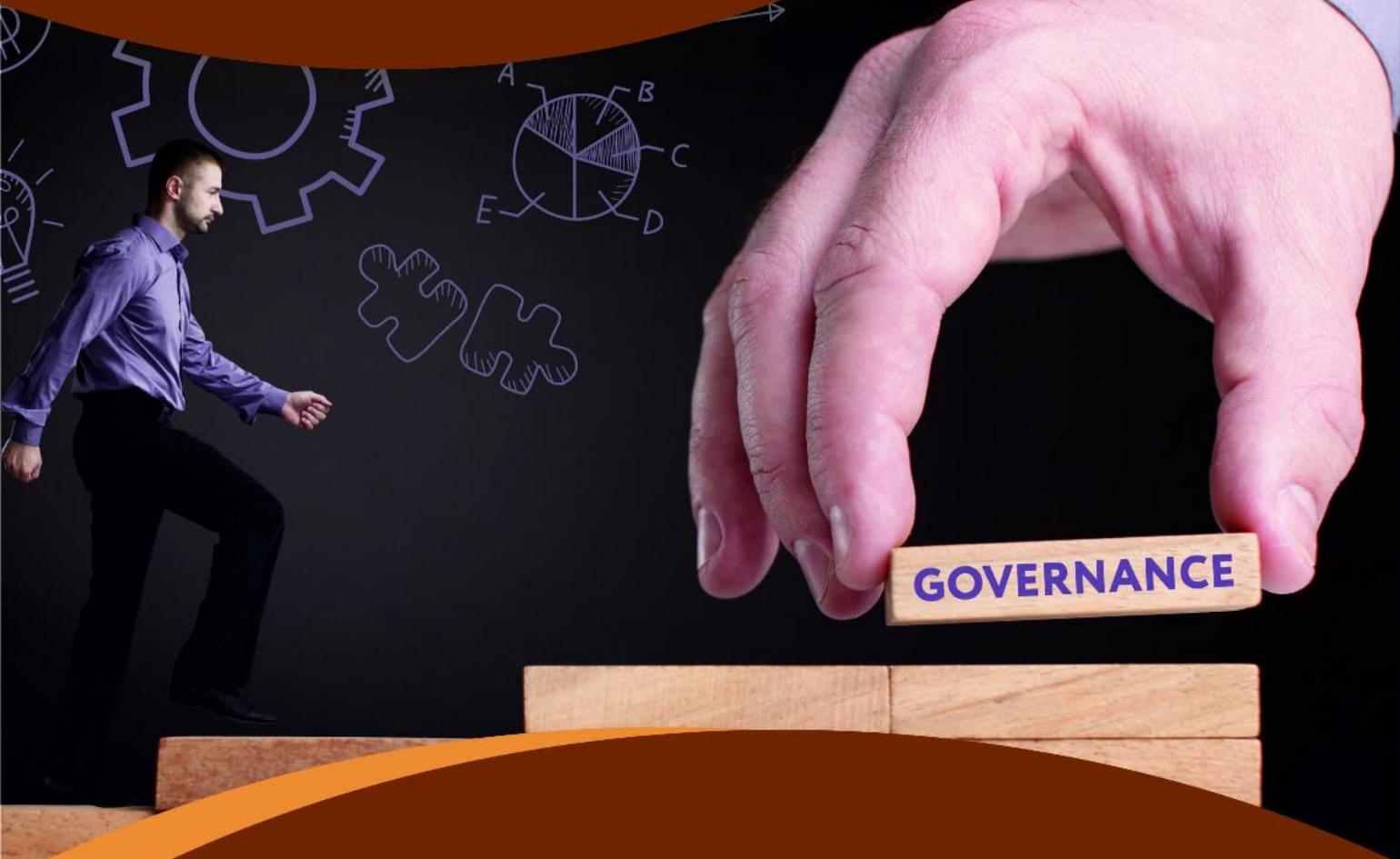




# STUDENT PROFESSIONALS TODAY

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Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 7-8 pages in word file (approx. 2500 words). Send your articles at email id : [articles@vidhimaan.com](mailto:articles@vidhimaan.com) along with your student registration number. The shortlisted articles shall be published in the Journal.

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## MESSAGE FROM THE PRESIDENT

*'The Foundation of Freedom is Unity' : Oliver Kemper*

Dear Students,

*In union there is a strength and with strength we stand resilient in presiding the globe with our competence and efficiency.* Friends, our flag is not just a reflection of one of the many political points of view, rather our flag is a symbol of our national unity. Since ancient times prominent thought leaders emphasised on the power of unity and asserted time and again that the unity of self and of mankind is a key behind the success of any nation at holistic level.

Swami Vivekananda in his treatise quoted that 'the whole universe is a tremendous case of unity in variety. There is only one mass of mind. Different states of that mind have different names. They are different little whirlpools in this ocean of mind. We are universal and individual at the same time. Thus the play is going on. In reality this unity is never broken. Matter, mind, and spirit are all one. Following the spirit of Unity in the development of mankind, Pandit Nehru, the First Prime Minister of India coined the phrase 'Unity in Diversity' for India. Friends the term '*Unity in Diversity*' for India explains how in spite of different languages, religion and cultures, there is unity in India. The interdependence of communities on each other, forges a link of bond and unity, which need to be preserved for centuries to upkeep '*Sashakt Bharat, Samridh Bharat*' (Empowered India, Prosperous India).

Besides all these thought leaders, Sardar Vallabhbhai Patel, the Iron Man of India has really unified the country. Considering the significance of unity in the inclusive growth of the nation and respecting the role of Sardar Vallabhbhai Patel in keeping India united, we all witness the *Rashtriya Ekta Diwas* (National Unity Day) on 31st October.

Friends, with the Government making all necessary reforms, the Nation has been escalated to the level where no one can undermine National Unity and our glowing progression as a upcoming leader of the world.

Moving aligned with the concept of Unity, we as a professional body are also taking necessary steps in rising our profession with unity and integrity. The completion of our 50 years journey with the laurels of success and accomplishment is none other than the result of our unity and harmony towards serving the nation with the premium practice of good governance.

With this, I am sure that legacy of the Institute would be honoured manifold with the pre-eminent set of harmony and unity among all stakeholders.

Let's pledge to unite for ourselves and for the nation.

**CS Makarand Lele**

President, ICSI



## Corporate Governance In India : A Brief

In today's world of compliance and transformation, good corporate governance is essential at national as well as international level. In this context, the author explains the concept of corporate governance and related issues.

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### Introduction

In current scenario corporate entities play crucial role in Indian economy. Corporation are not only limited to shareholder's interest but also involves interest of all other stakeholder, viz., creditors, consumer, supplier, public etc. Thus to ensure smooth functioning of every corporate entity, several principles of corporate governance are laid down. As company is an artificial legal person created under law it is govern by Board of directors. Board of directors are representatives of shareholders of the company, thus responsibility of smooth functioning of company cast with the board. Board of directors must ensure smooth functioning of company by adhering principles of corporate governance. Now a days corporate governance has become buzzword in corporate world. There are several high profile corporate governance failure scams like the stock market scam, Ketan Parikh scam, Satyam scam, Harshad Mehta scam which were severely criticized by the shareholders, which generates need to make corporate governance in India more transparent ,as it greatly affects the development of the country. Thus it is clear that good corporate governance is very essential for every company. Transparency in corporate governance is very essential for growth, stability and profitability of a business. A company that has good corporate governance has a much higher level of confidence amongst the shareholders associated with that company, which fosters positive impact on share prices of the company. Corporate Governance is one of the important

criteria for foreign institutional investors to decide on which company to invest in.

### Concept of Corporate Governance

In simple words corporate governance deals with how a corporate is governed. The famous Cadbury Committee defined "corporate governance" in its Report (Financial Aspects of Corporate Governance, published in 1992) as "the system by which companies are directed and controlled". The Organisation for Economic Cooperation and Development (OECD), which, in 1999, in its Principles of Corporate Governance has given a very comprehensive definition of corporate governance which is as under:

"A set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders, and should facilitate effective monitoring, thereby encouraging firms to use recourses more efficiently."

Above definitions explained the term 'corporate governance' in comprehensive manner. Thus it is clear that to govern corporation several principles are laid down which are required to be followed by the company. Government as well as other statutory bodies lays down Regulatory framework of corporate governance in the form of laws, rules,

regulation, procedures, etc., which are mandatorily followed by companies.

### Regulatory Framework for Corporates in India

In India, companies are classified into different types, such as private limited company and public limited company, listed public limited company, one person company, statutory companies, etc. Thus, legal framework of every type of company differs in some aspect. However, major part of legal frame work remains the same. In listed public company Securities and Exchange Board of India (SEBI) plays prominent role. Corporate governance framework for companies in India is enumerated in the following enactments/regulations/guidelines/ listing agreement/accounting standards/secretarial standards etc.

#### Companies Act 2013

*Companies (Amendment) Act, 2017 – The Companies Act, 2013 ('2013 Act')* was enacted by the Parliament by replacing the Companies Act 1956. New Act is much more focused on good corporate governance. The 2013 Act introduced several new concepts, enhanced disclosure, accountability, better board governance, better facilitation of business and so on. In latest amendment of 2017 several new provisions are inserted which focuses on ease of doing business. *Key provisions of the 2013 Act are enumerated below :*

- Every company is required to appoint minimum one resident director on its Board.
- Introduced simplified proforma for incorporating company electronically (SPICe) for incorporating companies in easy, fast and simplified manner.
- Listed companies and certain other public companies shall be required to appoint at least one woman director on its Board.
- The Act for the first time codifies the duties of directors.
- The Act introduces significant changes to the composition of the boards of directors
- The Act mandates following committees to be constituted by the board for prescribed class of companies :

- Audit committee
- Nomination and remuneration committee
- Stakeholders relationship committee
- Corporate social responsibility committee

- The independent directors are a newly introduced concept under the Act. A Code of Conduct is prescribed and so are other functions and duties. The Independent directors must attend at least one meeting a year.
- Every company must appoint an individual or firm as an auditor. The responsibility of the Audit committee has increased.
- Filing and disclosures with the Registrar of Companies has increased.
- A Related Party Transaction (RPT) is the transfer of resources or facilities between a company and another specific party. The company devises policies which must be disclosed on the website and in the annual report. All these transactions must be approved by the shareholders by passing a Special Resolution. Promoters of the company cannot vote on a resolution for a related party transaction.
- The e-voting facility has to be provided to the shareholder for any resolution is a legal binding for the company.
- The company has the responsibility to promote social development in order to return something that is beneficial for the society.

#### Securities and Exchange Board of India (SEBI) Guidelines

SEBI is a regulatory authority having jurisdiction over listed companies and which issues regulations, rules and guidelines to companies to ensure protection of investors. Core objective of SEBI is protection of investor. All regulation, guidelines, rules etc. which are issued by SEBI must be mandatorily followed by all listed companies. For Example, SEBI (Prohibition of insider trading)

Regulation 2015, SEBI (Substantial Acquisition of Share and Takeover) Regulations, 2011, SEBI (LODR) Regulations, 2015.

### **Secretarial Standards Issued by the Institute of Company Secretaries of India (ICSI)**

ICSI is an autonomous body, which issues secretarial standards in terms of the provisions of the New Companies Act. So far, the ICSI has issued Secretarial Standard on “Meetings of the Board of directors” (SS-1) and Secretarial Standards on “General Meetings” (SS-2). New Companies Act provides that every company (other than One Person Company) shall observe Secretarial Standards specified as such by the ICSI with respect to general and board meetings.

### **Accounting Standards Issued by the Institute of Chartered Accountants of India (ICAI)**

ICAI is an autonomous body, which issues accounting standards providing guidelines for disclosures of financial information section 129 of the 2013 Act inter alia provides that the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the Accounting Standards notified under section 133 of the 2013 Act. It is further provided that items contained in such financial statements shall be in accordance with the accounting standards.

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

Regulation 72 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 deals with corporate governance. As per sub-regulation (1) of Regulation 72, the listed entity shall comply with the corporate governance provisions as applicable in its home country and other jurisdictions in which its equity shares are listed.

Sub-regulation (2) states that the listed entity shall submit to stock exchange a comparative analysis of the corporate governance provisions that are applicable in its home country and in the other jurisdictions in which its equity shares are listed along with the compliance of the same vis-à-vis the corporate governance requirements applicable

under regulation 17 to regulation 27, to other listed entities.

### **National Committees on Corporate Governance**

#### **CII Code of Desirable Corporate Governance (1998)**

For the first time in the history of corporate governance in India, the Confederation of Indian Industry (CII) framed a voluntary code of corporate governance for the listed companies, which is known as CII Code of desirable corporate governance.

#### **Kumar Mangalam Birla Committee (2000)**

Another Committee named as K.M. Birla Committee was set up by SEBI in the year 2000. Practically most of the recommendations were accepted and included by SEBI in its new Clause 49 of the Listing Agreement in 2000. Committee's report came up in the year 2000 covering issues such as protection of investor interest, promotion of transparency, building international standards in terms of disclosure of information.

#### **N.R. Narayan Murthy Committee (2003)**

SEBI constituted this Committee under the chairmanship of N.R. Narayan Murthy and mandated the Committee to review the performance of corporate governance in India and make appropriate recommendations. The Committee focused on responsibilities of audit committee, quality of financial disclosure, requiring boards to assess and disclose business risks in the company's annual reports. The Committee submitted its report in February 2003.

#### **J.J. Irani Committee (2005)**

The J.J. Irani Committee was constituted by the Government of India in December, 2004 to evaluate the comments and suggestions received on 'concept paper' and provide recommendations to the Government in making a simplified modern law. The Committee submitted its report to the Government in May 2005. New Companies act 2013 is also based on JJ Irani committee.

#### **Kotak Committee (2014)**

The Committee on Corporate Governance ('Kotak Committee') under the Chairmanship of Shri

Uday Kotak made several recommendations. Most of amendments necessary to implement these recommendations have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 vide notification No. SEBI/LAD-NRO/GN/2018/10 dated 9th May, 2018. A few recommendations as accepted by the SEBI, were implemented through issue of a circular No. SEBI/HO/CFD/CMD/CIR/P/2018/79 dated 10th May 2018.

### Role of Management (Board of Directors) in Corporate Governance

Board of directors look over the management of the company, thus primary responsibility to follow corporate governance principles cast on the Board. It is mandatory for Board of every company to present financial statement to shareholders along with Board's report at every annual general meeting. Board report is detailed document covering financial as well as non-financial aspects. Directors must perform their duties with due care, skill and diligence & exercise independent judgment. Directors should not obtain any undue gain or advantage. Board of directors and senior management has responsibility to make necessary disclosures to public as well as other authorities as prescribe by law. Board should authorize one or more key managerial personnel to make necessary disclosure to stock exchange, SEBI or other authorities, generally all this compliance work is performed by company secretary of the company.

### Responsibilities of Shareholders Regards to Corporate Governance

There is no statutory responsibility on shareholders, however shareholders have some voluntary responsibility to protect their interest. These provisions are more related to minority shareholders in case of mismanagement of the affairs of the company. In the event that company's affairs are being conducted in a manner which is prejudicial in the interest of the company itself or any shareholder, then affected shareholder (constituting 100 in number or 1/10th of total number of shareholders or holding at least 10%

of issued capital of the company) have a right under section 244 to approach NCLT for relief.

### Corporate Governance Scores<sup>1</sup>

The report on the Indian Corporate Governance Scorecard, has been developed jointly by the BSE, IFC and Institutional Investor Advisory Services (IIAS), with the financial support of the Government of Japan. The goal of a scorecard is to provide a fair assessment of corporate governance practices at the corporate level. In this report, IFC, BSE, and IIAS jointly present the corporate governance scores of companies forming the S&P BSE 100 index. The scores presented in this report are representative of the Indian market, since the 100 companies evaluated form 67% of BSE's market capitalization. Highlights of the report are mentioned as under.

### Sensex Trends

In December 2016, a study was conducted on the S&P BSE SENSEX 30 (SENSEX) companies. For comparability, the first part of the assessment in the 2017 study was conducted on the same set of index companies. The trends highlight a broad-level improvement in critical governance parameters for these index constituents.

Trends	2017	2016
 Companies which had adequate disclosures on business segment information	28	26
 Companies which had women directors who were not part of the promoter family	27	26
 Companies which separated the roles of the Chairperson and the CEO	18	14

### Stellar Practices

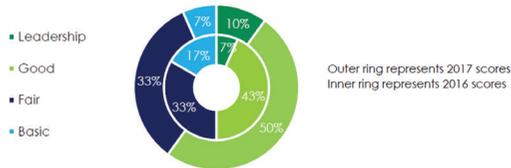
 Companies which provided a detailed transcripts or minutes or a webcast of the previous AGM	6	3
 Companies which facilitated shareholder participation via video or tele-conferencing or via advance question submissions	7	4
 Companies which had detailed disclosures on succession planning	2	1

1. [https://www.ifc.org/wps/wcm/connect/4052f480-e81c-4e44-984f-f4c21a13cee3/CG\\_Scores\\_S%26P\\_BSE\\_100\\_Companies\\_Handbook.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/4052f480-e81c-4e44-984f-f4c21a13cee3/CG_Scores_S%26P_BSE_100_Companies_Handbook.pdf?MOD=AJPERES)

As per the scorecard methodology, based on the final score, companies will be grouped into the following buckets

Bucket	Score Range
Leadership	>=70
Good	60 - 69

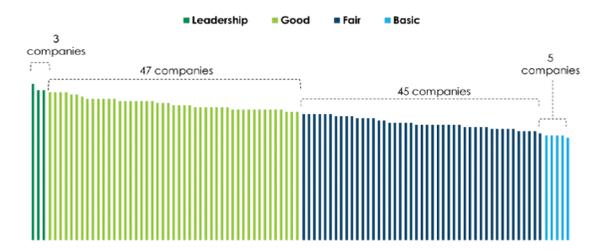
Exhibit 1: Percentage of companies in each governance category



### S&P BSE 100 Findings

Given below are the results of the evaluation of S&P BSE 100 (BSE 100) companies on the Indian Corporate Governance Scorecard. Because these 100 companies comprise over 2/3rd of BSE's market capitalization, the results can be construed to reflect the overall state of governance of listed companies in India.

Exhibit 3: Governance Scores for the BSE 100 companies



### Ease of Doing Business Index Issued by World Bank

In Ease of doing business index 2019<sup>2</sup> issued by World Bank India stood on 77th rank as compare to ease of doing index 2017 India was on 130th rank. Good corporate governance is one of the important parameter for rise in ranking of India in ease of doing business index.

### Need of Good Corporate Governance

In corporation various stakeholder are involved such as customer, investor, employees, shareholders, creditors etc., thus in order to protect interest of all

these stakeholders good corporate governance is essential. Generally importance of good corporate governance is understood when corporate governance failure frauds like Satyam Computers takes place. In current scenario, Corporation is global entity which involves stakeholders around the globe, thus in order to sustain in global market good corporate image is essential, which can be achieved by implementation of corporate governance principles by the corporation.

### Conclusion

A company that has good corporate governance has a much higher level of confidence amongst the stakeholders associated with that company. Corporate Governance is one of the important criteria for foreign institutional investors to decide on which company to invest in. The Companies Act, 2013 introduced innovative measures to appropriately balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment, keeping in mind international practices. The rules and regulations are measures that increase the involvement of the shareholders in decision making and introduce transparency in corporate governance, which ultimately safeguards the interest of the society and shareholders. Corporate governance safeguards not only the management but the interests of the stakeholders as well and fosters the economic progress of India in the roaring economies of the world. Now a days we have witness use of internet and advance technology in governing corporation, so in order to facilitate good governance practices several innovative ideas should be introduced. Some of the innovative ideas which are implemented in India recently are Board meeting by video conferencing, e- voting, e-return, etc. India is witnessing tremendous growth in good corporate governance which is also covered in this essay.



2. [http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report\\_web-version.pdf](http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf)



# Proxy Firms – Boon or Bane for Corporate Governance

In this article, the authors discuss about proxy firms which provide advice to shareholders or institutional investors on corporate matters. They make an attempt to answer as to whether proxy firms are boon or bane in reference to Corporate Governance.



Jaya Sharma and Gautam Sain

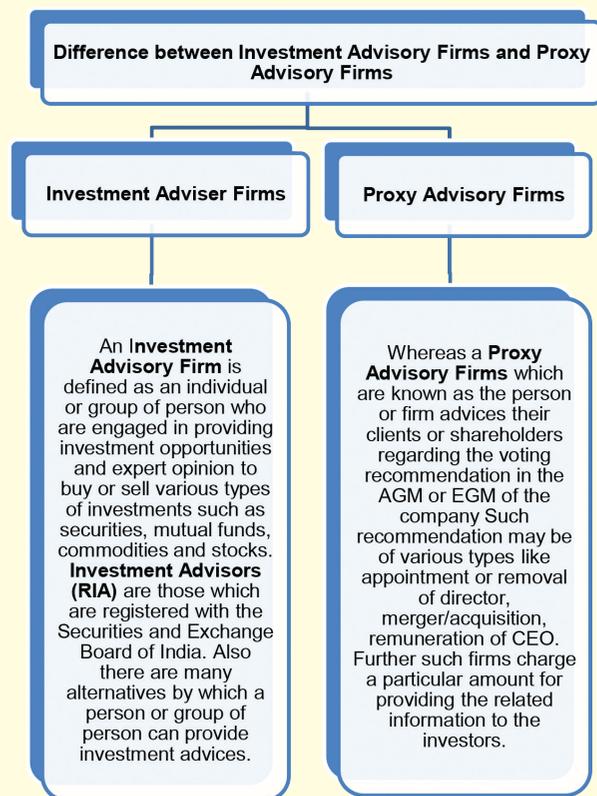
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## Introduction

“Proxy firms” also known as “Proxy advisory firms” means any person or group of persons who provide advice to shareholders or institutional investors on corporate matters such as appointment or removal of director, merger/acquisition, remuneration of CEO and many other matters which may discussed in the Annual General Meeting or Extra ordinary General Meeting of the company. The advisory firms merely advice or recommend the research to the stakeholders and such stakeholders may comply with their advices and recommendations.

The core responsibility of proxy advisory firms shall include mining and researching various information related to the company. There are mainly three domestic proxy firms in India: InGovern, Stakeholders Empowerment Services, and Institutional Investors Advisory Services (IiAS). Also there are some US-based global proxy advisory firms ISS and Glass Lewis are active in India. These proxy advisory firm charges a particular amount for providing advice and research from the investors. The proxy advisory firms are require to get register from SEBI (Research Analysts) Regulations, 2014 although such requirement shall not applicable to the foreign advisory firms. Indian proxy advisory firms should record his voting recommendation and furnish such record to SEBI on request.



## About Proxy Advisory Firms

### How proxy firms are regulated in India

The Indian proxy advisory firms are registered and regulated by the Securities and Exchange Board of India (SEBI). Foreign proxy advisory firms who

advice corporate investors are not required to register themselves. Although it is very challenging to convince those to get registered with the Security and Exchange Board of India. In 2014, SEBI notified regulations for research analysts and including domestic proxy advisory firms with their purview.

To pass out all the issues related to the formation or regulation of proxy advisory firms SEBI via its notification dated 1st September, 2014 introduced SEBI (Research Analysts) Regulations, 2014 (“Regulations”). In this regulation SEBI provides the minimum capital requirement to maintain the proxy advisory firms and disclosure related matters for recommendations and policies adopted by the proxy advisory firms. The regulations require several requirements to provide quality advice to the investor and other shareholders:

- Sufficient staffing which gives voting recommendations based on current and accurate information provided by the firms.
- Defined procedures and methodologies must be available publicly for developing proxy recommendations and analyses.
- Procedures to permit companies an opportunity to provide meaningful comment and observation on firm recommendations.
- Policies and procedures to manage conflicts of interest.
- Additionally, following points are also required to disclose by a proxy advisory firm in India:
- Policies and procedures which are available in the voting recommendation.
- The recommendation provided by the proxy firm shall disclose its range.

The proxy adviser is also required by SEBI to maintain records of his voting recommendations.

### Current Scenario in India

The current scenario of proxy advisory firms in India has rapidly growing day by day. The recommendation or advice of the proxy advisory firms are seriously taken into note. There are unexpected clamor of proxy advisory firms which are regulating in India. The stakeholders are now relying on the recommendation of the proxy advisors to vote against or in favor of the resolution of the corporate. Kotak Mahindra Bank's chief executive Mr. Uday Kotak also suggested the global advisory

firms should be regulated just like domestic advisory firms regulated by the Security and Exchange Board of India.

The proxy advisory firm is an old age concept in many countries but it is very much a new perception in India. However, with this new concept the regulatory now have to focus and make relative change in the corporate governance. The transactions must also be updated according to the new phenomenon of advisory firms.

### Are any Changes Required in Law Regarding Proxy Advisory Firms?

The proxy advisory firms are increasingly analyzing the corporates in recent years. There are substantial effects on corporate voting by the proxy advisory firms which influences the decisions of the stakeholders. Currently there is lack of implementation of regulations over the working of the proxy advisory firm. The relation between the retail investor and the proxy advisory firm must be transparent and the voting recommendations or information provided by the proxy firm must be accurate and reliable.

Uday Kotak, chief executive of Kotak Mahindra Bank, has suggested that global proxy advisory firms should now be regulated by the Security and Exchange Board of India and also giving power to vote in the meeting as proxy gives unequal influence to the proxy advisory firms. Although proxy advisory firms are required to be regulated, companies should also try to match with the requirement of the proxy firms.

### What made Proxy Firms in news

The investors possess all the powers in the company and affect the decisions and working of the company. Further the proxy advisory firms provide and help the investor in the decision making process to choose the right decision for the company so that the major influence over the votes of shareholders is by proxy advisory firms. It is precarious for the advisory firms to provide balanced recommendations which should affect conflict of interest.

In a recent case two US proxy firms named as, ISS and Glass Lewis provide their recommendation as vote against the special resolution which is going to be passed for the re-appointment of Deepak Parekh as a Director. The justification provided by the ISS is that the Deepak Parekh already appointed as a Director in more than six public companies. Although Glass Lewis identified that the board of the HDFC

has not adequately independent. This incident clearly makes sensation in the Indian market and shows the shows the active intention of the shareholders. It also enriched the involvement of the U.S. proxy advisory firms over the decisions of the Indian companies.

### Significant impact on the corporates

The major and important impact of the advisory firm is highlighting the core matters of the company. It also shows the real and actual condition of the company which may require some changes in the board or its function to improve the working of the company. There are some other points of that the recommendation provided by the proxy firms may not give direct impact on the operations of the board.

There is variety of services provided by the proxy advisory firms after analyzing the present situation. There might be some situation in which advisory firm gives proxy services as well consulting services to their clients and may give recommendation to vote for management either for “quid pro quo” on hiring other services. The proxy advisory firms should consider such matters which evade their relation of conflict of interest.

### Shareholder Activism – Is still in a nascent stage in India?

The actions of the company may completely influenced by the activities of the investors. The involvements of shareholders are projected to be very important in corporate governance. Most of the foreign and domestic investors use recommendation of proxy advisors to vote in a particular resolution. The recommendation of the proxy advisor is based on the facts of global market further the investors should not blindly rely on the reports or recommendations of the proxy advisory firms. Shareholder involvement must be require in many matters of the company time to time. The shareholder activism gets the higher attention after the recent incident of the HDFC. The matter clearly discloses the dissatisfaction and activism of the shareholders.

Stewardship Code is a UK based company law which is incorporated some principles for institutional investors. It was came into force in 2010 by the Financial Reporting Council, which is basically to direct the assets managers who are the investors of companies in UK. The main reason to incorporate this law is that persons or group of persons who manages other’s money should be dynamic and involve in the benefit of shareholders and in corporate governance.

### Challenges for Proxy Advisory Firms

The main challenge for the proxy advisory firm is to provide the transparency in the recommendation and how such recommendations develop by them. Further investors have very little knowledge about the proxy advisory firms also there are only few advisory firms available in the market. The proxy advisory firms also need to build the trust among the investors for recommendation provided by them.

The corporate governance framework in India which includes the shareholding pattern, management hierarchy and promoters existence does not match the models of western corporate governance so it is clearly shows that the recommendations and advices provided by the foreign advisory firms does not impact in India.

### Demand and Monopoly of Proxy Advisory Firms

There are only few firms working as a firm advisor who gives the advice or recommendations to the investors to vote in particular resolution. Although there are enormous foreign holding of the Indian corporates and which is mostly regulated from the outside. Shareholders are now completely participate in the decision of the company and regularly cast their vote in the meeting but in case of institutional investors who has many holdings in different companies will not able to vote in every company so that in such situation the demand of the proxy advisory firms in research and decision making increases. Institutional Shareholder Services Inc. (ISS) and Glass Lewis & Co. are primarily two Proxy advisory firms who dominate the market worldwide.

Likewise, In India InGovern ; Stakeholders Empowerment Services ; and Institutional Investors Advisory Services (IIAS) are only few proxy firms which regulate the whole market in India.

### Conclusion

The proxy advisory firms must implement a particular policy, guidance and stewardship code which may easily boost the value of the investors. Also by improving the corporate governance policies the wrong interpretation as well the major influences of the proxy firms can be easily govern. As there are increases numbers of institutional investors in India it is essential that there must be a strong stewardship code adopted by the Indian regulatory.





## Meeting under the Companies Act, 2013 : An Analysis

In the article the author deliberates on the provisions of the Companies Act, 2013 dealing with meetings and topics related thereto.

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### Introduction

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. However, every gathering or assembly does not constitute a meeting. A company meeting must be convened and held in perfect compliance with the various provisions of the act and the rules framed there under. It is the duty of the company secretary to study carefully the provisions of the Companies Act, 2013 ('the Act') relating to meeting and to ensure that the business at meetings is conducted in conformity with the provisions of the Act. Meetings of the shareholders under the Act can be classified as under:

- Annual general meeting
- Extraordinary general meeting
- Class meetings

### Annual General Meeting

Annual General meetings ('AGM') is an important event where members get an opportunity to discuss the activities of the company. Section 96 of the Act provides that every company, other than one person companies ('OPC'), is required to hold an AGM every year. First AGM of the company should be held within 9 months from the closure of the first financial year. Subsequent AGM of the company should be held within 6 months from the closure of the financial year. The gap between two AGM should not exceed 15 months.

### Extraordinary General Meetings

All general meetings, other than AGM, are called extraordinary general meetings (EGM). All business items can be transacted at the extraordinary meetings are special business.

### Business to be Transacted at AGM

Sub-section (2) of section 102 of the Act provides that all other business transacted at an annual general meeting except the following are special business:

- Consideration of financial statements and the reports of the board of directors and auditors
- Declaration of any dividend
- Appointment of directors in place of those retiring
- Appointment of, and the fixing of remuneration of, the auditors.

In case of any other meeting all business shall be deemed to be special.

### Time and Place of Meeting [section 96]

An AGM can be called during business hours, that is, between 9 a.m. to 6 p.m. on any day that is not a national holiday. It should be held either at the registered office of the company or at some other place within the city, town, or village in which the registered office of the company is situate.

**Notice of Meeting [section 101]**

A general meeting of a company may be called by giving not less than 21 clear days notice either in writing or through electronic mode. A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95 per cent of the members entitled to vote at such meeting.

**Agenda [section 102]**

A statement of the business to be transacted at the general meeting should be given in the notice. In case, the meeting is to transact a special business, an explanatory statement should be attached about such item.

**Persons Entitled to Receive Notice**

In terms of section 101(3), notice of every meeting of the company must be given to -

- (i) Every member of the company, legal representative of any deceased member and the assignee of an insolvent
- (ii) The auditors of the company
- (iii) Every director of the company

Any accidental omission to give notice to, or the non receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceeding of the meeting.

**Quorum for Meeting**

Quorum refers to the minimum numbers of members required to constitute for a valid meeting. Following are the minimum numbers provided in section 103 of the Act, for various category of companies. However, the articles of association of the company may provide for a higher number.

**Public company** – 5 members personally present if the number of members as on the date of meeting is not more than 1000. 15 members personally present if the number of members as on the date of the meeting is more than 1000 but up to 5000. 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

**Private company** - 2 members personally present, shall be the quorum for a meeting of the company. If the quorum is not present within half an hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other date and such other time and place as the board may determine.

**Chairman of Meetings [section 104]**

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

**Proxies [section 105]**

Every notice calling a meeting of a company should carry with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself, and that proxy need not to be a member of the company. A proxy shall be entitled to vote only on a poll. A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person appointed as proxy shall not act as proxy on behalf of more than 50 members and members holding in aggregate more than 10% of the total share capital of the company carrying voting rights. The instrument appointing the proxy must be deposited with the company 48 before the meeting.

The instrument appointing a proxy must be in form no. MGT 11, it needs to be in writing and signed by the appointer or his attorney duly authorised in writing.

**Voting through Electronic Means [section 108]**

Every listed company or a company having five hundred or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. "Voting by electronic means" means secured system based process of display of electronic ballots, recording of votes of the members and the number of votes

polled in favour or against, such that the entire voting exercised by way of electronic means gets registered counted in an electronic registry in a centralised server with adequate cyber security.

### Ordinary Resolution

A resolution shall be an ordinary resolution if the notice has been duly given and it is required to be passed by the votes cast, in favour of the resolution, including the casting vote, if any, of the chairman, exceed the votes, if any, cast against the resolution.

### Special Resolution

A resolution shall be a special resolution when : the intension to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution and the notice required under this act has been duly given

### Postal Ballot [section 110]

As per clause (65) section 2 “postal ballot” means voting by post or through any electronic mode.

The rules provide that the following items of business shall be transacted only by means of voting through a postal ballot.

- Alteration of the object clause of the memorandum
- Alteration of articles of association in relation to insertion or removal of provisions
- Change in place of registered office outside the local limits of any city, town or village
- Change in objects for which a company has raised money from public through prospectus and still has any unutilised amount out of the money so raised
- Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43 of the Act
- Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48 of the Act

- Buy-back of shares by a company under sub-section (1) of section 68 of the Act
- Election of director under section 151 of the Act
- Sale of whole or substantially the whole of an undertaking of a company as specified
- Giving loan or extending guarantee or providing security in excess of the limit prescribed under sub-section (3) of section 186 of the Act.

### Resolutions and Agreements to be Filled with the Registrar

Section 117 of the Act provides that a copy of every resolution and agreements in respect of matters specified therein together with a explanatory statements shall be filed in form no. MGT 14 with the Registrar within thirty days of its passing.

### Maintenance of Minutes of Meetings

Section 118 of the Act provides that every company shall prepare ,sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholder or creditors or board of directors and also resolution passed by postal ballot within thirty days of the conclusion of every meeting concerned.

It may be noted that resolution passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting. in case of every resolution passed by postal ballot, a brief report on the postal ballot including the results of the voting thereon shall be entered in the books of general meetings within thirty days from the date of passing of resolution.

Minutes of proceeding of each meeting shall be entered in the books maintaining for that purpose along with the date of such entry within 30days of the conclusion of the meeting. minutes books of general meetings shall be kept at the registered office of the company. Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or

any director duly authorised by the board for the purpose and shall be kept in the registered office or such other place as the members may decide by passing special resolution pursuant to requirement of section 88 read with 94, of the Act.

### Report on AGM

Every listed public company required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the act and the rules made there under. A copy of the report is to be filed with the registrar in form no. MGT 15 within thirty days of the conclusion of the annual general meeting along with the prescribed fees. According to rule 31, the report shall be prepared in addition to the minutes of the general meeting:

- Report under this section shall be prepared in addition to the minutes of the meeting
- Report shall be signed and dated by the chairman of the minutes of the general meeting
- Such reports shall contain the details in respect of the following :
  - ◆ The day, date, hour and venue of the annual general meeting
  - ◆ Confirmation with respect to appointment of chairman of the meeting
  - ◆ Numbers of members attending the meeting
  - ◆ Confirmation of quorum
  - ◆ Confirmation with respect to compliance of the Act and the rules, secretarial standard made there under with respect to calling, convening and conducting the meeting.
  - ◆ Any other points relevant for inclusion in the report
- Such report shall contain fair and correct summary of the proceedings of the meeting.



## KNOWLEDGE UPDATE

### COMPANY LAW

#### Constitution of High-Level Committee on Corporate Social Responsibility

Central Government, vide F. No.12/03/2018-CSR dated 11<sup>th</sup> October, 2018, has re-constituted High-Level Committee on Corporate Social Responsibility (CSR) under the Chairmanship of Shri. Injeti Srinivas, Secretary, Ministry of Corporate Affairs (MCA) to review the existing framework and guide and formulate the roadmap for a coherent policy on CSR.

#### Companies (Registered Valuers and Valuation) (Third Amendment) Rules, 2018

Central Government, vide Notification No. G.S.R 925(E) dated 25<sup>th</sup> September 2018, has amended the Companies (Registered Valuers and Valuation) Rules, 2017 by substituting figures, letters and word “31st January, 2019” in rule 11 in place of “30th September, 2018”. Further, in rule 14, in clause (f), for the words “one year”, the words “two years” shall be substituted.

#### Constitution of National Financial Reporting Authority

Central Government, vide Notification No. S.O. 5099(E) dated 1<sup>st</sup> October 2018, has appointed the 1<sup>st</sup> October, 2018 as the date of constitution of National Financial Reporting Authority.

#### Enforcement of Sub-sections (1) and (12) of Section 132 of the Companies Act, 2013

Central Government, vide Notification No. S.O. 5098(E) dated 1<sup>st</sup> October 2018, has appointed 1<sup>st</sup> October, 2018 as the date on which the provisions of sub-sections (1) and (12) of section 132 of the Companies Act, 2013 shall come into force.

#### Relaxation of Additional Fees and Extension of Last Date of Filing of Forms MGT-7 (Annual Return) and Aoc-4 (Financial Statement) under the Companies Act, 2013

Central Government vide General Circular no. 10/2018 dated 30<sup>th</sup> October 2018, has decided to relax the additional fees payable on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 upto 31<sup>st</sup> December, 2018, wherever additional fee is applicable.



## Know About Insolvency And Bankruptcy Board of India : A Concise Note

In this article, the author gives an overview of the Insolvency and Bankruptcy Board of India which regulates insolvency professionals agencies and information utilities.

*Dr. M. Govindarajan - Practising Company Secretary*

*Email ID : govind.ayyan@gmail.com*

### Insolvency and Bankruptcy Board of India

The Insolvency and Bankruptcy Board of India ('Board' for short) was established on 1st October, 2016 under the Insolvency and Bankruptcy Code, 2016 ('Code'). The Code consolidates and amends the laws relating to reorganization and insolvency resolution of - (i) corporate persons, (ii) partnership firms and (iii) individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. The Board is a unique regulator: regulates a profession as well as processes. The Board is also the authority for registered valuers. The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. The head office is situated at New Delhi. The Board regulates the following service providers :

- Insolvency Professionals (IP);
- Insolvency Professional Agencies (IPA);
- Information Utilities (IU);
- Insolvency Professional Entities;
- Registered Valuers Organizations (RVO);
- Registered Valuer.

### Composition of Board

The Board shall consist of the following members who shall be appointed by the Central Government :

- ◆ Chairperson
- ◆ Three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex officio
- ◆ One member to be nominated by the Reserve Bank of India, ex officio
- ◆ Five other members to be nominated by the Central Government of whom at least three shall be the whole-time members.

### Governing Board

The Board consists the following personalities :

- ◆ Dr. M.S. Sahoo – Chairperson
- ◆ Ms. Suman Saxena – Whole Time Member (Registration and Monitoring)
- ◆ Dr. Navrang Saini – While Time Member (Administrative Law Wing)
- ◆ Dr. Ms. Mukulita Vijayawargiya – Whole Time Member (Research and Regulation Wing)
- ◆ Dr. Shashank Saksena - Adviser (Capital

Markets), Department of Economic Affairs, Ministry of Finance – ex-officio Member

- ♦ Shri. Gyaneshwar Kumar Singh - Joint Secretary, Ministry of Corporate Affairs - ex-officio Member
- ♦ Shri. G. S. Yadav, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law & Justice. - ex-officio Member;
- ♦ Shri. A. Unnikrishnan, Legal Adviser, Reserve Bank of India - ex-officio Member

### Powers and Functions of the Board

Section 196 of the Code provides the powers and functions of the Board. Section 196 (1) provides that The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions :

- Register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations.
- Promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code.
- Specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities.
- Levy fee or other charges for carrying out the purposes of this Code, including fee for registration and renewal of insolvency professional agencies, insolvency professionals and information utilities.
- Specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities.
- Lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies.
- Carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder.
- Monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder.
- Call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities.
- Publish such information, data, research studies and other information as may be specified by regulations.
- Specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data.
- Collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases.
- Constitute such committees as may be required including in particular the committees laid down in section 197.
- Promote transparency and best practices in its governance.
- Maintain websites and such other universally accessible repositories of electronic information as may be necessary.
- Enter into memorandum of understanding with any other statutory authorities.
- Issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities.

- Specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder.
- Conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board.
- Specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations.
- Make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor.
- Perform such other functions as may be prescribed.
- Setting up of a governing Board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board.
- Information required to be submitted by members including the form and the time for submitting such information.
- Specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by members.
- Grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof.
- Fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies.
- Grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies.
- Quantum of fee and the manner of collecting fee for inducting persons as its members.
- Procedure for enrolment of persons as members of insolvency professional agency.

Section 196(2) of the Code provides that the Board may make model bye-laws to be adopted by insolvency professional agencies which may provide for the following :

- Minimum standards of professional competence of the members of insolvency professional agencies.
- Standards for professional and ethical conduct of the members of insolvency professional agencies.
- Requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory. For the purposes, the term “non-discriminatory” means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified.
- Manner of granting membership.
- Manner of conducting examination for enrolment of insolvency professionals.
- Manner of monitoring and reviewing the working of insolvency professional who are members.
- Duties and other activities to be performed by members.
- Manner of conducting disciplinary proceedings against its members and imposing penalties.
- Manner of utilizing the amount received as penalty imposed against any insolvency professional.

Section 196(3) provides that notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil

Procedure, 1908, while trying a suit, in respect of the following matters :

- ◆ Discovery and production of books of account and other documents, at such place and such time as may be specified by the Board
- ◆ Summoning and enforcing the attendance of persons and examining them on oath
- ◆ Inspection of any books, registers and other documents of any person at any place
- ◆ Issuing of commissions for the examination of witnesses or documents

### Meetings of the Board

The Board shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be determined by regulations. The Chairperson, or if, for any reason, the Chairperson is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting. All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second or casting vote. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

### Committees

The Board may, for the efficient discharge of its functions, may constitute advisory and executive committees or such other committees, as it may deem fit, consisting of a Chairperson and such other members as may be specified by regulations. The

Board has constituted the following committees :

- IBBI Disciplinary Committee
- IBBI Advisory Committee
- IBBI Technical Committee
- Internal Complaints Committee

### Website

The Board maintains its own website – [www.ibbi.gov.in](http://www.ibbi.gov.in). In that website the Board uploaded the following :

- ◆ Entire provisions of the Code
- ◆ Regulations framed by the Code and the amendments made therein
- ◆ Judgments of Supreme Court, High Courts, National Company Law Appellate Tribunal, National Company Law Tribunals
- ◆ Details of examinations conducted by the Board for the Insolvency professionals, registered valuers
- ◆ Details of the publications made by the Board
- ◆ Details of the service providers coming under the control of the Board
- ◆ And other information.

### For students : Significance of the Code

The students after becoming a member of the Institute may be a Company Secretary in employment or practicing Company Secretary. The Code gives a vast area of practice for practicing Company Secretaries. The Code is also applicable to the companies. Therefore, the Company Secretaries in employment are also to be updated in this Code and the regulations made thereunder. The Board is the regulator for this profession and it is regular in updating all the laws, events, judgments etc., in its website. It should be made useful for the future career of the students.



## ATTENTION STUDENTS !

### DECEMBER, 2018 SESSION OF EXAMINATIONS

#### LAST DATE FOR SUBMISSION OF REQUEST FOR CHANGE OF EXAMINATION CENTRE / COMBINATION OF MODULE(S)/ MEDIUM & PRECAUTION TO BE TAKEN WHILE REMITTING THE FEE THROUGH CANARA BANK CHALLAN

Please note that the facility for submission of change of Examination Centre / Combination of Module(s) / Medium for the students who have enrolled for December, 2018 Session has been activated effective from 11th October, 2018 and the requests may be submitted upto **5th December, 2018(16:00 Hours)**. Thereafter, requests for changes in the examination enrollment status will not be entertained under any circumstances.

The prescribed fee is Rs. 250/- per change and the same may be remitted by way of Credit Card/Debit Card/ Net Banking modes. The fee may also be remitted through Canara Bank Challan by depositing the fee by way of Cash in Canara Bank branches.

Students remitting fee through Canara Bank Challan System i.e. by way of Cash at the Canara Bank branches are advised to ensure that the cash is deposited LATEST BY **5th December, 2018**. It may be noted that in case the cash is deposited after **5th December, 2018** (even if the Challans are generated on a prior date), the requests will be rejected without further notice.

Students are advised to take note for compliance.

## Kind Attention!!

As a part of implementing a monitored environment all have been advised to use <http://support.icsi.edu> only. Phone numbers as mentioned below have been REMOVED from service to make the initiative of monitored environment a success.

ICSI Sampark	8824401155
ICSI call center	0120-3314111
	0120- 6204999
Academic Helpdesk	0120-6267777

All are advised to take note of the same.

If undelivered, please return to:

**Krishna Law House,**  
128, Municipal Market, Super Bazar Compound,  
Connaught Place, New Delhi-110001.