

THE JOURNAL FOR CORPORATE PROFESSIONALS





01 >> NIRC - Inauguration of 42nd Foundation Day Celebrations – Sitting from Left: Ranjeet Pandey, M.G. Jindal, Krishna Tirath (Hon'ble Union Minister for Women and Child Development, Government of India), Nesar Ahmad, Praveen Trivedi (Regional Head, North, SEBI) and Manish Gupta.

03 >> EIRC - Full day Seminar on Companies Bill, 2012 – Dr. Navrang Saini (RD (East), MCA) addressing. Others sitting on the dais from Left: Deepak Kumar Khaitan, Ashok Pareek and Arun Khandella.

05 >> NIRC - Seminar on Companies Bill, 2012 - The Way Ahead – Inaugural Session – Hon'ble Justice Dilip Raosaheb Deshmukh (Chairman, CLB) inaugurating the programme. Others standing from Left: Vineet K Chaudhary, Sanjay Grover, NPS Chawla, Harish K Vaid, Atul Mittal and M G Jindal.

02 >> WIRC Annual Regional Students' Conference 2013 on Believe It and Achieve It - Chief Guest Manohar Parrikar (Hon'ble Chief Minister of Goa) addressing at the valedictory session. Others sitting on the dais from Left: Kevin Oliveira Fernandes, B Narasimhan, S N Ananthasubramanian, Valerie Frank and Guest of Honour Abhijit Gaonkar.

04 >> EIRC-Bhubaneswar Chapter - Seminar on Companies Bill, 2012 - G.C. Nanda (Chairman, Bhubaneswar Stock Exchange Limited) addressing. Others sitting on the dais from Left: Debadatta Mohapatra, Ashok Pareek, Arabinda Acharya and Deepak Kumar Khaitan.

06 >> National Seminar on Investor Education and Protection for Inclusive Growth – U. K. Sinha (Chairman, SEBI) addressing. Others sitting on the dais from Left: Ashok Pareek, Ashish Kumar Chauhan (MD & CEO, BSE Ltd.), S.N. Ananthasubramanian, M.S. Sahoo and Arabinda Acharya.

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» Articles (A 325 - 376)

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The Companies Act, 2013 and Company Secretaries » P-1022

Ms. Renuka Kumar

The Companies Act, 2013 has given due recognition to the profession of company secretaries and under the new regime they will constitute a vital link between the company, board of directors, shareholders, government and other regulatory authorities. Now they must serve the broader interests of the public to contribute to promoting a culture of good governance while serving the interests of their clients. The Institute of Company Secretaries must nurture its members in terms of capacity building, improved skill sets and continuing education.

Company Secretary's Exalted Role » P-1026

R. Krishnan

For long the company secretary has been the Cinderella of the corporate scene. The new Companies Act has strengthened the position of company secretary and has elevated his status as key managerial personnel. Besides ensuring compliances under various laws he has to assist the management in taking a total view of all issues arising in his company. The Cinderella has at last been liberated. Company Secretary is not merely a luxury for companies but a necessity.

The Companies Act: New definition of 'subsidiary company' » P-1029

Dr. K. R. Chandratre

The main problem with the new definition of the term 'subsidiary company' is section 2(87)(ii) of the Companies Act, 2013 according to which if one company exercises or controls more than one half of the total share capital either on its own or together with one or more of its subsidiary companies, the other company will be treated as the former's subsidiary. The total omission of the provisions of section 4(7) of the Act of 1956 appears to be a shortcoming of the new Act.

Offences, Prosecution and Penalties under the Companies Act, 2013: An Analysis » P-1032

D. K. Prahlada Rao

The provisions relating to offences, penalties and prosecution contained in the Companies Act, 2013 are refreshingly different from the provisions of the existing Act structurally and otherwise also. The new Act testifies the fact that it is a recodification in the real sense and aims at serving the corporates with greater freedom. Violations of the provisions of the Act will attract severe punishment. Public interest is sought to be protected adequately.

Independent Directors Role and Responsibilities under the Companies Act, 2013 » P-1039

Dr. S. D. Israni and Satyan S. Israni

At present only the Stock Exchange Listing Agreement requires the induction of independent directors on the boards of listed companies with a view to ensure better governance and the Companies

Act, 1956 does not mandate so. The Companies Act, 2013 has, for the first time introduced a provision for the appointment of independent directors. The new Act has also specified the requisite qualifications of such directors. The objective of this provision will be realized only if the independent directors act with highest standards of professional ethics.

New Company Legislation – Directors » P-1044

T. V. Narayanaswamy

The Board of directors of a company is the body and soul of the company and is thus the fulcrum around which its activities revolve. The re-codified company law has substantially restructured the provisions relating to appointment of board of directors, reappointment, removal, role and functions. The new Act has not prescribed any qualification for a person to be appointed as a director in any positive terms but has defined the qualifications negatively.

Synchronisation Trend in Relation to Scope and Ambit of 'Control' under Indian Corporate Laws » P-1050

G.R.Bhatia

Control by one over another in Indian Corporate laws is determined by virtue of (a) ownership of half or more of equity, (b) majority representation on board and (c) rights to manage or influence the affairs of another. While the first twin parameters are arithmetic based, the third one is subjective and therefore prone to arbitrariness and unpredictability. The Companies Act, 2013 adopts the definition of 'control' as is enshrined in the Takeover Code, 2011 and the same has been imbibed by FIPB. The definition of 'control' in Competition Law is not completely congruent with that of Companies Act, 2013. Parity of definition and shedding more light by way of orders/guidelines by the regulatory authorities especially on 'subjective factors' will be helpful in removing the grey areas in relation to scope and ambit of 'control'.

The Concept of Corporate Social Responsibility under the Companies Act, 2013 - Whether well conceived? » P-1053

T. N. Pandey

In India for long much has been spoken, discussed and written on corporate social responsibility without much having been done actually excepting some voluntary actions by certain corporates. The new Companies Act has, for the first time mandated that corporates should spend certain prescribed percentage of their profits on specified social upliftment activities. However the coverage of CSR activities appears to be rather narrow. Some more measures are required to make the CSR scheme successful and beneficial to the society.

Inspection, Investigation, Serious Fraud Investigation Office » P-1058

T. Ramappa

With a view to prevent Satyam like scams the Government set up the Serious Frauds Investigation Office in the Ministry of Corporate Affairs. The Companies Act, 2013 while strengthening the provisions relating to inspection and investigation, gives statutory recognition to the SFIO. The New Act has also provided for more severe punishment for violations and non-compliances. However what is desirable is speedy



disposal of cases relating to corporate offences so that perpetrators of such offences do not take undue advantage of the loopholes in the law.

The Companies Act, 2013 – Stringent Disclosures in the Board's Report, Company's Annual Return and Certification by the Company Secretary

» P-1062

Delep Goswami

Disclosure of information to shareholders is a very important requirement under the company law. This is with a view to protect the interests of the shareholders and ensure better governance. Accordingly the Companies Act, 2013 has stipulated stringent measures and requirements for disclosure in Board's report and annual return. The Act has also prescribed onerous duties and responsibilities for company directors as well as company secretaries. The punishment for violation of such provisions has also been enhanced under the new provisions.

The Companies Act, 2013 – Accounts and Audit

» P-1068

V. Rajaraman

A substantial portion of the company law in India comprise of provisions dealing with maintenance of accounts and audit thereof. The Companies Act, 2013 has made substantial changes in the provisions concerning accounts and audit. Rotation of auditors has been made mandatory. Limited liability partnerships have been made eligible for appointment as auditors. In such a case only a chartered accountant who is a member of the LLP is eligible to certify the audit report.

» Legal World (LW 98 - 109) P-1076

► **LW.79.09.2013** Even assuming for the sake of argument that the lease deed, being an unregistered document, cannot be looked into for the purpose of ascertaining the monthly rent, since the respondent-company never disputed the amount of rent payable for the premises and in fact even admitted the same in the counter, the petition must be held to be maintainable.[Del] ► **LW.80.09.2013** The exclusion of time does not apply in respect of a notice of requisition as it is not a legal proceeding.[Boom] ►

LW.81.09.2013 It would be unrealistic to take a view that in every case, the company must take decision to extend the financial year, before the financial year or the period by which the financial year is sought to be extended, expires. Neither there is such requirement laid down in Section 210 of the Act nor there is any necessity to read such a requirement in the provisions of the Act.[Del] ► **LW.82.09.2013** Tender conditions cannot be termed as discriminatory or unfair just because the informant was unable to meet those conditions and these conditions can vary according to specific requirement of a particular tender having regard to local conditions obtaining therein.[CCI] ► **LW.83.09.2013** The conditions of engaging pharmacists and installing A.C. at storage facility are must for any chemist and druggist shop and cannot be considered as abusive.[CCI] ► **LW.84.09.2013** Thus, in my considered opinion, so far as the case on hand is concerned, the action of the Government in referring the Industrial Dispute, at the instance of the respondent management does not offend sub-sections (1) and (3) of Section

22 of SICA at all.[Mad] ► **LW.85.09.2013** The job which the petitioner was performing manually came to be performed through computers. Admittedly, no notice under Section 9-A of the Act of 1947 was given by the respondent no.2 and consequently the retrenchment of the petitioner was illegal.[Del] ► **LW.86.09.2013** Obviously advertisement refers to the retail sale price of Rs.15/- of a given package, but omits to make the declaration as to the quantity/number of the commodity contained in such package. As such, section 18(2) is attracted to the case in hand and there is infringement of the statutory prescription.[Ker] ► **LW.87.09.2013** Merely because invoices were raised from New Delhi or payments were made by the plaintiff on account of service tax/education cess at New Delhi, are not sufficient to clothe this court with jurisdiction.[Del] ► **LW.88.09.2013** The acts of the defendants in using the impugned trademark coupled with a lack of plausible explanation offered by the defendants for the same, leads to the conclusion that the defendants are in fact passing off their services as those of the plaintiffs in an attempt to cash in on the plaintiff's reputation worldwide as well as in India.[Del]

» From the Government (GN 174 - 196) P-1088

► Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2013 ► Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2013. ► Testing of software used in or related to Trading and Risk Management ► Investment by Qualified Foreign Investors (QFIs) in "to be listed" Indian Corporate Debt Securities ► Securities and Exchange Board of India (Buy-back of Securities) (Amendment) Regulations, 2013. ► Application for change in category of the Alternative Investment Fund ► Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007. ► Utilisation period for Government Debt Limits ► Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement ► Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs) ► Reporting of OTC transactions in Securitised Debt Instruments ► Investments by Non-resident Indians (NRIs) under Portfolio Investment Scheme (PIS) Liberalisation of Policy ► Foreign Investments in Asset Reconstruction Companies (ARC) ► Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Fifth Amendment) Regulations, 2013 ► Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2013 ► Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999 ► Non-Resident Deposits - Comprehensive Single Return (NRD-CSR): Submission under XBRL

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From the President



"A hundred times every day I remind myself that my inner and outer life depend on the labours of other men, living and dead and that I must exert myself in order to give in the same measure what I have received."

- Albert Einstein



Dear Professional Colleagues,

The 8th day in the month of August holds a special place in the history of our quest for freedom. On this day, in 1942, Mahatma Gandhi launched the Quit India Movement which eventually led to the raising of the Indian Tricolour on 15th August, 1947. A similar historic moment reverberated on 8th August, 2013 when in a quick turnaround of tides and tidings, the Rajya Sabha gave a clarion call to 'Quit the Command and Control Regime' and ushered in self-regulation through its approval of the Companies Bill, 2012. The Bill, which had a chequered stint in the corridors of power and was awaiting passage for an excruciatingly long time, froze into history with the President's assent on 29th August, 2013 and its notification on 30th August, 2013. Thus, we now have in our midst, the Companies Act, 2013 which becomes the Constitution for governance of over one million companies in the country.

Perhaps it would be in order to recall and recap the myriad manifestations of various attempts to replace the existing Companies Act, 1956. This flagship legislation traversed through curious turns and twists for almost two decades, before it reached its eventual notification. This also presents us an opportunity to pay our respectful tributes to all those who contributed in their unique ways to many debates, articulated with conviction on various provisions contained in the Bill,

and provided the much needed 'Thought Leadership' to reflect the ever-changing ground realities as also the emergent need for a different paradigm for corporates to operate and govern themselves. The sequence of events says it all, the magnitude of efforts made, the numerous types of hurdles and obstacles on the way, the innovations made by the powers that be to stay relevant to the times in the form of short amendments.

The story began almost in sync with the commencement of the liberalisation process and the Companies Act, 2013 now places India on par with contemporary corporate legislation elsewhere in the globe. The paradigm has been redefined; the discourse have to be structurally different; and prescriptions have given way to principles. The Act is transformative in its content and direction as every stakeholder has to think, act and perform in an evolving milieu. The thrust on self-regulation is evident from deletion of various approvals, permissions, sanctions required from the powers that be and replacement by effective internal controls and objective external validations by acknowledged experts and provision of a platform for stakeholder vigilance and shareholder democracy. Viewed in the context of the resultant makeover of corporate boards and imperatives of board transformation, the Act is equally aspirational. The introduction of CSR as an integral function of corporate operations is the most significant step as also the levy of heavier penalties for transgressions from fulfilment of its obligations.



The Act places us in a distinctive status-part of key managerial personnel, defines our compliance role with clarity and leads us to emerge as responsible governance professionals. The CS in employment is expected to become the key link in board- stakeholder relationships, the key advisor to the Boards on contentious issues of ethics and propriety, the key coordinator in the effective functioning of corporate management, and the pivot of governance. The CS in practice is enjoined with the conduct of secretarial audit for listed companies, validation of substantially expanded annual returns of all companies, appearance before Tribunals to be set up and many more implicit and explicit areas covering wide range of issues such as valuation, voluntary liquidation, etc. The CS in practice is expected to perform with diligence, report with objectivity and display a level of professionalism, perhaps hitherto unseen, unheard and unspoken. The message is: Trust but Verify.

It is only proper that we place on record with utmost gratitude the contribution of many, living and dead, members and non-members, friends and acquaintances, who, with conviction and courage, chose to burn midnight oil to accomplish these recognitions with relentless zeal and infectious passion. Due mention also needs to be made of the untiring efforts of Past Presidents, Office Bearers, Secretaries, Council Members - past and present, Senior Executives of ICSI and many more whose unwavering commitment to the task was indeed noteworthy and exemplary. The best possible way to say 'Thank You' to each of them is to strive hard to live up to their expectations by becoming fit and proper in our commitment to the unfolding tasks ahead.

ICSI has, in response, laid out a well-conceived plan to reach out to each of you in a multi-channel, multiple modes so as to help achieve the latent expectations in the Act from the CS community. Regional Councils and Chapters have been encouraged to hold seminars, workshops and study circles in depth to facilitate a faster and simpler transformation from being statute driven to becoming stature driven professionals. I appeal to each one of you to seize this moment of truth as it were and help yourselves in this exciting journey to redefine ourselves.

It is indeed prophetic that the Theme for 41st National Convention in Chennai on 7, 8, and 9 November, 2013 'Transitioning from Company Secretary to Governance Professional' seems very apposite and appropriate in this changed context and may I appeal to each one of you to take time off from your busy

schedule and arrange to book and block your travel and accommodation as also your hallowed presence in ITC Grand Chola, Chennai. The assemblage of speakers and the topics to be covered would, I hope, make this Convention a memorable event to cherish and remember.

My visits to Ahmedabad, Kochi, Thirsoor, Palakkad and Madurai during this eventful month were fruitful and productive in communicating ICSI's policies, plans and programmes to members and others. It has also been very rewarding to receive the feedback and the uniquely different types of issues confronted by Regional Councils/Chapters in their selfless pursuit of stakeholder satisfaction.

The month ended on another bright note with ICSI being invited to partner NSE in the first Workshop on Business Responsibility Reporting. It is equally gratifying to report the announcement of PCS Induction Programme to facilitate our members desirous of entering into practice and also currently in practice to appreciate about various aspects relating to practice side of the profession including dos and don'ts and I am sure this initiative would meet with overwhelming response from you. The launch of Placement Portal for aspirant CS and engaging corporates fulfilled the long standing need to provide a platform for placement through technological intervention and overcome the difficulties in the existing format. Incidentally IIBF reported 101 enrolments till month end to the Certified Banking Compliance Professional Course launched on 12th July and made operational from 1st August, 2013.

At the end of this extraordinarily exceptional month for each of us, one can't help recalling the cryptic quote of the Irish Wit, Oscar Wilde:

"When God wishes to punish us, he answers our prayers!"

With kind regards,

Yours sincerely,

Thane

August 31, 2013.

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The Companies Act, 2013 and Company Secretaries

- The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. They need to gear up to meet the challenges and rise to the occasion. This article highlights the provisions in the law relating to company secretaries.

Background

The Companies Bill, vetted twice by the Parliamentary Panel, was passed by the Lok Sabha on December 18, 2012 and by the Rajya Sabha on August 8, 2013. On receiving the assent of the Hon'ble President of India on August 29, 2013, it was notified on August 30, 2013 as the Companies Act, 2013 (Act 18 of 2013) consisting of 470 Sections and 7 Schedules.

The Companies Act, 2013 (hereafter 'The Act') is a historic legislation all set to replace the existing company law, which is 56 years old. It consolidates and amends the law relating to the companies and intends to improve corporate governance and to further strengthen regulations for the corporate sector. It is a modern and contemporary law, enacted after several rounds of deliberations with various stakeholders. It moves from the regime of control to that of liberalisation/self-regulation. In appropriate cases, it enables the authorities to make rules through subordinate legislation, thus ensuring that the law remains relevant at all times in the changing economic environment. It demonstrates the Government's commitment to ushering in a new era of corporate regulation.

Major corporate frauds and misdemeanours witnessed in recent times, which were the consequences of

mismanagement and gross neglect of legal and compliance requirements by certain companies, have affected the image of the country in general, and the corporate sector in particular. These could have been avoided if proper compliance procedures had been followed and due diligence





was exercised by relevant experts and professionals associated with such companies. The Act has put in place suitable mechanisms to guard against such incidents. The success of these initiatives would largely depend upon how diligently the professionals discharge their responsibilities in furtherance of objectives sought to be achieved through such mechanisms.

The Act broadly seeks to achieve the following objectives:

- a. To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;
- b. To encourage transparency, accountability and high standards of corporate governance;
- c. To recognize various new concepts and procedures facilitating ease of doing business while protecting interests of all the stakeholders;
- d. To enforce stricter action against fraud and gross non-compliance with company law provisions;
- e. To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and
- f. To cater to the need for more effective and time bound approvals and compliance requirements relevant in the present context.

➤ Company secretaries are the natural conscience keepers for the corporate sector since they are specialists in the fields of corporate governance, regulation and processes and are the eyes and ears of the Board on such matters. It is they who validate board processes and ensure that companies do the right things, always.

Role of Company Secretaries

Company secretaries are the natural conscience keepers for the corporate sector since they are specialists in the fields of corporate governance, regulation and processes and are the eyes and ears of the Board on such matters. It is they who validate board processes and ensure that companies do the right things, always.

The professionals and legal experts provide a very important link between the regulated entities and the regulatory bodies. Internationally, their role is being recognised increasingly. Indian statutes too have been suitably taking note of this important development.

The Act has incorporated a framework which is based on self-regulation but with enhanced disclosures and accountability on the part of companies and their managements. The corporate sector will be required to exhibit responsible self-regulation and corporate governance on their part, which necessitates the services of independent, competent and responsible governance professionals. From this perspective, company secretaries, would be required to play a very important role in implementation of the Act. The Act expects the company secretary to play a wider role in terms of guiding the activities of a company, in addition to certifying its compliance-oriented actions.

The Act has substantially strengthened the role and position of the company secretaries. In particular, it considers a company secretary as a key managerial personnel. While this is expected to enhance the position of a company secretary, it also casts responsibility on him for due compliance with the provisions of law. It should also be noted that for non-compliance of the provisions of law, he is also an “officer-in-default” thus, subject to liability under relevant penal provisions.

Some of the key areas contained in the Act which will directly





Article

The Companies Act, 2013 and Company Secretaries



Section 203 provides for compulsory appointment of whole-time Key Managerial Personnel (KMP) in respect of certain class of companies to be prescribed by Central Government. A company secretary is covered under the term “whole-time KMP”. Thus, the appointment of company secretary will become mandatory in respect of such class of companies.

impact the role of company secretaries in employment or in practice are discussed below:

(a) Introduction of Secretarial Audit(Section 204)

Based on the recommendations made by the Honourable Parliamentary Standing Committee, Secretarial Audit has been introduced for the first time in section 204 of the Companies Act, 2013. Under the section, every listed company and a company belonging to such class as may be prescribed in the rules, shall annex with its Board's report a Secretarial Audit Report, given by a company secretary in practice. If any qualifications or observations or other remarks are made by the company secretary in practice in his report, the Board shall provide explanation for the same in its report. Stringent penal provisions have been provided for non-compliance.

The introduction of Secretarial Audit proves that Government is committed to improved corporate compliance and governance. This provision highlights the enhanced role the company secretaries in practice are expected to play under the Act.

(b) Secretarial Standards(Section 118)

The Act gives statutory recognition to the Secretarial Standards specified by the ICSI. It is the beginning of a new era where besides Financial Standards, non-financial standards have been given importance and statutory recognition. Section 118(10) mandates that every company shall observe Secretarial Standards with respect to general and board meetings as specified by the ICSI and approved by the Central Government. 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.

(c) Annual Return(Section 92)

The annual return is a comprehensive document and contains information about the company relating to its share capital, directors, shareholders, changes in directorships, etc. Much reliance is placed on the annual return by the regulators, shareholders, judicial and other regulatory authorities.

Under the Companies Act of 1956, the annual returns of listed companies are required to be signed by a company secretary in practice. Section 92 of the Act has further widened this requirement by providing that annual returns of companies having such paid up share capital and turnover as may be prescribed shall also be required to be certified by a company secretary in practice. The certification shall be to the effect that the company has complied with all the provisions of the Act. Further, prescribed extracts of the annual return shall be included in the Board's report. These provisions seek to ensure that information filed through annual returns in the Registry is properly verified by qualified professionals.

(d) Appointment of Whole-time Key Managerial Personnel (Section 203)

The role of senior management in managing the affairs of the company is crucial in ensuring good corporate governance and regulation. In order to ensure that companies of a prescribed class are effectively managed by a whole time managerial personnel, Section 203 provides for compulsory appointment of whole-time Key Managerial Personnel (KMP) in respect of certain class of companies to be prescribed by Central Government. A company secretary is covered under the term “whole-time KMP”. Thus, the appointment of company secretary will become mandatory in respect of such class of companies.

(e) Functions of Company Secretary (Section 205)

For the first time, the functions of the company secretary have been specified in the Companies Act. He has to report to the Board about the compliance of the provisions of the Act, rules and other laws applicable to the company. He has also to ensure that the company complies with the Secretarial Standards (as issued by the ICSI and approved by the Central Government) as applicable to the company. Other duties will be prescribed in the Rules to be framed by the Central Government. This provision casts an onerous responsibility on company secretaries in employment in the discharge of their duties and they are expected to exhibit a proactive and responsible role to meet the expectations of the respective companies and regulatory authorities.



The Act also contains some other provisions giving recognition to the profession of company secretaries. They are briefly listed below:

a. Professional Assistance to Company Liquidator (Section 291)

With the sanction of the Tribunal, the Company Liquidator may appoint one or more professionals, including company secretaries, to assist him in the performance of his duties and functions under the Act.

b. Appearance before Tribunal (Section 432)

A party to any proceedings or appeal before the Tribunal or the Appellate Tribunal may authorize amongst others, a company secretary, to present the case before the Tribunal or the Appellate Tribunal, as the case may be.

c. Declaration of Compliance at the time of Incorporation (Section 7)

A company secretary in practice engaged for the incorporation of a company shall be competent to give a declaration that all requirements of the Act and rules in respect of registration and the matters precedent or incidental thereto have been complied with.

d. Qualifications of Members of Tribunal (Section 409)

The constitution of the National Company Law Tribunal offers opportunities to company secretaries in practice to become Technical Members of the Tribunal. Amongst others, a company secretary in practice is eligible to become a Technical Member of National Company Law Tribunal, if he is in practice for at least fifteen years.

e. Others

In addition to the areas listed above, company secretaries

can also play a key role in the fields of valuation, corporate restructuring, winding up and in certification of areas of compliances specified in the Act.

Duty to report frauds

If during the course of their professional duties, a practising professional has reason to believe that an offence involving fraud is being or has been committed by a company, it is his duty to report the fraud.

Section 143 (12) of the Act provides that notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. As per section 143 (14), the provision of section 143 shall *mutatis mutandis* apply to a company secretary in practice conducting secretarial audit under section 204.

Conclusion

The Companies Act, 2013 is all set to bring a paradigm shift in the Indian corporate world and widen the horizon of various professionals. It has given due recognition to the profession of company secretaries. Company secretaries will constitute a vital link between the company, its Board of Directors, shareholders, government and other regulatory authorities.

Company secretaries, internal auditors and external auditors are often viewed as traditional gatekeepers within the corporate governance ecosystem. The proper functioning of the corporate sector depends on good corporate governance and good corporate governance depends on company secretaries who, as gate keepers, must serve the interests of the company and the society with honesty and integrity.

Company secretaries must serve the broader interests of the public and contribute to promoting a culture of good governance while they serve the interests of their clients. In this context, gatekeepers in the discharge of their roles and responsibilities must aspire to a higher standard of professionalism beyond fulfilling the requirements of the law and expectations of clients.

The ICSI must nurture its members in terms of capacity building, improved skill sets and continuing education in the new regulatory regime. The regulators, investors and the corporate sector hope that the company secretaries will rise to the occasion, face the challenges in corporate compliance in letter and spirit of the law and usher in new standards in corporate governance and compliance.

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Company Secretary's Exalted Role

- The Companies Bill, 2012 as passed by both the Houses of Parliament and assented as the Companies Act, 2013, at last has conferred the belated recognition to the Company Secretaries in the corporate world and reinforced the adage that a Company Secretary is not a luxury but a necessity.



The Origin

The Ministry of Corporate Affairs deserves accolades for ushering a new Companies Act, replacing the moribund Act of 1956, and encompassing a comprehensive Corporate Governance model. While there are several revolutionary and innovative provisions in keeping with the globalized economy, the position of Company Secretary has been elevated to an enhanced pedestal by not only emphasizing his traditionally acknowledged role as a PRINCIPAL OFFICER, but endowing him with the responsibility of widened COMPLIANCE functions. The growing significance of compliance functions arising

out of the Enron, WorldCom and Satyam scams has created a new awakening in the corporate world, and it is a tribute to the profession that Company Secretaries have been entrusted with the task to handle this emerging responsibility.

Elevation of the Position of Company Secretary

The journey of the Company Secretary has been a long and arduous one. The Companies Act 1956 defined in Section 2(45) 'Secretary' as an individual to perform the duties of a secretary and any other purely ministerial or administrative duties. The Companies Act, 2013 under section 203(1) has accorded an exalted status to the Company Secretary

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bracketing him as a key managerial person along with the Managing Director/CEO. Company Secretary's appointment under the new Act will be effected only by means of a resolution of the Board of Directors.

Thus the profession of Company Secretaries has climbed the top of the professional ladder in these last 57 years, a situation never contemplated by the Founding fathers. Far from being dubbed as a subordinate officer, he is now elevated as a key managerial personnel, superseding his recognized role as a Principal Officer. In the early nineteenth century the functions of the company secretary as contemplated by the Acts were administrative and not managerial, and the secretary should not assume an executive or managerial power in the absence of express authority. Lord Esher, M.R. in *Barnett v. South London Tramways Co.* (1887) 18 Q.B.D. 815 held the view that a Secretary is a mere servant. Even in 1928 the House of Lords in *J.C. Houghton and Company v. Nothard, Lowe and Wells Ltd* (1928) L.R. (A.C.) 1 reaffirmed the earlier view that as an arrangement which was entered into by the company was not ratified by the company through its Board, it was not authorized by the respondent company.

From 1887 to 1906 Courts had uniformly taken the view that a company secretary fulfils a very humble role and had no authority to make any contract on behalf of the company. A striking departure was made in *Panorama Developments (Guildford) Ltd v. Fidelis Furnishing* (1971) when Lord Denning and Lord Justice Salmon enhanced the company secretary's status by stating thus: "Times have changed; a company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities. He is no longer a mere clerk...He is certainly entitled to sign contracts in the administrative side of the Company's affairs..."

Lord Salmon after caricaturing in similar terms the office of secretary stated that "the secretary is the chief administrative officer of the company".

A further recognition of the position of the Secretary came in the Supreme Court's decision in *Turner Morison v. Hungerford Investment Trust*, AIR 1972 SC. In this case the secretary was held responsible for all the costs of a litigation in which he had signed the plaint.

Reasons for the Transformation

There are several reasons for this change in the status of company secretaries. Firstly, the major impetus for economic development in the less developed countries came at a time when large scale changes in technology were already under way. The main thrust of economic development came from Companies which were not only able to exploit the new technology but were managed by groups of men well versed in

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the associated industrial technologies. The Company Secretaries in large companies took on gradually the functions of coordinators of the multitudinous subordinate executive decisions. Secondly the rapid change in the character of social and economic policy aligned with the policy of economic development in our country has cast additional responsibilities on the corporate sector. Company Secretaries thus have to pay due regard to the impact of multiple factors on the internal administration of these companies.

Emergence of the ICSI

The need for developing the profession of company secretaries was widely recognized in the country culminating in the Government of India setting up in 1960 an Advisory Board to evolve and implement a Government Diploma in Company Secretaryship. The Advisory Board comprised of eminent experienced Company Secretaries from leading Business Houses in India. They formulated the syllabus for the company secretary examinations to be conducted for the first time in India, and the successful candidates were awarded Government Diploma in Company Secretaryship (GDSCS). The first such examination was conducted in 1961. It was this essential groundwork in the early sixties that provided the necessary foundation for the present fledgling Institute of Company Secretaries of India. When the nucleus of GDSCS Members were available during the period of 8 years, the Government set up on 4 October 1968 the Institute of Company Secretaries of India as a Section 25 Company. The Institute so set up assumed control of all the functions which the Government was carrying out for conducting the examinations for Company Secretaries. As this form was temporary in character, in line with the status of the other two professional institutes namely ICAI and ICWAI, the Government converted the Institute as a Statutory Institute in 1980 under an Act of Parliament.

Statutory Recognition

Even prior to the conversion of the Institute as a Statutory body in 1980, the Government held the baby in its cradle and issued instructions to all Ministries/Departments in the Central



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Government to appoint GDCS holders as Company Secretaries in all the Public Enterprises. This was a major thrust and initiative in positioning indigenous company secretaries in the Public Sector in India. This led to the insertion of Section 383A in the Companies Act by the Amendment Act of 1975 providing for mandatory appointment of Company Secretaries in companies having a paid up capital of Rs 25 lakhs and above.

With corporate governance gaining ascendancy all over the world following a series of corporate frauds compliance with corporate governance norms have been made mandatory. Renowned Committees such as Cadbury Committee, Sarbanes Oxley Committee, Kumarmangalam Birla Committee, Naresh Chandra Committee, to name a few, all unanimously advocated stringent corporate governance norms, many of which are now in the new Companies Act, 2013.

Indeed, the Cadbury Committee has eloquently emphasized the significant role of the Company Secretary in company management thus :“The company secretary has a key role in ensuring that board procedures are both followed and regularly reviewed. The Chairman and the board will look to the company secretary for guidance on what their responsibilities are...and how these should be discharged. All directors should have access to the advice and services of the company secretary and should recognize that the chairman is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board”.

Compliance Certifications

The second innings of the company secretary as a practitioner is the most innovative and pioneering initiative of the profession. The first such, provision in Section 383A of the Companies Act 1956 requiring every company with a paid up capital of less than Rs 5 Cr. but exceeding Rs 10 Cr. was to obtain a

certificate from a practicing company secretary on compliance with the provisions of the Companies Act. This has since been enlarged where the practicing company secretary is now authorized to :

1. issue pre-certification of various e-forms/LLP Forms/DIN certification
2. certify compliance with Buy Back of Securities Rules 1999
3. appear before the National Company Law Appellate Tribunal, Company Law Board, Tax Authorities, Reserve Bank of India, Enforcement Directorate, Competition Commission, Export Import Authorities, and SEBI.

These areas have been incorporated in section 204 of the Companies Act, 2013 providing for secretarial audit in companies of a particular size by a company secretary in practice.

SEBI in exercise of its power under Clause 49 of the Stock Exchange Listing Agreement has already gone ahead in stipulating several of the unanimous recommendations of the above Committees. The stringent compliance norms and penalties for failure to comply have cast additional responsibility on the Company Secretaries, with the result that the Practicing Company Secretaries have now established themselves as an important aid for CG compliance. The Act under section 204 is mandating all listed and other companies of a particular size to annex to their Board Report, a secretarial audit report from a practicing company Secretary. In doing so, India has outperformed all other countries in the world and would be the first country in the world to introduce Secretarial Audit, a concept alien to the rest of the world.

The new Act further specifies under section 205 the functions of the Company Secretaries.

Positioning as Key Managerial Personnel

It must thus be acknowledged that the new Act seeks to strengthen the position of the Company Secretary, and according him the status of a Key Managerial Personnel is the icing on the cake. The Secretary for a long time has been the Cinderella of the corporate scene. The specialization of a Company Secretary is now unique because it now not only fits him in the generalist role which will enable him to take into account all segments of a Company's business, but also makes him directly responsible to administer the various corporate laws. He is not merely to ensure compliance but also assist the Management in taking a total view of all the issues that arise in a Company.

Cinderella has at last been liberated. Fortunately the Companies Act, 2013 at last has conferred the belated recognition to the Company Secretaries in the corporate world and reinforces the adage that a Company Secretary is not a luxury but a necessity.

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The Companies Act: New definition of 'subsidiary company'

- The main problem with the new definition of the term 'subsidiary company' is section 2(87) (ii), according to which if one company "exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies", the other company will be treated as the former's subsidiary. The shortcomings in the new definition are outlined here.

DEFINITION IN THE COMPANIES ACT, 2013

Section 2(87) of the Companies Act, 2013 which defines the expression "subsidiary company" reads thus:

"subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other

company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries.

Anomalies and absurdities

The main problem with the new definition is section 2(87) (ii), according to which if one company "exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies", the other company will be treated as the former's subsidiary.

Firstly, the construction is grammatically wrong. While control of share capital is the correct construction, exercise of share capital is wrong. The word "exercise" is often used in relation to voting power. It is absurd to say that one company exercises more than half of the total share capital of the other company. Therefore, "exercises more than half of the voting power" should have been provided.

One of the principal rules of statutory interpretation is 'the literal rule', i.e. words that are reasonably capable of only one meaning must be given that meaning whatever the result. Secondly, it is

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against the principles of statutory interpretation to insert any words in a statute. "It is a corollary to the general rule of literal construction that nothing is to be added to or taken out from a statute unless there are adequate grounds to justify the inference the legislature intended something which it omitted to express.¹ Long ago an English Judge had said: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver."²

"If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act".³

It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so." Section 7 of the Arbitration and Conciliation Act 1996 requires an arbitration agreement to be "signed" by both parties. The Supreme Court refused to read in the words "signed on each page and stamped."⁴ The judge may read in or read out words which he considers to be necessarily implied or surplus by words which are already in the statute; and the judge has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute. In *Becke v. Smith*⁵ it was held: 'It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.'⁶ We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there."⁶

Going by the abovementioned rules of interpretation, it would seem that the words "exercises or" are inapposite surplusage and should be ignored. The court is unlikely to add the words "one-half of the total voting power" rather than ignoring the words "exercises or".

Secondly, the expression "total share capital" is not defined and hence both equity and preference share capital should be taken into account. According to the definition in the 1956 Act, only when one company holds more than half in nominal value of its equity share capital of another company, that other company is treated as

» Since preference shares do not have any voting power unless they acquire voting power due to non-payment of dividend for the period specified in the law, it is absurd to include preference share in the concept of 'control' or exercise of voting power. Nowhere in the world non-voting preference shares are included in the definition of 'exercise or control of voting power'. Had the new provision provided for exercise or control of more than half of the total voting power, this problem could have been avoided.

subsidiary of the former. Since preference shares do not have any voting power unless they acquire voting power due to non-payment of dividend for the period specified in the law, it is absurd to include preference share in the concept of 'control' or exercise of voting power. Nowhere in the world non-voting preference shares are included in the definition of 'exercise or control of voting power'. Had the new provision provided for exercise or control of more than half of the total voting power, this problem could have been avoided.

Thirdly, it is not clear as to whether "total share capital" should be taken as nominal capital or paid-up capital. In the current definition it is clearly stated that a holding should hold more than half in nominal value of equity share capital of the subsidiary.

Section 2(87) (ii) contemplates exercise or control of more than one-half of the total share capital either at its own⁷ or together with one or more of its subsidiary companies. The effect of this provision is that if A Ltd and its subsidiary B Ltd hold together more than 50% of the share capital of C Ltd, C Ltd will be treated as a subsidiary of A Ltd. This clause reproduces though in a different language, the provision in section 3(b)(ii) of the current section 4 and its effect is that if B Ltd is a subsidiary of A Ltd and both together hold more than 50% of the share capital of C Ltd, C Ltd will be a subsidiary of A Ltd.

Moreover, according to clause (a) of the Explanation, a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company.

Indian company as subsidiary of foreign company

Clause (c) of the Explanation provides that the expression "company" includes any body corporate. This is identical to what sub-section

¹ Maxwell on the Interpretation of Statutes, 12th edition, page 33.

² Sussex Peerage case (1844) 11 Cl&F 85.

³ *Kanailal Sur v. Paramnidhi Sadhu Khan* AIR 1957 SC 907, p. 910, per Gajendragadkar J.

⁴ *Great Offshore Ltd v. Iranian Offshore Engineering & Construction Company* AIR SCW 2008 2722.

⁵ (1836) 2 M & W 191.

⁶ The judicial committee in *Crawford v. Spooner* (1846) 6 Moore PC 1.

←
⁷ The correct phrase is "on its own".



(5) of section 4 provides. Essentially, the companies contemplated in section 4 as holding company and subsidiary company are companies incorporated under the 1956 Act (or any of its predecessors), for in both the expressions the term 'company' occurs. A body becomes a 'company' for the purposes and under the 1956 Act, only if it satisfies the definition given in section 3 of the 1956 Act. Broadly speaking, a body formed and registered as a company under the 1956 Act or any of its predecessors [mentioned in section 3(1)(ii)], is a 'company'. Hence, a company formed and registered outside India is not a 'company' under and for the purposes of the 1956 Act. It may be a 'body corporate', but not a 'company' as defined in section 3.

But sub-section (5) of section 4 contains a crucial provision. It, *inter alia*, provides: "In this section, the expression "company" includes any body corporate". Thus, for the purposes of section 4, a body corporate, which is not a company, is treated as a company, though it is not a company as defined in section 3. The expression 'body corporate', as defined in section 2(7), is of wide connotation. It includes a company incorporated in India as well as a company incorporated outside India. The effect of this provision is that a company (or other body corporate) incorporated outside India will be a body corporate under the 1956 Act and hence a holding company or a subsidiary company in relation to a company incorporated in India under the 1956 Act (or any of its predecessors).

Omission of sub-section (7) of section 4

The new definition does not contain a provision similar to that in section 7(4) of the existing Act. The effect of this sub-section is that, a private company incorporated in India which is a subsidiary of a body corporate incorporated outside India, will get rated as a private company if the entire share capital in the private company is not held by that body corporate (whether alone or together with one or more other bodies corporate incorporated outside India) and that body/ bodies corporate is/are a public company/public companies, as defined in section 3(1)(iv) of the Act, if it was incorporated in India.

The omission of this subsection is likely to give rise to controversy as to whether an Indian private company which is a subsidiary of a foreign company (body corporate) would be treated as a subsidiary of a private company or of a public company, because a foreign company (which is a body corporate) is a 'company' only for the purposes of the definition of 'subsidiary' in section 2(87) of the Companies Act and not for the purposes of the definition of 'company' or the definitions of 'private company' and 'public company'. Therefore, the definitions of 'company', 'private company' and 'public company' given in the Indian Companies Act cannot determine the status of a foreign company (whether it is a private company or a public company) under the Indian Act. As a result, it cannot be said that if a foreign company would be a public company if it has been incorporated in India (which subsection (7) seeks to clarify by a legal fiction).

According to section 2(71) of the new Act, "public company" means



a company which is not a private company; Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles. Thus, a private company in India which is a subsidiary of a public company will be treated as a public company.

As a result, the question as to whether a company incorporated outside India (which is a body corporate under the Indian Act) should be treated as a public company or a private company and how this should be determined, is a question that is going to create controversies. And it cannot be said that all foreign companies having subsidiaries in India should be treated as either public companies or private companies.

There should have been either an incorporation of the contents of sub-section (7) or some other explanatory provision in the new definition clarifying as to what would be the status of a foreign company whether a public or a private company and how it would be determined. This is what sub-section (7) seeks to do and it helps to avoid the confusion pointed out above.

Layers of subsidiaries- why is it sinful?

The new definition provides that "such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed." The term 'layer' is defined as (relation to a holding company) a subsidiary or subsidiaries. Though not clear, it appears that the Central Government will by notification prohibit a chain of subsidiaries (also known as 'step-down subsidiaries') in the case of a certain classes of companies. The intention of this provision is not known since the Notes on Clauses do not throw any light on this. While constitutional validity of this prohibition is questionable, there doesn't seem to be a justification in the current era of global business environment and is therefore a retrograde step. Sometimes it is expedient to invest in a subsidiary through a subsidiary while sometimes it becomes also necessary by virtue of laws of foreign countries to invest in a local subsidiary.

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Offences, Prosecution and Penalties under the Companies Act, 2013: **An Analysis**

➤ The provisions of the Companies Act, 2013 relating to offences, penalties and prosecution are refreshingly different from the existing provisions. The Act testifies the fact that it is a re-codification in the real sense of the term and aims to serve the corporates with greater freedom but with severe consequences for non compliance. Public interest is also sought to be protected adequately.

INTRODUCTION

The efficacy of any statute depends upon the readiness with which the laws are enforced by punishing those who violate the law. Needless to say that laws provide regulatory mechanism to ensure that the activities, be it economic or social, are carried on in an orderly manner for the benefit of the country and its people. Non compliance of law by any section of society will have deleterious effect on the economy, particularly in the case of economic legislations like the company law, FEMA, Income tax Act etc. In order to check such tendencies, penal provisions form an integral part of any statute and they are administered by the courts, tribunals etc. The more serious offences are considered as criminal offences which, on conviction, will result in either imprisonment for a definite term or fine or both. Such offences are indulged in by some sections of our society. Hence prosecution of such offenders require greater degree of skill and preparation without which the offenders will go scot free from the clutches of law.

Penal provisions under the Companies Act, 1956

The offences under the Act are criminal offences and are dealt with as such. There is no structured mechanism for dealing with such offences, both serious and non serious. This has been remedied under the Companies Act, 2013 (the new Act) in a most satisfactory manner. The Statement of Objects and Reasons appended to the Bill, *inter alia*, provides for minimum and maximum quantum of penalties for each offence with a suitable deterrence for repeated defaults. The company is identified as a separate entity for imposition of penalties apart from the offenders. In case of fraudulent activities, provision for recovery and disgorgement of asset has been provided. Levy of additional fee in a non-discretionary manner for procedural non compliance, such as late filing of statutory documents will be provided through Rules to be prescribed.

Offences under the new Act

The following are the broad categories of offences recognised and enforced under the new Act;

Offences by the officers who are in default [Section 2(60)]

There is a broad classification of managerial personnel who are liable for penalty or punishment by way of imprisonment, fine or otherwise. They are (i) whole-time directors, (ii) key managerial personnel (KMP), that is, the CEO, or the managing director or the manager, the Company Secretary, the Chief Financial officer and such other directors as specified by the board in the absence of KMP and charged with the responsibility of having

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to comply with the legal requirement, deemed director, that is, any person whose advise is acted upon by the board, every director who is aware of contravention of law by virtue of receipt of board proceedings or participation therein without raising any objection or where contravention has taken place with his consent or connivance and in respect of issue or transfer of shares of a company, share transfer agents, registrars and merchant bankers to the issue or transfer.

There are a number of provisions in the new Act which specify the "officer who is in default" as persons responsible for non compliance of law, whether they are privy to the offence or not. These offences are decided either by the adjudicating officer by imposing fine and where penalty involves imprisonment and fine, it will be decided by the Special Court.

Investigation of Offences by Serious Fraud Investigation office (SFIO)

Section 212 provides for investigation into the serious offences by a company on the basis of (i) a report by the Registrar or Inspector under section 208, (ii) special resolution passed by a company that its affairs have to be investigated, (iii) in public interest or (iv) on request from any department of the Central or State Governments.

SFIO set up by the Central Govt. is headed by a Director and consists of such number of experts from (i) banking, (ii) corporate affairs, (iii) taxation, (iv) forensic audit, (v) capital market, (vi) information technology, (vii) law, or (viii) such other fields as may be prescribed, appointed by the Central Govt. from amongst persons of ability, integrity and experience. This is a highly structured organisation and fully equipped to undertake investigation into serious offences. It is recognised that efficacy of prosecution depends upon completeness of investigation, more so when public interest is involved.

The offences covered (most of which are cognizable in nature) are (i) furnishing of any false or incorrect particulars or suppression of material particulars either before or after incorporation of a company [Section 7(5)&(6)], (ii) criminal liability for mis-statement in prospectus [Section 34], (iii) fraudulently inducing persons to invest money [Section 36], (iv) personation for acquisition of securities [Section 38], (v) issue of duplicate share certificate with intent to defraud [Section 46(5)], (vi) transfer of shares by the depository or participant with a view to defraud a person [Section 56(6)], (vii) concealment and mis-representation in respect of reduction of share capital [Section 140(5)], (viii) failure to furnish information called by the registrar or where the business of the company is being carried on for a fraudulent or unlawful purpose [Section 206], (ix) furnishing false statement, mutilation, destruction of documents [Section 229], (x) fraudulent application for removal of names of companies from the register [Section 251(1)], (xi) fraudulent conduct of business [Section 339(3)] and (xii) furnishing false

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statement [Section 448].

Offences involving fraud

The above offences are covered by the term "fraud" which includes in relation to a company, any act, omission, concealment of any fact or abuse of position committed by any person with the connivance in any manner to deceive, 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. Wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled. On the other hand, wrongful loss means the loss by unlawful means of property to which the person losing is legally entitled (Section 447).

Grant of Bail

The above offences are cognizable and no person accused of it should be released on bail or on his own bond, unless the Public prosecutor is given an opportunity to oppose the application for such release. In such an event, the court should be satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail. However, a person who is under the age of sixteen years or is a woman or sick or infirm person may be released on bail. The limitation aforesaid on grant of bail is in addition to the limitation under the Cr .P.C or under any other law for the time being in force.

Cognizance of offence

The Special Court is prohibited from taking cognizance of the aforesaid offences except upon a complaint in writing made by the (i) Director of SFIO or (ii) any officer of the Central Govt authorised by a general or special order in writing. The officers aforesaid should have in their possession material which makes them believe (the reason for such belief should be recorded) that any person has been guilty of the offence aforesaid. Such person should be arrested and he should be informed of the ground of such arrest. The person so arrested



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should be taken to the jurisdictional Judicial or Metropolitan Magistrate within 24 hours of arrest excluding the journey time from the place of arrest.

If so directed by the Central Govt, SFIO should submit an interim report on the investigation to the Central Govt. On completion of investigation, SFIO should submit to the Central Govt the investigation report. A copy of such report may be obtained by any person concerned by making an application to the court. On scrutiny of the report, the Central Govt may direct the SFIO to initiate prosecution against the company and its officers or employees who are connected with the affairs of the company, by filing the investigation report with the Special Court for framing of charges. The report so filed shall be deemed to be a report filed by a police officer under section 173 of the Cr.P.C.

Any investigation by SFIO or any other action taken under the Companies Act, 1956 should continue to be processed under that Act as if the said Act had not been repealed. Where SFIO is investigating any offence under the new Act, any other investigating agency, State Govt, Police, Income tax, having information or documents in respect of such offence should provide all such information or documents to the SFIO. Similarly SFIO may also share the information with it to the authorities aforesaid.

Investigation into the affairs of the company in other cases (Section 213)

Sections 213 to 218 prescribe detailed procedure for investigation into the affairs of a company taking care to see that the investigating agency has full powers to conduct a proper inquiry. These are enumerated in the following paragraphs.

Eligibility

One hundred members holding not less than one tenth of the total voting power in the case of a company having share capital or not less than one fifth of the persons on the register of members in the case of a company having no share capital and supported by the evidence that they have reason for conducting investigation into the affairs of a company or on the basis of an application made by any other person (this may be by non-members) that circumstances exist suggesting that the (i) business of the company is being conducted to defraud the creditors, members or for a fraudulent or unlawful purpose or in any manner oppressive of its members or that company was formed for any fraudulent or unlawful purpose, (ii) the persons connected with the formation of a company or management of its affairs are guilty of fraud, misfeasance or other mis-conduct towards the company or its members, (iii) the members of the company have not been given all the information with respect to its affairs including calculation of commission payable to a managing or other director or the manager of the company, then the Central Govt, after giving a reasonable opportunity of

being heard, that the affairs of the company ought to be investigated by an Inspector, shall appoint one or more competent persons as Inspectors to investigate into the affairs of a company in respect of such matters and report thereon to the Central Govt. Only an individual and not a firm or body corporate can be appointed as Inspectors.

Result of Investigation

After investigation by the Inspector, if it is proved that the business of the company is being conducted in the manner aforesaid, then every officer of the company who is in default or the persons connected with the formation of the company or management of its affairs are punishable for fraud in the manner prescribed by section 447.

Security Deposit

Where the Central Govt has ordered investigation into the affairs of a company or in pursuance of an order made by the Tribunal, the Central Govt may, before appointing an Inspector, require the applicant to give security deposit not exceeding Rs25,000 as it may think fit, for payment of costs and expenses of investigation. Such security deposit will be refunded to the applicant if the investigation results in prosecution (section 214).

Investigation into the ownership of a company

If the Central Govt is of the opinion that it has reason to do so, may appoint one or more Inspectors to investigate and report on matters relating to the company and its membership for the purpose determining the true persons who are financially interested in the success or failure of the company, whether real or apparent or who have controlling or material influence on the policy of the company. Such an appointment may also be made, if the Tribunal during its proceedings, direct that the membership of the company have to be investigated. While appointing an Inspector, the Central Govt may define the scope of investigation, the matters and the period to which it should extend and may also limit the investigation to matters connected with particular shares or debentures. The scope of investigation may also extend to inquiring into the existence of any arrangement or understanding, whether observed or likely to be observed in practice and which is relevant for the purpose of investigation.

Powers of the Inspector

The Inspector has the power to direct a company to preserve and produce to an Inspector or any person authorised by him all books and papers relating to the company or other body corporate as may be required. The Inspector may require any other body corporate to furnish such information or such books and papers to him, if they are relevant for the purpose of investigation. The Inspector should not keep in his custody the books and papers for more than 180 days and he should return the same to the company. He may again requisition the books and papers of the company, if so required for further investigation.



An Inspector may examine on oath any of the officers and employees of the company under investigation including former officers and employees of such company. He may also examine any other person with the prior approval of the Central Govt. In the case of investigation by SFIO, the Inspector requires the approval of the Director of SFIO.

The Inspector being an officer of the Central Govt has the power of a civil court under C.P.C regarding discovery and production of books of accounts and other documents, summoning and enforcing the attendance of persons and examining them on oath, inspection of any books, registers etc. Disobedience of orders of the Inspector by any director or the officer is punishable with imprisonment extending to one year and with fine of Rs 5,000 but it may extend to rupees one lakh.

If a director or any officer is convicted of an offence under this section, they shall be deemed to have vacated their office and they are also disqualified from holding any office in the company.

The officers of the Central Govt, State Govt, Police or statutory authority are required to assist the Inspector for the purpose of Inspection, inquiry or investigation, with the prior approval of the Central Govt.

The Central Govt may enter into an agreement with the Govt of a foreign state on reciprocal basis for the purpose of extending assistance for any inspection, inquiry or investigation, subject to the corresponding law in that state.

If in the course of investigation an application is made to the competent court in India by an Inspector about the existence of an evidence in a country or place outside India, the court may issue a letter of request to a court or authority outside India which may be forwarded by the Central Govt. This will enable the Inspector to examine the person orally who is acquainted

with the facts and circumstances of the case, record the statement of such person and forward copies of such evidence to the court in India. All such statement or document are deemed to be evidence collected during the course of investigation.

If so required and the Inspector considers expedient to investigate into the affairs of a related company, he may do so (i) in regard to that company's subsidiary or holding company or its subsidiary, (ii) any other body corporate which is managed by any person as managing director or manager at the relevant time, (iii) any other body corporate whose board consists of nominees of such company or accustomed to act in accordance with the directions or instructions of any such company or any of its directors, (iv) the inspector may also examine any person who at the relevant point of time was the company's managing director or manager or employee with the prior approval of the Central Govt.

If the Inspector has reason to believe that the books & papers relating to a company are likely to be destroyed, mutilated, altered, falsified, he may enter the premises of such company to seize the same required by him or take copies thereof. The limitation is that the Inspector should return the seized books and papers not later than the conclusion of the investigation. The provisions of the Cr.P.C. will apply in respect of search and seizure.

The Tribunal may issue an order freezing the assets of the company, if there is a reasonable ground to believe that the transfer, disposal of funds, assets are likely to take place which is prejudicial to the interests of the company or its shareholders or creditors or in public interest. In case of default the company is punishable with fine of not less than one lakh of rupees but it may extend to Rs 25 lakhs.

If the Tribunal is of the opinion that it has reason to believe that the facts about the securities issued or to be issued by a company cannot be found unless restrictions are placed, it may by order direct that the securities shall be subject to such restrictions as it may deem fit.

The Inspector, if so directed by the Central Govt, shall submit an interim report and on conclusion of the investigation, the final report to the Central Govt. A copy of the report may be obtained by making an application to the Central Govt. The Central Govt may prosecute the company and others that an offence has been committed which is criminally triable.

Mediation and Conciliation of Disputes (Section 442)

Any of the parties to the proceedings may, at any time, during the course of such proceedings before the Central Govt, the





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The offences under this Act are triable by the Special Court for the area in which the registered office of the company is situate and in relation to which the offence is committed. Where there are more than one Special court for such area, the High Court shall specify one of them for the purpose of trial.

Tribunal, or the Appellate tribunal, apply to these authorities in such form and with such fee as may be prescribed for referring the matter pertaining to such proceedings to the Mediation and Conciliation panel in which case the Central Govt, the Tribunal or the Appellate Tribunal shall appoint one or more experts from the panel maintained by it. It is also provided that the Central Govt should maintain a panel of experts to be called as Mediation & Conciliation panel, consisting such number of experts having such qualification as may be prescribed for mediation between the parties during the pendency of any such proceeding before the Central Govt, or the Tribunal or the Appellate Tribunal under this Act.

Appointment of Company Prosecutors (Sections 443 - 446)

The Central Govt may appoint generally or for any specified class of cases in any local area, one or more persons as Company Prosecutors for the conduct of prosecution arising out of this Act and persons so appointed shall have all the powers and privileges conferred by the Code on Public prosecutors appointed under section 24 of the Code.

The Central govt may, in any case arising out of the new Act, direct any Company Prosecutor or authorise any other person to present an appeal from an order, other than High Court, and the appeal presented by such Prosecutor or other person shall be deemed to have been validly presented to the appellate court.

The provisions of section 250 of the Cr.P.C. shall apply, *mutatis mutandis*, to compensation for accusation without reasonable cause before the Special Court or the Court of Sessions. The court imposing any fine may direct that the whole or any part thereof shall be applied in or towards payment of costs of the proceedings or in or towards payment of reward to the person on whose intimation the proceedings were instituted.

Establishment of Special Court (Sections 435 to 440)

Another novel feature of the Act is the establishment of Special Courts for providing speedy trial of offences under this Act. The Central Govt may, by notification, establish or designate as many Special Courts as may be necessary. Such a court shall consist of single judge appointed by the Central Govt with the

concurrence of the Chief Justice of the High Court within whose jurisdiction the Judge to be appointed is working. A person is not qualified to be appointed as aforesaid, unless he is, immediately before such appointment, holding office of a Session Judge or Additional Sessions Judge, as such judges alone can impose punishment by way of imprisonment authorised by law, as per section 28 of the Cr. P.C.

The offences under this Act are triable by the Special Court for the area in which the registered office of the company is situate and in relation to which the offence is committed. Where there are more than one Special court for such area, the High Court shall specify one of them for the purpose of trial.

Where a person accused of an offence is forwarded to a Magistrate, such Magistrate may authorise the detention of such person in such manner as he thinks fit for a period not exceeding 15 days in the whole, where the Magistrate is a judicial Magistrate. The period of detention shall not be more than 7 days, if the Magistrate is an Executive Magistrate. Where detention is not considered necessary, either upon or before the expiry of the period of detention, such person may be forwarded to the Special Court having jurisdiction. The Court, upon perusal of the police report, may take cognizance of the offence without the accused being committed to it for trial. It may also try an offence under the Cr.P.C. other than an offence under this Act.

The Special Court, if it thinks fit, can try an offence in a summary manner in the case of an offence (not involving punishment of imprisonment for a term exceeding three years) in which case no sentence of imprisonment for a term exceeding one year shall be passed. However, during the summary trial, if it appears to the Special Court that imprisonment for term exceeding one year may have to be passed or otherwise, it may after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to re-hear the case as a regular trial.

The High Court has all the powers conferred by Chapters XXIX and XXX of the Cr P.C. as if the Special Court were a court of Sessions trying cases within the local limits of jurisdiction of the High Court.

The provisions of the Cr.P.C. shall apply to the proceedings



before a Special Court and the said court is deemed to be a Court of Sessions and the person conducting the prosecution before such court shall be deemed to be a Public prosecutor. (Section 438).

Every offence under this Act (except the offences involving investigation by SFIO) shall be deemed to be non-cognizable within the meaning of the said Code. No court shall take cognizance of an offence alleged to have been conducted by any company or any officer thereof except on a complaint in writing of the Registrar, a shareholder of a company or of any person authorised by the Central Govt. However, in the case of offences relating to issue and transfer of securities, non payment of dividend, cognizance of such offence can be taken by the court on the complaint in writing by a person authorised by SEBI.

Where a complaint is lodged by the Registrar or by a person authorised by the Central Govt, the personal presence of such person before the court shall not be necessary, unless the court requires the presence of such person at the trial.

Transitional Provision(Section 440)

In respect of an offence under this Act which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of sessions exercising the jurisdiction over the area, notwithstanding anything contained in the Cr.P.C. This shall not affect the powers of the High Court for transfer of cases from a Sessions Court.

Compounding of Offences (Section 441)

This section is a re-enactment of section 621A of the Companies Act, 1956 and provides for composition of certain offences involving imposition of fine as punishment. This is a beneficial measure and provides a silver lining for settlement of offences out of court and takes away the need for prosecution by the Central Govt.

Any offence punishable with fine only is compoundable in accordance with the procedure laid down in the new Act, either before or after institution of any prosecution. An offence is compoundable by the Tribunal where the maximum amount of fine which may be imposed does not exceed Rs 5 lakh. The authority to do so is either the Regional Director or any officer authorised by the Central Govt as may be specified. However, the specified sum should not exceed the maximum amount of fine which may be imposed for the offence. Any additional fee already paid is deductible from the sum payable under compounding facility.

There are two exceptions which do not qualify for compounding and they are (i) in the case of a company in respect of which investigation has already been initiated or is pending, (ii) any offence committed by a company or its officers within a period

of three years from the date on which a similar offence was compounded. After the expiry of three years such an offence is treated as a fresh offence.

A simplified procedure is laid down for giving effect to the compounding of an offence. Every application is required to be made to the Registrar who shall forward the same, together with his comments, to the Tribunal or the Regional Director as the case may be. Where an offence has been compounded before institution of prosecution, no such prosecution will be instituted. However, where compounding is made after institution of prosecution, such compounding should be brought to the notice of the court by the Registrar in writing. On filing of such notice, the company and its officers shall be discharged from the prosecution. This is subject to the company or its officers filing any document or return as the case may be in fulfilment of legal obligation.

In the case of an offence punishable with imprisonment or fine or with both, compounding may be permitted by the Special Court. However an offence punishable with imprisonment only or with imprisonment and fine is not compoundable, as they are serious offences.

Punishment for Offences (Sections 447 to 453)

Punishment for fraud (Section 447)

Fraud is punishable with imprisonment for a term of not less than six months but it may extend to ten years. The liability towards fine is not less than the amount involved in the fraud but it may extend to three times the amount. Where the fraud involves public interest, the imprisonment shall not be less than three years. This is without prejudice to the repayment of any debt involved in fraud.

Fraud is comprehensively defined to include (i) any act, omission, concealment of any fact or abuse of position committed by any person, with the connivance and with intent to deceive, to gain undue advantage or injure the interests of the company or its shareholders or creditors, (ii) wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled, (iii) wrongful loss means the loss by unlawful means of property to which the person losing is legally entitled.

Punishment for false statement (Section 448)

Any person making a statement which is false in any material particular knowing it to be false or omission to make material fact knowing it to be material, in relation to any return, report, certificate, financial statement, prospectus statement or other document required by the provisions of this Act or the rules made there under, the punishment for the same is as applicable for fraud.



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Punishment for false evidence (Section 449)

If any person intentionally gives false evidence upon any examination on oath or solemn affirmation authorised under this Act or in any affidavit, deposition or solemn affirmation in or about the winding up of any company, he shall be punishable with imprisonment for a term which shall not be less than three years but it may extend to seven years and with fine which may extend to rupees ten lakh.

Punishment where no specific penalty or punishment is provided (Section 450)

If a company or any officer of the company or any other person contravenes any of the provisions of proposed Act or the rules there under or any condition, limitation, or restriction subject to which any approval is given or granted for which no penalty or punishment is provided elsewhere, then the company and every officer thereof who is in default or such other person is punishable with fine extending it to rupees ten thousand and where the contravention is a continuing offence, with a further fine extending it to rupees one thousand for every day during which the contravention continues.

Punishment in case of repeated default (Section 451)

In the case of repeated default committed for the second or subsequent occasions within a period of three years, the company and every officer thereof who is in default is punishable with twice the amount of fine for such offence, in addition to any imprisonment for the same.

Punishment for wrongfully withholding of property (Section 452)

If any officer or employee of a company wrongfully obtains possession of any property including cash or having such property wrongfully withholding it or knowingly applies it for the purpose other than expressed or directed in the articles and authorised by this Act, then he shall, on the complaint of the company or any member or creditor or contributory thereof, be punishable with fine of not less than rupees one lakh but it may extend to rupees five lakh. The court trying an offence may

also order restoration of property and in default thereof, the person is punishable with imprisonment for a period of two years.

Punishment for improper use of the word “limited” or “private limited”(Section 453)

If any person carries on trade or business under the name or title of which the word “limited” or the words “private limited” or any construction or imitation thereof, unless duly incorporated with limited liability or as a private company with limited liability, as the case may be, is punishable with fine of not less than rupees five hundred but it may extend to rupees two thousand for every day during which that name or title has been used.

Adjudication of Penalties (Section 454)

This is a novel feature. The Central Govt may, by an order published in the Official Gazette, appoint as many officers of the Central Govt, not below the rank of Registrar, as Adjudicating Officers for adjudging penalty under this Act in the prescribed manner. The regulations in this behalf are as under: While appointing adjudicating officers, the Central Govt shall specify the jurisdiction of each of them. The adjudicating officer may, by an order impose the penalty on the company and the officers in default stating the non compliance or default under the relevant provisions of this Act. Before imposing penalty, the adjudicating officer should give a reasonable opportunity of being heard to the company and the officer who is in default. Any person aggrieved by an order made by adjudicating officer may prefer an appeal to the Regional Director having jurisdiction in the matter. Every appeal shall be filed within sixty days from the date of receipt of a copy of the order. The R.D. after giving the parties to the appeal an opportunity of being heard pass such order as he thinks fit confirming, modifying, or setting aside the order appealed against. Where the company does not pay the penalty imposed by A.O. or R.D. within a period of ninety days from the date of receipt of the order, the company is punishable with fine which shall not be less than rupees twenty five thousand but it may extend to rupees five lakh. Where an officer of the company who is in default does not pay the penalty within a period of ninety days from the date of receipt of a copy of the order, such officer is punishable with imprisonment for six months or with fine of not less than rupees twenty five thousand but it may extend to rupees one lakh or with both.

Conclusion

The provisions of the new Act are refreshingly different from what is provided for in the Companies Act of 1956, both structurally and otherwise. The new Act testifies to the fact that it is a re-codification in the real sense of the terms and aims to serve the corporates with greater freedom but with severe punishment for non compliance. The public interest is also sought to be protected adequately.

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Independent Directors

Role and Responsibilities under the Companies Act, 2013

➤ With a view to ensure better corporate governance the Stock Exchange Listing Agreement requires the appointment of independent directors on the boards of listed companies. Going further the Companies Act, 2013 has made it mandatory for companies to appoint independent directors and has also prescribed the requisite qualifications. This article elaborately explains the implications of the new provisions relating to independent directors.

Every problem has a solution or so it is believed. Therefore, efforts are always on to find solutions to the various intractable problems faced by the world from time to time. However, the million dollar question is of finding the perfect solution to the problem on hand. This is easier said than done, but the quest to find the right answer continues. Today the corporate sector constitutes the backbone of the economy. With huge public funds riding on its back and involving the interests of multiple stakeholders, directly and indirectly, the corporate sector carries a huge responsibility on its shoulders. Whether the corporate sector will discharge its obligations effectively is an issue that has been engaging the best of minds in India and abroad.

Background

During the last decade, Corporate Governance has become one of the most widely discussed topics in the business world, in India



as also in countries like the United States of America and United Kingdom. As stated by the Narayanamurthy Committee Report, "Corporate Governance is about ethical conduct in business. The Corporate Governance is beyond the realm of law. It stems from the culture and mindset of management and cannot be

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➤ While there can be no denying the fact that the expertise and experience of an independent director would prove immensely useful to the company on whose board he is a director, he also has to be the conscience keeper of the stakeholders by ensuring that the decisions taken by the board are in the larger interest of the company and not merely in the interest of the promoter group.

regulated by legislation alone". As Martin Luther King, Jr. once remarked "Morality cannot be legislated, but behaviour can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless". While it is recognised that ethical Corporate Governance cannot be really enforced by law, it cannot be left totally to the whims and fancies of individual conduct to the detriment of larger interest.

Therefore, continuous efforts are being made to effect changes in the applicable laws so as to improve the standards of Corporate Governance. In a way it can be said that the Companies Act, 1956, was perhaps the first enactment responsible for introducing some form of corporate governance for all types of companies. Similarly, the listing agreement brought in a modicum of corporate governance specifically applicable to listed companies only.

For many years the listing agreement was primarily meant to ensure that every listed company protected the interest of its shareholders by ensuring certain minimum compliances like timely dispatch of share certificates, annual accounts, dividend, etc. At the same time every listed company was under obligation to keep the stock exchanges in the know about any information that could have implications on the financial health of the company.

For the first time, as a result of the Kumar Mangalam Birla Committee Report, the term 'Independent director' became a part of corporate lexicon. To give legal character to the newly introduced concept and to make it compulsory for the listed companies, SEBI effected changes in the listing agreement by introducing a new clause in the form of clause 49, exclusively devoted to Corporate Governance. Clause 49 also prescribes several other requirements, Audit Committee being the most important. The thrust of this article is confined to the role of independent directors in the scheme of corporate governance and more particularly, the provisions contained in the recently passed Companies Act, 2013 (the new Act).

Interestingly, though the concept of independent directors was brought into force so far as listing companies are concerned, no specific definition of the term "independent director" exist in the Companies Act, 1956 (the Act). The Birla Committee put the onus on the management to decide as to whether a particular director was an independent director or not for meeting the requirements as stipulated in clause 49.

Subsequently, the issue of definition of 'independent director' was considered by the Naresh Chandra Committee. The Committee took note of the prevailing scenario in the Indian and the international corporate sector, including the various international definitions of the word 'independence'. After going through the various guidelines and taking cognizance of different factors, the Committee arrived at a definition of independent directors. Even this definition is not specific in nature, but it is more in the nature of a code comprising of seven points. In fact, it would seem that the Committee was unable to define the term 'independent director' and instead it provided an explanation specifying negative covenants / disqualifications, absence of which would qualify a person to become an independent director.

Thereafter, the Committee appointed under the chairmanship of Mr. Narayanamurthy has also given a definition to the term "independent director", which is on the lines of the one given by the Naresh Chandra Committee.

To redress the shortcoming in the Act so far as the subject of independent directors is concerned, the Government has incorporated Section 149 in the new Act that defines the term 'independent director'. Although, in reality, the said section does not define the term 'independent director' it mentions several negative attributes or disqualifications which would render a person incapable of being appointed as an independent director.

Concept of Independent Director

Who is an independent director and what is meant by an independent director? Do we mean a person who is independent of the influence of the promoters and the management or is he a person who does not care about the management and is always in an adversarial roles? Or is he a person of experience and expertise whose wise counsel will be available for the benefit of the company? Well, keeping in view the role and responsibilities an independent director is expected to perform, it would be fair to say that he or she will be an amalgam of all these and much more.

While there can be no denying the fact that the expertise and experience of an independent director would prove immensely useful to the company on whose board he is a director, he also has to be the conscience keeper of the stakeholders by ensuring that the decisions taken by the board are in the larger interest of the company and not merely in the interest of the promoter group.



While performing the role expected of him, there is every possibility that he could fall foul of the promoter group who has the control over the board and in such a situation his mettle will be tested. The law expects him to stand up for what is right in the circumstances; in case it is not possible for him to convince others of his views, it will be his duty to ensure that his dissent is recorded in the minutes of the proceedings of the board meeting.

It is an accepted fact that it is not easy to define an 'independent director', but the new Act has attempted to provide a definition by stipulating for the first time, the qualities and qualifications that a person should have to make that person eligible for appointment as independent director rather than listing the grounds of disqualification as has been the case before.

Section 149(6) of the new Act prescribes several qualifications expected of an independent director in relation to a company. One requisite is that he should be a person of integrity. On first thought it may sound ludicrous that it is necessary to specify that a person wanting to be an independent director should be a man of integrity, because it should be without saying that every person on the board of a company should be a man of integrity. Unfortunately, experience indicates that many directors over the years have failed in discharging their fiduciary duties; perhaps that is why the lawmakers have felt the need to provide in law that such a person should be a man of integrity. However, at the same time it should be noted that ethics and morality cannot be legislated though ethical standards of conduct may be specified by the law. As if the so many qualifications listed in the clause are not enough, the Government has kept for itself the residuary power to prescribe such other qualifications as the Government may deem fit. One can only hope that the additional qualifications that may be prescribed by the Government should not make the task of getting independent directors still more difficult.

The ten requisites mentioned in Section 149(6) of the new Act for eligibility to be an independent director indicates the intent of



the Government to ensure that an independent director is not only a capable and experienced person, but he should not have any material pecuniary or other relationship with the company that would come in the way of his discharging his duties without fear or favour.

Role of Independent Directors

In the existing Act there is no provision for appointment of independent directors; it is only the listing agreement which provides for the same. Strictly viewed, under the Act, except for the managing and whole-time directors, all the other directors being non-executive directors, also called ordinary or part-time directors, enjoy similar status and responsibilities. Therefore, one could wonder as to the exact nature of the role to be played by independent directors. One thing that is certain is that the success of the system of corporate governance is directly dependant upon the discharge of duties by the independent directors. Onerous responsibilities have been laid on the shoulders of independent directors and they are expected to play the assigned role effectively.

Schedule IV of the new Act provides a comprehensive code for independent directors covering the following aspects:

I. Guidelines of professional conduct: An independent director is required to uphold ethical standards of integrity and probity and work objectively and constructively while exercising his duties. He is expected to act in a bona fide manner in the interest of the company and devote sufficient time and attention to his professional obligations for informed and balanced decision making. At the same time he should not abuse his position and must refrain from any action that would lead to loss of his independence. He is under an obligation to assist the company in implementing the best corporate governance practices.

II. Role and functions: The role that he has to play includes bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct. In addition, he is also expected to bring an objective view in the evaluation of the performance of the board and the management. He has to scrutinize the performance of the management in meeting agreed goals and monitor the reporting of performance and ensure the integrity of financial information, financial controls and the systems of risk management. He has a role to play while fixing the remuneration of executive directors and key managerial personnel and plays a prime role in appointment and removal of executive directors, key managerial personnel and senior management.

III. Duties: The Schedule has stipulated thirteen different duties to be performed by an independent director. Some of the duties include: (1) Regularly updating and refreshing the skills, knowledge and familiarity with the company; (2) Strive to attend



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The most revolutionary provision is the one that requires the performance evaluation of independent directors. As of now there is no formal requirement for conducting any evaluation of non-executive directors or independent directors. The evaluation of independent directors has to be done by the entire Board of Directors, excluding the director being evaluated.

and participate actively in all meetings of the Board and the committees and general meetings.(3) Keep well informed about the company and the external environment in which it operates. Interestingly, the list of duties also stipulates that an independent director should not unfairly obstruct the functioning of a proper Board or committee. He is also expected to pay attention and ensure that adequate deliberations are held before approving related party transactions and assure himself that the same are in the interest of the company. He has to ensure that the company has an adequate and functional vigil mechanism and also has to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use. He cannot disclose confidential information, including commercial secrets, technologies, unpublished price sensitive information, etc., except as required by law.

IV. Manner of appointment: For the first time the law stipulates that a formal letter of appointment has to be given to an independent director mentioning all those items stated in item (4) of this clause in the schedule.

V & VI Re-appointment & Resignation or removal: For the first time the law makes a provision about resignation by a director including an independent director and in the process has removed the prevailing ambiguity in the law.

VII. Separate meetings: An interesting duty that has been cast upon the independent directors is that they will have to hold at least one meeting in a year, without the attendance of non-independent directors and members of management. The objective of such a meeting being to afford an opportunity to the independent directors to review the performance of the company, flow of information from the management to the Board, etc. It is expected that such a meeting must be attended by all the independent directors of the company.

VIII. Evaluation mechanism: The most revolutionary provision is the one that requires the performance evaluation of independent directors. As of now there is no formal requirement for conducting any evaluation of non-executive directors or independent directors. The evaluation of independent directors has to be done by the entire Board of Directors, excluding the director being evaluated. The Board will keep in view the report of performance evaluation while determining the suitability of extending or continuing the term of appointment of the independent director.

A food for thought that arises from the duties cast upon an independent director under the new Act is, whether casting such onerous duties upon the independent directors would act as a deterrent for persons who would like to put themselves up for appointment as independent directors as they would be wary of the enormity of the role being assigned to them under the new law without adequate legal protection.

Appointment and Term

There is a provision in Schedule IV regarding the manner of appointing an independent director, but Section 150 of the new Act stipulates that an independent director has to be selected from a data bank maintained by authorised bodies / institutions. Such bodies / institutions will be notified by the Government. It is only to be hoped that the Government will not have any direct role in the appointment of independent directors. An independent director shall hold office for a term up to five consecutive years on the Board of a company. However, he will be eligible for reappointment on passing of a special resolution by the company; disclosure to that effect has to be made in the Board's report about the intention to re-appoint such independent director.

How much remuneration should be paid to independent directors?

Quality never comes cheap; senior professionals need to be remunerated adequately for the time spent by them for the company, etc. It is true that if the remuneration is too low, very few worthwhile professionals or other capable persons would be willing to spend time on the company boards. At the same time, there is a fear that if the remuneration is too high there is every risk of independence being compromised and defeating the very purpose of appointing an independent director. Hence, it is a classic hen and the egg story. Then there is the question of loss making companies, sick companies, unknown unlisted public companies, etc. Will they be able to afford so many independent directors? And even if they pay adequately, how many persons would be interested in becoming independent directors on the boards of such companies? There is a real need for the authorities to give a proper thought to these issues so that the main objective is not defeated.

Liability of Independent Directors

Independent directors are expected to perform twin functions as members of the board of a company. On the one hand they have



to participate in the proceedings of the board, while at the same time they are expected to perform the oversight function and ensure that all the decisions are taken in the larger interest of all the stakeholders. However, a question that needs to be addressed in this context is about the degree of involvement of an independent director in the affairs of the company and the liability that is fastened on his shoulders. There has been a demand in certain quarters, particularly from the Chambers, that independent directors be given protection from legal proceedings. There is no doubt that an independent director would have limited interaction with a company on whose board he is a director, but in the eyes of law that would not matter. As pointed out by the Naresh Chandra Committee, any infringement by an independent director is treated akin to that by an executive director. The Committee did recommend that independent directors need to be exempted from the applicability of certain laws.

Section 149(8) of the new Act states that the company and independent directors shall abide by the provisions specified in Schedule IV. Section 149(12), *inter-alia*, states that notwithstanding anything contained in this Act an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. This in a way limits the scope of offences for which an independent director can be personally held liable. However, it is imperative that independent directors act diligently while discharging their duties and be conscious and cautious when it comes to giving consent to any proposal, else they will have to be prepared to face the consequences of their actions. At the same time, it is evident that by using a phrase like 'attributable through Board processes', law has left room for vagaries of interpretation and consequent uncertainties. It would have been better if the provision was made more specific and direct in nature. Further, although, the law is attempting to limit the scope of offences in respect of independent directors, at the time of prosecution, all directors irrespective of their category are issued summons. It is only after leading evidence that a conclusion is drawn whether the independent director was diligent in the discharge of his duties or not and that whether he had acted in a bona fide manner or not. However, till such a conclusion is drawn, the independent director suffers a lot of inconvenience and embarrassment which is avoidable.

Are Independent directors the panacea for all the corporate ills?

Even if all the listed companies which are required to have independent directors, on their boards have done so, would that automatically result in better Corporate Governance? Will such boards ensure that there would be no recurrence of Harshad Mehta and Ketan Parekh and NSEL scams? Quite unlikely. If legal provisions alone could change the scene, then India should

have been miles ahead of all the countries as India is one of the most legislated countries in the world. Therefore, it would be extremely short sighted or even naïve to believe that a mere provision in the law for appointment of directors would achieve miracles. As mentioned earlier, law by itself can only render a limited assistance. Mere provision or even actual appointment of independent directors would not solve all the problems of the corporate sector nor will it mean a quantitative jump in Corporate Governance. Eventually it would depend not only on the quality and calibre of the independent directors but also on the commitment of the managements toward independent directors. Therefore, it is necessary to take a rational and holistic view of the issue rather than believing that independent directors would prove to be a magical wand.

Can the Corporate Sector be insulated?

It would be tempting to believe that all the ills plaguing the corporate sector will vanish if companies have independent directors on their boards as envisaged in the new Act. There is no doubt that the Government has done a commendable job by enacting adequate provisions in the Act specifying the definition, role and responsibilities of independent directors. However, the way the role of independent directors has been advocated during the last decade, it would convey an impression that good corporate governance is self sustaining and once the companies have independent directors on their board then automatically everything will be hunky dory.

The new Act mandates that every listed public company shall have at least one third of its total number of directors as independent directors. The Central Government will prescribe the minimum number with respect to unlisted public companies. Private companies are not required to have independent directors. However, it is a misnomer to presume that independent directors are the sole answer for corporate governance and that only public companies require corporate governance. All companies, whether public or private, are required to conduct their affairs in a proper and transparent manner. The key to successful corporate governance lies in the commitment of the management of a company to achieve the same.

A question that comes to one's mind in this context is, notwithstanding the best management practices, can companies be insulated from the prevailing economic, political and social environment of the country? Can independent directors help create an island of purity in the midst of a cesspool full of dirt and filth all around? After all, to an extent the practices prevalent in the corporate sector are nothing but the reflection of ethics and morality prevailing in the society. For independent directors to really succeed and make corporate governance what it should be, then apart from the promoters' attitude, there has to be ethical conduct in public life which should be the norm and not an exception. Otherwise we will have the odd lotus surrounded by filth all around us.

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- The provisions of the Companies Act, 2013 relating to the appointment of directors their role, duties, responsibilities, powers and the regulations subject to which they have to perform their duties in a company have been elaborately discussed here.

Companies incorporated under any company legislation obtaining at the time and place of their incorporation are bodies corporate and are artificial persons in the eyes of law. It has of necessity to act through human beings. The general meeting comprising of all members which sets out the overall objectives and policies of a company, is one of the three organs of a company. The Board of Directors, being the second organ of a company, translates the objectives and policies set out by the general meeting into action points for implementation thereof by the third organ namely the employees, of the company. As regards outsiders the Directors of a company are agents of the company but in relation to shareholders of the company they are to some extent trustees of the company to the extent they hold the properties of the company for their benefit. After various attempts, the first of which commenced in the year 1993, the Government achieved success in the year 2013 in legislating a new Companies Act (the Act), which received the assent of the President of India on 29th August 2013 and has been christened as Companies Act, 2013 (18 of 2013). The Act, probably will be put into force early in 2014. It is proposed to discuss in this Article the appointment of directors who constitute the Board of Directors, the second and very important organ of a company, their role in a company, their duties and responsibilities, their powers and the regulations subject to which they have to perform their duties in a company, etc. as stipulated in the new Companies Act.

Number of Directors

Under Section 149 of the Companies Act, 2013, every company is required to have a Board of Directors consisting of individuals as directors. Section 2(10) defines the Board to mean the collective body of directors. It has been stipulated that directors should be individuals, i.e. natural persons. To some extent the office of director, is office of trust and there should be somebody readily available who can be held responsible for the failure to





carry out the trust and it might be difficult to fix the responsibility, if the director was a corporation or an association of persons. [*Oriental Metal Pressing Works (P) Limited v. Bhaskar Kasinath Thakoor*, [1961] 31 Comp. Cas 343 (SC)]. Section 149 further stipulates that a public limited company should have a minimum of three directors, a private limited company should have a minimum of two directors, one director in the case of a 'one person company' and a maximum of 15 directors for all the companies. Where necessary, the ceiling on the number of directors could be pierced by passing a special resolution. It should be noted that the aforesaid ceiling of 15 directors would not be a bar for the appointment of Directors by State Financial Corporations, State Bank of India and its subsidiaries, Nationalised Banks and Life Insurance Corporation of India, because the enactment under which or by which they are constituted have overriding effect and confer on the respective institutions this power in spite of provisions to the contrary in any legislation or document. Approval of the Central Government under section 259 of the Companies Act, 1956 (the Current Act) has been dispensed with. Also the said section 149 postulates that a company should have at least one director who has stayed in India for a period of not less than 182 days in the previous calendar year. This requirement has been inserted in the Act keeping in mind the number of companies incorporated in India by companies incorporated abroad which have all directors resident abroad, so as to ensure that a company has at any time a director who is resident in India so that he can be made responsible for any defaults committed by it. This requirement has to be complied with by existing companies existing within one year of the enforcement of the Act. This clause further requires listed companies and such class of companies as may be prescribed to have a woman on their Board.

Appointment of Directors

Directors of companies are appointed by the following:

- (a) The promoters
- (b) The General Meeting
- (c) Small shareholders
- (d) The Board of Directors
- (e) BIFR
- (f) National Company Law Tribunal
- (g) Lenders and State Financial Corporations, etc.

The power to appoint directors, of course, with the exception of appointing authorities mentioned in (e) and (f) above has to be spelt out in the Articles of Association. In respect of the authorities mentioned at (g) above, while the foregoing is the general rule, power to appoint directors has been conferred on certain lenders and State Financial corporations, Life Insurance Corporation of India, State Bank of India and its subsidiaries, all Nationalised banks by the enactments by which they are constituted, on the Boards of Companies to which they have extended financial facilities. The said Acts override the position set out above.

» Under Section 168(3) of the new Act if all the directors of a company resign or vacate their offices as directors, then the promoters are empowered to appoint the required number of directors who will hold office till directors are elected at the general meeting. No time limit has been stipulated for appointment of directors by general meeting.

The Promoters

Under Section 152 of the new Act, first directors of a company until they are appointed by the general meeting could be named in the Articles of Association. In the absence of any provision relating to the first directors in the Articles, subscribers to the Memorandum of Association who are individuals would be deemed to be the First Directors. The promoters decide the provisions in the Memorandum and Articles and also subscribe to the Memorandum and Articles of Association. Hence it could be said that the promoters have a role in the appointment of first directors.

Under Section 168(3) of the new Act if all the directors of a company resign or vacate their offices as directors, then the promoters are empowered to appoint the required number of directors who will hold office till directors are elected at the general meeting. No time limit has been stipulated for appointment of directors by general meeting. By implication the appointment has to be made sufficiently before the due date of the annual general meeting held first after the resignation or vacation of office as director referred to above so that the company concerned could comply with the requirement of retirement of directors under section 168. The number of directors who could be so appointed should not exceed the effective quorum required for a meeting of the Board. This is a welcome provision which will remove unexpected complications in a company resulting from the resignation or vacation of office, by all directors.

General Meeting

Under Section 152 not less than two-thirds of the total number of directors have to retire by rotation and have to be appointed by the general meeting. In default of any provisions to the contrary the remaining directors and all the directors of a private limited company have also to be appointed by the general meeting. The implication of this requirement is that not more than one-third of the total number of directors in a public limited company and all the directors in a private limited company could, by having suitable provisions in its Articles of Association, be appointed by other interests. The managing director, whole-time director,



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independent director, nominee directors of lenders and other institutions could be accommodated within the aforementioned stipulation of “not more than one-third of the total number of directors”. As the tenure of appointment of an independent director under section 149 of the new Act is five years he will not be counted as a director liable to retire by rotation for the purposes of ceiling and appointment referred to above.

Small Shareholders

Under Section 151 of the new Act, a listed company may have a director appointed by the small shareholders in such manner and with such terms and conditions as may be prescribed. For this purpose a small shareholder would mean a shareholder holding shares of the nominal value of not more than twenty thousand rupees or such other sum as may be prescribed. The reference is to shares and therefore holding of preference shares also should be taken into account. It is not clear as to how holdings in multiple accounts by a shareholder should be considered for determining whether he is a small shareholder or not. This has been made clear by an explanation appended to section 152(6). In keeping with the objective of this provision it would be appropriate if the holdings under multiple accounts were aggregated. Holdings of a shareholder under joint accounts need not be aggregated unless the other joint holders are common.

Board of Directors

Casual Directors

Vacancies may arise in the Board of Directors by death, resignation or otherwise amongst the directors liable to retire by rotation. Unfortunately there is no provision in the Act as to how such vacancies could be filled in. In the existing Act section 262 provides for such contingencies. In the absence of any provision similar to section 262, there is no other way but to allow these vacancies to lapse and Board taking recourse to the appointment of additional directors in such situations.

Additional Directors

Section 161 of the new Act provides that the Board of Directors of a company through a suitable provision in its Articles of Association could be conferred with the power to appoint any person other than the one who fails to get appointed as a director in a general meeting as additional director. Such an additional director, would hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. The portions highlighted above are deviations from the provisions in this regard contained in section 260 of the present Act. This disqualification, i.e. if he fails to get elected as a director in a general meeting, would visit a person if he fails himself to get appointed as a director at any general meeting in the past.

Alternate Directors

Section 161 of the new Act provides that powers could be

conferred on the Board for appointment of a person who is not already an alternate director of any other director of the company by having a suitable provision in the Articles or by a resolution passed by a company in general meeting, as an Alternate director of any other director, to act as such, for the other director during his absence for a period of not less than three months from India. The requirement of single alternate directorship and absence from India are the deviations from the existing provisions of section 313. In view of this deviation it should be noted that a person could hold only one alternate directorship in a company. This section also provides that no person could be appointed as an alternate to an independent director unless, he is qualified to be appointed as an independent director. As is currently the position the alternate director would cease to be in office if the original director returns to India. As has been held by the Bombay High Court in *Naina D. Kamani v. Janson Engineering and Trading P. Ltd.*, [2011] 167 Comp. Cas 89 (Bom): the alternate director would vacate his office of director only if and when the original director returns to India for a length of time and not on a short visit on social or other engagements.

Nominee Directors

Under section 161 (3) of the new Act, even nominee directors have to be appointed by the Board of its Directors. Under the present Act there is no such requirement. On nomination the nominee director from the date of nomination can take his seat on the Board. It is not known why this requirement has been inserted. In view of this new requirement, if the institution nominating the nominee director withdraws the nomination the director concerned has to resign from the Board. At times this may create complications if the nominee director for any reason refuses to resign. This requirement could have been avoided. It needs no reiteration that, such an appointment could be made, only against the one-third the total number of directors of a company and if there is a provision in the Articles of Association of the company concerned in this regard.

BIFR

Under section 17(4) of the Sick Industrial Companies (Special Provisions) Act, 1985, the Board of Industrial and Financial Reconstruction could appoint one or two special directors on the Board of Directors of a sick industrial company under the circumstances set out in the said sub-section. This overrides the provisions in the Companies Act 1956 and any other law for the time being in force or provisions in the Memorandum and Articles of Association of the sick company concerned. Such special directors could be appointed even if the sick industrial company concerned has already fifteen directors, i.e. the ceiling prescribed under the Act, and are not liable to retire by rotation or counted in the total number of directors liable to retire by rotation, etc. This power would automatically stand withdrawn from the date the Sick industrial Companies (Special Provisions) Repeal Act, 2003 is put into force.



National Company Law Tribunal

Under Section 242(2)(k) of the new Act the Tribunal may appoint such number of persons as directors, who may be required to report to the Tribunal on such matters as the Tribunal may direct. This is a new provision. There are no overriding provisions governing this appointment. The Tribunal being clothed with the powers of the Court will, it is hoped that while appointing such directors it would take care of this deficiency and provide for such matters in its order. It should be noted that the Tribunal could not supersede the Board of Directors of a company and constitute a new set of directors. In this respect the new Act seeks to strengthen the democratic right of the shareholders. Further under section 408 of the existing Act, the Central Government has been clothed with powers to appoint with the approval of the Company Law Board directors on the Boards of companies under the circumstances and for the purposes detailed in that section. Such a director need not hold qualification shares, if any, prescribed under the Articles of Association of the company concerned, will not retire by rotation and will not be counted for the purposes of determining the directors liable to retire by rotation. Such a director will also not be taken into account for the purpose of computing two thirds or any other proportion of the total number of directors of the company concerned. No similar power has been conferred on the Central Government under the Act and as a consequence the Central Government cannot appoint directors on companies in the interest of the shareholders or public interest in cases of mismanagement/oppression.

Lenders and State Financial Corporations, etc.

Lenders who are generally financial institutions and Nationalised Banks are conferred with the right to nominate directors on the Boards of companies to which they have extended financial

assistance either by the Act constituting them or under which they are constituted or by an agreement entered into by the institution concerned with the borrowing company/ies. The State Financial Corporations which are associated with private sector companies are also conferred with the right to nominate directors on the Boards of such private sector companies. Some of these institutions are constituted by separate enactments and some are incorporated under the Company Legislation in force at the time of their incorporation. In regard to former there are provisions in the Acts constituting them, which are overriding in nature to appoint directors on the Boards of assisted companies notwithstanding the fact that on nomination the ceiling under the Act would be pierced. Such directors are also not liable to retire by rotation and also not to be taken into account for determining the total number of directors liable to retire by rotation and they need not own qualification shares, if any, prescribed under the Articles of companies concerned. In the case of the latter they are amenable to the provisions of the Act and they can be nominated only if there is specific provision in this regard in the Articles of Association of the company concerned. Even in their cases, the persons nominated by the lenders have to be, as noticed earlier, appointed by the Boards of such companies.

Qualifications for appointment as a director

The new Act has not prescribed any qualification for a person to be appointed as a director of a company directly. Impliedly a person cannot be appointed as a director unless he has a Director Identification Number (DIN) as provided under section 152(3) of the new Act. Sections 153 to 159 of the new Act lay down the procedure for obtaining DIN by a person, informing the company in which he is a director, filing it with the Registrar and quoting the said number in all documents and returns filed by him as a director of the company concerned.

Apart from the above in Section 164 of the new Act the qualifications of a director have been defined negatively. In terms of the said clause a director should:

- Be of sound mind.
- Be solvent.
- not have applied for adjudication as an insolvent.
- not have been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years have, at the time of appointment, elapsed.
- not have been disqualified for appointment as a director by any Court or Tribunal and the order is subsisting.
- Have paid calls on shares held by him either singly or jointly within six months of the due date of the respective calls.
- Not have been convicted of an offence dealing with related party transactions under section 188 of the Act during the period of five years before the date of his



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appointment.

- Not have been a director of a public limited company which has not filed their financial statements and/or annual returns for a continuous period of three years before five years from the date of their appointment.
- Not have been a director of a public limited company, which has defaulted in the repayment of deposits and interest thereon and/or defaulted in the repayment of debentures and interest thereon on the due date and such a default has continued for a year, before four years from the date of appointment.

This Section further provides that a person convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more cannot be appointed a director of any other company. If a person is not qualified to be appointed as director of a company because of his conviction for an offence involving moral turpitude or otherwise and is sentenced to imprisonment for a period of not less than six months, or of his conviction under section 188 or of an order of a Court or Tribunal, the disqualification would get suspended for a period of 30 days and if an appeal is filed against the order within the said period of 30 days, the disqualification would get suspended for a further period of 7 days after the date on which the order in appeal is pronounced. If further appeal is preferred within the said period of 7 days it will get suspended for a period of 7 days after the date on which the second appeal is decided. A private company can add more qualifications.

Even though the appointment of a director is not a contract but as the person concerned is an agent of the company of which he is a director, unless he has attained majority he cannot be appointed as a director. Thus even though no age qualification has been prescribed unless he is competent to enter into a contract, he cannot be appointed as a director of company. Attaining majority is one of the competencies.

Independent Directors

Under Section 149(4) of the new Act, every listed company is required to have at least one-third of the total number of directors as independent directors. By way of explanation it has been mentioned in this section that any fraction in such one-third should be rounded off as one. It might be appropriate to recall that under Clause 49 of the Listing Agreement every listed company is required to have 50% of its total number of directors, as independent directors, if the Chairman of the company is an executive chairman and 1/3 of its total number of directors as independent directors, if its Chairman is a non-executive Chairman. Section 149(6) of the new Act defines the term 'independent director'. It largely follows the definition of 'independent director' in the listing agreement. It should, however, be noted that a nominee director cannot be an independent director for the purposes of the Act while under the Listing Agreement he is treated so. While there is no limit on the

tenure of an independent director in the Listing Agreement, Section 149(11) of the new Act limits his tenure to 10 years at a time. He can be considered for appointment after a cooling off period of three years during which period he should not be associated with the company in any capacity. An independent director, under Section 149(10) of the new Act, is required to be appointed by the general meeting to hold office as such for a period of five years. He can be re-appointed for another term of five years by a special resolution and the fact of re-appointment has to be stated in the Director's Report. As noticed earlier the independent director is not liable to retire by rotation and as such, he will have to be accommodated in the one-third of the total number of directors of the company. Under Section 149(7) of the new Act every independent director is required to give a declaration at the first meeting of the Board he attends after his appointment and at the first meeting of the Board in every financial year or whenever there is a change in the circumstances which may affect his status as an independent director, that he meets the criteria of independence as provided in Section 149(6) of the new Act.

Retirement of Directors

Under Section 152(6) of the new Act, one-third the total number of directors for the time being are liable to retire by rotation, have to retire at each annual general meeting. Similar provision exists in the Articles of Association of companies. If the number retiring by rotation is not one third then the number nearest to one third would retire. It should be noted that fractions in the said one-third should not be grossed up as one as in the case of the requirement of the appointment of the independent directors. If a company desires to retire more than this number, then the number in excess of the one-third will have to be retired by a special resolution. This, however, should not be construed to mean that if the Articles of Association of a company provides that all directors would retire at each annual general meeting then the number in excess of one-third can retire only by means of a special resolution. This is so because, in such a situation the company concerned follows the provisions in the Articles and in the case of the former that has the effect of amending the Articles which can be done only by means of a special resolution. Section 152 of the new Act also provides that the directors retiring would be those who have been longest in office and in the event that there are more than the number required to retire at the annual general meeting on this score, the names of the retiring directors subject to the provisions in the Articles will have to be decided by lots.

Resignation of Directors

There is no regulation in the existing Act with regard to resignation of directors. Judge made law largely governs this. The new law aptly regulates the resignation of directors. Section 168 of the new Act exhaustively deals with the matter. This has become a boon to non-executive directors of companies. Under this section a non-executive director can resign by addressing a letter to the



company concerned which the Board of Directors is required to note and inform the Registrar of Companies. The director concerned is also required to forward a copy of his resignation letter within 30 days of the resignation along with detailed reasons for his resignation. The resignation will take effect from the date on which the letter of resignation is received by the company or the date mentioned in the said letter whichever is later. This section further empowers the promoters and in their absence the Central Government to appoint the required number of directors who will hold office till the general meeting appoints the directors. The use of the word 'required number' is significant. The required number would mean that number which is required to hold a board meeting in terms of the provisions in the Act and in the Articles of Association of the company concerned. A Board meeting can be validly convened and held only when there is an effective quorum. In this light the expression 'required number' in Section 168 of the new Act would mean that number of directors who can constitute an effective quorum for a board meeting. In exercise of this power the delegate cannot appoint more directors than that is required to constitute an effect quorum at board meetings. This clause has put at rest various problems faced by non-executive directors, and at times leading to avoidable litigations.

Vacation of Office of Director

Section 167 of the new Act specifies the circumstances in which the office of director will stand automatically vacated. This is generally in line with section 283 of the existing Act, with the exception that if a director is convicted of an offence involving moral turpitude or otherwise and is sentenced in respect of that offence to imprisonment for a period of six months or more, the office of director shall stand vacated even if he files an appeal against his conviction.

Removal

In line with the provisions of section 284 of the existing Act, Section 169 of the new Act specifies the procedure for the removal of directors. It should be noted that as the removal is by means of a resolution, a single shareholder cannot give notice for removal of a director and a proposal for removal of a director can be moved only by a shareholder or shareholders holding the requisite number of shares with voting rights who can give notice of resolutions for consideration at a general meeting as provided in Section 111 of the new Act.

Duties of Directors

All along duties of directors of companies have to be deduced from court judgments. Section 166 of the new Act succinctly lays down the duties of directors, as under:

- He has to act according to the Articles of the company.
- He should act in good faith in order to promote the objects of the company for the benefit of the members as

a whole and in the best interest of the company, its employees, its shareholders, the community and for the protection of environment.

- He should exercise his duties with due and reasonable care, skill and diligence and should exercise independent judgment.
- He should not involve himself in a situation in which he may have direct or indirect interest that conflicts, or possibly might conflict with the interest of the company.
- He should not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.
- He should not assign his office.

If a director is found to have obtained undue gain he is required to pay an amount equal to the gain to the company and if he assigns his office, the assignment would be void. If a director contravenes the above requirements he is liable to be punished with fine, which will be not less than one lakh of rupees and which may extend to five lakh rupees.

Powers of directors

Being agents of the company in regard to dealing with outsiders, individual directors cannot exercise any powers in relation to management of company. Directors can exercise the powers in relation to management of a company collectively as a Board and an individual director could be delegated powers by the Board.

Liability of Directors

Directors will have no personal liability so long as they exercise the duties set out earlier in this Article. It should be noted that pursuant to the provisions of Section 149(12) of the new Act a non executive director including an independent director and nominee directors will be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes and with his consent or connivance or where he had not acted diligently.

Under Section 195 of the new Act, a director, *inter alia*, is prohibited from indulging in Insider Trading. There are many provisions in the Act, which are not in line with the Regulations framed in this regard by the Securities and Exchange Board of India, which are applicable to listed companies. Thus in their cases there could be duplications and the requirements of the Act or SEBI Regulations may be stringent. In such situations it would be prudent and in fact is required that listed companies should comply with more stringent requirements of the two so that they are not hauled up for possible violations.

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Synchronisation Trend in Relation to Scope and Ambit of 'Control' under Indian Corporate Laws

➤ The definition of 'control' as given in the Competition Act, 2002 is not completely in sync with that under the Takeover Code and adopted in the Companies Act, 2013 and also adopted by FIPB. The need is to bring parity in definition of 'control' and the Regulators to shed more light on subjective parameters through its orders/guidelines.

OBJECTIVE

It is increasingly recognised more than ever before by the corporate world that 'restructuring' is an imperative and inevitable instrument to meet the ever increasing challenges of business dynamics. Restructuring/revamping involves putting in place the changed structure, introducing new methods of doing business and abandoning or modifying the old ones. It may be initiated by top management or by an in-house division created for the purpose or it may be in the wake of inputs from outsourced independent consultant. Having realised that restructuring has to sync with market landscape, the business managers continuously strive to find best solutions as to timing and mode of reshaping business so that it remains synergised, competitive, profitable and successful.

The objectives of restructuring could be many including (a) attaining efficient allocation of resources, (b) achieving economy of scale by expansion and diversification, (c) ensuring consistent and regular

supplies of scarce inputs, (d) improving return on capital employed (e) reducing business risk, (f) availing of benefit of new business opportunity. Mergers/amalgamations; acquisitions/takeover and setting up of joint ventures are by far the three important ways to achieve business restructuring. In case of merger, one entity subsumes into another and thereby one which subsumes loses its existence. In amalgamation, two or more entities create a third one. The amalgamated entities vanish and the newly created third body takes charge of the business. In both the situations, the objectives of the entity (post merger/amalgamation) are carried as per its Memorandum of Association and indoor management is governed by Articles of Association. However, in the case of acquisitions/takeover, the acquirer as well as acquired entity continue to exist and subsist. Again in the case of setting up of a joint venture, the parent as well as JV baby continue to exist and do their respective businesses. Thus, in the latter twin modes of restructuring, the complex issues to be settled are (a) who will control whom, (b) the nature and extent of control, and (c) the corporate regulatory compliances that trigger such control.

In common parlance 'control' refers to power which one possesses to check or restrain another. The steps involved in control are (i) determining standards of performance and recording deviations; (ii)

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probing reasons for deviation,² (iii) fixing responsibility, and (iv) taking corrective measures. In a joint Hindu family, the effective control is with head or Karta of family and he exercises control over rest of the members of the joint Hindu family. The term 'control' has been subject to adjudication under social/non corporate laws too.

'Control' is a term of very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned³. The word 'control' is synonymous with superintendence, management or authority to direct, restrict or regulate⁴. Control is exercised by a supervisory authority in exercise of its supervisory authority. Control suggests check, restraint or influence and is intended to regulate and hold in check and restrain from action. Control includes power to prohibit. To satisfy the words 'exercises control', some positive act that is capable of specific identification as an exercise of control is required.

The Companies Act, 1956; the Takeover Regulations, 2011 issued under the Securities and Exchange Board of India Act, 1992; the Competition Act, 2002 (including the Combination Regulations issued thereunder) and the Foreign Direct Investment Policy trigger mandatory compliances when acquisition/takeover or setting up of a JV raises issues in relation to 'control'.

The term 'control' is defined in the Takeover Regulations as: "control shall include the right to appoint majority of 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".

In the case of *Subhkam Ventures*, the SEBI noted that while it will have 17.90% equity in MSK Project (India) Ltd., a company listed with BSE, the shareholder's Agreement vests (a) a right to nominate a director on the board of the target, (b) a right to be present as a condition of quorum and (c) affirmative rights all of which are in the nature of 'negative rights' constitute 'control' and consequently the requirement to make public announcement to acquire shares gets triggered. However, on appeal, the Securities Appellate Tribunal reversed the SEBI's order and held that covenants of shareholders agreement which shower protective rights do not amount to 'control'. Unfortunately, the appeal was disposed off by the Supreme Court without decision on question of law and additionally it said that SAT's order will not be a precedent. Thus, ambiguity *qua* negative controls subsists. The SEBI pursuant to the recommendations of Takeover Committee, gave good bye to its 1997 Code and replaced it with new Takeover Code in 2011.

» As of now, the term 'control' is not explicitly defined under the Companies Act, 1956. The Act explains the meaning of 'holding' and its 'subsidiary'. However, the Companies Bill, 2013 which has already been passed by both Houses of Parliament and is awaiting the assent of the President before it is notified and made effective, does define 'control' and interestingly it is an exact replica of what is provided in the Takeover Code, 2011.

Though the trigger limits for open offer is raised to 25% as against 15% and minimum offer size in open announcement is raised to 26%, the definition of 'control' remains unchanged.

As of now, the term 'control' is not explicitly defined under the Companies Act, 1956. The Act explains the meaning of 'holding' and its 'subsidiary'. However, the Companies Act, 2013 does define 'control' and interestingly it is an exact replica of what is provided in the Takeover Code, 2011. It is believed that an explicit definition will reduce the legal tussle and will obviate instances of indirect or proxy control. Currently, control is being exercised through the articles or memorandum and many times by an agreement between parties. Invariably, these documents broadly explain 'control' as hereinbelow:

A person or persons (controller) shall be taken to have control of another person (the controlled person) if one or more controllers whether by law or fact, is entitled to secure directly or indirectly that the controlled person's affairs are conducted in accordance with the wish of the controller besides if controller hold greater part of share capital/voting rights or composition of board of controlled. A change in control is deemed to have occurred when a person having previously control, ceases to do so.

Taking note of the definition of 'control' in the Companies Act, 2013 (which is to replace the Companies Act, 1956) and the fact that it is on the lines as described in Takeover Regulation, the Foreign Investment Promotion Board (FIPB) changed its approach of linking 'control' only to appoint majority of directors and adopted the definition as contained in the Companies Act, 2013.

The Competition Act, 2002 explains 'control' as well as 'group'⁵ and both are intertwined. Control includes controlling the affairs or management by (i) one or more enterprises either jointly or singly, over another enterprise or group; (ii) one or more groups either jointly or singly, over another group or enterprises. Group means

² Taxmann's Dictionary for CAs/CSs/Cost Accountants/Corporate Professionals.

³ *Corp. of Nagpur City v. Ramachandra*, (1981) 2 SCC 14; 1981 SCC (L & S) 455; AIR 1984 SC 626; (1981) 43 FLR 78.

⁴ *Shamrao Vitthal Coop Bank Ltd. v. Kasargode Panduranga Maliya*, (1972) 4 SCC 600; AIR 1972 SC 1248.

⁵ Explanation (a) and (b) below Section 5 of the Competition Act, 2002.



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Synchronisation Trend in Relation to Scope and Ambit of 'Control' under Indian Corporate Laws

two or more enterprises which directly or indirectly are in a position to (i) exercise 26% or more voting rights in the other enterprise; or (ii) appoint more than 50% representation in the board of other; or (iii) control the management or affairs of other enterprise. The analysis of three dimensions of competition regime are largely impacted by determination of 'control' and resultant being in same group. An anti competitive agreement relating to production, supply, distribution of goods/services fall outside the jurisdiction of CCI in case the parties to agreement belong to same group (single economic entity). The determination of 'dominance' of an enterprise is again linked with control and group. Further, the question of whether a combination is notifiable under the Competition Act, 2002, is to be examined, *inter-alia*, in the context of the aggregate value of assets/turnover of the entities controlled by the group. In the recent past, the Competition Commission of India has examined as to what tantamounts to 'control'.

The Competition Commission of India in the Combination Regulations has carved out certain categories of transactions which are ordinarily not likely to cause appreciable adverse effect on competition in India and notice of such proposed combination is not required to be filed. In these exempted categories, the determination of 'control' is *sine qua non*. Few instances to cite are (a) an acquisition of shares/voting rights below 25% not leading to control; (b) an acquisition of additional shares/voting rights where acquirer already holds 50% or more unless results in transfer from joint to sole control; (c) an acquisition of control/shares/voting rights/assets within the same group; and (d) a merger/amalgamation involving holding and its wholly owned subsidiary in the same group. These are all exempted from applicability of Section 5 and 6 of the Competition Act, 2002 as well as the attendant regulations.

In over two years of experience in relation to merger control, the



Competition Commission of India through its few orders has shed light on concept of 'control'. The Commission in a combination between Reliance Industries and TV 18 group examined the right to exercise option to convert the Zero Coupon Optionally convertible debentures into equity shares of company confers upon holder the ability to exercise decisive influence over the management or affairs of the acquired company and therefore amounts to 'control'⁶. In another case, vide its order dated August 9, 2012, the Competition, in relation to the acquisition of shares by Multi Screen Media P Limited observed that veto rights enjoyed by minority over certain strategic commercial decisions resulted in a situation of joint control⁷.

The twin common as well independent arithmetic parameters to determine control in Indian corporate laws are (i) by virtue of ownership of majority of the voting power of that enterprise; as well as (ii) by virtue of having majority representation in the board of the other company. These numerical percentages have the traits of simple, straight and swift calculations and thereby bring predictability and certainty for investor, investee, regulator and the practitioners. Further, these can be worked out easily and ensure certainty and consistency. However, having stated the above, it is possible for an acquirer to acquire ownership below the prescribed limit or have inadequate or no representation on the board of target, yet have a say or the power to influence the strategic and/or commercial decisions of the investee company. Thus, the disadvantage of the arithmetic parameters is that these can be easily circumvented and can frustrate the intent and purposes of such regulation. In order to plug the escape valves, numerical percentages are complemented by subjective factors namely (a) inclusive definition; (b) scope of management or policy decisions; (c) by virtue of direct or indirect rights emanating from shareholding, managements or voting agreements; (d) in any other manner. These subjective criteria are difficult to comprehend and therefore capable of inducing arbitrariness and uncertainty. The element of arbitrariness and uncertainty surrounding these subjective factors may sometimes lead to ambiguous and varied results. There is no doubt that subjective criteria is important, however, it is to be borne in mind that the conclusions drawn out of such subjective strictures may be equivocal and evasive.

Thus, the scope and ambit of 'control' has to be determined on the basis of minimum percentage of ownership or majority representation on the board or the open ended subjective criteria elucidated above. At present, even though there is a great risk of inconsistency, we have to work with these parameters. The definition of 'control' as given in the Competition Act, 2002 is not completely incongruent with that which exists in Takeover Code and adopted in the Companies Act, 2013 and also adopted by FIPB. The need is to bring parity in definition of 'control' and the Regulators to shed more light on subjective parameters through its orders/guidelines. CS

⁶ Combination Registration No. C-2012/03/47 dated 28th May 2012.
⁷ Combination Registration No. C-2012/03/47 dated 28th May 2012.



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The Concept of Corporate Social Responsibility under the Companies Act, 2013 - Whether well conceived?

➤ Although much has been spoken, written and discussed on the corporate social responsibility, nothing concrete had emerged on this so far except some voluntary actions by some corporates. The Companies Act, 2013 for the first time has introduced a welcome provision requiring corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. To know more on this read this article.

The country has a new law for Companies after long deliberations extending to nearly two decades - the exercise for giving a new Companies Act to replace the Companies Act, 1956 having been started in the year 1993! Obviously in the new law, on whose drafting so much time has been spent, efforts have been made not only to remove the deficiencies noticed in the working of the earlier Act, but also to introduce some new concepts one of which is to make Companies realize their obligations towards the Society of which they are an important constituent and discharge these by spending prescribed part of their earnings for the good of the people. This has been done by introducing in the Act, the concept relating to Corporate Social Responsibility ('CSR' for short). The new law vide section 135 of the Companies Act, 2013 provides that all Companies will have to spend 2% of their average net profit during three preceding years on CSR. The explanation to the clause provides that 'average net profit' shall be calculated in accordance with the provisions

of section 198 which mentions the method relating to calculation of profits.

Legal provision in a nutshell

Section 135 of the Companies Act, 2013 provides that it will apply to every company with a net worth of Rs. 500 crores or more, turnover of Rs. 1000 crores or a net profit of Rs. 5 crores or more during any financial year; The amount has to be a minimum of 2% of 'average net profit'.

The amount has to be spent on the 9 broad areas that result in social good as specified in Schedule VII of the new Act. The areas are:

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immuno deficiency virus, acquired immuno deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;

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- (viii) social business projects;
- (ix) 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.
- (x) such other matters as may be prescribed.

In spending the funds, the company is to give preference to the local area and areas around it where it operates and the activities to be undertaken will be those specified in Schedule VI.

The residuary sub-clause(x) in the Schedule gives power to the Government to enlarge this list. A number of claims are bound to be made for inclusion in the list by the Government by exercising power under this sub-clause, which is going to be a continuing exercise. The Company falling in any of the categories referred to earlier shall have to constitute a Corporate Social Responsibility Committee (CSRC), which shall 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; recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and monitor the Corporate Social Responsibility Policy of the company from time to time.

The Board of Directors of the Company shall after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the Company's website, if any, in such manner as may be prescribed; and ensure that the activities as are included in Corporate Social Responsibility Policy of the Company are undertaken by the Company. The Board of every company falling in the categories specified earlier has to ensure spending of the amount as prescribed and if the Company fails to do so, the Board shall, in its report made under section 134(3)(o) of the new Act specify the reasons for not spending the amount. Section 134(3)(o) mandates that with financial statements to be presented, there shall be a statement showing the details about the policy developed and implemented by the Company on corporate social responsibility initiatives taken during the year. Section 134(8) of the new Act provides that if it is not done, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall be less than 50 thousand rupees but which may extend to five lakh rupees, or with both.

What is CSR?

There is no definition in the new Act for the term Corporate

» There is no definition in the new Act for the term Corporate Social Responsibility though the areas in which the money could be spent have been specified in Schedule-VII. Broadly, CSR relates to the companies running their business in such a way as produces overall positive impact on the society.

Social Responsibility though the areas in which the money could be spent have been specified in Schedule VII. Broadly, CSR relates to the companies running their business in such a way as produces overall positive impact on the society. In other words, it implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way. The Indian scheme is going ahead in this matter by providing spending of 2% of net profits mandatorily for the CSR and in cases of failures in compliance, explanation will have to be given by the directors at the Annual General Meeting.

In the United States, the term 'CSR' has been described with a shade of philanthropy. There, besides paying taxes, companies donate a certain share of profits to charitable causes – an act of giving as a reciprocity for receiving something. There cannot be any rigidity in the outlook in this regard. In different countries, there could be different parameters, values and priorities and the companies generally consider this aspect in the background of their core business activities operating their businesses in a way that meet (or exceed) the ethical, legal, commercial and public expectations that the society has from the business. However, no country, appears to have prescribed statutorily any limit for expenditure which has to be mandatorily spent on CSR. India is, perhaps, the first country to proceed in this manner. Some companies despite their having profits, net worths, turnovers, as prescribed may find themselves ill-equipped to engage in broad societal goals. Further, there could be arguments whether the companies could be compelled to assume such roles which legitimately are to be undertaken by the Governments for which they are collecting taxes!

Analytical Appraisal of the Scheme – Impact of new law relating to CSR

India is one of the few countries that have provided by legislation



a scheme of the nature like CSR. Other countries are Sweden, Norway, Netherlands, Denmark & France. Mauritius too has a legislation that mandates spending of 2% of PAT (Profit After Tax) towards CSR. However, the law as enacted is not likely to have wide coverage. Media reports show that according to a study made by Ernst & Young, a Consulting firm, there are more than 13.29 lakh Companies registered with the Registrars of Companies in various parts of the country and out of these only 9 lakh companies are active and out of this, only 8000 companies (even less than 1% of active companies) are likely to be covered by the section 135 on the basis of criteria prescribed. Thus the impact of this provision on the total company population in the country is expected to be minimal.

Conflict between sections 135, 181 and 182

Section 135 relates to CSR. Section 181 allows a company to contribute to bona fide charitable and other funds to any extent with the condition that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceeds five per cent of its average net profits for three immediately preceding financial years. Section 182 contains prohibitions and restrictions regarding political contributions and starts with a *non-obstante* clause providing that a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party. The provisions of sub-sections (2) to (4) do not directly relate to the aspect being considered. These, *inter alia*, provide how other expenditure on the publication like a pamphlet, tract, brochure etc. for and on behalf of a political party too is to be considered as political contribution. The contribution covered by this provision shall have to be disclosed in the profit and loss account for the financial year for which the contribution relates along with the name(s) of recipient party/parties and sub-section(4) provides punishment of fine and prosecution in case of non-compliance of the provisions of section 182.

Section 183 gives power to Board of a Company and other persons exercising the power of Board to make contributions to National Defence Fund or any other Fund approved by the Central Government for the Defence of the Country to any extent notwithstanding anything contained in sections 180, 181 and 182. Thus a company has power to contribute to various multi funds for which provisions are contained in the Act. In some situations even 100% income can be contributed to the Funds.

The issue that needs consideration is whether the above mentioned provisions are to operate independently? For example, if contributions are made under section 181 for areas covered by section 135, will such contributions be treated to be compliance of section 135 also; whether political contributions can be said to come under the head 'social business projects' mentioned in schedule VII and hence such payment will be considered as



compliance to CSR obligations and whether CSR expenditure should qualify for deduction under the Income Tax Act?

The Income-tax Act, 1961 (Act) provides tax benefits for expenditure on charitable activities vide sections 11 to 13 and section 10(23C). Should such expenditure by Companies on CSR be made eligible to tax benefits also needs consideration? If so provided, this will encourage expenditure on CSR activities. Such expenditure should normally be admissible under section 37(1) of the Act being expenditure wholly and exclusively incurred for business. A clarification from the CBDT will avoid undue litigation in the matter. Incidentally, contributions to Prime Ministers Relief Fund will get double benefit. These will be entitled to 100% deduction in income tax as well as will be counted against discharge of obligation for CSR under section 135 of the new Act. There are few other institutions which deserve such double benefit if the expenditure on CSR aspects is not considered admissible for deduction under section 37(1) of the IT Act.

Spending on CSR

The only requirement of the first proviso to section 135(5) is that the Company shall give preference to the local area and areas around it where it operates for spending the CSR amount. Of course this is recommendatory and not mandatory but broader perspective in the interest of the country as a whole would get compromised by such requirement.

Relevancy with business

Whether CSR expenditure should have relevance with the business of the Company is an important question. The familiarity with the business will serve twin objectives of bringing more business to the company along with promoting broader social development. The CSR must grow with the growth of the company. This view is countered with the view that the companies need to look beyond their business interests on the ground that



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if they aspire to be national and global their reach in the social sector also must be national and global.

Parity with political contributions

Section 183 provides for political contributions up to 7.5% of net profit (increased from existing limit of 5%). In view of this, limiting expenditure for CSR to 2% only seems unfair.

CSR expenses relating to employment

The expression 'employment enhancing vocational skills' in Schedule (VI) needs to be expanded to cover expenditure on employees welfare and efficiency increasing activities also.

Clarity about unspent amount

For how long the unspent accumulated funds for which explanations have been given in the published accounts of the Companies can remain unspent has not been provided. Some time limit for this needs to be prescribed and if the same is not adhered to, the Company and its Directors should be made liable to penal action as provided in section 134(8) of the new Act. Companies should not get away from CSR expenditure merely by giving an explanation for non-spending. The specified unspent amounts should be carried forward and spent in later years within the period to be prescribed unless the reasons given are such that making expenditure is impossible or put the Company to grave consequences.

New head in Schedule VII

A new head needs to be added to Schedule VII of the new Act to provide encouragement to community programmes with a view to improve the quality of community life and to promote the company's long term business strategies and goals.

The phrase 'social business projects' is ambiguous and needs to be elaborated.

CSR needs to be extended to cover philanthropy and charity also.

CSR activities need to be pooled for undertaking major projects in a group. This, if done, would bring in more funds and expertise and may result in better results.

Promotion of education

Promotion of education is one head on which CSR expenditure can be spent. However, for this purpose, 'education' needs to be considered in a broader way and not narrowly as done by the apex Court in the case of *Sole Trustee Loka Shikshana Trust v. CIT* (1975) 101 ITR 234(SC) where education has been described as the process of training and developing the knowledge, skill mind and character of students by normal schooling. On the basis of this decision, the IT authorities are disallowing income tax exemption to Institutions like Institute of Chartered Accountants of India, Ahmedabad Management Institute etc. holding that such institutions are not involved in 'normal education' activities. It also needs to be clarified whether under CSR capital expenditure can also be incurred (for example expenditure incurred in constructing a school building) within the prescribed limit of 2%?

Promoters/Directors family or other trusts

It needs to be clarified whether contributions to promoters/Directors family trusts or trusts in which they are interested will be considered as compliance to CSR obligation if such trusts are promoting the areas mentioned in Schedule VII.

Views and Criticism of the scheme

The CSR concept in the Act has not been universally welcomed. There has been criticism of the proposals by those who believe that welfare of the people is the responsibility of the Government for which it collects taxes and hence this extra burden on the companies is unjustified. Then there is also a view that why only companies should be made to discharge social responsibility! Why not other sectors like Firms, Individuals, Association of Persons etc. who are being assessed to tax. Business Lines dated 12 August 2013 has expressed the following views regarding CSR in its editorial page: "But there are spoilers as well, especially the requirement for companies to compulsorily set aside 2 per cent of their earnings for corporate social responsibility (CSR) activities. Companies are ultimately accountable to shareholders, while philanthropy is something for promoters to pursue in their individual capacities. A mining firm may choose to open schools or hospitals for tribals in its area of operations. Corporates value the goodwill these create, which may even be in their shareholders' long-term interest. The problem from CSR being imposed – by a government increasingly abdicating its own public welfare delivery functions rather than leaving it to the judgement of companies. Enlightened managements know it isn't worth doing business in places where the locals don't want them. One hopes the 'rules' under the new





To give incentive to companies to excel in the area of CSR, companies should be given 'CSR credits' on the lines of Carbon credits on the basis of criteria fixed in advance for giving such credits on priority basis namely giving more credits to the areas that are more important from national perspective and less to others in priority order.

law provide enough leeway to make CSR a true value proposition for firms".

In an interview published in "The Economic Times" of 14th August, 2013 the Minister of State for Corporate Affairs has expressed the following views regarding CSR: "It is a new idea, a new beginning. India is perhaps the first country in the world to have CSR in a statute and it has been well received by corporate India. There have been problems in manufacturing and in mining sectors with regard to the trust deficient between the people who live in tribal areas and the large companies which operate there. Paying taxes to the federal structure is part of the law of the land, but CSR initiative can be used to win the endearment of people. You are also adding to your potential talent pool by contributing to quality education and healthcare. Religious donation can't be considered as CSR." Regarding funding religious trusts through CSR, the Minister stated that he was against any religion's donation to be counted as part of CSR but the final decision rests with the rule committee and I will not like to interfere with their work." On some other aspects, the Minister observed: "I feel CSR is an avenue for companies to earn that 'goodwill' which sponsorships can't. Corporate houses spend so much money on media to get eyeballs. The kind of impact CSR can create in the hearts and minds of people is phenomenal. To improve the investment climate, to create better investment opportunities we need that harmonization. So CSR has many facets to it, besides this 2% contribution. It's not just the quantum of money, but quality of work. I don't want to straightjacket a company but it shouldn't be done with an idea to get commercial benefits out of it."

Concluding comments

Being a new concept in the context of companies legislation, there could be varied views regarding CSR. It is a part of Companies responsibility towards the society and these being the organized sector in the business arena, there should be no grudge in undertaking it. Actually, companies are contributing to various areas concerning society in a disjointed way. What they presently do in an unorganized way and in some cases for benefit of some particular sections in some cases will now ensure for public good. Further, there will be advantage to the companies contributing towards CSR activities because it will enhance their images as socially responsible entities which understand the need of the day towards the society be it towards a green revolution or towards disabled persons or persons with terminal illnesses who cannot afford the cost of treatment. It

would ensure better compliance, if each company keeping in view its area of activity declares its CSR policy each year as Annexure to Directors reports in clear terms relating to eradicating hunger and poverty, promotion of education, women empowerment, reduction in child mortality and improving national health, environmental sustainability, enhancement, employment and vocational skills or contributions to Central or State Government set up funds including the Prime Ministers National Relief Fund or in regard to any other area prescribed by the Government from time to time.

To give incentive to companies to excel in the area of CSR, companies should be given 'CSR credits' on the lines of Carbon credits on the basis of criteria fixed in advance for giving such credits on priority basis namely giving more credits to the areas that are more important from national perspective and less to others in priority order. These credits should not be transferable or saleable like carbon credits. These should count for National Awards to be announced by the Ministry of Corporate Affairs annually in functions to be organized at different places on yearly basis. Ten companies should be given award each year on the basis of such credits. The awards should be in terms of trophies.

Considering the fact that on the basis of prescribed criteria, the coverage of CSR is narrow (only 8000 companies are expected to be covered), it needs to be enlarged by suitably reducing the monetary limits. This will give wider participation, which will be good in the longer run.

There should be specific audit of expenditure on CSR during annual statutory audits of the Companies regarding compliance to CSR obligations. The ICAI should amend the auditing report format on companies to include a special mention about the CSR in the Auditor's report. This would avoid superficial approaches to compliance of CSR provisions in the Act namely, Section 135.

To make the scheme meaningful, a Committee of in-house officers of the Ministry of Corporate Affairs may be formed to examine the various aspects relating to functioning of the scheme immediately which can examine the relevant issues and frame appropriate guidelines for the implementation of the CSR scheme, which is apparently well thought of and should be welcome. This Committee's work should not be confined to only making rules concerning the new areas to be covered in terms of clause (x) of Schedule VII of the new Act.



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Inspection, Investigation, Serious Fraud Investigation Office

➤ In the context of recent corporate frauds like that of Satyam, the company law provisions dealing with inspection and investigation of the affairs of companies have been strengthened under the new law. The Serious Fraud Investigation Office has also been vested with wider powers to prevent recurrence of Satyam like incidents.

Chapter XIV of the Companies Act, 2013 deals with inspection, through Sections 206 to 209 and with investigation, through Sections 210 to 229.

Section 206 specifies the power of the Registrar to call for information and inspect books and conduct inquiries.

A reading of the provisions of Section 206 of the new Act shows that there has been a mix of disconnected concepts and that it does not deal with inspection of the records of a company, pure and simple, like section 209A of the 1956 Act. More than that some of the terms are vague and could expose the company to vexatious litigation. Section 209A provided only for inspection of the books of account and other books and papers of a company.

Section 206(1) provides for inspection by the Registrar following from his scrutiny of any document filed by a company or information received by him. The section does not indicate the *locus standi* of the person, *vis-a-vis* the company, giving any information to the Registrar that would trigger the process of inspection.

The officers concerned are required to furnish information or explanation to the 'best of their knowledge and power'. Information obtained under this qualification would have little value. Also, one cannot envisage a situation when those occupying positions in the

company are not in a position to give the necessary information or explanation to the Registrar on the records with the company and there would be a need to require a past employee to give that information or explanation. What would be the value of the explanation given by a past employee to 'the best of his knowledge' on a past transaction, assuming that he is available and willing to cooperate?

The provision entitling the Registrar to issue a further notice on the ground that 'an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required could be challenged on the ground that the section does not define 'an unsatisfactory state of affairs in the company', besides the basis being subjective and much too wide.

Similarly, the provision authorizing the Registrar to carry out an inquiry if he is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, is also open to attack on the ground that the discretion vested in the Registrar is unfettered, as the grounds on which he may act are not specific at all.

What is the *locus standi* of the person who may make a representation



» Where the Central Government has ordered an investigation by the SFIO, no other investigating agency of Central Government or any State Government shall proceed with investigation in respect of any offence under this Act and if any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to the SFIO.

to the Registrar as stated above and what are the records which the informant is bound to file with the Registrar and what responsibility he is asked to undertake to substantiate his allegations, for example security for costs, when he is on the point of initiating an inquiry by the Registrar. Unless, he is a shareholder or a debenture holder or creditor what would be his stake in making such a sweeping complaint against the company and on what records enjoining the Registrar to start a speculative inquiry? The fact that the company would be given a reasonable opportunity of being heard is no comfort as the provision confers a right on one who has no interest in the company. Sub-section (4) is a gateway to frivolous and vexatious harassment of a company by outsiders without their being held accountable for their acts.

What are the circumstances in which the Central Government could itself appoint an inspector, when there is a Registrar is not clear. The second proviso is perplexing. Who is the authority to determine that the business of the company has been or is being carried on for a fraudulent or unlawful purpose? It is a lacunae in a section dealing only with inspection. That the business of the company is carried on in this manner is a crucial decision that will have to be determined by a court. Sub-section (6) is general provision empowering the Central Government to authorize, having regard to the circumstances, by general or special order, any statutory authority to carry out the inspection of books of account of a company or class of companies. Sub-section (7) providing for the punishment for failure to furnish any information or explanation or produce any document is more severe than that provided under section 209A.

Section 207(1) casts a duty on the officers and employees of the company which is the subject of an inspection to submit the necessary documents, information and assistance to the Registrar or an inspector, if one has been appointed; sub-section (2) deals with making of copies, of the documents and marking any of them, during inspection, for record purposes; sub-section (3) is similar to section 209A(5) vesting in the Registrar or the inspector appointed, the powers of a civil court under the Code of Civil Procedure, 1908; sub-section (4) provides for the penalty for disobeying any direction

of the Registrar or the inspector and the vacation of office of a director convicted of an offence under this section, from the date of his conviction.

Section 208: Registrar or the inspector shall submit a report to the Central Government, after his inspection and inquiry, along with any relevant document. He may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary, giving his reasons in support.

It is not clear when such a further investigation is likely to be ordered on the company and on what matters and whether the company would at that stage be informed of the grounds for making that recommendation.

Section 209 provides for search and seizure, by the Registrar or the inspector, of books and papers of a company, or those relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary. He may initiate action, after obtaining an order from the Special Court, upon information in his possession or otherwise, when he has reasonable ground to believe that any of the above books or papers are likely to be destroyed, mutilated, altered, falsified or secreted. The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, *mutatis mutandis*, to every search and seizure made under this section.

It is not clear as to how prior information will reach the Registrar or the inspector when the company attempts to engage in such acts.

Investigation

Sections 210 to 229 deal with investigation into the affairs of a company. We may consider the substance of some of the major provisions, leaving out those dealing only with procedure.

Section 210 empowers the Central Government to order an investigation into the affairs of a company in the following cases: (i) on the receipt of a report of the Registrar or inspector under section 208; (ii) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or (iii) in public interest. But the Central Government is bound to order an investigation into the affairs of a company if an order has been passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated. The Central Government, while ordering an investigation may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as it may direct.

Serious Fraud Investigation Office (SFIO)

The Serious Fraud Investigation Office was set up by the Government of India under the Ministry of Corporate Affairs by a resolution dated 2.7.2003. The office was set up to investigate corporate frauds of serious and complex nature. SFIO is a multi-disciplinary investigating



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agency, where experts from the banking sector, capital market, company law, law, forensic audit, taxation, information technology etc. worked together to unravel a corporate fraud. SFIO conducted its investigation under Sections 235 to 247 of the 1956 Act. It became the main investigating agency to investigate affairs of companies where *prima facie* wrong doings are noticed under Sections 235, 236 and 237 of the Act. SFIO was also asked by the Courts to also undertake investigations in pursuance of PILs etc.¹

SFIO Report 2009

On April 29, 2009, the Expert Committee headed by Shri Vepa Kamesam submitted its Report on issues concerning the Serious Fraud Investigation Office.² The Committee was constituted by the Ministry of Corporate Affairs to examine various issues relating to SFIO and to suggest statutory, administrative and organizational changes for improving the effectiveness and to ensure efficient discharge of duties of SFIO. Some of its major recommendations were: (i) an exclusive jurisdiction may be carved out for corporate frauds under the Companies Act, 1956, irrespective of whether it has features of an offence under the IPC or not; (ii) provision of an adequate statutory means to control corporate fraud through an appropriate investigative, enforcement and penalty structure; (iii) strengthen the investigative powers of SFIO and to accord statutory recognition to SFIO in the Companies Act itself; (iv) strengthen the powers of the inspectors appointed under the Companies Act, 1956 to make them more effective in dealing with frauds relating to companies; (v) special legislation may be considered, long term, to deal with fraud in a broad sense and to set up an agency to investigate fraud; (vi) increasing the level of punishment for failure to furnish information to the investigating inspector; similarly the penalty for furnishing false information or withholding relevant information under section 628 is also to be enhanced; (vii) the offence under section 68 (Penalty for fraudulently inducing persons

to invest money) should be made non-compoundable with imprisonment and monetary penalty linked with the quantum of investment so procured.

Establishment of the SFIO

As stated earlier, Section 211 provides for the establishment of Serious Fraud Investigation Office, through a notification by the Central Government, to investigate frauds relating to a company. Till this notification is issued, the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section. It also provides for the staffing of the SFIO, their experience and terms and conditions of service.

Initiation of the process by the Central Government of investigation by the SFIO

Section 212: The Central Government may also order an investigation of the affairs of a company by the Serious Fraud Investigation Office in the following cases: where there is a report of the Registrar or inspector under Section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest; or on request from any Department of the Central Government or a State Government.

Where the Central Government has ordered an investigation by the SFIO, no other investigating agency of Central Government or any State Government shall proceed with investigation in respect of any offence under this Act and if any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to the SFIO.



The SFIO shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order. The investigating officer shall have the power of the inspector set out under section 217. The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation. The section also provides that certain offences listed therein and which attract the punishment for fraud as provided in section 447, are cognizable and states the conditions when a person accused of any these offences may be released on bail.

On completion of the investigation, the SFIO shall submit the investigation report to the Central Government. On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the

1 Paragraphs 1.14.1 to 1.14.3 of 56th Annual Report on the Working & Administration of the Companies Act, 1956 year ended March 31, 2012.

2 The entire Report may be browsed at the website of the Ministry of Corporate Affairs www.mca.gov.in



company or any other person directly or indirectly connected with the affairs of the company. Any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

Investigation by an order of the Tribunal: Section 213

The Tribunal may order that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government if on an application made by (a) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or (b) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and offering evidence supporting their case that they have good reasons for seeking an order for conducting an investigation into the affairs of the company. The section also permits an application for an order of investigation from the Tribunal by one who is not a member as defined above. He may make an application to the Tribunal and the Tribunal may make an order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector appointed by the Central Government. For the Tribunal to conclude that an order for investigation can be made, it should be satisfied that there are circumstances suggesting that [a] the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose; [b] persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or [c] the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company. On such an order being passed by the Tribunal the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report in such manner as the Central Government may direct.

If it is proved after inspection 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, officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the

manner as provided in section 447.

What are the 'good reasons' for seeking an order of investigation by the Tribunal has not been indicated at all. It cannot be a subjective conjecture of the applicant which will expose the company to speculative litigation. Where the complaint is that the business of the company is conducted in a manner oppressive to any of its members, the applicant should be directed to pursue the remedies under Chapter XVI dealing with oppression and mismanagement. A company that may be charged as having been formed for any fraudulent or unlawful purpose cannot obtain registration at all. Information relating to calculation of the commission payable to a managing or other director, or the manager, of the company will be shown in the accounts placed before the company in general meeting and any clarificatory information may be obtained at the annual general meeting at which the directors and the statutory auditor would be available. This cannot be a ground for making an application to the Tribunal. The fact that this was a ground under the 1956 Act is no justification when reviewing legislation is made.

Sections 214 to 229 deal with related matters. They are: security for payment of costs and expenses of investigation; ineligibility of a firm, body corporate or association to be appointed as inspector; investigation of ownership of company; procedure, powers, etc., of inspectors; protection of employees during investigation; power of inspector to conduct investigation into affairs of related companies, etc.; seizure of documents by inspector; freezing of assets of company on inquiry and investigation; imposition of restrictions upon securities; inspector's report; actions to be taken in pursuance of inspector's report; expenses of investigation; voluntary winding up of company, etc., not to stop investigation proceedings; legal advisers and bankers not to disclose certain information; investigation, etc., of foreign companies; penalty for furnishing false statement, mutilation, destruction of documents.

Investigation and punishment for corporate crime

What is the way forward?

In India, the record of punishment of those who swindle the money of investors, is poor. In recent times, the case of Satyam Computers has been shown to be a surprising challenge to those enforcing legislation relating to companies. The fraud of the promoter came to be known only on his confession and not on any investigation. The sad part is that the offenders in that case have not been punished till now. As is known to everyone, including those defrauding other people of their investments, legislation is not enough. Special expertise in investigating crimes such as insider trading, investment through the channels of money-laundering and other devious methods which corrupt the integrity of the capital market is necessary, because communications relating to these offences are not put in writing. Unless disposal of cases of these crimes is quick and the punishment is severely dissuasive, the perpetrators will take advantage of the deficiencies in the system of enforcement. CS



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The Companies Act, 2013 – Stringent Disclosures in the Board's Report, Company's Annual Return and Certification by the Company Secretary

➤ In this article, an attempt has been made by the author to highlight some of the new stringent and onerous provisions relating to the Company Board's functioning and also the importance of added responsibility of company secretaries more particularly with regard to the disclosure requirements.

INTRODUCTION

The Parliament has recently passed the Companies Bill, 2012 which has been assented as the Companies Act, 2013. The Act, 2013 will replace the 57 years old Companies Act, 1956. Apart from introducing many definition clauses relating to the Duties of the Directors and the additional disclosures of non-financial information envisaged in the Annual Return ('AR') as compared to the existing format, the Act, 2013 also defines the duties of the Company Secretary ('CS') with regard to compliance management. As against 658 sections in the existing Companies Act, 1956, the Act, 2013 has 470 Sections and can be viewed as less voluminous. The Central Government has been empowered to prescribe rules in respect of a large number of provisions of the new Act.

Many new provisions have been incorporated and new definitions have been added, which is a welcome move for good corporate governance and it is hoped that this will simplify the task of the

professionals associated with the corporate sector and clarify many doubts and confusions resulting from complications in implementing the provisions of Companies Act, 1956. The new Act provides for appointment of 'Key Managerial Personnel' ('KMP') by the companies and defines who they are. Considering the significant role played by the company secretaries, they have been included in the definition of KMP. The new Act mandates the appointment of Independent Directors in the companies and defines their duties. As a welcome move, the Act, 2013 also prescribes appointment of woman directors in certain companies. Class action suits against companies and the concept of 'Corporate Social Responsibility' ('CSR') have been included.

Even though the directors on the Boards of companies, and the corporate professionals associated with companies ought to familiarise with the changed provisions what is important to note is that while the corporate sector has been freed from the shackles of excessive rules and regulations, and it seems that the Legislature has assumed that the Indian corporate sector has, at long last, matured and therefore the company directors and the



associated corporate professionals have been entrusted with stringent responsibilities and they will be held accountable for lapses in compliance. The Companies Act, 2013 not only attempts to ensure the compliance with the provisions of the Companies Act by the companies, but it also wants the Board of Directors ('BOD') and the certifying Company Secretary ('CS') to ensure that the provisions of all other applicable laws have been complied with. This is a stringent and onerous responsibility on the directors as well as on the CS and time only tells how this part of the requirement has been scrupulously followed by the companies. This will strengthen dependency on the in-house professionals as also the outside experts.

In this article, an attempt has been made to highlight some of the changed stringent and onerous provisions relating to the Company Board's functioning and also the importance of added responsibility of the CS, more particularly with regard to the disclosure requirements.

Powers of the Board

Section 179 of the Act, 2013 stipulates, *inter-alia*, that, subject to the provisions of the Memorandum or Articles of Association ('AA') of a company and subject to specific provisions of the Act, including the regulations made by the company in general meeting, the BOD of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. The Board will approve the financial statements and the BOD's report [Section 179 (3g)]. Restrictions on the powers of the Board have been enumerated in Section 180. As per Section 184 directors have to give a declaration of their interest in contracts. However, an important change is that exemption from this clause's applicability in the case of a private limited company, which was available earlier, has been done away with and the new provision stipulates that an interested director cannot vote or take part in the discussion relating to such contract or matter in which he is interested.

Loans to Directors

With regard to giving of loans to directors, Section 185, *inter-alia*, stipulates that without passing of a special resolution, no company, be it public or private, can give any loan or provide security or guarantee in connection with a loan to a director or any other person in whom he is interested. Contraventions will entail payment of huge fine on the part of the company concerned, as well as for the director concerned who will be liable to pay hefty fine or liable to imprisonment, extendable upto 6 months or with both.

Investment by companies

At long last, Section 186, *inter-alia*, curbs the misuse of funds invested by a company in another company. Section 186 provides that a company, unless otherwise prescribed, shall make investment through not more than 2 layers of investment companies. Limits on loan or giving of guarantee have been

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provided in section 186(2) and covers loans not only to a body corporate but also to a person. The company shall disclose to members in the Financial Statement the full particulars of the loans given, investments made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security [Section 186(4)]. No resolution sanctioning of loan or guarantee or security shall be passed, unless all directors present in the meeting vote in its favour and with the approval of financial institutions in certain cases [Section 186(5)]. No loan shall be given at a rate of interest lower than the prevailing rate of interest. Section 186(7)]. Contraventions will entail imposing fines on the company concerned and every officer responsible for such non-compliance will be not only liable to pay a hefty fine, but with imprisonment extendable upto 2 years [Section 186(13)].

Restrictions on related party transactions

Section 188 prescribes new restrictions on 'related party transactions'. Section 2(76) of the new Act defines 'related party' with reference to a company to mean:

- i) A director or his relative;
- ii) A KMP or his relative;
- iii) A firm, in which director, manager or his relative is a partner;
- iv) A private company in which a director or manager is member or director;
- v) A public company in which a director or manager is a director or holds along with his relatives, more than 2 (two) percent of its paid up share capital;
- vi) Any body corporate whose BOD, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii) Any person on whose advice, directions or instructions, a



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director or manager is accustomed to act: provided that nothing in clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- viii) Any company which is – (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary;
- ix) Such other person as may be prescribed.

Section 2 (51) defines 'key managerial personnel', in relation to a Company as –

- (i) Chief Executive Officer (CEO) or the Managing Director ('MD') or the Manager;
- (ii) Company Secretary;
- (iii) Whole Time Director;
- (iv) Chief Financial Officer;
- (v) Such other officer as may be prescribed.

Section 188 (1) stipulates that "Except with the consent of the BOD, given by a resolution at a Board meeting and subject to such conditions as may be prescribed, no Company shall enter into any contract or arrangement with a Related Party with respect to –

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

It is provided that subject to regulations to be prescribed and passing of special resolution, contracts can be entered into. No member who is a 'Related Party' will be entitled to vote on the special resolution. The restrictions shall not apply to any transactions entered into by the Company in its ordinary course of business, other than transactions which are not on arm's length basis. The expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

Section 188(2) stipulates that every contract or arrangement entered into under sub-clause (1) shall be referred to in the BOD's Report to the shareholders along with the justification for entering into such contract or arrangement. The company may proceed against a director or against any other employee who has contravened the provisions of this clause for recovery of any loss sustained by it as a result of such contract or arrangements.

Section 188(5) provides that any Director or any other employee of the Company who had entered into or authorized the contract or



arrangement in violation of the provisions of this section shall be punishable with imprisonment for a term extendable upto 1 year or with fine which shall not be less than Rs.25,000/- but which may extend to Rs.5,00,000/- or with both; and in case of any other company, be punishable with fine ranging between Rs.25,000/- to Rs.5,00,000/-.

To prevent misuse of frittering away of company properties to interested persons, Section 192 stipulates that no Company shall enter into arrangements by which

- a) a Director of the Company or its holding, subsidiary or associate Company or a person connected with him, acquires or is to acquire assets for consideration other than cash from the Company; or
- b) the Company acquires or is to acquire assets for consideration other than cash, from such Director or person so connected unless prior approval for such arrangement is accorded by a resolution of the Company in general meeting and if the Director or connected person is a Director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

Prohibition of forward dealings in securities

Section 194 prohibits forward dealings in securities of Company by Director or key managerial personnel. However, a very important provision has been incorporated in Section 195 which prohibits "insider trading" of securities. This Section provides that no person including any Director or KMP of a Company shall enter into insider trading: Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law. For the purposes of this Section, "insider trading" means –

- (a) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any Director or KMP or any other officer of a Company either as principal



or agent, if such Director or KMP or any other officer of the Company is reasonably expected to have access to any non-public price sensitive information in respect of securities of a Company; or

- (b) an act of counselling about procuring or communicating directly or indirectly, any non-public, price-sensitive information to any person.

It has been clarified that "Price Sensitive Information" means, any information which relates directly or indirectly to a Company and which, if published, is likely to materially affect the price of securities of the Company. Contravention of the provisions of this section shall render a person punishable with imprisonment extendable upto 5 years or with fine ranging between Rs.5,00,000/- to Rs.25,00,00,000/- or thrice the amount of profits made out of the insider trading, whichever is higher or with both.

Key managerial personnel

Section 203 stipulates that every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time KMP :-

- i) MD, or CEO or Manager and in their absence, a whole-time director;
- ii) CS; and
- iii) CFO.

This section further stipulates that an individual shall not be appointed or re-appointed as Chairperson of the company in pursuance of the Articles of the company, as well as the MD or CEO of the company at the same time after the date of commencement of the new Act, unless the Articles of such company provides otherwise; or the company does not carry multiple businesses. Every whole-time KMP of a company shall be appointed by means of a resolution of the BOD containing terms and conditions of appointment, including remuneration. Since the CS has been assigned a very important role in corporate governance, it is felt that his appointment by means of a Board

Resolution will at least give him the courage to be forthright and not to buckle under pressure of the promoters/directors. The clause further stipulates that a whole-time KMP shall not hold office in more than one company, except in its subsidiary company at the same time. A KMP shall be entitled to be a director of any company, with the permission of the BOD. A company may appoint or employ a person as its MD, if he is the MD or manager of one, and of not more than one other company and such appointment or employment is made or approved by a Board resolution passed with the consent of all directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all directors then in India. Further, if the office of any whole-time KMP is vacated, the resulting vacancy shall be filled up by the BOD at a Board meeting within a period of six months from the date of such vacancy. Thus, the tendency to delay filling up of vacancies in the office of KMP has been curbed, which suited the whims and fancies of some selected persons. Contravention of these provisions will entail payment of hefty fines as stipulated and it is hoped that this will not affect smooth functioning of the company and its corporate governance norms.

Functions of company secretaries

Section 203 is a new provision and elaborates the functions of the company secretary (CS). It stipulates that the functions of a CS shall include –

- a) to report to the BOD about compliance with provisions of this Act i.e. the Companies Act, and the rules made thereunder and other laws applicable to the company;
- b) to ensure that the company complies with applicable secretarial standards;
- c) to discharge such other duties as may be prescribed.

Thus, the CS's duty is to ensure compliance not only with provisions of the Companies Act but also with other laws applicable to the company and will change his position from mere "CS" to that of a 'Compliance Officer'/'Corporate Governance Officer' which mandates such an appointee to be very well-versed not only with the newly added provisions, but also with compliance requirements of all other applicable laws. From corporate governance parlance and disclosure reporting purposes, this is definitely a very positive move. However, it is felt that the earlier accepted view that a CS is an expert only in the Companies Act, will no longer hold good as, now the CS will have to be well versed with other applicable laws. Since this forms part of his mandated duties, the CS may take help of different in-house/outside experts to enable him to fulfil his duties and obligations.

Duties of directors

Section 166 is a new provision which defines the duties of Directors. The said section stipulates that :-

- i) subject to provisions of the Act, a director of a company shall act in accordance with the AoA of the company;
- ii) a director of a company shall act in good faith in order to



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In terms of Section 92(2), the AR filed by a listed company, or by a company having such paid up capital and turnover as may be prescribed, shall be certified by a CS in practice in the prescribed form, stating that the AR discloses the facts correctly and adequately and that the company has complied with all provisions of this Act. An extract of the AR in such form as may be prescribed shall form part of the Board's Report.

promote the objects of the company for the benefit of members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

- iii) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgement;
- iv) A director of a company shall not involve in a situation in which he may have direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- v) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay to the company an amount equal to that gain;
- vi) A director of a company shall not assign his office and any assignment so made shall be void;
- vii) If a company director contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than Rs.1,00,000/-, but which may extend to Rs.5,00,000/-.
- viii) Another important provision in the new Act relates to preparation and filing of Annual Return ('AR'), corresponding to Sections 159, 160, 161 and 162 of the Companies Act, 1956.

One of the important duties of company directors is preparation of the AR and the prescribed Financial Statements. In this regard, Section 92 stipulates that every company shall prepare an AR in the prescribed form containing the following particulars as they stood on the close of the financial year regarding –(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; (b) its shares, debentures and other securities and shareholding pattern (c) its indebtedness; (d) its members and debenture-holders along with changes therein since the close of the previous financial years (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; (f) meeting of members or a class thereof, Board and its various committees along with attendance details; (g) remuneration of directors and KMP; (h) 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;(i) matters relating to certification of compliances, disclosures as may be prescribed;(j) details, as may be prescribed, in respect of shares

held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and(k) such other matters as may be prescribed, and the Statement is to be signed, *inter-alia*, by a director and the CS or where there is no CS, by a CS in practice.

In terms of Section 92(2), the AR filed by a listed company, or by a company having such paid up capital and turnover as may be prescribed, shall be certified by a CS in practice in the prescribed form, stating that the AR discloses the facts correctly and adequately and that the company has complied with all provisions of this Act. An extract of the AR in such form as may be prescribed shall form part of the Board's Report. [Section 92(3)].

Every company shall file with the Registrar of Companies a copy of the AR, within 60 days from the date on which the annual general meeting (AGM) is held. Where no AGM is held in any year, within 60 days from the date on which the AGM should have been held together with the statement specifying reasons for not holding AGM, with such fees or additional fees as may be prescribed, within the specified time.[Section 92(4)].

Failure of company to file its AR within specified period shall entail payment of fine between Rs.50,000/- to Rs.5,00,000/- and every defaulting officer of the company shall be punishable with imprisonment for a term extendable upto 6 months or with fine which shall not be less Rs.50,000/- to Rs.5,00,000/- or with both [Section92(5)].

If a CS in practice certifies the AR otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine ranging between Rs.50,000/ to Rs.5,00,000/-[Section 92(6)].

Section 134 stipulates that it shall be the duty of the BOD of a company to prepare, for disclosure to shareholders, a Financial Statement, including consolidated financial statement, if any, and such a statement shall be approved by the BOD before they are signed on behalf of the Board by, at least by the Chairperson of the company where he is authorized by the Board or by two directors, out of which one shall be the MD and the CEO, if he is a director in the company; the CFO and the CS of the company for submission to the Auditor for his report thereon. The Auditors' Report shall be attached to every financial statement. The new provision further stipulates that there shall be attached to



statements laid before a company in general meeting, a report by its BOD, which shall include –

- i) The extract of the AR as provided under sub-section(3) of Section 92;
- ii) Number of meetings of the Board;
- iii) Directors Responsibility Statement;
- iv) A statement on declaration given by Independent Directors under sub-section (6) of section 149;
- v) In case of a company covered under section 178(1), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
- vi) Explanation or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Auditor in his report; and by the CS in practice in his Secretarial Audit Report;
- vii) Particulars of loans, guarantees or investments under section 186;
- viii) Particulars of contracts or arrangements with related parties referred to in Section 188(1) in the prescribed form;
- ix) The state of the company's affairs –
 - a) The amounts, if any, which it proposes to carry to any reserves;
 - b) The amount, if any, which it recommends should be paid by way of dividend;
 - c) Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
 - d) The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner, as may be prescribed;
 - e) A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which, in the opinion of the BOD may threaten the existence of the company;
 - f) The details about the policy developed and implemented by the company on CSR initiatives taken during the year;
 - g) In case of a listed company and every other public company having such paid up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the BOD of its own performance and that of its Committees and individual directors;
 - h) Such other matters as may be prescribed.

The Directors' Responsibility Statement shall state that –

- i) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- ii) The directors had selected such accounting policies and

applied them consistently and made judgements and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

- iii) The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- iv) The directors had prepared the Annual Accounts on a going concern basis; and
- v) The directors, in case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. The explanation of 'internal financial controls' for the purpose of this section means policies and procedures adopted by the company for ensuring orderly and efficient conduct of its business, including adherence to company's policies, safeguarding of its assets, prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and timely preparation of reliable financial information;
- vi) The directors had devised proper systems to ensure compliance with provisions of all applicable laws and that such systems were adequate and operating effectively.

The BOD's report and any annexures thereto under sub-clause (3) shall be signed by its Chairperson, if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be the MD, or by the director where there is one director. A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of –

- a) Any notes annexed to or forming part of such financial statement;
- b) The Auditors' Report; and
- c) The Board's Report referred to in sub-clause (3).

If a company contravenes the provisions of this clause, the company shall be punishable with fine ranging between Rs.50,000/- to Rs.25,00,000/- and every defaulting officer of the company shall be punishable with imprisonment for a term extendable upto 3 years or with fine, ranging between Rs.50,000/- to Rs.5,00,000/- or with both.

CONCLUSION

The Companies Act, 2013 prescribes onerous duties and responsibilities for company director and also for the CS. Contraventions will be visited with penalty of fine as well as imprisonment. Thus, it is necessary to know the changed provisions of the law, and it is also necessary to constantly update such knowledge. To avoid prosecutions resulting from unintended lapses, persons associated with the company management need to be alert, updated and ready to learn more.

CS



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The Companies Act, 2013 – Accounts and Audit

➤ Preparation of accounts and audit thereof are important compliances mandated by the Companies Act and these involve elaborate compliances. The Companies Act, 2013 which ushers in an altogether new company law regime in India has made substantial changes in the law relating to accounts and audit. This article comprehensively describes the new provisions.

INTRODUCTION

The law relating to administration of Companies, dates back to 1866 when the Indian Companies Act was enacted. Thereafter, the law was re-enacted with changes in 1882, 1913 and 1956. Since then, about fifty six years have passed and in the meanwhile vast changes had taken place in the national and international economic environment and growth of economy of the country as well as the world, especially in Europe and USA. Changes have taken place in the laws governing the Corporate Sector, whether engaged in business or commerce or engaged in social activities. The Central Government took the initiative to thoroughly revamp the Companies Act in the year 2004. This exercise has now fructified. A new Act called the Companies Act, 2013 at last has emerged. The main purpose seems to be to meet with the changed national and international economic environment and to further accelerate the growth and expansion of the economy with accent on more accountability and transparency.

This article intends to limit its examination to the Chapters of the Companies Act, 2013 relating to 'Accounts and Audit. These are

dealt with in Chapter IX on 'Accounts of Companies' consisting of sections 128 to 138 and Chapter X dealing with 'Audit and Auditors' consisting of sections 139 to 148. In Companies Act, 1956 these are dealt with in Sections 209 to 223 under the heading 'Accounts' and Sections 204 to 233B under the head 'Audit'. No attempt is therefore, made in this article to repeat the possible alternatives that could have been chosen but to confine to explain the exact implications of the amendment and how best these could be complied with. *However, where ambiguities still persist, these are brought forth so that appropriate clarifications could be provided by the Authorities concerned. In the process, the additions, modifications and omissions, if any, are dealt with since the readers would be already aware of the existing provisions concerning 'Accounts and Audit'.*

Changes in the definitions

- (i) The definition of 'Associate Company' perhaps carries the same meaning as in Accounting Standard AS 23 but also includes 'Joint Venture'.
- (ii) Body corporate : Though section 1(4) of the new Act states that the new Companies Act is applicable to those bodies Corporate incorporated by other Acts, the definition of body corporate excludes those body corporates which are notified to be excluded from the application of this Act
- (iii) 'Books and Paper' or 'Books of Account' or 'Document' now

* The views expressed in this article are those of the Author and readers are advised to consult the provisions of the new legislation before taking any action.



➤ There is a rider as to 'the time period' for which the Books of Account are to be kept which is laid down to be 8 years in the normal course. The Books of Account consist of the whole gamut of records pertaining to the transactions undertaken by the Company. However, the Act states that Books of Account has to be kept for a longer period as may be directed by Central Government when an investigation has been ordered. It is not clear how a Company can keep the records for a long period when the Investigation takes place after the period of 8 years has already lapsed.

includes those matters included in the definition whether maintained manually or in electronic form.

- (iv) The new definition 'Branch Office' is 'any establishment described as such by the company'. However, the earlier definition contained in Section 2(9) of the Act of 1956 defined branch office also to include (a) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the Company OR (b) any establishment engaged in the production, processing or manufacture but does not include any establishment specified in any order made by the Central Government. *Therefore, it is not clear as to whether or not a Company is free to describe an establishment described in either (a) or (b) above as Branch. This perhaps could not be the intention.*
- (v) The definition of 'Company Secretary' is now restricted only to those who can be described as such under the Company Secretaries Act 1980. The flexibility of appointing others who had the prescribed qualification as earlier notified under the previous Act is no longer available.
- (vi) 'Cost Accountant' unlike the definition of Chartered Accountant under Section 2(17) *has not been defined as having a Certificate of practice.*
- (vii) The definition of the word 'deposit' is now linked with the definition contained in the RBI Guidelines regarding 'deposits'.
- (viii) The definition of Financial Statement, would now include besides the Balance Sheet, Profit and Loss Account or Income and Expenditure Account also a Cash Flow Statement as well as any explanatory notes attached to any of the items included in the definition of Financial Statement. *This would mean that even if Stock Exchange Regulations may not be applicable to a Company, it would still be obligatory to prepare a cash flow statement as part of Financial Statement.*
- (ix) Internal Financial control means the policies and procedures adopted by the Company for ensuring the *orderly and efficient*



conduct of its business including adherence to Company's policies, safeguarding the assets the prevention and detection of frauds and errors, accuracy and completeness of the accounting records and timely preparation of financial statements.

- (x) Now, a 'financial year' could only be from 1st April to 31st March of a year. The choice to adopt any other cycle of a year is not permissible. Therefore, a Company registered in the middle of the year i.e. 1st April to 31st March has to close its accounts at the end of 31st March, however short the intervening period be.
- (xi) A foreign Company would be deemed to be an Indian Company for the limited purpose of the new Act even if it does not have a place of business in India nor conduct its business through an agent in India but through electronic mode. So for purpose of compliance with accounts and audit foreign Companies have to prepare a set of Financial Statements incorporating the transactions they have conducted in India and file a return to the Registrar of Companies. They will have also to appoint a Chartered Accountant as defined in the new Act to conduct an audit of the Financial Statements. *Such an Auditor will have access to all the records, books and accounts pertaining to the transactions conducted in India.*
- (xii) The term 'Free reserves' has been clarified as to what it would constitute. This clarification is necessitated since dividends can be declared out of 'Free Reserves' only. *Thus the amounts involved in the following items will not be defined to be free reserves even if the amounts are shown as reserves or surplus or in the Equity portion in the Balance Sheet (a) unrealized gains, notional gains or revaluation of assets and (b) any amount involved in fair valuation of assets and liabilities of the Company.*
- (xiii) The definition 'Net Worth' is stated to include the aggregate value of the paid up share capital and all reserves created out of profits but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.



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In the case of a Company which is neither a listed Company nor falls under the class or classes of Companies, there is no obligation to rotate the Auditors at any time. Similarly the rotation of audit Partner within the Firm will also not be applicable.

However the definition does not exclude the amounts accounted for due to fair valuation of assets and liabilities are also unrealized whereas the reserves created out of revaluation has been excluded even though it is also not realized.

- (xiv) Related Party as listed in section 2(76) mostly centres round the definition contained in Accounting Standard 18 and may lead to either 'Control' or 'significant influence' on the concerned body. The definition contains a 'clause' for eventual 'other relationships' to be prescribed and includes a person on whose advice, directions, or instructions a Director or a manager is accustomed to Act.
- (xv) The definition of "Relative" includes, besides Husband and Wife and members of HUF, one person related to the other in such manner as may be prescribed, leaving the definition wide open. When notified, it will affect the definition of 'related party' also. The definition of relative in Accounting Standard 18 is, the spouse, son, daughter, brother, sister, father and mother in relation to the individual concerned. It is hoped that the notification would confine to this limited list of relatives.
- (xvi) The word 'remuneration' has now been defined to include all facilities treated as perquisites under the Income Tax Act, 1961. It means that any facility though could be expressed in monetary terms would not be regarded as remuneration if the same is not treated as a 'perquisite' under the Income Tax Act, 1961.

Accounts of Companies :Major changes

Chapter IX containing sections 128 to 138 deals with 'Accounts of the Companies' and Chapter X containing sections 139 to 148 deals with 'Audit and Auditors'. The salient features of additions, alterations, modifications and deletions are discussed in the following paragraphs.

There is a rider as to 'the time period' for which the Books of Account are to be kept which is laid down to be 8 years in the normal course. The Books of Account consist of the whole gamut of records pertaining to the transactions undertaken by the Company. *However, the Act states that Books of Account has to be kept for a longer period as may be directed by Central Government when an investigation has been ordered. It is not clear how a Company can keep the records for a long period when the Investigation takes place after the period of 8 years has already lapsed.*

The terminology for the annual accounts (vide section 129) has been collectively christened as Financial Statements consisting of

(a) Balance Sheet (b) Statement of Profit and loss Account and (c) Cash flow Statement. The format of the Financial Statement has been prescribed in Schedule III which replaces Schedule VI of the Companies Act 1956. By and large, the format is the same as was provided in the revised Schedule VI recently notified. However, a one person Company need not prepare cash flow statement. There was no requirement for the preparation of cash flow statement for the fact since neither the stock exchange nor Accounting Standard 3 in certain situations warranted drawing up of the cash flow statement. The exception provided in section 2(40) for dispensing with Cash flow statement is in respect of one person Company. *However, it is not certain as to whether the requirements of Accounting Standard 3 will supersede the provisions of this clause granting exception only to one person Company or the provisions of the Act and consequently, other bodies contemplated in AS 3 would also be exempt.*

Section 129 which concerns with the Financial Statement only states that the Financial Statements shall give a true and fair view of the state of affairs of the Company and comply with the Accounting Standards notified under section 133 provided that the items in such Financial Statements shall be in accordance with the accounting standards. *Therefore, it appears that the requirement of the law as contained in the new Act as opposed to the Accounting Standard being a subordinate law should prevail. When the Cash Flow Statement is required to be made, then such a statement should conform with the requirement of that accounting standard. When an exemption is provided, there would be no need with compliance of this standard.*

There is no provision for 'Individual Companies' to seek exemption from disclosure of the required particulars in the Financial Statement as provided for in Section 211(4) of the Act of 1956, but the Central Govt. can grant such exemption to a class or classes of Companies on an application made by such class or classes or by itself *suo motu*.

Besides consolidation of subsidiaries' Accounts, section 129 also requires that a separate statement containing the salient features of the Financial Statement of its subsidiaries in such form as may be prescribed should also be attached with the consolidated Financial Statement. *Schedule III contains the general instructions for the preparation of consolidated Financial Statements but does not prescribe any specific manner in which it is to be done. It is not clear as to whether compliance with the requirement of Accounting Standards on 'Consolidated Financial Statement i.e. AS 21' which has already been notified would suffice.*



The word 'subsidiary' for the limited purpose of consolidation would include Associate Company and Joint Venture. Perhaps even without this clarification, Accounting Standards 23 and 27 deal with Accounting for investment in Associates in consolidated Financial Statements and financial Reporting of interest in joint ventures.

The punishment for the failure to keep Books of Accounts, has been increased to 1 year imprisonment or fine of Rs. 50,000 to Rs. 5,00,000.

The requirement of attaching all the documents viz. Directors Report, Audited Accounts, Auditors Report and other Reports is not made compulsory though all these are to be placed before the annual general meeting and distributed to persons concerned.

As already stated Financial Statements should cover a period of 12 months beginning from 1st April to 31st March only and no other period.. There is no provision for a period beyond 31st March. *The definition clause of financial year i.e. section 2(41) permits an exception only to those Companies which are holding Companies or subsidiaries of a Company incorporated outside India and the laws of that country requires the Financial Statements to be consolidated on a date different from 31st March.* They can apply to the National Company Law Tribunal (to be established under Section 408) for adopting a different financial year. *The Tribunal may permit the request only if it is satisfied for the necessity to give such permission.*

It is not clear as to why this exemption has been given to the specified Companies since even now, when most of them follow the Calendar Year, they have to necessarily prepare the Financial Statement separately covering the period from 1st April to 31st March for the purpose of filing of their return under Income Tax Act since that Act affords no flexibility for the Companies to file the return covering a different period.

The Financial Statements have to be authenticated as per the modified law by (a) the Chairman of the Company if so authorized by the Board or (b) by two Directors out of which one should be the Managing Director, if any and (c) Chief Executive Officer, if any, if he is a Director in the Company AND (d) Chief Financial Officer, Company Secretary, if appointed.

The word 'if appointed' perhaps would be applicable to the 'Chief Executive Officer', 'Chief Financial Officer' and 'Company Secretary' since there is no provision for compulsory appointment of a 'Chief Executive Officer', a 'Financial Officer' and the appointment of a Company Secretary would be necessitated only under certain circumstances.

As regards reopening of either the Books of Account or the Financial Statement, *the new provision vide section 130 gives the option only when application is made to the Tribunal by either (a) the Central Government (b) the Income Tax Authorities (c) Securities Exchange Board (d) any other Statutory Regulatory Body or (e) any other person concerned and the 'tribunal' or 'a Court of Competent*

Jurisdiction' passes an order permitting such revision. Perhaps 'any other person concerned' may include the Company itself besides other interested persons. However, the cause for the application should be to reopen the Financial Statement or the Books of Account could relate only to the following reasons (a) the earlier year's accounts were prepared fraudulently or (b) the affairs of the Company were mismanaged.

However, section 131 deals with cases of *revision* of Financial Statement for the limited purpose of complying with the requirement of section 129 which deals with preparation of Financial Statement and section 134 which deals with the contents, authentication and various other documents that are required to be prepared and presented to the shareholders of the accounts earlier drawn were defective and did not fully comply with the requirements after having obtained approval from the Tribunal. The corrections should however be limited only to rectify the omissions to comply with the relevant Sections and should not be used to corrections unrelated.

As regards rectification of accounts due to mistake (not arising out of fraud or mismanagement) for the limited purpose of complying with the technical requirements of the laws like Income Tax Act etc. perhaps it may still be possible to rectify the same (without obtaining the approval of the Tribunal) as was permitted by the Department of the Company Affairs by its Circular No. 1/2003 dated 13.01.2003 bearing the number 17/79/2002 (LV).

Changes in the manner of appointment of Auditors

Chapter X of the Act deals with matters connected with the Auditors as regards their qualification, disqualification, their tenure of office, the manner of their appointment, removal, remuneration, powers, duties, and punishment in cases of failure to perform their duties. The Chapter also deals with audit of 'cost items' in respect of specified Companies.

Section 139 requires that in the case of listed Companies or companies belonging to such class or classes of Companies an Auditor whether an 'individual' or a 'Firm' (including Limited Liability Partnerships) when appointed or re-appointed can continue in office for five consecutive years provided his re-appointment is confirmed at each of the annual general meetings .

In the case of a firm, it can be appointed for a second term of five years following the procedure described above. In the case of an individual, the initial term is only for five years and he cannot be re-appointed in continuation of his first term without interruption. Both in the case of an individual and a firm the eligibility for reappointment is denied for the next five years.

The Central Government has assumed powers as to how exactly the retiring Auditors could be rotated. Perhaps it is the intention to place further restrictions on the re-appointment of the Auditors once



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they complete their first term of appointment. Specified companies have been given a period of three years to comply with the requirements of rotation. It is not clear as to whether existing Auditors, if they had already completed 5 years as Auditors continually, will have to be rotated or the period of rotation would start only from the commencement of the new Act. Similarly it is not clear whether the Auditor who at the commencement of the Act had not completed five consecutive years can continue for the balance period before being rotated. Keeping in view of the fact that rotation is contemplated only after an auditor has functioned as such for a period of five years, this should be possible.

When a Firm is appointed as Auditors, the members (of the listed Company or class or classes of Companies) in the Annual General Meeting either at the time of appointment or at the time of renewal, *can specify that the Partners, within the Firm along with the set of the team with him should be rotated after a certain interval or the audit should be conducted by more than one Auditor. The meaning of the words 'more than one Auditor' is not clear as to whether by more than one 'audit Partner' within the Firm or the audit should be conducted jointly by two or more Auditors whether individually or by Firms or a combination of both.*

The Act for the first time recognizes Limited Liability Partnership to be appointed as Auditors. *Only a Chartered Accountants in practice who is a Partner in an LLP can certify the Audit Report.*

In the case of a Company which is neither a listed Company nor falls under the class or classes of Companies, there is no obligation to rotate the Auditors at any time. Similarly the rotation of audit Partner within the Firm will also not be applicable.

For non appointment of another Auditor in place of a retiring Auditor or moving a Resolution not to re-appoint the retiring Auditor before the expiry of his term a Special Resolution would be necessary.

For removing an Auditor before the expiry of his term in addition to the Special Resolution (instead of an Ordinary Resolution as contemplated by section 224 (7) of the 1956 Act) the previous approval of the Central Government would be required. *It is not understood as why the emphasis of obtaining a 'Special Resolution' of the members as opposed to 'Ordinary Resolution' would be necessary. This may perhaps be to give a higher security to the independence of Auditors as well as increased rights to minority shareholders.*

The Tribunal is authorized either suo motu or on an application from Central Government or the person concerned to direct the Company to change the Auditors if it is satisfied, that if he or it has Acted in a fraudulent manner or abetted or colluded in any fraud. Such an Auditor will not be eligible for appointment as Auditor for a period of 5 years. However, in the case of application from Central Government, the Tribunal can itself appoint another Auditor instead

of asking the Company to appoint another. It is not clear as to how long such an Auditor can continue.

The liability, as regards disability for being appointed as Auditor, would be applicable not only to the individual concerned but also to the Firm or every other Partner who Acted in collusion.

Vide Section 141 (3) the following, whether individual or Firm or a relative are disqualified for being appointed as auditors:

- (a) A person holding securities of the 'Company' exceeding the face value of Rs. 1000 or such sum as may be prescribed or indebted to the Company, or given guarantee or provided security to any person indebted by the Company. A relative (either of the individual or firm) also, can only hold securities or interest to the extent of Rs. 1000 of the face value [vide section 141 (d)].
- (b) A person who has any business relationship with the Company whether directly or indirectly i.e. through perhaps 'relative'. The Company for the purpose of (a) & (b) includes not only the Company for which he has been appointed as Auditor but would include its holding Company or any of its subsidiary or an Associate [vide section 141(c)].
- (c) A person convicted by a Court for a period of 10 years for any fraud [section 141 (h)].
- (d) If any other person or Firm or such other body in which either the individual or Firm is either a Partner or associated at the time of appointment is rendering consulting or other specified services as contemplated in section 144. Consequently the Auditor cannot by himself render such services to the Company [vide Section 141(4)].
- (e) A person who is an 'Officer' or 'Employee' of the Company or is a 'Partner' or is 'in the employment' of an 'Officer or Employee of the Company' or 'a relative of a Director' or 'himself employed as a Director or as a Key Management Personnel' in the Company [Section 141 (b), (c) & (f)].
- (f) A person who is in full time employment elsewhere or if a person or Partner of Firm holds appointment as Auditor in more than 20 Companies.
- (g) A body corporate other than an LLP.

As regards the disqualifications restricting the appointment of Auditors to 20 Companies concerned, Clause 141(g) does not make any distinction between Companies having paid up share capital of Rs. 25 lacs or more within the number of 20 nor between Public or Private Limited Companies. Therefore, the restrictions of 20 Companies will also include Private Companies at the time of appointment of Auditors.

The reference to a 'Partner' of a Firm in section 141(g) instead of 'Partner in a Firm' as is contained in Section 224 of the Companies Act 1956 perhaps means that the limit of 20 is in relation to each Partner of the Firm even though an appointment of a Firm as Auditor is made in the name of the 'Firm' and not in the name of



any individual Partner in the Firm.

Sub Section(1B) of Section 224 of the present Act of 1956 which limits the number of Companies for which the same Auditor could be appointed, states that the Section will come into force only on and from the financial year next following the commencement Companies (Amendment) Act 1974 and sub Section (c) states that for the purpose of the Company to comply with the provisions of sub section (1B) the Auditor concerned, within sixty days, to intimate as in which of the Companies the Auditors would like to continue or discontinue as Auditors. However there is no corresponding provision in section 141 or elsewhere in the Act since the limit of 20 Companies is now to include private Companies also.

According to section 141, an Auditor who holds such appointment as the Auditor either in a holding or a subsidiary of another subsidiary can be appointed to the other Companies connected in the above manner even if he is disqualified to be appointed as Auditor by virtue of section 141(3). Section 226 (4) of the 1956 Act contained a prohibition in such cases.

As regards the Auditors reporting responsibility is concerned (vide Section 143) practically these are more or less same except for that fact that certain additional matters, as may be prescribed, are also to be answered or Reported upon. These are

- (a) In respect of such class or description of Companies, as may be prescribed in consultation with National Financial Reporting Authority, a statement on such matters that are prescribed.
- (b) The Auditor is required to Report separately and immediately to the Central Government if he has reasons to believe that an offence involving a fraud is being or has been committed against the Company by officers or employees of the Company.

The word 'being' perhaps means that a fraud has already been

committed and is still continuing since an Auditor cannot conclude whether a 'fraud' is 'being committed' unless the Action has resulted in an actual fraud. He cannot, merely on suspension, report that a fraud is 'being' committed.

Section 147 mentions about the punishment for defaults committed by the Auditors as regards their responsibilities. The normal punishment is a fine between Rs. 25,000 and Rs. 5 lacs. However, if the Auditor is found to have knowingly or willingly with the intention to deceive the Company or its shareholders or its creditors or tax authorities committed any offence, the punishment will be imprisonment upto 1 year and fine between Rs. 1 lac and Rs. 25 lacs.

The provisions of this Section will apply *mutatis mutandis* equally to 'Cost Accountant' appointed under section 148 and to 'Company Secretary in practice' appointed under section 204. The word *mutatis mutandis* perhaps means 'in every aspect'. It is presumed that the Reporting responsibilities mentioned in this clause would be applicable with regard to matters they are supposed to examine under Section 148 or 204 as the case may be.

The Auditor is required to sign the Auditors Report. The 'adverse remarks' contained in the Auditors Report has to be read in the Annual General Meeting where he is now compulsorily to be present or be represented by another person who is also otherwise eligible to be appointed as Auditor in his individual capacity. A Chartered Accountant with a certificate of practice connected with the Firm can represent.

The Auditor, whether Chartered Accountant or Cost Accountant or a Practising Company Secretary will be liable under section 147 for contravening the provisions of sections 139 to 146 concerning 'Audit and Auditors' for punishment to a greater extent than contemplated under the Act of 1956 both in respect of (a) the Company or (b) its Officers or (c) the Auditors. In the case of any Officer of the Company imprisonment may extend to 1 year or a fine between Rs. 10,000 to Rs. 1 lac.

The special audit contemplated under Section 233A of the Act of 1956 has been omitted.

As regards Cost Audit the following changes have been brought about :

- (a) *No approval of the Central Government is required.* However in the case of Cost Audit of 'bodies created under special Act' the concerned body is to be consulted by the Central Government before ordering Cost Audit.
- (b) The words "production, processing, manufacturing or mining Activities" have been changed to "production of such goods or providing such services as may be notified". The word 'such' used against 'goods' and 'services' is all embracing and is therefore not likely to make any change in the existing situation.
- (c) No part of the Cost Audit Report is to be circulated to members.

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

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1. I, Shri/Ms./Dr./Prof, declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
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(Signature)

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
October, 2013	September 15, 2013	Companies Act, 2013	<ul style="list-style-type: none"> • One Person Company • Investor Protection • Class Actions • Gender Diversity • Whistle Blower Policy • Corporate Social Responsibility • Political Donations • Business Responsibility Reporting • Subordinate Legislation • Disgorgement • Auditing Standards • Secretarial Standards • Secretarial Audit • Disclosures and Transparency • E-governance • Shareholder Democracy • Role of CS
November, 2013	October 15, 2013	Transitioning from Company Secretary to Governance Professional	<ul style="list-style-type: none"> • 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
January, 2014	December 15, 2013	FEMA	<ul style="list-style-type: none"> • 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
March, 2014	February 15, 2014	Gloomier Side of Business	<ul style="list-style-type: none"> • 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

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:

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The Institute of Company Secretaries of India, 22, Institutional Area
Lodi Road, New Delhi – 110003.

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Corporate Laws

LW.79.09.2013

VISHNU MANGLANI & ANR v. TUFF ENERGY P. LTD [DEL]

CO.PET. 588/2012

R.V. Easwar, J.

[Decided on 02/08/2013]

Companies Act, 1956 - Sections 433&434 - winding up of company - lease of premises - non - payment of admitted rent by the respondent company - lease deed not registered - whether winding petition is maintainable - Held, yes.

Brief facts

The petitioner is the land lord and the respondent company was the tenant of the leased premises. The respondent-company had taken the premises for rent under a lease agreement dated 29th August, 2011 and the agreed rent was Rs.3,25,000/- per month exclusive of maintenance charges payable to M/s DLF Home Services Pvt. Ltd. and electricity charges. The maintenance charges were to be paid by the respondent-company directly to the maintenance agency.

The premises were occupied from 1st September, 2011 and prior inspection thereof had been taken by the respondent-company on 29th August, 2011. The respondent-company paid the monthly rent for seven months but thereafter did not pay. During the period from September, 2011 to October, 2012, the respondent company paid an amount of Rs.27,29,500/- as against the amount of Rs.47,74,000/- being the rent and maintenance charges for 14 months calculated at Rs.3,41,000/- per month (inclusive of electricity charges of Rs.16,000/- p.m). Thus an amount of Rs.20,44,500/- was due and payable by the respondent- company. This was exclusive of the electricity charges.

A notice under Section 433 read with Section 434 of the Act was sent by the petitioner in the aforesaid circumstances calling upon the respondent to pay the arrears within 21 days. The notice was duly served on the respondent, which is not disputed. No reply was received to the notice from the respondent. In the aforesaid

circumstances, the petitioner filed the present winding up petition.

Decision: Petition admitted.

Reason

On a careful consideration of the matter, I am of the view that there is no merit in the defence sought to be raised by the respondent-company. Even assuming for the sake of argument that the lease deed, being an unregistered document, cannot be looked into for the purpose of ascertaining the monthly rent, since the respondent-company never disputed the amount of rent payable for the premises and in fact even admitted the same in the counter, the petition must be held to be maintainable.

There was no denial in the reply to the statutory notice about the amount of the rent. Moreover in the counter, in paragraph 12, the respondent- company admitted that the total rent paid by it was Rs.27,29,500/- which conforms to the claim of the petitioner that the rent payable in respect of the premises was Rs.3,25,000/- per month. There is no denial in the counter, denying the averment in paragraph 6 of the petition that the rent in respect of the premises was fixed by the parties at Rs.3,25,000/- per month. Considering these facts, it is clear that even if the lease deed is not to be looked into, it has otherwise been proved that the rent for the premises was Rs.3,25,000/- per month.

The learned counsel for the respondent submitted that the premises were not properly maintained despite several intimations given to the landlord and it is inconceivable, and would also be unjust, that the respondent should be asked to pay for such premises the full rent of Rs.3,25,000/-. I am of the view that this is merely a counter blast to the claim made by the petitioner. Annexure-2 of the counter is an e-mail sent by the petitioner. On 15th August, 2012, the respondent wrote to the petitioners that the latter have been talking only about the payments due to them without caring for the facilities which the respondent has to get. In this e-mail it was specifically stated that the respondent had agreed to pay monthly rental of Rs.3,25,000/-. In reply, the petitioners sent an e-mail on 23rd August, 2012 regarding the progress made in respect of the repair works and asking the respondent not to withhold the rents any further. On 27th August, 2012 the respondent sent an e- mail to the petitioners attaching pictures of the living room where repairs to the AC were carried out and objecting to the non-completion of the work. To this, the petitioner stated that the entire wall will be painted once the same dries up and requested the respondent to wait for some more time. Simultaneously the maintenance agency was also alerted about the request of the respondent-company. It would thus appear that these are routine requests made by the tenant of the premises to the landlord for maintenance work which was also being attended to and in the very nature of things there is likely to be some time taken to set things right. The petitioners have not been negligent in attending to the requests of the respondent-company. In any case that is not a justification for not paying the agreed rent in time. These are not substantial issues or defences



which can successfully be put forth in answer to the present petition for winding up on the ground that the respondent-company is neglecting to pay the rental amounts. It may also be noted that the respondent, despite all the protests about repairs and maintenance not being properly carried out, vacated the property only in March, 2013 and that too only under orders of this Court.

The judgment of *Manju Bagai v. Magpie Retail Ltd.* 175 (2010) DLT 212 upon which reliance was placed by the learned counsel for the respondent deals with the question of the liability to pay liquidated damages in the form of rent for the unexpired portion of the lease period of three years. The main question examined in that case was whether the rent payable for the unexpired portion of the lease can be said to be liquidated damages. This was negated by the Court which held that it cannot be considered as liquidated damages. No doubt in paragraph 9 of the judgment, the other issue as to whether an unregistered lease deed can be relied upon by the petitioner was also considered and it was observed that it cannot be. This however is not an impediment to the petitioner in the present case since I have earlier found that even *de hors* the lease deed there is an admission by the respondent that it had agreed to pay a monthly rent of Rs.3,25,000/-

In view of the aforesaid discussion, there is no force in the defence sought to be put up on behalf of the respondent. The petition is admitted. CS

LW.80.09.2013

MAN INDUSTRIES (I) LIMITED v. JAGDISH CHANDRA JHAMAKLAL MANSUKHANI [BOM]

Appeal from Order (ST.) No. 19663 of 2013 Along with Civil Application (ST.) No. 19666 of 2013

Roshan Dalvi, J.
[Decided on 24/07/2013]

Companies Act, 1956 - Sections 169 – Holding of requisitioned EGM - can it be held after the lapse of 3 months - Held, No. whether provisions of the Limitation Act apply to meetings - Held, No.

Brief facts

The Appellant is a Limited company of which the Respondent is one of the Directors. The Appellant sued in the City Civil Court, Mumbai restraining the Respondent from holding an Extraordinary General Meeting (EGM) on 25th July, 2013 pursuant to notice dated 24th June, 2013 and for declaration that the requisition to convene that meeting dated 15th January, 2013 was invalid and also that if the EGM is held it be declared null and void. He took out the Notice of Motion restraining Respondent from holding the meeting. Its application for ad-interim injunction in the Notice of Motion has

come to be refused on 15th July, 2013 which order of the learned Judge City Civil Court, Goregaon, Dindoshi, Mumbai is challenged in this Appeal.

The Appellant has prayed for stay of the holding of the EGM on 25th July, 2013 or on any other subsequent date pursuant to the notice dated 24th June, 2013 based upon the requisition dated 15th January, 2013.

The Appellant / Plaintiff company is represented by its Director, one Ramesh Mansukhani who is the brother of the Respondent / Defendant. There have been number of disputes between the two brothers who essentially represent two groups in the Company. There have been two Company Petitions filed by the Respondent alleging oppression and mismanagement of the Company under section 397 - 398 of the Companies Act, 1956.

The Respondent initially requisitioned an EGM by his notice dated 15th January, 2013 served on company on 16th January, 2013. At that time the Petition against oppression and mismanagement was pending before the Company Law Board (CLB) on 24th January, 2013. The holding of the meeting under the requisition came to be stayed. The Petition came to be disposed of by CLB on 30th May, 2013. Under its final order the CLB allowed the Respondent to proceed with the EGM and directed the Appellant to hold it in accordance with law and vacated its interim stay.

The Appellant company in its plaint has set out *inter-alia* the reason that the three months' time has expired for not calling EGM under clause (i) of the grounds in paragraph 17 of the plaint.

Decision: Appeal allowed.

Reason

The law is the provision contained in Section 169 of the Companies Act, 1956 which is the complete code with regard to calling of EGM on requisitions.

The Respondent has contended that Appellant company did not convene the meeting as it was enjoined to do by 12 th June, 2013 and hence he issued notice on 24th June, 2013 to convene meeting on 25th July, 2013. Needless to state this would have to be in accordance with law.

About 9 days after the requisition was deposited, on 24th January, 2013, the CLB had stayed the holding of the EGM pending the hearing of the Petition. That order was not challenged. That order remained as an interim order pending the Petition and until its disposal on 30th May, 2013 when the order in that behalf under clause 'c' above came to be passed. It is contended on behalf of the Respondent that the time taken by the Court between 24th January, 2013 and 30th May, 2013 whilst the interim order of injunction remained operative has to be excluded from the period of three months specified under Section 169(7) (b) of the Companies Act.



Counsel on behalf of the Respondent has not been able to show the Court under what provision of law the exclusion is claimed. He only argued that it would be under the Limitation Act.

Under Section 12 of the Limitation Act exclusion of time in legal proceedings is granted. This is for computing the period of limitation for any suit, appeal or application. The exclusion of time does not apply in respect of a notice of requisition as it is not a legal proceeding. Similarly, under other provisions being Sections 13,14 and 15 of the Limitation Act exclusion of time are with regard to extraneous matters but not for exclusion of time relating to any requisitioned meeting.

The Respondent argued that no Court has any power to stay or injunct a meeting of a company as held in the case of *Life Insurance Corporation of India v. Escorts Ltd. & Ors.*, AIR 1986 SC 1370 in paragraph 95.

Whilst that argument as a general proposition may be accepted to uphold the democratic functioning of a company with which the Court must not interfere, allowing a meeting which is shown to be illegal in view of all the provisions of Company Law would not fall under the general principle. It would tantamount to a court ignoring the provisions of law or not considering provisions of law to allow the meeting to be held which would be later held to be invalid and illegal. The Appellant company has applied for declaration in this suit itself that the requisition dated 15th January, 2013 is invalid, illegal and inoperative and that the EGM sought to be held is null and void so that they asked for the injunction restraining its holding.

Besides, the CLB has also directed the Appellant company to hold the meeting in accordance with law which would imply that it would not hold the meeting because the provisions of law for the holding of meeting upon the requisition dated 15th January, 2013 after 14th April, 2013 would be against the plain law laid down under Section 169 (7) (b) of the Companies Act which the Appellant company is not directed to do and the Court is enjoined not to allow to be done.

The fact that the learned Judge has not considered the provisions of Section 169 (7) (b) is indeed fundamental error. Consequently the impugned order deserves to be and is set aside. Ad-interim order prayed for by the Plaintiff in the suit (the Appellant herein) deserves to be and is granted.

CS

LW.81.09.2013

DINESH SAINI V. UOI & ORS [DEL]

W.P. (C) 9003/2011

V.K.Jain, J.
[Decided on 23/07/2013]

1078 [LW-100]

September 2013

Companies Act, 1956 - Section 210 - extension of accounting period - whether the decision is required to be taken within 3 months - Held, No.

Brief facts

Section 210 of the Companies Act, 1956 to the extent it is relevant for our purpose requires a company to hold its Annual General Meeting for considering profit and loss account and balance sheet, within six months of the close of the financial year. The said section also permits the company to extend the financial year by upto three months. The period can be further extended by upto 6 months with the special permission of the Registrar of Companies.

Respondent No. 3 which is a company registered under the Companies Act, 1956 was required to hold its Annual General Meeting on or before 30.09.2011, its financial year being 01.04.2010 to 31.03.2011. No decision prior to 11.08.2011 was taken by respondent no. 3 company to extend the accounting year. It was only by way of resolution dated 11.08.2011 that the company decided to extend the accounting year 2010-11 by three months so as to end the said year on 30.06.2011. Consequently, it became eligible to hold the Annual General Meeting, for the purpose of considering the account and balance sheet, on or before 31.12.2011.

Decision: Petition dismissed.

Reason

The contention of the learned counsel for the petitioner is that the decision to extend the accounting year for a period upto three months can be taken by the company before the end of the financial year or at best before the period by which the financial year is to be extended, expires and not thereafter. In other words, according to the learned counsel, the decision to extend the accounting year ought to have been taken on or before 31.03.2011 or at best by 30.06.2011 whereas in the present case it was taken on 11.08.2011 after the aforesaid three months had already expired.

The learned counsel for the respondent No. 3, on the other hand, submits that the decision to extend the financial year could be taken by the company even after expiry of the period by which the financial year is sought to be extended and there is no requirement of law that such a decision has to be taken before expiry of the financial year or the period by which the financial year is sought to be extended.

I have carefully examined the provisions of Section 210 of the Companies Act. The said provision does not require the company to take decision to extend the financial year, either by the end of the financial year or within the time period by which the financial year is to be extended. The decision to extend the financial year, therefore, can be taken at any time though the period cannot be extended by more than three months without special approval of the Registrar of Companies. To take an example, if a company is expecting to finalize its accounts and balance sheet in time and towards the fag



end of the financial year, it finds that for some reason or the other, it shall not be in a position to finalize the accounts and balance sheet by the end of the financial year, in case the contention of the learned counsel for the petitioner is extended, it will have to convene a Board meeting on or before the end of the financial year. Considering that, sometimes, there may be a last minute glitch in finalization of accounts and balance sheet, the need to extend the accounting year may arise say on 29th or 30th of the March in a case where the financial year ends on 31st March, 2013. It may not be possible for every company to convene the Board Meeting at such a short notice. Therefore, it would be unrealistic to take a view that in every case, the company must take decision to extend the financial year, before the financial year or the period by which the financial year is sought to be extended, expires. Neither there is such requirement laid down in Section 210 of the Act nor there is any necessity to read such a requirement in the provisions of the Act.

Considering that the time available to the company is only three months and thereafter, it will necessarily have to go to Registrar of Companies seeking a special approval for extending the financial year beyond three months and obviously, the Registrar of Companies would not accord such an approval unless he is satisfied that there are sufficient reasons for granting such an extension, I find no illegality in the decision taken on 11 th August, 2011, to extend the financial year by 3 months.

I find no merit in the present writ petition and the same is dismissed as such. No order as to costs.

CS



Competition Laws

LW.82.09.2013

M/S DIPAK NATH, SIVASAGRA v. OIL AND NATURAL GAS CORPORATION LTD. & ANR [CQJ]

Case No. 23 of 2013

Ashok Chawla Chairperson, Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, Justice (Retd.) S. N. Dhingra & S.L. Bunker(Members)

[Decided on 05/07/2013]

Competition Act, 2002 - Sections 3& 26 - abuse of dominance by

anticompetitive agreements - hiring of cranes for exploration purposes- tender conditions - eligibility requirement - whether abuse of dominance - Held, No.

Brief facts

The Informant is stated to be a registered partnership firm, engaged in the business of civil and transport contractor and is also a registered vendor of ONGC for supplying various kinds of cranes to ONGC on hire.

During the month of December, 2012, OP issued a notice inviting bids under two bids system from domestic bidders for hiring of 174 nos. of hydraulic cranes for the onshore deployment at various work centers of OP within the country for a period of 3 years. For North Eastern Sector, which included Assam, Tripura and West Bengal, bids were invited for 71 cranes. 3. The Informant was engaged in the North Eastern Sector and had been providing services to OP in the past. However the OP prescribed an eligibility criteria in the bid tender of December, 2012 that a bidder must own minimum 4 nos. of cranes and submit his bids for minimum of 7 nos. of cranes for the same sector (Agartala/Kolkata/Bokaro). The bidders were free to submit bids for one or more sectors. The Informant was aggrieved with the aforesaid condition and had also shown his resentment at the pre-bid conference and asked the OP for equalizing eligibility criteria for all sectors and requested to modify the criteria to owning of three cranes and offering of minimum three cranes.

The Informant complained to the CCI alleging that the conduct of OP in imposing unfair and discriminatory condition in the purchase of services, was abusive in nature and was in violation of the provisions of Section 4(2) of the Act.

Decision: Case closed.

Reason

In order to examine the allegations of the informant relating to abuse of dominant position, first the relevant market is to be defined. The Commission is of the view that the relevant product market in this case would be the market of "hiring of hydraulic cranes". From the end user's point of view, the service of hydraulic cranes was not substitutable with other types of light cranes. Thus, *prima facie*, the relevant product market in this case would be "hiring of hydraulic cranes". The relevant geographic market in this case appears to be the north eastern region of India including the state of West Bengal. The condition of competition for providing hydraulic cranes on hiring basis in north eastern region is distinct from the other neighbouring areas because of the distance and peculiar features of the north eastern region from the rest of India. Moreover, the relevant product in question cannot be transported easily and economically to north eastern region from other regions where these products are required by OP. Also, it is not economically viable for an owner of hydraulic cranes located in other parts of the country to provide the services to OP in north eastern region. Thus, the Commission is of the view that the relevant geographic market in the present case



would be the North Eastern Region of India. Hence, considering the relevant product market and relevant geographic market as stated above, the relevant market in the present case would be "the market for hiring of hydraulic crane in the North Eastern Region of India including the State of West Bengal."

Further the dominance of the enterprise needs to be examined in terms of explanation (a) to section 4 of the Act keeping in view the factors mentioned under section 19(4). The informant in the information merely averred that the OP abused its dominant position, without alleging that the OP enjoyed a dominant position in the relevant market. However, as per the information available in public domain, the OP, *prima facie*, does not appear to be in dominant position because hydraulic cranes are hired in large scale not only by the other oil and gas exploration companies operating in the region but also by the public and private sectors companies engaged in various other activities, such as construction, transportation. Thus, there are a large numbers of enterprises operating in North Eastern region of India which hire hydraulic cranes. So, the OP does not appear to be a dominant procurer of hydraulic cranes on hiring.

From the above, it is observed that a number of service procurer are easily available to the service providers in the relevant market as per their choices/ preferences. In view of the above market construct, *prima facie* OP is not dominant in the relevant market for "hiring of hydraulic crane in the North Eastern Region of India including the State of West Bengal." As such, dominance of OP in the relevant market is *prima facie* not in existence and so there is no question of abuse of the same.

Moreover in an earlier case before this Commission, *CSR Nanjing Puzhen Co. Ltd v. Kolkata Metro Rail Corporation Ltd* (Case No. 54 of 2010), it was held that tender conditions cannot be termed as discriminatory or unfair just because the informant was unable to meet those conditions. The conditions can vary according to specific requirement of a particular tender having regard to local conditions obtaining therein. Thus the impugned conditions not being unfair or discriminatory cannot be said to be abusive.

The Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

LW.83.09.2013

M/S ORACLE DRUGS & ORS v. SECRETARY, DEPARTMENT OF HEALTH & FAMILY WELFARE, GOVERNMENT OF ODISHA & ANR [CCI]

Case No. 04 of 2013

Ashok Chawla (Chairperson), Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, Justice (Retd.) S. N. Dhirga & S. L. Bunker (Members).
[Decided on 01/07/2013]

Competition Act, 2002 - Sections 4 & 26- allotment of medical shops by government - government prescribing certain new conditions on the owners of these medical shops - whether an act of abuse of dominance - Held, No.

Brief facts

The informants are owners of approved Medical Shops that operate within the premises of public health facilities in Odisha. These shops are governed by the guidelines formulated by the Department of Health and Family Welfare, Government of Odisha and revised from time to time.

The State Government, vide its resolution dated 17.11.2012, issued revised guidelines with few new conditions to be adhered to the selected allottees of medical shops located within the premises of public health facilities. In Para 16 the revised guidelines stipulated that the allottees operating within the public health facilities would supply drugs at discounted prices to the public and the information about discount offered on drugs sold would be displayed at a prominent place.

The Informants alleged that the aforesaid resolution imposing condition of discounts upon the allottees was beyond the contract signed between the parties. The aforesaid Resolution itself provided that the condition/direction to give discount to the public was not applicable on Day and Night Medicine Shops in "Public Private Partnership" mode and was discriminatory in nature. It has been further alleged that under Para 13 of the aforesaid resolution mandated that each allottees shall appoint at least 3 pharmacists to supervise sale of drugs and this condition would unnecessarily increase the establishment cost and reduce the profit margin of the allottees. It is alleged that above condition amounted to an abuse of dominance by the OPs through imposition of unreasonable condition on conduct of trade.

Decision: Case closed.

Reason

The Opposite Parties are responsible for policy decisions to achieve the above objectives. The activity of the OP-1 in formulating the conditions of allotment of shops by way of resolution is not an economic activity. The activity is purely a policy making activity. The guidelines issued by Opposite Parties are applicable only to the shops / medical stores allotted by the Govt. that are located within the premises of public health facilities in state of Orissa and are not applicable in general to all chemists & druggists. The chemists & druggists allotted shops by the State within the premises of public health facilities can be bound with such reasonable conditions which facilitate the availability of medicines and drugs to the consumers at a reasonable price. Such a policy cannot be said to be an anti-competitive policy. The limits of discounts prescribed by the resolution are lower limits. The shops can compete with each other by giving higher discounts than what is provided by the resolution.



It must be kept in mind that the objective of the Act is to promote and sustain competition in order to protect the interests of consumers and to ensure freedom of trade. The conditions of allotment laid down by the State do not infringe any of the provisions of the Competition Act as the allottees had liberty to open their chemists & druggists shops and carry on trade anywhere in the city in which case they would not be bound by the conditions applicable to the shops allotted by State within the premises of public health facilities. The interest of consumers i.e. the patients were also not at stake by the conditions of providing discounts to the patients, keeping in view the necessities of poor persons who visit public health facilities. It is normally the common and the poor person, who cannot afford private health facilities, who visits public health facilities. The State had to ensure that he would get medicines at reasonable price from the chemists & druggists permitted to open shops within the area of public health facilities. The exemption granted to "day and night medicine shops in PPP mode" from the resolution also cannot be held to be discriminatory. The terms & conditions of PPP mode shops have not been stated by the informant. It is quite probable that in PPP mode shops, the OP had put some other conditions of consumer benefits. In any case, no customer will go to PPP mode shops if the PPP shops do not provide discounts being provided by other chemists & druggists within the public health facilities and this will be to the advantage of informant and other chemists & druggists having shops within the premises of public health facilities. The discrimination if any is not to the disadvantage of the informant. The conditions of engaging pharmacists and installing A.C. at storage facility are must for any chemist and druggist shop and cannot be considered as abusive. The Commission finds that no *prima facie* case is made out against the Opposite Parties for directing investigation into the matter. It is a fit case for closure under section 26 (2) of the Act and is hereby closed.

[Decided on 24/07/2013]

Sections 22 & 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 read with Sections 12(3), 25(N)(1), 25N of the Industrial Disputes Act, 1947 - pendency of proceedings before BIFR - Government made reference to industrial tribunal as to retrenchment of workmen - award passed allowing retrenchment - whether violates the provisions of SICA – Held, No.

Brief facts

The petitioner is a Trade Union known as "United Bleachers Thozhilalar Munnetra Sangam". A substantial number of workmen employed by the respondent management herein are the members of the petitioner's Trade Union. Some other workmen are the members of the 5th and 6th respondents Trade Unions.

The respondent management is a company which became sick and registered with the BIFR vide Case No.131 of 1997].The BIFR, by an order, dated 18.11.1997, declared the respondent management as a sick industrial company in terms of Section 3(1)(o) of SICA.

While the proceedings before the BIFR was under progress the respondent wanted to retrench 156 workmen and after certain rounds of litigation the State Government referred the issue to the Industrial tribunal, which made an award allowing the retrenchment of 94 workmen. The petitioner challenged the reference under W.P.No.7222 of 1999 and the industrial award under W.P.No.6724 of 2000 on the ground that the reference as well as the award is violative of section 22 of the SICA, which were disposed of under a common order.

Decision: Petitions dismissed.

Reason

In the instant case, let us first examine as to whether there is any inconsistency between the sanctioned scheme under Section 18 of the SICA and Section 25-N of the ID Act. Admittedly, the scheme was sanctioned by the BIFR only on 30.08.2001. Until then, the scheme was only under consideration of the BIFR. Assuming that there is some inconsistency between the scheme under consideration and the provisions of the ID Act, the scheme under consideration will not have overriding effect over the ID Act inasmuch as under Section 32(1) of the SICA, it is only a sanctioned scheme which will have overriding effect over any other law including the ID Act.

If one makes a cursory comparison of Section 32 of the SICA with sub-sections (1) and (2) of Section 22 of the SICA, it will be crystal clear that so far as sub-sections (1) and (2) of Section 22 are concerned, they cover not only a sanctioned scheme under implementation, but also a scheme which is either under



LW.84.09.2013

WORKMEN OF UBL v. STATE OF TAMIL NADU & ORS [MAD]

W.P. Nos. 7222 of 1999 & 6724 of 2000

Nagamuthu, J.





preparation or under consideration of the BIFR, but, in Section 32 of the SICA, the Parliament has consciously omitted from its ambit a scheme either under preparation or under consideration of the BIFR. The plain language of Section 32(1) of the SICA would keep things beyond any doubt that it covers only a scheme which has already been sanctioned by the BIFR. Therefore, in instant cases, since the impugned G.O.Ms.177 cited *supra* was issued and eventually the Award of the Industrial Tribunal itself came into being while the scheme was still under consideration of the BIFR, the provisions of the scheme under consideration of the BIFR shall not have overriding effect over Section 25-N of the ID Act.

Now, let us examine as to whether there is any inconsistency between Section 25-N of the ID Act and sub-sections 1 and 3 of Section 22 of the SICA. Section 22(1) of SICA bars initiation of any proceeding or continuation of any proceeding in respect of the matters enumerated in Section 22(1) of the SICA only against the sick industrial company.

This provision does not bar the sick industrial company from proceeding against any other company or authority, or individual in respect of the matters enumerated in Section 22(1) of the SICA. This provision gives adequate protection only to the sick industrial company. The object of the said provision appears to be to protect the sick industrial company so as to enable it to revive and to get rehabilitated by the measures taken under the provisions of the SICA. In other words, if any proceeding is initiated against the sick industrial company in respect of the matters enumerated in Section 22(1) of the SICA notwithstanding the scheme under preparation or under consideration or under implementation, such action may frustrate the implementation of the scheme. That is the reason why, Section 22(1) of the SICA was made as a shield in the hands of the sick industrial company. Thus, it does not prevent the company to initiate any proceeding against any third party or workmen. But, at the same time, the action of the sick industrial company should not have the tendency to frustrate the scheme, under preparation or consideration or implementation. Thus, in my considered opinion, there is no inconsistency between Section 22(1) of SICA and Section 25-N of the ID Act.

A careful perusal of the provision [i.e.22(3)] would go to show that the said provision is applicable when a scheme is either under preparation or under consideration or when there is a sanctioned scheme. The said provision further envisages that it is for the BIFR to pass an order declaring that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force to which the sick industrial company is a party shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising there under before the said date, shall remain suspended or shall be enforceable with such adaptations.

As we have already seen, sub-section (1) of Section 22 of the SICA bars initiation or continuance of any proceeding whereas sub-section (3) deals with suspension of concluded proceedings like a contract, award, settlement, etc. Under sub-section (1) of Section 22, no order is required to be passed by the BIFR or any other authority either prohibiting initiation of any proceeding or continuing the same against the sick industrial company. The moment a company is declared sick, by operation of section 22(1) of the SICA, there shall be an automatic stay of all further proceedings.

However, such proceedings can be initiated or continued only with the consent of the BIFR or AAIFR as the case may be. To put it otherwise, there is no order required from the board or appellate authority to stay the proceedings. But, sub-section (3) of Section 22 of the SICA which deals with a concluded proceedings, settlements or awards, requires an order of suspension. In the absence of any such order from the BIFR under section 22(3) of the SICA, there is no automatic suspension of the award, settlement, etc. At any rate, sub-section (1) of section 22 of the SICA does not bar the sick industrial company from initiating or proceeding with any matter enumerated in the said sub section against a third party or workmen, whereas, sub-section (3) of section 22 of the SICA is a bar even for the sick industrial company to execute any settlement, award, agreement, etc. in the event there is an order from the BIFR to the said effect. In the instant case, admittedly, there was no order at all passed under section 22(3) of the SICA by the BIFR suspending the obligations and liabilities, rights and privileges of the respondent management. Admittedly, in the instant case, there was no order of suspension passed by the BIFR. Thus, in my considered opinion, so far as the case on hand is concerned, the action of the Government in referring the Industrial Dispute, at the instance of the respondent management does not offend sub-sections (1) and (3) of Section 22 of SICA at all.

In the case on hand, it is not as though the BIFR was not aware of the proposal for retrenchment of 156 workmen. The SITRA report suggested that the company shall retain only 242 workmen out of 356 workmen on the role. It suggested for introduction of voluntary retirement scheme so that the remaining workmen could be sent out on voluntary retirement. Based on the same, in the scheme submitted by the respondent management, it was reiterated.

The Canara Bank which was appointed as the operating agency as per the order of the BIFR dated 25.06.1998, submitted a report to the BIFR in which the operating agency took note of the manpower. Thus, the BIFR was aware of the reference made by the Government and the proceedings pending before the Industrial Tribunal, Chennai, in I.D.No.38 of 1999. After the Award was passed permitting retrenchment of 94 workmen, the matter was reported to the BIFR. In the interim order dated



25.10.1999, the BIFR, among other things, considered the same.

From the orders passed by the BIFR on various occasions, it is crystal clear that BIFR was informed then and there by the respondent management about the industrial dispute right from the application made to the competent authority seeking retrenchment of 156 workmen. The BIFR was fully aware of the reference made by the Government; the proceedings pending before the Industrial Tribunal in I.D.No.38 of 1999; the award passed; the consequential retrenchment made; settlement of retrenchment compensation etc.

As we have already noticed, under Section 22(3) of the SICA the BIFR has got power to suspend the Award of the Industrial Tribunal. Had it been satisfied that the retrenchment of these workmen would frustrate the successful implementation of the scheme, certainly the BIFR would not have omitted to pass an order of suspension under Section 22(3) of the Act. Instead, the BIFR accepted the retrenchment of the workmen in pursuance of the award of the Industrial Tribunal and also the settlement of retrenchment compensation to the workmen. Thus, though the BIFR was fully conscious of the award passed by the Industrial Tribunal for retrenchment of the workmen numbering 94, the BIFR did not choose to pass any order under Section 22(3) of SICA which means, the BIFR itself considered that such retrenchment was necessary for successful implementation of the rehabilitation scheme.

As we have already noticed, the scheme itself provides for such reduction of labour strength. Though originally the draft scheme provided for reduction of the labour strength by introducing Voluntary Retirement Scheme, since it proved futile, the respondent management had to approach the competent Authority under the Industrial Disputes Act seeking permission for retrenchment of workmen and since it was dismissed and since the writ petition filed by the respondent management was withdrawn, the respondent management made request to the Government for referring the dispute, which was rightly done and the same resulted in the Award. Thus, the award of the Industrial Tribunal is not to the detriment of the successful implementation of the scheme.

In the result, both the writ petitions fail and the same are accordingly dismissed.

CS

LW.85.09.2013

PRADEEP KUMAR GUPTA V. P.O.LABOUR COURT & ANR
[DEL]

W.P.(C) No.1137/1999



P.K.Bhasin, J.
[Decided on 29/07/2013]

Industrial Disputes Act,1947 - Sections 9A & 25F - post of teleprinter operator abolished and the work was computerised - workman was retrenched - no notice under section 9A was given by the management - whether computerisation of work resulted in change of working conditions - Held, Yes. Whether non-issuance of notice under section 9A makes the retrenchment illegal - Held, Yes.

Brief facts

The petitioner-workman joined M/s Air France, respondent no.2, in the year 1964 in its Telecommunication Department as a Teleprinter Operator, which post fell in category PLC-2 under Clerical Staff category, and subsequently he was re-designated as Teleprinter Operator Assistant in 1969 after being put into PLC-3 category.

After serving respondent no.2 almost two decades he was all of a sudden retrenched w.e.f. 25th February, 1983 on the ground that as a result of computerisation of the Telecommunication Department his services as a manual teleprinter operator had become surplus. At that time the petitioner was offered money which according to respondent no.2 was payable to him as per Section 25-F of the Industrial Disputes Act,1947('the act of 1947' in short). The petitioner-workman protested against his retrenchment through the Workers' Union of which he was a member since that retrenchment was brought about without serving him a notice under Section 9-A of the Act of 1947 and also because of breach of the provisions of Section 25-F, G and H of the said Act. However, since respondent no.2 – management did not re-call his retrenchment order the matter was taken to the Labour Department of the Delhi Government where conciliation proceedings were held but failed. Thereafter the dispute about the termination of the services of the petitioner-workman, which he considered to be illegal, was referred for adjudication to the Labour Court on 6th August,1984.The Labour Court after examining the evidence adduced by the parties gave its Award holding that the petitioner-workman was legally retrenched and he was given due compensation as per Section 25-F of the Act of 1947.

Decision: Petition allowed.

Reason

The learned counsel for the petitioner had submitted that the decision of the management to computerize the telecommunication department and to dispense with the manual operation of teleprinting machine amounted to change in his service condition and which in turn necessitated his retrenchment and consequently notice under Section 9-A of the Act of 1947 was required to be served upon him but that was not served and consequently his retrenchment was illegal. On the other hand,



learned counsel for the respondent No. 2 - management contended this is a simple case of retrenchment of the petitioner which is the right of every employer subject of course to compliance of Section 25-F of the Act of 1947 which was duly complied with by respondent No. 2 and the Labour Court has also accepted that position and so no fault can be found with the Award of the Labour Court. It was also submitted that retrenchment of a workman can never be considered as a change in his service conditions as contemplated in Section 9-A and, therefore, its non-compliance is inconsequential. It was also submitted that it is a case of closure of Telecommunication Department and so for that reason also it cannot be said that there was change in service conditions of the petitioner.

In my view, I need not spend much time in resolving this dispute since the answer to the controversy regarding applicability of Section 9-A in almost similar fact situation was given by the Supreme Court in *M/s Lokmat Newspapers Pvt. Ltd. v. Shankarprasad*, AIR 1999 Supreme Court 2423.

The judgment in Lokmat's case (*supra*) applies squarely to facts of the case at hand wherein the services of the petitioner became surplus because of computerization of the Telecommunication Department which earlier was done by the petitioner manually and that decision of the management brought about change in his service conditions, which necessitated issuance of notice under Section 9-A prior to retrenchment. The plea of the management that it was a case of closure of Telecommunication Department cannot be accepted since only the technique was changed from manual teleprinting to computerised system. The job which the petitioner was performing manually came to be performed through computers. Admittedly, no notice under Section 9-A of the Act of 1947 was given by the respondent no.2 and consequently the retrenchment of the petitioner was illegal. Unfortunately the Labour Court did not even deal with this important aspect of the matter though in the Award it was noticed that the petitioner-workman had raised this point. That makes the Award perverse justifying interference by this Court.

In view of the said conclusion regarding the applicability of Section 9-A I need not go into the controversy whether the department where the petitioner was working was a one-man department to which Section 25-G did not apply, as is the plea of the management.

This writ petitioner is accordingly allowed and consequently the Award of the Labour Court is set aside and retrenchment of the petitioner-workman is held to be illegal. Since he has already reached the age of retirement he shall now only be entitled to all his financial benefits upto the date of his retirement as if he had not been retrenched.

CS



General Laws

LW.86.09.2013

MARS INTERNATIONAL INDIA PVT LTD V. STATE OF KERALA & ORS [KER]

WP(C). No. 15852 of 2013

P. R. Ramachandra Menon, J.
[Decided on 24/07/2013]

Sections 18(2) & 36(1) of the Legal Metrology Act, 2009 read with Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011 – advertisement did not show the quantity or number of the packaged commodity contained in the pack - whether violates the provisions of the Act and Rules - Held, Yes.

Brief facts

The petitioner is a company having its registered office at New Delhi. The petitioner is stated as associated with Mars group of companies and imports various brands of chocolates and other food products including the product-'SNICKERS'. It is pointed out that, the petitioner commenced its operation in India in 1994 and is doing the business in conformity with all the statutory requirements.

In connection with promotion of business of the petitioner, advertisements/Boards like Ext.P3 came to be issued/installed, referring to the name of the product and projecting the profile as "Now Rs.15 onwards". On coming across such advertisement, the 3rd respondent issued Ext.P1 notice dated 27.02.2013 to the petitioner, simultaneously serving similar notice (Ext.P2) to the Distributor of the petitioner by name M/s Jeny Agencies, alleging violation of Section 18(2) of the Legal Metrology Act. The third respondent is of the view that, since there is no declaration as to the net quantity or number of the commodity contained in the package, the advertisement saying "Snickers Now Rs. 15 onwards" constitutes infringement of Section 18(2) of the Act and is punishable under Section 36(1) of the Act. It is in the said circumstance, that the petitioner and the Distributor have been required to show cause in writing, why they should not be prosecuted for the offence.

The petitioner filed statement of objections before the third respondent, pointing out that no contravention of any of the



provisions of the Statute was ever made by them, in any manner. It was sought to be explained with reference to Section 18(2) of the Act that, it applies only to those advertisements which declare the price of any specific package of a pre-packaged commodity since it uses the words “contained in the package”. In the case of the petitioner, Ext.P3 advertisement was only of a general nature, without reference to any specific package and hence the request to withdraw the impugned notice.

After considering the reply preferred by the petitioner, the third respondent issued a communication dated 13.04.2013, observing that the advertisement was in clear violation of Section 18 (2) of the Act, punishable under Section 36(1) of the Act; and accordingly directed the petitioner to submit the packing registration for the said packages as well as the details of Partners/Directors/persons responsible for conduct of the business. This made the petitioner to rush to this Court for immediate interference.

Decision: Petition dismissed..

Reason

Whether Ext.P3 advertisement given by the petitioner showing that the product is available “Now Rs.15 onwards” (without mentioning the quantity/number) contravenes Section 18(2) of the Legal Metrology Act, 2009 (hereinafter referred to as the ‘Act’) is the point that arises for consideration in this writ petition.

The ‘retail sale price’ as defined under Rule ‘2(m)’ of the Legal Metrology (Packaged Commodities) Rules, 2011, means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer, which shall be printed on the package in the manner as specified therein. When the petitioner gives advertisement vide Ext.P3 to the effect that the product is available “Now Rs.15 onwards”, it naturally proclaims the existence of a package having the retail sale price of Rs. 15/-. When the advertisement refers to such retail sale price of the concerned package, it necessarily has to contain a declaration as well, with regard to the Actual quantity/ number of the commodity contained in such package.

It has to be noted that, while advertising that the product ‘SNICKERS’ is available “Now for Rs.15/- onwards”, the petitioner very consciously omits to mention the particulars as to the net quantity/number of the commodity contained in ‘such package’ available for ‘such price’ (like 100gms/10 Nos. or as the case may be). In so far as the mandate of Section 18(2) is concerned, the operation is with reference to any advertisement. If there is any advertisement mentioning the retail price of a pre-packaged commodity, it has necessarily to contain a declaration as to the net quantity or number of the commodity contained in the package.

Obviously, Ext.P3 advertisement refers to the retail sale price of Rs.15/- of a given package, but omits to make the declaration as to the quantity/number of the commodity contained in such package.

As such, this Court does not require any second thought to hold that Section 18(2) is attracted to the case in hand and there is infringement of the statutory prescription. This being the position, notices have been issued by the third respondent, strictly in conformity with the statutory prescriptions, followed by penal proceedings. As it stands so, the Ex P1 is not liable to be assailed under any circumstance. This Court finds that there is absolutely no merit or bonafides in the writ petition.

CS

LW.87.09.2013

DEGREMONT LTD V. KOLKATTA MUNICIPAL CORPORATION
[DELJ]

CS(OS) 276/2012

Vipin Sanghi, J.
[Decided on 29/07/2013]

Civil Procedure Code, 1908 - Section 20 (c) read with Order VII, Rule 11 – territorial jurisdiction of court - return of plaint - plaintiff in Delhi and defendant in Kolkata - contract conferring jurisdiction on Kolkata courts - recovery suit filed in New Delhi - whether maintainable - Held,No.

Brief facts

This application has been filed by the Defendant under Order VII, Rule 11 of the Civil Procedure Code, 1908 (CPC for short) for rejection of the plaintiff’s suit for recovery of amount of Rs.88,80,107/- on the grounds that this Court is not vested with the territorial jurisdiction to try this Suit.

Decision: Application allowed.

Reason

The jurisdiction clause in the MOA in no uncertain terms states “this agreement will be subject to jurisdiction of Calcutta Courts”. No doubt, the words “only”, “exclusively” and “alone” have not been used in the aforesaid jurisdiction clause; however, the same does not destroy the exclusiveness of the jurisdiction of the Kolkata Courts.

The decision of the Supreme Court in the case of *A.B.C. Laminart Pvt. Ltd & Anr. v. A. P. Agencies, Salem*, 1989 2 SCC 163 makes it clear that even in the absence of the words “only”, “exclusively” etc, the intention of the parties to vest, or oust the jurisdiction of a particular court must be examined as it could be a case of expression of one to the exclusion of another.

In the present case, the defendant is situated in Kolkata and was constituted by the West Bengal Act, LIX 1980. The functions of the defendant corporation are confined within the State of West Bengal. It is not the plaintiff’s case that the defendant operates from, or has various branches or subordinate offices all over the country through



which it is operating. It has no operations in Delhi. Though the Plaintiff may have deposited the cheques in Delhi - which were received by it in Kolkata, that would not vest jurisdiction in the Courts at Delhi. If this submission were to be accepted, a party may deposit the cheque received by it at its place of choice anywhere in the country, and create jurisdiction in the Court having jurisdiction over such place. Similarly, because the Plaintiff may have issued its invoices from New Delhi, this Court would not have jurisdiction. The Defendant is not concerned, and has no control over such unilateral acts of the Plaintiff who may choose to issue invoices from any of its several offices. None of these facts are a part of the bundle of essential facts, which constitute cause of action. What is of relevance is - where the invoices were sent to the Defendant, and where they were expressly or impliedly repudiated/rejected. It is the rejection of the invoices raised by the plaintiff (from where ever they may have been raised) which gives rise to cause of action.

The plaintiff's averment that the invoices were payable at Delhi is not supported from the material on record. No doubt, in *A.B.C. Laminart (supra)*, the court observed that part of cause of action arises where money is expressly or impliedly payable, however, a perusal of the MOA shows that there is not a whisper of which place the money is payable at. The payment would be released by the Defendant from its office in Kolkata. It has not been pleaded by the Plaintiff that the Defendant was obliged to, or has, in fact, released or made payment from its office in Delhi.

As far as an implied inference regarding where the money is payable is concerned, all correspondence between the plaintiff and the defendant was issued from the plaintiff's head office in Gurgaon. The communication of the acceptance of the contract was also made vide a letter sent by the defendant from Kolkata to the plaintiff's head office in Gurgaon. It is settled law, that as regards acceptance of a contract via letters, the place of formation of a contract is the place where the acceptance was dispatched which, in this case, is Kolkata. All work orders issued by the defendant from Kolkata to the plaintiff were also communicated to the head office in Gurgaon. There is no reason to accept that, merely because invoices were raised from New Delhi, they became payable at New Delhi, especially since no express term in respect of the same has been provided for in the MOA.

Merely because the plaintiff has its registered office in New Delhi does not give this court jurisdiction to entertain the present suit, as the location of the plaintiff *per se* does not vest jurisdiction in a Court.

The next argument of the plaintiff that payments on account of service tax and education cess were deposited by the plaintiff with the Union of India in New Delhi is also not sufficient to constitute cause of action. The aforesaid payments are on account of a statutory liability and cannot be the sole basis of conferring jurisdiction on this Court.

The place where the plaintiff made payments on account of service tax and education cess is not the subject matter of the suit, and only

happens to be incidental to the claim of the plaintiff. It is not shown that these payments could have been deposited only at Delhi. What is of relevance is that factum of deposit, not the place of deposit. Therefore these are not facts sufficient to clothe this court with jurisdiction.

In the present case too, the MOA was executed at Kolkata and the performance of the contract was to be carried out in West Bengal. Merely because invoices were raised from New Delhi or payments were made by the plaintiff on account of service tax/education cess at New Delhi, are not sufficient to clothe this court with jurisdiction. Even otherwise, owing to the "jurisdiction clause" in the MOA, I am of the opinion that the intention of the parties was to confine the jurisdiction to Kolkata only, as already discussed hereinabove.

Consequently, I am of the opinion that this Court has no territorial jurisdiction to entertain the present suit. Application is allowed. CS

LW.88.09.2013

EASYGROUP IP LICENSING LTD &ANR V. EASYJET AVIATION SERVICES PVT LTD &ANR[DEL]

CS(OS) 157/2010

Vipin Sanghi, J.
[Decided on 19/08/2013]

Trademarks Act, 1999 - Sections 28 & 29 – infringement of trademark - airline services - defendant adopted plaintiff's coined trademark "easyJet" – whether constitutes infringement - Held, Yes.

Brief facts

This suit for grant of permanent injunction restraining infringement of registered trademark, passing off, delivery up and damages has been filed by Plaintiffs no 1 and 2, which are companies incorporated under the laws of England and Wales against defendant no 1, a company incorporated under the Companies Act 1956 and defendant no 2, who is the director of defendant no 1, in respect of the alleged infringement and passing off of the plaintiff's registered trademark "easyJet".

The plaintiff no 1 is the owner and plaintiff no 2 is the licensed user of the registered trademark "easyJet" (hereinafter referred to as the suit trademark). The suit trademark was adopted by plaintiff no 2- which is wholly owned by EasyJet, plc, a company listed on the London Stock Exchange, in the year 1995 in respect of a low cost carrier airline operated by plaintiff no 2. In the year 2000, on account of reorganization of business, the suit trademark was assigned by plaintiff no 2 to plaintiff no 1. Subsequently via Brand License Agreement dated 05.11.2000, plaintiff no 1 licensed the use of the suit trademark to plaintiff no 2.



The plaintiffs allege that the defendant no. 1 company having its principal place of business in Mumbai, is trading in the name and style of "EasyJet Aviation Services Limited". It is engaged in facilitating air charters, air craft management as well as buying and selling of aircrafts as middlemen. The plaintiffs allege that defendant no 1 is malafidely using the aforesaid trademark "EasyJet" in relation to services that are identical to those covered by the classification in which the plaintiffs mark "easyJet" is registered.

Decision: Suit decreed.

Reason

A perusal of the trademark registration certificate, Exhibit PW1/36, of the plaintiffs' reveals that the plaintiff's mark "easyJet" was first registered in the United Kingdom in 1995 in respect of class several classes including class 39 which covers the services offered by the plaintiffs and the defendants. Subsequently, the suit trademark was granted registration in India in various classes from 2001 onwards- in class 16 vide Exhibit PW 1/44 dated 07.02.2001 and the most important for the purpose of this suit being class 39, registration whereof was granted on 07.12.2004 vide Exhibit PW1/41. As aforementioned, class 39 includes, but is not restricted to transportation of goods, passenger and travelers by air; airline and shipping services; airport check in service; chartering of aircraft; rental and hire of aircraft etc.

The plaintiff's website www.easyJet.com, went live in 1995. The said website has been accessible to Indians who wish to travel on the plaintiff no 2's airline on its operational routes abroad since 1998. A significant aspect of the plaintiff's business model is its elimination of ticketing agents through its website that provides customers the convenience of booking tickets online as far back as 1998. Exhibit PW1/15 is an article dated 08.03.2001 in the magazine "Economist" stating that several airlines, including the plaintiff no 2's airline, sell up to 90% of their tickets online.

Exhibit PW 1/29 is a printout from an Indian online travel portal www.cleartrip.com showing the details, routes, destinations, flights and company information of the plaintiff's operations. The website cleartrip.com also provides a link to the plaintiff's website. This evidences the fact that even besides the plaintiff's own website, Indians can book tickets on the plaintiff no 2's airline via Indian online travel portals too. Exhibit PW1/10 is a summary of visits from Indian IP addresses to the plaintiff no 2's website. The same shows that between 2008-2010, 28416 bookings were made by clients accessing the website from India.

Furthermore, Exhibit PW1/14 is an article dated 16.11.2000 in the magazine "The Economist" referring to several low cost airlines including plaintiff no 2 and its plan to increase the density of its flights. Exhibit PW 1/19 is a list of top 5 best companies in marketing according to "FORBES Asia" magazine featuring the plaintiff no 2 at fifth position. Exhibit PW1/21 is an article dated 23.07.2001 in International magazine "TIME" discussing the easy group's

successful marketing strategy. Similarly exhibits PW1/22, PW1/23 and PW1/24 are write ups in "TIME" magazine about low cost carriers and the plaintiff no 2 airline dated 26.11.2001, 22.05.2002 and 04.08.2002 respectively. The aforesaid demonstrates that the plaintiff no 2 has consistently been covered in international news and magazines as a successful marketing phenomenon. In *Allergan Inc v. Milmet Otho Industries*, 1997 2 CAL LT, it was held that internationally established reputation is enough to entitle the plaintiff to sue in India, even if he has no business in India.

Keeping in view the aforesaid, I am of the view that the plaintiffs have established prior use of the trademark since 1995 - when it was first registered, and since 1998 when their services became accessible to Indians via their website. In *Caesar Park Hotels & Resorts v. Western Hospitality Services*, AIR 1999 Mad 396, it was held that if the plaintiffs have customers in a country, it can be presumed that they enjoy a reputation in that country. Owing to the fact that Indians could access the plaintiff no 2's services through its website as far back as in 1998, I am of the view that the same is sufficient to constitute prior use. By virtue of Section 28 of the Act, a registered proprietor of the trademark has the exclusive right to the use of the trademark in relation to the goods and services in respect of which the trademark is registered and to obtain relief against infringement of the trademark.

The defendants are using the impugned trademark in respect of identical services covered under class 39 in which the plaintiffs enjoy their registration. Therefore, the action of the defendants squarely amounts to infringement under Section 29. Having already established that the plaintiffs enjoy a considerable amount of reputation, there is no iota of doubt that the use of the suit trademark by the defendants in respect of identical services is likely to cause confusion and mislead the public into believing that the services of the defendant are associated with the plaintiff no 2's airline.

It is also pertinent to note that the suit trademark is a coined word. No explanation has been offered by the defendants as to why they chose the suit trademark. The defendants have chosen not to contest the present proceedings and, therefore, the only valid inference that can be drawn is that the defendants adopted the impugned trademark to ride on the plaintiffs' goodwill and popularity.

In the present case too, the plaintiff no 2 and the defendants are operating in the same sphere of activity. The services provided by the plaintiff no 2 and defendants are identical in nature. Therefore, the likelihood of confusion and deception is strong on account of the public at large associating the defendants' services to be those offered by the plaintiff no 2. The acts of the defendants in using the impugned trademark coupled with a lack of plausible explanation offered by the defendants for the same, leads to the conclusion that the defendants are in fact passing off their services as those of the plaintiffs in an attempt to cash in on the plaintiff's reputation worldwide as well as in India.

Accordingly, the suit is decreed in favour of the plaintiffs.

CS



Corporate Laws

01 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2013

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2013-14/19/6422. Published in the Gazette of India (Extraordinary) Part III- Section 4 dated 26.08.2013]

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 (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second 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 (Issue of Capital and Disclosure Requirements) Regulations, 2009, –

- (i) In regulation 73,-
 - (a) in clause (e) of sub-regulation (1), after the words “the identity of” and before the words “the proposed allottees”, the following words shall be inserted, namely,-
“the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control” ;
 - (b) in clause (e) of sub-regulation (1), for the semicolon, the symbol “:” shall be substituted;
 - (c) after clause (e) of sub-regulation (1), the following proviso shall be inserted, namely,-
“Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.”

- (ii) After sub-regulation (3) of regulation 74, the following sub-regulation and Explanation shall be inserted, namely,-

“(4) Allotment shall only be made in dematerialised form.
Explanation.-The requirement of allotment in dematerialised form shall also be applicable for the equity shares to be allotted pursuant to exercise of option attached to warrant or conversion of convertible securities.”

- (iii) After sub-regulation (4) of regulation 77, the following sub-regulations shall be inserted, namely,-

“(5) The issuer shall ensure that the consideration of specified securities, if paid in cash, shall be received from respective allottee’s bank account.

(6) The issuer shall submit a certificate of the statutory auditor to the stock exchange where the equity shares of the issuer are listed stating that the issuer is in compliance of sub-regulation (5) and the relevant documents thereof are maintained by the issuer as on the date of certification.”

- (iv) In regulation 78, -

- (a) in sub-regulation (1),
 - (i) for the words “date of allotment of the”, the words “date of trading approval granted for” shall be substituted;
 - (ii) in the first proviso, for the word “allotment”, the words “trading approval” shall be substituted;
 - (iii) in the second proviso, for the words “their allotment”, the words “trading approval” shall be substituted.
- (b) in sub-regulation (2), for the words “their allotment”, the words “trading approval” shall be substituted.
- (c) in sub-regulation (4),
 - (i) for the word “allotment”, the words “trading approval” shall be substituted;
 - (ii) in the proviso, for the word “allotment”, the words “trading approval” shall be substituted;
- (d) in sub-regulation (6),
 - (i) for the words “preferential allotment”, the words “trading approval” shall be substituted;
 - (ii) the existing Explanation shall be numbered as Explanation 1 and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:-
“Explanation 2. - For the purposes of this regulation, the date of trading approval shall mean the latest date when trading approval has been granted by all the recognised stock exchanges where the equity shares of the issuer are listed, for specified securities allotted as per the provisions of this Chapter.”

- (v) In regulation 79, -

- (a) the existing regulation shall be numbered as sub-



- regulation (1).
- (b) after sub-regulation (1), the following sub-regulation shall be inserted, namely,-
- “(2) The specified securities allotted on preferential basis shall not be transferred by the allottee till trading approval is granted for such securities by all the recognised stock exchanges where the equity shares of the issuer are listed.”

U.K. Sinha
Chairman

- interest of the sponsor or its associates;
- (iii) the custodian and the asset management company of a mutual fund are not subsidiaries of each other;
- (iv) no person is a director of both the custodian and the asset management company of a mutual fund; and
- (v) the custodian and the asset management company of a mutual fund sign an undertaking that they will act independently of each other in their dealings with the scheme.”

U.K. Sinha
Chairman

02 Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2013.

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2013-14/18/6384. Published in the Gazette of India Extraordinary, Part III-Section 4 dated 19.08.2013]

In exercise of the powers conferred by section 30, read with clause (c) of sub-section (2) of section 11 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 (Mutual Funds) Regulations, 1996, namely:-

- These Regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2013.
- They shall come into force on the date of their publication in the Official Gazette.
- In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, -
 - in regulation 24, in clause (b), the following proviso shall be inserted, namely-
“Provided further that the asset management company may become a proprietary trading member for carrying out trades in the debt segment of a recognised stock exchange, on behalf of a mutual fund.”
 - in regulation 26, in sub-regulation (2), the following proviso shall be inserted, namely-
“Provided that where the sponsor or its associates hold 50 per cent or more of the voting rights of the share capital of the custodian, such custodian may act as custodian for a mutual fund constituted by the same sponsor or any of its associates or subsidiary company if:
 - the sponsor has a net worth of at least twenty thousand crore rupees at all points of time;
 - 50 per cent or more of the directors of the custodian are those who do not represent the



03 Testing of software used in or related to Trading and Risk Management

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/24/2013 dated 19.08.2013]

SEBI vide circular SEBI/MRD/Policy/SE/15864/2003 dated August 21, 2003 advised stock exchanges to obtain an undertaking in the form of an affidavit from the members of the stock exchange stating that the members as well as their sub-brokers are using only authorized software. In this regard, stock exchanges have provided testing facilities to their stock brokers / trading members to facilitate testing of the software.

- Further, vide various circulars issued by SEBI on Internet Based Trading (IBT), Direct Market Access (DMA), Securities Trading using Wireless Technology (STWT), Smart Order Routing (SOR) and Algorithmic Trading (AT), stock exchanges have been directed to ensure that various requirements specified in such circulars, including requirements related to systems, operations, testing, etc., are implemented and the systems of stock broker / trading member facilitate orderly trading and integrity of the securities market.
- Various incidents of malfunctioning of software used by market participants have been observed in Indian as well as foreign securities market in the recent past. Such incidents have emphasized the need for a stringent and thorough testing of software before its introduction in the securities market. This applies equally to any subsequent changes to the software used by the stock brokers / trading members.
- SEBI has engaged in a consultative process with the stock exchanges, software vendors, system auditors and the Technical Advisory Committee (TAC) to streamline



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and strengthen the process of testing of software. Based on the recommendations of TAC, it has been decided that market participants shall follow the testing procedure specified hereinafter before deployment of the software.

5. For the purpose of the circular, the term 'software' shall mean electronic systems or applications used by stock brokers / trading members for connecting to the stock exchanges and for the purposes of trading and real-time risk management, including software used for IBT, DMA, STWT, SOR, AT, etc.

6. Testing of Software

- 6.1. In addition to the testing and approval requirements specified through various circulars issued by SEBI on IBT, DMA, STWT, SOR and AT, stock exchanges shall frame appropriate testing policies for functional as well as technical testing of the software. Such framework shall at the minimum include the following:

(i) **Testing in a simulated test environment:** Stock exchanges shall provide suitable facilities to market participants / software vendors to test new software or existing software that have undergone change. Subjecting the new software or existing software that have undergone change to such testing facility shall be mandatory for market participants, before putting it in use.

(ii) Mock testing

- (a) Stock exchanges shall organize mock trading sessions on regular basis, atleast once in a calendar month, to facilitate testing of new software or existing software that has undergone any change of functionality, in a close-to-real trading environment. Stock exchanges shall suitably design and plan such mock trading sessions to ensure maximum participation and sufficient trading volumes for the purpose of testing.
- (b) Stock exchanges shall mandate a minimum time period for such testing in the mock trading sessions.
- (c) In order to improve the efficacy of the mock trading sessions, all stock brokers / trading members shall ensure that all user-ids approved for Algo trading, irrespective of the algorithm having undergone change or not, shall participate in the mock trading sessions.
- (d) User Acceptance Test (UAT): The stock broker / trading member shall undertake UAT of the software to satisfy itself that the newly developed / modified software meets its requirements.

- 6.2. Stock brokers / trading members shall also engage

system auditor(s) to examine reports of mock tests and UAT in order to certify that the tests were satisfactorily undertaken.

- 6.3. Stock exchanges shall monitor compliance of stock brokers / trading members, who use trading algorithm, with regard to the requirement of participation in mock trading session as mandated with this circular. In cases where stock exchanges find that the stock broker / trading member has failed to participate in such mock trading sessions, stock exchange shall call for reasons and if found unsatisfactory, shall suspend the proprietary trading rights of the stock broker / trading member for a minimum period of one trading day.
- 6.4. Stock exchanges shall also ensure that the system auditors examine the compliance of stock broker / trading member, who use trading algorithms, with regard to the requirement of participation in mock trading session, as mandated with this circular, and provide suitable comments in the periodic system audit report. In cases where the system audit report indicate that the stock broker / trading member has failed to participate in such mock trading sessions, stock exchange shall call for reasons from the stock broker / trading member and if found unsatisfactory, shall suspend the proprietary trading rights of the stock broker / trading member for a minimum period of one trading day.
- 6.5. For pre-approval / periodic system audit of Computer-to-Computer Link (CTCL) or Intermediate Messaging Layer (IML), IBT, DMA, STWT, SOR and AT, stock brokers / trading members shall engage a system auditor with any of the certifications specified vide SEBI circular dated CIR/MRD/DP/16/2013 dated May 21, 2013. While finalizing the system auditor, stock brokers / trading members shall ensure the system auditor does not have any conflict of interest with the stock broker and the directors / promoters of the system auditor are not directly or indirectly related to the current directors or promoters of stock broker / trading member.

7. Approval of Software of stock broker / trading member

- 7.1. Stock brokers / trading members shall seek approval of the respective stock exchanges for deployment of the software in the securities market by submitting necessary details required by stock exchange including details of software, tests undertaken and certificate / report provided by the system auditor. Stock exchange may seek additional details as deemed necessary for evaluating the application of the stock broker / trading member.
- 7.2. Stock exchanges shall grant approval or reject the application of the stock broker as the case may be,



and communicate the decision to the stock broker / trading member within fifteen working days from the date of receipt of completed application (or within any other such time period specified vide SEBI circulars on DMA, IBT, STWT, SOR, AT, etc.). In case of rejection of the application, the stock exchange shall also communicate reasons of rejection to the stock broker / trading member within such time period.

- 7.3. Before granting approval to use software in securities market, stock exchange shall ensure that the requirements specified by SEBI / stock exchange with regard to software are met by the stock broker / trading member.

8. Undertaking to be provided by stock brokers / trading members

- 8.1. Stock brokers / trading members shall submit an undertaking to the respective stock exchanges stating the following at the minimum:

- (i) M/s (name of the stock broker / trading member)
will take all necessary steps to ensure that every new software and any change thereupon to the trading and/or risk management functionalities of the software will be tested as per the framework prescribed by SEBI / stock exchange before deployment of such new / modified software in securities market.
- (ii) M/s (name of the stock broker / trading member)
will ensure that approval of the stock exchange is sought for all new / modified software and will comply with various requirements specified by SEBI or the stock exchange from time to time with regard to usage, testing and audit of the software.
- (iii) The absolute liability arising from failure to comply with the above provisions shall lie entirely with M/s (name of the stock broker / trading member)

- 8.2. Stock exchanges may include additional clauses as deemed necessary in the undertaking.

9. Sharing of Application Programming Interface (API) specifications by the stock exchange with stock brokers / trading members

- 9.1. API is an interface that enables interaction of software with other software and typically includes language and message format that is used by an application program to communicate with the operating system or other application program. Stock brokers / trading members and software vendors require relevant API specifications to facilitate interaction of the developed software with the systems of the stock exchanges.
- 9.2. Technical Advisory Committee (TAC) had engaged with stock exchanges, software vendors and stock brokers / trading members to review the framework of sharing of APIs by stock exchanges.

- 9.3. Based on the recommendations of the committee, it is decided that stock exchanges shall provide relevant API specifications to all stock brokers / trading members and software vendors who are desirous of developing software for the securities market, after establishing their respective credentials.

- 9.4. In case of refusal to share APIs, stock exchanges shall provide reasons in writing to the desirous stock brokers / trading members or software vendors within a period of fifteen working days from the date of receipt of such request for sharing of API.

- 9.5. Further, stock exchanges shall not selectively release updates / modifications, if any, of the existing API specifications to few stock brokers / trading members or software vendors ahead of others and shall provide such updated / modified API specifications to all stock brokers / trading members and software vendors with whom the earlier API specifications were shared.

10. Penalty on malfunction of software used by stock broker / trading member:

Stock exchanges shall examine the cases of malfunctioning of software used by stock brokers / trading members and apply deterrent penalties in form of fines or suspension to the stock broker / trading member whose software malfunctioned. In addition, stock brokers / trading members shall implement various mechanisms including the following to minimize their losses in the event of software malfunction:

- 10.1. include suitable clauses in their agreement with the software vendors to define liabilities of software vendor and stock broker / trading member in case of software malfunction, and / or,
- 10.2. consider taking suitable insurance cover to meet probable losses in case of software malfunction.

11. This circular shall be effective from October 01, 2013 and shall supersede circular no. SEBI/MRD/Policy/SE/15864/2003 dated August 21, 2003. Stock exchanges are directed to:

- 11.1. take necessary steps and put in place necessary systems for implementation of the provisions of this circular.
- 11.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
- 11.3. bring the provisions of this circular to the notice of the stock brokers / trading 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



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development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager

04 Investment by Qualified Foreign Investors (QFIs) in "to be listed" Indian Corporate Debt Securities

[Issued by the Securities and Exchange Board of India vide CIR/IMD/FII/C/13/2013 dated 13.08.2013]

1. Vide SEBI circular CIR/IMD/FII&C/17/2012 dated July 18, 2012, QFIs had been allowed to invest in listed/ to be listed Indian corporate debt securities through public issues and units of debt schemes of Indian mutual funds.
2. Based on the feedback received from market participants, with a view to align the eligibility criteria for investment in debt securities between SEBI and RBI, and to bring QFI and FII at par for investment in "to be listed" debt securities, it has now been decided to allow QFIs to invest in "to be listed" corporate debt securities directly from the issuer.
3. In the circumstance that the debt issue cannot be listed within 15 days of issue for any reasons whatsoever, then the holding of the QFI shall be sold off only to domestic participants/investors until the securities are listed.
4. All other applicable stipulations prescribed by SEBI in circular CIR/IMD/FII&C/17/2012 dated July 18, 2012 shall continue to apply.

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.

Parag Basu
General Manager

05 Securities and Exchange Board of India (Buy-back of Securities) (Amendment) Regulations, 2013.

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/2013-14/16/6348. Published in the Gazette of India (Extraordinary) Part III- Section 4 dated 08.08.2013]

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with clause (f) of sub-section (2) of Section 77A

of the Companies Act, 1956 (1 of 1956), the Board hereby makes the following Regulations to amend the Securities and Exchange Board of India (Buy back of Securities) Regulations, 1998, namely:-

1. These regulations shall be called the Securities and Exchange Board of India (Buy-back of Securities) (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 (Buy-back of Securities) Regulations, 1998-
 - (i) in regulation 4,
 - (a) in sub-regulation (1), the following proviso shall be inserted, namely,-
"Provided that no offer of buy-back for fifteen per cent or more of the paid up capital and free reserves of the company shall be made from the open market."
 - (b) after sub-regulation (3), the following sub-regulation shall be inserted, namely,-
"(4) A company shall not make any offer of buy-back within a period of one year reckoned from the date of closure of the preceding offer of buy-back, if any."
 - (ii) in regulation 14, after sub-regulation (2), the following new sub-regulation shall be inserted, namely,-
"(3) The company shall ensure that atleast fifty per cent of the amount earmarked for buy-back, as specified in resolutions referred to in regulation 5 or regulation 5A, is utilized for buying-back shares or other specified securities."
 - (iii) in regulation 15,
 - (a) in sub-regulation (d), for the words "at least seven days prior to the commencement of buy-back" the words and numbers "within seven working days from the date of passing the resolution referred to in regulation 5 or regulation 5A", shall be substituted.
 - (b) sub-regulation (e) shall be substituted with following, namely,-
"(e) Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with the Board along with the fees specified in Schedule IV;"
 - (c) sub-regulation (i), shall be substituted with the following, namely,-
"(i) the company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a daily basis in such form as



may be specified by the Board and the stock exchange shall upload the same on its official website immediately;"

- (d) after sub-regulation (i), the following sub-regulation shall be inserted, namely,-

"(ia) The company shall upload the information regarding the shares or other specified securities bought-back on its website on a daily basis;"

- (e) After sub-regulation (j), the following new sub-regulation shall be inserted, namely,-

"(k) The buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer."

- (iv) After regulation 15, the following new regulations shall be inserted, namely,-

"Buy-back of physical shares or other specified securities

15A. A company shall buy-back its shares or other specified securities in physical form through open market method as provided hereunder:

- (a) a separate window shall be created by the stock exchange, which shall remain open during the buy-back period, for buyback of shares or other specified securities in physical form.
- (b) the company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate window specified in clause (a), only after verification of the identity proof and address proof by the broker.
- (c) the price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker:

Provided that the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.

Explanation: In case no shares or other specified securities were bought back in the

normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.

15B. Escrow account

- (1) The Company shall, before opening of the offer, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolutions referred to in regulation 5 or regulation 5A.
- (2) The escrow account referred to in sub-regulation (1) may be in the form of,—
 - (a) cash deposited with any scheduled commercial bank; or
 - (b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.
- (3) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the company shall while opening the account, empower the merchant banker to instruct the bank to make payment of the amounts lying to the credit of the escrow account, to meet the obligations arising out of the buy-back.
- (4) For such part of the escrow account as is in the form of a bank guarantee:
 - (a) the same shall be in favour of the merchant banker and shall be kept valid for a period of thirty days after the closure of the offer or till the completion of all obligations under these regulations, whichever is later.
 - (b) the same shall not be returned by the merchant banker till completion of all obligations under the regulations.
- (5) Where part of the escrow account is in the form of a bank guarantee, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolutions referred to in regulation 5 or regulation 5A. as and by way of security for fulfillment of the obligations under the regulations by the company.
- (6) The escrow amount may be released for making payment to the shareholders subject to atleast 2.5% of the amount earmarked for buy-back as specified in the resolutions referred to in regulation 5 or regulation 5A remaining in the escrow account at all points of time.
- (7) On fulfilling the obligation specified at sub regulation (3) of Regulation 14, the amount and



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the guarantee remaining in the escrow account, if any, shall be released to the company.

- (8) In the event of non-compliance with sub-regulation (3) of regulation 14, except in cases where,-

- a. volume weighted average market price (VWAMP) of the shares or other specified securities of the company during the buy-back period was higher than the buy-back price as certified by the Merchant banker based on the inputs provided by the Stock Exchanges.
- b. inadequate sell orders despite the buy orders placed by the company as certified by the Merchant banker based on the inputs provided by the Stock Exchanges.
- c. such circumstances which were beyond the control of the company and in the opinion of the Board merit consideration,

the Board may direct the merchant banker to forfeit the escrow account, subject to a maximum of 2.5 per cent of the amount earmarked for buy-back as specified in the resolutions referred to in regulations 5 or 5A.

- (9) In the event of forfeiture for non-fulfillment of obligations specified in sub-regulation (8), the amount forfeited shall be deposited in the Investor Protection and Education Fund of Securities and Exchange Board of India."

- (v) in regulation 16,

- (a) in sub-regulation (1), after the words, figures and numbers "provisions of sub-regulation (2)" the words, figures and numbers "and sub-regulation (3)", shall be inserted.
- (b) after sub-regulation (2), the following shall be inserted, namely:-

"(3) The company shall extinguish and physically destroy the security certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month: Provided that the company shall ensure that all the securities bought-back are extinguished within seven days of the last date of completion of buyback."

- (vi) In regulation 19,

- (a) sub-regulation (1), in clause (e),
 1. after the words, " of the company in the stock exchange" the words "or offmarket, including inter-se transfer of shares among the promoters", shall be inserted.

2. for the words, "of the buy-back offer is open" the words and numbers "from the date of passing the resolution under regulation 5 or regulation 5A till the closing of the offer", shall be substituted.

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

"(f) the company shall not raise further capital for a period of one year from the closure of buy-back offer, except in discharge of its subsisting obligations."

U.K. Sinha
Chairman

06

Application for change in category of the Alternative Investment Fund

[Issued by the Securities and Exchange Board of India vide CIR/IMD/DF/12/2013 dated 07.08.2013]

1. SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") were notified on May 21, 2012.

Regulation 7(2) of AIF Regulations specifies as under:

"An Alternative Investment Fund which has been granted registration under a particular category cannot change its category subsequent to registration, except with the approval of the Board."

2. In this regard, it is specified as under:
 - 2.1 Only AIFs who have not made any investments under the category in which they were registered earlier shall be allowed to make application for change in category.
 - 2.2 Any AIF proposing to change its category shall make an application to SEBI for the same along with application fees of Rs. 1 lakh. The application shall include the updated Form A (Refer First Schedule to the AIF Regulations), other updated supporting documents, if any and rationale for the proposed change. Registration fees shall not apply for such applications.
 - 2.3 If the AIF has received commitments/ raised funds prior to application for change in category, the AIF shall be required to send letters/emails to all its investors providing them the option to withdraw their commitments/ funds raised without any penalties/ charges. Any fees collected from investors seeking to withdraw commitments/ funds shall be returned to them. Partial withdrawal may be allowed subject to compliance with the minimum investment amount



required under the AIF Regulations.

2.4 The AIF shall not make any investments other than in liquid funds/ banks deposits until approval for change in category is granted by SEBI.

2.5 On approval of the request from SEBI, the AIF shall send a copy of the revised placement memorandum and other relevant information to all its investors.

3. 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.

4. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Alternative Investment Funds".

Barnali Mukherjee
General Manager

07 Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/ GN/2013-14/15/6319. Published in the Gazette of India (Extraordinary) Part III- Section 4 dated 02.08.2013]

In terms of sub-regulation (1) of regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (the Regulations), the Board may require, by notification, any category of associated persons as defined in the Regulations to obtain requisite certification(s).

Accordingly, it is notified that with effect from the date of this notification, Merchant Bankers registered with the Board shall ensure that atleast two associated persons designated as Key Management Personnel, who,-

- perform SEBI regulated activities such as initial public offer, further public offer, Open Offer, Buy-back, Delisting;
- deal with the issuers in connection with activities mentioned in (a) above;
- deal with intermediaries associated with activities mentioned in (a) above;
- act as designated Compliance Officer dealing with the activities mentioned in (a) above;
- submit Due Diligence Certificates to SEBI in connection

with the activities mentioned in (a) above;

shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as 'NISM') by passing the NISM-Series-IX: Merchant Banking Certification Examination (hereinafter referred to as 'MBCE') as mentioned in the NISM communiqué No. NISM/Certification/NMD/ Series-IX: MB/2013/01 dated March 6, 2013 within two years from the said date of notification:

Provided that a Merchant Banker, who engages or employs any such associated person after the date of this notification, shall ensure that such person obtains certification by passing MBCE within one year from the date of his employment.

U.K. Sinha
Chairman

08 Utilisation period for Government Debt Limits

[Issued by the Securities and Exchange Board of India vide CIR/IMD/ FIC/11 /2013 dated 31.07.2013]

- SEBI vide circular CIR/IMD/FIC/22/2012 dated November 07, 2012 had reduced the utilisation period for Government debt limits allocated through auction process to 30 days from 45 days.
- Currently, the unutilised debt limits as on the 18th of every month are auctioned on the 20th of the month (the next working day in case 20th is a holiday). Thus, an FII/QFI purchasing debt limits in the auction on the 20th has time till 19th of the next month to utilise the debt limits.
- The limits not utilised by the FIIs/QFIs as on the 19th are added back to the pool of free limits. Since the date of expiry of the utilisation period for debt limits (19th) exceeds the cut-off date for the free limit to be auctioned (18th), by one day, the unutilised limits being freed up on the 19th are auctioned in the subsequent month and not in the same month. On account of this, free limits remain unavailable for investments for two months till the FIIs/QFIs can purchase them in the subsequent auction.
- Therefore, in partial modification to para 2 of CIR/IMD/FIC/22/2012 dated November 07, 2012, in order to ensure that the unutilised debt limits are put up for auction without delay, it is proposed that FIIs/QFIs may be permitted to utilise the debt limits allocated to them in each monthly auction till the 17th day of the succeeding month. Any unutilised limit as on the 18th of each month would get auctioned on the 20th of each



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month, in terms of SEBI circular CIR/IMD/FIIC/8/2013 dated June 12, 2013.

5. The Government Debt Limits allocated in the auction held on July 22, 2013 shall adhere to the revised utilisation period.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under SEBI 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. The custodians are requested to bring the contents of this circular to the notice of their FII clients.

S Madhusudhanan
Deputy General Manager

09 Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/23/2013 dated 30.07.2013]

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
 - a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
 - b) There are no other grounds/reasons for continuation of the trading in TFTS.

3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Maninder Cheema
Deputy General Manager

Annexure A

Sr. No.	Name of the Company	ISIN
1.	Swadeshi Polytex Limited	INE243N01011
2.	Joy Realty Limited	INE433O01016
3.	Shantanu Sheorey Aquakult Limited	INE545N01019
4.	Planter's Polysacks Limited	INE293E01015
5.	Centron Industrial Alliance Limited	INE450L01016
6.	Suryo Foods & Industries Limited	INE565E01016
7.	Rajlaxmi Industries Limited	INE400O01015
8.	Birla Transasia Carpets Limited	INE646O01013
9.	M P Polypropylene Limited	INE739N01018
10.	Bell Agro Machina Limited	INE011E01011
11.	Fomento Resorts And Hotels Limited	INE241E01014
12.	IO System Limited	INE502D01011
13.	Dhanvantri Jeevan Rekha Limited	INE239F01015
14.	Jainex Aamcol Limited	INE280F01019
15.	Ahmedabad Gases Limited	INE501O01010
16.	Sri Kanyaka Investments Limited	INE853O01015

10 Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs)

[Issued by the Securities and Exchange Board of India vide CIR/IMD/DF/10/2013 dated 29.07.2013]

1. SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") were notified on May 21, 2012. Regulations 18 (c) and (d) of the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") state as under

Reg 18(c)- 'Category III Alternative Investment Funds may engage in leverage or borrow subject to consent from the investors in the fund and subject to a maximum limit, as may be specified by the Board

Reg 18(d)- 'Category III Alternative Investment Funds shall be regulated through issuance of directions regarding areas such as operational standards, conduct of business rules, prudential requirements, restrictions on redemption and conflict of interest as may be specified



by the Board.’

2. Further, under Regulation 28 of the said Regulations, the Board may at any time call upon the Alternative Investment Fund to file such reports, as the Board may desire, with respect to the activities carried on by the Alternative Investment Fund.
3. In this regard, it is specified as under:

3.1 Risk Management and Compliance

All Category III AIFs which employ leverage shall:

- i. have a comprehensive risk management framework supported by an independent risk management function, appropriate to the size, complexity and risk profile of the fund.
- ii. have a strong and independent compliance function appropriate to the size, complexity and risk profile of the fund supported by sound and controlled operations and infrastructure, adequate resources and checks and balances in operations.
- iii. maintain appropriate records of the trades/ transactions performed and such information should be available to SEBI, whenever sought
- iv. provide full disclosure and transparency about conflicts of interest and how they manage them from time to time to investors in accordance with Regulation 21 of the AIF Regulations and any other guidelines as may be specified by SEBI from time to time. Such conflicts shall be disclosed to the investors in the placement memorandum and by separate correspondences as and when such conflicts may arise. Such information shall also be disclosed to SEBI as and when required by SEBI.

3.2 Submission of reports to SEBI

- i. Under Regulation 28 of the AIF Regulations, All AIFs shall submit periodical reports to SEBI relating to their activity as an Alternative Investment Fund.
- ii. Category I and II AIFs and the Category III AIFs which do not undertake leverage shall submit report to SEBI on a quarterly basis in the format as specified in Annexure I.
- iii. Category III AIFs which undertake leverage shall submit a report to SEBI on a monthly basis in the format as specified in Annexure II.
- iv. Reports shall be submitted by AIFs online through the online reporting system provided by SEBI. However, till such online system is made available, reports shall be sent by email to aifreporting@sebi.gov.in. Excel sheet to be filled in this regard

is available on SEBI website under the section ‘Info for’ ‘Alternative Investment Funds’. Once the online system is made available by SEBI, no reports shall be sent by email. Further, AIFs are advised to note that no physical reports shall be filed with SEBI.

- v. The reports for the period upto the quarter ended June 30, 2013 for AIFs which are already registered with SEBI shall be sent vide email to the aforesaid email address within one month from the date of this circular.
- vi. Reports shall be submitted within 7 calendar days from the end of quarter/ end of month as the case maybe.

3.3 Redemption norms

- i. These norms shall apply to open ended Category III AIFs for all their existing and new schemes.
- ii. The Manager of such AIFs shall ensure adequate and sufficient degree of liquidity of the scheme/ fund in order to allow it, in general, to meet redemption obligations and other liabilities.
- iii. the Manager shall establish, implement and maintain an appropriate liquidity management policy and process to ensure that the liquidity of the various underlying assets is consistent with the overall liquidity profile of the fund/scheme while making any investment.
- iv. The Manager of such AIFs shall clearly disclose the possibility of suspension of redemptions in exceptional circumstances to investors in the placement memorandum.
- v. Suspension of redemptions by the Manager shall be justified only:
 1. in exceptional circumstances provided that such suspension is exclusively in the best interest of investors of the AIF , or
 2. if the suspension is required under the AIF regulations or required by SEBI.
- vi. The Manager of such AIFs shall build the operational capability to suspend redemptions in an orderly and efficient manner. During the suspension of the redemptions, the Manager shall not accept new subscriptions.
- vii. The decision by the Manager to suspend redemptions, in particular the reasons for the suspension and the planned actions shall be appropriately documented and communicated to SEBI and to the investors.
- viii. The suspension shall be regularly reviewed by the Manager. The Manager shall take all necessary steps in order to resume normal operations as soon as possible having regard to the best



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interest of investors.

- ix. The Manager of such AIFs shall keep SEBI and investors informed about the actions undertaken by the manager throughout the period of suspension. The decision to resume normal operations shall also be communicated to SEBI and the investors as soon as possible.

3.4 Prudential requirements

All Category III AIFs which undertake leverage, whether through investment in derivatives or by borrowing or by any other means shall comply with the following prudential requirements:

- i. For the purpose of arriving at leverage undertaken by an AIF, leverage shall be calculated as the ratio of the exposure to the Net Asset Value of the AIF.
- ii. Leverage shall be calculated as under:

$$\text{Leverage} = \frac{\text{Total exposure (Longs+Shorts (after offsetting as permitted))}}{\text{Net Asset Value (NAV)}}$$
- iii. The leverage of a Category III AIF shall not exceed 2 times of the NAV of the fund. i.e. If an AIF's NAV is Rs. 100 crore, its exposure (Longs+shorts) after offsetting positions as permitted shall not exceed Rs. 200 crore.

Calculation of exposure and NAV

- i. The total exposure of the fund for the purpose of computing leverage shall generally be the sum of the market value of all the securities/ contracts held by the fund. The total exposure at any point of time will be a sum of exposure through instruments in both the spot market and the derivative market.
- ii. Exposure shall generally be calculated as below:
 1. Futures (long and short)= Futures Price * Lot Size * Number of Contracts
 2. Options bought= Option Premium Paid * Lot Size * Number of Contracts
 3. Options sold= Market price of underlying * Lot size * Number of contracts
 4. In case of any other derivative exposure, the exposure is proposed to be calculated as the notional market value of the contract
- iii. Idle cash and cash equivalents shall not be included in the calculation of total exposure. Long put positions shall be considered as short exposure and short put positions shall be considered as long exposure. Short selling of a stock through SLBM shall be treated as short exposure. Temporary borrowing arrangements which relate to and are fully covered by capital

commitments from investors need not be included in calculation of leverage.

- iv. Offsetting of positions shall be allowed for calculation of leverage for transactions entered into for hedging and portfolio rebalancing as provided in the circular No. MFD/CIR/21/25467/2002 dated December 31, 2002 and to the extent as specified in the circular.
- v. Sum of all exposures without offsetting transactions for hedging and portfolio rebalancing shall be termed as 'gross exposure' and the ratio of such gross exposure and Net Asset Value shall be termed as 'gross leverage'.
- vi. Net Asset Value (NAV) of the AIF shall be the sum of value of all securities adjusted for Mark to market gains/losses (including cash and cash equivalents). The NAV shall exclude any funds borrowed by the AIF.
- vii. All the above restrictions/limits shall apply at the scheme-level.

Breach of leverage limits

- i. All Category III AIFs shall have adequate systems in place to monitor their exposures. It shall be responsibility of the AIFs to ensure that the leverage shall not exceed the prescribed limit at all times.
- ii. All Category III AIFs shall report to the custodian on a daily basis the amount of leverage at the end of the day (based on closing prices) and whether there has been any breach of limit during the day.
- iii. In case of a breach in limit:

a. Obligation of AIF:

- i. The AIF shall send a report to the custodian in accordance with point (ii) above.
- ii. The AIF shall send a report to all its clients before 10 a.m. on the next working day stating that there is a breach in the limit along with reasons for the same.
- iii. The AIF shall square off the excess exposure and bring back the leverage within the prescribed limit by end of next working day. This shall however not prejudice any action that may be taken by SEBI against the AIF under SEBI (Alternative Investment Funds) Regulations, 2012 or the SEBI Act.
- iv. A confirmation of squaring off of the excess exposure shall be sent to all the clients by the AIF by end of the day on which the exposure was squared off.

b. Obligation of custodian:

- i. The custodian shall report to SEBI providing



name of the fund, the extent of breach and reasons for the same before 10 a.m. on the next working day.

- ii. A confirmation of squaring off of the excess exposure shall be sent to SEBI by the custodian by end of the day on which the exposure was squared off

4. Further, all AIFs shall ensure that all marketing documents of the fund/ scheme, if any, can be distributed on a private basis only to its proposed investors and shall be in accordance with the placement memorandum of the fund/scheme.
5. 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.
6. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Alternative Investment Funds".

Barnali Mukherjee

General Manager

Annexure I

Reporting Format for Category I AIFs, Category II AIFs and Category III AIFs which do not undertake leverage

General information		
1	Name of the AIF	
2	Registration number	
3	Category and sub-category of the AIF	
4	Name of the sponsor	
5	Name of the manager	
6	Name of the Trustee	
7	Name of contact person	
8	Email address of contact person	

Report upto/ as on the quarter ended (March/ June/ Sep/ Dec) Year

Cumulative details of the funds raised & invested by all schemes under the fund

1. Brief details of the Fund (Scheme-wise) (All figures in Rs. Crore) ¹									
Name of Scheme	Target Corpus	Total corpus as on date	Investible funds as on date	Open ended/ Close-ended	Cumulative funds raised under the scheme				
					At the beginning of the quarter	Additions during the quarter	Redemptions during the quarter	Temporary funding by borrowing ²	At the end of the quarter
					(a)	(b)	(c)	(d)	(a+b-c+d)

1. Brief details of the Fund (Scheme-wise) (All figures in Rs. Crore) ¹				
Cumulative funds raised under the scheme				Tenure of the scheme (in years) ³
At the beginning of the quarter	Additions during the quarter	Divestments during the quarter	At the end of the quarter	
(a)	(b)	(c)	(a+b-c)	

--	--	--	--	--

¹ The grants received may be included in funds raised and grants provided may be included in investments.

² The net outstanding borrowing may be mentioned. If the net borrowing is negative, the negative figure may be used. If the net borrowing is negative, the amount must be entered with a '-' sign.

³ Including possible extensions. E.g. If the tenure of the scheme is 4 years, which may be extended by 2 one-year periods, enter 4+1+1. In case of open-ended funds, enter 'N/A'.

2. Cumulative net investments by the AIF as at the end of quarter (in Rs. Crore) (Scheme-wise)							
Name of the scheme	In Unlisted equity shares/ equity linked instruments/ LLP interest	In listed equity (excluding in listed/to be listed on SME exchange)	In Debt/ securitised debt instruments	In units of other AIFs	In liquid funds	In listed/ to be listed securities on SME exchange	Others

3. For Fund of Funds, specify list of AIFs in which investment is made (Enter details only if the AIF is a Fund-of-Funds. If not, leave the fields blank.)		
Name of the AIF	Category of the AIF	Cumulative net amount invested as at the end of the quarter (in Rs. Crore)

4. Maximum Investment made in a single investee company (Scheme-wise)			
Name of the Scheme	Name of the investee company	Amount invested (in Rs. Crore)	Amount of investment as a % of total investible funds

5. Investment in associates, if any (Scheme-wise)			
Name of the Scheme	Name of the associate	Nature of association	Cumulative net amount invested as at the end of the quarter (in Rs. Crore)

6. Categories of investors									
Name of the scheme	Individual (Resident)		Corporate (Resident)		Foreign investors (excluding FVCIs)		FVCIs		Others
	Number of investors	Amount raised from investors (in Rs. Crore)	Number of investors	Amount raised from investors (in Rs. Crore)	Number of investors	Amount raised from investors (in Rs. Crore)	Number of investors	Number of investors	Amount raised from investors (in Rs. Crore)

7. Industry-wise break-up (Cumulative net investment in the sector as at end of the quarter in Rs. Crore)			
Name of the scheme	List of sectors as enclosed in Annexure C		
	Sector 1	Sector 2	Sector 3

Annexure II

Reporting Format for Category III AIFs which undertake leverage

General information





From the Government

1	Name of the AIF	
2	Registration number	
3	Name of the manager	
4	Name of the sponsor	
5	Name of the Trustee	
6	Name of custodian	
7	Name of contact person	
8	Email address of contact person	

B Report upto/as at the end of month ended _____, Year

1. Brief details of the Fund (Scheme-wise) (All figures in Rs. Crore)								
Name of Scheme	Target Corpus	Total corpus as on date	Investible funds as on date	Open ended/ Close-ended	Cumulative funds raised under the scheme			
					At the beginning of the quarter	Additions during the quarter	Redemptions during the quarter	Temporary funding by borrowing ⁴
					(a)	(b)	(c)	(d)
								(a+b-c+d)

1. Brief details of the Fund (Scheme-wise) (All figures in Rs. Crore)				
Cumulative Investments made under the scheme				Tenure of the scheme (in years) ^a
At the beginning of the quarter	Additions during the quarter	Divestments during the quarter	At the end of the quarter	
(a)	(b)	(c)	(a+b-c)	

⁴ Include only temporary borrowings which are fully covered by capital commitments. Do not include other borrowings.

2. Exposure by the AIF as at the end of month (in Rs. Crore) (Scheme-wise)									
Name of the scheme	In listed equity and ETFs	Long Futures	Short futures	Long calls	Short calls	Long puts	Short puts	Cash & cash equivalents	Others

3. Leverage undertaken by the AIF (Scheme-wise)(as at the end of the month)							Total borrowing as at end of the month (in Rs. crore)
Name of the scheme	NAV (in Rs. crore) (1)	Gross Long positions (in Rs. Crore) (2)	Gross Short positions (in Rs. Crore) (3)	Gross leverage (No. of times) {(2)+(3)/(1)}	Exposure after off-setting transactions for hedging and portfolio rebalancing (in Rs. Crore) (4)	Leverage after off-setting transactions for hedging and portfolio rebalancing (Number of times) (4) / (1)	

4. Leverage as reported to custodian on daily basis (Leverage after offsetting transactions for hedging and portfolio rebalancing) (Number of times)				
Leverage as on the date of the month as reported to the custodian (E.g. If date is 1 for month of April 2013, enter leverage as on April 1, 2013)	Scheme 1	Scheme 2	Scheme 3	Scheme 4,...
1				
2				

3				
4,...				

5. Maximum Investment made in a single investee company (Scheme-wise)			
Name of the Scheme	Name of the investee company	Amount invested (in Rs. Cr)	Amount of investment as a % of total investible funds

6. Investment in associates, if any (Scheme-wise)			
Name of the Scheme	Name of the associate	Nature of association	Cumulative net amount invested as at the end of the quarter (in Rs. Crore)

7. Categories of investors							
Name of the scheme	Individual (Resident)		Corporate (Resident)		Foreign investors		Others
	Number of investors	Amount raised from investors (in Rs. Crore)	Number of investors	Amount raised from investors (in Rs. Crore)	Number of investors	Amount raised from investors (in Rs. Crore)	Amount raised from investors (in Rs. Crore)

Annexure C

List of industries/ sectors:

- IT/ ITeS
- Telecommunication
- Pharmaceuticals/ Biotechnology/ healthcare
- Media/Entertainment
- Real Estate
- Auto/ Auto Ancillary
- Banking and financial services (Excluding NBFCs)
- NBFCs
- Electrical & Engineering/Outsourced engineering services
- Industrial products
- FMCG/Food and beverages
- Energy/ Power Plants/ power generation and transmission/Non-conventional energy
- Roads/Bridges
- BPOs
- Railways
- Industrial Parks/SEZ
- Urban Infrastructure (water supply, sanitation and sewage products)
- Mining, exploration and refining
- Shipping and Ports
- Logistics
- Education
- Packaging
- Textiles
- Retail



25. Agriculture
26. Chemicals/Petrochemicals/Plastic/Rubber
27. Nanotechnology
28. Seed Research & Development
29. Dairy industry
30. Poultry industry
31. Production of bio fuels
32. R&D of new chemical entities in pharma sector
33. Hotels/Travel/ Hospitality
34. Services sector (services not covered above)



Banking Laws

11 Reporting of OTC transactions in Securitized Debt Instruments

[Issued by the Reserve Bank of India vide RBI/2013-14/201 IDMD.PCD. 06 /14.03.06/ 2013-14 dated 26.08.2013.]

As a measure to develop the securitized debt market and improve transparency, the reporting of Over The Counter (OTC) transactions in Securitized Debt Instruments has been enabled in Fixed Income Money Market and Derivatives Association of India (FIMMDA) reporting platform.

2. All entities regulated by the Reserve Bank should report their secondary market OTC trades in securitized debt instruments within 15 minutes of the trade on FIMMDA's reporting platform with effect from September 02, 2013.

K.K. Vohra

Principal Chief General Manager

12 Investments by Non-resident Indians (NRIs) under Portfolio Investment Scheme (PIS) Liberalisation of Policy

[Issued by the Reserve Bank of India vide RBI/2013-14/192 A. P. (DIR Series) Circular No.29 dated 20.08.2013.]

Attention of Authorised Dealers Category-I (AD Category - I) banks is invited to Schedule 3 of the Foreign Exchange

Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 (hereinafter referred to as Notification No. FEMA 20), as amended from time to time in terms of which, NRIs can invest under PIS on repatriation and/or non-repatriation basis in shares and convertible debentures of listed Indian companies on a recognized stock exchange in India through a registered stock broker. Further, NRIs may purchase and sell shares/ convertible debentures under the PIS through a branch designated by an Authorised Dealer for the purpose and duly approved by the Reserve Bank of India.

2. As a measure of further liberalisation, it has been decided to

- i) allot Unique Code number only to Link office of the AD Category - I bank; and
- ii) dispense with the allotment of Unique Code number to each branch designated by that AD Category - I bank administering the Scheme. Accordingly, henceforth in accordance with the policy approved by the Board, AD Category - I bank shall be free to permit its branches to administer the Portfolio Investment Scheme for NRIs subject to the following:

- a) the AD Category - I bank while granting permission to NRI for investment under PIS shall allow them to operate the scheme as per the terms and conditions are as Annex-A;
- b) the designated link office shall continue to report on a daily basis PIS transactions undertaken on behalf of NRIs for their entire bank to the Reserve Bank under the Online Report Filing System (ORFS) in form LEC (NRI) as per present practice in vogue web site (<https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp>);
- c) the AD Category - I bank shall provide to the Reserve Bank the complete contact details of such link office in advance before commencing operations;
- d) the AD Category - I bank shall sensitise the branches administering the Scheme to ensure that NRIs are not allowed to invest in any Indian company which is engaged or proposes to engage in the business of chit fund, Nidhi company, agricultural or plantation activities, real estate business (does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships), construction of farm houses, manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes and trading in Transferable Development Rights (TDRs) and in sectors/



From the Government

activities as specified in terms of Notification No. FEMA.1/2000-RB dated May 3, 2000, as amended from time to time; and

- e) ensure compliance with instructions issued through A.D.(M.A. Series) Circulars, EC.CO.FID circulars annexed as Annex-B and the regulatory requirements under FEMA, 1999. It may be noted that Overseas Corporate Bodies(OCBs) have been derecognized as an eligible 'class of investor' under various routes/scheme available under the extant Foreign Exchange Management Regulations in terms of the Foreign Exchange Management [withdrawal of General Permission to Overseas Corporate Bodies(OCBs)] Regulations, 2003 notified vide Notification No. FEMA.101/2003-RB dated October 3, 2003.
3. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
4. Reserve Bank has since amended the Regulations and notified vide Notification No. FEMA.261/2013-RB dated February 27, 2013 vide G.S.R. 515(E) dated July 30, 2013.
5. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar

Chief General Manager-in-Charge

[Annex-A to the A.P.(DIR Series)
Circular No.29 of 20.08.2013]

Salient features of Portfolio Investment Scheme (PIS) for investments by a Non Resident Indian (NRI)

- a) An NRI intending to buy and sell shares / convertible debentures of an Indian company through a registered broker on a recognized stock exchange in India will apply in prescribed form to the designated branch of AD bank for participating in the Scheme on repatriation and / or non-repatriation basis.
- b) While applying, the NRI should also undertake that
 - i) the particulars furnished are true and correct;
 - ii) he has no dealing with/ he will not deal with any other designated branch/bank under PIS;
 - iii) he will ensure that total holding in shares / convertible debentures, both on repatriation and non-repatriation basis in any one Indian company at no time shall exceed 5 per cent of the paid up capital/ paid up value of each series of convertible debentures of that company.
- c) The designated branch of the AD bank will grant one time

permission to the NRI applicant for purchase and sale of shares / convertible debentures of an Indian company. Two distinct permission letters (for repatriation basis and non-repatriation basis) shall be issued as per the prescribed format.

- d) Designated branch shall open a separate sub account of NRE/NRO account (opened and maintained by an NRI in terms of the Foreign Exchange Management (Deposit) Regulations, 2000) for the exclusive purpose of routing the transactions under PIS on behalf of an NRI. NRE(PIS) account for investment made by the NRI on repatriation basis and NRO(PIS) account for investment made on non-repatriation basis under the Scheme. The designated branch shall ensure that amounts due to sale proceeds of shares / convertible debentures which have been acquired by modes other than PIS, such as underlying shares acquired on conversion of ADRs/GDRs, shares/ convertible debentures acquired under FDI Scheme, shares/ convertible debentures purchased outside India from other NRIs, shares/ convertible debentures acquired under private arrangement from residents / non-residents, shares/ convertible debentures purchased while resident in India, do not get credited/debited in the accounts opened exclusively for routing the PIS transactions.
- e) The permissible credits and debits in the NRE (PIS) account for routing PIS transactions will be as under:

Permissible Credits

- (i) Inward remittances in foreign exchange through normal banking channels;
- (ii) Transfer from applicant's other NRE accounts or FCNR (B) accounts maintained with AD bank in India ;
- (iii) Net sale proceeds (after payment of applicable taxes) of shares and convertible debentures which were acquired on repatriation basis under PIS and sold on stock exchange through registered broker;
- (iv) dividend or income earned on investments under PIS.

Permissible debits

- (i) Outward remittances of dividend or income earned;
- (ii) Amounts paid on account of purchase of shares and convertible debentures on repatriation basis on stock exchanges through registered broker under PIS; and
- (iii) Any charges on account of sale/ purchase of shares or convertible debentures under PIS.
- f) The permissible credits and debits in the NRO(PIS) account for routing PIS transactions will be as under;

Permissible Credits

- (i) Inward remittances in foreign exchange through normal banking channels;
- (ii) Transfer from applicant's other NRE accounts or FCNR (B) accounts or NRO accounts maintained



- with AD bank in India;
- (iii) Net sale proceeds (after payment of applicable taxes) of shares and convertible debentures which were acquired on repatriation (at the NRI's option) and non repatriation basis under PIS and sold on stock exchange through registered broker; and
 - (iv) dividend or income earned on investments under PIS.
- Permissible debits
- (i) Outward remittances of dividend or income earned;
 - (ii) Amounts paid on account of purchase of shares and convertible debentures on non- repatriation basis on stock exchanges through registered broker under PIS.
 - (iii) Any charges on account of sale/ purchase of shares or convertible debentures under PIS.
- g) The purchase of equity shares in an Indian company, both repatriation and non-repatriation basis by each NRI shall not exceed 5 per cent of the paid up capital of the company subject to an overall ceiling of 10 per cent of the total paid-up capital of the company concerned by all NRIs both on repatriation and non-repatriation basis taken together.
 - h) The purchase of convertible debentures of each series of an Indian company both repatriation and non-repatriation basis by each NRI shall not exceed 5 per cent of the total paid -up value of convertible debentures subject to an overall ceiling of 10 per cent of the total paid –up value of each series of the convertible debentures issued by the Indian company concerned by all NRIs both on repatriation and non-repatriation basis taken together.
 - i) Shares /convertible debentures purchased shall be held and registered in the name of the NRI.
 - j) Shares /convertible debentures acquired by the NRI under this permission can be sold on recognized stock exchange in India through registered broker without any lock in period. NRI shall not engage in short selling and shall take delivery of the shares and convertible debentures purchased and give the delivery of the shares and debentures sold.
 - k) Shares /convertible debentures acquired by the NRI under the Scheme shall not be transferred out of his name by way of gift except to his close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time or Charitable Trust duly registered under the laws in India with prior approval of AD bank Shares /convertible debentures acquired by the NRI under the Scheme shall not be transferred out of his name by way of sale under private arrangement without prior approval of the Reserve Bank .
 - l) Shares /convertible debentures acquired by the NRI under the Scheme shall not be pledged for giving loan to a third party without prior permission of the Reserve Bank.
 - m) NRI is permitted to buy or sale shares/convertible

- debentures through his own broker who is an authorized member of a recognized stock exchange. Both purchase and sale contract notes, in original, should be submitted by the NRI within 24/48 hours of execution of the contract to his designated branch with whom his PIS account is maintained. The onus is on the NRI for submission of contract notes to the designated branch of the AD bank.
- n) NRI is at a liberty to change the designated branch / AD bank. The designated branch / AD bank from whom the PIS account is being transferred should
 - i) issue no objection certificate to the new designated branch / AD bank
 - ii) furnish the list of all the existing holding as also the dates of reporting the transaction in LEC(NRI) to the Reserve Bank to that designated branch/ AD bank to whom the PIS account is being transferred.
 - o) In cases, where an NRI is eligible to make investment in India, his resident Power of Attorney holder can be permitted by AD bank to operate NRE(PIS)/NRO (PIS) account to facilitate investment under the Scheme.

For rest of the Annexures please log on to website of RBI.

13 Foreign Investments in Asset Reconstruction Companies (ARC)

[Issued by the Reserve Bank of India vide RBI/2013-14/191 A.P. (DIR Series) Circular No.28 dated 19.08.2013.]

Attention of Authorized Dealers is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified by the Reserve Bank of India vide Notification No.20 dated 3rd May 2000 as amended from time to time and A.P.(DIR Series) Circular NO.16 dated November 11, 2005.

2. In terms of the aforesaid circular :
 - (a) Foreign Direct Investment (FDI) upto 49% in the equity capital of Asset Reconstruction Companies (ARCs) was permitted subject to certain conditions. However, investment by Foreign Institutional Investors (FIIs) in the equity capital of ARCs was not permitted; and
 - (b) general permission was granted to Foreign Institutional Investors (FIIs) to invest in Security Receipts (SRs) upto 49 per cent of each tranche of scheme of Security Receipts subject to condition that investment of a single FII in each tranche of scheme of SRs shall not exceed 10 per cent of the issue.
3. A review of the policy was undertaken and it has been decided as under:
 - i. The ceiling for FDI in ARCs has been increased from



From the Government

49% to 74% subject to the condition that no sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing through an FII. The foreign investment in ARCs would need to comply with the FDI policy in terms of entry route conditionality and sectoral caps.

- ii. The foreign investment limit of 74% in ARC would be a combined limit of FDI and FII. Hence, the prohibition on investment by FII in ARCs will be removed. The total shareholding of an individual FII shall not exceed 10% of the total paid-up capital.
- iii. The limit of FII investment in SRs may be enhanced from 49% to 74% of the paid up value of each tranche of scheme of Security Receipts issued by the Asset Reconstruction Companies. Further, the individual limit of 10% for investment of a single FII in each tranche of SRs issued by ARCs may be dispensed with. Such investment should be within the FII limit on corporate bonds prescribed from time to time, and sectoral caps under the extant FDI Regulations should be complied with.
4. A copy of Press Release dated December 21, 2012 issued in this regard by Department of Financial Services, Ministry of Finance Government of India is as per Annex.
5. Reserve Bank of India has since amended the Regulations and notified vide Notification No. FEMA.254/2013-RB dated January 07, 2013 vide G.S.R.No.344(E) dated May 29, 2013.
6. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers concerned.
7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Rudra Narayan Kar

Chief General Manager-in-Charge

[Annex]

REVIEW OF FOREIGN INVESTMENT POLICY FOR ASSETS RECONSTRUCTION SECTOR*

Government had permitted Foreign Direct Investment (FDI) in the equity capital of Asset Reconstruction Company (ARCs) upto 49% vide Press Release dated 08.11.2005. Further, on 09.11.2005, the Government permitted the Foreign Institutional Investors (FIIs) registered with the Securities and Exchange Board of India (SEBI) to invest in Security Receipts (SRs) issued by ARCs upto 49% of each

tranche of scheme of SRs. The ceilings of FDI and FII have been reviewed in consultation with the stakeholders and the sector regulators. Accordingly, the Government has decided that –

- i. The ceiling for FDI in ARCs has been increased from 49% to 74% subject to the condition that no sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing through an FII. The foreign investment in ARCs would need to comply with the FDI policy in terms of entry route conditionality and sectoral caps.
- ii. The foreign investment limit of 74% in ARC would be a combined limit of FDI and FII. Hence, the prohibition on investment by FII in ARCs will be removed. The total shareholding of an individual FII shall not exceed 10% of the total paid-up capital.
- iii. The limit of FII investment in SRs may be enhanced from 49% to 74%. Further, the individual limit of 10% for investment of a single FII in each tranche of SRs issued by ARCs may be dispensed with. Such investment should be within the FII limit on corporate bonds prescribed from time to time, and sectoral caps under the extant FDI Regulations should be complied with.
2. The necessary notification / circular under FEMA are being brought out separately by the Reserve Bank of India.
3. The necessary notification under SEBI (FII) Regulations is being brought out separately by the Securities and Exchange Board of India.

Alok Nigam

Joint Secretary to the Government of India

14 Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Fifth Amendment) Regulations, 2013

[Issued by the Reserve Bank of India vide Notification No.283/2013-RB dated 14.08.2013.]

In exercise of the powers conferred by clause (a) of sub-section (3) of Section 6 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations 2004 (Notification No. FEMA 120/RB-2004 dated July 7, 2004), as amended from time to time, (hereinafter called the Principal Regulations or the Notification) namely:-

1. Short Title & Commencement:-

- (i) These Regulations shall be called the Foreign

* Companies registered/to be registered with RBI as Securitization Companies/ Reconstructions Companies under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for the purpose of carrying on / commencing the business of asset reconstruction.



Exchange Management (Transfer or Issue of Any Foreign Security) (Fifth Amendment) Regulations, 2013.

- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment to Regulation 6 in Part I

- (i) In Regulation 6, in sub-regulation (2), for clause (i) the following shall be substituted:

“The total financial commitment of the Indian Party in Joint Ventures / Wholly Owned Subsidiaries shall not exceed 100%, or as decided by the Reserve Bank from time to time, of the net worth of the Indian Party as on the date of the last audited balance sheet.

Explanation: For the purpose of determining the ‘total financial commitment’ within the limit of 100%, or as decided by the Reserve Bank from time to time, of the net worth, the following shall be reckoned, namely:

- Remittance by market purchases, namely in freely convertible currencies; in case of Bhutan, investment made in freely convertible currencies or equivalent Indian Rupees, in case of Nepal investment made only in Indian Rupees;
- Capitalization of export proceeds and other dues and entitlements as mentioned in Regulation 11;
- Hundred percent of the value of guarantees issued by the Indian party to on or behalf of the joint venture company or wholly owned subsidiary;
- Investment in agricultural operations through overseas offices or directly;
- External Commercial Borrowing in conformity with other parameters of the ECB guidelines;
- Fifty percent of the value of performance guarantee issued by the Indian party to or on behalf of the JV/WOS.

Explanation : In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 100 per cent, or as decided by the Reserve Bank from time to time, of the net worth of the Indian party, the Indian party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.

- (g) Hundred percent of the value of the bank guarantee issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party.

Overseas direct investment by an Indian party in Pakistan shall henceforth be considered under the approval route under regulation 9 of this Notification.”

- (ii) In Regulation 6, in sub-regulation (3), in clause (ii), for the words :

“drawal of foreign exchange from an authorised dealer in India shall not exceed 400 % of the net worth of the Indian Party as on the date of last audited balance sheet;

Explanation: For the purpose of the limit of 400 % of the net worth the following shall be reckoned, namely:” the following shall be substituted :

“drawal of foreign exchange from an authorised dealer in India shall not exceed 100%, or as decided by the Reserve Bank from time to time, of the net worth of the Indian Party as on the date of last audited balance sheet;

Explanation: For the purpose of the limit of 100%, or as decided by the Reserve Bank from time to time, of the net worth, the following shall be reckoned, namely:”

- (iii) In Regulation 6, in sub-regulation (3), for clause (ii)(h) the following shall be substituted:

“(h) Fifty per cent of the value of performance guarantee issued by Indian party to or on behalf of the JV/WOS.

Explanation : In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 100 %, or as decided by the Reserve Bank from time to time, of the net worth of the Indian party, the Indian party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.”

C.D. Srinivasan
Chief General Manager

15 Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2013

[Issued by the Reserve Bank of India vide Notification No.FEMA.282/2013-RB dated 14.08.2013.]

In exercise of the powers conferred by sub-section (2) of Section 6, Sub-Section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Reserve Bank of India, in consultation with Central Government, makes the following Regulations to amend the Foreign



From the Government

Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, (Notification No. FEMA.1/2000–RB dated May 3, 2000) namely:

1. Short Title & Commencement

- (i) These Regulations may be called the Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2013.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment to the Regulations

In the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, in regulation 4, in sub-regulation (a), for the provisos, the following shall be substituted :-

“ Provided that –

- (a) subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 75000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I. Further, any remittances for acquisition of immovable property outside India under the Scheme shall not be permitted.

Explanation: Drawal of foreign exchange by resident individuals towards remittances of gift or donations as per item No. 3 and 4 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above;

- (b) where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 75000 or as decided by Reserve Bank from time to time as the case may be, per financial year, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.

Provided further that no part of the foreign exchange of USD 75000 or as decided by Reserve Bank from time to time as the case may be, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned.”

C.D. Srinivasan
Chief General Manager

16

Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999

[Issued by the Reserve Bank of India vide RBI/2013-14/176 A.P. (DIR Series) Circular No. 20 12.08.2013.]

Attention of Authorised Dealers (ADs) and their constituents is invited to paragraph 7.2 of A.P. (DIR Series) Circular No. 56 dated June 28, 2010 wherein they were advised to ensure that the applications for compounding are submitted only after the transactions are complete and all the requisite approvals are in place. Of late, we have been receiving a number of applications for compounding of contraventions of FEMA, 1999 which are submitted without obtaining proper approvals or permission from the concerned authorities leading to avoidable correspondence with the applicants and also return of applications. In case the application has to be returned for this reason or any other reason, the application fees of Rs.5000/- received along with the application fees is also returned.

2. To expedite the refund of compounding fees in such cases, it has been decided to credit the same to the applicant's account through NEFT. The applicants are advised to furnish their mandate and details of their bank account as per ANNEX along with the application in the prescribed format and other documents required to be submitted in terms of the instructions contained in A.P. (DIR Series) Circular Nos. 56 and 57 dated June 28, 2010 and December 13, 2011 respectively.
3. Further, the Annexes relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as given in A.P. (Dir Series) Circular No.57 dated December 13, 2011, have also been modified to include the details of income-tax PAN and the activity as per NIC codes – 1987. It may please be noted that the application will be treated as incomplete without these details.
4. The applicants may also note to bring to the notice of the compounding authority change, if any, in the address/contact details of the applicant during the pendency of the compounding application with Reserve Bank.
5. Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers concerned.
6. The directions contained in this circular have been issued under sections 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

Rudra Narayan Kar
Chief General Manager-in-Charge

**ANNEX****ELECTRONIC CLEARING SERVICE (ECS)
MANDATE FORM**

1. Name of the Party (Beneficiary) -
2. Particulars of the Bank Account -
 - A. Name of the Bank
 - B. Name of the Branch -
Address:
Telephone No:
 - C. 9 Digit MICR Code Number:
(as appearing on the cheque issued by the Bank)
 - D. IFSC Code
 - E. Type of Account : SAVINGS / CURRENT
 - F. Account No. :
(as appearing on the cheque book issued by the Bank)

(Please attaché photocopy of a blank cheque for verification of the bank account details)

I/We hereby declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I/We would not hold the user institution responsible.

Signature of the Authorised Signatory
(Name of the Authorised Signatory)

Date :

Place :

Official Stamp

Annex- FDI**Details to be furnished along with application for compounding of contravention relating to Foreign Direct Investment in India**

- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date

Table A

Sl.No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Reported to RBI on*	Delay if any
	Total				

* date of reporting to RBI and not AD

Table B

Name of Investor	Date of allotment of shares	Number of shares allotted	Amount for which shares allotted	Date of reporting to RBI*	Delay if any
	Total				

* date of reporting to RBI and not AD

Table C

Sl. No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Excess share application money	Date of refund of share application money	Amount in forex	RBI approval letter and date
	Total						

Table D

Sl. No.	Date	Authorised Capital	With effect from	Date of Board meeting	Date of filing with ROC

A= B+C

Please give supporting documents

Table A- Copies of FIRC with date stamp of receipt at RBI

Table B- Copies of FCGPR with date stamp of receipt at RBI

Table C – letter seeking refund/ allotment of shares- approval letter from RBI A2 form

- Copies of Balance Sheet during the period of receipt of share application money
- and allotment of shares
- Nature of contravention and reasons for the contravention

Annex- ECB**Details to be furnished along with application for compounding of contravention relating to External Commercial Borrowing**

- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Brief particulars about the foreign lender
- Is the applicant an eligible borrower?
- Is the lender eligible lender?
- Is the lender an equity holder?
- What is the level of his holding at the time of loan agreement?
- Details of ECB
- Date of Loan agreement
- Amount in Foreign Currency and Indian Rupee



From the Government

- Rate of interest
- Period of loan
- Repayment particulars
- Details of draw down

Date of draw down	Amount in Foreign Currency	Amount in INR
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- Details of LRN Number- application and receipt
- Details of ECB 2 returns submitted; Period of return: Date of submission
- Details of Utilization of ECB in Foreign Currency and Indian Rupee
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

Annex- ODI Details to be furnished along with application for compounding of contravention relating to Overseas Investment

- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Name of Overseas entity
- Date of incorporation of overseas entity
- Nature of activities under taken by overseas entity
- Nature of entity- WOS/JV
- Details of remittance sent- Date of remittance; Amount in FCY and in INR
- Details of other financial Commitment
- Details of UIN applied and received
- Date of receipt of share certificate
- Approval of other regulators if required
- Details of APRs submitted: For the period ended; date of submission
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

Annex- Branch Office / Liaison Office Details to be furnished along with application for compounding of contravention relating to Branch/ Liaison Office in India

- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Date of approval for opening of Liaison Office/ Branch Office
- Validity period of the approval
- Income and expenditure of the LO/BO
- Dates of submission of Annual activity Certificates
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

17 Non-Resident Deposits - Comprehensive Single Return (NRD-CSR): Submission under XBRL

[Issued by the Reserve Bank of India vide RBI/2013-14/173 A.P. (DIR Series) Circular No. 19 dated 07.08.2013.]

Attention of banks maintaining Non-Resident Deposits (NRD) Accounts is invited to A.P. (DIR Series) Circular No.55 dated May 9, 2007 on NRD-CSR software package being used by the banks for submission of detailed monthly data on non-resident deposits to the Reserve Bank.

- It has been decided to move the NRD-CSR reporting to eXtensible Business Reporting Language (XBRL) platform to provide validations for processing requirement in respect of existing NRD schemes, improve data quality, enhance the security-level in data submission, and enable banks to use various features of XBRL-based data submission, and tracking. The existing formats of NRD-CSR have also been rationalised for reporting bank-wise consolidated data under XBRL. This would replace the existing system where banks generate the NRD-CSR DAT file from RBI-provided software and submit NRD data through e-mail attachment to our Department of Statistics and Information Management (DSIM), Central Office (CO), on monthly basis.
- The revised NRD-CSR format, maturity codes, record types and the validations checks are provided in the Annex. For monthly NRD-CSR submission on XBRL platform by nodal office of banks, the Reserve Bank has provided the following two alternatives:
 - Banks can download the RBI's NRD-CSR template by logging to the RBI's OnlineReporting web-page (<http://orfs.rbi.org.in>) (Path: Homepage - XBRL-based filing - (enter user name / password) - Download Returns Package - Form NRD-CSR) and use the same to generate instance document (.xml file) after entering details. The instance document can be uploaded on RBI's XBRL page. The Reserve Bank (DSIM, CO) will provide User name and Password to all banks for NRD-CSR for this purpose.
 - Banks can use any publically available XBRL tool in relation with their internal database and build NRD-CSR discipline prescribed by RBI, for generation of instance document (.xml file) and upload the same on RBI's XBRL page.

In addition, banks can also generate instance document in the prescribed format from their internal system, if it provides such flexibility.



4. It has been decided to switch-over to the XBRL-based NRD-CSR reporting from October 2013. Accordingly, banks are required to capture the NRD-CSR data for XBRL submission from October 1, 2013 ("Go-Live" date). It has been also decided to retain the current prescription of NRD-CSR reporting on or before 10th of the month following the month to which the NRD data pertains. As such, banks may submit the XBRL-compliant NRD-CSR data for October 2013 on or before November 10, 2013. The current email-based reporting of NRD-CSR data would continue for reporting NRD data up to September 2013. The Reserve Bank would not provide any support towards the usage of legacy NRD-CSR software (v3.0) after the "Go-Live" date.
5. To facilitate testing of the bank's NRD-CSR data in the XBRL-based NRD-CSR reporting, the Reserve Bank has enabled a test environment (<https://125.18.33.234/orfsxbrl/customer/index.jsp>) for use by reporting banks before "Go-Live". Banks can also download the NRD-CSR Returns Package (login with user_name / password → Download Returns Package → Form NRD-CSR). From "Help" menu of this test-site, banks can also download the Manual on XBRL-based Submission which indicates the processes for creation of bank-checker/bank-maker by bank-superuser with respective user_name and password, and provides other information required for the reporting system.
6. Reporting banks would be shortly receiving user_name and password along with bank_code for login to the test-site in their respective email-ids, through which they submit NRD-CSR data to RBI (DSIM,CO) under the existing system. In case of any change/difficulties, concerned banks may send a request to the email for assistance.
7. Further, the Reserve Bank would also provide training on "NRD-CSR submission under XBRL" to the officers/software personnel of the reporting banks before "Go-Live". Separate communication is being sent to reporting banks for this purpose. For any assistance during testing or live periods, banks may contact XBRL helpdesk ('Contact us' menu in the homepage of the test-site before the "Go-Live" date and on the ORFS site subsequently).
8. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

C.D. Srinivasan
Chief General Manager

Non-Resident Deposits - Comprehensive Single Return: Format for XBRL-based reporting system

1. Format of NRD-CSR

No.	Column Description	Type	Position	Remarks
1.	Bank Code	7 N	1 to 7	Bank Working Code for XBRL (given by RBI) followed by zeros
2.	Reporting period [of Stock & flows]	6 N	8 to 13	Month to which NRD data pertains (YYYYMM format)
3.	Deposit_Scheme code	4 A	14 to 17	As per Code Box 1
4.	Account Type	1 A	18	F for Fixed; R for Recurring; S for Savings; C for Current A/c
5.	Original Maturity	1 N	19	As per Code Box 2
6.	Remaining Maturity	1 N	20	As per Code Box 2
7.	Country (SWIFT code)	2 A	21 to 22	SWIFT Country code
8.	A/c Currency (SWIFT code)	3 A	23 to 25	SWIFT Currency code
9.	Record_Type Code	2 A	26 to 27	As per Code Box 3
10.	Record - Amount	15 N	28 to 42	Amount (in currency of account) without decimal point

N – Numeric; A – Alpha-numeric

2. Details of codes to be used in the NRD-CSR

Code Box-1: Deposit_Scheme Code		
Sr.No.	Account under the Scheme	Scheme Code
1.	Foreign Currency Non-Resident (FCNR) A/c	FCNR
2.	Non-Resident External (NRE) Rupee Account	NRER
3.	Non-Resident Ordinary (NRO) Rupee Account	NROR

Code Box-2: Maturity Code		
Sr.No.	Maturity Classification	Maturity Code
1.	Up to and inclusive of six months	1
2.	Over six months but up to and inclusive of one year	2
3.	Over one year but up to and inclusive of two years	3
4.	Over two years but up to and inclusive of three years	4
5.	Over three years	5
6.	Unallocated (Savings/Current/Unclaimed Accounts)	6

The residual maturity cannot be determined for Savings/Current/Unclaimed Deposit Accounts. The residual maturity for such cases, should be "unallocated" (Code 6).

Currency Code (SWIFT Code)	
USD, GBP, EUR, JPY, AUD, CAD and other freely convertible currencies are permitted for FCNR(B)	

Code Box-3: Record_Type Code			
No.	Record Type	Description of data item on the record	Code



From the Government

1.	Inflows	Fresh inflow from abroad (total)	FI
2.		Amount of interest reinvested	IR
3.		Amount renewed / transfer from other A/c	PR
4.		Local inflow (for NRO Savings A/c)	LI
5.	Outflows	Amount of principal remitted abroad (total)	PA
6.		Amount of interest remitted abroad (total)	IA
7.		Amount of principal remitted locally	PL
8.		Amount of interest remitted locally	IL
9.		Local withdrawals (gifts, tax, donations etc.)	LW
10.		Transfers to other A/c including renewals	TR
11.	Balances	Opening Balance, including unclaimed	OB
12.		Closing Balance, including unclaimed	CB
13.		Unclaimed Balance	UC
14.		Interest Accrued as on end of Reference Month	AI
15.		Interest Suspense Balance (Interest Arrears)	SB

3. Validations

Sl. No.	Validations	Type *(F) (N) (Fatal/Non Fatal)
1	Total length of the file should not go beyond 42.	F
2	Bank Code, N.R. D. Scheme code, Account Type, Country (SWIFT code), A/c Currency (SWIFT code) and Record - type Code will be validated with their respective code box / master.	F
3	"Original Maturity" can't be less than "Residual Maturity"	F
4	Record type can't have negative value.	F
5	For FCNR (B) scheme any freely convertible currencies (except INR) can be selected.	F
6	For NRE and NRO scheme only INR can be selected.	F
7	For FCNR (B) scheme, the valid Record types are FI, IR, PR, PA, IA, HI, PL, IL, TR and OB,CB,UC,AI,SB.	F
8	For NRE scheme the valid Record types are FI, IR, PR, PA, IA, PL, IL, LW, TR and OB,CB,UC,AI,SB.	F
9	For NRO scheme the valid Record types are FI, IR, PR, LI, PA, IA, PL, IL, LW, TR and OB,CB,UC,AI,SB.	F
10	For FCNR (B) scheme the following consistency check shall be provided for each currency: CB = OB + INFLOWS (FI+IR+PR) - OUTFLOWS (PA+PL+TR)	N
11	For NRE scheme the following consistency check shall be provided: CB = OB + INFLOWS(FI+IR+PR) - OUTFLOWS (PA+PL+TR+LW)	N
12	For NRO scheme the following consistency check shall be provided: CB=OB + INFLOWS(FI+IR+PR+LI) - OUTFLOWS (PA+PL+TR+LW)	N
13	For FCNR and NRE scheme, "Original Maturity" for term deposit cannot have "Maturity Code" value '1' [code box 2]	F

***Note:** For any 'fatal error', system shall completely reject the file and record and for 'non-fatal error', the system shall accept the record / file and process. However, in both the cases errors will be thrown by the system for correction and submission of revised data.

ATTENTION ! PRACTISING COMPANY SECRETARIES

EMPANELMENT AS A "PEER REVIEWER"

(AS PER THE GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTICING COMPANY SECRETARIES)

The Council of the Institute approved the Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries at its 202nd Meeting held on August 25-26, 2011 at New Delhi.

A copy of the Guidelines is available on the ICSI website (<http://www.icsi.edu/LinkClick.aspx?link=2242&tabid=2220&mid=4498>) and also published in the September, 2011 issue of the Chartered Secretary Journal.

The Guidelines have come into effect from October 1, 2011. The Peer Review exercise has already commenced from January 4, 2012. The Peer Review Board has been organising extensive training programmes for Peer Reviewers at various locations throughout the country and more programmes have been scheduled in the months of September-October, 2013 at New Delhi, Mumbai and Chennai/Bangalore.

The nature and complexity of peer review requires the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- Be a member;
- Possess at least ten years experience; and
- Be currently in the practice as Company Secretary.

Members in practice are invited to empanel themselves as a Peer Reviewer under the Guidelines for Peer Review of Attestation Services by PCS if they fulfill the aforesaid qualifications for being empanelled as a Peer Reviewer.

The Proforma for Empanelment as a "Reviewer" is available on the webpage of the Peer Review Board on ICSI website (<http://www.icsi.edu/AppointmentReviewer/tabid/2240/Default.aspx>). The duly filled in proforma may be sent to - The Secretary, Peer Review Board, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi 110 003 (email: prb-icsi@icsi.edu).



News From the Institute



Brand Building - Telecast / Broadcast of TV / Radio Spots on CS

With a view to creating Media Visibility for the CS Course & Profession, Spots on Company Secretaries Course were telecast / broadcast on Headlines Today, NDTV 24x7, News X, Aajtak, ABP News, India TV, NDTV India, News 24, Zee News, ETV Bangla, ABP Ananda, Sadhana News Bihar / Jharkhand, Mahua TV, ETV Gujarati, TV9 - Gujarati, Udaya TV, TV9 - Karnataka, Surya TV, Kochu TV, Star Pravah, IBN Lokmat, Dilli Aaj Tak, ETV Oriya, MBC TV, PTC Punjabi, TV 24, Dhamaal TV, ETV- Rajasthan, Zee Tamizh, Makkal TV, MAA TV, TV 9- Telugu, Zee Salaam, Munsif TV, Radio Mirchi, Red FM and All India Radio (National Channel) for brand building. CS Spots were aired from first week of August and continued till 3rd week of August 2013 for an activity period of 15 days.

The Spots were also hosted on the Homepage of ICSI website.

Links for TV/Radio Spots:

<http://www.youtube.com/watch?v=xbLOfcoMCM0> (TV Spot)
<http://www.youtube.com/watch?v=HOa7R8a-8qs> (Radio Spot- 20 seconds)
<http://www.youtube.com/watch?v=0SCUeH8vfwz> (RadioSpot 1 - AIR National)
<http://www.youtube.com/watch?v=EqMHVvjf96l> (RadioSpot 2 - AIR National)

Members Admitted

Sl. No.	Name	Membership No.	Region
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FELLOWS*

1	Sh. Hardik Sanghvi	FCS - 7247	WIRC
2	Sh. Pankaj Tandon	FCS - 7248	NIRC
3	Sh. Pankaj Khetan	FCS - 7249	NIRC
4	Sh. Gagan Preet Singh	FCS - 7250	NIRC
5	Ms. Nupur Garg	FCS - 7251	NIRC
6	Sh. Vikas Srivastava	FCS - 7252	NIRC
7	Sh. Prakash Chandra Sahoo	FCS - 7253	EIRC
8	Sh. Uttam Bailung	FCS - 7254	EIRC
9	Ms. Pooja M Kohli	FCS - 7255	NIRC
10	Sh. Dinesh Kumar Jain	FCS - 7256	NIRC
11	Sh. N A Srinivasan	FCS - 7257	SIRC
12	Sh. Dharmaraj Jagannath Bhonsle	FCS - 7258	WIRC
13	Sh. Ankur Singhal	FCS - 7259	NIRC
14	Sh. Pradeep Kulkarni	FCS - 7260	SIRC
15	Ms. Kanubha Jain	FCS - 7261	NIRC
16	Ms. Neha Sharma	FCS - 7262	NIRC
17	Ms. Shweta Gupta	FCS - 7263	NIRC

18	Sh. Krishna Kant Chaturvedi	FCS - 7264	NIRC
19	Sh. Harsha Vardhan Reddy Raghuram	FCS - 7265	SIRC
20	Sh Upendra Kumar R Pathak	FCS - 7266	WIRC
21	Sh. R K Agrawal	FCS - 7267	WIRC
22	Sh. Jayakrushna Das	FCS - 7268	EIRC
23	Sh. R N Tripathi	FCS - 7269	NIRC
24	Sh. Sumit Pahwa	FCS - 7270	NIRC
25	Sh. Rishabh Kumar Jain	FCS - 7271	WIRC
26	Sh. Saurabh Mathur	FCS - 7272	NIRC
27	Sh. Abhishek Mittal	FCS - 7273	NIRC
28	Ms. Dhavneesh Gupta	FCS - 7274	NIRC
29	Sh. Saurabh Srivastava	FCS - 7275	NIRC
30	Sh M D Abraham	FCS - 7276	SIRC
31	Sh. Subhasis Bosu	FCS - 7277	EIRC
32	Sh. Lal Babu Chourasia	FCS - 7278	EIRC
33	Sh. Arvind Sharma	FCS - 7279	NIRC
34	Sh. Ranveer Singh Chandel	FCS - 7280	NIRC
35	Sh. Kapil Kumar Sharma	FCS - 7281	NIRC
36	Sh. Jatin Prabhakar Patil	FCS - 7282	WIRC
37	Mrs. Sonali Manchanda	FCS - 7283	NIRC
38	Sh. J Nagaraja Rao	FCS - 7284	SIRC
39	Sh. Anuj Kumar Tiwari	FCS - 7285	NIRC
40	Sh. Chandan Daulatram Lakhwani	FCS - 7286	WIRC
41	Sh. Pawan Kumar Gupta	FCS - 7287	EIRC
42	Sh. Jayant Gupta	FCS - 7288	NIRC
43	Sh. Amit Prakash Jaste	FCS - 7289	WIRC
44	Sh. N Shanmugham	FCS - 7290	SIRC
45	Sh. Akash Agarwal	FCS - 7291	NIRC
46	Sh. Vinit Sikka	FCS - 7292	NIRC
47	Sh. Rajesh Kumar Khurana	FCS - 7293	NIRC
48	Sh. Sandeep Maheshwari	FCS - 7294	NIRC
49	Mrs. Mayuri Amit Datar	FCS - 7295	WIRC
50	Mrs. Amrita Vinay Kulkarni	FCS - 7296	WIRC
51	Sh. K L Jayakrishna	FCS - 7297	SIRC
52	Ms Naina Soni	FCS - 7298	WIRC
53	Sh. B Bilu	FCS - 7299	SIRC
54	Sh. Baiju T	FCS - 7300	SIRC
55	Sh. Vijay Bhagwan Sonone	FCS - 7301	WIRC
56	Sh. Vimal Sota	FCS - 7302	WIRC
57	Ms. Kavita Budhiraja	FCS - 7303	NIRC
58	Sh. Rajendra Kumar G. Patel	FCS - 7304	WIRC

ASSOCIATES*

1	Ms. Deepa Baneshi	ACS - 33186	NIRC
2	Mr. Sheshadri Nimmala	ACS - 33187	SIRC
3	Mr. Pankaj Agarwala	ACS - 33188	EIRC
4	Mr. Rajeshkumar Chellappan Pillai	ACS - 33189	WIRC
5	Mr. Madhvendra Prakash	ACS - 33190	NIRC
6	Ms. Mona Agarwal	ACS - 33191	EIRC
7	Mr. Mohit Chandra Sharma	ACS - 33192	NIRC
8	Mr. Govind Khandelwal	ACS - 33193	NIRC
9	Ms. Vandana Sharma	ACS - 33194	NIRC
10	Ms. Shipra Chugh	ACS - 33195	NIRC
11	Ms. Swati Vaish	ACS - 33196	NIRC
12	Ms. Nancy Verma	ACS - 33197	NIRC
13	Ms. Sunita Ganjoo	ACS - 33198	NIRC
14	Mr. Sumti Pugliya	ACS - 33199	NIRC
15	Mr. Abhishek Mishra	ACS - 33200	NIRC
16	Ms. Swapnil Tripathy	ACS - 33201	NIRC
17	Mr. Aditya Gupta	ACS - 33202	NIRC
18	Ms. Jaya Arora	ACS - 33203	NIRC
19	Ms. Ridhima Soni	ACS - 33204	NIRC
20	Mr. Ankur Gupta	ACS - 33205	NIRC
21	Ms. Anu Gupta	ACS - 33206	WIRC
22	Mr. Ajay Kumar	ACS - 33207	NIRC

* Admitted on 22nd July, 31st July and 12th August, 2013



23	Mr. Prince Kumar	ACS - 33208	NIRC	88	Mr. Sandeep Kumar	ACS - 33273	NIRC
24	Mr. Satish Kumar	ACS - 33209	NIRC	89	Ms. Lavang Arora	ACS - 33274	NIRC
25	Mr. Deepak Rawat	ACS - 33210	NIRC	90	Mr. Jitendra Prasad Shah	ACS - 33275	NIRC
26	Ms. Jaya Bhatia	ACS - 33211	NIRC	91	Mr. Jatinder Kapoor	ACS - 33276	NIRC
27	Mr. Mantra Nath Jha	ACS - 33212	NIRC	92	Ms. Hemlata Mishra	ACS - 33277	NIRC
28	Ms. Avni Gulati	ACS - 33213	NIRC	93	Ms. Payal	ACS - 33278	NIRC
29	Mr. Mohit Bajaj	ACS - 33214	NIRC	94	Ms. Sakshi Gupta	ACS - 33279	NIRC
30	Ms. Shikha	ACS - 33215	NIRC	95	Ms. Prakriti Wason	ACS - 33280	NIRC
31	Ms. Aditi Pardal	ACS - 33216	NIRC	96	Mr. Rohit Tandon	ACS - 33281	NIRC
32	Mr. Tanuj Arora	ACS - 33217	NIRC	97	Mr. Saurabh Sharma	ACS - 33282	NIRC
33	Ms. Pooja Garg	ACS - 33218	NIRC	98	Mr. Sagar Gaur	ACS - 33283	NIRC
34	Ms. Kanika Rani	ACS - 33219	NIRC	99	Ms. Juhi Chawla	ACS - 33284	NIRC
35	Ms. Kanchan Agarwal	ACS - 33220	NIRC	100	Ms. Rachita Dharnidharka	ACS - 33285	EIRC
36	Ms. Megha Agrawal	ACS - 33221	NIRC	101	Mr. Hitesh Kumar Darolia	ACS - 33286	NIRC
37	Ms. Swetha Subramanian	ACS - 33222	SIRC	102	Mr. Bhasker Dubey	ACS - 33287	NIRC
38	Mr. Shijin T T	ACS - 33223	SIRC	103	Ms. Ankita Mehra	ACS - 33288	NIRC
39	Ms. Bandana Sangai	ACS - 33224	SIRC	104	Ms. Shilpy Gupta	ACS - 33289	NIRC
40	Mr. Kalirajan D	ACS - 33225	SIRC	105	Mr. Sahil Patpatia	ACS - 33290	NIRC
41	Mr. K Sudarsan	ACS - 33226	SIRC	106	Ms. Kanika Phophalia	ACS - 33291	NIRC
42	Ms. Kusum Lata Rathi	ACS - 33227	SIRC	107	Ms. Astha Arora	ACS - 33292	NIRC
43	Ms. Alka Ashok Kumar Ahelleya	ACS - 33228	SIRC	108	Ms. Dolly Sharma	ACS - 33293	NIRC
44	Ms. Vidya Jamnadas Dharra	ACS - 33229	WIRC	109	Mr. Siddhant Benara	ACS - 33294	NIRC
45	Ms. Anupama Murali Nair	ACS - 33230	WIRC	110	Mr. Sunny Agarwal	ACS - 33295	EIRC
46	Ms. Surekha Uttam Abhang	ACS - 33231	WIRC	111	Ms. Anu Kapoor	ACS - 33296	SIRC
47	Mr. Kedar Anil Laghate	ACS - 33232	WIRC	112	Ms. Gurleen Kaur Arora	ACS - 33297	NIRC
48	Ms. Sonu Deepak Pandey	ACS - 33233	WIRC	113	Ms. Pulkita Rajvanshi	ACS - 33298	NIRC
49	Ms. Medha Madhukar Tamhanekar	ACS - 33234	WIRC	114	Mr. Ravinder Kumar	ACS - 33299	NIRC
50	Mr. Yogesh Mataprasad Sharma	ACS - 33235	WIRC	115	Ms. Aakansha	ACS - 33300	NIRC
51	Mr. Vijay Ramesh Gupta	ACS - 33236	WIRC	116	Mr. Umesh Soni	ACS - 33301	NIRC
52	Ms. Jyoti Narayan Kholia	ACS - 33237	WIRC	117	Mr. Abhishek Gupta	ACS - 33302	NIRC
53	Ms. Alisha Ramniklal Togani	ACS - 33238	WIRC	118	Ms. Neha Anchlia	ACS - 33303	NIRC
54	Mr. Manav Parimal Purohit	ACS - 33239	WIRC	119	Mr. Naveen Kumar	ACS - 33304	NIRC
55	Ms. Anita Lalwani	ACS - 33240	WIRC	120	Mr. Vijayaraghavan S	ACS - 33305	SIRC
56	Mr. Shubham Modi	ACS - 33241	WIRC	121	Mr. Tara Nath Bingimalla	ACS - 33306	SIRC
57	Ms. Sonakshi Bhargava	ACS - 33242	WIRC	122	Mr. P R Moorthy	ACS - 33307	SIRC
58	Mr. Sanjay Kumar	ACS - 33243	WIRC	123	Mr. Dhanraj Prahlad Dagar	ACS - 33308	SIRC
59	Ms. Pooja Sanjay Shah	ACS - 33244	WIRC	124	Mr. Ramkumar H	ACS - 33309	SIRC
60	Mr. Ankit Gupta	ACS - 33245	WIRC	125	Ms. Sneha S Jain	ACS - 33310	SIRC
61	Mr. Yatin Yogesh Sangani	ACS - 33246	WIRC	126	Ms. Hetal Nitin Jariwala	ACS - 33311	WIRC
62	Mr. Yash Shailesh Thakkar	ACS - 33247	WIRC	127	Ms. Shweta Eknath Chavan	ACS - 33312	WIRC
63	Ms. Richa Ramchand Dalwani	ACS - 33248	WIRC	128	Ms. Vandana Jayantilal Patel	ACS - 33313	WIRC
64	Mr. Neel Jyotindrabhai Shah	ACS - 33249	WIRC	129	Ms. Khushbu Hemal Shah	ACS - 33314	WIRC
65	Mr. Akshay Shrirang Bapat	ACS - 33250	WIRC	130	Mr. Kiransingh Roopsingh Rajpurohit	ACS - 33315	WIRC
66	Mr. Naveen Kumar Jain	ACS - 33251	WIRC	131	Mr. Prathamesh Suhas Joglekar	ACS - 33316	WIRC
67	Mr. Ankitkumar Bharatbhai Patel	ACS - 33252	WIRC	132	Mr. Gaurav Bharatbhai Mody	ACS - 33317	WIRC
68	Mr. Sunil Kumar Mishra	ACS - 33253	NIRC	133	Ms. Anupama Selvaraj Naidu	ACS - 33318	WIRC
69	Ms. Alheena Khan	ACS - 33254	WIRC	134	Ms. Bhanupriya Kishor Petkar	ACS - 33319	WIRC
70	Ms. Priya Padmanabhan	ACS - 33255	SIRC	135	Ms. Radhika Nikhil Bhalwankar	ACS - 33320	WIRC
71	Mr. Vinod Kumar Mahapatra	ACS - 33256	NIRC	136	Mr. Amod Ravindra Bapat	ACS - 33321	WIRC
72	Ms. Juhi Joshi	ACS - 33257	NIRC	137	Ms. Rupa Pawan Khanna	ACS - 33322	WIRC
73	Ms. Puja Bharatkumar Trivedi	ACS - 33258	WIRC	138	Mr. Alok Ajay Chandak	ACS - 33323	WIRC
74	Mr. Raag Amit Kumar Mehta	ACS - 33259	WIRC	139	Mr. Urvil Rajnikant Desai	ACS - 33324	WIRC
75	Ms. Sonal Jagdish Sharma	ACS - 33260	WIRC	140	Ms. Nidhi Virendrakumar Shethwala	ACS - 33325	WIRC
76	Mr. Ajinkya Rajendra Bannore	ACS - 33261	WIRC	141	Mr. Pawan Rajendrasingh Yadav	ACS - 33326	WIRC
77	Mr. Vikas Kumar Verma	ACS - 33262	NIRC	142	Ms. Priyanka Arvind Jain	ACS - 33327	WIRC
78	Mr. G Ganapathy Subramanian	ACS - 33263	SIRC	143	Mr. Mayank Arora	ACS - 33328	NIRC
79	Ms. Sruthy Suresh	ACS - 33264	SIRC	144	Ms. Nidhi Mishra	ACS - 33329	WIRC
80	Mr. Nitesh Kumar	ACS - 33265	NIRC	145	Mr. B Rajesh	ACS - 33330	SIRC
81	Ms. Manju Sri A	ACS - 33266	SIRC	146	Mr. Elangovan A	ACS - 33331	SIRC
82	Ms. Pinki Mishra	ACS - 33267	EIRC	147	Mr. Suryaprakash H Gopa	ACS - 33332	NIRC
83	Mr. Khunjambam Rakesh Singh	ACS - 33268	EIRC	148	Ms. Dipti Mahendra Sharma	ACS - 33333	WIRC
84	Ms. Megha Agarwal	ACS - 33269	EIRC	149	Mr. Sudarshan Vasant Shintre	ACS - 33334	WIRC
85	Ms. Chandni Patel	ACS - 33270	EIRC	150	Mr. A S Uma Mahesh	ACS - 33335	SIRC
86	Ms. Prem Dugar	ACS - 33271	NIRC	151	Mr. Dharmveer Kumar	ACS - 33336	NIRC
87	Ms. Pratyasi Sarma	ACS - 33272	EIRC	152	Ms. Narayani Subramanian Aiya	ACS - 33337	SIRC



Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
ISSUED**				
1	Ms. Neha Jain	ACS - 25909	12116	NIRC
2	Sh. Akash Gupta	ACS - 32338	12117	WIRC
3	Sh. Ankit Agarwal	ACS - 32360	12118	NIRC
4	Sh. Alpesh Rameshbhai Dhandhlya	ACS - 32500	12119	WIRC
5	Sh. Venugopalrao Prasadrao Kudipudi	ACS - 32965	12120	WIRC
6	Sh. Sanjay Uttamrao Patare	ACS - 33075	12121	WIRC
7	Sh. Dimple Bhatia	ACS - 17826	12122	NIRC
8	Sh. Devaki Vasudevarao	ACS - 18047	12123	SIRC
9	Sh. Raman Bawa	FCS - 3954	12124	NIRC
10	Mr. Preet Kanwar Singh	ACS - 29415	12125	NIRC
11	Ms. Deepali Ashok Sadavarte	ACS - 29909	12126	WIRC
12	Ms. Sweeny Gulati	ACS - 29367	12127	NIRC
13	Ms. Manisha Prakash Chitgopekar	ACS - 27816	12128	WIRC
14	Ms. Sonal Srivastava	ACS - 20522	12129	NIRC
15	Ms. Neha Maheshwari	ACS - 32894	12130	EIRC
16	Ms. Navneet Saharan	ACS - 26073	12131	NIRC
17	Ms. Minoo Siddharthkumar Naidu	ACS - 33097	12132	WIRC
18	Sh. Vikas Ramchandra Chomal	ACS - 24941	12133	WIRC
19	Mrs. Asmita Dhore	ACS - 13923	12134	SIRC
20	Ms. Preeti Sharma	ACS - 32847	12135	NIRC
21	Ms. Rekha Mahavir Prasad Sharma	ACS - 31144	12136	WIRC
22	Mr. Ravindra Kumar Jain	ACS - 32928	12137	NIRC
23	Ms. Sonu Singhal	ACS - 33059	12138	NIRC
24	Sh. Amit Kumar	ACS - 32378	12139	NIRC
25	Sh. Jignesh Ashvinkumar Shah	ACS - 21389	12140	WIRC
26	Mr. Sanjay Chopra	ACS - 32624	12141	NIRC
27	Ms. Girija Maheswari	ACS - 30974	12142	NIRC
28	Ms. Ravinder Kaur	ACS - 32913	12143	NIRC
29	Ms. Nitu Goel	ACS - 32708	12144	EIRC
30	Ms. Ruchi Chawda	ACS - 29299	12145	SIRC
31	Sh. Roshan Ramesh Raikar	ACS - 32941	12146	SIRC
32	Sh. V. R. Venkatakrishnan	ACS - 13302	12147	WIRC
33	Ms. Palak Sethi	ACS - 32728	12148	NIRC
34	Sh. Tushar Dey	ACS - 7589	12149	NIRC
35	Ms. Greta Govindbhai Rupapara	ACS - 32601	12150	WIRC
36	Ms. Payal Manoj Chauhan	ACS - 29888	12151	WIRC
37	Sh. R Hariharan	FCS - 2776	12152	NIRC
38	Sh. Husain Yusufali Wagh	ACS - 32996	12153	WIRC
39	Ms. Isha Hirawat	ACS - 29830	12154	NIRC
40	Ms. Sonia Khenduja	ACS - 24912	12155	NIRC
41	Ms. Usha	ACS - 31341	12156	NIRC

42	Ms. Nidhi Umesh Sheth	ACS - 27041	12157	WIRC
43	Ms. Deepa Aggarwal	ACS - 28680	12158	NIRC
44	Ms. P Lakshmi	ACS - 31839	12159	SIRC
45	Ms. Manisha Pradeep Gaikwad	ACS - 30480	12160	WIRC
46	Sh. Sidharth C A	ACS - 26843	12161	SIRC
47	Ms. Jacintha Castellino John	ACS - 33081	12162	WIRC
48	Sh. K S Natarajan	ACS - 679	12163	SIRC
49	Sh. Kuldeep Jaymahesh Bhai Shukla	ACS - 31142	12164	WIRC
50	Ms. Mitali Rajendra Mittal	ACS - 25762	12165	WIRC
51	Mrs. Debika Chatterjee	ACS - 27822	12166	EIRC
52	Ms. Indu Jain	ACS - 33139	12167	NIRC
53	Ms. Shipra Khandelwal	ACS - 30243	12168	NIRC
54	Ms. Priyanka Kumari	ACS - 33171	12169	NIRC
55	Sh. Yuvaraj G	ACS - 32616	12170	SIRC
56	Mrs. Megha Vikram Sinha	ACS - 33131	12171	NIRC
57	Ms. Mansi Agarwal	ACS - 32362	12172	NIRC
58	Mrs. Neelam Agarwal	ACS - 33113	12173	NIRC
59	Sh. Vikas Gupta	ACS - 30124	12174	NIRC
60	Ms. Sangeeta Vasant Kulkarni	ACS - 32828	12175	WIRC
61	Mr. Arjit Gupta	ACS - 30696	12176	NIRC
62	Ms. Sujata Joshi Ratnakar	ACS - 31760	12177	SIRC
63	Mr. Amar Dattatray Patil	ACS - 33156	12178	WIRC
64	Ms. Sneha Tejas Gandhi	ACS - 32247	12179	WIRC
65	Ms. Meenakshi Gupta	ACS - 16083	12180	NIRC
66	Sh. Vivek Singh	ACS - 23721	12181	NIRC
67	Sh. Maheenath Ananda	ACS - 4650	12182	SIRC
68	Ms. Nisha Radhakishan Nawani	ACS - 29193	12183	WIRC
69	Ms. Isha Garg	ACS - 32998	12184	WIRC
70	Sh. Ajay Tipu Kholkar	ACS - 32983	12185	WIRC
71	Sh. Abhishek Mahajan	ACS - 32961	12186	WIRC
72	Ms. Chopra Nayna Parasmalji	ACS - 32833	12187	WIRC
73	Sh. Ajinkya Sadashiv Kulkarni	ACS - 26301	12188	WIRC
74	Ms. Richa Agarwal	ACS - 33091	12189	EIRC
75	Mrs. Neha Poddar	ACS - 33026	12190	EIRC
76	Ms. Harshita Jain	ACS - 31959	12191	EIRC
77	Ms. Padmasree Balaji	ACS - 33021	12192	SIRC
78	Ms. Swati Shankarlal Sharda	ACS - 31278	12193	WIRC
79	Sh. H Ganesh Shenoy	FCS - 2364	12194	WIRC
80	Sh. Gangatharan K	ACS - 32939	12195	SIRC
81	Sh. Ish Sadana	ACS - 28196	12196	NIRC
82	Sh. Om Daga	ACS - 32884	12197	EIRC
83	Ms. Pooja Kunal Dave	ACS - 31961	12198	WIRC
84	Ms. Sonal Agarwal	ACS - 33123	12199	NIRC
85	Sh. Sumit Naib	ACS - 25943	12200	NIRC
86	Ms. Namrata Jain	ACS - 31963	12201	EIRC
87	Ms. Voodigi Anisha	ACS - 32819	12202	SIRC
88	Ms. S Nikita Attri	ACS - 31368	12203	SIRC
89	Sh. Venkateswara Reddy Rachamalla	ACS - 25313	12204	SIRC
90	Sh. Kamlesh P Patel	ACS - 10772	12205	WIRC
91	Ms. Jalpa Jignashu Shah	ACS - 32969	12206	WIRC
92	Mr. Anil Kumar	ACS - 32269	12207	NIRC
93	Ms. Shruti Santosh Paharia	ACS - 28919	12208	WIRC
94	Ms. Priti Jain	ACS - 30944	12209	EIRC

* Issued during the month of July 2013





News From the Institute

95	Sh. Abhishek Mishra	ACS - 33200	12210	NIRC
96	Sh. Sarojanand Mishra	ACS - 24283	12211	NIRC
97	Ms. Nancy Verma	ACS - 33197	12212	NIRC
98	Ms. Pallavi Sharma	ACS - 32072	12213	WIRC
99	Ms. Deepti Maheshwari	ACS - 16453	12214	WIRC
100	Sh. Prince Kumar	ACS - 33208	12215	NIRC
101	Mrs. Ankita Drupad Patel	ACS - 30275	12216	WIRC
102	Sh. A Vijayshankar	ACS - 5897	12217	SIRC
103	Ms. Radhika Satish Karmarkar	ACS - 32782	12218	SIRC
104	Ms. Alka Ashok Kumar Ahelleya	ACS - 33228	12219	SIRC
105	Sh. Vijay Siyamani Tiwari	ACS - 33084	12220	WIRC
106	Mrs. Pooja Gupta	ACS - 36957	12221	NIRC
107	Sh. Nikhil Nandakumar Chitale	ACS - 29265	12222	WIRC
108	Mrs. Puja Kasera	ACS - 23541	12223	NIRC
109	Ms. Jyoti Narayan Kholia	ACS - 33237	12224	WIRC
110	Ms. Neha Agarwal	ACS - 25158	12225	EIRC
111	Ms. Priyanka Sharma	ACS - 29423	12226	NIRC
112	Ms. Anu Gupta	ACS - 33206	12227	WIRC
113	Sh. Dinesh Kumar	FCS - 4726	12228	NIRC
114	Mr. Soham Harshadbhai Parmar	ACS - 29890	12229	WIRC
115	Sh. P K Mansukhani	ACS - 4973	12230	WIRC
116	Ms. Ankita Sati	ACS - 33176	12231	NIRC
117	Ms. Shrishty Khaitan	ACS - 32298	12232	NIRC
118	Sh. Vijayabhaskar Perunduru	FCS - 6321	12233	SIRC
119	Sh. Amit Prakash Jaste	FCS - 7289	12234	WIRC
120	Ms. Sonu Deepak Pandey	ACS - 33233	12235	WIRC
121	Mr. Rakesh Bisht	ACS - 31834	12236	NIRC
122	Ms. Soma Saha	ACS - 33125	12237	EIRC
123	Mrs. Chanchal Lohia	ACS - 28195	12238	NIRC

CANCELLED*

1	Sh Dinesh Suryakant Cadwa	ACS - 17210	5596	WIRC
2	Sh Sanjay Kumar Lalit	FCS - 2466	10610	WIRC
3	Ms. Nishtha Chaturvedi	ACS - 30548	11262	NIRC
4	Sh Rajiv Gupta	ACS - 25404	11163	EIRC
5	Sh M. L. Birjuka	FCS - 1188	11046	EIRC
6	Ms. Cheshtha Narang	ACS - 26098	9344	NIRC
7	Ms. Kalpana Ramamurthy	ACS - 18554	7934	NIRC
8	Sh. Kanaiyalai M Gandhi	ACS - 4830	3089	WIRC
9	Sh. Avnish Malpani	ACS - 29772	11575	NIRC
10	Sh. Amit Dave	ACS - 28787	11207	NIRC
11	Sh. Jitesh Bansal	ACS - 29149	11919	EIRC
12	Ms. Swati S Mayekar	ACS - 2809	2781	WIRC
13	Mr. Ajay Kumar	ACS - 30196	11287	NIRC
14	Sh. Majeti Muniyya	ACS - 8288	11116	EIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
ADMITTED**			
1	Sh. Rajeev V Verma	6551	SOUTH
2	Ms. R Anbarasi	6552	SOUTH
3	Sh. Ravindra Vasudeo Apte	6553	WEST
4	Ms. Deepika Khullar	6554	NORTH

* Cancelled during the Month of July 2013

** Admitted During the Month of July, 2013

1116

September 2013

Annual Membership and Certificate of Practice Fees for 2013-14

The Status of payment of Annual Membership and Certificate of Practice fees has been hosted on the web-site of the Institute. Members who have paid their Annual Membership and Certificate of Practice fee for the year 2013-14 are requested to kindly check their status on the web-site and inform the Institute about discrepancy, if any. In case the members find that inspite of having paid the fee, their records have not been updated, they may kindly send a copy of acknowledgement issued by the Institute or the particulars of the Demand Draft/Cheque amount paid and the name of the bank for proper coordination. The information can also be provided to Meenakshi Gupta, Joint Director, D.D. Garg, Admn. Officer or Vanitha Dhanesh, Senior Assistant on telephone nos. 45341047/62/64 or over mobile no. 8130454693 or through e-mail at e-mail id's meenakshi.gupta@icsi.edu, dd.garg@icsi.edu or vanitha.dhanesh@icsi.edu.

The names of the 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 however pay the fee and get their names restored by making an application in Form "BB" together with entrance fee of Rs. 1500/- and Rs.1000/- towards Associated and Fellow Membership respectively and restoration fee of Rs. 250/-. Form BB is available on the web-site of the Institute and also published else where in this issue.

In accordance with regulation 11(1)(d) as amended by the Company Secretaries (Amendment) Regulations, 2010, the members may remit the Certificate of Practice fee for the year 2013-14 on or before 30th September, 2013. If the Certificate of practice fee is not paid by the said date, the Certificate will stand cancelled w.e.f. 1st October, 2013.

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.in 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)).
- 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,

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 annualfee@icsi.edu, 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
NIRC				
1	10064	MR. VIPUL JAIN	ACS - 20971	DELHI
2	10066	MR.SUMAN KUMAR	FCS - 5824	NEW DELHI
3	10067	MR. RAVINDER NEGI	ACS - 31244	NEW DELHI
4	10068	MR. HARISH CHAWLA	ACS - 28928	NEW DELHI
5	10069	MR. ABHISHEK ADITYA	ACS - 31067	DELHI
6	10070	MS. IQNEET KAUR	ACS - 13624	NEW DELHI
7	10071	MR.AMIT KISHORE SINGH	ACS - 18038	GURGAON
8	10072	MR.VIVEK GUPTA	ACS - 12898	GURGAON
9	10073	MS. RICHA ARYA	ACS - 28873	GURGAON
10	10074	MR.BHASKER JOSHI	ACS - 24674	DELHI
11	10075	MR.DHEERAJ KUMAR MISHRA	ACS - 25723	GORAKHPUR
12	10076	MS. SWATI SANDHAL	ACS - 32484	NEW DELHI
13	10077	MR.. B L AGRAWALA	FCS - 6583	DELHI
14	10078	MS. SALONI AGARWAL	ACS - 32361	KASHIPUR
15	10079	MR. AKHIL SHARMA	ACS - 32197	DELHI
16	10086	MR. NITESH KUMAR	ACS - 33265	NEW DELHI

Sl. No.	LM No.	Name	Mem No.	City
SIRC				
17	10063	MR. GANGATHARAN K	ACS - 32939	SIVAKASI
18	10081	MR. VENKATESH N	ACS - 32213	BANGALORE
19	10082	MR. ELANGO VAN A	ACS - 33331	COIMBATORE
20	10084	MR. MADASUDHAN REDDY	ACS - 33355	RAICHUR
21	10085	MR. K SUDARSAN	ACS - 33226	HYDERABAD
22	10087	MR. ANIL KUMAR B S	ACS-33513	THIRUVANANTHAPURAM
23	10088	MR. PARAMJYOTI DANDAPANI	ACS - 33441	CHEENAI
24	10089	MS. SRUTHY SURESH	ACS - 33264	THIRUVANANTHAPURAM
25	10090	MR. VIJAYARAGHAVAN S	ACS - 33305	CHENNAI
WIRC				
26	10065	MR. VIMAL SOTA	FCS - 7302	MUMBAI
27	10080	MR. AKSHAY SHRIRANG BAPAT	ACS - 33250	PUNE
28	10083	MR. PIYUSH AVINASH LUKTUKE	ACS - 30568	VADODARA

* Enrolled from 23rd July 2013 to 23rd August, 2013





News From the Institute



List of Companies Registered for Imparting Training During the Month of July 2013

Region	Training Period	Stipend (Rs.)		
Eastern				
East India Securities Ltd. Da-14, Sector-1, Salt Lake Kolkata-700064 mail@eisec.com	15 Months Training	Suitable		
K.H. Petrochem Pvt. Ltd. 16, East Topsia Road Kolkata- 700046	15 Months Training	Suitable		
Svarna Infrastructure & Builders Pvt. Ltd. "Dlf Galleria" Unit No. 306-308, 3rd Floor, Premises No. 02-0124 Action Area-1B, New Town, Kolkata-700156 info@rishi.net.in	15 Months Training	Suitable		
MNH Shakti Ltd. Anand Vihar, P.O. Jagruti Vihar Sambhalpur, Orissa-768020 csmnhshakti1td@gmail.com	15 Months & 3 Months Practical Training	Suitable		
Decillion Finance Ltd. 'Mercantile Building' 'E' Block, 2nd Floor 9/12, Lalbazar Street Kolkata India 700 001 info@decillion.co.in	15 Months & 3 Months Practical Training	Suitable		
Kamalraj Traders & Foods Pvt. Ltd. 36, Strand Road, 1st Floor Room No.8, Kolkata India 700 001 kamalraj_traders@yahoo.co.in	15 Months & 3 Months Practical Training	Suitable		
Syston Electronics Pvt. Ltd. Plot No. J 5, Block GP Sector V Salt Lake Electronics Complex Salt Lake City Kolkata 700 091	15 Months & 3 Months Practical Training	Suitable		
Scintilla Commercial & Credit Ltd. 'Mercantile Building' Block 'E', 2nd Floor 9/12 Lalbazzar Street, Kolkata	15 Months & 3 Months Practical Training	Suitable		
Marda Commercial & Holding Ltd. 'Mercantile Building' Block 'E', 2nd Floor 9/12 Lalbazzar Street, Kolkata	15 Months & 3 Months Practical Training	Suitable		
Virat Leasing Ltd. 'Mer4cantile Building' Block 'E', 2nd Floor 9/12 Lalbazzar Street, Kolkata	15 Months & 3 Months Practical Training	Suitable		
Northern				
Barmer Lignite Mining Company Ltd. Office No. 2 & 3, 7th Floor Main Upasana Plaza C-44, Sardar Patel Marg C-Scheme, Jaipur-302001	15 Months & 3 Months Practical Training	Suitable		
Akshi Finance Pvt. Ltd. 315-A, Qutab Plaza DLF Qutab Enclave Phase-I, Gurgaon-122002 Haryana	15 Months Training	5000/-		
Tentiwal Wire Products Ltd. Delhi Masani Road Mathura-281003 Uttar Pradesh polyrose@tentiwala.co.in	15 Months & 3 Months Practical Training	4000/-		
Parbati Koldam Transmission Company Ltd. 12th Floor, Tower 10B Dlf Cyber City Phase-II, Sector- 24 & 25 Gurgaon-122002	15 Months Training	Suitable		
J. Sagar Associates Sandstone Crest Opposite Park Plaza Hotel Sushant Lok-1 Gurgaon 122009 gurgaon@jsalaw.com	15 Months Training	10000/-		
Legajoist-Advocates & Solicitors C-113, South City 1, Gurgaon-122002 info@legajoist.com	15 Months Training	Suitable		
Religare Securities Ltd. D3, P3b, District Centre Saket, New Delhi-110017	15 Months Training	8000/-		

News From the Institute



Ameriprise India Insurance Brokers Services Pvt. Ltd. Plot No.81, Sector 32 Gurgaon-122001	15 Months Training	Suitable	Victory Infratech Pvt. Ltd. 702-704, D-Mall Netaji Subhash Place Pitampura, New Delhi-110034 info@victoryinfra.com	15 Months Training	Suitable
Vaish Associates, Advocates 1st Floor, Mohan Dev Bldg 13 Tolstoy Marg New Delhi-110001 delhi@vaishlaw.com	15 Months Training	Suitable	M/S. Sara Textiles Ltd. Sara House B-8 Sector 4, Noida 201 301 info@saratextiles.com	15 Months Training	Suitable
Shiva Textfabs Ltd. 8 L, Model Town (Backside Hotel Chevron) Ludhiana-141002 shivatextfabs@rediffmail.com	15 Months & Months Practical Training	Suitable	SMS Paryavaran Ltd. Sh 2, Vardhman Grand Plaza Plot 7, Mangalam Place Sector 3, Rohini, New Delhi 100 085	15 Months Training	Suitable
NCML Industries Ltd. 1818, Naya Bazar Delhi- 110006	15 Months Training	Suitable	Vardhman Chemtech Ltd. Sco 350-352 3rd Floor, Sector 34-A Chandigarh - 160022	15 Months Training	Suitable
Singhania & Parteners S&P House, P-24 Green Park Ext. New Delhi-110016 rochana@singhania.in	15 Months & 3 Months Practical Training	10000/-	J&K Projects Construction Corporation Ltd. Panama Chowk, Rail Head Jammu (Tawi)-180012 info@jkpcc.com	15 Months Training	Suitable
Shreevatsa Finance & Leasing Ltd. 120/500 (10), Lajpat Nagar, Kanpur-208005 investors.svfl@rediffmail.com	15 Months Training	Suitable	Lok Priya Nursing Home Ltd. Samrat Palace Garh Road, Meerut - 250003	15 Months & 3 Months Practical Training	Suitable
Airen Metals Private Ltd. G-750, Road No. 9f/2, V.K.I Jaipur 302013 airenmetals@satyam.net.in	15 Months Training	Suitable	Southern Wonderla Holidays Ltd. 28th Km, Mysore Road Bangalore-562109 mail.blr@wonderla.com	15 Months & 3 Months Practical Training	Suitable
Jade Eservices Pvt. Ltd. Plot No. 103, Udyog Vihar, Phase I, Gurgaon 122016, Haryana legal@jabong.com	15 Months Training	Suitable	Fox Mandal & Associates Solicitors & Advocates Fm House, No. 302, Anna Salai, Teynampet Chennai-600006 chennai@foxmandal.com	15 Months Training	Suitable
Himachal Pradesh State Forest Development Corporation Ltd. Van Nigam Bhawan SDA Commercial Complex, Block No.1 Kasumpti, Shimla 171009	15 Months Training	Suitable	Laurus Labs Private Ltd. 2nd Floor, Serene Chambers Road No. 7, Practical Training Hyderabad- 500034 info@lauruslabs.com	15 Months & 3 Months	Suitable
Trustline Securities Ltd. Trustline Tower, B-3, Sector-3 Noida-201301, Uttar Pradesh	15 Months Training	Suitable	Kannur International Airport Parvathy, Tc – 36/1, Chacka NH Bypass Thiruvanthapuram 695 024 Kerala	15 Months & 3 Months Practical Training	Suitable
Schneider Electric India Pvt. Ltd. 9th Floor, Dlf Building No.10, Tower C, Dlf Cyber City, Phase II, Gurgaon-122002	15 Months Training	Suitable	Tera Software Ltd. 8-2-293/82/A/1107 Plot No.1107, Road No.55, Jubilee Hills, Hyderabad 500 033, Andhra Pradesh, India	15 Months Training	Suitable
VE Commercial Vehicles Ltd. # 96 Sector, 32 Gurgaon 122001 Haryana	15 Months & 3 Months Practical Training	Suitable			





News From the Institute

Premier Solar Systems (P) Ltd. 3rd Floor, V.V. Towers Kharkhana Main Road, Secunderabad 500009 Greater Hyderabad. A.P India.	3 Months Practical Training	Suitable	SMS Envocare Ltd. 267, Phadnavis Bhavan Near Triangular Park Dharampeth, Nagpur Pin Code-440010 cssmsil@gmail.com	15 Months Training	Suitable
APW President Systems Ltd. Plot 5c/1, Kiadb Industrial Area Attibele Bangalore 562 107 (India)	15 Months Training	15000/-	Thermosol Glass Pvt. Ltd. Cargo House, Opp. Gandhi Ashram Old Vadaj, Ashram Road Ahemdabad-380027	15 Months & 3 Months Practical Training	4000/-
Cambridge Technology Enterprises Plot Zno. 8-2-269 1 to 6 Cyber Spazio, 1st Floor West Wing, Road No. 2 Banjara Hills Hyderabad 500 033	15 Months & 3 Months Practical Training	5000/-	GEI Industrial Systems Ltd. 26a, Industrial Area, Govindpura Bhopal 462023, Madhya Pradesh	15 Months Training	4500/-
Banzai Estates Pvt. Ltd. 49, Bajaj Bhavan, Nariman Point Mumbai-400021	15 Months Training	6000/-	Boxco Logistics India Pvt. Ltd. 29 Bank Street, Fort Mumbai-400001 info@boxcoworld.com	15 Months Training	Suitable
Boxtrans Logistics (India) Pvt. Ltd. 29 Bank Street, Fort Mumbai - 400001	15 Months Training	Suitable	Tiki Tar Industries (Baroda) Ltd. 8, 8th Floor, Neptune Tower Baroda Productivity Council Road, Alkapuri, Vadodara, Gujarat-390007	15 Months Training	Suitable
Angel Broking Private Ltd. G 1 Akuti Trade Centre Road No. 7 MIDC Andheri (E) Mumbai - 400093	15 Days Training		Tata Capital Financial Services Ltd. Tower A 1101, Paninsula Business Park Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013, India	15 Months Training	Suitable
MCX Stock Exchange Ltd. Exchange Square CTS No.255 Suren Road, Andheri (East) Mumbai-400093	3 Months Practical Training & 15 Days Training	2000/-	Marwadi Finlease Pvt. Ltd. Marwadi Financial Plaza Nana Mava Main Road Off.150 Feet Ring Road Rajkot- 360 005 compliance@marwadionline.com	15 Months Training	Suitable
KSPG Automotive India Pvt .Ltd. Village Takwe Budruk Taluka Vadgoan Maval Dist. Pune 412106 Maharashtra	15 Months & 3 Months Practical Training	Suitable	Amneal Life Sciences Pvt. Ltd. 508-512a,514, Venus Atlantis Near Shell Petrol Pump, Praladnagar Road, Ahmedabad 380015 Gujarat (India) pushpaj@amnealindia.com	15 Months Training	Suitable
True Value Commodities Pvt. Ltd. “Sheraton” 4th Floor Opp. Ketav Petrol Pump Polytechnic Road Ambawadi, Ahmedabad-380015 hiren.chandaran@truevalueindia.com	15 Months & 3 Months Practical Training	Suitable	Regal Shipping Pvt. Ltd. “Rajvi”, 3, Smruti Kunj Society Opp. Narnarayan Complex, Swastik Cross Road Ahmedabad 380009 India	15 Months & 3 Months Practical Training	Suitable
Lucy Electric India Pvt. Ltd. Survey No. 26-30, Noorpura Post: Baska, Tal. Halol, District Panchmahal Halol-389350, Gujarat	15 Months Training	Suitable			
Ideal Education Pvt. Ltd. 401, Ideal House , S.V. Road Near Filmistan Studio, Goregaon (W) Mumbai-400062 info@idealclasses.com	15 Months Training	Suitable			



Shree Electric Ltd. Industrial Estate Jaysingpur 416 144 Dist Kolhapur Maharashtra	15 Months & 3 Months Practical Training	Suitable	CS ARUN KANNAMANGALAM KAMALOLBHAVAN PCSA – 3533 Company Secretary in Practice # 36/1920F, Sebastian Road Kaloor, Kochi – 682 017
Anupam Industries Ltd. 138, G.I.D.C. Vithal Udyognagar-388121 Gujarat	15 Months	Suitable	CS JOSEPH P G PCSA – 3534 Company Secretary in Practice # 36/1920F Sebastian Road Kaloor, Kochi – 682 017
Alfa Laval (India) Ltd. 301,302 401,402 Global Poat Survery No.45/1 To 10 Mumbai Banglore Highway Baner Pune - 411045	15 Months Training	Suitable	CS ANJALI MALPANI PCSA – 3535 Company Secretary in Practice 253, Civil Lines, Dewas (MP)
Official Liquidator (Ministry of Corporate Affairs) Government of India, 2nd Floor East Wing, New Secretariat Building Opp.V.C.A. Ground, Civil Lines Nagpur-440001	15 Days Training		CS NEHA BHATT PCSA – 3536 Company Secretary in Practice C-714, Veena Velocity -1 Suncity, 100 Feet Road Off Diwanman, Vasai (West) Thane -401 202
Arthveda Fund Management Pvt. Ltd. Hdil Towers, Ground Floor Anant Kanekar Marg, Bandra (E) Mumbai 400051	15 Months Training	Suitable	CS NEHA JAIN PCSA – 3537 Company Secretary in Practice FT-74B, Raiser Plaza Indira Bazar, Jaipur
			CS PARUL ARORA PCSA – 3538 Company Secretary in Practice SCO-64-65, 1st Floor Sector-17A, Chandigarh
			CS VISHU KAUSHAL PCSA – 3539 Company Secretary in Practice 14, Vidya Park, Air Force Central School Road Ratanada, Jodhpur - 342 001
			CS RASHMIKANT V. GANDHI PCSA – 3540 Company Secretary in Practice 31, Raj Tower, Satadhar Cross Road, Sola Road, Ahmedabad – 380 061
			CS SONU SINGHAL PCSA – 3541 Company Secretary In Practice E-79, First Phase Ind. Area Balotro – 344 022
			CS VIKAS RAMCHANDRA CHOMAL PCSA – 3542 Company Secretary in Practice 4, Ground Floor, Rajsheela - 1 Near Dagdi School, Dr. Moose Road Thane (West) – 400 601
			CS RITESH KALRA PCSA – 3543 Company Secretary in Practice Shop No-8, 1-2 Chowk, Near Bank of Maharashtra N.I.T, Faridabad -121 001
			CS AKANSHA RATHI PCSA – 3544 Company Secretary in Practice 1001, B3 Wing, Phase 2, Unnathiwoods Opp Regency Towers, Kaveshar Ghodbunder Road Thane (W) – 400 607

List of Practising Members
Registered for the
Purpose of
Imparting Training
During the Month of
July, 2013



CS LEENA KULSHRESHTHA Company Secretary in Practice Flat No. 69, Pocket – E, Sheikh Sarai Phase -1, New Delhi – 110 017	PCSA – 3529
CS VARUN JINDAL Company Secretary in Practice Shop No. 1, Aggarwal Street No. 1 Gohana Road, Panipat – 132 103	PCSA – 3530
CS JYOTI KUKREJA Company Secretary in Practice 1804, Nishat Apratment, Plot No. 5 Sector-19B, Dwarka , New Delhi – 110 075	PCSA – 3531
CS A BALASUBRAMANIAM Company Secretary in Practice 4/141 Vinayakar Koil Street Pannimadai, Coimbatore – 641 017	PCSA – 3532



News From the Institute & Regions

CS ALAKH PANDEY

Company Secretary in Practice
108/134, Radha Mohan Market
Sisamau Bazar, Kanpur – 208 012

PCSA – 3545

CS SAKSHI JAIN

Company Secretary in Practice
102, HCL IX, B-Wing
Unnathi Garden
Opp. Dev Daya Nagar Junction of Pokhran Road
No.1 and 2 Thane (W.) Mumbai-400606

PCSA – 3546

CS HIMANSHU GROVER

Company Secretary in Practice
L-2A, Hauz Khas Enclave
New Delhi – 110 016

PCSA – 3547

CS LOKESH SINGHAL

Company Secretary in Practice
Old Market, Ram Nagar Ward
Bachel, Dantewada -494 553

PCSA – 3548

CS NEHA KHANDELWAL

Company Secretary in Practice
52, Shankar Colony
Naya Khera, Ambabari
Jaipur – 302 024

PCSA – 3549

CS SUDHAKAR JHA

Company Secretary in Practice
Emco Complex,59,Vijay Bock,
2nd Floor,Office No. 203
Laxmi Nagar, Delhi – 110 092

PCSA – 3550

CS M. RAJENDRA PRASATH

Company Secretary in Practice
No.23/2,Viswa Paradise Apartment
2nd Floor , Kalidas Road
Ramnagar, Coimbatore – 641 009

PCSA – 3551

CS SHIKHA GUPTA

Company Secretary in Practice
Ch. No. 106, 1st Floor, U.G.F
Shriram Complex, C-20
Mandir Marg, East Krishna Nagar
Delhi - 110 051

PCSA – 3552

CS ARBIND KUMAR SINGH

Company Secretary in Practice
B-80, III rd Floor, Pandav Nagar
Delhi – 110 092

PCSA – 3553

CS MITEN GOVINDBHAI CHAWDA

Company Secretary in Practice
A Wing, 103, 1st Floor
Gurukrupa Chs
Near Plaza Cinema
N C Kelkar Road, Dadar, Mumbai-400 028

PCSA – 3554

CS RAVI

Company Secretary in Practice
2231, N.H.B.C, Near Anand Park
Panipat -132 103

PCSA – 3555

CS MOHIT ARORA

Company Secretary in Practice
E-355, Mandir Marg
Street No. 6, Chhajupur
Shahdara, Delhi – 110 032

PCSA – 3556

CS BARKHA JAIN

Company Secretary in Practice
Flat No. 201-A, Raj Bhawan Apart.
Kamalakant Lane
Opp Goshala, Harmu Road
Ranchi – 834 001

PCSA – 3557

CS BHAKTI ASHISH TALIKOT

Company Secretary in Practice
Shop No.13, Punnya-Smriti Appt
Behind Mahatma Nagar Water Tank
B Road, Mahatma Nagar
Nashik – 422 007

PCSA – 3558

CS NARENDAR KUMAR SINGH

Company Secretary in Practice
706, R N Tagore Road
Bediapara, Kolkata – 700 077

PCSA – 3559

CS ANUSHREE AGARWAL

Company Secretary in Practice
215, Old China Bazar Street
4th Floor, Room No: 17
Kolkata – 700 001

PCSA – 3560

CS NAREN SUMANLAL SHROFF

Company Secretary in Practice
26, Nafees Chambers
2nd Flr, 121-123 Mody Street, Fort
Mumbai – 400 001

PCSA – 3561

CS DEVAKI VASUDEVA RAO

Company Secretary in Practice
3rd Floor, Sri Sai Residency
Plot No. 54, H.No. 2-66/3
Mega Hills, Madhapur
Hyderabad -500 081

PCSA – 3562

CS BHARAT CHANDRA DAS

Company Secretary in Practice
Qr. No. 307, Mig II
Sector 2, Niladri Vihar
Saiteshree Vihar
Bhubaneswar – 751 021

PCSA – 3563

CS NIDHI DHABRIYA

Company Secretary in Practice
C/603 , Pratap House
Shivaji Nagar, Vakola Bridge
Sancatcruz (E), Mumbai – 400055

PCSA – 3564

CS N. RAMANATHAN

Company Secretary in Practice
Suite No 103, First Floor,
Kaveri Complex,96/104
Nungambakkam High Road
Chennai -600 034

PCSA – 3565



CS VIVEK SHARMA Company Secretary in Practice House No- 911, Opp Radha Govind Baruah College, Fatasil Ambari Guwahati – 781 025	PCSA – 3566	CS PRAFUL NANJIBHAI VEKARIYA Company Secretary in Practice 8-A, 2nd Floor Heera Panna Complex Opp. Rajhans Point Varachha Road Surat -395 006	PCSA – 3572
CS BHARAT KUMAR AMRUTLAL PRAJAPATI Company Secretary in Practice 306, Shapath - Iii, Near Gnftower Pakwan Cross Road, S. G. Highway, Bodakdev Ahmedabad – 380 052	PCSA – 3567	CS JACINTHA CASTELLINO JOHN Company Secretary In Practice 39, Upper Basement, Dheeraj Heritage Off. S.V. Road, Santacruz (W) Mumbai – 400 054	PCSA – 3573
CS B CHAGAN LAL Company Secretary in Practice H.No. 1-4-879/75/A/1 Bakaram, Street No. 8, Mch No. 970 Gandhinagar, Hyderabad – 500 080	PCSA – 3568	CS MEGHA VIKRAM SINHA Company Secretary in Practice 21/73, Basement Old Rajender Nagar New Delhi – 110 060	PCSA – 3574
CS AARTI JAIN Company Secretary in Practice 23, Anamika Apartment 99, I.P. Extension, Patparganj Delhi -110 092	PCSA – 3569	CS KRISHNA RAO INTURI Company Secretary in Practice # 2-2-1133/2 & 2A New Nallakunta Hyderabad – 500 044	PCSA – 3575
CS DIVYA SHRIDHAR PAI VERNEKAR Company Secretary In Practice 311, Kamat Towers Patto, Panaji, Goa – 403 001	PCSA – 3570	CS JIGYASA NILESH VED Company Secretary in Practice 111, 11th Floor Sai Dwar Chs Ltd. Sab Tv Lane Opp Laxmi Indi Estate Off Link Road, Andheri West Mumbai -400 053	PCSA – 3576
CS MARDAN SINGH Company Secretary in Practice 366, Lekhraj Khajana Faijabad Road, Indira Nagar Lucknow – 226 016	PCSA – 3571		

Notification under Guideline 34 of the CS Chapter Guidelines, 1983

On consideration of governance, management and affairs of the Ranchi Chapter, the Council, on the recommendation of the Executive Committee formed an opinion that the circumstances so warrant, and accordingly decided, in exercise of its powers under Guideline 34 of the Company Secretaries Chapter Guidelines 1983, to shorten the life of the Chapter Management Committee of the Ranchi Chapter. It appointed an Administrator with effect from 17th May, 2013 to discharge the responsibilities of the Chapter Management Committee under the oversight of Secretary of the Council of the Institute.

Notification under Guideline 34 of the CS Chapter Guidelines, 1983

On consideration of governance, management and affairs of the Dombivli Chapter, the Council, on the recommendation of the Executive Committee formed an opinion that the circumstances so warrant, and accordingly decided, in exercise of its powers under Guideline 34 of the Company Secretaries Chapter Guidelines 1983, to shorten the life of the Chapter Management Committee of the Dombivli Chapter. It appointed an Administrator with effect from 2nd August, 2013 to discharge the responsibilities of the Chapter Management Committee under the oversight of Secretary of the Council of the Institute.



News From the Regions

» Eastern India Regional Council

Study Circle Meeting on use of three Ts (Training, Technology & Timely Disclosures) - Tools to comply with Insider Trading Regulations

On 10.8.2013 the EIRC of the ICSI organized a Study Circle Meeting on the above topic at ICSI-EIRC premises, Kolkata. CS Narendra Singh, Company Secretary, Essel Mining & Industries Limited was the discussion leader. CS Deepak Kumar Khaitan, Chairman ICSI-EIRC in his welcome address said that CS Narendra Singh is the apt discussion leader on Insider Trading Regulations and that the discussion will create awareness among the participants present at the meeting.

CS Narendra Singh in his address emphasised on Unpublished Price Sensitive Information as per SEBI Rules and further insisted timely disclosures of Price Sensitive Information to the Stock Exchanges (SEs). He discussed various definitions related to Insider Trading like who is an Insider and Designated Employee? What constitutes Price Sensitive Information etc. He said that there are two types of disclosures given under [Regulation 13] i.e., Initial and Continual Disclosures. He also specified there is a penalty for violation which may extend to 10 years imprisonment or with fine which may extend to Rs. 25 crores or with both. He said about the Use of Three Ts as tools to comply with Insider Trading Regulations by explaining Training, Technology, and Time. He concluded by saying that effective usage of three Ts will not only ensure the compliances but will also track/ prevent violation of Insider Trading Regulations.

Full-Day Seminar on Companies Bill, 2012

On 17.8.2013 the EIRC of the ICSI organized a Full-Day Seminar on Companies Bill, 2012 at Kolkata. CS Deepak Kr Khaitan, Chairman, ICSI EIRC while introducing the theme of the seminar said that the Companies Bill promises opportunities for professionals and it is for the professionals to update themselves for better understanding of the schedules etc.

CS Ashok Pareek, Council Member, the ICSI in his address said that

the Companies Bill enhances accountability of auditors, protect minority shareholders. The Bill puts Company Secretaries (CS) in the forefront. The role of CS will increase so CS should take this opportunity to unlearn, learn and relearn for better understanding of the laws.

CS (Dr.) Navrang Saini, Regional Director (East), MCA, the Chief Guest of the seminar in his inaugural address said that the Bill is now awaiting Presidential Assent and after the assent would be known as the Companies Act, 2013. He said that now the formation of NCLT will be a boon and said that the company Secretaries with their academic excellence and hard work will benefit.

CS K Sethuraman, Group Company Secretary & Chief Compliance Officer, Reliance Industries Limited spoke on Overview, Definitions, Share Capital and Prospectus Chapters: I, II, IV, V and emphasized on the subjects of incorporation, allotment of securities, share capital, acceptance of deposits by company, registration of charges and management and administration of company and spoke on the importance given to e-governance and CSR. He mentioned that from now onwards lot of disclosures is required to be given during formation of a company. Thereafter he discussed various definitions with various inclusions, exclusions and variations.

CS Shashikala Rao, Practising Company Secretary spoke on Incorporation, Deposit, Dividend, Chapters: III, VI, VII, VIII, XI and said that articles now include entrenchment clause, annual return needs to be signed by Director and CS and also mentioned that AGM can be held during business hours. She highlighted the enhancement of responsibilities of CS. She also spoke on object clause in the Companies Bill, the formation of Co. with charitable objective, charge, dividend, IEPF etc.

CS B.B. Chatterjee, Executive Vice-President & CS, ITC Limited discussed Board & Governance introduced in the Companies Bill, 2012. He said that a person could be director of maximum 15 companies at a time, more than that it will require Special Resolution in General Meeting. He then gave emphasis on the duties of directors as defined in new Companies Bill, 2012 and said that from now on Directors are liable to act as per Articles of the company, they are bound to act in good faith and promote objects of the company for the benefit of the investors and in the best interest of the company. He said that in the Companies Bill it is mandatory to form Nomination & Remuneration Committee for Listed Companies and other class of Companies as may be specified. The focus should be given to Corporate Social Responsibility (CSR) by corporates as from now onwards it is mandatory for the prescribed class of Companies and violation attracts penalty. He then discussed the newly added provisions regarding Independent Directors. Non-cash transactions with directors now require mandatory valuation and shareholders' approval and resigning Directors to forward his resignation to ROC along with detailed reasons.

CS Vinod Kothari, Practising Company Secretary on his topic



Accounts & Audit - Chapters: IX, X focused on the constitution, compliance and management of the two new quasi-judicial bodies - NAFRA (National Financial Reporting Authority) and NAFRAA (National Financial Reporting Appellate Authority). He said that financial statement will now include Cash Flow Statement, Statement of changes in shareholders' equity and notes. He pointed out that after NAFRA and NAFRAA there is no further provision for appeal and that there is nothing about exclusive jurisdiction in law. He also spoke on the preparation of Balance Sheet, Profit and loss A/c, statements of changes in Shareholdings, audit etc.

CS Shashikala Rao, Practising Company Secretary in the fifth session dealt with compromise and arrangement. She said that scheme of Corporate Debt Restructuring to have consent of not less than 75% of secured creditors in value. She further mentioned that 'acquirer' & 'person acting in concert' to have same meaning as in SEBI Takeover Regulations.

CS K Sethuraman, Chief Compliance Officer, RIL in the sixth session spoke on section 372A discussed that no company shall make investment through more than two layers of investment unless otherwise prescribed. New changes in section 372A were elaborately discussed. He said that the function of a CS is to comply with secretarial standards, report to board about compliance, to see no insider trading occurs, etc.

67th Independence Day Celebration

The EIRC of the ICSI celebrated the 67th Independence Day at ICSI-EIRC premises. The dignitaries present on the occasion were, CS Deepak Kr. Khaitan, Chairman, ICSI-EIRC, CS Ashok Pareek, Council Member, ICSI, CS (Dr.) Navrang Saini, Regional Director, Ministry Of Corporate Affairs, CS Mukesh Chaturvedi, Regional Council Member, ICSI EIRC. CS (Dr.) Navrang Saini unfurled the tricolour. In his address Saini talked about the independence struggle made by our countrymen and said that we should not forget the sacrifices made by our freedom fighters and we as citizens are bound to take the legacy forward. CS Deepak Kr. Khaitan said that we should remember the contribution of our forefathers and should work united and with devotion for the betterment of the people of this country. He added that we should always remember our origin, irrespective of what we do in our lives. CS Ashok Pareek, CS Mukesh Chaturvedi and CS Sanjay Sarbadhikhari also spoke on the occasion highlighting contributions made by our freedom fighters for the independence of our Country. Thereafter the participants released tricolour balloons in the air to spread the message of unity of diversity on which our nation is founded. The program concluded with games and vibrant cultural program performed by the students of EIRC.

Workshop on Wheels

The ICSI - EIRC conducted a Workshop on Wheels –in an AC Tram on the occasion of the 67th Independence Day of India at Kolkata. The topic of the workshop was Think Global Act Local - Transform India from VISION to ACTION. CS Deepak Khaitan, Chairman ICSI-EIRC after boarding the tram said that trams are a unique experience limited to Kolkata and this seminar is being conducted on a moving

Tram to remind people of the proud heritage of the city and the topic selected is very relevant to the occasion of our Independence Day. He also said that the Calcutta Tram Corporation has first time leased out its unique AC tram. The tram was decked up with tri-colour balloons and national colours and the workshop was conducted in two sessions.

The Chief Guest of the seminar was CS (Dr.) Navrang Saini, RD (East), MCA and the speakers of the first session were Miltonian Sanjay Mansukhani and CA Bharat Baid who spoke on their vision of a developed nation and said that a nation develops when its citizens strive for the common good of the nation. They also said that as individuals we should visualise and imagine better and be confident so that we realize our dreams and by realizing our dreams, the nation progresses. The speakers in the second session were CS Ashok Pareek, Council Member, the ICSI where he spoke on the initiatives of ICSI for both members and students, the vision document of ICSI and how we as professionals can contribute to the development of the nation. Miltonian Sanjay Mansukhani in the second session spoke on how we can individually focus on developing a healthy lifestyle and improve our thinking processes.

33rd AGM of ICSI - EIRC 2013

On 31.7.2013 the ICSI – EIRC organized its 33rd Annual General Meeting at its premises. CS Deepak Kumar Khaitan, Chairman, CS Arun Kumar Khandelia, Vice-Chairman, CS Mukesh Chaturvedi, CS Anjan Kr Roy and CS Ranjeet Kanodia, Members, ICSI EIRC and other members attended the AGM. The resolution to consider the Income & Expenditure Account for the year ended 31st March, 2013 and the Balance Sheet as on that date together with the Auditors' Report and the Annual Report of ICSI-EIRC for the year and also to appoint Auditors for the year 2013-2014 and to fix their remuneration was passed unanimously. Thereafter CS Deepak Kumar Khaitan, briefed the members about the various programmes/meetings organised and other activities undertaken by the ICSI-EIRC for last six months and also apprised them about the renovation work done at the ICSI EIRC building. He also stated the new initiatives taken by the ICSI-EIRC and its future plan. The members present appreciated the initiatives taken by the EIRC and thanked Chairman, Vice-Chairman and Secretary & Treasurer and other Members of the Regional Council for their unstinted efforts to make all the events successful. The Chairman ICSI EIRC urged upon the members to take part in EIRC's activities and provide support in all its endeavours.

Stress Management and Art of Mind Control

Ashroy Gauranga Dass, ISKCon, Mayapur while delivering his address with power point presentation explained about the increment of stress in the present world. He explained in detail the reason of increment of stress, reaction of common people against stress like smoking, drinking etc. which are injurious to health. He explained the right way to manage stress and also taught the gathering the art of controlling mind.

CS Biman Debnath, past Secretary of the Chapter with power point



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presentation explained the scope of the Companies Act, 1956. He also spoke on Related Party Provisions under the Companies Act, 1956 and also about sections 295, 297 and 314 of the Companies Act, 1956. He then concluded his address.


During the Question - Answer session that followed the queries raised by the participants were ably replied by the speaker. Ashok Kumar Agarwala, Chapter Chairman also addressed on Stress Management.

Bhubaneswar Chapter Image Building

On 14.08.2013, CS A. Acharya, Chapter Chairman met K. Siva Sankara Naidu, Dy. General Manager, State Bank of India, Bhubaneswar and apprised him about the ICSI, its various development programmes for the members, students and the society. Further he was also apprised about the Bhubaneswar Chapter activities for the growth & development of the profession in Odisha.

Hooghly Chapter Half Day Workshops

On 11.8.2013 a half day workshop on Practical Aspect of Contract was organised at the Chapter Conference Hall, Rishra. CS Siddhartha Murarka, Partner, Ghosh & Murarka, Solicitors and Advocates was the guest speaker who apart from discussing the fundamentals of Indian Contract Act, 1872, also discussed different stages of a contract. He said that a good contract creates a "win-win" situation for both the parties and mitigate potential risks.

Again on 18.8.2013 the Chapter organized a half day workshop on Companies Bill 2012- An Overview" at Sarat Sadan, Howrah Maidan. CS Mamta Binani, Past Chairperson, ICSI-EIRC was the guest speaker who in her deliberations discussed the revised provisions for constituting Private Company and Public Company, concept of OPC (One Person Company) and changes in the limit of number of directors on the board. She also discussed the CSR clauses introduced in the Bill. She further emphasized the increased role and responsibilities of a Company Secretary in the light of new Bill. She further added that the new Bill is very futuristic and growth oriented and envisages a much larger role for the Company Secretaries in the future. More than 200 delegates participated in the workshop. 

>> Northern India Regional Council

178th MSOP

On 1.8.2013 NIRC-ICSI inaugurated the 178th MSOP at ICSI-NIRC Building, New Delhi. CS A G Agarwal, Former Director (Finance),

ITDC Ltd. was the Chief Guest and CS B Parmeshwaran, Head (Legal) & Company Secretary, Shahi Exports Pvt. Ltd. was the Guest of Honour on the occasion. The program was inaugurated by the Chief Guest, Guest of Honour & Regional Council Members present. CS Avtaar Singh while coordinating the inaugural session in his welcome address advised the participants not only to add value to the professional work but to create the value through their professional knowledge and expertise. He requested the participants to give their sincere and honest feedback for improvement in MSOP.

CS Shyam Agrawal, Vice Chairman, NIRC while addressing the participants said that everyone has few strengths and weaknesses, we should learn from each other. He advised to maintain the dignity and decorum of the profession and of the Institute. He said that after the completion of the 15 days orientation programme the participants will be treated as Members of ICSI and suggested them to inculcate the habit of a professional in them from the very beginning of their professional career.

CS NPS Chawla said that the 15 days of MSOP will never come back in the lives of the participants and stated that the participants of batch will share special bond of oneness amongst themselves. He also emphasized on making best use of the faculties and suggested to interact with them.

CS Deepak Kukreja congratulated the participants for reaching the last leg of training i.e. MSOP. He said that the entire corporate world is looking up towards the CS professionals. He advised the participants to learn from the expert faculties of MSOP and emphasized upon improving their liaisoning skills.

CS B Parmeshwaran while addressing the participants congratulated them for joining Management Skills Orientation Programme and said that learning is a continuous process and suggested them to regularly read Chartered Secretary, the Journal of the Institute. He emphasized on the art of drafting and advised the participants to remain sincere in their job.

CS A G Agarwal in his address informed that CS is a vital link between the Company, its Board of Directors, Shareholders, Government and other Stakeholders. He is a person who unites the two ends of the river. He encouraged the participants on becoming members of a group comprising less than 40,000 professionals. He advised them to keep the pride of the profession and suggested and emphasized on the policy of thinking what management thinks.

42nd Foundation Day Celebrations

Inaugural Session: On 25.07.2013 NIRC-ICSI inaugurated its 42nd Foundation Day Celebrations at ICSI-NIRC Building, New Delhi. Krishna Tirath, Hon'ble Union Minister for Women & Child Development, Government of India was the Chief Guest on the occasion. The programme was inaugurated by the Chief Guest and the Regional Council Members present. CS Ranjeet Pandey anchored the inaugural session of the programme.



CS M G Jindal while delivering his welcome address informed the minister about the establishment of the Institute, its members & students. He said that the Foundation Day has a special importance as all the senior members have put in their untiring efforts, dedication and commitment and nurtured this profession and now it is our turn to carry the flag of the Institute to Himalayan heights. He briefed about the various programmes planned to be organized during the Foundation Day Week.

CS Nesar Ahmad in his address mentioned that India is doing very good in the field of Corporate Governance. He said that Corporate Governance is not restricted to corporate world but it includes NGOs, Panchayats, Trusts, etc. He said that CSR is a part of Corporate Governance. He informed about various MOUs entered into by the ICSI with various foreign Institutes. He also informed that on the combined efforts of member countries of Corporate Secretarial International Association the Corporate Governance, Compliances and Secretarial Advisory Services has been added under the service Sectoral classification list of WTO.

Smt. Krishna Tirath while inaugurating the 42nd Foundation Day Celebrations of Northern India Regional Council of the ICSI expressed her happiness to note that around 50% of the student strength of the Institute is female and there is equal representation of female members in the Institute. She informed about various key initiatives taken in the social sector and also pioneering landmark legislations for children & women i.e., 'Protection of Children from Sexual Offences and The Protection of Women from Sexual Harassment at Workplace'. She assured her full support in the matter of the Companies Bill, 2012 then pending at Rajya Sabha.

CS Manish Gupta concluded the inaugural session by saying that Company Secretaries are acting and will continue to act as watch dogs for corporate world and ensure the compliances of all the laws applicable to them. After the inaugural session, saplings were planted at the ICSI-NIRC premises by the Chief Guest and other dignitaries present.

Seminar on Corporate Restructuring - Contentious Issues

On 27.07.2013, NIRC-ICSI organized a one-day seminar on Corporate Restructuring - Contentious Issues at Hotel Le Meriden, New Delhi. Man Mohan Singh, Technical Member, Customs, Excise & Service Tax Appellate Tribunal was the Chief Guest. Around 400 members were present on the occasion.

Inaugural Session: CS Vineet Chaudhary anchored the inaugural session of the seminar. In his welcome address he mentioned that Corporate Restructuring is a very wide subject and informed that the focus of the seminar is on the important issues relating to the corporate restructuring. He mentioned that despite various efforts made by the SEBI to monitor various arrangements etc., it was felt to protect the interest of the minority shareholders. He also made a

mention of the recent circular issued by SEBI in relation to clause 24(f) of the listing agreement and said that this seminar is planned to discuss the various issues arose out of this circular and various clarifications issued by SEBI in the matter.

CS M G Jindal while addressing the gathering said that Corporate Restructuring has become a common phenomenon in Corporate World now-a-days. It is a tool that is used by corporates to meet the challenges posed by dynamic business environment. Mergers, Amalgamations have become an integral part of new economic paradigm. Giant Corporate Houses are taking shape by combining their businesses. To meet the challenges, the country needs enormous experienced and knowledgeable professionals like Company Secretaries who have to study the global trend and devise plans and strategies for staying ahead of others for creating a congenial and market friendly atmosphere. If the professionals have to stay ahead of others there is no way but to keep themselves abreast of the latest developments in various economic legislations taking place not only in India but in other countries as well. They are also required to suggest the strategies to be adopted to handle the complex situations arising out of various mergers, demergers or takeovers taking place across the globe. It, therefore, becomes necessary for every professional to constantly update themselves with various legislative changes taking place from time to time.

Chief Guest Man Mohan Singh while addressing the gathering said that corporate restructuring is the process of redesigning one or more aspects of a company. The process of reorganizing a company may be implemented due to a number of different factors, such as positioning the company to be more competitive, survive a currently adverse economic climate, or poise the corporation to move in an entirely new direction. Restructuring a corporate entity is often a necessity when the company has grown to the point that the original structure can no longer efficiently manage the output and general interests of the company. For example, a corporate restructuring may call for spinning off some departments into subsidiaries as a means of creating a more effective management model as well as taking advantage of tax breaks that would allow the corporation to divert more revenue to the production process. In this scenario, the restructuring is seen as a positive sign of growth of the company and is often welcomed by those who wish to see the corporation gain a larger market share.

CS NPS Chawla before concluding the inaugural session of the seminar stated that Corporate Restructuring shows a positive sign of growth.

First Technical Session: CS Rajiv Bajaj anchored the first technical session of the seminar. CS Sanjay Grover spoke on "Contentious issues in corporate restructuring". He initiated the discussion with the recent developments viz. Companies Bill, 2012, Recent circulars issued by SEBI etc. and discussed in detail the various contentious issues in case of mergers like filing of undertaking relating to compliance of Accounting Standard 14, etc. He discussed specifically



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the circulars issued by SEBI on 4th February & 31st May, 2013. He also discussed in detail the requirement of Valuation Report/Fairness Report.

CS Atul Mittal spoke on "Regulatory Aspects in Corporate Restructuring". He discussed various modes and objectives of Corporate Restructuring. He also discussed various tools for restructuring viz. Merger/Demerger, Hive off/Slump Sale, Takeover/Acquisition, Joint Venture/Strategic Alliance, Franchise, etc. He explained the entire regulatory framework and discussed in detail stamp duty and its chargeability. He also explained the entire procedure to be followed under section 391-394 of the Companies Act, 1956.

G R Bhatia, Partner, Luthra & Luthra, Law Offices spoke on "Merger Control Issues Qua Competition Law Regime". He initiated the discussion by mentioning competition in markets brings prosperity. He discussed the merger control under the other laws like compromises, arrangements and amalgamation are governed by the Companies Act, Substantial Acquisitions/Takeover are regulated by Takeover Regulations. He said that prior to merger control under the competition Act, scrutiny of proposed transaction was not from the lens of competition in markets. He mentioned that the provisions of the Competition Act for regulating the combinations are effective from June, 01, 2011. He also informed the procedure and the time taken in giving approvals by Competition Commission of India. He explained the transaction which may not require filing of the requisite notice with CCI and when the obligation to file the notice with CCI will trigger, the responsibility of filing, filing fee and the approval timelines.

Sunil Kadam, General Manager, SEBI spoke on "Obligations of Stock Exchange for sending observations on the Merger/ Demerger Scheme to SEBI & Stringent Provisions for Merger/Demerger of Listed Companies". He briefly explained the major reasons, primary objective and kinds of restructuring. He with the help of examples explained the earlier process for seeking exemption under Rule 19 of SCRR, 1957 and discussed various concerns in the earlier process. He then explained the revised process for the scheme of arrangement, timelines and the advantages available in the revised process.

After all the presentations of the first technical session, participants present asked various queries which were very well responded by the guest speakers.

Second Technical Session: CS Manish Gupta anchored the second technical session of the seminar.

Rajiv Singh, Director & Co-Founder, Explico Consulting Pvt. Ltd. spoke on "Valuation aspect of Corporate Restructuring including role of Valuation Professionals/Merchant Bankers". He briefly discussed the need for Corporate Restructuring. He defined Business Valuation as an act or process of determining the value of a business, business

ownership interest, security or intangible assets. He also discussed the business valuation standards, business valuation process, purpose valuation approaches and methods etc.

CS NPS Chawla spoke on "Instrument of Transfer & Implication of Stamp Duty in Corporate Restructuring". He discussed in detail the execution of the instrument of transfer and the implication of stamp duty in corporate restructuring.

After all the presentations of the second technical session, participants present asked various queries, which were very well responded by the guest speakers.

Vaishali Study Group Meeting on Valuation of Business & Shares

On 13.07.2013 at the Vaishali Study Group Meeting on Valuation of Business & Shares, Manish Khanna and Manoj Bhandari were the speakers.

South Zone Study Group Meeting

On 19.07.2013 at the South Zone Study Group Meeting on Practical Implications in Disqualification & Vacation of Directors under section 274 & 283 of the Companies Act, 1956 CS Samir Biswas, Ex-Regional Director - MCA (Western & Southern Region) was the speaker.

West Zone Study Group Meeting on SME Listing

On 20.07.2013 at the West Zone Study Group Meeting on SME Listing CS Hemadri Mukhereja was the speaker.

North Zone Study Group Meeting on Stamp Duty – Key Issues

On 21.7.2013 at the North Zone Study Group Meeting on Stamp Duty – Key Issues, CS Satwinder Singh, Past Chairman, NIRC-ICSI was the speaker.

Mega Study Circle Meeting on Inbound and Outbound Investments - Recent Key Policy Changes

On 26.07.2013 at the Mega Study Circle Meeting on Inbound and Outbound Investments - Recent Key Policy Changes Guest Speakers were CS Atul Mittal (Council Member, ICSI) and CS Satwinder Singh (Past Chairman, NIRC-ICSI).

Exhibition of Crafts, Arts, Photographs, Paintings & Souvenir

On 28.7.2013 the Regional Council organised Exhibition of Crafts, Arts, Photographs, Paintings.

Cultural Evening for Members and their families (Felicitation of CS Jatin Garg on Successfully clearing the IAS 2012 Examination with 235th Rank)



On 28.7.2013 at the Cultural Evening for Members and their families (Felicitation of CS Jatin Garg on Successfully clearing the IAS 2012 Exam. With 235th rank) Chief Guest on the occasion was Yogender Chaudhary, IRS, Govt. Advisor, Competition Commission of India and the Guest of Honour was Pawan Kumar, IRS, Chief Commissioner, Income Tax.

Health Check-up

On 31.7.2013 the Regional Council organised Health Check Up by a team of Doctors from B.L. Kapur Hospital and Blood Donation Camp by Red Cross Society.

Career Awareness Programmes/ Career Fairs

The Regional Council organised 33 Career Awareness Programmes/ Career Fairs during the month of July, 2013 in various schools & colleges located in Delhi and surrounding areas. CS JK Bareja, CS Shiv Tyagi, T R Mehta and Himanshu Sharma addressed in these Career Awareness Programmes/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 22.7.2013 the Chapter organised a Career Awareness Programme at Delhi Public School, Ishar Nagar, Himshikha for the +2 students of commerce stream. Again on 19.7.2013 the Career Awareness Programmes were held at Vivekanand Millennium School, HMT Township Pinjore and DAV Sr. Public School, Surajpur Haryana for the +2 students of commerce stream.

CS Vishawjeet Gupta and Nishi Gupta along with Chapter staff on 22.7. 2013 and CS Mukesh Sharma, CS Vishawjeet Gupta and Nishi Gupta along with Chapter staff on 19.7.2013 highlighted the future prospects of the profession of CS. During their address to the students they apprised them about the mode of registration in the course, fee structure, eligibility criteria for admission and the avenues available to the profession both in employment and in practice. Pamphlets explaining the company secretary course were also distributed to the students. More than 40 students along with the staff of the school participated in the programme held on 22.7.2013 and More than 50 students in each school, along with the staff of these schools participated in the programme held on 19.7.2013. The queries raised by the students were also replied by the speakers and also the Chapter staff.

Gurgaon Chapter Programmes on Companies Bill, 2012

On 16.8.2013, Gurgaon Chapter of NIRC of the ICSlin Association with Factum Legal, Advocates & Solicitors as Knowledge Partner Organized first class of its Classroom Series-II on the Companies Bill

2012 at Gurgaon. CS Parvesh K Kheterpal, Chairman Gurgaon Chapter introduced the theme of the programme and also thanked the members for attending the session and factum legal for sponsoring the programme. He further threw light on the important sections of the Companies Bill, 2012 and highlighted the need of understanding and attending all the series of the programme to the members in order to become more conscious of the changes in law and thus implementing them in the corporate world.

CS Santosh Sharma, Vice Chairman Gurgaon Chapter, while introducing the speakers urged the members to attend all the programmes of Class room Series to make themselves aware of the new law to be notified by the Central Government. The programme was attended by more than 80 participants.

First Technical Session on Companies Bill – An Overview. The topic discussed was Liberalized Provisions, Governance & Transparency, Role & Liabilities of Professionals. The speakers were CS (Dr.) S. Chandrasekaran, Senior Partner, Chandrasekaran & Associates, Company Secretaries who in his address discussed various liberalized provisions introduced in the Bill where approval of Central Government is not required for entering into related party transactions. He further discussed the provisions of heavy penalties on company, directors and professionals for not complying with the provisions of law. He emphasized the importance of Secretarial Standard for Board and General Meetings, which is introduced in the Bill and inspired the members present to send their suggestions and views to the ICSI about such finalization of standards whenever asked. He then put light on the role and liabilities of professionals and importance of Secretarial Audit for the Corporate and Industry. He concluded by highlighting how Companies Bill, 2013 has increased the Scope of practice for CS Professionals.

The Second Technical Session was on New Concepts under the Bill and Changed Scenario - Foreign Companies in India - An overview & Applicable Provisions of the Companies Bill, 2012 for Foreign Companies in India. The speaker was Arun Gupta, FCS & Law Graduate, Managing Counsel, Factum Legal, Advocates & Solicitors. Gupta spoke on the changed scenario under the Companies Bill, 2012 applicable on Foreign Companies, Joint Ventures & Foreign subsidiaries in India, foreign offices in India. He stated that MNCs in India will require changing their Corporate Secretarial process and system to align with the new provisions in the Bill. He emphasized on the important provisions of the Bill related to formation, Articles of Association, Share capital & transfer of shares, Board meetings, its composition, accounts and audits, etc. that a foreign company should comply. He also highlighted the new definition of foreign companies in the Bill covering the electronic presence as place of business in India. He also presented and shared the newly introduced concepts in the Companies Bill, 2012 like One Person, Dormant Company, Small Company, Related Party, CSR, Class action suit, NFRA etc. He also highlighted the importance of Secretarial Audits & Secretarial Standards in the companies.



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Ludhiana Chapter Seminar on Companies Bill, 2013

On 23.8.2013, Ludhiana Chapter of the ICSI conducted a Seminar on Companies Bill, 2013 at Ludhiana. This seminar was inaugurated by N K Jain, Past Secretary and CEO of the ICSI, New Delhi. Satwinder Singh, Partner, Vaish Associates, New Delhi and R S Bhatia, Practising Company Secretary, New Delhi were the Guests of Honour.

The Companies Bill was passed by the Lok Sabha on 18.12.12 and by the Rajya Sabha on 08.08.13 and is now with the President for his Assent. The new Bill will replace the 57 years old Companies Act, 1956 with the new Companies Act, 2013. The Bill is forward looking in its approach which empowers the Central Government to make rules, etc. through delegated legislation. The main provisions will be enacted in the rules. The Ministry of Corporate Affairs expects all the rules regarding the Companies Bill likely to be in place by the end of this fiscal, after taking into account the suggestions from experts, public and other stakeholders. This will change the working of companies all over India. The Companies Bill is the result of detailed consultative process adopted by the Government.

The Government has now classified companies based on their size and operations of business as Small Companies, Listed Companies, Public Limited Companies and Private Companies. Further the concept of One Person Company (OPC) has been introduced in the Bill. The new Bill introduces more transparency and Corporate Governance to the Companies. The auditor will hold office for five years and firm of auditors for a period of ten years. More investor protection measures have been introduced in the Bill.

A new concept of Corporate Social Responsibility (CSR) has been introduced in the Bill. Every company having net worth of rupees 500 crores or more, or turnover of rupees 1000 crores or more or a net profit of rupees 5 crores 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. The Board of every company shall ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.

The seminar deliberated on the new provisions of the Companies Bill and opportunities for the professionals. The Bill has enhanced the Role of a Company Secretary in Employment as well as Practice. Now, Secretarial Audit has been introduced for certain companies. The seminar was attended by people from Companies, Practising Professionals and students of ICSI and other professional bodies.

CS

Southern India Regional Council

Half – Day Seminar on Recent reforms in Primary Market

Sundaresan V S, Chief General Manager, Securities Exchange Board of India, Mumbai was the speaker at the seminar held on 26.7.2013 on the above topic. Sundaresan spoke on the regulatory framework involved in the issue of shares, key parties and their role in the IPO process and the issue process. He also spoke elaborately on the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Framework For Rejection Of Draft Offer Documents) Order, 2012. The members actively interacted with the speaker.

Study Circle Meeting on Cost Audit under the Companies Act 1956

R Vasudevan, Cost Accountant, Chennai was the speaker at the study circle meeting on the above topic held on 30.7.2013. Vasudevan started his presentation by making a comparison between cost audit prior to May 2011 and the existing one. He also focussed on the change in the appointment procedure of cost auditor, Maintenance of Cost Accounting Records, Compliance Report and Companies (Cost Audit Report Rules) 2011, dated 3.6.2011 and amendment dated 30.11.2012 (in supersession of Companies (Cost Audit Report Rules) 2001).

Foundation Day Lecture – 31st July 2013

On 31.7.2013 at the Foundation Day lecture of the ICSI – SIRC delivered by CS M S Sundararajan, Former Chairman & Managing Director, Indian Bank, the Chairman traced the history and the contributions of the previous office bearers of the ICSI – SIRC. In his address M S Sundararajan highlighted the growing and diversified role of Company Secretaries in the company's management. He also observed that more opportunities are available to the professionals in the banking sector also. Sundararajan emphasized the members to stick on with good ethics. Being the custodian of the investors' interest in the company, he observed that, it is the duty of Company Secretaries to be a bridge between the management and shareholders.

BANGALORE CHAPTER

Half day Seminar on Technological Challenges – Directors Meeting Management – Any Solution?

On 13.7.2013 the Chapter organised a Half Day Seminar on Technological Challenges – Directors Meeting Management – Any Solution? at Bangalore.



The Seminar was Led by CS M V S Appa Rao, Corporate Secretary, ING Vysya Bank Ltd., Bangalore and the Speakers were Kunal Gursahani, Executive Director, Rhea Gursahani, AVP – Products & Research, Alphaplus Technologies, Mumbai and CS Rajesh Saxena, Mumbai.

The speakers emphasised on the fact of paperless e-solutions available for almost all our day-to-day needs such as e-bills, e-tickets, e-statements, e-payments. However the challenge of using this cutting edge technology for our Board/Committee Meetings is what Management needs to think about and also think that can we collate and collaborate our requirements for a technological solution for conduct of such meetings – a solution which is convenient, saves time & efforts, cost effective and ensures data confidentiality. They dealt with in detail on what best practices are to be imbibed in such technological solution.

Career Awareness Week - I

From 15.7.2013 to 20.7.2013 the Chapter observed Career Awareness Week and conducted six Career Awareness Programmes at various institutions as under: On 15.7.2013 the Career Awareness Programme was held at Sindhi College for B.Com & BBM students. 300 students participated in the programme. Noor Sumayya, Assistant Education Officer of the Chapter was the speaker. On 18.7.2013 at Kristu Jayanthi College for 1st B.Com & BBM students. Noor Sumayya, Assistant Education Officer of the Chapter and CS V.K. Harish Babu, Practising Company Secretary, Bangalore were the speakers. Three hundred students participated in the programme. On 19.7.2013 at KLE Society's Independent Pre University College for 1st year B.Com, BBM and for 1st year MBA Students and at Mount Carmel College for Post Graduate students. Noor Sumayya, Assistant Education Officer of the Chapter was the speaker. 240 students attended the programme. The Speakers explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc., the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. They also highlighted the opportunities available to anyone who has completed the Company Secretaryship course, enumerated the emerging areas of practice and the changing role of a Company Secretary. What would be the mind-set and preparation required from a student who wanted to pursue the Company Secretaryship Course was also explained. Brochures explaining the Company Secretary ship Course were also distributed to the students.

Annual Day Celebrations

On 28.7.2013 the Chapter, to commemorate its Annual Day celebrations organised various programmes for the Members and the Students. The Chapter organised the following competitions: Table Tennis, Shuttle, Chess and Carrom at the Karnataka Badminton Association between 10.00 AM and 1.00 PM and Chess and Carrom at Chapter premises between 2.00 PM and 6.00 PM for students and members. Around 75 members and students and their families participated in the competitions.

COIMBATORE CHAPTER

Joint Programme on VAT- Tax Audit & Tax Planning for Professionals

On 20.7.2013 a Study Circle Meeting on VAT - Tax Audit & Tax Planning for Professionals was organized by the Chapter. The session equipped the participants to understand various intricacies and niceties on the topic, and the magnitude of VAT – Tax audit and tax planning can bring about in the functioning of professionals. He concluded by expressing his views on how these, in turn, will help the organizations to espouse high standards of efficiency. The session was addressed by CA R.Muralidharan, Practising Chartered Accountant, Erode. The programme was graced by 75 participants.

Career Awareness Programme

The Chapter as part of its Career Awareness drive aimed educating the student community on the benefits of company secretaries course organized various Career Awareness Programmes in and around Coimbatore during the month of July, 2013. Around 3000 students were educated on "Career as a Company Secretary". The details of programmes organized at various Schools/Colleges are as follows: On 2.7.2013 a Career Awareness Programme was organised at Dr. NGP Arts & Science College. CS P.Eswaramoorthy, Chairman, Coimbatore Chapter of SIRC of the ICSI was the speaker. 700 students attended the programme. On 5.7.2013 at GRD College of Science, CS R. Hariram, Chapter Treasurer was the speaker. 150 students attended the programme and at Bharathi Matriculation Hr. Sec. School, Shyama Vijayaraghavan, Assistant Education Officer was the speaker. 130 students attended the programme. On 8.7.2013 at PSGR Krishnammal College for Women, Coimbatore. CS P. Eswaramoorthy, Chairman, Coimbatore Chapter was the speaker and 300 students attended the programme. At Hindusthan College of Arts & Science, CS S.Venkatesh, Chapter Secretary was the speaker. 300 students attended the programme. On 9.7.2013 at PSGR Krishnammal College for Women, P. Eswaramoorthy, Chapter Chairman was the speaker. 300 students attended the programme. On 12.7.2013 at GRD College of Science. 60 students attended the programme. At Maharaja Arts & Science College, Neelambur, 380 students attended the programme. Shyama Vijayaraghavan, Assistant Education Officer of the Chapter was the speaker; On 16.7.2013 at PKR College for Women and Gobi Arts & Science College, Gobi. CS P. Eswaramoorthy, Chapter Chairman addressed during the programme. 550 students attended the programme. On 17.7.2013 the Career Awareness Programme was held at GRD College of Science, Coimbatore, 150 students attended the programme.

Career Awareness Week

As part of ICSI Career Awareness Week the Chapter celebrated Career Awareness Week from 22.7.2013 to 26.7.2013. The details of the programmes are as follows:

On 22.7.2013 at PSGR Krishnammal College for Women, Shyama Vijayaraghavan, Assistant Education Officer was the speaker. 60 students attended the programme. On 23.7.2013 at Avinashilingam



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University, Coimbatore Shyama Vijayaraghavan was the speaker. 600 students attended the programme. On 26.7.2013 three Career Awareness Programmes were held at VellalarCollege, KonguArts & ScienceCollege, and Vasavi College Erode, 450 students attended the programme.

KOCHI CHAPTER

Career Awareness Programme

The Kochi Chapter of SIRC of ICSI organized a Career Awareness programme for the students of The National University of Advanced Legal Studies (NUALS), Ernakulam on 1.8.2013. The programme was held at the campus of NUALS and more than 75 students of first semester attended it. The Vice Chancellor of NUALS Dr. N. Balu gave an introduction to the students. He also introduced the Kochi Chapter team to the students.

The programme was led by CS Jayan K., Chairman, CS Asish Mohan, Vice Chairman and CS Rohini Varma K, Treasurer of Kochi Chapter. During the programme the syllabus, method of study, details of formalities of registration and training, various avenues for Company Secretaries etc. were explained in detail. The speakers focused on the dual benefit of having CS with the law degree that could be availed by the students of NUALS. During the programme the leaflets and pamphlets of ICSI were distributed to the students. Students very actively interacted with the speakers on various points and their doubts were clarified. The programme lasted for 2 hours and the students gave very good feedback on the programme.

Joint Programme on Governance & Unlimited Avenues

The Palakkad, Kochi and Thrissur Chapters of Kerala jointly conducted a Professional Development Programme on Governance & Unlimited Avenues at Palakkad on 10.8.2013. CS S N Ananthasubramanian, President, the ICSI was the Chief Guest. A. Balaji, General Manager, United Breweries Limited was the Guest of Honour and P. Rajendran, Managing Director, KSFE Ltd. was the Keynote Speaker. This was the first public professional development programme of the President, after passing of the Companies Bill by the Upper House. R. Rajan, Management Consultant from Chennai took a session on VAT audit by Company Secretaries. The President and other officials interacted with the participants. The programme was well attended by the members and students of all the three Chapters.

Open Interaction with the President

The Kochi Chapter conducted an interactive programme with the President of The ICSI, CS S N Ananthasubramanian on 9.8.2013 at Kochi. This was the first public function of the President with the members and students of ICSI, after passing of the Companies Bill by the Upper House. Chief Guest CS SN Ananthasubramanian, President, the ICSI delivered the Presidential address covering the highlights of new Companies Bill. He explained in detail the aspect and relevance of Key Managerial Personnel, role of Company

Secretary in Corporate Governance, the scope of Company Secretaries in Practice as well as in employment, as per the Companies Bill. He interacted with the members and students and their queries were responded to.

This was followed by release of CS Kerala Directory by the President, an initiative of Kochi Chapter of ICSI. The President also presented the "Kochu Mariamkutty Endowment Award" to Rejitha S., instituted by senior member of the profession CS P.C. Jose. The programme was well attended by members and students. Several media representatives were also present.

Independence Day Celebrations

The Kochi Chapter celebrated Independence Day on 15.8.2013, at the Chapter premises. The function was well attended by members and students. The celebrations started with vande mataram. After this, pledge was taken by everyone who took part in the celebration. CS Jayan K Chairman, gave the Independence Day message. Members and students actively participated in the function and many of the members were invited to share their thoughts on Independence Day. The members and students also discussed the necessity of more active students' participation at Chapter level in organizing various innovative programs to benefit the student community. All the students present voluntarily came forward offering their service and the members of the Managing Committee suggested them to work as a core team for the Chapter, by networking with other students. The Celebrations concluded after rendition of National Anthem.

MADURAI CHAPTER

One day seminar on Indian Financial Code, Deferred Taxation Provisions, Transfer pricing and Foreign Direct Investments

On 20.7.2013 the Madurai Chapter of SIRC of the ICSI organised a One day seminar on Indian Financial Code, Deferred Taxation Provisions, Transfer Pricing and Foreign Direct Investments. S. Kumararajan, Chapter Chairman in his welcome address explained the need for the subjects chosen for the seminar. The Programme was inaugurated by A.Kathir Kamanathan, CEO & Founder of M/s Chella Software, Madurai and Chairman of CII, Madurai Zone. In his address he emphasised the requirement of foreign direct investments in the present context. The programme contained four technical sessions as under. The First Technical session on Foreign Direct Investments was taken by J. Chandrasekaran, Advisor, Finance and Company law, M/s. Hi-tech Arai (P)Ltd, Madurai. The Second Technical session on Deferred Tax Provisions was taken by A. Arunkumar, Chartered Accountant, Chennai. The Third Technical session on Transfer Pricing was taken by Roopeshkumar Rao, Director, B.S.R. & Co, Chartered Accountant, Hyderabad. Rao explained the current provisions relating to the domestic transfer pricing which was very useful to the participants. The fourth and last technical session on Indian Financial Code was taken by CS S. Dhanapal, Practicing Company Secretary, Chennai. The Valedictory



session was attended by E. M. Sudarsana Natchiappan, Hon'ble Minister of State for Commerce and Industry, Government of India. He in his address with the appreciation to the ICSI Madurai Chapter for the topics chosen at the right time while, the government is relaxing the FDI norms in various sectors including retail trade, defence etc., informed that the Government is taking all efforts to reduce the time in various sanctions/approvals to start new industries and business especially with the capital of Rs.1000 crores and more. He emphasised that the Government had created many schemes/plans for utilising abundant available skilled man power for the country's growth. Above all he concluded by stating that the growth will lead to the employment opportunities for those who are pursuing the company secretary ship course.

Career Awareness Programme

On 25.07.2013 Madurai Chapter organized a career awareness programme at G.V.N College, Kovilpatti. S.Kumararajan, Chairman, Madurai Chapter explained about the CS course, structure, fees, and employment opportunities/avenues in practice for the students. Around 200 First year B.com and B.B.A students participated.

SALEM CHAPTER

Industrial Visit cum Seminar on Corporate Social Responsibility

On 11.7.2013 the Salem Chapter organised an Industrial Visit cum Seminar on Corporate Social Responsibility at M/s. Hatsun Agro Products Limited, Salem. This was the fourth industrial visit organised by the Chapter. Office bearers, members and students of the Chapter numbering 40 participated in the programme. CS Santhanam N, Chapter Secretary coordinated the visit. Monisha, Production Manager, took the team inside the plant and explained the entire production systems of Ice Cream and Dairy products. After visiting the entire plant, team gathered in a Conference Hall, where Narendran, HR Manager and C Selvaraj, Senior Internal Auditor explained the Corporate Social Responsibilities adopted by the company. CS Santhanam N, Chapter Secretary also explained the necessity of CSR by the Companies in the present scenario.

Career Awareness Programme

On 26.5.2013 a Career Awareness programme was conducted by the Salem Chapter of SIRC of the ICSI at Vidhya Nikethan Matriculation Higher Secondary School, Rasipuram, Nammakal District. CS Solaiyappan S, Chapter Chairman and CS Santhanam N, Chapter Secretary addressed the students on the importance, value and role of Company Secretaries. A detailed lecture was given to the students regarding the CS course like qualification, duration, structures and the employment prospects.

Again on 11.7.2013 the Career Awareness programme was conducted at KSR Arts and Science College for Women, Tirchengode, Nammakal District. CS Solaiyappan S, Chapter Chairman and CS Gnanasekeran S, Vice-Chairman, of the Chapter addressed the students on Recent Trends in Corporate Secretaryship.

Career Awareness Week

From 15.7.2013 to 20.7.2013 the Career Awareness Programmes were conducted by the Chapter in various Colleges and Schools as under: On 17.07.2013 the Chapter conducted the Career Awareness Programmes at Shri Sakhtikailash College of Arts & Science for Women, Salem and AVS College of Arts and Science, Salem. The Speakers of the Programmes were CS Anuradha Santhankrishnan and CS RS Shanumugam. More than 400 students attended the programme and there was activate participation among the students. On 18.07.2013 the Chapter conducted the Career Awareness Programmes at Srinivasan College of Arts & Science, Perambalur Dist., Dhanalakshmi Srinivasan College of Arts & Science for Women Perambalur Dist. and Bharathi Vidyalaya Hr. Sec.School, Salem. The Speakers of the programmes were CS Solaiyappan S, Chapter Chairman, and CS Gnanasekeran S, Vice Chairman, of the Chapter . Around 400 students participated in the programmes. On 19.07.2013 the Chapter conducted the Career Awareness Programmes at Bala Bharathi Matriculation Hr. Secondary School and Vysya College of Arts and Science, Salem. The Speakers of the programmes were CS Solaiyappan S, Chapter Chairman and CS Santhanam S, Chapter Secretary. Pamphlets of CS Course were distributed to all the students and information regarding admission in the CS course along with the course fee/syllabus was disseminated to the students. Around 250 students participated in the programmes and benefited. On 20.7.2013, the Chapter conducted a Career Awareness Programme at the Department of Corporate Secretaryship, School of Management, Alagappa University, Karaikudi, Sivaganga District. About 90 students doing MBA (Corporate Secretaryship) Course attended the programme. In his special address, CS.S.Solaiyappan, Chapter Chairman, gave an overview about the Company Secretaryship course, the admission procedures, fee structure, mode of study, syllabus for Executive and Professional Programs and employment opportunities. He further gave a detailed account about the scope and opportunities available to company secretaries in practice. He motivated the students to join the CS course by availing the exemptions given by the ICSI. The queries raised by the students were clarified by the Chairman.

CS

Western India Regional Council

AHMEDABAD CHAPTER

Study Circle Meetings

On 20.7.2013, Ahmedabad Chapter of WIRC of the ICSI organized a Study Circle Meeting at the Chapter premises. The meeting was arranged under the leadership of CS Rohit Dudhela, Chairman, PCS Committee, Ahmedabad Chapter of WIRC of the ICSI. The session in Study Circle Meeting was taken by CS Pinakin Shah on Delisting of Shares – Voluntary & Mandatory. CS Pinakin Shah, one of the senior most Members of CS profession and currently



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engaged in whole time practice explained in detail the complete procedure of delisting with its pros and cons. His deliberation assisted the Members to understand the intricacies of Delisting of Shares. The study circle session was attended by 56 Members who were allotted 01 PCH.

Again on 6.7.2013 the Chapter organized a study circle meeting under the leadership of CS Rohit Dudhela, Chairman PCS Committee, Ahmedabad Chapter of WIRC of the ICSI. The session in Study Circle Meeting was taken by Shri Amit Chavda. on Public Private Partnership (PPP). Amit Chavda, currently working with GIDB (a Board formed by Gujarat State Government for development and promotion of infrastructure Projects through PPP in the State), addressed the members about the broad features of PPP policy of the Government. The study circle session was attended by 37 Members and were allotted 01 PCH.

Career Awareness Programmes

Ten Career Awareness Programmes were conducted by CS Deepa Methwani during the Career Awareness Week I (15 July to 20 July 2013). On 17.7.2013 the programme was held at Sarvajani Madhyamik Shala, Sarkhej, Ahmedabad for the students of Science, Arts and Commerce disciplines, on 18.7.2013 the programme was held for Bachelor of Commerce and Arts students of both English and Gujarati medium at Bhavan Sheth RA College of Arts and Commerce, Ahmedabad, on 19.7.2013 at FD High School, Maktampur, Ahmedabad and C.M. Thaker High School, Naroda. Three Career Awareness Programmes were conducted by CS Vaishali Shah during the Career Awareness Week.

Tv Show - Live Telecast on CS Career

The Chairman – CS Chetan Patel and Secretary – CS Rajesh Tarpara, of Ahmedabad Chapter of WIRC of the ICSI addressed in the live telecast on DD Girnar (Gujarati) channel, a programme named “Hello Karkirdi” on the career and prospects of Company Secretary with recent updates. The live telecast was shown on 07.08.2013 from 08 pm to 09 pm and the repeat telecast at 11.30 pm to 12.30 am (midnight). The same was telecast on 08.08.2013 from 11 am to 12 noon on the same channel.

WIRC Annual Regional Conference 2013

The Western India Regional Council organized its Annual Regional Conference 2013 which was hosted by Ahmedabad Chapter of WIRC of the ICSI, on Perceive - Plan - Perform on 3 and 4. 08. 2013 at Chekhla, Ahmedabad. The Conference received overwhelming response with the active participation of more than 280 Members / Students from across the Region. Some of the Central and Regional Council Members besides others also participated in the conference. The Inaugural Session of the Conference was addressed by the President of ICSI, CS S. N. Ananthasubramanian, CS Hitesh Buch, Chairman – WIRC and CS Umesh Ved, Central Council Member. The President in his inaugural address stated that the theme and topics selected by

WIRC were very appropriate in the 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 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 explained various initiatives of ICSI like Peer Review. During the Inaugural Session of 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.

Press Conference

The Press Conference was organized on 03.08.2013 at 04 pm at Ahmedabad Chapter of WIRC of ICSI wherein the President of the ICSI CS Ananthasubramanian, WIRC Chairman CS Hitesh Buch and Ahmedabad Chapter Chairman Chetan Patel interacted with the representatives of various press.

The press was informed about the developments and latest updates in ICSI such as new syllabus of CS Foundation, ICSI Grievance Solutions, Executive and Professional Course, the top ten goals of the Institute, Strategic Action Plan 2013-14, career awareness initiatives, online registration and enrolment facilities, expansion of 15 days training, e-learning facility, Campus Placement, the first international Chapter at Dubai, MOU with CISI, London, MOU with MAISCSA, MOU with NSE, BSE, MCX-SX, United Stock Exchange of India Limited, Symbiosis International University, IPE Hyderabad, ASSOCHAM, Federation of Andhra Pradesh Chamber of Commerce & Industry & Merchants Chamber of Commerce and Industry,



Kolkata, MOU with IIBF, MOU with NISM, MOU with New India Assurance Co.Ltd., MOU with RAJIV GANDHI IIM – SHILLONG. ICSI has also collaborated with NALSAR, NISIET from Hyderabad and National Law School of Indian University in Bangalore for mutual research and collaborative programmes.

PUNE CHAPTER

Two-day Conference on CS Catalyst to Corporate Solutions

On 5 and 6.7.2013 the Pune Chapter of WIRC of the ICSI hosted a 2 day Conference organized by Western Regional Council of ICSI on the theme CS Catalyst to Corporate Solutions at IMA House, Pune. Various sessions by eminent faculties were scheduled in the conference. S K Jain, President MCCIA and CS S N Ananthasubramanian, President, the ICSI were invited as the Chief Guests. After the inaugural session, the first technical session on “Managing Oppression and Mismanagement” was scheduled for which CS S D Israni was the eminent faculty. After this, a session on “Intellectual Property Assets Management” by CS Nayan Rawal was held. Later on, a session on “Presentation on Continuing Professional Education” by Rajesh Walawalkar was organized. Post Lunch, a “Presentation on WIRC – ICSI Placement Initiative in Collaboration with CAMPLACE” was made. Another session on “Corporate Finance & Corporate Tax” was held for which CS Anand Varma and CA Abhay Pitale were the eminent faculties. The last session of the day was on “Art of Advocacy” by Justice Dilip Karnik. This was followed by a session on Profession, Professional and Professionalism by CS S N Ananthasubramanian. In the evening, a cultural programme was organised by Mahesh Nimbalkar Group.

On the second day, the first technical session was organized on “Setting up of International Business from India” in which CS Vivek Sadhale, CS Vikrant Gandhe, CS Subodh Gore, CS Kedar Sabne, CS Arun Deshpande were invited to talk and who gave a brief idea and shared their experience of setting up of units in five different countries i.e. USA, Dubai, Singapore, Germany & Africa. After this interactive session, a session on “Romancing the Balance Sheet” by Anil Lamba was organized. Another session on “Corporate Social Responsibility” by Madhuri Lele was held. Post Lunch, a session to share the experience of Company Secretaries on various topics viz. Funding, Legal Compliance Management, NBFCs, Indirect Tax, Information Technology was held. The conference concluded after rendition of National Anthem. The 2 day conference was a grand success attended by more than 180 delegates.

Half Day Seminar on Knowledge Refresher Course

On 13.7.2013 the Pune Chapter of WIRC of the ICSI organized a half day programme on “Knowledge Refresher Course” at Pune. Dr K R Chandratre, Past President, the ICSI was the faculty which was attended by 71 delegates. The technical session was very informative & appreciated by the gathering at large. Two (2) PCH

was allotted to members who attended the programme and students were allotted four (4) PDP for the programme.

Study Circle Meeting on Business Instruments & Stamp Act

On 13.7.2013 the Pune Chapter of WIRC of the ICSI organized a Study Circle Meeting on “Business Instruments & Stamp Act” at Pune. Adv Swaroop Godbole was the faculty which was attended by 61 members. The technical session was very informative & appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme and students were allotted two (2) PDP for the programme.

Study Circle Meeting on Will & Succession –Law & Practice

On 20.7.2013 the Pune Chapter of WIRC of the ICSI organized a Study Circle Meeting on “Will & Succession - Law & Practice” at, Pune. Adv. Rohit Erande was the eminent faculty which was attended by 52 members. The technical session was very informative and appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme and students were allotted two (2) PDP for the programme.

Study Circle Meeting on Concept of Peer Review

On 26.7.2013 the Pune Chapter of WIRC of the ICSI organized a Study Circle Meeting on Concept of Peer Review & Expectation from Practising Unit at Pune. CS M J Risbud was the faculty for the meeting. In total 34 members attended the programme. The technical session was very informative & appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme & students were allotted two (2) PDP for the programme.

Half day Seminar on Related Party Transactions Under the Companies Act

On 27.7.2013 the Pune Chapter of WIRC of the ICSI organized a Study Circle Meeting on “Related Party Transactions Under the Companies Act” at Pune. Dr K R Chandratre, Past President, the ICSI was the faculty which was attended by 84 members. The technical session was very informative & appreciated by the gathering at large. Two (2) PCH was allotted to members who attended the programme & students were allotted four (4) PDP for the programme.

Career Awareness Sessions

On 11,12 and 15.7.2013 the Pune Chapter of WIRC of the ICSI organized various Career Awareness Sessions in Sinhgad College and H V Desai College, Pune to apprise the students on “Career as a Company Secretary”. CS Manoj Soni, CS Bhushan Kotecha and CS Girish Paralikar were the faculty members. More than 300 students attended these Career Awareness Sessions. Brochures explaining the CS course were distributed amongst all the students.



ICSI - CCGRT

Orientation Programme on Valuation

On 11.8.2013, the ICSI-CCGRT organised a full day orientation programme on "Valuation" in order to give the participants a practical exposure to the different facets of valuation and make them confident to carry out valuation assignments. The programme was hosted at the MDP Centre of the SIES College of Arts, Science & Commerce, Sion and inaugurated by SRamesh, Director, Kotak Mahindra Capital Company Limited, who complimented ICSI-CCGRT for organizing the programme.

S Ramesh, in his address, pointed out that having a realistic understanding of the value of one's own business or the value of your shares in a business is critical to personal decision-making and planning. He also added that many believe that the process of valuing a business is carried out only at the point of buying or selling a business, but the fact is that valuation is a versatile tool and can have a profound effect on the actions of managers. Used as a business performance indicator, it can demonstrate the direction the business is heading.

The speaker, CS Jayanth Gudimella, Founder, Elephos Education Services – Education Advisory & Training, Mumbai covered various aspects of valuation of business viz. Valuation tools- DCF, relative valuation etc., Industry analysis, Interpreting credit rating of the company, Forecasting revenues, growth & profitability, assessing company's management and peer group comparison and during the session, he also shared some of his experience in the area.

The programme provided a medium to interact with the experts to examine the increasingly importance of valuation not only in business but in our day – to – day life. It was well received by the participants.

Programme on Compliances and Consent Orders under SEBI & Compounding under FEMA

On 20.7.2013, the ICSI-CCGRT organised a full day Programme on "Compliances and Consent Orders under SEBI & Compounding Under FEMA" at its premises in Navi Mumbai. A O Basheer, General Manager, Foreign Exchange Department, RBI delivered the key note address on Compounding under FEMA. Other eminent speakers included Shailashree Bhaskar, Former Deputy General Manager, SEBI & Practicing Company Secretary and Arvind Salvi, Former Deputy General Manager, RBI.

Speaking on the scope and jurisdiction of compounding under FEMA 1999, A O Basheer threw light on the statutory provisions governing compounding under FEMA viz. Sections 13 and 15 of FEMA and Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000. Powers of Compounding under all

sections of FEMA except Section 3(a) (basically dealing with Hawala transactions) are vested in RBI and Powers to deal with contraventions under Section 3(a) are vested in Directorate of Enforcement. The 3 basic ingredients for compounding as per section 15 are Contravention, Admission on application and Application to be decided within 180 days. In terms of Rule 3 of Compounding Proceedings rules, 'Compounding Authority' (CA) means an officer of the ED not below the rank of DLA or an officer of the RBI not below the rank of AGM. Talking about the jurisdiction, he made it clear that no contravention shall be compounded if an appeal has been filed under section 17 or 19 of the Act (i.e. after Adjudication order is issued by AA). He then explained in detail the concept of compounding and the compounding procedure, contravention penalty and other procedures from regulator's i.e. RBI side. He also discussed the sources of information available for detection of contraventions, how the contraventions are classified as Material and Sensitive followed by the method of dealing with it and the generally committed contraventions under FDI, ODI and ECB. In conclusion, he pointed out that the application must have amount of contravention (in INR) irrespective of the nature of contravention & acceptance of Contravention.

Arvind Salvi discussed all the major developments during 1st July 2012 to 30th June 2013 w.r.t. ECBs, Trade Credits, Overseas Investments, Foreign Investment, Exports and Imports. The recent developments since July 2013 include Allowing NBFC-AFCs to avail of ECBs; Issue of guidelines for calculation of total foreign investment by RBI, Transfer of ownership and control of Indian Companies and downstream investment by Indian companies and Issue of FAQ on FLA statement by RBI. Towards the end, he threw light on the overall international position of India as on March 2013 in terms of foreign exchange.

Shailashree Bhaskar, at the outset, threw light on the non-compliances / alleged violations under the SEBI takeover regulations, insider trading regulations and other violations such as indulging in grey market operations, other FUTP violations, code of conduct violations, not handling investor grievances etc. and the likely actions thereof. After explaining how consent is different from compounding, she discussed various civil and enforcement actions that can be taken by the regulator. She then elucidated on the consent orders – procedure, waivers, applications, annexures, personal orders, calculation of consent amount, benchmark amount, violations not consentable or applications not entertained, consequences of non-acceptance or non-compliance of consent orders etc. Through case studies, she made the participants calculate the consent amount for various non-compliances. She also discussed in brief the compounding process under SEBI.

More than 150 participants including members and students of ICSI attended the programme. The programme was interactive and very well received by them.



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Participants Mix: Students and Members of ICSI

Fees
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*** Limited seats and hence prior registration is desirable
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Venue: ICSI-CCGRT, Plot No. 101, Sector-15, Institutional Area, CBD-Belapur, Navi Mumbai 400 614

Fees may be drawn by way of DD/local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to Shri Gopal Chalam, Dean, ICSI-CCGRT, at the above address.

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RESEARCH &
TRAINING (CCGRT)**

PCH - 4

NISM NATIONAL INSTITUTE OF
SECURITIES MARKETS
An Educational Initiative by SEBI

PDP- 8

And

Announces

Conference on

Ethics and Governance

CHIEF GUEST: SHRI U K SINHA, CHAIRMAN, SEBI

Background	<p>Corporate Governance assumes much significance in today's corporate world as we see collapse of institutions, systems and procedures due to poor governance. Voluminous work has been done in the area of corporate governance through studies, debates and conferences. The need for such exercises is felt more in the modern world.</p> <p>Corporate governance and ethical practices play a dominant role in a company's overall growth and success. A well governed company has strong, transparent policies in both areas – accountability and rigorous Board oversight – and operates in the best interest of its Shareholders, Employees, Customers, Community and Environment.</p>
Day, Date & Time	Thursday, September 26, 2013 from 09.30 a.m. to 05.30 p.m.
Venue	HOTEL SOFITEL C-57, BANDRA KURLA COMPLEX, BANDRA EAST, MUMBAI
Proposes Coverage	<p><u>Technical sessions with different themes to cover, interalia</u></p> <p>Regulatory Perspectives of Corporate Governance - Existing regulatory requirements and compliance by institutions, International practices in the regulatory environment, issues and challenges of New Financial Code, Offsite and onsite inspection procedure etc.</p> <p>In each technical session, it is proposed to have a key note speaker and a Panel Discussion. The members of the Panel Discussion can be thought of</p>
Speaker include	<p>Shri U K Sinha, Chairman, SEBI has agreed to be the Chief Guest and inaugurate the conference.</p> <p>Shri S N Ananthasubramanian, President, ICSI, Shri M S Sahoo, Secretary, ICSI and Shri Sandip Ghose, Director NISM will address the participants</p> <p>Other keynote speakers for the technical sessions and eminent faculty members related to particular theme would also address the participants.</p>
Participation Mix	Directors of Corporates, Banks, Mutual Funds, Governance Professionals- Company Secretaries and Other Professionals including Academicians
Fees (Inclusive of Service Tax@12.36%)	<p>₹ 5,000/- per participant</p> <p>(to cover the cost of program kit, background material, lunch and other organizational 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 The Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614.



022-41021501/15,022-27577814/33



022- 27574384



ccgrt@icsi.edu

Limited participation and hence prior registration is desirable



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

**CENTRE FOR
CORPORATE
GOVERNANCE,
RESEARCH &
TRAINING (CCGRT)**

PCH - 4

Program on

PDP - 8

RISK MANAGEMENT

Day, Date & Time	Saturday 28 th September, 2013 09.30 a.m. – 05.30 p.m. with lunch and background material
Proposed Coverage	<ul style="list-style-type: none"> Overview of Risk Management including Forex Risk Management – Regulatory Framework Risk Management in a Corporate Environment Risk Management in Banks & Financial Institution
Venue:	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Principal Faculty	Shri Ramesh Lakshman , Ramesh Lakshman & Co., Chartered Accountants, Mumbai
Fees (inclusive of Service Tax)	₹ 850/- per participant for Students of ICSI ₹ 1,050 /- per participant for Members of ICSI ₹ 1,250 /- per participant for Others to cover the cost of program kit, background materials, lunch and other organizational expenses.

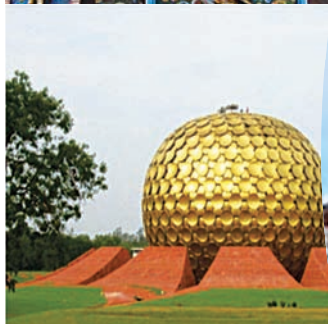
For Registration : The Fees may be drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to The Dean, ICSI-CCGRT , Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614.

☎ 022-2757 7814, 022 – 4102 1513, Fax: 022-2757 4384, ✉: ccgrt.icsi@gmail.com, ccgrt@icsi.edu

Limited participation and hence prior registration is desirable

OTHER FORTHCOMING PROGRAMS

Program Details	Day, Date & Time
3 Days Workshop on 'Secretarial Practice, FEMA and Tax Laws'	Sunday, September 08, 15 & 22, 2013 09.30 a.m. – 05.30 p.m.
Conference on 'Ethics and Governance'	Thursday, September 26, 2013 from 09.30 a.m. – 05.30 p.m.



41st National Convention of Company Secretaries

Transitioning from Company Secretary to
Governance Professional

7-8-9 November, 2013

ITC Grand Chola, Chennai



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

41st National Convention of Company Secretaries



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Dear Professional Colleagues,

We cordially invite you to attend and participate in the 41st National Convention of Company Secretaries which is being organized by the Institute from Thursday, November 7, 2013 to Saturday, November 9, 2013 at ITC Grand Chola, Chennai on the theme “**Transitioning from Company Secretary to Governance Professional**”. At the Convention indepth analysis of the theme would be made in five technical sessions which are as under:

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

In addition there would be an interactive session on Day 3 for the members of ICSI.

The Convention will start with the Opening Plenary at 2:30 pm on November 7, 2013 and conclude by lunch on November 9, 2013.

As in the past, eminent persons and experts in the respective fields from the Government, Regulators, the profession and the corporate sector will address the Convention.

Your participation will not only add to fruitful deliberations, but also give you an opportunity for mutual exchange of ideas and views and sharing of experience with your professional colleagues from across the country and abroad.

We, therefore, request you to register yourself along with other executives of your organization(s) as delegate(s) by sending the attached delegate registration form along with the requisite delegate fee. An additional fee will be charged from a delegate desiring to register his/her spouse for attending the lunch, dinner, sightseeing, cultural programme and other attractions of the Convention.

A Souvenir containing theme articles, programme details, messages of good wishes and other interesting features will be brought out to commemorate this mega annual event.

Kindly use your good offices in obtaining advertisements for the proposed souvenir. We also look forward to your support by way of sponsorship.

Registration procedure, fee structure along with the delegate registration form, tentative programme schedule, advertisement/sponsorship rates etc. are set out in this booklet.

Awaiting your nomination(s), advertisement and sponsorship support.

Looking forward to meet you at the 41st National Convention at ITC Grand Chola, Guindy, Chennai.

With regards,

Yours sincerely,

(CS R SRIDHARAN)

CHAIRMAN, 41ST NATIONAL CONVENTION ORGANISING
SUB-COMMITTEE

PH: 9841018446

EMAIL: sri251959@gmail.com

THEME

TRANSITIONING FROM COMPANY SECRETARY TO GOVERNANCE PROFESSIONAL

Change and growth are inevitable constituents of a prosperous economy. The economy and society has been a witness to the proliferation of professions over the ages. The influence of the professionals in making of the society and the economy has been growing, as they contribute to competitiveness of the nations, and sustainability of the posterity with prosperity. They ensure fair play in market place and instill ethics in the enterprises and the society. The State relies on them for second order state functions. In recognition of their strategic role, the State and the Society have evolved an institutional framework to develop and regulate various professions. The ever changing economic dynamics require keen, zealous and adaptable attitude for ultimate growth of the professionals and the profession.

Governance, or the lack of it, has assumed centre-stage not



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only in India but across the globe and sooner than later the members of Company Secretaries Profession shall be anointed as Chief Governance Officers/Governance Professionals.

The need to continually redeem our pledge and commitment to the trust and confidence placed on us, the Company Secretaries, by the Society and regulators is important and critical to the sustenance and growth of the profession. The real testimony to this is the Companies Act, 2013 which makes company secretaries Key Managerial Personnel and makes Secretarial Audit mandatory for certain class of companies. This provision in the Act showcases strategic importance of the Company Secretary in governance architecture of any company.

The Company Secretary professionals or the Governance Officers will soon be recognised as the “Guardians of Company’s Governance and an independent adviser to any corporate.”

To live upto the expectations of not only the regulators but also other stakeholders, Company Secretaries should put their best efforts to turn the wheels and drive the governance regime.

It is in this backdrop that the theme of the 41st National Convention of Company Secretaries has been devised as **TRANSITIONING FROM COMPANY SECRETARY TO GOVERNANCE PROFESSIONAL**. Further thenational convention would deliberate threadbare how to develop and regulate professionals, particularly those engaged in governance, in the best interest of the State and the Society under the following sub- themesin five technical sessions:

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

FIRST TECHNICAL SESSION

MODEL FRAMEWORK FOR DEVELOPING AND REGULATING PROFESSIONALS

Professions are characterized by several factors, including an identifiable body of knowledge, a pathway for advancing

knowledge and skills related to the profession and an emphasis on continued learning and development.

The issue of quality in any sector is inextricably linked to the issues of knowledge exercise through education, training and professional development. A model framework for developing the profession intends to provide a basic guide to the scope of practice and evolution of the professional. The framework is also an important tool for developing continuing education plans. It provides an outline of the responsibilities, knowledge and skills of the professional at various stages of professional development. Such outlining also assists as a tool for career/ professional development planning by the individual professional and the regulatory authority.

The global economic resurgence, in the times to come, shall envisage the governance professionals to ensure quality, accountability and promote stakeholder responsive environment. A model framework for developing and regulating professionals shall become a manifesto of heightened awareness of how critical are their services to the society.

This technical session will deal with the importance of a framework for developing and regulating a profession, institutional framework for developing and regulating a profession and enforcement actions for defaults by a professional.

SECOND TECHNICAL SESSION

EMERGING ROLE OF PROFESSIONALS IN THE ECONOMY AND SOCIETY

The role, responsibility and accountability of professionals towards the corporates and its stakeholders have increased manifold. The Companies Act, 2013 as passed by the Lok Sabha on December 18, 2012 and by the Rajya Sabha on August 8, 2013 received the assent of Hon’ble President of India on 29th August, 2013. The modern and contemporary company law transitions company secretaries to corporate governance professionals. It brackets them in the category of key managerial personnel.

The need of the hour for corporates and professionals, particularly Company Secretaries is to gear themselves for implementation of the changing legislation in letter and spirit and endeavour to transport India into the big league in corporate governance and democracy.

This technical session has been structured to deliberate upon the emerging role of professionals in the development of economies and society. This session is expected to cover: Emerging landscape of professions in India; Role in liberalized, Globalised and Dynamic Environment; Role of Professionals

41st National Convention of Company Secretaries

in the Economy, Society and Government; Role of Priests, Physicians, Scientists, Advocates, Social Workers and Company secretaries.

THIRD TECHNICAL SESSION

ROLE OF GOVERNANCE PROFESSIONALS

Governance provides effective and efficient safeguard against corruption, fraud and mismanagement and ensures responsiveness towards its multiple stakeholder groups. Governance is all pervasive, it isn't restricted to the corporate world; rather it derives its roots from democracy.

The distinct role of professionals in governance regime is to safeguard the integrity and promote high standards of ethical behaviour. Prosperity and sustenance of economy depends on ethical and transparent functioning of various sectors whether it is banking, insurance, financial markets, non-governmental organisation (NGO) etc. The governance professional assists an entity to adopt a vision and strategy enforcing the elements of good governance.

The technical session has been designed to deliberate on how governance professionals can bring a difference and become the frontiers of economic renaissance with focus on his Role under the Constitution and in Government; Role in Corporate sector, Banking and Insurance industry; Role in NGO(s) and under related laws; Role in Financial Markets and under related Laws.

FOURTH TECHNICAL SESSION

MAKING OF A GOVERNANCE PROFESSIONAL

To meet the surging demand and unending opportunities & challenges, professionals need to equip themselves with adequate knowledge and robust ethical conduct.

A governance professional is expected to adopt foresighted actions in terms of adaptability, legal and ethical dynamism and demonstrate managerial ethics and standards. In times of increasing pressures from the environmental and social domains, the role of company secretaries as governance professionals is bound to become an imperative for any entity.

In order to be able to continue to offer high level of service, professionals are expected to speed up the knowledge updation as well as assimilate and articulate the same to respond to expectations of stakeholders.

The session has been designed to deliberate upon 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.

FIFTH TECHNICAL SESSION

PANEL DISCUSSION: IFS AND BUTS WITH GOVERNANCE AND RELATED PROFESSIONALS

Laws are just a set of rules to ensure the safe and harmonious interaction of the society. Governance on the other hand is alignment of personal sense of moral values with social and economic goals.

Today's global economy suffers from a sinister set of problems which originate from a lack of fundamental values. The Constitution of India is the Code of all good governance. The question is whether we have been successfully infusing elements of good governance in "we the people"?

As professionals, we are bounded by a social contract to provide a service over and above normal duties, and good governance in turn relies on ethos of governance professional. Emerging opportunities cast increased responsibilities on professionals, which further demands better regulation of service delivery and conduct. What measure can a regulatory body initiate to instill fundamental values in professionals? Is code of conduct sufficient enough to ensure accountability?

The panelists at the session drawn from various professions would provide their perspectives and discuss on: Can Governance be legislated?; Can Governance Professionals be manufactured?; Balancing Independence and Accountability of a Governance Professional; Identifying and Resolving Conflicts of Interests of a Governance Professional; Risks and Liabilities of a Professional; Protection available to Professionals.

TENTATIVE PROGRAMME

DAY – 1 – Thursday, November 7, 2013

1.00 PM onwards	Registration of Delegates
2:30 PM to 4:00 PM	OPENING PLENARY
4:00 PM to 4:30 PM	Tea
4:30 PM to 6:00 PM	First Technical Session
7:00 PM onwards	Cultural Programme & Dinner

DAY – 2 – Friday, November 8, 2013

9:30 AM to 11:00 AM	Second Technical Session
11:00 AM to 11:30 AM	Tea
11:30 AM to 1:00 PM	Third Technical Session
1:00 PM to 2:00 PM	Lunch



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2:00 PM to 3:30 PM	Fourth Technical Session
3:30 PM to 4:00 PM	Tea
Evening	Cultural Programme and Dinner
DAY – 3 – Saturday, November 9, 2013	
9:00 AM to 10:15 AM	Interactive Session (For Members of ICSI Only)
10:15 AM to 10:45 AM	Tea
10:45 AM to 12:00 Noon	Fifth Technical Session
12:15 PM to 1:15 PM	Closing Plenary
1:15 PM onwards	Lunch

Participants

Corporate Directors, Business Leaders, Company Secretaries and other Senior Management Executives in the Corporate and Financial Services Sector, Practicing Professionals in Secretarial, Financial, Legal and Management Disciplines, Researchers and Academicians would benefit from participation in the Convention.

Faculty

Eminent persons from the Government and industry, including professionals, management experts, academicians will address the participants and there would be brainstorming sessions and interactions.

Papers for Discussion

Members who wish to contribute papers for publication in the souvenir or for circulation at the Convention are requested to send the same preferably through email [alka.kapoor@icsi.edu] in MS-word format with the caption 'Paper for National Convention' on or before September 20, 2013. The paper should not normally exceed 15 typed pages. The Articles Screening Committee will consider the articles so received and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects.

DELEGATE FEE AND REGISTRATION PROCEDURE

TYPE OF DELEGATE	EARLY BIRDS (PAYMENTS RECEIVED UPTO 25.09.2013) INCLUSIVE OF SERVICE TAX (Rs.)	OTHERS(PAYMENT RECEIVED AFTER 25.09.2013) INCLUSIVE OF SERVICE TAX (Rs.)
Members of ICSI/ICAI/ICAI-CMA	6700	7300
Company Secretaries in Practice / Senior Members (60 years & above)	6200	6700
Non-Members / Foreign Delegates	7300	7900
Spouse/ Accompanying Guest / Accompanying Children (above 5 years but below 18 years) / Students	5600	6200

The above, non-residential delegate fee covers Lunch (3), Dinner (2), Morning /Evening Tea/ Coffee with cookies, Convention Bag & Kit, Cultural Programme on two evenings.

The entire fee is payable in advance and is not refundable once the nomination is received. The registration form duly completed along with a crossed demand draft drawn in favour of **The Institute of Company Secretaries of India payable at New Delhi** may please be sent to **The Institute of Company Secretaries of India, C-37, Sector - 62, Noida – 201 309** by 25th October, 2013 in case hotel accommodation is not required; and by 25th September, 2013 in case hotel accommodation is required.

Stay Arrangements

The Institute has made special arrangements for accommodation of delegates at

Hotel ITC Grand Chola.

ITC Grand Chola is an unending horizon of inspirations and humble tribute to the Chola Dynasty and its valiant kings, in its scale, grandeur, magnitude and architectural aspirations. The ITC Grand Chola committed to the highest standards in Indian hospitality and has 522 rooms and 78 luxuriously appointed serviced apartments. Its 600 spacious guest rooms, suites and luxury serviced apartments, are the epitome of Indian grace and style, expertly appointed with thoughtful amenities.

Tariff and other details are as under :-		
Details of the Hotel	Tariff/ Package from 07.11.2013 (12:00 Noon) Checkin to 09.11.2013 (12:00 Noon) Checkout (2 Nights) (All inclusive)	
ITC Grand Chola No.63, Mount Road, Guindy, Chennai 600032 Tel: 044 22200000 / 044 22200200 E- Mail: Gaurang.sinha@itchotels.in / sushant.raj@itchotels.in Website : www.itchotels.in	A.	Executive Club Category Rooms (200 Rooms available)
	(i)	Rs. 9000 per delegate on Twin Sharing Basis (Two Delegates in one room)
	(ii)	Rs.17000 per delegate on Single Occupancy Basis
Distances from : Airport : 7 Kms. Railway Station : 14 Kms. Bus Stand : 7 Kms. Checkin Time : 12 Noon onwards Checkout Time : Before 12 Noon	(iii)	Rs.18000 on Double Occupancy Basis (With Spouse/ Accompanying Guest)
	B.	Towers Category Rooms (50 Rooms available)
	(i)	Rs.11250 per delegate on Twin Sharing Basis (Two Delegates in one room)
	(ii)	Rs.21400 per delegate on Single Occupancy Basis
	(iii)	Rs.22500 on Double Occupancy Basis (With Spouse/ Accompanying Guest)

Note : The tariff is based on the various taxes applicable as on date. In case of any revision in the rate of taxes by the

Government, the same will be recoverable from the delegates.

Residential Package (Add Delegate Fee to Hotel Accommodation Charges) with **Hotel ITC Grand Chola** includes stay from 07.11.2013 (12 Noon – Checkin) to 09.11.2013 (12 Noon – Checkout), Breakfast (2), Welcome drink on arrival, Mineral Water in rooms, Tea/ Coffee Makers & Iron Box in the room, 10% Discount on all Hotel Services except Travel House & Paid Outs. ITC Biscuits/ Chips will be provided in Executive Club Rooms and Fruit Platter on request in Towers Category Rooms on complimentary basis. These facilities will be in addition to the benefits available under the Non-Residential Package.

IMPORTANT INSTRUCTIONS TO THE DELEGATES

1. **Early Bird Discount :** Early Bird Discount on Delegate Fee is subject to receipt of the payment in the Institute on or before 25th September, 2013.
2. **Closure of Delegate Registration :** The closing date for delegate registration is 25th October, 2013. Depending upon the response from the delegates vis-à-vis the capacity of the Convention Venue and other administrative factors, the Institute may consider closing the delegate registration in advance. In such case, delegates will be registered for the Convention on First Come First Served Basis and the Delegate Fee will be refunded in case Institute is unable to register them as delegates.
3. **Hotel Accommodation :** Interested delegates may send their requests along with the requisite tariff in full (non-refundable) latest by 25th September, 2013 for booking their accommodation in the aforesaid hotel. Rooms will be allotted on First-Come-First-Served Basis on receipt of requisite payment in the Institute subject to availability. If rooms are not available at the time of receipt of payment, the delegates will be kept in the waiting list and/ or the payment received will be refunded in case the Institute is unable to arrange the accommodation. In view of limited availability of hotel accommodation, even after remitting the requisite fee, kindly DO NOT treat the booking as confirmed until a formal confirmation is received from the Institute.
4. **Preference of Category of Room :** If the accommodation is not available in the preferred category, the accommodation will be arranged in the available categories. Accordingly, if the accommodation is arranged in higher category, the delegates will be required to remit the balance amount immediately to the Institute. Conversely, if the accommodation is arranged in the lower category, the excess amount will be refunded directly to the delegates by the Institute.
5. **Checkin / Checkout Timings :** Checkin time is 12 Noon (7th November, 2013) and Checkout time is 12 Noon (9th November, 2013). Early Checkin/ Late Checkouts will be subject to availability of rooms. Delegates may please recheck with the hotel regarding applicability of extra charges before availing the early checkin/ late checkout facilities.
6. **Extra Bed :** There is no provision for accommodating extra bed in the rooms. However, one additional occupant upto 12 years may accompany their parents in the rooms with complimentary breakfast.
7. **Payment of Additional Expenses in the Hotel :** Delegates have to pay for additional/ incidental expenses like room service, laundry charges, telephone charges, items consumed out of minibar, etc. to the Hotel directly at the time of service.
8. **Room-wise Bill :** No separate room-wise bill will be issued by the Hotel and the delegates may remit the balance amount, if any, after adjusting the advance amount remitted to the Institute and obtain receipt for the same.
9. **Consumption of Items from Minibar & Settlement of Additional / Incidental Expenses :** The hotel will not remove the minibar from the rooms and all items in the minibar are chargeable. As per the hotel's requirement, the delegates will be required to provide Credit/ Debit Card Details at the time of Checkin as the incidental expenses are required to be settled by the delegates directly with the hotel.
10. **No Hotel bookings against requests through E-Mail / Phone :** Rooms will only be booked / confirmed on receipt of actual payment in the Institute. Merely sending the request through E-Mail/ Phone without the requisite payment is not sufficient for booking the accommodation.
11. **Advisory on Twin Sharing Accommodation :** Delegates accompanied by Children are required to opt for Single / Double Occupancy accommodation and are not eligible for Twin Sharing accommodation.
12. **Delegate Fee & Hotel Accommodation Charges :** The delegate fee and hotel accommodation charges are non-refundable. Delegate Fee and Hotel Accommodation Charges are to be remitted in advance along with the Delegate Registration Form duly filled up and signed.
13. **Refund of Hotel Accommodation Charges :** Once the payments are received by the Institute and the rooms are blocked on behalf of the delegates in the hotel, refunds

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are not admissible under any circumstances. Refunds, if any, allowed would depend purely upon the policy of the hotel in this regard.

14. **Lunch & Dinner Coupons** : Delegates may please collect separate Lunch and Dinner Coupons for themselves, Accompanying Spouse, Children (above 5 years but below 18 years) and the coupons are essentially required to be handed over to the catering staff at the food counters.
15. **Special requirements** : Delegates are required to carry a copy of the government recognized identification in the form of Voter ID Card, PAN Card, Driving Licence or Passport.
16. **Extra Breakfast** : Extra Breakfast, if required would be provided by the Hotel @ Rs.900 all inclusive.
17. **Payment through Electronic Transfer** : Delegates/ Sponsoring Organisations desirous of making payments through Electronic Transfer may please refer to the NEFT Mandate. The details regarding the remittance through NEFT mode is required to be sent to the Institute for verifying the receipt of the payment. After making the remittance through NEFT mode, delegates are required to send confirmation regarding the remittance through E-Mail to convention41@icsi.edu along with a copy of the transaction details and the priority will be decided according to date/time of receipt of E-mail.
18. **Payment through Demand Draft payable at New Delhi / At Par Cheque**: Delegates may please note that in case they are remitting the fee through demand draft / at par cheque their requests for Delegate Registration and hotel accommodation will be considered on receipt of the form and fee in the Institute. Keeping in view the time lag in receipt of the delegate registration form & payment in the Institute from the date of dispatch of the same, they may send a scanned copy of the delegate registration form and demand draft/ at par cheque along with dispatch details by E-Mail to consider their priority. The delegate registration form & fee may be sent to The Institute of Company Secretaries of India, C-37, Sector - 62, Noida – 201 309 superscribing the envelope "Delegate Registration for 41st National Convention of Company Secretaries (Chennai)".
19. **Direct Bookings in other Hotels by the Delegates** : The Institute has arranged accommodation in Hotel ITC Grand Chola only and will try to accommodate all the delegates in the said hotel. However, in case of non-availability of rooms at the said hotel, the delegates will be required to book alternative accommodation on their own.
20. For any query pertaining to Delegate Registration/

accommodation in **Hotel ITC Grand Chola**, please contact Mr Sohan Lal, Director / Mr K P Sasi, Desk Officer at Tel. No. 0120-4522014 or at E-Mail [id convention41@icsi.edu](mailto:convention41@icsi.edu).

Accompanying spouse and children registered for the convention will be eligible to participate in lunch, dinner, cultural programme and other attractions of the Convention.

Venue of the Convention

ITC Grand Chola
No.63, Mount Road, Guindy, Chennai 600032

Tel: 044 22200000 / 044 22200200

E- Mail: gaurang.sinha@itchotels.in/sushant.raj@itchotels.in

Website : www.itchotels.in

National Electronic Fund Transfer (NEFT) Mandate Form (Mandate for Receiving Payment Through NEFT/RTGS)

1	Vendor Name	THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
2	Address of Vendor	22, ICSI HOUSE, LODHI ROAD INSTITUTIONAL AREA, NEW DELHI - 110003
3	Permanent Account Number (PAN)	AAATT1103F
4	Particulars of Bank Account	
	A. Name of Bank	AXIS BANK
	B. Name of Branch	SWASTHYA VIHAR
	C. Address	C-58 BASEMENT & GROUND FLOOR, PREET VIHAR ,MAIN VIKAS MARG,NEW DELHI-92
	D. City Name	NEW DELHI
	E. IFSC Code (11 digits)	UTIB0000055
	F. 9 digit MICR Code appearing on the Cheque Book	110211010
	G. Type of Account (10/11/13)	SAVINGS (10)
	H. Account No.	912010040104826
5	Vendor's email ID	1. mahendra.gupta@icsi.edu 2. shadilya.saroj@icsi.edu 3. amit.kumar@icsi.edu
6	Date of effect	26/Aug/13

Programme Credit Hours and PDPs

Members of the Institute will be entitled to 10 (ten) Programme Credit Hours.

Students attending the National Convention would be deemed to have complied with the requirement of attending 25 (Twenty

41st National Convention of Company Secretaries

Five) hours of Professional Development Programme (PDP).

Background Papers

A soft copy of the Backgrounder will be sent in advance to all delegates whose nominations are received on or before October 20, 2013.

DETAILS OF ADVERTISEMENTS TARIFF/SPONSORSHIPS ETC.	
Type of Sponsorship	Sponsorship Amount in Rs. and other Details
1. Principal Sponsor	Flexible
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	15 Delegates
- Special acknowledgement	
2. Co-Sponsor – More than one	10,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	10 Delegates
- Display at Convention Backdrop	
- Special acknowledgement	
3. Sponsorship for Bags	8,00,000*
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	8 Delegates
- Display at the Convention Backdrop	
- Acknowledging Support	
4. Sponsorship for Dinner	10,00,000*
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	10 Delegates
- Display at Convention and Dinner site	
- Special acknowledgement	
5. Sponsorship for Lunch	8,00,000*
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	8 Delegates
- Display at Convention and Lunch site	
- Special acknowledgement	
6. Sponsorship for High Tea	4,00,000*
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	4 Delegates
- Display at the Site of High Tea	
- Acknowledging Support	
7. Platinum Sponsor	3,00,000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	3 Delegates

- Display at Convention Site	
- Acknowledging Support	
8. Golden Sponsor	2,50,000
- One special full page advertisement in the Souvenir	
- Delegate fee(non-residential) exemption	2 Delegates
- Display at Convention Site	
- Acknowledging Support	
9. Silver Sponsor	1,50,000
- One special full page advertisement in the Souvenir	
- Delegate fee [non-residential] exemption	1 Delegate
- Display at Convention Site	
- Acknowledging Support	
10. Souvenir Sponsor	5,00,000
11. Cultural Programme Sponsor	5,00,000
12. ADVERTISEMENTS IN SOUVENIR	
Back Cover (Display of one banner)	1.00,000
Third Cover (Display of one banner)	75,000
Second Cover (Display of one banner)	75,000
Special Full Page (coloured printing)	50,000
Full Page (Black & White)	25,000
13. Banners/ Standeeds	
(I) 8' x 3'	50,000
(II) 6' X 3'	35,000
14. Stall -- (size may vary depending upon space)	
(I) 6' X 6'	75,000
15. Distribution of Publicity Material, literature	1,00,000
16. Sponsorship of Pen/ Pad	1,00,000
17. MISCELLANEOUS	
1. 10% Incentive to the Chapter for procuring any of above sponsorships / advertisements	

* Co-sponsorship may be considered.

Note: Service Tax Extra. If the sponsorship is from a body corporate / partnership firm, service tax would be deposited by such sponsor under the Reverse Charge Mechanism.

41st National Convention of Company Secretaries



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

41ST NATIONAL CONVENTION OF COMPANY SECRETARIES DELEGATE REGISTRATION FORM

The Institute of Company Secretaries of India
C-37, Sector-62
Institutional Area,
Noida – 201 309

FOR OFFICE USE	
Date of Receipt	
Delegate Regn. No.	

Dear Sir,
Please register Mr./ Ms. _____ as a delegate for attending the 41st National Convention of Company Secretaries to be held during November 7-9, 2013 at Hotel ITC Grand Chola, Chennai. The particulars of the delegate are as under :-

1.	Name of the Delegate				
2.	Designation				
3.	Name and Address of the Organization (Professional Address) [®] (may attach Visiting Card)			Address of the Delegate (for correspondence pertaining to 41 st National Convention) [®]	
4.	E-Mail			Mobile No.	
5.	Telephone Numbers(incl. STD Code)			Fax No.	
6.	If Senior Citizen, Date of Birth		Fax No.		
7.	a) ACS/FCS NO.		b) CP Holder No.		c) Student Regn. No.
8.	d) ICAI/ICAI-CMA Membership No.		Name of the Spouse		Non.Veg
					Veg.
9.	Details of Payment				Rs.
(i)	Delegate Fee (Member of ICSI, ICAI or ICAI-CMA/ Non-Member/ Student/ Member above 60 Years/ Foreign Delegate)(Circle Whichever is applicable)				
(ii)	Delegate Fee in respect of Spouse/ Accompanying Guest Fee				
(iii)	Delegate Fee in respect of Accompanying Children (above 5 years but below 18 years)				
(iii)	Amount for Hotel Booking from 07.11.2013(Checkin 12:00 Noon) to 09.11.2013 (Checkout 12:00 Noon) (Tick whichever is applicable) at Hotel ITC Grand Chola				
	Occupancy Basis		Category of Room→	Executive Club Category	Towers Category
	→ Twin Sharing Basis				
	→ Single Occupancy Basis				
	→ Double Occupancy Basis				
	→ Any other amount (please specify)				
	Total Amount				
10.	Details of Payment				
	Bank Draft/ At Par Cheque bearing No. _____ dated _____ for Rs. _____ favouring "The Institute of Company Secretaries of India" payable at New Delhi OR Fee Acknowledgement bearing No. _____ dated _____ for Rs. _____ is attached. Amount transferred to Institute's Bank Account through NEFT Mode on _____ vide Transaction Number _____ (please refer NEFT Mandate published in this booklet)				

Yours faithfully,

(Signature of the Sponsoring Authority/ Delegate)

Notes :

- Kindly mention your E-Mail Id / Mobile Number in this form legibly. Delegate Registration Letter / Confirmation of Hotel Accommodation will be sent by E-Mail only.
- In view of limited availability of hotel accommodation, even after remitting the requisite fee, kindly DO NOT treat the booking as confirmed until a formal confirmation is received by the delegates from the Institute.

41st National Convention of Company Secretaries



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

SPONSORSHIP/ ADVERTISEMENT FORM

The Institute of Company Secretaries of India

ICSI HOUSE, 22, Institutional Area

Lodi Road, New Delhi – 110 003

We are pleased to sponsor the following activities at the 41st National Convention of Company Secretaries

Dates : November 7-9, 2013

Venue : ITC Grand Chola, No.63, Mount Road, Guindy, Chennai – 600032

Principal Sponsor	<input type="checkbox"/>	Co-Sponsor	<input type="checkbox"/>
Sponsorship for Bags	<input type="checkbox"/>	Sponsorship for Dinner	<input type="checkbox"/>
Sponsorship for Lunch	<input type="checkbox"/>	Sponsorship for High Tea	<input type="checkbox"/>
Platinum Sponsor	<input type="checkbox"/>	Golden Sponsor	<input type="checkbox"/>
Silver Sponsor	<input type="checkbox"/>	Souvenir Sponsor	<input type="checkbox"/>
Cultural Programme Sponsor	<input type="checkbox"/>	Banner/Standees	<input type="checkbox"/>
Stall	<input type="checkbox"/>	Sponsorship of Pen/Pad	<input type="checkbox"/>
Distribution of Publicity Material, Literature	<input type="checkbox"/>		

Advertisement in Souvenir

- | | | |
|--|--------------------------------------|--|
| <input type="checkbox"/> Back Cover | <input type="checkbox"/> Third Cover | <input type="checkbox"/> Second Cover |
| <input type="checkbox"/> Special Full Page (Colour Printing) | | <input type="checkbox"/> Full Page (B & W) |

We are forwarding herewith draft / cheque for Rs. drawn in favour of "The Institute of Company Secretaries of India" payable at New Delhi.

* The advertisement matter / art work / bromide / CD is / are enclosed / being sent separately.

Yours sincerely,

(Signature)

Sponsoring authority

Date

Name of the Organisation

Address

.....Pin

Tel. Fax No.

Email id



The Companies Bill, 2013 Receives the Assent of the President Published in the Gazette of India as Act No. 18 of 2013

The historic new Company Law in the country has been enacted with the President of India giving his assent to the Companies Bill, 2013. It has now been published in the Gazette of India, Extraordinary, Part-II, Section-1, dated the 30th August 2013 as Act No. 18 of 2013. [PIB Press Release dated 02.09.2013]

Parliament Passes the Historic Companies Bill 2012

The Parliament has passed the historic Companies Bill 2012, moved by Shri Sachin Pilot, Minister of Corporate Affairs. The Bill was passed by the Rajya Sabha here today which had already been passed by the Lok Sabha many months ago (in December 2012). Shri Pilot has termed it as a historic day for the country as it will usher in a new era in the Corporate Governance.

The new Companies Bill, on its enactment, will allow the country to have a modern legislation for growth and regulation of corporate sector in India. The existing statute for regulation of companies in the country, viz. the Companies Act, 1956 had been under consideration for quite long for comprehensive revision in view of the changing economic and commercial environment nationally as well as internationally. The new law will facilitate business-friendly corporate regulation, improve corporate governance norms, enhance accountability on the part of corporates/ auditors, raise levels of transparency and protect interests of investors, particularly small investors.

The salient features of the new Companies law are: Business friendly corporate Regulation/ pro-business initiatives; e-Governance Initiatives; Good Corporate Governance and CSR; Enhanced Disclosure norms; Enhanced accountability of Management; Stricter enforcement; Audit accountability; Protection for minority shareholders; Investor protection and activism; Better framework for insolvency regulation; and Institutional structure. Other important features of the Companies Bill, 2012 are:

(i) Enhanced Accountability on the part of Companies:

- (a) In addition to the concept of Independent Directors (IDs) introduced, the provisions in respect of their tenure and liability etc have been provided. Code for IDs provided in a new Schedule to the Bill. Databank for IDs proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of IDs. (Clauses 149(10); 149(11); 149(7); 150);
- (b) Corporate Social Responsibility (CSR) Committee of the Board proposed in addition to other Committees of the Board viz Audit Committee, Nomination and Remuneration and Stakeholders Relationship Committee. These committees shall have IDs/ non

executive directors to bring more independence in Board functioning and for protection of interests of minority shareholders. (Clauses 135, 177 and 178);

- (c) Provisions in respect of vigil mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behavior, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices. (Clause 177 (9) and 177 (10));
- (d) New provisions suggested for allowing re-opening of accounts in certain cases with due safeguards. (Clause 130 and 131).

(ii) Audit Accountability:

- (a) Rotation of auditors and audit firms being provided for. (Clause 139 (2));
- (b) Stricter and more accountable role for auditor being retained. Provisions relating to prohibiting auditor from performing non-audit services revised to ensure independence and accountability of auditor. (Clause 141 and Clause 144);
- (c) National Advisory Committee on Accounting and Auditing Standards (NACAAS) proposed to be renamed as National Financial Reporting Authority (NFRA) with a mandate to ensure monitoring and compliance of accounting and auditing standards and to oversee quality of service of professionals associated with compliance.

(iii) Facilitating Mergers/ Acquisitions:

Simplified procedure (through confirmation by the Central Government), laid down for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiary (ies), between two or more small companies and for such other class or classes of companies as may be prescribed. This would result into faster decisions on approvals for mergers and amalgamations resulting effective restructuring in companies and growth in the economy. For other companies, such matters would be approved by Tribunal. (Clause 233 and 232).

(iv) Investor Protection:

- (a) Acceptance of deposits from public subject to a more stringent regime. (Clause 76);

(b) Provisions for Class Action Suits revised to provide minimum number of persons who may apply for such suits. Safeguards against misuse of these provisions also being included.(Clause 245).

(v) **National Company Law Tribunal (Tribunal):**

Keeping in view the Supreme Court's Judgment, on the 11th May, 2010 on the composition and constitution of the Tribunal, modifications relating to qualification and experience etc of the members of the Tribunal have been made. Appeals from Tribunal shall lie to National Company Law Appellate Tribunal. (Chapter XXVII).

[PIB Press Release dated 08.08.2013]

The Institute of Company Secretaries of India Hails the Passage of Companies Bill 2012 by Parliament

Says the New Law will Further Accelerate the Transformation of Company Secretaries into Corporate Governance Professionals

The Institute of Company Secretaries of India (ICSI) has welcomed the new Company Law i.e. Companies Bill, 2012 as passed by the Parliament yesterday. Terming it as a modern, growth oriented and futuristic law, Shri S. N. Ananthasubramanian, President, Council of the ICSI, said that the new law promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors, protection of interest of investors particularly small and minority investors, better shareholder democracy, facilitation of corporate social responsibility (CSR) and stricter enforcement processes. He said the Act is designed to balance the stakeholders' interests, viz, promoters, shareholders and public at large.

Shri Ananthasubramanian said the new Companies law will further accelerate the transformation of Company Secretaries into corporate governance professionals by recognizing them as Key Managerial Persons in a Company along with the Chief Executive Officer / Managing Director / Manager, Whole-Time Director and Chief Financial Officer. The Company Secretary is expected to become the Chief Governance Officer of the Company and lead the governance initiatives. Further, it envisages a much larger role for Company Secretaries in areas of secretarial audit, restructuring, liquidation, valuation and much more, the Institute has said.

[PIB Press Release dated 09.08.2013]



GREETINGS AND CONGRATULATIONS



Chartered Secretary greets and congratulates Shri Bhim Sain Bassi, IPS and also a Member of the Institute, on taking over as Commissioner of Police, Delhi w.e.f. 01.08.2013.



GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS

DEAR CORPORATES,

TO AVOID LAST MINUTE RUSH AND SYSTEM CONGESTION IN MCA21 TOWARDS END OF OCTOBER AND NOVEMBER 2013, EXPEDITE FILING OF BALANCE SHEET AND ANNUAL RETURN WITHOUT WAITING FOR THE LAST DAYS OF THE MONTHS.

DURING OCTOBER AND NOVEMBER 2013 CORPORATE SEVA KENDRA / HELP DESKS (Ph. No. 0124-4832500) WOULD GIVE PRIORITY IN EFILING/ ANSWERING QUERIES OF COMPANIES FOR FILING BALANCE SHEET AND ANNUAL RETURN.

KINDLY PLAN YOUR FILING ACCORDINGLY.

MCA: Corporate Growth with Enlightened Regulation



CERTIFIED BANKING COMPLIANCE PROFESSIONAL (CBCP) COURSE

Certified Banking Compliance Professional course launched on 12th July, 2013 is a joint initiative of ICSI and IIBF. The Course has two parts viz. on-line examination and class room learning.

Objective : The course primarily aims to create a cadre of compliance professionals in banks and seeks to cover important areas like importance of compliance function in banks, compliance and organizational benefit, structure and issues in compliance function, various aspects /coverage of compliance in banks and role and functions of compliance officer.

Coverage : The course broadly covers:

- Risk Management in banking and financial institutions covering *inter alia* Credit
- Risk Management, Operations Risk Management, Market Risk and organization of risk functions in Banks
- Legal and Regulatory aspects of Risk, Governance and Compliance
- Compliance function - Roles and Responsibilities

Target group & eligibility: Members of ICSI and CAIIB holders of IIBF

Subjects for Examination:

- 1) Risk, Regulation & Governance
- 2) Compliance in Banks

Examination Fees/Registration fees: The examination fee is Rs.6742/- inclusive of service tax for the first two attempts.

For additional two attempts the fee is Rs.3371/- per attempt.

Pattern of Examination:

- (i) Examination will be conducted in English only.
- (ii) Question Paper will contain approximately 120 objective type multiple choice questions for a total of 100 marks.
- (iii) Examination will be of 2 hours duration.
- (iv) The examination will be held in Online Mode only.

Period of Examination: The Examination will be conducted normally twice a year in June and December on a Sunday.

Study Material:

Name of the Book	Price
RISK MANAGEMENT - M/s. Macmillan Publishers India Ltd. (For the subject Risk, Regulation & Governance)	Rs.450/-
COMPLIANCE IN BANKS - M/s. Taxmann Publication Pvt. Ltd	Rs.650/-

Passing Criteria: Minimum marks for pass in each subject is 60 out of 100 marks.

Class Room Learning: After passing the online examination, candidate has to register for class room learning by paying the requisite fees for class room learning and undergo class room learning for 5 days at the pre-determined dates and venue announced by ICSI or IIBF. The total marks for class room learning will be 50 and passing marks is 25.

Award of Certificate: All the successful candidates in the classroom learning will be awarded 'Certified Banking Compliance Professional' citation jointly by IIBF and ICSI.

For further details on classroom learning details/fee, exam centers, application, syllabus, exam updates etc., please refer to IIBF website iibf.org.in

Candidates can access the link through

http://registration.sifyitest.com/iibf_mem_reg/Examination.php?type=Tk0=

Last date for applying online for DECEMBER 2013 Examination is 03/10/2013.

Looking Beyond

BHIM SAIN BASSI

Commissioner of Police, Delhi



Shri Bhim Sain Bassi, IPS (1977) and also a Member of the Institute took over as Commissioner of Police, Delhi on 1.08.2013. In an interview with Chartered Secretary Sh. Bassi has advised the younger generation to work with dedication and with positive attitude.

Edited Excerpts:

CS: We congratulate you on your much deserved elevation to the position of Police Commissioner, Delhi. What contributed to such great professional success?

BSB: Thank you very much. It may not be very appropriate on my part to make any definite assertion on this. However, in view of the question I may state with all humility that my diverse experience in policing coupled with seniority, perhaps, persuaded the government to consider me suitable for shouldering the responsibility of Commissioner of Police, Delhi.

CS: This position would have enormous challenges, while offering you enormous opportunities to serve the citizens of National Capital Delhi. What are the challenges you visualize and how would you deal with them? How would you use this opportunity to serve the society?

BSB: Challenges confronting my job offer me tremendous opportunities to serve the citizens of Delhi. Briefly speaking, effective prevention and detection of crime and maintenance of law and order

affords me the opportunity to give people a safer environment in Delhi. Responsibility of traffic management in this mega city enables me to ensure safer road journeys for the road users in Delhi. I may also add that my endeavour will be to encourage community participation in policing and to instill a spirit of service among policemen in carrying out their tasks.

CS: How do you propose to upgrade police force to deal with violations of economic legislations?

BSB: Delhi Police has an adequate capacity to handle economic crimes. My endeavour will be to further upgrade knowledge and skills of the concerned officers by suitable training and sensitisation. It may involve interaction with the corporate world including the Institute of Company Secretaries of India.

CS: The position of Police Commissioner of National Capital is a role model for rest of the country. How do you intend to play this role?

BSB: I do not know whether I can claim any such distinction. However, I am clear in my mind that I will like to organize my functioning with an eye on justice as the end result of my efforts.

CS: How do you reinforce 'with you for you always'?

BSB: My endeavour will be to motivate my officers and men to give their best.

CS: How do you view the new company law? Would it be effective in protecting the interests of small investors?

BSB: I am not fully aware of its contents. However, I understand that it removes various shortcomings in the existing Company Law. In my opinion interest of the small investors will be better protected if lifting of corporate veil and is made well a defined activity whenever fraudulent use of managerial authority is proved on the part of management.

CS: In a country like India, how do you see the future of professionals?

BSB: Future belongs to professionals. In particular, Company Secretaries are going to play an important role in corporate probity.

CS: If given a chance, how would you like to reform the education system in India?

BSB: I would like to make it student friendly.

CS: What is your message for the youth of India?

BSB: Work with dedication and with positive attitude.



CHARTERED SECRETARY

Advertisement Tariff

(With Effect from 1st April 2012)

BACK COVER (COLOURED)

Non - Appointment

Per Insertion	₹ 75,000
4 Insertions	₹ 2,70,000
6 Insertions	₹ 3,96,000
12 Insertions	₹ 7,65,000

COVER II/III (COLOURED)

Non - Appointment

Per Insertion	₹ 50,000
4 Insertions	₹ 1,80,000
6 Insertions	₹ 2,64,000
12 Insertions	₹ 5,10,000

FULL PAGE (COLOURED)

Non-Appointment Appointment

Per Insertion	₹ 40,000	₹ 10,000
4 Insertions	₹ 1,44,000	₹ 36,000
6 Insertions	₹ 2,11,200	₹ 52,800
12 Insertions	₹ 4,08,000	₹ 1,02,000

HALF PAGE (COLOURED)

Non-Appointment Appointment

Per Insertion	₹ 20,000	₹ 5,000
4 Insertions	₹ 72,000	₹ 18,000
6 Insertions	₹ 1,05,600	₹ 26,400
12 Insertions	₹ 2,04,000	₹ 51,000

PANEL (QTR PAGE) (COLOURED)

Per Insertion	₹ 10,000	₹ 3,000
(Subject to availability of space)		

EXTRA BOX NO.CHARGES

For 'Situation Wanted' ads.	₹ 50
For Others	₹ 100

MECHANICAL DATA

Full Page - 18 x 24 cm	Half Page - 9 x 24 cm or 18 x 12 cm	Quarter page - 9 x 12 cm
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The Institute reserves the right not to accept order for any particular advertisement.
The journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor,
"CHARTERED SECRETARY",



**THE INSTITUTE OF
Company Secretaries of Inc**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003
Tel: 011-45341024, 41504444. Fax: + 91-11-24626727, 24645045
Email : ak.sil@icsi.edu website : www.icsi.edu



ATTENTION MEMBERS

CHANGE OF ADDRESS

Member's attention is drawn to Regulation 3 of the Company Secretaries Regulations, 1982 according to which every member of the Institute is required to communicate to the Institute any change of Professional address within one month of such change. The contravention of the same amounts to professional misconduct under clause (1) of part II of the Second Schedule to the Company Secretaries Act, 1980.

Members are, therefore, requested to intimate the change in their professional address within the specified period.

A The members may change their professional and residential address and other details online through Institute's portal www.icsi.edu by following the steps given below:-

1. Login to portal www.icsi.edu.
2. Click online services on the right top corner and then click 'Login' on page.
3. Fill the User name: Enter your membership number (like A1234) as per the sample given on the page.
4. Password. Fill the password. In case you do not have a password. You may retrieve your password in case your email is correctly registered in the Institute. Alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu
5. After login, go to 'Members Option' (from top menu) then click on "My Account "
6. Click on Manage Account
7. Click on Change of Address
8. A window will be displayed with the option "Professional" or " Residential" then change the details and click on "go" button
9. A screen will be displayed with the options "Existing details as per records" and "Enter change Details"
10. Change the details as required and press on "Submit" button.

B Members may also send their request for change of address to the Institute's email IDs at member@icsi.edu & ashish.tiwari@icsi.edu from their e-mail ID as recorded with the Institute.

C Members may send the request through electronic mode as described under A, B & C above. Otherwise, members may also send their request through post to the Membership Section of the Institute at ICSI House, 22 Institutional Area, Lodi Road, New Delhi – 110003.

For Clarifications if any, members may contact **Mr. Ashish Kumar Tiwari**, Jr. Assistant at telephone no. 011 45341063 or **Mr. D D Garg**, Administrative Officer at Telephone No. 011 45341062 or write at e-mail ids ashish.tiwari@icsi.edu or dd.garg@icsi.edu

ATTENTION MEMBERS

UPLOADING OF SCANNED IMAGES OF PHOTOGRAPHS & SIGNATURES ON INSTITUTE'S WEBSITE

The Institute has reoriented its online services to capture the information pertaining to photographs and signatures of members. The members may upload the scanned image of their photograph and signature on the website of the Institute by following the steps given below:

1. Login to portal www.icsi.edu.
2. Click online services on the right top corner and then click 'Login' on page.
3. Fill the User name : Enter your membership number (like A1234) as per the sample given on the page.
4. Password. Fill the password. In case you do not have a password, you may retrieve your password provided your email is correctly registered in the Institute. Alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu.
5. After login, go to 'Members Option' (from top menu) then click on "My Account".
6. Click on Manage Image.
7. Then upload your Photo (passport size) and Signature and click on Upload button.

(The format of the file containing the photograph and signature should be in .jpeg format and the size of the file containing the photograph and signature should be maximum of 150kb each).

In case the members are facing any problem in doing the same, the members are requested to send their images of photograph and signature from their email id registered with the Institute at email IDs at ashish.tiwari@icsi.edu. For clarifications if any, members may contact **Mr. J. S. N. Murthy**, Administrative Officer at jsn.murthy@icsi.edu, phone 011 45341049



Placement Portal

CS S.N.Ananthasubramanian President, The ICSI launched the Institute of Company Secretaries of India's Placement Portal for Members and Corporates on 23rd Aug 2013 in the presence of CS Ashok Pareek, Chairman, Placement Committee and CS Atul Mittal, Chairman, IT Committee and other Council Members.

The portal provides free of cost online platform for Corporates seeking CS and Members seeking jobs. Corporates looking for Company Secretaries can register themselves and post their requirements through the placement portal.

Members searching for jobs can apply directly to the Corporates. The portal will work "24X7" for the benefit of Corporates and Members of the Institute.

Members of ICSI	Recruiting Organisation	Advertisers for Display Advertisement
<p>Steps: Open ICSI Portal www.icsi.edu Click on Online Services (Right Top link) Click on Members Tab Login In into the Portal by using your Membership type + Membership Number and Password Click Members Option (from top menu) Click My Account Select Members Placement Join Placement Services</p> <p>View the vacancies through "Members Placement" the vacancies posted by Recruiting Organisation</p> <p>Check details which will go to the Recruiting Organisation and upload CV and apply (May also add experience while applying against a vacancy)</p>	<p>Steps: Open ICSI Portal www.icsi.edu Click on Online Services (Right Top link) Click on Companies (from top Menu) Click on Companies Registration (one time process) Fill in the form and submit An email with User credentials and password shall be received by the organisation once the same is approved by the Placement cell in ICSI</p> <p>Use the User name and Password to Log In Click Companies & Company Account Click Placement and Add Job</p> <p>The job will be posted on the portal for members</p> <p>Recruiting organisation after login can view and access the profile of Member who have applied for the job against the posted vacancy through "Company Account" and thereafter "Manage Application"</p> <p>In case the Recruiting organisation desires to go for Paid Display Advertisement. Use Company (top menu) and Place Advertisement tab</p>	<p>Steps: Open ICSI Portal www.icsi.edu Click on Online Services (Right Top link)</p> <p>Advertisers can first register their Companies as per the previous column or Use the Link companies and Place Advertisement</p>



Our Members

CONGRATULATIONS

Shri Shrivallabh Goyal, FCS, on his being awarded the degree of Doctor of Philosophy by Singhania University, Rajasthan by virtue of eminence attained in the field of Industrial Infrastructure & Resources.

Shri Sutanu Sinha, FCS, Chief Executive, The ICSI on his becoming the Chairman of the Expert Committee on Corporate Governance & CSR of Association of Business Chambers of Commerce and Industry (ABCCI), New Delhi.

voluntary adoption of secretarial standards and secretarial audit

The Institute is pleased to publish that Infotech Enterprises Limited has reported voluntary adoption of secretarial standards and secretarial audit for the financial year 2012-2013. The company is listed on the National Stock Exchange of India Limited (NSE) and the Bombay Stock Exchange Limited (BSE). The company was awarded the prestigious Golden Peacock Award for Excellence in Corporate Governance for year 2012.

ATTENTION MEMBERS

The soft copy (CD) of List of Members of the Institute as on 1st April, 2013 is available at Rs.250/-(Rupees Two Hundred and Fifty only) for the Members of the ICSI and at Rs.500/-(Rupees Five Hundred only) for others.

Those desirous to have a copy of the CD may send a request in writing along with the requisite charges by way of a Demand Draft/at par Cheque drawn in favour of "The Institute of Company Secretaries of India" and payable at Delhi.

Kindly send your request together with the like amount to J.S.N. Murthy, Administrative Officer, The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003.

For queries, if any please contact at
Tel.No. 011-45341049.

CS QUIZ

Ram and Shyam were non-executive directors of a listed public limited company. They were related to the promoters of the company. The Securities and Exchange Board of India (SEBI) charged them under section 11(B) read with section 19 of the Securities and Exchange Board of India Act, 1992 for manipulation in the prices in the shares of the listed public company by issuing false and misleading advertisements about the working of the company. After giving them a hearing but without giving them copies of the advertisements which contained false and misleading information they were punished by SEBI. Is the punishment meted out to them will stand to legal scrutiny?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th October, 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 September, 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 S. Nagaraju, ACS (25.05.1945 - 20.04.2013), an Associate Member of the Institute from Bangalore.

Shri S. Ramasubramanian, ACS (15.09.1960- 28.06.2013), an Associate Member of the Institute from Bangalore.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed Souls rest in peace.

Publications Released

at The 14th National Conference of Practising Company Secretaries

Referencer on Annual Return

Price: Rs.150/-
(Postage extra Rs. 50/-)

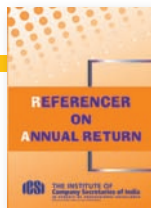
Edition: 2013

Annual Return is required to be filed by every company annually with the Registrar. It gives bird's eye view of the various aspects of the company including its capital structure, constitution, its management, details of securities, share transfers and indebtedness etc. A study of Annual Return can provide valuable and up-to-date information about the company as it contains the facts upto the date of Annual General Meeting. In the Companies Bill, 2012 which is passed by Lok Sabha in December 2012 and awaiting clearance from Rajya Sabha, significant additional disclosures of non-financial information are envisaged in Annual Return as compared to the existing format.

Annual Return is required to be signed by the Company Secretary of the company along with a director. In the case of listed companies, it is also required to be certified by a Company Secretary in Practice.

In view of the considerable responsibility which is cast on the Company Secretary who is required to certify the correctness, it is imperative that he scrutinizes the documents carefully before signing.

With a view to serve as a handy guide while signing the Annual Return, the Institute of Company Secretaries of India has developed a Referencer on the same. This Referencer includes the legal provisions relating to Annual Return, checklists for signing of Annual Return and the relevant Guidelines.



form or return are as per the books and records of the company and are true and correct. This Referencer has been prepared to highlight some of the important aspects in the form of checklists which a Practising Company Secretary and the management of the company may examine before certifying the e-forms relating to Directors. This Referencer also contains important notes with respect to each of these e-forms.

Guidance note on Compliance Certificate for Listing at SME Platform of Stock Exchanges

Price: Rs.100/-
(Postage extra Rs. 50/-)

Edition: 2013

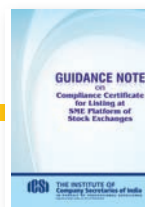
The Small and Medium Enterprises (SMEs) play a very important role in terms of significant contribution to employment, national income, balanced development, value addition, and exports.

In recognition of their role in economic development of the country, Securities and Exchange Board of India (SEBI) and the Stock Exchanges have recently laid down a conducive regulatory framework for raising resources by them from the market, keeping in view the interests of investors. According to the framework, a SME that meets the norms of listing on SME Platform of a Stock Exchange can list itself on a stock exchange and raise resources from the market.

In order to ensure that various formalities and procedures relating to issue and listing of shares at the SME Platform / Exchange are adhered to, the Institute of Company Secretaries of India (ICSI) has developed a Compliance Certificate for listing / issue of shares by SMEs, in consultation with BSE Ltd. (BSE) and the National Stock Exchange of India Ltd. (NSE), to be issued by a Practising Company Secretary (PCS).

This Compliance Certification provides the necessary comfort and assurance to the regulator and stock exchanges to the effect that the proposed listing of a SME conforms to all regulatory prescriptions and adequately protects the interest of investors.

To guide the PCS in issuing the said Certificate, ICSI has developed a Guidance Note on the same. This Guidance Note requires a PCS to verify the level of adherence of the SME to the SEBI Act, the Securities Contracts (Regulation) Act and the rules and regulations made thereunder. While considering a request from an SME for listing, the Stock Exchanges take various inputs into account. One critical input taken by the Stock Exchanges these days is the Compliance Certificate issued by a PCS as per this Guidance Note.



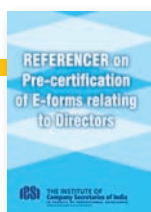
Referencer on Pre-Certification of E-forms Relating to Directors

Price: Rs.200/-
(Postage extra Rs. 50/-)

Edition: 2013

The Ministry of Corporate Affairs (MCA) has entrusted practicing professionals like members of the Institute of Company Secretaries of India (ICSI) with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. The system accepts most of these documents online without approval by Registrar of Companies or other officers of the Ministry. (MCA vide Circular 14/2011 dated 08.04.2011).

Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the





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