following a recent commodity exchange scam, in order to strengthen the boards of the Forwards Market Commission, Government of India, has issued guidelines which draw attention to the importance of independent directors on boards. As per the



fresh guidelines, commodity exchanges must constitute a selection committee for hiring a managing director and that such committee must comprise five persons including two independent directors. Additionally, the new guidelines mandate that one independent director be made part of the selection committee and the meetings of such committee at all times.

The new Act seeks to balance the broad spectrum of responsibilities, functions and duties imposed on an independent director. Schedule IV of the new Act lays down a specific code on the professional conduct, role and functions including relating to safeguarding the interest of all stakeholders, particularly the minority holders, harmonizing the conflicting interest of the stakeholders, analyzing the performance of management, mediating in situations of conflict between management and the shareholder's interest, duties, manner of appointment, re-appointment, resignation, meetings and evaluation of independent directors. The code raises the bar of standards and expectations from independent directors to a great extent by imposing a significant amount of onus on them of investor protection.


As per the guidelines on professional conduct under Schedule IV of the new Act, an independent director is expected to uphold ethical standards of integrity and probity, act objectively and constructively while exercising his duties, exercise his responsibilities in a *bona fide* manner in the interest of the company, devote sufficient time and attention to his professional obligations for informed and balanced decision making, not allow any extraneous considerations that will vitiate the objectivity and independent judgment of an independent director, not abuse his/her position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person and refrain from any action that would lead to loss of his/her independence.

The role and functions of an independent director as stipulated Schedule IV of the new Act include helping in bringing an independent judgment and view on the board's deliberations, scrutinizing the performance of management in meeting agreed goals and objectives and monitoring the reporting of performance, satisfying themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible, safeguarding the interests of all stakeholders, particularly the minority shareholders, balancing the conflicting interest of the stakeholders, determining appropriate levels of remuneration of executive directors, key managerial personnel and senior management and having a prime role in appointing and where necessary recommending removal of executive directors, key managerial personnel and senior management, moderating and arbitrating in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

The various duties of independent directors outlined in Schedule IV of the new Act are a more detailed version of the roles and functions as above and include undertaking appropriate induction and regularly updating and refreshing their skills, knowledge and

familiarity with the company, seeking appropriate clarification or amplification of information and where necessary, taking and following appropriate professional advice and opinion of outside experts at the expense of the company, striving to attend all meetings of the board of directors and of the board committees, participating constructively and actively in the committees of the board, striving to attend the general meetings of the company, in case of concerns about the running of the company or a proposed action, ensuring that these are addressed by the board and to the extent that they are not resolved, insisting that their concerns are recorded in the minutes of the board meeting, keeping themselves well informed about the company and the external environment in which it operates, not to unfairly obstruct the functioning of an otherwise proper board or committee of the board, paying sufficient attention and ensuring that adequate deliberations are held before approving related party transactions and assuring themselves that the same are in the interest of the company, ascertaining and ensuring that the company has an adequate and functional vigil mechanism, reporting concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy, acting within his/her authority, assisting in protecting the legitimate interests of the company, shareholders and its employees, not disclosing confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the board or required by law.

An interesting development in the UK listing rules for Controlled companies in which a single promoter owns at least 30% of voting power require that in a shareholder meeting, voting on independent directors is by majority of the minority shareholders with the promoter not casting any vote on these resolutions. If no approval is obtained, another meeting may be held within 120 days in which all shareholders can vote but this authority will be used judiciously and only in exceptional circumstances. However, it is important to note that all the power on independent directors does not lie with the minority shareholders and they are only bound to consider voting on resolutions of persons nominated by the Board, hence unlikely to cause a revolution.

Most Boards all over the world today, follow textbook standards for functioning with all the boxes ticked correctly but sometimes lacking in substance though perfect in form. There is a marked distinction between theory and practice and many a time independent directors are appointed for reputational reasons rather than proven ability though this is changing and will keep changing for the better as companies seriously cast a wide net to attract the best talent and not marquee names. The composition of the Board should reflect where the Board is going and not where it has been in the past. We are fighting the wrong battle if procedural rules are tightened and human elements underestimated. Critical requirements of the Board require fearless independence, constructive criticism and functioning of a team. The Act and the listing agreement has set the right tone, it is upto the Boards to make them effective. 



**Delep Goswami, FCS**

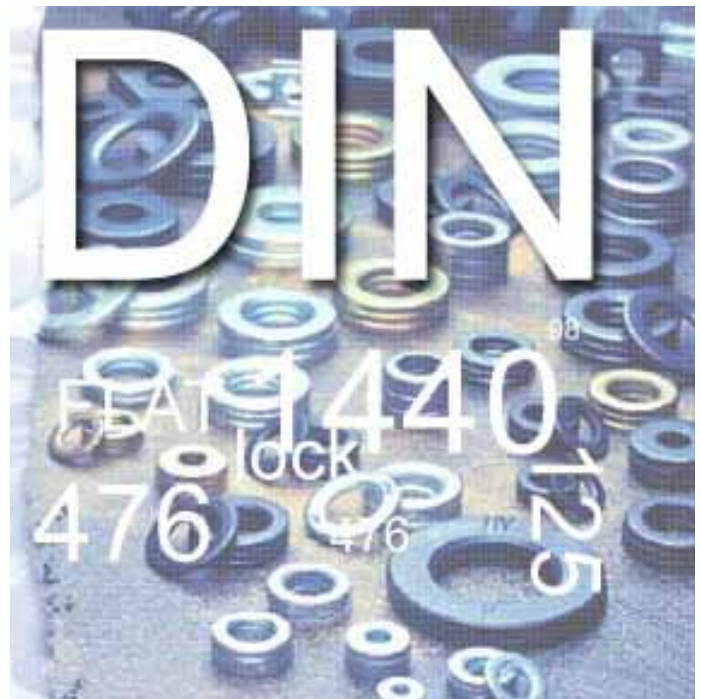
Advocate  
Supreme Court of India  
New Delhi

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

## 'DIN' For Director's Appointment Will Enable Tracking Accused Company Directors to Face Prosecution

- The mandatory requirement of every appointee director to obtain 'Director's Identification Number' (DIN) to be issued by the Central Government will help the regulating/prosecuting agencies, to identify and trace the company directors to face prosecution.

**T**he passing of the new Companies Act, 2013 ('the Act') and bringing into force a large number of provisions of the Act and the notification by the Central Government of relevant Rules framed under the Act have already energized the professional bodies like the Institute of Company Secretaries of India (ICSI); the Institute of Chartered Accountants of India (ICAI) and the Institute of Cost and Works Accountants of India (ICWAI) and all such professional bodies had been holding discussion meetings/seminars to apprise its members about the impact of the provisions of the new Act and how to comply with the same. Also, the regulatory bodies like the Registrar of Companies (ROC); the Securities and Exchange Board of India (SEBI) and the various Regional Directorates under the Ministry of Corporate Affairs (MCA) are gearing themselves up to the task of finding out whether the companies, be they listed or non-listed, comply strictly with the stringent provisions of the Act and its Rules. Already SEBI has issued amended listing guidelines for corporate governance norms to be fulfilled by the listed companies, highlighting, *inter-alia*, the role and responsibilities of the Independent Directors (ID) and the professionals associated with such companies are







➤ Seeking the vital information from the appointee directors is a pragmatic step because the prosecuting agencies often waste crucial time to obtain the bare details of the company directors whenever any mishap happens and/or where the company directors are to be prosecuted for offences committed by the company and to trace/track such directors to bring them to justice. Though this may not wholly eliminate the continuation of dubious promoters/directors who employ employees/officials to run the show from the front, even though the real control/beneficial interests may be exercised by such promoters through 'behind the scene'/through remote control devices.

busy with preparation of check-lists of compliances to avoid show-cause notice for non-compliance.

Further, taking into account the difficulties being faced by companies in complying with the new provisions of the Act, almost on a regular basis, the MCA had been issuing notifications clarifying the procedural requirements to be followed by the companies. Put together, all these seem to be a heavy burden for the company directors and the company professionals entrusted with the task of compliance. The pious hope is that strict compliance with the Act and the Rules will ensure good corporate governance and will prevent corporate frauds and will boost investor confidence and the Indian companies can enhance their image in the country and in the international markets. It appears that the provisions of the new Act and the Rules are being treated as a panacea of all corporate ills, but time only will tell how far this pious hope gets implemented in letter and in spirit.

While many seminars were/are being organised by the professional bodies to apprise their members about the changes in the Companies Act in 2013 and the new role and responsibility of the professionals, in almost all the professional journals and the economic dailies, critically analysed articles were published regularly about the provisions of the new Act and its Rules. These became very handy for the professionals and the corporate sector.

Simultaneously, many private practitioners and various chambers

of commerce and industry started voicing their serious viewpoints and apprehensions about the usefulness of many provisions of the new Act and the consequential difficulties in implementing the provisions of the new Act and Rules. They pointed out that the provisions of the new Act are too stringent, particularly for the private limited companies which are not subsidiaries of any public limited company and which have not availed of public finance and/or where the large body of public are not interested. Objections have also been raised about the compulsory appointment of woman director on the Board of certain companies. Objectors have also highlighted the non-availability of Independent Directors who could meet all the required parameters for such appointments. Objections have also been raised about the provisions in the Act about 'corporate social responsibility' (CSR) clauses and the compulsory spending required from the concerned companies. It has been pointed out that being a voluntary initiative, many companies have already been spending monies on socially relevant projects aimed at upgrading the quality and welfare of human life.

Recent newspaper reports also suggest that with the new Government in place at the Centre, is likely to be thoroughly review of the Companies Act, 2013 and objectionable provisions of the Act will be relooked and changed to give relief to the industry body. Though the new Act has incorporated provisions for setting up of Special Courts to deal with corporate offences, including 'corporate frauds' for which a new chapter has been included in the Act, the trade and industry bodies are seeking relief in the laws and regulations to shield/insulate company directors who are hauled up by the Courts under the provisions of the Indian Penal Code (IPC) on the allegations of cheating; breach of trust; fraud and deliberate hoodwinking of gullible public/investors through attractive schemes. It is a cause of concern that while the new Companies Act has enacted many stringent provisions to prevent corporate fraud and to penalise the brains behind such frauds and to bring to justice the real beneficiaries of such fraudulent activities, how proposed dilution of penal provisions of the new Act and in the IPC will help the investors and stakeholders and how it will boost investors' confidence in the corporate sector. Such exercises should not be undertaken lightly and in a hurry





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to please one segment of the society at the cost of large body of common people and hapless investors.

Though this article will not do detailed threadbare analysis of the various provisions of the Act relating to directors, which the listed and unlisted companies will have to comply with, yet, it will highlight some significant changes which will curb the escape route for the company directors, whom the prosecuting agencies would like to haul up for various non-compliances. **The mandatory requirement of every appointee director to obtain 'Director's Identification Number' (DIN) to be issued by the Central Government will help the regulating/prosecuting agencies, to identify and trace the company directors to face prosecution.** Though 'DIN' is not a new provision in the Companies Act, 2013, yet the changed provision in the new Act and its Rules seek relevant details of the directors and makes the applicant liable to prosecution for giving false, incorrect details and/or suppressing material information. With the important details of the directors which are furnished at the time of applying for 'DIN', it is hoped that the Central Government will not be handicapped for want of detailed information about those directors, who are ostensibly the persons in-charge of and responsible for the conduct of business and affairs of the accused/non-compliant company.

It is felt that seeking the vital information from the appointee directors is a pragmatic step because the prosecuting agencies often waste crucial time to obtain the bare details of the company directors whenever any mishap happens and/or where the company directors are to be prosecuted for offences committed by the company and to trace/track such directors to bring them to justice. Though this may not wholly eliminate the continuation of dubious promoters/directors who employ employees/officials to run the show from the front, even though the real control/beneficial interests may be exercised by such promoters through 'behind the scene'/through remote control devices. It is hoped that mandatory obtaining of information about promoter directors at the time of

formation of a company will exercise some curb on misuse of company form of organization by dubious promoters who carry on illegal, harmful and unhealthy activities.

With regard to the requirements of 'DIN', the Central Government has framed the 'Companies (Appointment and Qualification of Directors) Rules, 2014' which elaborately prescribe the Rules to be followed by the companies in appointing directors and the particulars to be furnished and the supporting documents to be filed with the Central Government by the appointee (proposed director). The Central Government has framed the said Rules by exercising powers under the second proviso to sub-section (1); clause (f) of sub-section (6) of Section 149; sub-section (3) and (4) of section 150; sections 151; 160 and sub-section (1) of section 168 and provisions of section 170 read with the provisions of Section 469 of the Companies Act, 2013. The law now mandates that no company can appoint a person as a 'director' on its Board who has not been allotted a Director's Identification Number (DIN) and for applying for DIN, the Central Government has prescribed Form DIR-3, which require the applicant director(proposed appointee) to furnish his full name; father's name; (in case of married woman applicant, in addition to husband's name, the name of her father is required to be given); the nationality of the applicant; whether resident in India or not; occupation; educational qualification; date of birth; gender; place of birth; Income-Tax Permanent Account Number details; voter identification card number; passport number; driving license number; Aadhaar Card number; details of permanent residential address – phone number, mobile number; fax number; e-mail; and whether the permanent residential address and the present residential are the same or not. The applicant has to be file documents on proof of identity and proof of residence and has to vouch that the particulars furnished and the documents attached to the application form are true, correct and complete and that no material information has been suppressed. The applicant has also to vouch and will have to agree that the applicant will be liable for action under section 449 of the new Act for any wrong

certification, if found at any stage, which will also make him/her liable for penal action under sections 448 and 449 of the new Act. Any person accepting the position of a director in any company will henceforth be required to understand and appreciate that the position of 'company director' is not merely decorative, but entails huge responsibility and utmost diligence, care and caution is required to be exercised in fulfilling such a role. Since the activities of companies impact virtually all the stakeholders and since companies usually use the natural resources of the nation, the companies, which act through the directors, owe a duty to the society at large to account for every action taken in the name of the company and no negligence, fraudulent manipulation and illegality can be allowed.





➤ In a criminal proceeding against the accused director, the Court has no power to grant relief from civil liability incurred by the accused. Where a director apprehends that he may be hauled up in a court, he can then apply to the High Court for relief under Section 463(2) of the Act. However, before granting relief, the High Court will give notice to the Registrar of Companies to show cause why such relief cannot be granted.

Under the aforesaid Rules, the Central Government has the power to call for further information from the DIN applicant and it may ask him to rectify the defects/inaccuracies noticed in the application. If these details are not furnished, the application for DIN may even be rejected. Rule No.6 of the said Rules stipulate that the DIN allotted to an applicant under the Rules is valid for the life-time of the applicant and shall not be allotted to any other person. Further, Rule 11 of the said Rules provides for cancellation or surrender or deactivation of DIN by the Central Government, where the DIN is found to be duplicated in respect of the same person, and the data related to both the DIN can be merged with the validly retained number; or the allotted DIN can be cancelled where it is found that the DIN was obtained in a wrongful manner or by fraudulent means; or on the death of the concerned individual; or where the concerned individual has been declared as a person of unsound mind by a competent Court; or if the concerned individual has been adjudicated an insolvent. By way of explanation, the said Rules make it clear that the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation; and that the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

Section 156 of the Act stipulates that every existing Director, within a period of 30 days, of receipt of his DIN shall inform the same to the company concerned or companies where he is a director. Section 157 of the Act stipulates that every company shall, within 15 days of receipt of intimation under section 156 of the Act about the DIN of all its directors shall furnish to the Registrar of Companies the said particulars with the prescribed fee. Failure to furnish such particulars within the stipulated period will make the company liable for fine which may range between Rs.25,000/- to Rs.1,00,000/-. Again, section 158 of the Act stipulates that every

person or company while furnishing any return, information or particulars required to be furnished under the Act, shall mention the DIN of directors in such return, information or particulars. Section 152 of the Act regarding appointment of Directors, provides, *inter-alia*, that no person shall be appointed as a director of a company unless he has been allotted the DIN under Section 154, which mandates the Central Government to allot the DIN within one month of receipt of the application for DIN under section 153. Section 155 prohibits obtaining more than one DIN. It is worth noting that Section 159 of the Act stipulates that if any individual or director of a company contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable for punishment with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.50,000/- and where the contravention is a continuing one, with further fine which may extend to Rs.5,000/- for every day after the first during which the contravention continues.

Rule 12 of the said Rules stipulates that every individual who has been allotted a DIN under the aforesaid rules shall, in the event of any change in his particulars as stated in his application for DIN intimate such change(s) to the Central Government within a period of thirty days of such change(s) in the prescribed form and fill in the relevant changes, attach copy of the proof of the changed particulars and that the same be verified in the prescribed form, all of which shall be scanned and submitted electronically; and that the said form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice. The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained







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by the MCA. The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it to the concerned Registrar of Companies (ROC) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

Section 164 of the Act stipulates disqualifications for appointment of directors and clause (h) of sub-section (1) of the said section states that the appointment of a person who has not been allotted a DIN will be treated as a disqualification. Rule 14 of the aforesaid Rules stipulates, *inter-alia*, that whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164 of the Act, the company shall immediately file Form DIR-9, to the Registrar of Companies furnishing therein the names and addresses of all the directors of the company during the relevant financial years. When a company fails to file the Form DIR-9 within a period of thirty days of the failure, that would attract the disqualification under sub-section (2) of section 164 and the officers of the company specified in clause (60) of section 2 of the Act shall be the 'officers in default'. Upon receipt of the Form DIR-9 the ROC shall immediately register the document and place it in the document file for public inspection. Any application for removal of disqualification of directors shall be made in Form DIR-10.

Section 166 of the Act defines the duties of directors, which stipulate, *inter-alia*, that a director of a company shall act in good faith in order to promote the objects of the company for the benefit of members as a whole and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment. The said section further stipulates that a director shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment and that a director shall not involve in a situation in which he may have direct or indirect interest that conflicts or possibly may conflict with the interests of the company. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or the relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay to the company an amount equal to that gain. It is the duty of every director to ensure that the annual accounts of a company are prepared, audited and that the annual returns are prepared in accordance with section 92 of the Act and filed with the ROC in accordance with the law. Contravention of provisions of the said section will entail fine ranging between Rs. 1 lakh to Rs.5 lakhs. Section 134 of the Act stipulates that it shall be the duty of the Board of Directors (BOD) of a company to prepare, for disclosure to shareholders, a Financial Statement including consolidated financial statement, if any and such a statement shall be approved by the BOD before they are signed on behalf of the Board by the Chairperson of the company where he is authorised

by the Board or by two directors, out of which one shall be the Managing Director and Chief Executive Officer, if he is a director of a company; the Chief Financial Officer and the Company Secretary for submission to the Auditors for their report thereon.

The circumstances in which the office of a director shall stand vacated are enumerated in section 167 of the Act. Section 195 of the Act prohibits indulging in insider trading. It is worth noting that so long as the directors exercise due diligence, care and caution in performing their duties, they incur no personal liability. In this regard it is important to note that as per section 149(12) of the Act, a non-executive director including an independent director or nominee director will be held liable and accountable only in respect of such acts or omission or commission by a company which occurred with his knowledge and can be attributable to the Board processes and with his consent or connivance or where he had not acted diligently.

For directors who perform their duties diligently, section 463 of the Act provides some relief. Section 463(1) stipulates that in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company (which includes director), if it appears to the Court hearing the case that the accused person has acted honestly, reasonably and diligently, then the Court can grant him relief as it may deem fit and proper. However, in a criminal proceeding against the accused director, the Court has no power to grant relief from civil liability incurred by the accused. Where a director apprehends that he may be hauled up in a court, he can then apply to the High Court for relief under Section 463(2) of the Act. However, before granting relief, the High Court will give notice to the Registrar of Companies to show cause why such relief cannot be granted.

## CONCLUSION

Since heavy and onerous duties are cast on company directors to perform in accordance with the laws and regulations and since non-compliances result in imposition of fine and even imprisonment, the company director's position ought to be accepted after due consideration and deliberation. By virtue of their unique position on the company's Board, the directors can have access not only to the in-house legal help, but can even seek outside legal help and assistance, wherever necessary and thus they need not feel helpless in performing their duties diligently. When hauled up in a court of law, since it becomes very difficult to get automatic relief from the court without going through the process of trial (which is always tedious, cumbersome and lengthy), the directors can and should avoid that stage to come and should exercise vigil, care, caution and diligence in performing their duties in ensuring good corporate governance. This brings the importance of in-house training facilities for the company directors and in this regard the ICSI and its experienced members in the profession can be of great help.

CS



**N. L. Bhatia, FCS**

NL Bhatia & Associates  
Practising Company Secretaries  
Mumbai

[navnitlb@hotmail.com](mailto:navnitlb@hotmail.com)

**Dhrumil Shah, ACS**

Practising Company Secretary  
Mumbai

[dhrumil@dmshah.in](mailto:dhrumil@dmshah.in)

# Impact of The New Rules Under Companies Act, 2013

- Unlike the Companies Act, 1956, the new Act contains basically the substantive provisions only, relegating the procedural provisions to the rule making powers of the Executive. The Government has by now put in place a plethora of rules to support the substantive provisions. The impact of the Rules are critically examined here.

## INTRODUCTION

**T**he Companies Act, 2013 was passed by Lok Sabha on 18th December, 2012, and by the Rajya Sabha on 8th August, 2013 and 98 sections were notified on 12th September, 2013. Finally on 1st April, 2014 most of the other Sections were notified except certain sections under chapters relating to inspection, inquiry and investigation; compromise, arrangements and amalgamations; prevention of operation and mismanagement; registered valuers; removal of names of companies from the register of companies; revival and rehabilitation of sick company; winding up; winding up by the tribunal; voluntary winding up; provisions applicable to every mode of winding up; official liquidators; companies authorized to register under this act; national company law tribunal; special courts.

Companies Act 2013 has replaced the more than six decades old Companies Act of 1956. In doing so the Parliament has compressed many scattered provisions under the old Act and consolidated the same by deleting obsolete provisions. As a result, the new Act has 470 Sections under 29 Chapters and seven Schedules as against 658 sections under 12 Chapters and fifteen Schedules of the 1956 Act. In the process, the Parliament

has moved away from the old format of retaining substantial and procedural provisions in the statute. It has retained only substantial powers in the Act and procedural matters have been transferred to delegated rules. Thus more than 70 per cent of the provisions of the statutes would be dealt by the Government without seeking prior approval of the Parliament. Thus they have adopted a new approach of retaining substantial provisions in the Act and delegating the procedural aspects to the Rule making body. The





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procedural aspects would be easy to modify to keep pace with the fast changing economic and other requirements. These rules shall be laid before each house of Parliament, while in session for a total period of 30 days.

## DRAFT RULES

One of the unique features of Rules under the Act is that draft rules were kept open for public comments. While finalizing the draft rules the Government has taken into consideration the views of Industries Associations, Professional bodies and Institutions. The above system has helped in modifying various draft rules while finalizing the same. Some of the important features are discussed herein.

### a. Relatives:

The definition of related party in the draft rules was very wide and unwieldy for practical operations this would be clear from the comparison of two definitions in the draft and final rules.

Draft Rules	Final Rules
List of relatives	"Relative" with reference to any person, means anyone who is related to another, if-
For the purposes of sub-clause (iii) of sub-section (77) of section 2, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner:	i. They are members of a Hindu Undivided Family;
(1) Spouse	ii. They are husband and wife; or
(2) Father (including step-father)	iii. One person is related to the other as per following list.
(3) Father's father	(1) Father: Provided that the term "Father" includes step-father.
(4) Father's mother	(2) Mother: Provided that the term "Mother" includes the step-mother.
(5) Mother (including step-mother)	(3) Son: Provided that the term "Son" includes the step-son.
(6) Mother's mother	(4) Son's wife.
(7) Mother's father	(5) Daughter.
(8) Son (including step-son)	(6) Daughter's husband.
(9) Son's wife	(7) Brother: Provided that the term "Brother" includes the step-brother;
(10) Son's son	(8) Sister: Provided that the term "Sister" includes the step-sister.
(11) Son's daughter	
(12) Daughter (including step-daughter)	
(13) Daughter's husband	
(14) Brother (including step-brother)	
(15) Sister (including step-sister)	

In the draft rules the list of relatives was very wide covering 17 relatives including HUF and the spouse. The draft Rules covered relatives spread over 5 Generations. In the Final Rules the relatives had been limited to three generations. In the old system of Joint Hindu Family relative used to reside under one roof. With the globalization and growth of job opportunities in cities the relatives are widespread and Joint Hindu Families had been substantively replaced by unit family as a result one brother does not know what the other brother is doing, not to speak of brother in laws and sister in laws. In the process directors and Key managerial personal were finding difficult to ascertain the interest of relatives in holding or subsidiaries companies.

As a matter of fact only dependent parents and dependent children could be legitimately included in the List of Relatives, in which case the head of the family is aware of the transaction. The matter gets complicated when such details are asked from Foreign Directors.

### b. Related Party

A Related Party definition under section 2 sub clause 76

A Public Company in which a director or manager is a director and holds along with his relatives more than 2% of its paid up share capital (the word "or holds" has been changed to "and holds" by Company's 1<sup>st</sup> (Removal of Difficulties) Order, 2014. Thus a Public Company does not become its related party merely because there is a common director. This difficulty was removed by the Ministry after Public comments and practical difficulties faced by Corporate World.

### c. Difficulties in Incorporation

The incorporation process has been made more complicated and costly. This results in delay of incorporation of Companies which is found more painful when foreign national want to incorporate Company in India. According to World Bank Report incorporation in advanced countries is carried out in one day where as in India it takes 25 to 30 days. Therefore, there is an urgent need to re-visit the incorporation procedure and simplify the same. According to new procedure for filing forms resubmission is allowed only once, whereas, under the old Act resubmission was not limited to one time only.

## ACCEPTANCE OF DEPOSIT

Under the 1956 Act, acceptance of deposits from members, directors or their relatives could be done without any regulatory compliance. Under section 73 of the 2013 Act, a private company is required to undergo lot of formalities before accepting any deposits from its members also. It also has become costly even as compared to bank deposits. By a recent circular the MCA has clarified that insurance cover for deposit is not required. However, the following two suggestions deserve consideration:



➤ The incorporation process has been made more complicated and costly. This results in delay of incorporation of companies which is found more painful when foreign national want to incorporate Company in India. According to World Bank Report incorporation in advanced countries is carried out in one day where as in India it takes 25 to 30 days. Therefore, there is an urgent need to re-visit the incorporation procedure.

1. Under the Act the company is required to create deposit repayment reserve account and deposit 15% of deposits maturing during immediately two years with any schedule bank. Thus in aggregate a company is required to deposit 30 per cent of deposit maturing in the immediately two years. (Current Financial Year and the next financial year). Further, the amount so deposited shall not be utilized for any purpose other than for repayment of deposits. The 15% deposit be restricted to only deposits maturing during the year. This will reduce the cost of acceptance of deposit.
2. The eligibility criteria for public companies to accept deposit be reduced from net worth of 100 Crores rupees to Rs. 50 Crores and turnover of Rs. 500 to Rs. 250 Crores. Further, the track record of the company in repayment of deposit and interest may be taken into consideration while reducing the eligibility criteria. For example there are many companies which have been resorting to public deposits and honouring their commitments for repayment of deposit and interest thereon without any default, such companies would be put to sever financial constrains.

## PARTICIPATION IN BOARD AND GENERAL MEETINGS

Most of the private companies are two member companies comprising of husband and wife as directors and members. Such couples also create other private companies. In their dealings between two such companies, the restriction imposed by Section 184 of the Companies Act, 2013 for passing board and general meeting resolutions has brought many such transactions to a deadlock, even in cases where there are only two directors and one of the directors is interested in a transaction, the transaction shall not be possible, in as much as related parties are prohibited from participating in a discussion and voting on the resolutions. As a result, such companies have to induct outside person both as a director and shareholder. Such inducted persons who carry 0.1 per cent of the shares of the company pass resolutions in

respect of material transactions. This has created unprecedented complications for private companies which are unconnected with any promoter group.

The concept of related party could be validly applied in the context of companies where there are both related and unrelated directors / members. In public listed companies there are promoters' group shareholders and minority shareholders. There such a concept could properly be applied for listed companies. Thus, there is a need for grant of relief to private companies.

Earlier under section 300 (2) of the Companies Act, 1956, the Directors in Private Limited Company were not debarred from taking part in discussion and voting and not excluded for the purpose of quorum in respect of resolution in which they are interested. Now under Rule 15 of Chapter XII of Companies Act, 2013 the directors of Private Limited Company shall not be present at the meeting during the discussion on subject matter in which they are interested.


## ORDINARY BUSINESS AT AGM

Under the 1956 Act, ordinary business was reserved for deliberation at the Annual General Meeting. Under the 2013 Act even ordinary business like adoption of accounts, retirement of directors, declaration of dividend and appointment of Auditors have been subjected to E-voting, thereby the seriousness of Annual General Meeting have been considerably reduced.

## RETIREMENT OF DIRECTORS BY ROTATION

Under the 2013 Act, Independent Directors are not liable to retire by rotation. Further, Managing/ Whole time Directors are appointed for a term of 3-5 years. Therefore, in many instances confusion prevails in applying the rule of two thirds Directors retiring by rotation. In some critical cases, the managing / whole time director, who was appointed for a term of three years is required to be retired, which may tantamount to break in service. Thus there is an urgent need for clarification in this matter.

## CONCLUSION

The Companies Act, 2013 appears to have been enforced in haste. Many provisions require review and reconsideration. Even the matter of general meeting, e-voting and deliberation at the meeting is full of controversy and pending before the Bombay High Court. In a short span of less than three months MCA has issued about 16 Circulars, 6 Notifications 4 removals of difficulties Order. Another area where difficulty is experienced relates to frequent revision of prescribed forms resulting in delay in submission / resubmission. The need of the hour is to urgently bring an end to controversial issues in consultation with professionals and corporates. 



J. Krishnamurthy, FCS

Hydrabad

*Krishnamurthy.janga@gmail.com*

## The Companies Rules 2014: A Critique

- Subordinate or delegated legislation lays out the road map for proper implementation of an enactment by a State or the Centre. The delegated legislation sub-serves the objectives behind the main legislation and remains within the broad framework of the main or parent Act. Else, it is liable to be struck down by courts as invalid. The new company rules notified by the Ministry of Corporate Affairs recently are subjected to a critical evaluation from the perspective of the company secretaryship profession.

**N**ever before in the annals of the corporate sector has there been a more piquant situation than the recent one that followed the new legal regime in MCA with its notification of most of the sections of the Companies Act 2013 (the Act) and Final Rules there under in the last week of March 2014 which took effect from 1<sup>st</sup> day of April 2014 unleashing a spate of controversies with underlying discontent, disbelief and anxiety of certain sections of the society – especially the company secretaries who were hit harder.

Over 25000 company secretaries and over 3 to 4 lakh students of company secretaryship course became gloomy about their employment and public practice in particular and future prospects in general necessitating their professional body ICSI to make a number of representations to MCA and the Union Minister for Company Affairs for a review of the Rules with a view to allaying their fears and restoring their future prospects under the new law.

It is proposed to analyse and evaluate the vital issues involved in the record of compliance by MCA with the said Code of the Government of India for drafting and issuing subordinate legislation since much of the misery experienced by sections of society or the public due to hurried finalisation of the draft Rules without due consultation with the affected stakeholders with a view to hitting the self-imposed deadline of 1<sup>st</sup> April 2014.







## SUBORDINATE OR DELEGATED LEGISLATION: VITAL STEPS AS PER GOI CODE

Subordinate or delegated legislation lays out the road map for proper implementation of an enactment by a State or the Centre. The delegated legislation sub-serves the objectives behind the main legislation and remains within the broad framework of the main or parent Act. Else, such legislation is liable to be struck down by courts as invalid.

Chapter 11 of the Government of India (GoI) Manual of Procedure details the steps to be followed by a Ministry in framing Rules under an enactment of Parliament a synopsis of which is given below:

- (a) While publishing the draft Rules in the Gazette and newspapers, it shall send registered letters to all those likely to be affected by such Rules inviting their comments in order to ensure that the legitimate interests of any persons or section of the public are not unduly or adversely affected.
- (b) If the suggestions or comments received are large, final rules may be notified by taking as much as six (6) months from the date of receiving the public comments. An extension of three (3) months has been provided for in special cases, with the permission of the Minister.
- (c) Final draft rules are to be tabled in the Parliament for information and scrutiny of any member of the Parliament who may propose an amendment thereto. Such amendments made by members in one House of the Parliament are communicated to the other House by the LS/RS Secretariat.
- (c) The Parliament's Committee on Subordinate Legislation scrutinizes all such amendments and submits a report of its recommendations to the Minister for Parliamentary Affairs who in turn examines the same and, after approval by the House, forwards them to the Department concerned for taking further action promptly and to submit an "Action taken report" to the Lok Sabha and Rajya Sabha Secretariats.

## ADDITIONAL GENERAL TENETS

In addition to the above administrative steps, the delegated legislation has to satisfy the following general or basic principles to remain acceptable to one and all to become implementable by the users/compliers :

First and foremost, it should be a friendly guide to the users or compliers which requires the rules and forms to be simple, straight-forward, lucid, transparent and easily understandable. Accordingly, each Rule and Form should bear reference to the number of the source-Section or Sub-Section or the Proviso from which the Rule or the Form has emanated.

Second, the Rules must be confined to the ambit of the letter and spirit of the Section and no attempt should be made to transgress such boundary limits (like the proverbial lakshman rekha). The Rule or the Form should not become more onerous or rigorous or unhelpful than the parent Section itself. The Rule should not become new or additional legislation altogether.

Third, the Rules must conform to the principles of natural justice and underscore the overall Public good which, ultimately, any legislation should uphold. A humane touch is a must.

Fourth, the Rules must reflect the good faith that the Parliament has reposed in the Executive for issuing subordinate legislation. For example, Rules should have been well-thought out, well-discussed with the stakeholders which automatically means that there shall be no hurry in finalizing the draft Rules until the views of all the stakeholders have been considered in depth and a satisfactory solution has been arrived at acceptable to all.

Fifth, the Rules should be consistent inter se and be in harmony, as far as possible, with other applicable Rules of the same and allied enactments applicable to the user.

Sixth, the Rules should pass the test of reason and relevance of the day at all times which means that they need to be kept updated periodically which is a basic purpose of subordinate legislation.

## ADDED SIGNIFICANCE OF THE COMPANIES RULES, 2014

The Companies Rules 2014 have gathered additional significance due to certain special factors underscoring it, such as (a) a 'more-than-usual' part of the Companies Act 2013 including several sensitive subjects have been entrusted to the care of the Executive (MCA) to detail and prescribe judiciously by way of Rules, Forms, Notifications etc in order to keep the law abreast of developments over time without having to amend the law in the Parliament frequently. MCA has thus been charged with a trustee-like responsibility which MCA should discharge with great care and distinction winning the approbation of all concerned. This responsibility assumes a tad higher significance when it is realized that MCA shares the overall vision of the country to become a Developed Nation by 2020.

## OBJECTIVE EVALUATION OF THE COMPANIES RULES 2014

MCA has no doubt bestowed great care and attention to detail in drafting and finalizing the Companies Rules & Forms but, perhaps due to its haste and hurry, some unintended but serious lapses and errors have crept into some of the Rules taking a heavy toll of MCA's image in the eyes of the public. Viewed against the combined criteria afore mentioned the Companies Rules 2014 (the



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➤ The removal of the requirement of pre-certification of eforms has seriously clipped and curbed the growing public practice of young company secretaries who have been aiding the growth of good corporate governance in the country. MCA should take urgent steps to rectify these unintended or unforeseen hardships in consultation with the statutory bodies like ICSI. By and large the *status quo ante* should be restored soon.

Rules) may be said to suffer from some the following infirmities that have caused mental agony to some vulnerable sections of society, namely the company directors, industrialists, businessmen or the professionals in general and the company secretaries in particular.

The drafts initially released by MCA for public comment were well received and responded to by one and all. However, the revisions made in the rules were not made public in a similar way for public comments, especially since the revisions were very different from the earlier drafts. It is surmised that this may have resulted from MCA's hurry to meet their internal deadline of 1<sup>st</sup> April 2014.

Failure to interact with even a statutory body like the ICSI has caused widespread dismay, discontentment, displeasure, even anger among the company secretaries, justifiably. This article examines and analyses the issues involved with a view to finding a road map for MCA to consider and move forward.

## HURRIED ENACTMENT OF FINAL RULES AND FORMS

Measures like the following, namely (a) the doubling of the threshold limits for mandatory appointment of CS (doubling the threshold of paid-up capital limit ( for appointment of company secretaries) from the erstwhile Rs. 5 crore to Rs. 10 crore which of course has now been restored to Rs. 5 crore) (b) omission of Private Companies (which form a whopping 90 to 95 per cent of the company population from the scope of such mandatory requirement ( this too has since been amended to restore the position that obtained prior to the Rules) and (c) removing the requirement of pre-certification of e-forms seriously affected the present and future prospects of over 30000 qualified Secretaries and over 4 lakh CS student population.

Careful consideration of such changes in consultation with the

affected stakeholders (at least with bodies like ICSI, CII etc) would have had the twin benefits of avoiding the introduction of controversial rules but also enhanced the reputation of MCA as a responsible Ministry worthy of the trust placed by the Parliament.

The removal of the requirement of pre-certification of eforms has seriously clipped and curbed the growing public practice of young company secretaries who have been aiding the growth of good corporate governance in the country. MCA should take urgent steps to rectify these unintended or unforeseen hardships in consultation with the statutory bodies like ICSI. By and large the *status quo ante* should be restored soon.

The salutary introduction of gradual professionalism in the country's corporate management, (journey of which commenced as far back as in 1970 with the abolition of a century-old managing agency system and induction of qualified professionals) may be said to have been derailed with the above measures taken by MCA.

Some of the Rules have repeated the provisions of the section(s) pursuant to which they have been framed. For example, Rule 34 repeats the contents of section 17.

Rule 4 of Companies Appointment and Qualification of Directors) Rules requires vacancies among IDs to be filled up by the Board within 3 months while the Act requires the appointment of ID only by general meeting, within six months which is also in sync with the listing agreement. MCA must solve this riddle soon. MCA may also explain why the name of ID's spouse, her/his PAN, mobile numbers are required to be uploaded on the websites, causing erosion of privacy.

Rule 7 (vide Sec.151) regarding Small Shareholders' Director (SSD) does not clarify whether the deposit of Rs. one lakh prescribed in section 160 (1) needs to be deposited by the small shareholders proposing a person for appointment as SSD.

Rule 16 (vide section 168) requires the resigning director to file copy of his resignation with reasons for resignation. However, Rule 9 that requires intimation to RoC about appointment of director does not require reason for appointing him/her as a director. Either rule needs to be amended for a uniform rationale.

No guidance has been provided for the method to be followed for evaluation of the performance of IDs (sections 149 & 150) or for making self-evaluation of its performance by the Board (Sec.134)

Rule 3 of the Companies (Management & Administration) Rules should clarify/confirm that maintenance of the Register of Members by the RTA shall be in compliance with the said Rule and that no authentication is required of entries in the registers maintained in electronic form, since it is system-generated.

Blanket prohibition in Rule 4 of Companies (meetings of Board and its powers) Rules for the items of business listed therein being transacted at board meetings held in video mode. This should be



➤ By framing the Rules Chapter-wise, instead of Section-wise as under the 1956 Act, references to the relevant Section or Sub-section etc. have been omitted to be given in the Rule or in the Form causing considerable confusion to the users or compliers. The provision of *non-obstante* clauses in many of the Sections have added to difficulties in understanding the rules and forms. The novel method followed by MCA under the Companies Act 2013 has rendered the present rules and the forms unclear and unfriendly to the users and compliers.

relaxed where there is physical presence of quorum at the main (physical) venue of the meeting. Video board meetings should be allowed to be held anywhere in the world to reap the benefits of such facility. Except very important items like consideration and approval of audited annual accounts, reviewing performance of directors and the board etc boards should be allowed to transact other business at video meetings to the extent advantageous to the company.

Rule (vide section 173) regarding video board meetings, requires the company to "record the proceedings and prepare the minutes of the meeting". MCA should clarify that the 'proceedings' here pertain only to the summary of decisions including the assent or dissent of the participating directors and not to the detailed proceedings of the meeting.

Rule 22(4) (vide section 110) re: postal ballot requires the notice of postal ballot to be placed on the website of the company, thus implying the maintenance of a mandatory website. This should be made optional.

Business transactions entered into by a company in its ordinary course of business and which do not carry any conflict of interest (being at arms-length) are exempt from the requirements of board resolution or special resolution mentioned in section 188 (1). However rule 15 of Companies (Meetings of Board and its powers) Rules has taken away this exemption for transactions in companies having a paid-up capital of Rs.10 crore and more which is clearly a breach of the section. This breach must be rectified soon. The paid-up capital limit also needs to be increased to, say, Rs.50 crore. Further, Private companies may be exempted from the requirements of the Rules. Furthermore, item 2 of Form AOC2 seeking details of transactions at arm's length basis is a negation of the third proviso to sub-section (1) of section 188.

Rule 3 (vide section 139) re: appointment of auditors: In the Explanation to Rule 3 it may be clarified that an auditor whose appointment has not been ratified by the AGM ceases to hold office as auditor *ipso facto* at that AGM and that the casual vacancy be filled by the Board on the lines provided in sub-section (8) of section 139.

In rule 3 of Companies (Declaration and Payment of Dividend) Rules the word 'adequacy' should be changed to 'inadequacy'.

## INCONGRUITY OR INCOMPATIBILITY OF THE (FINAL) DRAFT RULES WITH THE FINAL RULE

Many of the measures mentioned above have also rendered the Final Rules to differ altogether from the immediately preceding final draft Rules, in many crucial areas. Examples include: (a) doubling the thresholds of capital detailed at Para 4.2 (a) above; and (b) wide variation in the threshold limits in the final Rule 4 of the Companies (Appointment and Qualification of directors) Rules in respect of the appointment of IDs – capital limit of Rs.100 crore or more and outstanding loans limit of Rs.200 crore or more in the draft Rules have been changed to Rs. 10 crore or more and Rs.50 crore or more respectively in the Final Rules.

## SACRIFICE OF TRANSPARENCY/CLARITY

By framing the Rules Chapter-wise, instead of Section-wise as under the 1956 Act, references to the relevant Section or Sub-section etc. have been omitted to be given in the Rule or in the Form causing considerable confusion to the users or compliers. The provision of non-obstante clauses in many of the Sections have added to difficulties in understanding the rules and forms. The novel method followed by MCA under the Companies Act 2013 has rendered the present rules and the forms unclear and unfriendly to the users and compliers. This difficulty is likely to be felt even by the judiciary in following matters of cases before them.

For example, *non-obstante* clause in section 139 (6) does not require a return of appointment of first auditor to be filed with RoC since the requirement of appointment return under sub-section (1) of section 139 is not applicable to appointment of first auditor. This position is not however clear from the prescribed rules and forms. As a result, many companies have filed Form ADT 1 for appointment of first auditor (in the absence of reference to Sections and sub-sections on the form). This should be clarified soon.

Being aware that no clear procedure exists in section 139 to be followed by a company when an AGM does not ratify the appointment of an auditor as required by sub-section 139 (1), MCA states in Rule 3 (7) of Companies (Audit and Auditors) Rules 2014 that 'the procedure laid down in this behalf in the Act may be followed'. If MCA considers that non-ratification results in a "Casual vacancy" in the position of the auditor, it should clearly



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state so and guide the user to follow the procedure of filling the casual vacancy.

Expressions used in the Act and in the Rules like 'joint venture' (section 230), 'regulated' (section 230) 'other benefit' and 'effect of compromise' (section 232) 'persons affected by the scheme' (section 233) 'other reason' (section 236), 'continuous experience', 'financial valuation', 'technical valuation', 'other professional bodies' (section 247) 'sick company' (section 253), 'financial asset' (section 254).

Rule 5 (1) of Companies (Management and Administration) Rules must clarify soon whether share transfers need to be considered and approved only by a committee of directors and not by a committee of senior company executives (and ratified by the Board) as was the case under the 1956 Act.

## FORFEITURE OF FAITH IN THE EXECUTIVE

This is yet another fall-out from the adverse measures taken by MCA mentioned above which include sub-ordinate legislation going beyond the principal or main legislation, in letter and/or spirit.

Many of the measures including unauthorized creation of new multiple layers/classes of companies based on capital, turnover borrowings etc, seeking particulars in Rule 5 (1) of Companies (appointment and remuneration of managerial personnel) Rules to be given the Directors' Report beyond the scope of section 197 (12), unwarranted and unjustified restrictions on unlisted companies (with no public borrowings) to give loans to interested concerns for business purposes in section 185 have led to a sort of loss of confidence and faith of the corporate industry in the government as is evident from the lengthy memoranda submitted by apex bodies like the CII etc to the Government recently seeking large-scale changes both in the Act and in the Rules, at an early date.

## NEW LAYERS/ADDITIONAL CATEGORIES OF COMPANIES CREATED BY MCA THROUGH THE RULES

The Companies Act has created enough number and categories and classes of companies, namely, (a) Limited and Unlimited by shares/guarantee (by nature and extent of liability), (b) Private, Public, OPC, Small (by size of capital or turnover and extent of public exposure) (c) Subsidiary, Holding, Government Company etc (by control), (d) Investment company (by objective) (e) Foreign company (by location) (f) Listed and Unlisted companies (by liquidity or marketability of shares) etc. The authorization given to the Government "to prescribe rules" in section 139 (2) is limited to the Government prescribing one or more of the class or classes of companies already created by the principal statute and not to make new legislation by creating furthermore new classes or types of companies based on additional criteria of turnover, public

deposits, borrowings etc as has been done by MCA in several rules including Rule 5 of the Companies (Audit & Auditors) Rules 2014.

Such drastic changes have violated the most important core principle of delegated legislation, namely the final draft being near-compatible with the Final Rules except to the extent of mutually agreed changes with stakeholders. Else, the Final rules may be open to judicial scrutiny, or even the Parliament's scrutiny.

## CORRECTIVE MEASURES REQUIRED

The MCA may like to take steps to retract its steps (as has been done to restore the paid-up capital limit at Rs. 5 crore for appointment of company secretaries) and rectify the unintended faults or omissions in the Final Rules at an early date in order to restore public confidence in MCA.

**The corrective measures to be taken by MCA include the following:-**

- (a) Reintroduction of pre-certification of e-forms.
- (b) Certification for annual return under section 92(2) in respect of companies with at least Rs.5 crore paid up capital or Rs.25 crore turnover.
- (c) Secretarial audit made applicable to all those companies which are subject to internal audit.
- (d) Clarifying that, where an AGM has not ratified the appointment of an auditor, the vacancy will be a casual vacancy under section 139.
- (e) A body corporate and a foreign citizen in India may also form an OPC.
- (f) Permit shifting of registered office after completion of action pursuant to inquiry, inspection or investigation.
- (g) Change of name to be permitted after rectification of defaults mentioned in Sec.13. In case of shift of registered office from one State to another, the affidavit required regarding 'no retrenchment of employees' should be confined to stating that the relevant provisions of the applicable labour legislation would be complied with.
- (h) Rule 17 (vide section 17) should be dropped as the rule repeats the contents of section 17.
- (i) Rule 3 (vide section 2) may be deleted since Sec.149 (6) (c) takes care of the independence of IDs.

Salutary measures as above, when taken by MCA, will ensure not only the achievement of the objectives of the Act but also gain the goodwill of the user-public. Such implementation will promote enlightened self-regulation by the companies contributing to better corporate governance.

CS





**Narendra Singh, FCS**

Company Secretary  
Essel Mining and Industries Limited  
Kolkata

[narendra.singh@adityabirla.com](mailto:narendra.singh@adityabirla.com)

# Rules relating to Loans, Guarantees & Security: Procedural aspects and Disclosures

- The law relating to giving of loans and providing guarantees and security by companies in relation to loans as contained in the Companies Act, 2013 are substantially different from the provisions of the old Act. The procedure relating to the loans and guarantees/security as contained in the new Act and the new Rules are narrated here.

## PREAMBLE

**P**ost enactment of the Companies Act, 2013 ('the Act'), there were lot of deliberations around provisions dealing with loans, guarantees or providing security in connection with a loan made to any other body corporate or person. The law relating to loans, guarantees etc., is contained in Section 186 of the Act (corresponding to section 372A of the Companies Act, 1956) and the Companies (Meetings of Board and its Powers) Rules, 2014, which are effective from 1<sup>st</sup> April, 2014.

Earlier, the provisions relating to loans, guarantees etc., were not applicable to pure private companies. Further, as per the Companies Act, 1956, holding company was permitted to give interest free loan to its wholly owned subsidiary company ('WOS').

As there are substantial changes in the provisions dealing with



\*The views expressed in this article are solely the views of the author and do not reflect in any way the views of the Company/or the Group where he is employed.





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loans, guarantees etc., as contained in the new Act read with the Companies (Meetings of Board and its Powers) Rules, 2014 and other relevant Rules ('the Rules') vis-a-vis, the provisions of the Companies Act, 1956, it was felt apt to elaborate upon the major changes, procedural aspects and disclosure requirement through this article.

## MAJOR CHANGES

Section 186 of the Act is applicable to both private and public companies, whereas section 372A of the Companies Act, 1956 was not applicable to:

- any loan made, guarantee given or security provided by a private company unless it was a subsidiary of a public company;
- any loan made by a holding company to its WOS.
- any guarantee given or security provided by a holding company in respect of any loan made to its WOS.

Additionally, the term 'any person' has been included in section 186(2)(a) of the Act. This means that for giving loan to 'any person', provisions of relevant Rules and section 186 of the Act also need to be complied with. It is pertinent to mention here that section 372A(1)(a) of the Companies Act, 1956 was restricted to loans to 'body corporate' only.

## PROCEDURE ASPECTS

In respect of any proposal to give loan to any person/ body corporate or give guarantee or provide security in connection with the loan to any other body corporate or person the following procedural aspects are involved:

1. Calculate the paid-up capital, free reserves and security premium account of the company. The term 'free reserve' is defined in section 2(43) of the Act whereas earlier it was defined in the Explanation to section 372A of the Companies Act, 1956.
2. Fix the date of convening meeting to seek approval of the Board of Directors of the company.
3. Ensure to send notice convening the Board meeting to all directors by hand delivery or by post or by electronic means at least 7 days before the meeting.
4. Finalise and send Agenda of Board meeting giving detailed background, rationale and draft resolution to all the directors.
5. In case some directors wish to attend the meeting through video conference or other audio visual mode, ensure to make arrangement for the same.
6. In case meeting of the Board is through video conferencing or other audio visual means, ensure to follow procedure prescribed to convene meeting in the Companies (Meetings of Board and its Powers) Rules, 2014.
7. File Form MGT 14 within 30 days from the date of approval of the Board of Directors with Ministry of Corporate Affairs ('MCA'). Also file Calendar of Event of Postal Ballot Process if the approval of shareholders is proposed to be sought through postal ballot.
8. Check whether terms of reference of Audit Committee, *inter-alia*, includes scrutiny of inter-corporate loans and investments (ICL). Further, ensure that matter relating ICL etc. are reviewed by the Audit Committee also.
9. Ensure to comply with Secretarial Standard relating to Board and General meeting as section 118(10) of the Act requires that every company shall observe Secretarial Standards with respect to Board and General meetings specified by the Institute of Company Secretaries of India.
10. Ensure minutes of the Board meeting are prepared, finalised and kept in minutes book within 30 days of conclusion of the Board meeting.
11. In case of Nidhi Company, the rate of interest to be charged on any loan given shall not exceed seven and half per cent. above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method. Further, ensure that Nidhi companies follow the Nidhi Rules, 2014 also.
12. If the proposed loan, guarantee or security in respect of loan exceed 60% of the its paid-up capital, free reserve and security premium account or 100% of free reserves and security premium account, ensure to seek approval of the Board for draft notice convening general meeting/ postal ballot notice also.
13. Print and despatch notice of general meeting to all the shareholders at least 25 days before the meeting.
14. Ensure that documents referred to in general meeting notice are available for inspection at the Registered Office of the company.
15. Listed company or a company having 1,000 or more shareholders, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.
16. Ensure to obtain approval of shareholders by means of voting through a postal ballot for matters relating to giving loan or extending guarantee or providing security in excess of the limits specified in section 186 of the Act if the members of the company exceed two hundred.
17. A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall have to follow the procedure prescribed in the Companies (Management and Administration) Rules, 2014.
18. In case approval of shareholders is sought through postal ballot, ensure that Calendar of Events for the postal ballot process, consent of Scrutinizer is sent to the stock exchange(s) where shares of the company are listed.



19. Ensure that listed companies while sending notice of general meeting/ postal ballot to its shareholders also send the same to the stock exchange(s) where shares of the company are listed.

20. For e-voting, some of the important requirement are :-

- Send notice through Registered Post or Speed Post or E-mail or Courier
- Upload the notice of meeting in the website
- Publish advertisement atleast five days before e-voting begins
- e-voting to remain open for 1-3 days
- e-voting need to be completed 3 days before the meeting
- appointment of scrutinizer etc.

21. In case of listed company, a copy of the proposed special resolution be filed with MCA at least one day before the date of general meeting of the company in Form No.MGT.14.

22. In case of Listed companies, ensure to send the proceedings of general meeting/ postal ballot to the Stock Exchange(s) where the securities of the Company are listed.

23. File Form MGT 14 within 30 days from the date of approval of the shareholders with MCA alongwith notice convening meeting.

24. Ensure that the minutes of the general meeting are prepared, finalised and kept in minutes book within 30 days of the general meeting.

25. Ensure to maintain Register of loan etc. in prescribed Form MBP 2.

26. Ensure to enter particulars of loan etc. in the Register within 7 days of making such loan or giving guarantee or providing security.

27. Ensure that each entry made in the Register is authenticated by the Company Secretary or any other person authorised by the Board.

28. The Register is to be kept at the Registered Office and preserved permanently.

29. The Register can be maintained either manually or in electronic mode.

30. Ensure that pursuant to section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014, certificate given by Company Secretary in Practice in Form MGT 8 certify that during the financial year the Company has complied with provisions of the Act & Rules made there under in respect of :

- a. advances/ loans to its directors and/or persons or firms or companies referred in section 185 of the Act.
- b. loans or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act

31. Ensure that extract from the Register, on payment of fee

which shall not exceed Rs.10 for each page, is made available to member of the Company.

## DISCLOSURES

With regard to giving loans or guarantees or providing security in respect of loan, the following filings/ disclosures,( some of them may also be appearing above), are required to be observed:-

1. File resolutions passed by the Board of Directors relating to giving loan or guarantee or provide security in respect of loan with MCA in prescribed Form MGT 14.
2. Send notice of general meeting to the shareholders to obtain prior approval of the shareholder by way of special resolution if:-
  - a. proposed loan, guarantee or security in respect of loan and acquisition of shares exceed 60% of the its paid-up capital, free reserve and security premium account; or
  - b. 100% of free reserves and security premium account.
3. Notice of general meeting should contain disclosure of interest (financial or otherwise) of not only the directors but also of the Key Managerial Personnel and their relatives also.
4. If approval is sought through e-voting/ postal ballot, ensure to make disclosures relating to e-voting and postal ballot as prescribed in the Companies (Management and Administration), Rules, 2014.
5. In case of listed company, a copy of the proposed special resolution is required to be filed with MCA at least one day before the date of general meeting of the company in Form No.MGT.14.
6. Ensure to file MGT 14 within 30 days of seeking approval of the shareholders.
7. Listed companies are required to send the proceedings of general meeting/ postal ballot to the Stock Exchange(s) where the securities of the Company are listed.
8. Disclose in the financial statement, full particulars of the loans made, or guarantee given or security provided; and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.
9. The Board of Directors' report to shareholders shall contain particulars of loans, guarantees etc.
10. Upon giving loan or guarantee or providing security, update the same in the Register in prescribed form MBP 2.
11. The said Registers need to be updated within 7 days from the date of giving loan or guarantee or providing security as the case may.
12. Each entry in the Register (i.e., MBP 2) need to be authenticated by the Company Secretary or other person authorised by the Board.



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13. The Registers in prescribed Forms need to be kept at the Registered Office in the custody of Company Secretary or other person authorised by the Board.
14. The register should be made available for inspection at the Registered Office of the Company.
15. All transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made during last five financial year should be stated in the prospectus.
16. The Private placement offer letter should disclose related party transactions entered during the last three financial years immediately preceding the year of circulation of offer letter including with regard to loans made or, guarantees given or securities provided.

to its WOS are certainly significant and welcome change. These companies are also now not allowed to give loans at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan. This will increase the revenue of the company who had given loan and consequently the revenue of the Government also. The provisions of section 186 of the Act are not applicable to companies executing 'infrastructural projects' or providing 'infrastructural facilities'. A question may arise as to when a single entity is executing one or more project(s) as mentioned in the Schedule VI of the Act and also manufacturing/ producing other product(s) such as cement, paper, tyre, steel, chemicals, medicine, car etc., whether it would be considered to be one providing 'infrastructure facility'. As the Rules and the Act do not state any criteria for being considered as providing 'infrastructure facility', the MCA should clarify, when the company could be considered as providing 'infrastructure facility' or executing 'infrastructure project(s)'. Primarily, the percentage of revenue generated and/ or capital employed from such project(s) could be the criteria to determine the said contentious matter. CS

## CONCLUSION

The applicability of the provisions of section 186 of the Act for giving loans etc., by private companies and holding companies



## THE INSTITUTE OF Company Secretaries of India

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Statutory body under an Act of Parliament

ICSI House , 22 , Institutional Area, Lodi Road, New Delhi –110 003

Phones : 41504444, 45341000 Fax : 91-11-24626727

E-Mail : [info@icsi.edu](mailto:info@icsi.edu) Website : [www.icsi.edu](http://www.icsi.edu)

## CAREER OPPORTUNITIES

The ICSI, a premier professional body constituted under an Act of Parliament, invites applications for the following posts at its Headquarters :-

Name of the Post	Pay Band & Grade Pay (Rs.)	Max. Age (as on 01.07.2014)	Total No. of Posts	Method of Recruitment
Joint Secretary (IT)	37400-67000 with Grade Pay-10000/-	45 years	1	Direct Recruitment/ Deputation
Joint Secretary (Finance & Accounts)	37400-67000 with Grade Pay-10000/-	45 years	1	Direct Recruitment/ Deputation
Director	37400-67000 with Grade Pay-8700/-	45 years	1	Direct Recruitment
Senior Programmer	9300-34800 with Grade Pay-4800/-	35 years	1	Direct Recruitment

For further details viz. qualification, experience, procedure for submission of application, etc., please visit our website [www.icsi.edu/career](http://www.icsi.edu/career) with effect from **1<sup>st</sup> July, 2014**. Interested candidates must **apply only through electronic application form (On-line)**. Last date for submission of application (On-line) is **20<sup>th</sup> July, 2014**. The "ICSI" reserves the right to increase/decrease or even not to fill up any posts as per its requirement.

(P K Grover)  
Joint Secretary (HR)





Anil Kumar Sehgal, FCS

Practising Company Secretary  
New Delhi

[anilsehgal14031953@yahoo.co.in](mailto:anilsehgal14031953@yahoo.co.in)

# Appointment of Functional Directors in Unlisted Central Public Sector Enterprises (CPSEs): Provisions of The Companies Act, 2013

- Government companies have not been given any exemption or special treatment with regard to appointment of managerial personnel under the Companies Act, 2013. These companies will have to follow provisions of section 196 of Companies Act, 2013, which are applicable for appointment of managerial personnel pursuant to section 152(2) which provides that every director shall be appointed by the company in general meeting.

## THE DEPARTMENT OF PUBLIC ENTERPRISES (DPE)

**T**he Department of Public Enterprises (DPE) in the Ministry of Heavy Industries and Public Enterprises, Government of India acts as a nodal agency for all Public Sector Enterprises (PSEs) and assists in policy formulation pertaining to the role of PSEs in the economy as also in laying down policy guidelines on performance improvement and evaluation, financial accounting, personnel management and in related areas. It also collects, evaluates and maintains information on several areas in respect of PSEs. DPE also provides an interface between the Administrative Ministries and the PSEs. In fulfilling its role, it associates itself with other Ministries and organisations as also premier management institutes in the country.





# Article

APPOINTMENT OF FUNCTIONAL DIRECTORS IN UNLISTED CENTRAL PUBLIC SECTOR ENTERPRISES(CPSES): PROVISIONS OF THE COMPANIES ACT, 2013

## CENTRAL PUBLIC SECTOR ENTERPRISES (CPSEs)

The term “Central Public Sector Enterprises(CPSEs)” has, probably, been coined by the DPE as in the Preface of Public Enterprises Survey (2012-13) issued by the DPE, it is stated that besides Statutory Corporations, CPSEs comprise those Government Companies (defined under Section 617 of Companies Act, 1956) wherein more than 50% equity is held by the Central Government. Here, use of the term “CPSEs” for Statutory Corporations is not understood. It is further gathered from Public Enterprises Survey (2012-13) that there were as many as 277 CPSEs out of which 229 were operating CPSEs as on 31<sup>st</sup> March, 2013 and that 46 CPSEs were listed on Stock exchanges of India as on 31.03.2013. It means as on 31.3.2013, out of 229 operating CPSEs, 173 were unlisted CPSEs.

## STATUS OF UNLISTED CENTRAL PUBLIC SECTOR ENTERPRISES (CPSEs)

Unlisted CPSEs are either Private Limited Companies or public Limited Companies. Government Companies and Private Limited Companies were granted certain exemptions under the Companies Act 1956, which were enjoyed by them till coming into force of Companies Act, 2013. 98 Sections of this new Act came into force on 13.9.2013 and 183 sections came into effect from 1.4.2014, which include sections relating to Appointment and Qualifications of Directors. The exemptions to Government Companies and Private Limited Companies no longer exist in the Companies Act, 2013.

## FUNCTIONAL DIRECTORS

The DPEs Guidelines on Corporate Governance ,2010 for CPSEs provide that the Board of Directors of the company shall have an optimum combination of Functional, Nominee and Independent Directors. The term “Functional Directors” is used by the DPE for those directors, who are full time operational Directors responsible for day to day functioning of the enterprise. The DPEs Guidelines provide that every Board should have some full time Functional Directors. The number of such Directors on a Board should not exceed 50% of the actual strength of the Board.

The policy of Government is to appoint through a fair and objective selection procedure outstanding professional managers to Level-I and Level-II posts and posts at any other level, as may be decided by the Government from time to time. Government has also recognised the need to develop a cadre of professional managers within the public sector. This is being done through Public Enterprises Selection Board (PESB).

## PUBLIC ENTERPRISES SELECTION BOARD (PESB)

The Public Enterprises Selection Board (PESB) is a high powered

body constituted by Government of India Resolution dated 3.3.1987 which was subsequently amended from time-to-time, the latest being on 11.11.2008. The PESB has been set up with the objective of evolving a sound managerial policy for the Central Public Sector Enterprises (CPSEs) and, in particular, to advise Government on appointments to their top management posts.

## PROCEDURE FOR APPOINTMENT OF FUNCTIONAL DIRECTORS IN UNLISTED CPSEs TILL 31.3.2014

Before the coming into effect of relevant provisions of Companies Act, 2013 from 1.4.2014, appointment of directors in unlisted CPSEs were governed as per provisions of Companies Act, 1956 as well as Articles of Association of the respective such CPSEs. Provisions of the following Sections of the Companies were exempt in the case of wholly owned government companies:

**Section 255** - Appointment of directors and proportion of those who are to retire by rotation - Exempt vide Government of India's Notification G.S.R No. 234 dated 31-1-1978

**Section 256** - Ascertainment of directors retiring by rotation and filling of vacancies - Exempt vide Government of India's Notification G.S.R No. 234 dated 31-1-1978

**Section 257** - Right of persons other than retiring directors to stand for directorship – Exempt vide Government of India's Notification G.S.R No. 234 dated 31-1-1988

**Section 264** - Consent of candidate for directorship to be filed with the company and consent to act as director to be filed with the Registrar - Exempt vide Government of India's Notification. G.S.R No. 577(E) dated 16-7-1985

Appointments of Directors in unlisted CPSEs, where exemptions were applicable, were governed by the Articles of Association of the Company, which have similar provision as that the President may appoint Chairman, Managing Director, Chairman cum Managing Director and shall appoint other Directors in consultation with the Chairman or Chairman cum Managing Director provided that no such consultation is necessary in respect of Government representatives on the Board of Directors of the Company. Accordingly, Functional Directors including Chief Executives of CPSEs were appointed by the Concerned Administrative Ministries/Departments on the basis of recommendations of Public Enterprises Selection Board (PESB) and with the approval of Appointments Committee of the Cabinet (ACC). The Terms and Conditions of their appointment were standard Terms and Conditions issued by the DPE vide their O.M.No. 2(30)/09-DPE(WC) dated 30.12.2009 in respect of Board Level Executives and clarifications issued thereafter.



## POSITION UNDER COMPANIES ACT, 2013

The Companies Act, 2013 was enacted to replace Companies Act 1956 and while its 98 sections came into effect from 12.9.2013, 183 sections of it, which include Section 152 regarding appointments of directors, along with other related sections, have become effective from 1.4.2014. Further, Companies (Directors Appointment and Qualifications) Rules, 2014 have come into force w.e.f. 1.4.2014.

Interpretation clause of the Articles of Association of unlisted CPSEs generally provides, inter alia, as follows:

“The Act” means the Companies Act, 1956 (1 of 1956) and includes, where the context so admits, any re-enactment or statutory modification thereof for the time being in force...”

Section 6 of the Companies Act, 2013 captioned “Act to override memorandum, articles, etc” provides as follows: -

Save as otherwise expressly provided in this Act—

- a. the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- b. any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.”

Section 152 of Companies Act, 2013 provides, inter alia, as follows:

“152. (1) .....

(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.”

This Section starts with the wordings “Save as otherwise expressly provided in this Act” and it is observed that the Act expressly provides for appointments of managerial in CHAPTER XIII with the Heading “APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL” and Section 196 provides for Appointment of managing director, whole-time director or manager. Managing Director or whole-time directors are termed as ‘Functional Directors’ by the DPE. In the absence of any exemption to Government Companies, appointment of Functional Directors of such Companies is governed by the provisions of Section 196(4) of the Companies Act, 2013, which provides as follows:

“(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and

remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.”

Section 197, subject to which such appointments are to be made, relates to Overall Maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits. The relevant portion of this Section is quoted below:

“197. (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed ...

(2).....

(3).....

(4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity...”

Sub-section (1) of this Section specifies the limits and states that “The total managerial remuneration payable by a public company...”, which means this sub-section is not applicable to unlisted CPSEs, which have been incorporated as Private companies.

SCHEDULE V referred to in Section 196 of the Companies Act, 2013 has following parts”

PART I contains conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the central Government.

PART II relates to Remuneration under five sections with the following Headings:

“Section I - Remuneration payable by companies having profits:



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APPOINTMENT OF FUNCTIONAL DIRECTORS IN UNLISTED CENTRAL PUBLIC SECTOR ENTERPRISES(CPSES): PROVISIONS OF THE COMPANIES ACT, 2013

Section II - Remuneration payable by companies having no profit or inadequate profit without Central Government

Section III -Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:

Section IV- Perquisites not included in managerial remuneration:

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

PART III contains following Provisions applicable to Parts I and II of this Schedule:

1. "The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.
2. The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196."

PART IV provides that the Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

So far no notification regarding exemption to Government Companies has been issued pursuant to PART IV.

From the foregoing it is clear that government companies have not been given any exemption or special treatment with regard to appointment of managerial personnel in the Companies Act, 2013. These companies will have to follow provisions of section 196 of Companies Act, 2013, which are applicable for appointment of managerial personnel pursuant to section 152(2) which provides "Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting."

Thus, as per section 196(4) of the Companies Act, 2013, a managerial personnel shall, subject to the provisions of section 197 and Schedule V, be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule. After the appointment, e.Form MR-1 is to be filed pursuant to Section 196, 197, and Schedule V of the Companies Act, 2013 and Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014..." It is stated in the kit of this Form under the heading "Purpose of the

e.Form" that "The provisions of section 196 are applicable to all the companies whether public or private..."

Here a question arises, from where choices will be available to the unlisted CPSE for appointment of managerial personnel. In this connection, an unlisted CPSE may have two alternatives viz. each CPSE should either create its own method to select the managerial personnel or appoint the person selected by PESB and approved by the Competent Authority, which is ACC. In the former case, each CPSE will have to create its own infrastructure for selection of competent managerial personnel and leaving the PESB without its core work. The latter case would mean shifting of or transferring the role of the President to the Board/General Meeting, which will unnecessarily lengthen the procedure for the Company with no choice left with the Company.

Similarly, the DPE, vide their O.M.No. 2(30)/09-DPE(WC) dated 30.12.2009 issued standard Terms and Conditions in respect of Board Level Executives. In case, the Board/General meeting appointing Functional Directors adopt different terms and conditions than those provided in the DPEs O.M. differential in remuneration and other terms and conditions may arise, which may have its own problems. Further, there could be requirement of Government's approval in cases which do not conform to applicable provisions of Companies Act, 2013 and rules made thereunder.

It is hoped that concerned authorities are seized of these issues.

## INCONSONANCE BETWEEN SECTION 196 AND SECTION 203 OF COMPANIES ACT, 2013 RELATING TO APPOINTMENTS OF FUNCTIONAL DIRECTORS

Appointments of Functional Directors in unlisted CPSEs have been discussed above. Such Directors are also included in the Definition of "Key Managerial personnel". As per Section 2(51) Of Companies Act, 2013, "key managerial personnel", in relation to a company, means:

- i. the Chief Executive Officer or the managing director or the manager;
- ii. the company secretary;
- iii. the whole-time director;
- iv. the Chief Financial Officer; and
- v. such other officer as may be prescribed;

Section 203(1) of Companies provides as follows:

"Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:

- i. managing director, or Chief Executive Officer or manager and





➤ In the case of appointment as Key Managerial Personnel of any Functional Director, whose appointment as a managerial personnel and terms and conditions including remuneration are governed by express provisions, a simple resolution by the Board would have been made sufficient in Section 203(2).

- in their absence, a whole-time director;
- ii. company secretary; and
  - iii. Chief Financial Officer :

Provided that...

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration”

Besides, listed CPSEs, unlisted CPSEs, incorporated as Public Limited Companies with paid up capital of Rs.10 crore or more are required to appoint “key managerial personnel”. For the purpose, the paid up share capital as existing on the last date of latest audited financial statements shall be taken into account.

In case provisions of sub-section (2) of above Section are followed, Functional Directors i.e. Managing Director or whole-time Director as whole-time key managerial personnel are required to be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

Here, it is interesting that in case Functional Directors viz. Managing Director or Whole-time Director are otherwise appointed, they are to be appointed as per provisions of Section 196(4), where such appointments are subject to the provisions of section 197 and Schedule V. However, in case they are to be appointed as “Key Managerial Personnel”, as per Section 203(2), they can be appointed by means of a resolution of the Board containing the terms and

conditions of the appointment including the remuneration”.

Thus, there is inconsonance, which needs to be addressed by the concerned authorities. It appears that intention of the Legislature was that appointments of officials as Key managerial Personnel be made by means of a resolution of the Board, who may not be members of the Board as the definition of the term. ‘Key Managerial Personnel’ includes posts like Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer as also such other officer, as may be prescribed. In the case of appointment as Key Managerial Personnel of any Functional Director, whose appointment as a managerial personnel and terms and conditions including remuneration are governed by express provisions, a simple resolution by the Board would have been made sufficient in Section 203(2).

Moreover, while there is no mention of posts like Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer in Section 196(4). Rule 3 (2) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 provides that for the purposes of second proviso to sub-section (4) of section 196, a company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days, with the Registrar in Form No. MR-1 along with such fee. Further, the Heading of Form MR-1 is (Return of appointment of key managerial personnel) However, in the Instruction Kit for eForm MR-1, in Part I – Laws Governing the eForm under the heading “Section and Rule Numbers, it is stated that eForm MR-1 is filed in pursuant to Section 196, 197, and Schedule V of the Companies Act, 2013 and Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014...” Further, it is also stated in the kit under the heading “Purpose of the e.Form” that ‘The provisions of section 196 are applicable to all the companies whether public or private...”

It will be observed that the Heading of form MR-1 is ( Return of appointment of key managerial personnel) and appointment of key managerial personnel is required to be made under Section 203 of the Companies, 2013 but, interestingly, this section finds place neither in the form MR-1 nor in the instruction kit for this e.form. Similarly, no return is stated to be filed under this section. This aspect thus also needs to be addressed by the concerned authorities. CS

## QUERIES ON COMPANIES ACT, 2013

- Members may send the queries relating to operation and practical difficulties in implementation of Companies Act, 2013 at [companiesact2013@icsi.edu](mailto:companiesact2013@icsi.edu) and
- Any query relating to filing of e-forms under the new Act may be sent at [efiling@icsi.edu](mailto:efiling@icsi.edu)



## Corporate Laws

LW: 56:07:2014

**KHATHIM v. ASTRIX TECHNOLOGIES PRIVATE LTD [KANT]**

C.P. No. 97 of 2013

**Anand Byrareddy, J. [Decided on 20/05/2014]**

Companies Act, 1956 – petitioner ousted from the management of the company – whether a petition for winding up is maintainable – Held, No.

EOGM called by the orders of the court – respondents refused to abide by the result of the EOGM – whether such action tenable – Held, No.

### Brief facts:

The petitioner along with his four friends founded the respondent company. The petitioner had 33% of the shares of the respondent. After the death of his friend, the relatives of the friend became members of the company and later coerced the petitioner to sign certain documents so as to divest him of his shares and side lined him from the management of the company. Against this background the petitioner had filed the present petition to wind up the company.

During the pendency of the petition, on the application made by the petitioner an EOGM was held on the directions of the court under the chairmanship of an independent chairman appointed by the court (with the consent of both the parties) from the bar, in which respondents lost ground. Therefore they refused to comply with the decisions taken in the EOGM.

### Decision:

Winding up refused. However, the result of the EOGM upheld.

### Reason:

Having regard to the allegations by the petitioner and the equally strong counter allegations against the petitioner by the contesting respondents, this court would have to be satisfied that there is material produced before the Court to demonstrate that the management and conduct of the company ought not to be continued, while exercising discretion under Clause (f) of Section 433 of the Companies Act, 1956. It cannot be said that there is any such clinching material made available by the petitioner. The allegations on both the sides would require a detailed enquiry, which is not contemplated in these proceedings. The allegations by the petitioner, as a minority shareholder, are primarily of oppression and mismanagement. The petitioner is provided with a remedy by recourse to Sections 397 and 398 of the Act. The powers of the Court under Sections 397 to 403 have been conferred on the Company Law Board by the Companies (Amendment) Act, 1988 (with effect from 31-5-1991). Therefore, in the circumstances of the case the petition is not maintainable and ought to be rejected.

But the peculiar circumstance that has been created by the parties of their volition, is in inviting this court to dispose of the application in CA 1886/2013, where by mutual consent - an Extra-Ordinary General Meeting of the company was convened under the Chairmanship of an independent member of the Bar, in whom both the sides had reposed confidence. The contesting respondents having found that the tables were turned on them at the said meeting, whether they would be in a position to refuse to abide by the result of the meeting, de-hors the merits of the petition, is a question that looms up for consideration. The contesting respondent shareholders have sought to place reliance on Article 12 (iii) of the Articles of Association in holding that the result of the Extra-Ordinary General Meeting was inconclusive and was not binding on them. The said Article reads as follows:

" Article 12 (iii): Mr. Umesh R. to be the permanent member of the Board of Directors of the company and any Resolutions passed at the Board Meeting and shareholders meetings are not valid unless affirmative vote is cast by Mrs. Lokamata Rangappa or Mr. Umesh R."

Section 284 of the Act provides for the manner of removal of a Director of the company, and notwithstanding anything to the contrary in its Articles, would be removable by an ordinary resolution of which special notice has been given. The Section is general and applies to all Directors and includes all those not retiring by rotation. It applies to permanent Directors or Life Directors and Directors appointed for a fixed term even though they may have been appointed with reference to the Articles or otherwise.

Further, Section 9 of the Act specifically provides that the provisions of the Act would override anything to the contrary in the Articles of Association.



Therefore, the contesting respondents are held bound by the result of the said meeting. The petitioner is at liberty to enforce the result of the meeting in terms of the report of the Chairman of the Extra-Ordinary General Meeting referred to hereinabove in the manner known to law.



## Competition Laws

LW: 57:07:2014

**SURENDRA PRASAD v. MAHARASHTRA STATE POWER GENERATION CO. LTD & ORS [CCI]**

Case No. 61 of 2013

**Ashok Chawla, Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, S.N. Dhingra & S. L. Bunker [Decided on 29/04/2014]**

Competition Act, 2002 – Sections 3, 4 and 26(2) – abuse of dominance – generation company issued tenders – tenders are later cancelled and ad hoc contracts are awarded – whether this constitutes abuse of dominance – Held, No.

### Brief facts:

The present information has been filed under section 19(1)(a) of the Competition Act, 2002 by the informant against Maharashtra State Power Generation Co. Ltd [MAHAGENCO] and other Ops alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

As per the information, being affected by the sudden rise in electricity charges and also having come across the final order and judgment of the Hon'ble Supreme Court of India in *M/s B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. & Ors.*, (2006) 11 SCC 548, the informant realized that in violation of the Supreme Court judgment and in complete disregard to the interest of the general public and the nation's economy, the opposite parties have continued to violate provisions of the Act.

The basic thrust of the grievance of the informant centres around the fact that MAHAGENCO floats tenders for coal liasoning and subsequently cancels them for various assigned reasons and thereupon as a stop gap arrangements, work orders are issued to the opposite party contractors. Further, it is alleged that the opposite party contractors have distributed the markets *inter se* and make exorbitant quotations for their bids. It is the case of the informant that whenever new entrants seek to enter the market, unnecessary disputes *qua* qualification of such competitors are raised by the entrenched contractors, all in collusion with the procurer.

**Decision:** Case closed.

### Reason:

To begin with, the allegations against the opposite party Nos. 2 to 4 with reference to the provisions of section 3 of the Act may be examined. The informant has annexed a chart containing quotes of the opposite party Nos. 2 to 4 for the year 2010 at page 370 onwards in the paper book. On perusal thereof, it appears that the quotes made by these parties were in a narrow band, yet the same cannot be described as identical or similar. Absent any other evidence or circumstance, it is difficult to infer any anti-competitive agreement solely on the basis of the chart noted above. Hence, it may be observed that the informant has not been able to substantiate its allegations of bid rigging by and between the opposite party Nos. 2 to 4. Resultantly, no case of contravention of the provisions of section 3 of the Act is made out against the opposite party Nos. 2 to 4.

The next grievance of the informant relates to alleged facilitation by the opposite party No. 1 to the bid rigging allegedly entered into by the opposite party Nos. 2 to 4. This can be summarily dealt with. The opposite party No. 1 is a government company and examination of any allegation of corruption or favouritism *per se* on its part or on the part of its officers is beyond the purview of the jurisdiction of the Commission.

For the same reasons, the allegations of the informant based on the same grounds against MAHAGENCO and the three named contractors relating to contravention of the provisions of section 4 of the Act are also misconceived. In the present case, the informant has alleged contravention of the provisions of section 4 of the Act by MAHAGENCO along with the three named contractors. As MAHAGENCO and its contractors do not fall within the definition of "group", the allegations do not stand. Even at a disaggregated level, assuming MAHAGENCO to be dominant in the market of procurement of liaison work relating to coal in the State of Maharashtra, the allegations made by the informant against MAHAGENCO of favouritism and corruption cannot be said to fall within the purview of section 4 of the Act.

Looked at from any angle, the Commission is of opinion that no



case of contravention of the provisions of sections 3 or 4 of the Act is made out against the opposite parties.

In the result, the information is misconceived and deserves to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.



## General Laws

**LW: 58:07:2014**

**MAHAMAYA GEN FINANCE CO LTD v. STATE OF U.P. & ORS [SC] on 8 May, 2014**

Civil Appeals No. 5514 and 5515 of 2014

**Sudhansu Jyoti Mukhopadhyaya, Ranjan Gogoi, JJ. [Decided on 08/05/2014]**

Land Acquisition Act, 1894 – Acquisition of land – payment of compensation – collector refused to accept the rates mentioned in the sale deeds – whether correct – Held, No. whether compensation to be increased – Held, Yes.

### Brief facts:

The respondent acquired approximately 455 acres of land situated in villages Prahlad Garhi, Maharajpur and Karket Madan in favour of the Uttar Pradesh Industrial Development Corporation (hereinafter referred to as “the Corporation”), which included an area measuring 42 bighas belonging to the appellant.

Possession of the acquired land was taken over and the award was made by the Special Land Acquisition Officer granting compensation at the rate of Rs.1.33 per square yard. In doing so, a sale deed dated 20.1.1969 in respect of an area of about 200 square yard situated in the village Maharajpur sold for Rs.400/- was taken as the base exemplar. 33% deduction was made on account of the smallness of the area covered by the aforesaid sale deed, thereby, assessing compensation for the acquired land at Rs.1.33 per square yard.

The appellant sought a reference before the Reference Court – the appellant filed sale deeds dated 13.06.1969 (Ex.1) and 16.10.1969 (Ex.2) executed by it in respect of land in the vicinity of the land acquired. The Reference Court, however, refused to accept and rely on the said sale deeds on the ground that the appellant, having come to know of the acquisition proceedings, had sold land at inflated price; the correct price was not known to the vendors who were not local residents of Meerut. The Reference Court, by order dated 26.08.1975, accordingly maintained the compensation awarded by the Land Acquisition Officer.

Aggrieved, the appellant filed a first appeal before the High Court seeking enhanced compensation, which was refused primarily on the ground that before determining the rate of compensation, the Land Acquisition Officer had verified 66 sale deeds in respect of lands situated in the neighbourhood which were sold within one year of/from the date of issuance of the Notifications in question.

Not satisfied, the appellant sought a review of the aforesaid order which was declined by the High Court. Hence the present appeal to the Supreme Court.

**Decision: Appeal allowed.**

### Reason:

We have considered the submissions advanced on behalf of the parties and the materials on record. The compensation awarded to the appellants at the rate of Rs.1.33 per square yard is based on the sale deed dated 20.01.1969 (Ex. A-1) in respect of a plot measuring 200 square yards situated in the village Maharajpur which was sold by one Naseerudin for Rs.400/-. The sale deeds dated 13.06.1969 and 16.10.1969 exhibited by the appellant before the Reference Court was not considered for the reasons already noted. The close proximity of the dates of aforesaid two sale deeds with the date of the acquisition which has been cited as one of the reasons for not accepting Exbt.1 and Exbt.2 sale deeds does not commend to us. That the said sale deeds are in close proximity of time with the acquisition and being in respect of land located in one of the villages, covered by the acquisition Notification and above all the land being owned by the appellant itself, in our considered view, are vital factors that could not have been ignored. The finding of the Reference Court, upheld by the High Court, to the effect that the sales covered by Exbt.1 and Exbt.2 were executed at inflated rates by the appellant on coming to know of the acquisition proceeding cannot be appreciated. In the order of the Reference Court as well as in the order of the High Court there is no indication on what basis the said finding had been arrived at. What had led the learned courts below to come to the conclusion that the appellants had prior knowledge of the proposed acquisition and on that basis had executed the sale deeds “in a hurry to dispose of the plots which had been carved out” also is not known. The further conclusion that the vendees of the aforesaid sale deeds, not being local residents,





did not know about the acquisition proceedings and they were charged fanciful prices for the land is plainly unacceptable in the absence of any materials on record to the said effect. Evidence of vital nature furnished by the two sale deeds dated 13.06.1969 (Exbt.1) and 16.10.1969 (Exbt.2) could not have been rejected on the basis of such surmises and conjectures as has been done in the present case. The High Court having failed to rectify the aforesaid apparent errors we are of the view that the transactions effected by the two sale deeds dated 13.06.1969 (Exbt.1) and 16.10.1969 (Exbt.2) must receive due consideration in the determination of the compensation payable to the appellant.

The acquisition in the present case was proposed in the year 1969 and the possession of the land had been taken from the appellant as far back as in the year 1970. Due to long efflux of time that has occurred we are of the view that the present is a fit case wherein the task of determination of the basis for quantification of the compensation due and payable to the appellant should be undertaken by us in order to give a quietus to the lis between the parties.

In the aforesaid circumstances, we set aside the compensation awarded by the learned Acquisition Officer as affirmed by the Reference Court and the High Court by the orders under appeal. Instead, we direct that the compensation payable to the appellant shall now be computed by taking into account the average of the price, at which the two transactions by sale deeds dated 13.06.1969 (Exbt.1) and 16.10.1969 (Exbt.2) were effected, as noted above, along with solatium and interest as payable under the Act. The Special Land Acquisition Officer, Ghaziabad, U.P., shall make the necessary computation in terms of the present order so as to enable the appellant to receive the balance amount of compensation along with solatium and interest as payable, forthwith, and in any case within three months from the date of receipt of this order.

## LW: 59:07:2014

**GUPTA COAL INDIA PRIVATE LIMITED v. SWISS MARINE SERVICES S.A. [BOM]**

First Appeal No.48 of 2014

**B.P. Dharmadhikari & P.R. Bora, JJ. [Decided on 09/05/2014]**

Code of Civil Procedure, 1908 – jurisdiction of court – parties agreed to submit to the courts of UK – plaintiff filed suit in the court of Nagpur – Trial court dismissed the suit for want of jurisdiction – whether the court ought to have returned the plaint to the plaintiff instead of dismissing the same – Held, Yes.

### Brief facts:

Being aggrieved by the order passed by 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nagpur on 07/01/2014 in Special Civil Suit No.694/2012 whereby he has dismissed the said civil suit for want of jurisdiction, the plaintiff therein has preferred the present appeal.

The appellant had engaged the vessels of the respondent for the transportation of six shipments of coal through e-mail negotiations and a Contract of Affreightment (CoA) dated 03/10/2011 was entered into between them. As per the terms of the CoA the courts in UK had exclusive jurisdiction over the contract. As disputes arose between the parties, the appellant filed a civil suit in Nagpur against the Respondent. The trial court dismissed the suit on the ground that it had no jurisdiction to entertain the same. The said order is impugned in the present appeal.

**Decision: Appeal dismissed with modification.**

### Reason:

After having carefully considered the entire material on record in light of the pleadings of the parties and the submissions made on behalf of the learned counsel for the parties we have reached to the conclusion that the agreement dated 3/10/2011 does constitute a concluded and binding contract between the appellant and the respondent. It satisfies the requirements of Section 2 to 7 of the Indian Contract Act. The correspondence through E-mail exchange between the parties contains offer and final acceptance by the parties of the terms and conditions containing in the said agreement dated 3/10/2011. Though there was some dispute in respect of Clause 45 therein, we have elaborately discussed referring to the E-mail correspondence that finally the said clause was also accepted by the appellant. We have also noted earlier that after having acted upon the said contract and having performed two shipments under the same CoA dated 3/10/2011 the appellant had lost the right to say that it was not a concluded contract and was not binding on it.

Though further attempt was made to submit that the provisions of Civil Procedure Code do not permit conferment of jurisdiction on a Court which has no jurisdiction would also not lend any assistance to the appellant in view of the facts recorded by us hereinabove and in view of the observations made by the Hon'ble Apex Court in the case of *Modi Entertainment Network & Anrv. W.S.G. Cricket Pte. Ltd*, AIR 2003 SC 1177.

In the said case the Hon'ble Supreme Court has held thus:

"It is a well settled principle that by agreement the parties cannot confer jurisdiction, where none exists, on a Court to which C.P.C. applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign Court; indeed in such case the English Courts do permit invoking



their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a foreign court termed as a 'neutral Court' or 'Court of choice' creating exclusive or non-exclusive jurisdiction in it."

In the instant case in view of Clause 45 in CoA dated 3/10/2011 the exclusive jurisdiction vests in the High Court of UK in case of any dispute arising out of the said CoA. It is, thus, evident that the Civil Court at Nagpur does not have any jurisdiction to try and entertain the suit so filed by the appellant. We, therefore, do not find any infirmity in the conclusion recorded by the trial Court on the point of jurisdiction. However, the trial Court has erred in dismissing the suit on the point of jurisdiction. After having held that it was not having jurisdiction the proper course for the said Court was to return the plaint to the appellant/plaintiff for its due presentation in the proper Court i.e. High Court at UK having jurisdiction. To that extent the order passed by the trial Court needs to be modified. In the result we pass the following order.

The judgment delivered by trial Court is maintained subject to modification that plaint as presented is returned back to the appellant/plaintiff for its due presentation to the Court having jurisdiction i.e. High Court at UK. Accordingly the suit plaint is returned to the appellant/plaintiff.

## LW: 60:07:2014

**SWISS TIMING LTD v. ORGANIZING COMMITTEE  
CWG 2010 DELHI [SC]**

Arbitration Petition No. 34 of 2013

**Surinder Singh Nijjar, J. [Decided on 28/05/2014]**

Arbitration and Conciliation Act, 1996 – section 11 – CWG contracts – appointment of arbitrator by court – Respondent refused to appoint arbitrator on the ground that engagement of the services of the petitioner was under investigation – whether tenable – Held, No. Court appoints the arbitrators.

### Brief facts:

The petitioner entered into an agreement dated 11th March, 2010 with the respondent for providing timing, score and result systems ("TSR systems/services") as well as supporting services required to conduct the Commonwealth Games. This contract contained an elaborate dispute resolution mechanism. The arbitration clause provided for the appointment of arbitrator by each party and the appointment of presiding arbitrator by these arbitrators.

The respondent defaulted in making the payment without any justifiable reasons and the petitioner invoked the arbitration clause and appointed its arbitrator. However, the respondent did not appoint its arbitrator. Hence the present petition before the Supreme Court.

**Decision: Petition allowed.**

### Reason:

It is evident from the counter affidavit filed by the respondents that the disputes have arisen between the parties out of or relating to the agreement dated 11th March, 2010. On the one hand, the respondent disputes the claims made by the petitioner and on the other, it takes the plea that efforts were made to amicably put a "closure to the agreement". I, therefore, do not find any merit in the submission of the respondent that the petition is not maintainable for non-compliance with Clause 38.3 of the Dispute Resolution Clause.

The second preliminary objection raised by the respondent is on the ground that the contract stands vitiated and is void ab-initio in view of Clauses 29, 30 and 34 of the agreement dated 11th March, 2010. I am of the considered opinion that the aforesaid preliminary objection is without any substance. I see no reason to accept the submission made by the learned counsel for the respondents that since a criminal case has been registered against the Chairman of the Organising Committee and some other officials of the petitioner, this Court would have no jurisdiction to make a reference to arbitration.

To shut out arbitration at the initial stage would destroy the very purpose for which the parties had entered into arbitration. Furthermore, there is no inherent risk of prejudice to any of the parties in permitting arbitration to proceed simultaneously to the criminal proceedings. In an eventuality where ultimately an award is rendered by arbitral tribunal, and the criminal proceedings result in conviction rendering the underlying contract void, necessary plea can be taken on the basis of the conviction to resist the execution/enforcement of the award. Conversely, if the matter is not referred to arbitration and the criminal proceedings result in an acquittal and thus leaving little or no ground for claiming that the underlying contract is void or voidable, it would have the wholly undesirable result of delaying the arbitration. Therefore, I am of the opinion that the Court ought to act with caution and circumspection whilst examining the plea that the main contract is void or voidable. The Court ought to decline reference to arbitration only where the Court can reach the conclusion that the contract is void on a meaningful reading of the contract document itself without the requirement of any further proof.

In the present case, it is pleaded that the manner in which the contract was made between the petitioner and the respondent was investigated by the CBI. As a part of the investigation, the CBI had



seized all the original documents and the record from the office of the respondent. After investigation, the criminal case CC No.22 of 2011 has been registered, as noticed earlier. It is claimed that in the event the Chairman of the Organising Committee and the other officials who manipulated the grant of contract in favour of the respondent are found guilty in the criminal trial, no amount would be payable to the petitioner. Therefore, it would be appropriate to await the decision of the criminal proceedings before the arbitral tribunal is constituted to go into the alleged disputes between the parties. I am unable to accept the aforesaid submission made by the learned counsel for the respondents, for the reasons stated in the previous paragraphs. The balance of convenience is tilted more in favour of permitting the arbitration proceedings to continue rather than to bring the same to a grinding halt.

I must also notice here that the defence of the contract being void is now-a-days taken routinely along with the other usual grounds, to avoid/delay reference to arbitration. In my opinion, such ground needs to be summarily rejected unless there is clear indication that the defence has a reasonable chance of success. In the present case, the plea was never taken till the present petition was filed in this Court. Earlier, the respondents were only impressing upon the petitioners to supply certain information. Therefore, it would be appropriate, let the Arbitral Tribunal examine whether there is any substance in the plea of fraud now sought to be raised by the respondents.

## LW: 61:07:2014

**AEZ INFRATECH PVT LTD v. SNG DEVELOPERS LTD [DEL]**

CM (M) 137/2014 & connected matters

**NAJMI WAZIRI, J. [Decided on 30/05/2014]**

Arbitration and Conciliation Act, 1996 – section 8 – application by defendant seeking to refer the suit to arbitration – plaintiff admitted the contract containing arbitration clause – defendant did not file original contract or certified copy thereof along with the application – trial court dismissed the application – whether correct – Held, No.

### Brief facts:

This batch of petitions challenge an order dated 27.09.2013 passed by the Trial Court which rejected the petitioner's application under Section 8 of the Arbitration and Conciliation Act, 1996 ("Act") seeking reference of the suits to Arbitration.

The respondent and petitioner had entered into a flat buyer's agreement dated 07.07.2006 wherein the petitioner had agreed to deliver the possession of the apartments within 24 months thereafter. Subsequently, the allotment was cancelled by the petitioner. The respondent had filed the batch of suits seeking injunction and declaration etc. In the said suits the petitioner had filed an application to refer the parties to arbitration as the agreement contained arbitration clause. The trial court dismissed the application. Hence the present petition by the petitioner.

**Decision: Petition allowed.**

### Reason:

This Court has considered the submissions made by both parties and is of the view that the petition ought to be allowed. There is merit in the submission of the petitioner that where the plaintiff has itself referred to and relied upon the agreement containing the arbitral clause, and has not denied the averment of the defendant as to the existence of the arbitral clause, the provisions of section 8(2) ought to not stand in the way of the matter being referred to arbitration.

The objective of filing certified copy is to ensure that there is no dispute apropos existence of the arbitration clause. However, it would be pedantic to insist upon compliance of the said provision in a situation like the present where the agreement containing the arbitration clause itself forms the basis of the suit and the said clause itself is clearly admitted by the respondent. The consideration before the Court would be that it should refer the matter to arbitration, when it is brought to the notice of the Court that such an agreement exists between the parties, and such request is made before filing of the Written Statement. It is not as if the Court's jurisdiction is ousted by the non-filing of the certified copy or the original copy of the agreement. Conversely, it cannot be said that it is the filing of the certified copy of the original agreement or its certified copy that vests jurisdiction on the Court. What the Court is required to see as per the scheme of the Arbitration Act is that an arbitration clause exists which is accepted by the parties. During the course of the arguments a query was put to counsel for the respondent where he disputed the existence or contents of flat buyer's agreement. His answer was in negative. Therefore, it is admitted that the flat buyer's agreement (containing the arbitration clause) which forms basis of the suit exists. Therefore, quite clearly, the Trial Court fell into error in not referring the parties to arbitration. This view also appears to be in consonance with various pronouncements of the High Courts as well as the Supreme Court, where applications under section 8 of the Act were allowed, 6 except where the plaintiff denied the existence of the agreement itself, 7 or of the dispute actually arising out of the agreement.

The next contention of the counsel for the respondent was that since clause 43 provides that the Courts in New Delhi shall have



exclusive jurisdiction over all matters arising out of the agreement, the provisions of clause 44 - which provides that all disputes and differences shall be referred to arbitration - ought to be regarded as being optional and hence ought not be enforced. This contention must merely be stated to be rejected, as being contrary to well established principles of interpretation of documents, as well as to the statutory mandate leaning in favour of reference to arbitration.

The learned counsel for the respondent then contended that the arbitration clause, even if it is regarded as mandatory, cannot be taken recourse to, unless the parties attempt to settle the matter amicably through discussions first. He submitted that the respondent was constrained to file the suits since the petitioner failed to respond to their repeated calls to settle the disputes through conciliation. This Court is unimpressed with this submission; the failure to respond to calls for conciliation indicates a failure of attempts to settle. The next logical step is to invoke arbitration, not to file a suit in the Court. Thus, the contention of the respondent on this ground cannot be accepted.

The learned counsel for the respondent further contended that the arbitration clause is vague and is uncertain with respect to who would be the Arbitrator and the manner in which he would be appointed. This contention, too, needs to be rejected. The Act provides the parties complete autonomy in respect of appointment of arbitrators, and also provides for a remedy in a situation where the mechanism agreed to by the parties fails. It is found in section 11 of the Act. Given the same, this contention too is untenable.

For the reasons aforesaid, this Court is unable to agree with the reasoning and the conclusion of the impugned order. Accordingly it is set aside and the case is hereby referred to arbitration. The parties shall take steps for arbitration proceedings as per the arbitration agreement. No order as to costs.



## Industrial & Labour Laws

LW: 62:07:2014

FOOD CORPORATION OF INDIA & ORS v. SARAT CHANDRA GOSWAMI [SC]

Civil Appeal Nos. 7201-7202 of 2008

918

[LW-68]

July 2014

Dipak Misra & N.V. Ramana, JJ. [Decided on 21/05/2014]

Disciplinary action – liability of the employee – no written findings as to the satisfaction of the disciplinary authority – whether vitiates the proceedings and consequent dismissal – Held, Yes.

### Brief facts:

The respondent while holding the post of District Manager in the Food Corporation of India (for short the FCI) was proceeded against in a disciplinary proceedings as contemplated under Regulation 60 of the Food Corporation of India (Staff) Regulations, 1971 (for brevity “the Regulations”) on the ground that during the period 15.7.99 to 21.1.02 while the respondent was working at North Lakhimpur Region, FCI in Assam had not faithfully carried out his duties as a consequence of which the Corporation suffered financial loss. After the preliminary inquiry, a show cause notice was issued calling for a representation and eventually the punishment for recovery of a sum of rupees five lakhs and censure was passed against the respondent.

On appeal the Single Judge set aside the order of punishment on the ground that there was no written opinion of the disciplinary authority as to how he satisfied himself as to the liability of the respondent employee. This judgement was confirmed by the Division bench also by relying on the case of *Food Corporation of India, Hyderabad & Ors. v. A. Prahalada Rao & Anr*, (2001) 1 SCC 165[SC]. Hence the present appeal by the employer to the Supreme Court.

**Decision:** Appeal dismissed.

### Reason:

It is submitted by the petitioner that the High Court has erroneously understood the ratio and ruled that an opinion has to be formed in writing. It is his further submission that when the reasons are manifest from the preliminary inquiry and from the show cause it was erroneous on the part of the High Court to emphasise on the formation of opinion.

Per contra, Respondent heavily relied on the authority in *A. Prahalada Rao (supra)* and urged that the discretion vested in the disciplinary authority under the Regulations casts an obligation on it to form an opinion and formation of such opinion has to be in writing.

On a perusal of the order passed by the learned Single Judge, we find that he has taken note of the fact that there was no expression





or formation of opinion. He has further recorded that the learned counsel for the Corporation had conceded that there was nothing to show that the Chairman-cum-Managing Director who had made the final order had recorded any opinion in writing before making the final order to the effect there was no need to hold a regular inquiry. From the principle stated by this Court in A. Prahalada Rao's case it is quite limpid that though in all cases where the employee disputes his liability, a full-fledged enquiry is not expected to be held as that would frustrate the purpose of interpreting the summary procedure for imposing minor penalties, yet the discretion conferred under the Regulation 1960(1) (b), if exercised in an arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. The Court had further opined that the Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold an inquiry in a particular case or not.

Once it is held that there has to be formation of opinion and such an opinion is assailable in a legal forum, we are of the view that the said opinion has to be founded on certain objective criteria. It must reflect some reason. It can neither be capricious or fanciful but demonstrative of application of mind. Therefore, it has to be in writing. It may be on the file and may not be required to be communicated to the employee but when it is subject to assail and, eventually, subject to judicial review, the competent authority of the Corporation is required to satisfy the Court that the opinion was formed on certain parameters indicating that there was no necessity to hold an enquiry. Thus, the High Court has correctly understood the principle stated in A. Prabhakar Rao (*supra*) and we do not find any fault with the same.



## Tax Laws

LW: 63:07:2014

**KONE ELEVATOR INDIA PVT LTD v. STATE OF T.N. & ORS [SC]**

Writ Petition (C) No. 232 of 2005 & all other connected matters.

**R.M. Lodha, A.K. Patnaik, Sudhansu Jyoti Mukhopadhyaya, Dipak Misra & Fakkir Mohamed**

**Kalifulla [Decided on 06/05/2014]**

**Sales tax Law – manufacturing and installation of lifts in buildings – whether “sale” or “works contract” – SC overrules its earlier judgement holding it to be “sales” and held that it is “works contract”. Law explained.**

### Brief facts:

The petitioner is engaged in the manufacture, supply and installation of lifts involving civil construction. For the Assessment Year 1995-96, the Sales Tax Appellate Tribunal, Andhra Pradesh, considering the case of the petitioner, opined that the nature of work is a “works contract”, for the erection and commissioning of lift cannot be treated as “sale”. On a revision being filed, the High Court of Andhra Pradesh affirmed the view of the tribunal and dismissed the Tax Case (Revision) filed by the Revenue. Grieved by the decision of the High Court, the State of Andhra Pradesh preferred special leave petition wherein leave was granted and the matter was registered as Civil Appeal No. 6585 of 1999 and by judgment dated 17.2.2005 in *State of AP v. Kone Elevators (India) Ltd* (2005) 3 SCC 389, the view of the High Court was overturned.

After the pronouncement in the said case, the State Government called upon the petitioner to submit returns treating the transaction as sale. Similarly, in some other States, proceedings were initiated proposing to reopen the assessments that had already been closed treating the transaction as sale. The said situation compelled the petitioner to prefer the petition under Article 32 of the Constitution.

### Issue:

The seminal controversy which has emerged in this batch of matters is whether a contract for manufacture, supply and installation of lifts in a building is a “contract for sale of goods” or a “works contract”.

**Decision: Petition allowed.**

### Reason:

Coming back to *State of AP v. Kone Elevators India Pvt Ltd* (2005) 3 SCC 389, it is perceivable that the three-Judge Bench has referred to the statutory provisions of the 1957 Act and thereafter referred to the decision in *Hindustan Shipyard Ltd v. State of AP* (2006) 6 SCC 579, and has further taken note of the customers' obligation to do the civil construction and the time schedule for delivery and thereafter proceeded to state about the major component facet and how the skill and labour employed for converting the main components into the end product was only incidental and arrived at the conclusion that it was a contract for sale. The principal logic



applied, i.e., the incidental facet of labour and service, according to us, is not correct. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. As has been held by the High Court of Bombay in *Otis Elevator Company (India) Ltd v. State of Maharashtra* (1969) 24 STC 525 (Bom), various technical aspects go into the installation of the lift. There has to be a safety device. In certain States, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What has been taken note of in *Kone Elevators (supra)* is that the company had brochures for various types of lifts and one is required to place order, regard being had to the building, and also make certain preparatory work. But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. The nature of the contracts clearly exposit that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building. In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Involvement of the skill has been elaborately dealt with by the High Court of Bombay in *Otis Elevator (supra)* and the factual position is undisputable and irrespective of whether installation is regulated by statutory law or not, the result would be the same. We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site, i.e., building, and prepared for delivery. The conclusion, as has been reached in *Kone Elevators (supra)*, is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in *Kone Elevators (supra)* does not correctly lay down the law and it is, accordingly, overruled.

It is directed that the show-cause notices, which have been issued by taking recourse to reopening of assessment, shall stand quashed. The assessment orders which have been framed and are under assail before this Court are set aside. It is necessary to state here that where the assessments have been framed and have attained finality and are not pending in appeal, they shall be treated to have been closed, and where the assessments are challenged in appeal or revision, the same shall be decided in accordance with the decision rendered by us.

## LW: 64:07:2014

COMMISSIONER OF INCOME TAX, NEW DELHI  
V. PUNJAB STAINLESS STEEL INDUSTRIES [SC]

Civil Appeal No. 5592 of 2008 with Civil Appeal Nos. 3283 and 4491 of 2009 and 4898 of 2010.

Anil R. Dave & Dipak Misra [Decided on 05/06/2014]

Income Tax Act, 1961 – section 80HHC – total turnover – whether sale of scrap forms part of the total turnover – Held, No.

### Brief facts:

The assessee is a manufacturer and exporter of stainless steel utensils. In the process of manufacturing stainless steel utensils, some portion of the steel, which cannot be used or reused for manufacturing utensils, remains unused, which is treated as scrap and the respondent-assessee disposes of the said scrap in the local market and the income arising from the said sale is also reflected in the profit and loss account. The respondent-assessee not only sells utensils in the local market but also exports the utensils.

For the purpose of availing deduction under Section 80HHC of the Act for the relevant Assessment Year, the assessee was not including the sale proceeds of scrap in the total turnover but was showing the same separately in the Profit and Loss Account.

However, Revenue considered the sale proceeds also part of “turnover” as the respondent-assessee was also selling scrap and that was also part of the sale proceeds.

The assessee had objected to the aforesaid suggestion of the Revenue because inclusion of the sale proceeds of scrap into the total turnover would reduce the amount deductible under the provisions of Section 80HHC of the Act.

**Decision: Appeal dismissed.**



## Reason:

To ascertain whether the turnover would also include sale proceeds from scrap, one has to know the meaning of the term “turnover”. The term “turnover” has neither been defined in the Act nor has been explained by any of the CBDT circulars.

Normally, the term “turnover” would show the sale effected by a business unit. It may happen that in the course of the business, in addition to the normal sales, the business unit may also sell some other things. For example, an assessee who is manufacturing and selling stainless steel utensils, in addition to steel utensils, the assessee might also sell some other things like an old air conditioner or old furniture or something which has outlived its utility. When such things are disposed of, the question would be whether the sale proceeds of such things would be included in the “turnover”. Similarly in the process of manufacturing utensils, there would be some scrap of stainless steel material, which cannot be used for manufacturing utensils. Such small pieces of stainless steel would be sold as scrap. Here also, the question is whether sale proceeds of such scrap can be included in the term “sales” when it is to be reflected in the Profit and Loss Account.

In ordinary accounting parlance, as approved by all accountants and auditors, the term “sales”, when reflected in the Profit and Loss Account, would indicate sale proceeds from sale of the articles or things in which the business unit is dealing. When some other things like old furniture or a capital asset, in which the business unit is not dealing are sold, the sale proceeds therefrom would not be included in “sales” but it would be shown separately.

So far as the scrap is concerned, the sale proceeds from the scrap may either be shown separately in the Profit and Loss Account or may be deducted from the amount spent by the manufacturing unit on the raw material, which is steel in the case of the respondent-assessee, as the respondent-assessee is using stainless steel as raw material, from which utensils are manufactured. The raw material, which is not capable of being used for manufacturing utensils will have to be either sold as scrap or might have to be recycled in the form of sheets of stainless steel, if the manufacturing unit is also having its re-rolling plant. If it is not having such a plant, the manufacturer would dispose of the scrap of steel to someone who would re-cycle the said scrap into steel so that the said steel can be re-used.

When such scrap is sold, in our opinion, the sale proceeds of the scrap cannot be included in the term “turnover” for the reason that the respondent-unit is engaged primarily in the manufacturing and selling of steel utensils and not scrap of steel. Therefore, the proceeds of such scrap would not be included in “sales” in the Profit and Loss Account of the respondent-assessee.

The intention behind enactment of Section 80HHC of the Act was to encourage export so as to earn more foreign exchange. For the

said purpose the Government wanted to encourage businessmen, traders and manufacturers to increase the export so as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, we are of the view that the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, we are sure that the Government would like to encourage such a person. In our opinion, once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the Revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law.

For the aforesaid reasons, we are of the view that the view expressed by the High Court is in conformity with the normal accounting practice followed by the traders, including the respondent-assessee and it was justified in coming to a conclusion that the proceeds generated from the sale of scrap would not be included in the “total turnover”.

## Appointment

### !! JOB OPPORTUNITY!!

**Spicer India Limited invites application in Finance Department for L1 Level of the Management Cadre.**

#### Job Profile

- Statutory Compliances status tracking
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#### Job specification -

**Company Secretary - with 4-5 years of experience**

**Location of work - Spicer India Limited - Chakan (Pune)**

Interested employees kindly forward your resume by 20 July 2014 to Krishna.sharma@dana.com with **subject line:**

**Spicer India Limited CS 2014**





## 01 The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide File No 1/21/2013-CL-V, dated: 30.06.2014. To be Published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (i)]

In exercise of the powers conferred by section 42 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014.
- (2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 14, in sub-rule (2), in clause (a), after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules".

Amardeep Singh Bhatia  
Joint Secretary

## 02 The Companies (Acceptance of Deposits) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 386(E), dated 06.06.2014. Published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (i), dated: 06.06.2014]

In exercise of the powers conferred by Sections 73 and 76 read with sub-section (1) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Acceptance of Deposits) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2014.
- (2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 2014, in rule 5, in sub-rule (1), the following proviso shall be inserted, namely:-

"Provided that the companies may accept the deposits without deposit insurance contract till the 31st March, 2015."

Amardeep Singh Bhatia  
Joint Secretary

## 03 Date of coming into force of Section 74 (2) & (3) of the Companies Act 2013

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O. 1459(E), dated 06.06.2014. Published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), dated: 06.06.2014]

In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 6th day of June, 2014 as the date on which the provisions of sub-sections (2) and (3) of Section 74 of the said Act shall come into force.

Amardeep Singh Bhatia  
Joint Secretary

## 04 The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 390(E), dated 09.06.2014. Published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (i), dated: 09.06.2014]

In exercise of the powers conferred by sub section (1) of Section 203 of the Companies Act, 2013 (18 of 2013) read with clause (51) of Section 2 and Section 469 of the said Act, the Central Government hereby makes the following rules to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 after rule 8, the following rule shall be inserted, namely:—





**"8A. Appointment of Company Secretaries in companies not covered under rule 8.**—A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary."

Amardeep Singh Bhatia  
Joint Secretary

## 05 The Companies (Meetings and Powers of Board) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 398(E), dated 12.06.2014. Published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (i), dated 12.06.2014]

In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Meetings and Powers of Board) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Meetings and Powers of Board) Amendment Rules, 2014
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings and Powers of Board) Rules, 2014, in rule 6, after the explanation, the following shall be inserted, namely:-

"Provided that public companies covered under this rule which were not required to constitute Audit Committee under section 292A of the Companies Act, 1956 (1 of 1956) shall constitute their Audit Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier:

Provided further that public companies covered under this rule shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier."

Amardeep Singh Bhatia  
Joint Secretary

## 06 The Companies (Declaration and Payment of Dividend) Amendment Rules, 2014

[Issued by the Ministry of Corporate Affairs vide F. No. 1/31/2013-

CL-V dated 02.06.2014. To be published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (i)]

In exercise of the powers conferred under sub section (1) of section 123 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Declaration and Payment of Dividend) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Declaration and Payment of Dividend) Amendment Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Declaration and Payment of Dividend) Rules, 2014, in rule 3, for sub-rule (5), the following sub-rule shall be substituted, namely: -

"(5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year."

Amardeep Singh Bhatia  
Joint Secretary

## 07 Establishment of Office of Official Liquidator at Hyderabad

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O.1524(E), dated 13.06.2014. Published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), dated 13.06.2014]

In exercise of powers conferred by section 448 of the Companies Act, 1956 (1 of 1956), the Central Government hereby establish the office of the Official Liquidator at Hyderabad having territorial jurisdiction for the purposes of the said Act for discharging the functions of the Official Liquidator in the whole State of Telangana and appoints the Official Liquidator at Hyderabad as Official Liquidator for the liquidation of companies under the said Act in the State of Telangana.

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

Amardeep Singh Bhatia  
Joint Secretary

## 08 Establishment of Office of Registrar of Companies at Hyderabad

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O.1525(E), dated 13.06.2014. Published in the Gazette of India,



Extraordinary, Part-II, Section-3, Sub-section (ii), dated 13.06.2014]

In exercise of powers conferred by sub-section (1) and sub-section (2) of section 396 of the Companies Act, 2013 (18 of 2013), the Central Government hereby establish the office of the Registrar of Companies at Hyderabad having territorial jurisdiction in the whole State of Telangana for discharging the functions of the Registrar of Companies under the various provisions of the said Act and appoints the Registrar of Companies, Hyderabad as Registrar of Companies for the purpose of registration of companies under the said Act in the State of Telangana.

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

Amardeep Singh Bhatia  
Joint Secretary

## 09 Clarifications on Rules prescribed under the Companies Act, 2013 -Matters relating to appointment and qualifications of directors and Independent Directors - reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 14/2014, No. 1/22/2013-CL-V, dated: 09.06.2014]

Government has received representations from Industry Chambers, Professional Institutes and other stakeholders seeking clarifications *inter alia* about appointment of Independent Directors (IDs) under the relevant provisions of the Companies Act, 2013 (Act) read with relevant rules with effect from 1st April, 2014. The representations have been examined and clarifications on the following points are hereby given:-

### (i) Section 149(6)(c): "pecuniary interest in certain transactions":-

- (a) This provision *inter alia* requires that an 'ID' should have no 'pecuniary relationship' with the company concerned or its holding/ subsidiary/ associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter has been examined and it is hereby clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases.

- (b) Stakeholders have also sought clarification whether receipt of remuneration, (in accordance with the provisions of the Act) by an 'ID' from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company.

The matter has been examined in consultation with SEBI and it is clarified that 'pecuniary relationship' provided in section 149(6)(c) of the Act does not include receipt of remuneration, from one or more companies, by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.

- (ii) Section 149: Appointment of 'IDs': Clarification has been sought if 'IDs' appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company so decide) in accordance with the provisions of the new Act.

The matter has been examined in the light of the relevant provisions of the Act, particularly section 149(5) and 149(10) & (11). Explanation to section 149(11) clearly provides that any tenure of an 'ID' on the date of commencement of the Act shall not be counted for his appointment/holding office of director under the Act. In view of the transitional period of one year provided under section 149(5), it is hereby clarified that it would be necessary that if it is intended to appoint existing 'IDs' under the new Act, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions.

- (iii) Section 149(10)/(11) - Appointment of 'IDs' for less than 5 years: Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than five years.

It is clarified that section 149(10) of the Act provides for a term of "upto five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing 'consecutive terms of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.



- (iv) Appointment of 'IDs' through letter of appointment: With reference to Para IV(4) of Schedule IV of the Act (Code for IDs) which requires appointment of 'IDs' to be formalized through a letter of appointment, clarification has been sought if such requirement would also be applicable for appointment of existing 'IDs'?

The matter has been examined. In view of the specific provisions of Schedule IV, appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

This issues with the approval of the competent authority.

Kamna Sharma  
Assistant Director

## 10 Clarification regarding maintaining register in new format [sub-section (9) of section 186] - reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 15/2014, File No.5/6/2014-CL-I, dated: 09.06.2014]

This Ministry has received various communications seeking clarification regarding sub-section (9) of section 186 read with sub-rule (1) of Rule 12 of the Companies (Meeting of Board and its Powers) Rule, 2014 with regard to maintenance of register of loans/guarantee/security/making acquisition in new format.

- In this connection, it is hereby clarified that registers maintained by companies pursuant to sub-section (5) of Section 372A of Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from 1.4.2014.
- This issues with the approval of the Competent Authority.

Kamna Sharma  
Assistant Director

## 11 Applicability of PAN requirement for Foreign Nationals

[Issued by the Ministry of Corporate Affairs vide General Circular No. 16/2014, F. No: 01/12/2013 CL-V, dated: 10.06.2014]

In continuation of the General Circular No. 12/2014 dated 22.05.2014 regards the above subject, it is clarified that the provisions of the said Circular are applicable to a Foreign National who is a subscriber/promoter at the time of incorporation of the Company.

- In case the said subscriber/promoter, does not possess Permanent Account Number (PAN), he/she shall furnish a declaration in the prescribed proforma, as an attachment to the Incorporation Form (INC-7).
- Further, it is clarified that, in case of a Resident Director of the proposed company he/she shall be required to submit PAN details at the time of incorporation.
- This issue with the approval of the Competent Authority.

Sanjay Kumar Gupta  
Deputy Director

## 12 Filling of MGT-10- clarification- regarding

[Issued by the Ministry of Corporate Affairs vide General Circular No. 17/2014, No. MCA21/72/2014-e.Gov., dated: 11.06.2014]

In continuation of General Circular No. 06/2014 dated 29.03.2014 and 09/2014 dated 25.04.2014, I am directed to inform you that stakeholders are required to fill Form MGT-10 physically, get it duly signed/certified by a professional and file it alongwith other required enclosures as attachments with the prescribed General E-Form No. GNL-2. This temporary arrangement will continue till an E-Form for MGT-10 is made available. Fee applicable for MGT-10 will be as per the Table of Fees prescribed in Companies (Registration Offices and Fees) Rules, 2014.

- This issues with the approval of the Competent Authority.

Sanjay Kumar Gupta  
Deputy Director

## 13 Clarification for filing of form No. INC-27 for conversion of company from public to private under the provisions of Companies Act, 2013- reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 18/2014, File No. MCA21/72/2014 -e.Gov., dated: 11.06.2014]

Attention of the Ministry has been drawn to difficulties being faced by stakeholders while filing form INC-27 for conversion of a public company into a private company. The relevant provisions of Companies Act, 2013 (second proviso to sub-section (1) and sub-section (2) of section 14) have not been notified. In view of this, the corresponding provisions of Companies Act, 1956 (Proviso to sub-section (1) and sub-section (2A) of Section 31) shall remain in force till corresponding provisions of Companies Act, 2013 are notified. The Central Government has delegated such powers under



# From the Government

the Companies Act, 1956 to the Registrar of Companies (ROCs) vide item No. (c) of the notification number S.O. 1538(E) dated the 10th July, 2012 and this delegated power remains in force. Applications for such conversions, therefore, have to be filed and disposed as per the earlier provisions.

2. This issues with the approval of the Competent Authority.

Sanjay Kumar Gupta  
Deputy Director

## 14 Clarifications on Rules prescribed under the Companies Act, 2013 -Matters relating to share capital and debentures- reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 19/2014, No. 1/4/2013-CL-V, dated: 12.06.2014]

Government has received representations from Industry Chambers, Professional Institutes and other stakeholders seeking clarifications on matters relating to 'share capital and debentures' under the relevant provisions of the Companies Act, 2013 (Act) read with relevant rules, which have come into force with effect from 1st April, 2014. The representations have been examined and clarifications on the following points are hereby given: -

- (i) Share Transfer Forms executed before 1st April, 2014: In view of prescription of new Securities Transfer Form as per Form SH-4 with effect from 1st April, 2014, the companies and other stakeholders have sought clarity with regard to Share Transfer Forms executed before 1st April, 2014 as per earlier Form 7B but which are yet to be accepted/registered by companies.

The matter has been examined and it is clarified that since transaction relating to transfer of shares is a contract between two or more persons/shareholders, any share transfer form executed before 1st April, 2014 and submitted to the company concerned within the period prescribed under relevant section of the Companies Act, 1956 needs to be accepted by the companies for registration of transfers. In case any such share transfer form, executed prior to 1st April, 2014, is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc. In case a company decides not to accept the share transfer form, it shall convey the reasons for such non-acceptance within time provided under section 56(4)(c) of the Act.

- (ii) Delegation of powers by board under rule 6(2)(a): Clarification has been sought whether the powers of the Board provided under rule 6(2)(a) of Companies (Share Capital and Debentures) Rules, 2014 with regard to issue of duplicate share

certificates can be exercised by a Committee of Directors.

The matter has been examined in light of the relevant provisions of the Act, particularly sections 179 & 180 and regulation 71 of Table "F" of Schedule I and it is clarified that a committee of directors may exercise such powers, subject to any regulations imposed by the Board in this regard.

This issues with the approval of the competent authority.

Kamna Sharma  
Assistant Director

## 15 Clarification with regard to voting through electronic means -reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 20/2014, No. 1/34/2013-CL-V, dated: 17.06.2014]

Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 deal with the exercise of right to vote by members by electronic means (e-means). The provisions seek to ensure wider shareholders participation in the decision making process in companies. Corporates and other stakeholders while appreciating the new approach have drawn attention to some practical difficulties in respect of general meetings to be held in the next few months.

2. The suggestions received from the stakeholders have been examined. It is noticed that compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/postal ballot etc will take some more time. Accordingly, it has been decided not to treat the relevant provisions as mandatory till 31st December, 2014. The relevant notification in this regard is being issued separately.
3. To provide clarity and ensure uniformity in the e-voting procedure, clarifications on certain issues raised by the stakeholders are provided in the Annexure to this circular for guidance of all concerned.

This issues with the approval of the competent authority.

KMS Narayanan  
Assistant Director

### Annexure

Clarifications on issues associated with e-voting procedure

- (i) **Show of hands not to be allowed in case of e-voting:-** In view of clear provisions of section 107, voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.





(ii) **Participation in the general meeting after voting by e-means:-** It is clarified that a person who has voted through e-voting mechanism in accordance with rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.

(iii) **Applicability of rule 20 for matters specified under rule 22(16):-** Stakeholders have asked whether matters specified under rule 22(16) (transactions of certain items only through postal ballot) can be considered in a general meeting where e-voting facility is available. It has been examined and it is stated that in view of clear provisions of section 110(l)(a) read with such rule 22(16) it would be necessary to transact items specified in rule 22(16) only through postal ballot and not at the general meeting.

(iv) **Relevance of provisions relating to demand for poll:-** In case of companies having share capital, voting through e-means takes into account 'Proportion principle' [i.e. 'one share - one vote' unlike 'one person - one vote principle under 'show of hands'. This alongwith provisions of section 107 make it clear that in case of companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, the provisions relating to demand for poll would not be relevant.

(v) **Permissibility of voting by postal ballot under rule 20:-** Stakeholders have sought a clarification that in cases (covered under rule 20) where a shareholder who is not able to participate in the general meeting personally and who is also not exercising voting through e-means whether such a person shall have the option to vote through postal ballot. The matter has been examined and it is felt that keeping in view the provisions of the Act such an option would not be available.

(vi) **Manner of voting in case of shareholders present in the meeting:-** Stakeholders have sought clarity about manner of voting for shareholders (of a company covered under rule 20) who are present in the general meeting. It is hereby clarified that since voting through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting accordingly.

(vii) **Applying rule 20 voluntarily:-** Stakeholders have referred to words 'A company which opts to' appearing in rule 20(3) and have raised a query whether rule 20 is applicable to companies not covered in rule 20(1). It is clarified that rule 20(3) is being amended to align it with rule 20(1). Regarding voluntary application of rule 20, it is clarified that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in rule 20 shall be applicable to such a company. This is necessary so that any piece-meal

application does not prejudice the interest of shareholders.

## 16 Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 21/2014, No. 05/01/2014-CSR, dated: 18.06.2014]

This Ministry has received several references and representation from stakeholders seeking clarifications on the provisions under Section 135 of the Companies Act, 2013 (herein after referred as 'the Act') and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013. Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as 'CSR') are as under: -

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- (ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- (iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- (iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- (v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.
- (vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so



# From the Government

as per section 135 of the Act.

(vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

2. This issues with the approval of Competent Authority.

Seema Rath  
Assistant Director

## Annexure referred to at para (i) of General Circular No. 21/2014 dated 18.06.2014

Sl. No.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1.	<p>Promotion of Road Safety through CSR:</p> <p>(i) (a) Promotions of Education, "Educating the Masses and Promotion of Road Safety awareness in all facets of road usage,</p> <p>(b) Drivers' training,</p> <p>(c) Training to enforcement personnel,</p> <p>(d) Safety traffic engineering and awareness through print, audio and visual media" should be included.</p> <p>(ii) Social Business Projects : "giving medical and Legal aid, treatment to road accident victims" should be included.</p>	<p>(a) Schedule VII (ii) under "promoting education".</p> <p>(b) For drivers training etc. Schedule VII (ii) under "vocational skills".</p> <p>(c) It is establishment functions of Government (cannot be covered).</p> <p>(d) Schedule VII (ii) under "promoting education".</p> <p>(ii) Schedule VII (i) under 'promoting health care including preventive health care.'</p>
2.	Provisions for aids and appliances to the differently- able persons - 'Request for inclusion	Schedule VII (i) under 'promoting health care including preventive health care.'

3.	<p>The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:</p> <p>(a) Capacity building for farmers covering best sustainable farm management practices.</p> <p>(b) Training Agriculture Labour on skill development.</p>	<p>Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills" and "rural development".</p> <p>(a) "Vocational skill" livelihood enhancement projects.</p> <p>(b) "Vocational skill"</p>
	<p>(c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri - ecological sustainable farm practices. (Applied research) with a focus on water management.</p> <p>(d) To do Product Life Cycle analysis from the soil conservation point of view.</p>	<p>(c) 'Ecological balance', 'maintaining quality of soil, air and water'.</p> <p>(d) "Conservation of natural resource" and 'maintaining quality of soil, air and water'.</p>
4.	<p>To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre).</p> <p>(i) Providing effective consumer grievance redressal mechanism,</p> <p>(ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution,</p> <p>(iii) Consumer protection activities,</p> <p>(iv) Consumer Rights to be mandated,</p> <p>(v) all consumer protection programs and activities on the same lines as Rural Development, Education etc..</p>	<p>Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".</p>



5.	<p>a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility.</p> <p>b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR.</p>	<p>Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as "promoting education".</p>
6.	Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and Technology.	Schedule VII (ii) under "promoting education", if approved by Department of Science and Technology.
7.	Disaster Relief	<p>Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,</p> <p>(i) medical aid can be covered under 'promoting health care including preventive health care'.</p> <p>(ii) food supply can be covered under eradicating hunger, poverty and malnutrition.</p> <p>(iii) supply of clean water can be covered under 'sanitation and making available safe drinking water'.</p>
8.	Trauma care around highways in case of road accidents.	Under 'health care'.
9.	Clarity on "rural development projects".	Any project meant for the development of rural India will be covered under this.

10.	Supplementing of Govt. schemes like mid-day meal by corporates through additional nutrition would qualify under Schedule VII.	Yes. Under Schedule VII, item no. (i) under 'poverty and malnutrition'.
11.	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12.	Capacity building of government officials and elected representatives - both in the area of PPPs and urban infrastructure.	No.
13.	Sustainable urban development and urban public transport systems	Not covered.
14.	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities faced by socially & economically backward groups", depending on the context.
15.	Likewise, could slum re-development or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes.
16.	Renewable energy projects.	Under 'Environmental sustainability, ecological balance and conservation of natural resources'.
17.	<p>(i) Are the initiatives mentioned in Schedule VII exhaustive?</p> <p>(ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2(c) (ii) of the Final Rules, they will count)?</p>	(i) & (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.
18.	US-India Physicians Exchange Program -broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.	No.



## 17 Clarification with regard to format of annual return applicable for Financial Year 2013-14 and fees to be charged by companies for allowing inspection of records.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 22/2014, No. 1/34/2013-CL-V (Part-I), dated: 25.06.2014]

Government has received requests for clarification about the applicability of form of annual return (MGT-7) prescribed under rule 11(1) of the Companies (Management and Administration) Rules, 2014 for financial year(s) commencing earlier than 1st April, 2014. The matter has been examined in the light of provisions of section 92(1) of the Act which requires annual return to contain particulars as they stood on the close of the financial year. It is clarified that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956.

Companies have also sought clarity about permitting free of cost inspection of records under rule 14(2) and rule 16 of the rules cited above and till a fee is prescribed for the purpose in the Articles. It is clarified that until the requisite fee is specified by companies, inspections could be allowed without levy of fee.

This issues with the approval of the competent authority.

KMS Narayanan  
Assistant Director

## 18 Clarification relating to incorporation of a company i.e. company Incorporated outside India

[Issued by the Ministry of Corporate Affairs vide General Circular no. 23/2014, F. N: 1/13/2013 -CL-V, dated: 25.06.2014]

Government has received references seeking clarity about the status of subsidiaries incorporated/to be incorporated by companies incorporated outside India. Attention has, in particular, been drawn to the absence of the deeming provision of sub-section (7) of section 4 of the Companies Act, 1956 in the Companies Act, 2013 (New Act).

The matter has been examined in the Ministry in the light of sections 2(68), 2(71) and 2(87) of the New Act and it is clarified that there is no bar in the new Act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private

company. An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act, will continue as a private company or public company as the case may be, without any change in the incorporation status of such company.

3. This issues with approval of Competent Authority.

KMS Narayanan  
Assistant Director

## 19 Clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide General Circular no. 24/2014, F. No: 01/13/2013 -CL-V, dated: 25.06.2014]

In continuation of the General circular No. 20/2013 dated 27/12/2013, it is clarified that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

2. This issues with approval of Competent Authority.

KMS Narayanan  
Assistant Director

## 20 Clarification on applicability of requirement for resident director.

[Issued by the Ministry of Corporate Affairs vide General Circular no. 25/2014, F. No. 1/22/13-CL-V, dated: 26.06.2014]

Section 149(3) of the Companies Act, 2013 (Act) requires every company to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. Government has received requests from stakeholders for clarification with regard to applicability of these provisions in the current calendar financial year.

The matter has been examined. It is clarified that the residency requirement' would be reckoned from the date of commencement of section 149 of the Act i.e. 1st April, 2014. The first, 'previous calendar year' for compliance with these provisions would, therefore, be Calendar year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e. 1st April to 31<sup>st</sup> December). Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India during Calendar year 2014, shall exceed 136 days.





Regarding newly incorporated companies it is clarified that companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.

This issues with the approval of the competent authority.

KMS Narayanan  
Assistant Director

## 21 Extension of jurisdiction of Local Office of the Board at Hyderabad

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2014-15/04/1223, dated 26.6.2014. Published in the Gazette of India, Extraordinary, Part-III, Section-4, dated 26.06.2014]

In exercise of the powers conferred by sub-section (4) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board had established its Local Office at Hyderabad vide notification No. LAD-NRO/GN/2013-14/05/5666 on April 22, 2013 conferring jurisdiction on the Local Office over the areas falling under the territorial jurisdiction of State of Andhra Pradesh. Consequent upon the formation of the State of Telangana, the Local Office so established shall continue to look after the regulatory aspects of investor protection, facilitating redressal of investor grievances, financial and investor education and such other functions as may be assigned from time to time, and its role and responsibility shall extend to the areas falling under the territorial jurisdiction of the State of Telangana and State of Andhra Pradesh.

U. K. Sinha  
Chairman

## 22 Review of the Securities Lending and Borrowing (SLB) Framework

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DP/19/2014, dated 03.6.2014]

1. Securities Lending and Borrowing was introduced vide circular no. MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007 and operationalised with effect from April 21, 2008. The SLB framework has been subsequently modified from time to time.
2. With regard to the requirement of an agreement between Clearing Member and client for the purpose of lending and borrowing of securities, representations were received from market participants. Based on the examination of suggestions received, it has been decided to modify the extant SLB framework.

3. Accordingly, para 6 of the Annexure 2 of aforesaid SLB circular shall be replaced as under:

- 3.1. The Authorised Intermediary (Als) shall enter into an agreement with Clearing Members (CMs) for the purpose of facilitating lending and borrowing of securities.

- 3.2. The agreement shall specify the rights, responsibilities and obligations of the parties to the agreement. The agreement shall include the basic conditions for lending and borrowing of securities as prescribed under SLB framework. Further, the exact role of Als/CMs vis-a-vis the clients shall be laid down in the agreement. Als shall ensure that there shall not be any direct agreement between the lender and the borrower.

- 3.3. In addition to that, Als may also include suitable conditions in the agreement to have proper execution, risk management and settlement of lending and borrowing transactions with clearing member and client.

- 3.4. The Als shall frame a rights and obligations document laying down the rights and obligation of CMs and clients for the purpose of lending and borrowing of securities. The rights and obligation document shall be mandatory and binding on the CMs and the clients for executing trade in the SLB framework.

4. All other conditions as specified in the circulars no. MRD/DoP/SE/Dep/Cir- 14/2007 dated December 20, 2007, MRD/DoP/SE/Dep/Cir-31/2008 dated October 31, 2008, MRD/DoP/SE/Dep/Cir-01/2010 dated January 06, 2010, CIR/MRD/DP/33/2010 dated October 07, 2010 CIR/MRD/DP/30/2012 dated November 22, 2012 and CIR/MRD/DP/ 18 /2013 May 30, 2013 remain unchanged.

5. Stock Exchanges and Depositories are advised to:

- 5.1. Take necessary steps and put in place necessary systems for implementation of the above.

- 5.2 Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.

- 5.3 Bring the provisions of this circular to the notice of the member brokers of the stock exchange and depository participants to disseminate the same on their 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.

Maninder Cheema  
Deputy General Manager





## 23 Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs)

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/IMD/FIIC/11/2014, dated 16.6.2014]

1. Reserve Bank of India (RBI) has issued circular no. RBI/2013-14/552 DBOD.AML.BC.No. 103/14.01.001/2013-14 dated April 03, 2014 regarding harmonization of KYC norms for FPIs.
2. In the light of the above circular, it has been decided as follows:
  - a. DDPs are advised to share the relevant KYC documents with the banks concerned based on written authorization from the FPIs.
  - b. Accordingly, a set of hard copies of the relevant KYC documents furnished by the FPIs to DDPs may be transferred to the concerned bank through their authorised representative.
  - c. While transferring such documents, DDPs shall certify that the documents have been duly verified with the original or notarised documents have been obtained, where applicable. In this regard, a proper record of transfer of documents, both at the level of the DDP as well as at the bank, under signatures of the officials of the transferor and transferee entities, may be kept.
3. The provisions of this circular are applicable for both new and existing FPI clients.
4. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
5. The circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal framework" and "information for - FII".

S. Madhusudhanan  
Deputy General Manager

## 24 Investments by FPIs in Non-Convertible/Redeemable preference shares or debentures of Indian companies

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/IMD/FIIC/13/2014, dated 17.6.2014]

1. Pursuant to the Reserve Bank of India (RBI) circular RBI/2013-14/632 dated June 06, 2014, it has been decided as follows:
  - a) In terms of the RBI circular A.P. (DIR Series) Circular No. 84 dated January 06, 2014, an Indian company is permitted to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities.
  - b) FPIs are permitted to invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company in terms of the above RBI circular and listed on recognized stock exchanges in India.
  - c) The investments by FPIs in the abovementioned securities shall be reckoned against the Corporate Debt Investment Limits (US\$ 51 billion).

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

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 FII clients.

S. Madhusudhanan  
Deputy General Manager

## 25 Base Issue Size, Minimum Subscription, Retention of Over-Subscription Limit and further disclosures in the Prospectus for Public Issue of Debt securities

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/IMD/DF/12/2014, dated 17.6.2014]

1. Minimum Subscription Limit:
  - a) Section 69 of the Companies Act, 1956 specifies that no allotment shall be made of any share capital of a company, offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount has been subscribed. As per Schedule II to the Companies Act, 1956, the issuer is required to make a declaration about refund of the issue, if minimum subscription of 90% of the issue size is not received.



- b) However, for public issue of non convertible debentures (NCDs), no such requirement is specified under Companies Act, 1956. Further, as per Regulation 12 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (SEBI ILDS Regulations), the issuer may decide the amount of minimum subscription, which it seeks to raise from public through issue of NCDs and disclose the same in the offer document.
- c) Companies Act, 2013 and the Rules made there under also do not specify the quantum of minimum subscription needed in case of public issues (both for equity and debt), but only requires disclosure of the same in the offer document.
- d) In view of the above, it has been decided that the minimum subscription for public issue of debt securities shall be specified as 75% of the base issue.
- e) size for both NBFCs and Non NBFC issuers. Further, if the issuer does not receive minimum subscription of its base issue size (75%), then the entire application monies shall be refunded within 12 days from the date of the closure of the issue. In the event, there is a delay, by the issuer in making the aforesaid refund, then the issuer shall refund the subscription amount along with interest at the rate of 15% per annum for the delayed period.
- f) However, the issuers issuing tax-free bonds, as specified by CBDT, shall be exempted from the above proposed minimum subscription limit.

## 2. Base Issue Size:

In any public issue of debt securities, it has been decided that the Base Issue size shall be minimum Rs. 100 crores.

## 3. Retention of Over-Subscription Limit:

- a) Currently, in respect of public issue of NCDs, SEBI ILDS Regulations does not specify any maximum cap on the retention of over-subscription.
- b) In general, issuers shall be allowed to retain the over-subscription money up to the maximum of 100% of the Base Issue size or any lower limit as specified in the offer document. However, for the issuers filing a shelf prospectus, they can retain oversubscription up to the rated size, as specified in their Shelf Prospectus.
- c) The issuers of tax free bonds, who have not filed Shelf Prospectus, the limit for retaining the oversubscription shall be the amount, which they are authorised by CBDT to raise in a year or any lower limit, subject to the same being specified in the offer document.

## 4. Further disclosures in the prospectus for Debt Issues:

### I. "Objects of the issue"

- a) As per Schedule I of SEBI ILDS Regulations, companies making public issue of NCDs need to specify the "Object of the issue" in the offer document. However, detailed disclosure requirements, as required in case of equity issues are not specified under the SEBI ILDS Regulations.
- b) On analysis of the various offer documents, filed by the issuers for public issue of NCDs, it is observed that almost none of the issuers gave concrete objectives for the issue. Most of the objectives stated are in the form of a blanket statement encompassing a lot of avenues for utilizing the monies raised through the issue.
- c) In this regard, it is stated that the entities coming out with public issue of NCDs shall provide granular disclosures in their offer document, with regards to the "Object of the Issue" including the percentage of the issue proceeds earmarked for each of the "object of the issue". Further, the amount earmarked for "General Corporate Purposes", shall not exceed 25% of the amount raised by the issuer in the proposed issue.
- d) Further, it is understood that NBFCs are the most frequent users of the debt channel and most of the NBFCs utilize the issue proceeds for onward lending. In view of the same, NBFCs shall have to disclose in their offer document, the details with regards to the lending done by them, out of the issue proceeds of previous public issues, including details regarding the following:
  - i. Lending policy;
  - ii. Classification of loans/advances given to associates, entities/person relating to Board, Senior Management, Promoters, Others, etc. ;
  - iii. Classification of loans/advances given to according to type of loans, sectors, maturity profile (less than one year, 1-3 yrs, 3-5 yrs, 5-10 yrs, etc.), denomination (loans of value below Rs. 50 lakhs, Rs. 50 Lakhs - 1 Cr; Rs. 1 Cr- 5 Cr, Rs. 5 Cr- 25 Cr, Rs. 25 Cr.-100 Cr etc.), geographical classification of borrowers, etc.;
  - iv. Details of top ten borrowers including their name, address, exposure etc.;
  - v. Details of top ten loans, overdue and classified as non-performing in accordance with RBI Guidelines, in terms of exposure to those entities.

## II. Disclosures in the offer document for public issue of NCDs:



## From the Government

Issuers coming out with public issues of NCDs need to make disclosure in accordance with the disclosure requirements as specified in Schedule II to Companies Act, 1956 (Chapter III of Companies Act, 2013) and disclosure requirements as specified in Schedule I of SEBI ILDS Regulations. In furtherance to the same, it has been decided that following additional disclosures have to be made in the Offer Document, by the issuers.

- i. Offer document shall contain the following disclaimer clause in bold capital letters:

"It is to be distinctly understood that submission of offer document to the Securities and Exchange Board of India (SEBI) should not in any way be deemed or construed that the same has been cleared or approved by SEBI. SEBI does not take any responsibility either for the financial soundness of any scheme or the project for which the issue is proposed to be made or for the correctness of the statements made or opinions expressed in the offer document. The lead merchant banker, \_\_\_\_\_ has certified that the disclosures made in the offer document are generally adequate and are in conformity with the SEBI (Issue and listing of Debt Securities) Regulations, 2008 in force for the time being. This requirement is to facilitate investors to take an informed decision for making investment in the proposed issue.

It should also be clearly understood that while the Issuer is primarily responsible for the correctness, adequacy and disclosure of all relevant information in the offer document, the lead merchant banker is expected to exercise due diligence to ensure that the issuer discharges its responsibility adequately in this behalf and towards this purpose, the lead merchant banker \_\_\_\_\_ has furnished to SEBI a due diligence certificate dated \_\_\_\_\_ which reads as follows:

(due diligence certificate submitted to the Board, as per Schedule II of SEBI ILDS Regulations, to be reproduced here)"

- ii. Provisions relating to fictitious applications
- iii. Declaration by board of directors that the underwriters, if any, have sufficient resources to discharge their respective obligations.
- iv. Reservation in the Issue, if any
- v. Utilization details regarding the Previous Issues of the issuer as well as the Group Companies
- vi. Benefit / interest accruing to Promoters/Directors out of the object of the issue
- vii. Details regarding material Contracts other than the contracts entered in the ordinary course of business and the material contracts entered within the previous 2 Years.

5. The provisions of this circular shall be applicable for the draft offer document for issuance of debt securities filed with the designated stock exchange on or after July 16, 2014.
6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.
7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

Barnali Mukherjee  
General Manager

## 26 Guideline on disclosures, reporting and clarifications under AIF Regulations

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CIR/IMD/DF/14/2014, dated 19.6.2014]

SEBI (Alternative Investment Funds) Regulations, 2012 were notified on May 21, 2012. A Circular No. CIR/IMD/DF/10/2013 dated July 29, 2013 was also subsequently issued for operational, prudential and reporting requirements for AIFs. Certain amendments were also made to the AIF Regulations on September 16, 2013. It is decided to provide certain clarifications on the AIF Regulations, increase transparency to the investors and provide reporting norms for AIFs as under:

1. Submission of information to SEBI under sub-regulation (1) of Regulation (3) of AIF Regulations
  - a. Circular no. CIR/IMD/DF/10/2013 dated July 29, 2013 requires that all Category III AIFs report to the custodian on a daily basis the amount of leverage at the end of the day (based on closing prices) and whether there has been any breach of limit during the day.
  - b. It has been observed that with respect to reporting of amount of leverage at the end of the day, the AIF is dependent on various parties in order to calculate and submit to the custodian the amount of leverage as at the end of the day. Such various parties provide information at varied time periods due to which the AIFs are finding it difficult to report to the custodian the amount of end-of-day leverage on the same day.
  - c. Therefore, in part modification of the aforesaid circular dated July 29, 2013, all Category III AIFs shall report to the custodian the amount of leverage at the end of the day (based on closing prices) by the end of next working day.





## 2. Disclosures in placement memorandum

### a. Disclosure on fees and charges and litigations

- i. It has been observed that fee structure applicable to the investors in an AIF is generally complex in nature. Therefore, for better understanding, every AIF shall, in its placement memorandum, add by way of an annexure, a detailed tabular example of how the fees and charges shall be applicable to the investor including the distribution waterfall.
- ii. While Regulation 11(2) requires that an AIF shall include disciplinary actions in its placement memorandum, it has been observed that many AIFs have not been including the same in their placement memorandum.

In view of the above, it is clarified that all AIFs shall include in their placement memorandum, disciplinary history of:

- (1) AIF, sponsor, manager and their Directors/ partners/promoters and associates
- (2) If applicant is a trust, Trustees or trustee company and its directors.

Such disciplinary history shall, *inter alia*, include:

- (1) Details of outstanding/pending and past cases (where the person has been found guilty) of litigations, criminal or civil prosecution, disputes, non-payment of statutory dues, overdues to/ defaults against banks or financial institutions, contingent liabilities not provided for, proceedings initiated for economic offences or civil offences, adverse findings with respect to compliance with securities laws, penalties levied, disputed tax liabilities, etc..
- (2) any disciplinary action taken by the Board or any other regulatory authority.

In case of operational actions such as administrative warnings/deficiency letters, the same may be grouped together and summarized. However, if the investor seeks details of the summarized portion, the same shall be provided by the AIF to the investor.

Any further litigations/cases, etc. as may arise in the course of the activities of the AIF shall be appropriately incorporated in the placement memorandum and intimated to the investors.

- iii. Existing AIFs shall send the annexure as stated in

clause (a)(i) above and disciplinary actions, if not already included, to all their investors as an addendum to the existing placement memorandum within 30 days of this circular. A copy of the same shall also be filed with SEBI at least 7 days prior to sending the same to the investors.

### b. Changes to placement memorandum

- i. At the time of submission of final placement memorandum to SEBI, any changes which have been made vis-a-vis the draft placement memorandum submitted to SEBI at the time of application shall be listed clearly in the covering letter. Further, the changes shall also be highlighted in the copy of the final placement memorandum.
- ii. Further, it has been observed in several cases that changes are being made to the placement memorandum without intimation to or consent from unit holders, which is not in the interest of the investors.
- iii. All AIFs shall intimate any change to the placement memorandum to all unit holders (including investors who have provided commitment to the AIF) within 7 days of making such change, specifically indicating the changes made. Such changes shall also be intimated to SEBI.
- iv. However, in cases of material changes significantly influencing the decision of the investor to continue to be invested in the AIF, the process as mentioned hereunder shall be complied with. Such changes shall include, but not be limited to the following:
  - a. Change in sponsor/manager (not including an internal restructuring within the group)
  - b. Change in control of sponsor/manager
  - c. Change in fee structure or hurdle rate which may result in higher fees being charged to the unit holders

The following process shall be followed by the AIF:

- a. Existing unit holders who do not wish to continue post the change shall be provided an exit option. The unit holders shall be provided not less than one month for expressing their dissent.
- b. In case the scheme of the AIF is open-ended, the exit option may be provided by either of the following:
  - (1) Buying out of units of the dissenting investors by the manager/ any other person as may be arranged by manager, valuation of which shall



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be based on market price of underlying assets.

(2) Redemption of units of the investors through sale of underlying assets.

c. In case the scheme of the AIF is close-ended, the exit option may be provided as under:

(1) The exit option shall be provided by buying out of units of the dissenting investors by the manager/ any other person as may be arranged by manager.

(2) Prior to buying out of such units, valuation of the units shall be undertaken by 2 independent valuers and the exit shall be at value not less than average of the two valuations.

d. The responsibility to provide exit to the dissenting investors shall be on the manager. The expenses for the entire process shall be borne by the manager sponsor/proposed new manager or sponsor and shall not be charged to the unit holders.

e. The entire process of exit to dissenting investors shall be completed within 3 months from the date of expiry of last date of the offer for dissent.

f. The trustee of AIF (in case AIF is a trust)/ sponsor (in case of any other AIF) shall be responsible for overseeing the process, ensuring compliance and regularly updating SEBI on the developments.

### 3. Clarification on certain aspects of the AIF Regulations

a. For the purpose of Regulation 10(b) of the AIF Regulations, in case the corpus of an open-ended scheme falls below rupees twenty crores:

i. The AIF shall intimate to SEBI within 2 days of receiving request for redemption from the client.

ii. The AIF shall take necessary action to bring back the scheme size to twenty crores within 3 months from the date of such breach.

iii. In case the AIF fails to bring back the corpus within the prescribed period, it shall redeem entire units of all investors.

iv. In case of repeated violations by the AIF, SEBI may take action against the AIF, as may be appropriate.

b. With respect to units of AIF issued to the employees of the manager of the AIF for profit-sharing, Regulation 10(c) shall not be applicable in cases where such units do not entail any contribution/investment from the employees.

c. With respect to investment by the sponsor/manager in the AIF, the sharing of loss by the sponsor/manager shall not be less than pro rata to their holding in the AIF vis-a-vis other unit holders.

d. With respect to Regulation 10(c), an AIF may accept the following as joint investors for the purpose of investment of not less than one crore rupees:

- i. an investor and his/her spouse
- ii. an investor and his/her parent
- iii. an investor and his/her daughter/son

With respect to the above investors, not more than 2 persons shall act as joint-investors in an AIF. In case of any other investors acting as joint-investors, for every investor, the minimum investment amount of one crore rupees shall apply.

e. For the purpose of maintaining continuing interest under Regulation 10(d) of the AIF Regulations, such interest may be maintained pro-rata to the amount of funds raised (net) from other investors in the AIF.

f. An AIF shall not invest in units of another AIF unless it is fund of AIFs as specified under the Regulations.

g. For the purpose of Regulation 15(1)(c), in case the AIF proposes to invest into real estate or infrastructure projects, every such investee company shall hold not less than one project.

h. For the purpose of Regulation 15(1)(e), prior to every investment in an associate, approval of the investors as specified shall be obtained.

i. In case of an AIF which is open-ended, the first single lump-sum investment amount received from the investor should not be less than the minimum investment amount. Further, in case of request for partial redemption of units by an investor in an open-ended AIF, the AIF shall ensure that after such redemption, the amount of investment retained by the investor in the fund does not fall below the prescribed minimum limit as provided under the Regulations.

j. With respect to an in-principle approval is granted to an applicant, in case the registered trust deed or duly filed partnership deed is not submitted within the prescribed time period, the applicant shall file a fresh application for registration under the Regulations.

k. Pooling vehicles shall not be created solely for the purpose of investing in an AIF unless the pooling vehicles are registered with SEBI as AIFs (acting as Fund of AIFs).



- i. With respect to Regulation 17(a), it is clarified that the term 'primarily' is indicative of where the main thrust of Category II AIFs ought to be. The investment portfolio of a Category II AIF ought to be more in unlisted securities as against the aggregate of other investments.
  - m. All circulars/guidelines as may be issued by SEBI with respect to KYC requirements, Anti-Money Laundering and Outsourcing of activities shall be applicable to AIFs and the manager of the AIF shall be responsible for compliance with such circulars/guidelines.
4. Compliance Test Report (CTR)
- a. At end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued thereunder in the format as specified in the Annexure to this circular.
  - b. In case the AIF is a trust, the CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of other AIFs, the CTR shall be submitted to the sponsor within 30 days from the end of the financial year.
  - c. In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR. Within 15 days from the date of receipt of such observations/comments, the manager shall make necessary changes in the CTR, as may be required, and submit its reply to the trustee/sponsor.
  - d. In case any violation of AIF Regulations or circulars issued thereunder is observed by the trustee sponsor, the same shall be intimated to SEBI as soon as possible.
5. Submission of information to SEBI under sub-regulation (1) of Regulation (3) of AIF Regulations
- a. Under fourth proviso to Regulation 3(1) of AIF Regulations, 'such existing funds, which do not propose to accept any fresh commitments after commencement of these regulations shall not be required to obtain registration under these regulations subject to submission of information on their activities to the Board in the manner as may be specified'.
  - b. Funds falling under the purview of the aforesaid proviso shall disclose to SEBI information in the manner as specified hereunder:
    - i. Such funds shall download the excel sheet provided on SEBI website under the Section Info for→Alternative Investment Funds→"Information to be filled by unregistered funds"
    - ii. The fund shall not add any additional rows/columns to the excel sheet or fill any information other than the information sought in the excel sheet
    - iii. Once filled, the excel sheet shall be emailed to aifreporting@sebi.gov.in
    - iv. The aforesaid information shall be sent only by email. No physical copy of the aforesaid sheet shall be sent to SEBI
    - v. The information shall be sent to SEBI within 30 days from the date of this circular.
  - c. Funds which have been closed/wound up (where all moneys have been returned to all the investors) on the date of commencement of the AIF Regulations need not submit the aforesaid information. Funds which have not been wound up and which have launched multiple schemes shall submit information only for those schemes which have not been closed/ wound up as on the date of commencement of the AIF Regulations.

This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992. This Circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Alternative Investment Funds".

Barnali Mukherjee  
General Manager

## Annexure

### Format of Compliance Test Reports (CTRs)

Name of the AIF:

Category:

CTR for the Year:

Contact details of the compliance officer:

Sr. No	Compliance with respect to	Details of compliance	Any other comments
1.	<b>Regulation 7(1)(c):</b> During the year, whether the AIF has informed the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.		
2.	<b>Regulation 9(2):</b> Whether there has been any material alteration to the fund strategy during the year and in such case, whether consent of atleast two-thirds of unit holders by value of their investment in the AIF has been obtained.		



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3.	<b>Regulation 10(b):</b> Whether each scheme of the AIF has corpus of atleast twenty crore rupees;		
4.	<b>Regulation 10(c):</b> Whether the AIF has added any new investors during the year. If yes, whether the AIF has accepted from an investor, an investment of value not less than one crore rupees.		
5.	<b>Regulation 10(d):</b> Whether the Manager or Sponsor has a continuing interest in the AIF of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment in the AIF and such interest is not through the waiver of management fees. In case of Category III AIF, whether the continuing interest is not less than five percent of the corpus or ten crore rupees, whichever is lower.		
6.	<b>Regulation 10(e):</b> Whether the Manager and Sponsor have disclosed their investments in the AIF to the investors of the AIF.		
7.	<b>Regulation 10(f):</b> Whether each scheme of the AIF has not more than one thousand Investors.		
8.	<b>Regulation 10(g):</b> Whether the AIF has solicited or collected funds only by way of private placement.		
9.	<b>Regulation 11(2):</b> Whether the placement memorandum contains all information as specified in Regulation 11(2)		
10.	<b>Regulation 12:</b> Whether the AIF has launched any new scheme during the year and in such case, whether the placement memorandum has been filed with SEBI atleast thirty days prior to launch of scheme along with the scheme fees.		
11.	<b>Regulation 13(4) &amp; 13(5):</b> Whether there has been any extension of the tenure of the close ended AIF. If yes, whether the same is not more than two years and approved by two-thirds of the unit holders by value of their investment in the AIF. In the absence of consent of unit holders, whether the AIF has fully liquidated within one year following expiration of the fund tenure or extended tenure.		
12.	<b>Regulation 14(1):</b> In case the units of the AIF are listed during the year, whether the listing is after final close of the fund or scheme.		

13.	<b>Compliance with every clause of Regulation 15</b> (Separate compliance for every clause shall be provided)		
14.	<b>Compliance with every clause of Regulation 16/17/18 as applicable</b> (Separate compliance for every clause shall be provided)		
15.	<b>Compliance with every clause of Regulation 20</b> (Separate compliance for every clause shall be provided)		
16.	<b>Regulation 21:</b> In case of any conflict of interests that have arose during the year, whether Regulation 21 has been complied with.		
17.	<b>Regulation 22:</b> Whether the AIFs have disclosed information contained in the clauses under Regulation 22 to the investors.		
18.	<b>Regulation 23:</b> (Separate compliance for every clause shall be provided)		
19.	<b>Regulation 25:</b> Whether the AIF, by itself or through the Manager or Sponsor, has laid down procedure for resolution of disputes between the investors, AIF, Manager or Sponsor through arbitration or any such mechanism as mutually decided between the investors and the AIF.		
20.	<b>Regulation 28:</b> Whether reports to be submitted the SEBI during the year have been submitted in the manner as specified by SEBI.		
21.	<b>Regulation 29:</b> In case the AIF has wound up during the year, whether Regulation 29 has been complied with.		
22.	<b>Compliance with SEBI circular No. CIR/IMD/DF/10/2013 dated July 29, 2013 regarding Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs):</b> Compliance with respect to: • Risk management and compliance • Redemption norms • Prudential requirements		
23.	<b>Compliance with circular No. CIR/IMD/DF/14/2014 dated June 19, 2014</b> Compliance with respect to: • Disclosures in placement memorandum • Every clause under point (3) on 'Clarification on certain aspects of the AIF Regulations'.		
24.	<b>Compliance with any circular as may be issued by SEBI</b>		





# 27

## Participation of FPIs in the Currency Derivatives segment and Position limits for currency derivatives contracts Regulations

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/MRD/DP/20/2014, dated 20.6.2014]

The Hon'ble Finance Minister in his Budget 2013-2014 speech on February 28, 2013 had announced that "FPIs will be allowed to participate in the exchange traded currency derivative segment to the extent of their Indian rupee exposure in India".

2. Pursuant to notification dated May 21, 2014 on Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2014, Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular no. 148 dated June 20, 2014 has allowed FPIs, who are eligible to invest in securities as laid down in Schedules 2, 5, 7 and 8 of Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000, to enter into currency futures or exchange traded currency options contracts, subject to terms and conditions mentioned in the said circular. Copy of the RBI circular is enclosed for reference.\*

### Participation of FPIs in the Currency Derivatives segment

- (3) In view of the above, FPIs are permitted to trade in the currency derivatives segment of stock exchanges, subject to terms and conditions mentioned in this circular and aforesaid RBI circular.
- (4) Accordingly, para 1.1.d. of the SEBI Circular SEBI/DNPD/Cir-38/2008 dated August 06, 2008 regarding Exchange Traded Currency Derivatives is modified as under:

Appropriate mechanisms are implemented to prevent participation in Exchange Traded Currency Derivatives of "persons resident outside India", as defined in Section 2(w) of the Foreign Exchange Management Act, 1999, except persons allowed under regulation 5B of Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2014.

5. Within the applicable position limits specified in para 12, positions taken by the FPIs in the currency derivatives segment of a recognised stock exchange shall be subject to the following conditions:
  - (a) FPIs may take long as well as short positions in the permitted currency pairs upto USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable,

per stock exchange without having to establish the existence of any underlying exposure.

- (b) FPIs shall ensure that their short positions at a stock exchange across all contracts in a permitted currency pair do not exceed USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable. In the event a FPI breaches the short position limit, stock exchanges shall restrict the FPI from increasing its existing short positions or creating new short positions in the currency pair till such time FPI complies with the said requirement.
- (c) To take long positions in the permitted currency pair in excess of USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable, FPIs shall be required to have an underlying exposure in Indian debt or equity securities, including units of equity/debt mutual funds.
6. Primary onus for ensuring compliance with the above provisions shall rest with the FPI.
7. With regard to enabling monitoring of positions of FPIs as per the provisions of the RBI A.P. (DIR Series) Circular no. 148 dated June 20, 2014, the following shall be implemented by the clearing corporations and the custodians of securities of the FPIs:
  - (a) The clearing corporation shall provide details on the FPI's day-end and day's highest open positions at end of day to the custodians of securities of the FPI.
  - (b) The custodian of securities of the FPI shall aggregate the positions taken by the FPI on the currency derivatives segments of all the stock exchanges and forward such details to the designated bank of the FPI as defined at regulation 2(1)(e) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014. The custodian of securities of the FPI shall also provide the market value of applicable underlying exposure of the FPI to the designated bank of the FPI.

### Participation of domestic clients in the currency derivatives segment

8. RBI vide A.P. (DIR Series) Circular no. 147 dated June 20, 2014 has revised the participation requirements for the domestic participants in the currency derivatives segment. Copy of the RBI circular is enclosed for reference.\*
9. Accordingly, within the applicable position limits specified in para 12, positions taken by the domestic clients shall be subject to the following conditions:
  - (a) Domestic clients may take long or short positions in the permitted currency pairs upto USD 10 million / EUR 5

\*Not reproduced here.

\*Not reproduced here.





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million / GBP 5 million / JPY 200 million, as applicable, per stock exchange without having to establish the existence of any underlying exposure.

- (b) Domestic clients may take positions in the permitted currency pairs in excess of USD 10 million / EUR 5 million / GBP 5 million / JPY 200 million, as applicable, subject to the conditions specified by the RBI A.P. (DIR Series) Circular no. 147 dated June 20, 2014.

10. Stock brokers shall comply with the requirements mentioned in the RBI A.P. (DIR Series) Circular no. 147 dated June 20, 2014 while dealing with domestic clients and shall bring to the notice of their clients the requirements specified in this circular and the aforementioned RBI circular.

11. The primary onus of complying with the relevant provisions of the RBI A.P. (DIR Series) Circular no. 147 dated June 20, 2014 shall rest with the client and in case of any contravention, the client shall render itself liable to any action that may be warranted by RBI as per the provisions of Foreign Exchange Management Act, 1999 and Regulations, Directions, etc framed thereunder.

## Position limits in the permitted currency pairs

12. In modification to position limits specified vide SEBI circular CIR/MRD/DP/22/2013 dated July 08, 2013 for USD-INR contracts and in partial modification to the position limits specified for EUR-INR, GBP-INR and JPY-INR contracts vide SEBI circular SEBI/DNPD/Cir-52/2010 dated January 19, 2010, the revised position limits per stock exchange shall be as follows:

- (a) Position limits for Stock Brokers (bank and non-bank), Category I & II FPIs: The position limits shall be as given in the table below.

Currency Pair	Position limits
USD-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or USD 100 million, whichever is higher
EUR-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or EUR 50 million, whichever is higher.
GBP-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or GBP 50 million, whichever is higher.
JPY-INR	Gross open position across all contracts shall not exceed 15% of the total open interest or JPY 2000 million, whichever is higher.

- (b) Proprietary positions of non-bank stock brokers: Proprietary positions of non-bank stock brokers shall be subject to position limits mentioned at para 12(c).

- (c) Position limits for Clients and Category III FPIs: The position limits shall be as given in the table below.

Currency Pair	Position limits
USD-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or USD 10 million, whichever is higher.
EUR-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or EUR 5 million, whichever is higher.
GBP-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or GBP 5 million, whichever is higher.
JPY-INR	Gross open position across all contracts shall not exceed 6% of the total open interest or JPY 200 million, whichever is higher.

13. Stock exchanges shall impose appropriate penalties for violation of position limits by stock brokers / FPIs / domestic clients.

14. In case of positions taken to hedge underlying exposure, the position limit linked to open interest shall be applicable at the time of opening a position. Such positions shall not be required to be unwound in the event a drop of total open interest in a currency pair at a stock exchange. However, participants shall not be allowed to increase their existing positions or create new positions in the currency pair till they comply with the position limits.

15. All other conditions as specified vide earlier SEBI Circulars shall remain unchanged. Stock exchanges / Clearing corporations may specify additional safeguards / conditions, as deemed fit, to manage risk and to ensure orderly trading.

16. Depositories are directed to forward this circular to the DDPs, who shall in turn bring the contents of this circular to the notice of the FPIs registered with them.

17. Stock Exchanges and Clearing Corporations are directed to:

- take necessary steps to put in place systems for implementation of the circular by June 27, 2014, including necessary amendments to the relevant bye-laws, rules and regulations;
- bring the provisions of this circular to the notice of the stock brokers / clearing members and also disseminate the same on their website;
- communicate to SEBI the status of implementation of the provisions of this circular.

18. 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.

Maninder Cheema  
Deputy General Manager



# 28

## SEBI Circulars No. CIR/CFD/DIL/3/2013 dated January 17, 2013, CIR/CFD/DIL/7/2013 dated May 13 and CIR/CFD/POLICYCELL/14/2013 dated November 29, 2013 - Extension of time line for alignment

[Issued by the Securities and Exchange Board of India vide Circular No. CIR/CFD/POLICYCELL/3/2014, dated 27.6.2014]

1. SEBI vide circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013, *inter alia*, made certain amendments to the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 {"SEBI (ESOS and ESPS) Guidelines, 1999"} and employee benefit schemes involving securities of the company were required to be aligned with the SEBI (ESOS and ESPS) Guidelines, 1999. The time line for alignment was subsequently extended vide aforesaid circulars dated May 13, 2013 and November 29, 2013.
2. Meanwhile, following a consultative process, SEBI Board has approved certain proposals for framing a new set of regulations concerning employee benefit schemes dealing in shares of the company. The new regulations shall come into force as and when notified.
3. In view of the above, it has been decided to modify the said circular dated November 29, 2013 to extend the time line for aligning existing employee benefit schemes with the SEBI (ESOS and ESPS) Guidelines, 1999 till the new regulations are notified. However, it is reiterated that prohibition on acquiring securities from the secondary market shall continue till the existing schemes are aligned with the new regulations to be notified.
4. 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.
5. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Issues and Listing".

Harini Balaji  
Deputy General Manager

## ANNOUNCEMENT FOR MEMBERS

**For getting password for online payment, members are requested to contact**

Vandana Mohindroo at  
e-mail id: [vandana.mohindroo@icsi.edu](mailto:vandana.mohindroo@icsi.edu)

Regarding complaint of non-receipt of Chartered Secretary Journal, members are requested to contact Meena Bisht at e-mail id: [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu)

## ATTENTION:

### MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March, 2014. The CDs are available at the headquarters of the Institute and will be supplied free of cost to the members holding certificate of practice on receipt of request. Request may please be sent to the Membership Section at email id [rajeshwar.singh@icsi.edu](mailto:rajeshwar.singh@icsi.edu).

For queries if any, please contact on telephone no: 011-45341063.

## ANNUAL LICENTATE SUBSCRIPTION

The Annual Licentiate Subscription for the year 2014-15 became due for payment w.e.f. 1st April, 2014. The last date for payment was 30th June, 2014 which has now been extended till 31st August, 2014.

## AMENDMENT IN THE DEFINITION OF ACCOUNTANT IN RULE 2(e) OF UP VAT RULES, 2008 TO INCLUDE COMPANY SECRETARY VIDE NOTIFICATION DATED 27.06.2014

### The Amended definition reads as under:

2(e) - Accountant means a Chartered Accountant as defined in Chartered Accountants Act, 1949 or a member of an association of accountants recognised in this behalf by the Central Board of Revenue and **includes a Company Secretary as defined in Company Secretaries Act, 1980** and a Cost Accountant as defined in the Cost & Works Accountants Act, 1959.



# News From the Institute



## Institute News

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15	SH. MRITYUNJAY PRASAD ROY	FCS - 7586	NIRC
16	SH. V N PARTHIBAN	FCS - 7587	SIRC
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18	MS. RITA AGGARWAL	FCS - 7589	NIRC
19	MS. SREEDIVYA S	FCS - 7590	SIRC
20	DR. SANTANU MITRA	FCS - 7591	EIRC

### ASSOCIATES\*\*

1	MS. SURBHI MAHESHWARI	ACS - 35883	NIRC
2	MS. NUPUR CHOUDHURY	ACS - 35884	EIRC
3	MR. KETAN SHARMA	ACS - 35885	EIRC
4	MS. SHRUTI KEJRIWAL	ACS - 35886	EIRC
5	MS. DIPANKY THAKUR	ACS - 35887	EIRC
6	MR. SHUBHAM SRIVASTAVA	ACS - 35888	NIRC
7	MR. HARSH RANJAN	ACS - 35889	NIRC
8	MR. SHAMBHU YADAV	ACS - 35890	NIRC

9	MS. POOJA AGARWAL	ACS - 35891	NIRC
10	MR. VIJAYA SARADHI PAPPU	ACS - 35892	SIRC
11	MR. SWAMINATHAN S	ACS - 35893	SIRC
12	MS. SWATI BHARAT SHARMA	ACS - 35894	WIRC
13	MS. VIDYA UDAYSINGH SIKARWAR	ACS - 35895	WIRC
14	MR. PRAKASH JOSHI	ACS - 35896	WIRC
15	MS. THEVAR ANUPRIYA CHANDRASEKAR	ACS - 35897	WIRC
16	MS. ANUSHA R	ACS - 35898	SIRC
17	MS. ANUPMA MITTAL	ACS - 35899	NIRC
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23	MR. RAJAT PURI	ACS - 35905	NIRC
24	MR. SANDEEP AGRAWAL	ACS - 35906	NIRC
25	MS. PINKY	ACS - 35907	NIRC
26	MS. SHRIPRIYA KAUSHAL	ACS - 35908	NIRC
27	MS. SWATI KHULBE	ACS - 35909	NIRC
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29	MS. BABITA SHOUN	ACS - 35911	NIRC
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34	MS. DEEPIKA ARORA	ACS - 35916	NIRC
35	MR. KRISHNA KUMAR TIWARI	ACS - 35917	NIRC
36	MS. BARKHA ARORA	ACS - 35918	NIRC
37	MR. ROHIT GUPTA	ACS - 35919	NIRC
38	MR. PUNEET MAHESHWARI	ACS - 35920	NIRC
39	MS. SHEFALI JAIN	ACS - 35921	NIRC
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41	MS. AYUSHI MAURYA	ACS - 35923	NIRC
42	MR. VIKAS GANDHI	ACS - 35924	NIRC
43	MS. SHRUTI GUPTA	ACS - 35925	NIRC
44	MS. JASMINE KAUR	ACS - 35926	NIRC
45	MS. SHRUTI GUPTA	ACS - 35927	NIRC
46	MR. SAURABH GUPTA	ACS - 35928	NIRC
47	MS. SHWETA GARG	ACS - 35929	NIRC
48	MS. PRERNA KAPOOR	ACS - 35930	NIRC
49	MS. SHWETA CHATURVEDI	ACS - 35931	NIRC
50	MR. TOMS KURIAN	ACS - 35932	SIRC
51	MR. RAJU	ACS - 35933	SIRC
52	MR. JOHN H MOHITH	ACS - 35934	SIRC
53	MR. N VINEETH CHANDRAN	ACS - 35935	SIRC
54	MR. KATUKURI RAJAMOULI	ACS - 35936	SIRC

\*Admitted during the period from 13.05.2014 to 16.06.2014

\*\*Admitted during the period from 16.05.2014 to 16.06.2014





55	MR. RAJESH AMARSHI SOLANKI	ACS - 35937	WIRC	100	MS. NEHAL BHARAT RATHOD	ACS - 35982	WIRC
56	MR. MD PARVEZ AYAZ SHAIKH	ACS - 35938	WIRC	101	MS. JANKI PARESHKUMAR DOSHI	ACS - 35983	WIRC
57	MR. MAHESH SURESH HUPARIKAR	ACS - 35939	WIRC	102	MR. VIJAYA BHASKER MASAPATRI	ACS - 35984	SIRC
58	MS. SILKY KIRANKUMAR JAIN	ACS - 35940	WIRC	103	MS. SRIVIDHYA S RAMAN	ACS - 35985	SIRC
59	MR. ABHISHEK PRAKASH	ACS - 35941	WIRC	104	MR. S SUDARSHAN	ACS - 35986	SIRC
60	MS. DIPIKA SANJEEV JOSHI	ACS - 35942	WIRC	105	MS. AMITA MHADHANA TARWALE	ACS - 35987	WIRC
61	MR. ALOK SATISH BODAS	ACS - 35943	WIRC	106	MS. SHUBHI SRIVASTAVA	ACS - 35988	NIRC
62	MRS. ANUJA PANDURANG MORE	ACS - 35944	WIRC	107	MS. YATIKA AGARWALLA	ACS - 35989	NIRC
63	MS. POOJA VAIKUNTH BHATT	ACS - 35945	WIRC	108	MS. MEGHA KHANDELWAL	ACS - 35990	NIRC
64	MR. AVINASH DICKSON DSOUZA	ACS - 35946	WIRC	109	MS. PRIYANKA CHUGH	ACS - 35991	NIRC
65	MS. CHANDYA KUNTAL VIRENDRA	ACS - 35947	WIRC	110	MS. DEEPSHIKHA SINGHAL	ACS - 35992	NIRC
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67	MS. BHUMIKA MAHESHBHAI RAJANI	ACS - 35949	WIRC	112	MS. S SWARNA REKHA	ACS - 35994	SIRC
68	MS. HEMALI RASIKLAL GOHIL	ACS - 35950	WIRC	113	MR. KATTAMANCHI NAGARJUNA	ACS - 35995	SIRC
69	MS. PRACHI RAJENDRA BHANDARI	ACS - 35951	WIRC	114	MS. MANALI NIKHIL VYAS	ACS - 35996	WIRC
70	MR. SMIT SHAILESH SHAH	ACS - 35952	WIRC	115	MS. PRACHI PRADEEP KAUSHIKE	ACS - 35997	WIRC
71	MS. PRIYANKA VERMA	ACS - 35953	NIRC	116	MR. SATISH KUMAR JAIN	ACS - 35998	WIRC
72	MR. SUSHIL GARG	ACS - 35954	NIRC	117	MR. ASHISH VINOD ROONGTA	ACS - 35999	WIRC
73	MR. AJAY KALRA	ACS - 35955	NIRC	118	MS. VIDYA VISHNU BURUNG	ACS - 36000	WIRC
74	MR. A AJAY KUMAR BANTIA	ACS - 35956	SIRC	119	MS. RAJSHREE V SHARMA	ACS - 36001	WIRC
75	MS. HIMA KAUSHIK SHETH	ACS - 35957	WIRC	120	MS. GRISHMA KRITI SHAH	ACS - 36002	WIRC
76	MS. NAMRATA AGRAWAL	ACS - 35958	WIRC	121	MS. KOMAL VASANTBHAI GADA	ACS - 36003	WIRC
77	MS. MONIKA SHARMA	ACS - 35959	NIRC	122	MR. PRADIP PRABHAKAR RASANKAR	ACS - 36004	WIRC
78	MR. SOURAV AGARWAL	ACS - 35960	EIRC	123	MS. SHILPA GULANI	ACS - 36005	WIRC
79	MS. REEMA KAILASH JAIN	ACS - 35961	NIRC	124	MS. MANISHA CHORDIA	ACS - 36006	NIRC
80	MS. JAVA JOSHI	ACS - 35962	NIRC	125	MR. DARJI PRATIK KUMAR MAHESHBHAI	ACS - 36007	WIRC
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85	MS. PRERANA PARAKH	ACS - 35967	NIRC	130	MS. SHWETA MADAN	ACS - 36012	NIRC
86	MS. PARUL AGRAWAL	ACS - 35968	NIRC	131	MS. KAVIN ARORA	ACS - 36013	NIRC
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88	MS. SHRADDHA SRIVASTAVA	ACS - 35970	NIRC	133	MS. RAJNI SHOUN	ACS - 36015	NIRC
89	MS. SAPNA SHARMA	ACS - 35971	NIRC	134	MR. HIMANSHU M GARG	ACS - 36016	NIRC
90	MS. AKSHITA KHANDELWAL	ACS - 35972	NIRC	135	MS. PARUL JAIN	ACS - 36017	NIRC
91	MR. AJIT CHANDRASHEKHAR KALE	ACS - 35973	WIRC	136	MS. DIKSHA GUPTA	ACS - 36018	SIRC
92	MS. CHAITALI UTKARSH JANI	ACS - 35974	WIRC	137	MR. GOVERDHAN CHANDAK	ACS - 36019	SIRC
93	MR. RAJESHBHAI MITHALAL BHADANG	ACS - 35975	WIRC	138	MR. PRAMOD S	ACS - 36020	SIRC
94	MS. MANSI DEEPAK SHAH	ACS - 35976	WIRC	139	MS. SABARI GIRISH H	ACS - 36021	SIRC
95	MR. DILEEP PANCHAL	ACS - 35977	WIRC	140	MS. POORNIMA HEGDE	ACS - 36022	WIRC
96	MR. KETAN SHRIKANT RANADE	ACS - 35978	WIRC	141	MR. ROHIT LAXMIKANT MORDE	ACS - 36023	WIRC
97	MS. PANKTI MUKESHKUMAR DESAI	ACS - 35979	WIRC	142	MS. JOSHI SAYALI SANJAY	ACS - 36024	WIRC
98	MR. ASHISH DINESH PATEL	ACS - 35980	WIRC	143	MS. HETA JAY CHOKSHI	ACS - 36025	WIRC
99	MS. DIVIJA AMEET DAVE	ACS - 35981	WIRC	144	MS. NOOPUR JAIN	ACS - 36026	WIRC



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146	MS. NIKITA JAGDISHBHAI PATEL	ACS - 36028	WIRC	191	MS. SWARNAMUKHI NADARAJAH	ACS - 36073	SIRC
147	MS. JASMIN JAYKUMAR DOSHI	ACS - 36029	WIRC	192	MR. CHINTAN HARENDRAKUMAR VAKIL	ACS - 36074	WIRC
148	MR. KSHITIJ JAINENDRA LUNKAD	ACS - 36030	WIRC	193	MS. DIVYA SHASHIKANT MER	ACS - 36075	WIRC
149	MR. ASIT KUJUR	ACS - 36031	WIRC	194	MS. PAYAL PRADIP CHINDALIYA	ACS - 36076	WIRC
150	MR. GOPAL GHANSHYAMBHAI VAIRAGI	ACS - 36032	WIRC	195	MS. MUKTA SANJAY TAMHANKAR	ACS - 36077	WIRC
151	MS. CHAITALI BHARATKUMAR PARIKH	ACS - 36033	WIRC	196	MS. CHARANCHIT KAUR BAGGA	ACS - 36078	WIRC
152	MS. MINAL RAJENDRA MEHTA	ACS - 36034	WIRC	197	MS. PURNIMA PARASHAR	ACS - 36079	WIRC
153	MR. YOGENDRA SHARMA	ACS - 36035	WIRC	198	MR. MOHD WASEEM KHAN	ACS - 36080	NIRC
154	MS. JYOTI RAMESH KANKANI	ACS - 36036	SIRC	199	MS. SWARANGI PRANAY GAWAS	ACS - 36081	WIRC
155	MS. SHUBHAMANGALA GANAPATI HEGDE	ACS - 36037	SIRC	200	MR. PRAKASH SHYAMLAL AGRAWAL	ACS - 36082	WIRC
156	MR. ABHISHEK GOGIA	ACS - 36038	NIRC	201	MS. KASTURI KSHEERASAGAR	ACS - 36083	SIRC
157	MR. VED PRAKASH ROY	ACS - 36039	NIRC	202	MS. LEELAVATHI NAIDU	ACS - 36084	WIRC
158	MR. ANUKUL UDAI	ACS - 36040	NIRC	203	MS. BAISAKHI JAIN	ACS - 36085	EIRC
159	MR. ANUP GAURAV	ACS - 36041	NIRC	204	MR. ANKIT SINGH	ACS - 36086	NIRC
160	MS. DIVYA SHARMA	ACS - 36042	NIRC	205	MR. SHIV SHANKER	ACS - 36087	NIRC
161	MR. MOHIT YADAV	ACS - 36043	NIRC	206	MR. PALLAV CHOUDHARY	ACS - 36088	NIRC
162	MS. NUPUR JAIN	ACS - 36044	NIRC	207	MR. AJAY NAGA CHOWDARY VEMURI	ACS - 36089	SIRC
163	MR. SAURABH TALWAR	ACS - 36045	NIRC	208	MS. TESSA JOSEPH KALLARACKAL	ACS - 36090	SIRC
164	MS. AAYUSHI MULASI	ACS - 36046	NIRC	209	MS. JAYA N	ACS - 36091	SIRC
165	MS. CHITTARS BHANDHAVI	ACS - 36047	SIRC	210	MS. SAMANTHA NIKITHA REGO	ACS - 36092	WIRC
166	MR. VAGEESH K S	ACS - 36048	SIRC	211	MS. DEEPTHI T	ACS - 36093	SIRC
167	MR. VINU THOMAS	ACS - 36049	SIRC	212	MR. AMIT SHANTARAM TODKAR	ACS - 36094	WIRC
168	MR. KIRAN K A	ACS - 36050	SIRC	213	MR. SEKAR RAMASUBRAMANIAN IYER	ACS - 36095	WIRC
169	MR. KESAVAN V R	ACS - 36051	SIRC	214	MR. SAM ROHAN LOBO	ACS - 36096	WIRC
170	MS. MONIKA RAMCHAND BHATIA	ACS - 36052	WIRC	215	MS. EKTA KUMARPAL SHAH	ACS - 36097	WIRC
171	MS. BIJAL RAMESHKUMAR SHAH	ACS - 36053	WIRC	216	MR. ASHISH VEDPRAKASH SHARMA	ACS - 36098	WIRC
172	MR. DEEPAK KUMAR AJMERA	ACS - 36054	NIRC	217	MR. PUNEET KUMAR SAHU	ACS - 36099	WIRC
173	MR. ANIL KUMAR SOMANI	ACS - 36055	NIRC	218	MS. KRISHNA NISHITH GANDHI	ACS - 36100	WIRC
174	MR. GOVIND MAHESHWARI	ACS - 36056	NIRC	219	MS. VIBHA PATNI	ACS - 36101	WIRC
175	MR. KULBHUSHAN VERMA	ACS - 36057	NIRC	220	MS. MONIKA RIZWANI	ACS - 36102	WIRC
176	MS. SPANDANA K N	ACS - 36058	SIRC	221	MR. ASHISHKUMAR GAUTAMBHAI PATEL	ACS - 36103	WIRC
177	MS. ANKITA GOENKA	ACS - 36059	EIRC	222	MS. NIMITA KALUBHAI RADADIYA	ACS - 36104	WIRC
178	MS. APARNA RAI	ACS - 36060	NIRC	223	MS. KHUSHBOO SACHDEVA	ACS - 36105	NIRC
179	MR. ANUP GUPTA	ACS - 36061	EIRC	224	MS. MEGHA CHHABRA	ACS - 36106	NIRC
180	MS. NIMISHA AGARWAL	ACS - 36062	EIRC	225	MS. SONAL SINGHAL	ACS - 36107	NIRC
181	MR. ANURAG KUMAR YADAV	ACS - 36063	NIRC	226	MS. MAKHIMASRI SRIRANGASWAMY	ACS - 36108	SIRC
182	MR. VARUN JAIN	ACS - 36064	NIRC	227	MS. RIDHI RAJEEV SOOD	ACS - 36109	WIRC
183	MS. ANCHAL OSWAL JAIN	ACS - 36065	NIRC	228	MS. ARJU JAIN	ACS - 36110	EIRC
184	MS. POOJA MAHESH KHANCHANDANI	ACS - 36066	SIRC	229	MR. RAJU SHAW	ACS - 36111	EIRC
185	MS. ASHA RAWAT	ACS - 36067	NIRC	230	MS. PRIYANKA AGARWAL	ACS - 36112	EIRC
186	MS. VANDANA LALWANI	ACS - 36068	NIRC	231	MS. SIMI SEN	ACS - 36113	EIRC
187	MS. ANJALI TRIVEDI	ACS - 36069	NIRC	232	MS. PAYAL BAFNA	ACS - 36114	EIRC
188	MR. BRIJESH KUMAR	ACS - 36070	NIRC	233	MS. NIKITA RATERIA	ACS - 36115	EIRC
189	MS. NEHA SHARMA	ACS - 36071	NIRC	234	MS. SHWETA PRIY	ACS - 36116	EIRC



235	MS. SHREYA AGARWAL	ACS - 36117	EIRC	278	MS. KHUSHBOO VINOD KUMAR SHAH	ACS - 36160	WIRC
236	MS. GEETIKA KHANDELWAL	ACS - 36118	EIRC	279	MR. ABHIJIT DAS	ACS - 36161	EIRC
237	MR. ANUBHAV NAGELIA	ACS - 36119	EIRC	280	MS. ALKA RANI	ACS - 36162	NIRC
238	MS. SHUKTI OJHA	ACS - 36120	NIRC	281	MR. SAURABH AGRAWAL	ACS - 36163	NIRC
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240	MS. DOLLY KHANNA	ACS - 36122	NIRC	283	MS. SHRUTI BAGRI	ACS - 36165	NIRC
241	MR. SANJIB CHAKRABORTY	ACS - 36123	EIRC	284	MS. AVNI GARG	ACS - 36166	NIRC
242	MS. SWARNLATA JAIN	ACS - 36124	NIRC	285	MS. POOJA	ACS - 36167	NIRC
243	MR. MOHD SADIQUL MEHDI	ACS - 36125	NIRC	286	MR. VIJAY KUMAR DWIVEDI	ACS - 36168	NIRC
244	MR. RAJNISH KUMAR	ACS - 36126	NIRC	287	MS. SHRUTI BANSAL	ACS - 36169	NIRC
245	MR. VISHAL MANTRI	ACS - 36127	NIRC	288	MR. SUSHIL CHOUDHARY	ACS - 36170	NIRC
246	MR. PARDEEP KUMAR	ACS - 36128	NIRC	289	MR. N K AJITH	ACS - 36171	SIRC
247	MS. GOPIKA GUPTA	ACS - 36129	NIRC	290	MR. RAGHAVENDAR REDDY M	ACS - 36172	SIRC
248	MR. MANJUL MISHRA	ACS - 36130	NIRC	291	MR. SREEKUMAR M	ACS - 36173	SIRC
249	MS. MAMTA JANGID	ACS - 36131	NIRC	292	MS. NEMALIKANTY ANURADHA	ACS - 36174	SIRC
250	MR. SACHIN BAREJA	ACS - 36132	NIRC	293	MS. BRINDA HARESHKUMAR BHATIA	ACS - 36175	WIRC
251	MS. HARSHITA TIWARI	ACS - 36133	NIRC	294	MR. AVINASH AGRAWAL	ACS - 36176	WIRC
252	MS. MANASA RAO	ACS - 36134	SIRC	295	MS. NEHA MAHENDRA CHAJJED	ACS - 36177	WIRC
253	MS. K LAKSHMI PRIYA	ACS - 36135	SIRC	296	MR. RAVI KUMAR UPPUTALLA	ACS - 36178	SIRC
254	MS. RAJI R	ACS - 36136	SIRC	297	MS. NETHRAVATHI N M	ACS - 36179	SIRC
255	MS. KARTHIKA P S	ACS - 36137	SIRC	298	MR. MALCOLM MICHAEL MASCARENHAS	ACS - 36180	WIRC
256	MR. VASUKI S	ACS - 36138	SIRC	299	MRS. BHAVIKA AASHISH BHATT	ACS - 36181	WIRC
257	MS. BHARTI BABULAL JAIN	ACS - 36139	WIRC	300	MR. MAYANK JAIN	ACS - 36182	WIRC
258	MR. ANUP RAJNIKANT PANDYA	ACS - 36140	SIRC	301	MR. VINEET KASERA	ACS - 36183	WIRC
259	MR. AKSHAY HASMUKH SHAH	ACS - 36141	WIRC	302	MS. POOJA YADAV	ACS - 36184	WIRC
260	MR. UDAY MISAL	ACS - 36142	WIRC	303	MR. SANDEEP SAHNI	ACS - 36185	NIRC
261	MS. SUPRIYA DILIP SAWANT	ACS - 36143	WIRC	304	MS. SAVITA DAHIYA	ACS - 36186	NIRC
262	MS. RASHMI JAGATSINGH DUDHARIA	ACS - 36144	WIRC	305	MR. SAMARTHA J HEGADE	ACS - 36187	SIRC
263	MS. SNEHA SHRIVASTAVA	ACS - 36145	WIRC	306	MR. BHUPESH MITTAL	ACS - 36188	NIRC
264	MR. ROHIT RAJA KUNDNANI	ACS - 36146	WIRC	307	MS. PURVASHRI PRADEEP SALGAONKAR	ACS - 36189	WIRC
265	MS. R KANAKATHARA	ACS - 36147	SIRC	308	MR. CHINTAN BHARATBHAI DOSHI	ACS - 36190	WIRC
266	MR. SACHIN KUMAR	ACS - 36148	WIRC	309	MRS. NANCY RAVI KADIWAR	ACS - 36191	WIRC
267	MR. MUKESH PAREEK	ACS - 36149	WIRC	310	MS. DIPALI SURYAKUMAR PITALE	ACS - 36192	WIRC
268	MR. ANUJ KALA	ACS - 36150	NIRC	311	MS. SHRADDHA GIRISH BHATT	ACS - 36193	WIRC
269	MR. RITESH KUMAR JHANWAR	ACS - 36151	WIRC				
270	MS. PRIYANKA V	ACS - 36152	SIRC				
271	MS. AKANKSHA SHARMA	ACS - 36153	SIRC				
272	MS. SWATI DUBEY	ACS - 36154	NIRC				
273	MS. HIMGAURI DEEPAK PALKAR	ACS - 36155	WIRC				
274	MS. MONICA MEGHRAJ BHAI SURJANI	ACS - 36156	WIRC				
275	MS. SWATI MAHAWAR	ACS - 36157	WIRC				
276	MS. MAYURI JAIN	ACS - 36158	WIRC				
277	MS. SWETA ASHOK THAKOR	ACS - 36159	WIRC				

## LICENTATE ICSI\*

1	ARUNABHA ACHARYA	6644	EIRC
2	MS. VERSHA VERMA	6645	NIRC
3	MR. GANESH RAMNATH SHANBHAG	6646	WIRC
4	MS. KHUSBHU AGARWAL	6647	EIRC
5	MR. ANKIT BHARGAVA	6648	SIRC
6	MR. ASHOK R. MERWADE	6649	SIRC
7	MS. PRATIBHA GUPTA	6650	NIRC

\*Admitted during the month of May, 2014





# News From the Institute

## Certificate of Practice

S. NO.	NAME	MEMBERSHIP NO.	CP NO.	REGION
<b>ISSUED**</b>				
1	MS. RASHIDA TAIYABIBHAI RATLAMWALA	ACS - 35530	13159	WIRC
2	MR. GAGANDEEP SINGH VIG	ACS - 34408	13160	NIRC
3	MR. AJINKYA PANDURANG BAGADE	ACS - 35247	13161	WIRC
4	MS. MADHURA MADHAV OAK	ACS - 28992	13162	WIRC
5	MR. MANDAR SHIRISH KARNIK	ACS - 34952	13163	WIRC
6	MS. APOORVA JOSHI	ACS - 22812	13164	WIRC
7	MS. PRIYANKA BATRA	ACS - 35686	13165	NIRC
8	MS. RACHANA PRAKASH	ACS - 32481	13166	NIRC
9	MS. SUMAN AGGARWAL	ACS - 33382	13168	NIRC
10	MS. ARPANA JHA	ACS - 25652	13169	WIRC
11	MRS. KOMAL M JAIN	ACS - 26395	13170	WIRC
12	SH. AJITH JOHN	ACS - 19371	13171	SIRC
13	SH. PINAKI SIRCAR	FCS - 7385	13172	EIRC
14	SH. S. S. ARUNACHALAM	ACS - 17626	13173	SIRC
15	MS. CHARU SHARMA	ACS - 27745	13174	NIRC
16	SH. V L VYAS	FCS - 1602	13175	WIRC
17	MR. MOHAMMAD HAMID	ACS - 35710	13176	WIRC
18	MR. NITESH MALL	ACS - 35341	13177	NIRC
19	MRS. RUCHIKA GULATI	ACS - 35232	13179	NIRC
20	MR. SUMIT MUTHA	ACS - 30341	13180	NIRC
21	SH. ANSHUL KUMAR JAIN	FCS - 5547	13181	WIRC
22	MS. PUJA SHARMA	ACS - 35148	13182	EIRC
23	MR. SOURABH GUPTA	ACS - 32052	13183	NIRC
24	MS. RATIKA RAVI GANDHI	ACS - 29732	13184	WIRC
25	MS. IPSA HEMNANI	ACS - 33756	13185	NIRC
26	MS. HINA ARORA	ACS - 31242	13186	NIRC
27	MR. VHORA NAHID AKHTAR ABDUL GAFAR	ACS - 35492	13187	WIRC
28	MR. VIKAS KALURAM SUTHAR	ACS - 35641	13188	WIRC
29	MR. GAURAV VASHISTHA	ACS - 35358	13189	NIRC
30	MR. SAJITH K B	ACS - 35602	13190	SIRC
31	MR. GOPAL LADDA	ACS - 34522	13191	SIRC
32	MR. PRASANNA H M	ACS - 35581	13192	SIRC
33	SH. OM PRAKASH SINGH	FCS - 4304	13193	WIRC
34	MS. RACHNA SHARMA	ACS - 34636	13194	NIRC
35	MRS. NAMRATA ANKIT MAHESHWARI	ACS - 27165	13195	WIRC
36	MRS. MONIKA KHANNA	FCS - 7579	13196	NIRC
37	MS APARNA P BHAT	ACS - 19995	13197	WIRC
38	MRS. KALPANA RAKHECHA JAIN	ACS - 22608	13198	WIRC
39	MRS. SOUMYA DAFTHARDAR	ACS - 29312	13199	SIRC
40	SH. NITIN AGARWAL	ACS - 25643	13200	NIRC
41	MS. D SNEHA JAIN	ACS - 31382	13201	SIRC
42	MR. RAHUL AGARWAL	ACS - 35598	13202	WIRC
43	MR. ABHISHEK SAXENA	ACS - 35399	13203	NIRC
44	MR. SREEJITH S WARRIER	ACS - 35637	13204	SIRC

45	MR. MARMIK DILIP PATEL	ACS - 35755	13205	WIRC
46	MR. ABRAHAM JOSEPH PINGLE	ACS - 32671	13206	WIRC
47	MR. RAJIT ANANTRAI KESARIA	ACS - 28256	13207	WIRC
48	MR. RAJESHKUMAR GOBARBHAI JOGANI	ACS - 35734	13208	WIRC
49	MS. AKANSHA GUPTA	ACS - 35567	13209	SIRC
50	SH. RAJESWARA RAO BANGARU	ACS - 15816	13210	SIRC
51	MR. RAJAN KHURANA	ACS - 35560	13211	NIRC
52	MR. SACHIN KHURANA	ACS - 35297	13212	NIRC
53	MS. KHUSHBU PREM KUMAR GUPTA	ACS - 35754	13213	WIRC
54	MS. PRATHEEPA R	ACS - 24324	13214	SIRC
55	MR. HEMANT AMRUTLAL OSWAL	ACS - 35599	13215	WIRC
56	SH. ROBIN KESHRI	ACS - 25288	13216	EIRC
57	MR. SUMIT CHANDHOK	ACS - 30449	13217	NIRC
58	MS. NEETA AGGARWAL	ACS - 33744	13218	NIRC
59	MRS. ANUBHUTI TRIPATHI	ACS - 28267	13219	WIRC
60	MS. POOJA GUPTA	ACS - 19094	13220	WIRC
61	MS. SHAH KOMAL	ACS - 35509	13221	WIRC
62	MR. NITESH PARASMAL SHAH	ACS - 35681	13222	WIRC
63	MR. MUKESH KUMAR HEDA	ACS - 34580	13223	NIRC
64	MR. RAJESH KUMAR SHAW	ACS - 31946	13224	EIRC
65	MS. VIDHI JAIN	ACS - 21101	13225	WIRC
66	SH. ANIKET KUMAR	ACS - 16810	13226	NIRC
67	MR. SAILENDRA KUMAR JHA	ACS - 35394	13227	NIRC
68	SH. ASHISH KUMAR SHRIVASTAVA	ACS - 25433	13228	WIRC
69	MS. MEGHA GUPTA	FCS - 7477	13229	WIRC
70	MS. IYSHWARYA R	ACS - 34821	13230	SIRC
71	MR. JIGAR JEETANDRA GORSIA	ACS - 35845	13231	WIRC
72	MS. RATHI JAYSHREE HARIKISHAN	ACS - 35732	13232	WIRC
73	SH. PRADEEP J OZA	FCS - 1726	13233	WIRC
74	MS. SHILPY CHOPRA	ACS - 22338	13234	NIRC
75	MS. JEETHI RADHAMOHAN PILLAI	ACS - 33085	13235	WIRC
76	MS. NEHA RATHI	ACS - 35186	13236	WIRC
77	MRS. NIDHI VARUN KUMAR	ACS - 28283	13237	NIRC
78	MR. SHASHANK KUMAR SHARMA	ACS - 33587	13238	NIRC
79	MRS. NEELAM BANSAL	ACS - 30913	13239	NIRC
80	MS. SHEETAL AGRAWAL	ACS - 35751	13240	WIRC
81	SH. RANJEETKUMAR PARMANAND SHARMA	ACS - 27079	13241	WIRC
82	MS. SONAL JAIN	ACS - 34393	13242	NIRC
83	MS. REENA	ACS - 35020	13243	NIRC
84	MR. KALIRAJAN D	ACS - 33225	13244	SIRC
85	MR. AKILAN B	ACS - 35797	13246	SIRC
86	MS. AMANPREET KAUR	ACS - 35480	13247	EIRC
87	MR. AJIT KAMAL SHARMA	ACS - 33076	13248	WIRC
88	MS. NATASHA MITTAL	ACS - 34924	13249	NIRC
89	MS. NEHA GARG	ACS - 35811	13250	NIRC
90	MS. RIMPY	ACS - 34934	13251	NIRC
91	MS. POONAM KAPOOR	ACS - 33856	13252	NIRC
92	MR. KANISHK ARORA	ACS - 31006	13253	NIRC
93	MR. AMIT JAIN	ACS - 35596	13254	WIRC
94	MR. BHOLI KUMAR PANDEY	ACS - 33168	13255	NIRC
95	MR. DHAVAL ASHVINKUMAR VACHHANI	ACS - 35844	13256	WIRC

\*\*Issued during the month of April, 2014





96	MS. ALMA M. S.	ACS - 25769	13257	SIRC
97	MS SANGEETA THAKUR	ACS - 16849	13258	WIRC
98	MS. URVASHI AGGARWAL	ACS - 34872	13259	NIRC
99	MRS. PREETI AGGARWAL	ACS - 32907	13260	NIRC
100	MR. AVINASH KUMAR DUBEY	ACS - 32948	13261	SIRC
101	MS. URVASHI MALHOTRA	ACS - 34500	13262	NIRC
102	MR. DEEPAK SHARMA	ACS - 35383	13263	NIRC
103	MS. PREETI YADAV	ACS - 35501	13264	NIRC
104	MS. PAYAL JAYANTILAL MODI	ACS - 35870	13265	WIRC
105	MR. VIKAS GANDHI	ACS - 35924	13266	NIRC
106	MR. SHANKAR KUMAR JHA	ACS - 35388	13267	NIRC
107	MR. DHANRAJ KRISHNA SALIYAN	ACS - 34837	13268	WIRC
108	MR. ABHISHEK PRAKASH	ACS - 35941	13269	WIRC
109	MS. ANUJA BANSAL	ACS - 34817	13270	NIRC
110	MR. RAKESH KUMAR	ACS - 35423	13271	NIRC
111	MR. ARUN SINGH	ACS - 35806	13272	NIRC
112	MS. SHIVANI SURANA	ACS - 35359	13273	NIRC
113	MRS. RUCHI PRABHAKAR	ACS - 28883	13274	NIRC
114	SH. SANDIP KUMAR JEJANI	FCS - 6649	13275	NIRC
115	MR. HARMEET SINGH	ACS - 34121	13276	NIRC
116	MS. APOORVA SINGH	ACS - 35621	13277	NIRC
117	MR. JAMEELU BABU KOLLA	ACS - 35456	13278	SIRC
118	MS. MANJULA PAIDI	ACS - 31661	13279	SIRC

## MEMBERS RESTORED\*

S. no	Name	ACS/FCS no.	Region
1	Mr. DheerajKhanna	ACS-15191	EIRC
2	Mr. Arvind Kumar Dutt	ACS-12719	NIRC
3	Mr.Lesley Joseph	ACS-10766	SIRC
4	Ms.Aashima Gupta	ACS-21120	NIRC
5	Mr.Vikas Sharma	ACS-16000	NIRC
6	Mr.James A I	ACS-18365	SIRC
7	Mr. G V M Prasad	ACS-9866	SIRC
8	Mr.MohamedMahaboobBasha	ACS-9482	SIRC
9	Mr.HarshadHasmukhlalKapadia	ACS-13018	WIRC
10	Ms.Kairavi Neel Bilgi	ACS-21519	WIRC
11	Mr.Umesh Kr Aggarwal	ACS-21533	EIRC
12	Mr.Sanjay B Gund	ACS-11003	WIRC
13	Ms.PreetiPathak	ACS-17760	NIRC
14	Mr.SamirBaranDewanjee	ACS-2447	WIRC
15	Mr.SanjayMaloo	ACS-14309	SIRC
16	Ms.GSavithri	ACS-9800	SIRC
17	Mr. Ashish Chandak	ACS-17535	EIRC
18	Mr.M S Muralikrishnan	ACS-7533	SIRC
19	Mr.Anmol Kapoor	ACS-18332	NIRC
20	Mr.TaruneshSharan	ACS-15451	NIRC

21	Mr.Paramjit Singh Rana	ACS-11164	NIRC
22	Mr.KSwaminathan	ACS-5177	EIRC
23	Mr.SanjayGordhanbhai Patel	ACS-7788	WIRC
24	Mr.Lalji Kumar	ACS-12183	NIRC
25	Mr.Bhagwandas N Thakker	ACS-14006	WIRC
26	Mr.VenkataramanVenkitachalam	ACS-24106	SIRC
27	Mr.K S Sundararajan	FCS-1405	SIRC
28	Mr.Raj Kumar Aggarwal	FCS-4805	NIRC

## CANCELLED\*\*

S. No	NAME	MEMB NO	COP NO	REGION
1	MR. GOVINDARADDI KURTA KOTI	ACS 23141	11138	SIRC
2	MS. MADHURI SHARMA	ACS 32090	12076	EIRC
3	MS. GARIMA JAIN	ACS 32632	11983	NIRC
4	MR. SUMEET GUSAIN	ACS 27525	11594	NIRC
5	MS. NAVNEET SAHARAN	ACS 26073	12131	NIRC
6	MR. RANJEETKUMAR PAR-MANAND SHARMA	ACS 27079	12291	NIRC
7	MS. SANDHYA RANI GUNTHA	ACS 32010	11805	SIRC
8	MS. BABBAN DEEP KAUR	ACS 27767	10323	NIRC
9	MS. SHIVANI KHANNA	ACS 33730	12729	EIRC
10	MR. AMIT SHEKHAR	ACS 21989	12666	NIRC
11	MR. SHAILANDRA KUMAR	ACS 29014	10485	NIRC
12	MS. VANDANA SHARMA	ACS 33194	12271	NIRC
13	MS. ITI GOYAL	ACS 31807	11674	NIRC
14	MS. PRIYANKA DWIVEDI	ACS 34763	12928	NIRC
15	MS. NISHI JAIN	ACS 33460	12436	EIRC
16	MS. KANIKA NEVTIA	ACS 29860	10974	NIRC
17	MR. JITESHKUMAR RAMCHANDRA VARKAL	ACS 31727	11850	WIRC
18	MR. RAJESH KUMAR SRIVASTAVA	ACS 27770	10526	NIRC
19	MR. VISHNU PRAKASH AGARWAL	ACS 30580	11943	EIRC
20	MR. ASHISH SHARMA	ACS 31645	12501	NIRC
21	MS. RICHA TEWARI	ACS 32555	12965	NIRC
22	MS. SANGEETA VASANT KULKARNI	ACS 32828	12175	WIRC
23	MS. PRITI ARORA	ACS 31236	12256	EIRC
24	MR. RACHIN MALIK	ACS 30729	12342	NIRC
25	MR.MANISH GUPTA	ACS 26432	9908	NIRC
26	MS. SHRUTI SHRENIKHBHAI PARIKH	ACS 31233	11894	WIRC
27	MR. MANDAR VASMATKAR	ACS 23953	12558	WIRC
28	MS. RAJULLA FRITO	ACS 26303	11415	WIRC
29	MR. M NANDA KUMAR	ACS 6576	12775	SIRC
30	MRS. RITU PODDAR	ACS 35086	13118	NIRC
31	MR. RAGHAVAN G	ACS 34073	13178	SIRC
32	MR. MALHAR MAJUMDER	ACS 12405	12081	EIRC
33	MS. POONAM POKHARIYAL	ACS 27958	12910	NIRC

\*Restored during 21 May, 2014 to 20 June, 2014.

\*\*Cancelled during the month of May, 2014





## Company Secretaries Benevolent Fund



**MEMBERS ENROLLED  
REGIONWISE AS LIFE  
MEMBERS OF THE  
COMPANY SECRETARIES  
BENEVOLENT FUND\***

Region	LM No.	Name	Member Number	City
<b>EIRC</b>				
1	10383	MR. VISHAL KANODIA	ACS - 32888	24 PGS (SOUTH)
2	10386	MR. AKSHAYA RANJAN PRADHAN	ACS - 35837	ANGOL
3	10394	SH. VIRENDRA KUMAR JAIN	FCS - 756	PATNA
4	10421	MR. SANTOSH KUMAR	ACS - 33444	SASARAM
<b>NIRC</b>				
5	10398	MR. MANISH KUMAR SAINI	ACS - 33433	DELHI
6	10415	SH. P K GUPTA	ACS - 6346	DELHI
7	10422	MR. RAHUL AGARWAL	ACS - 22025	GURGAON
8	10423	SH. PRADEEP CHUGH	ACS - 18711	GURGAON
9	10424	SH. PRAMENDRA TOMAR	FCS - 5999	GURGAON
<b>SIRC</b>				
10	10381	MS. MANJULA PAIDI	ACS - 31661	HYDERABAD
11	10382	MR. N D SATISH	ACS - 33507	BANGALORE
12	10384	SH. L V N MURALIDHAR	ACS - 10634	SECUNDERABAD
13	10385	MR. RAHUL BIYANI	ACS - 35822	HYDERABAD
14	10387	MS. PEENAZ MOSHRAF	ACS - 35704	BANGALORE
15	10389	MR. VASANTHA KUMAR KAPULURU	ACS - 34732	HYDERABAD
16	10390	MR. KATUKURI RAJAMOULI	ACS - 35936	HYDERABAD
17	10391	MR. GOVERDHAN CHANDAK	ACS - 36019	HYDERABAD
18	10392	SH. NARESH KUMAR SANGAM	ACS - 15405	SECUNDERABAD
19	10395	MS. DIKSHA GUPTA	ACS - 36018	HYDERABAD
20	10399	SH. K SUNDARARAJAN	ACS - 3659	CHENNAI
21	10400	MS. SARABJEET KAUR	ACS - 34053	HYDERABAD
22	10403	MR. AMIT AGARWAL	ACS - 34096	HYDERABAD
23	10404	SH. N MURALI KRISHNA	FCS - 5092	HYDERABAD
24	10405	MR. AJAY NAGA CHOWDARY VEMURI	ACS - 36089	VIJAYAWADA RURAL

Region	LM No.	Name	Member Number	City
25	10406	SH. S. RAVI	ACS - 17961	SECUNDERABAD
26	10407	MS. MADHAVI CHOUDHARY	FCS - 5614	SECUNDERABAD
27	10409	SH. N A SRINIVASAN	FCS - 7257	CHENNAI
28	10412	MR. RAVI KUMAR UPPUTALLA	ACS - 36178	ONGOLE
29	10413	MS. R KANAKATHARA	ACS - 36147	CHENNAI
30	10416	MS. K VIDYA	ACS - 18139	BANGALORE
31	10418	MS. Y SAILAJA	FCS - 4844	HYDERABAD
32	10419	MS. NEHA MISHRA	ACS - 33664	HYDERABAD
33	10426	SH RAMA KRISHNA PRASAD C.	ACS - 19942	HYDERABAD
34	10428	MR. NAGASUNDARAM T	ACS - 28451	MADURAI
35	10429	MR. DARGA MABU BASHA	ACS - 35046	KURNOOL
36	10430	SH. SRINATH M MANIYAL	FCS - 2979	BANGALORE
<b>WIRC</b>				
37	10380	MS. JYOTI PRABHAKAR KALLOLI	ACS - 20960	THANE DISTT
38	10388	MR. BHALCHANDRA GIRISH TRIPATHI	ACS - 35900	THANE
39	10393	MR. AJIT CHANDRASHEKHAR KALE	ACS - 35973	DOMBIVLI (EAST)
40	10396	MRS. SWATI BHARAT DONGARE	ACS - 29217	PUNE
41	10397	MS. MONICA VIJAYVRAGIYA	ACS - 35421	INDORE
42	10401	SH. ANURAG KUMAR SAXENA	ACS - 24362	SHAJPUR
43	10402	MS. PURVI GIRISHBHAI DAVE	ACS - 27373	RAJKOT
44	10408	SH. JAY PRABHU D'SOUZA	FCS - 3058	MUMBAI
45	10410	MRS. VISHAKHA KUNAL MEHTA	ACS - 25731	MUMBAI
46	10411	MS. MILITA ALINIA RODRIGUES	ACS - 24374	MUMBAI
47	10414	MS. KHYATI ANIL VYAS	ACS - 27048	MUMBAI
48	10417	MR. BALAMURUGAN T NADAR	FCS - 7600	PUNE
49	10420	SH. A R PARASURAMAN	ACS - 3813	NAVI MUMBAI
50	10425	MR. SACHIN KUMAR	ACS - 36148	MUMBAI
51	10427	MR. ARVIND KUMAR TIWARI	FCS - 7596	BHOPAL

\*Enrolled during the period from 21.05.2014 to 20.06.2014



## List of Companies/ organizations Registered During May, 2014 For Providing Training to The Students Of ICSI

Name Of The Company	Training Period	Stipend
Reliance Big Entertainment Pvt. Ltd. 502, Plot No.91/94 Prabhat Colony, Santacruz (E) Mumbai-400055	15/03 Months	Suitable
Gateway Technolabs Pvt Ltd. 8 <sup>th</sup> Floor, Corportae House Bodakdev, Ahmedabad-380054 Gujarat	15 Months	Suitable
Western India Metal Processors Limited 132 B Mittal Towers, 210 Nariman Point, Mumbai-400021	15 Months	Suitable
Tecumseh Products India Private Limited Balanagr Township, Hyderabad-500037	15/03 Months	Suitable
Zee Knits & Weaves Pvt Ltd. 169/7, Sector-2 Rohini New Delhi-110085	15 Months	Suitable
Institute Of Chartered Tax Advisers Of India Limited A-45, New Jawahar Nagar, Kota Rajasthan-324005	15/03 Months	Suitable
Anshuj Dhingra Law Offices 1204, Nirmal Towers, 26 Barakhamba Road Connaught Place New Delhi	15 Months	Suitable
Response Informatics Limited Suiteno.309/312, Arun Apartments Red Hills, Lakdi-Ka-Pool Hyderabad-500004	15/03 Months	Suitable
Franklin Templeton Asset Management (I) Pvt Ltd. Indiabulls Finance Center, Tower 2 12 <sup>th</sup> & 13 <sup>th</sup> Floor, Senapati Bapat Marg Elphinstone (W) Mumbai-400013	15 Months	Suitable
TCG Hamilton India Limited Level 2, Elegance Tower, Jasola District Centre, Mathura Road New Delhi-110025	15 Months	Suitable

Rikhav Securities Limited B, Matruchhaya, 4 <sup>th</sup> Floor S N Road, Mulund (W) Mumbai-400080	15/03 Months	Suitable
Kako Tea Pvt. Ltd. Chhota Hapjan P O Borhap Jan Dist. Tinsukia-786150 Assam	15/03 Months	Suitable
Marwadi Financial Plaza, Nana Mava Main Road, Off 15Ft Ring Road Rajkot-360001 Gujarat	03 Months	Suitable
Encash Entertainment Limited 9, Lal Bazar Street 3 <sup>rd</sup> Floor, Block A Kolkata-700001	15 Months	Suitable
Sagar Samrat Caplease Private Ltd. 04 <sup>th</sup> Floor, D K House Near Patel Vas, Gamtal Nr. Mithakhali Garden, Mithakhali Ahmedabad-380006 Gujarat	15 Months	Suitable
The Kolhapur Steel Limited Pune Bangalore Highway Shiroli (Pulachi), Tal Hatkanangal, Dist. Kolhapur-416122 Maharashtra	15 Months	Suitable
Alliance Corporate Lawyers 55, 5 <sup>th</sup> Floor, Atlanta Building Nariman Point, Mumbai-400021	15 Months	Suitable
Mohindra Fasteners Limited 304, Gupta Arcade, Inder Enclave Rohtak Road New Delhi-110087	15 Months	Suitable
Prolegal Universal (Advocates & Advisors) C-58-C, Ashok Vihar-3 New Delhi-110052	15 Months	Suitable
Maheshwari & Co. B7/1, Safdarjung Enclave Extn. New Delhi-110029	15Months/15 Days	Suitable
Vyapar Industries Ltd. 145, S V Road, Khar (W) Mumbai-400052 Maharashtra	15/03 Months	Suitable
R Vagharia & Co 109/110, Akshar Diamond Market Mini Bazar, Sardar Chowk Varachha Road Surat	15 Months	Suitable



# News From the Institute

Shikhar Microfinance Pvt. Ltd A-113, 2 <sup>nd</sup> Floor, Behind ICICI Bank Palam Extension, Sector-7 Dwarka, New Delhi-110007	15 Months	Suitable	Azure Power India Private Limited 8, Local Shopping Complex Pushp Vihar, Madangir New Delhi-110062	15/03 Months	Suitable
Aro Granite Industries Ltd 1001, 10 <sup>th</sup> Floor, DLF Tower A Jasola, New Delhi-110025	15 Months	Suitable	MDH Beverages Private Limited Barun Lodge, Lower Motinagar, Shillong-793014 Meghalaya	15 Months	Suitable
Noble Co-Operative Bank Ltd. Raghunathpur, M P Road 1 Sector-22, Noida Uttar Pradesh	15 Months /15 Days	Suitable	Sun Edison Energy India Pvt Ltd. Menon Eternity, 10 <sup>th</sup> Floor North Wing, New#165, Old#110, St. Mary's Road Alwarpet, Chennai-600018	15 Months	Suitable
Infinite Computer Solutions (I) Ltd. 155, Som Dutt Chambers II, 9, Bhikaji Cama Place, New Delhi-11006	15 Months	Suitable	Unicharm India Private Limited 2 <sup>nd</sup> Floor ,No.222,224 246 & 247, Centrum Plaza Building, Golf Course Road ,Sector -53 Gurgaon-122002	15 Months	Suitable
Canara Robeco Asset Management Company Ltd. Construction House, 4 <sup>th</sup> Floor, 5 Walchan Hirachand Marg Ballard Estate, Mumbai-400001 Maharashtra	15 Months	Suitable	Rajapalayam Mills Limited Rajapalayam Mills Premises P.A.C.Ramasamy Raja Salai Post Box No.1, Rajapalaiyum Tamil Nadu-626117	15 Months	Suitable
Goods and Services Tax Network Room No.255, North Block New Delhi-110001	15 Months	Suitable	Morning Glory Infra Limited 7/102,Swaroop Nagar Kanpur -208002	15 Months	Suitable
Baid Leasing and Finance Company Ltd "Baid House", IInd Floor, 1Tara Nagar, Ajmer Road, Jaipur-302006 Rajasthan	15/03 Months	Suitable	Jaihind Projects Limited 3 <sup>rd</sup> Floor, Venus Atlantis Corporate Park Nr. Prahladnagar Auda Garden, Satellite Ahmedabad-380015	15/03 Months	Suitable
BFL Developers Ltd Baid House, 1 Tara Nagar, Ajmer Road, Jaipur-302006 Rajasthan	15/03 Months	Suitable	Halifax Merchandise Private Limited Village-Indamara, Post-Pendri Rajnandgaon-491441 Chattisgarh	15/03 Months	Suitable
SRS Finance Ltd. SRS Multiplex, Top Floor City Centre, Sector-12 Faridabad-121007 Haryana	15 Months	Suitable	Sunvalley Diabetic Care & Research Centre Privtae Limited Purbanchal Path, Mathura Nagar G S Road, Guwahati-781006 Assam	15 Months	Suitable
Janak Healthcare Pvt Ltd. Janak House, Opp. Indian Oil Corpn Depot, Sheikh Misry Road Wadala(E), Mumbai-400037	15/03 Months	Suitable	Dulari Digital Photo Services Pvt Ltd. 585/1092, Miller Ganj, Opp Water Tank, Gill Road Ludhiana-141003 Punjab	15 Months	Suitable
Liberal Tradelinks Private Ltd. 7A/1, Mezzanine Floor, Kopalitola Lane, Opp. Indian Airlines Kolkata-700012 West Bengal	15 Months		Kamarajar Port Limited P.T. Lee Chengalavaraya Naicker Maaligai, 1 <sup>st</sup> Floor, 23, Rajaji Salai, Chennai-600001	15/03 Months	Suitable
Comm LAB Corporate Utilities Llp D-157, Sector-40 Noida-201303 Uttar Pradesh	15 Months	Suitable			





## List of Practising Members Registered For the Purpose of Imparting Training During The Month of May, 2014

CS Subhendu Bhusana Mohapatra  
Company Secretary In Practice  
St. No. 10  
Ranjit Nagar  
Patel Nagar  
New Delhi – 110 008

PCSA-3976

CS Navneet Agiwal  
Company Secretary In Practice  
F-1, B-17, Radha Vihar  
Opposite Hotel Raj Palaza  
New Sanganer Road, Sodala  
Jaipur – 302 006

PCSA- 3977

CS Prateek Jain  
Company Secretary In Practice  
204, Balaji Tower  
Tonk Road  
Jaipur – 302 018

PCSA- 3978

CS Pankaj Aggarwal  
Company Secretary In Practice  
4, Madan Flour Mill Chowk  
Opp. Moti Industries  
Jalandhar -144 001

PCSA- 3979

CS Jaymeen Trivedi  
Company Secretary In Practice  
2-L, Rangsagar Flats  
P T College Road  
Paldi Ahmedabad – 380 007

PCSA- 3980

CS K. Dhandapani  
Company Secretary In Practice  
M 102/ 17 30Th Cross Street  
(Opp RBI Quarters)  
Besant Nagar  
Chennai -600 090

PCSA- 3981

CS Pankaj Kumar  
Company Secretary In Practice  
101/A3, Street No. 6  
Vikas Nagar,  
Rewari -123 401

PCSA- 3982

CS Ruchi Nagori  
Company Secretary In Practice  
321, 3rd Floor,  
Arihant Complex,  
Station Road  
Raipur -492 001

PCSA- 3983

CS Praveen Kumar  
Company Secretary In Practice  
183/B, Kamruddin Nagar  
Nangloi,  
New Delhi – 110 041

PCSA- 3984

CS Pooja Gupta  
Company Secretary In Practice  
E-501, Mayur Park  
Sector - 36  
Kamothe  
Navi Mumbai – 400 023

PCSA- 3985

CS Sumit Raj  
Company Secretary In Practice  
B-1, Sagar Apartments  
6, Tilak Marg  
New Delhi – 110 001

PCSA- 3986

CS Anuj Kumar Solanki  
Company Secretary In Practice  
118, Susha Farm House  
New Manglapuri  
M G Road, New Delhi -110 030

PCSA- 3987

CS Mehta Pranav Vitthal  
Company Secretary In Practice  
93 Ghorpade Peth  
Mehta Motor Driving School  
Near Swargate  
Pune – 411 042

PCSA- 3988

CS Manjari Sinha  
Company Secretary In Practice  
Flat No- 4302, 6<sup>th</sup> Phase  
Vijaya Heritage Kadma  
Jamshedpur – 831 005

PCSA- 3989

CS Akash Sharma  
Company Secretary In Practice  
F-129, Dhan Shree Tower IInd, Vidyadhar  
Nagar  
Jaipur – 302 039

PCSA- 3990

CS Riya Jagdish Gujrathi  
Company Secretary In Practice  
5, Vinayak Smruti Apt.,  
Ghodke Chowk  
Prabhat Road, Deccan  
Pune – 411 004

PCSA- 3991

CS Vaishali Vohra  
Company Secretary In Practice  
#307, Block -1, Ceebros Boulevard,  
Old Mahabalipuram Road  
Gandhi Ngr, Okkiyam, Thuraipakkam  
Chennai – 600 097

PCSA- 3992

CS Umesh Parameshwar Maskeri  
Company Secretary In Practice  
304, Geetanjali Heights  
Plot No. 77, Sector 27, Near Presentation  
Convent School, Seawoods  
Nerul East  
Navi Mumbai -400 706

PCSA- 3993

CS P R Sivarajan  
Company Secretary In Practice  
N.P. Building  
Cemetery Junction, Chittoor Road  
Kochi- 682 018

PCSA- 3994

CS Sachin Khurana  
Company Secretary In Practice  
138, Kakrola Housing Complex  
Kakrola  
New Delhi – 110 078

PCSA- 3995





# News From the Institute

CS Satish Joshi Company Secretary In Practice S-561, 2nd Floor, Off No.216 Bhagwati Busines Center School Block-II, Shakarpur Delhi – 110 092	PCSA- 3996	CS Nahid Akhtar Abdulgafar Vhora Company Secretary In Practice C-1, Shree Krishna Centre Mithakhali, Navrangpura Ahmedabad – 380 009	PCSA- 4006
CS Ashish Jain Company Secretary In Practice G-10, Plot No. 330, Sector -4, Vaishali Ghaziabad – 201 010	PCSA- 3997	CS Vicky Madhavdas Kundaliya Company Secretary In Practice B/102, Sunderbaug Soc, Mathuradas Road Kandivali (W) Mumbai -400 067	PCSA- 4007
CS Sunil Kumar Maheshwari Company Secretary In Practice 30/A/28 Dr P.T. Laha Street Back Of Maheshwari Bhawan Po : Rishra Hooghly - 712 248	PCSA- 3998	CS Gaurang Manubhai Shah Company Secretary In Practice A-302, Rushabh Enclave Bhayander (W) Thane -401 101	PCSA- 4008
CS Priyanka Sancheti Company Secretary In Practice Office No.-5, 2 <sup>nd</sup> Floor, Bharat House 104, Mumbai Samachar Marg, Fort Mumbai -400 001	PCSA- 3999	CS Anup Vaibhav C. Khanna Company Secretary In Practice 117, Vindhya A Commercial Complex Plot -1, Sector -11 CBD Belapur Navi Mumbai -400614	PCSA- 4009
CS Vinayak Nagesh Hegde Company Secretary In Practice No.-19, 2 <sup>nd</sup> Floor, Model House Street S. Kariappa Road Basdavanagudi Bangalore -560 004	PCSA- 4000	CS Rahul Shivcharan Agarwal Company Secretary In Practice B-49, Nu-4, Sapna Nagar Gandhidham, Kutch Gujarat – 370 201	PCSA- 4010
CS Arun Kumar Mohta Company Secretary In Practice 404, Laxmi Mall Laxmi Industrial Estate New Link Road, Andheri West Mumbaic-400 053	PCSA- 4001	CS Shweta Akash Gokarn Company Secretary In Practice 53, Gautam Complex, Sector -11 CBD, Belapur Navi Mumbai -400 614	PCSA- 4011
CS Anuj Gupta Company Secretary In Practice 169 E/2, Bhagwan Nagar Hari Nagar Ashram New Delhi – 110 014	PCSA- 4002	CS Chetan Chandulal Rajdev Company Secretary In Practice 203, Malay Trade Centre, Opp.Jivan Com. Co-Op. Bank Ltd. Dhebar Road Rajkot – 360 001	PCSA- 4012
CS Sanjay Dayalji Kukadia Company Secretary In Practice Flat Number -8 Darshini Housing Society, Above Alfa Classes Nr. H L Commerce College Road Navrangpura Ahmedabad – 380 006	PCSA- 4003	CS Vikas K.Suthar Company Secretary In Practice 14, Sopariwala House 1st Floor 289/293, Princess Street Marine Line Mumbai – 400 002	PCSA- 4013
CS Vijay Bharatkumar Anadkat Company Secretary In Practice "Rushikesh", Kotecha Nagar -2 Block No. 43 A Kalawad Road Rajkot – 360 001	PCSA- 4004	CS Mini Booshan G.Ch.Vs Company Secretary In Practice Plot No.-15, 2nd Floor, Bhagya Lakshmi Nagar Kavadiguda, Hyderabad – 500 080	PCSA- 4014
CS Deepa Sharma Company Secretary In Practice E-49, Bank Colony Near Kedia Palace Crossing Jaipur -302 039	PCSA- 4005	CS Purvi Kakani Company Secretary In Practice Shop -9, Panchamrut Bldg, NL Complex Dahisar (East) Mumbai – 400 068	PCSA- 4015
		CS Umesh Aggarwal Company Secretary In Practice H.No/.645, Kayasthwara Rewari – 123 401	PCSA- 4016



## News From the Regions

### EASTERN INDIA REGIONAL COUNCIL

#### Half-Day Workshop on Position of Directors and Incorporation of Companies under Companies Act, 2013

On 7.6.2014 ICSI-EIRC organized a Half Day Workshop on Position of Directors and Incorporation of Companies under Companies Act, 2013 at ICSI-EIRC House, Kolkata.

CS R. Kalidas, Vice-President & Company Secretary, Reliance Power Ltd, Mumbai, deliberated on "Position of Directors under The Companies Act, 2013". He covered perspectives of the new law relating to company directors and onset of the new Act. CS Kalidas further highlighted the items to be considered by Board consequent upon the introduction of the Companies Act, 2013.

CS Siddhartha Murarka, Partner - Ghosh & Murarka Legal, Solicitors & Advocates, addressed on Incorporation of Companies under The Companies Act, 2013 & CSR – An Overview. He said that the provisions for incorporation of companies in India under the new Company Law regime have undergone certain procedural changes which seem to have been aimed at containing or deterring fictitious applicants from incorporating companies.

#### Half-Day Seminar on Enhanced Disclosures under the Companies Act, 2013

On 4.6.2014, National Stock Exchange of India Limited (NSE) in association with ICSI – EIRC organized a Seminar on Enhanced Disclosures under the Companies Act, 2013 at Kolkata.

The welcome address was given by Dr. V.R. Narasimhan, Chief Regulation, NSEIL. CS B. B. Chatterjee, Past Council Member, the ICSI and Executive Vice-President & Company Secretary, ITC Ltd, addressed with brief remarks about the topic. CS Vinod Kothari, Past Chairman, ICSI-EIRC and Practising Company Secretary and CS Subhasis Mitra, Vice-President & Company Secretary, CESC Limited addressed. Panel discussion among all the three speakers and also Dr. Narasimhan was held, where queries raised by the delegates, were suitably replied by the panellists. The programme was appreciated by all present.

#### Full-Day Seminar on Discussion on the Companies Act, 2013 - Critical Provisions

On 24.5.2014 the ICSI – EIRC organized a Full Day Seminar on Discussion on the Companies Act, 2013 - Critical Provisions at Kolkata.

The programme was inaugurated by Chief Guest Sanjay Jhunjhunwala, Managing Director & CEO, Mani Group of Companies, Kolkata. CS Arun Kumar Khandelia, Chairman ICSI-EIRC, in his welcome address while introducing the theme of the programme highlighted the importance of the Companies Act, 2013 and stated that it is a step forward in corporate field as there are so many processes for avoidance and fraud after full implementation of this new Act.

CS B. Narasimhan, Central Council Member, the ICSI in the First Technical Session dealt with "Rules framed under Chapter IV and Chapter VII and the practical difficulties in complying with them". CS Manoj Kumar Banthia, Past Chairman, ICSI-EIRC deliberated on "Conversion of Private Limited Company into LLP & Related Party Transactions under The Companies Act, 2013".

Thereafter the floor was kept open for members where queries raised by the participants were aptly replied by the learned speakers.

In the Second Technical Session CS R. Kalidas, Vice-President & Company Secretary, Reliance Power Ltd, Mumbai, deliberated on Drafting Anomalies and Aberrations under The Companies Act, 2013 & Rules. CS Sanjay Kumar Gupta, Past Chairman, ICSI-EIRC, dealt with Disclosures/Declaration by Director – Critical Analysis. CS Subrata Ray, Past Chairman, ICSI-EIRC, Company Secretary, MSTC Limited, Kolkata, deliberated on Corporate Social Responsibility – What A Company should do now. The Technical Sessions were chaired by Arun Kumar Khandelia.

#### 86<sup>th</sup> Management Skills Orientation Programme (MSOP)

From 15.5.2014 to 31.5.2014 the ICSI – EIRC organized its 86<sup>th</sup> Management Skills Orientation Programme (MSOP) at ICSI-EIRC House, Kolkata. Chief Guest CS Girish Bhatia, Company Secretary, Magma Fincorp Limited inaugurated the programme. Bhatia in his address explained in the detail the role of Company Secretary under changed environment with regard to the Companies Act, 2013. He said that the provisions of the Companies Act, 1956 are in the blood of Company Secretaries. Therefore it is high time for the Company Secretaries to relearn and unlearn for positioning themselves in the new era of Corporate Governance through the new Companies Act. During the programme the participants were apprised of various practical and procedural aspects of Company Secretaries' responsibility following defined guidelines. It also tried to bridge the gap of knowledge acquired by the participants and its application in real life work situation. A special session on communication and presentation skills was organized before the concluding day.

On 31.5.2014 at the Valedictory Session Hariram Garg,



# News From the Institute & Regions

Chairman cum Managing Director, Asian Tea & Exports Limited was invited as the Chief Guest. Garg in his address explained the ways to achieve professional excellence. He congratulated the participants for successful completion of training and handed over the MSOP Completion Certificates to them. The programme concluded after rendition of National Anthem.

**Best Participant Awards:** Anubhav Nagelia, Niyati Gadit and Paridhi Bagaria were adjudged as the first, second and third best participants of the 86<sup>th</sup> MSOP.

## BHUBANESWAR CHAPTER Talk on Related Party Transactions

On 21.05.2014, Bhubaneswar Chapter of EIRC of the ICSI organized an evening talk on Related Party Transactions at its premises. CS Vikas Y Khare, Vice President, the ICSI was the Chief Guest who in his address said that Company Secretaries have the opportunity to grow in an organization by virtue of their proximity to the management at an early stage. The company secretaries should not confine to the company law only. He expressed that service tax practice is a very prestigious area where company secretaries can enter into. He encouraged the members and students to come to the service tax area which has a great scope for growth. CS Khare made a beautiful presentation on how to set up service tax practice and touched upon the different sections of the New Companies Act relating to Related Party Transactions having focus on service tax provisions. It was a very good interactive session. CS Khare very nicely handled the questions raised by the audience.

Earlier, CS A. Acharya, Chapter Chairman introduced the theme of the programme and also highlighted various professional development activities being undertaken by the Chapter. Around 70 members and students attended the programme. Queries raised during the programme were ably replied by the speaker.

## Address by Vice President, ICSI at Training Programme of CE & ST Department, Bhubaneswar

CS Vikas Y Khare Vice President of ICSI and CS J B Das, Member, Management Committee, Bhubaneswar Chapter were invited by the Chief Commissioner, Central Excise and Service Tax, Bhubaneswar on 22.05.2014 to address at their two days training programme. CS Khare explained in detail the concept of Company and its separate entity, the documents required for registration of a company, the role of Board of directors and the shareholders in a company, the various documents filed with the Registrar of Companies. He also highlighted the concept of related party transactions and how the price of a product and service gets affected in certain transactions between a company and another in certain circumstances and the loss of revenue to the Government as result thereof. He told the audience for checking the various documents to know about the transactions and the impact on the cost and revenue of the product and services to check pilferage.

CS J B Das explained the particular circumstances where the central excise officials should take note of by verifying the Accounts, Asset details, Audit Reports and the Returns filed with the Registrar of Companies.

## Seminar on How to Set up Service Tax Practice

On 22.05.2014, the Chapter organized a seminar on "How to setup Service Tax Practice". S.K. Panda, Chief Commissioner, Central Excise & Service Tax, Bhubaneswar was the Chief Guest of the seminar. CS Vikas Y Khare, Vice President, the ICSI was the Guest of Honour of the programme.

In his address to the gathering, S.K. Panda said that Company Secretaries play a vital role in indirect taxation and also have ample opportunities in central excise, service tax & VAT. Indirect taxes contribute the maximum revenue for the Union and the State Governments. Union Government's revenue from the Indirect Taxes is mainly from CENVAT (Central Excise), Services Tax & Customs duties. State Government's revenue from the Indirect Taxes is mainly from VAT (Sales Tax within the State), CST, Excise on alcoholic beverages, Entry tax/Octroi, luxury tax, entertainment tax etc., he said.

While addressing the seminar, CS Vikas Y Khare, elaborated the tax structure in India, Administrative Structure – Service Tax, Importance of Indirect Tax in Transaction Structuring, What Results in to Tax Liability under Indirect Tax Laws, Service Tax Mechanism, Finance Act 1994, Indirect Tax Control by Government, Applications for Advance Ruling, Dispute Resolution Mechanism, Pit falls in indirect tax management, Dos and Don'ts - Penal Provisions Under Indirect Taxes, Indirect Tax Compliance Management.

CS A Acharya, Chairman of the Chapter also spoke on the occasion and expressed his gratitude to the dignitaries for updating the members and students on service tax practice and various provisions on the Indirect Tax. Participants raised several queries on the subject which were clarified by the dignitaries. More than 60 members and students attended the programme.

## Two Days Personality Development Programme

In order to develop the skills of the members, the Chapter organized two days programme on 5-6 June 2014 at its premises on "Effective Communication Skill, Negotiation and Leadership Skill". Sumant Banerjee, Associated with core consultant India's leading training organisations was the trainer and speaker of the two days programme. CS A Acharya, Chapter Chairman informed to all during the two days programme that the Chapter will organise similar programmes in future.

## Study Circle Meeting on Directors Report under The New Companies Act, 2013





On 7.6.2014, the Chapter organized a study circle meeting on Directors' Report under the New Companies Act, 2013 at its premises. CS B.K. Sahu, Additional Company Secretary, National Aluminium Company Limited, Bhubaneswar was the speaker who highlighted various sections of the New Companies Act, 2013 and Rules there under. About 40 members and students attended the meeting. The meeting concluded after question hour session.

## NORTHERN INDIA REGIONAL COUNCIL

### One Day Mega Workshop on Companies Act, 2013

On 17.5.2014 the Regional Council organised a mega workshop on the above topic. CS (Dr.) K R Chandratre, Past President, the ICSI and CS Ankur Mittal, Senior Expert National Securities Depository Limited (NSDL) were the Chief Guest and Guest of Honour respectively. During the workshop there was extensive discussion on Chapters XI to XIII of the Companies Act, 2013 (Directors, Meetings of the Board and Appointment and Remuneration of Managerial Personnel) and extensive discussion on e-voting.

### One Day Workshop on Companies Act, 2013

On 24.5.2014 the Regional Council organised a one day workshop on the Companies Act, 2013. The topic discussed was Impact on Merger and Amalgam deals - covering share sale, slump sale, joint ventures, private equity and scheme of arrangements. The workshop also discussed annual return certification – issues and challenges.

### Management Skills Orientation Programme

From 26.5.2013 to 11.6.2013 the Regional Council organised its 193<sup>rd</sup> MSOP wherein the Chief Guest was CS Rajiv Bajaj, Past Chairman, NIRC-ICSI.

### One Day Mega Workshop on Companies Act, 2013 – Preparedness to Handle Contentious Issues

On 31.5.2014 the Regional Council organised a mega workshop on the above topic wherein the Guest Speaker was CS Nesar Ahmad, Past President, The ICSI. The panelists for the discussion were CS (Dr.) S Chandrasekaran, CS Atul Mittal, CS N K Jain and M C Gupta of ministry of Corporate Affairs.

### One Day Workshop on immediate Secretarial Action to be taken under the New Companies Act, 2013

On 7.6.2014 the regional Council organised a programme on the

above topic wherein the guest Speakers were CS Rajeev Goel and CS Rajesh Arora.

### Vaishali Study Group Meeting on Loans and Investments and Deposits

On 7.6.2014 the Vaishali Study Group discussed the above topic. The Guest Speaker was CS J K Chowdhery, Senior Vice President, ISGEC Heavy Engineering Ltd.

## DEHRADUN CHAPTER

### Study Circle Meeting on the Companies ACT, 2013

CS Arun Sabharwal was the key speaker of the Study Circle Meeting conducted by the Chapter. The speaker explained various sections of the Companies Act, 2013, the Corporate Social Responsibility under section 135 of the Companies Act, 2013 and schedule VII of the Companies Act, 2013. On the occasion discussion was also held on specified activities of Schedule VII. Members' doubt on various activities covered under CSR specified under schedule VII were also addressed by the speaker.

Jasneet Kaur was the speaker of the topic on Incorporation of Company and Development Provision in the Companies Act, 2013. She addressed on One Person Company. Vyas, Chairman, Dehradun Chapter also addressed the participants and requested them to involve themselves in Chapter activities to achieve the goal of professional excellence in the corporate sector.

Again on 31.5.2014 the Chapter organised a Study Circle Meeting on The Companies Act, 2013. CS Jasneet Kaur addressed on Directors (Under Section 149 of The Companies Act, 2013) and covered mandatory requirement of directors in Public, private and One person Company, requirement to have women directors on the Boards of Companies, number, qualification, disqualification of independent directors, declaration and remuneration of independent directors. The speaker also discussed additional, alternate and nominee director, duties, vacation, resignation, etc. by the directors. Vyas, Chapter Chairman also addressed the participants and requested them to involve themselves in the activities of the Chapter to achieve the goal of professional excellence in the corporate sector.

## GURGAON CHAPTER

### 18<sup>th</sup> MSOP Valedictory Programme

Gurgaon Chapter organized the valedictory session of 18<sup>th</sup> MSOP on 28.05.2014 at the Chapter premises. CS Shitij Wadhwa while welcoming the students into the fraternity of Company Secretaries apprised them about their value in the corporate world. He also briefed them about their role after acquiring Membership of the Institute.



# News From the Institute & Regions

## JAIPUR CHAPTER

### Full Day Seminar on LLP & Companies Act, 2013

On 24.5.2014, Jaipur Chapter of NIRC of the ICSI organized a one day programme on 'Limited Liability Partnership (LLP) & Companies Act, 2013' at the Chapter premises. Girish Goyal, Chapter Chairman in his welcome address made a mention of freedom that entrepreneur would enjoy in LLP form of Entity. He also suggested that regulation and compliance in case of LLP should be enforced in a balance way so as to avoid any misgivings. The workshop was divided into three sessions.

Chief Guest R.K. Meena, Registrar of Companies, Rajasthan in his address talked about the success story of this corporate structure by quoting the fact that in less than four years of coming into existence of the LLP Act, around 2000 LLPs have been registered so far. Meena stressed on the LLP Act and its relevance to the SMEs, statutory compliance and registration of LLP. He discussed in detail how an LLP can be registered online without falling into the vicious circle of office documentation and long official procedures and compliances.

The First Session was addressed by Sushil Daga, Company Secretary & Practicing Advocate who said that all these could be made possible by the e-governance project of the Government. He also talked about the tax-benefits of conversion into LLPs. He also talked about whether any stamp duty is payable on conversion of company into LLP and how reserves are treated in case of conversion into LLP. He discussed the benefits of conversion of a firm or a company into LLP, e.g. the LLP does not have to pay dividend distribution tax or minimum alternate tax unlike in cases of a company. He also discussed the benefits of having an LLP.

In The Second and Third Sessions Kamal Garg, Partner, KG Management Advisors LLP, Management Consultants, New Delhi spoke on the transition Issues for private companies, Loan to Directors, Related Party Transactions, Inter Corporate Loans and Corporate Social Responsibilities under new Companies Act, 2013.

The programme was co-ordinated by Rajesh Gupta, Executive Officer of the Chapter office.

### 11<sup>th</sup> Management Skill Orientation Programme

On 14.6.2014 the Chapter organized its 11<sup>th</sup> batch of MSOP at the Chapter premises. Kanan Bala Sharma, Principal, University Maharani College, Jaipur, was the Chief Guest of the programme.

Dr. Girish Goyal Chapter Chairman in his welcome address informed about various new initiative taken by the Chapter. He also briefed about achievement of Jaipur Chapter during the year 2013-14. He said that they are entering the profession when it is well known to everybody and there is no doubt in the minds of people regarding CS, unlike earlier days when it was difficult for the people to differentiate

between personal Secretary and Company Secretary.

Chief Guest Kanan Bala Sharma advised the participants to be updated of relevant laws regularly. The main objective of a true professional is to follow the ethics in true spirit and also ensure that the laws are complied with. She also wished the participants success. Rajesh Gupta, Executive Officer coordinated the programme.



## SOUTHERN INDIA REGIONAL COUNCIL

### ICSI Convocation 2014 – Southern Region

On 03.05.2014, The Institute of Company Secretaries of India (ICSI) organised ICSI Convocation 2014 – Southern Region at Chennai. Dr. P. Vanangamudi, Vice Chancellor, The Tamilnadu Dr. Ambedkar Law University, Chennai was the Chief Guest who awarded the Associate Membership of the Institute to newly qualified members at the ICSI convocation – Southern Region 2014, held at D.G. Vaishnav College, Chennai.

Earlier, CS Sutanu Sinha, Chief Executive, The ICSI declared the Convocation open. CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC introduced the dais. CS Sudhir Babu C, Council Member, The ICSI delivered the welcome address. Dr. P. Vanangamudi, in his convocation address, said that ICSI is playing a stellar role in the transformation of a corporate sector through its members who are Governance Professionals in the true sense. Being the prime mover of the progress of a country, it is but a critical role that the young professionals need to play in the development and governance of the corporate sector, he observed. Dr. P. Vanangamudi also expressed his happiness that the CS course has law papers and it attracts more law students to take the CS course simultaneously while doing their law course. Dr. P. Vanangamudi added that the professional bodies around the world are seen as vital sources of new knowledge and innovative thinking, and as providers of skilled personnel with credible credentials and he believes that ICSI would rise up to this challenge. Dr. P. Vanangamudi concluded by advising the new members to strictly follow the ethics in letter and spirit.

CS R Sridharan, President, The ICSI, said that we live in knowledge society, where knowledge is the driver of today's world. The central figure of such knowledge society is the professionals, who form influential section of the society. Thus, becoming professionals, we are bound to contribute more to this world. President, the ICSI, also expressed that the members need not unduly concern with respect to the recent notifications issued by the MCA. The Council is taking every step to sort out the issues and added that indeed the Companies Act, 2013 has substantially strengthened the role and position of the company secretaries. He also added that, some of the key areas in the Act will directly impact the role of CS in employment or in practice.



## Study Circle Meeting on Internal Audit – An Insight

On 03.05.2014, the ICSI – SIRC organized a Study Circle Meeting at ICSI-SIRC House, on 'Internal Audit'. The meeting was addressed by CA N R Govindarajan, Practising Chartered Accountant, Chennai. CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address observed that as per the Companies Act, 2013, certain class of companies shall be required to appoint an internal auditor and such internal auditor shall be a Chartered Accountant or such other professional as may be decided by the Board and as such the CS shall also be appointed as the Internal Auditor. Govindarajan explained that the internal audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system. He further explained that the role of internal audit is to provide independent assurance that an organization's risk management, governance and internal control processes are operating effectively. He elaborated on internal policy compliance, regulatory policy compliance, process improvements and training and development. The members actively interacted with the speaker during the study circle.

## 10<sup>th</sup> Group Reading Programme

On 5, 9 and 10.05.2014 CS Eshwar S, Company Secretary in Practice, Chennai led the 10th Group Reading Programme which was organized at ICSI – SIRC House. The rules of The Companies Act 2013 pertaining to 'Acceptance of Deposit & Inspection, Investigation and enquiry' were discussed in detail.

## National Technology Day Special Programme

On 10.05.2014, Synchronizing the National Technology Day, the ICSI – SIRC organized a special programme on 'Latest Developments in Information Technology Laws and Recent Trends in Cyber Crimes' at ICSI – SIRC House. D R Anbarasan, Inspector of Police, Cyber Crimes Cell, Chennai was the speaker. Earlier, CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address explained that the 11th of May has been officially declared as National Technology Day in India and the day symbolizes the importance the Regulator attaches to the development of the country's technological capabilities. As the profession of Company Secretaries, the technology is used on a daily basis to send and receive emails, online filing of documents with the MCA and other Government authorities, handling digital signatures etc. and hence it is important for the CS and other professionals to be updated with the IT laws, he observed. Anbarasan shared his rich experience on handling various cases on cybercrimes, with the members. He opined that the growth of IT has both advantages and disadvantages. He explained in detail about how the public are being cheated by the false emails and text messages in mobile phones. He explained that these crimes are dealt under sections 507 and 509 of the IPC and sections 66 to 71 of the Information Technology Act. He stated that, since we live in the "information age," information

technology has become a part of our everyday life and it is not only the duty of the Government to take stern measures against those involved in cybercrimes, but also the duty of the citizens to be careful and vigilant in using the information technology. The meeting was very lively as he narrated many cases in detail and members discussed with him very actively. CS Dr. B Ravi, Member, ICSI – SIRC summed up the entire proceedings of the programme.

## One Day Joint Programme on Select Provisions of the Companies Act 2013 and Rules

ON 12.05.2014 the ICSI – SIRC and ICSI – CCGRT jointly organized a one day programme on 'Select Provisions of The Companies Act, 2013 and Rules' at ICSI – SIRC House, Chennai. Guest speakers were CS K. Sethuraman, Group Company Secretary & Chief Compliance Officer, Reliance Industries Limited, Mumbai and CS (Ms.) Shashikala Rao, Practising Company Secretary, Mumbai.

CS Sethuraman spoke on the appointment and qualification of Directors, under section 149 to 172 of The Companies Act 2013. He elaborated Section 159, under which a listed company may have one director elected by small shareholders and the company *suo motu* may appoint a small shareholder director. CS Sethuraman highlighted the right of persons other than retiring directors to stand for directorship, appointment of additional/alternate/nominee director, disqualifications for appointment of director and the duties of directors. The meetings of board and its powers, which are dealt under the sections 173 to 195 and Related Party Transactions were also dealt in detail by Sethuraman.

CS (Ms.) Shashikala Rao, dealt with the restrictions on the powers of the board under section 180, contribution to bonafide and charitable funds under section 181, prohibitions and restrictions regarding political contributions under section 182. She also explained the sections 177, 184 and other sections related to loans to directors and inter corporate loans.

The afternoon session was handled by Dr. V. R. Narasimhan, Chief of Regulatory Affairs, National Stock Exchange, Mumbai on e-voting. Narasimhan observed that the e-voting concept is prevalent worldwide for over a decade now and the advantages of e-voting outweighs disadvantages and it is best suited for companies with large number of shareholders. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means, he added. At any general meeting, a resolution put to vote at the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands, he narrated. The programme was attended by around 130 delegates and was concluded with the summing up of the entire programme by CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC.

## Panel Discussion on Enhanced Disclosures under the Companies Act, 2013



# News From the Institute & Regions

On 12.05.2014, a Panel Discussion on Enhanced Disclosures under Companies Act, 2013 was organized by the National Stock Exchange in association with ICSI at ICSI – SIRC House. The panelists included CS K. Sethuraman, Group Company Secretary & Chief Compliance Officer, Reliance Industries Ltd, Mumbai, CS (Ms.) Shashikala Rao, Practising Company Secretary, Mumbai, Somasekhar Sundaresan, Partner, JSA Advocates & Solicitors, Mumbai and Dr. V R Narasimhan, Chief of Regulatory Affairs, NSE, Mumbai. The various disclosures as mentioned in the Companies Act, 2013 were discussed in detail. The delegates actively participated in the discussion with the panel members.

## 11<sup>th</sup> Group Reading Programme

From 13 to 15.05.2014, the ICSI-SIRC organized a Group Reading Programme of the Rules under the Companies Act, 2013 at ICSI – SIRC House. CS Eshwar S, Company Secretary in Practice, Chennai led the programme. The rules on 'Audit and Auditors and Accounts Rules' were dealt with in the programme.

## Meet the Regulator Programme with Income Tax Officials

On 16.05.2014, Rajib K. Hota, IRS, Chief Commissioner of Income Tax [TDS], Chennai and his team were invited at the Meet the Regulator Programme organized by the ICSI – SIRC at ICSI – SIRC House, Chennai. Swaroop Mannava, IRS, Assistant Commissioner of Income Tax, Chennai made a presentation on 'TDS implications on Principal Officers'. Hema Bhupal, IRS, Assistant Commissioner, Income Tax, Chennai also spoke on the occasion. Nallathambi and Nagendra, Income Tax Officers were also present on the occasion. In his address, Rajib K Hota explained that TDS is one of the modes of collection of taxes, by which a certain percentage of amounts are deducted by a person at the time of making or crediting certain specific nature of payment to the other person and deducted amount is remitted to the Government account. He quoted that it is similar to the "pay as you earn" scheme also known as Withholding Tax in many other countries, one of the countries is USA. He added that it facilitates sharing of responsibility of tax collection between the deductor and the tax administration. It ensures regular inflow of cash resources to the Government and acts as a powerful instrument to prevent tax evasion as well as expands the tax net. Swaroop Mannava, in his presentation, explained the history of TDS in India, Principal Officer, responsibilities of deductor, consequences of default and implications. The members actively interacted with the officials.

## One Day Seminar on the Companies Act 2013: Moving Towards Next Decade

On 20.05.2013 Thrissur Chapter and SIRC-ICSI jointly organized a One day Seminar on The Companies Act, 2013: Moving towards Next Decade. CS M Vasudevan, Chapter Chairman in his welcome address emphasized the importance of the seminar to the members and the students. This was followed by an in-depth introduction offered by Dr. Baiju Ramachandran, Chairman of the SIRC of the ICSI about the theme of the Seminar as well as the Chief Guest, CS R Sridharan,

President, ICSI. CS R Sridharan in his address stressed upon the great words of Jonathan Swift, which says "Vision is the art of seeing what is invisible to others" and asked the audience to always stress upon a positive vision and to be optimistic. He narrated the major steps taken by our Institute to enhance the profession and also outlined the representations made to the Government regarding the Rules notified by the Companies ACT, 2013. His optimistic speech offered a soothing effect to the listeners. The President delivered Late CS Meenakshi Award to Chitra, who came out with flying colours in June 2013 session and cleared all the four modules of CS Professional exam at one sitting.

**Technical Session I – Incorporation of Companies:** V E Josepkutty, Deputy Registrar of Companies, Kerala and Lakshadweep was the Speaker of the 1st Technical Session on Incorporation of Companies. He started his presentation with detailed focus on the company incorporation after the New Companies Act, 2013. He elaborated the mode of forming incorporated companies, the MOA requirements, the AOA requirements and other basic requirement for registration.

**Technical Session II – Related Party Transactions:** CS Thiagarajan, Practising Company Secretary, Coimbatore was the speaker of the 2nd Technical Session on Related Party Transactions. In his address he stated that the New Companies ACT, 2013 emphasises on the related party transactions and the manner of approval and disclosure under Section 188. He pointed out that a Consent of BOD or in certain cases prior approval by special resolution is required for every contract or agreement. He also emphasized that the section provides penalty for directors or other employee of a company who had entered into or authorized the contract or agreement in violation of the provisions in case of listed company or unlisted company. There was a lively participation from delegates present and it was a very memorable one.

**Technical Session III – Acceptance of Deposits:** CS Pradeep P C, PCS, Kochi was the speaker of the Third and Final Technical Session on Acceptance of Deposits. He stressed on the important definitions on the terms like deposit, depositor, eligible company and trustee. Discussed the highlights in brief and limits of acceptance of deposits. The session concluded with an interactive question and answer time which witnessed a very lively participation from the members and the students present.

Before conclusion of the programme CS Jackson David, Vice-Chairman, Thrissur Chapter of the ICSI gave the summary of the One Day Seminar.

## Two Day Master Class Programme on the Companies Act, 2013

On 23 and 24.05.2014 The ICSI – SIRC organized a Two Day Master Class Programme on the Companies Act, 2013 at ICSI – SIRC House. The programme was inaugurated by CS K Chandrasekaran, Past Chairman, ICSI – SIRC. At the inaugural session, CS Dr. Baiju Ramachandran, Chairman, ICSI – SIRC in his welcome address explained the objectives of the programme and requested the





delegates to be interactive with the resource persons.

CS K. Chandrasekaran complimented the SIRC for organizing this programme, as it will create opportunity for updation on the new Act. He opined that The Companies Act, 2013 shall be viewed positively and members should try to explore the opportunities under the Act. CS Chandrasekaran added that the Act has not only brought in more opportunities, but also vests more responsibilities on CS. He concluded by requesting the members to be more interactive during the sessions.

**Technical Session – 1:** The First Session of the programme was on 'Incorporation of Companies', which was handled by CS Sriram P, Company Secretary in Practice, Chennai. CS Sriram explained the delegates the difference between The Companies Act, 1956 and The Companies Act, 2013, provisions relating to the formation of companies, one person companies, memorandum of association, articles of association, section 8 Companies, registered office and change of objects. He elaborated in detail about the documents to be filed with the registrar and various forms pertaining to the incorporation of companies.

**Technical Session – 2:** CS R. Prakash, Deputy General Manager, Legal and Company Secretary, HC Kothari Group of Companies was the speaker of the Second Session on the topic, 'deposits and dividends'. CS Prakash explained the term 'deposits' and the sections from 73 to 76, which deals with deposits. The speaker explained sections 123 to 127 on dividends. He observed that the right to dividend, right shares and bonus shares to be held in abeyance pending registration of transfer of shares.

**Technical Session – 3:** The topic of the Third Technical Session was 'fraud and prosecution', which was addressed by CS Dhanapal S, Company Secretary in Practice, Chennai. He observed that the provisions regarding inspection, enquiry and investigation was available in the Companies Act, 1956 and the Act also provided for penalty under sections 627 and 628 for false statement and false evidence. The Companies Act, 2013 brings out the real essence of enforcement by giving statutory recognition to the Serious Fraud Investigation Office and giving them power to arrest under The Companies Act itself without having to invoke provisions of other legislations. CS Dhanapal explained in detail the punishments for indulging in fraudulent activities under the new Act.

**Technical Session – 4:** CS Shyam Sundar L. V., Management Consultant spoke on the 'Corporate Social Responsibility' in the Fourth Technical Session. He dealt elaborately with Section 135 of The Companies Act, 2013. He opined that CS can head the CSR programme of the Company, identify good CSR programmes and present the same to the Board/CSR Committee. The CS can also create a CSR Policy and encourage companies to spend on CSR in the right manner and ensure compliance with all regulations relating CSR requirements and also on sustainability reporting, risk management and other related areas. The first day concluded with the summing up of the entire day proceedings by the Chairman, ICSI – SIRC.

**Technical Session – 5:** On the second day the Fifth Technical Session of the programme was dealt by CS A Mohan Kumar, AGM, Legal & CS, Allsec Technologies Limited, Chennai on 'KMP and remuneration'. CS Mohan Kumar explained that there is no need for a private limited company to appoint KMP and if appointed, it is required to get Board & General Meeting approval for appointment & remuneration. The remuneration to CEO, CS and CFO does not fall under Remuneration to Managerial Personnel though they are whole time KMP under Section 203, he added.

**Technical Session – 6:** CS Gopal Krishna Raju, Practising Chartered Accountant, Chennai addressed the Sixth Session of the programme on 'Account and Audit'. He focused on Chapter IX which deals with the accounts of companies. He briefed the delegates on eligibility, qualifications and disqualifications of auditors and the National Financial Reporting Authority.

**Technical Session – 7:** CS Eshwar S, PCS, Chennai was the speaker for the session on 'Board of Directors'. He observed that as per the 2013 Act, a director was disqualified from being appointed to the Board of Directors if convicted in any offence and not just an offence under the Companies Act. The final Rules clarify that a Director is disqualified from being appointed to the Board of Directors only if the director is convicted in an offence committed under the Companies Act, he added.

**Technical Session – 8:** The final session of the programme was handled by CS A. M. Sridharan, PCS, Chennai on 'Oppression and Mismanagement'. He explained in details Section 241 which deals with oppression and mismanagement. Clause (a) deals with oppression and mismanagement and Clause (b) deals with mismanagement likely to occur on account of change in management. He also threw light on the class action suits.

The two day programme concluded with the summing up of the entire two days' proceedings by CS Dr. Baiju Ramachandran.

## Joint Programme on Collective Investment Schemes and Nidhi Companies – The Way Forward

On 26.05.2014 The ICSI – SIRC in association with the Tamil Nadu Investors' Association [TNIA], Chennai organized a joint programme on the above topic at ICSI – SIRC House. The programme was well attended by members of ICSI as well as members of TNIA.

**Session – 1: Collective Investment Scheme:** CS Pradeep Ramakrishnan, Assistant General Manager, Securities and Exchange Board of India, Southern Region, Chennai spoke on the Collective Investment Schemes. In his address, he explained various measures taken by the Government and SEBI to regulate and control these schemes. He suggested that the investors should be aware and should analyse the schemes before investing in it.

**Session – 2: Nidhi Companies:** E. Selvaraj, Former Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai



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spoke on 'Nidhi Companies'. He elaborated Nidhi companies and the provisions contained in the Companies Act, 2013. The delegates actively interacted with the speaker.

## One Day Joint Programme on The Companies Act 2013 - Engage, Execute & Exercise Precaution

On 27.05.2014, The ICSI – SIRC in association with the Visakhapatnam Chapter of ICSI organized a One Day Joint Programme on The Companies Act 2013 – Engage, Execute & Exercise Precaution at Visakhapatnam. The seminar was inaugurated by CS Sridharan R, President, The ICSI. In his address, CS Sridharan explained the various positives of the Rules under The Companies Act, 2013. He also assured the members and students present that the ICSI is making strenuous efforts with the MCA to sort out the issues raised with the implementation of new Rules under the Companies Act, 2013. The President also hinted the various other venues available in the present Act. The inaugural session concluded with the formal vote of thanks by CS Chatakundu Suman, Secretary, Visakhapatnam Chapter of ICSI.

The seminar had three technical sessions, viz., 'Board of Directors', 'Deposits, Loans & Guarantees' and 'Raising of Capital' which were duly addressed by CS C. Sudhir Babu, Council Member, The ICSI, CS S. Chidambaram, Company Secretary in Practice, Hyderabad and CS P. S. Rao, Company Secretary in Practice, Hyderabad respectively. The delegates actively interacted with the speakers.

## BANGALORE CHAPTER Interactive Session on Companies Act, 2013, Rule & E-Form Thereunder

On 1.5.2014, the Bangalore Chapter of SIRC of the ICSI organised an Interactive Session on the Companies Act, 2013, Rules & e-form there under with M.R. Bhat, Registrar of Companies, Karnataka and his Team. CS Gopalakrishna Hegde, Central Council Member, the ICSI shared the efforts being made by the Central Council through representations to the MCA. He appreciated the initiative taken by the Chapter and the proactive approach of the ROC in addressing the queries of the members.

M. R. Bhat, Registrar of Companies, Karnataka elaborated the New Companies Act, 2013, Rules and Forms there under. The first 50 queries emanated from the Open House Sessions held during the months of March, April and May 2014 on Definitions, Incorporation, Public Offer and Private Placement, Acceptance of Deposits by Companies, Management and Administration, Dividends, Accounts of Companies were replied by ROC, Karnataka. Sehar Ponraj, Dy. Registrar of Companies, Karnataka and Keerthi Tej, Asst. Registrar of Companies, Karnataka were also present.

## Joint One Day Seminar on The Companies Act 2013 – The New Reality

On 2.5.2014 Bangalore Chapter of SIRC of the ICSI in association with

FKCCI organised a Seminar on The Companies Act 2013 – the new reality at Bangalore. This marked the first seminar being organised after the Companies Rules were notified and the Act became effective from April 1<sup>st</sup> 2014. The seminar was attended by around 300 professionals and corporate representatives. M. R. Bhat, Registrar of Companies (ROC), Karnataka in his address stated that the Ministry of Corporate Affairs is expected to clarify in the next 10 to 15 days most of the fears and doubts raised by the industry about the new Companies Act, 2013, which came into effect on April 1<sup>st</sup>.

Speakers, Vasanthi Srinivasan, Professor, IIM-B, M.R.Bhat, Registrar of Companies, Karnataka and K.G. Raghavan, Senior Advocate spoke on Independent Directors and Women Directors, Incorporation of Companies and Mergers and Acquisitions, respectively.

Allaying the fears of many speakers, Bhat highlighted that a special committee of the Ministry of Corporate Affairs was looking into "the deluge of representations" received from companies and their auditors about the new clauses of the law. A few provisions were being notified in steps. A few classes of companies had approached it about the exemptions they would lose. However, this issue cannot be addressed until after six months, when a draft notification would be placed in Parliament, he said.

About concerns over 'harsh' clauses that prescribed penalties, imprisonment, and prosecution by special courts in the new law, Bhat said they were meant to avert or reduce corporate scams. The clauses were a caution for Chartered Accountants to uphold financial probity and also to bring corporate governance on par with good global practices.

Registrars on their part would ensure tighter incorporation of companies as this was being done haphazardly until now, and misused to launder money.

The Act, he said, was also corporate-friendly and path-breaking in many ways: it applied rules to e-commerce companies that do business without being physically present in the country; it made business easier for small companies as well as for large, unlisted ones.

K. Ravi, chairman of FKCCI's Committee on Corporate Social Responsibility (CSR) and Corporate Affairs, said the law unfairly limited auditors to just 20 assignments. He also sought clarity on tax benefits against money spent on CSR activities.

A special panel is looking into the deluge of representations from companies said M.R. Bhat by concluding that 'Clauses are meant to avert or reduce corporate scams'. Topics relating to Corporate Social Responsibility, Duties & Responsibilities of Directors and Related Party Transactions & Inter-Corporate Loans were addressed by Soumitro Chakraborty, CEO, Fiinovation, New Delhi, Murali Ananthasivan, Partner, J. Sagar & Associates and Ganesh Raju, Executive Director, PwC respectively.

Mahendra Jain, Partner, S.R. Batliboi & Associates, LLP spoke on Accounts & Audit while Arjun Lall, Partner, Amarchand Mangaldas



addressed the gathering on Corporate Governance, Vigilance & Fraud Management (SFIO).

CS V. Ramchandran, Company Secretary, Wipro, CS J. Sundharesan, Company Secretary, Aditya Vikram Bhat, Partner, AZB & Partners, Kalpesh Maroo, Partner, BMR Advisors, Soumitro Chakraborty, CEO, Fiinnovation were a part of the PANEL DISCUSSION (Q & A).

## Series of Open House Sessions on Companies Act, 2013

The Bangalore Chapter of the ICSI organised a series of Open House Sessions on "Companies Act, 2013" during the month of May 2014 at the Institute of Agricultural Technologists. The details of Open House Sessions were as under:

Date	Topic – Open House on	Moderator/Speaker
6 & 7.5.2014	Open House Session on "Appointment and Qualification of Directors - Chapter XI"	CS D.K. Prahlada Rao, Past President, The ICSI.
10.5.2014	Open House Session on "Chapter IV & VII of CA 2013 – Rules thereunder"	CS B. Narasimhan, Council Member, The ICSI.
20 & 21.5.2014	Open House Session on "Chapter IV – Share Capital & Debentures"	CS S. Kannan, (Past Chairman, Bangalore Chapter of the ICSI), PCS, Bangalore.
22.5.2014	Open House Session on "Revised Exposure Drafts of Secretarial Standards 1 & 2"	CS Dattatraya Joshi, (Past Chairman, SIRC of the ICSI), Vice President and Secretary, Hitachi Koki India Ltd., Bangalore.

Speakers made a very lucid comparative analysis of the Companies Act 2013 *vis-a-vis* the Companies Act, 1956 on all the above days at the open house sessions.

Lively interaction was witnessed among the Members present on all the six days throughout the sessions. The queries emanating from these sessions were compiled and forwarded to the ROC, Bangalore for clarification.

Suggestions received on SS 1 & 2 were forwarded to CCGRT by the Chapter.

## Press Meet

On 9.5.2014 the Chapter organised a Press Meet with CS R. Sridharan, President, The ICSI at Bangalore. CS Vikas Y Khare, Vice President, The ICSI, CS Gopalakrishna Hegde, Council Member, The ICSI and CS S.C. Sharada, Chairman, Bangalore Chapter of the ICSI were also present in the Press Meet.

CS R. Sridharan, in his address highlighted the major initiatives of ICSI made during the year such as Computer-based Examination (CBE)

for its Foundation-level Programme and an open book examination (OBE) in all the five elective subjects in Module III of the Professional Programme. The student has to opt to study one subject for June 2014 Examinations. He also added that The Institute recently launched a full time three-year Integrated CS Course comprising Foundation, Executive and Professional Programmes at ICSI-Centre for Corporate Governance Research and Training in Navi Mumbai. He also explained to the media people that upon completion of the new building of the Bangalore Chapter, similar full time course may be contemplated by the Institute in Bangalore, subject to the feedback and response to the course in CCGRT.

CS Vikas Y. Khare, Vice President highlighted the demand for Company Secretaries. On the number of students clearing the examinations hovering between 20 and 30 per cent, CS Gopalakrishna Hegde, Central Council Member emphasized on quality of Company Secretary. CS S.C. Sharada, Chapter Chairman highlighted the importance of Women Company Secretaries and the potential that they hold to become Women Directors as envisaged in the New Companies Act, 2013.

## Members' Meet

On 9.5.2014 the Chapter organised a Members' Meet with CS R. Sridharan, President, The ICSI at Bangalore. CS Gopalakrishna Hegde, Council Member briefed the Members on recent issues related to MCA notification of Companies Act, 2013 Rules and its impact on the profession of Company Secretaries such as Removal of Pre Certification, Appointment of KMP not applicable for Private Companies, Secretarial Audit & Annual Return to be signed by PCS.

CS Vikas Y. Khare, Vice President, the ICSI said that the new rules which were notified by MCA have shattered the sentiments of all the members equally. He also highlighted the major areas and compliance works such as IPO, Amalgamation, Takeover, Listing Agreement compliances, etc. He appealed to the members to be united and face the challenges posed on the profession.

In his address CS R. Sridharan, President, the ICSI assured that the Council is taking care of every challenge posed to the profession by the notified new Rules and also mentioned that Council is regularly working to build up the value of the profession according to the changing global scenario in corporate world. He also mentioned that Council is making efforts to interact with MCA regarding the rules notified with continuous representations in detailed manner. He further stated that Council made representation with Law Ministry. He also informed the members that the Council is preparing a guidance note on Secretarial Audit. He appealed to every member that they should work for professional excellence and bring laurels to ICSI. The queries on New Rules pertaining to the profession raised by the members were also clarified by him. Some of the senior members shared their views and thanked the Central Council for its efforts. They also appreciated the performance of the Bangalore Chapter and expressed satisfaction with the number and quality of several programmes conducted so far of the year 2014.





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## Joint One Day Conference on Dissecting Companies Act, 2013

On 29.5.2014 the Chapter in association with Wolters Kluwer (CCH India) organised a one day conference on Dissecting Companies Act, 2013. The conference commenced with a panel discussion on "Teething Problems in Companies Act, 2013" moderated by Nishchal Joshipura, Partner, Nishith Desai Associates. The session provided a perspective on the overview of the new provisions of the Companies Act, 2013 ("CA 2013"), Transition from the old regime to the new regime, Applicability of CA 2013 on a retrospective basis and jurisprudence created under the Companies Act 1956, Integration of CA 2013 with other laws and What does this mean for companies going forward? Panelists for the discussion were B. Gopalakrishnan, Legal Advisor, Asset Reconstruction Company (India) Ltd.; Madhu Sudan Kankani, Partner, BSR & Co. and CS Gopalakrishna Hegde, Central Council Member, The ICSI.

The session was followed by another presentation on "Management and Administration" facilitated by CS Satish Menon, Principal Associate, Menon & Associates, Bangalore. During the presentation Menon highlighted the Board and its composition - Key Management Employees, ESOPs, Board of Directors, appointment & qualification of directors, key managerial personnel and independent director, Members' right to inspect, Punishment - Private companies v. public companies- Power of Board - Penalties for non-compliance Responsibilities - Remuneration Committee, vigilance mechanism - Independent Director & nominee director- Role & responsibility, Board meetings, Director's remuneration, Board Report - Resignation of Directors, Vacancy, eligibility, qualification for appointment, removal - Audit Committee and responsibilities and Company secretary and responsibilities challenges of corporate governance in private companies, legal aspects of corporate governance, nomination & remuneration committee and stakeholders' relationship committee, SEBI Consultative paper, CSR applicability, CSR Committee & role of CSR committee.

The post lunch session on "Capital Raising and impact on PE/VC transactions" facilitated by Nishchal Joshipura, Partner, and Vaibhav Parikh, Partner, Nishith Desai Associates. The session elaborated on types of instruments and restrictions - Preferential Allotments, Private placements, Rights Issue, Public Issues, Bonus Issues - Role of a registered valuer - Enforcement of shareholder agreements - Layering of investments - Exit rights: Buy-backs, reduction of capital, mergers and amalgamations - What does this mean for VC/PE investors going forward?

The conference ended with a panel discussion on "Corporate Governance & Corporate Social Responsibilities" moderated by Arun Scaria, Senior Member, Nishith Desai Associates. The session provided a perspective on the Overview of the new provisions of the Companies Act, 2013 ("CA 2013"), Transition from the old regime to the new regime, Applicability of CA 2013 on a retrospective basis and jurisprudence created under the Companies Act 1956, Integration of CA 2013 with other laws and

what does this mean for companies going forward?. S.Sundaresan, Partner, Deloitte Haskins & Sells and Satish Menon, Principal Consultant, Menon & Associates were the Panellists.

## COIMBATORE CHAPTER Half Day Joint Seminar on Raising of Capital and Related party transactions under the Companies Act, 2013

On 2.6.2014 SIRC of the ICSI organized a half day seminar jointly with Coimbatore Chapter of SIRC of the ICSI on Raising of Capital and Related party transactions under the Companies Act, 2013 at Coimbatore. The programme was inaugurated by CS R Sridharan, President, ICSI. CS C Sudhir Babu, Central Council Member and CS Baiju Ramachandran, Chairman, SIRC of the ICSI were also present during the inaugural function.

CS Baiju Ramachandran in his welcome address elaborated various initiatives taken by ICSI-SIRC in organizing many professional development programmes and workshops for the benefit of the members and students at large in making understand the rules of the Companies Act 2013. He further invited the members to attend the 39th Southern India Regional Conference of SIRC of the ICSI being held on 18th & 19th July 2014 being held at Alleppey, Kerala.

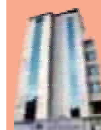
R. Sridharan in his inaugural address explained various opportunities available under the Companies Act, 2013 for members both in employment as well as in practice. He also detailed the initiatives of the Council of the ICSI and the Institute in restoring the position of the Company Secretaries under the Companies Act, 2013. He also highlighted the expectations of the Government from the CS Professionals. He advised the members and students to attend professional development Programmes and workshops as many as possible for better understanding of the new Companies Act and to improve the ability and quality to meet the expectations of the trade and industry.

He explained the initiatives taken by the Institute in conducting induction programmes for fresher members both in practice as well as in employment and advised them to attend the induction programmes to get an exposure of the industry and the new Act.

CS C. Sudhir Babu, Central Council Member, the ICSI in his address expressed Company Secretaries responsibility under the Companies Act, 2013 and spoke on Master Class programme and workshops initiated by the institute to better understand the key provisions of the new Companies Act, 2013.

CS S. Kannan, Practising Company Secretary from Bangalore addressed on "Raising of Capital under the Companies Act, 2013". During his presentation he explained various modes available for raising capital under the Companies Act. He also explained the provisions regarding Private Placement of Share, Sweat Equities and also dealt with issue of Debentures under the New Act. He further





highlighted the opportunities in IPO for raising capital and gave a brief summary of IPO market activities.

CS M. R. Gopinath, Practising Company Secretary from Bangalore, addressed on the provisions of related party transaction and also highlighted the importance of interpretation of law in right manner. The speaker compared the provisions on related party under the Companies Act, 1956, Accounting Standard and also under the new Act. He highlighted the course of action to be initiated by the Corporate to comply with the provisions of the Companies Act, 2013 regarding 'Related Parties'. Around forty members including students attended the seminar. At the end of the seminar a video on Company Secretaries Benevolent Fund [CSBF] was screened. The CSBF banner and standee were also displayed at the venue of the programme.

## Press Meet

Synchronizing with the visit of CS R. Sridharan, President, The ICSI, the Coimbatore Chapter of SIRC of ICSI organized a Press Meet on 02.06.2014 at Coimbatore. Reporters from 20 reputed English and Tamil dailies and TV Channels were present at the Press Meet.

CS R. Sridharan, President, ICSI explained the syllabus, fee structure, mode of admissions, training requirements to qualify to become members of ICSI. He also outlined the major initiatives taken by the ICSI, introduction of Three Year Full Time Integrated CS Course on pilot basis from July 2014 and the mode of admission by selecting only 50 students through a rigorous entrance examination. He also informed the Integrated Full Time CS course would be conduct at ICSI Centre for Corporate Governance & Research Centre at Mumbai.

He spoke on the recognition of CS as a Key Managerial Personnel along with the Chief Executive Officer, Managing Director, Whole-time Director and Chief Financial Officer under section 203 of the Companies Act 2013, and other opportunities available for CS professionals under the new Companies Act. He stated that under the new Companies Act, the Private Companies have been excluded from the Secretarial Audit and need not compulsorily appoint KMPs. He added that the matter is already been brought in to the notice of MCA and also recommended to MCA to appoint KMPs in Private Companies too.

CS C. Sudhir Babu, Central Council Member, the ICSI CS Baiju Ramachandran, Chairman, SIRC of ICSI, CS C. Ramasubramaniam, Secretary, SIRC of ICSI and CS R. Dhanasekaran, Chairman, ICSI-Coimbatore Chapter and CS G. Vasudevan, Past Chairman, ICSI-SIRC were also present during the press meet. The representatives of the press asked the dignitaries many queries which were aptly replied by the President of the Institute. The news with regard to the Press Meet was published in Times of India [All India edition page – Business News], The Hindu, Indian Express, Dinamalar, Hindu Tamil, Dinamani, and many more newspapers on 03.06.2014. On 04.06.2014 the news was published in Hindu Business Line, Madyamam and Dina Thanthi. The Press Kit along with the Press Release was distributed among the Media people.

## Interactive Session with President, ICSI

Coimbatore Chapter of SIRC of ICSI organized an Interactive Session for members and students with President, ICSI on 2.6.2014 at Coimbatore. Before commencement of the interactive session CS R. Sridharan, President, ICSI invited queries and suggestion from the members and students on Companies Act, 2013.

CS R. Sridharan started the interaction with the detailed elaboration of the wide opportunities available for Company Secretaries both in employment as well as in practice under the new Companies Act, with the support of statistical data prepared by the Institute and the data collected from MCA. He further indicated that the Council is continuously following up with the officials of MCA on all issues relating to Company Secretaries under the new Act implemented with effect from 01.04.2014. He added that the new Government has positively taken the suggestions and recommendations of the Institute and the Government could understand the demerits of the Companies Act, 2013. He indicated that the developments of the discussion would be updated in the website regularly. The queries raised by the participants were replied satisfactorily by the President, ICSI who also assured initiatives on various requests made by CS Members and students. He also expressed his confidence that the status of the profession could be restored in due course. He created confidence among the members and the students who attended the session.

## One Day Professional Development Programme

On 17.04.2014, Coimbatore Chapter of SIRC of the ICSI organized a one day Professional Development Programme on Companies Act - 2013: Sections and Rules having immediate implications at Coimbatore. CS. Dr. P. V. S. Jagan Mohan Rao, Past President of ICSI inaugurated the Programme and addressed on "Directors and Auditors – Role, Responsibilities and Challenges under the Companies Act - 2013". He very extensively explained the roles and challenges of Directors, Independent Directors and women Directors under the new Companies Act, 2013. He further explained the Directors' appointments, qualifications, disqualifications and provision of number of directorships, etc.

CS. Dr. K. S. Ravichandran, Practising Company Secretary, Coimbatore addressed on "Setting up a compliance management system under the Companies Act, 2013 and the Rules thereon".

CS M. R. Thiagarajan, Practising Company Secretary, Coimbatore addressed on "Different types of Companies under the Companies Act, 2013".

During the programme, a book titled "Reflections on Companies Act, 2013 – Important aspects and immediate requirements" written by CS Dr K S Ravichandran, Practising Company Secretary was released by Mr M.R. Thiagarajan, Practising Company Secretary.

During the programme CSBF film was screened twice. The banner & standee of CSBF were also displayed at the programme venue.





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The programme was very interactive and the queries raised by the participants were duly addressed by all the speakers in their respective sessions, and the programme was actively attended by 115 participants.

## Series of Discussion Meetings – First Discussion Meeting on Companies Act, 2013

On 07.05.2014, Coimbatore Chapter of SIRC of the ICSI organized its First Discussion Meeting for the year 2014, on “Companies Act, 2013, its rules and related forms” at ICSI-Coimbatore Chapter premises. By conducting this meeting, Chapter created a platform for the members to discuss and update the knowledge/Sharing of knowledge on Companies Act, 2013. CS G Vasudevan, Past Chairman of the Chapter was the moderator who coordinated the meeting well. The moderator explained the important e-forms to be filed with the Registrar of Companies and other authorities under the Companies Act, 2013. He extensively used power point presentation and subsequently, the doubts, implications, consequences, were discussed by the core group of Company Secretaries. It was further guided and supplemented by the moderator. Around 16 Company Secretaries attended the meeting.

## Professional Development Programme on Emerging Paradigm of Corporate Governance under the Companies Act, 2013

On 14.05.2014, Coimbatore Chapter of SIRC of the ICSI organized a Professional Development Programme on Emerging Paradigm of Corporate Governance under the Companies Act, 2013 at Coimbatore. CS NK Jain, Corporate Advisor & Former Secretary and CEO, The ICSI, New Delhi was the speaker. N K Jain in his address elaborated various requirements under the Companies Act, 2013 in general and in particular with respect to Corporate Governance, composition of Board, Independent Directors, Resident Director, Women Director, Rotation of Auditors, Secretarial Audit, Internal Audit, Secretarial Standards, Vigil Mechanism, E-Governance etc., with the support of power point presentation. The session was very informative and appreciated by the gathering at large. The queries raised by the participants were well addressed by the Speaker. The programme was attended by around forty participants.

## HYDERABAD CHAPTER Interactive session on Forms - Filings & Challenges

On 13.5. 2014 the Chapter organized an Interactive session on Forms-Filings & Challenges at its premises. CS Vaudeva Rao Devaki, Chapter Chairman in his welcome address spoke on the importance of the topic and requested the members to interact actively and get the doubts clarified.

N. Krishnamoorthy, Registrar of Companies spoke about the changes

taking place in the technology day in and day out. He also mentioned that the changes in technology would result in better quality of work. He also requested the members to have patience. The Chairman requested the members to come forward with their queries.

The members then raised various queries and the same were clarified by CS Shashi Raj Dara and V. Venkata Rami Reddy.

CS Shashi Raj Dara, Deputy Registrar of Companies requested to give inputs regarding the issues in the forms so that the forms, if necessary, can be changed accordingly. The active participation of the members made the evening lively.

## Half-day Seminar on Meetings & E-voting Jointly with NSDL

On 17.5.2014 the Chapter organised a Half-a-day seminar on Meetings & E-voting jointly with NSDL at Hyderabad. CS A.V. Rao, Treasurer, SIRC in his address opined that it would pave the way to increasing the poll percentage that would lead to share holder democracy, Corporate Governance and enhanced investor relations.

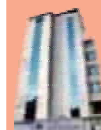
In the First Technical Session, CS Mahesh Anant Athavale, Former President, The ICSI spoke at length on contemporary issues pertaining to the meetings, both general as well as board meeting *vis-a-vis* the provisions of the Companies Act, 2013. He also discussed the Secretarial Standards and the revision thereof. While speaking on the subject and the changes that are going to be brought in by introduction of e-voting, he opined that this would significantly change the landscape and would open tremendous opportunities for Company Secretaries.

In the Second Technical Session Nitin Ambure, Vice President, NSDL, took members through the process of e voting. He explained in detail the e-voting process and the modules that are thereunder NSDL which specifically provides individual platforms to retail shareholders as well as to the custodians of shareholders. He also explained through slides the whole system of process as to how would be the role of RTA, Company scrutinizer and the shareholders. Members benefited a lot from his hands on experience.

## 8<sup>th</sup> Residential Programme on Happy Life

On 24 and 25.5.2014 the Chapter organised its 8<sup>th</sup> Residential Programme on “Happy Life”. CS Vasudeva Rao Devaki, Chapter Chairman highlighted the importance of Happy Life.

The inaugural session was addressed by Jayalakshmi, Trainer who perfectly designed the theme of the programme happy life. She addressed the gathering by highlighting as to how one can be contented and also strives towards personal development. She dealt with the concepts of “Happiness and Joy” in our own way and it was refreshing to the members who listened her.



In the evening of 24<sup>th</sup> there was a cultural programme by CS Srinivasa Sharma, along with his friends. They entertained the crowd thoroughly and the members reciprocated with joy.

Next morning K. V. Pradeep, Actor, Anchor, Film Maker, HR Consultant and international Soft Skills Trainer addressed the members for on the concept of happiness. He engaged the crowd and interacted with them and elucidated their experiences and the best movements of their life. He shared his experiences and highlighted the importance of simple living.

The Residential Programme was attended by a good number of members along with their families who enjoyed the programme.

CS Vasudeva Rao Devaki, Chapter Chairman requested for the feedback from the members. He also announced the forthcoming programmes and requested those present to attend the same.

## KOCHI CHAPTER

### Professional Development Programme

As part of the series of group discussions on notified sections of Companies Act, 2013 and its Rules, Kochi Chapter of SIRC of the ICSI organized its first discussion on 19.5.2014 at ICSI House, Kochi. The discussion was on Chapter X - The Companies (Audit & Auditors) Rules, 2014, Chapter IX - The Companies (Accounts) Rules, 2014 and also on Revised Exposure Drafts of Secretarial Standards with respect to General and Board Meetings for public comments. This was followed by a discussion on Circular number 10/2014 dated 7.05.2014. The programme was led by CS MP Vijayakumar, Secretary, Kochi Chapter of ICSI.

### Group Discussion Series: Companies Act 2014 and its Rules

On 27.5.2014 Kochi Chapter conducted a group discussion on Chapter V – Acceptance of Deposits by Companies which was led by CS Asish Mohan. On 30.5.2014, CS Sunil Shankar made a presentation on Chapter XII – Meetings of Board and its Powers. On 12.6.2014 a detailed deliberation was made on Chapter IX-The Companies (Accounts) Rules, 2014 and Chapter X-The Companies (Audit & Auditors) Rules, 2014 by CS Prashant Mohan. An insight into Chapter II – Incorporation of Company and Matters Incidental thereto, was made by CS Rajiv K, on 16.6.2014. The Programmes were well attended by members and students.

### Deposits and Investment Schemes - The Regulatory Regime, the Way Forward

Kochi Chapter of ICSI conducted an evening Professional Development Programme on Deposits and investment Schemes - the regulatory regime, the way forward. The session was handled by CS Rajesh Kumar K, Company Secretary, Manapuram Finance Limited. The speaker explained in detail Acceptance of Deposit Rules, 2014 and also compared the relevant sections of the topic with the

Companies Act, 1956. Members raised various queries on the topic and the speaker addressed the same. Members shared their views, opinion and experience in connection with the topic. The session was followed by honouring Dr. CS Baiju Ramachandran, Chairman SIRC of the ICSI. CS Krishnamoorthy and CS Sruthy appreciated him for his achievement and his dedication to the profession. The Kochi Chapter of ICSI honoured 3 executive students by distributing endowments. They secured high marks in executive examination held in December 2013.

## MADURAI CHAPTER

### One Day Seminar on Companies Act, 2013

On 21.6.2014 the Chapter organised a one day seminar on Companies Act, 2013 at Madurai. The speaker for the First Session was Dr. B. Ravi, Past Chairman of SIRC of the ICSI who took the session on Board Process, Conduct of Meetings and Loan to Directors.

The Second Session was addressed by S.S.Marathi, Past Chairman of SIRC of the ICSI on Public Deposits and Conduct of Meetings. The Madurai chapter also invited Apollo Hospital for a brief presentation on health related topics by eminent doctors. The first informative lecture was on Lung diseases. The second session was addressed by Dr. Suguna on ideal diet. The seminar was well attended by over 100 participants from industry, practice, besides students. T.Raja, Chapter Office In-charge made all arrangements for the programme.

## VISAKHAPATNAM CHAPTER

### Half-day Programme on Secretarial Standards

On 15.06.2014 the Chapter organized a half day programme on "Secretarial Standards" on at its premises. Guest Speaker CS Ahalada Rao V., Practicing Company Secretary, Hyderabad spoke on the Secretarial Standards 2 General Meeting, notice in writing, notice through newspaper, Annual General Meeting, postal ballot, Quorum. 4.1.1 If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting. The Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other member of any such Committee authorised by the Chairman of the Committee, shall attend the General Meeting. 4.1.2 Directors who attend the General Meetings of the company shall be seated with the Chairman. The authorised representative who attends the General Meeting of the company shall also be qualified to be an Auditor. If Company conducts AGM on Monday then what shall be the period/day when the proxy register can be inspected? And also briefed on Secretarial Standards 1 Meetings of the Board. Apart from that he also informed to all the participants the final exposure drafts of Secretarial Standards on SS1 &



# News From the Institute & Regions

SS2 to give comments or suggestions before 30th June 2014. Around twenty-six delegates attended the programme.

## Meeting on Recent Changes in Companies Act 2013

The Chapter organized an extraordinary general meeting on Recent Changes in Companies Act, 2013. There was lively interaction by twenty eight members including students. CS D.V. Subbarao, Chairman and CS Sekhar Babu A.V.V.S.S.CH.B, Past Chairman, CS C. Suman, Secretary of Visakhapatnam Chapter of ICSI were present. The members and students critically analysed various provisions of the Companies Act, 2013 and their impact on the profession. Issues exclusively related to the new Act were debated on and the members present actively participated in the discussion. The Chairman and Secretary also explained about ICSI representations to MCA for doing the needful and also requested for peaceful expression of their feelings in this regard.

## Half-day Seminar on Challenges and Opportunities for CS under Companies Act 2013

The Chapter organized a half day seminar on Challenges and Opportunities for CS under the Companies Act, 2013. The Programme was held on 26.04.2014 at Visakhapatnam Chapter of SIRC of the ICSI. The delegates critically analysed various provisions of the Companies Act, 2013 and their impact on the industry, economy and professionals. Issues exclusively related to the new Act were debated on and the members of the Chapter actively participated in the discussion. Speaker CS A.V. Vaitheeswaran, CFO & CS, Vizag Seaport Pvt Ltd, made an elaborate presentation on Origin of Company Secretary Profession, Journey of CS Profession in Industry, Functions of CS under Companies Act, 2013, opportunities and challenges in Industry, practice and also explained to all present the ICSI representations made to MCA on day to day basis on Companies Act, 2013. There was lively interaction by thirty one delegates present.

## Interactive Session with President, ICSI

Visakhapatnam Chapter of ICSI organized an interactive session with the President of ICSI CS R. Sridharan and other dignitaries with the members of the Chapter

on 27.05.2014 at Visakhapatnam. The President was accompanied by CS Sudhir Babu C, Central Council Member, the ICSI; CS Dr. Baiju Ramachandran, Chairman SIRC of the ICSI. Senior Members and Students of Visakhapatnam Chapter actively participated on the occasion. CS Subbarao DV, Chairman of Visakhapatnam Chapter attended the interaction with other members of the Managing Committee. The Programme was organized to give an opportunity to the members and students to interact with the top officials and Council Members of ICSI, to submit their suggestions on various aspects and to clarify the doubts in relation to their profession and career. The session also provided as a platform

for detailed discussions on the new Companies Act.

CS R. Sridharan, President opined that the members should come forward to have effective and powerful deliberations to further elevate the profession. He appreciated team ICSI Visakhapatnam for their committed effort towards developing the Visakhapatnam Chapter to a vibrant platform for members and students.

CS Sudhir Babu C, CS Dr. Baiju Ramachandran, CS Marthi SS, Member, CS AV Rao Treasurer, SIRC of the ICSI also addressed the gathering. The suggestions given by various members were well received.

## Press Meet with President, ICSI

The President of ICSI CS R. Sridharan attended a press meet on 27.05.2014 at Visakhapatnam. The Chairman of the Chapter CS Subbarao DV, Chairman of SIRC CS Dr. Baiju Ramachandran, Member of SIRC CS SS Marthi and others arranged for the meet. On the occasion Sridharan replied to the detailed queries raised by the representatives from press with reference to course content, new syllabus, besides Professional opportunities. Around 40 media (Print & electronic) represented by around 60 people were present during the press meet.

## One Day Joint Programme on the Companies Act 2013 - Engage, Execute & Exercise Precaution

On 27.05.2014, The SIRC of the ICSI and Visakhapatnam Chapter organised a one day joint programme at Visakhapatnam on The Companies Act 2013 - Engage, Execute & Exercise Precaution.

CS Sudhir Babu C., Central Council Member, ICSI was the speaker of the First Session. He explained the role of Board of Directors.

CS S. Chidambaram, Company Secretary in Practice, Hyderabad was the speaker of the Second Session who in his address explained about Deposits, Loans & Guarantees.

CS P. S. Rao, Company Secretary in Practice, Hyderabad was the speaker of Third Session who explained Raising of Capital.

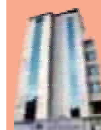
The joint programme was well attended by the members, students and other professionals who actively interacted with the speakers of all the sessions. The meeting concluded with the summing up of the entire programme by CS Suman C., Chapter Secretary.



WESTERN INDIA  
REGIONAL COUNCIL

## Orientation Lecture Series on Companies Act, 2013





ICSI-WIRC continued with its Second Orientation lecture series on 18,23 and 25.5.2014 at its premises at Nariman Point,Mumbai.

Eminent speakers having practical exposure to the subject addressed the delegates. Earlier on 17.5.2014 the lecture series was inaugurated by Keyoor Bakshi, Past President, The ICSI.

On 18.5.2014 Rajesh Doshi, Founder Steer Advisory Services Pvt Ltd., took up the topic on Mergers, Amalgamations and Shareholders Agreement as per the new Companies Act. He highlighted the tremendous opportunity available to CS arising out of the new provisions relating to appearance before CLT and valuation. He also highlighted the importance of drafting the various clauses of shareholders' agreement keeping in mind the new provisions of the Companies Act, 2013.

During the Second Technical Session Kalidas Vanjpe, Practising Company Secretary,Thane took up the topic Role of Directors and their Responsibilities under the Companies Act, 2013. He explained that the responsibilities of directors have increased manifold under the Companies Act, 2013, which also provides for duties of directors. He also highlighted the new provisions of Managerial Remuneration which provides for enhanced scale of remuneration in the new Schedule.

The third day of Orientation lecture series was held on 23.05.2014. The session was graced by R. Sridharan,President, the ICSI. R Sridharan, highlighted the relevance of the deliberations particularly since the impact of various new provisions of the Companies Act are still to settle in. He encouraged the members to attend various programmes on Companies Act, 2013. He also explained the members the steps taken by the Institute in addressing the concerns of the members at large regarding the curtailment of the scope for employment of Whole Time Secretaries as also the threshold levels relating to certification of annual returns and Secretarial Audit. He explained the members, that irrespective of the outcome of these efforts, which are expected to be positive there is enormous role for company secretaries both in employment as well as in practice to do well on utilising the opportunity that has come to them through Companies Act, 2013.

Thereafter Anand Ambedkar, Practising Company Secretary,Thane took up 'Compliance for Private and Small Companies under the new Companies Act, 2013'. He explained that as regards private companies most of the privileges enjoyed by the companies under the Act of 1956 have been virtually withdrawn. He also explained the concept of small companies and that it is the intention of the legislators to provide for simplified compliances for them. However, apart from requirement to hold only one meeting in half-year and some minor concessions/simplifications, very few simplifications have yet been notified.

On 25.5.2014 during the First Technical Session Suresh Vishwanathan, Founder Director & Chief Consultant, Finteglaw Knowledge Solutions Private Limited took up for discussion the topic Clause 49 and Related Party Transactions (RPT). He explained that Section 188, which though is an aggregation of Sections 297 and 314 of the Companies Act, 2013 is wider in scope than under the Act of 1956. He also highlighted the

key provisions of Clause 49 of the listing agreement relating to RPT.

Robert Pavrey, Practising Company Secretary,Mumbai deliberated on "Company Management and Administration Relating to Directors".

During the concluding session Mehul Shah, Chartered Accountant dealt with the contentious topic of NFRA and highlighted the concerns arising therefrom. In his presentation he highlighted the important provisions affecting the presentation of financial statements, including the requirement of publishing Consolidated Financial Statements and the new schedule relating to depreciation, which now requires estimation of effective life for all the fixed assets of the company. In his presentation, he also highlighted the new CSR provisions and the Rules prescribed thereunder. He also dealt with the new concept of One Person Company (OPC) and the relaxations granted to them and the requirements for appointing nominee.

The queries raised by the delegates were appropriately responded by the speakers. The orientation lecture series was very interactive and well appreciated by the delegates. The delegates requested to organise many such lecture series in the future to get themselves acquainted with the new provisions.

## AHMEDABAD CHAPTER FUTURA 2014 Education Fair

The Futura 2014 Education Fair – Rotary's Education and Career Fair was organized on 10 and 11.5.2014 at Gandhinagar by Rotary Club of Gandhinagar. CS Naresh Senani, CS Kavita Khatri, CS Ekta Mehta and CS Monica Sankhla were present to guide and to manage the crowd for two days at the venue. The Smita Subin, Section Officer of the Chapter Office and Anu Varghese were also present on the first day to counsel the visitors. The co-ordinators/members manned the counters and put their endeavours to make the event a grand success and prospective. The Chairman, TEFC Committee, CS Chetan Patel was present to represent the Institute of Company Secretaries of India during the presentations of all registered participants. He briefed about the new online registration for students and few initiatives of the ICSI. The visitors numbering around ninety comprising students and parents visited the ICSI Stall for enquiry of the CS Courses and to understand its utility in their current stream. The queries about the CS course were counselled and the Company Secretaryship course was presented as one of the best career options. The visitors were briefed about the CS course benefits being a distance learning programme. The Brochures were circulated to the visitors along with visiting cards for future contacts. The fair was fruitful in building the brand image and propagating the importance and awareness of CS Programmes to all. The certificate was also issued to by the ROTARY Club to the ICSI for participating in the two days FUTURA 2014 Education Fair. The event was successful with the help and guidance of CS Urnil Ved, PCS, CS Nilesh Patel, CS GSPL, CS Chetan Patel - Chairman TEFC, CS Rajesh Tarpara - Chairman and CS Rutul Shukla - Secretary, Ahmedabad Chapter.



# News From the Institute & Regions

## Series of Learning Workshops on Companies Act, 2013

The Ahmedabad Chapter of WIRC of ICSI announced a series of Eight "Learning Workshops on Companies Act, 2013", under the theme "One Can Not Do Everything But, Together We Can Do Something". The initial 3 (three) workshops of the series were conducted in the month of April 2014 and the remaining 5 (five) workshops of the series were conducted in the month of May 2014.

**Fourth Workshop:** The fourth workshop was conducted on "CSR Policy Rules & Share Capital and Debenture Rules & Declaration of Divided Rules" on 03.05.2014 with PCH=01 at Ashram Road, Ahmedabad.

The workshop was addressed by CS Arvind Gaudana, a Practising Company Secretary at Ahmedabad. The workshop was attended by 126 CS Members comprising Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman-PCS Committee, Ahmedabad Chapter of WIRC of ICSI.

**Fifth Workshop:** The fifth workshop was conducted on "Appointment of Directors and Qualifications & Appointment & Remuneration of Managerial Personnel" on 10.5.2014 with PCH=01 at Ashram Road, Ahmedabad. The workshop was addressed by CS Mahesh Gupta, a Practising Company Secretary at Ahmedabad. The workshop was attended by 148 CS Members comprising Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman-PCS Committee, Ahmedabad Chapter of WIRC of ICSI.

**Sixth Workshop:** The sixth workshop was conducted on "Management and Administration & Board's Powers and Meetings" on 17.05.2014 PCH=01 at Ashram Road, Ahmedabad. The workshop was addressed by CS Manoj Hurkat, a Practising Company Secretary at Ahmedabad. The workshop was attended by 136 CS Members comprising Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman-PCS Committee, Ahmedabad Chapter of WIRC of ICSI.

**Seventh Workshop:** The seventh workshop was conducted on "Prospectus and Allotment of Securities & Adjudication of Penalties" on 24.05.2014 with PCH=01 at Ashram Road, Ahmedabad. The workshop was addressed by CS Umesh Ved, Central Council Member & Practising Company Secretary at Ahmedabad. The workshop was attended by 106 CS Members comprising Past Chairmen, Senior CS Members, Committee Members. The workshop was successful with the support and guidance of CS Jaymeen Trivedi, Chairman-PCS Committee, Ahmedabad Chapter of WIRC of ICSI.

## Study Circle Meetings at Gandhinagar

Gandhinagar Study Circle of Ahmedabad Chapter organised study circle meeting on "Issue and Allotment of Shares for Private Limited and Closely Held Public Companies" on 12.05.2014 at Gandhinagar

with PCH=1. CS Jignesh Shah, PCS, Ahmedabad was the faculty of the meeting. CS Rohit Dudhela, CS V. K. Sharma, CEO-Guj Info Petro Limited, CS Urmil Ved and members & students attended the meeting. Presentation was made on various aspects of Issue and Allotment of Shares for Private Limited and Closely Held Public Companies with practical examples. The meeting was appreciated by a gathering of around 20 members including students.

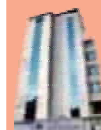
Again on 19.5.2014 Gandhinagar Study Circle organised a study circle meeting on "Acceptance of Deposits under the Companies Act, 2013" at Gandhinagar with PCH=1. CS Rohit Dudhela, PCS, Ahmedabad was the faculty of the meeting. CS V. K. Sharma, CEO-Guj Info Petro Limited, CS Kuldeep Jain and members & students attended the meeting. Presentation was made on various aspects of Acceptance of Deposits under the Companies Act, 2013 with practical examples. The meeting was appreciated by a gathering of around 15 members including students.

## INDORE CHAPTER Full Day Seminar on Essential Rules of Statutory Interpretation and Companies Act, 2013

On 18.5.2014, Indore Chapter of WIRC of the ICSI organized a Full Day Seminar on Essential Rules of Statutory Interpretation and Companies Act, 2013 at Indore. The Seminar was inaugurated in the presence of CS (Dr.) K.R. Chandratre, Past President of the institute among others. CS Dr. K.R. Chandratre in the First Session explained the necessity of right interpretation of Statutes. He explained with examples various Provisions of the Companies Act, 2013. He also apprised the Members about various types of Interpretation of Statutes.

In the Second Session he explained the Critical Aspects of Chapters XI, XII, XIII of the Companies Act, 2013. He explained the provisions relating to Independent Directors, Non - Executive Director, Woman Director, Small Shareholder Director, Appointment and Retirement of Directors, Directors Identification Number, Alternate Director, Nominee Director, Register & Return of directors and KMP and their shareholding and Inspection of the Register, Meetings of Board, Quorum for meetings of Board, Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, Powers to be exercised by Board with shareholders' approval, Political Contribution, Loans to Directors, Related Party Transactions and Appointment of Managerial Personnel, etc.

In the Third Session various queries raised by the Members of the Chapter were replied and resolved by Dr. K.R. Chandratre.



## ICSI-CCGRT

### 3 Days Crash Course on Companies Act, 2013

ICSI-CCGRT organised a 3 Days Crash Course on Companies Act, 2013 and Companies Rules, 2014 from 30.5.2014 to 01.06.2014 at CBD Belapur, Navi Mumbai. The programme was residential as well as non-residential. CCGRT got overwhelming response from the members and hence registration had to be closed in advance. The 3 Days Crash Course was launched by Vikas Khare, Vice President, ICSI and Chairman, CCGRT. There were many well-known faculties who were invited for the said Crash Course viz. CS Prakash Pandya, CS Mahesh Athavale, CS Shashikala Rao, CS Sunil Nanal, M. R. Bhat, ROC, Bangalore, CS (Dr.) K. R. Chandratre, Dr. V. R. Narasimhan, CS Savithri Parekh and CS N. L. Bhatia. CS Atul Mehta, Central Council Member and Co-Chairman CCGRT also remained present in the said programme.

Major Provisions relating to Companies Act, 2013 and the Companies Rules, 2014 were covered during the 3 Days Crash Course viz. Anatomy of Companies Act, 2013, How CS Add Value under the New Companies Act, Secretarial Audit and Role of PCS, Deposits, Board Report and Loans and Investment, FEMA *vis a vis* Companies Act, 2013, Companies Incorporated Outside India, Inspection – Inquiry & Investigation, Adjudication and Compounding and many more.

Participants enjoyed all the sessions with great attention. Queries pertaining to Companies Act, 2013 and Rule made thereunder were, to the full extent possible, resolved by the concerned faculties. On the third day, the programme was concluded by Vikas Khare, Vice president, the ICSI and Chairman, CCGRT Committee.

### Programme on Critical Issues in Companies Act, 2013

On 14.6.2014 the ICSI-CCGRT organised the first of its kind full day Questions and Answers Session on Critical Issues in Companies Act, 2013 at CBD Belapur, Navi Mumbai. For the said programme, questions were invited from Members and Students on Companies Act, 2013 and the same were compiled to be discussed during the programme. Many members sent their queries relating to Companies Act, 2013. Dr. K. R. Chandratre, Past President, the ICSI and Practicing Company Secretary at Pune was faculty for the said Programme. Dr. Chandratre tried to resolve almost all the queries of the participants raised in advance as well as during the programme. ICSI-CCGRT got overwhelming response and due to that registration had to be closed in advance. The participants appreciated the initiative of ICSI-CCGRT and further requested for conduct of such programmes in future.

### 27<sup>th</sup> Residential Managerial

### Secretarial Orientation Programme (27RMSOP)

From 5.6.2014 to 20.6.2014 the ICSI-CCGRT conducted its 15 days Residential MSOP (with one day break). There were training sessions on soft skills, Company formation, Salient features of New Companies Act, 2013, Inbound & Outbound Investment, Competition Law & Practice including provisions related to mergers, Practical aspects of convening & conducting Board, IPO-Basic concept & regulations, Appearing before CLB, Group Discussion & Mock Interview, Service Tax & VAT & Industrial out bound visit. The sessions were taken by well experienced faculty. The valedictory and concluding remarks were proposed by CS Vikas Khare, Vice President, the ICSI & Chairman, CCGRT Management Committee.

## Appointment

# REQUIRE

**A Qualified Company Secretary,  
for the post of the Company  
Secretary of the Company.**

The candidate should be  
an Associate Member of  
the Institute of Company  
Secretaries of India having  
2-4 years of relevant  
experience.

**Application can be sent to**

**MEENAKSHI STEEL  
INDUSTRIES LIMITED**

407, Kalbadevi Road, Daulat Bhavan  
3rd Floor, Mumbai - 400002.



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PCH- 10

## ANNOUNCES

24 PDP

### 3 Days Intensive Course

### Structuring and Managing Companies under the Companies Act, 2013 A High Level Value Adding Course

Background	Most of the Sections of the Companies Act, 2013 and Rules there under which have been notified. To familiarise the Company Secretaries and others with Major Provisions of the Companies Act, 2013 and respective Rules ICSI-CCGRT is organising this 3 Days Refresher Course.
Day, Date & Time	Friday, July 18 – Sunday, July 20, 2014 – Starts @ 09.30 a.m. to 05.30 p.m. (first two days extended sessions up to 7.00 p.m.). Last day programme will conclude at 4.30 p.m.)
Venue	YASHWANTRAO CHAWAN ACADEMY OF DEVELOPMENT ADMINISTRATION (YASHADA) Raj Bhawan Complex, Baner Road, Pune 411 007
Proposed Coverage (Inclusive of)	Interpretation of Statutes, Scope for Company Secretary under New Companies Act, Re-crafting skills for drafting Memorandum and Articles of Associations under Companies Act 2013, Incorporation of a Company and New Dimension of Corporate Entity, LLP vis-a-vis Limited Liability Company – A Re-look, Public Officer, Private Placement, Share Capital and Debentures – Chapter III & IV, Management & Administration – Chapter VII, Directors, Meetings of Directors, Appointment & Remuneration of Managerial Personnel, Dividend, Accounts & Audit, Depreciation Method – Chapter VIII, IX, , Companies Incorporated Outside India - CSR, Related Party Transactions, Loans & Investment – Chapter XII, Inspection, Inquiry and Investigation – Chapter XIV, Compounding – Chapter XXVIII. See the attachment for details. Interactive Session with MCA Officials and Infosys on MCA21.
Speakers include	CS Dr. K. R. Chandratre, CS Mahesh Athavale, Ms. Savitri Parekh, CS Sunil Nanal, CS Prakash Pandya, CS Sachin Bhagwat & other eminent faculties whose confirmation is awaited.
Participant Mix	Predominantly for Company Secretaries, Chartered Accountants, Cost Accountants, Corporate Advisors
Fees (Inclusive of Service Tax @ 12.36%)	<b>CCGRT ANNUAL MEMBERS: FREE ON NON RESIDENTIAL BASIS-3 days will be debited.</b> ICSI Members: Rs.4000 (Non-Residential) per Participant ICSI Students: Rs.3500 (Non-Residential) per Participant (Limited for only 50 Students of ICSI) Others: Rs.6000 (Non-Residential) per Participant Residential Package @ Yashada: Rs. 9000 Residential @ Ashwamedha: Rs. 6500
Residential Accommodation Inclusive of Service Tax @ 12.36%)	@ <b>YASHADA (At Venue): Rs.5000***</b> per head for 2 Nights on Twin Sharing Basis (Including Dinner) + Program fees as prescribed above) @ <b>Hotel Ashwamedh Residency (7 km from Venue @ city Centre): Rs. 2500 ***</b> per head for 2 Nights on Twin Sharing Basis (Only Stay) + Program fees as prescribed above)

## For Registration

**CS Vikas Khare**  
Vice President ICSI &  
Chairman CCGRT

**CS Atul Mehta**  
Co-Chairman  
CCGRT

Fees may be paid through NEFT/DD payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to: Gopal Chalam, Dean, ICSI-Centre for Corporate Governance, Research & Training (ICSI-CCGRT), Plot No. 101, Sector-15, Institutional Area, CBD Belapur, Navi Mumbai- 400 614.

☎ 022- 4102 1515/1533, 022- 27577814, Fax: 022- 27574384; email: ccgrt@icsi.edu

**EARLY BIRD INCENTIVE FOR FIRST 150 PAID DELEGATES -CHAIR AND DESK FACILITY**

\*\*\* Limited Residential Accommodation and hence registration for residential participants is on First Come First Serve Basis till Thursday, July 10, 2014. Program Registration is Subject to Confirmation.





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## ANNOUNCES !!!

### *Annual Membership Scheme (2014 – 2015)*

**An invitation to attend a variety of Professional Development Programs  
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ICSI-CCGRT proposes its new schemes of Annual Membership for the Professional Development / Participative Programs organized by us.

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# PMQ COURSE IN COMPETITION LAW



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

## POST MEMBERSHIP QUALIFICATION COURSE IN COMPETITION LAW

India has witnessed two phases of development process with different policy regimes and institutional frameworks. In the first phase, since independence, the development of the Indian economy took place within a rigidly regulated and relatively closed economic framework. In the second phase, since 1991, the country embarked upon economic reform process and embraced market oriented policies.

Since 1991, the Government of India introduced a series of economic reforms, including policies of liberalisation, deregulation, disinvestment and privatisation. The broad thrust of the new policies was a move away from the centralised allocation of resources in some key sectors by the government to allocation by market forces. After a decade of reforms, restraints to competition such as state monopolies and protective measures and controls were replaced by relatively more competitive and de-regulated open market policies.

The Competition Act, 2002, replacing the MRTP Act, 1969, was enacted to provide, keeping in view of the economic development of the country for the establishment of a Commission, to prevent practices having adverse effect on competition, to promote and sustain competition in markets and to protect the interests.

The basic purpose of the Competition Law, in any country, is to ensure that markets remain competitive, to the benefit of both business and consumers. The compliance by the market participants of competition law, rules and directions issued by competition authorities, is a precondition in achieving the purpose of law.

Competition authorities, the world over, encourage companies to seek advice from professional experts in compliance of competition law to assist them in designing, implementing and maintaining an effective compliance program. The Company Secretaries being compliance experts are most suitable professionals to play a wider role in enforcement and compliance of competition law. Company Secretaries are the professionals, who have expertise in providing total compliance solutions and imbibing good corporate governance practices in the veneer of company strategy, formulation, implementation and other aspects of company policies as a coherent whole.

In these underpinnings, the ICSI introduced Post Membership Qualification Course (PMQ) in Competition Law, for its members.



## OBJECT

The PMQ Course in Competition Law aims at capacity building of Company Secretaries in the area of legal, procedural and practical aspects of Competition Law and matters related thereto.

## OBJECTIVES

The objectives of the PMQ Course in Competition Law are that the members who complete the PMQ Course in Competition Law should –

- Appreciate various concepts of competition, economics of Competition including economic theories and policies that influence the aspects of Competition in the market and operation of Competition Law.
- Gain acumen, insight and thorough knowledge of law governing competition in India and major overseas jurisdictions.
- Understand and appreciate the interface between Competition Commission of India and Sectoral Regulators.
- Understand the Competition Law in practice and in particular procedures involved in various aspects of administration of competition law in India including dealing with Competition Commission of India and Competition Appellate Tribunal.
- Understand and appreciate the importance and structure of Competition Compliance Programme its effective implementation, monitoring and evaluation.
- Be able to apply the knowledge of Competition Law in commercial context.

## Course Structure

PMQ Course in Competition Law comprises of following two parts, namely:

- (a) Part I of the course comprises of written examination, and
- (b) Part II of the Course comprises of 100 hours training.

### PART I: Papers for Examination

The candidates for Part I examination shall be examined in the following four papers :

Paper I	Concepts and Economics of Competition Law (100 marks)
Paper II	Anti-competitive Agreements and Abuse of Dominance (100 marks)
Paper III	Regulation of Combinations (100 marks)
Paper IV	Competition Compliance Programme (50 marks) Case study (50 marks)





## PART II: Training

A candidate after qualifying Part I of the course shall undergo training for 100 hours in the manner and areas specified by the Council under a Competition Law Practitioner, legal department of large companies particularly MNCs or PCS firms engaged in Competition Law Practice, as may be approved by the Council from time to time.

### ELIGIBILITY CRITERIA

The members of the Institute shall be eligible for the admission to the course. Registration for the course will be valid for a period of five years during which period the candidate will be required to complete both the parts. Registration shall be open throughout the year. A candidate shall however, register at least six calendar months prior to the month in which the examination commences.

### EXAMINATION

Part I of the Post Membership Qualification Course in Competition Law examination will be conducted at such intervals, in such manner and at such time and place as the Council may decide subject to availability of such minimum number of candidates enrolled for the examination. The dates and places of the examination shall be published in the Institute's Journal "Chartered Secretary".

### PREPARATION FOR THE COURSE

Post Membership Qualification Course in Competition Law is a specialized course and the candidates pursuing this course will be required to have thorough knowledge of the subjects prescribed under each paper of the course. For this purpose, the candidates will be provided an illustrative list of suggested books and readings.

### DIPLOMA CERTIFICATE

A candidate successfully completing both Part I and Part II of the Post Membership Qualification Course in Competition Law shall be awarded a Diploma Certificate to that effect in the appropriate form by the Institute and shall be entitled to use the descriptive letters and bracket "DCL (ICSI)" to indicate that he has been awarded "Post Membership Diploma in Competition Law" by the Institute of Company Secretaries of India.

Course Fee: Rs. 25,000/- per candidate at the time of Registration

For further details please visit [www.icsi.edu](http://www.icsi.edu) or  
contact Director (Academics), [pmq@icsi.edu](mailto:pmq@icsi.edu) 011-45341039/45341014



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Headquarters

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tel **011-45341000, 4150 4444** fax **+91-11-2462 6727**

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## PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2014-15

The annual membership fee and certificate of practice fee for the year 2014-15 became due for payment w.e.f. 1st April, 2014. The last date for payment of fee is 30th June, 2014 which has now been extended upto 31st August, 2014.

The membership and certificate of practice fee payable is as follows:

- Annual Associate Membership fee Rs.1125/- (\*)
- Annual Fellow Membership fee Rs.1500/- (\*)
- Annual Certificate of Practice fee Rs.1000/- (\*\*)

\* A member who is of the age of sixty years or above can claim 50% concession and a member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the

furnishing of declaration in writing duly signed that the member is not in any gainful employment or in practice.

\*\* The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu).

### MODE OF REMITTANCE OF FEE

The fee can be remitted by way of: Online mode through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu))

Cash/Cheque at par/Demand draft or Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr.Saurabh Bansal, Asst. Education Officer at email id [Saurabh.bansal@icsi.edu](mailto:Saurabh.bansal@icsi.edu)



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# GOVERNANCE IN THE CORPORATE SECTOR – CERTAIN PERSPECTIVES<sup>1</sup>

Mr. Sridharan, President, Institute of Company Secretaries of India (ICSI), Mr. Khare Vice-President, Mr. Sahoo, ladies and gentlemen. Good afternoon. It is my pleasure and privilege to address this gathering today at the conclusion of the 15<sup>th</sup> National Conference of Practicing Company Secretaries (PCS) held under the aegis of ICSI. When my good friend Mr. Sahoo asked me to address this august gathering, I accepted with alacrity since I am aware that the ICSI has been dedicating itself to developing and regulating the profession with its vision of being a global leader in promoting good corporate governance and a mission to develop high caliber professionals to facilitate good corporate governance. I respect that. ICSI is also nurturing professionals that are actively engaged in issues to enhance governance in the corporate sector as well as in the securities markets, the two vital growth engines of the economy. I applaud that. Companies or corporations have been the principal way of organising large scale commercial or industrial endeavour right down the history but it assumed a formal structure in the early nineteenth century as the industrial revolution gathered pace<sup>2</sup>. The story of growth and development since then in the free-market economies is not very different from that of the evolution of corporations. The narrative is not very different in India. The corporate sector has registered a quantum change in terms of size, number and complexity over the years and is slated for further acceleration in the process in the times to come. Therefore, today, the importance of a strong and vibrant corporate sector in the economic growth process cannot be overemphasised.

2. The profession of a company secretary is probably as old as companies themselves. Though it has greatly evolved over the time, the nucleus continues to be 'compliance'. A company functions in the milieu of a maze of regulatory obligations. The job of a company secretary - whether as an employee or a practitioner - is to ensure that the company functions within the ambit of the legal and regulatory framework. As Lord Cadbury observes in his now eponymous report, "The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject to and on how those responsibilities should be discharged." To complete the perspective, let me also quote the then Central Minister Shiv Shankar, who stated, while introducing the Company Secretaries Bill, 1980, "The

Government attaches special importance to the development of professional management, so that the corporate sector can evolve and function in tune with changing needs of time, and the social responsibilities that this important segment of the economy has to shoulder. The profession of Company Secretaries has an important part to play in the introduction of professionalism in the area of corporate management."

3. During the past two decades, the importance of good corporate governance has come to the fore. The concern has been reinforced, particularly as it relates to the financial sector, in the backdrop of the global financial crisis. Suffice it to say here that it essentially comprises acting in a manner as to enjoy sustained trust of all the stakeholders which can broadly be grouped into four categories: the owners, the lenders, the customers and the regulators. The literature on corporate governance is voluminous and I too have spoken about it elsewhere. It is not my intention to go into the principles and practice of sound corporate governance here today. After jogging my mind about the issues that I should flag to an audience like this, I concluded that, given my background, it might be worthwhile to talk about the tension between the companies and regulators, and then about some of the changes brought about by the new Companies Act and my perception about a few important areas. Let me start with the tension between the companies and the regulators, why it is important to resolve this and establish synergy in the interest of corporate and economic growth and how it can be achieved.
4. One of the themes often discussed these days is the ease of doing business. According to global ranking of 189 countries published by the World Bank in June 2013, India figures at rank 134 in the overall ease of doing business, at 179 in the attribute 'starting a business', at 186 in 'contract enforcement' and 124 in 'resolving efficiency'. Not an insignificant part of the blame for this predicament usually is laid at the door of the complexity and opacity of the regulatory framework. Without admitting the truth of the accusation or culpability as a regulator, I have no hesitation in stating that both the regulatory framework and its administration require improvement. At the same time, let me argue that this improvement is not possible at the initiative of the authors and administrators of regulations alone; it requires active contributions from those for whom the regulations are framed. This is where you have an important role to play.
5. What is the foundation of regulations? In a free market

1. Valedictory address by Shri G Padmanabhan at the 15th National Conference of Practicing Company Secretaries (PCS) on the theme 'Practicing Company Secretaries: The Facilitator for Corporate Growth'- June 27-28, Mumbai. Assistance provided by Shri P R Ravimohan and Shri H S Mohanty gratefully acknowledged.

2. It may be of some interest to note that the so called Bubble Act, 1720 had banned formation of all companies in UK without a Royal Charter till it was repealed in the wake of progress of industrial revolution.

economy, regulations are basically aimed or should be aimed at addressing various reasons for market failure: existence of monopoly power, externalities, information asymmetry etc. Put another way, in a kind of 'bar stool' manner, regulations are aimed at addressing the divergence between individual and social incentives. There are many parables that illustrate this point; let me do this with the so called 'tragedy of commons'. Suppose residents of a village use a parcel of land – called common in UK – to graze their animals. If one villager grazes an additional animal, it is beneficial for her but detrimental for villagers as a group. If several villagers do this, the common will be depleted and ultimately destroyed. Societies down the ages have resolved this problem in myriad ways – mostly through standards of normative behaviour rather than regimes of regulations and their enforcement. In a modern economy that is large, complex and organically interrelated, such problems require elaborate and explicit rules and regulations and their administration and enforcement.

6. Regulations thus are supposed to modify behaviour of those covered by the regulation and ensure that they behave in a socially desirable way. But whether the regulations will have to be in the nature of a nudge or a shove depends upon how the regulated entities respond to. When the regulations are simple and the regulated entities comply with the regulations in letter and spirit so that the objective of the regulator is achieved, it is not necessary for regulations to be complex and detailed, which makes both administration and compliance difficult. In addition, several socially and economically useful activities may also not be undertaken in the face of such elaborate regulatory regimen.
7. Let me give an example from my own professional field. As you are aware, we have restrictions on capital account transactions. This is motivated by the objective of macroeconomic stability. In the preference hierarchy of capital inflows, equity inflows dominate debt inflows and as such we have a stricter regulatory regime for debt in comparison with equity. In 2007-08, when the global market conditions were benign and the Indian economy was going at a rapid pace, there were large debt inflows resulting in Rupee appreciation. Reserve Bank's efforts to contain the Rupee volatility in turn resulted in large Rupee liquidity which had to be sterilised at considerable fiscal cost lest inflationary pressures became unmanageable. In the circumstances, the regulatory framework discouraged borrowing by Indian companies. I don't need to amplify that this measure was in the greater interest of the economy including that of the companies. It would have been the end of a nice story if the companies had moderated their foreign currency borrowings in response to these regulations.
8. But how did the companies respond? Let me elaborate three different ways in which they tried to circumnavigate the regulation with the caveat that there may be others.
  - a. Some companies issued convertible debentures, which, till

2007, was a permitted instrument for equity investment. But such debentures were structured in such a way that they were predominantly debt rather than equity. As an example, in a convertible debenture of 100 Rupees, only 10 Rupees were convertible to equity on maturity.

- b. Some others adopted a slightly more sophisticated approach. They issued equities with a put option at a specified strike price in favour of the investor thus camouflaging the debt nature of the instrument. To illustrate, suppose an equity instrument valued at 10 Rupees is issued with a put option after five years with a strike price of 20. At the appropriate time, the investor exercises the option and sells back these shares at Rupees 20 to the issuer, thereby getting a fixed return of close to 15 per cent. The economic essence of the whole transaction is that the company has borrowed the funds at a cost of 15 per cent.
- c. Yet others adopted an innovative approach. A company issues a share valued at 10 Rupees at a premium of Rupees 25,000 and enters into a shareholders' agreement promising a guaranteed dividend of 8 per cent on the face value of the share as well as the share premium. The structure needs no elaboration.
9. What does the regulator do when such incidents unfold? They respond by making regulations more elaborate and provide for clauses that can prevent the aforesaid evasions. The regulatory framework evolves in a process of a game continuously played between the regulator and the regulated entities. What is necessary in the larger interest of the economy is that these games result in improving the common good.
10. I now come to the second part of my address, the new Companies Act. I consider the enactment of the new Companies Act 2013 (CA 2013) as an important development. As we all know, the new law introduces changes and updates to various aspects relating to companies and their operations, including accounting, auditing, corporate governance, related party transactions, loans and investments, mergers, reconstruction and raising of capital. The updates necessitate changes and enhancements in the role of practicing company secretaries going forward. I understand that these issues, in particular with regard to the conduct of secretarial audit, have been deliberated upon in various sessions held over the last day and a half. On my part, permit me to talk about certain provisions relating to three aspects of the CA 2013 viz. the Board, the audit function and corporate social responsibility; all areas that impact corporate governance by default, the growth and development of an entity and the economy by consequence.

## The Board of Directors

11. Recognising that the Board of Directors is the ultimate source of governance in a company, the new CA 2013 addresses

the issues relating to its composition of the and functioning comprehensively in order to enhance its efficacy. The Act specifies that each company should have at least one 'resident' director who has stayed in India for a total period of not less than 182 days in the previous calendar year. Large companies will also need to have at least one woman director on the Board and listed companies should have at least one third of the Board as independent directors. Independent directors can hold office for not more than two consecutive terms of five years each. The number of Board memberships a director can hold in public and private companies is also limit bound. Board meeting can be called only after a seven day notice and the fiduciary duties of directors are clearly defined in the Act. The code of conduct for independent directors has been appropriately articulated.

12. The Act also makes it mandatory for all listed companies and certain other companies to put in place an Audit Committee and a Nomination and Remuneration Committee. The type of directors that can be members of the Committees are specified with three scale weighing in favour of independent directors. The responsibility of chairing these Committees can be assigned to persons competent and qualified to discharge the responsibility.
13. The above provisions will ensure diversity and integrity in the composition of the Board/Committees and facilitate the company in benefiting from available talent pools. These improvements in turn will ensure effective Board oversight, inculcate operational discipline and instill financial discipline, leading to overall improvements in the corporate sector.

## Audit function

14. Paraphrasing Wendell Phillips, we can say that effective audit is the price of good governance. In the area of audit, the CA 2013 provides for various checks and balances to ensure that the audit function in the corporate world maintains impeccable quality. The appointment of individual auditors and audit firms cannot exceed five consecutive years or two terms of five consecutive years, respectively. The appointment will be subject to ratification at every Annual General Meeting (AGM) and similarly, their removal prior to a five year term will also be subject to a resolution at the AGM and government approval, where required. There are stiff penalties and provisions for prosecution by the National Financial Reporting Authority for fraudulent actions on the part of the audit firms. The act also prohibits auditors from providing non-audit services such as book-keeping, internal audit, actuarial services, investment advisory services, etc. to the company where they are auditor to ensure their independence. These measures will not only ensure quality in audits but will also bring more transparency and accountability for the auditors as well as the company.
15. This brings me to an important provision in the Act, relating to the introduction of 'Secretarial Audit' as a new class of audit, in addition to the existing mandated statutory audit, internal audit

and cost audit. Secretarial audit will be mandatory for listed companies and certain other specified companies viz. those public companies that have paid up capital of Rs 50 crore or more or a turnover of Rs. 250 crore or more. In the CA 1956, the requirement was only to file a compliance certificate given by a PCS with the Registrar of Companies with the requisite fees and attach a copy with the Board's report. This will no longer be the case. The objective of the proposed secretarial audit under CA 2013 will be to improve the compliance culture in the corporate sector in letter and spirit, and ensure transparency and timely communication of compliance/non-compliance status to the management of the company, regulators and external stakeholders. This will ultimately protect the interest of customers, employees, directors, stakeholders and avoid any unwarranted action from the law enforcing /other agencies. The report of the secretarial audit will need to be annexed with the Board report. The Board of Directors in their report to shareholders will need to explain any qualification/remark made by the company secretary in practice in the secretarial audit.

16. The secretarial audit is intended to be a detailed and meaningful exercise conducted by a professional to verify compliance with provisions of various laws applicable to a company. It is you, practicing company secretaries who will have the responsibility to conduct these audits for which you will have similar powers and rights as statutory auditors. In fact, practicing company secretaries will form part of the Key Management Personnel (KMP) of certain class of companies whose appointment, remuneration and removal can only be effected through Board resolutions. Given the significance of the position and the work involved in the audits, it will be important to ensure that practicing company secretaries inculcate the required expertise and knowledge to conduct these audits diligently and with integrity. This will benefit the company management, government authorities, regulators, investors as well as other stakeholders with positive effects spreading to the economy.

## Corporate Social Responsibility

17. "The price of greatness is responsibility", Winston Churchill often used to say. There is no reason why it should be any different for companies as well. A new initiative that has been put in place under the CA 2013 relates to corporate social responsibility (CSR) of companies. Under the Act, every company with net worth of Rs 500 crore or more, or turnover of Rs 1,000 crore or more or a net profit of Rs 5 crore or more during any financial year will need to set up a CSR Committee, which will, inter alia, recommend to the Board an appropriate CSR policy, indicate the CSR activities that the company will undertake and recommend the amount of expenditure to be incurred on the activities. Boards of CSR companies will need to ensure that at least 2% of the average net profits made during the three immediately preceding financial years are utilised for CSR activities, giving preference to local area and areas around where it operates. In case of non-fulfilment of CSR spending, the reasons will need

to be indicated in the report of the Board in a 'comply or explain' approach. The CSR policy and its contents will also need to be disclosed in the Board report and the company's website.

18. Thus far, there had been no specific mandate for CSR for companies, though several companies did voluntarily undertake CSR initiatives. With the new Act, CSR activities will be a responsibility of all specified companies. While there may be issues in implementing CSR initiatives in companies that have not yet ventured in this area and also for companies with large amounts becoming eligible for CSR spends, over time this measure will not only help in the economic and social progress of the under privileged sections of the society but also facilitate gains for companies in terms of their reputation and image.

## The profession

19. I have talked about some key provisions of the CA 2013 that are likely to have a positive bearing on the governance and compliance culture in the corporate world. However, simply enshrining the provisions in the Act will not ensure that governance standards are enhanced. The key in my view lies in their appropriate implementation, which will need to be ensured. Towards this end, the Act has significantly enhanced the role of company secretaries. As a professional class, PCS will in the year ahead, need to emerge as an extremely reliable source of assessing existing or potential compliance risks in the corporate sector; a source whose integrity will be relied upon by various regulators and agencies, and indeed the corporate sector itself. So, what needs to be done? Where does the profession see itself going forward and how does it get there?
20. To answer the questions, let me go back to some issues relating to the roles and responsibilities of PCSs. The conduct of the annual secretarial audit that PCSs will have to perform going forward will entail i) reporting to the Board about the compliance with the provisions, rules and laws applicable to the company, and ii) ensuring compliance with the secretarial standards, as issued by ICSI. These two functions will cast an overwhelming responsibility on PCSs that will require them to incur knowledge and experience of various laws, regulations and practices on the one side and display commitment and integrity in performance on the other.
21. To illustrate the enormity and depth of the task entrusted to PCSs, the scope of the secretarial audit will include assessing a company's compliance with all applicable provisions of the CA 2013, SEBI Act 1992, RBI Act 1934, Securities Contracts Act 1956, Depositories Act 1996, FEMA 1999, Competition Act 2002, listing agreement and any other law specifically applicable. Compliance with various secretarial standards issued by the ICSI to aid companies in discharging their corporate responsibilities will also need to specifically assess as these standards, several of which are non-financial, have been provided statutory recognition in CA 2013 as against their earlier

recommendatory nature. Further, the secretarial standards cover the entire range of company operations including conduct of meetings, dividends, shares, maintenance of records, inter-corporate interactions, contracts, appointment of auditors, etc. which PCSs will need to assess.

22. I understand that the ICSI will be embarking upon a nationwide capacity building exercise amongst the existing professionals and members to meet the expectations and requirements of the enhanced position of PCS under the new Act. In addition, to bring up a niche cadre of high quality professionals in the coming years, the Institute also plans to initiate a long duration integrated programme for company secretaries. These initiatives are timely and warranted, and if I may say so necessary for developing world class professionals who will facilitate corporate sector growth through their knowledge, expertise, guidance, analysis and insights. These formal capacity building initiatives will, however, need to be supplemented with self-motivated learning as well as regular interactions with companies, regulators, government agencies and other stakeholders to understand organisational issues, compliance requirements and disclosure rationales. Practicing company secretaries will soon move to the centre of the corporate world. It is imperative that they are geared for this enhanced role.

## Conclusion

23. Let me conclude by summarising the issues that I have touched upon today. I raised the issue that what is often good for an individual may not always be good for the society which explains the difference in perception between the regulator and the regulated. Thereafter, in the context of the new Companies Act 2013 and some of its important provisions in relation to corporate governance, I talked about i) the changes that will need to be effected in the Boards of companies, particularly listed companies as also certain other companies and the beneficial effect these are likely to have on corporate sector's operations and growth; ii) the improvements proposed in the audit function, in particular the introduction of secretarial audit and its importance in creating compliance awareness for management and external stakeholders; iii) the new provisions relating to social responsibility of the corporate world and its role in facilitating (sustainable) growth in the economy and lastly, iv) how the profession of company secretaries needs to evolve going forward to meet the challenge of a more pivotal role in the corporate sector. In my perspective, the Companies Act 2013 proposes significant improvements in the corporate sector operations and casts huge responsibility on company secretaries; it is for you professionals to live up to the enhanced expectations and responsibilities that will now be coming your way and ensure that the proposed improvements come to fruition. My best wishes to the Institute in its continued endeavours to bring about a more vibrant, ethical and responsible corporate India.

Thank You.





**(With Effect from 1<sup>st</sup> April 2012)**

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For further information write to:  
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ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003  
Tel: 011-45341024, 41504444. Fax: + 91-11-24626727, 24645045  
Email : ak.sil@icsi.edu website : www.icsi.edu

## CONGRATULATIONS

### SUSHIL KUMAR BAJPAI

FCS on his being appointed as CFO of RSPL Limited (flagship Co. of Ghari Group) in addition to being President (Corporate Affairs) & Company Secretary of the Company.

## SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out special issues of Chartered Secretary on the following topics during the remaining period of 2014.

- One Person Company (August, 2014)
- Secretarial Standards and Secretarial Audit (September, 2014) and
- Direct Taxes Code, 2013 (November, 2014).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

The articles may kindly be forwarded to :

The Joint Director (Publications), The ICSI, 22, Institutional Area, Lodhi Road, New Delhi 110003

E.Mail : ak.sil@icsi.edu

***For Special Issue on One Person Company, the articles/write ups may please be sent latest by 20th July 2014.***

## OBITUARIES

**“Chartered Secretary” deeply regrets to record the sad demise of the following members:**

**Shri Chand Ratan Damani**, (17.09.1935 – 04.06.2014), a Fellow Member of the Institute from Ahmedabad and also the past Chairman of Ahmedabad Chapter during 1985-86.

**Shri Solaimalai Sundararajan**, (23.07.1928 – 19.06.2014), a Fellow Member of the Institute from Chennai and also the past Chairman of ICSI-SIRC during the year 1983.

**Shri Sunil Kumar Mehta**, (19.12.1960 - 06.08.2011), a Fellow Member of the Institute from New Delhi.

**Shri V G B Sarma**, (17.01.1939 - 29.04.2014), a Fellow Member of the Institute from Chennai.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.

## CS QUIZ

In terms of the provision in its Articles a company can have a maximum of 15 directors. The present strength of the Board is 10 comprising 3 non-retiring directors, four non-executive independent directors and 3 non-executive non-independent directors. The Annual General meeting of the company for considering the accounts for the period ended 30th June 2014 is scheduled to be held on 10th Nov. 2014. At this annual general meeting how many directors will retire by rotation? Support your reply with appropriate legal provisions.

### Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th August, 2014. 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed **‘Prize Query July, 2014 Issue’** and addressed to:

### Joint Director (Publications)

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