

# CHARTERED SECRETARY

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**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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01 ICSI National Seminar on "Indian Financial Code" Recommended by Financial Sector Legislative Reforms Commission – Sitting on the dais from Left: M.S. Sahoo, Justice B.N. Srikrishna (Former Judge, Supreme Court of India and Chairman, FSLRC), P. Chidambaram(Hon'ble Union Minister of Finance), S.N. Ananthasubramanian and Chitra Ramakrishna (MD & CEO, NSEIL).

03 Signing of MOU between the ICAI, ICAI(Cost) and ICSI for Acquiring Land for Setting up Centre of Excellence for Quality and Ethics at Ajmer, Rajasthan – Presidents of the three Institutes signing the MOU in the august presence of Sachin Pilot ( Hon'ble Minister of State for Corporate Affairs I/C, Govt. of India) and NavedMasood (Secretary, MCA).

05 ICSI NISM Conference on Ethics and Corporate Governance – S.N.Ananthasubramanian addressing. Others sitting from Left: U. K. Sinha (Chairman, SEBI) and Rama Bijapurkar (Thought Leader on Market Strategy and India's Consumer Economy).

07 SCOPE ICSI Joint Workshop on Corporate Risk Management – Session I on Enterprise Risk Management: Institutional Framework and Case Studies – K. N. Vaidyanathan( Chief Risk Officer, Mahindra and Mahindra) addressing. Others sitting from Left: B.V.K.R.Rao, Ankur Jain and Ardhendu Sen.



02 FICCI – ICSI Conference on Companies Act, 2013 – Sitting from Left: VijayaSampath ( Sr. Partner and Country Head, L&S Attorneys), Sidharth Birla (Sr. VP, FICCI), Sachin Pilot ( Hon'ble Minister of State for Corporate Affairs I/C, Govt. of India), S.N. Ananthasubramanian (President, ICSI) and Dr. A. Didar Singh(Secretary General, FICCI).

04 Synergy MSME 2013 –ICSI (represented by S.N. Ananthasubramanian, President, the ICSI), Department of Micro & Small Scale Enterprises and Textile, Government of West Bengal (MSSET) and ASSOCHAM entered into a tripartite Memorandum of Understanding (TRI-MOU) for a larger cause of growth and development of the MSME sector in W. B.

06 Signing of MOU between ICSI and Insurance Institute of India (III) inter-alia to launch the Certificate Course on Compliance, Governance and Risk Management in Insurance - Group photo - from Left: P.K.Rath (Director, College of Insurance), Gopal Chalam (Dean ICSI-CCGRT), A.K.Roy (President III) and CMD, GIC, R.K.Nair (Member, IRDA), S.N.Ananthasubramanian(President, ICSI) and SharadShrivastva (Secretary General, III).

08 Two Day UP State Conference on Business Governance: Professional Opportunities & Challenges – Valedictory Session – Sitting from Left: Dhananjay Shukla, Ranjeet Pandey, Dr. Dinesh Sharma (Mayor, Lucknow), Sudhir Halwasia( Industrialist), Shyam Agarwal and Rajeev Kumar.

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# At a Glance

## Articles (A 377 - 428)

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### Different perspectives of the Companies Act, 2013

P-1166

**R. R. Shastri**

Different perspectives of the Companies Act, 2013 are emerging from various quarters since its notification in the Gazette. This article attempts to provide an objective evaluation of some important provisions. Indeed some aspects of business would now become more cumbersome but the underlying rationale of the new Act is that corporates that have institutionalised good governance, good internal control systems and a robust compliance system would have no complaints. The provisions relating to Corporate Social Responsibility have generated a lot of debate, some bordering on criticism that the corporate sector is being burdened with an activity and expense that the government should be undertaking. The new Act contains several provisions which, the government expects, would check scams and frauds. Genuine difficulties in the implementation of the new Act should be brought to the notice of the government and one hopes that the government would be receptive and introduce necessary changes.

### Disclosure of interest by directors in contracts and arrangements: Provisions Not free from anomalies and absurdities

P-1170

**Dr. K. R. Chandratre**

Section 299 of the Companies Act, 1956 has been retained by the Companies Act, 2013 in section 184 with considerable similarity but with some significant changes. The recasting and changes are going to result in more anomalies and absurdities in the working of this provision in reality. Candidly, section 299 is such a well drafted provision in the 1956 Act that there was hardly any need to recast it except one small change in sub-section (6) thereof. Unfortunately, this has happened in respect of many provisions of the 1956 Act included in the new Act; they have been unnecessarily tinkered with in an enthusiasm to create something new and different.

### Implications of the Notification issued by the Ministry of Corporate Affairs enforcing various provisions of the Companies Act, 2013

P-1174

**T. V. Narayanaswamy**

The Central Government has brought into force over 90 sections of the Companies Act, 2013 with effect from the 12th September 2013. The Ministry of Corporate Affairs, has notified draft Rules in respect of certain Chapters of the Act and has sought comments from the Public. Thus on date the old Act and the notified sections of the Act are in force. Because of this there is lot of confusion amongst those who are, in companies, required to comply with the requirements of various provisions of Company Legislation in India. The Central Government could have waited for some more time, say, till the finalisation of the Rules and then brought into force the Act as a whole and simultaneously repealed the old Act. Such a course could have avoided the present confusion existing in the minds of the professionals.

### Special Court for Speedy Trial of Company Offences

P-1182

**Delep Goswami**

The Companies Act, 2013 has introduced a very important provision in Section 235 for setting up of Special Courts for trial of all offences under the new Act. It may function like CBI Courts. Further, provisions of Section 211 of the new Act relate to investigation by the Serious Fraud Investigation Office (SFIO) and prosecution of the offenders by SFIO in the Special Courts will ensure speedier justice delivery system. Also, Section 447 of the new Act now defines what constitutes 'fraud' and provides stricter penal consequences. Since the Special Courts under the new Act would be in addition to NCLT, it will be at the peril of companies if there are slippages in stricter compliances with the provisions of the new Act. Moreover, the offences pertaining to formation of companies are included for trial by the Special Court, the name lending casual approach by professionals in company formation would now be risky. The article highlights some such important issues.

### Corporate Social Responsibility in the Companies Act, 2013 - A boon for scientific research

P-1187

**Narendra Singh and Arpita Banerjee**

With the enactment of the Companies Act, 2013 ('the Act'), Corporate Social Responsibility ('CSR') became a mandatory requirement in India. Schedule VII of the Act lists out the CSR activities which may be undertaken by the companies. Since companies are now required to spend 2% of their last three years average profits on CSR activities, they would strategize their spending on the same. Spending on approved

Institutions/ University/ Associations (AIIMS, IITs, BITS, ISM, IISc, etc.) engaged in scientific research of activities listed in Schedule VII of the Act appears to be one such area which would give the companies dual benefits of complying with the requirement of law and availing appropriate benefit under Income Tax Act.

### Squeezing out Minority Shareholders

P-1191

**G. P. Sahi**

Rights of Minority shareholders have been severely dented under the present legal dispensation. Capital reduction schemes under section 100 to section 104 of the Companies Act, 1956 are being used successfully to wipe out an entire class of minority shareholders. The Companies Act, 2013 ('Act') has been notified in the official gazette. Section(s) 230 and 236 of the Companies Act, 2013 aim at protecting minority shareholder rights. SEBI has also vide its circular in February 2013 amended the compliance requirement for listed companies and stock exchanges thereby mandating them to have the scheme approved by special resolution passed by public shareholders.

### Relief to Directors/Officers of a Company against Criminal Prosecution

P-1196

**R Rajesh**

The new company legislation imposes larger responsibility on the directors/officers of the company not only in legal compliances but also to protect the interest of creditors, investors, depositors, public etc. But if the affairs are found to be conducted against their interest the law provides for stringent action against those found guilty either by imprisonment or fine and this article deals with the legal protection available to the diligent directors/officers under the law.

### Strengthening Board Rooms through Women: Needed Resource for Effective Governance

P-1202

**Rekha Handa and Balwinder Singh**

Corporate governance and its indispensability in effective functioning of a corporate have sprang to limelight in recent times of globalized competition and debilitating corporate scandals. In improving and establishing good governance board of directors is a pertinent mechanism shouldering the onerous responsibility of enhancing value, and so is their composition in enhancing governance. In this backdrop, gender diversity also emerges as a means of strengthening boards. The study explores the meagre presence of women on Indian boards taking the example of IPO firms. In the interest of effective governance women need to be given their due not just by presence but active participation. The importance all the more enhances in the light of latest Companies Act which mandates the presence of women on boards.

### Secretarial Standards : A Giant leap forward

P-1208

**Dr. V. Balachandran and Sudheendra Putty**

Secretarial Standards are a pioneering effort of the ICSI, ideated over a decade ago. Introduced with the aim of harmonizing, synchronizing and promoting uniformity in the diverse secretarial practices, the Secretarial Standards do provide answers to several grey areas in the law. The ICSI has been doing a commendable role in formulating and issuing Secretarial Standards for the benefit of stakeholders. The Companies Act, 2013 has bestowed statutory recognition on Secretarial Standards – making it mandatory for all companies to comply with a couple of standards (to start with) and also including the compliance thereof as part of the duties of the company secretary. While this is a giant leap forward for the profession and the professionalism of corporate practices, this is a harbinger for much more to come.

### Promoters : Role Under The Companies Act, 2013

P-1212

**K. R. Sampath**

The Companies Act, 1956 did not spell out the importance of the role of promoters of a company nor had a general definition of this expression as applicable to the whole of the Companies Act, 1956, except for a definition, limited to a specific section, contained in clause (a) of sub-section (6) of section 62. However, the Companies Act, 2013 has made substantive provisions to cover the role of promoters. It is only hoped that action under the Act does not come in the way of actions against promoters under the Security Regulations.

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### Other Highlights

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*"No one can make you feel inferior without your consent"* - Eleanor Roosevelt



*Dear Professional Colleagues,*

**T**he advent of the Companies Act, 2013 in August, 2013 was soon accompanied by a flurry of activities; the provisions in 98 Sections came into force, the two trenches of draft Rules were notified and the consultative process began with all sincerity and without much ado. It is very gratifying to note that the Regional Councils, Chapters, Study Circles got into the act with attitude and alacrity and seminars and conferences followed with precision and promptitude. It would be fair to assume that these deliberations would enable our responses to the Rules to be crisp, comprehensive, consistent, complete and with conviction.

The coming together of heads of the three professional bodies, namely, The Institute of Chartered Accountants of India, The Institute of Cost Accountants of India and The Institute of Company Secretaries of India, on more than one occasion in recent past, heralds common pursuit of professional attainment and conveying a certain meeting of minds over protocol. The Second Meeting of the Coordination Committee this year was held in ICSI which witnessed substantive progress in contentious areas such as multi-disciplinary partnerships, common entrance tests and the like. It is hoped that more headway would result at the third meeting scheduled in November, 2013. This cooperative spirit also extended to the signing of the MOU for setting up of a Centre of Excellence for Quality and Ethics at Ajmer towards which the acquisition of land has been accomplished with requisite approvals. I am ever so grateful to the Ministry of Corporate Affairs for their wholehearted support and valuable guidance towards the fulfilment of this visionary initiative by the three professional bodies.

Our association with MSMEs has been central to their growth and betterment as we offer them our protective support in compliance and consultation. The SME Listing on Exchanges prompted our efforts towards IPO/FPO Certification, insisted upon from those who choose to list their shares. In similar vein, as a path-breaking effort, ICSI entered into a MOU with ASSOCHAM and Department of MSSE&T, West Bengal to offer wide ranging services more particularly on providing support in corporate governance. The MOU was exchanged in the presence of the Ms. Mamata Banerjee, Hon'ble Chief Minister of West Bengal in Kolkata in the inaugural function of a week-long assembly of various agencies of the State and MSMEs, both current and prospective. Kudos are naturally due to EIRC in putting together this unique partnership in an emerging area which hopefully would be replicated by other states in the days to come.

Our profession is inextricably linked to Ethics and Governance and the Duties in the Rules for those who are in employment provide ample evidence as also opportunity to adhere, assist and advise the Boards in their behaviour and conduct. It was, therefore, in fitness of things that the first ICSI-NISM Workshop held in Mumbai evoked unanimous acclaim and approval. The Workshop backed by NSE was inaugurated by Chairman, SEBI Mr. U. K. Sinha and

witnessed a galaxy of experts from different disciplines delineating the theme with deftness and dexterity. The Keynote and Valedictory Addresses were delivered by women of substance and stature, Ms. Rama Bijapurkar and Ms. Chitra Ramakrishna. The underlying message in the Workshop to our community was laden with enormous expectations, to carry the torch forward in facilitating good corporate governance.

On a similar note, the Second Workshop on Business Responsibility Reporting held in Delhi provided substantive insights from our members which would, hopefully, enable the Guidance Note to emerge soon. We had also a very successful risk management workshop in Delhi under the guidance of Mr. Ardhendu Sen, Central Council Member and we propose to offer a few more keeping in view the insatiated demand for the same. The first ever interactive meet with Examiners and Paper Setters for enhancing uniformity and standards in assessment conducted by ICSI met with resounding success resulting in significant takeaways for both. It was heartening to address the congregation of bright, young minds at 14th All India Students Conference, 2013 on the theme "Company Secretary – Imparting Wisdom, Empowering Lives" at New Delhi.

It is a matter of pride and gratitude that one seeks to report that for the second time in this financial year, ICSI played host to Mr. P. Chidambaram, the Hon'ble Union Finance Minister, who as Chief Guest inaugurated the Fifth National Seminar on Indian Financial Code held at Chennai. The keynote address by Justice B. N. Srikrishna, accompanied by addresses by the vast array of experts who assembled at the Seminar was indeed a veritable feast in articulation of the different facets of the Code and their underlying principles; this received approbation and praise from the many who thronged the Seminar on a Monday, being the last day of the first half of the current year.

And finally, the 41st National Convention on 7, 8 and 9 November, 2013 at ITC GRAND CHOLA in Chennai is just about a month away and it's gratifying indeed to report that while many of us have enrolled from far and wide; nonetheless many more can still register as delegates. We have confirmations from the very distinguished speakers from their chosen fields; sponsorships are being organised and may I appeal to you to join our fellow professionals in making this Convention a memorable one. Your support and encouragement would indeed go a long way in its smooth and successful conduct and accomplishment.

To end on an apt note with a Mark Twain quote: Always do the right thing; it will gratify some people and astonish the rest!!!

With kind regards,

Yours sincerely,

Thane  
October 02, 2013.

*S. S. N. Ananthasubramanian*

(CS S N ANANTHASUBRAMANIAN)  
president@icsi.edu







## Speech of Shri P. Chidambaram, Hon'ble Union Finance Minister at ICSI Seminar on Indian Financial Code recommended by Financial Sector Legislative Reforms Commission on September 30, 2013 at Taj Coromandel, Chennai



**M**r. Justice Srikrishna, Chairman of the Committee that drafted the Report, Mr. S.N. Ananthasubramanian, President, Institute of Company Secretaries of India, Ms. Chitra Ramakrishna, Mr.M.S. Sahoo, Members of the Institute of Company Secretaries of India, other speakers of the technical sessions later today, distinguished guests, ladies and gentlemen.

This seminar, the second that I attend and fifth in the series, is on the recommendations of the draft law contained in the FSLRC report. Let me begin by thanking, on behalf of the Government of India, Mr. Justice Srikrishna, who chaired the Committee and who produced this outstanding Report that will guide the Government in many years to come.

This seminar is on the recommendations in the draft law, but I plan to use the opportunity to speak on financial sector reforms on a broader canvass. The FSLRC Report is also all encompassing. As such the themes for discussions today, I hope, will get converged to a great extent.

The last six months have witnessed five institutional milestones in the area of Indian corporate financial institutions. In chronological order, they are: One - the Report of the FSLRC; Two - the New Companies Act; Three - the passage of the PFRDA Bill; Four - placing Commodity Futures Markets Regulation under the Ministry of Finance; and Five - Repromulgation of Securities Laws (Amendment) Ordinance, in the hope that the Bill will be passed in next session. When fully operationalized, these will have profound implications for the Indian financial sector. While the Companies Act would impact beyond the

financial sector, all other developments that I listed are directly related to financial sector regulatory and institutional changes.

I have heard some people say that financial sector gets disproportionate policy attention. In the Ministry of Finance, we believe, it gets less than proportionate policy attention. And, we believe that the political discourse in this country also pays less than the deserved policy attention to financial sector.

Efforts of legislative and institutional reforms are undertaken in the financial sector more regularly than in many other areas. The five milestones which I just stated happened during a time frame of six months. But, some of these proposals, let me remind you, have been in the pipe line for many years. It has taken us ten years to enact the PFRDA Act. It has taken thirteen years to accept that the commodity futures market should be a part of organised financial trading. It has taken us two decades to get a new modern Companies Act. It will take some time, I think, some years, before we can implement the recommendations of the FSLRC Report.

So, despite the feeling of the regular reforms in the financial sector, things are happening at the slower than the desired speed. However, it is reassuring to note that there is widespread political support for the financial sector reforms as witnessed by the discussion and passage of the Companies Bill, the PFRDA Bill, the absence of any demur in placing the commodities market under the Ministry of Finance and the hope that the securities laws amendment ordinance will become a Bill in December.

Why do I say that we need to speed up the second wave of reforms? Financial markets and information technology are two major drivers of change in the today's world. When they combine, the result is high speed and dynamism. That is what the financial market is doing by embracing modern technology in providing financial services. Therefore, whether we like it or not, the financial sector today operates at the speed of light. Fungible capital travels across the world in nano seconds.

The globalised financial market is an off repeated theme for more than a decade now. This got pronounced after the global financial crisis, when people all over the world witnessed power of globalised finance. It was evident from this that some of the effect of financial globalisation will be negative. And the extent of negative effects varies from country to country depending upon their stage and pace of growth, structure of their economies, degree of integration with the rest of the world and the depth of the financial system. This would call for having an appropriate and solid institutional structures for managing the domestic market and integration of the global system. We cannot fortify our economy against the financial winds from across the shores by turning away from globalisation.

Given the speed and dynamism with which financial sector operates, it generates new space, sometimes undefined areas, which provide opportunities for "unregulated" players in the market. The existence of such players who operate in the twilight zone endanger the discipline of the markets, leading to systemic instability. Invariably, such activities adversely impact a large number of consumers. This reduces their confidence in the system. When, large number of investors, particularly smaller investors, stay away from the system, it reduces the supply of blood to the body economic.

A financial consumer is comfortable to participate in a regulated market. There should be an



# Speech of Shri P. Chidambaram

## Hon'ble Union Finance Minister



assurance that she would be protected if she gets into problems. However, exploiting the limitations of the regulatory architecture, financial engineers come up with innovative products outside the regulatory jurisdiction and deprive the consumers of such products of regulatory protection. We believe that we must move quickly to remove all unregulated space. A recent attempt in this direction is the Ordinance, that I referred to, which was first promulgated on July 18 this year and repromulgated on September 16, which considers any raising of resources by whatever means, if not regulated otherwise, as a collective investment scheme. Our endeavour is to eliminate unregulated space.

My government is focused on protection of financial consumers. The new company law has many explicit measures to protect them. I do not wish to dwell on the many provisions of the new Companies Act.

Where are we now? It is not that India has not implemented many of the needed reforms in the past. Many good things have been done in Indian Finance. We have travelled at a reasonable speed in financial sector reforms since the early 90s. But as I said a little while earlier, the speed is not good enough as financial developments unfold thick and fast. Moreover, we have been responding to events rather than anticipating them. The move of the financial of the commodities futures market to the Ministry of Finance is a response to a crisis and did not anticipate the crisis.

In the changing world, financial economic policy has to catch up with the needs of future India that we are aspiring to build. Generally, our policy process involved developing new ideas and a consensus around them through a sequence of expert committees. The four milestones in this journey in the last decade were the Committee chaired by Mr. Percy Mistry on International Finance, Dr. Raghuram Rajan on Domestic Finance, Mr. U K. Sinha on Capital Controls, and Mr. D. Swarup on Consumer Protection. From 2007 to 2011, there was considerable debate about these questions. A consensus emerged on the board strategy that we should take. Then for effecting an overarching institutional change, we set up the FSLRC - a Legislative Reforms Commission- that is the Report before you today.

The last two decades also witnessed many new legislative initiatives - the SEBI Act, the Depositories Act, the IRDA Act and various amendments to these and other financial sector laws etc. We also created new organisations - SEBI, IRDA, the interim PFRDA - now the PFRDA, new Exchanges, Depositories, Clearing and Settlement Systems, Payment Systems, etc. These organisations and these laws refined and extended reforms at ground level, some of them, in an exemplary manner.

Consequently, our existing markets have achieved considerable dynamism and earned global repute. Many more people got included in financial systems, particularly in banking and insurance. More recently, new pension schemes have started fanning out to reach larger and larger number of people in unorganised sector.

Now, how do we achieve next wave of changes? The next wave of reforms will be through strengthening our institutional foundation- both laws and organisations; improving and polishing our processes; and by taking well designed policy decisions which will enhance clarity, consistency and transparency for a globalised India.

The FSLRC recommendations and the draft law that the Commission has prepared would go a long way in achieving many of the objectives, particularly in the area of institutions and processes. It is my intention that we adopt the basic spirit of the framework provided by the FSLRC in building a strong institutional foundation for our financial sector. I do not wish to dwell at great length on all the recommendations of FSLRC in detail. This has been done and will be referred to in greater details in the technical sessions. Justice Srikrishna himself has referred to many of them. Let me just flag the main issues.

As all of you are aware by now that there are nine key components of the legal framework recommended by the Commission. These are: 1) Consumer protection and competition; 2) Micro Prudential Regulation; 3) Resolution; 4) Systemic Risk; 5) Capital Controls; 6) Development; 7)

Monetary Policy; 8) Public Debt Management; and 9) Foundations of Contracts and Property.

What struck me when I read the summary carefully are the following: Firstly, the Commission has advocated a non-sectoral approach. This is in complete contrast to current laws which are based on sectoral approach. Secondly, the Commission has advocated a principles based approach. Drafting a new law on principles based approach will be a novel experiment in India. Thirdly, the Commission has recommended the establishment of independent regulators. Fourthly, the Commission has favoured a strategy of ownership neutrality.

The Commission has taken the trouble to draft the law. I am not sure how much of this law will eventually go through the process of law making and finally emerge in the manner recognised by the Members of the Commission. But, I sincerely hope that the commendable effort made by the Commission, including 450 sections draft of the Indian Financial Code, can be enacted substantially in the same manner as the drafts presented to us. There are, of course, powerful dissenting notes, that in the interest of transparency, the Commission has appended to the Report. And I am sure, that while we make law, we will take note of the powerful dissents that have been appended.

In conclusion, May I say this? What we are undertaking is indeed an ambitious task. Institutional revamping, making a new law based on principles, establishing the processes are not for the weak hearted, the suggestions made by the Commission have the potential to change the manner in which we regulate India's financial system.

We have delivered path breaking institutional reforms in the past. There is no reason to think that we cannot deliver path breaking financial sector reforms now. We must do this to plug the limitations in our existing structures and to achieve our growth potential in full.

In the Government of India, we have already initiated steps, to improve the regulatory governance process and we have also initiated discussion on the non-legislative steps recommended by the FSLRC. The legislative parts will be pursued after due consultations. We will set up various project management groups for charting, synchronising and sequencing the actions required in implementing big institutional changes.

Ladies and gentlemen, I can only assure you that the financial sector policy will be in tune with our aspirations for India and will promote clarity, consistency, competition and transparency and protect the autonomy of the institutions. It will be difficult for me to spell out details of the policy at this stage, because policies are taken based on emerging requirements. However, we recognise the need to redraw the institutional structures and processes as quickly as possible.

Spreading awareness on these complex issues and eliciting public comments is a first step which seminars like this intend to achieve. It is an important step in formulating informed policies. I commend the initiative of the ICSI in organising a number of such events in different parts of India. I take this opportunity to wish all of you success in your deliberations at the three technical sessions and I look forward to outcome of the deliberations.

**Thank you.**





**R. R. Shastri, ACS**

Company Secretary (Retd.)  
Mumbai

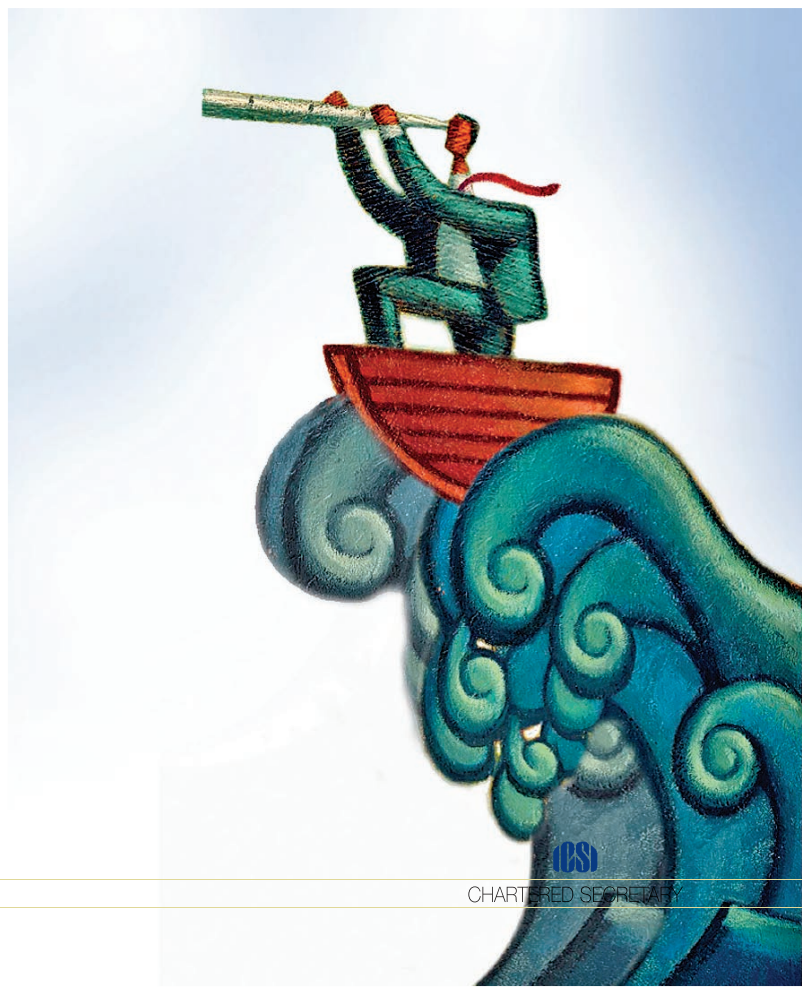
[rrshastri@tata.com](mailto:rrshastri@tata.com)

## Different perspectives of the Companies Act, 2013

- The new company law has been put in place by the Government with best intentions and it is now the turn of the corporate sector to demonstrate that it will play according to the Rules. The Government on its part must trust the corporate sector to function honestly and also keep a watch.

**T**he new Companies Act, 2013 (the Act) that has already been made partially effective has been criticized by many for two main reasons; firstly, many provisions of the Act will get implemented through Rules to be prescribed (this is seen as excessive delegation that may lend itself to frequent change of Rules by the Ministry of Corporate Affairs) and secondly, companies would have to frequently approach shareholders by convening general meetings or adopting the postal ballot route to seek their approvals.

The first criticism may be unfair because the Ministry of Corporate Affairs (MCA) has already instituted a practice of consulting the stakeholders while drafting the Rules. Representatives of industry, industry bodies like chambers of commerce, investor protection organizations, the Institute of Company Secretaries, Company Secretaries, Chartered Accountants and Cost Accountants in practice, participated as a team in several meetings over a period of almost a year to review the draft Rules, consider suggestions based on experience and practical difficulties and tweak the Rules while ensuring they are aligned with the relevant provisions of the Act. It is reliably learnt that the Minister of Corporate Affairs, has strongly advocated and supported the initiative of the MCA in instituting the consultative process for Rules-making. The MCA is likely to constitute a formal Committee comprising of representatives of the stakeholders to discuss amendments or





modifications to the existing Rules or prescription of Rules before being notified.

The second criticism is unwarranted because in the company form of organization, the shareholders are supreme and the Boards of companies have to function within the powers and sanctions accorded by them. If a company needs to convene meetings in addition to the annual general meeting, why should one complain? Yes, it does involve costs but so do all activities that company executives and Board members undertake. For many years, companies have operated (and some of them unfairly) with the support of a few hundred shareholders who attend general meetings to pay obeisance to the Chairman and some of the eminent directors rather than to ask the management critical and relevant questions. We now have a generation of enlightened shareholders that is conscious of its rights and wishes to participate more actively. Postal ballot, e-voting, video-conferencing are new tools that are available to the present generation of companies to seek the mandate of their shareholders.

## Good governance

Several measures introduced in the Act are based on the tenets of good governance. The concept of independent directors introduced by SEBI has now been incorporated in the Act. Having one third of the strength of the Board comprising independent directors is no draconian provision. The candidates would still be people known to either the Chairman or some members of the Board or their friends. So what is there to complain? Prescribing a Code of Conduct (Schedule IV of the Act) is a step in the right direction. A written code and one mandated by law draws the lines for the conduct of independent directors.

The need to appoint a woman director on the Board is another welcome step. It is not 'reservation' for women. If this was not mandated, Boards of companies would rarely induct women because, by nature women, especially those educated, are independent and would not 'play along'. We have examples in renowned companies, banks and financial institutions of women directors, some even occupying the positions of Chairman and/or CEO, and their performances have been admirable and laudable.

The provisions enabling a company to have a small shareholders' director are currently not mandatory. This should not be mandated because we have seen many instances of how some shareholders with vested interests could 'gang up' and cause nuisance to the management. The Independent Directors and a Woman Director would bring about a balance in the policies and decisions of companies to advance and protect the interests of small shareholders among other stakeholders.

Increasing the scope of reporting in the annual directors' report including the assessment of the performance of the Board and

➤ The Government has rightly reduced the need for companies to seek approvals for managerial remuneration from the government. Shareholders must satisfy themselves that the remuneration managerial personnel in their company wish to draw are in line with the market and they do not enrich themselves merely because they are serving prosperous companies.

the remuneration paid to directors and senior management are welcome measures. The common refrain that is heard is what would the shareholders do with all the information contained in the directors' report? It is not only the shareholders but a wide range of people including the government and its agencies that refer to the directors' reports of companies and several purposes could be served by providing comprehensive information in such reports.

## Shareholder supremacy

The Act upholds the supremacy of the shareholders of a company and, therefore, it has vested authority in the shareholders to approve significant transactions that the management wants to undertake. Investment of a company's funds or providing loans out of the company's funds and furnishing guarantees on behalf of others are all transactions that directly impact the fortunes of a company. The law recognizes that some leeway needs to be provided for the Boards of companies to operate based on opportunities that present themselves and this is reflected in the Act permitting companies to make investments, give loans or provide guarantees up to 60% of the net-worth of the company or up to 100% of its free reserves. It is beyond these limits that the prior approval of shareholders is mandated. A show-stopper is the removal of the exemption that was available in respect of wholly-owned subsidiaries but this is also not without justification. Companies are known to have created several wholly-owned subsidiaries and transferred funds to them using the exemption that was available under the old Act. Once the funds are thus transferred, the management could do anything with those funds using the wholly-owned subsidiary as a vehicle they were called 'special purpose vehicles'. The shareholders would only learn later about what transpired.

Related party transactions have also been entered into by companies many a times to allow related parties to enrich themselves at the cost of the company's larger interests. By mandating that some of the related party transactions cannot be





# Article

Different perspectives of the Companies Act, 2013



What the Government wants the corporate sector to do is to give back a small portion of the wealth it has created with the help of the resources drawn from the society and its surroundings to provide succor and relief to the under-privileged sections of the society. Companies would in fact gain from such initiatives as they would enhance their reputation and image among all sections of people.

undertaken unless approved by the shareholders, the law has plugged a loophole. The measure is fortified by prescribing that if a shareholder is the related party, that shareholder would have to abstain from voting on the resolution. For example, a parent/holding company that draws out a significant amount from its subsidiary or other promoted companies in the guise of a royalty would now have to get the contract/agreement for payment of royalty approved by the shareholders. The parent/holding company cannot itself vote on the resolution for approving such a contract.

Managerial remuneration norms have been significantly liberalized and shareholders have been vested with power to sanction managerial remuneration. The Government has rightly reduced the need for companies to seek approvals in this regard from the government. Shareholders must satisfy themselves that the remuneration managerial personnel in their company wish to draw are in line with the market and they do not enrich themselves merely because they are serving prosperous companies.

## Auditors' responsibilities and tenure

The Act has introduced several requirements for determining the eligibility of a person or a firm to be appointed as an auditor. While it is true that actions of a few professionals who did not do a sincere job or colluded with managements to perpetrate wrong-doings that affected the interests of shareholders have turned the heat on chartered accountants working as auditors, the measures taken by law are in the best interests of all concerned. In the short run, the new requirements of rotating auditors may cause some discomfort to managements and auditors who have established a good rapport. However, we must not forget that auditors are professionals with responsibilities and are required to act in a professional manner and not merely in a friendly manner. Auditors would not be starved of assignments as the economy grows and more companies get established. They should be happy that they can gain as well as provide better professional knowledge working with diverse industries.

The provisions which require auditors to act as whistle-blowers are perhaps not entirely justifiable as the auditors are in any case required to report instances of fraud or potential fraud to the Audit Committee which is chaired by an independent director. The auditor is also required to report on frauds

committed by or against the company in his report. The requirement for auditors to report instances of fraud or potential fraud to the Central Government would lead to unwarranted consequences. The media which is news hungry and constantly wanting to 'break news', would get ready fodder from sources in the Central Government and even before someone is proved guilty his or their reputation would be tarnished. A person who is damned but found not guilty in due course has no means of redeeming his lost/tarred reputation.

## Corporate Social Responsibility

The provisions requiring certain class of companies to spend a certain amount each year on initiatives reflecting the Corporate Social Responsibility of the companies has been much criticized. Some say that what the government ought to do is being made a responsibility of the corporate sector. In addition to paying a huge amount of taxes to the government which are not spent entirely for the welfare of the people, the corporate sector now has to spend an additional amount on initiatives which the government should undertake. Such criticism is not entirely justified. What the Government wants the corporate sector to do is to give back a small portion of the wealth it has created with the help of the resources drawn from the society and its surroundings to provide succor and relief to the under-privileged sections of the society. Companies would in fact gain from such initiatives as they would enhance their reputation and image among all sections of people. There may be concerns and difficulties in the initial years but this measure would improve the lot of the under-privileged and backward sections of our population in the years to come. The corporate sector can then take credit for the transformation brought about by it.

## Raising of funds and utilization thereof

The Act has tightened the provisions relating to the raising of funds by companies through issue of capital either as a public issue or private placement and through public deposits. The measures have been the result of several companies which having raised monies from the public on the promise of fabulous returns have later vanished or lost all the money in their ventures. Similarly, if a company has raised money on a representation that the money would be utilized for a specific purpose, it cannot unilaterally change the purpose to which the money is to be applied. This would require prior approval of the shareholders and shareholders who do not wish to support such a change in object are entitled to be bought out at a fair price.



Fixed deposits or public deposits are invariably placed by individuals out of their savings or retirement benefits and, therefore, their monies need the greatest protection. The Act prescribes that deposits must henceforth be secured partly by assets of the borrowing company and partly by deposit insurance. This cannot be considered as an onerous measure introduced by the Act.

## National Company Law Tribunal

The creation of the National Company Law Tribunal and the National Company Law Appellate Tribunal are well-intentioned. They would reduce the burden on the Courts which have a huge backlog of other cases to deal with. The measure would be beneficial to the corporate sector and the Government if the Tribunals are staffed with persons having appropriate legal and commercial knowledge and experience. The Tribunals would also have to be housed in convenient locations in all metro cities and other cities if need be.

## Prohibition of Insider Trading and forward dealings

Provisions dealing with prohibition of insider trading and forward dealings in the securities of companies have been introduced in the Act. Earlier these provisions were contained in Regulations framed by SEBI as the capital markets regulator. By incorporating these provisions in the Act, the Government has given the subject legislative force. These provisions are generally relevant for companies whose shares are listed on stock exchanges.

## Cross-border mergers

The Act now permits cross-border mergers, both ways; a foreign company merging with an Indian company as well as an Indian company merging with a foreign company. However, there are several factors that need to be considered before such mergers are undertaken and it seems unlikely that there would be a flood of mergers happening merely because of the Act permitting it. The measure is therefore a forward looking one.

## Class action suits

A new tool called 'Class action suits' has been created which has been in existence in advanced countries like the US. With shareholders and other stakeholders becoming more informed, knowledgeable and conscious of their rights, it was inevitable that this concept would find roots in India as well.

## Miscellaneous

Several new concepts have been introduced such as 'total share capital' as the basis for determining the holding company which for all these years hinged on shareholding of the equity capital. The term 'control' has also been defined. 'Associate companies' and 'joint venture companies' are treated on par with subsidiaries causing practical difficulties as well as



accounting difficulties. 'Auditing standards' are being introduced and the National Financial Reporting Authority ("NFRA") is being created to take over several functions including the setting of accounting and auditing standards. 'Key Managerial Personnel' ("KMP") are identified and onus is on them to ensure various compliances required under the Act. The company secretary in employment is a KMP but the fear is that he/she would become an official with only responsibilities but no authority or power.

## Conclusion

The introduction of a new Companies Act, after the old Act has served all for over five decades, is a welcome and a significant step. The intentions of the Central Government, particularly the MCA, in drafting this law with several new provisions and concepts and prescribing extensive Rules to make the law dynamic and responsive to the needs of the corporate sector are greatly laudable. While the corporate sector would certainly be expected to conduct its affairs responsibly and transparently, the government would have to demonstrate that its intentions are to encourage the corporate sector and not to stifle or strangle it. If the corporate sector prospers, society and all its stakeholders will prosper. The Government and the corporate sector must work together to build mutual confidence and help advance the economic development of India. Each one of us may have a different perspective with regard to the new company law but let us believe for a moment that the new law has been introduced by the central government with the best intentions and that it is now the turn of the corporate sector to demonstrate that it will play according to the Rules. The government on its part must trust the corporate sector to function honestly but keep a watch!

CS





**Dr. K R Chandratre\***, FCS

Practising Company Secretary  
Pune.

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

## Disclosure of interest by directors in contracts and arrangements: Provisions Not free from anomalies and absurdities

➤ Though the provisions of existing section 299 dealing with disclosure of interest by directors, have by and large, been incorporated in section 184 of the Companies Act, 2013 some significant changes made therein have unfortunately resulted in some absurdities and avoidable confusions. This article makes a critical analysis of the new provisions.



### INTRODUCTION

Section 299 of the Companies Act 1956 (1956 Act) has been retained by the Companies Act 2013 in section 184 with considerable similarity but a few significant changes. Overall, the recasting and changes are going to result in

more anomalies and absurdities in the working of this provision in reality. Candidly, section 299 is such a well drafted provision in the 1956 Act that there was hardly any need to recast it except one small change in sub-section (6). Unfortunately, this has happened in respect of many provisions of the 1956 Act included in the new Act; they have been unnecessarily tinkered with in an enthusiasm to create something new and different.

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



Section 184 of the new Act, reads as follows:

**“Disclosure of interest by director:** (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(5) Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement

➤ A director will have to give a notice of disclosure at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change. This disclosure is the disclosure of the director's interest by virtue of his connection.

with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.”

## General disclosure of director's connection with companies, etc.

According to section 184(1) of the new Act, every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

This is similar to sub-section (3) section 299 of the 1956 Act but with some change. A director will have to give a notice of disclosure at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change. This disclosure is the disclosure of the director's interest by virtue of his connection with any company, body corporate, firm, or other association of individuals. The interest may be by shareholding or otherwise. All these are cases of direct interest by reason of the director's connection as a shareholder or in some other capacities with company, etc. The notice of this disclosure will be given by a director by a notice in the prescribed manner. Why interest through a relative has been excluded, is not clear.





# Article

Disclosure of interest by directors in contracts and arrangements: Provisions Not free from anomalies and absurdities

## Specific disclosure of interest or concern

According to section 184(2) of the new Act, every director of a company must disclose the nature of his concern or interest if he is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

- (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be.

Such disclosure must be made at the meeting of the Board in which the contract or arrangement is discussed and the concerned director shall not participate in such meeting. The words “in any way, whether directly or indirectly, concerned or interested in a contract or arrangement” underscore the wide scope of this provision. Interest of a director may be in any way, whether directly or indirectly, and it is not only interest but also concern and not only in a contract but also an arrangement, that would attract the requirement of disclosure. The disclosure required is a specific disclosure at a board meeting. This provision casts a duty on a director to disclose but also a duty on the company management to bring before the board every contract or arrangement that would attract the provision and it would not be justified to say that a contract or arrangement was not placed before the board (because it did not require to be placed either under the law or the company’s articles of association or its policy) director. The company management will have to place all contracts or arrangements before the board for its approval if any director is in any way, whether directly or indirectly, concerned or interested in such contract or arrangement.

This provision debars the concerned or interested director from participating in the board meeting. The words “shall not participate in such meeting” indicate the intention of the Legislature that the concerned or interested director should stay away from the meeting while the matter is being discussed and decided by the board and let the board do it in camera. In other words he should leave the board meeting room while the board discusses the matter.

## Becoming concerned or interested subsequently

According to the Proviso to section 184(2) of the new Act, if a director who is not concerned or interested in a contract or arrangement when it is entered into but becomes concerned or interested after it is entered into, he must disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned

or interested.

The words “he must disclose his concern or interest forthwith when he becomes concerned or interested” are going to create confusion because the following words (“at the first meeting of the Board held after he becomes so concerned or interested”) were enough to take care of the contingency contemplated by this proviso.

## Consequences of non-disclosure

According to section 184(3) of the new Act, a contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company. Thus, the contract or arrangement will not be void but only voidable at the option of the company and the board can ratify it so as to avoid its voidability.

According to section 184(4) of the new Act, a director who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both. Then, according to section 167(c) of the new Act the office of a director failing to comply with the requirements of section 184 of the new Act shall become vacant. This provision is identical to section 283(1)(i) of the 1956 Act.

## Exclusion

Section 184(5) of the new Act reads thus:

“Nothing in this section—

- (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;





- (b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

Sub-clause (b) is identical to sub-section (6) of section 299 of the 1956 Act, which provides that "Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company."

As in the case of sub-section (6), this provision is going to create (rather continue) a controversy as to its correct interpretation, which could have been avoided by simply introducing words appropriate to indicate that this exemption will be available only where interest of a director in another company is by reason of shareholder and not in any other manner and if a director has interest (direct or indirect) in any manner other than shareholding, such interest shall be excluded by this provision.

Such has to be the interpretation of the exemption under sub-clause (b) despite the use of the words "Nothing in this section shall apply". It may be noted that these words were interpreted by the Supreme Court (in the context of some other law) to be having the effect of excluding the operation of the entire section [see Commissioner of Agricultural I. T., Kerala v. Plantation Corporation of Kerala Ltd. AIR 2000 SC 3714]. However, going by the principle of purposive interpretation, it is clear that the words "Nothing in this section shall apply" do not have the result of excluding the operation of the provisions of section 184 of the new Act (like section 299 of the 1956 Act) and they seek to exclude only director's interest by virtue

of shareholding, the exemption has to be read in conjunction with the substantive provision in sub-sections (1) and (2). The intention of an analogous provision in the Indian Companies Act 1913 (section 86F) was thus explained by Chagla J. in *Walchandnagar Industries Ltd v Ratanchand Khimchand Motishaw* (1953) 23 Comp. Cas 343 (Bom): "It is clear that in enacting this provision, the Legislature wanted to suppress a particular mischief and had a particular object in mind. A director of a company occupies a responsible position and the Legislature wanted that while occupying that position he should not be placed in a situation where there would be a conflict between his interest and his duty. His duty would be to his company of which he is a director. His interest would be to enter into a profitable contract with the company. It is also clear that a director holding the position that he does can obtain undue benefit by entering into profitable contracts with the company, and in order to suppress that mischief and to achieve the object which the Legislature had in mind, section 86F was enacted. It is a well settled canon of construction that when we are considering a remedial measure, we must give to the provision of law as wide an interpretation as possible, of course, consistently with the language used by the Legislature, and if section 86F is remedial in its nature, which it undoubtedly is, then it would be wrong to give it a restricted construction. On the contrary we should try and give it as wide an interpretation as possible."

## Definition of "interested director"

Section 2(49) of the new Act defines the expression "interested director" as a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

This definition is not the same as the concept of interest contemplated in section 184 of the new Act and there is a conflict between section 184 and the definition of "interested director". The expression "interested director" as such has not been used in section 184.

The phrase "interested director" as such is used in only one provision throughout the new Act namely section 174, but, strangely enough, the Explanation appended to that section states that "For the purposes of this sub-section, 'interested director' means a director within the meaning of sub-section (2) of section 184". And, as noted, section 184 of the new Act doesn't use precisely that expression. So, no purpose is served by the definition. Interestingly, this definition omits 'concern', which section 184 does include.

In short, a good amount of confusion has been created in drafting the provisions of the new Act in this regard.

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**T. V. Narayanaswamy, FCS**

Practising Company Secretary  
New Delhi

[tvns32@gmail.com](mailto:tvns32@gmail.com)

## Implications of the Notification issued by the Ministry of Corporate Affairs enforcing various provisions of the Companies Act, 2013

➤ Some of the provisions of the Companies Act, 2013 have already been brought into force with effect from 12 September 2013. The Companies Act, 1956 is still in force and has not been repealed in its entirety. The implications of the partial enforcement and the confusions that are likely to arise due to this are highlighted here.

### INTRODUCTION

The Companies Act, 2013 (the Act) received the Assent of the President of India on the 29th August 2013. Section 1(3), which empowers the Central Government (i.e. the Ministry of Corporate Affairs) to bring into force the remaining provisions of the Act from such date as the Central Government appoints, has come into force simultaneously with the issue of the notification notifying the receipt of Assent of the President of India in the Official Gazette (i.e. 30th August 2013). The said section further empowers the Central Government to appoint different dates for bringing into force different provisions of the Act. In exercise of its powers under the aforesaid section 1(3) of the Act the Ministry of Corporate Affairs has brought into force over 90 sections of the Act with effect from the 12th September 2013. The Companies Act, 1956 (the old Act) is still in force and has not been repealed. The Ministry of Corporate Affairs, for eliciting comments from the Public, has notified draft Rules in respect of certain Chapters of the Act. Thus on date the old Act and the notified sections

of the Act are in force. Because of this there is lot of confusion amongst those who are, in companies, required to comply with the requirements of various provisions of Company Legislation in India. The Central Government could have waited for some more time, say, till the finalisation of the Rules and then brought into force the Act as a whole and simultaneously repealed the old Act. Such a course could have avoided the present confusion existing in the minds of the professionals. Now that certain sections of the Act have been brought into force and the whole of the old Act has not been repealed, in order to avoid penal consequences it would be advisable for professionals to comply with the stricter requirements of the two legislations so that companies are not hauled up for unintended violations of either of the Acts. It may be of interest to note that even though not formally repealed by issue of specific notification in this regard the Ministry of Corporate Affairs has through its circular No.16/2013 dated the 18th Sept. 2013 has clarified that the corresponding sections in the old Act in respect of the aforesaid sections which have been enforced, would



cease to be effective. In the following paragraphs it is proposed to examine the implications of the Central Government's Notification putting into force certain provisions of the Act.

## Enforcement Notification

The Notification was issued on the 12th September 2013 in an Extra-ordinary Gazette of India bearing the same date. It has fifty-five clauses.

### Clause 1 - Definitions

Clause 1 relates to definition section (section 2) of the Act. Most of the definitions, which have been brought into force are similar or identical definitions contained in the definition section, or in the substantive sections of the Old Act. Wherever there are significant deviations the implications of the same are discussed hereunder:

**[a] Abridged prospectus:** In the old Act the power to prescribe the contents rested with the Ministry of Corporate Affairs. Under the new Act the power is with the Securities and Exchange Board of India and consequently companies have to follow the format of 'abridged prospectus' prescribed through its Regulations. Presently in the Issue of Capital & Disclosure Regulations of SEBI there is no specific format in this regard. It is hoped that SEBI would prescribe the format soon. Till it is prescribed, it would be prudent and advisable for companies to follow the format prescribed by the Ministry of Corporate Affairs, even though the said format cease to be current in view of the fact that the provisions of the Act which is latest in point of time would prevail.

**[b] Associate Company:** This is a new definition and has drawn its influence from the Accounting Standard No.18 issued by the Institute of Chartered Accountants of India relating to 'Related Party Disclosures'.

**[c] Board of Directors or Board:** The definition appropriately clarifies that the collective body of the directors will be known as 'Board of Directors or Board'.

**[d] Book and Paper:** This is on the lines of section 2(8) of the Old Act but the provisions of the said section 2 (8) is enlarged to include, 'minutes and registers maintained on paper or in electronic form'. The addition of the foregoing would formally enable companies to maintain registers in electronic form and make the Act self-contained. The word 'accounts' appearing in the definition of the old Act has been substituted by the words, 'books of account'. This enlargement is of a clarificatory in nature.

**[e] Control:** This is a new definition and is identical to the definition contained in Regulation 2(1)(e) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

**[f] Court:** The whole of the definition excluding the one relating to special court has been brought into operation. Probably the whole of the definition would be brought into force when the Special Courts are constituted upon enforcement of all the provisions of the new Act.

**[g] Director:** The definition in the old Act has been revised to specifically mention that a person appointed as director to the Board of Directors would be a director of the company. In view of this revision the words, 'includes any person occupying the position of director, by whatever name called' have been deleted from the earlier definition.

**[h] Expert:** This is a new definition and will be of use in relation to section 26(5) of the Act. Largely in the absence of the definition the meaning of this term was in the realm of interpretation. By defining this term in the Act the word has been given a definite meaning.

**[i] Financial Institution:** This is a new inclusive definition. Schedule Banks and other institutions defined or notified under the Reserve Bank of India Act, 1934 are financial institutions in terms of the provisions of this section. Section 451(c) of the Reserve Bank of India Act, 1934 defines the expression 'Financial Institution' as under:

"financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely: -

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972 (26 of 1972);
- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which carries on as its principal business,—
  - (a) agricultural operations; or
  - (aa) industrial activity; or]
  - (b) the purchase, or sale of any goods (other than securities) or the providing of any services; or





# Article

Implications of the Notification issued by the Ministry of Corporate Affairs enforcing various provisions of the Companies Act, 2013

- (c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

**Explanation.**—For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

It may be seen from the above that the Reserve Bank of India has not been empowered to notify institutions as ‘Financial institution’. In view of this position only institutions, which conform to the definition of ‘Financial Institution’ extracted above would, for the purposes of the Act, be Financial Institutions. Unless the Reserve Bank of India Act is amended the said Bank cannot notify institutions as Financial Institutions.

**[j] Financial Statement:** This is a new inclusive definition. Balance Sheet, Profit and Loss Account, Cash Flow Statement, where applicable a statement of changes in equity and notes in relation to the above would, inter alia, form part of the Financial Statement. In respect of an One Person Company and a Dormant Company this expression would exclude Cash Flow Statement. It may be noted that when section 129 of the Act is brought into force companies would be required to circulate to their members all the above documents for consideration at an Annual General Meeting.

**[k] Free Reserves:** This is a new definition. Earlier this expression was defined by way of Explanation to section 372A of the old Act. The said explanation in the old Act has been amplified to specifically spell out that

- (i) any amount representing un-realised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

It should be noted that credit balance in the securities premium account has not been included in the definition of free reserve.

**[l] Interested Director:** This is a new definition. It could be seen on a close reading of the definition of the term ‘interested director’ that it has enlarged the scope of interest in that even a contract with two public limited companies would come within the purview of the definition. But in relation to contracts with public limited companies a director would be deemed to be interested if in the public company with which the contract is entered into, any of the directors of the contracting company either by himself or along with other co-directors of the contracting company holds not less than 2% of its share capital. This would be evident from the



provisions of section 184 (5)(b) of the Act. As the reference in this section is to ‘share capital’ amount of the preference capital also would go into the computation of the aforesaid percentage. In order to simplify matters it would have been ideal if this had been provided so in the definition clause itself. It may be pertinent to point out that section 184 of the Act has not yet been brought into force and as such the aforesaid exemption would be available to companies only as and when the same is brought into force. Till such time the said section is made operational the definition of ‘interested director’, would have sway in relation to transactions with directors, etc. of a company and companies will have to live with it unless the Ministry of Corporate Affairs comes up with a clarification. Further even though a definition of this phrase has been included in the definition clause, this definition has been hardly made use of in the body of the Act as would be evident from the fact that wherever the interest of a director has been referred to the said section itself stipulate the details of interest thus making this definition redundant. Section 184(2), explanation to section 185(1), explanation to section 174(3), are instances in point.

**[m] Key managerial personnel :** This is a new definition. Even though the definition section has been brought into force, as section 203 of the Act has not been made effective, companies need not at present appoint key managerial personnel mandatorily. But if they so desire they can do so. But as section 21 of the Act has been brought into operation, a key managerial personnel of a company can authenticate documents requiring authentication on behalf of the company of which he is one of the key managerial personnel. Likewise he can sign contracts on behalf of the company. No delegation from the Board of Directors is required for this purpose.



**[n] Manager :** This conforms to the definition in the old Act. In terms of the definition a manager will have the management of the whole or substantially whole of the affairs of a company. The expression 'substantially whole' has not been defined. By way of explanation 'substantially the whole of the undertaking' has been defined by way of explanation to section 180 specifying, 'Restrictions on Powers of Board' to mean twenty percent or more of the value of the undertaking as per the audited balance-sheet of the preceding financial year. It would appear that the meaning assigned to 'substantially whole of the undertaking' in relation to section 180 of the Act could be made applicable to this definition. In that light a company could have more than one 'Manager' for the purposes of the Act. This requires clarification.

**[o] Net Worth:** The existing definition in the old Act has been amplified to make it self-contained. It would be significant to note that accumulations in securities premium would form part of the net worth as it is exclusively available to equity holders of a company.

**[p] Officer who is in default:** Provisions of section 5 of the Old Act have been incorporated in the definition clause. The said section has been amplified to include key managerial personnel as officers in default.

**[q] Promoter:** This is a new definition and exhaustively defines the promoter of a company. It is significant to note that a person, who is not merely acting in his professional capacity, but in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act is a promoter in terms of this definition. The definition is important in view of the fact that promoter is empowered to appoint directors, under section 168(3) of the Act, to the Board of Directors of a company in the event of all its directors resigning or vacating their office, to hold office till the directors are appointed by the general meeting. It would appear that once a person becomes a promoter of a company by his name being borne in the prospectus issued by the company he will continue to be promoter for life as there is no provision for resigning or otherwise vacating the office of promoter in the Act. That would not be the case if one becomes a promoter under other circumstances.

**[r] Public Financial Institution:** Provisions of section 4A of the old Act have been incorporated in the definition clause. This opportunity has been taken to prune the said section keeping in view the changes that have taken place subsequent to the enactment of the section. In terms of the definition, the Life Insurance Corporation of India, the Infrastructure Development Finance Company Limited, the specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, the Institutions notified under section 4A of the old Act and such other institutions as may be notified by the Central Government (Ministry of Corporate Affairs) are Public Financial Institutions for the purposes of the Act.

**[s] Related Party:** This is a new definition and is similar to the definition contained in the Accounting Standard 18 issued by the Institute of Chartered Accountants of India with the addition to empower the Central Government to prescribe by notifications more person/s as related party. In exercise of this power the Central government has signified its intention through the draft Rules notified (Chapter I – 1.3) to include in the definition of 'related party' directors and KMP of subsidiaries and associate companies and personnel of the company, who are members of core management team excluding Board of Directors, comprising all members of management one level below the executive directors, including the functional heads. Under Section 188 of the Act, apart from entering into contracts, holding an office of profit by a related party will fall under the mischief of the said section. This requirement may lead to a miserable situation considering the wide coverage of the term 'related party'.

The provisions of Section 314 of the old Act have also been brought into Section 188 of the new Act. The provisions of Section 314 regulate only a relative of a director holding an office of profit. Of course 'Arm's length basis' transactions entered into in the ordinary course of business of the company have been excluded in the Act. It is now proposed, by intent or otherwise, to regulate the holding of office or place of profit by parties related to the senior management personnel (functional heads) of companies and its subsidiaries who normally are professionals without any other stake in the company. In a large company there may be number of such persons who are employed and related to the directors and other persons referred to above. The question, whether their appointments are on 'arm's length basis' or otherwise, is a subjective one. Any such appointment, the promotion and accelerated increments to such employees holding the appointment, etc. will require approval of the shareholders by special resolution in terms of the provisions of this section. This is definitely a retrograde provision and not simplification of the requirements, and, therefore, calls for review and revision so that the persons who are related to senior management persons, etc. are excluded from the restrictive provisions of section 188 of the Act.

**[t] Relative:** Provisions of Section 6 of the old Act have been transferred to the definition clause. Schedule 1A of the old Act has been deleted from the definition and in lieu thereof the Central Government has been empowered to prescribe the manner in which one would be related to another. The definition section itself states that two persons would be related if they were husband and wife. In this context it is not understood why in the draft rules to be prescribed (Rule 1.4) spouse has been mentioned. Further the following relatives who found a place in Schedule 1A appended to the old Act are not mentioned in the List of Relatives: son's son's wife  
daughter's son  
daughter's daughter





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daughter's daughter's husband  
son's daughter's husband  
brother's wife  
sister's husband

It is also strange to note that wife's sister and wife's brother and husband's brother and husband's sister who enjoy considerable clout in the India context do not find a place in the list.

**(u) Remuneration:** This is a new definition inserted in the Act by shifting an inclusive definition given section 198 of the Old Act. The term has been given a definite meaning. Hitherto perquisites were for the purpose of remuneration computed on 'cost to the company' or 'outgo' basis. In terms of the new definition remuneration would include perquisites as defined in the Income-tax Act, 1961. In view of this change perquisites would be valued on Income-tax basis.

**(v) Subsidiary company or subsidiary:** This is also a new definition inserted in the Act by shifting the provisions of section 4 of the old Act. The definition confers on the Central Government the power to prescribe the number of layers of subsidiaries a holding company can have. Of course, the clause in the definition in this regard has not been put into force. The deeming provision contained in section 4(7) of the old Act do not find a place in the definition.

**[w] Total voting power:** This is a new definition. This means the total votes that may be cast in regard to that matter on a poll at a meeting of the company. This definition will not be use in regard to matters decided on a show of hands, but would be relevant in relation to matters where certain interests are denied voting rights. For example in regard to election of small shareholder director, voting right is denied to members other than small shareholders (section 151).

**[x] Voting right:** This is a new definition and means the right of a member to vote in any meeting of the company or by means of postal ballot. This definition has to be read in conjunction with the provisions of section 47 of the Act in terms of which the holders of preference shares get the right to vote on certain matters and under certain circumstances.

## Clause 2 (Section 19):

This section relates to holding of shares in the holding company by its subsidiary. This is similar to the provisions of section 42 of the old Act. This section seeks to prohibit the allotment or transfer of shares by the holding company to its subsidiary and make such allotment or transfer void. A company registers a transfer and do not transfer its own shares to any one. It makes allotment of shares. Probably by referring to 'transfer of shares' the Legislature intends to prohibit the Registration of transfer of shares. This prohibition to be more effective in the case of listed companies should be extended to registration of transfer by Depository Participant also.

## Clause 3 (Section 21):

This section deals with authentication of documents and signing of contracts on behalf of a company. Now that the definition of 'Key managerial personnel' has been brought into force, if an existing company has a key managerial personnel he can authenticate documents and sign contracts on behalf of the company. No authorization would be required for that purpose. In addition to the key managerial personnel a document can be authenticated and contracts signed on behalf of a company by a person if he is so authorised in this behalf by its Board of Directors.

## Clause 4 (Section 22):

This section deals with signing of bill of exchange, etc. on behalf of a company and delegation of powers through a power of attorney. Provisions contained in sections 47 and 48 of the old Act have been combined and incorporated in this section.

## Clause 5 (section 23 except clause (b) of sub-section 1 and sub-section 2):

This section deals with public offer and private placement. It should be noted that the provisions relating to private placement by a public limited company and rights issue, bonus issue and issue by private placement by a private limited company have not yet been brought into force.

## Clause 6 (Section 24):

This section relates to distribution of powers with respect to share capital and debentures, and punishment for failure to distribute dividend, to be administered by the Securities and Exchange Board of India and the Central Government in the case of listed companies and other companies respectively. This is on the lines of section 55A of the old Act.

## Clause 7 [Section 25 except sub-section (3)]:

This section deals with and spells out that the documents containing offer of securities for sale would be deemed to be prospectus. However, sub-section (3) of section 25 has not been enforced. This section is similar to section 64 of the old Act.

## Clause 8 [sections 29 to 32 (both inclusive)]:

These sections specify that public offer of securities should be in dematerialized form (this is new in the case of companies whose shares are not listed and made mandatory in the case of listed companies irrespective of the amount of issue) and deals with shelf prospectus and red herring prospectus and advertisement of prospectus.

## Clause 9 [Section 33 except sub-section (3)]:

This section which is similar to sub-section (3) of section 56 spells out that no one can issue application for securities unless it is accompanied by abridged prospectus. In the definition of the



abridged prospectus, SEBI is required to notify the contents and till such time it is notified by SEBI it would be prudent to follow that the contents are in line with Form 2A prescribed under the Companies (Central Government's) General Rules and Forms, 1956.

#### **Clause 10 (Section 34):**

This deals with criminal liability for mis-statements in prospectus and is on the lines of section 63 of the old Act.

#### **Clause 11 [Section 35 except clause (e) of sub-section (1)]:**

This deals with civil liability for mis-statements in prospectus and is on the lines of section 62 of the old Act except that it seeks to specifically include the expert named in the prospectus. The liability in the case of an expert has been presently put on hold.

#### **Clause 12 [Sections 36 to 38 (both inclusive)]:**

These deals with fraudulent inducement to invest money and personation for acquisition of securities and corresponds to sections 68 and 68A of the old Act. Section 37, which is a new provision, provides for action by the affected person.

#### **Clause 13 [Section 39 except sub-section (4)]:**

This deals with allotment of shares and is on the lines of section 69 of the old Act.

#### **Clause 14 [Section 40 except sub-section (6)]:**

This deals with securities issued, to be dealt with in stock exchange and corresponds to section 73 of the old Act. Sub-section (6), which corresponds to section 76 of the Old Act, empowers the Central Government to prescribe the conditions subject to which such commission could be paid.

#### **Clause 15 (Sections 44 & 45):**

This deals with nature of shares and numbering of shares issued in physical form and corresponds to sections 82 and 83 of the old Act.

#### **Clause 16 (Sections 49 to 51):**

This relates to calls and payment of dividend in proportion to the amount paid up if so authorized by articles and is similar to sections 91 to 93 of the old Act.

#### **Clause 17 (Sections 57 to 60):**

Section 57 is new and deals with personation of shareholder. The other sections deal with registration of transfer of shares, rectification of register of members and publication of authorized capital. These sections correspond to section 111, 111A and 148 of the old Act.

#### **Clause 18 (Section 65):**

This requires an unlimited company to provide for reserve share capital on conversion into a limited liability company and is on the lines of section 98 of the old Act.

#### **Clause 19 (section 69):**

This requires a company purchasing its own shares out of free reserve and securities premium to create Capital Redemption Reserve Account. This is akin to section 77AA of the old Act.

#### **Clause 20 (section 70 except sub-section (2)):**

This section prohibits companies from buying back its shares under certain circumstances corresponds to section 77B of the old Act. Sub-section (2) of section 70, which has not been brought into force completely prohibits a company from buying its own shares if it had not filed the annual return, failed to pay the declared dividend, and circulate the financial statements amongst its members.

#### **Clause 21 (Section 86):**

This section prescribes penalties for contravention of the provisions relating to charges. It may be noted that the compliance provisions relating to charges have not been put into force. Therefore, in regard to compliances with the provisions relating to charges in the old Act will apply. It may further be noted that punishment for non-compliance with the provisions prescribed in this section would, in view of the provisions of Article 20 of the Constitution of India, apply only in relation to non-compliances arising on or after the 12th Sept. 2013 from which date this section was put into force. In relation to non-compliances relating to the period prior to Sept. 12, 2013, the provisions of the old Act would prevail.

#### **Clause 22 (Section 91):**

This relates to closure of Register of Members and is similar to provisions of section 154 of the old Act.

#### **Clause 23 (Section 100 except sub-section (6)):**

This deals with calling of extra-ordinary general meetings including on requisition by members. This is in line with section 169 of the old Act. The rationale for not putting into force sub-section 6 which deals with reimbursement of expenses incurred by the requisitionists and recovery there of from the directors concerned which is similar to the provisions of section 169 (9) of the old Act is not understood.

#### **Clause 24 (Section 102):**

This requires the explanatory statement to be attached with the notice in relation to each item of special business to be transacted at the meeting. The Ministry of Corporate Affairs, in its circular No.15 of 2003 dt. 13th Sept. 2013, has clarified that in regard to notice issued prior to 12th Sept. 2013 the requirements of this section need not be complied with. Further rules requiring additional disclosures have not yet been promulgated. This section applies to private limited companies also and as such notice of meetings of private limited companies should be accompanied by an explanatory statement.

#### **Clause 25 (section 103):**

This prescribes graded quorum of general meetings of companies.





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The requirements of this section have to be complied with in relation to general meetings held on or after the 12th September 2013 when the section was brought into operation. This corresponds to section 174 of the Act. It should be noted that there is no exemption from this requirement in regard to private limited companies.

## **Clause 26 (section 104):**

This deals with the Chairman of General Meetings of companies and is on the lines of section 175 of the old Act.

## **Clause 27 [Section 105 except the third and fourth proviso of sub-section (1) and sub-section (7)]:**

This section relates to proxies and is on the lines of section 176 of the old Act. Through the Third and Fourth Provisos referred to above the Central Government takes powers to prescribe that members of certain class of companies will not be entitled to appoint proxies and to prescribe a ceiling on number, for a person to be a proxy of the members of a company or on the number of shares in respect of which he can be a proxy. Sub-section (7) deals with the form of proxy.

## **Clause 28 (Section 106):**

The section 106 deals with restriction on voting rights and combines in itself provisions of sections 181 and 182 of the old Act.

## **Clause 29 (Section 107):**

This deals with voting by show of hands and is on the lines of section 177 and 178 of the old Act.

## **Clause 30 (Section 111):**

This deals with circulation of members' resolutions and is on the lines of section 188 of the old Act.

## **Clause 31 (Section 112):**

This deals with nomination of representatives by the President of India and Governors of States for attending meetings of companies in which they are members. This is on the lines of section 187A of the old Act.

## **Clause 32 [Section 113 except clause (b) of sub-section (1)]:**

This deals with the nomination of a representative by a company for the meeting of members and of creditors in which they are members and/or creditors, as the case may be. Clause (b) of sub-section (1) which deals with nomination to a meeting of creditors, which is a new provision in the Act, has not yet been put into force.

## **Clause 33 (Section 114):**

This deals with classification of resolutions and is similar to section 189 of the old Act.

## **Clause 34 (Section 116):**

This section deals with resolutions passed at adjourned general

meetings of a company and is in line with the provisions of section 191 of the old Act.

## **Clause 35 (section 127):**

This section spells out the punishment for failure to distribute declared dividend and is in line with the provisions of section 206 of the old Act. As indicated earlier in regard to punishment for non-compliance with the provisions relating to Registration of Charge, this section will be operative in respect of dividends declared on or after 12th September 2013.

## **Clause 36 (section 133):**

This confers power on the Central Government to prescribe Accounting Standards, which are to be followed in the preparation of Financial Statements. Through its circular No.15/2013 dated the 13th September 2013 the Ministry of Corporate Affairs have stated that till the standards are prescribed, under the Act, the standards prescribed under the old Act would apply.

## **Clause 37 [Section 161 except sub-section 2)]:**

This section confers powers on the Board of Directors to appoint, additional, alternate and casual directors. Sub-section (2) which deals with the appointment of alternate director and which has not yet been brought into force, stipulates that a person could be an alternate to only one director in a company. This section combines the provisions of section 260, 262 and 313 of the old Act.

## **Clause 38 (Sections 162 and 163):**

These sections deal with the appointment of directors and adoption of the principle of proportional representation in making such appointments and are similar to the provisions of sections 263 and 265 respectively of the old Act.

## **Clause 39 (section 176):**

This section provides that defect in the appointment of directors will not invalidate the acts done by them before the defect came to be noticed. This section corresponds to the provisions of section 290 of the old Act.

## **Clause 40 (sections 180 to 183 (both inclusive):**

These sections relate to the restrictions on the powers of directors, making of contribution to charitable purposes, political contributions and to National Defense Fund, etc. These correspond to 293, 293A and 293B of the old Act.

## **Clause 41 (section 185):**

This section regulates loan to directors and is similar to section 295 of the old Act. It is significant to note that loans to managing or whole-time directors as part of the terms of the service extended to all employees of the company pursuant to any scheme approved by the members by special resolution is exempt from the provisions of this section. Earlier such loans required the approval of the Central Government.

**Clause 42 (Section 192):**

This is a new provision inserted into the Act and restricts the acquisition of assets and sale of assets other than for cash from or to the directors of the company from the directors of the holding and subsidiary of the company or from persons connected with him. As a corollary of this provision if assets are acquired from or sold to such persons for cash would be outside the purview of the restrictions imposed by this section.

**Clause 43 (Section 194):**

This is also a new provision built into the Act and prohibits forward dealings in securities of the company by its directors and key managerial personnel.

**Clause 44 (Section 195):**

This is also a new provision which prohibits any person including a director and a key managerial personnel indulging in insider trading. This section also defines the expression 'insider trading'. This applies to all companies, whether listed or not. In the case of listed companies these are regulated by Regulations promulgated by SEBI under the Securities and Exchange Board of India Act. Thus in their case, they are regulated both by the Ministry of Corporate Affairs and SEBI and there are bound to be differences in the course of implementation which may lead to avoidable difficulties to listed companies. It is hoped that in order to ensure simplicity such diarchy is avoided.

**Clause 45 (Section 202):**

This section regulates the compensation to managing, or whole-time director or manager for loss of office in line with section 318 of the old Act.

**Clause 46 (Section 379):**

This section is new and stipulates that if a company incorporated abroad in which an Indian citizen(s) or a company(ies) incorporated in India or a combination thereof holds 51% or more of its share capital, whether preference or equity, has a place of business in India, such business has to comply with the requirements of Chapter XXII of the Act and such other requirements as may be prescribed as if it is a company incorporated in India.

**Clause 47 (Sections 382 and 383):**

These stipulate the display the names, etc. outside the premises from where a foreign company transacts business in India and manner of service of documents and are on the lines of section sections 595 and 596 of the old Act.

**Clause 48 (Section 386 except clause (a)):**

This is an interpretation provision for Chapter XXII of the Act. The interpretation of the word, 'certified', has not yet been enforced because the Ministry of Corporate Affairs has not issued Rules in this regard. Till the Rules are promulgated, the provisions of section 602 of the old Act would interpret this word.

**Clause 49 (Section 394):**

This deal with the requirement of laying before Parliament of the annual report of Government companies and is in line with the provisions of 619A of the old Act.

**Clause 50 (Section 405):**

This empowers the Central Government to issue of orders to companies to furnish statistics and is in line with the provisions of section 615 of the old Act. It may be noted that the Central Government has not issued any order in this regard and pending the issue of such orders the old prescribed requirements in this regard would have to be complied with.

**Clause 51 [Section 407 to 414 (both inclusive)]:**

These relate to the constitution of National Company Law Tribunal and Appellate Tribunal and correspond to sections 10FB to 10GF of the old Act. It may be of interest to note that the aforesaid provisions in the old Act have not yet been brought into force but the provisions in this regard in the Act has been put into force. This is probably with a view to enable the Central Government to constitute the aforementioned Tribunals in time so that when the entire Act is put into force the Tribunals would be in place to attend to duties assigned to them under the Act.

**Clause 52 (section 439):**

This section states that offences under the Act are non-cognisable and is on the lines of section 624 of the old Act.

**Clause 53 [Sections 443 to 453 (both inclusive)]:**

These relate to various powers conferred by the Act on the Central Government and various other matters and correspond to sections 624A to 631 of the old Act.

**Clause 54 [Sections 456 to 463 (both inclusive)]:**

These relate to enactment of various provisions relating to administration of the Act by the Central Government, such as providing for consequences for action taken in good faith, condonation of delays, etc.

**Clause 55 [Sections 467 to 470 (both inclusive)]:**

These relate to conferment of power on the Central Government to amend the Schedules appended to the Act, to make Rules including for winding up of companies and to issue orders to remove any difficulty. In exercise of the power under section 470 of the Act the Ministry of Corporate Affairs has issued an order to clarify that 'that until a date is notified by the Central Government under sub-section (1) of section 434 of the Companies Act, 2013 (18 of 2013) for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter XXVII of the said Act, the Board of Company Law Administration shall exercise the powers of the Tribunal under sections 24, 58 and section 59 in pursuance of the second proviso to sub-section (1) of section 465 of the said Act.

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**Delep Goswami, FCS**

Advocate, Supreme Court  
New Delhi

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

## Special Court for Speedy Trial of Company Offences

➤ The setting up of the Special Courts will prompt the companies to scrupulously comply with the various provisions of the new Act and it will be dangerous if the companies become reckless or ignore the requirements of the newly introduced penal provisions of the Act. If they do so, it will be at their risk and peril.

**L**ike many newly introduced provisions in the Companies Act, 2013 (hereafter referred to as 'the Act'), the provision for establishment of Special Courts is of special significance for speedy trial of 'all offences under the Act' and this will definitely help good corporate governance and stricter implementation of the new company law in India for the benefit of all the stakeholders. Section 435 of the Act stipulates that the Central Government by notification can establish or designate as many Special Courts as may be necessary. Added to this is the fact that the newly introduced Section 447 of the Act defines 'fraud' and prescribes the consequential stricter penal provisions for indulging in fraudulent activities. It is felt that the setting up of the Special Courts will prompt the companies to scrupulously comply with the various provisions of the new Act and it will be dangerous if the companies become reckless or ignore the requirements of the newly introduced penal provisions of the Act. If they do so, it will be at their risk and peril. Section 436(2) of the Act provides that while trying an offence under the Act, a Special Court may also try an offence other than an offence under the Act, with which the accused may, under the Criminal Procedure Code, 1973 (in short 'Cr PC) be charged at the same time.





Thus, not only trial of all offences under the Companies Act, 2013 but also offences in other Acts can be clubbed for trial by the Special Court. A perusal of the provisions of sections 435, 436 and 437 of the Act makes it clear that the Special Judge will exercise original jurisdiction in the criminal cases and he can even exercise jurisdictions akin to the one which are exercised by the Magistrate under the Cr PC.

Though it is too early to predict, simple analysis of the relevant provisions of the Act with regard to trial of offences indicate that just like the Central Bureau of Investigation ('CBI') which investigates bribery charges and corrupt practices by the Government officials enumerated in the provisions of the Prevention of Corruption Act, 1988 (in short 'PC Act') and subsequent trial of offenders by the special CBI Courts, in due course of time the Special Courts set up under the Companies Act, 2013 will assume a tremendous importance and are likely to usher in a regime of speedy justice delivery system by prosecuting the corporate offenders.

## What Section 447 Provides

Before we embark upon studying the provisions relating to setting up of the Special Courts and discussions on the 'cognizable' and 'non-cognizable' offences as per the Act, it is necessary to look at section 447 of the Act which has widened the scope of 'fraud' and clarifies that 'fraud' in relation to the affairs of the company or any body corporate, includes any act, omission or concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive or to gain undue advantage from, or to injure the interests of the company, or its shareholders, or its creditors or any other person (whether or not there is any wrongful gain or wrongful loss). Any such person, (including the company), who is found to be guilty of fraud shall be meted out with strict penalty going up to thrice the amount of the fraud and a minimum imprisonment term ranging from 6 (six) months up to 10 (ten) years. To deter the fraudulent acts affecting the "public interest", the Act clarifies that the minimum term of imprisonment shall not be less than 3 (three) years as against the minimum 6 months period in other cases. The said section also clarifies that 'wrongful gain' means the gain by unlawful means of property to which the person gaining is not legally entitled and that 'wrongful loss' means the loss by unlawful means of property to which the person losing is legally entitled.

## Composition of Special Court

Section 435 of the Act stipulates that a Special Court shall consist of a single Judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the Judge to be appointed is working and states that a person shall not be qualified for appointment as a Judge of a Special Court unless

he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge. Thus, it becomes quite clear that the Central Government is very serious in punishing the corporate offenders and the Judge who will try corporate offences being not less than the rank of a Sessions Judge or Additional Sessions Judge will have sufficient experience, expertise and acumen to try such serious offences and render justice.

## Jurisdiction and Powers

Section 436 of the Act stipulates that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (hereafter referred to as the 'Cr PC') 'all offences under the Act' shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned. Regarding detention of accused person, Section 436(1)(b) of the Act stipulates that where a person accused of or suspected of the commissioning of an offence under the Act is forwarded to a Magistrate under Section 167(2A)(2) of the Cr PC, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15(fifteen) days in the whole, where such Magistrate is a Judicial Magistrate and 7(seven) days in the whole, where such Magistrate is an Executive Magistrate, provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction. Since imminent arrest of the accused corporate officials is stipulated in the Act, it would hopefully deter fraudulent corporate practices.

Section 436(1)(c) of the Act stipulates that the Special Court may exercise, in relation to the person forwarded to it under clause (b) of Section 436(1) of the Act, the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the Cr PC in relation to an accused person who has been forwarded to him under that section; and a Special Court may, upon perusal of the Police Report of the facts constituting an offence under the Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial. Section 436(2) states that when trying an offence under the Act, a Special Court may also 'try an offence other than an offence under the Act' with which the accused may under Cr PC be charged at the same trial. This also widens the jurisdiction and scope of trial at the Special Court and is a welcome move.

Section 436(3) of the Act stipulates that notwithstanding anything contained in the Cr PC, the Special Court may, if it thinks fit, try in a summary way any offence under the Act



# Article

Special Court for Speedy Trial of Company Offences

» Central Government is very serious in punishing the corporate offenders and the Judge who will try corporate offences being not less than the rank of a Sessions Judge or Additional Sessions Judge will have sufficient experience, expertise and acumen to try such serious offences and render justice.

which is punishable with imprisonment for a term not exceeding 3 (three) years, provided that in the case of any conviction in a Summary Trial, no sentence of imprisonment for a term exceeding 1 (one) year shall be passed. It is further provided that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding 1 (one) year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure the regular trial.

Section 437 of the Act stipulates that the High Court within whose local jurisdiction the Special Court is functioning shall hear the appeals filed against the orders of the Special Court. Section 438 of the Act states that 'save as otherwise provided in this Act, the provisions of the Cr PC shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor. It is hoped that with the full functioning of the Special Courts under the Act, the maze of cases otherwise handled by a Magistrate would not come in the way of delivering speedier justice in cases pertaining to corporate fraud/corporate wrong doings.

Section 439 of the Act states that notwithstanding anything in the Cr PC, every offence under the Act, except the offences referred to in sub-section 6 of Section 212 of the Act shall be deemed to be non-cognizable within the meaning of Cr. PC and that no Court shall take cognizance of any offence under the Act which is alleged to have been committed by any Company or any officer thereof, except on the complaint in writing of the Registrar of Companies ('ROC'), a shareholder of the company or of a person authorized by the Central Government in that behalf. Thus a single shareholder can invoke the provisions of the law and initiate proceedings in the

Special Court. The law allows authorised SEBI officials to file cases relating to offence in issue and transfer of securities and for non payment of dividend. Prosecution by a company of any of its officers is not permitted in this section.

Section 439(3) of the Act, inter-alia, states that where the complainant is the ROC or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary, unless the Court requires his personal attendance at the trial. Section 439(4) of the Act clarifies that the Official Liquidator of a company 'shall not be deemed to be an officer' of the company within the meaning of sub-section 2 of Section 439 and offences committed relating to winding up of companies will not be covered in this section.

To investigate frauds committed by companies, the Serious Fraud Investigation Office ('SFIO') set up since July, 2003 had already been doing a good job. The newly introduced provisions of Section 211 of the Act has given legal effect to this in the Act itself. The SFIO set up by the Central Government shall, be deemed to be the SFIO for the purpose of the Act. Section 212 of the Act provides that on receipt of a report of the ROC or of the inspector under Section 208 of the Act or on intimation of a special resolution passed by a company that its affairs are required to be investigated or in the public interest or on request of any department of the Central Government or the State government, the Central Government may, by order, assign the investigation in to the affairs of the said company to the SFIO and its Director, who may designate such number of Inspectors as he may consider necessary for the purpose of such investigation. Since 'fraud' is now defined in the Act, SFIO can now get the offenders prosecuted at the Special Court.

## Cognizance of Offences

Though section 439 talks about non-cognisable offences, for knowing what type of offences are 'cognisable' notwithstanding anything otherwise contained in the Cr PC, an analysis of sub-section (6) of section 212 of the Act becomes necessary as it clearly states that no person accused of any offence under the following sections of the Act shall be released on bail or on his own bond, unless the Public Prosecutor has been given an opportunity to oppose the application of such release and where the Public Prosecutor opposes the application but the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that the accused is not likely to commit any offence while on bail, the Court may order the accused to be released on bail. However, if the Special Court so directs, a person below age of 16 years or a woman or a sick or infirm may be released on bail. The Special Court shall not take cognizance of any offence referred to in sub-section (6) of Section 212 of the Act, except upon a complaint in writing





made by the Director, SFIO, or any officer of the Central Government authorized by a general or special order in writing in this behalf by that Government. Section 212 (6) of the Act relates to the following provisions, namely :-

- offences covered under sub-sections (5) & (6) of section 7 of the Act, which inter-alia, relate to furnishing of false or incorrect particulars or suppression of any material fact or information in relation to registration of a company or subsequent to its incorporation by such fraudulent actions;
- offences covered in Sections 34 and 36 of the Act, relating, inter-alia, to issue, circulation or distribution of any Prospectus containing any untrue or misleading statement or inclusion or omission of any matter likely to mislead any person, or making knowingly or recklessly any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, so as to induce another person to enter into or to offer to enter into any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities or any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities or any agreement for, or with a view to obtaining credit facilities from any bank or financial institution.

## Other Relevant Provisions

Section 38 (1) of the Act relates to offence committed by any person who makes or abets making of an application in a fictitious name to any company for acquiring or subscribing for, its securities.

Section 46 (5) of the Act stipulates that if a company, with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate, but which may extend to ten times the face value of such shares or rupees 10(ten) crores, whichever is higher and every officer of the company who is in default shall be liable for action under Section 447 of the Act.

Section 56 (7) of the Act relates to transfer and transmission of securities and prescribe that without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under Section 447 of the Act.

Section 66 (10) of the Act relates to reduction of share capital and it states that if any officer of the company knowingly conceals the names of any creditor entitled to object to the reduction; knowingly misrepresents the name or amount of the debt or claim of any creditor; or abets or is privy to any

such concealment or misrepresentation as aforesaid, he shall be liable under Section 447 of the Act.

Section 140 (5) of the Act relates to the removal, resignation of Auditor and giving of special notice and it stipulates that without prejudice to any action under the provisions of the Act or any other law for the time being in force, the National Company Law Tribunal (NCLT) either suo-moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the Auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to the company, or its directors or officers, it may, by order direct the company to change its Auditors. Where an auditor, whether individual or a firm, against whom final order has been passed by the NCLT shall not be appointed as an Auditor of any company for a period of 5 (five) years from the date of passing of the said NCLT order and the Auditor shall also be liable for action under Section 447.

Section 206 of the Act relates to ROC's power to call for information, inspect books and conduct enquiries against any company and sub-section (4) of Section 206 of the Act states, inter-alia, that if the ROC is satisfied that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of the Act or if the grievances of the investors are not being addressed, the ROC may call for any information and may, in writing, direct carrying out of such inquiry as he deems fit after providing the company a reasonable opportunity of being heard. Where the business of a company has been or is being carried out for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud and liable under Section 447 of the Act.

Section 213 of the Act pertains to investigation into company's affairs by the Inspector or Inspectors as ordered by the NCLT, and it is stipulated that if after investigation, it is proved that the business of the company is being conducted with intent to defraud its creditors, members, or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then every officer of the company who is in default and the person or persons concerned in the formation of the company or management of its affairs shall be punishable for fraud and liable under Section 447 of the Act.

Section 229 of the Act stipulates that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body



# Article

Special Court for Speedy Trial of Company Offences



The Special Court shall not take cognizance of any offence referred to in sub-section (6) of Section 212 of the Act, except upon a complaint in writing made by the Director, SFIO, or any officer of the Central Government authorized by a general or special order in writing in this behalf by that Government.

corporate which is also under investigation, destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorized removal of, documents relating to the property, assets or affairs of the company or the body corporate, makes or is a party to the making of, a false entry in any document concerning the company or body corporate or provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in Section 447 of the Act;

Section 251 (1) of the Act stipulates that where it is found that an application by a company under Section 248(2) has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in-charge of the management of the company shall, notwithstanding that the company has been notified as dissolved, be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved, be punishable for fraud in the manner as provided in Section 447 of the Act.

Section 339 (3) of the Act states that where any business of a company is carried on with fraudulent intent or for fraudulent purposes described in that section, every person who was knowingly a party to the carrying on of the business in the fraudulent manner shall be liable for action under Section 447 of the Act.

Section 448 of the Act stipulates that, save as otherwise provided in the Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by or for the purposes of any of the provisions of the Act or the rules made there under, any person makes a statement which is false in any material particulars, knowing it to be false; or which omits any material fact, knowing it to be material, he shall be liable under Section 447 of the Act.

## Power to Grant Relief

This article dealing with the setting up of Special Courts under the Act and trial of offences would be incomplete without mentioning the power of the Court to grant relief in certain cases as mentioned in Section 463 of the Act. Sub-section (1) of Section 463 states that if in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court

hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such term, as it may deem fit. Proviso to the said section stipulate that in a criminal proceeding under this section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach. Sub-section (2) of Section 463 of the Act further states that where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1) of Section 463. However, before granting such relief to the officer, the Court would give notice to the ROC to show cause as to why such relief should not be granted. Section 2(59) of the Act states that 'officer' includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act. Thus, company directors, in appropriate cases, can expect to get relief.

## CONCLUSION

From a discussion of the above mentioned legal provisions, it is felt that since the Special Courts under the Act would function in addition to the cases dealt with by the NCLT, the professionals associated with the corporate sector would be benefited if they not only keep themselves abreast with the changes in the Act, but they also appropriately guide the management of the corporate sector to take stock of the far reaching changes introduced in the new Act. Since the offences now cover cases pertaining to formation of companies, where the professionals readily lend their names, casual approach in this regard would be avoided. Moreover, since every person to be appointed as a Director in a company's Board is required to obtain 'Director's Identification Number' ('DIN'), escape route for the Company Directors to face trial could be curbed to a large extent.

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**Narendra Singh, FCS**

Company Secretary  
Essel Mining & Industries Ltd.  
Kolkata

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

**Arpita Banerjee, ACS**

Asst. Manager  
Essel Mining & Industries Ltd.  
Kolkata

[arpita.banerjee@adityabirla.com](mailto:arpita.banerjee@adityabirla.com)

# Corporate Social Responsibility in the Companies Act, 2013 - A boon for scientific research

➤ 'Corporate social responsibility is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it... because it is good for our business.'

*Niall Fitzgerald, Former CEO, Unilever*

## BACKGROUND

Corporate social responsibility has gained tremendous momentum in today's economic and social environment. The traditional approach of corporates that 'the business of business is to do business' has changed and now business goals are inseparable from the societies and environment within which business operate. Whilst short-term economic gain can be pursued through traditional approach, the failure to align the business goals with social and environmental factors will make those businesses unsustainable in the long term.

Corporate Social Responsibility (CSR) can be understood as a management concept and a process that integrates social and environmental concerns in business operations and a company's interactions with the full range of its stakeholders. Due to the world becoming a global village, companies are encouraged to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption.

\* The views expressed in this article are solely the views of the authors and are not connected in any way with the views of the Company/ or the Group where the authors are employed.



### Following are some of the approaches for defining CSR:

- CSR is a responsibility, beyond that required by the law, for a business to pursue long term goals that are good for society.
- CSR is a means by which a company manages its business to produce an overall positive impact on society.





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- CSR is coming out of the purview of 'doing social good' and is fast becoming a 'business necessity'.

## METHODS OF CSR

CSR activities can be conducted through the following methods:

### Charity and Donation:

Companies donate funds to charitable institutions e.g. donation to UNICEF, Red Cross, etc.

### Contract:

Companies hire agencies / Non-governmental Organizations which in turn carry out the activities/ projects for the companies and the companies bear the cost.

### Own initiatives:

Companies create a separate administrative machinery and staff of its own to perform the CSR activities e.g. large companies like Tata, Microsoft, IBM, GMR, Cairn India, Polaris Software etc have separate administrative department to deal with CSR activities.

## CSR Under the Companies Act, 2013

The Companies Act, 2013 (hereinafter referred to as the 'new Act'), which replaces nearly six decade old Companies Act, 1956, contains detailed provisions regarding CSR. The Act was passed by Lok Sabha and Rajya Sabha on 18th December 2012 and 8th August 2013 respectively and notified in the Gazette of India on 30th August 2013. CSR has been recognized for the first time through the said Act. Section 135 (under Chapter IX – Accounts of Companies) of the new Act deals with CSR while Schedule VII of the new Act lists out the CSR activities which may be undertaken by the companies.

## Who must comply?

According to Section 135(1) of the new Act, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Thus, every company registered under the Companies Act and having

- net worth of Rs. 500 crore or more, or
- turnover of Rs. 1000 crore or more, or
- net profit of Rs. 5 crore or more during any financial year will have to comply with the provisions of Section 135 of the new Act.

## Who will be accountable?

The Committee of the Board of Directors of the Company constituted under Section 135 of the new Act consisting of three or more directors shall be accountable for undertaking

the CSR activities.

## Duties of the CSR Committee

As per Section 135(3) of the new Act, the CSR Committee shall have the following duties and responsibilities:

- To 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.
- To recommend the amount of expenditure to be incurred on the CSR activities.
- To monitor the Corporate Social Responsibility Policy of the company from time to time.

## Role of Board of Directors

Section 135(4) & (5) of the new Act, specifies the role of the Board with respect to CSR as under:-

- review the recommendations made by the CSR Committee;
- approve the CSR Policy for the company;
- disclose contents of the Policy in the company's report/ website; and
- ensure that the company spends in every financial year, at least two percent of the average net profits made during the three immediately preceding financial years of the Company in CSR activities in pursuance of the CSR Policy of the Company.

Further, a company qualifying for CSR activities under section 135 of the new Act will have to explain if it fails to do so under section 134 of the new Act which states that any company that fails to spend prescribed amount and also fails to specify the reasons for not spending the amount in its Board report, shall be punishable with a fine not less than Rs. 50,000 but which may extend to Rs 25 lakh.

Although this appears to be more like a government levy on corporate profits, the Government has left the manner in





which the amount can be deployed in the various activities to the discretion of individual companies. Schedule VII of the new Act contains the activities, given below, which may be included in the CSR Policy:-

Eradicating extreme hunger and poverty  
Promotion of education  
Promoting gender equality and empowering women  
Reducing child mortality and improving maternal health  
Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases  
Ensuring environmental sustainability;  
Employment-enhancing vocational skills;  
Social business projects;  
Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the state governments for socio-economic development, and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;  
Such other matters as may be prescribed.

With the enactment of the Companies Act, 2013, companies would be required to spend at least 2% of their net profits on CSR activities, and hence it becomes imperative for corporate India to plan its spending on CSR activities and avail appropriate benefits/ deductions available under the Income Tax Act, 1961. Investments/ spending on scientific research appear to be one such area which apart from complying with the requirement of law is going to encourage scientific research hugely in India.

## Relevant Provisions of Income Tax Act on Scientific Research

As per the provisions of Section 35 of the Income Tax Act, 1961 (IT Act), deduction is available of an amount

➤ According to Section 135(1) of the new Act, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

- equal to any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business of the assessee. [Section 35(1)(i)]
- equal to one and three-fourth times (175%) of any sum paid to a research association which has as its object the undertaking of scientific research or to a approved university, college or other institution to be used for scientific research. [Section 35(1)(ii)]
- equal to one and one-fourth times (125%) of any sum paid to a company (registered in India and whose main object is scientific research) to be used by it for scientific research and approved by the prescribed authority and fulfill other conditions. [Section 35(1)(iia)]
- equal to one and one-fourth times (125%) any sum paid to a approved research association which has as its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in social science or statistical research. [Section 35(1)(iii)]

The above mentioned association, university, institution etc. should have been approved by the Income Tax Department of the Govt. of India for the purpose of scientific research. The scope of scientific research in the IT Act appears to be quite wide. Member (IT), CBDT on the recommendation of jurisdictional Commissioner or Director Income Tax is the approving authority for such matters.

There are many approved Institutions/ University/ Associations viz. AIIMS, IITs, BITS, ISM, IISc, ISI, ICAR, etc. and any contribution to them for scientific research would allow the contributor to avail appropriate benefits.

A reading of the provisions of the IT Act as above shows that expenditure incurred on scientific research was always the focus area of the Government. Nevertheless, mandatory





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The Companies Act does not specifically include spending on scientific research. However, if the companies spend/ contribute to the approved association(s) or university or institution(s) etc. engaged in scientific research pertaining to the activities mentioned under section (iv), (v), (vi) and (viii) of Schedule VII of the Act, then they would not only meet the requirement of the Companies Act, 2013 but also allow them to avail appropriate deductions under IT Act. Nevertheless, investments/ spending in scientific research have innumerable benefits.

spending on CSR will be the driving factor for the companies to look for the activities where they can avail appropriate benefits under IT Act.

The Companies Act does not specifically include spending on scientific research. However, if the companies spend/ contribute to the approved association(s) or university or institution(s) etc. engaged in scientific research pertaining to the activities mentioned under section (iv), (v), (vi) and (viii) of Schedule VII of the Act, then they would not only meet the requirement of the Companies Act, 2013 but also allow them to avail appropriate deductions under IT Act. Nevertheless, investments/ spending in scientific research have innumerable benefits.

## Benefits of Scientific Research

Scientific research is certainly a significant contributor to economic growth. R&D policies must be designed in such way which could respond to the complex societal issues within which scientific research can be applied. Scientific and technical research far outstrips our knowledge of the relationship between research and its outcome. There are countless benefits both direct and indirect that society and mankind obtain from scientific research. Some of them are as follows:

- Policy makers frequently frame discussions of the economic benefits from science in terms of job creation. This suggests that scientific research is the creator of various new employment opportunities.
- Companies would gain by having a stronghold in the Global market because of the innovations arising from scientific research within the country.
- Talent management and restricting talent drain will be possible as professionals and researchers would stop migrating to foreign lands in search of better career prospects.

## Way forward

A combined reading of the provision of CSR in the Companies Act, 2013 and provisions of IT Act, suggests that the corporates might take the following course of action to avail

the maximum benefits of spending in CSR activities as specified in Schedule VII:

- identify the existing approved association(s) or institution(s) or college or university etc. engaged in scientific research to whom contribution can be made; or
- seek the appropriate approval for the association(s) or institution(s)/ college/ university etc. engaged in scientific research

Schedule VII also states that the Government may include such other matters as may be prescribed under the said Schedule. Hence, it would be appropriate if the Ministry of Corporate Affairs include the spending on scientific research as one of the CSR activities.

## Conclusion

There are many companies and large corporate houses that are spending substantial amounts on CSR activities voluntarily. Primarily, such spending is on development of neighborhood, primary health care, education, safe drinking water etc. in the areas where the businesses are located. Nevertheless, CSR activities in the country suffer from a lack of understanding, inadequately trained personnel, non-availability of authentic data and specific information on the kinds of CSR activities that companies should be investing in.

The CSR Committee of the Board of Directors of the companies would strive to find avenues on focused areas where the allocated funds for CSR activities can be deployed. The Companies Act, 2013 has already provided relatively huge avenues where the CSR Committee can strategize their spending. Spending on scientific research appears to be one such area which would give the companies dual benefits of complying with the requirement of law and availing appropriate benefit under IT Act. Hence, companies would tend to allocate and contribute certain part of its CSR spending on scientific research which can become a boon for the specified Institutions/ Universities / Associations engaged in scientific research. Finally, spending on scientific research would also immensely benefit Indian companies and they will have competitive edge globally.

CS



**G. P. Sahi, FCS**

Vice President (Legal) & Company Secretary  
CJ International Hotels Limited  
New Delhi

[gpsahi@lemeridien-newdelhi.com](mailto:gpsahi@lemeridien-newdelhi.com)

# Squeezing out Minority Shareholders

➤ Rule by majority and protection of the rights and interests of the minority shareholders have always been areas of considerable dispute and controversy. Besides explaining the present position in the light of decided cases this narrative throws light on the new provisions of the Companies Act, 2013.

## MAJORITY RULE

The fundamental principle defining operation of shareholders democracy is that the rule of majority shall prevail. However, it is also necessary to ensure that this power of the majority is placed within reasonable bounds and is not abused resulting in oppression of the minority. Adequate protection of shareholders and the business are the foundations for growth. Shareholders' rights are set out in the articles of association. A majority shareholder would want unfettered rights to conduct the business of the company in the manner he deems fit, and the concept of minority 'squeeze-outs', becomes relevant. Basically in corporate law, any transaction where parties in control of a company engage in for the purpose of eliminating minority shareholders could be viewed as a 'squeeze-out' or 'freeze-out' transaction. The question of squeezing out minority shareholders is always a vexed question. This is because the law, in certain circumstances allows minority shareholders to be forcibly bought out by the majority shareholders such that they are forced out of the company. The controversy arises because this might amount to deprivation of property rights of the minority shareholders.

The word 'minority' has not been defined under the Companies Act 1956 though in ordinary parlance 'minority' means persons who hold relatively less number of shares compared to other shareholders in the company. To determine a 'minority', a 10% criteria in case of companies having share capital and a 20% criteria in the case of other companies is provided for in the

Companies Act, 1956.

## Capital Reduction

The law pertaining to capital reduction can be found in sections 100 to 104 of the 1956 Act. If a company's Articles of Association permit reduction, the company could pass a special resolution (75 per cent vote by shareholders present and voting at a general meeting) approve reduction of capital, and then seek a court's approval to effect the reduction. Of late, there have been a spate of judgments wherein the minority shareholders have been squeezed out of the Company under the Capital reduction schemes.

Section 100 of the 1956 Act gives companies liberty to decide the mode of reducing share capital. The reduction of share capital may be brought about in one or more of the ways specified in clauses (a), (b) and (c) of sub-section (1) of section 100. But these are only illustrations of modes of reduction of capital and not the only modes in which share capital can be reduced. Capital may be reduced in any other way. Sub-section (1) of section 100 expressly provides that a company may reduce its share capital "in any way". It permits companies to reduce capital in any of the specified ways but "without prejudice to the generality of the foregoing power". The phrase "in any way", meaning in any manner, without any particular way or method, is a clear indication of the legislative intent, namely that a company is free to resort to any manner or mode or method of reducing its share capital and that there is no restriction on how or in what way a company may do it. The section does not place any fetter on the power of the company.



## Wiping out a Class of Shareholders

Should or not the reduction of share capital be made equally or ratably across all shareholders in the Company? Can a scheme of reduction wipe out an entire class of shareholders? If some minority shareholders wish to retain their shares, can the company forcibly reduce their capital by compulsory acquisition? Can a minority shareholder seek class meeting to ward off such threat? We shall first take note various judicial precedents to understand the legal position in this regard.

Reckitt Benckiser, the world leaders in household, health and personal care is a major player in personal care in India. It's wide range of products include Dettol, Air Wick, Veet, Lizol, Harpic, Mortein, Strepsils, Finish, Vanish and other brands in personal care known all over the world. Reckitt Benckiser (India) Ltd was promoted by M/s. Reckitt Benckiser Plc holding 63.87% of the total share capital. M/s. Lancaster Square Holdings (Lancaster), a subsidiary of the promoter company, held 36.02% and 0.11% shares were held by other members of the public and 4 shares were held by employees of the company. This Company decided to reduce its equity share capital by canceling and extinguishing 3,78,614 equity shares held by Lancaster constituting about 1.44 % of their equity shareholding in the company and 28,531 equity shares held by the public constituting which was 100% of the equity share holding of the public in the company.

The High Court of Delhi allowed the reduction of share capital stating it as a commercial and business decision, which has been approved by 99.999% of equity shareholders of the petitioner-company and only 0.0020% of shareholders were opposing the purchase price of Rs. 1500/- per share. Accordingly, the Court was of the opinion that there was no valid reason for not accepting the proposed scheme of reduction of share capital. [Reckitt Benckiser (India) Ltd., In re [2011] 14 taxmann.com 15 (Delhi)]. An Appeal against this decision of the Single judge was filed by a minority shareholder holding 536 equity shares out of 2,62,79,612 fully paid up equity shares of 10/- each of the respondent company. The Appellant, inter alia, contended that he has been receiving dividend of Rs 50,000/- per year for his aforesaid shares and which he would be deprived of and the price of Rs 1500/- per share being paid was not compensation enough for the same. The Division bench concurred with the reasoning of the Single Judge and dismissed the Appeal of the minority shareholder vide its order dated 07.03.2012 in Company Appeal no. 1/2012. [Chander Bhan Gandhi v Reckitt Benckiser (India) Ltd].

Sandvik Asia Limited, a subsidiary of Sandvik AB, Sweden, with a fully integrated production and marketing base has been in the Indian market for over three decades. It offers three main product areas i.e tooling, mining and construction and materials technology. In Sandvik Asia Ltd. v. Bharat Kumar Padamsi [2009] 92 SCL 272 (Bom), the Division Bench of the Bombay High Court overruled the Single judge and confirmed the resolution for

reduction of paid-up equity share capital to the effect that the share capital be reduced by paying off/returning to the holders of equity shares other than the promoters, at the rate of Rs. 850 per share, thereby extinguishing all such shares. The Promoters held 95.54 per cent of equity shares in the company while the balance 4.46 percent were held by the non-promoters. The grievance of the non-promoters shareholders were: they were not given any option except to leave the company if the offer was not acceptable; the said reduction of share capital was not within the purview of section 100(1)(a) to (c) of the Act ; there was no need at all to reduce the share capital; there has been a patent discrimination between one class of shareholders to another class amongst the equity shareholders; and the only way the company could have reduced the share capital was by way of buying back under section 77A ; that the compensation offered at Rs. 850 per share was not a fair and adequate compensation ; the resolution contemplates two classes of shareholders amongst the paid-up equity shareholders, the promoters group and non-promoters group, and what is sought to be done by the aforesaid resolution is to completely extinguish the shares held by the non-promoters group and to force them out of the company. This is a matter wherein the petitioner-company ought to have proceeded by way of a scheme under sections 391 and 394 of the Act read with section 100 of the Act.

Thus, the question before the court was whether a special resolution can wipe out a class of shareholders. The Bombay High Court, after considering the arguments of Sandvik and the objecting non-promoters, observed that a perusal of section 100 suggests that a company can reduce its share capital 'in any way'. The Division Bench relied upon two judgments of the House of Lords, which laid down the proposition that where the Court found that the scheme did not work unjustly or inequitably, it should not interfere with the same. In particular, the Division Bench relied upon the judgment of the House of Lords in the case of Poole v. National Bank of China Ltd. 1907 AC 229 (HL) wherein an objection was raised by an insignificant number of shareholders who formed part of the group whose capital was sought to be reduced. It also observed that in Poole's case (supra), the dissenting shareholders had not demanded any better pecuniary terms, but had only insisted on retaining their holdings in the company, and, in such circumstances, their objections were not sustained.

The Division Bench noted that observations of the House of Lords in Poole's case (supra) squarely applied to the facts relating to scheme proposed in relation to Sandvik. It ruled that the Court would not be justified in withholding its sanction to the resolution for the following reasons:

- (i) It was established that the non-promoters were being paid a fair value for their shares, and at no point of time was it suggested by them that the amount being paid was in any way less; and
- (ii) an overwhelming majority of the non-promoters had voted in



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favour of the resolution in question.

The SLP filed there against, was dismissed by the Supreme Court.

Elpro International Limited (Elpro) are manufacturers of lightning arresters, pellet and thyrister types and X-ray equipment for medical and industrial applications. They also manufacture alnico magnets for domestic and industrial applications, calor heating elements for domestic, industrial and medical applications and other electrical apparatus. Elpro, listed on the Bombay Stock Exchange (BSE) proposed to extinguish and cancel 25 per cent of the issued and paid-up share capital at a price of Rs. 183 per equity share pursuant to section 100. They sought shareholder approval for the scheme (Scheme) for reduction of capital by postal ballot. The resolution prescribed that the actual reduction of capital was to be made to such shareholders that "either assent or do not object by postal ballot to the proposed reduction". An exit opportunity was provided by the company. The resolution then provided that if the shareholding of those shareholders who assented or did not object to the proposed reduction of capital exceeded 25 per cent of the total issued and paid up capital, priority would be given to the small shareholders of the company. 95 per cent of the shareholders and creditors of Elpro approved the scheme.

The main objection to the scheme was from BSE which had issued a letter to Elpro declining to give its permission to proceed with the scheme on grounds that (a) the price on the date of the letter was much higher than the exit price being offered to the shareholders. (b) The promoters of the company would have the benefit of realizing a higher market value for the divestment of

their shareholding in the light of the undertaking that they would take necessary steps for increasing non-promoter shareholding to at least 25 per cent after the scheme was sanctioned. (c) Differential treatment to different shareholders is permissible. But this should be done either on the basis of positive consent of each shareholder who would be affected or in the alternative should apply across-the-board to all the shareholders.

The Single Bench of the Bombay High Court while allowing the reduction held that Section 100 authorized a company to reduce its share capital and lays down the procedure which is required to be followed. Sub-section (2) of section 101 then provides that where the proposed reduction of share capital involves either a diminution of the liability in respect of unpaid share capital or the payment to "any shareholders" of any paid up share capital and in any other case, if the Court so directs, then the provisions which have been made there under shall have effect. The adoption by Parliament of the words "any shareholders" in section 101 of the Act, indicates that a reduction of share capital need not necessarily be qua all shareholders of the company, but can take place from one or more amongst the body of shareholders. A classification of shareholders for the purposes of effecting the reduction of capital is, therefore, not an act, which is extraneous to the provisions of section 101. The Court must give effect to the plain meaning and intent of the provisions of section 101. Corporate autonomy must have a wholesome recognition in law and unless the law circumscribes it by a clear provision, the Court would not read limitations where the Legislature has not imposed them. [Elpro International Ltd., In re [2008] 86 SCL 47(Bom).]

Hoganas India Ltd. manufactures different grades of iron powder in terms of a technical-cum-financial collaboration agreement with Hoganas AB, Sweden. The holding company provides Hoganas India Ltd with complete technical know-how for manufacture of iron powder and also for installation of plant and machinery. The shareholding of Hoganas India Limited was as follows: 96.15% was held by Hoganas AB Sweden; 1.82% shareholding was held by Hoganas Hogap AB, a subsidiary of Hoganas AB Sweden and 2.01% of the shareholding was held by other shareholders. The object of the company was to reduce the shareholding of all its members, except its holding company. Having become declared de-listed, the company's shares became incapable of trading. Therefore company has proposed to get back his shares from the shareholders at a certain consideration. It proposed reduction of share capital under a scheme made under section 391 of the Act and offered three alternatives to the shareholders of Hoganas Hogap AB and other shareholders. The shareholders could sell their shares for a consideration of Rs. 177 or they may exchange it for an unsecured fully paid debenture of Rs. 177 or if the shareholders did not opt for the above two, he would be paid a sum of Rs. 177 in lieu of share, which would then be deemed to have been vested in the Company's name.

The main objections to the scheme were that the three options





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were not fair in as much as the last option compelled the shareholders to return share for a consideration of Rs. 177; the required three fourths majority was achieved by improper inclusion of Hoganas Hogap AB; the company ought to have obtained appropriate directions from the Court for convening separate meetings of Hoganas Hogap AB which is a subsidiary of Hoganas AB Sweden, because Hoganas Hogap would be inclined to allow its shareholding to be extinguished according to the wishes of the company and therefore constituted a separate class from the other shareholders, who would not have wanted their shareholding to be extinguished and that the company had not passed a special resolution under section 100 of the Act.

The Bombay High Court while rejecting the objections allowed the reduction and held that section 391 was a complete code. It was intended to be in the nature of a single window clearance system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which must be needed effectively to implement the sanctioned scheme. It also observed that it cannot be said that two separate meetings ought to have been called one of Hoganas Hogap AB and another of other members of the public merely because Hoganas Hogap was a subsidiary of the holding company. [Hoganas AB Sweden. In Re. 2008-(088)-SCL -0255 –Bom]

In Reckitt Benckiser (India) Ltd. 122 [2005] DLT 612, the Delhi High Court underlined the following principles, which emerged from the law relating to a reduction of share capital:

- “(i) The question of reduction of share capital is treated as a matter of domestic concern, i.e., it is the decision of the majority which prevails.
- (ii) If a majority by special resolution decides to reduce share capital of the company, it has also the right to decide as to how this reduction should be carried into effect.
- (iii) While reducing the share capital, the company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. Consequently, it is purely a domestic matter and is to be decided as to whether each member shall have his share proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent.
- (iv) The company limited by shares is permitted to reduce its share capital in any manner, meaning thereby a selective reduction is permissible within the framework of law. (Re. Denver Hotel Co., 1893 (1) Chancery Division 495).
- (v) When the matter comes to the Court, before confirming the proposed reduction, the Court has to be satisfied that (i) there is no unfair or inequitable transaction and (it) all the creditors entitled to object to the reduction have either consented or been paid or secured.”

The Court besides assuming the role of protector of minority

shareholders, invented three tests -

- the burden lies on the majority to prove that the special resolution always ensures class rights;
- the majority acted in good faith ensuring a fair and non-discriminatory dealing of the minority; and
- the burden of proof to show the scheme was fair and protected class rights always lies with the majority. [Chetan G. Cholera and Another v. Rockwool (India) Ltd. (2010)102 SCL 93 (AP)].

In yet another interesting case before the Bombay High Court, Cadbury India proposed a share capital reduction scheme whereby 97.4 per cent majority promoter shareholders planned to acquire 2.5 per cent minority shareholding at a price fixed by valuers. The Investors Grievances Forum, representing Cadbury India's minority shareholders, had earlier opposed the Rs. 1,340 per share valuation arrived at by the company-appointed valuers Bansi Mehta & Co and SSPA & Co stating they were not getting value for their money with such lower price. The court then appointed Ernst & Young as fresh valuers. Over the years, Cadbury has raised its buy-back price to Rs 1,900. Court-appointed valuer Ernst & Young came up with a value of Rs 2,014 per share, which was rejected by shareholders who wanted Rs 2,500 then. Today, minority shareholders are asking for Rs 3,000 per share. The case for capital reduction has dragged on in the Mumbai High Court, as the company and minority shareholders have been unable to agree on the buy-back price.

## ISSUES

A perusal of the above judgments would suggest that Courts have left it to the wisdom of shareholders to reduce the share capital in the manner and mode in which they deem fit in the interest of the company. In practice, due to the overwhelming shareholder power of the majority, they are able to muster enough support to pass a special resolution for reduction of capital. However, a few issues arise for consideration.

The minority shareholders usually have no say whatsoever due to their minimal shareholdings, and are left powerless. If the statutory provisions are weak towards minority shareholders, why cant the court intervene in their favour as all schemes of reduction require sanction of the court? Is it fair if a shareholder is denied his right to continue to hold shares in a company? Should not the courts consider approving such schemes under section 391 read with sections 100 - 104 of the 1956 Act since class meetings are envisaged under section 391 and minority interests can be duly taken care there in? Further should buy back of shares be permissible under a scheme of arrangement or in capital reduction schemes under sections 100 - 104 of the Act with total disregard to the provisions of section 77A of the Companies Act and the rules and regulations framed there under by MCA/SEBI. In several judicial precedents, it has been stated that every buyback of shares would involve reduction of share capital and that is why sanction of the courts under section 100 to section 104 is



mandated. It is difficult to agree with this reasoning since the opening words of section 77A begins with “(1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities.....”

Compulsory buy back of shares (selectively from minority non promoter shareholders) is violative of fundamental right of equality enshrined in the Constitution of India. Such a move creates two separate and unequal classes of shareholders, i.e. promoter shareholders and non promoter shareholders.

## New Legislation : The Course Ahead

The Companies Act 2013 has introduced several sections aiming at protection of minority rights. In the context of capital reduction schemes extinguishing minority rights forcibly, the following are worth noting:

- (a) The framers of the law have made their intent quite explicit with the introduction of Section 230(10) in the Companies Act, 2013 (Power to compromise or make arrangements with creditors and members) which reads as “No compromise or arrangement in respect of any buyback of securities under this section shall be sanctioned by the Tribunal unless such buyback is in accordance with the provisions of section 68.” Likewise Section 66(6) of the Companies Act, 2013 (Reduction of share capital) states that “Nothing in this section shall apply to buy-back of its own securities by a company under section 68”.
- (b) Section 236 of the Companies Act, 2013 gives an option to the acquirers and persons acting in concert holding 90% or more of the issued share capital to notify to the company of its intention to buy out the remaining equity shares. The acquirer shall deposit the amount equal to the value of shares acquired in a separate bank Account to be operated by the transferor company for a period of at least one year for payment to the minority shareholders. The shares may be acquired at a price determined by the registered valuer in

- accordance with such rules as may be prescribed. Generally, when minority shareholders have resisted at buybacks, it has been over the price. Usually, the discounted cash flow method in which all future cash flows are estimated at present value is used to determine the price. It remains to be seen whether and how this may change under the new law, and whether it tips the scales in favour of minority shareholders. But it is quite evident that the new law helps companies buy out minority shareholders without risking years of legal battle.
- (c) Further, Section 66(2) of the Companies Act, 2013 provides that the Tribunal shall give notice of every application for reduction of share capital to the Central Government, Registrar and to the SEBI thereby allowing it to consider representations from them. This gives an additional protection to the minority shareholders from being squeezed out.
- (d) SEBI has protected the interests of minority shareholders vide circular no CIR/CFD/DIL/5/2013 dated 4th Feb'2013 and has revised the requirements for listed companies and stock exchanges desirous of undertaking a Scheme of Arrangement under Chapter V of the Companies Act, 1956, (Amalgamation / Merger / Reconstruction/ Reduction Of Capital, etc.) The Circular lays the procedure and the processes which have to be followed with the stock exchanges before an Application is made to the High Court. Listed Companies shall now be required to file the Draft Scheme with the stock exchanges in terms of Clause 24(f) of the Listing Agreement. They shall also ensure that the Scheme submitted with the High Court for sanction, provides for obtaining shareholders' approval through special resolution passed through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. The Scheme shall also provide that the special resolution shall be acted upon only if the votes cast by public shareholders in favor of the proposal amount to at least two times the number of votes cast by public shareholders against it.

## CONCLUSION

The Court in Chetan Cholera's case (supra) observed that it must not lose sight of the fact that the regulatory bodies like SEBI have been established under the Acts of Parliament to safeguard the interests of the investors. All companies offering shares to the public are required to allot the required quantity to retail investors. In addition to this, the retail investors are provided investor friendly methods, procedures and safeguards for buying and selling securities and prevent fraud by overenthusiastic corporate brokers. All this would be rendered illusory if the promoters, with a view to bypass small investors; come forward with a petition to reduce the share capital. As the legal treatment of shareholder protection finds its balance between enabling logical majority rule and safeguarding minority interests, it lands itself in a sticky situation of perpetual grey area where the laws and regulation could no longer afford straightforward legal resolution but requires judiciary intervention for even the most trivial cases.

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**R Rajesh,**  
Advocate, Chennai

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

## Relief to Directors/Officers of a Company against Criminal Prosecution

➤ It would be inappropriate to prosecute and punish all the officers of a company but only those who are actually involved in the offences and hence it is necessary to provide adequate protection to safeguard those who acted honestly and reasonably by exonerating them particularly from criminal liability.

### INTRODUCTION

**C** In the modern corporate era, officers of a company play a significant role in complying with the various provisions of law including new Companies Act, 2013 and any non-compliance would result in prosecution and punishment not only to the company but also to the officers of the company and if convicted the punishment could either be imprisonment and/or fine and the amount of fine could even run in lakhs which depends on the offence committed but whether all the officers of a company can be held liable for any offence committed under the Companies Act is an issue which requires detailed consideration. Though de facto (in fact) one or more persons in a company are entrusted with the responsibility of complying with the provisions of law, de jure (in law) towards non-compliance, it is the 'officer who is in default' as defined under section. 5 of the 1956 Act and section 2(60) of the new Act is held liable and must face prosecution and punishment. A company cannot function on its own, being an artificial person hence it is being managed by the Board of directors and it is the collective responsibility of the Board to comply with the various provisions of law but at the same time a person just because being a member of the board cannot be held liable for the offences under the Act unless proven guilty.

A director may hold the position as a nominee director, independent director, professional director, non-whole time director, non-executive director etc. in such cases the role of those directors would not be as similar as that of the Managing Director/Whole-time director or any other director who is in-charge of the day to day affairs of the company hence even for the purpose of conviction and punishment for the offences committed under the law is concerned they cannot be held liable merely because of the fact that they are part of the Board unless and otherwise their actual participation is established. Though the nomenclature is 'director', still they stand in a different footing as compared to regular directors and therefore they cannot be treated on par with those who discharge their functions in managing the day to day affairs of a company is concerned. This article discusses the immunity available to an officer/director of a company if he has acted honestly or reasonably while discharging his duties despite the company or the officer having committed a default or an offence. The legal provisions applicable to the present discussion are contained in section 633 of the Companies Act, 1956 and corresponding section. 463 of the Companies Act, 2013. Similarly the provisions relating to compounding of offences contained in section 621A of the Companies Act, 1956 are covered under section 441 of the





➤ Normally the High Court while exercising its powers under section 633 (section 463 of the new Act) will approach very cautiously before exercising its discretion in favour of an officer and the discretion will be a judicial one. At the most it can relieve the officer from the liability but cannot order the company or the officer to comply with the statutory requirements.

Companies Act, 2013. The term 'composition' used in section 621A of the 1956 Act has been replaced by the word 'compounding' in section 441 of the new Act. The Regional Director is vested with the power to compound offences carrying punishment upto a fine of Rs. 5 lakhs and as per section 441(1) the offences under the new Act can be compounded only if the punishment for such offence is fine only which means after the new Act comes into force no more an offence punishable with imprisonment or fine would be compoundable but as per section 441(6) of the new Act, the Special court is empowered to compound all offences committed under the Companies Act, 2013 in accordance with the procedures laid down under Cr.P.C. except those offences which are punishable with imprisonment only or imprisonment and fine. As per section 92(1)(h) of the new Act it is also mandatory for every company to disclose in the Annual Return about the penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment.

## Who is an 'Officer'?

Section. 633/463 uses the term 'Officer' and not 'officer who is in default' and hence for the purpose of invoking this right it is to be understood going by the definition of the term 'Officer' as defined in section 2(30) / 2(59) which includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act. Therefore the relief covered by section 633/463 is applicable not only to directors/ex-directors but every person who falls within the said definition against whom any criminal proceeding is initiated or likely to be initiated for negligence, default, breach of duty, misfeasance or breach of trust resulting in committing an offence under the Act.



A director being an officer as per the definition under section 2(30) / 2(59) can also file an application under section 633/463 for relief upon receipt of show cause notice from RoC if he has an apprehension that any proceeding will or might be initiated against him for negligence, default, breach of duty, misfeasance or breach of trust and the court would come to his rescue only when there is a benefit of doubt and that he has acted honestly and reasonably while performing his duties and the High Court while exercising its powers under section 633/463 would have the same power in relieving him from the criminal liability as the Criminal Court would have had before which any criminal proceedings against the director had been initiated. Naturally, it must be proved beyond doubt that the officer has acted honestly, bona fide or reasonably or with due care and diligence expected of a person holding a responsible office. Similarly, the Court while exercising its powers under section 633/463 is empowered to relieve the director either in whole or in part from his liability as he may incur in respect of the offence committed. The relief under section 633(1)/463(1) would not entitle a director from discharge against any civil liability that he would attract by virtue of his acts of negligence etc. under the Act since the Proviso under Sub-section (1) protects a director only against a criminal liability and not against any civil liability however that is not the case under sub-section (2) where an High Court can exonerate an officer even from the civil liability. The relief if granted under section 633/463 would discharge from criminal liability the officer/director concerned for that offence and it would amount to an acquittal from the charges levelled against him and subsequent to the relief being granted no prosecution would lie against the officer/director concerned for the said offence.

## When section 633/463 is applicable?

The section is applicable under two different contexts, one is prior to initiation of prosecution and the other is post initiation of prosecution. In the former case it is the High Court which can



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grant relief and in the later case it is the criminal court concerned where the prosecution is initiated alone can grant relief. Therefore this power can be exercised under section 633(1) of the Companies Act, 1956 by the Magistrate Court [whereas as per section 436(1)(a) of the new Act it is the Special Court constituted under section 435 which is competent to try all offences under the new Companies Act] before whom the criminal proceedings are already initiated against the officers concerned by the RoC or any other person and under section 633(2) / 463(2) by the High Court as a preventive relief if there is an apprehension on the part of the officer that it is likely that the RoC or any other person might initiate criminal proceedings against them and the entitlement for the relief is subject to proving that the officer had acted honestly and reasonably in exercise of his powers and therefore he deserves to be excused. The High Court can even grant an interim relief before ordering notice to the RoC. . Once the proceedings are initiated before the criminal court it is that court which can exercise the right and grant relief under section 633(1) / 463(1) and the High Court cannot intervene under section 633(2) / 463(2). The requirements for the applicability of the said section are (a) there must be a statutory default on the part of an individual while acting on behalf of the company and the individual happens to be an 'officer' (b) the court must come to a conclusion that the applicant had acted honestly and fairly and even after his honest and fair act the default was committed for some unavoidable circumstances (c) non-compliance with such statutory requirements by the applicant was caused due to incidents beyond his control.

## Comparison between Sections 441 and 463 of the new Act (Sections 621A and 633 of the 1956 Act)

Under section 441 of the new Act before or after the initiation of prosecution, a company or an officer who has committed an offence under the Companies Act can file a petition before the RoC for compounding the offence which will be compounded by the Central Govt. (i.e. Regional Director) or the Tribunal depending upon the quantum of fine imposed for the said offence under the Act and upon payment of the compounding fee imposed, the offence is said to be compounded. Therefore the compounding power under section 441 is vested with the Central Government/ Tribunal whereas under section 463(1) the power is vested with the Special court and with the High Court under section 463(2). The burden under section 463(2) is to prove that the officer had acted honestly and reasonably while exercising his duties which is the criteria for granting the relief by the High Court and unlike section 441, it is not necessary to admit the offence in a petition under section 463(2) since if it is admitted but ultimately the petition fails (as it is a discretionary relief) the said admission would have an impact on the outcome in the criminal proceedings if any initiated later. Further a company which is entitled to invoke section 441 is not entitled to invoke section 463 since this right is available only to individuals. The limitation which is prescribed



under sub-section (2) of section 441 is not applicable for a petition under section 463 and section 463 covers all offences whereas the right under section 441 cannot be exercised in respect of the offences which are not compoundable. Under section 441(4) the Tribunal/Regional Director while compounding can direct compliance of the default whereas the court while exercising its limited powers under section 463 cannot order such compliance of the statutory requirements. Reference is drawn to page 636 of the Judgment in Tapan Kumar Chowdhury v. RoC (2003) 114Comp.cas. 631 (Cal.) where the High Court dealing with section 633(2) of the Companies Act, 1956 observed that "the court is neither empowered to extend the time to hold annual general meeting or to comply with the statutory requirements nor empowered to relieve the company from such responsibility and/or liability."

## NOTICE UNDER SECTION 463(3)

It is mandatory to serve notice on the Registrar and such other person as the case may be, before the Court grants relief either under section 463(1) or (2). This is one of the principles of natural justice which is to be adhered in order to give an opportunity of being heard to the other side (audi alteram partem). The term 'such other person' mentioned under sub-section (3) would include a shareholder of the company or a person authorised by the Central Govt. or a person authorized by SEBI if the offence relates to issue and transfer of securities and non-payment of dividend. As per section 439(2), no court shall take cognizance of any offence under the Companies Act, 2013 unless a complaint in writing is made by the person(s) aforementioned. Therefore the term 'other person' in section 463(3) must be read with reference to persons mentioned in section 439(2). Therefore the right under section 463(1) or (2) can be invoked if the proceedings are



initiated or likely to be initiated by any person who is entitled to do so as per section 439(2) and therefore not restricted to complaint by the RoC only .

## POWERS OF HIGH COURT

Normally the High Court while exercising its powers under section 633 (section 463 of the new Act) will approach very cautiously before exercising its discretion in favour of an officer and the discretion will be a judicial one. At the most it can relieve the officer from the liability but cannot order the company or the officer to comply with the statutory requirements.

In the case of *Kenji Tamiya & Another* (1990) 68 Comp.Cas 142 (Bom.), two Japanese directors of Orson Electronics Ltd. (OE Ltd.) filed a petition under section 633(2) for being relieved from any criminal proceedings and/or liability that might be launched or brought or action taken against the petitioners in respect of default in complying with the provisions of sections 210 and 220 of the Companies Act 1956. The petitioners were officers of Sony Corporation which incorporated a company called Somtron in Hongkong which held 76% shares in the Indian company OE Ltd. The petitioners were directors of the Indian company who realising manipulation of accounts by a director who resigned from the Board appointed Price Waterhouse and Co. to audit the accounts. The petitioners realised that the balance-sheet and profit and loss account cannot be laid before the company at the AGM and it could not be filed with the RoC within 30 days from the date of the AGM hence it would lead to breach of provisions of sections 210 and 220 of the Companies Act, 1956 and it may further lead to the RoC initiating criminal prosecutions against them hence they tendered their resignations as directors of OE Ltd. and filed the petition under section 633.

It was argued that the petitioners were residents abroad and were not connected with the day-to-day management of the company and they were nominee directors appointed by Sony Corporation and the petitioners took reasonable precautions to appoint Price Waterhouse to investigate into the affairs of the Co. the petitioners never acted mala fide or dishonestly or unreasonably hence they need to be relieved from any intended prosecution in respect of violation of provisions of sections 210 and 220 of the Companies Act, 1956. The High Court allowed their petitions under section 633 by exonerating them from any criminal proceedings and the order made it clear that the order would have no effect on the similar applications made by the Indian directors which will be examined independently.

Similarly, in *Orissa Jute and Cotton Mills Ltd. & Others* AIR 1956 Orissa 205 where the directors of the company filed an application under sections 281(2) of the Indian Companies Act, 1913 which corresponded to section 633 of the Companies Act, 1956 for relieving them from their liabilities in respect of defaults such as holding the AGM and filing the balance sheet of the year 1951 in 1954. The only difference in this case as compared to the earlier case is that the RoC had already filed a criminal complaint before the Magistrate Court, Cuttack and the petitioners were being tried in the said court for such offences. Though the High Court initially granted an interim stay of the criminal proceedings before the Magistrate Court, it finally held that “ the petitioners having filed this application after institution of the prosecution, though I am satisfied that the default was due to unavoidable circumstances and grant them the relief, this relief will be confined only as far as the future liabilities for the default are concerned. Under the express provisions of Clause (1) of section 281, it is only the Court which is in seisin of the matter complained of that can grant relief regarding the subject matter of the prosecution. In this case, the Magistrate, before whom the proceedings are pending, can if he is so satisfied grant the relief.’

In *Om Prakash Khaitan v. Shree Keshariya Investment Ltd* (1978) 48 Comp.Cas. 85 (Del.) while dealing with a petition of a professional director, the High Court held : “Judicial moderation was necessary in the administration of section 633 of the Act so as to ensure that such categories of directors were not subjected to the harassment of legal proceedings for breach and defaults of the company, which might at times be rather protracted. It would be proper in such cases to relieve such directors of consequences of the defaults and the breaches unless they were directly involved in the act or omission complained of or had otherwise not acted honestly or reasonably or had financial involvement in the company.”

In another interesting case [*Hindusthan Wire & Metal Products* (1983) 54 Comp.Cas 104 (Cal.)] a director filed an application under section 633 for relieving him from the default committed u/s. 295 in granting loan to another co. The application was presented





# Article

Relief to Directors/Officers of a Company against Criminal Prosecution



The relief under section 633 of the 1956 Act / section 463 of the 2013 Act is confined to offences under the Companies Act, 1956/2013 and not under any other law and therefore an officer cannot seek relief under this section for an offence committed under other laws.

on 28.06.1980 and on 02.07.1980 there was an interim order of injunction passed by the High Court restraining the RoC from commencing any prosecution against the applicant director for the default. Later it appeared from the affidavit filed by the RoC that a complaint was filed as early on 12.06.1980 with a petition to condone the delay under section 473 of Cr.P.C. but the said petition was taken up and allowed on 04.11.1980 i.e. after the interim order of injunction passed by the High Court. The directors while appearing on 23.12.1980 before the Magistrate pleaded that the violation u/s. 295 has been made good as the loan has been repaid by the Co. and there should be an injunction against the RoC from taking any criminal proceedings against the petitioners. The issue that arose was whether the application under section 633(2) was maintainable after the said complaint had been filed and cognizance of the same taken by the Metropolitan Magistrate. Though the High Court was inclined to relieve the directors since the offence has been made good and their resignation has been accepted by the Board and the offence was no longer a continuing one, in the facts and circumstances of the case, the court held that it will not hesitate to relieve the petitioners from the consequence of such default.

The point for consideration is whether filing the complaint and making an application for condoning the delay under section 473 of Cr.P.C. can be said to be the institution of a criminal proceeding or initiation of a proceeding before the delay is condoned and the offence is taken cognizance of by the criminal court where the proceeding has been filed. The High Court in order to ascertain when a criminal court shall take cognizance of an offence went through various sections such as sections 2(d), 190, 192, 200, 204, 468, 469 and 473 of the Cr.P.C. and arrived at the conclusion that in the facts and circumstances of the case the magistrate had taken cognizance of the offence only after the delay was condoned on 04.11.1980 which was much after the High Court admitted the petition under section 633 and granted an interim injunction on 02.07.1980. Therefore on 12.06.1980, it cannot be said that cognizance of the said offence was taken of or any proceeding was initiated against the accused in respect of the alleged offence under section 295 of the Companies Act, 1956, as, unless the bar of limitation was lifted by condonation of delay by an order of the Magistrate, there cannot be any question of taking cognizance of the offence or filing of the complaint against the accused. Therefore the complaint itself was filed before the Magistrate during the period when the injunction order against the RoC was in force and operative and therefore the complaint was in violation of the injunction order and the said proceeding was

bad and a null and had no effect and non est. Reference was also drawn to the decision in E. Pedda Subba Reddy v. State, AIR 1969 AP 281, where the meaning of the word "cognizance" occurring in section 190 of the Cr.P.C. has been interpreted as indicating the point of time when a criminal court first takes notice of an offence. Therefore the court allowed the petition under section 633(2) since on the date of granting interim injunction there was no proceeding pending before a criminal court hence there is no bar to entertain and relieve the petitioners in the petition under section 633.

In Progressive Aluminium Ltd. and Others v. RoC (1997) 89 Comp.Cas. 147 (AP) the High Court while allowing a petition under section 633 held that the petitioners had not acted with a mala fide intention of luring the public to subscribing to the shares of the company under a false representation that the company had experience of two and a half decades. The only default, if any, was the omission on the part of the promoters to clarify that the experience of two and half decades in the field was of the persons who were manning the earlier partnership firm and not the partnership firm itself. However, such omission could not be treated as a deliberate omission with a mala fide intention of suppressing any truth from the public. Moreover, the company had been successfully launched on the strength of the experience of the directors. It is a matter of ordinary prudence that the experience of a body corporate is always that of the persons manning the body corporate and not of the body corporate itself. The explanation tendered by the petitioners for the delay in commencing production was reasonable. Subsequent developments and the progress made by the company in the direction of fructifying the objects for which the company was incorporated, discharged or acquitted the promoters of any allegation that the misstatements in the prospectus were made with any dishonest intention of practising fraud upon the subscribers of the company.

There are also instances of courts dismissing petition under section 633. Some such cases are briefly dealt with hereunder.

In T.G. Venkatesh v. RoC (2008) 145 Comp. Cas. 662 (AP), the RoC issued a show cause notice for violation of sections. 63, 68, 628 for failure of the company to comply with the specified schedule in the prospectus. One of the directors filed a petition under section 633(2) and sought relief from prosecution contending that there was inevitable delay in project implementation due to unforeseen circumstances and he was not liable for non-



declaration of dividends by the company since he became aware of it only after his resignation from the Board. Moreover, the company could not declare dividends as stated in the prospectus due to unforeseen decline in the company's business. In turn the RoC contended that the petitioner should not be relieved of his obligation as he was one of the signatories to the prospectus of the company. The High Court while dismissing the petition, held that the resignation of the petitioner would not absolve him of his obligations and liabilities since he was a signatory to the prospectus and the explanation provided for non-implementation of the project in accordance with the schedule specified in the prospectus failed to elaborate the inevitable circumstances. The explanation for non-declaration of dividend was vague and was not substantiated by any facts and figures. The petitioner having failed to produce material explaining the circumstances for non-compliance with the terms declared in the prospectus and to prove that the statements made in the prospectus were not false, deceptive or misleading, he was not entitled for the relief under section 633 of the Act.

In *Satish Batra and Another v. RoC and Another*, (2010) 154 Comp. Cas.. 453 (Del.)(DB) an inspection was carried out under section 209 and it was found that the company had accepted huge amounts from the directors, shareholders, corporate bodies and from public since 1999; that the MD/WTd received application money from directors, shareholders, public and body corporates without any board resolution and allotment of shares were done by MD/WTd and not by the Board. The RoC issued a show cause notice under section 628 to which the company replied that the amount shown as share application money was a current account transaction and as there is no provision in the Companies Act, or in Schedule VI to reflect the current account balances it was reflected under the head share application money. The RoC came to the conclusion that the company had violated the provisions of section 628 of the Companies Act, 1956. The directors filed a petition under section 633 before the Single Judge for relieving them from any liability for the alleged default and a defence was taken that unsecured loans were in fact friendly and temporary loans based on the oral agreements and therefore no interest was payable thereon. The Single judge dismissed the petition and on an appeal the Division Bench finding no default dismissed the appeal thereby upholding the order of the Single Judge and even extracting the observation made by the Single Judge that "from the averments made and considering the facts and totality of circumstances, it is difficult to infer that the petitioners have acted reasonably and that considering all the circumstances, it will be appropriate to excuse the petitioners. Merely on the basis of the bald averments made by the petitioners, it will be difficult to infer that the amounts received were temporary loans based on oral agreements and no interest was payable thereon and in the totality of the facts and circumstances, it will not be appropriate to excuse the petitioners. The petitioners are also unable to show prima facie that they have acted in good faith and they have justifiable reasons to escape from the liability".

## CAN RELIEF BE GRANTED FOR OFFENCES UNDER OTHER LAWS?

The relief under section 633 of the 1956 Act / section 463 of the 2013 Act is confined to offences under the Companies Act, 1956/2013 and not under any other law and therefore an officer cannot seek relief under this section for an offence committed under other laws. This is supported by a judgment of the Supreme Court in the case of *Rabindra Chamria & Others s. RoC* AIR 1992 SC 398, wherein the Supreme Court while dealing with the issue as to whether relief under section. 633 would cover proceedings only under the Companies Act, 1956 or under other Acts also, held that 'any proceeding' under section 633(2) would mean both civil and criminal proceedings but does not apply to proceedings instituted against the officer of the company to enforce the liability arising out of violation of provisions of other statutes since the notice contemplated under section 633(3) is mandatory and required to be given to the RoC or other person hence the power under sub-section (2) must be restricted in respect of the proceedings arising out of the violation of the Companies Act only. On the other hand, the authority to take action under Provident Funds Act as seen from section of 14 of the EPF Act is the Commissioner; if notice is given to RoC for the offences committed under the said Act without giving notice to the authority concerned who alone is competent to prosecute in respect of liabilities under the respective law the purpose of giving notice itself would be defeated.

## CONCLUSION

In the administration of a company irrespective of its nature and size it is natural that occasionally the persons involved are likely to breach or fail to comply with any of the provisions of law. The objective of penal provisions in a law is not to punish an innocent person but to punish those who are negligent and acted contrary to law with a mala fide intention and at the same time the law always protects those who are vigilant. It would be inappropriate to prosecute and punish all the officers of a company but those who are actually involved and hence under such circumstances it is necessary to provide adequate protection to safeguard those who acted honestly and reasonably by exonerating them particularly from criminal liability. No person can claim relief under 633/463 as a matter of right unless he deserves to be discharged from the liability and he owes a duty to explain and convince the court that he was not responsible for the offence charged or he was diligent in exercising his duties. The Court while entertaining a petition will also be extra cautious while granting relief under section 633/463 in order to prevent any delinquent officer from escaping the clutches of law irrespective of the consequences of the offence. The object of section 633/463 is only to prevent any harassment or injustice caused to innocent officers who played no role in the offence charged. An officer who approaches with clean hands stands to deserve a relief subject to fulfillment of proving his innocence.

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**Rekha Handa, ACS**

Assistant Professor, Department of  
Commerce and Business Management  
GNDU, Amritsar

[rekha2802@gmail.com](mailto:rekha2802@gmail.com)



**Balwinder Singh**

Associate Professor, Department of  
Commerce and Business Management  
GNDU, Amritsar

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

## Strengthening Board Rooms through Women: Needed Resource for Effective Governance

➤ The focus of this discussion is the meagre presence of women on Indian boards. In the interest of effective governance, women need to be given their due not just by their presence but active participation. The Companies Act, 2013 has rightly recognized this aspect and mandates the presence of women on boards.

### INTRODUCTION

The genesis of corporate governance can be traced to the evolution of corporate form of organization. However, the complexities of environment and operational challenges have got the governance issues to the forefront. The main issue addressed by governance mechanisms is the principal - agent problem which is caused by separation of ownership and control and resulting in conflicting interest and motivations. A theoretically complete contract between the principal and agent, which is expected to lead to firm value maximization, remains a distant reality. The incomplete contracts signed between managers and owners lead to agency problems and in turn to information asymmetry. Berle and Means (1932) assert that in the face of separation of ownership and control managers may pursue their self-interest at the expense of profit maximization, thereby creating "agency" costs.

Corporate governance is the system that deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment (Shleifer and Vishny, 1997). Research indicates that investors are prepared to pay a premium for good governance because of the role it plays in a corporation.

Mc Kinsey & Co. (2002) concluded through an investor opinion survey that a large majority of respondents are willing to pay a premium for the companies with "good" governance practices. A well functioning corporate governance system can, not only protect the shareholders' investment but can also motivate those professional managers or entrepreneurs to maximize the wealth of investors (Charreaux, 1997; Hung, 1998). Thus, governance mechanisms are important criteria for ensuring the safety of funds and assessing the performance potential of firms which have management and control segregated in different hands.

Initial Public Offering (IPO), which is an important stage in the life cycle of the company, is a time when the firm reaches out to the general public from the hitherto closed private contours as a source of financing. IPO issuing firm attempts to garner public interest and funds for its issue by signaling and communicating its potential through various qualitative and quantitative measures. The information pertaining to such firms is limited due to no prior public presence so the investors rely on varied means before investing in the IPO firm.

The issuing firm is more informed about its prospects for growth and profitability than other market participants and the challenge





for the IPO firm, then, is to effectively demonstrate this value so that the firm's owners may maximize the price at which they can sell their shares with the initial stock offering. At the time of IPO, when limited information is available about the firm, Sanders and Boivie (2004) suggest that corporate governance parameters can serve as useful screening and sorting criteria to influence investors' perceptions. Some observable characteristics are generally used by investors like earnings, growth, industry but managers through corporate governance information can provide useful insider information to the investors who have grown paranoid with governance concerns provoked by cases of gross corporate and managerial indiscipline.

## IPOs AND BOARD OF DIRECTORS

Firms undergoing IPOs face many crucial governance decisions. The agency relationships which get accentuated at the time of IPO need a careful consideration from the firms which hitherto were in insider circles. The preparedness on governance front and compliance with regulatory provisions calls for thorough preparedness on the part of issuers to enhance its visibility and acceptability in market place.

An effective and dominant element of corporate governance is the board of directors. Monitoring by board of directors is viewed as an important internal control mechanism which helps mitigate agency conflicts and check managerial opportunism by aligning interests of shareholders and managers. The monitoring function of boards has drawn the attention of corporate governance researchers as it refers to the responsibility of directors to monitor managers on behalf of shareholders.

Monitoring by boards of directors can reduce agency costs inherent in the separation of ownership and control and, in this way, improve firm performance (Fama, 1980; Mizruchi, 1983;

Zahra & Pearce, 1989). Agency theory is among the most recognized approaches to studying boards of directors (Zahra & Pearce, 1989 on the reasoning that agency relationships should be the focal point in analyzing and studying corporate governance. Other than monitoring, another important contributing area of board of directors is provision of resources. This perspective implies ability of boards to bring the always needed resources to the firm. The theoretical underpinning of this function is based on Pfeffer and Salancik's (1978) work on resource dependency whereby boards are appointed to provide desired support to the organization, be the face of firm and help it through all times.

The boards, thus, have a gigantic role to play whether through monitoring or resource availability. Concretely, board of directors can check agency conflicts and appending agency costs, enhance firm value by serving as a reliable information channel between managers and shareholders, control managerial opportunism and provide strategic inputs to keep the business growing in right direction.

## WOMEN CONTRIBUTIONS – CASE FOR GENDER DIVERSITY

The seemingly simpler role of board of directors has acquired complex dimensions in contemporary times characterized by wider variety of stakeholders, more aware and legally vigilant investors, frantic information and technology diffusion, global competitive challenges and the like. The boards need to be aware and sensitive to the larger and wider interests involved so as to be effective in their roles. Corporates cannot achieve and sustain that competitive advantage with 'ornamental boards' or by simply functioning as old boys' clubs. The boards need to possess broad based talent and the right composition to provide diverse and comprehensive perspectives that today's businesses require (Smith, 2001, Biggins 1999, Milliken and Martins, 1996). Companies today face a more complex economy which demands sophisticated talent, entrepreneurial skills and ability to manage increasingly de-layers, disaggregated organizations (Chambers et al, 1998). Researchers recently have investigated the effect of board diversity, which may be defined as the variety inherent in the board's composition. Of broad dimensions, primarily the focus has been on a specific aspect of diversity, namely the composition of the board of directors in terms of gender.

It has been suggested that one way to deal with some of the present times' concerns pertaining to effectiveness and relevance of corporate board of directors is to appoint more women, who are eligible and qualified, to the boards for broader representation and holistic viewpoints for better decision making. The argument for having women on higher rungs of corporate holds a good business case. The presence of women widens the talent pool which enables businesses to benefit from large number of able people. One benefit of diversity is that people with different backgrounds may have different viewpoints. It can also serve as



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a credible signal of greater focus on corporate governance and gender diversity and acceptance of women skills.

A diverse board may meaningfully convey otherwise unobservable information to the public, corporate constituencies, interest groups, or regulatory authorities. Board diversity as a signal can convey relevant information to employees (that firm embraces equality in employment), to consumers (considers need of certain demographic groups in servicing needs) and to regulators, promoters, public or other interest groups (firm is committed to social responsibilities and equal opportunities) (Broome & Krawiec, 2008).

Despite frantic initiatives to draw women onto corporate boards, the board room largely remains the room of men. The low representation of women in corporate boards remains a dominant reason for increased attention to gender diversity, despite the fact that women may increasingly possess the same relevant skills and qualifications as men (Smith, Smith & Verner, 2005). The numbers globally with respect to women directors are not very encouraging and pinpoint the need for correction of these differences. Globally, only 5-20 per cent of directors of substantial organizations are women (Vinnicombe et al., 2008). GMI Ratings' 2012 Women on Boards Survey presents a consolidated picture with respect to different countries analyzing industrialized and emerging economies. The highest women representation is noted for Norway (36.3%) which stills falls short of the mandated quota of 40%. The legislative compulsions have resulted in higher number of women directors in Sweden and Finland (26.4%) but which still indicate inequalities stemming from whatever reasons. The US numbers stand at 12.6% while the emerging economies' numbers stand shamefully low (Brazil 4.5%, India 5.2% and China 8.5%).

**Table 1: Country wise presence of females as directors on board**

Country	Percentage of women directors
Australia	13.8
Brazil	4.5
China	8.5
Denmark	15.6
Finland	26.4
France	16.6
Germany	12.9
India	5.2
Japan	1.1
Norway	36.3
South Africa	17.4
Sweden	26.4
US	12.6

Source: GMI Ratings' 2012 Women on Boards Survey, March 2012

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The increasing awareness about importance of corporate governance and accentuated commitment to corporate governance reforms globally, stemming from devastating corporate scandals have brought significant attention to gender diversity in board rooms. To this end, the governments have also stepped in to correct these prevalent gender imbalances and let not women be denied the opportunity to contribute through their skills and abilities. Norway (40%) and Sweden (25%) have mandated quota for women on corporate boards making gender diversity a legal requirement (Smith, et al., 2006 and Adams & Ferreira, 2008).

## INDIAN SCENARIO – MANDATING WOMEN PRESENCE

India is no exception to the globally skewed numbers with respect to women on corporate boards. Women constitute



CHARTERED SECRETARY



only 5.3% of the total number of board members in the top 100 companies by market capitalization on the Bombay Stock Exchange as per the report of Standard Chartered Bank, 2010. With women constituting almost 24% of the Indian workforce and the constantly increasing number of female students in professional and management institutes these figures are quite depressing. In line with the peer countries, Indian also contemplated the need to mandate women presence on boards in the wake of such intriguing disparities. The Companies Act, 2013 stipulates appointment of at least one woman director on the board of prescribed classes of companies. This is done in the light of empirical conclusions of women making boards more representative which is expected to enhance governance, ethical strength and shareholder value. This policy action ushering in an era of reformist actions in corporate settings and an attempt towards breaking the persistent though invisible glass ceiling is expected to change board room settings quite significantly. The exploration of this issue after the stipulation would provide insights but the need to see how the situation exists as of now, more so in typical new issue settings, the unexplored area is an interesting research issue.

## WOMEN ON BOARDS OF INDIAN IPO FIRMS

In India the presence of women in board rooms is worse than bad ones globally and research focused on women presence in board rooms and their contributions has been rather rare. Indian corporate sector, the world's second fastest growing economy, has no reassuring numbers of women as boards of directors. Women constitute only 5.3% of the total number of board members in the top 100 companies by market capitalization on the Bombay Stock Exchange (Report by Standard Chartered

Bank, 2010). The financial potential of Indian economy is acclaimed globally and is too gigantic to be ignored. This enormous contribution generates primarily from the corporate sector. How these corporate set ups are structured in terms of female representation and the abilities of their boards sum up as an important determinant of corporate performance. Research on women on corporate boards is very limited in India and non-existent in context of IPO firms.

The IPOs issued in India since 2002 and listed on Bombay Stock Exchange are investigated for women presence on board of directors. The sample for gender diversity of boards includes 404 IPO issuing companies during the period April 2002 to March 2012. The issues which were delisted, or listed on NSE or on which complete information could not be gathered were dropped out from the final sample.

The total numbers of director positions in these 404 companies were 3143 and these total directorships were analysed for female presence compared to their male counter parts.

**Table 2: Gender wise categorization of board positions**

Gender	No. of directors	Percentage (%)
Male	2991	95.16
Female	152	4.84
Total	3143	100

Table 2 presents the overall presence of women on the board which stands at abnormally low level (4.8%) while the boards are dominated by male presence. 2991 of the total 3143 board positions are filled in by males.

**Table 3: Gender frequency and representation across boards**

Female presence	No. of companies	Percentage (%)
No female director	277	68.56
1 Female Director	103	25.5
2 Female Directors	23	5.69
3 Female Directors	1	0.25
Total	404	100

Analyzing these low numbers of women presence further, Table 3 displays that a major chunk of these listed firms (69%) do not have any female member as a director. Of the total board size, at the most only 3 members are female and surprisingly only one of these companies (Beeyu Overseas Ltd) accommodates three women on its board. 81% (103) of the total 127 companies having female directors have only one woman on their board suggesting tokenistic approach to inclusion of women on the board of directors. Of the total, hardly 5% of the companies have two women taking the total number of women directors to 152 of the total of 3143.







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Taking these women figures further, the nature of directorship was analysed. Of the total 3143 directorships, the status of 3131 director positions was disclosed. The distribution of these directorships as executive, non-executive and independent directors is displayed in Table 4.

**Table 4: Gender wise status of board members**

STATUS	MALE	Percentage	FEMALE	Percentage	TOTAL
EXECUTIVE	1062	33.92	68	2.17	36.09
NON-EXECUTIVE	403	12.87	51	1.63	14.50
NON-EXECUTIVE INDEPENDENT	1516	48.42	31	0.99	49.41
TOTAL	2981	95.21	150	4.79	100

The distribution of directorships shows highest percentage of independent directors (49.41%) followed by executive directorships (36.09%) leaving a mere 454 (14.50%) directors as non-executive directors. The gender wise distribution is highly skewed wherein for women the proportion of independent directorships remains the lowest (.99%).

Moving on to another aspect of this low presence of women as directors on corporate boards, their position as Chairperson and Managing Director is studied.

**Table 5: Designation of women directors as Chairperson/ MD**

DESIGNATION	Number of women	Percentage
CHAIRPERSON	7	4.61
MD	5	3.29
CHAIRPERSON & MD	1	0.65
NONE	139	91.45
TOTAL	152	100

From Table 5 it is seen that only 13 of all women present on boards hold the position of Board Chairperson and/or Managing Director giving indication of nominal presence of women reserving positions of power and influence for the men. 91.45 % of the women who exist as board members failed to secure the office of Chairperson or managing director for themselves.

Constitution of various board committees is more a necessity than just a requirement under the legal parameters. Board may constitute various committees to enable them to shoulder and discharge their responsibilities effectively. The relative proportion of men to women in the context of board committee structures can play a decisive role in whether women are able to assert themselves (Grosvold, 2011). In India, Clause 49 of the listing agreement recommends constitution of mandatory committees (Audit Committee and Shareholder/ Investors Grievance Committee) and non-mandatory committee (Remuneration Committee). These board committees are then focused on to gauge women presence and power. The table 6 highlights the presence of women on board committees as chairperson and a member.

**Table 6: Women presence on Board Committees as member and Chairperson**

Committee	Number of women as members	Number of women as Chairperson
Audit Committee	30	2
Remuneration Committee	17	9
Shareholders' Grievance Committee	28	9
Other Committees	25	2

The presence of women on the board committees as a member and chairperson is displayed through Table 6. The regulations mention constitution and functioning of three board committees namely Audit committee, remuneration committee and shareholders' grievance committee by differences in nomenclature leaving other committees to the choice of company. In this light women presence on these committees is studied whereby it comes to light that women are struggling on this aspect also.

**Table 7: Number of Companies with women as members and chairperson of Board Committees**

Committee	Companies with women as members of board committee	Companies with women as Chairperson of board committee
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Audit Committee	29	2
Remuneration Committee	16	9
Shareholders' Grievance Committee	27	9
Other Committees	21	2
None	62	107

Of all the companies, 107 companies have no women as chairperson of any board committee and 62 companies have no place for women on board committees as members also. Audit Committee the focus of listing agreement being an important mechanism in corporate governance highlights the skewed numbers and policy of tokenism with regards to women presence.

The overall picture sketched by the above numbers highlights the prevalent bias against women in the board rooms. In the light of the contributions which women can make as directors, such low presence on corporate boards does not augur well for the growth and effectiveness of companies and economy.

## CONCLUSION

There is ample theoretical and empirical evidence on the contributions women directors can make to firm performance and board effectiveness. The journey of women from being restricted to domestic chores due to conventional and religious barriers to fighting a winning battle of acclaimed excellence, women have not been able to break the glass ceiling completely. Denying the talented lot their due on the tenuous grounds of gender ignoring credentials and skills will debilitate boards and corporate. The presence of women on boards of Indian IPO firms is shamefully low calling for remedial action to strengthen governance and performance. Corporate governance concerns have been adopted as matters of primary concerns. The effectiveness of these mechanisms emanates from quality of governing boards which need to be well structured for competitive policies and strategies. A major concern on this account is lack of gender diversity on the boards. When women form almost half of the total population (ignoring the skewed male female ratios in some parts) their meagre presence as board members is a serious issue. Getting women to the board positions and making them part of critical decision making is indeed the responsibility of firms as a means of ushering in effective governance till date eluding the Indian companies.

The conclusion drives us to fact of the situation being grim but the ray of hope lies in the mandate provided by the provision in Companies Act, 2013 on this issue. Compulsion of appointing at least one woman as a director can prove to be the balancing act but does that happen in spirit would have to be investigated. At the face of it, it is a corrective action to bring in the balance in board rooms in terms of gender, talent and skills. CS

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**Dr. V. Balachandran, FCS**

Professor of Corporate Secretaryship  
School of Management  
Alagappa University  
Karaikudi

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



**Sudheendhra Putty, FCS**

Ph. D Scholar  
Alagappa University  
Karaikudi

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

## Secretarial Standards : A Giant leap forward

➤ An attempt has been made in this article to bring out the unique features of the provisions of the Companies Act, 2013 pertaining to secretarial standards. These provisions lay down a set of principles which companies are expected to adopt and adhere to in discharging their corporate responsibility.

### Introduction

Indeed, it has taken a period of 12 years for the realization of a dream. A dream that was still a fledgling with few takers when it was first conceived and put in place in 2001. The concept of secretarial standards was not perhaps thought of or implemented anywhere else in the world, not in the UK, not in the commonwealth and not elsewhere either. A maiden attempt to come out with the concept of secretarial standards was made by the Institute of Company Secretaries of India (ICSI) in 2001 and to paraphrase the words of the Bard, the ICSI and the profession have “crossed the Rubicon” today with the passage of the Companies Act, 2013 (the Act). Secretarial standards were a reality even in 2001; they are mandatorily relevant now. The preface to the secretarial standards made a pledge with destiny then by stating, “ICSI will endeavor to persuade the Government and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardization of secretarial practices.”

With a sense of fulfillment and pride, it can be proclaimed that the said pledge has been redeemed. The government has been persuaded not just by the ICSI, but by the corporates themselves to accord statutory recognition to the standards. The Companies Act,

2013 has provided statutory recognition to secretarial standards. An attempt has been made in this article to bring out the unique features of the provisions of the Act pertaining to secretarial standards. These provisions lay down a set of principles which companies are expected to adopt and adhere to in discharging their corporate responsibility.

### Need for introduction of Secretarial Standards

It was perceived that corporates adopt varied and diverse practices in their day to day working and there was a clear lack of uniformity in the discharge of secretarial functions. Further, there are several areas of corporate legal practice where either the law was silent or prone to more than one interpretation. Besides, the need was also felt that in the interests of greater transparency, non-financial disclosures were necessary. In this background, the ICSI, recognizing the need for integration, harmonization and standardization of diverse secretarial practices, constituted the Secretarial Standards Board (SSB) with the objective of formulating secretarial standards. Companies adopt diverse secretarial practices and, therefore, there arose a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency. The ICSI has taken care continuously to constitute the SSB comprising of eminent, erudite people representing the profession, sister professions such as the Institute of Chartered Accountants of India and Institute of Cost Accountants of India, regulators such as the Ministry of Corporate Affairs, Stock





Exchanges, SEBI and RBI and trade and industry bodies as well. This has enabled the SSB to acquire a holistic perspective and command the respect of being well represented across the board.

## Scope and Functions of the Secretarial Standards Board

- (i) In terms of the preface to the Secretarial Standards issued by the ICSI, the scope of SSB is to identify the areas in which secretarial standards need to be issued by the Council of ICSI and to formulate such standards, taking into consideration the applicable laws, business environment and best secretarial practices.
- (ii) SSB will also clarify issues arising out of such standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.
- (iii) The secretarial standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.
- (iv) Secretarial standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

## Main functions of Secretarial Standards Board

The key functions of the SSB are given below:

- (i) Formulating secretarial standards;
- (ii) Clarifying issues arising out of the secretarial standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the secretarial standards/Guidance Notes at periodic intervals.

## Formulating and issuing secretarial standards - Commendable role of the ICSI

The ICSI has been doing a commendable role in formulating and issuing secretarial standards for the benefit of stakeholders. While an in-depth analysis of the procedure would be incongruous here, it would nevertheless be worthwhile to note that the procedure is time bound, transparent, comprehensive, facilitates discussion and debate from all stakeholders concerned and takes into account the principles of natural justice.

The secretarial standard will generally include the following basic points:

- (a) Concepts and fundamental principles relating to the subject of the Standard;
- (b) Definitions and explanations of terms used in the Standard;
- (c) Objectives of issuing the Standard;
- (d) Disclosure requirements; and

» The statutory recognition provided by the new Companies Act is a harbinger. The ICSI must continue its exercise of propagating the benefits of adopting secretarial standards among the industry and other regulatory authorities. This statutory recognition must act as a lever to propel the profession into a higher trajectory.

- (e) Date from which the Standard will be effective

## Secretarial Standards issued until now

Commencing from the secretarial standard -1 issued at the National Convention in Bangalore in 2001, the Council of the ICSI has thus far issued 10 Standards. A brief summary of these standards is as follows:

### Secretarial Standard 1: Meetings of the board of directors

Prescribes a set of principles for the convening and conduct of meetings of the board of directors and matters related thereto.

### Secretarial Standard 2: General meetings

Prescribes a set of principles for the convening and conduct of general meetings and matters related thereto.

### Secretarial Standard 3: Dividend

Prescribes a set of principles in relation to the declaration and payment of dividend and matters incidental thereto or connected therewith.

### Secretarial Standard 4: Registers and Returns

Prescribes a set of principles in relation to various registers and records including the maintenance and inspection thereof.

### Secretarial Standard 5: Minutes

Prescribes a set of principles for the recording of minutes of the meetings of:

- board or committees of the board
- members
- debenture holders
- creditors
- others as may be required under the Act, and matters related thereto

### Secretarial Standard 6: Transmission of shares and



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## debentures

Applies to transmission of shares and debentures held by individual shareholders in physical mode.

## Secretarial Standard 7: Passing of resolutions by circulation

Prescribes a set of principles for passing of resolutions by circulation.

## Secretarial Standard 8: Affixing of Common Seal

Prescribes a set of principles for affixing of the common seal.

## Secretarial Standard 9: Forfeiture of Shares

Prescribes a set of principles for forfeiture of both equity and preference shares arising from non-payment of calls.

## Secretarial Standard 10: Board's Report

Lays down practices pertaining to the preparation and presentation of the Board's Report.

Further, Guidance Notes have also been issued from time to time to provide detailed guidance on the compliance of the corresponding secretarial standard and the procedures, interpretation and practical aspects in connection therewith. Efforts are made to issue the secretarial standards which are in conformity with the customs, usages and business environment of the country. In other words, the standards are formulated as policy documents relating to various aspects of secretarial practices in the corporate sector.

In the initial years, adherence to each of the standards by companies has been stated to be recommendatory. However, as a measure of good corporate governance, over the years, the secretarial standards have been adopted by major corporates on a voluntary basis. Further, compliance of the same is also being reported in the Annual Report by several progressive companies. Adoption and implementation of the standards would have a substantial impact on the quality of secretarial practices making them comparable with the practices in the world.

## Provisions in the Companies Act, 2013 pertaining to Secretarial Standards

It is, therefore, in the above background that one needs to understand the unique and distinct provisions incorporated in the Companies Act pertaining to secretarial standards.

Section 118 of the Act deals with Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot. Sub-section (10) thereof reads as follows:

*"Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under*

*section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government."*

The section is not happily worded for it uses the word "observe" in the opening lines. As per the Oxford Advanced Learners' Dictionary, 4th Edition, "observe" means to see and notice; or watch carefully. A second meaning is also attributed to the word, albeit categorized as formal – obey (rules, laws, etc). Adhere or comply would have been better words to use in this context. Further analysis of the section leads us to the following:

- It has universal applicability – mark the usage of the word "every". Without exception, all companies would need to observe secretarial standards.
- Secretarial standards with respect to general and board meetings. Prima facie, secretarial standards 1 and 2 would clearly be applicable. The usage of the phrase with respect to leaves it open to interpretation that other standards may also be applicable in addition to SS 1 and 2. Clearly, the standards on minutes and passing of resolutions by circulation would also fall within the meaning of with respect to. Vicariously, other standards may also be read in to the meaning of with respect to general and board meetings.
- The section goes on to lay down, "specified by the Institute of Company Secretaries of India". This provides clarity that the ICSI alone is the recognized professional body to issue secretarial standards and no other body is entitled to do so. It is pertinent to note that the section uses the word specified by and not issued by the ICSI. Therefore, although the ICSI may issue many more standards, only those specified by it would be applicable for the purposes of this section.
- The said standards also need to be approved by the Central Government
- In the current scheme of things, no other standards except those that pertain to board and general meetings can be specified by the ICSI and approved by the Central Government.





The section heading is also a clear indicator to this.

- Any other standards that need to be made applicable would need either a statutory amendment or be brought in through the various Rules being notified under the Act.

It is noteworthy that the Parliamentary Standing Committee that reviewed the Companies Bill a second time, recorded in its report in June 2012, the following suggestions received by it:

*“Secretarial standards dealing with procedural matters only should be considered for mandatory compliance. Secretarial Standards dealing with interpretation of statutory provisions should not be made mandatory since such an interpretation may not always be in consonance with common law”*

However, the Ministry replied as follows:

- The Standards issued by the Institutes (like ICAI, ICSI, ICWAI) are subject to provisions of all applicable laws in the country. In case of any inconsistency between provisions of any law and the standard, the provisions of law shall have overriding effect. This approach has been reflected in the Preface/Introduction to Standards issued by such Institutes. The same effect shall be retained in the Secretarial Standards after the new Bill is implemented.
- In view of above, there does not appear to be any necessity of any modification in these provisions.

The other reference to secretarial standards in the Act appears in Section 205 that deals with the functions of the Company Secretary. The section reads as follows:

*205. (1) The functions of the company secretary shall include,—*

- to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;*
- to ensure that the company complies with the applicable secretarial standards;*
- to discharge such other duties as may be prescribed.*

*Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.*

Sub-section (1)(b) states that the functions of the company secretary shall include compliance with the applicable secretarial standards. It is quite apt and appropriate that the responsibility of ensuring compliance has been put on the company secretary and included as function in the Act. Explanation to the section clarifies that secretarial standards shall mean those issued by the ICSI and

approved by the Central Government.

It is interesting to note two major differences in the words used in sections 118 and 205. As already delineated, section 118 uses the word “observe” secretarial standards, whereas section 205 (1) (b) uses the more colloquial word, “complies”. If for nothing else, at least for the purpose of consistent English language usage, the same word could have been used in both places, ideally the latter word.

Secondly, the Explanation to section 205 states secretarial standards means secretarial standards issued by the ICSI. Note the difference again in the language – while section 118 uses the word specified by the ICSI, section 205 uses the more appropriate word issued by the ICSI. Here too, it would have been ideal if consistency was maintained and the same word “issued” had been used in both sections.

## Adoption of secretarial standards in industry and practice - New initiatives to be taken by ICSI

In view of this statutory provision, it is hoped that the ICSI will focus on specifying appropriate secretarial standards and ensuring their periodic review and updation so that they are relevant and meet the expectations of the company secretaries, corporate sector and other stakeholders. The statutory recognition provided by the new Companies Act is a harbinger. The ICSI must continue its exercise of propagating the benefits of adopting secretarial standards among the industry and other regulatory authorities. This statutory recognition must act as a lever to propel the profession into a higher trajectory. Members of the ICSI – both in industry and practice – must be sensitized to voluntarily adopt the other non-mandatory standards as well.

The SSB, which is the bulwark of the standards, has been doing a stellar job. Acting with god speed, it has already discussed and finalized the modifications to the existing standards so as to synchronize them with the Act. Its task is clearly cut out. As indeed, for all the stakeholders – corporates, professionals and the regulators.

## Conclusion

Since 2001, the ICSI has been playing a significant and key role in formulating and issuing various secretarial standards. The biggest triumph for the profession is that the Companies Act 2013 bestows statutory recognition to the secretarial standards of the ICSI. It is the beginning of a new era where besides financial standards, non-financial standards have been given importance and statutory recognition. This is an opportunity, legally induced, for corporates to adopt, implement and practise some of the best corporate governance practices. This will also be an enabler for companies to focus on greater transparency and non-financial disclosures. Ultimately, this is a good augury for the investors, the society and all the stakeholders concerned.

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**K. R. Sampath\*, ACS**

Advocate & Solicitor to Supreme Court of England and Wales

[sampath.kr@gmail.com](mailto:sampath.kr@gmail.com)

# Promoters : Role Under The Companies Act, 2013

➤ The Companies Act, 2013 has made substantive provisions to cover the role of promoters. It is only hoped that action under the Act does not come in the way of actions against promoters under the Security Regulations.

## PRELIMINARY

Company is a creation of law. Like a living person, a company has its own 'parents'- the promoters through whose vision the company comes into existence to carry on an enterprise. The role of a 'promoter' is neither that of an agent nor a trustee of the company but is like the 'Settlor' of a trust, though there is no cestui que trust. The concept of 'ratification' of acts by a 'promoter', after incorporation of a company, is akin to the persons agreeing to act as trustees of the 'Settlement' giving their consent to act as such.

The role of a 'promoter' of a company is often compared to that of a promoter of a charitable institution under the Los Angeles Municipal Code. Section 44.01 of the said Code defines the term to mean "any person who for pecuniary compensation or consideration received or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation, or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying

on any drive or campaign for any such purpose.<sup>1</sup>"

The Companies Act, 1956 did not spell out the importance of the role of promoters of a company nor had a general definition of this expression as applicable to the whole of the Companies Act, 1956, except for a definition, limited to a specific section, contained in clause (a) of sub-section (6) of section 62 which states that for the purposes of that section "the expression 'promoter' means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company".

The Expert Committee on Company Law under the Chairmanship of Dr. Jamshed J. Irani, had recommended that 'the terms 'Promoters' and 'control' should be clearly defined for avoiding any doubts' and that 'The process of incorporation through registration should be based on correct information to be disclosed by the promoters of the company with full liability towards its correctness'.

Before the Standing Committee on Finance which considered the Companies Bill, 2009, it was, ignoring the provisions

<sup>1</sup> U. S. Supreme Court *Rescue Army v. Municipal Court of City of Los Angeles* 33a US 549 (1947) quoted in the dissenting judgment by Mr. Justice Murphy.

\* Also Practising Corporate Advisor.



## » There is a provision to grant relief, subject to acceptance by the company after its incorporation, in cases where the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation under the Specific Relief Act, 1963.

already contained in section 62(6)(a) referred to earlier, averred that “The expression ‘promoter’, is not justified in the Companies Act and should be deleted. It is more a capital market terminology, but extensively used in the media to create a separate ‘class’. The purpose for which ‘Promoter’ is sought to be defined in Law (as distinct from Regulations) is unclear, more so since the ‘control sequence’ which is Shareholder - Boards - Management is well defined in existing law. ....To define a nebulous and extra constitutional authority who in law ‘has control over affairs of Company’ is wrong in fact, as well as holding potential to severely compromise the accountability of the Board and Management.”<sup>2</sup> Notwithstanding such observations, the Companies Bill, 2011, did contain definition of expressions ‘promoter’ as well as ‘control’.

Before considering the provisions relating to ‘promoter’ under the Companies Act, 2013, one may enumerate some of the instances of the use of the expression ‘promoter’ under the Companies Act, 1956:

- (a) Section 62 dealing with civil liability for mis-statements in prospectus – where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a ‘promoter’ of the company shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein.
- (b) Section 69 dealing with prohibition of allotment unless minimum subscription is received – it provides for levy of fine on ‘every promoter’ contravening the provisions of sub-section (4) of section 69.
- (c) Section 75 dealing with return as to allotments – contravention of proviso to clause (a) of sub-section 1 (not to show allotment made against cash if cash is not received).
- (d) Section 322 dealing with unlimited company – giving of

notice by a promoter to a person who is proposed to be a director or manager and failing this levy of fine on the promoter.

- (e) Section 478 dealing with power to order public examination of promoters by the Tribunal in case of winding up of a company.
- (f) Section 519 dealing with application of liquidator to Tribunal for public examination of promoters if in his opinion a fraud has been committed by a promoter in the promotion or formation of the company.
- (g) Schedule II dealing with matters to be specified in prospectus in terms of sections 43(2)(a) and 56 Promoters and their background, short particulars of every transaction relating to the property completed within the two preceding years with promoter, contribution of promoters towards means of financing and benefit paid or given within the two preceding years or intended to be paid or given to any promoter.

Apart from the above there is a provision to grant relief, subject to acceptance by the company after its incorporation, in cases where the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation under the Specific Relief Act, 1963 [sections 15(h) and 19(e)].

With these preliminary observations, we now proceed to consider the provisions of the Companies Act, 2013 relating to ‘promoter’.

### DEFINITION

For the first time, based on the recommendations of the Expert Committee under the Chairmanship of Dr. J.J. Irani, the Companies Bill 2008 and 2009 contained a definition of the expression in clause (zzq) of sub-section (1) of section 2, which read as under:

*“promoter” means a person –*

- (a) *who has been named as such in a prospectus*
- (b) *who has control over the affairs of the company, directly*

<sup>2</sup> Para 1.96(ii) of the 21st Report of the Standing Committee on Finance on Companies Bill, 2009.



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*or indirectly whether as a shareholder, director or otherwise*

**Provided** that nothing in sub-clause (b) shall apply to a person who is acting merely in a professional capacity.

On the basis of recommendations of the Standing Committee on Finance on the Companies Bill, 2009 (Companies Bill 2011; and later amended to read as Companies Bill 2013), the Companies Act, 2013 contains the definition under sub-section (69) of section 2, which read as under:

**“promoter” means** a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

**Provided** that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity (emphasis supplied)

One can note that the differences between the earlier Bills and the final provision is the modification of clause ‘a’ by insertion of an additional criteria, the insertion of clause (c) and the application of proviso to clause (c) instead of to clause (b). The proviso to clause (b) under the Companies Bill, 2009, was removed due to the observations of the Standing Committee on Finance 57th Report that “the proviso

reference to sub-clause (b) is erroneous since it gives rise to a meaning that if a person is acting in a professional capacity he can still have control over the affairs of the company, directly or indirectly, whether as a shareholder, director, or otherwise and such a person would not be a promoter. This is a very easy gateway and would not be justified in public interest”.

The additional criteria may have been inserted in clause (a) to ensure changes in the status of a ‘promoter’ are reflected on the basis of disclosures made in the Annual Return of the company filed with the Registrar viz. particulars regarding ‘promoters’ as it stood on the close of the financial year **along with changes therein since the close of the previous financial year**. In this regard one may also refer to the reply given by the Ministry to the Standing Committee on Finance viz. “... It is not the intention that in the likelihood of change in the ‘promoter’ of a company over a period of time, the promoter initially indicated in the offer document should continue to remain liable even for the actions of the company after the change in promoter have taken place.” Thus both the initial promoters as well as promoters indicated in the Annual Return are covered under the definition.

The insertion of clause (c) is to bring within the meaning of the expression ‘promoter’ any person who is ‘acting from behind’ and is ‘shadow boxing’ but is in fact controls the operations of a company. The insertion ignores the objections raised before the Standing Committee on Finance that “To define a nebulous and extra constitutional authority who in law ‘has control over affairs of Company’ is wrong in fact, as well as holding potential to severely compromise the accountability of the Board and Management”.

Thus the following four categories of persons fall within the definition of the expression ‘promoter’ –

- a person who has been named as such in a prospectus or
- a person identified by the company in the annual return referred to in section 92 or
- a person who has control over the affairs of the company or
- a person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

While identifying persons under items (i) and (ii) is easy, the other two categories, if a person does not fall in the first two categories, may have to be established by facts and thus may lead to litigation.

It will be of interest to note that the definition clause under the Companies Act, 2013, uses the word ‘**means**’ i.e. more specific, while the definition contained in the Securities and





Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (SAST) which refers to section 2(1)(za) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, is an **inclusive definition** as it uses the word '**includes**'. Thus the definition of 'promoter' under the above said Regulations have a wider meaning than that as contained in the Companies Act, 2013. Readers must note this difference. In addition since the definition does not mention whether it applies only to a listed company it will have application to all unlisted companies whether they are public limited companies or private limited companies.

There are two other expressions used in this definition which have been defined in the legislation viz. 'control' and 'prospectus'. These expressions are defined in sub-section (27) and sub-section (70) of section 2 respectively as under: 2(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

2(70) "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

The Standing Committee on Finance observed on Companies Bill 2009, that "Since the term 'controlling interest' has been defined in clause 2(1)(za) but has not been used in the Bill anywhere it may be considered for omission; and that the suggestion to define the term 'control' in the Bill, particularly in context of the definition of the term 'promoter' may be considered." Based on this observation the definition of the expression 'control' is inserted in the Companies Act, 2013.

It may be of interest to note that the definition of 'control' is similar to the definition contained in Regulation 2(1)(e) of the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011,(SAST) excluding the proviso in the said Regulation.

The definition of 'Control' is an inclusive definition as it uses the word '**include**' and thus wide enough to cover 'control' as generally understood and specifically covers –

- (a) the right to appoint majority of the directors or
- (b) right to control the management exercisable by a person or persons acting individually or in concert, directly or indirectly, including

- i. by virtue of their shareholding or
- ii. management rights or
- iii. shareholders agreements or
- iv. voting agreements or
- v. in any other manner

- (c) right to control policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including
  - i. by virtue of their shareholding or
  - ii. management rights or
  - iii. shareholders agreements or
  - iv. voting agreements or
  - v. in any other manner

The absence of the proviso as contained in SAST viz. "**Provided** that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position" is absent in the Companies Act, 2013. This together with the use of the words 'in any other manner' is likely to be open for dispute and hence likely to lead to litigation.

## PENAL PROVISIONS

The Companies Act, 2013, has several sections providing for penal actions against the 'promoter'. We briefly narrate some of the provisions:

### A. Section 7(6)

Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters shall each be liable for action under section 447.

### B. Section 35(1)

Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the promoter of the company, without prejudice to any punishment to which he may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

### C. Section 42(10)

If a company makes an offer or accepts monies in contravention of section 42 i.e. making an offer or invitation of securities to a section of the public otherwise than through issue of a prospectus by way of private



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The insertion of clause (c) is to bring within the meaning of the expression 'promoter' any person who is 'acting from behind' and is 'shadow boxing' but is in fact controls the operations of a company. The insertion ignores the objections raised before the Standing Committee on Finance that "To define a nebulous and extra constitutional authority who in law 'has control over affairs of Company' is wrong in fact, as well as holding potential to severely compromise the accountability of the Board and Management".

placement basis without complying with the requisites under the said section, inter alia its promoters shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher.

## D. Section 102(5)

Failure to make full disclosure or non-disclosure concerning each item of special business to be transacted at a general meeting will entail inter alia the promoter a fine which may extend to fifty thousand rupees or five times the amount of benefit accruing inter alia to the promoter or any of his relatives, whichever is more. Section 173 of the Companies Act, 1956 did not provide for such fine, except for the general provision under section 629A.

## E. Section 266(2)

If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than the purposes of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall, by order, disqualify inter alia the said promoter from being appointed as a director in any company registered under this Act for a maximum period of six years.

## F. Section 284(2)

The promoters, inter alia, who are or have been in employment of the company or acting or associated with the company who did not, without reasonable cause, extend full cooperation to the Company Liquidator in discharge of his functions and duties shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

## DISCLOSURES

### A. Section 26(1)(a)(xi)

Every prospectus issued by or on behalf of a public company either with reference to its formation or

subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company shall state the particulars relating to any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company.

### B. Section 26(1)(a)(xiv)

Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company shall give disclosures in such manner as may be prescribed about sources of promoter's contribution. [Para 3.16 of the Report of Standing Committee on Finance]

### C. Section 92(1)(e)

Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding inter alia its promoters, along with changes therein since the close of the previous financial year.

### D. Section 93

Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change. This is a new clause. [Para 7.12 of the Report of Standing Committee on Finance]

### E. Section 102(2)

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of inter alia every promoter shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement to be sent to all members.

### F. Section 230(3)

In a statement required to be sent to all the creditors or class of creditors and to all the members or class of



members and the debenture-holders of the company disclosing the details of the compromise or arrangement, explanation should be given as to the effect of such proposal to promoters.

#### G. Section 232(2)

Where an order has been made by the Tribunal in respect of merging companies or the companies in respect of which a division is proposed, the companies required to circulate the for the meeting so ordered by the Tribunal a report adopted by the directors of the merging companies explaining effect of compromise on inter alia promoters laying out in particular the share exchange ratio, specifying any special valuation difficulties.

### 5.Prohibition to act as an Independent director

#### Section 149 (6)

A person –

- (a) who is or was a promoter of the company or its holding, subsidiary or associate company; or
- (b) who is related to promoters of the company or
- (c) who has or had any pecuniary relationship with the promoters during the two immediately preceding years or during the current financial year; or
- (d) or his relatives is a Chief executive or director of a non profit organisation which receives 25% or more of its receipts from a promoter of the company cannot be an independent director of that company.

### 6.Right to appoint directors on the Board of the company

#### Section 167(3)

Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1) of section 167, inter alia the promoter has a right to appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting (No such provision in the 1956 Act)

### 7. Opportunity to exit for shareholders

#### (a) Section 13(8)(ii)

A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and apart from such resolution published in newspapers the dissenting shareholders are given an opportunity to exit by the



promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

#### (b) Section 27(2)

A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution, and The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

It may be pointed out that notwithstanding the provision for Class Action under section 245 of the Companies Act, 2013, there is absence of action against a promoter, though the Expert Committee had observed "A situation may arise whereby the interest of the company may need to be protected from the actions of the persons in control of the company. At the same time, the interests of the larger body of investors/ shareholders may have to be provided legal avenues to protect the company in their interest. For this purpose, the law should provide for 'class action/derivative suits on behalf of depositors/shareholders. The promoters, managers held guilty of misfeasance / fraud should be asked to pay the legal costs, if proven guilty."

It would be seen from the above analysis that the Companies Act, 2013 has made substantive provisions to cover the role of promoters. It is only hoped that action under the Act does not come in the way of actions against promoters under the Security Regulations.

CS



# Articles in Chartered Secretary Guidelines for Authors

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

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1. I, Shri/Ms./Dr./Prof ....., declare that I have read and understood the Guidelines for Authors.
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# Invitation of Articles for Special Issues of Chartered Secretary

It has been decided to bring out special issues of Chartered Secretary as under:

Issue	Last Date for receiving Articles for this Issue	Theme	Illustrative Coverage
November, 2013	October 15, 2013	<b>Transitioning from Company Secretary to Governance Professional</b>	<ul style="list-style-type: none"> <li>• Role of Professions in Economic Development • Role of CS in Governance • Governance in Government • Governance in Companies • Governance in Not-for-profit Organisations • Governance in Banking and Insurance Industry • Regulation of the Profession of CS • Development of the Profession of CS • CS as Independent Directors • Balancing Independence and Accountability of a Governance Professional • Identifying and Resolving Conflict of Interests of a Governance Professional • Risks and Liabilities of a Professional • Protection available to Professionals • Developing and Imparting Governance Knowledge and Skills • Continuing Professional Education for Governance Professionals • Ethics in Governance Profession • Behavioural Traits of a Governance Professional • Conducive Corporate Environment to sustain Governance Professionals</li> </ul>
January, 2014	December 15, 2013	<b>FEMA</b>	<ul style="list-style-type: none"> <li>• Foreign Investments in India • Investment Routes and Procedures • Foreign Direct / Portfolio Investment • Foreign Exchange Management • External Commercial Borrowing • Foreign Currency Convertible Bonds • ADRs/GDRs • Deferred Payment Protocols • U K Sinha Committee Report • Chandrasekhar Committee Report • Overseas Business Opportunities and Financing thereof • Joint Ventures / Branches of Overseas Companies /Opening of Branches Abroad by Indian Companies • Indian Depository Receipts • Offences, Contraventions and Compounding Provisions • Common Adjudication Authority • Currency Derivatives • Provisions in Indian Financial Code</li> </ul>
March, 2014	February 15, 2014	<b>Gloomier Side of Business</b>	<ul style="list-style-type: none"> <li>• Corporate Fraud • Violations of Corporate Laws • Securities Market Manipulation • Violations of Securities Laws • Enforcement Actions • Benami Transactions • Money laundering • Financing of Terrorism • Serious Fraud Investigation Office • Financial Intelligence Unit • Financial Action Task Force • Economic Offences</li> </ul>

Articles on the aforesaid subjects are welcome for consideration by the Editorial Advisory Board for publication in the said special issues. Contributors may also refer to the general guidelines for authors published elsewhere in this issue.

The articles may kindly be forwarded to:

**The Deputy Director  
(Publications)**

The Institute of Company Secretaries of India, 22, Institutional Area  
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e-mail: [ak.sil@icsi.edu](mailto:ak.sil@icsi.edu)

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## Corporate Laws

LW: 89.10.2013

RAMONA GARWARE v. DEVE PAINTS LTD & ANR [BOM]

Criminal Writ Petition No. 1222 Of 2013

K. U. Chandiwal, J.

[Decided on 21/08/2013]

**Companies Act, 1956 - Section 630 - wife of deceased employee occupying the flat - dispute between the wife and mother of the deceased - whether wife could claim right to possession of the flat as rightful independent tenant - Held, No.**

### Brief facts

Jaideep Garware was appointed as Vice President of Garware Paints. In the year 1988, he took over possession of the flat - suit premises. On December 27, 1989, he was appointed as whole time Director. Petitioner - Ramona married to Jaideep Garware on April 9, 1992. Garware Paints Ltd. was taken over by Deve Paints - Respondent, under Agreement. Later, Jaideep asserted as tenant of Garware Paints Ltd in respect of the said flat. On September 25, 1996, Respondent issued a notice to Jaideep Garware to vacate the flat. He filed declaratory R.A.D. Suit no.1771 of 1996. Anita Garware, mother of Jaideep was impleaded as plaintiff in place of Jaideep Garware, same was questioned by Petitioner. Consent terms were recorded on March 21, 2001 in the High Court between Petitioner and Anita Garware. Thereafter, the Petitioner filed Suit no.2535 of 1999 against her mother in law.

Meanwhile, Respondent instituted, on July 11, 1997, the subject complaint under Section 630 of the Companies Act, in which the Learned Additional Chief Metropolitan Magistrate issued process under Section 630 of the Companies Act, 1956 against the petitioner, same is questioned in the present petition.

Decision: Petition dismissed.

### Reason

The submissions that possession of Petitioner is with her independent rights as tenant, is a defence, not yet settled in any competent forum. Matter is pending before Supreme Court. Any

agreement or consent terms between two individuals detrimental to the rights of original owner, will not acquiesce him nor such rights is foreclosed. The order of this Court dated April 3, 2001 in Writ Petition no.7529 of 2000 is explicit. It primarily does not bind respondent M/s.Deve Paints Ltd. or eclipse its rights to the suit flat in terms of Section 630 of the Companies Act. Such proceedings were pending even on 3.4.2001. There is no controversy that Smt. Ramona asserted in several proceedings to be staying with her husband and having left the premises owing to her differences. She is asserting her rights as a widow of Jaideep Garware. Consequently, she is bound to face proceedings under Section 630 of the Companies Act. The legal position in respect of a person staking claims by any other title in civil proceedings is explained by Hon'ble Supreme Court in the matter of Lalita Jalan & Anr v. Bombay Gas Co Ltd & Ors ((2003)6 SCC.

The question that has arisen in the present case is whether the provisions of section 630 of the Companies Act can be made applicable also to the heirs and legal representatives of the officer or employee in whose charge the property of the company has been left by the deceased employee. In my judgment, on a proper construction of the said provision, the said heirs and legal representatives would be included in the term "officer or employee of a company". An employee who is allotted a residential accommodation by the company does not occupy it alone, but occupies it along with the members of his family. If section 630 obliges an officer or an employee to return the property of the company, I see no reason why after his death, his heirs and legal representatives who continue to be in possession of the property of the company by virtue of they being the heirs and legal representatives of the officer or employee should be absolved of their liability to return the property to the company.

It is pertinent that memorandum of understanding between the Company - respondent and M/s.Garware Paints does not refer to tenancy to a valuable property, Clause 15 thereof is explicit. The tenancy document primarily is shrouded with militant act to retrograde impact of claim accelerated by the respondent - company. Primarily petitioner cannot stake independent claim to retain the flat, as she is bound to face impact of Section 630 of Companies Act.

Elaborate exploration of facts was advanced before this Court by the petitioner, however, I am not dealing with the same in detail as before this Court, the controversy is shrunk to a limited aspect as to whether there was sufficiency of material before the learned Judge to issue process. Indeed there was sufficient material to issue process.

CS

LW:90.10.2013

COL (RETD) DALIP SINGH SACHAR v. MAA KARNI COAL CARRIERS (P) LTD & ANR [DEL]





CCP (CO) 25/2005 & C.A.No.1545/2005

R.V. Easwar, J.

[Decided on 21/08/2013]

**Companies Act, 1956 read with Contempt of Courts Act - court's direction to file form 32 - company complied with the direction though after some delay which was explained - whether contempt established- Held, No.**

## Brief facts

This contempt petition has been filed by Col(Retd) Dalip Singh Sachar complaining of violation by the respondents of the directions issued by the Company Judge in his order dated 31.5.2005 passed in Company Appeal (SB) Nos.2 & 6 of 2005.

The brief facts leading up to the filing of the present petition are these. The petitioner and the respondent No.2 were directors of the respondent No.1 Company. The petitioner filed a petition before the Company Law Board under sections 397 and 398 of the Companies Act, 1956 complaining of acts of oppression and mismanagement. The disposed of the petition by order dated 28.12.2004. Both the parties were aggrieved by the order of the CLB and filed cross appeals before this Court in Company Appeal (SB) Nos.2 and 6 of 2005.

So far as Company Appeal (SB) 2 of 2005 is concerned, it was filed by the respondent against that part of the order of the CLB in which it was held that the provisions of section 283(1)(g) would not come into play and it cannot therefore be said that the petitioner had vacated the office of Director. So far as Company Appeal (SB) No.6 of 2005 is concerned, the following directions were issued by the Company Judge (A. K. Sikri, J., as he then was):-

- (i) the decision of the Board of Directors to induct Satish K Thappar, a civilian, as the Additional Director and issuance of further shares was erroneous and contradictory.
- (ii) the decision taken to the above effect in the meetings held on 27.6.1996, 4.7.1996 and 29.8.1996 was invalid. The issuance of further share capital was also invalid.
- (iii) however, it would be open to the company to pass the necessary resolution for allotment of the shares and the manner in which they should be allotted.

The SLP filed by the respondents against the judgment dated 31.5.2005 was dismissed on 13.7.2005.

On 5.10.2005, the respondent-company filed Form No.32 with the Registrar of Companies, showing the petitioner to be appointed as a director by order of this Court dated 31.5.2005/13.7.2005 and Satish Thapar as resigned from directorship by the aforesaid orders.

The petitioner has filed the present contempt petition on the ground that the respondents have failed to carry out the aforesaid directions of this Court.

Decision: Petition dismissed.

## Reason

I have considered the rival contentions and I have also perused the written submissions filed by both the sides.

On 5.10.2005, the respondents filed Form No.32 with the ROC (Annexure R-I). Therein the petitioner was stated to have been appointed as director by order of Delhi High Court dated 31.5.2005/13.7.2005. These are the dates on which this Court rendered the judgment and the date on which the SLP was dismissed, respectively. In the column "date of appointment or change", the date given was 13.7.2005. Satish K Thapar, the civilian director was shown to have resigned from directorship by order of Delhi High Court dated 31.5.2005/13.7.2005. In his case also, the date of appointment or change was shown as 13.7.2005. It may be noted that this Form was filed within 3 months from the date on which the SLP was dismissed. However, this Court by order passed on 22.4.2009 pointed out that prima facie since the removal of the petitioner was itself illegal, he would continue to be a director on all relevant dates including the dates on which the respondents claimed to have removed him and for the same reason the appointment of the civilian director would cease to have effect from the date of his appointment itself. Apparently, when this was pointed out, the respondents realised that the particulars given in Form 32 were inaccurate and sought 4 weeks' time for compliance. Time was granted. Thereafter, both sides were in agreement that a fresh form should be filed with the ROC to show that the petitioner continued as Director from 23.9.1996 to 13.11.2005 and accordingly, this Court, by order dated 19.1.2011, suggested that both the sides should find out as to what steps have to be taken by the respondent company to achieve this objective. It is necessary to mention here the significance of the date 13.11.2005. This is because the annual general meeting of the company was called on 14.11.2005 and notices for the same were sent to everyone concerned, including the petitioner. The company had earlier received two notices from its shareholders proposing a resolution for the removal of the petitioner from the office of the director. Copies of these notices and the proposed resolutions were also sent to the petitioner on 31.10.2005. The petitioner however did not attend the annual general meeting, in which the resolutions were unanimously passed and the petitioner was removed from the office of director of the company w.e.f. 14.11.2005. This fact was also communicated to the petitioner by the respondents by letter dated 26.11.2005 (Annexure P- 19). It was because of this development, which was made known to the Court, that the Court on 19.1.2011 observed that a fresh Form had to be filed with the ROC showing that the petitioner continued as director from 23.9.1996 to 13.11.2005, as he had been removed from 14.11.2005. Immediately thereafter an affidavit was filed on behalf of the respondent dated 13.7.2011, a copy of which was given to the petitioner. On 19.7.2012 this Court noticed that the earlier directions given on 19.1.2011 had not been complied with; it accordingly directed the respondent to file the Form 32 (in physical form) with the ROC. An affidavit of compliance was directed to be



filed within two weeks. An affidavit of compliance was filed which was taken on record on 1.11.2012 to which the petitioner wanted to respond. His response was also taken on board. Eventually, on 1.5.2013, the delay in filing the prescribed form with the ROC was condoned and the ROC was directed to accept the uploading of the digital version of Form 21.

A perusal of the affidavit dated 13.7.2011 filed by the second respondent (Retd. Major General P C Puri) shows the following chronology. After the order of this Court dated 19.1.2011 in which both sides were directed to find steps for filing a fresh Form with the ROC, there was no response from the petitioner and no suggestion came from him. Therefore, the respondent approached the ROC on 6.4.2011 and explained the entire case including the orders passed by this Court on 19.1.2011 and the problem that was faced by the company to get the order by this Court implemented due to the electronic filing system which had come into force in the meantime. The Deputy ROC suggested to the respondent that e-Form 32 may be generated again and submitted afresh. When this was attempted, the Form was generated but the system did not accept the same. Therefore, the second respondent personally handed over the Form 32 to the ROC on 13.4.2011 together with relevant documents so as to get the order implemented. The second respondent followed it up on several occasions with the ROC and on 30.6.2011, the official in the office of the ROC suggested an alternative, which was to generate an electronic Form 21 and get the order of this Court scanned. On 6.7.2011, the respondent generated e-form 21 providing the details as per the orders of this Court i.e. that the petitioner continued as a director from 23.9.1996 till 13.11.2005. A scanned copy of the order of this Court passed on 19.1.2011 was also sent along with the e-form. On 7.7.2011, the receipt of the e-form 21 was acknowledged by the ROC.

It was thus stated in the affidavit that it was only on account of the e-filing system that the Form No.32 was not accepted and after considerable efforts and discussion with/guidance from the office of the ROC that the Form No.21 was generated electronically and filed along with a scanned copy of the order of this Court dated 19.1.2011.

The delay in filing the Form was condoned by the order of this Court passed on 1.5.2013 and the ROC was directed to accept the uploading of the digital version of Form 21.

Having regard to the above circumstances, I am unable to see any wilful or intentional disobedience of the orders of this Court on the part of the respondents. Pursuant to order dated 19.1.2011 (Manmohan, J.) the company filed digital Form 21 after discussion with the office of ROC and after taking their guidance. However, the company was directed by this Court (Indermeet Kaur, J.) on 19.7.2012 to file Form No.32 with the ROC. This direction was complied with on 29.10.2012. I do not therefore see any disobedience of the orders of this Court. The compliance with the orders of the court took some time on account of technical problems which were

beyond the company's control. It is therefore not possible to impute any contumacious conduct on the part of the respondents. They have made all efforts, bonafide to comply with the orders of the court.

CS

LW:91.10.2013

FRESENIUS KABI ONCOLOGY LTD v. SEBI [SAT]

Appeal No. 133 of 2013

Justice J. P. Devadhar (PO), Jog Singh & A. S. Lamba (MM).

[Decided on 10/09/2013]

**SEBI (Delisting of Equity Shares) Regulations, 2009 - Regulation 17 - Listed company – promoter diluted 9% of its shareholding by way of approved OFS scheme - later company opted for delisting which was approved by majority of shareholders - Board insisted that the company's eligibility for delisting should be linked to its promoter's pre - OFS shareholding - whether tenable - Held, No.**

## Brief facts

The public shareholding in the Appellant stood at 10% as opposed to the mandatory requirement of 25% which has been prescribed by the amended Securities Contracts (Regulation) Rules, 1957 ("SCRR"). In order to achieve this minimum public shareholding, the appellant after seeking and receiving the required approvals from the Foreign Investment Promotion Board ("FIPB") decided to issue and launch OFS in 2 tranches of 7.5% each. On October 12, 2012 when the OFS was issued, it was issued with an option to sell an extra 1.5% of the Appellant's shares if the OFS was received well in the capital market. As it turned out, the Appellant ended up divesting its shareholding by 9% and consequently, FKSL's shareholding in the Appellant was reduced to 81%.

Meanwhile, appellant's Kalyani plant was closed as the Food and Drugs Administration ("FDA") of the US, while conducting a routine inspection found certain discrepancies in adherence to norms with respect to manufacturing, documentation practices and product testing. Next, the Appellant decided to undertake voluntary delisting, which was successfully completed as per the norms laid down in the delisting regulations.

The Respondent passed an order directing that the pre-OFS shareholding of FKSL shall be applicable for the purposes of regulation 17 of Delisting Regulations. This is challenged in the present appeal before the Tribunal.

Decision: Appeal allowed.

## Reason

It is clear from the facts on record that the OFS was made with a



bonafide intention to in effect comply with the mandatory requirement of a 25% public shareholding as provided by Rule 19A of the SCRR. It is the negative findings of the FDA which led the Appellant to make the delisting offer. It is a fact that all necessary in-principle approvals required for the purposes of the delisting had been received by the Appellant from the two stock exchanges. A company secretary issued a certificate of compliance with Regulation 8 (1) (b) of the Delisting Regulations in favour of the company which shows that the delisting process was being carried on in accordance with the applicable law concerned. Now, when the delisting process was continuing smoothly, the Respondent suddenly decided to intervene and impose the needless condition on the Appellant that it ought to take its pre-OFS shareholding into consideration while complying with Regulation 17(b) of the Delisting Regulations.

Once the Respondent had established that the Appellant did in fact intend to conform to Regulation 19A of the SCRR, we are forced to question why then it decided to impose the ludicrous condition of taking the pre-OFS shareholding of FKSL, i.e. 90%, into consideration while moving forth with the delisting process. The Respondent claims to have done relying on the 5 complaints received by it. In the absence of any basis for the allegations in the complaints, it would have to be held that complaints are based on conjectures and surmises. The complaints seemed to be basing this inference on a pointless and rather seemingly concocted story which gives it the appearance of wild conjecture that the investors who bought the 9% shareholding in the OFS might have acted in collusion with the Appellant so as to sell those shares off when the delisting offer is made and ensure the successful completion of the delisting process. As stated above, no documents have been brought on record to lend any credibility to these accusations. It is pertinently noted that on receiving a copy of the complaints, the Appellant offered its replies to the Respondent which seem to have been acceptable to the Respondent considering no action has admittedly been taken against the Appellant regarding any of the complaints. Therefore, the entire issue regarding these complaints does not assist the Respondent's case in any manner, particularly when no meaningful opportunity of being heard has been granted to the Appellants by the Respondent. We would hasten to add that we do not make any comment on the merit or demerit of the said complaints and it is purely for Respondent, if so advised, to proceed in the matter of those complaints as per law and take a decision thereon.

Finally, we would like to point out that delisting of a listed company is the company's prerogative, and as long as the process of delisting is carried out within the four corners of law, no authority can interfere with the same without a solid foundation.

To sum up, dispute in this case is, where promoters of a company after obtaining necessary approval for compliance of minimum shareholding requirement under Regulation 19A of SCRR (as amended) by "Offer For Sale" reduce their shareholding from 90% to 81% and before achieving minimum shareholding requirement,

for valid reasons, seek delisting of shares under Delisting Regulations, whether, SEBI while permitting delisting, is justified in directing that for purpose of delisting shares held by promoters, should be considered at 90% instead of 81%. Admittedly, necessary decision for delisting has been taken after following due process of law. SEBI does not dispute genuineness of the reasons on the basis of which delisting is sought. If delisting is in the ordinary course of business, then there is no reason for imposing conditions. It appears that impugned direction has been issued on the basis of certain complaints which are yet to be investigated.

Therefore, in the facts of the present case, instead of fulfilling minimum public shareholding requirement under SCRR, since delisting of shares under Delisting Regulations have been sought for valid and genuine reasons, in our opinion, SEBI while permitting delisting was not justified in directing that the promoters' shareholding prior to OFS, that is shareholding at 90% instead of 81%, should be taken into consideration for the purpose of delisting.

In the light of the aforesaid discussion, we allow the present appeal to the extent that the Appellants may go ahead with their delisting offer without the condition imposed by the Respondent regarding compliance with Regulation 17(b).

CS

LW:92.10.2013

S.P.J. STOCK BROKERS PVT LTD v. SEBI [SAT]

Appeal No. 52 of 2013

Justice J.P. Devadhar, Jog Singh & A. S. Lamba.  
[Decided on 04/09/2013]

**SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 – Regulation 4 - price fluctuation in the scrips - synchronised trade - imposition of penalty - whether tenable - Held, No.**

## Brief facts

Appellant is primarily engaged in the business of stock broking and investment. On noticing that in the scrip of Adani Exports Ltd. there were huge spurt in volumes and wide fluctuations in price during the period from July 9, 2004 to January 14, 2005 ('first period' for short) and August 8, 2005 to September 9, 2005 ('second period' for short), SEBI had initiated investigation to look into reasons for price-volume fluctuations. Fluctuation in price noticed during the first period (pre-split) was ranging from Rs. 481 to Rs. 756 and ranging from (past-split) Rs. 64.35 to Rs. 74.20 during the second period.

On completion of investigation by show cause notice dated June 23, 2008 appellant was called upon to show cause as to why enquiry should not be held and penalty not imposed under section 15HA and 15HB of SEBI Act, 1992 for the alleged violations of PFUTP





Regulations and Broker Regulations, which ultimately resulted in the passing of the impugned order.

Decision: Appeal is allowed.

## Reason

We have carefully considered rival submissions. Penalty under impugned order is imposed upon appellant solely on ground that almost all trades in shares of Adani Exports Ltd effected by appellant during investigation were found to be synchronized and those trades were with only one group. It is well established by various decisions by this Tribunal that synchronized trade is per se not illegal. Synchronized transaction would be illegal if it is executed with a view to manipulate the market, is dubious in nature and is executed with a view to avoid regulatory detection, does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting market equilibrium etc.

In this case, save and except recording that trades executed by appellant with one group were synchronized, no other particulars are set out in the impugned order. Neither names of persons forming group with whom appellant had traded nor has their connection with appellant been set out in the impugned order. Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium.

Mere fact that buy and sell orders between appellant and one group (with whom no connection is attributed) within a time gap of one minute with negligible or no price difference cannot ipso facto lead to conclusion that the trades in question were executed with a view to manipulate the scrip. In absence of any circumstantial evidence to suggest that synchronized trades were executed for purpose of upsetting market equilibrium or to manipulate market, it cannot be inferred that appellant was guilty of violating PFUTP Regulations or Broker Regulations. CS



## Competition Laws

LW:93.10.2013

VINEET KUMAR v. MINISTRY OF CIVIL AVIATION [COJ]

Case No. 18 of 2013

1224 [LW-114]

October 2013

Ashok Chawla (Chairperson), Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, Justice (retired) S.N. Dhingra & S. L. Bunker (Members).  
[Decided on 06/08/2013]

**Competition Act, 2002 - Section 2(h) - interpretation - enterprise - guidelines for procurement of aircrafts - whether Ministry of Civil Aviation is an enterprise - Held, No.**

## Brief facts

The present information has been filed by the informant who claims to be a public spirited citizen to protect and promote the interests of the passengers who use air transport services in India under section 19(1)(a) of the Competition Act, 2002 ('the Act') against Ministry of Civil Aviation ('the opposite party'/ MOCA) alleging inter alia contravention of the provisions of section 4 of the Act.

It is the case of the informant that MOCA is going slow in allowing private airlines to import more aircrafts, which has raised question about the roles of MOCA in the investment and financial decisions of market participants. The informant has also alluded to a news item which reported that a Delhi based low-cost private airlines which had sought permission from ACC for import of 16 aircraft during this current calendar to add to its fleet, was instead permitted to import only 5 aircrafts.

The informant has made detailed reference to the various clauses of the impugned guidelines to contend that the same are violative of the provisions of section 4 of the Act. It is however unnecessary to reproduce the same in view of the reasons stated below.

The informant, essentially, appears to be aggrieved by the guidelines issued by MOCA to be followed by AAC while considering and examining inter alia the applications/ proposals for providing/ permitting air transport services/ import or acquisition of aircrafts for various purposes. The informant has impleaded MOCA in the present case as the opposite party and has Fair Competition for Greater Good defined regulation and provision of air transport services in India as the relevant market.

Decision: Case closed.

## Reason

On perusal of the information and the material filed therewith, it appears that the present information is not maintainable as MOCA does not appear to be an 'enterprise' within the meaning of the term as defined in section 2(h) of the Act for the purposes of the present case.

In this connection, it may be pointed out that section 2(h) of the Act defines the term 'enterprise' meaning as a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of



acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

As per the subjects allocated to MOCA vide the Second Schedule to the Government of India (Allocation of Business) Rules, 1961, the activities and functions of MOCA essentially include inter alia regulation of civil aviation sector and formulation of policy for the civil aviation sector. These activities of MOCA per se cannot be considered as commercial activities as implied in the definition of the term 'enterprise' as defined in section 2 (h) of the Act.

Thus, in light of the definition of the term 'enterprise', it is evident that MOCA while framing the impugned guidelines is not engaged in any economic activity as envisaged under the Act. Formulation of policies is not Fair Competition for Greater Good an activity which per se may be amenable to the jurisdiction of the Commission.

Before parting with this order, it may be noted that subsequent to the filing of the present information, MOCA abolished AAC. Thereupon, the Commission vide its order dated 23.04.2013 while noticing the fact of abolishing of AAC granted the informant time to file supplementary information. On 25.06.2013, the informant sought more time to file the submissions. In the submissions so filed, the informant sought yet more time to file the additional submissions after 'procuring the specific relevant information' from MOCA.

For the reasons noted above, it is not necessary to further dilate on this aspect. The information is not maintainable and deserves to be closed forthwith in terms of the provisions contained in section 26(2) of the Act. CS

LW:94.10.2013

RAJIV KUMAR CHAUHAN v. BPTP LTD [CCI]

Case No. 33 of 2013

Ashok Chawla (Chairperson), Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, Justice (retd.) S.N. Dhingra & S. L. Bunker (Members)  
[Decided on 31/07/2013]

**Competition Act, 2002 - Sections 4, 26(2) - housing construction - allegations that builder is abusing its dominant position - whether maintainable - Held, No.**

## Brief facts

Informant booked a residential unit in a project called "Park Elite Floors, Parkland, Faridabad" being developed by OP in Faridabad. The initial cost of the said unit was declared to public at large Rs. 25.56 lacs + EDC & IDC (external and internal development charges). OP launched the units with payment plan for the potential buyers who were supposed to make 35% payment before the Floor Buyers' Agreement ('the Agreement') could be entered into. The informant and OP entered into the Agreement after 35% of purchase price was paid by the informant. The Agreement laid down the terms and conditions required to be complied by both the parties. The informant alleged several malpractices on the part of OP and alleged that OP abused its dominant position in the market of residential flats in the area of Faridabad. The informant prayed the Commission to initiate investigation on the abusive conduct of OP in the relevant market.

Decision: Case closed.

## Reason

The Commission perused the information on record and heard the informant. Dealing with section 4 of the Act, the facts and circumstances of the matter suggests that the relevant market in the present case is the market of 'development and sale of residential apartments in Faridabad'. The informant alleged that the opposite party, being a dominant player in the relevant market abused its dominant position by unilaterally changing terms of the agreement increasing super built up area, illegitimately demanding cost escalation charges, delaying possession etc. Before considering alleged abuses, the dominance of opposite party needs to be established. The documents submitted by the informant to establish dominance of OP are draft red herring prospectus, some newspaper articles etc. None of these substantiates informant's case. The draft red herring prospectus gives an overview of the booming real estate industry to attract investors for OP's public issue of equity shares. Self-claim of being the 'biggest' or 'No. 1' by companies do not amount to establishment of dominance as required under the Act. The Explanation to section 4 categorically states (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour.

Applying the above stated test on the relevant market determined in the present case, OP does not appear to be a dominant player. The information available in public domain indicated that in the relevant market of 'development and sale of residential apartments in Faridabad' there were many real estate developers operating and competing with each other. Though the Opposite Party was one of the known builders in the relevant market, that fact in itself is not decisive for establishing dominance. The Commission in 'Ajit Mishra and Supertech Ltd' (Case No. 03/2013) observed that, the



presence of other well-known builders in the relevant market negates the contention that informant or any other consumer was dependent on the opposite party to purchase an apartment. In Case no. 42/2010 the Commission had occasion to consider the dominance of OP in the year 2010. The Commission, vide its order dated 16.12.2010 passed under Section 26 (2) of the Act, held that M/s BPTP Ltd. (OP) was not in a dominant position in the relevant market as defined above. No change in circumstances has come to the notice of Commission warranting a different view now. The information available in public domain also does not suggest any material change in the real estate industry in the relevant market of 'development and sale of residential apartments in Faridabad' so as to change the prima facie view with regard to dominance of the OP. Presence of other builders of repute also shows prevalence of competition. It is not a case where OP could operate independent of competitive forces.

Since OP, prima facie, does not appear to be in a dominant position in the relevant market, there seems to be no question of abuse of its dominant position within the meaning of the provisions of Section 4 of the Act. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act. CS



## Industrial & Labour Laws

LW:95.10.2013

EXIDE INDUSTRIES LTD & ANR V. PRESIDING OFFICER,  
ADDITIONAL LABOUR COURT & ANR [MAD]

W. P. No. 8405 of 2005 and W. P. M. P. No. 9075 of 2005 and  
W. P. No. 20416 of 2005

M. Venugopal, J.  
[Decided on 06/09/2013]

**Industrial Disputes Act, 1947 read with Apprentices Act, 1961 – probationer found unsuitable after training - not absorbed – probationer claimed reinstatement - whether tenable - Held, No.**

### Brief facts

Two cross appeals are involved in this common order. The Management filed W.P.No.8405 of 2005 for the quashing of the Award dated 09.09.2004 in I.D.No.495 of 2000 passed by the

Respondent/Additional Labour Court, Salem. The workman also filed W.P.No.20416 of 2005 to quash that portion of the Award denying back wages without any reason and resultantly to direct the management to pay the back wages from the date of termination till reinstatement and to award costs.

The Petitioner/Company, during the year 1997, recruited six candidates for undergoing training on the explicit condition that on successful completion of the said training period and on succeeding in the evaluation test they would be appointed as regular employees of the Company. The 2nd Respondent (Petitioner in W.P.No.20416/2005) was given an offer to join the Petitioner/Company as 'Production Trainee' initially for a period of one year. In the appointment letter, it is also stated that during the period of training the service can be terminated at any time by giving one month notice or in lieu of a month's consolidated stipend. Added further, it was mentioned that the Management at its sole discretion may extend the training period, if found necessary. It was an explicit term that the said offer would not confer on him any right to any employment in the organisation.

After completion of such training for an initial period of one year, 2nd Respondent's performance was appraised by the concerned authority of the Petitioner/Company and on such appraisal, he was found not suitable for regular employment. However, on considering the fact that he had already underwent training for one year, it was recommended by the Head of the Department for an extended period of training.

On completion of the second year training period, he was again appraised by the concerned authority of the Company, when it was found that the 2nd Respondent, inspite of such training for two consecutive years could not succeed in the appraisal test.

The Petitioner/Company, through letter dated 30.10.1999 informed the 2nd Respondent that a training period was closed in accordance with the Clause (6) of the training letter dated 22.01.1998 and as such, he ceased to be a trainee under the Petitioner/Company with effect from the closer of the working hours on 30.10.1999. Also that, a cheque for Rs.4,600/- was sent to him, but he refused to accept the same.

The workman filed I.D.No.495 of 2000 in which the impugned order was passed, which is challenged before the High court.

**Decision:** Management's petition allowed & workman's petition dismissed.

### Reason

As far as the present case is concerned, there is nothing on record to show that the 2nd Respondent's services were ever regularised or that he was brought on the rolls of the permanent establishment. As a matter of fact, the Offer of Appointment letter dated 22.01.1998 in respect of the 2nd Respondent shows that he





was offered with the employment in Petitioner/Management, Hosur works as 'Production Trainee' with necessary terms and conditions stipulated therein.

P.W.1 (2nd Respondent/Petitioner in W.P.No.20416/2005), in his evidence, had deposed that in his appointment order dated 22.01.1998 he was described as 'Trainee' and also stated that in the appointment order for the conditions laid down therein he had not raised objections and thereafter, he continued to work as 'Trainee'.

At the risk of repetition, it is to be pointed out that R.W.1 had deposed that Ex.R.2 is the Training Appointment Order in respect of the 2nd Respondent dated 22.01.1998 for a period of one year and the first year performance report and the first year performance appraisal report in respect of him was Ex.R.6 and Ex.R.7 is the report in respect of the second year and since his performance was not satisfactory it was recommended for a period of six months extension as per Ex.R.6 and accordingly, Ex.R.7 was issued and since his second year performance was not satisfactory, he was discharged by means of an Order of Termination dated 30.10.1999-Ex.P.3.

Also that, R.W.2 in his evidence has deposed that the 2nd Respondent was a Trainee who joined in the Petitioner/Company on 29.09.1997 and during the first year training period, the 2nd Respondent had scored 15/35 marks and other trainees had scored 24/35 and as such, his training period was extended to second year and during second year also he scored 10/35 marks and that his appraisal was not upto the mark that he was disengaged.

A perusal of Ex.P.3-Order of Termination/Order of disengagement dated 30.10.1999 shows that in accordance with Clause (6) of the Training Letter issued to the 2nd Respondent, he was informed that the training period was closed and accordingly, he cease to be a Trainee in a Petitioner/Company effective from the closing of the working hours on 30th October 1999 etc.

As per Clause (6) of Ex.P.1 dated 22.01.1998, the 2nd Respondent was issued with one month's stipend for a sum of Rs.4,600/- towards Notice Pay and fifteen days stipend towards Retrenchment Compensation etc. However, this amount, by cheque, was returned by the 2nd Respondent. Even though, the Petitioner/Management had not issued any formal letter to the 2nd Respondent in extending his period of probation, after completion of one year in terms of Ex.R.9-Standing Order 21(2), it cannot be denied, in the instant case, that the 2nd Respondent till his disengagement was serving only in the capacity as 'Trainee' and as stated already, in the instant case, there was nothing to show that the 2ndRespondent's service was ever regularised or that he was brought on the rolls of the permanent establishment.

As such, this Court holds that the 2ndRespondent (Petitioner in W.P.No.20416/2005) was only a 'Trainee' at the time of his disengagement and viewed in that perspective, the stand taken

by the 2ndRespondent that he was a Workman and also the view of the 1st Respondent/Additional Labour Court, Salem that when there was no formal order of extension of training period and the Trainee was allowed to continue for more than one year after the completion of one year training and he was discharging the works of regular nature he should be considered as a Workman within the meaning of Section 2(s) of the Industrial Disputes Act, are not correct and legally tenable in the eye of law.

Also that, even though Section 2(s) of the Industrial Disputes Act, 1947 uses the term 'Apprentice', yet, merely employing such term within the ambit of the definition of 'Workman', in the considered opinion of this Court, could not confer a vested right on a Trainee to be called as 'Workman' within the meaning of Section 2(s) of the Act. In short, the 2ndRespondent, who was engaged as 'Production Trainee' by the Petitioner/Management, does not fall within the definition of Workman as per Section 2 of the Industrial Disputes Act, 1947.

Therefore, an apprentice even though was not engaged in respect of any purported designated trade would not be Workman under the Industrial Disputes Act and therefore, the question of his reinstatement would not arise on any score. Looking at from that angle, the conclusion arrived at by the 1stRespondent/Additional Labour Court, Salem, in its Award that the 2nd Respondent was not a Trainee after completion of training and his non-employment was not justified, is an incorrect one based on the latent and patent facts and circumstances of the present case which float on the surface. As a logical corollary, the contra plea taken on behalf of the 2ndRespondent is not acceded to by this Court.

Likewise, the findings rendered by the Additional Labour Court that the dismissal or discharge of the 2ndRespondent was not justified and that the workman is entitled to all the benefits and further, the Award passed to the effect that the 2ndRespondent could be reinstated into service without back wages and other benefits but with continuity of service from 01.11.1999, are clearly held to be unsustainable by this Court in the eye of law.

CS

LW:96.10.2013

BHARAT COKING COAL LIMITED v. WORKMEN& ANR[PAT]

W.P. (L) No. 3381 of 2001

Aparesh Kumar Singh, J.  
[Decided on 07/08/2013]

**Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 read with Section 10 Industrial Disputes Act, 1947 – turnkey contract - Principal employer awards contract to main contractor who in turn subcontracts to other - many sub - contractors engaged in the work- employees of petty**



**contractor claimed regularisation with the principal employer - whether tenable - Held, No.**

## Brief facts

The management, M/s. Bharat Coking Coal Ltd (BCCL) had awarded turn- key contract to M/s. Mining and Allied Machinery Corporation Ltd (MAMCL) for complete design, engineering, supply, delivery to site, erection and commissioning of a coal washery of 2.5 MTA at the cost of Rs. 72.50 crores. MAMCL awarded the contract to M/s. Hindustan Steel Works Construction Ltd (HSWCL).

As the contract involved various type of works, the contractor selected and engaged sub-contractors having specialization on certain items of works. In that process HSWCL engaged various sub-contractors from time to time. These sub-contractors selected and recruited their own workers, paid them their wages, supervised their works and exercised all kinds of control over them. The sub-contractors paid them the retrenchment compensation notice pay after completion of their works and thus released them after giving full and final payments.

The concerned workmen are claiming to have worked under the sub-contractor, M/s. Ratan Engineering Works (REW) during the period of his contract under HSWCL. REW's work was over in the middle of 1991 and all the workmen were paid the notice pay and retrenchment compensation at the time of completion of the contract job. They received all other dues at the time of their termination of service under the sub-contractors. HSWCL also completed its civil construction works in the middle of 1991 and retrenched all the surplus workmen not wanted by it in different contract jobs.

These workmen claimed regularisation with BCCL and therefore approached the Industrial Tribunal, which vide the impugned order directed the regularisation of these workmen which is challenged before the High Court.

**Decision:** Petition allowed.

## Reason

I have heard learned counsel for the parties at length and gone through the materials on record. The facts which have been borne on record and have been referred to in some details in earlier part of the judgment, shows that BCCL had awarded the turn-key work to MAMCL, which was having a license under section 12 of the Act of 1970, for construction work of Madhuban Washery Project. MAMCL awarded part of the work to its sub-contractor HSWCL, who was also having a license under section 12 of the Act of 1970 dated 18th November, 1988.

It is also not in dispute and has been accepted by the workmen themselves that they were working under the petty contractor REW who was engaged by sub-contractor HSWCL to perform certain works. Evidence of two workmen-witnesses i.e. W.W-1 and

W.W.-2, namely, Khedam Mahato and Arjun Mahato also shows that they were working under petty contractor in Madhuban Washery Project from May, 1987 to June, 1991. The case of the management as per written statement was that these workmen were paid wages by the petty contractor after completion of the work and were also given compensation wages for the notice period and had received full and final payment on termination of their work.

In the wake of such evidence brought on record, the learned Tribunal proceeded to render a finding that since Madhuban Washery Project was not registered under Section 7 of the Act of 1970 as a principal employer and the petty contractor REW was not also holding license under the same Act, therefore, the concerned workmen being the workers of the petty contractor should be deemed to be the employee of the principal employer.

While recording the findings the learned Tribunal relied upon a judgment of Hon'ble Apex court rendered in the case of Secretary, Haryana Steel Electricity Board v. Suresh & Ors 1999 LLR 433as also in the case of Air India Statutory Corporation v. United Labour Union 1997 Lab IC 365.

However, the judgment of Hon'ble Apex court in the case of Air India Statutory Corporation (Supra) stood overruled by Constitution Bench judgment of the Apex Court rendered in the case of SAIL v. National Union Waterfront Workers (2001) 7 SCC 1. Under the mandate of law prescribed under paras 125 and 126 of the judgment in the case of SAIL (Supra) on the issuance of prohibition notification under section 10(1) of the Act of 1970, the industrial adjudicator on a reference made before it is required to come to a finding on the basis of evidence adduced before it whether the engagement of contractor by the principal employer is in the nature of a ruse or camouflage. On rendering of such finding and after taking into account the factors which are enumerated in the said paragraphs of the judgment, the learned Industrial Tribunal has to come to a conclusion as to whether the workmen in question engaged through the contractor are required to be directed to be absorbed in the services of the principal employer. The impugned Award in the instant case was not given effect to as it had been stayed by interim order dated 31st July, 2001.

Therefore the judgment of Constitution Bench in the case of SAIL (Supra) would also be applicable to the facts of the present case. The consequences flowing out of non-registration under section 7 of the Act of 1970 by the principal employer or the contractor/petty contractor not having a license under section 12 of the Act of 1970 are not that the workmen could be automatically deemed to be treated as the employees of the principal employer. The learned Tribunal in such circumstances has acted contrary to the law laid down in the case of Dena Nath & Ors v. National Fertilizers Ltd (1992) 1 SCC 695 as also in the case of Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh & Ors (2002) 4 SCC 609.



In the instant case there was no prohibition notification issued either. Even in such a case the learned Tribunal had to come an independent finding on the basis of materials on record whether the arrangement made by the petitioner management was in the nature of camouflage or ruse before it could have directed regularization of the workmen in the employment of the BCCL.

The facts of the instant case as has been discussed hereinabove, however portray a totally contrary picture in the sense that the work which was a turnkey contract awarded to MAMCL executed through the sub-contractor HSWCL and the petty contractor REWL in turn were in no way connected with the operation of mine carried out by the petitioner BCCL. The turnkey contract awarded to MAMCL was for the construction of Madhuban Washery Project itself which involved design, engineering, supply, delivery to site, erection and commissioning of a coal washery of 2.5 MTA at the cost of Rs. 72.5 Crores.

In such circumstances, when the workmen themselves accepted that they were working under the petty contractor, learned Tribunal committed serious error of law which goes to the root of the matter by rendering the impugned Award, directing regularization of these workmen in the employment of BCCL. In the aforesaid facts and circumstances and the reasons recorded hereinabove therefore the impugned Award cannot be sustained in law as well as on facts and it is accordingly, quashed. The writ petition is allowed. CS

LW:97.10.2013

SEE (DSIDC) v. UNION OF INDIA & ORS [DEL]

W.P.(C) No. 4974/2011

Valmiki J.Mehta, J.  
[Decided on 29/08/2013]

**Pension scheme - autonomous government body - government refusing to introduce - whether court can issue direction to introduce a pension scheme - Held, No.**

## Brief facts

Petitioner is an association of retired and serving employees of Delhi State Industrial and Infrastructure Development Corporation (DSIDC). Originally, recommendation was made by DSIDC and approval of the Government was sought, however, the Government vide its letter dated 16.3.2000 said that benefit of pension scheme cannot be given to autonomous bodies by the government making contribution. In view of the above, it is clear that Government has refused to grant financial aid for the pension scheme. By this writ petition, relief is sought for introduction of a pension scheme for employees of DSIDC.

Decision: Petition dismissed.

## Reason

There cannot be direction against an unwilling employee because the Supreme Court has in a number of cases held that Courts cannot decide pay packages which are to be given to employees of an organization. It is settled law that the employer-organization knows best of the availability of finances with it to decide various schemes of seeking of regularization or fixing of pay-scales or giving other monetary benefits to its employees. It has been held that Courts should not step in and direct payment of a particular monetary emolument to the employees. A recent judgment of the Supreme Court in this regard is in the case of Indian Drugs and Pharmaceuticals Ltd. vs. Workman, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC 408.

Therefore, this Court cannot direct introduction of a pension scheme for the employees of DSIDC because this would amount to putting a financial burden on an employer-organization, and which burden the employer-organization has decided not to take up. This Court cannot impose financial burden on an unwilling employer-organization.

In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs. CS



**Tax  
Laws**

LW:98.10.2013

AKS APPARELS v. UNION OF INDIA & ANR [DEL]

W.P.(C) 2548/2013

Sanjiv Khanna & Sanjeev Sachdeva, JJ.  
[Decided on 03/09/2013]

**Customs Act, 1962 - Section 129DD; Customs and Excise Drawback Rules, 1995 - Rule 3 - duty draw back allowed to merchant exporter - later the draw back was sought to be**





**reclaimed as wrongly allowed as the assessee was not a manufacturer - whether tenable - Held, No.**

## Brief facts

Petitioner-AKS Apparels, sole proprietorship of Anup Joshi, by this writ petition has prayed for quashing/setting aside of Order No.243/12-Cus dated 11th June, 2012 passed by the Government of India in exercise of power under Section 129DD of the Customs Act, 1962 (Act, for short). The said order affirms the view taken by the first appellate authority and the adjudication authority that the petitioner herein should refund duty drawback of Rs.4,00,801/-.

The petitioner herein is an exporter and during the period November, 2006 to June, 2007, had exported readymade garments of FOB value of Rs. 82,74,303/- against shipping bills. The export itself is not disputed and there is no quarrel or issue with regard to the quantum of exports. The petitioner had applied for refund of excise duty portion on the imports as drawback and payment of Rs.4,00,801/- was sanctioned and made in 2007 (exact date is not stated). Subsequently, after about 3 years on 13th January, 2010, a show cause notice was issued that the said drawback had been wrongly paid and it was admissible only if the petitioner was a manufacturer exporter or had got the garments manufactured under job work. The claim was not admissible as the petitioner had procured the goods for export from traders in open market.

The above order is challenged before the High court.

**Decision:** Petition allowed.

## Reason

It is clear from the impugned order as well as the order passed by the first appellate authority and the adjudicating authority that the petitioner had not used the word "manufacturer" or stated that he had got the goods/garments manufactured on job work. Thus, it can be argued that there was no fraud, suppression of facts or misdeclaration by the petitioner. The word "supplier" used in the form clearly indicates that the goods were purchased from third parties. The show cause notice itself records that the petitioner had not filed details of the job workers or evidence of supporting manufacturer, yet the claim was accepted and payment of drawback was made.

The issue raised is covered by decision of this Court in Commissioner of Customs (Export) v. Kultar Export, 2013 (288) ELT 187 (Del.). It is apparent from the said judgment that Government was concerned with the objections and that the distinction between manufacture/job work and trader purchasers had led to difficulties and denial of claims. Therefore, they had issued Circular No.16/2009 stipulating that duty drawback would be admissible even when merchant exporters purchase goods from the local market for export. The stand of the respondents, however, was that this circular was operative prospectively i.e.

with effect from 25th May, 2009 and is not retrospective.

5. In Kultar Export (supra), the High Court examined the question whether the benefit of this Circular No.16/2009 could be given to an exporter from whom drawback paid was being reclaimed. The High Court affirmed the view taken by the Customs, Excise and Service Tax Appellate Tribunal that Rule 3 of the Customs and Excise Drawback Rules, 1995 did not make any distinction between manufacture/job work exporters on the one hand and traders or merchant exporters.

This distinction was undone and abolished by Circular No.16/2009 and it was clarified that the drawback would be available to a merchant/trader exporter. In the case of Kultar Export (supra), the respondents herein had initiated recovery proceedings for the period 2003-04 to 2006-07 i.e. for the period prior to Circular No.16/2009 stating that the exporter therein was a merchant/trader exporter and not a manufacturer or the person, who had got the garments stitched under job work and, therefore, was wrongly paid drawback of Rs.1,43,15,400/-. On appeal before the tribunal, the merchant-exporter succeeded. It was observed that the only applicable legal provision was Rule 3 of the Customs and Excise Drawback Rules, 1995, which did not make any such distinction. It was further observed that the respondents themselves had not relied on the said distinction when drawbacks were paid in spite of the circulars that drawback would be available to manufacturer/exporters or the person, who had got the garments manufactured on job work. It was held that the exporter therein was under a bona fide belief that they were eligible for drawback and this belief was also accepted and acted upon by the authorities.

In view of the aforesaid legal position, we allow the present writ petition and the impugned order is quashed and it is held that the respondents are not entitled to recover the drawback which was paid to the petitioner.

CS

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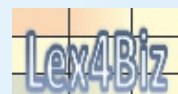
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ICSI House, 22, Institutional Area, Lodi Road, New Delhi- 110 003  
tel 011-4150444, 4534100 fax +91-11-24626727  
email [info@icsi.edu](mailto:info@icsi.edu) website [www.icsi.edu](http://www.icsi.edu)





## Corporate Laws

### 01 The Securities Laws (Amendment) Second Ordinance, 2013

No. 9 of 2013

[Issued by the Ministry of Law and Justice (Legislative Department) and Published in the Gazette of India (Extraordinary) Part-II - Section I dated 16.09.2013]

Promulgated by the President in the Sixty-fourth Year of the Republic of India.

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS the Securities Laws (Amendment) Ordinance, 2013 further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 was promulgated by the President on the 18th July, 2013;

AND WHEREAS the Securities Laws (Amendment) Bill, 2013 with certain modifications was introduced in the House of the People to replace the said Ordinance but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

#### CHAPTER I PRELIMINARY

##### 1. Short title and commencement.

- (1) This Ordinance may be called the Securities Laws (Amendment) Second Ordinance, 2013.
- (2) Save as otherwise provided in this Ordinance, it shall be deemed to have come into force on the 18th day of July, 2013.

#### CHAPTER II

#### AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

##### 2. Amendment of section 11.

In section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) (hereinafter in this Chapter referred to as the principal Act),-

- (i) in sub-section (2),
- (a) for clause (ia), the following clause shall be substituted, namely:-

“(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;”;

- (b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:-

“(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;”;

- (ii) after sub-section (4), the following sub-section shall be inserted, namely:-

“(5) The amount disgorged, pursuant to a direction issued, under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or section 19 of the Depositories Act, 1996, (22 of 1996) as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Ordinance.”.

##### 3. Amendment of section 11AA.

In section 11AA of the principal Act,-

- (i) in sub-section (1)-
  - (a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;
  - (b) the following proviso shall be inserted, namely:-
- “Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective





investment scheme.”;

(ii) in sub-section (2), in the opening portion, for the word “company”, the word “person” shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.”;

(iv) in sub-section (3),-

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:-

“(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify.”.

#### 4. Amendment of section 11B.

In section 11B of the principal Act, the following Explanation shall be inserted, namely:-

“Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

#### 5. Amendment of section 11C.

In section 11C of the principal Act,-

(i) for sub-section (8), the following sub-section shall be substituted, namely:-

“(8) Where in the course of an investigation, the Investigating Authority has reason to believe that any person or enterprise, as the case may be, to whom a notice under sub-section (3) has been issued or might be issued,-

(a) has omitted or failed to provide the information or produce documents as required in the notice; or

(b) would not provide the information or produce documents which shall be useful for, or relevant to, the investigation; or

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation,

then, the Chairman may, after being satisfied that it is necessary to do so, authorise the Investigating Authority or any other officer of the Board (the officer

so authorised in all cases being hereinafter referred to as the authorised officer), to-

(i) enter and search, with such assistance, as may be required, the building, place, vessel, vehicle or aircraft where such information or documents are expected or believed to be kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available;

(iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account or other documents;

(iv) require any person who is found to be in possession or control of any books of account or other documents, maintained in the form of electronic record, to provide the authorised officer the necessary facility to inspect such books of account or other documents.

*Explanation* - For the purposes of this sub-clause, the expression “electronic record” shall have the meaning assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

(v) seize any such books of account or other documents found as a result of such search;

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(vii) record on oath the statement of any person who is found to be in possession or in control of the information or documents referred to in sub-clause (i), (iii) and (iv).’;

(ii) for sub-section (9), the following sub-section shall be substituted, namely,-

“(9) The Board may make regulations in relation to any search or seizure under this section; and in particular, without prejudice to the generality of the foregoing power, such regulations may provide for the procedure to be followed by the authorised officer-

(a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(b) for ensuring safe custody of any books of account or other documents or assets seized.”;

(iii) in sub-section (10), the words “and inform the Magistrate of such return” shall be omitted.

#### 6. Insertion of new section 15JB.

After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have



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been inserted with effect from the 20th day of April, 2007, namely:-

**“15JB. Settlement of administrative and civil proceedings.**

(1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceeding initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the Board or Adjudicating officer, as the case may be, under this section.”.

**7. Amendment of section 15T.**

In section 15T of the principal Act, sub-section (2) shall be omitted.

**8. Amendment of section 26.**

In section 26 of the principal Act, sub-section (2) shall be omitted.

**9. Insertion of new sections 26A, 26B, 26C, 26D and 26E.**

After section 26 of the principal Act, the following sections shall be inserted, namely:-

**“26A. Establishment of Special Courts.**

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

**26B. Offences triable by Special Courts.**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court

established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

**26C. Appeal and revision.**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

**26D. Application of Code to proceedings before Special Court.**

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973. (2 of 1974)

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

**26E. Transitional provisions.**

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under this Section.”.

**10. Insertion of new section 28A.**

After section 28 of the principal Act, the following section shall be inserted, namely:-

**‘28A. Recovery of amounts.**

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter



referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties;

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961 (43 of 1961)

*Explanation 1.*-For the purpose of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

*Explanation 2.*- Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961(43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

*Explanation 3.*-Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, (43 of 1961) shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other

law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purpose of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.'

## 11. Amendment to section 30.

In section 30 of the principal Act, in sub-section (2),-  
(i) after clause (c), the following clauses shall be inserted, namely:-

"(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;

(cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;";

(ii) after clause (d), the following clauses shall be inserted, namely:—

"(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations."

## 12. Insertion of new section 34A.

After section 34 of the principal Act, the following section shall be inserted, namely:-

### Validation of certain acts.

"34A. Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times."

## CHAPTER III

### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

## 13. Amendment of section 12A.

In section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this Chapter referred





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to as 'the principal' Act), the following Explanation shall be inserted, namely:-

*"Explanation.-For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."*

## 14. Insertion of new section 23JA.

After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:-

### **"23JA. Settlement of administrative and civil proceedings.**

(1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992. (15 of 1992)

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply.

(4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be under this section."

## 15. Insertion of new section 23JB.

After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:-

### **'23JB. Recovery amounts.**

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of

the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961 (43 of 1961).

*Explanation 1.-For the purpose of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from | the person under this Act.*

*Explanation 2.-Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.*

*Explanation 3.—Any reference to appeal in Chapter XVIIID and the Second Schedule to the Income-tax Act, 1961, (43 of 1961) shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act.*

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of



amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.

(4) For the purposes of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.'

## 16. Amendment to section 26.

In section 26 of the principal Act, sub-section (2) shall be omitted.

## 17. Insertion of new sections 26A, 26B, 26C, 26D and 26E.

After section 26 of the principal Act, the following sections shall be inserted, namely:—

### "26A. Establishment of Special Courts.

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

### 26B. Offences triable by Special Courts.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

### 26C. Appeal and Revision.

The High Court may exercise, so far as may be applicable, all the power conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

### 26D. Application of Code to proceedings before Special Court.

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special

Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973. (2 of 1974)

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

### 26E. Transitional provisions.

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973: (2 of 1974)

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section."

## 18. Insertion of new section 32.

After section 31 of the principal Act, the following section shall be inserted, namely:—

"32. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times."

## CHAPTER IV

### AMENDMENTS TO THE DEPOSITORIES ACT, 1996

## 19. Amendment of section 19.

In section 19 of the Depositories Act, 1996 (22 of 1996) (hereafter in this chapter referred to as the principal Act in this chapter), the following Explanation shall be inserted, namely:-

"*Explanation.* -For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

## 20. Insertion of new section 19-IA

After section 19-I of the principal Act, the following section



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shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:-

## **“19-IA. Settlement of Administrative Civil Proceedings.**

(1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 19 or section 19H, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992. (15 of 1992)

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply.

(4) No appeal shall lie under section 23A against any order passed by the Board or the adjudicating officer under this section.”.

## **21. Insertion of new section 19-IB.**

After section 19-IA of the principal Act as so inserted, the following shall be inserted, namely:-

### **“19-IB. Recovery of amounts.**

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to

the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

*Explanation 1.*— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or sons' minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

*Explanation 2.*— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

*Explanation 3.*— Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, (43 of 1961) shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23A of this Act.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to noncompliance with any direction issued by the Board under section 19, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

## **22 . Amendmen of section 22.**

In section 22 of the principal Act, sub-section (2) shall be omitted.

## **21. Insertion of new sections 22C, 22D, 22E, 22F and 22G.**

After section 22B of the principal Act, the following sections shall be inserted, namely:—





## **“22C. Establishment of Special Courts.**

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

## **22D. Offences triable by Special Courts.**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

## **22E. Appeal and Revision.**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

## **22F. Application of Code to proceedings before Special Court.**

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973. (2 of 1974)

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

## **22G. Transitional Provisions.**

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court

of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973: (2 of 1974)

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.”

## **24. Amendment of section 23A.**

In section 23A of the principal Act, sub-section (2) shall be omitted.

## **25. Insertion of new section 30A.**

After section 30 of the principal Act, the following section shall be inserted, namely:—

### **“30A. Validation of certain acts.**

Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”

## **26. Repeal and saving.**

- (1) The Securities Laws (Amendment) Ordinance, 2013 (Ord. 8 of 2013) is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

**PRANAB MUKHERJEE**  
PRESIDENT

**P. K. Malhotra**  
Secy. to the Govt. of India

# 02 The Securities and Exchange Board of India (Amendment) Act, 2013

**No. 22 of 2013**

[Issued by the Ministry of Law and Justice (Legislative Department) and Published in the Gazette of India (Extraordinary) Part II- Section I dated 13.09.2013]

An Act further to amend the Securities and Exchange Board of India Act, 1992

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

## **1. Short title and commencement.**

- (1) This Act may be called the Securities and Exchange Board of India (Amendment) Act, 2013.
- (2) It shall be deemed to have come into force on the 21st day of January, 2013.



# From the Government

## 2. Amendment of section 15M.

In section 15M of the Securities and Exchange Board of India Act, 1992, (15 of 1992) for sub-section (1), the following sub-sections shall be substituted, namely:-

“(1) A person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he-

(a) is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or

(b) is a sitting or retired Judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.

(1A) The Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.”.

## 3. Repeal and saving.

(1) The Securities and Exchange Board of India (Amendment) Second Ordinance, 2013 (Ord. 5 of 2013) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Securities and Exchange Board of India Act, 1992, (15 of 1992) as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of that Act, as amended by this Act.

P. K. Malhotra

Secy. to the Govt. of India

## 03 Companies (Removal of Difficulties) Order, 2013.

[Issued by the Ministry of Corporate Affairs vide order dated 20.09.2013]

Whereas the Companies Act, 2013 (18 of 2013) (here in after referred to as the said Act) received the assent of the President on 29th August, 2013 and section I there of came into force on the same date:

And whereas the provisions contained in section 24, section 58 and section 59 of the said Act have come into force on the 12th day of September, 2013;

And whereas section 24 provides for exercise of certain powers regarding prospectus, return of allotment, redemption of preference shares and other matters specifically provided in the said Act by the Central Government, Tribunal or the Registrar;

And whereas section 58 and section 59 of the said Act provide for certain powers of the Tribunal which deal with hearing of an appeal against the refusal of registration or

rectification of name of members in the register of members of a company respectively;

And whereas the constitution of the Tribunal after following the procedure specified under Chapter XXVII of the said Act is likely to take some time;

And whereas the provisions of section 55A, section III and section III A of the Companies Act, 1956 (I of 1956) which correspond to section 24, section 58 and section 59 of the said Act confer abovesaid powers on the Company Law Board constituted under the Companies Act, 1956;

And whereas difficulties have arisen regarding compliance with the provisions of section 24, section 58 and section 59 of the said Act in so far as they relate to exercise of certain powers by the Tribunal during the period it is duly constituted under the said Act; Now, therefore, in exercise of the powers conferred by sub-section (I) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the above said difficulties, namely:-

## 1. Short title and commencement.-

- (I) This Order may be called the Companies (Removal of Difficulties) Order, 2013.
- (2) It shall come into force on the date of its publication in the Official Gazette.

## 2. Continuance of matters, proceedings or cases before the Company Law Board until their transfer to the Tribunal under section 434.-

It is hereby clarified that until a date is notified by the Central Government under sub-section (I) of section 434 of the Companies Act, 2013 (18 of 2013) for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter XXVII of the said Act, the Board of Company Law Administration shall exercise the powers of the Tribunal under sections 24, 58 and section 59 in pursuance of the second proviso to sub-section (I) of section 465 of the said Act.

Renuka Kumar

Joint Secretary to the Govt of India

## 04 Clarification on the notification dated 12.9.2013.

[Issued by the Ministry of Corporate Affairs Vide Circular No. 16/2013 F. No. 01/12/2013-CL-V dated 18.09.2013]

This Ministry had issued a notification on 12.09.2013 bringing into force to 98 sections or part thereof of the Companies Act, 2013. The said notification is available on the Ministry's website. This Ministry has been receiving requests for clarification as to whether the provisions of the companies Act, 1956 corresponding to such 98 sections would continue



to apply or not.

It is hereby clarified that with effect from 12.09.2013, the relevant provisions of the Companies Act, 1956, which correspond to provisions of 98 sections of the Companies Act, 2013 brought into force on 12.09.2013, cease to have effect from that date.

This issues with the approval of competent authority.

**K.M.S. Narayanan**

Assistant Director

## 05 Clarification on the notification dated 12.9.2013.

[Issued by the Ministry of Corporate Affairs Vide General Circular No. 15/2013 F. No. 01/12/2013-CL-V dated 13.09.2013]

The Companies Act 2013 received the assent of the President on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013. Towards the proper implementation of the Companies Act 2013, first tranche of Draft Rules on 16 Chapters have been placed on the website of the Ministry on 9.9.2013 for inviting comments and objections/suggestions from the general public/stakeholders. of the 16 Chapters, only 13 Chapters require specifying of Forms referred to in those Chapters. The draft Forms shall be placed on the website shortly.

2. Ministry of Corporate Affairs has also notified 98 sections for implementation of the provisions of the Companies Act, 2013 (the "said Act") on 12.09.2013. Certain difficulties have been expressed by the stakeholders in the implementation of following provisions of the said Act. With a view to facilitate proper administration of the said Act, it is clarified that -

- (i) Sub-section (68) of section 2:- Registrar of Companies may register those Memorandum and Articles of Association received till 11.09.2013 as per the definition clause of the 'private company', under the Companies Act 1956 without referring to the definition of 'private company' under the "said Act".
- (ii) Section 102:- All companies which have issued notices of general meeting on or after 12.09.2013, the statement to be annexed to the notice shall comply with additional requirements as prescribed in section 102 of the "said Act".
- (iii) Section 133:- Till the Standards of Accounting or any addendum thereto are prescribed by Central Government in Consultation and recommendation of the National Financial Reporting Authority, the existing Accounting Standards notified under the

Companies Act, 1956 shall continue to apply.

- (iv) section 180:- In respect of requirements of special resolution under Section 180 of the "said Act" as against ordinary resolution required by the Companies Act 1956, if notice for any such general meeting was issued prior to 12.09.2013, then such resolution may be passed in accordance with the requirement of the Companies Act 1956.

3. This issues with the approval of competent authority.

**KMS Narayanan**

Assistant Director

## 06 Date of coming into force of the following provisions of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs Vide notification dated 12.09.2013]

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 12th day of September, 2013 as the date on which the following provisions of the said Act shall come into force, namely :-

### SL.No. Section

1. Section 2
  - clause (1);
  - clauses (3) to (6) (both inclusive);
  - clauses (8) to (12) (both inclusive);
  - clauses (14) to (22) (both inclusive);
  - clauses (24) to (28) (both inclusive);
  - clause (29) [except sub-clause (iv)];
  - clause (30);
  - clauses (32) to (40) (both inclusive);
  - clauses (43) to (46) (both inclusive);
  - clauses (49) to (61) (both inclusive);
  - clauses (63) to (66) (both inclusive);
  - clause (67) [except sub-clause (ix)];
  - clauses (68) to (82) (both inclusive);
  - clause (84);
  - clause (86);
  - clause (87) [except the proviso and Explanation (d)];
  - clauses (88) and (89);
  - clauses (90) to (95) (both inclusive);
2. Section 19;
3. Section 21;
4. Section 22;
5. Section 23 [except clause (b) of sub-section (1) and sub-section (2)];





# From the Government

6. Section 24;
7. Section 25 [except sub-section (3)];
8. Sections 29 to 32 (both inclusive);
9. Section 33 [except sub-section (3)];
10. Section 34;
11. Section 35 [except clause (e) of sub-section (I)];
12. Sections 36 to 38 (both inclusive);
13. Section 39 [except sub-section (4)];
14. Section 40 [except sub-section (6)];
15. Sections 44 and 45;
16. Sections 49 to 51 (both inclusive);
17. Sections 57 to 60 (both inclusive);
18. Section 65;
19. Section 69;
20. Section 70 [except sub-section (2)];
21. Section 86;
22. Section 91;
23. Section 100 [except sub-section (6)];
24. Section 102;
25. Section 103;
26. Section 104;
27. Section 105 [except the third and fourth proviso of sub-section (1) and subsection (7)];
28. Section 106;
29. Section 107;
30. Section 111;
31. Section 112;
32. Section 113 [except clause (b) of sub-section (I)];
33. Section 114;
34. Section 116;
35. Section 127;
36. Section 133;
37. Section 161 [except sub-section (2)];
38. Sections 162 and 163;
39. Section 176;
40. Sections 180 to 183 (both inclusive);
41. Section 185;
42. Section 192;
43. Section 194;
44. Section 195;
45. Section 202;
46. Section 379;
47. Sections 382 and 383;
48. Section 386 [except clause (a)];
49. Section 394;
50. Section 405;
51. Sections 407 to 414 (both inclusive);
52. Section 439;
53. Sections 443 to 453 (both inclusive);
54. Sections 456 to 463 (both inclusive);
55. Sections 467 to 470 (both inclusive).

**Renuka Kumar**

Joint Secretary to the Govt of India

## 07 Relaxation of last date and additional fee in filing of e-Form 23C for Appointment of Cost Auditor

[Issued by the Ministry of Corporate Affairs Vide General Circular No. 14/2013 dated 13.09.2013]

Reference is invited to General Circular No. 15/2011 dated 11th April 2011 (amended further by General Circular No. 36/2012 dated 6th Nov. 2012), under the clause (f) of which, the company shall e-file its application in Form 23C for appointment of Cost Auditor within 90 days from the date of commencement of each financial year along with prescribed fee. Further, vide Notification, G.S.R. 617(E), dated 7th August 2012 the additional fee for delay in filing applications for appointment of cost auditor under sub-section (2) of section 233 (B) of Companies Act 1956 were also prescribed.

It has now been decided to extend the last date of filing and to relax the additional fee applicable on e-form 23C up to 31st October 2013 and as such the e-form 23C can be filed for appointment of cost auditor with normal applicable fee, up to 31st October 2013 or within 90 days of the commencement of the company's financial year to which the appointment relates, whichever is later.

**V.K. Aggarwal**  
Director (Cost)

## 08 Formats for filing reports in terms of regulations 15(i) and 20(j) of SEBI (Buy Back of Securities) Regulations, 1998

[Issued by the Securities and Exchange Board of India vide CIR/CFD/ POLICYCELL/10/2013 dated 17.09.2013]

1. SEBI (Buy Back of Securities) Regulations, 1998 (hereinafter referred to as "Buy Back Regulations") were amended vide notification dated August 08, 2013 with an objective of aligning the regulatory requirements with the changing market realities and enhancing the efficiency in the Buy Back process. The amended regulation 15(i) of Buy Back Regulations requires companies to upload information regarding shares or other specified securities bought back on its website as may be specified by SEBI and submit the same to the respective Stock Exchanges.
2. Regulation 20(j) of Buy Back Regulations mandates Merchant Bankers to file a postoffer report with SEBI as may be specified by the Board.
3. The necessary formats to enable the listed companies



and the merchant bankers to make disclosures and ensure compliance with the extant regulatory requirements, are specified in Annexure 1 and 2, respectively.

4. This Circular shall come into force with immediate effect.
5. This Circular is being issued in exercise of the powers conferred under section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with regulation 26 of the Buy Back Regulations as amended.
6. This Circular along with the Annexure is available on the SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the category "Legal framework".

Amit Tandon

Deputy General Manager

### Annexure 1

#### Format in terms of regulation 15(i) of Buy Back Regulations

**Buy-back Offer of Equity Shares or other specified securities of [•] (the "Buyback"), in accordance with the Buy Back Regulations**

With reference to the captioned subject, [•], the company hereby submits the daily report pursuant to regulation 15 (i) of the Buy Back Regulations regarding the shares bought-back on [•]

a.	Total amount earmarked for Buy Back	
b.	Cumulative amount utilised for Buy Back till date	
c.	Maximum number of shares that can be bought back as per Section 77A(c) of Companies Act, 1956	
d.	Cumulative number of shares bought back till the end of previous reporting period*	
e.	Number of shares bought back during the current reporting period**	
f.	Cumulative number of shares bought back till the end of the current reporting period	

\*Previous reporting period shall be the day before the reporting date when the company had bought back securities.

\*\* Current reporting period shall be the day on which report is being filed with the Stock Exchanges.

Place : \_\_\_\_\_ Signature: \_\_\_\_\_  
(on behalf of the Company)  
Name: \_\_\_\_\_  
Date : \_\_\_\_\_ Designation: \_\_\_\_\_  
Seal of the Company

### Annexure 2

#### Format in terms of regulation 20(j) of Buy Back Regulations

##### Basic details

1.	Name of the company		
2.	Name of the Manager to the offer		
3.	Name/(s) of the designated broker/(s)		
4.	Details of paid up Capital (Amount in crores)	Pre Buy Back	Post Buy Back

##### Details of Buy Back offer

5.	Date of member's special resolution authorizing Buy Back of securities; or Date of Board resolution authorizing Buy Back of securities	
6.	Date on which previous Buy Back was authorized	
7.	Date on which the previous Buy Back was completed	
8.	Date of opening of the present Buy Back offer	
9.	Date of closure of the present Buy Back offer	

#### Details of amount earmarked for present Buy Back and Escrow Account

10.	Amount earmarked for Buy Back	
11.	Details of escrow account (Name of the bank account and composition)	
	Amount deposited by way of cash	
	Amount deposited by way of bank guarantee	
12.	Amount utilized for Buy Back	
13.	Whether the amount utilized is less than 50% of the amount earmarked? (Yes/No)	
14.	If answer to point No. 13 is Yes, whether the Manager to the Offer forfeited the deposit in the escrow account in accordance with the provisions of regulation 15B(8) of Buy Back Regulations. If so, quantum of amount forfeited	
15.	Whether the forfeited amount has been deposited in Investor Protection and Education Fund of SEBI.	
	If yes, details of the same/ If no, reasons for the same	

#### Other Details:

16.	Date of release of advertisement and name of newspapers in which such advertisement was published in terms of regulation 19(7) of Buy Back Regulations	
17.	Whether the shares have been extinguished in accordance with the provisions of Buy Back Regulations?	
18.	Pursuant to the Buy Back, whether shareholding of any shareholder has exceeded the threshold limit as specified under regulations 3(1) and 3(2) of SEBI (SAST) Regulations, 2011? (Yes/No)	
19.	Whether the obligations of Merchant Banker and the company as specified in the Buy Back Regulations have been complied with? (Yes/No)	
20.	If no, provide details and reasons for the same	

I/We hereby declare that the information provided in the instant report is true.

Place : \_\_\_\_\_ Signature: \_\_\_\_\_  
(on behalf of the Company)  
Name: \_\_\_\_\_  
Date : \_\_\_\_\_ Designation: \_\_\_\_\_  
Seal of the Company

## 09 Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India Published in the Gazette of India (Extraordinary) Part III- Section IV, dated 16.09.2013]

No. LAD-NRO/GN/2013-14/24/6573.- In exercise of the powers conferred by sub-section (1) of section 30 read with





# From the Government

sub-section (1) of section 11, clause (ba) and clause (c) of sub-section (2) of section 11 and sub-section (1) and (1B) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, namely,-

1. These regulations may be called the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2013.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, -

I. in regulation 2, in sub-regulation (1), in clause (z), after the words "a new business model", the words and symbols "and shall include an angel fund as defined under Chapter III-A" shall be inserted.

II. In regulation 3, in sub-regulation (1), after the third proviso, the following proviso shall be inserted, namely,-  
"Provided further that 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."

III. in regulation 6, after sub-regulation (3), the following sub-regulations shall be inserted, namely,-  
"(4) The Board may, on being satisfied that the applicant complies with the provisions of regulation 4 except those of clause (c) or clause (d) thereof, as the case may be, grant an in-principle approval to the applicant:

Provided that the applicant shall comply with clause (c) or clause (d) of regulation 4, as the case may be, within six months from the date of grant of in-principle approval and upon compliance with the same, the Board may grant a certificate of registration under sub-regulation (2).

(5) An Alternative Investment Fund that has been granted in-principle approval may accept commitments from investors but shall not accept any monies till it is granted registration under sub-regulation (2) of this regulation."

IV. in regulation 10,

- (i) in clause (f), for the symbol ":", the symbol "·" shall be substituted;
- (ii) after clause (f), the following proviso shall be

inserted, namely,-

"Provided that the provisions of the Companies Act, 1956 shall apply to the Alternative Investment Fund, if it is formed as a company."

V. in regulations 15, the word "corpus", wherever appearing, shall be substituted by the words "investible funds";

VI. in regulation 16,

(i) the word "corpus", wherever appearing, shall be substituted by the words "investible funds";  
in sub-regulation (4), clause (b), for the symbol "·" the symbol "·" shall be substituted;

(ii) in sub-regulation (4), after clause (b), the following provisos shall be inserted, namely,-  
"Provided that the amount of grant that may be accepted by the fund from any person shall not be less than twenty-five lakh rupees:  
Provided further that no profits or gains shall accrue to the provider of such grants."

VII. in regulations 17, the word "corpus", wherever appearing, shall be substituted by the words "investible funds";

VIII. in regulation 18, in clause (b), the words and symbol "Fund of Category II" shall be substituted by the words and symbol "Fund of Category III".

IX. After chapter III, the following chapter III-A shall be inserted, namely,-

## "CHAPTER III -A ANGEL FUNDS

### Definitions.

**19A.** For the purposes of this Chapter, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,-

- (1) "angel fund" means a sub-category of Venture Capital Fund under Category I- Alternative Investment Fund that raises funds from angel investors and invests in accordance with the provisions of this Chapter.
- (2) "angel investor" means any person who proposes to invest in an angel fund and satisfies one of the following conditions, namely,
  - (a) an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who:
    - (i) has early stage investment experience, or
    - (ii) has experience as a serial entrepreneur, or
    - (iii) is a senior management professional with at least ten years of experience;





*Explanation:* For the purpose of this clause, 'early stage investment experience' shall mean prior experience in investing in start-up or emerging or early-stage ventures and 'serial entrepreneur' shall mean a person who has promoted or copromoted more than one start-up venture.

- (b) a body corporate with a net worth of at least ten crore rupees; or
  - (c) an Alternative Investment Fund registered under these regulations or a Venture Capital Fund registered under the SEBI (Venture Capital Funds) Regulations, 1996.
- (3) "company with family connection" means:
- a. if the angel investor is an individual,
    - i. any company which is promoted by such an individual or his relative; or
    - ii. any company where the individual or his relative is a director; or
    - iii. any company where the person or his relative has control, or shares or voting rights which entitle them to fifteen percent or more of the shares or voting rights in the company.

*Explanation I:* For the purpose of this clause, "relative" means a person as defined under section 6 of the Companies Act, 1956 (1 of 1956).

*Explanation II:* For the purpose of this clause, "control" shall have the same meaning as assigned to it under sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- b. if the angel investor is a body corporate,
    - i. any company which is a subsidiary or a holding company of the investor; or
    - ii. any company which is part of the same group or under the same management of the investor; or
- Explanation:* For the purpose of this clause, "part of the same group" and "under the same management" shall have the same meaning as assigned to it under regulation 23 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- iii. any company where the body corporate or its directors/partners have control, or shares or voting rights which entitle them to fifteen percent or more of the shares or voting rights in the company.

*Explanation:* For the purpose of this clause, "control" shall have the same meaning as assigned to it under sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

## Applicability.

- 19B.** (1) The provisions of this Chapter shall apply to angel funds and schemes launched by such angel funds.
- (2) All other provisions of these regulations, except clauses (a), (b), (c), (d) and (f) of regulation 10, regulation 12, regulation 14, clauses (a), (c) and (e) of sub-regulation (1) of regulation 15, clause (b) of sub-regulation (1) of regulation 16 and sub-regulation (2) of regulation 16, and the guidelines and circulars issued under these regulations, unless the context otherwise requires or repugnant to the provisions of this Chapter, shall apply to angel funds, their sponsors and managers and angel investors.

## Registration of angel funds.

- 19C.** (1) An applicant may apply for registration as an angel fund in accordance with the provisions of Chapter II of these Regulations.
- (2) An Alternative Investment Fund already registered under these regulations, which has not made any investments, may apply for conversion of its category into an angel fund under the provisions of this Chapter and the provisions of Chapter II shall apply as they apply to a fresh registration.

## Investment in angel funds.

- 19D.** (1) Angel funds shall only raise funds by way of issue of units to angel investors.
- (2) An angel fund shall have a corpus of at least ten crore rupees.
  - (3) Angel funds shall accept, up to a maximum period of three years, an investment of not less than twenty five lakh rupees from an angel investor.
  - (4) Angel fund shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called.

## Schemes.

- 19E.** (1) The angel fund may launch schemes subject to filing of a scheme memorandum at least ten working days prior to launch of the scheme with the Board: Provided that payment of scheme fees shall not apply to schemes launched by angel funds.
- (2) Such scheme memorandum shall contain all material information about the investments proposed under such scheme.
  - (3) The Board may communicate its comments, if any, to the applicant prior to launch of the Scheme and the applicant shall incorporate the comments in the scheme memorandum prior to launch of the scheme.
  - (4) No scheme of the angel fund shall have more than forty-nine angel investors.



# From the Government

## Investment by Angel Funds.

**19F.** (1) Angel funds shall invest only in venture capital undertakings which:

- (a) have been incorporated during the preceding three years from the date of such investment;
- (b) have a turnover of less than twenty five crore rupees;
- (c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds three hundred crore rupees; and

*Explanation I:* For the purpose of this clause, "industrial group" shall include a group of body corporates with the same promoter(s)/promoter group, a parent company and its subsidiaries, a group of body corporates in which the same person/ group of persons exercise control, and a group of body corporates comprised of associates/ subsidiaries/holding companies.

*Explanation II:* For the purpose of this clause, "group turnover" shall mean combined total revenue of the industrial group.

- (d) are not companies with family connection with any of the angel investors who are investing in the company.
- (2) Investment by an angel fund in any venture capital undertaking shall not be less than fifty lakh rupees and shall not exceed five crore rupees.
- (3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of three years.
- (4) Angel funds shall not invest in associates.
- (5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:  
Provided that the compliance to this sub-regulation shall be ensured by the Angel Fund at the end of its tenure.

## Obligations of Sponsors and Managers of Angel Fund.

- 19G.** (1) The sponsor shall ensure that the angel investors satisfy the conditions specified in subregulation (2) of regulation 19A.
- (2) The manager or sponsor shall have a continuing interest in the angel fund of not less than two and half percent of the corpus or fifty lakh rupees, whichever is lesser, and such interest shall not be through the waiver of management fees.
  - (3) The manager of the angel fund shall obtain an undertaking from every angel investor proposing to make investment in a venture capital undertaking, confirming his approval for such an investment, prior to making such an investment.

## Prohibition of Listing.

**19H.** Units of angel funds shall not be listed on any recognised stock exchange."

X. in the First Schedule, in Form A,

- (i) in clause (2), in sub-clause (III), the words "duly

registered" shall be substituted by the words "duly filed".

- (ii) in clause (3), the words, symbols and number "sub-regulation (w) of regulation 2" shall be substituted by the words, symbols and number "clause (w) of sub-regulation (1) of regulation 2".

XI. in the Second Schedule, in Part A,

- (i) the words "registration fee" shall be substituted by the words  
"Registration fee for Alternative Investment Funds other than Angel Funds"
- (ii) the following clause shall be inserted, namely,-  
"Registration fees for Angel Funds: 2,00,000"
- (iii) the words "scheme fee" shall be substituted by the words "scheme fee for Alternative Investment Funds other than Angel Funds".

U. K. Sinha

Chairman

Securities and Exchange Board of India

## 10 Debt Allocation Mechanism for FII/QFI - Government Debt Securities

[Issued by the Securities and Exchange Board of India Vide CIR/IMD/FIIC/15/2013 dated 13.09.2013]

1. SEBI vide its circular CIR/IMD/FIIC/12/2012 dated April 27, 2012 had prescribed a framework for the allocation of debt limits to FIIs. However the allocation mechanism had been amended from time to time.
2. SEBI vide its circular CIR/IMD/FIIC/22/2012 dated November 07, 2012, decided that all FIIs/ sub-accounts may avail limits in the Corporate Debt – Long Term Infra category without obtaining SEBI approval till the overall FII investments reaches 90%, after which the auction mechanism shall be initiated for allocation of remaining limits.
3. Similarly, SEBI vide circular CIR/IMD/FIIC/6/2013 dated April 01, 2013, decided that FIIs can invest in Corporate Debt without purchasing debt limits till the overall investment reaches 90% after which the auction mechanism shall be initiated for allocation of the remaining limits.
4. It has been decided to extend the allocation mechanism, as presently applicable for corporate debt securities, to FII/QFI investment in Government debt securities also.
5. In partial modification to circular CIR/IMD/FIIC/12/2012



dated April 27, 2012, it has been decided that FIIs/QFIs can now invest in Government Debt without purchasing debt limits till the overall investment reaches 90% after which the auction mechanism shall be initiated for allocation of the remaining limits, as currently in place for FII investments in Corporate Debt.

6. It is clarified that consequent to the changes as above, the facility of re-investment provided vide SEBI circular CIR/IMD/FIIC/18/2010 dated November 26, 2010 as well as the restrictions on re-investment as given in the SEBI circulars CIR/IMD/FIIC/1/2012 dated January 03, 2012, CIR/IMD/FIIC/22/2012 dated November 07, 2012 and CIR/IMD/FIIC/1/2013 dated January 01, 2013 shall no longer apply in respect of limits held/investments made by FIIs in the Government Debt category, till the limits are available on tap.
7. It is further clarified that for those FIIs which had obtained Government Debt limits in the debt limit auctions held on August 20, 2013, the time period for utilization of limits allocated through the bidding process shall be in terms of the SEBI circular CIR/IMD/FIIC/11/2013 dated July 31, 2013.

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, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

A copy of this circular is available at the web page "F.I.I." on our website [www.sebi.gov.in](http://www.sebi.gov.in). The custodians are requested to bring the contents of this circular to the notice of their FII clients.

**Parag Basu**

Chief General Manager

Investment Scheme ('PIS') route shall be classified as Category I, II and III as provided in Annexure A. The intermediary shall follow risk based Know Your Client norms. Accordingly, certain clarifications are hereby issued, as given in Annexure B, based on the category of these investors.

3. Eligible foreign investors investing under PIS route shall be subject to KYC review as and when there is any change in material information / disclosure.
4. The provisions of this circular are applicable for both the new and existing clients.
5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Sub Rule 14(i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

**A.S. Mithwani**

Deputy General Manager

## Annexure A

Category	Eligible Foreign Investors
I.	Government and Government related foreign investors such as Foreign Central Banks, Governmental Agencies, Sovereign Wealth Funds, International/ Multilateral Organizations/ Agencies
II.	a) Appropriately regulated broad based funds such as Mutual Funds, Investment Trusts, Insurance / Reinsurance Companies, Other Broad Based Funds etc. b) Appropriately regulated entities such as Banks, Asset Management Companies, Investment Managers/ Advisors, Portfolio Managers etc. c) Broad based funds whose investment manager is appropriately regulated d) University Funds and Pension Funds e) University related Endowments already registered with SEBI as FII/Sub Account
III.	All other eligible foreign investors investing in India under PIS route not eligible under Category I and II such as Endowments, Charitable Societies/Trust, Foundations, Corporate Bodies, Trusts, Individuals, Family Offices, etc.

## Annexure B

Document Type	Category - I	Category - II	Category - III
<b>Entity Level</b>			
Constitutive Docs	Required	Required	Required
Proof of Address	Required Power of Attorney, mentioning the address, is acceptable as address proof	Required Power of Attorney, mentioning the address, is acceptable as address proof	Required - Address proof other than Power of Attorney should be submitted.
PAN Card	Required	Required	Required
Financials	Exempt	Exempt	Risk based - Financial data sufficient.
SEBI Registration Certificate	Required	Required	Required
Board Resolution	Exempt	Required	Required
KYC Form	Required	Required	Required

## 11 Know Your Client Requirements for Eligible Foreign Investors

[Issued by the Securities and Exchange Board of India Vide CIR/MIRSD/ 07 /2013 dated 12.09.2013]

1. This has reference to SEBI circular No CIR/MIRSD/ 11 /2012 dated September 5, 2012 whereby certain clarifications were issued on 'Know Your Client' requirements in case of foreign investors viz. Foreign Institutional Investors, Sub Accounts and Qualified Foreign Investors. This circular is issued in partial modification to the provisions of circular dated September 5, 2012.
2. Eligible foreign investors investing under Portfolio





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Senior Management (Whole Time Directors/ Partners/ Trustees/ etc.)	List	Required	Required	Required
	Proof Of Identity	Exempt	Exempt	Entity declares on letterhead - full name, nationality and DoB OR Photo-identity proof'
	Proof of Address	Exempt	Exempt	Declaration on letter head
Authorized Signatories	Photographs	Exempt	Exempt	Exempt
	List & Signatures	Required - List of Global Custodian ('GC') signatories can be given in case of POA to GC	Required - List of GC signatories can be given in case of POA to GC	Required
	Proof Of Identity	Not required	Not required	Required
	Proof of Address	Not required	Not required	Not required
Ultimate Beneficial Owner ('UBO')	Photographs	Not required	Not required	Required
	List	Exempt	Required - Can declare "no UBO over 25%"	Required
	Proof Of Identity	Exempt	Exempt	Required
	Proof of Address	Exempt	Exempt	Exempt
	Photographs	Exempt	Exempt	Exempt

# Note: Copies of all the documents, wherever applicable, to be submitted by the applicant should be self attested and accompanied by originals for verification. In case the original of any document is not produced for verification, then the copies should be properly attested by entities authorized for attesting the documents, as per the SEBI circular no. MIRSD/SE/Cir-21/2011 dated October 5, 2011.

## 12 Risk Management Framework for Dedicated Debt Segment on Stock Exchanges

[Issued by the Securities and Exchange Board of India Vide CIR/MRD/DP/ 27 /2013 dated 12.09.2013]

1. With an objective to develop debt markets and encourage transition of trading in debt instruments from OTC markets to stock exchanges, SEBI issued Guidelines for providing dedicated Debt Segment on Stock Exchanges vide circular no CIR/MRD/DP/03/2013 dated January 24, 2013. Pursuant to these Guidelines, the stock exchanges have been given approval to launch the Debt Segment.
2. Subsequent to introduction of Debt Segment on stock exchanges, market feedback has been received on various issues including need for DVP-3 settlement in corporate bond trades. For enabling settlement on DVP-3 basis in corporate bonds trades, implementation of appropriate risk management framework is necessary. Stock exchanges have submitted proposals for risk management framework and these were discussed in Secondary Market Advisory Committee. Based on discussions, it has been decided that the risk management framework for corporate bond trades shall be as specified herein.

3. Feedback from market participants and stock exchanges also pointed towards need for further clarity/ amendments to certain provisions of SEBI circular dated January 24, 2013. Hence, such provisions are being amended as specified hereunder.
4. The term "corporate bonds" in this circular refers to debt securities as defined in the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
5. **Institutional Market:** In the circular dated January 24, 2013, it was specified that institutional market of debt segment shall be the market for non-publicly-issued debt instruments with a market lot size of minimum Rs 1 crore. It is clarified that institutional market shall provide for trading in both publicly issued and non-publicly (privately) issued debt instruments with a market lot size of minimum Rupees one crore. For trading in smaller lot sizes of minimum rupees ten lakhs in respect of privately issued debt instruments in the institutional market, a separate odd lot window may be provided.

### 6. Clearing and Settlement

- 6.1 **Settlement Cycle:** The trades settled on DVP-3 basis in debt segment shall have settlement cycle of T+1 . In case of trades settled on DVP-1 basis, Stock exchanges shall have flexibility to settle trades on T+0 or T+1.
- 6.2 **Settlement Basis:**
  - 6.2.1 Retail Market: The Stock Exchanges shall continue to settle trades on DVP-3 basis in retail market of debt segment for publicly issued corporate bonds.
  - 6.2.2 Institutional market: The Stock exchanges may provide settlement on DVP-3 basis for publicly issued corporate bonds and for such privately placed corporate bonds which meet certain selection/eligibility criteria to be specified by the exchanges.
    - 6.2.2.1 The minimum selection/eligibility criteria for privately issued corporate bonds to be eligible for DVP-3 settlement shall include the following:
      - (a) The corporate bonds shall have a minimum rating of AA+ (or similar nomenclature).
      - (b) The yield spread of corporate bonds over similar residual tenure government securities shall not exceed 150 basis points.
      - (c) New corporate bonds listed during the month shall also be eligible for DVP-3 settlement if they meet the rating and yield spread criteria stated at (a) and (b) above.
      - (d) In case of existing corporate bonds, only liquid bonds shall be permitted. The stock exchanges may consider one or more following factors while defining liquid bonds-
        - (i) Bonds to have traded for at least 5 trading





days in every month ( including both exchange trades and reported trades) ;

- (ii) Bonds to have minimum trading volumes of Rs 25 crores in every month ( including both exchange trades and reported trades)

6.2.2.2 The list of eligible bonds may be reviewed on monthly basis and made applicable from 15th of subsequent month.

6.2.2.3 In all other cases, privately issued corporate bonds shall continue to settle on DVP-1 basis.

## 7. Risk Management:

7.1 The Clearing Corporation shall provide settlement guarantee for trades settled on DVP-3 basis. For this purpose, the Clearing Corporation shall create a Settlement Guarantee Fund on similar lines as in other segments.

7.2 For the purpose of risk management in respect of trades settled on DVP-3 basis, the Clearing Corporation shall impose the following margins:

7.2.1 **Initial Margin (IM):** Initial margin shall be based on a worst case loss of a portfolio of an individual client across various scenarios of price changes so as to cover a 99% VaR over one day horizon.

7.2.1.1. The minimum initial margin shall be 2% for residual maturity up to three years, 2.5% for residual maturity above three years and up to five years; and 3% for maturity above five years. The margin shall be calculated as percentage of traded price of the bond expressed in terms of clean price i.e. without taking accrued interest into account.

7.2.1.2. Stock Exchanges may follow a VaR estimation model similar to Interest Rate Futures as prescribed in SEBI circular SEBI/DNPD/Cir-46/2009 dated August 28, 2009.

7.2.1.3. The Initial Margin shall be deducted upfront from the liquid assets of the member taking into account gross open positions.

7.2.2 **Extreme Loss Margin (ELM):** The ELM shall cover the expected loss in situations that go beyond those envisaged in risk estimates used in the initial margins. The ELM for any bond shall be 2% of the traded price expressed in terms of clean price. It would be deducted upfront from the total liquid assets of the member.

7.3 **Liquid Assets:** The liquid assets for meeting margin requirements may be deposited in the following form:

- (a) At least 50% in cash or cash equivalents i.e. government securities, bank guarantee, fixed deposits or units of liquid mutual funds or government securities mutual funds;
- (b) Not more than 50% in the form of corporate bonds / liquid equity shares/ mutual fund units other than units of liquid mutual funds or government securities mutual funds;

as specified in SEBI circular No. MRD/DoP/SE/Cir-07/2005

dated February 23, 2005.

8. **Auction/financial close-out:** In case of shortages, stock exchanges may conduct auction and/or financial close-out with a mark up of 4% on traded price of such corporate bonds.

9. **Reporting:** The reporting platform made available by stock exchanges under the earlier SEBI circulars shall be merged with the negotiated window or facility for RFQ or other such similar facility provided by debt segment of exchanges for enabling reporting of OTC trades or facilitating OTC trades. This platform shall be available for reporting of trades by both members and non-members.

10. This circular is in partial modification of earlier circular no CIR/MRD/DP/03/2013 dated January 24, 2013 on debt segment.

11. The stock exchanges and clearing corporations are directed to:

- (i) take necessary steps and put in place necessary systems for implementation of the above.
- (ii) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
- (iii) bring the provisions of this circular to the notice of the stock brokers/ trading members and clearing members and also disseminate the same on their website.

12. 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

## 13 Securities and Exchange Board of India (Prohibition of Fraudulent and unfair Trade Practices Relating to Securities Market) (Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/ GN/2013-14/22/22670 dated 06.09.2013 and Published in the Gazette of India (Extraordinary), Part III, Section IV dated : 06.09.2013]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities



# From the Government

Market) Regulations, 2003, namely:-

1. These Regulations may be called the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2013.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, in regulation 4, in subregulation (2),
  - (I) after clause (s), the following clause (t) shall be inserted:  
“(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person.”
  - (II) the following explanation shall be inserted, namely,-  
“*Explanation.*– For the purposes of this sub-regulation, for the removal of doubts, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3, notwithstanding that it is not included in this subregulation or is described as being committed only by a certain category of persons in this sub-regulation.”

U. K. Sinha  
Chairman

## 14 Principles of Financial Market Infrastructures (PFMIs)

[Issued by the Securities and Exchange Board of India Vide CIR/MRD/DRMN/26/2013 dated 04.09.2013]

### Background

1. To promote and sustain an efficient and robust global financial infrastructure, the Committee on Payments and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) published the Principles for financial market infrastructures<sup>1</sup> (PFMIs) on April 2012. They replace the three existing sets of international standards set out in the *Core Principles for Systemically Important Payment Systems* (CPSIPS); the *Recommendations for Securities Settlement Systems* (RSSS); and the *Recommendations for Central Counterparties* (RCCP). CPSS and IOSCO have strengthened and harmonised these three sets of standards by raising minimum requirements, providing more detailed guidance and broadening the scope of the standards to cover new risk-management areas and new types of FMIs.

2. The PFMIs comprise of 24 principles (Annex 1) for Financial Market Infrastructure to provide for effective regulation, supervision and oversight of FMIs. They are designed to ensure that the infrastructure supporting global financial markets is robust and well placed to withstand financial shocks.
3. Full, timely and consistent implementation of the PFMIs is fundamental to ensuring the safety, soundness and efficiency of key FMIs and for supporting the resilience of the global financial system. In addition, the PFMIs play an important part in the G20's mandate that all standardized over-the-counter (OTC) derivatives should be centrally cleared. Global central clearing requirements reinforce the importance of strong safeguards and consistent oversight of derivatives CCPs in particular.

### Financial Market Infrastructure (FMI)

4. The Principles apply to systematically important financial market infrastructures entities such as Central Counterparty (CCP), Central Securities Depository (CSD)/ Securities Settlement System (SSS), Payment and Settlement systems, and Trade Repository (TR) which are responsible for providing clearing, settlement and recording of monetary and other financial transactions.. The principles are international standards set forth to –
  - a. Enhance safety and efficiency in payment, clearing, settlement, and recording arrangements,
  - b. Reduce systemic risk.
  - c. Foster transparency and financial stability and
  - d. Promote protection of participants and investors.
5. Financial Market Infrastructure (FMI) are critically important institutions responsible for providing clearing, settlement and recording of monetary and other financial transactions. The different categories of FMIs, as identified under PFMIs, are listed below -

### Payment Systems (PSS)

A payment system is a set of instruments, procedures, and rules for the transfer of funds between or among participants. The system includes the participants and the entity operating the arrangement. Payment systems are typically based on an agreement between or among participants and the operator of the arrangement, and the transfer of funds is effected using an agreed-upon operational infrastructure.

### Central Securities Depositories (CSD)

Central securities depository provides securities accounts, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues (that is, ensure that securities are not accidentally or fraudulently created or destroyed or their details changed). A CSD can hold securities either in physical form (but immobilised) or in dematerialised form (that is, they exist only as electronic records). A CSD may maintain the definitive record of

<sup>1</sup> CPSS IOSCO : Principles of Financial Market Infrastructures - April 2012  
<http://www.bis.org/pub/cpss101a.pdf>



legal ownership for a security; in some cases, however, a separate securities registrar will serve this notary function.

## *Securities Settlement Systems (SSS)*

A securities settlement system enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Such systems allow transfers of securities either free of payment or against payment. When transfer is against payment, many systems provide delivery versus payment (DvP), where delivery of the security occurs if and only if payment occurs. An SSS may be organised to provide additional securities clearing and settlement functions, such as the confirmation of trade and settlement instructions.

## *Central Counterparties (CCP)*

A central counterparty interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts. A CCP becomes counterparty to trades with market participants through novation, an open-offer system, or through an analogous legally binding arrangement. CCPs have the potential to significantly reduce risks to participants through the multilateral netting of trades and by imposing more effective risk controls on all participants. For example, CCPs typically require participants to provide collateral (in the form of initial margin and other financial resources) to cover current and potential future exposures. CCPs may also mutualise certain risks through devices such as default funds. As a result of their potential to reduce risks to participants, CCPs also can reduce systemic risk in the markets they serve.

## *Trade Repositories (TR)*

A trade repository is an entity that maintains a centralised electronic record (database) of transaction data. TRs have emerged as a new type of FMI and have recently grown in importance, particularly in the OTC derivatives market. By centralising the collection, storage, and dissemination of data, a well-designed TR that operates with effective risk controls can serve an important role in enhancing the transparency of transaction information to relevant authorities and the public, promoting financial stability, and supporting the detection and prevention of market abuse. An important function of a TR is to provide information that supports risk reduction, operational efficiency and effectiveness, and cost savings for both individual entities and the market as a whole. Such entities may include the principals to a trade, their agents, CCPs, and other service providers offering complementary services, including central settlement of payment obligations, electronic novation and affirmation, portfolio compression and reconciliation, and collateral.

## **Adoption of Principles of Financial Market Infrastructures**

6. All CPSS and IOSCO members are required to strive to adopt the PFMI and implement them in their respective jurisdictions.

7. SEBI as a member of IOSCO is committed to the adoption and implementation of the new CPSS-IOSCO standards of PFMI in its regulatory functions of oversight, supervision and governance of the key financial market infrastructures under its purview.
8. Depositories and Clearing Corporations regulated by SEBI are FMIs in terms of the criteria described above. These systemically important financial infrastructures provide essential facilities and perform systemically critical functions in the market and shall hence be required to comply with the principles of financial market infrastructures specified by CPSS-IOSCO as applicable to them. The list of SEBI regulated FMIs is provided in **Annexure 2**.
9. All FMIs in the securities market shall be monitored and assessed against the PFMI on a periodic basis.
10. 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.
11. This Circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

P K Bindlish  
Chief General Manager

## **Annexure 1**

### **Principles for financial market infrastructures**

#### **General organisation**

##### *Principle 1: Legal basis*

An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

##### *Principle 2: Governance*

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

##### *Principle 3: Framework for the comprehensive management of risks*

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

#### **Credit and liquidity risk management**

##### *Principle 4: Credit risk*

An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient



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financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.

## *Principle 5: Collateral*

An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

## *Principle 6: Margin*

A CCP should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

## *Principle 7: Liquidity risk*

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions.

## **Settlement**

### *Principle 8: Settlement finality*

An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

### *Principle 9: Money settlements*

An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.

### *Principle 10: Physical deliveries*

An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.

## **Central securities depositories and exchange-of-value settlement systems**

### *Principle 11: Central securities depositories*

A CSD should have appropriate rules and procedures to help ensure the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities. A CSD should maintain securities in an immobilised or dematerialised form for their transfer by book entry.

### *Principle 12: Exchange-of-value settlement systems*

If an FMI settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

## **Default management**

### *Principle 13: Participant-default rules and procedures*

An FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

### *Principle 14: Segregation and portability*

A CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP with respect to those positions.

## **General business and operational risk management**

### *Principle 15: General business risk*

An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.

### *Principle 16: Custody and investment risks*

An FMI should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.

### *Principle 17: Operational risk*

An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

## **Access**

### *Principle 18: Access and participation requirements*





An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

**Principle 19: Tiered participation arrangements**

An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.

**Principle 20: FMI links**

An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.

**Efficiency**

**Principle 21: Efficiency and effectiveness**

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

**Principle 22: Communication procedures and standards**

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.

**Transparency**

**Principle 23: Disclosure of rules, key procedures, and market data**

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

**Principle 24: Disclosure of market data by trade repositories**

A TR should provide timely and accurate data to relevant authorities and the public in line with their respective needs.

## Annexure 2

### 1. Clearing Corporations

- Indian Clearing Corporation Ltd. (ICCL)
- MCX-SX Clearing Corporation Ltd. (MCX-SXCCL)
- National Securities Clearing Corporation Ltd. (NSCCL)

### 2. Depositories

- Central Depository Services Ltd. (CDSL)
- National Securities Depository Ltd (NSDL)

# 15

## Index based market-wide circuit breaker mechanism

[Issued by the Securities and Exchange Board of India Vide CIR/MRD/DP/ 25 /2013 dated 03.09.2013]

- Please refer to SEBI circular SMDRPD/Policy/Cir-37/2001 dated June 28, 2001 directing stock exchanges to implement an index based market wide circuit breaker system to affect a

coordinated trading halt in all equity and equity derivative markets on index movement either way of 10%, 15% and 20%.

- Based on the recommendations of Secondary Market Advisory Committee (SMAC), it has been decided to partially modify the system of index based market wide circuit breaker as under:
  - Daily revision of index based market-wide circuit breaker limits: Para 2 of the SEBI circular dated June 28, 2001 shall be modified as under:  
The stock exchange on a daily basis shall translate the 10%, 15% and 20% circuit breaker limits of market-wide index variation based on the previous day's closing level of the index.
  - Resumption of trading after the halt with a pre-open call auction session
    - Post-observation of the trading halt, stock exchange shall resume trading in the Cash Market with a fifteen minutes pre-open call auction session.
    - Such pre-open call auction session shall be governed as per the provisions mandated vide SEBI circulars no. CIR/MRD/DP/21/2010 dated July 15, 2010, CIR/MRD/DP/32/2010 dated September 17, 2010 and CIR/MRD/DP/6/2013 dated February 14, 2013.
    - In order to accommodate such pre-open call auction session, the extant duration of the market halt prescribed vide SEBI circular June 28, 2001 shall be suitably reduced by fifteen minutes.
    - With regard to the dynamic price bands mandated in para 6.1 and para 6.2 of the SEBI circular CIR/MRD/DP/34/2012 dated December 13, 2012, the reference price for the dynamic price band in the pre-open session and subsequent trading sessions shall be previous day's closing price.
- All other conditions shall be as per SEBI circular SMDRPD/Policy/Cir-37/2001 dated June 28, 2001.
- Stock exchanges are directed to:
  - take necessary steps and put in place necessary systems for implementation of the provisions of this circular with effect from October 01, 2013.
  - make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
  - bring the provisions of this circular to the notice of their members and also disseminate the same on their website.
- 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





# From the Government

## 16 Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India Vide No. LAD-NRO/ GN/2013/14/21/6463. Published in the Gazette of India (Extraordinary) ] Part III Section IV dated 02.09.2013]

In exercise of the powers conferred by sections 4, 8A and 31 of the Securities Contracts (Regulation) Act, 1956 read with sections 11 and 30 of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India hereby makes the following regulations to further amend the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, namely:—

1. These Regulations may be called the Securities Contracts (Regulation)(Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2013.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012—
  - (I) in regulation 2, in sub-regulation (1), for clause (j) the following shall be substituted, namely-
 

“(j) “netting” means the determination by Clearing Corporation of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities including the claims and obligations arising out of the termination by the Clearing Corporation or Stock Exchange, in such circumstances as the Clearing Corporation may specify in bye-laws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed.”
  - (II) after regulation 44, the following new regulations shall be inserted, namely-

### “ Settlement and netting.

44 A. (1) The payment and settlement in respect of a transaction in a recognized stock exchange and recognized clearing corporation shall be determined in accordance with the netting or gross procedure as specified in the bye-laws of such recognized stock exchange and recognized clearing corporation, with the prior approval of the Securities and Exchange Board of India.

(2) Payment and settlement in respect of a transaction between parties referred to in sub-regulation (1), effected under the bye-laws of a recognized stock exchange or recognized clearing corporation, shall be final, irrevocable and binding on such parties.

(3) When a settlement has become final and irrevocable, the right of the recognized stock exchange or the recognized clearing corporation, as the case may be, to appropriate any collaterals or deposits or margins contributed by the trading member, clearing member or client towards its settlement or other obligations in accordance with the bye-laws of the recognised stock exchange or recognized clearing corporation shall take priority over any other liability of or claim against the said trading member, clearing member or client, as the case may be.

*Explanation.* – For removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this regulation is final and irrevocable as soon as the money, securities or other transactions payable as a result of such settlement is determined, whether or not such money, securities or other transactions is actually paid.

### Right of Clearing Corporation.

44B. The right of recognised clearing corporation(s) to recover the dues from its clearing members, arising from the discharge of their clearing and settlement functions, from the collaterals, deposits and the assets of the clearing members, shall have priority over any other liability of or claim against the clearing members.”

U.K. Sinha  
Chairman



» Economic Laws

## 17 Review of the policy on Foreign Direct Investment (FDI)-Caps and routes in various sectors

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion Vide Press Note No.6 (2013 Series) dated 22.08.2013]



1.0 The Government has reviewed the Foreign Direct Investment (FDI) caps and/or routes in various sectors, as contained in paragraph 6.2 of 'Circular 1 of 2013-Consolidated FDI Policy'. The present and revised position is given as under:

## 1.1 Tea sector including tea plantations (paragraph 6.2.2):

### a) Present Position

FDI Cap	Entry Route
100%	Government

### b) Revised Position

FDI Cap	Entry Route
No Change	No Change

**Note:** Besides the above, FDI is not allowed in any other plantation sector/activity.

The following clause (i) under 'Other conditions' listed in paragraph 6.2.2.2 is deleted:

"(i) Compulsory divestment of 26% equity of the company in favour of an Indian partner/Indian public within a period of 5 years."

## 1.2 Petroleum and Natural Gas (paragraph 6.2.4.2):

Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs

### a) Present Position

FDI Cap	Entry Route
49%	Government

### b) Revised Position

FDI Cap	Entry Route
No Change	Automatic

## 1.3 Defence (paragraph 6.2.6):

Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act 1951

### a) Present Position

FDI Cap	Entry Route
26%	Government

### b) Revised Position

FDI Cap	Entry Route
26%	Up to 26% Government. Above 26% to Cabinet Committee on Security (CCS) on case to case basis, which ensure access to modern and 'state-of-art' technology in the country

paragraph 6.2.6.2 is renumbered as (xx) and after clause (xiv), the following additional clauses are added :

(xv) Investment by Foreign Institutional Investors (FIIs) through portfolio investment is not permitted.

(xvi) All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of the Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs.

(xvii) Applications for FDI up to 26% will follow the existing procedure with proposals involving inflows in excess of Rs. 1200 crore being approved by Cabinet Committee on Economic Affairs (CCEA). Applications seeking permission of the Government for FDI beyond 26%, will in all cases be examined additionally by the Department of Defence Production (DoDP) from the point of view particularly of access to modern and 'state-of-art' technology.

(xviii) Based on the recommendation of the DoDP and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the DoDP in respect of cases which are likely to result in access to modern and 'state-of-art' technology in the country.

(xix) Proposals for FDI beyond 26% with proposed inflow in excess of Rs.1200 crores, which are to be approved by CCS will not require further approval of the Cabinet Committee of Economic Affairs (CCEA).

## 1.4 Courier Services (paragraph 6.2.10):

### a) Present Position

FDI Cap	Entry Route
100%	Government

### b) Revised Position

FDI Cap	Entry Route
No Change	Automatic

## 1.5 Telecom Services (paragraph 6.2.15)

### a) Present Position

6.2.15	Telecom Services
	Investment caps and other conditions for specified services are given below. However, licensing and security requirements notified by the Department of Telecommunications will need to be complied with for all services.
	FDI Cap
	Entry Route

The present clause (xv) under 'Other conditions' listed in



# From the Government

6.2.15.1	(i) Telecom Service	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
6.2.15.1.1	Other conditions:		
	<b>(1) General Conditions:</b>  (i) This is applicable ..... (v) .....countries.  <b>(2) Security Conditions:</b>  (i) The Chief Officer in-charge..... (xxii)..... on OSPs.  (3) The above General Conditions.....49%  (4) All..... on six monthly basis.		
		FDI Cap	Entry Route
6.2.15.2	(a) ISP with gateways.....  (d) .....bandwidth	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
6.2.15.3	(a) Infrastructure Provider .....  (c) ..... Mail. Note: Investment ..... world.	100%	Automatic up to 49% Government route beyond 49%

## b) Revised Position

6.2.15		FDI Cap	Entry Route
Change	<b>Telecom Services (including Telecom Infrastructure Providers Category-I)</b>  All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licences, Voice Mail/Audiotex/ UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.	100%	Automatic up to 49% Above 49% Government
6.2.15.1	Other Conditions: FDI upto 100% with 49% under automatic route and beyond 49% through FIPB route subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time.		

**1.6 Test Marketing (paragraph 6.2.16.3)** of such items for which marketing facility will be for a period of two years, and investment in setting up manufacturing facility commences simultaneously with test marketing.

### a) Present Position

FDI Cap	Entry Route
100%	Government

### b) Revised Position

**Para 6.2.16.3 stands deleted.**

**1.7 Single-brand product retail trading (paragraph 6.2.16.4):**

### a) Present Position

FDI Cap	Entry Route
100%	Government

### b) Revised Position

FDI Cap	Entry Route
No Change	Up to 49% Automatic Above 49% Government

Existing paragraphs 6.2.16.4 (2) (d) and 6.2.16.4 (3) of 'Circular 1 of 2013- Consolidated FDI Policy' are revised as under:

### Existing paragraphs- 6.2.16.4 (2) (d)

"Only one non-resident entity, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in the country, for the specific brand, through a legally tenable agreement, with the brand owner for undertaking single brand product retail trading in respect of the specific brand for which approval is being sought. The onus for ensuring compliance with this condition shall rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/ franchise/sub-licence agreement, specifically indicating compliance with the above condition."

### 6.2.16.4 (3)

"Application seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/ product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/ product categories to be sold under 'Single Brand' would require a fresh approval of the Government."





## Revised paragraphs-

### 6.2.16.4 (2) (d)

"A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'Single Brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval."

### 6.2.16.4 (3)

"Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy and Promotion. The applications would specifically indicate the product/ product categories which are proposed to be sold under a "Single Brand". Any addition to the product/ product categories to be sold under "Single Brand" would require a fresh approval of the Government. In case of FDI upto 49% the product/ product categories proposed to be sold except food products would be provided to the RBI."

**1.8 Asset Reconstruction companies(paragraph 6.2.17.1):** Asset Reconstruction Company" (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

#### (a) Present Position

FDI Cap	Entry Route
74% of paid-up capital of ARC (FDI+FII)	Government (for FDI)

#### b) Revised Position

FDI Cap	Entry Route
Up to 100% of paid-up capital of ARC (FDI+FII)	Up to 49% Automatic Above 49% Government

Clause (i) under 'Other conditions' listed in paragraph 6.2.17.1.2 is revised as under:

#### a) Present Position

"(i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs)

registered with Reserve Bank only under the Government Route."

#### b) Revised Position

"(i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank, upto 49% on the automatic route, and beyond 49% on the Government Route."

## 1.9 Commodity Exchanges(paragraph 6.2.17.4.2):

#### (a) Present Position

FDI Cap	Entry Route
49% (FDI & FII) [Investment by Registered FII under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	Government (for FDI)

#### b) Revised Position

FDI Cap	Entry Route
No Change	Automatic

The following is added as clause (iii) under 'Other conditions' listed in paragraph 6.2.17.4.3:

"(iii) Foreign investment in commodity exchanges will be subject to the guidelines of the Department of Consumer Affairs/ Forward Markets Commission (FMC)."

## 1.10 Credit Information companies (paragraph 6.2.17.5.1):

#### (a) Present Position

FDI Cap	Entry Route
49% (FDI + FII)	Government (for FDI)

#### b) Revised Position

FDI Cap	Entry Route
74% (FDI + FII)	Automatic

Clause (3) under 'Other conditions' listed in paragraph 6.2.17.5.2 is revised as under:

#### a) Present Position:

Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.



## b) Revised Position:

Investment by a registered FII under the Portfolio Investment scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 74% for foreign investment.

## 1.11 Infrastructure Company in the Securities Market (paragraph 6.2.17.6.1):

Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations

### a) Present Position

FDI Cap	Entry Route
49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Government (for FDI)

### b) Revised Position

FDI Cap	Entry Route
No Change	Automatic

## 1.12 Power Exchanges (paragraph 6.2.19.1):

Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010

### c) Present Position

FDI Cap	Entry Route
49% (26% FDI + 23% FII)	Government (for FDI)

### d) Revised Position

FDI Cap	Entry Route
No Change	Automatic

The following clause (ii) under 'Other conditions' listed in paragraph 6.2.19.2 is deleted:

"(ii) FII investments would be permitted under the automatic route and FDI would be permitted under the government approval route."

2.0 The above decision will take immediate effect.

Anjali Prasad  
Additional Secretary

# 18

## Review of the policy on foreign direct investment in the Multi-Brand Retail Trading Sector- amendment of paragraph 6.2.16.5 (iii), (iv) and (vi) of Circular 1 of 2013-Consolidated FDI Policy

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion Vide Press Note No.5 (2013 Series) dated 22.08.2013]

### 1.0 Present Position:

1.1 Paragraphs 6.2.16.5 (iii), (iv) and (vi) of the 'Circular 1 of 2013-Consolidated FDI Policy' effective from April 5, 2013, relating to the policy on FDI in Multi-Brand Retail Trading, read as below:

### 1.2 Paragraph 6.2.16.5 (iii)

At least 50% of total FDI brought in shall be invested in 'backend infrastructure' within three years of the first tranche of FDI, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, backend infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure.

### 1.3 Paragraph 6.2.16.5 (iv)

At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian 'small industries' which have a total investment in plant & machinery not exceeding US \$ 1.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. Further, if at any point in time, this valuation is exceeded, the industry shall not qualify as a 'small industry' for this purpose. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/ processed products purchased, beginning 151 April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.

### 1.4 Paragraph 6.2.16.5 (vi)

Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census and may also cover an area of 10 kms. around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking; In States/ Union Territories not having cities with population of more than 10 lakh as per 2011 Census, retail sales outlets may be set up in the cities of their choice, preferably the



largest city and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities. The locations of such outlets will be restricted to conforming areas, as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

## 2.0 Revised Position:

The Government of India has reviewed the position in this regard and decided to amend Paragraph 6.2.16.5 (iii) , (iv) and (vi) of Circular I of 2013-Consolidated FDI Policy', effective from April 5, 2013 , as below:

### 2.1 Amendment to paragraph 6.2.16.5 (iii):

At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'backend infrastructure' within three years, where ' back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in the backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

### 2.2 Amendment to paragraph 6.2.16.5 (iv):

At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian micro, small and medium industries which have a total investment in plant & machinery not exceeding US \$ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The ' small industry' status would be reckoned only at the time of first engagement with the retailer and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US\$ 2.00 million, during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/ processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.

### 2.3 Amendment to paragraph 6.2.16.5 (vi):

Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per the 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around

the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

**3.0** The above decision will take immediate effect.

Anjali Prasad

Additional Secretary to the Government of India

## 19 Amendment of the existing policy on Foreign Direct Investment - definition of the term "control", for calculation of total foreign investment i.e. direct and indirect foreign investment, in Indian companies

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion Vide Press Note No.4 (2013 Series) dated 22.08.2013]

### 1.0 Present Position:

1.1 As per paragraph 2.1.7 of 'Circular 1 of 2013-Consolidated FDI Policy'- effective from April 5,2013, the term "control" is defined as under:

"A company is considered as "controlled" by resident Indian citizens if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company."

### 2.0 Revised Position:

2.1 The Government of India has reviewed the above position and decided to amend paragraph 2.1.7 of the existing policy. The revised definition of the term "control" will be as under;

" 'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements."

**3.0** The above decision will take immediate effect.

Anjali Prasad

Additional Secretary to the Government of India



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60	Mr. Anil Kumar B S	ACS - 33513	SIRC
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62	Mrs. Aparupa Ghosh	ACS - 33515	EIRC
63	Mr. Vivek Borar	ACS - 33516	NIRC
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66	Ms. Nisha Chauhan	ACS - 33519	NIRC
67	Ms. Shalu Banoria	ACS - 33520	NIRC
68	Ms. Payal Mangla	ACS - 33521	NIRC

\* Admitted on 20<sup>th</sup> August, 30<sup>th</sup> August and 10<sup>th</sup> September, 2013





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71	Ms. Shraddha Dhacholia	ACS - 33524	EIRC	134	Mr. Shashank Kumar Sharma	ACS - 33587	NIRC
72	Mr. Amit Khowala	ACS - 33525	EIRC	135	Ms. Geeta Mohan Bandekar	ACS - 33588	WIRC
73	Ms. Ankita Sodani	ACS - 33526	EIRC	136	Mr. Pradeep Khetaram Prajapati	ACS - 33589	WIRC
74	Ms. Chaitaly Adak	ACS - 33527	EIRC	137	Ms. Riddhi Kanodia	ACS - 33590	EIRC
75	Mr. Amit Singhania	ACS - 33528	EIRC	138	Mr. Newton Kumar Dhar	ACS - 33591	EIRC
76	Ms. Neha Gupta	ACS - 33529	EIRC	139	Mr. Dharendra Sharma	ACS - 33592	NIRC
77	Mr. Ramesh Kumar Singh	ACS - 33530	EIRC	140	Mr. Hareesh Swaminathan	ACS - 33593	WIRC
78	Ms. Tapasya Rakhecha	ACS - 33531	EIRC	141	Ms. Shweta Nagesh Bandekar	ACS - 33594	WIRC
79	Mr. Vikram Tak	ACS - 33532	NIRC	142	Ms. Meenu Shivkumar Modi	ACS - 33595	WIRC
80	Mr. Kavindra Kumar Gupta	ACS - 33533	NIRC	143	Mr. Manoj Garg	ACS - 33596	WIRC
81	Ms. Shikha Verma	ACS - 33534	NIRC	144	Ms. Sayani Ghose	ACS - 33597	EIRC
82	Ms. Dheera Haran	ACS - 33535	WIRC	145	Mr. Swaroop Saha	ACS - 33598	EIRC
83	Ms. Ayushi Rastogi	ACS - 33536	NIRC	146	Mr. Sandeep Kumar	ACS - 33599	NIRC
84	Mr. Abhishek Kedia	ACS - 33537	NIRC	147	Mrs. Rekha Gaurav Longia	ACS - 33600	NIRC
85	Mr. Hariom Rastogi	ACS - 33538	NIRC	148	Mrs. Divya Ajith	ACS - 33601	SIRC
86	Ms. Anjali Chauhan	ACS - 33539	NIRC	149	Mr. Rohit Prakash Prit	ACS - 33602	EIRC
87	Ms. Payal Sharma	ACS - 33540	NIRC	150	Mrs. Preeti Bansal	ACS - 33603	NIRC
88	Ms. Amandeep Kaur	ACS - 33541	NIRC	151	Mr. Manoj Kumar	ACS - 33604	NIRC
89	Ms. Vinita Rani	ACS - 33542	NIRC	152	Ms. Bhawna Kapoor	ACS - 33605	NIRC
90	Ms. Mitali Goel	ACS - 33543	NIRC	153	Ms. Kusum Lata	ACS - 33606	NIRC
91	Ms. Shruti Aneja	ACS - 33544	NIRC	154	Mr. Ashish Thakur	ACS - 33607	NIRC
92	Ms. Geetika Parmar	ACS - 33545	NIRC	155	Ms. Priyanka	ACS - 33608	NIRC
93	Ms. Mohini Agarwal	ACS - 33546	NIRC	156	Ms. Bhawna Mittal	ACS - 33609	NIRC
94	Ms. Saloni Jain	ACS - 33547	NIRC	157	Mr. Jitender Singh	ACS - 33610	NIRC
95	Ms. Harsha	ACS - 33548	NIRC	158	Ms. Dimple Juneja	ACS - 33611	NIRC
96	Ms. Simranjot Kaur	ACS - 33549	NIRC	159	Ms. Priyanka Bhandari	ACS - 33612	WIRC
97	Ms. Sonam Katyal	ACS - 33550	NIRC	160	Mr. Pratik Jayanti Gala	ACS - 33613	WIRC
98	Mr. Dharambir Singh Bisht	ACS - 33551	NIRC	161	Ms. Vrushali Jayant Bhawe	ACS - 33614	WIRC
99	Ms. Kirti Gaiind	ACS - 33552	NIRC	162	Mr. Mayur Kunvarji Shah	ACS - 33615	WIRC
100	Mr. Vasu Takkar	ACS - 33553	NIRC	163	Ms. Alpa Rameshbhai Ramani	ACS - 33616	WIRC
101	Mr. Ashish Kumar Srivastava	ACS - 33554	WIRC	164	Ms. Shruti Vishwanath Shetty	ACS - 33617	WIRC
102	Ms. Mamta	ACS - 33555	NIRC	165	Ms. Monika Chawla	ACS - 33618	NIRC
103	Ms. Swati Goel	ACS - 33556	NIRC	166	Mr. Sudhir Kumar	ACS - 33619	EIRC
104	Ms. Harshika Khandelwal	ACS - 33557	NIRC	167	Ms. Renu Kumari	ACS - 33620	NIRC
105	Mr. Bhupendra Kaushik	ACS - 33558	NIRC	168	Ms. Sharanya Sriram	ACS - 33621	SIRC
106	Ms. Lalita Parakh	ACS - 33559	NIRC	169	Mr. Sanjay Mishra	ACS - 33622	WIRC
107	Ms. Keerti Seetaram Hegde	ACS - 33560	SIRC	170	Ms. Kritika Sharma	ACS - 33623	NIRC
108	Ms. Divya Venkat	ACS - 33561	SIRC	171	Mr. Arvind Purohit	ACS - 33624	NIRC
109	Mr. Ankit Jayantilal Jain	ACS - 33562	SIRC	172	Ms. Shampita Das	ACS - 33625	EIRC
110	Mr. Kiran Policepatil	ACS - 33563	SIRC	173	Mr. Mohit Baid	ACS - 33626	EIRC
111	Mr. Mohit Ramesh Saraogi	ACS - 33564	WIRC	174	Ms. Ishita Saraogi	ACS - 33627	EIRC
112	Ms. Vandana Periwal	ACS - 33565	WIRC				
113	Ms. Ruchi Pramod Sathe	ACS - 33566	WIRC				
114	Ms. Rucha Sharad Jain	ACS - 33567	WIRC				
115	Mr. Rohit Ravikiran Kulkarni	ACS - 33568	WIRC				
116	Ms. Dhara Nareshbhai Shah	ACS - 33569	WIRC				
117	Ms. Poonam Gurdevsingh Pabla	ACS - 33570	WIRC				
118	Ms. Hiral Nitin Kanani	ACS - 33571	WIRC				
119	Ms. Kathryn Durando	ACS - 33572	WIRC				
120	Mr. Utkarsh Rastogi	ACS - 33573	NIRC				
121	Ms. Vinita Ashokkumar Kapoor	ACS - 33574	WIRC				
122	Ms. Payal Tukaram Thok	ACS - 33575	WIRC				
123	Mr. Pranav Vitthal Mehta	ACS - 33576	WIRC				
124	Mr. Harshil Paresb Kumar Shah	ACS - 33577	WIRC				
125	Mr. Siddharth Sharma	ACS - 33578	WIRC				
126	Mr. Narendra Kumar Arora	ACS - 33579	NIRC				
127	Ms. Vandna Jain	ACS - 33580	NIRC				
128	Mr. Murali Krishna Cheruvu	ACS - 33581	WIRC				
129	Mr. Ramesh C	ACS - 33582	SIRC				
130	Mr. Asis Goenka	ACS - 33583	EIRC				
131	Ms. Lipi Todi	ACS - 33584	EIRC				

## RESTORED\*

1.	Sh. Ashok Kumar Panigrahi	ACS - 20846	NIRC
2.	Sh. Vinod Mehra	FCS - 2997	NIRC
3.	Sh. Pradeep Kumar	ACS - 12390	NIRC
4.	Sh. Ashish Kumar Sachdeva	ACS - 16444	NIRC
5.	Sh. Ajay Saini	ACS - 13587	NIRC
6.	Mrs. Meenakshi Sudan	ACS - 11184	NIRC
7.	Sh. R. S. Hariharan	ACS - 2292	NIRC
8.	Sh. Kaid Johar Kalabhai	ACS - 21592	WIRC
9.	Sh. Sunil Khengarji Parmar	FCS - 5472	WIRC
10.	Sh. N E Devasahayam	FCS - 5058	SIRC
11.	Sh. K G George	ACS - 9538	SIRC
12.	Sh. Jitendra Prakash Gupta	FCS - 3086	NIRC
13.	Sh. N Natarajan	FCS - 4200	SIRC
14.	Sh. Noel Solomon Benjamin	ACS - 14058	WIRC
15.	Sh. Vinod P Patil	ACS - 12135	WIRC

\* Restored from 22<sup>nd</sup> July 2013 to 21<sup>st</sup> August 2013



# News From the Institute

16. Ms. Sheetal Divakar Vaidya	ACS - 17093	SIRC
17. Mrs. Anjali Makarand Gudekar	ACS - 19937	WIRC
18. Sh. Anoop Kumar Awasthi	ACS - 18662	NIRC
19. Sh. Rajeev Kumar Jain	ACS - 9724	WIRC
20. Sh. Krishna Kumar	ACS - 17977	WIRC
21. Sh. H Ravi Kumar	ACS - 13303	SIRC
22. Sh. S N Madhavan	FCS - 3846	SIRC
23. Mr. Sourabh Raha	ACS - 30244	NIRC
24. Sh. Ramesh Sadanand Shenoy	ACS - 7052	NIRC
25. Mr. Atul Chauhan	ACS - 28394	NIRC
26. Ms. Hemlata Chainsukh Bohara	ACS - 22609	WIRC
27. Mr. Vidhya Bharti S	ACS - 31688	SIRC
28. Ms. Shanthi Mg	ACS - 23932	SIRC
29. Sh. Chirantan Datta	ACS - 6830	EIRC
30. Sh. Rishi Daga	ACS - 15212	EIRC
31. Sh. Rabilal Thapa	FCS - 3910	SIRC
32. Ms. Seema Rath	FCS - 4004	NIRC
33. Sh. Yogesh Goel	ACS - 10864	NIRC
34. Sh. Anil Kumar Babulal Mehta	ACS - 24105	WIRC
35. Mrs. Manju Anand	ACS - 17215	WIRC
36. Ms. Anita Kakar	ACS - 18466	NIRC
37. Sh. Ramesh Kathuria	ACS - 11214	WIRC
38. Sh. Gaurav Toshkhani	ACS - 9795	NIRC
39. Ms. Vasudha Verma	ACS - 10802	NIRC
40. Ms. Neelam Beniwal	ACS - 29494	NIRC
41. Sh. Sunil Kumar Vaya	ACS - 16101	NIRC
42. Sh. Samir Pravinbhai Rajdev	ACS - 17849	WIRC
43. Ms. Monika Arora	ACS - 15702	NIRC
44. Ms. Prachi Aggarwal	ACS - 31250	NIRC
45. Ms. Sumithra Chakravarthi	FCS - 6319	SIRC
46. Mr. Rohit Singh Rautela	ACS - 22641	NIRC
47. Sh. Ravendra Pratap Singh	ACS - 25261	NIRC
48. Sh. Saurabh Misra	ACS - 25150	NIRC
49. Sh. Rajat Arora	ACS - 23101	NIRC
50. Sh. Rama Shanker Tiwari	ACS - 14217	NIRC
51. Ms. Purni Kathpalia	ACS - 22395	NIRC
52. Sh. Dinesh Gupta	ACS - 6225	NIRC
53. Ms. Sonika Jain	ACS - 14266	NIRC
54. Ms. Deepika Dawar	ACS - 29025	NIRC
55. Sh. Joginder Sharma	FCS - 5091	NIRC
56. Reema Sharma	FCS - 5425	NIRC
57. Sh. B K Sinha	FCS - 1286	EIRC
58. Sh. Shekhar Bhandari	ACS - 13011	WIRC
59. Sh. Pawan Kumar	ACS - 4628	NIRC
60. Sh. Aditya Sharma	FCS - 5572	EIRC
61. Sh. Rajeev Goswami	ACS - 15080	NIRC
62. Ms. Anuradha Nagar	ACS - 18184	NIRC
63. Sh. Sunil Khengarji Parmar	FCS - 5472	NIRC
64. Sh. Amit Sikri	ACS - 17200	NIRC
65. Mr. Sandeep Dogra	ACS - 30872	NIRC
66. Ms. Smita Dhamija	ACS - 23244	NIRC
67. Ms. Lakshmi Mahadevan	ACS - 9081	NIRC
68. Sh. S Mahadevan	FCS - 3011	NIRC
69. Sh. Anshul Bhargava	ACS - 15731	NIRC
70. Sh. K R Anandan	ACS - 12409	SIRC
71. Sh. Vaidyanathan Subramanian	ACS - 18850	SIRC
72. Sh. Sham Sunder	FCS - 4402	NIRC
73. Ms. Anamika Bhola	ACS - 26132	NIRC
74. Sh. Narayan Barasia	ACS - 12957	NIRC
75. Sh. K R Ramamoorthy	FCS - 661	SIRC
76. Sh. Rakesh Sareen	ACS - 7315	NIRC
77. Sh. Gauri Shankar Gupta	ACS - 3605	NIRC
78. Sh. Rajeev Sharma	ACS - 18276	NIRC

79. Sh. M N Balasubramanian	ACS - 11851	SIRC
80. Sh. Rajmal Labhchand Mogra	ACS - 8089	WIRC

## Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
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### ISSUED\*\*

1	Mr. Mayur Gujrati	ACS - 33126	12239	NIRC
2	Mr. R Ramchandrar	ACS - 33068	12240	SIRC
3	Mr. Deepak Rawat	ACS - 33210	12241	NIRC
4	Mr. Narender Pal Gupta	FCS - 2105	12242	NIRC
5	Mr. Rahul Sitaram Bhilare	ACS - 33183	12243	WIRC
6	Ms. Aakansha Jain	ACS - 33013	12244	WIRC
7	Ms. Swati Gupta	FCS - 5766	12245	WIRC
8	Ms. Shalini B	ACS - 28817	12246	SIRC
9	Ms. Manju Laur	ACS - 28844	12247	NIRC
10	Ms. Surabhi Jain	ACS - 31754	12248	EIRC
11	Ms. Manju Sri A	ACS - 33266	12249	SIRC
12	Ms. Meenakshi Sharma	ACS - 30481	12250	NIRC
13	Ms. Nidhi Ajmera	ACS - 32645	12251	NIRC
14	Ms. Sidhi Jain	ACS - 31294	12252	NIRC
15	Mr. Mahesh Kumar Bohra	ACS - 30918	12253	NIRC
16	Ms. Deepa Singal	ACS - 31657	12254	NIRC
17	Mr. Ankit Kiritbhai Shah	ACS - 32988	12255	WIRC
18	Ms. Priti Arora	ACS - 31236	12256	EIRC
19	Mr. Santosh Janardhan Shinde	ACS - 32699	12257	WIRC
20	Ms. Komal Jain	ACS - 25666	12258	NIRC
21	Mr. Harashanag G R	ACS - 32860	12259	SIRC
22	Ms. Deepa Methwani	ACS - 29560	12260	WIRC
23	Mr. Sunil Kumar Maheshwari	ACS - 30808	12261	EIRC
24	Mr. Abhishek Gupta	ACS - 33302	12262	NIRC
25	Ms. Suman	ACS - 32385	12263	NIRC
26	Mr. Narayan Das Daga	ACS - 33133	12264	NIRC
27	Mrs. Meenu Aggarwal	ACS - 30120	12265	NIRC
28	Mr. Rajesh Shantaram Shinde	ACS - 33149	12266	WIRC
29	Ms. Tanzeem Raineer	ACS - 29432	12267	NIRC
30	Mrs. Chhavi Jain	ACS - 23010	12268	NIRC
31	Mr. Akash Ghuwalewala	ACS - 32445	12269	EIRC
32	Mrs. Jyothi Shivayogi	ACS - 33062	12270	SIRC
33	Ms. Vandana Sharma	ACS - 33194	12271	NIRC
34	Ms. Sruthy Suresh	ACS - 33264	12272	SIRC
35	Mr. Karan Mehra	ACS - 33137	12273	NIRC
36	Ms. Aditi Agrawal	ACS - 32103	12274	WIRC
37	Mr. Siddhant Benara	ACS - 33294	12275	NIRC
38	Mr. Kiransingh Roopsingh Rajpurohit	ACS - 33315	12276	WIRC
39	Mr. Abhishek Kumar Goyal	ACS - 25809	12277	NIRC
40	Mr. Rajendra Kumar Gupta	FCS - 753	12278	NIRC
41	Mr. Gajendra Singh Solanki	ACS - 33079	12279	WIRC
42	Mr. Amarnadh Baratam	ACS - 24213	12280	SIRC
43	Mr. Arun Kumar Jaiswal	ACS - 29827	12281	EIRC

\* Issued during the month of August 2013



44	Mr. Lokesh Ghatiya	ACS - 22813	12282	WIRC	98	Mr. Jitendra Prasad Shah	ACS - 33275	12336	NIRC
45	Ms. Parul Gupta	ACS - 29939	12283	NIRC	99	Mr. Priyank Gattani	ACS - 33403	12337	WIRC
46	Mr. Minender Poshetty Boga	ACS - 25528	12284	WIRC	100	Mr. Dhairyakumar Mohanbhai Thakkar	ACS - 31505	12338	WIRC
47	Mr. K Sudarsan	ACS - 33226	12285	SIRC	101	Ms. Chanchal Sharma	ACS - 21064	12339	NIRC
48	Mr. Biswanath Mukherjee	FCS - 1944	12286	EIRC	102	Mr. Ram Sahay	ACS - 33469	12340	NIRC
49	Ms. Mini Bansal	ACS - 26776	12287	NIRC	103	Ms. Anupriya Saxena	ACS - 22491	12341	NIRC
50	Mr. Amit Kumar Jain	ACS - 15486	12288	NIRC	104	Mr. Rachin Malik	ACS - 30729	12342	NIRC
51	Mr. V S S R Murthy Eranki	ACS - 32737	12289	SIRC	105	Mr. Ashish Gupta	ACS - 33450	12343	WIRC
52	Ms. Kanika Rani	ACS - 33219	12290	NIRC	106	Mr. Ajay Kumar	ACS - 30196	12344	NIRC
53	Mr. Ranjeetkumar Parmanand Sharma	ACS - 27079	12291	WIRC	107	Ms. Sneha K Das	ACS - 31542	12345	SIRC
54	Ms. Shweta Gupta	FCS - 7263	12292	NIRC	108	Ms. Monisha Gupta	ACS - 23260	12346	SIRC
55	Mr. Mohit Kanojia	ACS - 32853	12293	NIRC	109	Mr. Chetan Kakkar	ACS - 33373	12347	NIRC
56	Mr. Abhishek Kumar Pandey	ACS - 33116	12294	EIRC	110	Mr. Sahil Patpatia	ACS - 33290	12348	NIRC
57	Mr. Milind Janak Gujar	ACS - 33432	12295	WIRC	111	Mr. Yogendra Eknath Ahire	ACS - 32976	12349	WIRC
58	Ms. Shweta Eknath Chavan	ACS - 33312	12296	WIRC	112	Mr. Naveen Kumar Jain	ACS - 33251	12350	WIRC
59	Ms. Riddhi Kamlesh Tilwani	ACS - 32797	12297	WIRC	113	Mr. Manish Durga	ACS - 30291	12351	NIRC
60	Mr. Ashish Kumar	ACS - 33348	12298	NIRC	114	Mr. Mayank Mittal	ACS - 33484	12352	NIRC
61	Ms. Ankita Suresh Agarwal	ACS - 33164	12299	WIRC	115	Mr. Sachin Shiva Kotian	ACS - 32374	12353	WIRC
62	Mr. Suryakant Laxman Khare	ACS - 8270	12300	WIRC	116	Ms. Shikha Jain	ACS - 32709	12354	EIRC
63	Ms. Payal Gupta	ACS - 24779	12301	NIRC	117	Mr. Saarthi Bhatia	ACS - 33477	12355	NIRC
64	Mr. Dushyant Bihari Lal Dholakia	FCS - 2169	12302	WIRC	118	Mr. V Swamidason	ACS - 17719	12356	SIRC
65	Mr. Vikas Kumar Sharma	ACS - 30697	12303	NIRC	119	Mr. Pavan Nandkishor Zavar	ACS - 32690	12357	WIRC
66	Mr. Kumar Pal Mahendra Mehta	ACS - 33179	12304	NIRC	120	Ms. Kiran Gupta	ACS - 27786	12358	NIRC
67	Mr. Prassan Navinkumar Sinha	ACS - 28105	12305	WIRC	121	Mr. Pawan Rajendrasingh Yadav	ACS - 33326	12359	WIRC
68	Mr. Rahul Gupta	ACS - 30597	12306	NIRC	122	Mr. S V Sangamesh	ACS - 30308	12360	SIRC
69	Mrs. Lalita Bansal	ACS - 32489	12307	NIRC	123	Ms. Mahua Mazumdar	ACS - 32130	12361	NIRC
70	Ms. Kavita Budhiraja	FCS - 7303	12308	NIRC	124	Mr. Nitin Kumar Singhai	ACS - 31061	12362	WIRC
71	Mr. K Janakiraman	ACS - 21851	12309	SIRC	125	Mr. Soumitra Bhooshan Mujumdar	ACS - 30938	12363	WIRC
72	Mr. Elangovan A	ACS - 33331	12310	SIRC	126	Mr. Miteshkumar G Rana	ACS - 28113	12364	WIRC
73	Ms. Pooja Sureshchandra Kanani	ACS - 30605	12311	WIRC	127	Mr. Vikas Rai Berry	FCS - 4013	12365	NIRC
74	Ms. Isha Singhal	ACS - 29372	12312	NIRC	128	Mr. Yogesh Mataprasad Sharma	ACS - 33235	12366	WIRC
75	Mr. Surinder Vashishtha	ACS - 21285	12313	NIRC	129	Mr. Karan Narang	ACS - 31525	12367	NIRC
76	Ms. Priyanka Sureshkumar Bajaj	ACS - 32580	12314	WIRC	130	Mr. Pratik Kalsariya	ACS - 33502	12368	WIRC
77	Mr. B Murugesan	ACS - 9848	12315	SIRC	131	Mr. Dhawal Doshi	ACS - 30629	12369	EIRC
78	Mr. Pawan Sharma	ACS - 15148	12316	NIRC	132	Mr. Raghav Agarwal	ACS - 26609	12370	NIRC
79	Mr. Ravinder Kumar	ACS - 33299	12317	NIRC	133	Mr. Rituraj Singh Rajput	ACS - 31272	12371	NIRC
80	Ms. Divya Jain	ACS - 23796	12318	NIRC	134	Ms. J Bhavana Chakragiri	ACS - 23149	12372	SIRC
81	Mr. Intezar Ahmad Khan	FCS - 2519	12319	NIRC	135	Mr. Anil Kumar	FCS - 5903	12373	NIRC
82	Mr. Pushkar Satish Deshpande	ACS - 21259	12320	WIRC	136	Mr. B Umesh	ACS - 29294	12374	SIRC
83	Ms. Kishori Narayan Khanolkar	ACS - 26827	12321	WIRC	137	Mr. Rishabh Baid	ACS - 33446	12375	EIRC
84	Mr. Sarath Kumar V	ACS - 33398	12322	SIRC	138	Mrs. Rupal Bhauwala	ACS - 33356	12376	EIRC
85	Mr. Venkatesh N	ACS - 32213	12323	SIRC	139	Mr. Vishal Chhaparia	ACS - 33357	12377	EIRC
86	Ms. Manisha Agarwal	ACS - 29621	12324	EIRC	140	Mr. Hemant Naranbhai Pawar	ACS - 33423	12378	WIRC
87	Ms. Pallavi Vinod Vaidya	ACS - 33437	12325	WIRC	141	Mr. Prathap Kumar S	ACS - 22453	12379	SIRC
88	Ms. Maanya Singhal	ACS - 33142	12326	NIRC	142	Mr. Jayesh Chandrakant Awati	ACS - 31816	12380	WIRC
89	Mr. Govind Khandelwal	ACS - 33193	12327	NIRC	143	Mr. Abdul Sab Khanali	ACS - 33406	12381	SIRC
90	Mr. Milan Malik	ACS - 32559	12328	NIRC	144	Ms. Amruta Vinod Bandivadekar	ACS - 32967	12382	WIRC
91	Ms. Shalu Singhal	ACS - 32682	12329	NIRC	145	Mr. Shailesh Vishwas Gadgil	ACS - 32745	12383	WIRC
92	Ms. Tajinder Kaur	ACS - 32776	12330	NIRC	146	Mr. Kanwaljit Singh	ACS - 32730	12384	NIRC
93	Mr. Vishwaskumar Ashokkumar Sharma	ACS - 33017	12331	WIRC	147	Ms. Shubhangi Mehta	ACS - 30659	12385	NIRC
94	Ms. Mamta Dhiman	ACS - 31847	12332	NIRC	148	Mrs. Shalu Varshney	ACS - 17344	12386	NIRC
95	Ms. Surbhi Garg	ACS - 32300	12333	NIRC	149	Mr. Vijay Kumar Sharma	ACS - 32547	12387	NIRC
96	Ms. Alka Rani	ACS - 30930	12334	NIRC	150	Mr. Harjinder Singh	ACS - 14363	12388	NIRC
97	Mr. Ajai Kumar Gupta	ACS - 23709	12335	NIRC	151	Ms. Namrata Nandakishore Paithane	ACS - 33173	12389	WIRC





# News From the Institute

152	Mr. Nagendra Kumar Sagi	ACS - 33490	12390	SIRC
153	Mr. Sandip Kumar Mishra	FCS - 7197	12391	WIRC
154	Mr. Sanjay Kumar	ACS - 33243	12392	WIRC
155	Ms. Meenal Talesara	ACS - 22658	12393	NIRC
156	Mr. Khunjambam Rakesh Singh	ACS - 33268	12394	EIRC
157	Ms. Puja Kumari	ACS - 32295	12395	EIRC
158	Sh. M V M Sundar	FCS - 5451	12396	SIRC
158	Ms. Swati Singhal	ACS - 29487	12397	NIRC
159	Mrs. Kanta Binwal	ACS - 29754	12398	NIRC
160	Mr. Gaurav Ramesh Mishra	ACS - 32829	12399	WIRC
161	Mr. N D Satish	ACS - 33507	12400	SIRC
162	Mr. Rajkumar Goel	ACS - 21338	12401	WIRC
163	Ms. Sonam Jain	ACS - 31862	12402	NIRC
164	Ms. Bandana Agarwal	ACS - 33463	12403	EIRC
165	Ms. Megha Gandhi	ACS - 30798	12404	NIRC

## CANCELLED\*

1	Sh. Amitav Ganguly	ACS - 4153	11855	NIRC
2	Sh. Sushil Kumar Antal	ACS -17733	9755	NIRC
3	Mrs. Isha Kharkia	ACS - 24304	11471	EIRC
4	Ms. Sonia Mittal	ACS - 27387	10242	NIRC
5	Mr. Vinayak Balasaheb Patil	ACS - 32464	11969	WIRC
6	Mr. Atul Chandrakant Vispute	ACS - 27999	10234	WIRC
7	Ms. Anushree Agarwal	ACS - 25243	10976	EIRC
8	Mr. Ashish A Parmar	ACS - 29470	11354	SIRC
9	Mr. Sandeep Kumar	ACS - 29086	10626	NIRC
10	Sh. B Anil Kumar	FCS - 3297	8801	SIRC
11	Mr. Mandar Subhash Palav	ACS - 27695	11623	WIRC
12	Ms. Sneha Mahajan	ACS - 23530	11087	NIRC
13	Sh. Vivek Singh	ACS - 23721	12181	NIRC
14	Mr. Ravi Shankar Kumar	ACS - 32681	12059	NIRC
15	Sh. Hridesh Agarwal	ACS - 17367	10325	NIRC
16	Mrs. Swati Lunia	ACS - 25474	10393	WIRC
17	Ms. Tripti Shyamsundar Rath	ACS - 27515	10879	WIRC
18	Ms. Puja Gupta	ACS - 28664	12036	NIRC
19	Sh. Ajay Kumar Jain	FCS - 5826	12084	NIRC
20	Ms. Aarti Arora	ACS - 18966	9520	NIRC
21	Ms. Nidhi Bothra	ACS - 25724	9591	EIRC
22	Mrs. Kanak Kewalramani	ACS - 22638	9682	WIRC
23	Sh. Tapan Kumar Banerjee	ACS - 1242	5247	EIRC
24	Mr. Rajesh Deepak Palande	ACS - 30939	11639	WIRC

## Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
ADMITTED**			
1	Ms. Kaynaz Kersi Sarbhawala	6555	SOUTH
2	Sh. Kumaran S.	6556	SOUTH
3	Sh. Ritesh Kumar	6557	WEST
4	Mohd. Arif	6558	NORTH
5	Sh. Chirag Khandelwal	6559	WEST
6	Sh. Abhinav Jain	6560	NORTH
7	Sh. Pradeep Kumar Sharda	6561	WEST

\* Cancelled during the Month of August 2013

\*\* Admitted During the Month of August, 2013

1264

October 2013

## ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2013-14

The names of members who could not remit their annual membership fee for the year 2013-14 by the last extended **date i.e. 31st August, 2013** stand removed from the Register of Members w.e.f. 1st September, 2013. They may pay the fee and get their names restored by making an application in Form 'BB' with the entrance fee (Associate members Rs. 1500/- & Fellow members Rs. 1000/- respectively) alongwith restoration fee of Rs. 250/-. Form-BB is available on the web-site of the Institute and also published else where in this issue.

The Certificate of Practice of the members who could not remit their annual Certificate of Practice fee for the year 2013-14 by the specified date i.e. on or before **30th September, 2013** stand cancelled **w.e.f. 1st October, 2013**. They may restore their Certificate of Practice by making an application in Form 'D' with the restoration fee of Rs. 250/-. Form-D is available on the web-site of the Institute and also published else where in this issue.

### The annual membership and certificate of practice fee payable is as follows:-

1. Annual Associate membership fee	Rs. 1125/-
2. Annual Fellow membership fee	Rs. 1500/-
3. Annual certificate of practice fee	Rs. 1000/- (*)

\*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) and also published elsewhere in this issue.

## MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

- On-Line (through payment Gateway of the Institute's web-site ([www.icsi.edu](http://www.icsi.edu))).
- Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- Cash/ local cheque drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.
- Demand draft / Pay order drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

### For queries, if any,

the members may please contact Mr. D.D. Garg, Admn. Officer or Mrs. Vanitha Dhanesh on telephone Nos.011-45341062/64 or Mobile No.8130454693 or through **e-mail ids: [annualfee@icsi.edu](mailto:annualfee@icsi.edu), [cp@icsi.edu](mailto:cp@icsi.edu)**



CHARTERED SECRETARY



## APPLICATION FOR RESTORATION OF MEMBERSHIP

**To,**  
 The Secretary to the Council of  
 The Institute of Company Secretaries of India  
 'ICSI' House, 22, Institutional Area  
 Lodi Road, New Delhi-110003

Sir,

I hereby apply for restoration of my name in the Register as an Associate/Fellow Member of the Institute of Company Secretaries of India in accordance with the provisions contained in the Company Secretaries Act, 1980 and Regulations made thereunder and declare that I am eligible for the membership of the Institute and am not subject to any disabilities stated in the act or the Regulations of the Institute. The required particulars are furnished below:

1. Name in full : .....  
**(In Block Letters)** Surname M. Name F. Name

2. Address

**(i) Professional**

Designation .....

Name of Company .....

Address .....

.....

.....

Pin Code: .....

Telephone No. .... Fax .....

E -mail .....

**(ii) Residential** .....

.....

.....

Pin Code: .....

Contd.

Telephone No. .... Fax .....

3. Date of admission as Associate / : .....  
 Fellow Member of the Institute

4. Membership Number .....

5. I hereby undertake that if re-admitted as an Associate/Fellow Member of the Institute, I will be bounded by the Company Secretaries Act, 1980 and the Regulations made thereunder, as amended from time to time

6. I also undertake that such instances will not recur and I will make the payment of annual fee in future within the stipulated time (i.e. on or before 30th June of each year)

7. I send herewith a sum of Rs. .... being the arrears of Annual Membership fee of Rs. .... for the years ..... to ..... and restoration fee of Rs.250/- alongwith entrance fee (Rs. 1500/- for Associates & Rs. 1000/- for fellows)

8. I solemnly declare that what I have stated above is true and correct.

Place:

Yours faithfully

Date:

Signature



# APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION\* OF CERTIFICATE OF PRACTICE

See Reg. 10, 13 & 14

To  
The Secretary to the Council of  
The Institute of Company Secretaries of India  
'ICSI HOUSE', 22, Institutional Area,  
Lodi Road, New Delhi - 110 003

Sir,

I furnish below my particulars .....

- (i) Membership Number FCS/ACS: .....
- (ii) Name in full: .....  
(in block letters) ..... Surname ..... Name .....
- (iii) Date of Birth: .....
- (iv) Professional Address: .....
- (v) Phone Nos. (Resi.) ..... (Off.) .....
- (vi) Mobile No ..... Email id .....
- (vii) Additions to or change in qualifications, if any: .....

1. Submitted for (tick whichever is applicable):

(a) Issue ..... (b) Renewal ..... (c) Restoration .....

2. (a) Particulars of Certificate of Practice issued / surrendered/Cancelled earlier

Sl. No	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

3. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.
- ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
- iii. I hereby undertake that, I shall adhere to the mandatory ceiling of not more than eighty companies in aggregate in a calendar year in terms of the **Guidelines for Issuing Compliance Certificate and Signing of Annual Return** issued by the Institute on 27th November, 2007.
- iv. I state that I have issued / did not issue ..... advertisements during the year 20 ..... -..... in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute\*.
- v. I state that I issued ..... Corporate Governance compliance certificates under Clause 49 of the listing agreement during the year 20 ..... -.....\*
- vi. I state that I have / have not undertaken ..... Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20 ..... - \*
- vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/Firm of Practising Company Secretaries** issued by the Institute. \*
4. I send herewith Bank draft drawn on ... .. Bank ... .. Branch bearing No ... .. for Rs ... .. towards annual certificate of practice fee for the year ending 31st March ... ..
5. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Encl.

Date:

\* Applicable in case of renewal or restoration of Certificate of Practice



# Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE  
COMPANY SECRETARIES BENEVOLENT FUND\*



Sl. No.	LM No.	Name	Mem No.	City
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## EIRC

1	10103	SH SUBIR KUMAR	ACS - 20262	PATNA
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## NIRC

2	10095	SH. SABYASACHI PANIGRAHI	FCS - 4522	NEW DELHI
3	10097	MR. VIKRAM TAK	ACS - 33532	PALI DISTT
4	10099	SH. GIRISH KUMAR GAKHAR	ACS - 27170	FARIDABAD
5	10104	MS. SHIPRA SINGLA	ACS - 31124	SIRSA DISTT
6	10105	MR. ABHISHEK GUPTA	ACS - 33302	NEW DELHI
7	10106	MR. SANDEEP KUMAR	ACS - 29086	NEW DELHI

## SIRC

8	10091	SH. SUNDAR V.	ACS - 18416	CHENNAI
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Sl. No.	LM No.	Name	Mem No.	City
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9	10093	SH. K VENKATA NARAYANA	ACS - 14244	BANGALORE
10	10094	MR. RAGHURAM MALLELA	ACS - 31442	HYDERABAD
11	10101	MS. C M LAKSHMI	ACS - 14680	CHENNAI
12	10102	SH. R GOPAL	ACS - 9156	CHENNAI
13	10107	MR. VIVEK KUMAR	ACS - 30180	ERNAKULAM

## WIRC

14	10092	MR. PRASHANT JAIN	ACS - 31031	THANE
15	10096	SH. AJAY DNYANESHWAR SATAV	FCS - 6358	PUNE
16	10098	MR. MURALI KRISHNA CHERUVU	ACS - 33581	NAVI MUMBAI
17	10100	MR. BHARAT RATHI	ACS - 32842	AHMEDABAD
18	10108	MS. MEENAKSHI SURESH POTDAR	ACS - 25087	DOMBIVLI (EAST)

\* Enrolled from 24<sup>th</sup> August 2013 to 20<sup>th</sup> September, 2013





# News From the Institute



List of Companies &  
other Organisations  
Registered for

Imparting Training  
During the Month of  
August 2013

Region	Training Period	Stipend (Rs.)
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## Eastern

**Sri Jiwan Builder Pvt. Ltd.**  
P.B Complex, A.T. Road,  
Guwahati- 781001, Assam

15 Months  
Training

Suitable

**Intelligent Money Managers Pvt. Ltd.**  
5th Floor, Narayani Building  
27 Brabourne Road, Kolkata-700001  
[ppoonam207@gmail.com](mailto:ppoonam207@gmail.com)

15 Months  
Training &  
15 Days  
Specialized Training

Suitable

**Gretex Corporate Services Pvt. Ltd.**  
19B, B.B. Ganguly Street,  
2nd Floor, Kolkata-700012  
[info@gretexgroup.com](mailto:info@gretexgroup.com)

15 Months  
Training

Suitable

**Himgiri Nirman Pvt. Ltd.**  
83/2/1, Topsia Road (South)  
Kolkata 700046, India

15 Months  
Training

5000/-

**Aqua Food Concepts Ltd.**  
81-B, Kalighat Road, Kolkata  
(West Bengal) 700 026

15 Months  
Training

Suitable

**Impex Steel Ltd.**  
Chittaranjan Avenue, 1st Floor  
Kolkata 700 012  
[impex\\_steel@yahoo.co.in](mailto:impex_steel@yahoo.co.in)

15 Months &  
3 Months  
Practical Training

Suitable

**Exodus Ispat Pvt. Ltd.**  
12, Ho-Chi-Minh Sarani,  
3rd Floor, Kolkata, India 700071

15 Months &  
3 Months  
Practical Training

Suitable

**Brahmaputra Valley Fertilizer Corporation Ltd.**  
Nampur, P.O.: Parbatpur  
Dist: Dibrugarh, Assam 786623

15 Months &  
3 Months  
Practical Training

Suitable

**Shri Mahavir Ferro Alloys Pvt. Ltd.**  
L/10, Civil Township, Rourkela  
Orissa, 769004, India  
[samfapl@gmail.com](mailto:samfapl@gmail.com)

15 Months &  
3 Months  
Practical Training

Suitable

## Northern

**M/S. Shivalik Shulz Pvt. Ltd.**  
27, 28 Industrial Area Biliya Pur Road  
Bhilwara 311 001

15 Months &  
3 Months  
Practical Training

Suitable

**Sports & Leisure Apparel Ltd.**  
408, 4th Floor, Signature Tower B  
South City - 1, NH-8 Gurgaon  
Haryana 122 001

15 Months &  
3 Months  
Practical Training

Suitable

**P.P.Jewellers Pvt. Ltd.**  
P.P.Chowk, Gurudwara Road  
Corner, Karol Bagh, New Delhi-110005

15 Months  
Training

Suitable

**Apco Infratech Ltd.**  
Universal Trade Tower  
4th Floor, Sohna Road, Sector 48-49  
Gurgaon-122101, Haryana  
[admin@apcoinfra.com](mailto:admin@apcoinfra.com)

15 Months  
Training

Suitable

**Quantum Securities Pvt. Ltd.**  
M-74, Greater Kailash-II (Market)  
New Delhi 110048  
[contract@quantumsecurities.com](mailto:contract@quantumsecurities.com)

15 Months  
Training

Suitable

**Gawar Construction Ltd.**  
SF-01, JMD Galleria Sector-48  
Sohna Road, Gurgaon  
Haryana 122001, India

15 Months  
3 Months  
Practical Training

Suitable

**Maha Associated Hotels Pvt. Ltd.**  
K-47, Janpath, Kishan Nagar  
Shyam Nagar, Jaipur, Rajasthan 302019  
[yashdeepsharma@gmail.com](mailto:yashdeepsharma@gmail.com)

15 Months  
Training

Suitable

**Singh & Associates Advocates & Solicitors**  
N-30, Malviya Nagar  
New Delhi 110017, India

15 Months  
Training &  
15 Days  
Specialized Training

Suitable

**M/S Vaidat Legale Services**  
Advocates & Solicitors  
A-415, LGF, Defence Colony  
New Delhi 110024, India

15 Months  
Training

Suitable

**P-Net Solutions Ltd.**  
897, First Floor, Pocket-C  
Gazipur Paper Market, New Delhi 110096  
[pnet@pnetindia.com](mailto:pnet@pnetindia.com)

15 Months  
Training

5000/-

**Daikin Airconditioning India Pvt. Ltd.**  
12th Floor, Building No.9, Tower 'A'  
DLF Cyber City, DLF Phase III  
Gurgaon 122002, Haryana, India

15 Months &  
3 Months  
Practical Training

Suitable

**Dalmia Bharat Ltd.**  
11th & 12th Floors  
Hansalaya Building  
15, Barakhamba Road  
New Delhi  
India 110 001

15 Months  
Training

Suitable





<b>Associated Composite Materials (P) Limited</b> 1G Bharat Nagar, New Friends Colony, New Delhi 110025	15 Months & 3 Months Practical Training	Suitable	<b>Southern</b> <b>Roots Multiclean Ltd.</b> R.K.G.Industrial Estate Ganapathy, Coimbatore-641 006	15 Months Training	Suitable
<b>Inx News Pvt. Ltd.</b> B4, Sector 3, Noida 201301, India <a href="mailto:aman.thukral@newsx.com">aman.thukral@newsx.com</a>	15 Months 3 Months Practical Training	Suitable	<b>Roots Industries India Ltd.</b> R.K.G.Industrial Estate Ganapathy, Coimbatore-641 006	15 Months Training	Suitable
<b>Naks &amp; Partners Advocates &amp; Solicitors</b> G-41, West Patel Nagar New Delhi 110008 <a href="mailto:info@nakslaw.com">info@nakslaw.com</a>	15 Months & Training & 15 Days Specialized Training	Suitable	<b>Scope Industries (India) Ltd.</b> 101,Plot No:280/A, Road No.12, Banjara Hills Hyderabad-500034	15 Months & 3 Months Practical Training	Suitable
<b>Pasupati Spinning &amp; Weaving Mills Limited</b> 1501, Nirmal Tower 26, Barakhamba Road New Delhi 110001 <a href="mailto:rekhasharma@pasupatitextiles.com">rekhasharma@pasupatitextiles.com</a>	15 Months & 3 Months Practical Training	Suitable	<b>VRL Media Ltd.</b> No. 120-125, "Lalit Mahal" Naveen Park, Kusngal Road Hubli 580023, Karnataka <a href="mailto:anandkulkarni@vrlmedia.com">anandkulkarni@vrlmedia.com</a>	15 Months & 3 Months Practical Training	Suitable
<b>Prime Electric Ltd.</b> Prime Tower 287-288 Udyog Vihar, Phase-II, Gurgaon India 122016	15 Months & 3 Months Practical Training	Suitable	<b>Enzen Global Solutions Pvt. Ltd.</b> # 90, Madiwala, Hosur Road Bangalore 560 068, Kamataka <a href="mailto:lalitha.kini@enzen.com">lalitha.kini@enzen.com</a>	15 Months & Training	Suitable
<b>JSL Lifestyle Ltd.</b> Jindal Centre, 12 Bhikaji Cama Place New Delhi 110066, (India)	3 Months Practical Training	Suitable	<b>Maben Nidhi Ltd.</b> Building No. V/421, Near High School Junction Valapad P.O. Thrissur Dt. Kerala 680567	15 Months & 3 Months Practical Training	Suitable
<b>Sanko Gosei JRG Automotive India Pvt. Ltd.</b> DSM 410-411, DLF Towers Shivaji Marg, Delhi 110015	15 Months & 3 Months Practical Training	Suitable	<b>M/S Indo-Asian Projects Ltd.</b> 7-2-1344, SRT-1089 Sanath Nagar, Hyderabad 500 018 <a href="mailto:indoasian95@yahoo.com">indoasian95@yahoo.com</a>	15 Months &	Suitable
<b>Orient Refractories Ltd.</b> 1307, Chiranjiv Tower 43 Nehru Place, New Delhi 110019	15 Months Training	Suitable	<b>M/S. Granules India Ltd.</b> 2nd Floor, Block III, My Home Hub Madhapur, Hyderabad 500081 (A. P.)	3 Month Practical Training	Suitable
<b>BT Global Communications India Pvt. Ltd.</b> 11th Floor, Eros Corporate Tower, Opposite International Trade Tower Nehru Place, New Delhi 110019	15 Months Training	Suitable	<b>Western</b> <b>Sharyans Resources Ltd.</b> 4th Floor, Kalpataru Heritage 127 M G Road, Fort, Mumbai 400 001	15 Months & 3 Months Practical Training	Suitable
<b>Universal Legal Attorney At Law</b> A-2,East of Kailash New Delhi 110 065	15 Months Training & 15 Days Specialized Training	Suitable	<b>Sahayog Microfinance Ltd.</b> 1003,10th Floor,Sunshine Tower Senapati Bapat Marg Dadar West, Mumbai-400013	15 Months & 3 Months Practical Training	Suitable
<b>Vinayak Polycon International Ltd.</b> 312, Navjeevan Complex 29, Station Road Jaipur 302006, Rajasthan <a href="mailto:polycon@bsnl.in">polycon@bsnl.in</a>	15 Months & 3 Months Practical Training	Suitable	<b>K P Buildcon Pvt. Ltd.</b> Shop No. 1, Higher Ground Floor Firdos Tower, Adajan Patia Surat 395009, India	15 Months & 3 Months Practical Training	Suitable
<b>Lifeline Securities Ltd.</b> Office No. 116, Plot No.18 Vikas Deep Building, District Centre Laxmi Nagar, Delhi 110092	15 Months Training	Suitable	<b>K.P. Energy Pvt. Ltd.</b> A-1/2, FIRDOS Tower, Behaind Fazal Shoping Center Adajan Patia Surat 395009, India	15 Months & 3 Months Practical Training	Suitable



# News From the Institute

<b>Gujrat Forging Pvt. Ltd.</b> P O. Box No. 1004, Opp PDTC , Aji Industrial Area, Rajkot-360003	15 Months Training	Suitable	<b>Tropolite Foods Pvt. Ltd.</b> Davarr Campus, Near Loco Industrial Area Hazira, Gwalior 474001 Madhya Pradesh <a href="mailto:info@davars.com">info@davars.com</a>	15 Months Training	Suitable
<b>Capitalsquare Advisors Pvt. Ltd.</b> 208, 2nd Floor, Aarpee Centre MIDC Road No. 11, Andheri (E) Mumbai 400093, India	15 Months & 3 Months Practical Training	Suitable	<b>Safal Realty Pvt. Ltd.</b> "Safal Profitaire" 11th Floor Corporate Road, Opp. Auda Garden Prahald Nagar, Ahmedabad 380015 <a href="mailto:inquiry@hnsafal.com">inquiry@hnsafal.com</a>	15 Months Training	Suitable
<b>P.D. Agrawal Infrastructure Ltd.</b> 6, Joy Builders Colony Near Rani Rati Mandir, Indore 452003 <a href="mailto:pdagrawal_indore@yahoo.com">pdagrawal_indore@yahoo.com</a>	15 Months & 3 Months	Suitable	<b>Essel Infraprojects Ltd.</b> 513 A, Kohinoor City Kirod Road, Kurla West Mumbai 400070	15 Months & 3 Months Practical Training	Suitable
<b>Investmart Commodities Ltd.</b> 307-A, Shree Vardhan Complex 4, R.N.T. Marg, Indore, India <a href="mailto:csinvestmart@yahoo.com">csinvestmart@yahoo.com</a>	15 Months & 3 Months Practical Training	Suitable	<b>IDBI Asset Management Ltd.</b> 5th Floor, Mafatlal Centre Nariman Point, Mumbai 400021	15 Months Training	Suitable
<b>Future Lifestyle Fashions Ltd.</b> Knowledge House, Shyam Nagar Jogeshwari Vikhroli Link Road Jogeshwari Eas, Mumbai 400060	15 Months Training	Suitable	<b>Amal Ltd.</b> 310-B, Veer Savarkar Marg Dadar (West) Mumbai-400 028 <a href="mailto:amal@amal.co.in">amal@amal.co.in</a>	15 Months & 3 Months Practical Training	Suitable
<b>Gujarat Forgings Pvt. Ltd.</b> P.O. Box No. 1004, Opp. PDTC Aji Industrial Area, Rajkot - 360003	15 Months Training	Suitable	<b>Investmart Stock Brokers P. Ltd.</b> 307 A, Shree Vardhan Complex 4, R.N.T. Marg, Indore-1 <a href="mailto:ceoinvestsmat@yahoo.com">ceoinvestsmat@yahoo.com</a>	15 Months Training	Suitable
<b>Amcor Flexibles India Pvt. Ltd.</b> 403-IVY Centre, 4 Prabhat Nagar Patel Estate Road, Jogeshwari(West) Mumbai 400102, India	15 Months Training	Suitable	<b>Americorp Business Services Pvt. Ltd.</b> 1201, 12th Floor, Tower 1 India Bulls Finance Centre Elphinestone Mills Compound Senapati Bapat Marg Mumbai 400 013	15 Months & 3 Months Practical Training	Suitable
<b>Cambay Sez Hotels Ltd.</b> Plot No. X-24, GIDC Electronic Estate Sector 25, Gandhinagar, Gujarat 382044	15 Months Training	Suitable	<b>SSV Engineers Pvt. Ltd.</b> E 110, MIDC, Lande Wadi Bhosari, Pune 411026 <a href="mailto:ssv_ip@vsnl.net">ssv_ip@vsnl.net</a>	15 Months Training	Suitable
<b>Neesa Technologies Ltd.</b> Cambay Plaza, 9th Floor Near PERD Center, Off. S.G Road, Thaltej, Ahmedabad 380054, Gujrat <a href="mailto:info@neesatech.in">info@neesatech.in</a>	15 Months Training	Suitable	<b>Capita India Pvt. Ltd.</b> Plant 6, Godrej & Boyce Complex, Pirojshahnagar, L.B.S Marg, Vikhroli(West), Mumbai, Maharashtra 400 079, India	15 Months Practical Training	10000/-
<b>Neesa Infrastructure Ltd.</b> Plot No. 278/279 Panchratna Ind. Estate, Opp. Armec Cold Storage, Changodar, Ahmedabad 382213, Gujarat, India <a href="mailto:info@neesainfra.com">info@neesainfra.com</a>	15 Months Training	Suitable	<b>Gunnebo India Pvt. Ltd.</b> Unit No. 102, 1st Floor Akruti SMC, L.B.S. Marg Khopat, Thane(W) - 400601 India	15 Months & 3 Months Practical Training	Suitable
<b>Fishfa Rubbers Ltd.</b> Plot No. 1359, At: Metoda (GIDC) Dist: Rajkot, Gujarat <a href="mailto:info@fishfarubbers.com">info@fishfarubbers.com</a>	15 Months Training	Suitable	<b>Angel Broking pvt. Ltd.</b> G-1, Ground Floor, Akruti Trade Centre Road No. 7, MIDC Andheri (West), Mumbai Maharashtra	15 days Practical Training	Suitable
<b>Eclerx Services Ltd.</b> Indiabulls Finance Centre 1102, Tower 2, 11th Floor, 612/613 S.B. Road, Elphinstone Road (West) Mumbai 400 013 <a href="mailto:gaurav.tongia@eclerx.com">gaurav.tongia@eclerx.com</a>	15 Months & 3 Months Practical Training	Suitable			



## List of Practising Members Registered for the Purpose of Imparting Training During the Month of August, 2013

<b>CS ADWAIT SUNIL KULKARNI</b> Company Secretary in Practice Flat No. 9, Karan Aniket Plot No. 37, Shri Varanasi Co-Op HSG. Soc. Ltd. Off Mumbai Bangalore Highway Behind Atul Nagar, Warje Pune - 411 058	PCSA – 3577	<b>CS DHARMENDRA VERMA</b> Company Secretary in Practice B-121, Ganesh Nagar Behind Ganesh Temple, Moti Doongri M D Road, Jaipur – 302004	PCSA – 3585
<b>CS AMIT KISHORE MEHTA</b> Company Secretary in Practice Flat No. 9, Karan Aniket, 5th Floor Plot No.37, Shri Varanasi Co-Op Soc Ltd. Behind Atul Nagar, Off Mumbai Bangalore Bye -Pass Warje, Pune -411 052	PCSA – 3578	<b>CS SUSHANT SHASHANK SATHE</b> Company Secretary in Practice Flat No. 9, Karan Aniket, 5th Floor Plot No. 37 Shri Varanasi Co-Op Hsg Soc.,Ltd. Behind Atul Nagar, Off Mumbai -Bangalore By-Pass Warje, Pune -411 052	PCSA – 3586
<b>CS SMITA JAYKRISHNA JAJU</b> Company Secretary in Practice Flat No. 9, 5th Floor Karan Aniket, Plot No.37, Shri Varanasi Co-Op Soc Ltd. Behind Atul Nagar, Off Mumbai Bangalore Bye -Pass Warje, Pune -411 052	PCSA – 3579	<b>CS VIJAY HARIKISHANJI BAHETI</b> Company Secretary in Practice Plt No: 5, Mitra Nagar Aurangabad- 431001	PCSA – 3587
<b>CS GOVIND KUMAR MISHRA</b> Company Secretary in Practice Flat # 410, Ruby-1, Gardenia Glamour Society Vasundhara Sector-3, Ghaziabad – 201012 (U. P.)	PCSA – 3580	<b>CS RANJAN KUMAR JHA</b> Company Secretary in Practice C-65, LGF, Malviya Nagar New Delhi – 110017	PCSA – 3588
<b>CS SURESH TIBREWAL</b> Company Secretary in Practice 10/619, Kaveri Path, Nr Telephone Exchange Mansarovar, Jaipur -302 020	PCSA – 3581	<b>CS GEETA JHA</b> Company Secretary in Practice G- 112, Sector -20, Noida – 201301	PCSA – 3589
<b>CS P V DURGA BHAVANI</b> Company Secretary in Practice Suit No. 1c, 1st Floor, Yeturu Towers # 6-2-47, Lane Adj. To Pti Building A C Guards, Hyderabad -500 004	PCSA – 3582	<b>CS RUPALI MODI</b> Company Secretary in Practice F-25, MIG, Rishi Nagar, Ujjain – 456010	PCSA – 3590
<b>CS RADHIKA VIVEK KHEMUKA</b> Company Secretary in Practice 201, Sai Regency Apt., Veer Chakra Colony Katol Road, Nagpur – 440013	PCSA – 3583	<b>CS ABHISHEK MAHAJAN</b> Company Secretary in Practice Opp. 157, L.I.G Jawahar Nagar, A.B. Road, Dewas – 455001	PCSA – 3591
<b>CS MITESH DHABLIWALA</b> Company Secretary in Practice 111,11th Floor,Sai Dwar ChsLtd Sab Tv Lane,Opp Laxmi Ind Estate Off Link Rd,Andheri (West), Mumbai – 400053	PCSA – 3584	<b>CS NEHA DEWAN</b> Company Secretary in Practice C-2/601, Belvedere Towers Charmwood Village Faridabad – 121009	PCSA – 3592
		<b>CS RAJNI MIGLANI</b> Company Secretary in Practice # 769/777, First Floor, D B Gupta Road Karol Bagh, New Delhi – 110005	PCSA – 3593
		<b>CS APOORVA SINGH</b> Company Secretary in Practice D/59 235-A-4-M, Nirala Nagar, Sheopura, Mahmoorganj, Varanasi – 221010	PCSA – 3594
		<b>CS ARDHENDU SEKHAR ROUT</b> Company Secretary in Practice Plot No: L.I.G-251, Ground Floor, Brit Colony, Nayapalli Colony, Bhubaneswar – 751012	PCSA – 3595
		<b>CS VRUSHALI DEEPAK SOLANKI</b> Company Secretary in Practice B-111, 15 &16, Sterling Tower Shahupuri, Kolhapur -416 001	PCSA – 3596



# News From the Institute & Regions

<b>CS VIBHAVARI DALVI</b> Company Secretary in Practice B-62, Keshav Housing Complex, 2nd Floor Dhanakwasi, Pune – 411043	PCSA – 3597	<b>CS GURDEEP KAUR EGAN</b> Company Secretary in Practice 21, 1st Floor, Sector- 15 A, Chandigarh – 160 015	PCSA – 3609
<b>CS SHWETA JAIN</b> Company Secretary in Practice 449, Mahaveer Nagar, Tonk Road, Jaipur	PCSA – 3598	<b>CS BISWAJITMAHAPATRA</b> Company Secretary in Practice Plot No. 506, Behind Baya Baba Matha Unit – IX, Bhubaneshwar – 751 022	PCSA – 3610
<b>CS REENA SHARMA</b> Company Secretary in Practice 205, Haldiyan Ka Rasta, Opp Dinesh Bhojnalaya Johari Bazar, Jaipur – 302003	PCSA – 3599	<b>CS SHIPRA KHANDELWAL</b> Company Secretary in Practice 1077, Ram Nagar, Shastri Nagar, Jaipur – 302016	PCSA– 3611
<b>CS ALPESH RAMESH BHAI DHANDHLYA</b> Company Secretary in Practice 3/23, Elise Bridge Police Line New Line & Tran Maliya Elise Bridge, Ahmedabad – 380 008	PCSA – 3600	<b>CS DEEPA AGGARWAL</b> Company Secretary in Practice B-231, Street No.2, Majlis Park, Azadpur, Delhi – 110033	PCSA – 3612
<b>CS APARNA SINGH</b> Company Secretary in Practice Jayanti Mansion III, Flat No. 503 Manish Nagar, Somalwada, Nagpur-440015	PCSA – 3601	<b>CS ISH SADANA</b> Company Secretary In Practice 56/12, 2nd Floor, Backside Ashok Nagar New Delhi – 110018	PCSA – 3613
<b>CS SANDEEP KUMAR</b> Company Secretary in Practice 1099/13, Poonam Vatika Mohan Colony, Mohan Nagar Ghaziabad – 201007	PCSA – 3602	<b>CS BHAVESH KUMAR ARUN KUMAR RAWAL</b> Company Secretary in Practice C-411, Abhinandan Palace, Shilpa Park Society Trikam Nagar-2, L.H. Road, Surat -395 006	PCSA – 3614
<b>CS SUNNY ARUN WARGHADE</b> Company Secretary in Practice Ajinkya Apartment, Flat No. 14 Near Trimurti Hospital Sinhgad Road, Pune - 411041	PCSA – 3603	<b>CS VISHAL KHERA</b> Company Secretary in Practice A/12, Old Quarters, Ramesh Nagar, New Delhi -110015	PCSA – 3615
<b>CS KOMAL KHADARIA</b> Company Secretary in Practice 607-608, 6th Floor Ajanta Shopping Centre Ring Road, Surat – 395002	PCSA – 3604	<b>CS DISHA DUGAR</b> Company Secretary in Practice 2, Synagogue Street, 2nd Floor Near Stock Exchange, Kolkata -700 001	PCSA – 3616
<b>CS KEVIN SUDESH OLIVEIRA FERNANDES</b> Company Secretary in Practice 508 , Kavlekar Towers Xim , Khorlim, Mapusa – 403507	PCSA – 3605	<b>CS SARITA LALWANI</b> Company Secretary in Practice Plot No. 123/362, Agarwal Farm Mansarovar, Jaipur - 302020	PCSA – 3617
<b>CS YASHIKA</b> Company Secretary in Practice D-582, Balaji Cloth House Dabua Colony, Faridabad – 121001	PCSA – 3606	<b>CS SWAROOP SURYANARAYANA</b> Company Secretary in Practice 962, 9th Main, 3rd Stage, 3rd Block Basaveshawaranagar, Bangalore – 560079	PCSA – 3618
<b>CS KAMNA SHARMA</b> Company Secretary in Practice 2nd Floor, Leela Mansion Naval Kishore Road Hazratganj, Lucknow – 226 001	PCSA – 3607	<b>CS SUSHANT VIKAS KULKARNI</b> Company Secretary in Practice Flat No.6, Hari-Laxman Apts, Shivprasad Soc, 24 Panmala B/H Cosmos Bank, Sinhgad Road Pune – 411030	PCSA – 3619
<b>CS ASTIK MANI TRIPATHI</b> Company Secretary in Practice 34, Sanskrit Nagar Rohini -14, Delhi – 110 014	PCSA – 3608	<b>CS SIDHI JAIN</b> Company Secretary in Practice 439, Adarsh Nagar, Near Bees Dhukan, Jaipur	PCSA – 3620
		<b>CS SALIL VINAYAK KARMARKAR</b> Company Secretary in Practice Flat No.6, Hari-Laxman Apts, Shivprasad Soc, 24 Panmala B/H Cosmos Bank, Sinhgad Road Pune – 411030	PCSA – 3621



# News From the Institute & Regions



<b>CS ROHAN SUBHASH AHER</b> Company Secretary in Practice Flat No.6, Hari-Laxman Apts, Shivprasad Soc, 24 Panmala, B/H Cosmos Bank, Sinhgad Road, Pune – 411030	PCSA – 3622	<b>CS SATISH KUMAR PANDEY</b> Company Secretary in Practice 217, 2nd Floor, Rishabh Complex M.G. Road, Raipur -492 001	PCSA – 3635
<b>CS SHWETAGUPTA</b> Company Secretary in Practice F-126, Lado Sarai, New Delhi -110 030	PCSA – 3623	<b>CS KOTESWARA RAO YECHURI</b> Company Secretary in Practice H.NO.45-345 Ganesh Nagar Chinthal, HMT Road Hyderabad – 500 054	PCSA – 3636
<b>CS MINENDER BOGA</b> Company Secretary in Practice A/1106,11th Flr,O2 Commercial Bldg Mulund, Mumbai – 400080	PCSA – 3624	<b>CS FRANCIS M C</b> Company Secretary in Practice Myladoor House, Arakulam P O Moonnumkavayal Idukki – 685591	PCSA – 3637
<b>CS SHIKHA PUROHIT</b> Company Secretary In Practice 41/411, C-Wing, Manish Nagar Andheri(W), Mumbai -400053	PCSA – 3625	<b>CS GAUTAM ROY</b> Company Secretary in Practice 2nd Floor, Sarkar Mansion Hill Cart Road Siliguri – 734001	PCSA – 3638
<b>CS MILIND JANAKGUJAR</b> Company Secretary in Practice Flat No.4, Nayantra Appt., Kathe Nagar Dwarka, Nashik -422011	PCSA – 3626	<b>CS RITU JHUNJHUNWALA</b> Company Secretary in Practice 62,B.B. D Road, Bipin Vilia, Flat 401 Hooghly – 712 233	PCSA – 3639
<b>CS KRISHNA KUMAR P</b> Company Secretary In Practice I Floor, C S Towers, N No 34, O No 76 Bazullah Road, T. Nagar, Chennai – 600017	PCSA – 3627	<b>CS AMAR DATTATRAY PATIL</b> Company Secretary in Practice Flat No.203, 2nd Floor D C Elegance Apptt.,Opp. Shahu Blood Bank E Ward Nagala Park Kolhapur – 416002	PCSA – 3640
<b>CS VIKRAMJHAWAR</b> Company Secretary in Practice 310, Nangal Raya, Delhi Cantt, New Delhi – 110046	PCSA – 3628	<b>CS SREEDHARA KONDA</b> Company Secretary in Practice Flat No. 301, 2nd Floor Cavery Residency Ground Floor, Near Canara Bank 2nd Cross, ISRO Layout Bangalore – 560078	PCSA – 3641
<b>CS MEHUL BATUKBHAIBAMBHROLIYA</b> Company Secretary in Practice 23, Ganga Vihar, Brij Nagar Rokadia Lane, Borivali (West) Mumbai – 400092	PCSA – 3629	<b>CS SONU SINGHAL</b> Company Secretary in Practice E-79, First Phase, Ind. Area Balotra – 344022	PCSA – 3642
<b>CS PAYALAGARWAL</b> Company Secretary in Practice Ambey House, Lokenath Park Near Chinar Park, New Town Road Rajarhat, Kolkata – 700157	PCSA – 3630	<b>CS AMEY MORAJKAR</b> Company Secretary in Practice 201- Krishna Chhaya, Sainath Nagar D N Mhatre Road, Eksar, Borivali (W), Mumbai – 400103	PCSA – 3643
<b>CS NEERAJ SRIVASTAVA</b> Company Secretary in Practice A-194a, Lajpat Nagar, Sahibabad, Ghaziabad – 201005	PCSA – 3631	<b>CS FALAHTAJTANZEEM</b> Company Secretary in Practice Ahmed Complex 8 Dr. Fatehullah Road Main Road, Ranchi-834001	PCSA- 3644
<b>CS BHAGWATI SHARMA</b> Company Secretary in Practice JJ/1 Aswini Nagar, Foyra Bhawan More Dipika Apartment, Kolkata – 700 159	PCSA – 3632	<b>CS NIVEDITA GAUTAM</b> Company Secretary in Practice Fca -232A, East Chawla Colony Ballabgarh, Faridabad- 121 004	PCSA- 3645
<b>CS K.VENUGOPAL RAO</b> Company Secretary in Practice 204, Pragati Tower, 2nd Floor Near Shivajinagar, S.T. Stand, Pune – 411005	PCSA – 3633		
<b>CS BHAWNA SUNIL AGRAWAL</b> Company Secretary in Practice 210, Space Cosmos, Ashok Stamb Nashik – 422002	PCSA – 3634		





## News From the Regions

### » Northern India Regional Council

#### Seminar on Companies Bill, 2012 - The Way Ahead

On 24.8.2013, NIRC-ICSI organized a one day seminar on the Companies Bill, 2012 - The Way Ahead at New Delhi. Hon'ble Justice Dilip Raosaheb Deshmukh, Chairman, Company Law Board was the Chief Guest on the occasion. Around 750 members were present at the inaugural session of the seminar.

Inaugural Session: CS Vineet Chaudhary while anchoring the inaugural session said that the theme of the seminar is very relevant for the professionals. He mentioned that the Company Secretaries have been given a different role in the new Companies Bill and CS as professionals' have to prove and reach that level. He also informed that very soon the Bill will become Act and NIRC along with ICSI- HQs will organize a number of capacity building workshops for the benefit of the members. He briefly informed about the coverage of the programme.

CS M G Jindal while addressing the gathering said that the new Law is progressive & forward looking. It provides enhanced disclosures & transparency requirements, increased accountability of independent directors, improved corporate governance norms, Corporate Social Responsibility, strict enforcement processes etc. It is a big step towards improving transparency and regulation of business houses in India. Under the new law Company Secretaries are put under the bracket of Key Managerial Personnel and will be held responsible for the compliances of the all the relevant laws applicable to the companies. Under the new law various fields are opening up for Company Secretaries in practice as well as in service. In order to ensure the compliance of the new law in letter & spirit, NIRC will organize capacity building workshops to provide ample opportunities to CS members to keep them updated so that they can prove themselves as excellent corporate governance professionals.

CS Atul Mittal said that time has come for all the members to gear up and be ready to face the challenges ahead. He highlighted few of the provisions of the new Law and said that the role of CS professionals vis a vis other professionals has increased manifold. He also said that more and more responsibility has been posed on the promoters and the professionals. He suggested the members to focus on their capacity and capability building.

CS Sanjay Grover said that the Bill is a reality now. He highlighted various provisions of the Bill and requested the members to send their suggestions on the rules when they are exposed to the Institute, so that they can be compiled by the Institute and sent to the Ministry.

CS Harish K Vaid said that the new Companies Bill has made all the professionals young and fresh and forced them to relearn the entire law and also compare the provisions of the new law with that of existing law. He said that the new law is forward looking. He discussed few of the important changes in the law. He expressed his hope that while framing and notifying the rules, the Government will take care of the concerns of the Industry also.

Justice Dilip Raosaheb Deshmukh in his address said that the new law presents a paradigm shift in the way every stakeholder in a corporation has to think, act and perform. It transports India into the big league in corporate governance and democracy. It also transits company secretaries to corporate governance professionals. It brackets them in the category of key managerial personnel and holds them responsible for implementation of all relevant laws applicable to the companies. It envisages a much larger role for them in the areas of secretarial audit, restructuring, liquidation, valuation and much more. The new Bill, makes it mandatory for companies to spend on social welfare, empowers investors against frauds committed by promoters, encourages companies to have women directors, and seeks to bring in greater transparency in corporate governance matters such as executive salaries and the role of auditors. He discussed the other important features of new Companies Bill viz. Enhanced Accountability on the part of Companies, Audit Accountability, Facilitating Mergers/Acquisitions, Investor Protection, National Company Law Tribunal, etc.

CS NPS Chawla concluded the inaugural session of the seminar and requested the Chief Guest to involve the Company Secretaries in Practice for the Valuation, limited audits etc., as under new Companies Bill also, Company Secretaries have been recognized to act as Registered Valuers etc. and he assured that they will come up to the expectations and perform at par with the other professionals.

**First Technical Session:** CS Sanjay Grover anchored the first technical session of the seminar.

Man Mohan Juneja, Registrar of Companies, NCT of Delhi & Haryana spoke on "Incorporation, Capital & Prospectus". He initiated the discussion with the categories of companies and said that companies are broadly divided into three categories like by liability, by type and by listing status. He explained the types of companies coming under these three categories. He explained the concept of one person company, small company and other types of companies. He further explained in detail the provisions relating to Memorandum of Association, Articles of Association, Reservation of Name, Cancellation of Name, Incorporation of Companies, formation of companies with Charitable objects, commencement of Business, Registered office & change in the registered office, etc.



CS K Sethuraman, Group Company Secretary & Chief Compliance Officer, Reliance Industries Ltd. spoke on "Board & Shareholders Management". He very elaborately explained the provisions relating to Board & Shareholders management under the new Companies Bill, 2012.

After the presentations of the first technical session, participants present asked various queries, which were very well replied by the guest speakers.

CS Ranjeet Pandey, Past Chairman, NIRC-ICSI concluded the first technical session and said that new Companies Bill has offered lot many opportunities for the professionals like CS and in order to grab those opportunities they have to gear up for the purpose.

**Second Technical Session:** CS Rajiv Bajaj anchored the second technical session of the seminar.

Ravindra Vadalli, Managing Director & Founder, Rhapsody Accounting & Advisory Services Pvt. Ltd. spoke on "Financial Statements & Accounting Standards". He initiated his discussions with the history of Company Law in India and its journey so far and he compared the provisions relating to Accounts & Audit in the Companies Act 1913, 1956 and the Companies Bill, 2012. He discussed and explained in detail the provisions relating to Financial Statements & Accounting Standards under the Companies Act 1956 & the Companies Bill 2012 and also discussed the salient features of the Financial Statements & Accounting Standards under the Companies Bill, 2013 and its relevance for the Company Secretaries.

CS Alka Kapoor, Director, Directorate of the Professional Development, the ICSI spoke on "Secretarial Standards - Need & Expectations". She initiated her discussions by informing that the basic purpose of any standard is to integrate, harmonise and standardize the diverse practices prevalent, adopt global best practices and ensure uniformity of practices bring better disclosures, transparency and accountability in corporate action, lead to ease in doing business, better understanding of corporate processes etc. she informed that in the Companies Bill 2012, Secretarial Standards have been given a place of pride and the standards have got statutory recognition. She informed about the various Secretarial Standards issued by the Institute. She explained in detail the Secretarial Standards relating to Board & General Meetings and said that Companies Bill 2012 under clause 118(10) provides that every company shall observe these standards. At the end she also mentioned that how these Standards are beneficial for the professionals and the Corporates.

After the presentations of the second technical session, participants present asked various queries which were ably replied by the guest speakers.

**Third Technical Session:** CS Ashu Gupta anchored the third technical session of the seminar. CS N K Nagpal, Company Secretary GAIL (India) Ltd. spoke on "Corporate Social Responsibility -

Compliance Issues & Concerns". He initiated his discussion with the definition of the CSR and discussed about the purpose of including CSR in the Companies Bill. He discussed the worldwide examples of the countries who have formulated CSR Regulations. He also discussed in detail the provisions relating to CSR in the Companies Bill, Its tax implications and issues thereof.

CS Harish K Vaid spoke on "Merger & Amalgamation" and initiated his discussions by mentioning that lot many queries are there in the minds of the professionals relating to the provisions of the Companies Bill and all these will be resolved over a period of time when Rules will be in place. He in detail highlighted those provisions of the Companies Bill where there are differences between the existing law and the new Bill. He said that now the knowledge of all the professionals is at par on the subject. He also discussed in detail the provisions relating to Corporate Restructuring.

## Valedictory Function of 178th MSOP

On 21.8.2013 NIRC-ICSI organised the valedictory function of the 178th MSOP at ICSI-NIRC Building, New Delhi. CS P K Rustagi, Vice President (Legal) & Company Secretary, J K Tyre & Industries Ltd. was the Chief Guest on the occasion. CS NPS Chawla while addressing the participants said that day to day implementation of the things learnt during the 15 days is essential and said that the Companies Bill 2012 is in place and there are immense opportunities for the professionals like Company Secretaries. He suggested the participants to maintain daily learning diary and also suggested them not to be after money in the initial days of their career.

CS Rajiv Bajaj while addressing the participants said that lot of foreign companies are coming to India and we have to change our way of working and the young professional can play an important role in that. He suggested the participants to be prepared for future ahead. CS Deepak Kukreja, while addressing the participants said that after getting the membership of the Institute, they will be acting as independent professionals and advised them to be careful in rendering any kind of services and also while performing their duties as Company Secretaries. He advised the participants to be updated and mentioned that as new Companies Bill has come and we all have to relearn the entire law from the scratch.

CS P K Rustagi initiated his discussion by saying that only the profession of Company Secretaries provides the opportunity of direct interaction with the Board of Directors of the company from the very beginning and no other professional course provides this type of opportunity. He gave various personality development tips to the participants which are very much essential and participants must inculcate them to be successful professionals.

## 179th MSOP

On 5.9.2013 NIRC-ICSI inaugurated its 179th MSOP at ICSI-NIRC Building New Delhi. CS G Gehani, Whole Time Director & Company Secretary, PSL Ltd. was the Chief Guest who along with Regional Council Members present inaugurated the programme.



# News From the Institute & Regions

CS Avtaar Singh while coordinating the inaugural session suggested the participants to take full advantage of the 15 days programme.

CS Shyam Agrawal said that new Companies Act brings lots of opportunities as well as huge responsibilities for Company Secretaries. He emphasized on raising constructive voice and suggested the participants that while raising voice they should come out with the solutions to the problems also. CS Ashu Gupta in her address said that all the participants of batch will share special bond of oneness among themselves. She also emphasized on making best use of the faculties those will be coming in next 15 days and encouraged them to interact with all the faculties. She also suggested the participants to join Company Secretaries Benevolent Fund after becoming members.

CS G Gehani in his address shared his experience of the importance of Teacher's Day i.e. 5th September. He congratulated the participants for joining Management Skills Orientation Programme. He emphasized that out of the total population of India, only 1 % is of professionals and they are one amongst that 1%. He mentioned that the term "survival of the fittest" will apply to every individual participant and suggested them to be updated every moment in order to compete in the corporate world. He suggested them to upgrade their knowledge & MSOP is one programme where they can clear all their doubts by interacting with senior faculties. He advised the participants to work hard so that future can be better.

## Two Day Regional Conference on Professional and Entrepreneur Partnership: Driver to the Industrial Growth

On 13 and 14.9.2013 a two day Regional Conference on Professional and Entrepreneur Partnership: Driver to the Industrial Growth (Host: Ludhiana Chapter) was organised by the Regional Council.

Chief Guest – Inaugural Session: M.M. Mittal (Hon'ble Minister for Parliamentary Affairs, Govt. of Punjab); Guest of Honour – Inaugural Session: Prof. Rajinder Bhandari (Vice-Chairman, Punjab State Planning Board); Chief Guest - Valedictory Session: Sarvjit Singh Samra (Managing Director, Capital Local Area Bank); Guest speakers were CS Nesar Ahmad, CS P K Mittal, CS Ranjeet Pandey, CS NPS Chawla, CS Rajiv Bajaj, Parshav Jain and Mohit Kapila of KPMG.

## North Zone Study Group Meeting on Recent Updates on FEMA

On 4.8.2013 the North Zone Study Group organised a Meeting on Recent Updates on FEMA. CS Atul Mittal, Council Member, the ICSI was the speaker.

## Vaishali Study Group Meeting on Recent Updates on FEMA

On 10.8.2013 the Vaishali Study Group organised a meeting on Recent Updates on FEMA.

## Flag Hoisting on the occasion of

## Independence Day of India

On 15.8.2013 at the Flag Hoisting on the occasion of Independence Day of India CS S N Anathasubramanian, President, ICSI, CS Harish K Vaid, Vice-President, ICSI and CS Nesar Ahmad, Immediate Past President, ICSI were the speakers.

## Study Circle Meeting on Highlights of Companies Bill, 2013

On 23.8.2013 at the Study Circle Meeting on Highlights of Companies Bill, 2013 CS Nesar Ahmad, Immediate Past President & Council Member, ICSI & CS Ilam C. Kamboj, A.V.P. - Legal and Company Secretary, Hero MotoCorp Ltd. were the speakers.

## West Zone Study Group Meeting on Recent Updates on FEMA

On 24.8.2013 at the West Zone Study Group Meeting on Recent Updates on FEMA, Kumarmanglam Vijay and Sunil Kumar of Ernst & Young LLP were the speakers.

## Meeting of Practising Company Secretaries on A Paradigm Shift for the Corporate - Era of opportunities for PCS

On 26.8.2013 the Regional Council organised a Meeting of Practising Company Secretaries on A Paradigm Shift for the Corporate - Era of opportunities for PCS.

CS Sanjay Grover Council Member, the ICSI was the speaker.

## Study Circle Meeting on Global Opportunities for Company Secretaries

On 29.8.2013 at the Study Circle Meeting on Global Opportunities for Company Secretaries CS Abhijit Mukhopadhyay, President-Legal, Hinduja Group, London was the speaker.

## South Zone Study Group Meeting on Recent Updates on FEMA

On 30.8.2013 at the South Zone Study Group Meeting on Recent Updates on FEMA CS Satwinder Singh Past Chairman, NIRC-ICSI was the speaker.

## Two Day UP State Conference on Business Governance: Professional Opportunities & Challenges

On 31.8.2013 and on 1.9.2013 at a Two Day UP State Conference on Business Governance: Professional Opportunities & Challenges (Host: Lucknow Chapter) Surendra Mohan Agarwal, (Chairman, Commercial Tax Advisory Committee - Cabinet Rank, Government of Uttar Pradesh) was the Chief Guest of the inaugural session. Guest of Honour was Professor Bharat Bhasker (Dean, IIM, Lucknow); Guest Speakers were CS Nesar Ahmad, CS P.K. Mittal, CS Rajiv Bajaj, CS Ranjeet Pandey, CS Bimal Jain, CS U K Chaudhary, CA Ravi Kumar, CS Ajay Garg, CS Amit Gupta and CS R K Porwal. At the Valedictory Session Dr. Dinesh Sharma (Mayor, Lucknow) was the was the Chief





Guest. Guest of Honour was Sudhir Halwasia (Industrialist).

## East Zone Study Group Meeting on Recent Updates on FEMA

On 31.8.2013 at the East Zone Study Group Meeting on Recent Updates on FEMA Vishwanath Pareek of PWC was the speaker.

## Mega North Delhi Study Group Meeting on Companies Bill, 2012

On 1.9.2013 at the Mega North Delhi Study Group Meeting on Companies Bill, 2012 CS Atul Mittal, CS Lalit Jain, CS H S Grover and CS Rajiv Bajaj were the speakers.

## Career Awareness Programmes/ Career Fairs

The Regional Council organised 29 Career Awareness Programmes / Career Fairs during the month of August, 2013 in various schools and colleges located in Delhi and surrounding areas. CS JK Bareja, CS Shiv Tyagi, T R Mehta and Himanshu Sharma addressed in these Career Awareness Programs/Career Fairs. The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice.

## CHANDIGARH CHAPTER

### Career Awareness Programmes

On 13.8.2013 the Chapter organised a Career Awareness Programme at G.R.S.D Sr. Secondary School (Sargodha) Ambala City and S.A. Jain College, Ambala City for the +2 students of Commerce stream and for all B.Com students. CS Vishawjeet Gupta and Nishi Gupta along with Chapter staff highlighted the prospects of the CS profession. The queries raised by the students were ably replied by the speakers. Again on 16.8.2013 the career awareness programme was held at GGDSD College for first year B.Com students. CS Vishawjeet Gupta and Dr.N.K. Sahni Coordinator of SIP/EDP were the speakers who along with Chapter staff highlighted the prospects of the CS profession. Yet again on 29 and 31.7.2013 the Programme was held at GGDSD College for first year B.Com and BBA students. CS Mukesh Sharma and Prof. Ajay Sharma along with Chapter staff highlighted the prospects of the profession. The queries raised by the students were ably replied by the speakers.

During the address by the speakers the students were informed about the mode of registration, fee structure, eligibility criteria for admission, avenues available both in employment and in practice. Brochures, pamphlets explaining the CS course were also distributed among the students. More than 80-90 students of the college along with the staff of the college participated in the programme.

## GHAZIABAD CHAPTER

### Study Circle Meeting

On 25.8.2013 the Ghaziabad Chapter of NIRC of ICSI organized a

Study Circle Meeting on Companies Bill 2012 – An Overview and its Impact on the Profession of Company Secretaries. Chief Guest Sutanu Sinha, Chief Executive, the ICSI threw light on the introduction of the Companies Bill, 2012 and its impact on the profession of Company Secretaries. He also dwelt on the intricacies of Companies Bill, 2012, and the rationale behind it. There was very lively interaction by the members present.

Speaking on the Technical Session Guest Speaker Rajiv Bajaj, Past Chairman of NIRC of the ICSI gave an overview of the provisions contained in the Bill including the objectives and the classification and registration of companies. He said that the Companies Bill, for the first time introduced the concept of One person Company (OPC), one more form of business organization. He stated that the term ID (Independent Director) has for the first time been defined in the Bill. He also highlighted the status of Company Secretary in the Companies Bill, 2012 as the “key managerial person”. He also discussed the need for Corporate Social Responsibility which has been made mandatory. The students and members actively interacted with the speakers.

## JAIPUR CHAPTER

### Full Day seminar on Companies Act, 2013

On 08.09.2013 the Chapter organized a seminar on Companies Act-2013 - Era of New Opportunities at Jaipur. Yaduvendra Mathur, IAS, CMD - Rajasthan Finance Corporation was the Chief Guest of the programme which was attended by more than 225 Company Secretaries.

**Inaugural Session:** Yaduvendra Mathur, Nesar Ahmed, Past President, the ICSI, Anshul Jain, Chapter Chairman, Vimal Gupta, Vice-Chairman of the Chapter, Dr. Girish Goyal, Chapter Secretary, Shyam Agarwal, Vice Chairman, NIRC & Programme Director and other Managing Committee Members present inaugurated the programme.

**First Technical Session:** The First Technical Session was addressed by CS Nesar Ahmed, Past President, the ICSI on an Overview of the Companies Act, 2013. In his address, he provided a rich insight on the new Companies Act, 2013 and described the important provisions and role of CS in the Companies Act, 2013.

**Second Technical Session:** The key speaker of the Second Technical Session was CS Pavan Kumar Vijay, Past President, The ICSI and the topic discussed was Opportunity for CS in the Companies Act, 2013. Vijay described the areas of opportunities available for Company Secretaries in the Companies Act, 2013.

**Third Technical Session:** The key speaker of the Third Technical Session was CS Pankaj Tewari (Senior Manager, Price WaterHouse Coopers, New Delhi) and the topic was Key Concepts, Impact on Private Companies & Corporate Restructuring.



# News From the Institute & Regions

Fourth Technical Session: The key speaker for the Fourth Technical Session was CA Bhupendra Mantri and the topic was Accounts & Audit under the Companies Act, 2013.

CS

## » Southern India Regional Council

### Independence Day Celebrations

On 15.8.2013 the ICSI – SIRC celebrated the Independence Day of the Nation. Lt. Col. K V Madhusoodan hoisted the National Flag at the ICSI – SIRC House, Chennai. In his address, Lt. Col K V Madhusoodan recalled how the independence was achieved with the great efforts and sacrifices of several people. He also narrated the boldness of the Indian Army during the Kargil war. He emphasized that it is the duty of all the citizens and particularly the professionals to contribute to the growth of the Nation. Managing Committee Members of the SIRC together with a good number of members and students were present on the occasion.

### Blood Donation Camp

On 17.8.2013 the Regional Council organized a blood donation camp at ICSI – SIRC House. Around 60 members and students donated blood on the occasion. The blood donation camp was organized in association with the Rotary Central, TTK VHS Blood Bank, Chennai.

### Full Day Seminar

On 17.8.2013 the ICSI – SIRC organized a full day seminar on Recent Developments in the Secondary Capital Market in India and Copyright in Software – Protection and Documentation. A Sebastin, Vice President, MCX Stock Exchange Limited, Chennai was the speaker of the first session on recent developments in secondary market. Sebastin in his address narrated the origin of stock markets and elaborated the secondary market. Sebastin also explained the applicable laws and regulations pertaining to the stock exchanges in India.

CS Eshwar S, Company Secretary in Practice spoke on Copyright in Software – Protection and Documentation in the second session. Bhuvana Jaiganesh, Crest Patent Services, Chennai spoke on the recent decisions of the IPAB on Patents. The speaker also elaborated the provisions relating to the copyrights, patents, etc.

## BANGALORE CHAPTER

### Chickballapur Udyog Mela - 2013

The Chikkaballapura Udyoga Mela was great a platform that brought together recruiters from various industries and aspiring jobseekers from the areas under Chikkaballapura Lok Sabha constituency. The Mela was aimed at building a strong bridge between the exciting new employment opportunities offered by a fast growing economy for the

budding youth. The event was professionally well organized. Recruiters from multiple industries like Dairy, Agriculture, Manufacturing, Retail, Hospitality, Automobile, IT, KPOs, BPOs, BFSI IT, ITES/BPO, Finance, Banking/Insurance, Telecom, Engineering, Hospitality and Construction participated in the Mela and around 25,000 students registered in the Fair.

On 3 and 4.8.2013 the Bangalore Chapter of the ICSI also participated in 'Chickaballapur Udyog Mela -2013' at SJC Institute of Technology, Chickaballapur. It was a great opportunity to disseminate information about the profession of company secretaries. The Bangalore Chapter had set up the stall on 3.8.2013 of the Mela. The ICSI Banner printed both in English and Kannada; Mounted Posters were displayed and the Brochures & Pamphlets explaining the CS course were distributed to around 500 students who visited the ICSI stall.

Noor Sumayya, Assistant Education Officer of the Chapter office along with other staff represented and managed the stall.

The Udyog Mela was fruitful in creating widespread Job opportunities to the rural and semi urban aspirants and also helped in building the brand image of CS by propagating the importance and awareness of CS Course.

### Interactive Meeting with ROC on Name Applications and Incorporation of Company & LLP

On 3.8.2013 the Bangalore Chapter of the ICSI organised an Interactive Meeting with ROC on the above topic at the Institute of Agricultural Technologists, Bangalore. CS Sehar Ponraj, Deputy Registrar, Registrar of Companies, Karnataka was the speaker. The interactive meeting was intended to clarify the doubts on incorporation of companies & LLPs and other e-Forms. There was lively interaction by the 96 members and students present.

### Outdoor Games

On 4.8.2013 the Chapter to commemorate its Annual Day celebrations organised various programmes for the members and the students. In this regard the Chapter organised a Cricket Match at Railway Grounds, Bangalore for the students and members. Around 125 members and students were present on the occasion.

### Annual Day Celebrations

On 1.8.2013 the Chapter to commemorate its Annual Day organised a get-together of members, students and their family at Hotel Woodlands, Bangalore. The annual day celebration started with colourful and creative cultural programmes followed by formal proceedings. CS H.M Dattatri, Chapter Secretary gave a brief summary of the major programmes organised throughout the year and the activities organised by the Chapter on account of its Annual Day Celebrations. CS R Srinivasan, Member, Bangalore Chapter of the ICSI acknowledged the Contribution made by the Immediate Past Chairman CS S Kannan in steering the Chapter this past year.



Gopalakrishna Hegde, Council Member, The ICSI then honoured CS S Kannan, Immediate Past Chairman of the Chapter as a token of gratitude and appreciation for his contribution to the Profession and the Chapter during his tenure as Chairman of the Managing Committee of the Bangalore Chapter of the ICSI. He also distributed Cash Awards and the Certificates to the meritorious students for the June and December 2012 CS examinations. CS Dwarakanath C, Chairman, SIRC of the ICSI distributed prizes to the members and students who won various competitions previously conducted by the Chapter and honoured participants/winners/runners-up of the various competitions - at Regional and National Level.

CS Gopalakrishna Hegde then made a brief presentation on the "Building Project for the Bangalore Chapter" wherein he highlighted the work in progress of the construction activities. He shared with the audience the recent photographs of the building which is on the verge of completion and requested all the members of CS fraternity located in Bangalore for their generous contribution and support in completion of the project. More than Around 360 members/students along with their families were present on the occasion.

## COIMBATORE CHAPTER

### Career Awareness Programmes

On 1.8.2013 the Chapter as part of its Career Awareness drive aimed educating the student community on the benefits of Corporate Secretaries Course organized a Career Awareness Programme at SBOA School, Coimbatore. CS C.Thirumurthy, Practicing Company Secretary, Coimbatore addressed more than 250 students at PSGR Krishnammal College for Women, Coimbatore. Shyama Vijayaraghavan, Assistant Education Officer of the Chapter addressed more than 60 students. Again on 6.8.2013 the Career Awareness Programme was held at Bishop Ambross College, Coimbatore. Shyama Vijayaraghavan, Assistant Education Officer addressed more than 125 students. Yet again on 7.8.2013 the Career Awareness Programme was held at Isha Home School, Velliangiri Foothills, Semmedu Post, Coimbatore. Shyama Vijayaraghavan, Assistant Education Officer of the Institute addressed more than 125 students.

### Programme on Creating & Managing Corporate Wealth

On 2.8.2013 the Chapter organised a seminar on Creating & Managing Corporate Wealth. V.Girish, President, IIFL Wealth Management addressed around 90 members and students.

### Programme on How to set up Practice in Service Tax & Issues in Service Tax

Service tax is a growing area for Company Secretaries in practice and with more regulations and amendments it has become critical for Corporates to seek advices from the Company Secretaries on day to day basis and expertise on the subject is required. To highlight the fact and opportunity available for Company Secretaries in the field of

Service tax, on 10.8.2013 the Chapter organised the above programme. CS Vikas Y. Khare, Central Council Member, the ICSI addressed on the criticalities pertaining to practice in the field of service tax to more than 65 members including students.

### Independence Day Celebrations

On 15.8.2013 the Chapter organised a programme to celebrate Independence Day. Around 18 members and students were present on the occasion.

### Programme on the Companies Bill, 2013

On 30.8.2013 the Chapter organized a programme on the Companies Bill, 2013 to deliberate the new Bill and its implications on corporate and professionals.

**Inaugural Session:** The programme was inaugurated by the dignitaries present. Dr M Manuneethi Cholan, Registrar of Companies, Tamilnadu, Coimbatore, CS C. Dwarakanath, Chairman, SIRC of the ICSI and B. Soundararajan, Chairman- Suguna Group of Companies, Coimbatore who also gave the inaugural address and highlighted the effect for corporates on the new Bill.

**First Technical Session:** CS M. R. Thiagarajan, Practicing Company Secretary addressed the members and students on features in the New Company Law, Secretarial Audit & Annual Return/Pre-certification and clarified the lacunae in the New Bill.

**Second Technical Session:** CA Ramesh Natarajan, Chartered Accountant deliberated on provisions pertaining to Accounts & Audit and the changes from the existing Act and aspects to be considered and its effect on corporates and professionals.

**Third Technical Session:** A. M. Sridharan, Practicing Company Secretary, Chennai deliberated on the provisions pertaining to Offences & Compounding of offences under the Companies Bill, 2013.

**Fourth Technical Session:** S. R. Rajagopal, Advocate, Chennai deliberated on provisions pertaining to NCLT, Restructuring & Insolvency under the Companies Bill, 2013. More than 138 members and 78 students benefited from the whole day programme. Programme credit hours were also credited to the members for the programme.

## KOCHI CHAPTER

### Workshop on FCRA 2010 and Income Tax for NGOs

On 24.8.2013 the Kochi Chapter of SIRC of the ICSI organised an outreach workshop exclusively for the NGO sector at Renewal Centre, Kochi. The programme was the first of its kind in the CS fraternity and was organised in line with the item "tapping untapped market" envisaged in the Strategic Action Plan of ICSI for the year 2013-14. The outreach workshop was designed as a partnership



# News From the Institute & Regions

programme between Kochi Chapter of ICSI, M/s. Financial Management Service Foundation (FMSF) and M/s. Centre for Promoting Accountability (CPA), Noida. The resource persons were Dr. Manoj Fogla (Author of the book FCRA 2010) and Prabhat Kumar, Programme Manager, CPA. Kochi Chapter took this as a unique opportunity to reach out to the voluntary sector. Invitations were sent to several NGOs and discussions were initiated with major companies running their own NGOs and Government agencies like Kerala Social Security Mission. Encouraging responses were received from the NGO sector. M/s. Attakkalari Public Charitable Trust of Contemporary Performing Arts, a leading NGO in art education has come forward to support the programme through sponsorship. There were more than 50 delegates out of which more than 25 were from the NGO sector. Delegates were registered from various places out of Kerala such as New Delhi, Chennai, Puttaparthi, etc. The delegates gave very good feedback about the programme and thanked ICSI for having organized this unique programme. The workshop had active interactions, team activities, presentations etc. The brochures and publications of ICSI were exhibited during the programme and the delegates from NGO sector collected them and enquired about CS course with interest. Two books – “Comprehensive Commentaries on FCRA 2010” and “Resource Material on Income-tax Laws for NPOs” were given as workshop material to all the delegates.

## Career Awareness Programme

On 27.8.2013 Initiated by SIRO, the Kochi Chapter of SIRC of the ICSI conducted a Career Awareness Programme for the MBA students of Rajagiri Centre for Business Studies, Rajagiri Valley, Kakkanad, Ernakulam. The programme was held at the Rajagiri campus and more than 150 students attended it. The programme was led by CS Jayan K., Chairman and CS Premjith. Sreekumar, Office in Charge of Kochi Chapter was also present. During the programme, the syllabus, method of study, details of formalities of registration and training, various avenues for Company Secretaries etc. were explained. The speakers focused on the dual benefit of having CS with MBA that could be availed by the students of Rajagiri. During the programme leaflets and pamphlets explaining the CS course were distributed to the students. Students very actively interacted with the speakers on various points and also clarified their doubts.

## MADURAI CHAPTER

### Career Awareness Programme

On 03.08.2013 Madurai Chapter organized a career awareness programme at Vellammal Engineering College, Veerapanchan, Madurai. S.Kumararajan, Chapter Chairman explained the CS course, structure, fees, and employment opportunities, avenues in practice, etc. Around 100 First year & Second year M.B.A students participated. Prof.S.Selvaraj, Head of the Department of M.B.A and lecturers also participated. On 14.08.2013 the Chapter organized the Career awareness programme at Tuticorin VOC College. S. Kumararajan, Chapter Chairman explained the CS course, structure,

fees, employment opportunities, avenues in practice, etc. T.Raja, Chapter Office In-charge distributed the course brochures to the participants and clarified the doubts raised by the students.

## Independence Day Celebrations

On 15.08.2013 the Chapter celebrated Independence Day at its premises which was attended by a good number of members and students besides the faculty members of the Chapter. S.Kumararajan, Chapter Chairman hoisted the National Flag.

## Interaction meet with President, ICSI

On 27.8.2013 S.N.Anathasubramanian, President, the ICSI participated in an interaction meet which was well attended by the Members of the profession, Industry heads apart from Chapter Chairman S.Kumararajan and Secretary S.Paramasivan. S.N.Anathasubramanian elaborated the opportunities available to the members of the profession after passing, in the newly created Post Qualification Courses in Banking, Insurance and Capital Market areas. He strongly emphasized about the good demand for persons with such specialized qualifications in the industry.

## One day seminar on the New Companies Bill, 2013

On 28.8.2013 S. N. Anathasubramanian, President, the ICSI inaugurated a one day seminar on Companies Bill, 2013. He stated that the Bill has thrown open new opportunities to the Practising Members as well as to the Members in service. There was a good gathering of the participants which included Members, persons from industry besides students.

The First Technical Session on M & A, besides NCLT- Special Court was taken by CS Rajiv Choubey, Company Secretary, Sterlite Industries Ltd., Tuticorin.

The Second Technical Session on Auditors, Accounting, Accounting standard and CSR was addressed by CA.S.Srikanth from Chennai. The Third and Final Technical Session was addressed by R. Sridharan, Central Council Member on Meeting of shareholders, Directors, Powers, Appointment and Remuneration of Managerial Personnel, Dividend and Secretarial Audit. The detailed coverage of R. Sridharan in the provisions of the Act in the above amended areas was very useful to the participants which included members, persons from industry besides students.

## MANGALORE CHAPTER

### Career Awareness Programmes

The Chapter conducted nine Career Awareness Programmes as under: On 2 & 5.7.2013 the programme was held at Vivekananda College of Arts Commerce and Science, Puttur wherein a total of 400 students attended the programme; on 10.7.2013 at Alva's College, Moodabidri, 150 IInd yr. BBM / Ist yr. B.Com students attended; on 12.7.2013 at Madhava Pai Memorial College, Manipal, 234 students of II.III yr. B.Com & IInd /IIIRD yr. B.B.M. students attended; on





15.7.2013 at Alva's College, Moodabidri, 200 students of IInd yr. BBM/IInd yr. B.Com students attended the programme; on 18.7.2013, 150 students of IIIrd yr. B.B.M & IIIrd yr. B.Com attended; on 19.7.2013 at Government First Grade College, Kavoor, Mangalore, 110 students of IInd / IIIrd yr. B.Com & IInd / IIIrd yr. B.B.M. Students attended the programme; on 20.7.2013 at Shree Niranjana Swamy First Grade College, Bajpe, Mangalore, 81 students of IIIrd yr. B.A./B.Com/BBM students attended the programme; on 27.7.2013 the Career Awareness Programme was held at Srinivas Institute of Management Studies, Mangalore, 70 students of 1st yr. B.Com attended the programme. The programmes were addressed by CS Ullas Kumar Melinamogaru, Chapter Chairman. During the Career Awareness Programmes in the above educational institutions, the students were appraised about the company secretary ship course, mode of registration, syllabus, structure of the course, opportunities and avenues available both in employment and practice on successful completion of the course. Brochures explaining the company secretary ship course were distributed among the students. The response in all the above programmes was very encouraging and the queries raised by the students were satisfactorily replied by the Chapter Chairman.

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the conference, publication of WIRC on "Practical Aspects of Service Tax" was released.

The First Technical Session on "Practical Tips on preparation for Drafting, Appearance and Arguments before the Tribunals (CLB, SAT)" was addressed by Advocate J. J. Bhatt.

The Second Technical Session on "Structuring Mergers & Acquisitions" was addressed by Bhagirat Merchant.

The Third Technical Session on "Regulatory Updates" was addressed by CS B. Narasimhan, Council Member, the ICSI.

A Special Session on "Implications of De-recognition of Regional Stock Exchanges" was addressed by CS Devesh Pathak.

The second day of the Conference commenced with celebration on the occasion of the 40th Foundation Day of Ahmedabad Chapter.

The Fourth Technical Session on "Exchange Approval for Mergers and Demergers" was addressed by Girish Joshi, Head, Listing, Debt & Index, BSE Ltd.

The Fifth Technical Session on "Related Party and Transfer Pricing under Income Tax Law" was addressed by CA Jayesh Thakur.

The Sixth Technical Session on "Secretarial Audit" was addressed by CS Keyoor Bakshi, Past President, the ICSI.

All the sessions were made interesting by the active participation of the delegates.

## Awareness Program on Companies Act, 2013

The WIRC of ICSI organised its maiden awareness programme on Companies Act, 2013 on 17.8.2013 at its premises at Nariman Point. Prakash K Pandya, Regional Council Member and Chairman, Professional Development Committee of ICSI-WIRC during his introductory talk spoke on the scope of the new legislation and the changing role of CS professionals. He opined that as per the new Act a professional has various avenues to specialise and gain mastery.

Narayan Shankar, Company Secretary of Mahindra and Mahindra limited dealt with in detail the scope and critical issues of the novel legislation. Prachi Manekar, Advocate, Bombay High Court deliberated on Class action Suits and remedies.

Himanshu L Chapsey, Chartered Accountant, B K Khare & Co., Mumbai spoke on accounts and audit provisions and S V Subramanian spoke on the role of Secretarial Standards as per the new legislation.

The programme was well attended by members, from both practice and employment. The queries raised by the participants were ably responded by the speakers..

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## Western India Regional Council

### Annual Regional Conference of WIRC

The Western India Regional Council organized Annual Regional Conference 2013 which was hosted by Ahmedabad Chapter of WIRC of ICSI, on the theme Perceive - Plan - Perform on 3 and 4.8.2013 at Chekhla, Ahmedabad.

The Conference received overwhelming response with the active participation of more than 280 Members/Students from across the Region. The Central and Regional Council Members besides others were present.

The Inaugural Session of the Conference was addressed by CS S. N. Ananthasubramanian, President, the ICSI; CS Hitesh Buch, Chairman – WIRC and CS Umesh Ved, Central Council Member. The President in his address stated that the theme and topics selected by WIRC was very appropriate in present context. It was also stated by him that the Company Secretary has important role in Governance of Companies. He also briefed the delegates about the Strategic Action Plan – 2013 devised by the ICSI. CS Hitesh Buch, Chairman, WIRC in his address stated that the theme of the Conference which is relevant for Professionals was selected by WIRC after detailed deliberations. He stated that the opportunities are abundant for Company Secretaries, but there were huge challenges and the Company Secretaries need to perform their tasks diligently. CS Umesh Ved, Council Member explained about various initiatives of ICSI like Peer Review. During the Inaugural Session of



## ICSI - CCGRT

### Orientation Programme on Companies Act, 2013

The ICSI-CCGRT conducted an orientation programme on the Companies Act 2013 on 30.08.2013. The programme was conducted at its premises in Navi Mumbai in order to give an insight into the provisions of the Companies Act 2013.

M A Kuvadia, Regional Director (Western Region) was the Chief Guest and inaugurated the programme. While initiating the discussion he spoke on the salient features and highlights of the Companies Act, 2013.

CS S V Subramanian, Chairman, Secretarial Standards Board (SSB) gave the concluding remarks during which he threw light on the Secretarial Standards Board (SSB) of ICSI and the procedure for issue of Secretarial Standards by ICSI. He also drew the attention of the participants towards the fact that compliance with certain Secretarial Standards issued by the ICSI has been made mandatory and the responsibility of ensuring compliance is entrusted to the Company Secretary.

Other eminent speakers for the programme were CS N L Bhatia, Practising Company Secretary, Mumbai who spoke on Incorporation of Companies & Matters incidental thereto, CS Shashikala Rao, Practising Company Secretary, Mumbai who covered Prospectus & Allotment of Securities Share Capital & Debentures, Acceptances of Deposits by Companies, Registration of Charges and Compromises, Arrangements & Amalgamations, CS R Balakrishnan, Company Secretary, Pune who conducted a session on Appointment and Qualifications of Directors, Meetings of Board and its Powers and Appointment & Remuneration of Managerial Personnel and CA Naresh Kataria, Partner, B K Khare & Co., Mumbai who explained the provisions relating to Accounts of Companies, Audit and Auditors.

The programme was well attended and well received by the participants.

### Programme on eXtensible Business Reporting Language (XBRL)

The Ministry of Corporate Affairs (MCA) has issued various General Circulars mandating certain class of companies to file their balance sheets & profit and loss account in respect of certain financial statements closing by using XBRL taxonomy. The Manual for filing financial statements in XBRL form in MCA21 system is given at the XBRL section of the MCA portal. MCA has also clarified that the verification and certification of the XBRL document of financial statements on the e-forms would continue to be done by authorized signatory of the company as well as professionals like Company Secretary in whole-time practice. Considering all the above, ICSI-CCGRT conducted a programme on 01.09.2013 at its premises in CBD Belapur, Navi Mumbai.

CA Aniket Varshney, Project Leader and his team from Webtel Electrosoft P. Ltd., Mumbai addressed the participants covering

Introduction to XBRL filing, Concept of XBRL Reporting, Recent developments in XBRL filing etc.

They also acquainted the participants with the intricacies and practical aspects involved in XBRL filing. Demo software required for XBRL filing was installed by CCGRT into the laptops/desktops of each of the participants and a demo session on XBRL filing involving all participants was conducted in order to enable the participants to have a practical exposure of filing the financial statements in XBRL mode.

The programme was well received and young company secretaries and other professionals benefitted particularly. The participants desired to have more such workshops.

### Programme on Corporate Restructuring through Mergers and Takeovers

Corporate restructuring implies reorganising company's business or system, total makeover of business structure and financial restructuring. Restructuring may be by Compromise, Arrangement (merger/ amalgamation/ demerger/ takeovers / buyback), Reconstruction and Reorganisation. Corporate restructuring has enabled many organizations around the world to respond more quickly and effectively to new opportunities and unexpected pressures, thereby re-establishing their competitive advantage. In order to help company secretaries and other professionals to learn to identify and respond to potential restructuring opportunities through mergers, amalgamations and takeovers, ICSI-CCGRT organised a two days programme on Corporate Restructuring Through Mergers and Takeovers at its premises in Navi Mumbai on 24 and 25.08.2013.

S C Gupta, Chief General Manager, SEBI was the Chief Guest who, in his inaugural address, discussed the regulatory aspects of building organic and inorganic growth strategies.

Bhagirat B Merchant, Former President, BSE Ltd. in his charismatic way explained the Practical Approach to Amalgamation and Mergers, leaving the participants with thought provoking ardour.

Prof. R Balakrishnan, Company Secretary, Pune spoke on Due Diligence aspects in Mergers and Acquisitions with practical examples.

Yogesh Chande, Associate Partner – ELP shared his experience on M&A and discussed the new SEBI Takeover Code.

Kaushal Shah, VP, Kotak Mahindra Capital Co. Ltd. explained the Valuation aspects and role of premium in corporate restructuring. In today's era, any subject is incomplete without the International Aspects which were explicitly covered by Raju Ananthanarayanan, Practising Company Secretary, Mumbai.

Sharad Abhayankar, Partner - Khaitan & Co. ran through various case studies on corporate restructuring covering the recent M&As.

The programme enabled the participants to obtain an understanding of the methods for creating value through restructuring.



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PDP - 8

**Announces**

PCH - 4

**Program on**

## COMPLIANCES AND CONSENT ORDERS UNDER SEBI & COMPOUNDING UNDER FEMA

<b>Background</b>	<p>RBI has issued Master Circulars on July 01, 2013 including Master Circular No. 9/2013-14 on Compounding of Contraventions under FEMA, 1999.</p> <p>SEBI has on the basis of experience gained and with the purpose of providing more clarity on the scope and applicability, partially modified the framework for passing of consent orders last year.</p> <p>To help members in particular and professionals in general understand these concepts, CCGRT is organising this one day program.</p>	
<b>Proposed Coverage</b>	<ul style="list-style-type: none"> <li>■ Non-Compliances under SEBI's Prevention of Insider Trading Regulations &amp; Takeover Regulations</li> <li>■ Consent Orders under SEBI</li> <li>■ Recent major developments in FDI, ECB &amp; ODI</li> <li>■ Compounding under FEMA</li> </ul>	
<b>Day, Date &amp; Time</b>	Saturday, October 19, 2013	09.30 a.m. to 05.30 p.m. (with lunch and background material)
<b>Venue</b>	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.	
<b>Speakers include</b>	Eminent speakers with practical exposure to the subject will address the participants	
<b>Fees (inclusive of Service Tax@12.36%)</b>	<p>Students : ₹ 1,000/- per Student</p> <p>Members : ₹ 1,200/- per Member</p> <p>Other : ₹ 1,500/- per participant</p> <p>to cover the cost of backgrounder, kit, lunch and other organisational expenses.</p>	

**For Registration :** The Fees may be drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to **Shri Gopal Chalam**, Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

☎: 022 - 2757 7815/16, 022 - 41021515, Fax: 022 - 2757 4384, ✉: ccgrrt@icsi.edu

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# News From the Institute & Regions ICSI - CCGRT



**THE INSTITUTE OF  
Company Secretaries of India**  
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CENTRE FOR  
CORPORATE  
GOVERNANCE,  
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*In the age of dynamic changes, everything is changing very rapidly. The technology of today is getting obsolete tomorrow. Most of the countries have adopted or going to adopt IFRS which prescribe that Books of Accounts should be stated at fair valuation. It necessitates that as the organizations adjust their financial statements accordingly, the Company Secretaries also equip themselves with the intricacies & techniques of Valuation. Recognizing this, ICSI-CCGRT is launching this Certificate Course on Valuation, which has been modeled in self study, class room training, case study & presentation.*

*This Certificate Course would:*

- Give an insight into various conceptual, technical & procedural aspects of valuation
- Provide a framework for business valuation & give practical exposure on applying the valuation principles in different situations.
- Enable to carry out the valuation assignments with confidence & commendable skills.

## CERTIFICATE COURSE ON VALUATION



*Admission for the next batch Starts  
from Thursday, August 01, 2013*

*Orientation lecture will be held on  
Sunday, August 11, 2013*

*1<sup>st</sup> Class Room Training will be  
tentatively held on Saturday, October  
19, Sunday, October 20, 2013,  
Saturday, October 26 & Sunday,  
October 27, 2013.*

*Evaluation will be organized on a  
subsequent weekend.*

### ELIGIBILITY

- Members of ICSI
- Final / Professional passed Students of CS course

### FEES: ₹ 16,850/-

(15000 + Service Tax @12.36%)

(Covering cost of Classroom Training, Reference Material and Evaluation)

### ADMISSION

Please send in the duly filled in Registration form (available at [www.icsi.edu/ccgrrt](http://www.icsi.edu/ccgrrt)) alongwith supporting documents and Fees to The Dean, ICSI-CCGRT, at ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614

Fees may be drawn up by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c". Fees may also be deposited in the CCGRT A/c with Vijaya Bank/ICICI Bank.

For clarifications please contact us at: ☎ 022-27577814, 41021533/ 10 📧: [ccgrrt@icsi.edu](mailto:ccgrrt@icsi.edu)

*Participation restricted to ensure effectiveness*

*Accommodation on twin sharing basis available on first-come-first-serve basis on payment of additional charges*



Ten PCH for Members  
Twenty Five PDP for Students

# 41<sup>st</sup> National Convention of Company Secretaries

November 7-8-9, 2013 (Thursday, Friday & Saturday)

Inaugural: 2.30 PM

Theme:

Transitioning from Company Secretary to  
Governance Professional

Sub Themes :

1. Model Framework for Developing and Regulating Professionals
2. Emerging Role of Professionals in the Economy and Society
3. Role of Governance Professionals
4. Making of a Governance Professional
5. Panel Discussion: Ifs and Buts with Governance and Related Professionals

Venue :

ITC Grand Chola, No.63, Mount Road, Guindy, Chennai 600032

For more details, please visit the dedicated portal at [www.icsi.edu/41nc/home.aspx](http://www.icsi.edu/41nc/home.aspx)

# EXPOSURE DRAFTS OF REVISED SECRETARIAL STANDARDS ON GENERAL AND BOARD MEETINGS

(Last Date for comments: October 30, 2013)

The Companies Act, 2013, after receiving the assent of Honorable President of India on August 29, 2013 has been notified in the Gazette of India on August 30, 2013.

Section 118(10) provides that every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

With the enactment of the Companies Act, 2013, existing Secretarial Standards-1, 2, 5 & 7 issued by the Council of the Institute need to be revised as per the applicable Law.

Accordingly, the Secretarial Standards Board of the Institute of Company Secretaries of India has brought out Exposure Drafts of Revised Secretarial Standards-1, 2, 5 and 7 on General and Board Meetings. The text of the Exposure Draft of the following proposed revised Secretarial Standards is placed for public comments:

- Secretarial Standard on Meetings of the Board of Directors (SS-1),
- Secretarial Standard on General Meetings (SS-2),
- Secretarial Standard on Minutes (SS-5), and
- Secretarial Standard on Passing of Resolutions by Circulation (SS-7)

The comments and suggestions on the Exposure Draft may be sent to Shri Gopal Chalam, Dean, ICSI-CCGRT at Plot No- 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai-400614 (E-mail: [t1025@icsi.edu](mailto:t1025@icsi.edu) or [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu)) so as to reach him by **October 30, 2013**.

## SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS

The following is the text of the Secretarial Standard-1 (SS-1) issued by the Council of the Institute of Company Secretaries of India, on "Meetings of the Board of Directors".

Adherence by a company to this Secretarial Standard will be mandatory, as per provisions of the Companies Act, 2013.

**(In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards').**

### INTRODUCTION

This Standard seeks to prescribe a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.

The principles enunciated in this Standard for meetings of the Board of Directors are also applicable to meetings of Committees, unless otherwise stated herein or stipulated by any other applicable guidelines, Rules or Regulations.

Although a company is a legal entity, it cannot act by itself and can do so

only through its Directors. Moreover, Directors are in a fiduciary position vis-à-vis the company and, to that extent, they are also deemed to be trustees of the properties and assets of the company. They owe a duty to the shareholders and other stakeholders and should exercise care, skill and diligence in the discharge of their functions and in the exercise of the powers vested in them. All the powers vested in Directors are exercisable by them only collectively. No individual Director has the power to act on behalf of the company unless such powers have been delegated by the Board or the Committee.

In case of One Person Company in which there is only one Director on its Board, for any business which is required to be transacted at a meeting of the Board, it shall be sufficient if the resolution is entered in the Minutes Book and signed and dated by such Director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under the Act.

### DEFINITIONS

The following terms are used in this Standard with the meaning specified: "Act" means the Companies Act, 2013 (Act No. 18 of 2013), or any statutory modification thereto or re-enactment thereof and includes any

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*Rules and Regulations framed thereunder.*

*“Articles” means the Articles of Association of a company, as originally framed or as altered from time to time, or applied in pursuance of any previous company law or of the Act.*

*“Board” or “Board of Directors” means the collective body of Directors of a company.*

*“Chairperson” means the Chairperson of the Board, or the Chairperson appointed or elected for a Meeting.*

*“Committee” means a Committee of the Board.*

*“Dormant Company” means*

- (i) a company formed and registered under the Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction,
- (ii) a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

*“Electronic Mode” means electronic medium of communication and includes audio-visual electronic communication facility.*

*“Independent Director” means a director other than a managing director or a whole-time director or a nominee director,—*

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors of the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives—
  - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
  - (ii) is or has been an employee or proprietor or a partner, in any

of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

- (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
- (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
- (iii) holds together with his relatives two per cent or more of the total voting power of the company; or
- (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;
- (f) who possesses such other qualifications as may be prescribed under the Act.

*“Interested Director” means a Director, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—*

- (a) with a body corporate in which such Director or such Director in association with any other Director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such Director is a partner, owner or member, as the case may be.

*“Meeting” means a Meeting, duly convened and constituted, of the Board or any Committee thereof.*

*“Minutes” or “Minutes Book” means Minutes or Minutes Book maintained on paper or in electronic form.*

*“National Holiday” means and includes a day declared as National Holiday by the Central Government.*

*“Non-interested Director” means a Director who is not an Interested Director.*

*“One Person Company” means a company which has only one person as a Member.*

*“Small company” means a company, other than a public company,—*

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed; or
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed.

Provided that such company is not —

- (A) a holding company or a subsidiary company;
- (B) a company registered under Section 8 of the Act; or



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(C) a company or body corporate governed by any special Act.

*“Original Director” means a Director in whose place the Board has appointed any other individual as an Alternate Director.*

*“Quorum” means the minimum number of Directors whose presence is necessary for holding of a valid Meeting.*

*“Unpublished price sensitive information” means any information which is material and is generally not known or is not published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company. Such information includes periodic financial results, intended recommendation of dividend, announcement of bonus shares, rights issue and other corporate benefits, issue of securities, buy back of securities, any major expansion plans or execution of new projects, amalgamation, merger and takeovers, disposal of the whole or substantial part of the undertaking, any significant changes in policies, plans or operations of the company, and such other information as may affect the earnings of the company.*

Words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

## SECRETARIAL STANDARDS

### 1. Convening a Meeting

#### 1.1 Authority

**Unless the Articles provide otherwise, any Director of a company may, and the Manager or Secretary on the requisition of a Director should, at any time, summon a Meeting of the Board.**

#### 1.2 Notice

**1.2.1 Notice in writing of every Meeting should be given to every Director by hand or by post or by courier at his address registered with the company or by facsimile or by e-mail or by any other Electronic Mode. Where a Director specifies a particular mode, the Notice should be given to him by such mode.**

**1.2.2 The Notice should specify the day, date, time and full address of the venue of the Meeting.**

A Meeting may be held at any time and place, on any day, including a National Holiday.

**1.2.3 The Notice should inform the Directors if facility of participation through Electronic Mode is made available and provide necessary information to enable Directors to access such facility.**

In cases where such facility is available, the Notice should seek confirmation from the Director as to whether he/she will attend the Meeting through Electronic Mode. Notice should also contain the contact number/e-mail address(es) of the Secretary/designated officer to whom the Director should confirm in this regard. In the absence of any confirmation from the Director, it should be assumed that he / she will physically attend the meeting.

**1.2.4 The Notice of a Meeting should be given even when Meetings**

**are held on pre-determined dates or at pre-determined intervals.**

**1.2.5 Unless the Articles prescribe a longer notice period, Notice convening the Meeting should be given at least seven days before the date of the Meeting.**

A longer notice will facilitate planning and scheduling of meetings by Directors.

**1.2.6 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda should also be given at least seven days before the date of the Meeting.**

Agenda and notes on agenda should be sent to all Directors by hand or by post or by courier at their address registered with the company or by facsimile or by e-mail or by any other Electronic Mode. Where a Director specifies a particular mode, the same should be sent by such mode.

**1.2.7 Each item of business should be supported by a note setting out the details of the proposal and where approval by means of a Resolution is required, the draft of such Resolution should be set out in the note.**

Unpublished Price Sensitive Information such as quarterly financial results can be tabled at the Meeting.

**1.2.8 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at a shorter period of time than stated above.**

The proposal to hold the Meeting at a shorter notice alongwith the justification regarding the urgency of the matter should be stated in the Notice.

The urgency of the matter should also be put on record.

At least one Independent Director, if any, should be present at such Meeting. However, if no Independent Director is present, decisions taken at such a Meeting should be circulated to all the Directors and should be finalised only on ratification thereof by at least one Independent Director.

Notice, Agenda and Notes on Agenda should be given to all Directors or to all members of the Committee, as the case may be, at the address registered by them with the company, whether in India or abroad, and should also be given to the Original Director, even when the Notice, Agenda and Notes on Agenda have been given to the Alternate Director.

**1.2.9 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairperson and with the consent of the majority of the Directors present in the Meeting.**

The items of business to be transacted should be arranged in the order of those items that are of a routine or general nature or which merely require to be noted by the Directors, and those items which require discussion and specific approval.

Besides the items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board and all material items having a significant bearing on the operations of the company, there are certain items which should also be placed before the Board. An illustrative list of such items is given at Annexure ‘A’.

Similarly, illustrative lists of items which should be placed



before the Board at its first Meeting is given at Annexure 'B' and which should be placed before the Board at the Meeting held for consideration of the annual accounts is given at Annexure 'C'.

There are certain items which cannot to be dealt with in a Meeting through Electronic Mode and has to be taken up in a physical Meeting. Such list is given at Annexure 'D'.

## 2. Frequency of Meetings

### 2.1 Meetings of the Board

**The Board should hold its first Meeting within thirty days of the date of its incorporation and thereafter should hold at least four Meetings in each year with a maximum interval of 120 days between any two consecutive Meetings.**

One Person Company, Small Company and Dormant Company should hold at least one Meeting of the Board in each half of a calendar year and the gap between the two Meetings should not be less than ninety days.

### 2.2 Meetings of Committees

**Committees should meet at least as often as stipulated by the Board or as prescribed by any other law or authority.**

## 3. Quorum

### 3.1 Meetings of the Board

#### 3.1.1 Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not present.

The Quorum for a Meeting of the Board should be one-third of the total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher. Total strength for this purpose, shall not include Directors whose places are vacant.

The presence of Interested Directors shall not be counted for the purpose of forming a Quorum.

A Director participating in a Meeting through Electronic Mode should be counted for the purpose of Quorum. However, every Director should attend personally, atleast one Meeting in a financial year.

Where the Quorum provided in the Articles is higher than one-third of the total strength, the company should conform to such higher Quorum requirement.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, should be the quorum during such time.

If a Meeting of the Board could not be held for want of Quorum, then, unless the Articles otherwise provide, the Meeting should automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place.

Notice of adjourned Meeting should be given to all Directors including those who did not attend the Meeting on the originally convened date.

If there is no Quorum at the adjourned Meeting also, another

Meeting should be convened after giving Notice afresh.

#### 3.1.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.

The continuing Directors may act notwithstanding any vacancy in the Board; but if and so long as their number is reduced below the Quorum, the continuing Directors or Director may act only for the purpose of increasing the number of Directors to that fixed for the Quorum, or of summoning a general meeting of the company and for no other purpose.

### 3.2 Meetings of Committees

**The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated by the Board while constituting the Committee.**

Members of Committees may participate in a Meeting of Committee through Electronic Mode, if such facility is provided. A member of the Committee participating in a Meeting through Electronic Mode should be counted for the purpose of Quorum. However, every Member of the Committee should attend personally, atleast one Meeting of Committee in a financial year.

Certain guidelines, Rules and Regulations framed under the Act or by any statutory authority may contain provisions for the Quorum of a Committee and such stipulations should then be followed.

## 4. Attendance at Meetings

### 4.1 An Attendance Register, containing the names and signatures of the Directors present at the Meeting, should be maintained.

If an attendance register is maintained in loose-leaf form, it should be bound at reasonable intervals and should be kept for atleast eight years.

In case of Directors participating through Electronic Mode, the Chairperson should confirm the attendance of such Directors. For this purpose, at the commencement of the Meeting, the Chairperson should take a roll call. The Chairperson should make the Director participating through Electronic Mode to state his/her full name, location and that he/she can completely and clearly see and communicate with each of other participants and should record the same.

A roll call should also be taken at the conclusion of the Meeting or at re-commencement of the Meeting after every break to ensure Quorum throughout the Meeting.

The proceedings of such Meeting should be recorded and stored along with date and time.

### 4.2 Leave of absence should be granted to a Director only when a request for such leave has been communicated to the Secretary or to the Board or to the Chairperson.

## 5. Chairperson

### 5.1 Meetings of the Board

**Every company should designate one of its Directors as Chairperson who would chair the Meetings of the Board.**

It would be the duty of the Chairperson to see that the Meeting is duly

convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before it proceeds to transact business. The Chairperson should then conduct the Meeting. The Chairperson should encourage deliberations and debate and assess the sense of the Meeting. The Chairperson should ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit.

In the case of a public company, if the Chairperson himself is interested in any item of business, he should entrust the conduct of the proceedings in respect of such item to any Non-interested Director and resume the Chair after that item of business has been transacted.

In case some of the Directors participate through Electronic Mode, the Chairperson should safeguard the integrity of the Meeting and ensure availability of proper electronic equipments/facility. The Chairperson should ensure that no person other than the concerned Director or other authorized person attends the Meeting through Electronic Mode.

If the Articles so provide, the Chairperson shall have a casting vote.

## 5.2 Meetings of Committees

The Board, while constituting any Committee, should appoint the Chairperson of that Committee.

## 6. Passing of Resolution by Circulation

### 6.1 A Resolution proposed to be passed by circulation should be sent in draft, together with the necessary papers, individually, to all the Directors or, in the case of a Committee, to all the members of the Committee.

The Act requires certain matters to be approved at Meetings of the Board of Directors only. Though the Act permits that all other matters can be approved by means of Resolutions by circulation, it would be appropriate if only those matters, which are of an urgent nature are approved by means of Resolutions by circulation.

### 6.2 The draft Resolution to be passed by circulation and the necessary papers should be circulated by hand, or by post or by courier at the addresses registered with the company in India, of the Directors or members, as the case may be, or by facsimile, or by e-mail or by any other Electronic Mode.

### 6.3 Where not less than one-third of the total number of Directors for the time being require the Resolution to be decided at a Meeting, the Chairperson should put the Resolution to be decided at a Meeting of the Board.

### 6.4 The Resolution shall be effective from the last date specified for signifying assent or dissent by the Directors, if no other effective date is specified in the Resolution.

### 6.5 Resolutions passed by circulation should be noted at the next Meeting of the Board or Committee, as the case may be, and recorded in the Minutes of such Meeting.

The Minutes should record the text of the resolution passed, and dissent, if any.

For more details, refer ICSI's Secretarial Standard on Passing of Resolutions by Circulation (SS-7).

## 7. Minutes

### 7.1 Within fifteen days from the date of the Meeting of the Board or Committee or of an adjourned Meeting, the draft Minutes thereof should be circulated in physical or Electronic Mode to all the members of the Board or the Committee, as the case may be, for their comments.

The Directors who attended the Meeting should communicate their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

If any Director does not communicate his/her comments within the said period of seven days, it shall be concluded that such Director does not have any comment.

In case a Meeting of the Board or Committee was held at a shorter notice and no Independent Director was present at the Meeting, the Minutes shall be finalised only after atleast one Independent Director ratifies the decisions taken at such Meeting.

The decision of the Chairperson whether or not to record the comments of the Directors in the Minutes shall be final.

A Director who has attended a Meeting of the Board or any Committee thereof is entitled to offer his comments on the draft Minutes of that Meeting and is also entitled to subsequently receive a copy of its signed Minutes, even if he ceases to be a Director.

### 7.2 The Minutes of proceedings of a Meeting should be entered in the Minutes Book within thirty days from the conclusion of the Meeting.

In case a Meeting is adjourned, the Minutes should be entered in respect of the original Meeting as well as the adjourned Meeting within thirty days from the date of the respective Meetings. In respect of a Meeting adjourned for want of Quorum, a statement to that effect should be recorded in the Minutes Book by the Chairperson or any Director present at the Meeting.

### 7.3 The date of entering the Minutes should be specified in the Minutes Book by a Director or the Secretary.

### 7.4 The Chairperson should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

Minutes of the proceedings should be entered in the Minutes Book within thirty days of the Meeting; there is no prescribed time limit within which such Minutes have to be signed. They could be signed beyond a period of thirty days if the succeeding Meeting is held after a period of thirty days from the date of the earlier Meeting. However, it is also not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting signed. Such Minutes may be signed by the Chairperson of the Meeting at any time before the next Meeting is held.

### 7.5 Minutes should not be pasted or attached to the Minutes Book.

### 7.6 Minutes, if maintained in loose-leaf form, should be bound at intervals coinciding with the financial year of the company.

The pages of the Minutes Book should be serially numbered and there should be proper locking device to ensure security and proper control to prevent irregular removal of the loose leaves.

### 7.7 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.

A Director who has attended a Meeting of the Board or any Committee thereof is entitled to inspect such Minutes, even after he ceases to be a Director.

While the Auditor or Cost Auditor of the company or Practising Company Secretary appointed by the company can inspect the Minutes Book in the course of audit, a member of the company has no right to inspect the Minutes of Meetings of the Board or any Committee thereof. Officers of the Registrar of Companies, or other Government or regulatory bodies, during the course of an inspection, can also inspect the Minutes.

Inspection of Minutes Book may be allowed in electronic form.

- 7.8 Extracts of the Minutes should be given only after the Minutes have been duly signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairperson, if the draft of that Resolution had been placed at the Meeting and was duly approved.**

Extracts of the duly signed Minutes may be provided in electronic form.

- 7.9 Minutes of an earlier Meeting should be noted at the next Meeting.**

- 7.10 Any alteration, other than grammatical or minor corrections, in the Minutes as entered, should be made only by way of express approval taken in the subsequent Meeting in which such Minutes are sought to be altered.**

- 7.11 The Minutes of Meetings of any Committee should be circulated to the Board for noting at the subsequent Board Meeting.**

Draft Minutes of the meetings of the Nomination and Remuneration Committee should however be circulated in consultation with the Chairperson of the Committee.

## **8. Recording in the Minutes**

- 8.1 In addition to the names of Directors present at the Meeting, the names of persons in attendance and the names of invitees, if any, should be recorded in the Minutes.**

- 8.2 Apart from the Resolution or the decision, the Minutes should mention the brief background of the proposal and the rationale for passing the Resolution or taking the decision.**

- 8.3 The names of the Directors who dissented or abstained from the decision should be recorded. Similarly, the fact that an Interested Director did not participate in the discussion or vote should be recorded in the Minutes.**

- 8.4 Wherever any approval of the Board or of the Committee is taken on the basis of certain papers laid before the Board or the Committee, proper identification by initialling of such papers by the Chairperson or any Director should be made and a reference thereto should be made in the Minutes.**

## **9. Preservation of Minutes and other Records**

- 9.1 The Minutes of all Meetings should be preserved permanently either in physical or electronic form.**

- 9.2 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, the Minutes of all Meetings of the Board and Committees of the transferor company should be preserved permanently by the transferee**

**company, notwithstanding that the identity of the transferor company may not survive such arrangement.**

- 9.3 Office copies of Notices, Agenda and Notes on Agenda and other related papers should be preserved in good order either in physical or electronic form for as long as they remain current or for ten years, whichever is later.**

For more details, refer ICSI's Secretarial Standard on Minutes (SS-5).

## **10. Disclosure**

**The Annual Report of a company should disclose the number of Meetings of the Board and Committees held during the year indicating the number of Meetings attended by each Director.**

## **EFFECTIVE DATE**

This Standard shall come into effect from \_\_\_\_\_.

*Annexure 'A'*  
*(Para 1.2.10)*

## **Illustrative list of items which should be placed before the Board**

1. Calls on shareholders in respect of money unpaid on their shares.
2. Buy Back of securities.
3. Issue of securities, including debentures, whether in or outside India.
4. Borrowing money otherwise than by issue of debentures.
5. Investing the funds of the company.
6. Making loans or giving guarantee or providing security in respect of loans.
7. Approving financial statements and the Board's Report.
8. Diversifying the business of the company.
9. Approving amalgamation, merger or reconstruction.
10. Taking over a company or acquiring controlling or substantial stake in another company.
11. Filling casual vacancies in the office of Directors.
12. Making donation to political parties.
13. Making donation to National Defence Fund.
14. According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
15. Periodical Disclosure of interest by a Director.
16. Receiving notice of disclosure of Directors' interest
17. Receiving notice of disclosure of Directors' and KMP's shareholdings.
18. Appointment, Remuneration or Resignation of Key Managerial Personnel.
19. Making a declaration of solvency where it is proposed to wind up the company voluntarily.
20. Forfeiture of shares.
21. Quarterly and half-yearly financial results, including segment results.
22. Minutes of Meetings of Committees of the Board (for noting).
23. Annual operating plans and budgets.
24. Any material default in financial obligations.
25. Material non-compliance of regulatory / statutory provisions or listing requirements.
26. Sale of investments, subsidiaries or assets which is not in the normal course of business.
27. Show cause notices, prosecutions and penalty notices of material nature.

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28. Any material effluent or pollution problems, industrial accidents, labour problems, signing of wage agreement, implementation of Voluntary Retirement Scheme, etc.
29. Any issue which involves possible public or product liability claims.
30. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
31. Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.
32. Information on recruitment and remuneration of senior officers (one level below the Board) and their transfers or resignations.
33. Details of any joint venture or collaboration agreement.
34. Material liability – legal or contractual.
35. Report of the Compliance Officer regarding share transfer process and analysis of movement of bulk transfers, through the Stakeholder Relationship Committee.
36. Report to the Board by the Company Secretary about compliance with the provisions of the Act and other applicable laws.
37. Events which are significant or have material commercial / financial implications, such as:
  - (a) strikes, lockouts, lay-off, closure of units/factory, etc.;
  - (b) change in the general character or nature of business;
  - (c) major expansion plans or execution of new projects;
  - (d) disruption of operations due to natural calamity or Act of God;
  - (e) commencement of commercial production / commercial operations;
  - (f) litigation / dispute with a material impact;
  - (g) revision in ratings assigned by credit rating agencies;
  - (h) voluntary delisting of securities from the Stock Exchange(s);
  - (i) default in the repayment of any deposits or redemption of any securities including debentures and in payment of interest, if any, due thereon;
  - (j) any action which will result in alteration in the terms regarding redemption / cancellation / retirement in whole or in part of any securities issued;
  - (k) information regarding opening, closing of status of ADR, GDR or any other class of securities issued abroad;
  - (l) cancellation of dividend / rights / bonus, etc.;
  - (m) formation of a subsidiary company and/or de-subsidiarisation of an existing subsidiary company.
  - (n) purchase / sale / licensing of important trademarks owned by the company.
  - (o) performance review of the subsidiary companies.
38. Action Taken Report (ATR) - Progress made in respect of the decisions taken at the last Board Meeting.
39. Items arising out of separate Meeting of the Independent Directors.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company.
5. To confirm/note the appointment of the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider the appointment of Additional Directors.
8. To consider the appointment of the Chairperson of the Board.
9. To consider the appointment of the first Auditors.
10. To adopt the Common Seal of the company.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve preliminary expenses and preliminary contracts.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.
16. To authorise Director(s) of the company to file a declaration with the ROC under Section 11 of the Act.

*Annexure 'C'*  
**(Para 1.2.10)**

## **Illustrative list of items of business for the Agenda for the Meeting of the Board of Directors at which annual accounts, etc. are to be considered**

(Besides regular Agenda items, such as confirmation of Minutes, granting leave of absence to Directors, reading Notices of disclosure of interest of Directors)

1. To consider and approve matters arising out of the accounts such as write-offs, provisions, legal cases, etc.
2. To consider and approve transfers to Reserves and other appropriations.
3. To consider recommendation of dividend.
4. To consider and approve the Balance Sheet and the Statement of Profit & Loss as well as the abridged Accounts or statement of financial results.
5. To approve the cash flow statement and statement of changes in equity.
6. To consider and approve consolidated financial statements.
7. To consider and take note of the Directors to retire by rotation at the Annual General Meeting.
8. To consider the draft Notice of the Annual General Meeting and to authorise issuance thereof.
9. To consider the appointment of Auditors and the payment of remuneration to them, to be proposed for members' consideration.
10. To take note of the draft Auditor's report.
11. To note the Certificate given by the CEO and CFO under the Listing Agreement.
12. To consider the draft Board's Report and to authorise issuance thereof.
13. To open Bank Account(s) for payment of dividend.
14. To approve/note the closure of the Register of Members and the Share Transfer Books for the purposes of the Annual General

*Annexure 'B'*  
**(Para 1.2.10)**

## **Illustrative list of items of business for the Agenda for the First Meeting of the Board of Directors of the Company**

1. To appoint the Chairperson of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.



Meeting.

15. To discuss the Secretarial Audit Report issued by a practicing company secretary.
16. To consider the appointment and remuneration of cost auditors.
17. To authorise Chairperson, Directors, Chief Financial Officer and Company Secretary of the Company to sign the annual and consolidated financial statements.
18. To take note of Statutory Compliance Certificate given by the

Company Secretary of the Company to the effect that the Company is in compliance with all applicable laws.

Annexure 'D'

## Items which cannot to be dealt with in a Meeting through Electronic Mode

1. To approve the annual financial statements; and
2. To approve the Board's report.

## SECRETARIAL STANDARD ON GENERAL MEETINGS

The following is the text of the Secretarial Standard-2 (SS-2), issued by the Council of the Institute of Company Secretaries of India, on "General Meetings".

Adherence by a company to this Secretarial Standard will be mandatory as per the provisions of the Companies Act, 2013.

***(In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards').***

### INTRODUCTION

This Standard seeks to prescribe a set of principles for the convening and conduct of General Meetings and matters related thereto.

The decision-making powers of a company are vested in its Members and the Board of Directors (the Board). Such powers are exercisable through Meetings of the Members and the Board respectively. Except where the law expressly provides that certain powers of a company are to be exercised only by the company in General Meeting, the Board is entitled to exercise all the powers of the company. Although Members, acting through the forum of a General Meeting, exercise ultimate check over a company, they cannot directly interfere with the exercise of powers which are vested in the Board.

Every company other than a One Person Company, is required to hold every year, a Meeting of its Members called the Annual General Meeting and may also hold any other General Meeting, as and when required or on the requisition of Members. The business to be transacted at an Annual General Meeting may consist of items of ordinary business as well as special business. The items of ordinary business specifically required to be transacted at an Annual General Meeting should not be transacted at any other General Meeting.

If a company defaults in holding its Annual General Meeting in any year, any Member of the company has a statutory right to approach the prescribed authority to call or direct the calling of the Annual General Meeting of the company.

A company may also hold Meetings of its Members, or class of Members or debenture-holders or creditors under the directions of the Court or the

National Company Law Tribunal (NCLT) or any other prescribed authority, and any such Meeting shall be governed by the rules, regulations and directions prescribed for the conduct of any such Meeting.

In case of One Person Company, for any business which is required to be transacted at an Annual General Meeting or other General Meeting of a company by means of an ordinary or special resolution, it shall be sufficient if the resolution is communicated by the Member to the Company, entered in the Minutes Book, signed and dated by such Member and such date shall be deemed to be the date of the Meeting for all the purposes under the Act.

### SCOPE

The principles enunciated in this Standard for General Meetings may also be applicable to class meetings of Members, debenture-holders and creditors. These principles may, however, not be applicable to any meeting convened on the directions of the Court or the NCLT or any other prescribed authority unless the directions themselves so prescribe. This Standard does not deal with passing of resolutions by postal ballot.

### DEFINITIONS

The following terms are used in this Standard with the meaning specified:

"Act" means the Companies Act, 2013 (Act No. 18 of 2013), or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time, or applied in pursuance of any previous company law or of the Act.

"Board" or "Board of Directors" means the collective body of the Directors of a company.

"Chairperson" means the Chairperson of the Board or the Chairperson appointed or elected for a Meeting.

"Electronic Mode" means electronic medium of communication and includes audio-visual electronic communication facility.

"Interested Director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner,

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director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

*"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.

*"Member"* means—

- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

*"Meeting"* or *"General Meeting"* or *"Annual General Meeting"* or *"Extra-Ordinary General Meeting"* means a duly convened Meeting of Members. *"Minutes"* or *"Minutes Book"* means Minutes or Minutes Book maintained on paper or in electronic form.

*"National Holiday"* means and includes a day declared as National Holiday by the Central Government.

*"Non-interested Director"* means a Director who is not an Interested Director.

*"One Person Company"* means a company which has only one person as a Member.

*"Ordinary Business"* means business to be transacted at an Annual General Meeting relating to (i) the consideration of financial statements, consolidated financial statements and the reports of the Board of Directors and Auditors; (ii) the declaration of any dividend; (iii) the appointment of Directors in the place of those retiring; and (iv) the appointment and fixing of remuneration of the Auditors.

*"Ordinary Resolution"* means a Resolution of which the Notice required under the Act has been duly given and the votes cast (whether on a show of hands or electronically or on a poll) in favour of the Resolution (including the casting vote, if any, of the Chairperson) exceed the votes, if any, cast against the Resolution by Members entitled to vote thereon either in person or, where proxies are allowed, by Proxy or by postal ballot.

*"Proxy"* means an instrument in writing signed by a Member, authorizing another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also means the person so appointed by a Member.

*"Quorum"* means the minimum number of Members whose presence is necessary for holding of a valid Meeting.

*"Special Business"* means business other than the Ordinary Business to be transacted at an Annual General Meeting and all business to be

transacted at any other General Meeting.

*"Special Resolution"* means a Resolution in respect of which (a) the intention to propose the Resolution as a Special Resolution has been duly specified in the Notice calling the Meeting or intimation of the Resolution has been given to the Members; (b) the Notice required under the Act has been duly given of the Meeting; and (c) the votes cast (whether on a show of hands or electronically or on a poll) in favour of the Resolution (including the casting vote, if any, of the Chairperson) are not less than three times the number of votes, if any, cast against the Resolution by Members entitled to vote thereon either in person or, where proxies are allowed, by Proxy or by postal ballot.

*"Voting right"* means the right of a Member to vote on any matter at a meeting of members or by means of postal ballot;

Words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

## SECRETARIAL STANDARDS

### 1. Convening a Meeting

#### 1.1 Authority

**A General Meeting should be convened on the authority of the Board.**

The Board of its own accord or on the requisition of Members who hold not less than one-tenth of the paid-up share capital or voting power of the company as on the date of the receipt of the requisition, should, either at a Meeting of the Board or by passing a resolution by circulation, convene or authorize the convening of a General Meeting.

If, on a requisition having been made in this behalf, the Board fails to call a Meeting within 45 days of the date of requisition, the requisitionists may themselves call the Meeting within 3 months of the date of requisition, in the same manner, as nearly as possible, as that in which Meetings are to be called by the Board.

#### 1.2 Notice

**1.2.1 Notice in writing of every Meeting should be given to every Member of the company. Such Notice should also be given to the Directors and Auditors of the company, to the Practising Company Secretary who has issued the Secretarial Audit Report, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.**

Notice should be given to all persons entitled to receive such Notice, at the address provided by them in India or outside India. In the case of joint-shareholders, the Notice should be given to the person whose name appears first in the Register of Members or in the records of the depository, as the case may be.

On receipt of intimation of death of a Member, the Notice of a Meeting should be sent to the surviving first joint-holder or to the nominee of the sole shareholder or to the person entitled to the share of the deceased Member. In case of insolvency of a Member, the Notice should be sent to the assignees of the insolvent or to the person entitled to the share(s) of the insolvent Member.

**1.2.1 Notice should be given by hand or by post or by courier or by facsimile or by e-mail or by any other Electronic Mode**

**and should also be placed on the website, if any, of the company.**

Notice and accompanying documents can be given by Electronic mode only if the company has obtained e-mail addresses of its Members, either directly from the Member or from their depository.

**1.2.2 The Notice should specify the day, date, time and venue of the Meeting with complete address.**

Meetings should be called during business hours i.e. between 9 a.m. and 6 p.m., on a day that is not a National Holiday, at the Registered Office of the company or at some other place within the city, town or village in which the Registered Office is situated. If the venue of the Meeting is not a prominent place, a site map of the venue should be sent with the Notice.

The Notice should prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy to attend and vote instead of himself and that a Proxy need not be a Member.

**1.2.3 The Notice should inform Members whether facility of participation through Electronic Mode is made available and provide necessary information to enable Members to access the available facility.**

**1.2.4 The Notice should clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item should be in the form of a Resolution and should be accompanied by an explanatory statement which should set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.**

The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any item of business or in a proposed Resolution, should be disclosed in the explanatory statement:

- Directors and Managers,
- Other Key Managerial Personnel, and
- Relatives of the persons mentioned above.

In case any item of Special Business to be transacted at a Meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager, and of every other Key Managerial Personnel of the first mentioned company should, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be stated in the explanatory statement.

Where reference is made to any document, contract, agreement or the Memorandum of Association and Articles, the relevant explanatory statement should state that such documents are available for inspection and such documents should be so made

available for inspection in physical or in electronic form during business hours at the Registered Office of the company and copies thereof should also be made available in physical or electronic form as prescribed at the head/corporate office of the company, if such office is situated elsewhere, and also at the Meeting.

In all cases relating to the appointment or re-appointment of Directors or variation of the terms of remuneration, details of each such Director, including age, qualifications, experience, terms and conditions of appointment/re-appointment including details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, membership/chairpersonship of Committees of other Boards should be given in the explanatory statement. In the case of appointment/re-appointment or variation of the terms of remuneration of other Key Managerial Personnel of the company, their resume, terms and conditions of appointment/re-appointment including details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, should be stated in the explanatory statement.

These details can also be given in the Annual Report accompanying the Notice and reference can be made in the explanatory statement.

**1.2.5 Notice and accompanying documents should be sent at least twenty-one days in advance of the Meeting if sent by Electronic Mode and at least twenty-five days in advance of the Meeting if sent by any other mode.**

Where the Notice is also to be published in a newspaper, it should appear at least twenty-one days before the date of the Meeting and such Notice need not be accompanied by an explanatory statement.

**1.2.6 Notice may be given at a shorter period of time if consent in writing is given thereto, by physical or Electronic Mode by not less than ninety-five per cent of the Members entitled to vote at such Meeting.**

**1.2.7 In the case of listed companies, the Notice should also be hosted on the website of the company.**

In addition, an abridged version of the Notice, listing the items of business and the day, date, time and venue of the Meeting, may be published in a leading national newspaper.

**1.2.8 No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.**

**1.2.9 No items of business other than those specified in the Notice should be taken up for consideration at the Meeting.** No Resolution shall be valid if it is passed in respect of an item of business not contained in the Notice convening the Meeting. Where Special Notice is required of any Resolution and Notice of the intention to move such Resolution is received by the company from the prescribed number of Members, such item of business should be placed for consideration at the Meeting after

giving Notice of the Resolution to Members in the manner specified.

Any amendment to the Notice, including the addition of any item of business, can be made provided the notice of amendment is sent to all persons entitled to receive the Notice of the Meeting and is sent within the time limit prescribed for giving of the original Notice.

**1.2.10 The Notice should be accompanied by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and depositing the Proxy form.**

**1.2.11 A Meeting convened upon due Notice should not be postponed or cancelled.**

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reschedule the Meeting after giving not less than seven days intimation to the Members by Electronic Mode. The intimation should also be published in a leading national newspaper and hosted on the website of the company.

## **2. Frequency of Meetings**

### **2.1 Annual General Meeting**

**Every company other than a One Person Company should, in each year, hold a Meeting called the Annual General Meeting.**

Every company should hold its first Annual General Meeting within nine months from the date of closing of the first financial year of the company and thereafter in each year within six months of the close of the financial year, with an interval of not more than fifteen months between two successive Meetings. The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies.

If a company holds its first Annual General Meeting, as aforesaid, it shall not be necessary for the company to hold any Annual General Meeting in the year of its incorporation.

### **2.2 Extra-Ordinary General Meeting**

Items of business of an urgent nature which need to be transacted before the next Annual General Meeting should be considered at an Extra-Ordinary General Meeting.

## **3. Quorum**

### **3.1 Quorum should be present throughout the Meeting.**

Unless the Articles provide for a larger number, the Quorum for a General Meeting should be:

- (a) in case of a public company,—
  - (i) five Members personally present and entitled to vote if the number of Members as on the date of Meeting is not more than one thousand;
  - (ii) fifteen Members personally present and entitled to vote if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;
  - (iii) thirty Members personally present and entitled to vote if the number of Members as on the date of the Meeting exceeds five thousand;
- (b) in the case of a private company, two Members personally

present and entitled to vote.

Where the Quorum provided in the Articles is higher than two or five or fifteen or thirty, as the case may be, the Quorum should conform to such higher requirements.

An authorised representative is treated as a person personally present. One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member for the Quorum. However, to constitute a meeting, atleast two individuals should be present in person. For eg:- In case of a public company with a Quorum requirement of five Members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so alongwith another Member personally present.

Since Members need to be personally present at a Meeting to constitute the Quorum, Proxies are to be excluded for determining the Quorum. However, a duly authorized representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.

Where Members participate in a Meeting through Electronic Mode, the Quorum of five or fifteen or thirty, as the case may be, as well as the Chairperson of the Meeting should be physically present at the place of the Meeting.

## **4. Presence of Directors and Auditors**

### **4.1 Directors**

**4.1.1 The Directors of the company should attend all Meetings of the company, particularly the Annual General Meeting, and should be seated with the Chairperson.**

If any Director is unable to attend the Meeting for reasons beyond his control, the Chairperson should explain such absence at the Meeting.

The Chairperson of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee should attend all General Meetings of the company.

### **4.2 Auditors**

**The Auditors of the company, unless otherwise exempted, should attend, either by themselves or through their authorised representative (who shall also be qualified to be an auditor), all General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.**

### **4.3 Practising Company Secretary**

**The Practising Company Secretary who has issued the Secretarial Audit Report should attend the Annual General Meeting.**

## **5. Chairperson**

### **5.1 Appointment**

**5.1.1 Where the Articles so provide, the Chairperson of the Board should take the chair and conduct the Meeting. If there is no Chairperson either of the Board or appointed for the purpose or if he or she is not present within fifteen minutes after the**



time appointed for holding the Meeting, or if he or she is unwilling to act as Chairperson of the Meeting, the Directors present should elect one of themselves to be the Chairperson of the Meeting. If no Director is willing to take the chair or if no Director is present within fifteen minutes after the time appointed for holding the Meeting, the Members present should elect, on a show of hands, one of themselves to be the Chairperson of the Meeting.

If a poll is demanded on the election of the Chairperson, it should be taken forthwith in accordance with the provisions of the Act and the Chairperson elected on a show of hands should continue to be the Chairperson of the meeting until some other person is elected as Chairperson as a result of the poll, and such other person should be the Chairperson for the rest of the Meeting.

The Chairperson should ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairperson should then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted.

In case the Members participate through Electronic Mode, the Chairperson should safeguard the integrity of the Meeting and ensure availability of proper electronic equipments/facility. The Chairperson should ensure that no one other than the concerned Member or his Proxy attends the Meeting through Electronic Mode.

## **5.2 The Chairperson should explain the objective and implications of the Resolutions before they are put to vote.**

The Chairperson should provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as may be warranted.

## **5.4 The Chairperson should not propose any Resolution in which he is deemed to be concerned or interested nor should he participate in the discussion or vote on any such Resolution.**

If the Chairperson is interested in any item of business, he should entrust the conduct of the proceedings in respect of such item to the Vice-Chairperson, if there is one, or to any Non-interested Director or to a Member and resume the Chair after that item of business has been transacted. A person who so takes the Chair can exercise his casting vote in the event that a vote on such item of business results in a tie, provided the Articles provide for casting vote by the Chairperson.

## **6. Voting**

### **6.1 Proposing a Resolution**

#### **6.1.1 Every Resolution should be proposed by a Member and seconded by another Member entitled to vote thereon.**

Every Member holding equity shares and, in certain events as specified in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.

#### **6.1.2 A Director should not propose or second any Resolution in which he is deemed to be concerned or interested nor should he participate in the discussion or vote on any such Resolution.**

### **6.2 On Show of Hands**

Every Resolution should, in the first instance, be put to vote on

a show of hands.

Every Member entitled to vote on a Resolution and present in person shall, on a show of hands, have only one vote irrespective of the number of shares held by him.

A Proxy cannot vote on a show of hands.

### **6.3 By Poll**

#### **6.3.1 Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by such Members as prescribed under the Act.**

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

#### **6.3.2 A Member present in person or by Proxy shall, on a poll, have votes in proportion to his share of the paid up equity capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.**

### **6.4 By Electronic Mode**

Every Member of the company prescribed under the Act and not present physically may exercise his right to vote by the Electronic Mode.

Every such company should have secured electronic platform to capture accurate electronic voting processes.

### **6.5 Casting Vote**

If the Articles so provide, the Chairperson shall have a casting vote.

## **7. Proxies**

### **7.1 Notice of Right to Appoint**

Every Notice calling a Meeting of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, should prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy to attend and vote instead of himself and that a Proxy need not be a Member.

#### **7.2 A Proxy shall act on behalf of number of Members not exceeding fifty and such number of shares as may be prescribed.**

### **7.2 Form of Proxy**

#### **7.2.1 An instrument appointing a Proxy should be either in the Form specified in the Articles or in any of the Form set out in the Act.**

The instrument of Proxy should be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

#### **7.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.**

### **7.3 Stamping of Proxies**

An instrument of Proxy is valid only if it is properly stamped. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.

### **7.4 Execution of Proxies**

**7.4.1** The Proxy-holder should prove his identity at the time of attending the meeting.

**7.4.2** An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.

## **7.5 Proxies in Blank and Incomplete Proxies**

**7.5.1** A proxy form which does not state the name of the Proxy should not be considered valid.

**7.5.2** If an undated Proxy, which is otherwise complete in all respects, is lodged within the prescribed time limit, it should be considered valid.

**7.5.3** If a company receives multiple Proxies for the same holdings of a Member, the proxy which is dated last should be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies should be treated as invalid.

## **7.6 Deposit of Proxies**

**7.6.1** Proxies should be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy should be accepted even on a holiday if the last date by which it could be accepted is a holiday.

Any provision in the Articles of a company which specifies or requires a longer period for deposit of proxy than forty-eight hours before a meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit. Proxies may be accepted at a shorter period, being not less than twenty-four hours before the commencement of the Meeting, if the Articles so provide.

**7.6.2** A Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.

## **7.7 Revocation of Proxies**

**7.7.1** If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

**7.7.2** A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

**7.7.3** A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

A Proxy need not be informed of the revocation of the Proxy issued by the Member. Even an undated letter of revocation of Proxy should be accepted. A notice of revocation should be signed by the same person who had signed the Proxy.

## **7.8 Inspection of Proxies**

**7.8.1** Requisitions, if any, for inspection of Proxies should be received in writing from a Member at least three days before the commencement of the Meeting.

**7.8.2** Proxies should be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

Inspection should be allowed during the business hours of the company, subject to reasonable restrictions.

**7.8.3** A fresh requisition, conforming to the above requirements, should be given for inspection of Proxies in case the original Meeting is adjourned.

## **7.9 Record of Proxies**

**7.9.1** All Proxies received by the company should be recorded chronologically in a register kept for that purpose.

**7.9.2** In case any Proxy entered in the register is rejected, the reasons therefor should be entered in the remarks column.

## **8. Conduct of Poll**

**8.1** When a poll is demanded on any Resolution, the Chairperson should get the validity of the demand verified and, if the demand is valid, should order the poll forthwith if it is demanded on the question of appointment of the Chairperson or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.

**8.2** In the case of a poll which is not taken forthwith, the Chairperson should announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairperson should also announce that any Member who so desires may be present at the time of counting of votes.

If the date, venue and time of taking the poll cannot be announced at the meeting, the Chairperson should inform the Members that it would be communicated to them separately.

A Member who did not attend the Meeting can participate and vote in the poll.

**8.3** Each Resolution on which a poll is demanded should be put to vote separately.

One ballot paper may be used for two or more items for which poll has been ordered.

**8.4** The Chairperson should appoint such number of scrutineers, as he deems necessary to ensure that the scrutiny of the votes cast on a poll is done fairly, accurately and properly. At least one of the scrutineers should be a Member who is present at the Meeting and is not an officer or employee of the company. Based on the scrutineers' report, the Chairperson should declare the result of the poll, with details of the number of votes cast for and against the Resolution and the final result as to whether the Resolution has been carried or not.

The Chairperson of the Meeting shall have the power to regulate the manner in which the poll shall be taken.

**8.5** The result of the poll should be displayed on the notice board of the company at its Registered Office and its Corporate/Head Office, if such office is situated elsewhere, and also placed on the website of the company. In the case of listed companies with more than 5,000 Members, the result of the poll should also be published in a leading national newspaper.

The result of the poll shall be deemed to be the decision of the Meeting on the resolution on which the poll was taken.

## **9. Withdrawal of Resolutions**

Resolutions for items of business which are likely to affect the market price of the securities of the company should not be withdrawn.

## 10. Rescinding of Resolutions

A Resolution passed at a Meeting should not be rescinded other than by a Resolution passed at a subsequent Meeting.

## 11. Modifications to Resolutions

Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the amended Resolution should be duly proposed, seconded and put to vote.

No amendment to any proposed Resolution should be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical and clerical errors may be corrected or words translated into more formal language and, if the precise text of the Resolution was not included in the Notice, it may be corrected into a formal Resolution, provided there is no departure from the substance as stated in the Notice.

## 12. Reading of Report/Certificate

**12.1** The qualifications, observations or comments on the financial statements or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Auditor's Report including the Statement pursuant to the Companies (Auditor's Report) Order, 2003 (CARO) should be read at the Annual General Meeting and attention of the Members present should be drawn to the explanations / comments given by the Board of Directors in their report.

**12.2** The qualifications, observations or comments on the financial statements or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Secretarial Audit Report issued by the Practising Company Secretary, should be read at the Annual General Meeting and attention of Members present should be drawn to the explanations / comments given by the Board of Directors in their report.

## 13. Distribution of Gifts

No gifts, gift coupons, or cash in lieu of gifts should be distributed to Members at or in connection with the Meeting.

## 14. Adjournment of Meetings

**14.1** A duly convened Meeting should not be adjourned arbitrarily by the Chairperson. The Chairperson may adjourn a Meeting with the consent of the Members and should adjourn a Meeting if so decided by the Members.

Meetings may be adjourned for want of requisite Quorum. The Chairperson may adjourn a Meeting in the event of disorder or other like causes, where it becomes impossible to conduct the Meeting and complete its business.

**14.2** If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting should be given in

accordance with the provisions contained hereinabove relating to Notice.

**14.3** If a Meeting is adjourned for a period of less than thirty days, the company should give not less than three days' notice specifying the day, date, time and venue of the Meeting, to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the Registered Office of the company is situated. In the case of listed companies, notice thereof specifying the day, date, time and venue of the Meeting should also be published simultaneously in a leading national newspaper.

**14.4** If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting should be held on the same day, in the next week at the same time and place or on such other day and at such other time and place as may be determined by the Board.

In case of such adjourned Meeting, Notice should be given in the same manner as stated above.

If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

**14.5** If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand dissolved.

**14.6** At an adjourned Meeting, only the unfinished business of the original Meeting should be considered.

Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

## 15. Minutes

**15.1** Minutes should contain a summary of the proceedings of the Meeting, recorded fairly, correctly, completely and in unambiguous terms, and should be written in third person and past tense.

**15.2** The Minutes should be entered and signed within thirty days from the conclusion of the Meeting.

In case a Meeting is adjourned, Minutes should be entered in respect of the original Meeting as well as the adjourned Meeting within thirty days from the dates of the respective Meetings.

The pages of the Minutes Book should be consecutively numbered.

The Minutes should be dated and signed by the Chairperson of the Meeting within a period of thirty days or, in the event of death or inability of the Chairperson, by a Director who was present in the Meeting and authorized by the Board for the purpose.

**15.3** The Chairperson should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

**15.4** Minutes, once entered in the Minutes Book, should not be altered. However, minor errors may be corrected and initialled by the Chairperson even after the Minutes have been signed.

**15.5** Minutes should not be pasted or attached to the Minutes Book.

## 15.6 Minutes, if maintained in loose-leaf form, should be bound at reasonable intervals.

Minutes may also be kept in electronic form in such manner as prescribed under the Act.

## 16. Recording in the Minutes

16.1 The name of the Chairperson of the Meeting, the Chairpersons of the Audit Committee, the Nomination and Remuneration Committee and the Stakeholders Relationship Committee and the names of other Directors present at the Meeting should be recorded.

16.2 The fact that the required Quorum was present should be recorded.

16.3 The number of Members present in person and through representatives and Proxies should be recorded.

16.4 The presence of the Auditor and the Practising Company Secretary, who has issued the Secretarial Audit Report, should be recorded.

16.5 If the Chairperson was interested in an item of business at the Meeting, the fact that he vacated the Chair and requested the Vice-Chairperson, if any, or some other Director or Member to Chair the Meeting to transact such business, should be recorded.

## 17. Preservation of Minutes and other Records

17.1 Minutes Book to record Minutes of General Meetings should be kept separately from those books used to record Minutes of any other meetings and should be kept at the Registered Office of the company.

17.2 The Minutes of all General Meetings should be preserved

permanently.

Minutes can be inspected by any Member. The Auditor or Cost Auditor of the company or Practising Company Secretary appointed by the company can also inspect the Minutes Book in the course of audit.

17.3 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, the Minutes of all Meetings of the transferor company should be preserved permanently by the transferee company, notwithstanding that the identity of the transferor company may not survive such arrangement.

17.4 Office copies of Notices and supporting papers relating to the Notices should be preserved in good order either in physical or electronic form for as long as they remain current or for ten years, whichever is later.

## 18. Report of the Annual General Meeting

Every listed public company should prepare a report in the prescribed manner, of the Annual General Meeting, including a confirmation that the meeting was convened, held and conducted as per the provisions of the Act.

Such report should be filed with the Registrar of Companies within thirty days of the conclusion of the Annual General Meeting.

## 19. Disclosure

The Annual Report of a company should disclose all Meetings held during the last three years.

## EFFECTIVE DATE

This Standard shall come into effect from \_\_\_\_\_.

# SECRETARIAL STANDARD ON MINUTES

The following is the text of the Secretarial Standard-5 (SS-5) on "Minutes" issued by the Council of the Institute of Company Secretaries of India.

In this Secretarial Standard, the standard portions have been set in **bold** type. These should be read in the context of background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards'.

Adherence by a company to this Secretarial Standard is recommendatory till it becomes mandatory.

*(In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards').*

## INTRODUCTION

This Standard seeks to prescribe a set of principles for the recording of

Minutes of the Meetings of:

- (a) the Board,
  - (b) the Committees of the Board,
  - (c) members including resolutions passed by postal ballot,
  - (d) debenture holders,
  - (e) creditors,
  - (f) others as may be required under the Act,
- and matters related thereto.

The expression "Minutes" means a brief summary of the proceedings of a Meeting. Minutes should contain a fair and correct summary of the proceedings of the Meeting and should normally convey why, how and what conclusions were arrived at in relation to each business transacted at the Meeting. It need not be an exact transcript of the proceedings.

Every company is required to keep Minutes of all Meetings. Minutes



# Exposure Drafts of Revised Secretarial Standards on General and Board Meetings

kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

The Company Secretary or authorized official of the company should record the proceedings of the Meetings.

## SCOPE

This Standard applies to Minutes of Meetings governed by the Act. The principles enunciated in this Standard are also applicable to class Meetings of Members, debenture holders and creditors. These principles may also be applicable to any Meeting convened on the directions of the Court or the National Company Law Tribunal (NCLT) or any other prescribed authority unless otherwise directed.

## DEFINITIONS

The following terms are used in this Secretarial Standard with the meaning specified:

*“Act”* means the Companies Act, 2013 (Act No. 18 of 2013), or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

*“Articles”* means the Articles of Association of a company, as originally framed or as altered from time to time, or applied in pursuance of any previous company law or of the Act.

*“Board”* or *“Board of Directors”* means the collective body of the Directors of a company.

*“Chairperson”* means the Chairperson of the Board or the Chairperson appointed or elected for a Meeting.

*“Committee”* means a Committee of the Board.

*“General Meeting”* or *“Annual General Meeting”* or *“Extraordinary General Meeting”* means a duly convened Meeting of members.

*“Maintenance”* means keeping Minutes either in physical or electronic mode, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

*“Meeting”* means any Meeting, duly convened, constituted and held.

*“Member”* means—

- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

*“Minutes”* or *“Minutes Book”* means Minutes or Minutes Book maintained on paper or in electronic form.

Unless the context otherwise requires, words and expressions used herein and not defined should have the meaning respectively assigned to them under the Act.

## SECRETARIAL STANDARDS

### 1. MAINTENANCE

#### 1.1 Minutes should be recorded in books maintained for that purpose.

Minutes of the Board Meetings, if maintained in loose-leaf form, should be bound at intervals coinciding with the financial year of the company. Minutes of other Meetings, if maintained in loose-leaf form, should be bound at reasonable intervals. There should be proper locking device to ensure security and proper control to prevent irregular removal of the loose leaves.

Minutes may also be maintained in electronic form in such manner as prescribed under the Act.

#### 1.2 A separate Minutes Book should be maintained for each type of Meeting.

#### 1.3 The pages of the Minutes Book should be consecutively numbered.

In the event any page in the Minutes Book is left blank, it should be scored off and initialed by the Chairperson who signs that Minutes.

#### 1.4 Minutes should not be pasted or attached to the Minutes Book.

#### 1.5 Minutes Books should be kept at the Registered Office of the company. Minutes of the Board and Committee Meetings may, with the approval of the Board, be kept at the office where such Meetings are generally held.

## 2. CONTENTS

### 2.1 General Contents

#### 2.1.1 Minutes should begin with the number and type of the Meeting, name of the company, day, date, venue, time of commencement and conclusion.

In respect of a Meeting convened but adjourned for want of quorum that fact should be recorded in the Minutes of such adjourned Meeting.

#### 2.1.2 Minutes should record the names of the Directors and the Company Secretary present at the Meeting.

The names of the Directors should be listed in alphabetical order or in order of seniority or in any other logical manner, but in either case starting with the name of the person in the Chair and the Vice-Chairperson, if any.

#### 2.1.3 Minutes should contain all appointments made at the Meeting.

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, Key Managerial Personnel, Auditors or Company Secretary in practice, shall be deemed to be valid.

### 2.2 Meetings of the Board or Committee

#### 2.2.1 Minutes should contain:

- (a) The appointment of the Chairperson of the meeting, if any.
- (b) The names of officers in attendance and invitees for specific items.
- (c) The names of Directors who were not present at the Meeting, whether with or without leave of absence.
- (d) If any Director has participated only for a part of the

Meeting, the agenda items in which he had participated.

- (e) The mode of attendance of every Director whether personally or through electronic mode.
- (f) In case of a Director joining through electronic mode, his/her particulars, the place from and the agenda items in which he participated.
- (g) The fact that an Interested Director did not participate in the discussion or vote.
- (h) All appointments made at the Meeting.
- (i) The fact of the dissent and the name of the Director who expressly dissented or abstained from the decision.
- (j) The resolution(s) passed by circulation since the last Meeting.
- (k) Notings of the Minutes of the last Meeting.

## 2.2.2 Minutes should mention the brief background of the proposal, summarise the deliberations and the rationale for taking the decisions.

The agenda items discussed should be recorded and appropriately numbered.

The decisions should be recorded in the form of resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

Where a resolution was passed pursuant to the Chairperson of the Meeting exercising his second or casting vote, the Minutes should record the same and also refer to the Articles which empowers the Chairperson to exercise the second or casting vote.

## 2.3 General Meetings

### 2.3.1 Minutes should contain:

- (a) The appointment of the Chairperson of the Meeting.
- (b) The presence of Quorum.
- (c) The fact that certain registers and documents were available for inspection.
- (d) The number of members present in person including representatives.
- (e) The number of proxies and the number of shares represented by them.
- (f) The presence of the Chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee at the General Meeting.
- (g) The presence if any, of the Auditors, the Practising Company Secretary who issued the Secretarial Audit Report, the Court appointed observers or scrutineers.
- (h) Reading of the notice of the Meeting.
- (i) Reading of qualifications, observations or comments on the financial statements or matters which have any adverse effect on the functioning of the company, as mentioned in the report of the auditors and practising company secretary.
- (j) Summary of the opening remarks of the Chairperson.
- (k) Summary of the clarifications provided.
- (l) In respect of each resolution, the type of the resolution,

the names of the persons who proposed and seconded and the majority with which such resolution was passed.

Resolutions should be written in the present tense.

Where a motion is moved to modify a proposed resolution, the result of voting on such motion should be mentioned. If a resolution proposed undergoes modification pursuant to a motion by shareholders, the Minutes should contain the details of voting for the modified resolution.

- (m) In the case of poll, the names of scrutineers appointed and the number of votes cast in favour and against the resolution.
- (n) If the Chairperson vacates the Chair in respect of any specific item in which he is interested, the fact that he did so and in his place some other Director or member took the Chair.
- (o) All appointments made at the Meeting.

## 2.3.2 In respect of Resolutions passed by Postal Ballot, a brief report on the Postal Ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutineer's Report should be recorded in the Minutes Book and signed by the Chairperson within thirty days from the date of declaration of the result of the postal ballot.

Where the Minutes have been kept in accordance with the Act then, until the contrary is proved, the Resolutions passed by postal ballot shall be deemed to have been duly passed and in particular, all appointments of Directors, Key Managerial Personnel, Auditors or Company Secretary in practice, shall be deemed to be valid.

## 3. RECORDING

### 3.1 Minutes should contain in unambiguous terms a fair and correct summary of the proceedings of the Meeting.

Minutes should be written using clear, concise and plain language. The Chairperson has absolute discretion to exclude from the Minutes, matters which in his opinion are defamatory, irrelevant or immaterial or which are detrimental to the interests of the company.

### 3.2 Minutes should be written in third person and past tense.

### 3.3 Each item of business taken up at the Meeting should be appropriately numbered.

For ease of reference, topic-wise index and cross-reference should be separately maintained.

## Meetings of the Board

### 3.4 Any document, report or notes placed before the Board and referred to in the Minutes should be identified by initialing of such document, report or notes by the Chairperson or the concerned Director.

### 3.5 Where an earlier resolution or decision is superseded or modified, Minutes should contain a clear reference to the earlier resolution or decision.

## 4. ENTRY

### 4.1 Minutes should be entered in the Minutes Book within thirty

days from the date of conclusion of the Meeting.

**4.2 The date of entry in the Minutes Book should be recorded.**

**4.3 Minutes, once entered in the Minutes Book, should not be altered.**

Any alteration, other than grammatical or minor corrections, in the Minutes as entered, should be made only by way of express approval taken in the subsequent Meeting in which such Minutes are sought to be altered.

## **5. FINALISATION**

**5.1 Within fifteen days from the date of the conclusion of the Meeting of the Board or Committee, the draft Minutes thereof should be circulated in physical or electronic mode to all the members of the Board or the Committee, as the case may be, for their comments.**

Draft Minutes of the Meeting of the Nomination and Remuneration Committee should however be circulated in consultation with the Chairperson of the Committee.

The Directors who attended the Meeting should communicate their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

If any Director does not communicate his/her comments within the said period of seven days, it shall be concluded that such Director does not have any comment.

In case a Meeting of the Board or Committee was held at a shorter notice and no Independent Director was present at the Meeting, the Minutes shall be finalised only after atleast one Independent Director ratifies the decisions taken at such Meeting.

The decision of the Chairperson whether to record or not the comments of the Directors in the Minutes shall be final.

A Director who has attended a Meeting of the Board or any Committee thereof is entitled to offer his comments on the draft Minutes of that Meeting and is also entitled to subsequently receive a copy of its signed Minutes, even if he ceases to be a Director.

**5.2 Minutes of the Meetings of all Committees should be placed and noted at a subsequent Meeting of the Board.**

## **6. SIGNING AND DATING**

**6.1 Minutes of the Meeting of the Board or Committee should be signed and dated by the Chairperson of the Meeting or the Chairperson of next Meeting.**

**6.2 Minutes of a General Meeting should be signed and dated by the Chairperson of the Meeting or in the event of death or inability of the Chairperson, by any Director duly authorized by the Board for the purpose, within thirty days of the General Meeting.**

**6.3 The Chairperson or the authorized Director should initial each page of the Minutes, sign the last page and append to such signature the date on which he has signed the Minutes.**

## **7. INSPECTION**

**7.1 Directors are entitled to inspect Minutes of all Meetings. Members are entitled to inspect the Minutes of all General Meetings including resolutions passed by postal ballot.**

A member has no right to inspect the Minutes of Meetings of the Board or Committee.

Minutes of all General Meetings should be open for inspection during business hours of the company, without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

When a member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company should furnish the same within seven working days, subject to payment of such fee as may be prescribed.

A Director who has attended a Meeting of the Board or any Committee thereof is entitled to inspect such Minutes, even after he ceases to be a Director.

Extracts of the Minutes should be given only after the Minutes have been duly signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairperson, if the draft of that Resolution had been placed at the Meeting.

The Auditor or Cost Auditor or the Practising Company Secretary appointed by the company may inspect the Minutes in the course of audit.

Officers of the Registrar of Companies, or other Government or regulatory bodies, during the course of an inspection, can also inspect the Minutes.

Inspection of Minutes Book may be allowed in electronic form. Extracts of the duly signed Minutes may be provided in electronic form.

## **8. PRESERVATION**

**8.1 Minutes of all Meetings should be preserved permanently either in physical or electronic form.**

**8.2 Office copies of Notices, Agenda, Notes on Agenda and other related papers should be preserved in good order for as long as they remain current or for ten years, whichever is later.**

**8.3 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company should be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.**

**8.4 Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company should be preserved in good order either in physical or electronic form for as long as they remain current or for ten years, whichever is later.**

**8.5 Minutes Books should be kept in the custody of the Secretary of the company or any Director duly authorized for the purpose by the Board.**

## **EFFECTIVE DATE**

This Standard shall come into effect from \_\_\_\_\_.

## SECRETARIAL STANDARD ON PASSING OF RESOLUTIONS BY CIRCULATION

The following is the text of the Secretarial Standard-7 (SS-7) issued by the Council of the Institute of Company Secretaries of India, on "Passing of Resolutions by Circulation".

Adherence by a company to this Secretarial Standard will be recommendatory, till it becomes mandatory.

*(In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards').*

### INTRODUCTION

A Company, being a legal entity, cannot act by itself but can do so only through its Board of Directors.

The Board is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do, subject to the restrictions and limitations imposed by the Act, Memorandum and Articles of Association and the company in General Meeting.

Decisions relating to the policy and operations of the company are arrived at Meetings of the Board held periodically.

Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective wisdom of the Board. However, it may not always be practicable to convene a Meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to.

### SCOPE

This Standard seeks to lay down a set of principles for passing of resolutions by circulation.

### DEFINITIONS

The following terms are used in this standard with the meaning specified: "Act" means the Companies Act, 2013 (Act No. 18 of 2013), or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time, or applied in pursuance of any previous company law or of the Act.

"Board" or "Board of Directors" means the collective body of Directors of a company.

"Committee" means a Committee of the Board.

"Chairperson" means the Chairperson of the Board, or the Chairperson appointed or elected for a Meeting.

"Interested Director" means a Director, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—  
(a) with a body corporate in which such Director or such Director in

association with any other Director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such Director is a partner, owner or member, as the case may be.

"Meeting" means a Meeting, duly convened and constituted, of the Board or any Committee thereof.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

### SECRETARIAL STANDARDS

The Act requires certain business to be approved at Meetings of the Board only. However other business that does not require detailed discussion or require urgent decisions can be approved by means of resolutions by circulation, if there is a provision in the Articles to pass a resolution by circulation.

#### 1. AUTHORITY

**1.1 Chairperson of the Board or the Managing Director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.**

If the resolution is proposed by any other Director, the approval of any of the aforesaid officers, if there is one, should be obtained before the draft resolution is circulated to all the Directors.

**1.2 Where there is no Chairperson or Managing Director, any other Director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.**

**1.3 Where not less than one-third of the total number of Directors for the time being require the resolution under circulation to be decided at a Meeting, the Chairperson should put the resolution to be decided at a Meeting of the Board.**

#### 2. PROCEDURE

**2.1 A resolution proposed to be passed by circulation should be sent in draft form, together with the necessary papers, individually to all the Directors or, in the case of a Committee to all the members of the Committee, at the same time.**

The resolution together with all papers should be sent to all Directors including Interested Directors and Directors who are usually residing abroad.

**2.2 Each business proposed to be passed by way of resolution by circulation should be explained by a note setting out the details of the proposal and the draft of the resolution proposed. The**



note should also indicate how to signify assent or dissent to the resolution proposed and the date by which a member of the Board or of the Committee should signify his assent or dissent to the resolution.

- 2.3 The draft of the resolution to be passed and the necessary papers should be circulated by hand, or by post or by courier at the addresses registered with the company in India, of the Directors or members, as the case may be, or by facsimile, or by email or by any other electronic mode.**

It is preferable that one resolution is sent under one covering letter. If more than one resolution is sent under a covering letter, the approval of the Directors should be individually obtained for each resolution.

### 3. APPROVAL

- 3.1 The resolution is passed, when it is approved by a majority of directors entitled to vote on the resolution other than interested directors, unless not less than one-third of the total number of Directors for the time being require the resolution under circulation to be decided at a Meeting.**

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the resolution should be passed only with the assent of such special majority or such affirmative vote.

- 3.2 The resolution shall be effective from the last date specified for signifying assent or dissent by the Directors, if no other effective date is specified in the resolution.**

Directors signify their assent or dissent by signing the resolution to be passed by circulation.

Directors should append the date on which they have signed the resolution. In case a Director does not append a date, the date of receipt by the company of the signed resolution should be taken as the date of signing.

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director should disclose his interest and abstain from voting.

If the approval of the majority of Directors is not received by the last date specified for receipt of such approval, the resolution shall be considered not passed.

### 4. RECORDING

- 4.1 Resolutions passed by circulation should be noted at the next Meeting of the Board or Committee, as the case may be, and recorded in the minutes of such Meeting.**

The minutes should record the text of the resolution passed, and dissent, if any.

Minutes should also record the fact that an Interested Director did not vote on the resolution.

### 5. VALIDITY

- 5.1 Passing of resolution by circulation should be considered valid as if it had been passed at a duly convened Meeting of the Board or of the Committee.**

This does not dispense with the requirement for the Board to meet at the specified frequency.

### EFFECTIVE DATE

This Standard is effective from \_\_\_\_\_.

### APPENDIX

#### Illustrative matters to be passed at a duly convened Board Meeting and which cannot be passed by circulation

1. To make calls on shares in respect of unpaid share capital of the company
2. To issue securities, including debentures, whether in or outside India.
3. To borrow money otherwise than on debentures.
4. To invest the funds of the company.
5. To give loans or guarantees or provide securities in respect of loans.
6. To approve financial statements and the Board's Report.
7. To diversify the business of the company.
8. To approve amalgamation, merger or reconstruction.
9. To take over a company or acquiring controlling or substantial stake in another company.
10. To buy-back its own securities.
11. To make political contributions.
12. To fill casual vacancy in the Board.
13. To sanction related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
14. To make investment in shares of other companies.
15. To make declaration of solvency with respect to voluntary winding up.
16. To enter into joint venture and collaboration agreement.
17. To commence a new business activity.
18. To shift the location of plant or factory or a registered office.
19. To appoint or remove senior management personnel one level below the Board.
20. To appoint internal auditors and cost auditors.
21. Adoption of Common Seal.
22. Forfeiture of shares.
23. Periodical Disclosure of interest by a Director.
24. Noting of Directors' interest.
25. Noting of Directors' and KMP's shareholdings.
26. Appointment, remuneration or resignation of Managing Director or whole-time director or Manager.
27. Appointment of a Managing Director / Manager as a Managing Director / Manager in more than one company.
28. Appointment, remuneration, resignation and removal of the Chief Financial Officer or the Company Secretary.
29. To approve quarterly and half-yearly results and cost accounts.
30. Annual operating plans and budgets.
31. Any material default in financial obligations.
32. Noting of statutory compliance reports, show cause notices, prosecutions and penalty notices of material nature.
33. Sale of investments, subsidiaries or assets which is not in the normal course of business.
34. Any issue which involves possible public or product liability claims.
35. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
36. Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.
37. Appointment of cost auditors.

# PMQ Course in Corporate Restructuring & Insolvency

## OBJECT:

The PMQ Course in Corporate Restructuring and Insolvency aims at capacity building of professionals in the area of legal, practical and application oriented aspects of corporate restructuring, rescue and insolvency and matters related thereto.

## COURSE STRUCTURE:

PMQ Course in Corporate Restructuring and Insolvency comprises two modules Viz 'Module A' and 'Module B':

### Module A: Written Examination

**The candidates for 'Module A' shall be examined in the following four papers:**

Paper 1	Corporate Restructuring, Rescue and Insolvency	100 marks
Paper 2	Strategic Options for Corporate Restructuring	100 marks
Paper 3	Cross Border Insolvency Practice and Procedure	100 marks
Paper 4	Professional and Ethical Practices for Insolvency Practitioners	100 marks

### 'Module B' Compulsory Workshop

The candidates shall be compulsorily required to attend one day workshop to be organized before the written examination. The candidates would be required to make presentation on Case Studies assigned in advance and interact with experts.

## ELIGIBILITY CRITERIA

The members of the Institute are eligible for the admission to PMQ Course in Corporate Restructuring & Insolvency.

## COURSE FEE

Rs 25,500/- (including the cost of prospectus) at the time of Registration.  
Rs 25,000/- at the time of Workshop.

## REGISTRATION

A copy of the prospectus giving registration procedure and other details can be purchased for Rs. 500/- from the Institute HQ at Lodhi Road. Prospectus & Registration form is also available on the ICSI website [www.icsi.edu](http://www.icsi.edu).  
For further details, please visit: [www.icsi.edu/CoursesOffered.aspx](http://www.icsi.edu/CoursesOffered.aspx) Or  
Write to: **Director (Academics & Perspective Planning)**, The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area Lodi Road, New Delhi-110003. **Tel.:** 011-45341016/45341071 **e-mail:** [lakshmi.arun@icsi.edu](mailto:lakshmi.arun@icsi.edu)



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Chairman, ITC Ltd.



**Mr. Y. M. Deosthalee**  
CMD, L&T Finance Holdings Ltd.



**CS S. N. Ananthasubramanian**  
President, The ICSI

## NOMINATIONS

Detailed Evaluation  
Process / Methodology  
is available on  
[http://www.icsi.edu/  
WebModules/Booklet.pdf](http://www.icsi.edu/WebModules/Booklet.pdf)  
Participants are  
requested to send their  
nomination by  
October 15, 2013



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

Head Office : ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003

For details, please contact : Tel : 011-4534 1055 • E-mail: [cgawards@icsi.edu](mailto:cgawards@icsi.edu) • Website : [www.icsi.edu](http://www.icsi.edu)



## Proceedings of ICSI-SCOPE Workshop on Corporate Risk Management, on September 21, 2013 at SCOPE Complex, New Delhi

ICSI-SCOPE jointly organised the Workshop on 'Corporate Risk Management on 21 September 2013, at SCOPE Complex, New Delhi. Theme of the workshop was deliberated by eminent policy makers, regulators, executives, professionals and practitioners in three technical sessions.

### First Technical Session

Enterprise Risk Management: Institutional Mechanism, Risks to Balance Sheet & Case Studies

Mr B. V. K. K. Rao, Advisor (Finance), SCOPE, read out the message of Dr. U. D. Choubey, Director General, SCOPE, which emphasized that the Guidelines on Corporate Governance issued by the Government for the public sector have laid special emphasis on risk management. Enterprise Risk Management helps management in achieving desired level of CPSE's performance and profitability targets. It also helps to ensure effective responsible reporting and compliance with the laws and regulations, and avoid damage to the entity's reputation and associated consequences.

Mr. Ardhendu Sen, Council Member, the ICSI and Programme Director in his address while providing an overview of the objectives of workshop, and explaining the instances of a few Public Sector companies, elaborated the Post liberalization disinvestment process by the Govt and beginning of Risk Management Process in PSUs.

Mr. K. N. Vaidyanathan, Chief Risk Officer, Mahindra & Mahindra Group, in his address said that the need to understand risks has become imperative to protect a business from facing severe losses. Mr. Vaidyanathan said that the bane and boon of Risk Management is realized in times of trouble only. Giving an insight through practical real life examples on Enterprise Risk Management, he elaborated about the risks associated with Businesses and failures in absence of Risk Management techniques. He also explained in detail the concept of Risk Ecosystem.

Mr. Ankur Jain, Associate Director, Pricewaterhouse Coopers Pvt Ltd., while discussing the impact and utility of technology in Risk Management, he expressed that the last 10 years were disruptive because of natural calamities like Tsunamis, Terrorist Attacks, Subprime Crisis, Uprising in the Arab and Middle East. He categorised risk into three parts namely, Known risks, Emerging risks and Black Swan risks. In his discussion he focused the discussion on the issues in emerging risk and black swan risks. He explained the key role being played by technology in protecting meaningful management of information and emphasized the need 'to shift

from Process focused to Culture Centric'.

Mr Ardhendu Sen proposed a vote of thanks to the Guest Speakers.

### Second Technical Session

Management of Risks from Environment: Systemic/ Policy/ Legal/ regulatory Risks, Risks to Sustainability and Ecological Risks

Mr Sutanu Sinha, Chief Executive, the ICSI, while convening the second technical session opined that 'if threat to nature can be reduced, risks can be reduced' and deliberated on Ecological Risk System and its impact on the society and corporates.

Dr. Manipadma Datta, Professor, TERI University, discussed in detail the Environmental Risks and Sustainability. He opined that sustainability or climatic risk is very anthropologic in nature. He explained that the regulatory risks in India may not be a regulatory risk in other country, so one has to look from that point of view also. While discussing Environmental Risks and Business: Emergence of a New Paradigm, Dr. Manipadma Datta deliberated on the Global Environment Outlook (GEO) and explained five types of GEO risks. Referring to KPMG survey, he explained that 72% of business firms under the survey have the main concern for regulatory risks. Infact that may be the mother of all risks, as the firms have to abide by the newer laws and legislations that Government imposes, he added. If they fail to comply, they face competitive disadvantages, he emphasised.

Mr. Pashupati Kumar, Director- Business Risk, Deloitte & Touche Assurance and Enterprise Risks Services India Private Limited presented in his address macro picture of Enterprise, Regulatory and Systemic Risks. Stressing the importance of ERM framework, Mr. Pashupati Kumar gave the example of Maruti, how there should be appropriate balance between the temporary and permanent worker. He further added that Risk Management is an art and science both. Mr. Pashupati Kumar outlined the importance of the role of leaders in managing risk by highlighting that 'leaders are not for working on today's issues, they are supposed to focus on emerging issues'. Referring to Regulatory Risks, he opined that working with regulator is necessity and communicating openly and transparently with regulators by



the companies is an imperative. If companies are not working with regulators, ERM would have less importance, he added.

Mr. Sutanu Sinha proposed the vote of thanks to the Guest Speakers.

### Third Technical Session

Management of Market Risks: Foreign Exchange Risk Management – Theory and Practice

Mr. B. Narasimhan, Council Member, the ICSI, while convening the third technical session informed that the foreign exchange risk is at 11th rank in Global Risk Management survey conducted by AON.

Mr. Ajay Shah, Eminent Economist and Professor, National Institute of Public Finance and Policy (NIPFP), emphasized that hedging is a tool for foreign exchange risk management which buys only time but underlying enterprise risk management is more important.

Mr. R. Sundararaman, Senior Vice President, NSE Ltd., explained how NSE currency derivative products can be used to hedge foreign currency risks. He elaborated the process of hedging contracts through futures and options and explained that exchange platform is easier and offers more transparency in hedging such risks than forward contracts as given by banks.

Mr. Vishal Saxena, Head SBI Regional Treasury Marketing Unit, gave a brief presentation on various types of hedging, risk policy and deliberated on identifying different products of hedging. He mentioned that foreign exchange risk consists of two components, namely currency risk and interest rate risk and discussed in detail products like futures, options, interest rate swaps and currency rate swaps etc. which can be used to hedge foreign exchange risk and the methods and benefits of hedging through those products.

Mr. B. Narasimhan proposed a vote of thanks to the Guest Speakers.

All the three Sessions witnessed intensive floor participation.

## Announcement

**The Council of the Institute has approved the following decisions pertaining to training of the students of the Company Secretaryship Course**

**A) 15 months training with Law Firms, Consultancy Firms, Financial Institutions**

The Council of the Institute has allowed imparting 15 months training by Law Firms, Consultancy Firms and Financial Institutions. Earlier they were allowed to impart training for 6 months only. Further the Council has removed the criteria of standing, minimum number of partners and fixed assets for registration of Law Firms and Consultancy Firms and approved the revised guidelines for registration of Law Firms, Consultancy Firms, Financial Institutions for imparting 15 months training which is available at training link on the website of the Institute [www.icsi.edu](http://www.icsi.edu).

**B) Removal of requirement of remitting fee of ₹ 50/- with Apprenticeship Agreement by the Practising Company Secretaries**

The Council has removed the requirement of remitting a fee of ₹ 50/- by the PCS towards registration of apprenticeship training of the students.

**C) 15 days with any one specialised agency:**

The Council has also allowed undergoing training of 15 days with any one specialised agency as prescribed under Regulation 50 (b) of the Company Secretaries Regulations, 1982, with the broking firms/ companies, Law firms, Universities (recognized by UGC), Merchant Bankers, Mutual Funds, Insurance Companies, SMEs, Industry Associations/ Chambers of Commerce, all Ministries, SEBI, IRDA, TRAI, CCI, Courts, Tribunals and other quasi-judicial bodies.



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MINISTRY OF CORPORATE AFFAIRS**

DEAR CORPORATES,

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## CHANDRA SHEKHAR VERMA

Chairman, SAIL



**S**hri Chandra Shekhar Verma, Chairman, Steel Authority of India Limited (SAIL) since June 2010 is also a Member of the Institute. In an interview with Chartered Secretary Shri Verma has advised the younger generation to 'be prepared to work hard to achieve your goals for there is no shortcut to success'.

### Edited Excerpts:

**CS:** The country is blessed with a new Company Law which would become the constitution for governance of over a million companies. What are your expectations from this new law and how it would change the way the companies and its Board of Directors operate today?

**CSV:** The Companies Act, 2013 replaces the old Companies Act, 1956. The new law allows the country to have a modern legislation for regulation of Corporate Sector in India. The Act, amongst other aspects, provides for business friendly corporate regulation/pro-business initiatives, e-governance initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms, enhanced accountability of management, stricter enforcement, audit accountability, protection for minority shareholders, investor protection etc. The new Act provides lesser government approvals and enhanced self-regulations coupled with emphasis on corporate democracy.

The new law provides for electronic voting for Board and Shareholders meeting. Further, it has also been made mandatory for listed companies and prescribed class of companies to have Audit Committee, Stakeholder Relationship Committee, Nomination & Remuneration Committee and Corporate Social Responsibility Committee. The new law also provides about the content of Directors Report to be elaborated which includes the existence and effective operations of systems on compliance with all applicable laws. The Secretarial Audit has also been made mandatory for listed companies. These

changes will have a lot of positive impact on the operational aspects of the Companies and its Boards.

**CS:** The reliance on professionals to undertake second order state functions has been increasing. They are increasingly called upon to discharge their responsibilities with due care and diligence keeping the public interest upper most in their mind. Do you think these professionals are adequately equipped and there is an effective accountability framework?

**CSV:** In the present context, the professionals are fully equipped to discharge their responsibilities with due care and diligence, keeping the public interest uppermost in their mind. In the present context, the various provisions, guidelines have been inbuilt under the Companies Act, SEBI Act and various guidelines have been issued by Dept. of Public Enterprises. Primarily, these provisions/ guidelines deal with adequate representation of Independent Director on the Board, stricter norms on corporate governance, constitution of Audit Committee, etc.

**CS:** Do you think public sector companies and private sector companies have the same level playing field? What according to you are the implicit benefits and privileges that a public sector Company enjoys vis-à-vis a private sector company and vice versa?

**CSV:** The public sector companies have been major source of strength to the nation's economy. The PSEs have grown from strength to strength in post liberalisation era too. This certainly goes on to substantiate that public sector companies do have the potential and the wherewithal to compete in the present competitive times. At the same time, they are subject to mechanisms or systems like multiple agencies for scrutiny and control, which somewhat affects the speed of decision making and promotes a culture of risk-aversion. It is heartening that government recognises this as challenge and are working towards more and more empowerment of PSEs.

**CS:** How do you compare Indian PSUs with those in other countries? What are your challenges in competing with your international peers?

**CSV:** Indian PSEs are comparable to the best in the world when it comes to competitiveness, corporate governance and adoption of new technologies keeping pace with the changing economic paradigm. Time and again Indian PSEs have successfully faced challenges posed by increasing competition from domestic companies as well as from multinational companies. Many Central Public Sector Enterprises (CPSEs) today have successful operations in foreign countries. They have set up subsidiaries, have formed joint ventures and have also acquired companies and commercial assets outside the country.

There are some major differences between our PSEs and those in other countries. For example in China, the government gives enough empowerment to its State owned enterprises subsequent to signing of MOU between its SOEs and the government. Also many other countries and their governments undertake active advocacy for their public sector companies or State owned enterprises (SOEs), be it in acquiring a right or permission to operate or to settle disputes.

**CS:** You have been leading a Maharatna company. What are the challenges of such leadership and how do you hold out as a model for 100 other smaller public sector companies?

**CSV:** Potential for growth and opportunities available in Public Sector are unmatched. Being at the helm of a mega enterprise or a Maharatna PSE poses a number of challenges and at the same time offers opportunities. Its sheer size and operational complexities demand intensive strategic planning and meticulous implementation. Continuous improvement in each facet of operation is required and has to be a thrust area be it

technology, production, projects, research and development, human resource management *et al.* The mantra has to be 'better your best' and this collective mindset builds the right culture of the organization.

**CS: Do you think in the current legalised and dynamic business environment, public sector companies are well equipped and have the necessary flexibility to deliver on their objectives?**

**CSV:** I feel that all the regulatory and control mechanisms that are used to govern the PSEs lend some advantages in dealing with the dynamic and legalized corporate environment. At the same time regulations and control mechanisms at times interfere with speedy decision making and compromise on required flexibility in operations. In the fiercely competitive corporate world where time is invaluable, such delays cost business opportunities.

SCOPE has been advocating greater autonomy to the PSEs. The government has committed itself to a strong and vibrant public sector and taken many favorable steps. It is also believed that another round of policy initiatives is in the offing for operational and financial autonomy of PSEs.

**CS: Can you please cite a few best practices for which SAIL is known and you feel proud of?**

**CSV:** SAIL offers huge opportunities to each and every employee to acquire new skills and to contribute. Successful accomplishment of tasks is the greatest motivator for the huge workforce of SAIL. This is reflected in the highest number of *Shram* and *Vishwakarma*

awards bagged by SAIL year after year. This entrepreneurial culture is the biggest strength of SAIL in my opinion.

As regards the framework of the organisation, SAIL has robust yet dynamic practices, systems and procedures in every discipline be it supply chain, production, projects, finance, human resource management etc. which have withstood the test of time for more than half a century. This gives a strong foundation to the organisation.

The SAIL's firm commitment to practice the highest standards of corporate governance by ensuring transparency, disclosures and reporting that conforms fully to laws, regulations and guidelines is also a recognised strength which helps SAIL in its business dealings.

**CS: The position of Chairman of SAIL obviously deprives you of small privileges of life. How do you balance your professional life and personal life?**

**CSV:** I will not deny there is pressure on time at this position. However it is a small price to pay for the huge opportunity you have to contribute to nation building. Having said that, however, I must give credit to my family for being extremely supportive and being a source of constant strength to me. Spending quality time with family members and listening to music are my stress busters and I enjoy that whenever I can.

**CS: Do you have any message for the youth of India?**

**CSV:** I find the younger generation is very well informed, sharper and ambitious which is very good. At the same time, I wish to give them only one message 'be prepared to work hard to achieve your goals for there is no shortcut to success'.



## Our Members

### CONGRATULATIONS

**Shri Nesar Ahmad**, FCS, Past President, The ICSI on his being nominated as a Member of the Faculty of Commerce & Business, University of Delhi, with immediate effect for a term of 3 years under the provisions of Statute 9(3)(vii) of the Statutes of the University.

**Shri R. Ravi**, FCS, Past President, The ICSI and Managing Director, Cameo Corporate Services Limited on his appointment as one of the Academic Council Members of the newly established Tamilnadu National Law School by Government of Tamilnadu for a period of three years.

### KIND ATTENTION MEMBERS

The Guidelines for approval of concern/firm name of Company Secretaries in Practice laid down by the Council of the Institute under Regulation 169 of the Company Secretaries Regulations, 1982 are under review by the Institute. The guidelines are available on the website of the Institute at link <http://www.icsi.edu/CSPractice/FirmnamesGuidelines>.

Members are requested to send their valuable inputs/suggestions for revision in the guidelines to the Membership Section of the Institute at email id [chandraprakash@icsi.edu](mailto:chandraprakash@icsi.edu).

## CS QUIZ

A private limited company invested in shares of a public limited company. These shares were pledged by it to a financial institution as a security for the financial assistance provided by the latter to it. To perfect the security the private limited company gave to the financial institution a duly signed share transfer deed and the relative share certificates. The pledged shares were sold by it to another company through an agreement to sell and execution of an irrevocable power of attorney and received the full consideration therefor. It incurred a loss in the transaction and claimed the same in its assessment under the provisions of the Income-tax Act, 1961. Is such a claim allowable in the assessment?

### Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th November, 2013.
- 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 October, 2013 Issue**' and addressed to :

### Deputy Director (Publications)

The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

## OBITUARIES

**"Chartered Secretary"** deeply regrets to record the sad demise of the following members:

**Shri Sooraj Kapoor**, FCS (06.09.1929–03.09.2013) a Fellow Member of the Institute from Gurgaon and former Registrar of Companies, Delhi & Haryana. He was also the First Chairman of Gurgaon Chapter of the ICSI.

**Dr. Vijaykumar K Jain**, FCS (31.03.1956–12.09.2013) a Fellow Member of the Institute from Nagpur and past Chairman of Nagpur Chapter of the ICSI.

*May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.*

*May the Departed Souls rest in peace.*



# COMPANY SECRETARIES

## EXAMINATIONS - DECEMBER, 2013

TIME-TABLE & PROGRAMME (EXAMINATION TIMING : 2.00 P.M. TO 5.00 P.M.)

Date and Day	Professional Programme	Executive Programme (New Syllabus)	Executive Programme (Old Syllabus)
20.12.2013 Friday	Company Secretarial Practice (MODULE-I)	Company Law (MODULE-I)	General and Commercial Laws (MODULE-I)
21.12.2013 Saturday	Drafting, Appearances and Pleadings (MODULE-I)	Cost and Management Accounting (MODULE-I)	Company Accounts, Cost and Management Accounting (MODULE-I)
22.12.2013 Sunday	<b>OMR BASED FOUNDATION PROGRAMME EXAMINATION</b> [Paper – 1 & 2 from 10.00 A.M. to 11.30 A.M.] and [Paper 3 & 4 from 1.30 P.M. to 3.00 P.M. – Details separately given at the bottom.]		
23.12.2013 Monday	Financial, Treasury and Forex Management (MODULE-II)	Economic and Commercial Laws (MODULE-I)	Tax Laws (MODULE-I)
24.12.2013 Tuesday	Corporate Restructuring and Insolvency (MODULE-II)	Tax Laws and Practice (MODULE-I)	Company Law (MODULE-II)
25.12.2013 Wednesday	<b>HOLIDAY — CHRISTMAS DAY</b>		
26.12.2013 Thursday	Strategic Management, Alliances and International Trade (MODULE-III)	Company Accounts and Auditing Practices (MODULE-II)	Economic and Labour Laws (MODULE-II)
27.12.2013 Friday	Advanced Tax Laws and Practice (MODULE-III)	Capital Markets and Securities Laws (MODULE-II)	Securities Laws and Compliances (MODULE-II)
28.12.2013 Saturday	Due Diligence and Corporate Compliance (MODULE-IV)	Industrial, Labour and General Laws (MODULE-II)	No Examination
29.12.2013 Sunday	Governance, Business Ethics and Sustainability (MODULE-IV)	No Examination	

## TIME-TABLE AND PROGRAMME FOR OMR BASED FOUNDATION PROGRAMME EXAMINATION

Day & Date of Examination : Sunday, the 22nd December, 2013

Morning Session	
Examination Timing: From 10.00AM —To 11.30 AM	
PAPER	SUBJECT
1	Business Environment and Entrepreneurship
2	Business Management, Ethics and Communication
After-noon Session	
Examination Timing: From 1.30 PM —To 3.00 PM	
PAPER	SUBJECT
3	Business Economics
4	Fundamentals of Accounting and Auditing