

SOUVENIR

CUM BACKGROUNDER

16th

NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

Conference for Governance Practices

Theme : PCS - Calibrating Competence for Achieving Excellence

**Venue : Bolgatty Palace and Island Resort (KTDC)
Kochi, Kerala**

**Thursday, August 13, 2015 - 11.45 am to 6.30 pm
Friday, August 14, 2015 - 7.00 am to 4.30 pm**



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

ICSI House No. 65/635, Judges Avenue, Rbi Quarters Road,
Behind Indian Express, Kaloor Kochi - 682017

Know your Venue

Bolgatty Palace Island Resort is a former Palace built by the Dutch in India. The Dutch East India Company left behind some majestic monuments as the vestiges of their occupation of the land of Kerala. The city of Kochi, the headquarters of the erstwhile Malabar Command still bears testimony to the rich Dutch colonial heritage though their occupation was brief and long gone.

This quaint mansion was built in 1744 by Dutch traders initially as a villa and was later extended and landscaped. The splendid Palace is situated in the tranquil waters of the Vembanad Lake in an island which is now popularly known as Bolgatty Island in Kochi, Kerala. The Palace holds the distinction of one of the oldest existing Dutch palace outside the Netherlands.

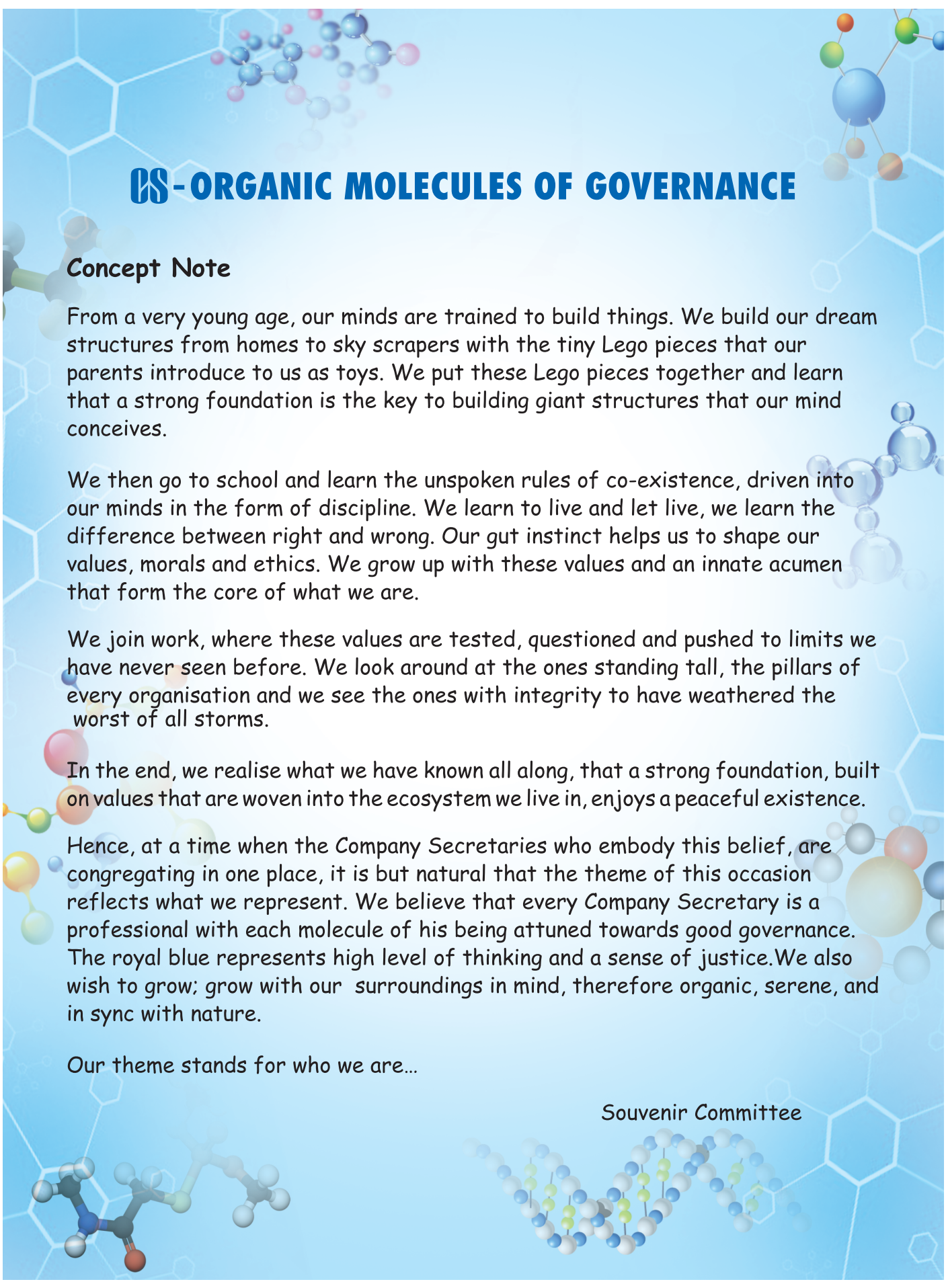
The Dutch were fond of having country houses on picturesque surroundings near watersides. They used wood for construction purposes and tried to combine the European style with the traditional Kerala style of architecture. The Bolgatty Palace is a well preserved legacy and is reminiscent of the Dutch connection with Kerala.

During the Dutch reign, the Palace used to serve as the Dutch Governor's residence. Following the departure of the Dutch, the Palace was leased to the British who turned it into a residence for the British Governors, being the seat of the British Resident of Kochi during the British Raj.

In 1947, after India attained independence, the Bolgatty Palace became the property of the state and was later transformed into a heritage hotel resort. The Palace is now a holiday destination for Indian and overseas tourists and is under the administration of the Kerala Tourism Development Corporation Limited (KTDC).

Well situated in the middle of a fabulous garden, the palace has slowly metamorphosed into an esteemed heritage hotel and is a prominent tourist destination in Kerala. With the spectacular backwaters of Kochi, the various islands in and around, the Kochi sea port opening to the Arabian Sea as the background, the scenery around the Palace is simply breathtaking.





CS-ORGANIC MOLECULES OF GOVERNANCE

Concept Note

From a very young age, our minds are trained to build things. We build our dream structures from homes to sky scrapers with the tiny Lego pieces that our parents introduce to us as toys. We put these Lego pieces together and learn that a strong foundation is the key to building giant structures that our mind conceives.

We then go to school and learn the unspoken rules of co-existence, driven into our minds in the form of discipline. We learn to live and let live, we learn the difference between right and wrong. Our gut instinct helps us to shape our values, morals and ethics. We grow up with these values and an innate acumen that form the core of what we are.

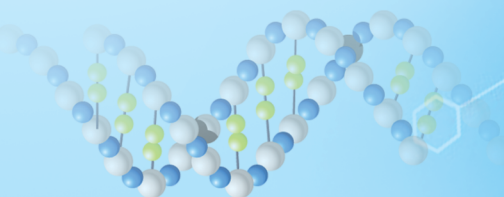
We join work, where these values are tested, questioned and pushed to limits we have never seen before. We look around at the ones standing tall, the pillars of every organisation and we see the ones with integrity to have weathered the worst of all storms.

In the end, we realise what we have known all along, that a strong foundation, built on values that are woven into the ecosystem we live in, enjoys a peaceful existence.

Hence, at a time when the Company Secretaries who embody this belief, are congregating in one place, it is but natural that the theme of this occasion reflects what we represent. We believe that every Company Secretary is a professional with each molecule of his being attuned towards good governance. The royal blue represents high level of thinking and a sense of justice. We also wish to grow; grow with our surroundings in mind, therefore organic, serene, and in sync with nature.

Our theme stands for who we are...

Souvenir Committee



KNOW YOUR HOSTING CITY

Kochi (erstwhile Cochin) is a vibrant city situated on the south-west coast of the Indian peninsula in the breathtakingly scenic and prosperous state of Kerala, hailed as 'God's Own Country'. Its strategic importance over the centuries is underlined by the epithet 'Queen of the Arabian Sea'. Kochi is arguably the ideal starting point for exploring the unfathomable diversity and beauty of Kerala.

Like most cities in India, Kochi has a very long and illustrious history. But, the origin of the name is still shrouded in mystery. Some believe that it is a modified version of Malayalam word 'Kochazhi' meaning small sea and others argue that the name was given by Chinese travelers.

Very little is known about the history of Kochi prior to the arrival of the Portuguese during the 1500s'. Though it is generally believed that Kochi port was formed only as late as 1341, there is also the possibility of its existence as a small harbour even earlier. Kochi rose to prominence and commercial supremacy after the port Muziris around Kodungallur (Cranganore) was destroyed by massive flooding of river Periyar in 1341.

The Kingdom of Cochin, originally known as Perumpadappu Swarupam, was under the rule of the Later Cheras in the Middle Ages. The ruler of Cochin State following the break-up of Kulasekhara Empire (1102 AD) was a king whose authority was confined to Cochin and adjoining areas. However, during much of this time, the kingdom was under foreign suzerainty, and the King often only had titular privileges.

Over the centuries, the princely state of Kochi came under numerous empires. The Portuguese rule in Cochin is the most prosperous and eventful period in the city's history which continued for more than a century from 1503 to 1663. Kochi was the first of the European colonies in colonial India. The Portuguese rule was followed by that of the Dutch



which occurred from 1663 to 1795. Cochin prospered under the Dutch rule by shipping pepper, cardamom and other spices, coir, coconut, and copper. In 1814 according to the Anglo-Dutch Treaty, the islands of Kochi, including Fort Kochi and its territory, were ceded to the United Kingdom. Even prior to the signing of the treaty, there is evidence of English residents in Kochi. The port city of Cochin had become highly developed during the time of the British rule in India. Kochi was the first princely state to willingly join the Indian Union when India gained independence in 1947. Cochin merged with princely state of Travancore to create Travancore-Cochin, which was in turn merged with the Malabar district of Madras State on 1 November 1956 to form the new Indian state of Kerala.

From time immemorial, the Arabs, British, Chinese, Dutch, and Portuguese have left indelible marks on the history and development of Kochi. Over the years, Kochi has emerged as a bustling centre of commercial activity and one of the fastest growing tier2 metros in India. Today, the contemporary Kochi is the representation of the modern Kerala with its sprawling malls, air-sea ports, Industrial parks, stadiums, world class educational institutions and with the upcoming Kochi Metro rail project, it is poised for a quantum leap to the next level.

Kochi during colonial times



City of Kochi today



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वेणु राजामणि
राष्ट्रपति के प्रेस सचिव

Venu Rajamony

Press Secretary to the President



राष्ट्रपति सचिवालय,
राष्ट्रपति भवन,
नई दिल्ली - 110004

*President's Secretariat,
Rashtrapati Bhavan,
New Delhi - 110004*



Message

The President of India, Shri Pranab Mukherjee, is happy to know that the Institute of Company Secretaries of India (ICSI) is organising its 16th National Conference of Practicing Company Secretaries on the theme "PCS - Calibrating Competence for Achieving Excellence" on August 13-14, 2015 at Kochi.

The President extends his warm greetings and felicitations to the organisers and the participants and sends his best wishes for the success of the Conference.

Press Secretary to the President



भारत के उप-राष्ट्रपति के विशेष कार्य अधिकारी
OFFICER ON SPECIAL DUTY
TO THE VICE-PRESIDENT OF INDIA
नई दिल्ली / NEW DELHI - 110011
TEL.: 23016344/23016422 FAX : 23012645



Message

Hon'ble Vice President of India is happy to learn that the Institute of Company Secretaries of India (ICSI), New Delhi is organizing its 16th National Conference on the theme 'PCS - Calibrating Competence for Achieving Excellence' on August 13 - 14, 2015 in Kochi, Kerala.

The Vice President extends his warm greetings and congratulation to the organizers and the participants and wishes the event all success.

(Anshuman Gaur)

New Delhi

13th July, 2015



प्रधान मंत्री कार्यालय
नई दिल्ली - 110011
PRIME MINISTER'S OFFICE
New Delhi - 110011

Message

The Prime Minister is happy to learn that the Institute of Company Secretaries of India is organizing its 16th National Conference of Practicing Company Secretaries on the theme "*PCS - Celebrating Competence For Achieving Excellence*" in Kochi on 13th & 14th August, 2015.

Prime Minister conveys his best wishes to the organizers and participants.

(Chandresh Sona)

New Delhi

June 27, 2015

JUSTICE (Retd.) P. SATHASIVAM
GOVERNOR OF KERALA



RAJ BHAVAN
KERALA

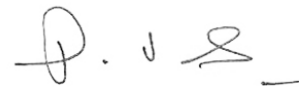
23 July 2015

MESSAGE

I am glad to know that the Cochin Chapter of the Company Secretaries of India is organising its 16th National Conference at Kochi on 13 & 14 August 2015.

It is truly commendable that the Conference aims at 'Calibrating Competence for Achieving Excellence', which is at once relevant and significant.

I compliment the organisers on their initiative and wish the commemorative volume all success.



[Justice (Retd.) P. Sathasivam]

CS Anilkumar. B.S.,
Vice Chairman,
Trivandrum Chapter of Company Secretaries,
Pattom,
Thiruvananthapuram.

अरुण जेटली
वित्त, कापॉरेट कार्य
एवं सूचना व प्रसारण मंत्री
भारत



Arun Jaitley
Minister of Finance, Corporate Affairs
and Information & Broadcasting
India

14 July, 2015



Message

I am happy to note that The Institute of Company Secretaries of India is organizing 16th National Conference of Practicing Company Secretaries on the theme "PCS- Calibrating Competence for Achieving Excellence" during 13-14 August, 2015 at Kochi, Kerala and bringing out a souvenir to mark the occasion.

I am also happy to learn that a large number of professionals, directors, advocates, senior officials and corporate executives would be attending the programme. I am confident that the participants will get comprehensive exposure to the practical aspects of the topics and gain immensely from the conference.

I extend my best wishes for the success of the conference and wish the souvenir all success.


[ARUN JAITLEY]

Ministry of Finance : 134, North Block, New Delhi - 110001, Tel : 23092810, 23092510 Fax: 23092828
Ministry of Information & Broadcasting : Room No. 560, A Wing, Shastri Bhawan, New Delhi - 110001,
Tel. : 23386892, 23384340 Fax : 23384286
Residence : 2, Krishna Menon Marg, New Delhi -110011, Tel : 23794990, 23794556 Fax : 23794543

Dr. NAJMA HEPTULLA

Minister of Minority Affairs
Government of India



डा० नजमा हेपतुल्ला

अल्पसंख्यक कार्य मंत्री
भारत सरकार



Message

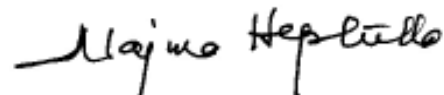
I am delighted to know that the Institute of Company Secretaries of India (ICSI) is organising the 16th National Conference of Practicing Company Secretaries at Kochi, Kerala from August 13-14, 2015.

The ICSI, a statutory body since its inception has been doing an outstanding work in developing and regulating the profession of Company Secretaries in India. Without doubt, it is one of the bedrocks of Corporate Governance in India.

The Theme of the conference '*Calibrating Competence for Achieving Excellence*' aligns very well with its stated vision and mission of promoting and facilitating good Corporate Governance and is very relevant in view of the emphasis being placed on good governance by the Government today and the new Companies Act. I am sure the participants will gain immensely by interacting with renowned faculty having a vast exposure in their respective fields.

I take this opportunity to extend my best wishes for the grand success of this National Conference.

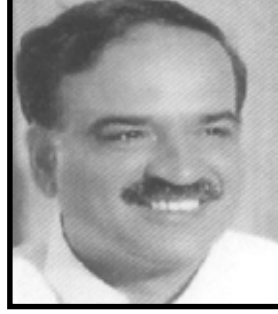
New Delhi,
24 July, 2015


(NAJMA HEPTULLA)

अनंत कुमार
ANANTH KUMAR
ಅನಂತ ಕುಮಾರ್



रसायन एवं उर्वरक मंत्री
भारत सरकार
**MINISTER FOR
CHEMICALS & FERTILIZERS
GOVERNMENT OF INDIA**



Message

It gives me great pleasure to learn that the **Institute of Company Secretaries of India (ICSI)** is organising its **16th National Conference of Practising Company Secretaries** on the theme **"PCS-Calibrating Competence for Achieving Excellence"** at Kochi from 13th to 14th August, 2015 and that a Souvenir will also be brought out to commemorate the occasion.

ICSI has rendered yeoman's service in developing secretarial excellence in the Indian corporate sector which has nurtured very healthy Board room practices and discharge exalted position in the corporate and professional order of the country. The profession of Company Secretaries has assumed added significance in the governance of the companies, particularly in the wake of implementation of Companies Act, 2013. It is imperative for the Company Secretaries as governance professionals to sharpen their professional skills and knowledge to provide exacting solutions to the businesses.

The theme of the Conference and topics chosen for deliberations are apt and contemporary in the present day regulatory developments. I am sure the participants will immensely benefit from the expert deliberations.

I congratulate the ICSI, the participants and wish the 16th National Conference a grand success.

27 July, 2015

(Ananth Kumar)

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डॉ. हर्ष वर्धन
DR. HARSH VARDHAN



मंत्री
विज्ञान और प्रौद्योगिकी एवं पृथ्वी विज्ञान
भारत सरकार
नई दिल्ली - 110001

**MINISTER
SCIENCE & TECHNOLOGY AND EARTH SCIENCES
GOVERNMENT OF INDIA
NEW DELHI - 110 001**

Message

I am very glad to know that the Institute of Company Secretaries of India is organizing its 16th National Conference of Practicing Company Secretaries on the theme PCS - Calibrating Competence for Achieving Excellence during 13-14 August, 2015 at Bolgatty Palace and Island Resort, Kochi, Kerala.

Institute of Company Secretaries of India gives exposure to the eminent faculty for practical aspects on wide range of topics having relevance to the practising professionals. It would be a good platform to give an opportunity to interact with large number of Professionals, Advocates, Senior Officials and Corporate Executives.

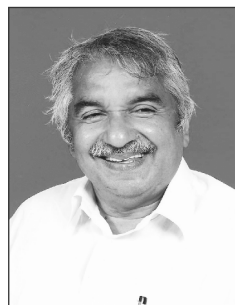
I convey my best wishes to the Institute of Company Secretaries of India on this occasion and wish for its successful completion.



(Dr. Harsh Vardhan)



OOMMEN CHANDY
CHIEF MINISTER
KERALA



No. 1013/Pre-Sec/CM/2015

31/07/2015

Message

I am glad to know that The Institute of Company Secretaries of India (ICSI) would be organizing its 16th National Conference of practicing company secretaries in Kochi and that a Souvenir would be released to commemorate the event.

I hope that the national conference would provide an ideal platform for deliberations, sharing of experiences, identification of challenges and exploring new horizons for enhanced professionalism.

I also hope that the collective efforts of all associated with ICSI would continue to spearhead its programmes and scale greater heights.

Wishing all success.

OOMMEN CHANDY

Office : Government Secretariat, Thiruvananthapuram-695 001

Phone-Office : 2333610, 2333812, 2333197, 2332148, 2333214, 2332682, 2332184

Fax : (0471) 2333489 Res : (0471) 2314853, 2318406 & (0481) 2351135

सुदर्शन भगत
SUDARSHAN BHAGAT



ग्रामीण विकास
राज्य मंत्री
भारत सरकार
**MINISTER OF STATE
FOR RURAL DEVELOPMENT
GOVERNMENT OF INDIA**

Dated : 23/07/2015

Message

I am very happy to meet you through this message. It gives immense pleasure to know that the Institute of Company Secretaries of India is being organized "**16 National Conference of Practicing Company Secretaries**" on August 13-14, 2015 on the theme **PCS - Competence for Achieving Excellence** in Bolgatty Palace and Island Resort, Kochi, Kerala.

It's really appreciable that the conference will have deliberation on a wide range of topics having relevance to the practicing professionals, viz., Secretarial Audit, Annual Return, Internal Audit, National Company Law Tribunal, Competition Law Compliance, Court Craft and Advocacy, Goods and Service Tax. It is my firm belief that in the near future large numbers of students having education from your institute are going to be in greater demand as professionals.

I extend my compliment to the **ICSI** for its noble activities and best wishes for great success in publication of the Souvenir and I express my gratitude to "**The Institute of Company Secretaries of India**".

(SUDHARSHAN BHAGAT)

जुएल ओराम
JUAL ORAM



मंत्री
जनजातीय कार्य मंत्रालय
भारत सरकार
शास्त्री भवन, नई दिल्ली - 110001

**MINISTER OF TRIBAL AFFAIRS
GOVERNMENT OF INDIA
SHASTRI BHAWAN
NEW DELHI - 110 001**

Message

I am glad to know that the Institute of Company Secretaries of India (ICSI) is organizing its 16th National Conference of Practicing Company Secretaries on the theme PCS - "**Calibrating Competence for Achieving Excellence**" on August 13 & 14, 2015 at Bolgatty Palace and Island Resort, Kochi, Kerala.

My best wishes for the event and publication.

(JUAL ORAM)

किरेन रीजीजू
KIREN RIJIJU



गृह राज्य मंत्री
भारत सरकार

**MINISTER OF STATE FOR
HOME AFFAIRS
GOVERNMENT OF INDIA**



Message

I am happy to know that the Institute of Company Secretaries of India (ICSI) is organizing its 16th National Conference of Practicing Company Secretaries on the theme "*PCS - Caliberating Competence for Achieving Excellence*" on August 13-14, 2015 at Kochi, Kerala.

A Company Secretary is one among the most important professionals in an organization. He plays a pivotal role and acts as an important link between the Board of the organization, various stakeholders, Government and other regulatory bodies. With fast changing business environment, his role has become more complex and multifaceted.

I am happy to see that the agenda for discussion has been carefully drafted. Internal auditing has tremendous scope in helping an organization to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance process. It is good to see that Goods and Services Tax (GST) which is considered to be the biggest taxation reforms in India and Non-Banking Finance Companies (NBFCs) which have an important role in boosting economic growth are also on the agenda for discussion.

I am sure the deliberations will help in useful exchange of best practices & bring to the fore many new ideas which will be beneficial to all concerned. I convey my best wishes to the organizers on this occasion.

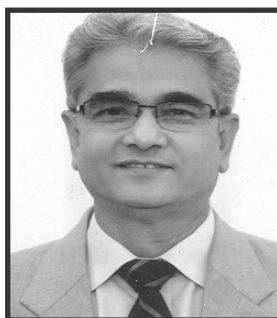
(Kiren Rijiju)

16th July, 2015
New Delhi

Shashi Kant Sharma



भारत के नियंत्रक – महालेखापरीक्षक
COMPTROLLER & AUDITOR GENERAL OF INDIA

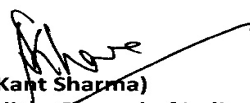


Message

I am very pleased to learn that the Institute of Company Secretaries of India is organising a national conference of Practicing Company Secretaries on **"PSC-Calibrating Competence for Achieving Excellence"**.

2. The Companies Act, 2013 has enhanced the role of Company Secretaries in areas such as promotion, formation and incorporation of companies, secretarial audit and certification services, signing of annual return, appointment of company liquidator and assistance to company liquidator. The Institute has, in this direction, taken appreciable initiatives to issue Secretarial Standards, which will ensure observance of uniform practices across Companies, while strengthening the Board processes, protecting individual directors, preventing mismanagement, building up investor confidence and better monitoring of compliances. I am confident that this conference would ensure that the Company Secretaries would effectively enable companies to comply with the Companies Act and other applicable corporate and economic laws with the overall objective of improving corporate governance.

3. I extend my good wishes and congratulate the Institute for providing a platform to deliberate on a wide range of topics having relevance to the practicing Company Secretaries.


(Shashi Kant Sharma)
Comptroller & Auditor General of India

Place : New Delhi

Dated : July 30, 2015

9, Deen Dayal Upadhyaya Marg, New Delhi -110 124
Tel. No. : ++91 11 23235797 • Fax : ++91 11 23233618 • email : cag@cag.gov.in



Ashok Chawla
Chairman



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Fax : +91-11-23704649
E-mail : cci-chairman@nic.in



Message

I am extremely pleased to learn that the Institute of Company Secretaries of India is organising its 16th National Conference of Practising Company Secretaries on the theme "PCS - Calibrating Competence for Achieving Excellence" on 13-14th August 2015 at Kochi, Kerala.

I am given to understand that the Companies Act, 2013 relies to a large extent on professionals like company secretaries for oversight over companies, the modern drivers of economic growth. The company law authorizes company secretaries to carry out secretarial audit and internal audit, ensure compliance with applicable laws and secretarial standards, and certify and file various returns and forms such as annual returns on behalf of the companies. The securities laws assign specific responsibilities to company secretaries. The competition law allows company secretaries to provide representational services before the Competition Commission of India and the Competition Appellate Tribunal. Various other laws have cast specific responsibilities on company secretaries. Thus, the company secretaries are being increasingly called upon to perform more and more statutory responsibilities. This elevates the expectation of the society from them. This in turn calls for excellence in professional services. Conferences such as this provide an opportunity to company secretaries to recharge themselves with excellence.

I understand that the Institute is bringing out a souvenir to commemorate the occasion. I compliment the Institute and wish it all success in its endeavours.

Ashok Chawla
(Ashok Chawla)

July 16, 2015



PROGRESS HARMONY DEVELOPMENT

Estd. - 1905

ALOK B. SHRIRAM

President



Message

I am happy to hear that the Institute of Company Secretaries of India is organizing 16th National Conference of Practicing Company Secretaries on the theme PCS - Calibrating Competence for Achieving Excellence on 13-14 August, 2015 at Bolgatty Palace and Island Resort, Kochi, Kerala.

The Institute's effort will help Company Secretaries to add real value to their role thereby increasing their impact by bringing commercial acumen, strategic understanding and soft skills in addition to their already much sought legal and governance knowledge.

Earlier, the traditional role of a Company Secretary was limited to providing support to the Board of Directors and performing statutory functions. However, the horizon of their roles and responsibilities has expanded exponentially. The Companies Act, 2013 recognises the pivotal role of a company secretary in both private and public companies. The responsibilities of the modern day company secretary have evolved from that of a "note taker" at board meetings or "administrative servant of the Board" to one which encompasses a much broader role of acting as "Board advisor" and having responsibility for the organisation's corporate governance, compliances and even legal matters of the company. The Company Secretary also has to ensure that SEBI regulations and Listing Agreements are strictly followed and adhered to.

The demand for trained company secretaries is enormous. The primary factor in this regard is the growth of our country's financial might. The policy of liberalisation has created favourable atmosphere within the country for setting up of new businesses. Further, numerous foreign companies have set up their installations in the country. All this has translated into India becoming one of the fastest growing economies of the world. Also, there is a spurt in the corporate activities such as expansions, mergers, collaborations and joint ventures. All this means a never ending demand for highly trained company secretaries.

I hope that the Institute will continue to work for the welfare of their members with great zeal.

I congratulate the Institute for promoting such initiatives and wish them a grand success.

(Alok B. Shriram)

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PHD CHAMBER OF COMMERCE AND INDUSTRY

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Unending source of inspiration



THE INSTITUTE

The Institute of Company Secretaries of India (ICSI) has been constituted under an Act of Parliament i.e., the Company Secretaries Act, 1980 (Act No.56 of 1980) to develop and regulate the profession of Company Secretaries. The ICSI functions under the jurisdiction of Ministry of Corporate Affairs.

The Institute has its headquarters at New Delhi, four Regional Councils at New Delhi, Chennai, Kolkata and Mumbai and 66 Chapters spread all over India including one Chapter at Dubai.

The ICSI has emerged as a premier professional body developing professionals specializing in Corporate Governance. Members of the Institute are rendering valuable services to the Government, Regulatory bodies, Trade, Commerce, Industry and society at large.

VISION

"To be a global leader in promoting Good Corporate Governance"

MISSION

"To develop high calibre professionals facilitating good Corporate Governance"

Objectives and Functions

The Institute

- develops a cadre of highly competent Company Secretaries for ensuring good corporate governance and effective management by registering students with 10+2 and graduate qualifications for Foundation and Executive Programmes of Company Secretaryship Course respectively with course contents in Law, Tax, Management, Accounting and Finance disciplines;
- provides postal/oral/web-based coaching and training enabling students to qualify as Company Secretaries;
- conducts Company Secretaryship Examination twice a year in June and December, at 123 centres spread all over India and an overseas centre at Dubai;
- arranges practical training for Executive/Professional Programme pass Students with Companies/Practising Company Secretaries empanelled with the Institute for the purpose;
- enrolls qualified persons as Associate/ Fellow Members of the Institute and issues Certificate of Practice to members taking up practice;
- conducts Post Membership Qualification Courses for Members of the Institute;
- publishes widely read and highly acclaimed monthly journal 'Chartered Secretary' disseminating information, expeditiously;
- brings out 'Student Company Secretary' and 'CS Foundation Course Bulletin' for the benefit of Students;

- circulates e-CS Nitor, fortnightly e-journal containing articles, development under Companies Act, 2013 and information relating to the profession;
- circulates CS Updates containing current notifications and circulars relating to various corporate and related laws, daily;
- exercises professional supervision over the Members of the Institute both in practice and in employment on matters pertaining to Professional Ethics and Code of Conduct;
- undertakes research in Law, Management, Finance, Capital Market, Corporate Governance and CSR and brings out research publications;
- formulates Secretarial Standards and brings out Guidance Notes thereon;
- renders expert advisory services to Members on intricate issues relating to various corporate laws;
- organises Professional Development and Continuing Education Programme(s), International/National/ Regional Conventions and Conference(s) directly or through its Regional Councils and Chapters, Chambers of Commerce, Department of Public Enterprises, Sister Professional Institutes and other Professional Development/ Management Bodies;
- interacts with various National and Regional Chambers of Commerce with regard to various Government Policies and Legislations;
- interacts with various international/multilateral bodies/institutions with regard to issues relating to the Corporate Governance, Business Ethics, Sustainability and Corporate Social Responsibility;
- interacts with Government both at Centre and States on various issues concerning the profession;
- undertakes benevolence of members and employees;
- interacts with Members of Corporate Secretaries International Association (CSIA) and Company Secretaries Institutes in other jurisdictions;
- bestows ICSI National Award for Excellence in Corporate Governance to best governed companies;
- bestows ICSI Lifetime Achievement Award to eminent corporate personalities for Translating Excellence in Corporate Governance into Reality;
- conducts Investor Awareness Programmes throughout the country on behalf of the Investor Education & Protection Fund, Ministry of Corporate Affairs;
- undertakes Research Projects on behalf of Government and its agencies / Institutions.

Building Professionals to Guide Corporate India

The ICSI conducts the Company Secretaryship examination to bring in high calibre professionals specialized in corporate laws, management and governance.

Stages of Company Secretaryship Course

The Company Secretaryship Course is conducted in three stages as under:

- *Foundation Programme* : Candidates who have passed Senior Secondary Examination (10+2) are eligible for admission to Foundation Programme.

- *Executive Programme* : Graduates in any stream excluding Fine Arts or candidates who have passed the Foundation Examination are eligible to join Executive Programme.
- *Professional Programme* : A registered student is admitted to the Professional Programme on passing the Executive Examination.

Training

The candidates are required to complete the following trainings :

- Three years on registration for Executive Programme; or
- Two years after passing the Executive Programme Examination; or
- One year after passing the Professional Programme Examination;
- Whole time basis during working hours.
- Fifteen days Management Skills Orientation Programme (MSOP).

The Company Secretaryship Course is conducted through distance learning and supplemented by Class Room teaching as well as e-learning. The Institute has also launched an Integrated Full time Company Secretaryship Course at CCGRT, Navi Mumbai.

Associate Membership

After successful completion of examination and training, a candidate is conferred with Associate Membership of the ICSI.

Fellow Membership

A member of the Institute is entitled to get himself enrolled as a fellow, if he is an Associate Member for atleast five years.

Code of Conduct for Members

The members of the ICSI are subject to Code of Conduct provided under the Company Secretaries Act, 1980.

Regulatory Supervision

The Institute maintains strict regulatory supervision over its members through issuing Guidelines in accordance with the provisions of Company Secretaries Act, 1980.

Disciplinary Control

The Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 made by the Central Government in exercise of powers conferred under of the Company Secretaries Act, 1980 provides elaborate provisions and fast track process for dealing with the complaints of professional or other misconduct filed under the Act.

ICSI - CCGRT

Centre for Corporate Governance, Research & Training (CCGRT)

The primary objective of the Centre is to act as a catalyst organisation in the professional development of the Indian corporate sector through qualitative research and high level corporate training with 'Corporate Governance' as the thrust area. Since its inception, the Centre has undertaken a number of activities.

Professional Development Programmes

ICSI-CCGRT conducts Professional Development Programmes (PDPs) for members, students, corporates and regulatory / government bodies. Apart from programmes for upgradation / updation of the knowledge base of Company Secretary functions, ICSI-CCGRT has designed programmes for enabling Company Secretaries to venture more effectively into newer areas.

ICSI-CCGRT provides reading material for these programmes, generally based on in-house research. These materials are also available for sale. Some such materials include Compliance with Listing Agreement, New Takeover Code (With Checklists and Formats), Revised Schedule VI, Labour Laws, Balance Sheet Analysis, Shareholders' Agreement, SMEs and Company Secretaries etc.

Integrated Company Secretaryship Course

In order to groom the students of Company Secretaryship Course better to meet the challenges of today and build a niche cadre of professionals who can shoulder the responsibilities assigned to them in an evolving business environment and ensure governance in true letter and spirit, Centre for Corporate Governance, Research & Training (CCGRT) of the Institute of Company Secretaries of India (ICSI) is offering three years Integrated Company Secretaryship Course (Full-Time).

The Course *inter-alia* covers the syllabus of the CS Course as notified by ICSI, focusing on experiential learning and, combining class room lectures, discussions, class exercises, case studies, mock meetings, industrial visits etc. and training in Soft skills, Leadership Traits and other Life Skills. Students would be exposed to real life organisational situations, professional dilemmas etc. to enable them to develop holistic perspective towards decision making and governance. In addition, CCGRT will also facilitate the following for the students of this Course:

- Registrations and Enrollments with ICSI
- Educational Loans for the Course
- Internship/Training
- Hostel Assistance around CCGRT for outstation candidates on request
- Placement Assistance

This would not only prepare the students to complete the Company Secretaryship course, thereby making them eligible to be the members of ICSI but also build their soft skills enabling them to be the governance leaders of tomorrow.

Certificate Courses

The Centre also conducts a Certificate Course on Valuation for the Members of ICSI and professional pass students of CS Course in order to give an insight into various conceptual, technical & procedural aspects of valuation, to provide a framework for business valuation & give practical exposure on applying the valuation principles in different situations and to enable them to carry out the valuation assignments with confidence & commendable skills. This becomes all the more important with the new Companies Act bringing in the concept of registered valuers for carrying out valuation assignments.

Annual Membership Scheme

ICSI-CCGRT continues with its Annual Membership Scheme, which is an invitation to all professionals, individuals and corporates, to attend a variety of Professional Development programs free of cost by making one-time payment. ICSI-CCGRT has recently introduced a new flexible Annual Membership Scheme, which comprises of four different kinds of schemes; including a special scheme for members outside Mumbai.

Residential Management Skills Orientation Programme (R-MSOP)

An activity added to ICSI-CCGRT's training initiatives for students pursuing Company Secretaryship course is through the Residential Management Skills Orientation Programme. ICSI-CCGRT organizes Residential MSOPs where students from all over India, including from non-metro cities and abroad take advantage and get the opportunity for interaction with expert professional faculty. In addition to the core subjects of MSOP, the participants are also exposed to topics on soft skills, general management, human relations, financial markets etc. Students also get an opportunity to enhance their communication skills, presentation skills and co-operative learning through presentation of group projects and case studies before a panel of experts. ICSI-CCGRT with its amenities, well designed programme schedule incorporating varied topics, adept faculties possessing rich exposure and expertise in their relative fields and placement assistance has helped create a niche for its R-MSOP.

Learning through IT

The Centre is the facilitation centre earmarked for conduct of e-Management Skills Orientation Program (e-MSOP) for the benefit of individuals occupying very senior positions, who have passed the CS examinations but have been unable to apply for membership due to time constraint for attending physical MSOP. Similarly, the Centre also organises e-Executive Development Programme (e-EDP) and e-Student Induction Programme (e-SIP) to enable students, particularly students at far-off places to study at one's own convenience without physical travel and for as many times as one wishes. It also helps in standard faculties being available to the not so privileged students from distant places to benefit from their immense knowledge and exposure. Thus quality education is made available to masses at low costs.

Facilitating the formulation of Secretarial Standards and Guidance Notes

The Centre provides technical and administrative support to the Secretarial Standards Board (SSB) of ICSI in convening their meetings and assists SSB in formulation and finalisation of the Secretarial Standards & Guidance Notes of ICSI. This has gained importance with the new Companies Act, 2013 mandating compliance with certain secretarial standards by the companies. The SSB comprises of

eminent members of the profession holding responsible position in well-known companies and as senior members in practice, as well as representatives of regulatory authorities, such as the Ministry of Corporate Affairs, Securities & Exchange Board of India and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.

Research Related Activities

In order to foster and nurture proactive research among Company Secretaries and other researchers, ICSI-CCGRT was entrusted with the responsibility of administering the ICSI Research Initiative. The basic idea has been to develop sound information base and insights into corporate /related laws, their delivery mechanism, need for harmonization / changes in the light of emerging realities, corporate governance etc., and to use the developed knowledge base for brand building and interacting with the Government, regulatory and international agencies.

CCGRT has, since inception, completed a number of commissioned research projects for outside agencies/institutions.

Infrastructure facilities

The facilities at ICSI-CCGRT have been upgraded. ICSI-CCGRT with its modern infrastructure facilities comprising 180 seats, well-appointed auditorium with ultra modern audio visual acoustics, state-of-the-art training and conference halls of varying capacity, equipped with world class audio – visual facilities, residential wing of 22 air-conditioned self-contained rooms is now equipped to organize further high end training programmes.

ICSI - CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

Plot No. 101, Sector 15, Institutional Area, (Near Total CAR Mall)

Palm Beach Road, CBD Belapur, Navi Mumbai-400 614

Phones : 022-27577814-15, 022 – 4102 1516; Fax : 022-27574384; E-mail : ccgrt@icsi.edu

LIST OF PUBLICATIONS

BOOKS	<i>Price (Rs.)</i>
— SS-1 Secretarial Standard on Meetings of the Board of Directors	50.00
— SS-2 Secretarial Standard on General Meetings	50.00
— Handbook on Arbitration and Alternative Dispute Resolution	175.00
— Handbook on Internal Audit of Operations of Depository Participants	150.00
— A Guide to Company Secretary in Practice	200.00
— CG Insights	200.00
— DNA of Integrity	200.00
— Independent Directors- a Handbook	100.00
— Board Committees-A Handbook	
— Corporate Social Responsibility-An Engine for inclusive growth	100.00
— Referencer on Reconciliation of Share Capital Audit	100.00
— Referencer on Certification of Securities Transfer	100.00
— Capital, Money and Commodity Market – Terms One Should Know	250.00
— Internal and Concurrent Audit of Depository Participants	200.00
— Gender Diversity in Boardrooms (Revised edition)	100.00
— Responsibly Managing e-waste	100.00
— Sustainable Reporting for Sustainable Future	100.00
— Referencer on Transfer Pricing	100.00
— Shareholder Activism	250.00
— Every Drop Counts	150.00
— Essential Rules of Interpretation of Statutes for CS	400.00
— Insurance Handbook	200.00
— Guide to Companies Act 2013	780.00
— Companies Act 2013 with Companies Rules and Forms	760.00
— Company Law Manual	900.00
— Competition Law in India (In Nutshell with Checklist)	100.00
— One Person Company (Ready Reckoner)	100.00
— Guidance Note on Secretarial Audit (Release 1.2)	500.00
— Guidance Note on Annual Return	200.00

— Circulars, Notifications, Orders, Amendment Rules under Companies Act, 2013 - A Compendium	100.00
— Legal & Professional Writing & Drafting in Plain Language	100.00
— E-Voting (Ready Reckoner)	100.00
— Companies Act, 2013 A Ready Referencer (Revised Edition)	100.00
— FAQs on the Companies Act, 2013	100.00
— Challenging Opportunities for Practising Company Secretaries in Labour Laws	400.00
— Compounding of Contraventions under FEMA	150.00
— Settlement Orders under SEBI Act	150.00
— Listing Agreement Referencer	300.00
— Training Guide	100.00
— Referencer on Pre-certification of e-forms	250.00
— Corporate Governance Clause 49 of Listing Agreement vis-à-vis Companies Act, 2013	150.00
— Takeover Code – A Referencer for Company Secretaries	300.00
— Gender Diversity in Boardrooms (Revised Edition)	100.00
— E-Governance – A Handbook	100.00
— Directors Handbook	100.00
— NBFC – Compliance Handbook	100.00
— Members Handbook	150.00
— Compliance Handbook – General Insurance	100.00
— A Guide to Board Evaluation	200.00
— Peer Review Manual (Revised Edition)	200.00
— Schedule III of Companies Act, 2013	
OTHERS	
— Badge	50.00
— Tie	500.00
— T-shirt	300.00
— DVD on Primer on Companies Act 2013	100.00
— CS Journal on CD ROM (Tenth edition 1971 to 2012)	600.00

CENTRAL COUNCIL

President : CS Atul H Mehta

Vice-President : CS Mamta Binani (Ms.)

Members

(in alphabetical order)

CS Ahalada Rao V
CS Amardeep Singh Bhatia
CS Ashish C Doshi
CS Ashish Garg
CS Gopal Krishan Agarwal
CS Gopalakrishna Hegde
CS Mahavir Lunawat
CS Makarand M Lele
CS Ramasubramaniam C
CS Ranjeet Kumar Pandey
CS Rajesh Sharma
CS Rajiv Bajaj
CS Santosh Kumar Agrawala
CS Shyam Agrawal
CS Satwinder Singh
CS Vijay Kumar Jhalani
CS Vineet K. Chaudhary
CS Yamal Ashwinkumar Vyas

Chief Executive & Officiating Secretary
CS Sutanu Sinha

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
SOUTHERN INDIA REGIONAL COUNCIL 2015



CS Nagendra D. Rao
Chairman



CS P.S. Shastry
Vice-Chairman



CS P. Sivakumar
Secretary



CS S. Dhanapal
Treasurer



CS Mohan Kumar A
Member



CS Ganapathi G.M.
Member



CS Ramakrishna Gupta R.
Member



CS Ahalada Rao V.
Member [Ex-Officio]



CS Gopalakrishna Hegde
Member [Ex-Officio]

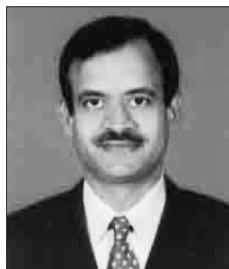


CS Ramasubramaniam C.
Member [Ex-Officio]



Mr. B.K. Bansal
Member [Co-opted]

**THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
KOCHI CHAPTER MANAGING COMMITTEE 2015**



CS S.P. Kamath
Chairman



CS Syam Kumar R.
Vice Chairman



CS Arun K. Kamalolbhavan
Secretary



CS Sreevidya P.M.
Treasurer



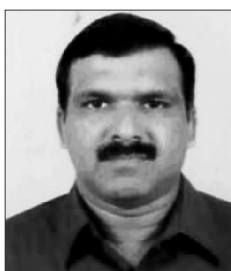
CS Jayan K.
Member



CS Jinu Mathen
Member



CS Mithun B. Shenoy
Member



Mr. V.M. Prasanth
Co-opted Member



CS P. Sivakumar
Member [Ex-officio]



CS G. Anil Kumar
Co-opted Member

Know your Hosting Chapter



KOCHI CHAPTER

39 years... and beyond

The Kochi Chapter is the first Chapter of the ICSI in the State of Kerala. It came into existence on 21st August, 1976. It has been in the forefront to create professionally qualified members and has been functioning as a role model and leading Chapter in the State. The Chapter has several achievements to its credit, that includes, organizing the Southern India Regional Council Conference in 1994, first State Conference of Student Company Secretaries in 1999, first State Conference of Company Secretaries in 2009 and several other innovative programmes. Each such initiative of the Chapter introduced a change and captured the attention of the CS community in general.

The Chapter in its 39 years, witnessed several selfless contributions and efforts of esteemed senior members of the profession. Thus the past has always been an inspiration to new members coming into the fold, to build up the Chapter.

The Chapter is now functioning from its new premises “ICSI House” at Judges Avenue, Kaloor, Kochi, which was acquired in 2013. It was inaugurated by the then President CS S.N. Ananthasubramanian on 3rd January 2014.

The growth of the Chapter can be traced to its humble beginnings. It started functioning from a small room belonging to a relative of the founder Chairman. Later on, for many years, the Chapter functioned from the residences of the office bearers. Until 1991, the Chapter was not having even a part time employee to carry out the day to day functions. Oral Coaching Classes were started in 1991 in a rented hall. In May, 1995, ICSI purchased a space for the Chapter, made possible with the sheer hard work of senior members.

The Chapter has been functioning as a symbol of unity among the members and it is also notable that over a period of 39 years there were only 15 Chairmen for the Chapter.

The momentum obtained from organizing the first State Conference of Company Secretaries, was phenomenal. The membership and students enrolment from the Chapter increased substantially. Regular Professional Development Programmes, workshops, seminars and various training programmes for students were organized successfully with very active participation. The confidence gained from all these encouraged the Chapter to host the first ever National Conference of Practising Company Secretaries in the State of Kerala.

The present Managing Committee of Kochi Chapter is a perfect blend of experience and enthusiasm. The Committee has been managing the Chapter in the best interest of the CS fraternity.

Hosting the National PCS Conference in August 2015 is a proud privilege to Kochi Chapter. The Managing Committee of Kochi Chapter dedicates this as a tribute to the committed efforts of its senior members...





COUNCILS & COMMITTEES

The Council

President

CS Atul H. Mehta

Vice President

CS Mamta Binani (Ms.)

Members

CS Gopal Krishna Agarwal

CS Shyam Agrawal

CS Rajiv Bajaj

CS Ramasubramaniam C.

CS Ashish C. Doshi

CS Gopalakrishna Hegde

CS Makarand M. Lele

CS Ranjeet Kumar Pandey

CS Satwinder Singh

CS Santosh Kumar Agrawala

CS Ahalada Rao V.

CS Amardeep Singh Bhatia

CS Vineet K. Chaudhary

CS Ashish Garg

CS Vijay Kumar Jhalani

CS Mahavir Lunawat

CS Rajesh Sharma

CS Yamal Ashwinkumar Vyas

Practicing Company Secretaries Committee

Chairman

CS Ashish Garg

Members

CS Ahalada Rao V.

CS Makarand M. Lele

CS Ramasubramaniam C.

CS Vineet K. Chaudhary

CS Ashish C. Doshi

CS Rajiv Bajaj

CS Ranjeet Kumar Pandey

Southern India Regional Council (ICSI – SIRC)

CS Nagendra Rao D.

CS P.S Shastri

CS Sivakumar P.

CS S. Dhanapal

Mr. B. K . Bansal

CS Ramasubramiam C.

CS G. M. Ganapathi

CS Gopalakrishna Hegde

CS A. Mohan Kumar

CS Ramakrishna Racharla Gupta

CS Ahalada Rao V.

Chairman

Vice Chairman

Secretary

Treasurer

Co-opted

Ex-Officio

Member

Ex-officio

Member

Member

Ex-officio

16th National Conference of Practicing Company Secretaries Organising Committee

CS Ashish Garg	Chairman
CS Ahalada Rao V	Member
CS C. Ramasubramaniam	Member
CS Gopalakrishna Hegde	Member
CS Sutanu Sinha	Member
CS Atul H. Mehta	Spl. Invitee
CS Mamta Binani (Ms.)	Spl. Invitee

16th National Conference of Practicing Company Secretaries Organising Sub-Committee

CS Ahalada Rao V., Council Member	Chairman
CS Ramasubramaniam C., Council Member,	Vice Chairman
CS Gopalakrishna Hegde, Council Member	Member
CS Nagendra Rao D., Chairman, SIRC	Member
CS S.P Kamath , Chairman, Kochi Chapter	Member

16th National Conference of Practising Company Secretaries

Programme Director

CS Ahalada Rao V.

Joint Programme Director

CS Ramasubramaniam C.

Programme Coordinator

CS Nagendra Rao D.

Joint Programme Coordinator

CS Sivakumar P.

Programme Facilitator

CS S.P Kamath

16th National Conference of Practising Company Secretaries - Functional Committees

Local Reception Committee

CS A. Mohan Kumar	Chairman
CS Syamkumar	Vice Chairman
CS Jayashree C.O.	Member
CS Prasanth V.M	Member
CS Premjith S.	Member
CS Rajesh A.	Member
CS Abhilash N.A	Member
CS Sharada S.C	Member
CS Manoj Kumar V.R	Member
CS Indran A.V	Member

Tours & Transport Committee

CS S. Dhanapal	Chairman
CS Anilkumar G.	Vice Chairman
CS R. Venkateswararan	Member
CS Pracheta M.	Member
CS Asish Mohan	Member
CS Vivek Kumar	Member
CS Liju K Johnson	Member
CS Vinod Mohan	Member
CS Sahkamuri Kavitha Rani	Member
CS Subba Rao D.V	Member
CS Thota Hari Babu	Member
CS Ullas Kumar M.	Member

Public Relations Committee

CS Nagendra D. Rao	Chairman
CS Mithun B. Shenoy	Vice Chairman
CS Sashikanth	Member
CS Vasudevan M.	Member
CS Jeevan Varghese	Member
CS Arun K. Kamalolbhavan	Member
CS Bilu Balakrishnan	Member
CS Yogindunath	Member
CS Harikrishanan R Nair	Member
CS Rishikesh P.	Member
CS Paramashivan S.	Member
CS Rai P. V	Member

Hospitality Committee

CS Ganapathi G.M	Chairman
CS Uthamkumar U.K	Vice Chairman
CS Vijayan	Member
CS Santhanam N.	Member
CS P. Ramya	Member
CS Sreevidhya	Member
CS Kala V.	Member
CS Jayashree C.O	Member
CS Rajesh K. Pillai	Member
CS Jayaraj T.	Member
CS Nair Karunalaiaam Sheeba	Member
CS Madaiah Ajay B.	Member

Cultural Committee

CS Nagendra D. Rao	Chairman
CS Narasimha Pai	Vice Chairman
CS Gautam R. Mallaya	Member
CS P. Rajavel	Member
CS Jinu Mathen	Member
CS Rajiv K.	Member
CS G. Shankar	Member
CS Jyothi Savitri	Member
CS Kishore kumar V.	Member
CS Kulothungan S.	Member
CS Dhanashekaran R.	Member
CS Raghavendra	Member

Fund Raising Committee

CS P.S Shastry	Chairman
Dr. Baiju Ramachandran	Vice Chairman
CS Badrinarayanan S.	Member
CS Sreekrishnakumar	Member
CS Asique A.M	Member
CS Sunil Aggarwal	Member
CS Sivakumar P.	Member
CS Baiju T.	Member
CS Satheeshan	Member
CS Satheesh V.	Member
CS Ravi Anand	Member
CS Sahkamuri Kavitha Rani	Member

Delegates Committee

CS Ramakrishna K. Gupta	Chairman
CS Arun K. Kamalolbhavan	Vice Chairman
CS V .Vijayaraghavan	Member
CS Chatakondur Suman	Member
CS Ramachandran	Member
CS Mithun B. Shenoy	Member
CS Gopi Mohan	Member
CS Vimal S.V	Member
CS Hariram R.	Member
CS Krishnan N.N	Member

Souvenir Committee

CS Sivakumar P.	Chairman
CS Jayan K.	Vice Chairman
CS Solaiyappan S.	Member
CS Ram Ganesh	Member
CS Rai P. V	Member
CS Susan Abraham	Member
CS Reshma P.	Member
CS Manjusha Menon	Member
CS Deepak Jijo	Member
CS Vasudeva Rao Devaki	Member

Local Advisory Committee

CS Sivakumar P.	Chairman
CS P.K Krishnamurthy	Vice Chairman
CS A.S Sivadasan	Member
CS Zibi Jose	Member
CS K.O. Kuriachen	Member
CS S.P Kamath	Member
Mr. A. Sehar Ponraj	Member

16TH NATIONAL PCS CONFERENCE @ KOCHI
STUDENT VOLUNTEERS

Coordinators:

1. MOHAMMED NIYAS A V
2. DEEPA DEVI

Members :

3. DIJO MATHEW
4. SUNNY KUMAR
5. ATUL GANESH S
6. ABHIJITH
7. VINOD S KUMAR
8. NOUFAL P N
9. M BALAMURALI KRISHNA
10. ANIL AUGUSTINE
11. SREERAJ V
12. SHAJIL MUHAMMED ALI
13. AMBILI M
14. NAVEENA P THAMPI
15. HASNU ASHRAF
16. REEBA KURIAN
17. KAGAL BOBAN
18. VEENA VISHWANATHAN
19. AARATHI VARMA
20. MEGHA VARGHESE
21. NAMITHA ROSE AUGUSTINE
22. VANDANA V KAMATH
23. DIVYA ARORA
24. NUMRATA ARORA
25. SANGEETA G
26. KRATI KABRA
27. POOJA MARIAM JOSE

INAUGURAL SESSION

AHALADA RAO V.



CS Ahalada Rao V. is a Science graduate and Master of Laws from Osmania University, and Master in Financial Management from Pondicherry University. A fellow member of the Institute of Companies Secretaries of India, he is also an associate member of Chartered Institute for Securities and Investment, U.K.

He has been elected to the Central Council of ICSI for the term 2015-18. CS Ahalada Rao V. has over 16 years of corporate experience and has given various expert opinion and advice on all the matters of Corporate Laws, served as Advocate during the year 1999- 2001, Representating before the Company Law Board and Consumer Forums- from 2001 to till date, He has rich experience in Secretarial works.

He is a Member of Capital Market, IPR and Corporate Affairs Sub-Committee of The Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI), Member of Finance & Taxation Panel of the Confederation of Indian Industry – AP Branch for the year 2012 – 13, Certified 'SEBI Financials Resource Person'.

CS Ahalada Rao V. has been Chairman of Hyderabad chapter of SIRC of ICSI for the year (2006). He has also received appreciation from government department, i.e., Posts & Telecommunications Audit Office for delivering lecture on "Books of Accounts under Companies Act".

CS Ahalada Rao V. Was Elected as the Managing committee member for the term 2004-06 of ICSI -of Hyderabad Chapter with a highest majority. He was also selected as Best Participant and Awarded in 17th Secretarial Modular Training Program (SMTP) (currently this programme is known as MSOP) organized by Hyderabad Chapter.

He has helped in imparting training and for getting suitable jobs to a number of CS students. He was the Secretary of All India Federation of Tax Practitioners south zone for the year 2010-2011.

CS Ahalada Rao has been Faculty to Executive Students of Company Secretary Course of Hyderabad Chapter for Economic Labour and Industrial Laws, from November 2002 onwards. He has been delivering lectures to reputed organizations on Accounting Standards, Company Law and Industrial Laws. He has also delivered lectures on Securities Laws & Regulation of Financial Markets for the Students of M.Com. He has been a Career Counselor at the Program conducted by the Hyderabad Chapter of SIRC of ICSI in the year 1996.

CS Ahalada Rao V. has written numerous articles in various professional journals and newspapers. He is a regular faculty at seminars and workshops conducted by various professional bodies. He conducted programmes on Companies Act, 2013 at various organizations and chapters across southern India. In the year 2013, Mr. Ahalada Rao was awarded certificate on "Business Valuation and Corporate Restructuring" by the Institute of Cost Accountants of India.

C. RAMASUBRAMANIAM



CS C.Ramasubramaniam is a Fellow Member of the Institute of Company Secretaries of India and holds Masters Degree in Financial Management from Pondicherry University. He did his Bachelor's Degree in Commerce at RKM Vivekananda College, Chennai.

He has been in Practice from the year 2004 and is an advisor for many companies in Chennai, Bengaluru and Pondicherry. He is also a Director of RAYS Consulting Private Limited, a company providing Corporate Services.

CS Ramasubramaniam has his office at Chennai, Erode and Coimbatore. His area of specialisation includes Corporate Laws, Indirect Tax, FEMA, and Appearance before CLB, Drafting of Agreements, and Scheme of Merger/Demerger.

Currently, he is the elected member of the Central Council of ICSI for the term 2015-2018. Earlier he was an Elected Member of Southern India Regional Council of ICSI (SIRC of ICSI) for the term 2011-2014. He is the youngest member to contest and get elected to SIRC at the age of 30 (Thirty) and also to the Central Council of ICSI at the age of 34 (Thirty Four). He was the Member of SIRC for the year 2011 and 2012, Treasurer for the Year 2013 and Secretary for the year 2014 and headed many committees at regional level. He is also a regular faculty for MSOP sessions organised by SIRC of ICSI.

Presently CS Ramasubramaniam is the Chairman of Information Technology Committee of ICSI and also the member of Executive Committee, Finance Committee, PCS Committee, Professional Development Committee, Financial Services Committee, CCGRT Committee , PMQ Course Committee and Research Committee and also member of HR Core Group of ICSI.

NAGENDRA D. RAO



CS Nagendra Rao, a Commerce graduate and Masters in Law from Bombay University is a Fellow Member of the Institute of Company Secretaries of India. Presently, he is a whole time Practicing Company Secretary.

He has worked in multinational companies like Godrej Group of Companies, Bombay; Indo Nissin Foods Limited, Bangalore & Sobha Developers Limited, Bangalore, looking into Legal & Secretarial aspects. He has handled IPO's, Right Issues, and Mergers Issues.

He was elected to the Managing Committee of the Bangalore Chapter of the ICSI for the period 2007-2010 and served the Bangalore Chapter of the ICSI as Secretary - 2007, Vice-Chairman - 2008 and Chairman - 2009. He has been elected to the Southern India Regional Council for Two terms 2011 - 2014 & 2015 - 2018 and presently Chairman of the Southern India Regional Council.

He was the member of the Corporate Affairs and Taxation Committee of the Bangalore Chamber of Industry & Commerce during the period 2000 - 2004. He is Director in Avava Environs Pvt. Ltd., and is a guest lecturer in Christ University, since 2004. He is also regular faculty for the MSOP conducted by the Bangalore Chapter.

S. P. KAMATH

CS S P Kamath, Chairman of the Cochin Chapter of ICSI is a Commerce Graduate and a Fellow Member of the Institute of Company Secretaries of India and also holds Masters Degree in Law with specialization in Corporate Laws. He started his career as an Executive Trainee with Shriram Group, New Delhi. He has worked for Corporate Sector and Industry over 25 years holding senior position.

He has been closely associated with the activities of the Institute and was responsible for holding the First Kerala State Conference of Company Secretaries in 2009. He was also instrumental in holding programmes like Training Orientation Programme (TOP), Crash Course, Weekly students programme etc. for the first time in the history of Cochin Chapter.

He was the member of the Economic Affairs Panel of Confederation of Indian Industry (CII) Cochin, Member of Expert Committee on Banking and International Trade and Member of Expert Committee on Taxation and Company Affairs of the Cochin Chamber of Commerce and Industry. He is also a former member of the Regional Advisory Committee of the Commissioner of Central Excise, Customs and Service Tax, representing Organised Sector, Service Tax Sector and SSI Sector.

CS Kamath is presently employed with Amalgam Group Companies, Cochin as the Vice President and Company Secretary heading the Corporate Legal and Company Affairs Department of the Group.

ASHISH GARG



CS Ashish Garg, a Post Graduate in Economics and Commerce and Graduate in Law from the Vikram University, Ujjain, is a Fellow Member of the Institute of the Company Secretaries of India (FCS). He has been elected to the Central Council of the ICSI for the term 2015-2018, first one from Madhya Pradesh and Chhattisgarh in the history of ICSI.

Mr. Ashish Garg is highly concerned about the Profession and actively participates in the activities of the Institute. He was the Secretary and Vice Chairman of Indore Chapter of the ICSI in 2004 and 2005. He was the member of the Western India Regional Council of the ICSI for two terms from 2007 to 2014 and Secretary of WIRC in 2013 and 2014.

He is a Practicing Company Secretary at Indore for more than last 14 years and specialises in corporate laws, organizational restructuring and corporate legal counselling to companies and appearances before Company Law Board and Ministry of Corporate Affairs. He has been the visiting faculty at various Management Institutes of Indore for MBA and other Professional courses and delivers lectures regularly as guest speaker in the conferences of Company Secretaries and Chartered Accountants.

MAMTA BINANI



CS Mamta Binani has been elected as Vice- President of the Institute of Company Secretaries of India for the year 2015 w.e.f. 19th January, 2015.

She is a Commerce graduate and a Fellow Member of the Institute of Company Secretaries of India. Ms. Binani has been a meritorious student throughout her education career. She was an All India Topper in the Intermediate Examinations of The Institute of Company Secretaries of India, amongst all the Lady Candidates in India and had ranked 14th on an All India Basis. In the Final Examinations, she stood all India first in the subject “Company Law”. She is practising as a Company Secretary for over 17 years now and also has a degree in law.

Ms. Binani is a facilitator for some very prestigious programmes conducted by the Professional Institutes of India. She is a regular and acclaimed speaker in the professional forums on subjects of academic interest including inter-personal & communication skills. She takes keen interest in delving into corporate and professional issues and is consulted on various contemporary matters by the Industry. She is also an empanelled trainer with ICICI Bank Limited, where she facilitates training in soft skills up to the chief managerial level on an All India Basis. She is a trainer with the Mutual Fund Industry, training people in products and processes. She is hugely associated with the financial sector, education sector and is an experienced mentor and counsellor to young professionals & students. She also serves as an Independent Director in few companies.

Ms. Binani has been the Chairperson of the Eastern India Regional Council of The Institute of Company Secretaries of India in 2010. She is the first lady to have held the position, amongst all the 3 Institutes, namely The Institute of Chartered Accountants of India, The Institute of Cost Accountants of India and The Institute of Company Secretaries of India, in the Eastern Region. She loves to interact with the student’s fraternity and is an energetic contributor in activities pertaining to development of the society. She holds various executive positions in prestigious chambers of commerce, study circles, NGO’s and associations.

She has been conferred with the “Bharat Nirman Awards” in the year 2010 for “Excellence in Professional Services” and is the first Company Secretary to have received this prestigious award. She also received the “Tejaswini Award” in the year 2010.

She writes for leading journals and magazines on a regular basis and contributes articles and papers in various house journals of professional institutes, on topics of varied interests. She is very regular with her informative & academic blogs.

ATUL H. MEHTA



CS Atul Hasmukhrai Mehta has been elected as President of the Institute of Company Secretaries of India for the year 2015 w.e.f. 19th January, 2015. He is B.Com, BGL and a Fellow Member of the Institute of Company Secretaries of India.

Initially, he has served the industry for 6 years as Company Secretary, in various industries. Along with Secretarial Department, he also headed departments like, Legal, Compliance, HR .

Thereafter, he laid his pioneering step in the area of consultancy and practice and set up the firm Mehta & Mehta. Since, past 16 years, he is practicing as company secretary, partner Mehta & Mehta.

CS Atul Mehta, is actively associated with Western India Regional Council (WIRC) of Institute of Company Secretaries of India (ICSI) and the activities of the Central Council of the Institute of Company Secretaries of India. He was the Chairman of Western India Regional Council (WIRC of ICSI) in 2009. He was Central Council Member of the ICSI for the term 2011-2014 and reelected to the Central Council for the term 2015-18. He is regular faculty for Seminars, study circle and several training programs of ICSI. He is also speaker at seminars organized by other institutions like IMC, SME Chambers etc.

SIVAKUMAR P.



CS. Sivakumar P. is the Managing Partner, SVJS & Associates, Company Secretaries, Kochi. He holds Master Degree in Commerce and is a Fellow member of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and Certified Management Accountant credential from IMA (USA). CS. Sivakumar has over 30 years of multi-disciplinary experience in the public, private and joint sectors and extensive experience in procedural and advisory services on Corporate Restructuring, Amalgamations, Corporate Governance, Capital Issues, Corporate Governance and SEBI matters.

He was the Public Representative Director of Madras Stock Exchange Ltd. and its subsidiary MSE Financial Services Ltd. and was Director and Chairman - Audit Committee of Inter Connected Stock Exchange of India Limited, Mumbai.

CS. Sivakumar was the Chairman of Institute of Cost Accountants of India, Cochin Chapter for the year 2012 -13 and Chairman Kochi Chapter of the Institute of Company Secretaries of India for the years 2010, 2011 and 2014. He is Secretary of Southern Indian Regional Council of Institute of Company Secretaries of India for the year 2015 -16.

ASHISH CHAUHAN



Shri Ashish Chauhan is the MD & CEO of the BSE Ltd., Asia's first stock exchange. He serves on the Board of ICCL, CDSL, BSE Training Institute, BFSI Sector Skill Council and Marketplace Technologies Limited. He is also a member of the Board of Governors of IIIT D&M, Jabalpur and a few SEBI committees. He currently is the Chairman of the Advisory Committee on Technology of FMC, member of several SEBI Committees (including PMAC and SMAC) and has served on various other government and regulatory committees; CBDT and FMC, among others in the past. He is also a member of the Advisory Board of Lend a Hand India – a NGO working in implementing vocational skill development programs for rural and urban youth by providing them practical training at high school level. He is a member of the Capital Markets Committee of FICCI, National Council on Corporate Governance & Regulatory Affairs of CII and Financial Sector Development Council of CII.

He has recently been a recipient of the Zee Business award for business transformation.

Shri Ashish has over 22 years of experience in Financial Markets and technology. Shri Ashish was part of the 5 member team that set up NSE and set up NSE's equities and derivatives segments and created the NSE Fifty (Nifty) index. He was the Group CIO of the Reliance group and was ranked amongst the top 50 CIOs in the world by several magazines and institutions. He also headed the Corporate Communications for Reliance group in between and was the CEO of Mumbai Indians.

Shri Ashish holds a B.Tech in Mechanical Engineering from IIT Bombay and PGDM from IIM Calcutta.

JUSTICE P. SATHASIVAM



Shri Justice P. Sathasivam was born into an agricultural family as the son of Palaniswamy and Natchiyammal at Kadappanallur Village near Bhavani in Erode district, Tamil Nadu on 27 April 1949. Graduating from the Government Law College, Madras, he enrolled as an advocate and was appointed to the post of Additional Government Pleader. Subsequently, he became the Special Government Pleader in the Madras High Court. He also served as Legal Adviser for several state-owned corporations, municipalities and banks. He was appointed a permanent judge of the Madras High Court in 1996 and transferred to the Punjab and Haryana High Court in 2007. He was elevated to the post of Judge of the Supreme Court on 21 August 2007. He was sworn-in as the 40th Chief Justice of India on 19 July 2013 and retired on 26 April 2014.

Shri Justice Sathasivam has to his credit several path-breaking judgements which include the Reliance Gas Judgement wherein he observed that 'in a national democracy like ours, the national assets belong to the people'. He also delivered the verdict in the triple-murder case of Stains and upheld the conviction of Dara Singh. Along with Justice B.S. Chauhan, he delivered the judgement in the 1993 Mumbai blasts case, sentencing several accused persons including Bollywood Actor Sanjay Dutt to five years imprisonment. This was the biggest case heard in the history of Supreme Court. In consonance with the international conventions and treaties, he delivered another important judgement in Rajiv Gandhi assassination accused case holding that unexplained and unreasonable delay in disposal of mercy petitions by the President leads to commutation of death sentence into life sentence. He has travelled widely creating awareness of people's rights and privileges.

Shri Justice P. Sathasivam assumed office as the Governor of Kerala on 05 September 2014.

SUTANU SINHA



CS Sutanu Sinha, Chief Executive and Officiating Secretary of the Institute of Company Secretaries of India (ICSI), is a Fellow Member of the ICSI and also a Member of the Institute of Chartered Secretaries and Administrators, London (UK). He obtained his Masters in Commerce from Calcutta University, as well as stood First Class First in the Post Graduate Diploma in German Examination of Calcutta University.

Before assuming the office of Chief Executive of the Institute of Company Secretaries of India (ICSI) from 1st January, 2013, Mr. Sinha was heading the Academics & Professional Development Directorate of ICSI.

After an accomplished career of over twenty six years as a Corporate Professional, CS Sinha has vast work experience in Company Secretarial, Corporate Functioning, Corporate Planning, Finance, International Trade and other allied areas in the course of his previous assignments in MNC/PSUs.

An avid reader, a prolific writer and corporate analyst, Mr. Sinha has contributed several papers and articles on different aspects of Governance and Management and addressed at various Workshops, Seminars and Conferences, both in India and abroad.

His areas of specialization include Corporate Governance, Sustainability, Banking and Enterprise Resource Planning. He is also Global Corporate Governance Forum (GCGF), IFC trained Trainer for Directors Development Programmes and Corporate Secretaries.

He has contributed significantly in ICSI initiatives to promote corporate governance in India and overseas.

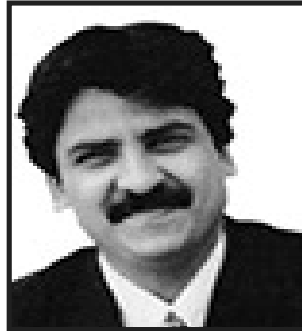
In 2013 he was awarded scholarship by Cambridge University for attending 'The Prince of Wales - Business and Sustainability' leadership programme. On 17th October, 2011 he was appointed by the Government of India as Director in the Board of Canara Bank, for a term of three years and during his tenure was also the Chairman of the Audit Committee of the Bank.

CS Sinha is Chairman of the Expert Committee on Corporate Governance & CSR of the Association of Business Chambers of Commerce and Industry (ABCCI). He is Member of the Independent Evaluation Committee of IBA, a Committee constituted as per Reserve Bank of India Framework. He is also a Permanent Invitee in the Post Graduate Board of Studies of Calcutta University, NND College.

He is also director on the Board of ICSI-Governance Research and Knowledge Foundation (GRKF). Fluent in many foreign languages, his hobby traverses from instrumental music, painting, photography to Documentary Film-making.

FIRST TECHNICAL SESSION
Secretarial Audit & Secretarial Standards –
Expectations & Experiences

PAVAN KUMAR VIJAY



CS Pavan Kumar Vijay, Managing Director, Corporate Professionals Capital Private Limited, is a Post Graduate in Commerce from, St. John's Collage, holds a Degree in law from Campus Law Center, Delhi University and is a Fellow Member of ICSI. As Managing Director, Corporate Professionals Capital Private Limited, he has profound expertise in merchant banking activities including fund raising & financial structuring, corporate restructuring, due-diligence, Corporate governance information technology skills, valuation business, transaction advisory skills, company law.

Before earning fame in the corporate world, he was honored to become one of the youngest Presidents of the ICSI in the year 2003. He is chairman of Secretarial Standards Board and Chairman of M & A Council of Assocham, Member of Capital Market Committee of PHD Chamber and Working Group of MCA for Revamping of Society Act. He served as a member of Appellate Tribunal of Disciplinary committee of MCA.

Being a multi disciplinary personality he has richly contributed towards working of various committees like Capital Market and Financial Services Committee of the PHDCCI as Member; Indian Institute of Corporate Affairs, Member; Business Advisory Group of the Stock Exchange, Mumbai, Member; Special Invitee-"E-Corporate Business Working Group" and Member, Accounting Standards Committee of the MCA; Primary Market and Mutual Fund and Narayan Murthy Committee on Corporate Governance of SEBI as Member and Co-opted Member of the Executive Committee of the Association of NSE Members of India and was also a convener of Corporate Governance Committee with Ministry of Corporate Affairs. He was also actively involved and contributing as a trustee for "Consumer Education and Research Centre" Ahmadabad.

Mr. Vijay has attended a week long Board Leadership Programme, South Asia, organised by Global Corporate Governance Forum, IFC, World Bank Group, Washington, DC and was a faculty in "Train the Trainer-Corporate Governance Board Leadership Programme" organised by Global Corporate Governance Forum, IFC, World Bank Group, Washington, DC in Mumbai and New Delhi.

Another hidden quality of Mr. Vijay is that he is a prolific writer and has recently published two books on Analysis of Companies Act, 2013 and Insight into Companies Bill, 2012 and other books covering Takeover Regulations, on the basis of various researches, one relating to "Open Offers" and other relating to "Takeover Queries". He has co-authored two books titled "Depositories, Law, Practice & Procedures and Guide to Depositories". The innovative www.takeovercode.com has even been awarded TATANen Hottest Startups . Bouquet of techno-legal web portals has been launched including recently launched www.companiesact.in which is totally dedicated to Companies Act with Android application.

R. SRIDHARAN



CS R Sridharan is a Commerce Graduate and a Fellow Member of the Institute of Company Secretaries of India. He is the Immediate Past President of the ICSI.

Starting his career with Best and Crompton Engineering Limited, CS Sridharan moved over to Murugappa Group and was Secretary of TI Diamond Chain Limited, Chennai from 1995 to 1999. Subsequently, he had set up practice as a Company Secretary and is advising a number of leading companies in Chennai, including Murugappa Group.

Keen in teaching, CS Sridharan was a faculty for a number of years at the Oral Coaching Classes of SIRC of the Institute of Company Secretaries of India. Being extremely passionate about the student activities, he had actively involved himself in organising innovative skills development programmes and also brought about significant changes in methodology of the intensive courses for the students, during his tenure as the Chairman of SIRC. During his period as Chairman of SIRC, CS Sridharan made significant improvements in infrastructure facilities at ICSI-SIRC Building, Chennai and also refurbished SIRC Library. During this period a number of thematic programmes, which were organised for the benefit of the members. Academically inclined, CS Sridharan has presented papers and addressed various Professional Development Programmes, organised by the Regional Councils, Chapters, Madras University and ICAI and also addressed a session in an International Programme organised by the Institute of Directors [IOD] at London. He has also contributed articles to the "Chartered Secretary".

CS Sridharan has been closely associated with the Institute activities for more than 14 years, initially at the Regional Level and later at the National Level. He was elected as a member of the Regional Council for the term 2001-2003 and was Secretary of the Regional Council in 2003. Subsequently, he was elected for the second term to SIRC, during 2004-2006 and was Vice Chairman and Chairman during 2004 and 2005 respectively. He was elected to the Council of the Institute for two terms in 2007-2010 and in 2011-2014. During the tenure as the Council Member, CS Sridharan served in various committees of the Institute and was the Chairman of the Corporate Laws Committee and Member of the Examination Committee, Syllabus Review Committee, PCS Committee, Professional Development Committee, Secretarial Standards Board, Managing Committee of CCGRT and Finance and Accounts Committee. As the Chairman of Board of Studies, he had made significant contribution in designing the new syllabus and the reading materials. Closely associated with the Peer Review Activities, CS Sridharan has conducted a number of Peer Reviewers Programmes all over India. In 2014, during his tenure as the President of the Institute, CS Sridharan was associated with various committees of the Institute and during his tenure a number of research publications were brought out and some of which were updated and on line journal, CS-Nitor was launched.

SECOND TECHNICAL SESSION

- Secretarial Audit & Secretarial Standards – Expectations & Experiences**
- Internal Audit – CS can play role ?**
- Winning Qualities of Highly Successful People**

RAMESH LAKSHMAN



CA Ramesh Lakshman is a Fellow Member of the Institute of Chartered Accountants of India with more than 35 years in Professional Practice under the name of Ramesh Lakshman and Company. He also holds additional qualification in Law and Cost Accountancy.

Over the year his focus shifted from the traditional audit driven practice to consultancy in the areas of derivatives, risk management, valuation and cross border deals. He also advises leading NBFC in pre-disbursement security documentation audit.

Most of the current assignments involve valuation of derivative financial instruments, accounting for derivatives under IFRS and IND AS, Use of derivatives in hedging, Corporate valuation, financial advisory services and advise on Asset Liability Management.

CA Ramesh Lakshman is an Adjunct faculty with SP Jain School of Global Business at Dubai and Singapore and conducts a full course on Derivatives for their MBA program. He is also a visiting faculty with ICAI and ICSI and speaks on diverse topics. He also conducts extensive customized programmes for corporates in the field of finance.

His other interests include Yoga and Spirituality; Alternate therapy using sound energy, tuning forks, magnets, pendulum, energy wands and light. He has been practicing Yoga for the past 24 years. He is associated with the Bihar School of Yoga and is guided by his Guru Paramhansa Swami Niranjananada Saraswati.

SATI ACHATH



Mr. Sati Achath is a Project Evaluation Specialist for the World Bank in Washington, D.C. Prior to that, he was with the Indian Revenue Service (IRS). He holds four master's degrees and speaks six languages. He has been recognized by the U.S. Government as a 'Person of Extraordinary Ability'. Sati is author of five books, including 12 Qualities of Highly Successful People, and 18 Simple Steps for Efficient Time Management.

Mr. Achath is also a motivational speaker, cartoonist, caricaturist, hand shadow puppeteer, ventriloquist, and magician. Sati was a quarter-finalist on NBC's 2008 America's Got Talent. He has been written about in The Washington Post, USA Today, and many other newspapers and magazines.

SPECIAL SESSION - I
Challenges and Opportunities for PCS in Digital Economy

RAGHU BABU



CS Raghu Babu is a co-founder of R & A Associates a corporate secretarial and legal services firm with an experience of close to 20 years. He is a Fellow member of the Institute of Company Secretaries of India (ICSI) and obtained Masters Degree in Commerce and Bachelors Degree in Law. He has recently completed Executive MBA (PGPMAX - Post Graduate Programme in Management for Senior Executives) from ISB (Indian School of Business).

He has deep understanding of corporate legal framework governing various businesses in India. He interacted and engaged with diverse profile of entrepreneurs and businesses across sectors such as IT, microfinance, pharma, capital goods, PEs, NBFCs, animation, gaming, retail, biotech, railway infrastructure, defence etc.

CS Babu's expertise include setting up business in India and overseas, capital structuring and capital raising, Foreign Direct Investment, Joint Ventures, Foreign Collaborations, Legal Due Diligence, Transaction Advisory, Advising on Corporate Governance, advising on corporate legal matters., setting up angel funds etc.

He works with startups, early stage and growth stage companies advising on business strategy, fund raising etc., and also as a sounding board member and mentor for few entrepreneurs and startups.

His affiliations include member of Agriculture Committee of FAPCCI, Member, Hyderabad Management Association, President of Abhaya Foundation (Not for profit) working for the betterment of the society, Charter Member – TiE (The Indus Entrepreneurs). He was the Chartered Secretary of Rotary eClub of Dist 3150.

SPECIAL SESSION - II
Indemnity, Immunity and Insurance for Professionals

SUDHIR BABU C.



CS Sudhir Babu a Commerce and Law graduate and also is a Fellow Member of the Institute of Company Secretaries of India and The Institute of Cost Accountants of India.

He was the Chairman of Hyderabad Chapter of the Institute of Company Secretaries of India in the year 1995 and served the Chapter for 6 years during 1991-1997. He was elected to the Southern India Regional Council of the ICSI for three terms during 1998-2007 and was the Chairman of SIRC of the ICSI for the year 2004. He was elected as a Central Council Member of ICSI for two terms during term 2007-2014 and served in various Committees of the Council.

He is actively associated with various bodies and professional associations. He was the Managing Committee Member of the Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) during the period 2001-2010 and President of Hyderabad Management Association for the year 2008-09.

He has organised and participated in various Seminars, Workshops and other professional development programmes of ICSI and addressed on important topics in Corporate Laws and Capital Market.

SPECIAL SESSION - III
Grooming for Start Ups

OOMMEN CHANDY



Shri Oommen Chandy is an Indian politician and is the current Chief Minister of Kerala since May 2011. He was born on 31st October, 1943. Previously he was Chief Minister from 2004 to 2006, and he was the Leader of the Opposition in the Kerala Legislative Assembly from 2006 to 2011.

Shri Oommen Chandy ventured into the political arena as an activist of Kerala Students Union (KSU), the student wing of the party. He was the unit president of KSU at St George High School, Puthupally, and went on to become the State President of the organization. He completed his college education from CMS College, Kottayam, SB College, Changanassery. Later, he took a bachelor's degree in law (LLB) from Government Law College, Ernakulam.

He started his political career through the Kerala Students Union (KSU), in which he served as president from 1967 to 1969. He was elected as the president of the State Youth Congress in 1970. He is the 21st Chief Minister of Kerala at present.

He has represented the Puthuppally Constituency for decades, having been elected to the Kerala Legislative Assembly for 10 times. During his legislative career he had also served as Chairman of the Public Accounts Committee during 1996–98.

Shri Oommen Chandy has been sworn as a minister in Kerala for four times. He was the Minister for Labour from 11.04.1977 to 25.04.1977 in the first K. Karunakaran Ministry and continued holding the same portfolio in the succeeding first A. K. Antony Ministry till 27.10.1978. He was in the charge of Home portfolio in the second K. Karunakaran Ministry from 28.12.1981 to 17.03.1982. Again, he was sworn in as a minister in the fourth K. Karunakaran Ministry on July 2, 1991. He was in charge of Finance Portfolio and resigned from the cabinet on 22.06.1994 due to difference with the Chief Minister.

Shri Oommen Chandy was the leader of opposition in the twelfth Kerala Legislative Assembly. Under his leadership UDF marked victories in Lok Sabha Election 2009 gaining 16 out of 20 parliament constituencies in Kerala and Local Body Election 2010. In the history of Kerala politics it's the first time that the UDF got an upper hand in local body elections.

After winning the closely contested 2011 assembly election, Congress legislative party unanimously elected Oommen Chandy as its leader.

Mr. Chandy's office received the 2013 United Nations Public Service Award from the Asia-Pacific region, for the category "Preventing and Combating Corruption in the Public Service." The award was presented on June 27, 2013, in Manama, Bahrain, by the UN Under-Secretary-General for Economic and Social Affairs, Wu Hongbo. The award was based on the theme "Transformative e-Government and Innovation: Creating a Better Future for All. United Nations Development Programme also appreciated Shri Oommen Chandy, for the range of innovative practices in democratic governance, initiated by the Government of Kerala in strengthening people's access and participation in human development and governance. They were impressed by the innovative approach to ensure transparency and accountability in Governance, particularly in web-streaming the entire functioning of CM's office. The Mass Contact Programme, in many ways, is the first of its kind to ensure the right to direct access to leaders and senior civil servants of the government.

THIRD TECHNICAL SESSION

**NCLT, Competition Law Compliance by Enterprises, Court
Craft and Advocacy**

DR. SATYA PRAKASH



Dr. Satya Prakash is Advisor (Law) Competition Commission of India (CCI). He has done LL.M and Ph. D (Constitutional Law-Articles 105 and 194-Parliamentary Privileges in India: A Critical Analysis) from Delhi University.

He has been working in Competition Commission of India since May, 2010. He is the head of Legal Division of CCI and handling all litigation work of CCI before Competition Appellate Tribunal (COMPAT), various High Courts, Supreme Court of India and Chief Metropolitan Magistrate, New Delhi.

He is also looking after all advisory/opinions and legal vetting of CCI.

He had also worked in various capacities (Legislative Officer, Under Secretary, Deputy Secretary) for more than 19 years in Lok Sabha Secretariat, Parliament of India. During this period, also worked on deputation in Debt Recovery Tribunals at Delhi and Mumbai as Recovery Officer for more than 6 years undertaking the execution work of final orders/decrees passed by the Tribunal for recovery of non-performing assets.

JASMEET WADEHRA



Advocate Jasmeet Wadehra leads the law firm - Wadehra Legal Services with offices in Delhi and Hyderabad where he focuses on advising and representing clients in the areas of M&A, private equity investments, corporate finance, project finance, corporate law matters and dispute resolution. In the past he has headed legal teams of International Paper, FedEx, Deutsche Bank and GE Capital International Services. Mr. Jasmeet is a Law and Commerce graduate from University of Delhi and has undertaken executive education course at Harvard Business School. He is also a Certified Compliance and Ethics Professional (CCEP) from Compliance Certification Board, Minneapolis, USA. He is a visiting faculty at Symbiosis Law School, Noida campus. Jasmeet speaks regularly at several international and Indian forums on contemporary legal and compliance issues and has various publications to his credit.

FOURTH TECHNICAL SESSION

- Annual Returns – Checks & Balances**
- GST – New ARea for Practice & New Norms for NBFCs**

L. JAYARAMAN



CS L. Jayaraman, a name reminiscent of uncompromising quality of teaching and of unparalleled commitment to sustain excellence is an epitome of knowledge, experience, expertise and commitment.

Revered by students, respected by the industry and admired by professional colleagues not only for his knowledge and expertise in corporate law, but also for his incredible ability to connect with a wide cross section of audience irrespective of their educational and cultural backgrounds with amazing ease. He is a Master in Commerce and a Fellow Member of ICSI, besides being a senior partner at Jayaraman Radhakrishna Associates, Company Secretaries, Hyderabad is also founder and director of Spellbound Professional Projects Private Limited and has a professional and teaching career span over 24 years.

A Practicing company Secretary with hands on experience of over two decades in dealing complex corporate law issues, he has in him a rare combination of a professional with practical experience and of an educator who over the years mastered the technique of blending knowledge and experience and articulating it to reach out to students pursuing professional courses and particularly even to a student from regional medium with modest academic score pursuing a professional course, in a most effective manner.

He has been conducting regular classes for all professional courses in Hyderabad, Chennai, Bangalore, Pune & Ernakulam and through his teaching touched upon and transformed directly or indirectly the lives of nearly one lakh families by doing his bit as a motivating faculty, in delivering nearly one lakh professionals, be it Chartered Accountant or Company Secretaries or Cost Accountants to the corporate world.

A gifted speaker whose audience is always Spellbound by his articulation and eloquence, he has been a regular speaker on Corporate Law topics at various seminars, workshops and conferences across the country, organized by professional bodies, institutes, federations and chambers of commerce, industry bodies etc. and has won countless accolades from the industry and the Academia for his contribution in setting new benchmarks in teaching for professional courses like CS/CA/ICWA.

ANIL MURARKA



CS Anil Murarka is the Past President of the Institute of Company Secretaries of India (ICSI) 2011, an Institute set up by an act of Parliament. Besides this, CS Murarka was Vice – President of ICSI for the year 2010; Member of the “National Advisory Committee on Accounting Standards”(NACAS), Member of “Indo-UK Taskforce” on Corporate Affairs, “National Foundation on Corporate Governance (NFCG) – Governing Council. He has also represented ICSI in various Committees of Ministry of Corporate Affairs and also a member of the Core Group of ICSI in 2009 which was constituted on Corporate Governance arising out of “Satyam” on the instruction of Ministry of Corporate Affairs.

CS Murarka is the Past President of the “Corporate Secretaries International Association” (an Association of Company/Chartered Secretaries & Governance Professional Institutes from Australia, Bangladesh, Hong Kong, India, South Africa, Singapore, New Zealand, Kenya, Nigeria, Pakistan, Sri Lanka, Malaysia, UK, USA, Zimbabwe) & was Vice – President of CSIA for the year 2011.

He was Central Council Member of ICSI from 2007 to 2014 and was also part of the various Committees of ICSI. He was Chairman of EIRC of ICSI for the year 2002 and also served the EIRC of ICSI in various capacities. He was also Member of CII-ER, Economic Affairs, Finance & Taxation Sub Committee-2012. At present, he is Member of Secretarial Standard Board of ICSI;

CS Murarka is a Practising Company Secretary for the last 24 years. He is Commerce and Law Graduate and a Fellow Member of the Institute of Company Secretaries of India. He is associated with various Corporate House of the Country as Consultant and is handling various Professional works relating to restructuring also represented clients before the Company Law Board, Stock Exchanges, Securities & Exchange Board of India, Reserve Bank of India and various other statutory bodies. He has been organizing Loan Syndication for various Corporates from Banks and Fund Managers.

Since 1991, he has contributed as convener, speaker in many professional seminars and conferences. He is a regular Faculty at Training Programme of ICSI, ICAI and other Educational Institutes & Professional organizations and also a Speaker at Seminar & Conferences organized by ICSI, ICAI, ASSOCHAM, CII, International Conferences, Ministry of Corporate Affairs, Stock Exchanges & Professional Institute at Kenya. Mr. Murarka made Presentation before World Trade Organisation at Geneva for Sectoral Service Classification in June, 2012. On 1st February, 2011 a live interview with Mr. Murarka was telecast by “Doordarshan”. He was one of the Panelist in first all India Investor Awareness Programme–“My Money – My Decisions”, organized by Ministry of Finance, Government of India in the year 2003.

DR. K. S. RAVICHANDRAN



DR. K.S.Ravichandran is the managing partner of KSR & Co Company Secretaries LLP. He is a fellow of the Institute of Company Secretaries of India and a Lawyer by qualification and Post Graduate in commerce and holds a doctorate from the Department of Management of Alagappa University on prosecution of directors. Dr. Ravichandran has been in practice as a Company Secretary ever since 1994.

He is vociferous speaker and prolific writer. He has spoken in more than 300 conferences, seminars and workshops and has authored hundreds of published articles in various journals and has authored 5 books – Secretarial, Securities and Management Audit; Prosecution of Directors – Reliefs and Remedies; Secretarial Audit of Compliances under Economic, Labour and Securities Laws; The Law relating to Debt Recovery and winding up; the Law relating to Limited Liability Partnership.

Dr. Ravichandran holds a Diploma in Electronics and Radio Communication Engineering and also a Diploma in Technology and had served the Indian Air Force for over 9 years as a specialist in Russian Radar Systems. He was a lecturer in commerce for the Government of Arunachal Pradesh at Pasighat.

He is a member of International Association for Protection of Intellectual Property Rights and member of INSOL INTERNATIONAL, a global organization of corporate insolvency professionals; member of the Chartered Institute of Arbitrators; member of the National Council for Corporate Affairs and Corporate Social Responsibility.

Dr. Ravichandran's experience in the field of corporate management and legal advisory is well known in the corporate sector. He is well known for his ferocious arguments and he has appeared in several cases before the Company Law Board; Competition Commission of India; Trademarks Tribunals; Intellectual Property Appellate Board; Arbitral Tribunals and other Tribunals and Appellate Tribunals. Many of cases argued by him have been reported in law journals. He is an expert in corporate legal and managerial advisory services.



Shameem Ahmed, LLM

Advocate & Partner at '**AHMED & AHMED**',
Tax & Commercial Law Attorneys.

Adv. Shameem Ahamed is a post graduate in law, lawyer by profession and has been in the field of legal and indirect taxation for the last 16 years. He had handled diversified roles like being a Big 4 Consultant, in-house lawyer and as a litigation attorney prior to establishing his own law firm called "AHMED & AHMED". In the past, Shameem had worked with large multinational corporations like **PepsiCo, HERSHEY'S, KPMG and PwC** at different regions in the country.

Adv. Shameem Ahamed was a national in-house attorney for **PepsiCo India** at their corporate office in Gurgaon and had handled some of the landmark Indirect Tax cases most of which stand as judicial precedents even today. He had appeared before various adjudication and appellate forums in almost every corner of the country and had successfully defended indirect tax cases involving more than INR 475 Cr for the PepsiCo group.

At Hershey's, he headed the Legal and Indirect tax department for its India business based out of Mumbai and he played significant role during Hershey's Joint Venture with Godrej Industries and later in establishing Hershey as a 100% foreign company in India. It is with this past exposure, he had established his firm AHMED & AHMED, a law firm, which is first of its kind in Kerala, providing in-house and external legal/tax support to business entities.

He has recently conducted sessions on GST in programs organized by Malabar Chamber of Commerce TiE - Kerala Chapter and Institute of Cost Accountants, Cochin Chapter.

VALEDICTORY SESSION

CHIEF GUEST



Prof. K V Thomas

Prof. K V Thomas is currently representing the Ernakulam Constituency in the 16th Lok Sabha. He was the Minister of State in the Ministry of Agriculture and Minister of State in the Ministry of Consumer Affairs, Food and Public Distribution, 2nd UPA Government; a member of the Indian Parliament; and a member of All India Congress Committee (since 1984).

Prof. K V Thomas was the Minister for Excise and Tourism and Minister for Tourism and Fisheries between 2001 and 2004 in Government of Kerala. During his long political career he had held several positions like President of Ernakulam District Congress (I) Committee; Member of KPCC; Member of Kerala State Election Congress (I) Committee; Organising Secretary & General Secretary of INTUC (Kerala); AICC Observer to Tamil Nadu, Karnataka, Andhra Pradesh and Lakshadweep. He is also a member of General Council of INTUC (trade union wing of the Indian National Congress) since 1976 – 2014.

Other positions that Prof. K V Thomas had held includes Member of Defence Consultative Committee; Member of Civil Aviation and Tourism Consultative Committee; Court Member of Jawaharlal Nehru University, New Delhi and Pondicherry University; Director Board Member of Marine Products Export Development Authority; Director of Cochin International Airport Limited; Member of Official Language Committee of the Kerala Legislative Assembly.

Prof. K V Thomas holds an MSc degree in Chemistry and was a Professor of Chemistry for a period of 33 years at Sacred Heart College, Thevara. He served as the Head of the Department (Chemistry) from 1 June 1999 to 31 May 2001.

KEY NOTE SPEAKER



Sri. Ali Asgar Pasha IAS
Managing Director
KTDC Limited

ANNOUNCEMENT

**43rd National Convention of
Company Secretaries**

Days : Thursday-Friday-Saturday

Dates : 17-18-19 December, 2015

Venue : Kempinski Ambience Hotel, Delhi

Vipanchika

(An evening with Music, Dance and More!)
13th August 2015, 7 pm

Performing Artists:

CS Sankar G.

CS Jyothi Savithri

CS Rajiv K.

Kalabhavan Renish (DJ Ren)

Harisree Syama

Saxon

Prasannan

Muralikrishna

Santulan - Mindful body

(Yoga for Professionals)
14th August 2015, 7 am

CS Jayan K. (M.SC Yoga)

Please give your names on 13th August

Arrive at the venue at sharp 7 am,
suitably attired (tracksuit and t-shirt)

16th National Conference of Practising Company Secretaries Kochi – Kerala 13th and 14th August, 2015

Souvenir cum Backgrounder

Concept development and design - Souvenir Committee

Technical coordination - ICSI Officials

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IS IT DIFFICULT TO EASE UP?

Introduction

A rank of 142 among 189 nations. Not at all flattering. This is where India currently stands as per the latest (2015) 'ease of doing business' ranking done by the World Bank Group.

Even though the real world experience of doing business may not be fully captured by any ranking system, a close scrutiny of the methodology adopted by the World Bank study shows it is quite scientific. A higher ranking highlights a good governance atmosphere, which while having the necessary checks and measures, is not too stifling for the business community. Also, the ranking has direct impact on foreign investments in a Country, since global investors assign significant weightage to the recent ease of doing business ranking while deciding on jurisdictions to invest in.

Due to these important factors, improving the rankings of India in this is a priority we should urgently strive for. Yet, there are several hurdles to cross before India can come up in the ranking substantially. Is improving the ease of doing business really a difficult task?

A brief scrutiny of the ranking methodology

A study of the ranking methodology will give insights to the areas in which we should focus on for immediate improvement. The ranking is based on 31 indicators classified under the following 10 topics:

- Starting a business
- Dealing with construction permits
- Getting electricity
- Registering property
- Getting credit
- Protecting minority investors
- Paying taxes
- Trading across borders
- Enforcing contracts
- Resolving insolvency.

Doing Business also measures labour market regulation, which is not included in any of the aggregate measures.

The indicators are classified in to two types. Those of the first type measure the complexity and cost of regulatory processes—assessing the efficiency with which a local entrepreneur can complete a common transaction, such as incorporating a company or getting an electricity connection, while

complying with all relevant rules and regulations. Those of the second type measure the strength of legal institutions. In both these examples, a higher score is assigned for features providing stronger protections of minority investors or secured creditors.

To make the data comparable across economies, the indicators are based on standardised case scenarios with specific assumptions about the enterprise - generally a domestic limited liability company operating in the largest business city. In 11 large economies with more than 100 million inhabitants (including India), data are now also collected for the second largest business city. In the case of India the cities coming under the study are Delhi and Mumbai.

The ranking is based on the 'distance to frontier' score, which represents the best performance observed on each of the *Doing Business* indicators across all economies since 2005.

India's Present Position

Scores achieved by India in the different topics for the latest data (2015) compared with previous year (2014) are as follows. A higher score shows a better performance with 0 being the least and 100 being the best.

TOPIC	SCORE 2015	SCORE 2014	Change	Rank in the category
<i>Starting a Business</i>	68.42	65.54	2.88	158
<i>Dealing with Construction Permits</i>	30.89	29.70	1.19	184
<i>Getting Electricity</i>	63.06	62.55	0.51	137
<i>Registering Property</i>	60.40	60.40	No change	121
<i>Getting Credit</i>	65.00	65.00	No change	36
<i>Protecting Minority Investors</i>	72.50	65.83	6.67	7
<i>Paying Taxes</i>	55.53	55.64	(0.11)	156
<i>Trading Across Borders</i>	65.47	64.89	0.58	126
<i>Enforcing Contracts</i>	25.81	25.81	No change	186
<i>Resolving Insolvency</i>	32.60	32.43	0.17	137

Analysis of Indicators

Among the better indicators for India, it may be noted that '*Protecting Minority Investors*' stands first with a marked improvement in score and a high ranking of 7. The minority shareholder friendly measures adopted by the Companies Act, 2013 including key disclosures on related party transactions have played a role in this high ranking.

On a lighter note, it can be seen that *'Protecting Minority Investors'* is one of the few areas in which the perfect frontier score is achieved by none of the countries – In other words, this is one area where even advanced countries lag which helped us score better in this count.

Even though there is no improvement over previous year, the ranking on *'getting credit'* is also comparatively better. The reason for this could be that on the two sub parameters considered ie. Legal right of borrowers and lenders; and having a good credit information system, India scores well. Again, delays or hassles in execution of legal rights are not considered in this indicator, which in fact could have helped our better rankings.

It needs to be carefully noted that the lowest scores are in the fields of *'enforcing contracts'*, *'dealing with construction permits'* and *'resolving insolvency'*. Of these, *'enforcing contracts'* and *'resolving insolvency'* are in the legal area and the need for an urgent reform in our painfully slow judicial system is evident. In the case of *'enforcing contracts'*, according to data collected for the World Bank study, contract enforcement takes 1420 days, costs 39.6% of the value of the claim and requires 46 procedures which is an abysmal situation compared to most countries. Resolving insolvency takes 4.3 years on average and costs 9.0% of the debtor's estate, with the most likely outcome being that the company will be sold as piecemeal sale. The average recovery rate is 25.7 cents on the dollar.

In both these areas a quick fix may not be possible, though some firm steps can be initiated. Proceeding with urgent legal reforms and having a good insolvency legal framework in place should be on top of the agenda.

'Construction permits' is an equally complex area. The very low ranking can be only improved by bettering the governance practices of both state governments as well as local bodies on these counts. A more mature legal framework followed by transparent procedures aided by technology is required in this regard. The Central Government will have to work closely with State Governments to make this difficult transition.

'Starting Business' has improved in India by a fair margin in the last decade, but when compared with global benchmarks, we are still found wanting. Ease of incorporation has improved, but getting necessary registrations on labour and tax authorities still lags. These areas need vast improvement. Streamlining of labour and tax compliance requirements under various statutes is definitely the only desirable way forward.

Electricity is a huge problem facing the nation today. Despite a quantum jump in electricity produced, the country today faces an issue of shortages primarily attributable to the bad financial situation of most State Electricity Boards. This is one area where implementation of reforms is sure to face political challenges. A better score in the *'Getting Electricity'* indicator will also demand better and more transparent procedures followed by the State Electricity Boards for all purposes, including new connections.

'Paying Taxes' is an area where India can improve significantly with comparative ease. Multiple taxes, along with complex tax laws and hassles in actual filing of returns and payment of taxes are the key indicators covered under this topic. GST, if and when implemented would go a long way in improving this parameter. Online filing and payment systems recently introduced for most taxes should be made universal and simpler. Similar is the case of Registration of Property, where transparency and technology can ease a lot of bottle necks. Procedural simplification can follow these basic steps.

The 'Trading Across Borders' topic mainly covers procedural hassles for imports and exports. Better facilities at ports and continuing with major customs reforms can ensure better performance in this count. The successful private participation in key areas can definitely help improve matters.

The ranking does not measure many key areas like security, macroeconomic stability, corruption, the skills of the labour force, the underlying strength of institutions, or the quality of infrastructure services (other than services related to trading across borders and getting electricity). Nor does it focus on regulations specific to foreign investment. Still all these factors have strong interconnections with the measured parameters and ignoring these issues will be at our own peril.

Conclusion

It is evident that there are no shortcuts towards making a conducive environment for business. Legal reforms and procedural improvements should be simultaneously pursued for creating the desired results. It should be borne in mind that our peers are also improving as time goes by and any incremental changes may not result in vastly improved rankings.

Care should also be taken that as procedures and requirements are simplified, the essentials of our democracy and governance measures are also kept intact. A conducive atmosphere only for the business community, while not providing adequate opportunities and potential to all class of citizens could be suicidal in the longer run.

A ray of hope can be seen as the Central Government, now fully aware of the gravity of the situation is initiating major steps to improve the Country's rankings. A concerted effort in the key areas highlighted above can go a long way in dramatically improving our position in the coming years.

Data source :

1. "Doing Business – Going Beyond Efficiency – Economy Profile 2015 – India", published by The World Bank Group
2. "Distance to Frontier and Ease of Business Ranking, 2015" - published by The World Bank Group
3. "Distance to Frontier and Ease of Business Ranking, 2014" - published by The World Bank Group



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CRITICAL ISSUES IN SECRETARIAL AUDIT

I. Introduction:

The concept of secretarial Audit has been introduced for the first time under the Companies Act, 2013. Secretarial audit is mandatory for all

- The Listed Company
- Every public Company having a Paid up capital of Rs. 50Crores or More OR
- Every public Company having a turnover of Rs. 250crores or more.

II. Scope of Secretarial Audit:

The secretarial Audit is a process to check compliance with the provisions of various laws, rules, regulations, procedures, maintenance of books, records etc, by an Independent Professional to ensure that the Company has complied with the legal and procedural requirements and also followed due processes. It is essentially a mechanism to monitor compliance to the requirements of stated laws and processes.

The secretarial Audit is both an opportunity as well as challenge for the practicing members.

III. Objectives:

The scope of Secretarial Audit is to assure owners, creditors, public, Government, regulators and foreign investors that the affairs of the Company are carried out in accordance with the laws, rules,

regulations applicable to the Company and the memorandum and articles of association and agreements regulating the decisions making process.

IV. Secretarial Audit and Practicing Company Secretary (PCS):

India is the only country in the world to prescribe mandatory Secretarial Audit for listed and specified companies. Secretarial Audit provides a significant new role for the Company Secretaries and Central Government has reposed tremendous trust and confidence. At the same time it casts a huge responsibility on the PCS and the corporate management to set a benchmark for a good corporate administration and governance acceptable not only to Indian Investors but also to the International Business community.

ICSI has provided timely help in bringing out Guidance Notes for practicing members. The first Guidance Note was issued in June 2014. The Institute came out with detailed Guidance Note in March 2015. The second Guidance Note came out with detailed Industry Specific Laws and Board processes. However, at the field level there are many **critical issues** and debatable points. Some of them are presented in this article.

(1) Management Representation Letter (MRL):

The Guidance Note stipulates that Management Representation Letter should be signed by two directors. In practice company management feels that it should be signed by the Company Secretary and that would be sufficient compliance. In some cases it is signed by Company Secretary and one Director. It is understood that when the Management Representation Letter is signed by two Directors it gets weighted importance and taken seriously by the management. This issue needs to be clarified as to how strictly the practicing member has to comply with this Guidance Note. If the MRL is signed by Company Secretary or Company Secretary and Director will it be reckoned as sufficient compliance?

(2) Another issue which came up was relating to the show cause notices received by the Company under various laws. As a matter of fact large manufacturing and marketing companies having local and global presence receive show cause notices on one or the other matter. Such matters may be trivial or important. Many of such show cause notices are sorted out and replied by the local officers spread over the country. Therefore, if the Company gives MRL stating that the Company has not received any **MATERIAL** show cause notices which may affect the business operations of the Company; it should be taken as sufficient compliance.

(3) Item no 15 of the Specimen MRL, stipulates as under:

*“There is no pending litigation and claims **other than** reported in the balance sheet by way of contingent liability”*

As a matter of fact, Companies have many pending litigation other than reported under the contingent liability in the balance sheet. Whether, the company management should give details of all pending litigation which is quite big and not available at the Corporate Head Offices and includes various matters pending before other regulators, consumer courts, Authorities and Tribunals.

(4) Guidance Note has also provided Annexure-A to MR-3:

While Annexure-A is very important, it is necessary that the Institute takes up this matter with MCA to include the contents of Annexure-A into MR-3. It may be mentioned that Auditors Report brings out the responsibility of the Management and Auditor distinctly in the Auditors Report. In the absence of such composite MR-3, many Secretarial Audit Reports published in the Annual Report do not contain Annexure-A.

Sub- Section 2 of Section 204 of the Companies Act, 2013 states that:

“It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company”

Further, the provisions of section 143- Dealing with **Powers and duties of auditors and auditing standards** stipulates that the provision of this section shall *mutatis mutandis* apply to the company secretary in practice conducting secretarial audit under section 204. Thus, powers of secretarial auditor are at par with the Statutory Auditors. However, the appointment of Secretarial Auditors is made by the Board of Directors. Therefore, a question arises that while the report of the Secretarial Auditor is made to the members of the Company, but his appointment is made by the Board of Directors of the Company and therefore, in this regards it not at par with the Statutory Auditor. The institute may like to take up this matter with the Ministry of Corporate Affairs. As stated above, sub-section 14 of section 143 applies *mutandis-mutandis* to secretarial audit. Sub-Section 12 of section 143 requires the auditor to report to the Central Government if he has a reason to believe that an offence involving fraud is or has been committed against the Company by officers or employees of the company.

Fortunately, this provision has been divided into two categories by the Companies Amendment Act, 2015. As per the amendment, the Central Government shall prescribe a limit upto which the fraud is required to be reported to the Audit Committee or to the Board and if it exceeds the specified limit then it will be reported to the Central Government. Further, if the Fraud Committed is within the specified limit and not reported to the Central Government, the same will be disclosed in the Board report. This is a very difficult assignment particularly for secretarial auditor who would be dealing with compliances of non-financial matters. However if he comes to know of any fraud it is his bounded duty to report to the relevant authority.

(5) Applicable Laws:

MR-3 also prescribes that the auditor should mention other laws as may be applicable specifically to the Company. In this regard there are two views. One view is that only those Acts be mentioned which are “Industry Specific”. On the other hand, the view is that all laws applicable to the Company should be mentioned in the Secretarial Audit Report. In one instance one Auditor has mentioned only two laws which are Industry specific. In another case, lists of more than 150 Acts have been mentioned. Thus, there is need for clarification in this matter if the view is that all applicable laws including Industry specific laws are to be mentioned then the Institute should also provide the check list for all the laws which are applicable to the corporate world.

(6) Decisions at the Board Meeting and General meeting:

MR-3 also prescribes to mention:

“Majority decision is carried through while the dissenting members’ views are captured and recorded as part of the minutes.”

There is one view that seems that above stipulation is placed immediately after the Board Meeting details like Notice, agenda and detailed notes on agenda the decision is only in respect of the passing of the resolution at the Board meeting.

Another view is that it covers both the Board Meetings and the General meetings.

(7) Delayed Filing of Forms:

In the Guidance Note, it is mentioned that delayed filing of forms with ROC is to be commented adversely. However, as per the Ministry of Corporate Affairs delayed filing of forms with additional fees is not considered as default. The number of forms to be filed on the MCA portal has considerably increased under the Companies Act, 2013. Further, during the first year of implementation there has been delayed filings by the Companies inadvertently and also due to interpretational issues. It is necessary that the Institute clarifies this point at the earliest.

V. Conclusion:

At present divergent views prevail in reporting the Secretarial Audit Report. Each Auditor has his own view in the matter. It is, therefore, important that a survey of all Audit Reports issued so far by practicing members be made and a Standard Guidelines be issued to the members.

This will help not only in improving the quality of the Audit Report but also standardize the reporting system akin to statutory audit report.

EMERGING AREAS OF PRACTICE

(SHARPENING THE SKILLS ON OPINION WRITING AND THE ART OF RIGHT INTERPRETATION OF APPLICABLE LAWS)

Prof R Balakrishnan* - FCS – Pune

1. Preliminary

The issue of formation of National Company Law Tribunal was pending in the Supreme Court for a long time since the Madras Bar council had earlier challenged the provision relating to the appointment process, eligibility and powers of the (proposed formation) of the National Company Law Tribunal members in the Companies Act 2013, arguing that the norms violated an Apex Court ruling of 2010 on “formation of body.

Recently – in May 2015, the Supreme Court has approved the formation of National Company Law Tribunal (NCLT) which was pending with the Supreme Court upholding the constitutional validity of the NCLT, clearing the way for a significant reform in the framework for resolving corporate insolvency.

Currently, there are 4 different bodies which are dealing on the company related issues.

- Company Law Board (CLB)
- Official Liquidator (OL)
- Board for Industrial & Financial Reconstruction (BIFR), and
- Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

With the formation of the proposed NCLT, these four different bodies will subsume and all company law related matters would be dealt under a single body i.e. NCLT and for any appeals by the National Company Law Appellate Tribunal (NCLAT). With the formation of NCLT, days to come, the Government would be able to bring the proposed bankruptcy code which will have NCLT as its main component.

* The first and only Indian to win the award of “Company Secretary of the year Corporate – Highly Commended” (the runner up award) of Company Secretary of the year 2007 from the Institute of Chartered Secretaries and Administrators (ICSA) of London

2. Great Opportunities for practicing professionals upon NCLT formation

The formation of NCLT would throw open a vast area for practicing professional for providing opinions on all company law related matters and even as well for other laws too, providing consultancy and representing the corporate in NCLT and conducting and arguing out the cases for the corporate. For practicing in NCLT, the practicing company secretary (PCS) need not be a member of the bar council and as a PCS, the company secretary would be in a position to represent and argue out the cases. Therefore, it is very important for practicing company secretaries to enhance, develop their skills in the area of interpretation of laws – accurately, correctly according to the applicable provisions of the act, read with relevant rules and judicial pronouncements.

3. We shall examine the following with the above background

When NCLT / NCLAT is established, one side there is going to be tremendous opportunities for the practicing company secretaries while on the other hand, the professionals may have to get equipped to encash the opportunities with the required skills to handle the matter at NCLT / NCLAT .

The practicing company secretary professional would be in a position to deal with all matters in NCLT / NCLAT like that of lawyers / advocates without being a law graduate and enrolling themselves in the bar council by virtue of the expertise knowledge they possess in the company law matters. As said earlier, all the company law matters would be dealt under one roof i.e. NCLT / NCLAT which are being dealt by different authorities today such as Company Law Board, Official Liquidator, Board for Industrial & Financial Reconstruction, Appellate Authority for Industrial and Financial Reconstruction any by various High Courts.

This is altogether a new area – emerging opportunities – one has to get sharpen their skills to deal with the matters at NCLT / NCLAT – acquire good drafting skills for making petition, written statement, rejoinder which would call for a good drafting skills with facts of the case and the facts of law along with required prayers sought from the authorities.

Secondly, interpretation of the applicable act itself would be called for with reference to applicable laws, rules, and regulations along with decided case laws by judiciary on the subject and any precedents etc.

Many a times, the organizations (client) may like to have an written opinion from the expert professional – not only on company law – but also on other applicable laws – the professionals have to get equipped to the art of “opinion writing” so that – the companies could take decision based on such opinion and the professionals would be asked to render service.

We shall examine the following in this article:-

- A. Emerging (new) areas of practice
- B. Writing skills (court documents)
- C. interpretation of Law / opinion writing

A. Emerging (new) areas of practice

A.1 Areas open for company secretary (as an expert)

The Companies Act 2013 in its definition – vide section 2 (38) spells out that an “expert” includes an engineer a valuer, a chartered accountant, **a company secretary**, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

Since the company secretary has been recognized by the Companies Act 2013 as being an expert, the company secretary could do many things in his capacity as an expert including opinion writing, not only on company law related issues but also all other applicable laws for a company to which a practicing company secretary is rendering service.

Being an expert and also coupled with professional knowledge in corporate laws, company secretary professionals in whole time practice would be in a position:-

- to advise on matters to be stated in prospectus
- advise on matters of amalgamations / mergers / demerger / reverse merger / compromise and arrangements and any reorganization etc.
- Further, the PCS could also be able to act as a mediator & conciliator
- assist in liquidation process
- render professional assistance on various company administration matters.

Let us briefly look into the specific areas which are newly opening up for the practicing company secretaries who are in whole time practice under National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal NCLAT .

A.2 Scheme of restructuring / compromise and arrangement

After the establishment of National Company Law Tribunal, the newer area of practice would open up for the practicing people could be listed as under:-

- advising and also assisting to various corporate / companies on the issue of

merger

amalgamation

demerger

reverse merger
compromise and
other arrangements of restructuring

The practicing company secretary could get involved right from the conceptual stage of any scheme of arrangement or compromise till its implementation i.e. till the completion stage. The work involved for any such scheme would consist of rendering services in

- (a) preparing scheme(s) itself
- (b) appearing before NCLT/NCLAT for approval of the scheme(s) and
- (c) finally the various post (approval) merger formalities followed by
- (d) required compliance with various regulating bodies

A.3 In relation to sick companies

In this case the very first step is

- the timely detection of sick company itself and
- the practicing company secretary could identify the sickness of the company as per the provisions defining the sick companies under the act and
- then arrange to place the matter before the board of directors of the company
- so that the board of directors could take further necessary action i.e.
- making reference to the Tribunal for revival and rehabilitation of the Company.

A.3.1 Making reference of Sick Industrial Company to NCLT

In this case also – i.e. for making reference to the National Company Law Tribunal the practicing company secretary could render assistance and advise the sick company in making reference to the Tribunal.

Further, the practicing professional could

- prepare a scheme of rehabilitation
- seeking various approvals from the Tribunal as may be called for or required.

As per the provisions of the act the reference relating to sick industrial company is required to be made to the NCLT within a period of 180 days from the date on which the board of directors of the company or the Central Government, Reserve Bank of India or State Government or a Public Financial Institution or a State level institution or a Scheduled Bank as the case may be, come to know of the relevant fact giving rise to causes of such reference or within 60 days of final adoption of accounts whichever is earlier.

A.4 Company secretaries could be Administrator / Receiver

As per the provisions of section 258 of the Companies Act, 2013, an interim / company administrator can be appointed by the Tribunal from the data bank maintained by the central government in case of Revival/ Rehabilitation of a company consisting of names of company secretary and other professionals.

Since Company Secretary is one such expert professional, the company secretary could act as receiver of the company.

A.5 Company secretaries to be a Liquidator

For the purpose of winding up of a company by the Tribunal, the Tribunal at the time of passing of the order of winding shall appoint an official liquidator or liquidator from the panel maintained by the central government for this purpose consisting the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters. The section 275(1) and (2) spells out this in the Companies Act, 2013.

By virtue of the expertise and having proficiency in company law related matters, the practicing company secretary could act as an official liquidator as the practicing company secretary is one of the professional whose name is maintained for the appointment of official liquidator by the central government in its panel.

It may be further noted that the new Companies Act 2013, the earlier position allowing only government officers to act as Official Liquidators has been done away with.

A.6 Professional assistance to Company Liquidator (for CS young starters)

The Company Liquidator may, with the sanction of the National Company Law Tribunal, appoint one or more professionals including company secretaries to assist him in the performance of his duties and functions under the Companies Act, 2013 as provided under section 291 and it is a good opportunity for the young (starter) practicing company secretary professional who are in practice as an additional area of practice.

5.6 Work relating to reduction of capital

Section 66 of the Companies Act 2013 permits that subject to confirmation by the National Company Law Tribunal (NCLT), a company limited by shares or a company limited by guarantee and having a share capital may if so authorized by its memorandum and articles of association or by passing a special resolution by the members in the general meeting could reduce its share capital. Practicing professionals i.e., e company secretaries in whole time practice would be able to represent cases of reduction of capital before the NCLT which is another added area opened to them for practice.

5.7 Company secretaries could be appointed as Registered Valuer

As per sub-section (1) of section 247, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

Further valuation is required to be done for various other transactions such as:-

- further issue of shares {sec 62(1)(c)},
- for valuing assets involved in arrangement of non cash transactions involving Directors [section 192(2)],
- for valuing whereas, property and assets of the company under a scheme of corporate debt restructuring {sec 230(2)(c)(V)},
- under a scheme of compromise/arrangement, along with the notice of creditors/shareholders meeting, a copy of valuation report, if any shall be accompanied {sec 230(3)},
- the report of the expert with regard to valuation, if any would be circulated for meeting of creditors/members {sec 232(2)(d)},
- where under a scheme of compromise/arrangement the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal {sec 232(3)(h)},
- for valuing equity shares held by minority shareholders {sec 236(2)},
- for preparing valuation report in respect of shares and assets to arrive at the reserve price for company administrator {sec 260(2)(c)},
- for valuing assets for submission of report by liquidator {sec 281(1)},
- for report on the assets of the company for preparation of declaration of solvency under voluntary winding up {sec 305(2)(d)},
- for valuing the interest of any dissenting member of the transferor company who did not vote in favour of the special resolution, as may be required by the company liquidator {sec 319(3)(d)},
- further issues of share capital (section 62),
- non cash transactions involving directors (section 192),
- compromise or arrangement (section 230),
- purchasing of minority shares (section 236).

Being an expert recognized under 2(38), the practicing company secretary could act as a registered valuer and this is yet another avenue provided in the Companies Act, 2013.

5.8. Company secretaries to be an “Arbitrator”

Company Secretaries in whole time practice are not only legal experts in corporate laws but they are also having superior knowledge in respect of commercial understanding. Practicing company secretaries have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner since company secretaries are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings while advising the client.

Thus company secretaries in practice can act as strategist and authorized representative in arbitral proceedings since they are now recognized as an expert. The only precaution the company secretaries need to take is that they should develop thorough knowledge about the Civil Procedure Code, 1908 and Indian Evidence Act, 1872 as many a times the proceedings are conducted in accordance with these laws though it is not compulsory as per the Act. However, given the competence of the company secretaries it is not a difficult task.

5.9 Company secretary could act Technical Members of NCLT

Among other qualifications, practice as a company secretary for at least fifteen years, (15 years) or being a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies is a qualification for appointment as technical member of the National Company Law Tribunal.(Section 409 of the Companies Act, 2013).

5.10 Appearance before NCLAT

As discussed in the beginning paragraph of this article, the company secretary in whole time practice has been authorized to appear before National Company Law Appellate Tribunal for all matters concerning the appeals against the order passed by the NCLT.

B. Writing skills – court documents

B.1 Certain pre-requisite for appearance before NCLT / NCLAT

Although there are ample opportunities are available for the practicing company secretaries for rendering services at NCLT and NCLAT – the practicing company secretaries for this purpose have to get well equipped with legal drafting abilities which are required at the Tribunals, legal frame work pertaining to the appearances before various Tribunals/quasi judicial bodies and the basic understanding of the principles of pleadings.

The practicing secretaries need to get their practical orientation and develop necessary acumen in drafting legal documents and their submission to the Tribunals. Needless to mention, the command over English needs to be excellent, drafting skills as per legal requirement would be called for and above all, presenting the facts to the Tribunal and pleading the matter would only lead to the success in the profession.

B 2 The art of understanding the provisions rightly - advising company/clients

In year 2004, the service tax was made applicable for the first time, on payment for intellectual property (defined under section 55a) services (royalty payments) and this is one of the item covered in a notification issued by the Government granting certain exemption. As we are all aware, royalty payment is generally made to overseas collaborator / parent company on intellectual property services received under automatic route based on the technology transfer on an ongoing basis.

To cite an real life example, on the service tax matter, when royalty payments were brought under the service tax net in the year 2004 a notification No. 18 / 2004 was issued by the Deputy Secretary to the Government of India on 10th September 2004 which states to the effect the Central Government exempts that portion of the value of taxable services which are defined in certain sub-classes of section 65 (105) of the Finance Act from the whole of the service tax leviable thereon under section 66 of the said act, which is received by the service provider from the customer, client or person as the case may be, prior to the 10th day of September 2004.

Companies were remitting payment for intellectual property (defined under section 55a) services (royalty payments) and this is also covered under the notification of 18/2004. Generally payments are made on a quarterly basis on IPR services by companies. The payment was covering the period for July to September 2004 (quarter of 3 months). Question has been raised by a company whether the service tax is payable only from 10th September 2004 or for the entire period of 3 months (covering the period 1st July to 30th September 2004) on IPR services received at that time.

On a plain reading of the notification, it does appears to one's mind that the company is liable to pay service tax only from and after 10th September 2004 i.e. for only 20 days (10th September to 30th September) of that quarter, as Intellectual property services were made taxable only with effect from 10th September 2004. However, it might be well be that the service tax authorities may try and content that since the payment of royalty is made by the company on the end of the quarter (i.e. 30/9/2004).

Question arises here, whether service tax payable only for 20 days or for the entire quarter.

B.2.1 The suggested right approach (for advising client)

In this situation, the right approach could be as under:-

- i. The client should be advised while making payment of service tax, the company could clarify to the department that the company is paying the same under the provisions of Rule 2(d) (iv)

of Service Tax Rules, which lays down the provisions regarding the person liable to pay service tax when the service provider is party outside India.

- ii. The company should be advised to obtain from overseas service provider two invoices, one covering the period from the beginning of the quarter till 9th of September 2004, and the other for the period from 10th September 2004 till the end of the quarter. The company could submit to the service tax authorities' relevant invoice pertaining to the period 10th September onwards. However, should the company be called upon to furnish the invoice for the period prior to 10th September, the company should have no hesitation in submitting the same.

The above opinion / advice would be perfectly in order since the notification in question provides the exemption and the company is required to pay service tax only with effect from 10th September 2004.

As pointed out in the earlier para, the service department might come back and try and content that since the payment of royalty is made by the company on the end of the quarter (i.e. 30/9/2004). In view of this possibility, it is better to advise the client company, advising them to consult their auditors and consider whether advisable, by way of abundant caution to make a suitable provision in the books of accounts of the company, in case a stand along the above lines is taken by the service tax authorities.

Should such an event take place, as a practicing professional, you should advise the company to resist and you should be in a position to provide necessary assistance in representing the case.

Therefore, while advising the client company, one has to very clear about the provisions, also clear to have the necessary documentation to prove the point and also to advise the client for required action at their end – in this case advising them to have provision in accounts.

B.3 Familiarity with the court procedures / legal phrases

One has to get familiar with the court procedures (Since NCLT / NCALT both are covered under the C.PC and Cr.PC codes with prescribed rules for their functioning) right from filing a petition till the disposal.

There are various stages involved in dealing with NCLT / NCLAT such as – filing a petition with the registrar – any modification / changes required – rectification done immediately / at the earliest – getting the registration number – making a written statement – filing re-joinder, seeking time extension – adjudicating procedure, pleading before the Honourable Judge – getting order of the court – certified copy – compliance procedure thereafter etc.

B.4 legal phrases – its meaning – usage at appropriate places

The practicing company secretaries who plan to practice in NCLT / NCLAT need to know difference between may and shall ("may" may be treated "shall" but "shall" shall not be treated "may"), "ipso-facto" – meaning by this fact alone or because of this matter alone, "tenable" meaning acceptable in

law, “quasi” meaning almost similar to – for example “quasi criminal” means almost equal to criminal, “jurisprudence” meaning law relating to particular matter, “mensrea” meaning guilty mind (mensrea is very vital in criminal cases), “suo moto” – meaning on its own, “non-est” meaning non-existing thing or what is not in existence, “de-nova” meaning completely new (many times the court passes an order stating de-novo adjudication – meaning that the case is to be heard as a fresh right from beginning all over again), sine-quo-non” meaning most essential thing and such other various legal phrases in law – which obviously would be used / practiced at NCLT / NCLAT.

Similarly certain phrases like “ reason to believe Vs reason to suspect: - one has to be familiar for this purpose, it is better to read various case laws so that the concept understanding is clear on this, which would be much help while presenting and pleading the case in front of the authorities. Similarly difference between “discovery Vs detection” – in this case, discovery is made by the assessee whereas detection is done by the assessing officer (one would come across on this in income tax related issues). Another important legal phrase is “to quash” – meaning the process of cancelling the proceeding of assessing authorities by judicial authorities and one has to be familiar with the quashing of proceedings, causes / reasoning etc. Out of ten grounds, even nine grounds are proved to be wrong – quashing cannot be done since the tenth one is remaining and hence one has to muster the art on this.

Many such legal phrases would be understood as one goes along and the practicing company secretaries need to sharpen their skills, if one has to come successful practice in NCLT / NCALT. To cite some more legal phrases would be – locus standi, suspended animus, sub-judice, impediment, sine-di, as-interm, defacto, ad-hoc, de-jure, modus-operandi, nexus, onus probandi, ratio-decidendi, caveat emptor and in personam etc.

B.5 Presenting / arguing the matter in front of the judiciary

Needless to mention, one has to have the clear cut facts rightly understood, with sequence, present the facts which are relevant to case, with reference to the applicable provisions of law, rules, and regulations – finally seeking the prayer. If the other party has the counter argument, one has to be prepared to answer the same then and there and make the point strongly in favour of the case which is being represented. Fluency, flow of clear communication would call for at these situations.

C. Interpretation of Law / opinion writing

C.1 Opinion writing – a brief

If one has to ask a question as to what is an opinion, the answer we would get is that a opinion is a written statement given by court or by a judicial officer or by an expert as to the legality (or illegality) of an action, condition or intent. Leaving aside the court and the judicial officer, the other person who could give an opinion is an “Expert”.

C.2 Company Secretary is an “Expert” as defined by the Companies Act 2013

The definition of “expert” is spelled out in the Companies Act 2013 – in section 2 (38) stating that an “expert” includes an engineer a valuer, a chartered accountant, a **company secretary**, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

Since the practicing company secretary has been recognized by the Companies Act 2013 as being an expert, the practicing company secretary could do many things in his capacity as stated earlier and as an expert the practicing company secretary could provide opinion in writing, not only on company law related issues but also all other applicable laws for a company to which a practicing company secretary is rendering service.

Being an expert and also coupled with professional knowledge in corporate laws, the practicing company secretary professionals in whole time practice would be in a position to excel in the area of proving opinion on all corporate laws – which is going to be a big leaf for practicing company secretaries as enormous laws are applicable in a corporate and many matters, an expert opinion is sought.

C.3 Brief – the way opinions are written

Generally, the companies would put up their points on an issue and provide the facts and seek for an opinion say – applicability of law on a particular issue or otherwise etc. If necessary, a personal discussion might be required to understand the issue – if the communication sent by the company is not very clear or call for more information or certain clarifications are required or even certain more facts are required to be known.

Then the application of the mind of the professional in the respective law and its applicability with reference to the facts provided by the company and the situation in which the company is placed and operated. There could be certain exemption notifications given by the authorities which is also taken to account and as well decided case laws on this issue.

While providing opinion, the professional could also enclose the copy of necessary notification, decided case laws etc along with the opinion.

C.4 Interpretation of law

We shall go through few cases of interpretation of law, since, one has to be very clear about the applicability of law or otherwise, correct interpretation of applicable laws with reference to the provisions of the acts and rules while providing opinion. Further one has to also keep track of the latest judgments relating to interpretation since the judicial judgments acts as precedence for the judiciary to follow them and delivering the orders. Let us go through each of the above by taking examples so that we are better in understanding the concept.

C.5 Scope of opinion providing by practicing company secretaries

Under the Companies Act, 2013 the role of the company secretary has been considerably widened inasmuch as now he is not only responsible for the compliances under the Company law but also in respect of compliances under **all other applicable laws**. The practicing professionals would have a very wider role in assisting the corporate for determination of applicable law i.e. whether a particular law is applicable or otherwise. This is very very important as much as, any court trying any case would have jurisdiction over the matter – if jurisdiction is not there, the case get dismissed. Similarly, one has to be sure about the applicability of a particular law. Let us look at an example on this

C.6 Applicability of law – an example

Let us take a situation of an organization that wants to be in food space and would like to employ around 40 employees with use of power and their activities are mainly on research and development (R & D) activities. Since the company is planning to operate for R & D activities, question arises, should they be requiring a factory licence to operate or they need shop and establishment licence. Of course, the organization would be requiring the necessary permit from Municipal corporation permit, necessary permit or approval from fire department and clearance from pollution department would also be required.

The ambiguity is relating to - whether to obtain factory licence or shop and establishment licence for carrying out the R & D operations. The crux of the matter is the application of mind on the applicability of the act or otherwise, few might say that a factory licence would be required since operation is carried out with the help of power employing around 40 employees and it is a factory operation while some might argue, not to have factory licence since this organization is not manufacturing anything and shop and establishment licence would do? What is the right answer or solution for this – whether or not factory licence required?

One has to go through the requirement / conditions to be fulfilled for getting the factory licence. Let us examine the same. Let us examine the section 2 (m) of the Factories Act 1948 on this in order to get an answer where the definition is given for factory.

C.6.1 Definition of factory - section 2(m) of Factories Act 1948

The above section prescribes as to what "factory" means in terms of man power, with or without aid of power and it further says “manufacturing process is carried on“. Manufacturing process is also defined in section 2 (k) of Factories Act 1948 spelling out five categories of process.

If one analyze the definition very carefully one would come to an conclusion that although the definition defining the manufacturing process is so wide and it includes almost all activities of making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale,

transport, delivery or disposal etc. the activities relating to research and development (R & D) is not finding a place in the definition of manufacturing process.

Each of the subsections of section 2(m) in relation to the operation of R & D activities are answered negatively and hence one could correctly interpret and come to a conclusion that the factory licence is not applicable for R & D activities.

The unit may have to go for shop and establishment licence and have its operations.

C.6.2 Further confirmation on this by a decided case law

One could even further get it confirmed by looking into a relevant decided case law on this matter. There is a decided case law from Calcutta High Court and the case law is ESIC v. Duncan Gleneagles Hospital Ltd. and Anr. 2005(3)CHN116, [2005(106)FLR1029], (2005)III LLJ174 Cal. In this case the definition of manufacturing process was gone into details by the judiciary and the judiciary delivered a judgment that any test and research activities would not amount to manufacture. One could go through the case law and understand the process of manufacturing and the decision given by the judiciary.

There is also another recent decided case law on this matter which is 2015 LLR 659 Punjab & Haryana High Court – CRM No. M-41413/2013 () & M) D/-21.2.2015 in Rajesh Saigal Vs State of Haryana and others – confirming that R & D activities would not come under the purview of Factories Act 1948.

C.7 Another case of interpretation under Industrial Disputes Act 1948

Let us consider a typical case law on interpretation under the provisions of Industrial Disputes Act 1947.

In one of the manufacturing unit, the employer decided to implement voluntary retirement scheme and upon launching the scheme 100% employees have opted for the same. Thereafter the board of directors decided to close down the unit and accordingly intimated to the concerned authorities about the closure and surrendered the factory licence for cancellation.

The real question to be examined here is whether the company has done a right thing or the closure is violative of section 25FFA of the Industrial Disputes Act 1947 since the closure notice is required to be served to the appropriate government by giving 60 days notice. The issue also could arise that the Labour department could raise an issue invoking the Section 25FFA of the Industrial Disputes Act, 1947 contenting that the company has committed a breach of Section 25FFA of The Industrial Disputes Act, 1947 and can threaten to prosecute the Company and its Directors for breach of the said Section under the provisions of Law?

To examine whether the company has done the right thing or otherwise, we need to examine the provisions contained in the section and interpret correctly to get a right answer

C.7.1 Provision under Industrial Disputes Act 1947

Relevant Section is reproduced below

Section 25FFA (1) of the Industrial Disputes Act, inter alia, reads as under:

- a. Sec. 25FFA (i) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective a notice, in the prescribed manner on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to:
an undertaking in which:-

- (i) less than fifty workmen are employed, or
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (iii) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work of project.

It will be observed that the proviso to the said section states that the section will not apply to an undertaking in which less than fifty workmen are employed or less than fifty workmen were employed on an average per working day in the preceding twelve months.

The word “or” between sub-Clause (i) and sub-clause (ii) of clause (a) of the proviso is very relevant in deciding this issue. Because of the existence of the conjunction “or” in between Sub Clause (i) and (ii) of Clause (a) the Section imposed by the each of the said two Sub Clauses are mutually exclusive and therefore, if any one of the two conditions is fulfilled, that the Section shall not apply to the concerned undertaking and as a result the question of the employer being liable to give a 60 days notice prior to the date of closure of the concerned authority under Sub Clause (i) of the said Section would not arise.

C.7.2 Company has done the right thing or otherwise

In the light of the above, let us examine the facts and circumstances of the case.

On the date on which the Board of Directors have taken a decision to declare “closure” of the unit, less than fifty workmen were employed (virtually no employee since the entire work force is relieved upon acceptance of VRS) and since clause (a) (i) of the proviso applies the question of intimation to the appropriate Government under subsection (i) does not arise at all. Clause (a) (ii) of the proviso in the circumstances would not be applicable and therefore Section 25FFA is not at all attracted in the facts of the case. Therefore, the company has not committed any breach or offense under the Sections 25FFA of the Industrial Disputes Act, 1947. In case, the Labour department raises an issue contenting

that the breach of section 25FFA which is liable for punishment under Section 30A which provides that an employer who closes down any undertaking without complying with the provision of section 25FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees or with both, the company should take up the foregoing contention before the Labour department and get the matter settled.

Many a times, the lower authorities don't accept the contention and they would like to persist their stand. If such a situation arises, the company have to move the matter by filing a Writ Petition in the High Court against the lower authority restraining them from taking proceedings under the Industrial Disputes Act, 1947 for alleged breach of the section 25FFA of the ID Act, 1947.

Since the interpretation skill is an very important skills and especially when practicing professional are representing the corporate in NCLT, they need to be very clear on the “facts of law” apart from the “facts of the case”. Professional need to develop the right interpretation skills in order to render services in compliance with applicable laws.

C.7.3 Practically what had happened (for the information of readers)

The enterprise had closed down the unit without giving the notice by virtue of the above interpretation. Subsequently there was an issue raised by the relevant regulatory authorities and the issue was resolved since the interpretation done by the company was accepted as correct. Once all the employees have taken voluntary retirement there remain no workmen with a result, it was falling under the proviso what has been discussed above.

C.8 Keeping track of latest judgment - (spirit of law rather than letter)

A judgment of Bombay High Court decided on 23rd August 2011 in the case of Naina D Kamani v Janson Engineering & Trading (p) Ltd 2011 has gone into the wider interpretation of the law relating to section 313 of the Companies Act 1956 (in the current Companies Act 2013, the relevant section is 161) dealing with the vacation of alternate director. Let us look into the details.

The plain reading of section 313 shows that that specific requirement is not made. For the alternate Director to cease to be a Director, the actual attendance at board meeting of the director appointing him is not contemplated under the section. Consequently, the return to the State by the original director would suffice though the director does not commence attending board meetings held after his return.

However, the court in this case the court has further to examine as to what would be the extent and quality of such return has to be seen for the purpose of deciding the vacation of the office of the alternate director. The court observed that the section 313 of the Companies Act, 1956 enables the alternate director to hold office for the period that the original director appointed him would have held such office and to vacate that office when the original director appointing him returns to the

State. The alternate director is essentially appointed during the absence of the original director appointing him from the State in which the meetings of the board are ordinarily held.

In this particular case the original director returned to India for a short period. During that period the alternate director and original director have met when the signature of original director came to be obtained on a separate paper showing his agreement thereon. The original director has thereafter left India for abroad. The court observed that the provision in section 313 of the Companies Act, 1956 with regard to the absence of the original director from the State in which the meetings of the board are ordinarily held until the original director returns to the State in which the meetings of the board are ordinarily held as set out in sub sections 1 & 2 thereof respectively would show not only a temporary return, but an intention to stay in that State so as to able him to transact the business of the Company in the State where board meetings are ordinarily held. If an original director merely comes to the State and leaves India again he would not be able to transact business. Hence the alternate Director would require to continue until the original director appointing him would have continued. In this case it would be permanently or until the original director resigns or is removed is as director or otherwise vacates office under section 283 of the Companies Act.

C.8.1 Wider interpretation and conclusion by the Court

What precisely the section contemplates by the term "the original Director returns to the State", must be read as contemplating only such return which would have some amount of permanence. The Director must return to carry on the business. He must return for a length of time. The intent of the Director must be not to make his visit merely temporary when he does not partake in the management of the Company and when he intends to go abroad again. It should therefore, be the intention to return to India and the State in which the Board Meetings are ordinarily held (i.e. where the registered office is generally situate) not for a temporary period e.g. on a holiday or on vacation. It will imply the intention akin to the intention required to be domiciled in the State. Therefore, when the original Director returned to India and the State in which the board meetings were held to carry on his business in India that the alternate Director would vacate his office under Section 313 (2) of the Companies Act, 1956.

This is altogether a new dimension and this judgment of Bombay High court has departed from the settled law so far on this subject. By and large, the companies have been following consistently, the vacation of the alternate director, upon the return of the original director to the state. This case law has given a very wide or wider interpretation for the vacation stating that it is not merely enough for the original director to return to the state but he should be in a position to participate the company's board meeting- i.e. - the return to the State by the original director would suffice though the director does not commence attending board meetings held after his return.

The company secretary in any case needs to be an expert in his professional capacity for all the corporate laws and he should be in a position to interpret the statue correctly – of course, he could consult expert in the field whenever he is in doubt. Also, he is expected to constantly keep updating

the relevant laws applicable to the organization where he is serving in case of employment or rendering service in case of practice. The company secretary also needs to keep the latest decisions of the judiciary on the relevant subjects since the judicial decisions are forming precedents while deciding the issues whenever they arise.

14. Conclusion

Considering the vast and enormous opportunities emerging by setting up of the National Company Law Tribunal and Appellate National Company Law Tribunal the Practicing Company Secretaries should get their competencies set with very high standards right from understanding the applicability of provisions / acts / rules at a given situation, correctly interpreting the law to the advantages of their clients to whom they render service in compliance with applicable laws while providing value added services in assisting the Tribunal for speedy disposal / dispensation of justice in all relevant matters such as scheme of restructuring, merger, amalgamation, compromise and arrangement, revival and rehabilitation of sick companies and winding up of companies etc.

Opinion writing would be one area which would emerge largely for practicing company secretaries and one has to develop of an art of opinion writing, right interpretation of the provisions / definitions and also provide a clear, unambiguous opinion spelling out the procedural issues which are to be followed.

Needless to mention that the practicing companies secretaries need to improve upon their skills relating to drafting the documents, petitions, submissions, joinder, rejoinder for the requirements of the Tribunals and also get familiarized with the pleading skills so that they could be very competent to be successful in the added new area of practice. Understanding the court procedures would be essential for representing the clients in judiciary.

Finally we could sum up and say that the role of company secretaries in the corporate world is going to be manifold and phenomenal and let us sharpen our skills with continuous improvement keeping in face with the amendments from time to time and try our best to “deliver first time right” and prove our metal in excelling the areas of governance and compliance.

Theme: PCS- Calibrating Competence for Achieving Excellence

Sub theme: Emerging Areas of Practice- Internal Audit

Title: “Controlling Esotericism, Ensuring Corporate Governance”

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Abstract

The establishment, growth, and evolution of the contemporary internal auditing profession is closely integrated with the history of The Institute of Internal Auditors (IIA), an organization established in the United States in 1941. The significance of both external and internal auditing arise from the need to keep a close eye on record-keeping errors, asset misappropriation, and fraud within business and non business organizations. With the passage of time and phenomenal growth in business activities, especially in corporate houses where it is of utmost importance to foster governance for protecting the interests of stakeholders, auditing both internal and external needs to be at its zenith.

However, this article focuses upon internal audit and various key facets associated with it, especially how it plays a pivotal role in curbing malpractices or bringing to the fore the wrongdoings or fault lines that carries the potential of becoming an irreparable fissure.

Through this article, the various types of internal audits but not limited to the following will be discussed: a) Performance (Value for Money) Audit; IT Audits; Financial Audits; Compliance Audits; Governance Audits; Operational Audits; and Continuous Audits. The purpose is to comprehend as to how various mentioned approaches of internal audit plays a pivotal role in ensuring complete governance.

Keywords: Genesis; Types of Internal Audits; Companies Act, 2013; The Future; New Vista for Company Secretaries

Prologue- Genesis of Internal Audit

The need for both internal and external audit cannot be ignored. As they are catalyst of independent verification to assuage record-keeping errors, asset misappropriation, and fraud within business and non-business organizations. The roots of auditing, in general, are instinctively described by historian Richard Brown (1905, quoted in Mautz & Sharaf, 1961) as follows: "The origin of auditing goes back to times scarcely less remote than that of accounting...Whenever the advance of civilization brought about the necessity of one man being intrusted to some extent with the property of another, the advisability of some kind of check upon the fidelity of the former would become apparent."

As far back as 4000 B.C., historians believe, formal record-keeping systems were first instituted by organized businesses and governments in the Near East to dispel their concerns about correctly accounting for receipts and disbursements and collecting taxes. Similar developments took place with respect to the Zhao dynasty in China (1122 – 256 B.C.). The requisite for and cues of audits can be traced back to public finance systems in Babylonia, Greece, the Roman Empire, the City States of Italy, etc., all of which developed a detailed system of checks and counterchecks. Specifically, the se governments were worried about incompetent officials prone to committing bookkeeping errors and inaccuracies as well as corrupt officials who were encouraged to perpetrate fraud whenever the opportunity surfaced. Even the Bible (referring to the period between 1800 B.C. and A.D. 95) explains the basic *raison d'être* for instituting controls rather straightforwardly: "*if employees have an opportunity to steal they may take advantage of it.*" The Bible also contains examples of internal controls, like, the dangers of dual custody of assets, the need for competent and honest employees, limited access, and segregation of duties (O'Reilly et al., 1998). The emergence of double-entry book keeping in circa 1494 A.D. can also be directly traced to the critical requirement for exerting stewardship and control.

Within a span of a couple of centuries, the European systems of bookkeeping and auditing were introduced into the United States. As the size, scope and complexities of the business activities enhanced, an urgent need for a different internal assurance function that would check the accounting information used for formulating decisions by management emerged. Management required some methods/means of evaluating not only the efficiency of work performed for the business but also the rectitude of its human capital. Around the turn of the 20th century, the setting up of a formal internal audit function to which these responsibilities could be delegated was observed as the logical answer. As the time flired, the internal audit function became responsible for careful collection and interpretive reporting of selected business realities to assist management in keeping track of critical business developments, activities, and results from diverse and voluminous transactions (Mautz, 1964). Companies in the railroad, defence, and retail industries had long recognized the importance of internal audit services, going far beyond financial statement auditing and devoted to furnishing reliable operating reports containing non-financial information, like, quantities of parts in short supply, sticking to the schedules, and quality of the product (Whittington & Pany, 1998). Similarly, the U.S. General Accounting Office (GAO) and several State Auditors' Offices, for example, the State of Ohio Auditors' Office, have traditionally employed large numbers of internal auditors.

Meaning & Value

The Institute of Internal Auditors (IIA, 1999a) defined internal auditing as:

An independent, objective assurance and consulting activity designed to add value and improve an organization's performance. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

This definition signifies that internal audit has undergone a paradigm shift from an emphasis on accountability about the past to improving future outcomes to help auditees operate more effectively and efficiently (Nagy and Cenker, 2002; Stern, 1994; Goodwin, 2004). Since, the definition equally serves both the private and the public sectors (Goodwin, 2004), it is used in this study as a basis to analyse public sector internal audit effectiveness.

Internal audit is effective if it meets the intended outcome it is supposed to bring about. Sawyer (1995) states, "... internal auditor's job is not done until defects are corrected and remain corrected." Van Gansberghe (2005) explains that internal audit effectiveness in the public sector should be evaluated by the extent to which it contributes to the demonstration of effective and efficient service delivery, as this drives the demand for improved internal audit services. Based on the results of a consultative forum that focused on improving public sector internal auditVan Gansberghe (2005) identified perceptions and ownership; organization and governance framework; legislation; improved professionalism; conceptual framework; and also resources as factors influencing internal audit effectiveness. Effective internal audit undertakes an independent evaluation of financial and operating information and of systems and procedures, to provide useful recommendations for improvements as necessary.

The effectiveness of internal audit greatly contributes to the effectiveness of each auditee in particular and the organization at large (Dittenhofer, 2001).Dittenhofer (2001) has also observed that if internal audit quality is maintained, it will contribute to the appropriateness of procedures and operations of the auditee, and thereby internal audit contributes to effectiveness of the auditee and the organization as a whole. Using agency theory, Xiangdong(1997) explained the role that internal audit plays in an economy and points out that internal audit has an advantage over external audit in obtaining information quickly and finding problems at an earlier stage; and Spraakman (1997), applying the theory of transaction cost economics, demonstrated how internal audit recommendations are important to the management of government organizations.

Without an iota of doubt it can be said that today's organizations witness economic catastrophe of great proportions. In view of this, management, boards of directors and leaders throughout the organization are taking fresh looks at virtually all facets of the business to evaluate how to accelerate productivity, processes and systems. They have started to think differently in order to find out ways as to how to operate their businesses successfully and maintain plans for long-term growth in today's unique business environment.

Internal auditing professionals not only must understand these challenges and their organization's key objectives, but also ensure that amid the many organization wide changes taking place on almost a daily basis, key controls and processes are sufficiently addressing these changes and the new risks that emerge, and are functioning as intended. Internal audit plays a crucial role in assisting companies successfully "manage the change" by providing assurances that with every new process, procedure and initiative, any significant new risks that emerge are identified, monitored and managed effectively, so that the enterprise is protected on an ongoing basis and to a level that satisfies management and the board.

Types of Internal Audits

Before pouncing upon the various approaches of internal audits, it is imperative to comprehend the concept of internal control and other relevant concepts, as various approaches of internal audit may have their origins from these topics. Internal control is under the Board of Director's responsibility. Internal control function is required to ensure the efficiency and profitability of operations, the dependability of information, and adhering to rules and regulations. It is a part of day-to-day management and company administration. A critical component of this internal control is the 'Internal Audit', which generally operates as a distinct unit under the CEO and report its observations to the Board of Directors. The internal audit assist the management in directing operations by inspecting and assessing the efficiency of business operations, risk management and internal control, and by producing information and recommendations to step up efficiency. The internal audit also inspects the processes of business operations and financial reporting.

In current business environment where business organizations are exposed to various forms of risks, especially systematic ones, internal audit can go a long way in managing risks. Since risk management is an essential but complex process of scientific approach to risk research, and areas of risk research being multiple, it can be categorized in the sub-areas of scientific research.

Experts opine that establishing and monitoring of internal audit systems are the obligation of the entity that retained a key manifestation of the concept of modern management theory & practice and responsibility (Mircea Boulescu, 2004). With reference to the private sector, internal audit activities encompasses all economic activity, each of them individually or collectively, may be the weak link in the chain that affect the performance of procedural goals in an efficient entity. For the public sector, internal audit concentrates upon, what has influence on the proper administration of public revenues and expenditures (Dan Mavrodin, 2008). Thus, risk identification is the first and most important stage of risk management process, it consists in identifying potential hazards that exist within the entity.

Having a brief discussion on internal control, the crucial component of internal control, i.e. internal audit and risk management, the ensuing discussion now focuses upon the kinds of internal audit which enables the organization to plug wastages and curb malpractices. The following types of internal audit will be discussed: a) Financial Audit and b) Operational Audit.

Financial Audit

In the last decade, both internal control and internal audit have gained paramount importance. In a study conducted by Isa Tak, Ana Morariu and Ayhan Guney and published in a research paper titled, *“The Importance of the Financial Audit Perception in the Internal Control Structure to prevent the Financial Crisis: Evidence from Romania”* tries to provide survey evidence of the internal control if it is needed, if it can prevent frauds and if it can improve financial report quality. The objective of the financial reporting is defined in the IFRS 2011 booklet as follows: *The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful in making decisions about providing resources to the entity and in assessing whether the management and the governing board of that entity have made efficient and effective use of the resources provided* (Bruce, Danie, Tapiwa & Raymond, 2011). The significance of precise financial reporting has been expressed by several academicians and standard setters. Accuracy in financial reporting should be ensconced in business process, as for ensuring effective and efficient utilization of resources the financial reports must provide the correct picture of the company.

Accounting scandals, like, Enron in 2001, WorldCom in 2002, Qwest Communications, Adelphia, Global Crossing, Nortel, Parmalat that appeared in the beginning of the 21st century has increased the magnitude of complexity of the financial world and pulled to the nebulous atmosphere. After these forms of financial catastrophes, flashes have been busted on the external auditors but the significance of the internal audit has been well accepted by the academicians that it should not be ignored.

Talking about financial audit without mentioning about financial statements has no relevance. Companies produce financial statements that provide information about their financial position and performance. This information is referred and used by a wide range of stakeholders, e.g. shareholders, banks, suppliers, customers, investors etc in formulating economic and other important decisions.

The financial statements prepared by corporate houses are audited by external auditors and it provide respite to the stakeholders, as they are assured of a neutral verification of accounts by an outside agency. But the external auditor scrutinizes or checks the final product but what about the work-in-progress, i.e. the preparation of financial statements, the accounting items covered, methods embraced for determining the value of various accounting items that gets final berth in Trading, Profit & Loss Account, Balance Sheet and Cash Flow Statement. For example, whether depreciation is properly charged? whether fixed assets are recorded at proper values? whether expenses have been inflated or revenues have been understated in order to show less profits for evading taxes or providing false information on profits as a window dressing and so on and so forth. So, right from checking financial loopholes, prevention of concealment of material facts, to ensuring compliance with accounting standards while recording various financial items all comes under the purview of financial audit.

While companies of varying sizes generate financial statements, the number of stakeholders interested in them would generally be larger for public companies and mammoth private companies,

due to the number of individuals, businesses and organizations that interact with and are affected by them. Also, public companies' financial statements are typically available to big number of users. In most jurisdictions, for public companies, there are additional requirements to comply with while preparing financial statements.

In addition, the changing economic and legal has substantial implications for a company's operations and financial reporting, and changes in the business, economy and laws and regulations normally enhance the degree of risks affecting the business and calls for adequate response and disclosure in the financial statements. This in turn affects the way an audit is carried out, since the auditing needs to be scaled to address increased risks of material misstatement of the financial statements. So the huge responsibility lies on the shoulders of internal audit team. They have to be well versed with advanced accounting knowledge and various mercantile laws that may have a direct or an indirect influence on financial activities of the organization.

Since accounting is the backbone of a business process, as it provides rails on which the train of financial activities runs, it is essential to understand 'Basic Internal Accounting Audit'. The following points are of relevance in this regard:

a) Creating an Accounting Audit Trail: An accounting audit trail is the paper and electronic sources that document the history of a business's transactions. Audit trails are used to trace a business's financial data from the general ledger to the source of the transaction/funds. A robust audit trail provides a complete chronological list documenting the steps taken to commence and complete transactions. Now, the internal auditors should try to find out that whether the existing accounting practices enable them to track the complete process of a financial transaction with documentation. If not, then accounting processes must be strengthened in order to create an adequate accounting audit trail. To create an accounting audit trail accounting software can be employed.

b) Reviewing your company's existing record keeping policies: It is important that all financial information is stored in reliable, secured and in an organized manner. . All relevant information, such as bank statements, cancelled checks, and cash register tapes should be stored at least through the end of each reporting period. If this information is stored properly then it will be easily accessible for resolving any issues or discrepancies.

c) Examining the process by which financial documents are currently provided to the accounting department: The primary step in accounting audit comprises of collecting financial documents, like, invoices, receipts and bank statements, and handing them off to the accountant or accounting department for processing. In case, this process moves at snail's pace then the accounting records will suffer and credibility will be lost.

d) Creating a system for monitoring company's internal controls: Internal controls are those provisions that help to protect against fraud, theft, and other internal accounting issues. Accounting duties to the employees should be assigned judiciously. For instance, it is advisable not to allow the same person to both handle cash and do the bookkeeping, as this makes it easier to explain away

missing cash. Further, the following safety measures should be implemented: i) Safes should be locked when not in use, and company software and computers should be password protected and ii) Use of camera systems as they are advantageous for monitoring the execution of internal controls at retail businesses.

e) The Accounting and Tax Laws: For tax purposes, it is mandatory to maintain comprehensive accounting records. If accounting records have been kept in compliance with law, then it creates no problem during external audit.

Operational Audit

It involves a review of operating processes from the perspective of determining the effectiveness and efficiency of such practices in attainment of the stated objectives. For instance, a business may perform an operational audit of manufacturing practices to conduct gap analysis to enable process improvements.

In other words, an operational audit process is the series of steps an auditor takes to assess the operational activities of a given company or other organization. The process is very much alike to the processes for other kinds of audits, like, financial audit, but the operational audit process is a much more in-depth review of the business. It generally does not concentrate on a single department or project, since each department plays a role in the overall operational process and is interlinked.

The objective of the operational audit process is to ascertain whether the internal controls of the business, like, policies and procedures, are adequate to produce an optimum level of efficiency and effectiveness. This is important for businesses, because absence of efficiency and effectiveness typically translates to lower sales and enhanced operational costs, which sometimes imply the inability of the business to compete in the industry.

The need for operational audit has emerged due to the insufficiency of traditional sources of information for an effective management of the company where the management is at a distance from actual operations due to levels of delegation of responsibility, segregating it from actualities in the organization. To be precise, operational auditing arose from the need of managers responsible for areas beyond their direct observation to be fully, objectively and currently informed regarding conditions prevailing in the units under control.

Operational audit is considered as a specialized management information tool to fill the void that traditional information sources fail to fill. The reason being conventional source of management information are departmental managers, routine performance report, internal audit reports, and periodic special investigation and survey. It is observed that these traditional sources fail to provide information for the best direction of the departments all of whose activities does not come under the ambit of direct observation of managers. In view of this, operational auditing has filled an important vacuum, i.e. it has provided the management with inexpensive, continuous and objective appraisal of activities, operations and controls to inform the management about accomplishment of standards and, if otherwise, to inform the management what has gone awry and how it happened. Also, it

enlightens the management about probable menaces, limitations and opportunities that may be of substantial value to the management. Thus to sum up, the operational audit is undertaken to address the following:

- a) Identify poor work practices in order to improve them.
- b) Verify that employees implement operations in conformity with instructions and regulations, which guarantees attaining the desired effectiveness and efficiency.
- c) Assist in the evaluation of quality control processes embraced by the organization.
- d) Evaluate implementation processes in the organization.

How it Goes?

During pre-audit, the auditor meets with managers, explains the audit process and collates basic information regarding the company to ascertain concerns and risks. After this, the auditor interacts with key managers to check the components of the audit and the associated concerns. Next, the auditor meets with those in control of high-risk areas and figures out and documents their objectives and control activities. The auditor sends the documentation to the managers for confirmation and discusses controls not in place. Then after, the auditor designs and prepares testing procedures for each key control. He reviews the plans with managers and carries out the tests, documenting and discussing all results and improvement proposals, followed by preparation of an audit report and conducting of meeting with the management to understand the ways and means to address the issues detected. At the end, final report is generated and follow-up is done.

To elaborate further, for executing operational audit in an effective manner, the following points needs to be taken into account (a brief description of them is provided below, please refer Exhibit 1):

a) Select procedures or departments whose operations are to be audited:

This step is considered the fundamental stage in which the procedures or departments whose operations are to be audited are chosen, which substantially affects all subsequent steps of the auditing process. This is achieved by using the following parameters:

- ✚ The audit added value: It refers to the impact that will result from improving the implementation of the process whose operations are to be audited, noting that priority will be given to the procedures or departments that never have been audited.
- ✚ Impact: Priority is given to the processes or departments that have the highest impact on economy, efficiency or effectiveness.
- ✚ Risk: The risks associated with the implementation of procedures in conformity with the stated or specified criteria and regulations are analyzed. The more they are associated with the public interest, the more important is the auditing process.

b) Determine audit objectives: In this step, the objectives of operational audit are decided. It must be noted that framing the operational audit objectives significantly affects the nature of the audit and the outcomes that will be obtained using this process. Elements to be considered when deciding the objectives of operational audit are: Procedures and departments to be audited; Reason, i.e. the driving reasons of operational audit and Impact, i.e. outcomes expected from operational audit.

c) Selection of audit team and determine the schedule: No team can perform well, if any of its member's rectitude is questioned. In view of this, it is essential that every member of the operational audit team possess the following qualities: Objectivity and impartiality; Maintain the confidentiality of information; Honesty and integrity; Ability to work as part of a team; Ability to assume responsibility and form decisions and Experience in operational audit. Having formed a team which possess the mentioned qualities and potential to conquer '*Alps*', without further loss of time, the schedule of operational audit should be chalked out. It comprises of the following:

Audit Schedule- When audit will happen? Which checklist? Lead Auditor/Owner

Audit Preparation- Agenda created, Audit team assigned and Schedule confirmed

Audit Execution- Audit performed, Findings recorded, Identify risks, Severity, Management/Peer review

Audit Reporting- Track progress, Trending & Analytics and Risk Management/Analytics

Follow Up/Closure- Track resolutions, Perform follow up and Schedule next audit.

d) Define the operations to be audited: In this stage, the audit team reviews all documents pertaining to the operation to be audited. This may cover the following:

Procedure manual.

Instructions concerning the operations that will be audited.

Regulations, legislation, policies and guidelines embraced by the government department.

Process flowcharts.

Forms used and the instructions on how to fill them out.

Performance indicators.

The government department's strategic plans and operational goals.

Reports on plans and priorities.

Previous audit reports prepared by other auditors.

e) Determine audit scope : At this stage, the following questions demands answers:

Which departments are engaged in the operation to be audited?

Who are responsible for implementing the processes and operations to be audited?

What powers does the auditor have? How accessible is the information?

Are the temporal or spatial determinants to implement the operations?

f) Preparation of audit checklist: The auditor must prepare the audit checklist based on the documents he has reviewed, which are pertinent to the scope of work specified. The checklist is a set of items that must be verified for conformity to the procedures and yardsticks set forth in the documents. The auditor uses this checklist during the audit process. It should be noted that the checklist must be encoded by serial numbers to maintain the reliability of information and document data for quick access.

At this stage, the auditor must use the audit checklist form to document all the queries through which to audit the implementation process and its conformity to the procedures and criteria. The auditor should also:

- Identify the sources and code of the document on which the inquiry is made.
- Procure the information and objective evidence needed.

g) Inform workforce to be audited: The department management informs the employees involved in the process implementation of the date of audit process: the scope of audit and the person to be audited. Employees must be given an apposite amount of time prior to auditing in order to prepare the records and files needed.

h) Implement auditing: The audit process is divided into two parts:

(i) Monitor the work- The auditor observes the performance of staff and assess the magnitude to which they conform to the sequence of operations and how they deal with customers. In the process, he writes down notes to prepare a report of nonconformity cases, if any.

(ii) Audit by interviewing human capital and reviewing the documents: Prior to auditing, the auditor must explain to the workforce concerned how auditing is to be performed. Then use the audit checklist to ask the employee/employees concerned the required questions and write down their answers in detail along with any notes. As well as auditing all the files and records that contain the previous forms, reports and documents on the implementation of the procedure, in order to check that operations are being executed as per the procedures and yardsticks specified.

i) Preparation of the audit summary report: Upon the conclusion of the auditing process, the auditor prepares the audit report and sends it along with the checklist and nonconformity report (if any) to the department management, which in turn approve the report and pass it on to the managers concerned in order to initiate requisite corrective and preventive actions.

When preparing the report, it is essential to ensure that the report contains all the needed information, including: Audit objectives; Scope of work, Action steps, including the time needed, professional standards and policies adopted; Audit results, including points of nonconformity; Summary of experts' views and management comments (if any). They must include all opinions, whether positive or negative and Any confidential or sensitive information that has been removed.

j) Follow up: Within a reasonable time period after implementing corrective and preventive actions, the audit process should be repeated to make sure that it achieves its objectives and that implementation conforms to the procedure and parameters laid down.

The Future of Internal Audit & Greener Pasture for Company Secretaries

In January 2012, Ernst & Young commissioned Forbes Insights to carry out a global survey about the evolving role of internal audit. Respondents comprised of chief audit executives (CAEs), C-suite executives and board members representing organizations with global revenues of \$500 million or more and spanning 26 industry sectors.

In the survey, 75% of respondents believe robust risk management exerts a positive impact on their long-term earnings performance. An equal number believe that their internal audit function has a positive impact on their overall risk management endeavours. And yet, 80% of respondents acknowledged that their internal audit function has room for improvement. Of these respondents, 70% believe that the improvements should be undertaken within the next 24 months.

So, from the brief description of the mentioned survey result, it can be confidently said that internal audit is going to stay and will capture the top slot in organizations. For several years, internal audit departments served as business and operational consultants to their organization, adding value enterprise wide. But with the passage of the Sarbanes-Oxley Act and other laws and regulations, the focus of internal audit has moved away from business and operational issues and toward financial controls. To be perceived as valuable business advisers, however, internal audit departments need to conquer challenges pertaining to governance, staffing, operations, and quality to align their contributions to the organization's strategic objectives.

Risk assessments and risk management are becoming more complex, and more important, to organizations. External market forces, economic volatility, and regulatory expectations have prompted executive management and audit committees to be more concerned about identifying and managing risks that could undermine strategic and operational objectives.

In view of this, there is a need and an opportunity for the internal audit function to take more of a leadership role in assisting organizations for addressing critical strategic risk management issues. To elevate the importance in the organization, internal audit needs to emphasize on three basic attributes: a) Acquire the technical skills to audit the organization's biggest risks. This can be achieved by hiring auditors with the appropriate experience and education, using outside resources, or both, b) Maintain a thorough understanding of the organization's industry and the risks the organization faces. This should include knowledge of the competitive landscape, the primary market drivers, and applicable regulations and c) Use technology and software tools that can render internal audit's skills and knowledge more effective.

Further, the Indian Companies Act, 2013, have placed high importance on the concept of internal audit. The theory of internal audit was not present in Indian Companies Act, 1956, but, was parked in Companies (Auditor's Report) Order, 2003 (CARO). But Indian Companies Act, 2013 contains an

express provision about internal audit recognizing the usefulness of such an audit in terms of better internal control and corporate governance.

The concept of internal audit is covered by Section 138 of Indian Companies Act, 2013. The section states that such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Further, it is also stated that the Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board. At this juncture, it is also important to discuss about Internal Audit provisions in Companies (Accounts) Rules 2014- Rule13.

Applicability (Rule 13 (1)):

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-

(a) every listed company;

(b) every unlisted public company having-

- (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
- (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
- (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year;
- (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

- (i) turnover of two hundred crore rupees or more during the preceding financial year; or
- (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

According to the Section 138 of Companies Act, 2013, the internal auditor shall be either Chartered Accountant or Cost Accountant or such other professional as may be decided by the board. Further, such internal auditor may or may not be an employee of the company (Explanation to Rule 13 of Companies (Accounts) Rules, 2014). Thus, an employee of company may also be appointed by Board as internal auditor. Now, it's a blessing for Company Secretaries, as the words, 'other professional' provide avenue for Company Secretaries to step into the shoes of internal auditor also. Another key insertion in Companies Act, 2013 that have broaden the scope of internal auditor and probably

Company Secretaries, is Section 139, as it states that statutory auditor appointed under the mentioned section is not eligible to provide the service of internal audit whether provided directly or indirectly to the company or its holding company or subsidiary company, as provided in Section 144 of the Companies Act, 2013.

Therefore, paramount challenges and opportunities are waiting for Governance Professionals. Business complexities are on the rise, so are the probabilities of malpractices, frauds, scams etc. As Key Managerial Personnel, Company Secretaries can now expand their wings and scale stellar heights in the firmament of internal audit. Since they are like a bridge between board and stakeholders of the company, and having access to critical processes, policies and procedures of the organization, they can be a fulcrum of internal audit, by monitoring financial and operational matters through the microscope of corporate governance.

Conclusion

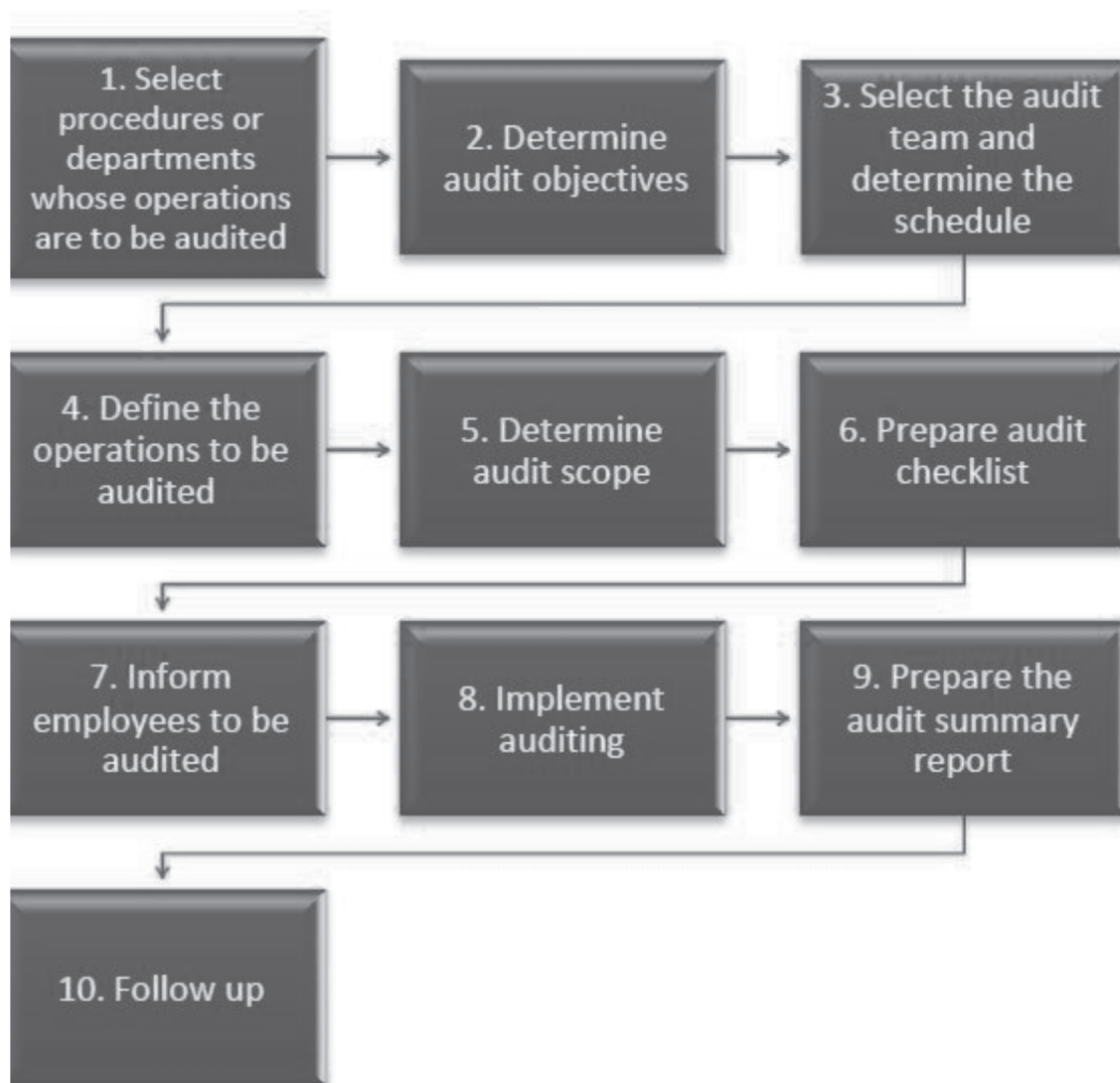
Simply observing a business organization, one may not understand what is going behind the walls and sometimes the heights of these walls are so high that for a stakeholder it may be beyond his capacity to explore the real facts. For instance, for an investor who is not conversant with the theory of Fundamental Analysis, may not be in a position to analyze the financial statements of the company over a period of time, in respect of its liquidity and solvency. Similarly, everyone cannot be expected to be a connoisseur in judging a business with reference to its production efficiency, turnover, quality of human capital and their performance, whether processes instituted are playing a crucial role in attaining cost effectiveness or enhancing profitability etc.

A stakeholder, especially investors who can afford to be hapless, if they are assured that there is a team that constantly keep vigil over the activities of the organization, which is always alert and will not waste a moment in bringing deviations to the notice of the management, will take all necessary measures to ensure that his wealth is intact and the company is not indulged in activities which are kept cryptic from the investors, and so on and so forth.

No doubt external audit is a control mechanism but to ensure as to how control systems are functioning and is there any collapse or chance of failure in control system, internal audit is the answer. Further, internal auditors work within businesses and organizations to monitor and assess how well risks are managed, the business is being governed and internal processes are functioning. Thus, they have the duty to advise management on how to improve systems and processes. Finally, internal audit is a cornerstone of robust governance, it bridges the gap between management and the board, assess the ethical climate and the effectiveness and efficacy of operations, and serves as an organization's safety net for compliance with rules, regulations, and overall best business practices.

Exhibit 1

Steps involved in Operational Audit



Source: Operational Audit Best Practices (US AID)

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COMPANY SECRETARY

GROWING POTENTIAL IN TODAY'S BUSINESS ENVIRONMENT!

CS Jae Goswami, Proprietor CS Jae Goswami & Associates

The world has come closer with trade and businesses crossing national boundaries.

The requirement of conducive environment for smooth operation of business has become all the more critical and the need of the day!

In such times a strong foundation of legal systems is a must for businesses to function without any apprehensions and hitches.

The business world has begun to identify and associate the role of a Company Secretary be it employment or practice with not only Company Law but also the entire gamut of corporate laws.

It encompasses laws relating to direct, indirect taxes, land laws, law pertaining to commercial contracts, Intellectual Property Law, Cyber Law, Environment Laws, Labour Laws amongst many others.

The laws mentioned above are not new but the active involvement of Company Secretaries in the implementation of these laws is rather recent. In some laws Company Secretaries do not dabble but there is still lot of scope for us to venture in provided the statutes are amended to that extent.

Company Secretaries by profession are not allowed to appear in the Court of Law to present cases. However, Company Secretaries now have a permission to appear before the Company Law Board to present cases falling under Company Law. Company Secretaries with their expertise on Company Law and a little fine tuning of presentation skills and methods for representing cases, have a big opportunity to widen the scope of their activities.

Labour Laws:

India has a multitude of restrictive labour laws and these have been found to adversely affect economic performance of manufacturing firms. The impact of trade liberalization on the domestic manufacturing sector to a great extent depends on labour laws. The more flexible labour laws are the better it will enable India to compete in global markets.

Shri Shankar Aggarwal, Secretary, Labour and Employment, Government of India in the 104th International Labour Conference in Geneva stated that the emphasis of the government is on quality and effectiveness of the labour inspection system rather than mere numbers. We want to bring in an efficient system of compliance for labour legislation with the help of information technology. He said

that Government of India has taken a major good governance initiative to avoid malpractices in labour inspections. He reiterated that the rights of the inspection authority have not been curtailed at all. The phrase 'end of Inspector Raj' does not mean 'end of inspection system' but ending malpractices and arbitrariness in the current inspection system.

Prime Minister Narendra Modi has launched several initiatives, including a single-window labour compliance process for industries and friendlier provident fund facilities. He also unveiled the new inspection scheme that is expected to end the so-called Inspector Raj. Labour inspectors will no longer have the powers to decide on the premises that they would survey. Instead, a computerized system will randomly, based on data and objective criteria, identify the companies to be inspected (something similar to what is done during random scrutiny of income tax returns). Further, the inspectors will have to upload their inspection reports within 72 hours and can't modify them thereafter.

The Government has launched the Shram Suvidha web portal to facilitate a single window for compliance in labour laws. The portal is one among the five schemes which were inaugurated in October, 2014 under a labour reform programme called 'Pandit Deendayal Upadhyaya Shramev Jayate Karyakram', by Prime Minister Narendra Modi. This programme is a part of the government's call for 'Minimum Government and Maximum Governance' in order to bring about greater transparency and speed in the system.

The most important advantage of the portal is online registration of units and filing of self-certified single online returns. This will help to identify each and every unit with its unique number and would help to reduce the compliance burden on the industries, especially small and medium sized enterprises. The filing of a single consolidated online return, rather than filing separate returns for various labour compliances reduces a large amount of burden for the employer. Company Secretaries with their knowledge and expertise in the field of labour laws will be in a position to contribute in the preparation and filing of the returns.

The Company Secretary can also deliver on compliance work on the following fronts under Labour Laws:

- Submission of returns on a regular basis.
- Maintenance of appropriate records with regard to employees of the establishment under various labour legislations.
- Preparation of master compliance report covering within its ambit the entire set of labour laws for a better grip on implementation of the applicable statutes.

The preparation of such a compliance report will reflect the picture in totality and will identify gaps. It will help set up an internal control system which will rectify the gaps to ensure regular and timely compliance of the laws.

Cyber Laws:

Another impact as a result of globalization is the threat of cyber crime. The reason why cyber crime is critical is because cyber crime does not involve physical presence at the scene of crime, a basic assumption in criminal law. The new methods of transactions and trades that have emerged with the new technologies are so different from old methods that the old checks and balances are no longer relevant in their respect. While embracing these methods, organisation needs to take this into consideration and make provisions against misuse.

The regulatory compliances under Indian Companies Act 2013 have been given a new meaning. The increased cyber obligations under the 2013 Act now require the companies to comply with techno legal requirements in India. These include cyber law due diligence, cyber security due diligence, e-discovery compliances, cyber forensics, etc. Even the cyber security obligations of law firms in India has significantly increased and various stakeholders, including companies and law firms, must keep in mind the international legal issues of cyber security.

Under the new Act the responsibilities of board of directors have been enhanced to a great extent. The Board now would be required to attach to statements laid before a company in general meeting a report about various compliances under the Companies Act 2013. These include cyber law, cyber security, e-discovery, cyber forensics and many more such techno legal compliance obligations on the part of directors. Further, they must also prove that they had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. Now this would require techno legal expertise as cyber law and cyber security issues are not easy to manage.

With the requirement for stringent compliances under Cyber Laws, its need for audit and checks in the system is all the more important. Information systems auditing is not similar to traditional auditing. To conduct the process of information systems auditing, knowledge of the following is required:

- traditional auditing,
- computer science,
- behavioral science
- information system management

The essence of a systems audit lies not only in covering the audit of reported items but also the aspects of choice of technology, use and risk of the technology without which the true picture will not be reflected and the purpose of the audit will not be served. All of this is finely wrapped inside a legal framework as a result of which a person with only technical knowhow cannot undertake such an activity. A person with sound knowledge of the legal implications needs to be support the cause.

The Compliance Officer of the organisation plays a pivotal role in this movement. He is well equipped with appropriate knowledge and ideas essential to introduce the checks and balances within the organisation. He can also contribute significantly in the training and orientation of employees towards achieving this end. These training programmes are crucial from the point of view of implementing the checks and balances that have been defined. Because it is after all the 'employees' that build the organisation!

Environment Laws:

Abiding by the law of the land is mandatory. There is a general desire in the corporate world to meet the requirements of the law and not fall prey to any litigation. But very few make an attempt to understand the essence and spirit of the statute and to extract and implement it. After all it is the Company Secretary who needs to propagate this philosophy and try to inculcate it in his organisation.

India is the seventh largest country in the world by geographical area and 65% of its population is under the age of 30. Over the next five to ten years, India is expected to experience aggressive growth by some estimates. While this growth seems high compared to many countries, India will require a high growth rate to ensure the livelihood of its population. The huge population burden also brings with it a whole spectrum of social issues that have environmental implications.

There are seventeen categories of industries been identified under the Environment Laws to be highly polluting industries: aluminium, cement copper, distillery, fertilizers, iron & steel, etc to name a few. The number of companies under these categories that have installed pollution controls to those who are in default is greater. What is a matter of concern is that many of the companies which now have installed pollution controls were initially found in violation of environmental requirements. This again drives us to the same thought that the basic instinct is 'not to follow the law'.

Public Interest Litigation has had a profound effect on the development of environmental law in India. These PILs have given the judiciary enormous scope for intervening in environmental matters. Indian courts have been categorical in their adoption of the values of sustainable development and the "precautionary principle," which asserts that a lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there are threats of serious and irreversible damage if the action is not taken.

Applicable environmental laws concerning the cleanup of contaminated property follow the polluter pays principle and impose liability on property owners and operators. The penalties imposed have included site closure and recovery of the cost of remediation from the responsible companies. This liability typically extends to individuals who have operational control, executive powers, or individual or joint ownership of assets. Since a board of directors has executive powers, statutory liability extends to all board members who are declared as Directors of the Company with the

Registrar of Companies. Liability may also extend to senior officials who are not board members if they fulfill the above criteria.

The liabilities under Environment Laws are rather stringent. They not only sap the revenues of the company in the form of penalties but also tarnish the image of the company in the global market. An increasing desire of Indian companies to meet world class standards has caused established companies in India to undertake regulatory compliance and sustainability initiatives as a means of improving their global brand and reputation. Foreign investment has resulted in heightened scrutiny of current and historic environmental liabilities associated with property transactions in India.

The desire to attain this status would necessitate a regime of self – regulation in organisations. Company Secretaries can render their valuable knowledge and ideas towards attainment of these objectives. Compliance could be ensured under the Environmental laws through internal audits and detailed checklists stating disclosure and measures under different environmental laws.

The noose is tightening around the neck of the Indian companies trying to make their mark in the global market with an increasing demand towards compliance of the law in letter and in spirit. The Company Secretaries have a great responsibility to steer the ship in the direction of self-regulation by interpreting the true sense of the law.

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TOOLS OF CORPORATE GOVERNANCE UNDER THE COMPANIES ACT, 2013

The business system is regulated by various rules, regulations, processes, customs and practices. The entity (whether a company / partnership / LLP or any other form of business organization) is under obligation to ensure compliance of the applicable rules, regulations, processes, customs and practices. Corporate Governance relates to compliance at the time when such compliance is contemplated and reporting such compliance / non-compliance to the stakeholders. Therefore, it is said that Corporate Governance relates to integrity, accountability, transparency and disclosures. For the corporates, the stakeholders include - shareholders, management, customers, suppliers, financiers, government and the community.

Under the Companies Act, 2013, there are various provisions which makes the companies (depending on applicability) and management more accountable, transparent and ensure that stakeholders are provided with adequate disclosures for the purpose of decision-making. The article is compilation of select provisions of the Companies Act, 2013 which provides a 'tool for corporate governance'. Few of these tools have been incorporated for the first time in the Indian Company Law, while few of the provisions existed under Companies Act, 1956 but were not mandatory, but were adopted as a good corporate practice. Few of the tools were mandatory under the Listing Agreement.

Synopsis: Under Companies Act, 2013, there are various provisions which makes the companies and management more accountable, transparent for ensuring that stakeholders are provided with adequate disclosures for the purpose of decision-making. The article is compilation of select provisions of the Companies Act, 2013 which provides a 'tool for corporate governance'. Few of these tools have been incorporated for the first time in the Indian Company Law, while few of the provisions existed under Companies Act, 1956 but were not mandatory, but were adopted as a good corporate practice. Few of the tools were mandatory under the Listing Agreement.

SECRETARIAL AUDIT:

Secretarial Audit can be an effective multi-pronged weapon to assure the regulator, generate confidence amongst the shareholders, the creditors and other stakeholders in companies, assure Financial Institutions and instill self-regulation and professional discipline in companies. It is a tool of risk mitigation and will allow companies to effectively address compliance risk issues. It helps the companies to build their corporate image.

Secretarial Audit is an independent and objective assurance intended to add value and improve operations of the company. The exhaustive exercise by Practicing CS and CS of the company helps in accomplishing the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

Under the Companies Act, 1956 the Secretarial Audit was not mandatory, however, few listed companies adopted the process and the Secretarial Audit Report was attached as an annexure to the Directors' Report. The scope of the Secretarial Audit was discussed between the CS of the Company and Practising CS, which was limited to corporate laws only.

SECRETARIAL STANDARDS:

Depending upon the philosophy of the promoters, compliance level of the company and overall volume of transactions requiring approval of the board of directors and the shareholders, the companies followed diverse corporate secretarial practices. These practices include: Issuing notice of meeting, mode of issue of sending notice of meeting, conducting meetings, maintaining minutes of meetings etc. Secretarial Standards aim to integrate, harmonise and standardise the corporate secretarial practices for various class the companies. It can be said that, after July 1, 2015 (date of implementation of Secretarial Standards) the documentation and compliance w.r.t the corporate secretarial records for closely-held private company, unlisted public company and listed company – will be at par i.e. standardized.

The adoption of Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed, making them comparable with the best practices in the world. It will also ensure observance of uniform practices across Board, while strengthening the Board processes, protecting individual directors, preventing oppression & mismanagement, building up investor confidence and better monitoring of compliances, thereby achieving the common goal of better corporate governance.

Under the Companies Act, 1956 the Secretarial Standards were not mandatory, however, few listed companies adopted the Secretarial Standards and made the requisite disclosure in the Directors' Report about its compliance.

INDEPENDENT DIRECTORS:

Section 149 of the Companies Act, 2013 relates to composition of the Board of Directors for the company, wherein Section 149(4) states that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. The latter of Section 149(4) is defined in the Companies (Appointment and Qualifications of Directors) Rules, 2014. Section 149(6) of the Companies Act, 2013 prescribes the criterias and qualifications a person to be eligible to be appointed as independent director of proposed company.

Considering the roles, responsibilities, duties and liabilities of the directors in the company, the Independent Directors plays a significant role in decision-making at Board-level and audit committee level, in spite of being an 'outsider' / 'watchdog'. It will not be an over-statement that the 'involvement' of Independent Director in the documentation, procedures, processes, compliances, risk-management is much higher than the actual promoters of the company. This is because of the enhanced roles and responsibilities of the independent directors in the company. The role of Independent Directors in fraud prevention and fraud detection has come under the direct scanner of the regulatory authorities, members and other stakeholders due to the recent exposure of high-profile instances of fraud in India.

Under the Companies Act, 1956 the appointment of independent director was not mandatory. Such appointment was mandatory under the Listing Agreement. Under the Companies Act, 2013, even unlisted public companies are under obligation to appoint independent director.

INTERNAL AUDIT:

Institute of Chartered Accountants of India ('ICAI') defines Internal Audit as an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the its risk management and internal control system.

In accordance with the Standard on Internal Audit ('SIA') - 1 issued by ICAI, the internal auditor should, in consultation with those charged with governance, including the Audit Committee, develop and document a plan for each internal audit engagement to help him conduct the engagement in an efficient and timely manner.

The internal audit aims at discovering errors and therefore when external audit (statutory or any other audit) is done those errors which were discovered during internal audit would have been rectified by then. There is reduction in the chances of frauds / plugging the loopholes which may be conducted by cartel of employees, wherein the top management cannot look into the minute details.

The internal audit is carried out by specialized professional, who present a report on the findings in the audit to the top management for necessary action.

Internal Audit was mandatory under the CARO for certain companies under the Companies Act, 1956.

REPORT ON AGM:

Pursuant to the provisions of Section 121 of the Companies Act, 2013, every listed public company shall prepare in the Form No. MGT – 15, a report on each Annual General Meeting ('AGM') including the confirmation to the effect that the meeting was convened, held and conducted in accordance with provisions of Companies Act and Rules made there under. The company is under obligation to file with the Registrar of Companies a copy of the report on AGM within 30 days of the conclusion of AGM.

Form No. MGT – 15, includes certain crucial points which are; (i) whether chairman of the meeting appointed, (ii) Number of members attended the meeting, (iii) Business transacted at the meeting and result thereof, (iv) Particulars with respect to any adjournment of meeting and change in venue, (v) Particulars with respect of postponement of meeting and change in venue, (vi) Fair summary of proceedings of the meeting. Such disclosures are crucial from the perspective of various stakeholders, whereby the company is accountable for the information that is submitted vide Form No. MGT – 15. The Form is to be digitally signed by Chairman of the meeting or in case of his inability to sign, then by 2 directors (one of whom shall be MD, if appointed) and CS.

There was no provision under the Companies Act, 1956 with respect to the Report on AGM.

INDEPENDENCE OF AUDITORS:

The independence of the statutory auditors of the company was one of the most sought provisions in the Companies Act, 2013. The principle envisaged with respect to the rotation of statutory auditors is to ensure that the "friendly relations" between the company promoters and statutory auditors is not developed, which if developed would jeopardize stakeholders' interest and dilute the statutory auditors' independence.

Pursuant to the provisions of Section 139(2) of Companies Act, 2013, a listed company or prescribed class of companies shall not appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years and an audit firm as auditor for more than 2 terms of 5 consecutive year.

Pursuant to the provisions of Section 144 of the Companies Act, 2013, the auditor shall provide to the company only such other services as are approved by the Board of Directors or the audit committee,

as the case may be, but which shall not include certain services (rendered directly / indirectly to the company or its holding company or subsidiary company). The certain other services include: (a) Accounting and book keeping services, (b) Internal audit, (c) Designing and implementation of any financial information system; (d) Actuarial services, (e) Investment advisory services, (f) Investment banking services, (g) Rendering of outsourced financial services; (h) Management services; and (i) any other kind of services as may be prescribed.

There was no specific provision under the Companies Act, 1956 with respect to independence of Auditors and restriction on rendering certain services. However, with respect to the rendering certain kind of services, MCA had issued circulars / clarifications to provide more precision on the provisions and its compliance.

AUDIT COMMITTEE:

Section 177 of the Companies Act, 2013 related to “Audit Committee”, whereby the Board of Directors of every listed company and prescribed class of company shall constitute such Committee. The Audit Committee shall consist of minimum of 3 directors, with independent directors forming majority. There are no specific ‘educational’ requirements criteria, however, majority of members of Audit Committee (including its Chairperson) shall be persons with ability to read and understand the financial statement.

The role and terms of reference of the Audit Committee has been defined to include:

- (i) Recommendation for appointment, remuneration and terms of appointment of statutory auditors company;
- (ii) Review and monitor the auditor’s independence and performance, and effectiveness of audit process;
- (iii) Examination of the financial statement and the auditors' report thereon;
- (iv) Approval or any subsequent modification of transactions of the company with related parties;
- (v) Scrutiny of inter-corporate loans and investments;
- (vi) Valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) Evaluation of internal financial controls and risk management systems;
- (viii) Monitoring the end use of funds raised through public offers and related matters.

Audit Committee is under obligation to investigate into the above mentioned matters or the can be referred to it by the Board and for this purpose Audit Committee shall have the power to obtain professional advice from external sources and have full access to information contained in the records of the company.

Under the Companies Act, 2013, the Audit Committees plays a significant role in corporate governance to maintain stakeholder confidence. The Audit Committee members encounter range of

new challenges as they are given the responsibility of overseeing critical aspects of the complexities of financial reporting, regulatory compliance and risk management.

The role, responsibilities and duties of the Audit Committee has substantially increased under the Companies Act, 2013 and almost at par with role, responsibilities and duties under the Listing Agreement. Therefore, unlisted public companies will have to ensure compliance of such provisions, as good as the public company is listed. The compliances under the Companies Act, 1956 were not as burdensome as prescribed under the Companies Act, 2013.

VIGILANCE MECHANISM:

The provisions relating to the vigil mechanism are applicable to listed companies and certain class of companies (companies which have accepted public deposits or companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 crores).

With respect to the operating part of the vigil mechanism, the Audit Committee is under obligation to oversee the same. Where the company is not required to form an audit committee, but where the provisions relating to vigil mechanism are applicable, then in such cases, the company shall nominate a director to oversee the implementation.

Companies may consider developing a fraud response plan and obtaining Audit Committee's approval. The Audit Committee member is under obligation to recue in case of conflicts. The vigil mechanism should provide for adequate safeguards against victimization. The Audit committee or the director is authorized to take suitable action (including reprimand) against repeated frivolous complaint. The vigil mechanism acts as a buffer for the management.

CONCLUSION:

The above-mentioned are few of the tools of corporate governance that are to be adopted by companies, depending upon its applicability. Some of the tools have been proved successful in developed countries, and its application in India will be challenging. There has been resistance from the corporates with respect to adoption of few tools and its practical implementation. As professionals, it is our responsibility to ensure that requisite compliances are fulfilled with ease and the person / committee complying the provisions are communicated and convinced with the importance of the same. Compliance burden is eased when the concerned person / committee are 'educated' and critical aspects are deliberated with the probable outcome.



FOREIGN DIRECT INVESTMENT (FDI) – A SYNOPSIS

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Introduction

“The Commerce and Industry Ministry declared on 15.07.2015 that the Foreign Direct Investment (FDI) into equity jumped 48% after the launch of the “Make In India” Programme. The “Make in India” initiative, which seeks to make the country a global manufacturing hub, was launched on September 25, 2014. Between October 2014 and April 2015, equity FDI rose 48 percent, according to the Ministry. Total FDI saw fresh equity inflows and reinvested earnings of foreign investors. The Ministry also said that in 2014-2015, investment by FII’s rose 717 percent to \$40.92 billion. (The Economic Times 16.07.2015)”

The above statistics show that foreign investors are gaining confidence in the Indian Economy and are finding India as a very attractive place to park their funds, both in terms of returns and safety; thanks to the liberal and dauntless measure by the Government to encourage foreign investments.

Understanding FDI

Foreign Direct Investment -FDI, as per the Consolidated FDI Policy has been defined as “Investment by non-resident entity/person resident outside India in the capital of an Indian Company under Schedule I of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.

Regulatory Framework

Foreign Investments in India is governed by Sec.6 (3) of The Foreign Exchange Management Act, 1999 read with Notification No.FEMA 20/2000-RB dated 3/5/2000 as amended from time to time. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India, makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000. These notifications take effect from the date of issue of Press Notes/Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail. The Procedural Instructions are issued by The Reserve Bank of India vide A.P.(DIR Series) Circulars.

The company accepting foreign Investments against issue of capital instruments should also comply with the relevant section of the Companies Act, 2013 and The Companies (Share Capital and Debentures) Rules, 2014 and any other Rules , if applicable and file the requisite forms with The

Registrar of Companies. It should also ensure the compliance with the internal regulations of the company by verifying its Articles of Association.

The regulatory framework thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications etc;

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India recently issued the Consolidated FDI Policy of 2015 which has become effective from 12th May 2015, which can be viewed at www.dipp.nic.in/FDI Circular 2015.

Recent Policy Measures towards FDI:

The Ministry of Commerce and Industry, Government of India, has recently introduced the following measures by issue of Press Notes from time to time, thereby increasing the Sectoral Cap in the following Sectors of FDI, which is a move to attract Foreign Investments:

1. 100% FDI allowed in Medical Devices
2. FDI Cap increased in insurance & sub-activities from 26% to 49%
3. 100% FDI in telecom sector
4. 100% FDI in single brand retail
5. FDI in commodity exchanges, stock exchanges and depositories, power exchanges, petroleum refining by PSU's, courier services under the Government route has been brought under the automatic route.
6. Removal of restriction in tea plantation sector.
7. FDI limit raised to 74% in credit information and 100% in asset reconstruction companies.
8. FDI limit of 26% in defence sector raised to 49% under Government approval route. Foreign Portfolio Investment upto 24% permitted under automatic route. FDI beyond 49% is also allowed on a case to case basis with the approval of the Cabinet Committee on Security.
9. Construction, operation and maintenance of specified activities of Railway Sector opened to 100% Foreign Direct Investment under Automatic Route.

Recent amendments to the Companies Act, 2013 to simplify the incorporation of companies in India by making some amendments to The Companies (Amendment) Act, 2015, viz; a) No requirement of Minimum Paid up Capital for Private/ Public Limited Companies b) Use of Common Seal made optional. c) No requirement of Certificate of Commencement of Business to be obtained by companies etc; also persuade foreign investors to commence business activities in India.

Hence, the Government is taking all steps to make India a most sought after place for making investments by foreign investors.

Business Structure in India for FDI:

The foreign company planning to invest in the Capital of the Indian Company can either:

- Incorporate a company in India under the Companies Act, 2013 as a Joint Venture or a Wholly Owned Subsidiary, or
- Set up an extension of Foreign Entity (Liaison Office/Project /Branch Office) These offices can undertake only activities specified by RBI. Approvals are granted under the Government and RBI route. Automatic Route is available for Branch/Project Office meeting certain conditions.

Other Structures: Foreign Investment or contribution in other structures like not for profit companies.

Citizen or Entity from Bangladesh and Pakistan can invest only under the government route also investor from Pakistan cannot invest in defence, space, atomic energy and sectors prohibited for foreign investment.

FDI – Investment Sectors:

I. Prohibited Sectors:

FDI is not permitted in the following industrial sectors:

1. Arms and Ammunition
2. Atomic Energy
3. Railway Transport
4. Coal and Lignite
5. Mining of iron, manganese, chrome, gypsum, Sulphur, gold, diamonds, copper, zinc.

II. Permitted Sectors:

General Permission is available for investment in rest of the sectors, subject to sectoral caps prescribed.

The permission may be under the Approval Route or the Automatic Route:

1. Automatic Route: FDI is allowed under Automatic Route without prior approval of either the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy issued by the Government of India from time to time. No prior regulatory approval is required. Only post facto intimation has to be done by the company accepting FDI, to the RBI through an Authorised Dealer. Automatic Approval is granted depending on the category of industry and the sectoral cap applicable.
2. Approval/Government Route: All cases which do not meet the parameters under automatic route are approved within 4 to 6 weeks under Approval Route. FDI activities not covered under the automatic route requires the prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance. Application can be made in Form FC-IL .

FDI – Type of Instruments:

Types of Instruments that can be issued against FDI:-

The following types of instruments can be issued by Indian Companies accepting FDI.

1. Equity Shares
2. Fully, mandatorily and compulsorily convertible preference shares
3. Fully, mandatorily and compulsorily convertible debentures
4. Foreign Currency Convertible Bonds
5. Depository Receipts (ADR/GDR)

FDI in also includes within its ambit issue of Rights Shares/Bonus Shares/Issued by way of Private Placement/Preferential Allotment of securities to foreign investors.

Further, the foreign investor can also acquire securities from a person resident in India by way of gift/transfer of securities.

General Permission of RBI (Notification No.FEMA dtd 03.05.2000) is also available for:

- x Issue of shares under ESOP (Employees Stock Option Plan) by Indian Companies to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India directly or through a Trust, upto 5% of the paid up capital of the Company.
(The RBI has said on 17.07.2015, that Indian Companies may issue shares under ESOP/Sweat Equity Shares to its employees or directors of their overseas firms only if it complies with the SEBI Regulations or Companies Act, besides adhering to the sectoral cap – Hindu Business Line dtd 18.07.2015)
- x Issue and acquisition of shares by non-residents after merger or demerger or amalgamation of Indian Companies.
- x Issue of shares or Fully and Compulsorily Convertible Preference Shares or Fully and Compulsorily Convertible Debentures on rights basis by and Indian Company to a person Resident Outside India.

Whenever making issue of securities, the company accepting FDI should also ensure compliance with the relevant provisions of the Companies Act, 2013 and Rules thereunder and also SEBI Regulations.

Issue of Debentures to Non-Residents:-

Issue of Debentures are governed by Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 and Companies Act, 2013.

Issue of Depository Receipts (ADR/GDR):-

Depository Receipts are negotiable securities issued outside India by a Depository Bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares held as deposit by a Custodian bank in India. Depository Receipts traded in US markets are called American Depository Receipts (ADR) and those traded in other markets are called Global Depository Receipts (GDR). Indian companies can raise foreign currency through issue of ADR'S/GDR's as per the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India. Unlisted Companies, which have not yet accessed the ADR/GDR Route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted Companies, which have already issued ADR/GDR's in the international market, have to list in the domestic market on making profit or within 3 years of such issue of ADR/GDR.

Pricing Guidelines of Issue of Shares/Convertible Debentures:-

The instrument issued by the Indian Company against FDI should meet the pricing guidelines under FEMA Regulations.

As per (Issue/Transfer of Shares or Convertible Debentures) Revised Pricing Guidelines (A.P.Dir Series) Circular No.4 dated 15.07.2014 issued by RBI, the issue and price of transfer of shares including Compulsorily Convertible Preference Shares and Compulsorily Convertible Debentures, the price of issue of shares issued shall not be less than:

- a. The price worked out in accordance with SEBI Regulations, as applicable, when the shares of the company is listed on any recognized stock exchange in India.
- b. The fair valuation of shares done as per SEBI Guidelines for listed companies or as per any internationally accepted pricing methodology on arm's length basis for unlisted companies.

Further, the pricing has to be decided upfront as a figure or based on a formula that is decided upfront at the time of issue of instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of instruments , in accordance with the extant FEMA Regulation.

Partly paid equity shares and warrants issued by an Indian Company in accordance with the provisions of the Companies Act, 2013 and SEBI Guidelines, as applicable, shall be treated as eligible FDI instruments w.e.f July 8, 2014, subject to compliance with FDI Scheme.

Any foreign investment into an instrument issued by an Indian Company which

- a) Gives an option to the investor to convert or not to convert into equity; or
- b) Does not involve upfront pricing of the instrument as date would be reckoned as ECB (External Commercial Borrowings) and will have to comply with ECB (External Commercial Borrowing) Guidelines stipulated by the RBI.

Optionality clauses are allowed in equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares under FDI Scheme, subject to the following conditions:-

- (a) There is a minimum lock-in period of one year which shall be effective from the date of allotment of such capital instruments.
- (b) After the lock-in period and subject to FDI Policy provisions, if any, the Non Resident Investor exercising option/right shall be eligible to exit without any assured return, as per pricing /valuation guidelines issued by RBI from time to time.

Where non residents are making investments in an Indian Company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI Scheme.

Mode of Payment for receiving FDI in an Indian Company

An Indian Company issuing shares/convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares/convertible debentures by :

- (a) Inward remittance through normal banking channels
- (b) Debit to NRE/FCNR account of a person concerned maintained with an AD category bank
- (c) Conversion of royalty/lump sum/technical know how fee due for payment or conversion of ECB , shall be treated as consideration for issue of shares with the approval of FIPB.
- (d) Conversion of import payables/pre incorporation expenses/share swap can be treated as consideration for issue of shares with approval of FIPB.
- (e) Debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I Bank on behalf of residents and non-residents towards payment of share purchase consideration.

Foreign Currency Account: Indian Companies which are eligible to issue shares to persons to residents outside India under the FDI Policy may be allowed to retain the share subscription amount in a Foreign Currency Account with prior approval of RBI.

Reporting Requirements:

As per RBI regulations, an India Company is required to report the details of FDI to RBI, whenever such Indian Company issues shares/debentures /preference shares/warrants under the FDI Scheme and raised Foreign Direct Investment. The Indian Company should report details of the amount of consideration (Including each upfront /call payment) to the Regional Office concerned of the RBI through its AD Category I Bank, within 30 days from the date of receipt of the money in the Advance Reporting Form.

1. Report on receipt of foreign investment:

An Indian Company receiving investment from outside India for issuing shares/convertible debentures/preference shares under the FDI Scheme should report the details of the amount of consideration received to the concerned Regional Office of the Reserve Bank within 30 days from the date of receipt in Advance Reporting Form, through AD Category-I Bank, together with copy(s) of FIRC(s) (Foreign Inward Remittance Certificate) evidencing the receipt of the remittance along with KYC Report on the non-resident investor from the overseas bank remitting the amount. The Report would be acknowledged by the concerned Regional Office of RBI, which would allot Unique Identification Number (UIN) for the amount reported.

An Indian company issuing partly paid up equity shares shall furnish a report not later than 30 days from the date of receipt of each call payment.

2. Report on Issue of Shares:

After Issue of shares (including bonus shares issued on rights basis and shares issued under ESOP) fully, mandatorily and compulsorily convertible debentures/fully, mandatorily and compulsorily convertible preference shares, the Indian Company has to file Form FC-GPR within 30 days from the date of issue of shares. The FC-GPR forms has to be duly filled up and signed by The Managing Director/Director/Secretary of the Company and submitted to the Authorised Dealer, who will forward the same to RBI. The following documents have to be submitted with form FC-GPR:-

1. A Certificate from Company Secretary certifying that:-

- a)
 1. All requirements of The Companies Act, 2013 have been complied with
 2. Terms and conditions of Government Approval, if any, have been complied with.
 3. The company is eligible to issue shares under the regulations.
 4. The company has all original certificates issued by the Authorised Dealer in India evidencing receipt of amount of consideration.

For companies with paid-up capital with less than Rs.5 Crores, the above mentioned certificate can be given by a Practicing Company Secretary.

b) A certificate from SEBI Registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

c) The report of receipt of consideration as well as Form FC-GPR have to be submitted to AD Category-I Bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Note: An Indian Company issuing partly paid up shares shall file a report in Form FC-GPR to the extent they become paid-up.

(d) Annual Return on Foreign Liabilities and Assets should be filed on annual basis by the Indian Company directly to RBI within 15th July every year. The details of investment to be

reported would include all foreign investments made into the company which is outstanding as on the balance sheet date.

(e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation/merger/demerger with an existing Indian Company, as well as issue of shares on conversion of ECB/royalty/lumpsum technical know-how fee/import of capital goods by units in SEZ, has to be reported in Form FC-GPR.

Transfer of Shares/fully, mandatorily and compulsorily convertible debentures:

Where the transfer of Shares/Fully, mandatorily and compulsorily convertible debentures requires the prior approval of FIPB, the same shall be obtained.

In other cases, the transfer of shares have to adhere with the pricing guidelines under The Foreign Exchange Management Act, 1999 or SEBI Guidelines, as the case may be.

The transfer should be reported by submission of Form FC-TRS to the AD-Category I Bank within 60 days from the date of receipt/consideration along with certificate from a Chartered Accountant on compliance with the pricing guidelines under FEMA/SEBI guidelines. The onus of reporting is on the person resident in India.

Sale of Securities:

Sale proceeds of shares and securities and their remittance is governed by FEMA (Remittance of Assets) Regulations, 2000.

AD Category-I bank can allow the remittance of sale proceeds of a security (net of Taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC/tax clearance certified from the income-tax department has been produced.

Repatriation of Dividend

Dividends are freely repatriable without any restrictions (After TDS or Dividend Distribution Tax). The repatriation is governed by provisions of FEMA (Current Account Transactions) Rules, 2000 as amended from time to time.

Repatriation of Interest:

Interest on fully, mandatorily and compulsorily convertible debentures is also freely repatriable without any restrictions (net of Taxes.)

An Indian Company taking on record in its books any transfer of its shares or Compulsorily Convertible Debentures by way of sale from a resident to a Non Resident or vice versa, shall disclose in its balance sheet for the financial year in which the transaction took place, details of the valuation of shares or Compulsorily Convertible Debentures, the pricing methodology adopted for the same, as well as the agency that has given/certified the valuation.

Adherence to Guidelines/Orders

FDI is a Capital Account Transaction and thus any violation of FDI Regulations are covered by the penal provisions of FEMA. The Directorate of Enforcement under the Ministry of Finance takes up any investigation in contravention of FEMA.

Conclusion:

A company that goes on FDI could possibly enjoy making incentives in the new country like low corporate tax and income tax rates, cheap labour etc; The country accepting FDI can garner the industrial development through funding of its industries by foreign capital, employment opportunities, sharing of know-how with the investing country, better technology and management etc;

As per the UNCTAD (Survey Project 2012) , India is the most important destination after China attracting foreign investors. Mauritius, Singapore, The USA and The U.K. are the leading sources of FDI into India. Amongst the developing countries, India and China are the two major economies that have adopted market oriented economic policies designed to attract foreign inflows.

Some of the latest foreign investments proposals awaiting India Inc are:

“Oracle plans to open its tenth product development centre in India in Gujarat International Finance Tec-City owing to Indian emerging as the second-largest product development workforce outside US. (Times Business 17.07.2015)”.

“Japanese major Honda Motor Car Company planning to pump in Rs.4,000 Crores for a new factory in Gujarat.....The headquarter in Japan sees India as a key strategic market, and the importance has only gone up and the country has emerged as Honda’s 4th largest car market globally (Times Business 18.07.2015)”.

India is slowly emerging as one of the robust economies of Asia. Thanks to the Government initiatives such as “Make in India”, focusing on 25 vital sectors of the economy for job creation and skill enhancement. Though FDI in certain sectors face domestic resistance, the Government is supporting the domestic industries on the one hand and also embracing unprecedented foreign investments into the country, thereby fostering the overall economic development of the country.

In the scenario where foreign investments are pouring into the country, we as professionals have immense opportunities to explore, and also guide the investors towards good compliance practices.

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A BIRD'S OVERVIEW OF EMERGING AREAS OF PRACTICE FOR PCS

CS Jagdish Ahuja B.Com, ACS, ACMA, LLB

Introduction:

For practising professionals good news seems to be flowing from several directions. Gone are the days when CS profession was in great demand only due to Section 383A of the Companies Act, 1956 (Old Act 1956). This section mandated appointment of a Company Secretary in employment on whole time basis in all companies having paid up capital of RS 5 Cr. and above. Even the Companies Act, 2013 (New Act 2013) contains the similar provision under Section 203 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014. However, in today's complex regulatory regime, it is correct to say that "only a Company Secretary (CS) does what he does". In other words, none other than a CS can discharge the duties expected of a compliance officer. It may not be out of place to state here that appointment of a whole time CS is also mandated as per clause 47a of the equity listing agreement. This clause requires a listed company to appoint a Compliance Officer who shall be the member of our esteemed Institute. As a Compliance Officer he has to deal with all the shareholders requests and to deal with Stock Exchange. The point which I want to emphasise here is that there is a great level of acceptance and recognition to the roles played by CS and it is practically impossible to think of running businesses without the support of company secretary professionals. It is indeed proud to say that members of our institute in employment are treated as Key Managerial Personnel (KMP). With this recognition, we are now at par with other key professionals in organisation such as CEO, CFO, Whole time director, etc.

With the growing business needs and expanding horizons across the world, the need for Company Secretaries in practice is also increasing manifold. A number of lucrative avenues are now thrown open to practicing company secretary professionals. Today, a skilled Company Secretary in practice is in great demand in the corporate sector. Be it a case of corporate restructuring (such as mergers, amalgamations or takeovers) or corporate advisory services related to Company law/FEMA/SEBI/IPR/ etc. a CS in practice is always preferred compared to other professionals due to his sound knowledge of corporate and economic laws. He is an expert and considered as panacea for all worries in the corporate sector. A CS can choose to be a generalist who can provide wide range of services as per need or he may also become a 'Specialist' who will provide exclusive services such as Specialist in Corporate Laws/FEMA/Tax, etc. matters. A professional always has to remain vigilant and opportunist. He needs to keep a close watch on the development happening around him. Example, when annual Union Budget is announced in the month of February, he needs to closely study to find out if there are any opportunities present which can be capitalized in time. Similarly, he must study the amendment to FDI policy, changes in FEMA regulations, RBI circulars, change in Government at Centre or State level and its impact on business and commerce in general and specific with reference to his practice etc. He must also study the impact of such changes on his client's

business and provide suitable alerts to all his clients from time to time. A true professional's duty is not clerical but managerial.

It seems that the change is the only constant. In the past, the frauds like Satyam has led to a situation of excessive regulation with more emphasis now being given on self-regulation. In case any non-compliance//irregularity or fraud is established or brought to the notice of regulators, strict action in the form of penalty/or imprisonment as the case may be is envisaged. Recently, the Bombay Stock Exchange has fined **530** companies for failing to appoint at least one women director which is a mandatory requirement. SEBI is expected to impose a scheduled fine ranging from RS 50,000 to RS 142,000 on companies who fail to comply and an additional fine of RS 5,000 per day till the date of compliance. The corporate sector has off late realized the fact that the cost of non-compliance is expected to be much higher than the cost of compliance. This is expected to provide a big fillip to the PCS as well as CS in employments who are now gearing up to grab such opportunities.

In the following discussion, an attempt is made to list out the emerging services that a PCS can provide.

1. NCLT

Recently, the Supreme Court has upheld the constitutional validity of the National Company Law Tribunal (NCLT), clearing the way for a significant reform in the framework for resolving corporate insolvency. The National Company Law Tribunal (NCLT) will replace the Company Law Board and the Board for Industrial and Financial Reconstruction, and be an overarching body for resolving insolvencies.

Once the NCLT is set up it will not just replace the Company Law Board (CLB) but will also take care of cases that are with the High Courts, the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

This is one development which is eagerly awaited by the PCS as they will be allowed to represent their clients before NCLT/NCLAT who would be eligible to appear for matters such as mergers, amalgamations, winding up, reduction of capital procedure, etc. Such matters are currently reserved for High Courts where only advocates are allowed to represent. Thus the PCS now have to sharpen their advocacy skills as they are now recognized under the New Act to appear before NCLT and NCLAT.

2. SECRETARIAL AUDIT

Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the prescribed companies. As per **Section 204(1)** of the CA 2013, only a member of the Institute of Company Secretaries of India holding certificate of practice can conduct Secretarial Audit and furnish the Secretarial Audit

Report to the company. As per this Section, 'Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a **Secretarial Audit Report**, given by a company secretary in practice, in such form as may be prescribed'. As per the relevant rule, for the purpose of Section 204(1), the other class of companies include every **public** company having a paid up share capital of RS 50 Crore or more or every **public** company having a turnover of RS 250 Crore or more.

At present, a CS in practice, based on his number of years of experience, can conduct from 5 to 20 Secretarial audits in a Financial Year. This will ensure that small time Practising members too have Secretarial audit mandates so that they do not miss the bus. This limit may be enhanced or reduced in future depending upon the quality of Secretarial Audit Reports issued by our Practising members.

3. PROJECT PLANNING AND CORPORATE RESTRUCTURING

Project Planning covers the specialized work such as promotion, formation and incorporation of companies and matters related therewith including choice of type of company, availability of name, drafting of Memorandum and Articles of Association and other documents, their stamping and registration with the Registrar of Companies. Corporate Restructuring covers the activities such as mergers, acquisition, amalgamations, etc. It also includes activities such as change of name, change of objects and shifting of registered office of a company. A PCS helps his client companies in complying with necessary legal and procedural requirements and advising the management on post restructured scenario.

There are numerous opportunities for PCS associated with project planning. As per the Ministry of Corporate Affairs (MCA) Annual Report for 2014-15, as on 31st December 2014, a total of 1,447,128 companies were on the Registry. Of them 1,007,637 companies are active (comprising of 943,012 private companies and 64,625 public companies). Again going by the data available from MCA Annual Report for 2014-15, during the financial year 2014-15 (upto 31.12.2014), a total of 44,324 companies were registered with collective authorized capital of over R 25,257 crore. Out of these, 49 were Government companies with authorized capital of over R 6,030 crore and 44,275 were Non-Government companies with authorized capital of R 19,226 crore. The following statistics reveals the volume of work involved:

Fig in Number

New entities Registered				
Month	Indian Companies	Foreign Companies	LLPs	Foreign LLPs
Jun-15	7,200	14	2,276	-
May-15	6,857	10	2,026	-
Apr-15	6,052	10	1,666	-
Qtr Total	20,109	34	5,968	-

Source: Compiled based on inputs from MCA website

The statistics reveals the volume of work involved for PCS. As per the table given above, a total of 20,109 Indian companies, 34 foreign companies and 5,968 Limited Liability Partnerships (LLPs) were incorporated during the quarter ended Jun 2015. Thus on an average 6,703 number of Indian Companies, 11 Foreign Companies and 1,989 LLPs were incorporated every month during the period. There were no Foreign LLPs incorporated during the period. A PCS is not only engaged for incorporation but also such entities once registered require services of a qualified and experienced PCS for ongoing compliances on a regular basis. Thus, such entities tend to become permanent client of the PCS adding to his source of revenue. The MCA issued a notification dated 5th June 2015 whereby certain provisions of Companies Act, 2013 are now relaxed for private companies. Some of these exemptions are no minimum capital requirement, no need to file Form MGT 14 in certain cases as listed in Section 179(3), borrowing in excess of paid up capital and free reserves need not be supported by a special resolution, loan to directors now allowed subject to certain conditions and so on. Moreover, with a view to improve India's image in the world on globally monitored parameter of ease of doing business, the Government has recently introduced a Single MCA form INC 29 for incorporation of companies which will replace earlier eight separate forms. Consequently, the time taken for incorporation of companies is now drastically cut down. This development too is expected to encourage more and more entrepreneurs to opt for company form for doing business and consequently boost the scope of work of professionals like PCS.

4. Intellectual Property Rights (IPR)

A PCS can act as a Trade Mark/Copy Right Agent and offer services such as registration of Trade Mark/Copy Right, appearing before Trade Mark/Copy Right Registrar on behalf of clients, in the matter of office objection, public opposition, etc. matters. As can be seen from the below table, there is an overall increase of around 2.16% in filing of IPR applications during the year 2013-14 (251,564) compared to the previous year 2012-13. (246,251)

Trends in filing of IPR applications:				Fig in Number	
Application	2009-10	2010-11	2011-12	2012-13	2013-14
Patent	34,287	39,400	43,197	43,674	42,951
Design	6,092	7,589	8,373	8,337	8,533
TM	141,943	179,317	183,588	194,216	200,005
Geographical Indication	40	27	148	24	75
Total	182,362	226,333	235,306	246,251	251,564

Source: Trade Mark Annual Report – 2013-14 available on <http://ipindia.nic.in/>

This demonstrates the volume of work involved and scope for PCS. A PCS, having sound knowledge on IPR can also offer advisory services to his clients on various related matters. Similarly, he can also render his valuable services on other aspects of IPR such as under Patent Act & Geographical Indication. It is now high time that PCSs can take up this untapped potential practice area.

5. Annual Return Certification

As per Section 92(2) of the New Act read with the relevant notified rule, it is mandatory for every company to file annual return with the Registrar. The prescribed form in which the Annual Return is to be prepared is Form MGT-7. It may be noted that in case of Companies other than One Person Company (OPC), the annual return is to be signed (authenticated) either by a director or company secretary OR where there is no company secretary, by a PCS. In case of OPC and small companies, the Annual Return shall be signed either by company secretary OR where there is no company secretary by the director of the company. Further, the annual return filed by a listed company or, by a company having paid-up capital of Rs.10 Crores or more OR turnover of Rs.50 Crores or more shall be certified by a PCS in Form No. MGT-8 stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. In addition to the above, an extract of the annual return in Form No MGT-9 shall form part of the Board's report. Thus it is evident that the services of PCS will be in great demand. The electronic version of the MCA annual forms such as MGT-7, AOC-4, etc. are still not available therefore many companies, especially the companies whose financial year ends on 31st December 2014 has already filed MGT-7 as an attachment to earlier version of Form 20B. These forms are learnt to have been approved by MCA and taken on its record. Interestingly, MCA has recently vide its notification dated 13th July 2015 relaxed the additional fees payable on Forms AOC-4, AOC-4 XBRL and Form MGT 7 up to 31st October 2015. The relaxation is given in view of the delay in making available electronic versions of the above forms which are expected to be launched by MCA by 30th September 2015. Thus PCS will enjoy enough time to plan and file these documents on behalf of his client companies without attracting any penalties for late filing.

6. Direct & Indirect Tax Planning and Management including income tax, service tax, VAT, Excise Duty, etc.

In my opinion, there is huge potential for knowledgeable PCS to take up work as direct and indirect tax practitioners. The income tax department has extended the return filing date for individuals from 31st July 2015 to 31st August 2015. The new ITR forms for online filing are now made available at the income tax website 'www.incometaxindiaefiling.gov.in'. The Practising professionals including PCS must grab this opportunity for filing of income tax return on client's behalf. One can use JAVA or Excel utilities on the website which are user friendly for filing income tax return.

In Maharashtra, the process of VAT registration has become fully online. No more manual document submissions. Thus, PCS can avail this opportunity. In certain States, (e.g. Uttar Pradesh, Kerala, Goa and Bihar) the Government has recognised PCS who is authorised to appear before any VAT authorities in connection with any proceedings. Thus there is a great opportunity for PCS as VAT practitioners. In certain States, Government has even recognised PCS for conducting VAT audits.

A PCS can also render his valuable services with respect to Service Tax Compliances. He can become a service tax practitioner which is currently very lucrative area of practice. It may kindly be noted that with the increasing role of service sector and its contribution to GDP, the Government felt the need to tax this sector. In our country, the service tax started from 1st July, 1994 with only 3 services viz., telephone, general insurance and stock broking. Today, there are very few services which are not taxable as we have recently switched over from selective approach to comprehensive approach to service tax. A PCS can offer services such as advising the client on the applicability of service tax, getting the client registered under service tax, Payment of service tax as per due dates and filing of timely service tax returns. He can also represent his clients before the regulatory authorities in case there is any dispute concerning payment of service tax by his client.

A CS possesses multi-dimensional personality as he plays a varied role as can be noticed from the above discussion.

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TENURE SYSTEM OF APPOINTMENT OF MANAGERIAL PERSONS, A CRITICAL ANALYSIS

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Introduction:

Employment practices vary from country to country, and from time to time. It is essential to know various methods adopted to employ personnel, so that the best practice suitable to the type of employment can be adopted to safeguard the interest of both the parties (the employer and the employee) and that of the business. The odd situation, in India Inc, is that in the case of employment of managerial persons, practically the employer and employee happens to be the same person. Invariably, the promoter is a family group holding majority shares, and thereby enable the family members to hold the managerial positions for decades together.

In India, the appointment and remuneration of Managerial Persons is subject to the provisions of Sections 196 to 202 of the Companies Act 2013 (the Act). If the procedure adopted for appointment of managerial persons falls under the four walls of Schedule V of the Act, then there need the no further compliance. The contract of employment of Managerial person is Statute-based and not agreement-based. Schedule V of the Act contains all key terms and conditions relating to the work - be it compensation, designation, place of work, list of benefits during employment over a period for exchange of service.

The Act has brought in many new concepts including "One Person Company", "Small Company", "Corporate Social Responsibility" and many more. At the same time, some new concepts have been carried half way through. One such area is the "tenure" of the appointment of managerial persons. Only old wine has been served in new bottle. Somehow our legislators have omitted to take the kind of care that has been in the appointment of Independent Directors/ Auditors. The term of Auditors/ Independent Directors cannot exceed the term fixed under the new Act. But tenure of managerial persons can be renewed any number of times. A glance at different employment practices will be useful to understand the impact of each practice and select the best. A simple classification of the different practices are given hereunder;

Employment -at-will

Implied Contracts

Agency Staff

Freelancers & consultants

Zero-hour Contract

Employees under fixed term contract

Tenure System of appointment

Employment-At-Will

Employment-at-will means that the employee can quit at any time, for any reason, and the employer can terminate the employee at any time and for any reason. This type of arrangement offers immense flexibility for the employee. That was especially important in times when relocating for more plentiful food or work opportunities was common. However, this arrangement doesn't offer job security. That's become more important as fewer families have migrant workers.

Employment-at-will arrangements still exist.. In fact, all employees are presumed to be at-will-employees unless the employee has a legally binding agreement with the employer that the employee can only be fired for good cause.

Implied Contracts

Generally speaking, an implied contract is a legally enforceable agreement assumed to exist due to the parties' conduct and because it would bring the fairest result. This type of implied contract is always construed in favor of the employee. Employers unknowingly create implied employment contracts every day, then , uses the mistake as a reason to fire employee .

Agency staff

An employer can hire temporary staff through Agencies. It is the agency's responsibility to make sure workers get their rights under working time regulations. At the same time, employer must make sure that the agency staff can access the facilities (such as canteen and childcare facilities).

After some months' continuous employment in the same role, agency workers get the same terms and conditions as permanent employees, including pay, working time, rest periods, night work, breaks and annual leave.

Freelancers and consultants.

Freelancer or consultant refer to self-employed or are part of other companies. They might not be entitled to the same rights as workers, eg minimum wages.

Zero hour contracts

Zero hour contracts are also known as casual contracts. Zero hour contracts are usually for 'piece work' or 'on call' work, eg interpreters.

They are on call to work when the employer need. Hirers don't have to give them continuous work. The employee also don't have to do work when asked Zero hour workers are entitled to statutory annual leave and the National Minimum Wage in the same way as regular workers.

Fixed-term contracts

Fixed-term contracts refer to employment- arrangement that last for a certain length of time and are set in advance. The contract ends when a specific task is completed or when a specific event takes place.

Fixed-term employees must receive the same treatment as full-time permanent staff. Very few individuals pay attention to the legal provisions in the fixed term employment contract. The appointment letter is invariably prepared by the employer.

Once an employee accepts the terms and conditions of the employment, there is a presumption that it is a valid contract and is binding on the individual. But it may so happen that some of the provisions contained in the contract of employment are ambiguous at best or downright illegal. The enforceability of the contract under such circumstances becomes impossible.

Tenure Appointment:

Tenure appointments are also normally for a fixed term. There need not be a separate contract for service under tenure system. But still letters of appointment are issued with pre-fixed service conditions that are applicable to the 'tenure' employments. Instances of top political appointments elected by the public such as that of a President provide good example. In the Indian corporate context, a managerial person can be appointed as Managing Director, by the share holders, for a 'tenure' consisting of 5 years. This is as per Company Law. No notice need be given on completion of the tenure. After the completion of the tenure, renewal for another term can be done. There is no limit for the tenure. There are instances where the concerned Law limits the numbers of tenures. For instance the tenure of appointment (on election) of American President is 4 years. One can be President only for a Maximum of two tenures.

Indian Company Law permits a free-run for managerial positions with no ceiling on the tenure of appointments. When one tenure ends- up automatically the next tenure is again thrust with the managerial persons coming-up. This is justified as the major investor's stake is higher. The term can neither be extended nor be shortened. But the tenure is renewed providing for long- term for managerial persons. In the case of the employment of managerial persons the 'option' of continuing with the institutions is the 'choice' of the management. This invites problems.

Difference between 'Tenure' Employment and Fixed Term Contract

Tenure system of employment in India is not recognized in isolation, as in USA and Canada, where it is a specialized form of employment designed for Educational Institutions and Hospitals. Separate regulations have been enacted to safeguard the interest of employer and employee. The concept is very much clear under the Indian Companies Act. Even though, appointment of managerial person under tenure system is term-based, it differs from fixed term contract in some respects as briefed below

SN	Matter	Tenure system	Fixed Term Contract
1.	Regulating Act	Indian Companies Act-2013 in case of Managerial appointments	Indian contract Act, 1872
2.	Manner of appointment	Selected or Elected according to the laws providing for the appointment	A contract is prepared by employer after discussions with employee.
3.	Signatories	Normally respective regulations provide for term of employment. No separate signature. A letter is issued as required by the said rules.	Both employer and employee sign the contract.
4.	Term	Subject to the rules framed. For instance, a single tenure is a period of 5 years under Company Law.	May be for one year or up to retirement -age.
5.	Notice period	Tenure automatically expires as per rules and no notice required	Normally a notice period of one month to three months on both sides is enforced
6.	Evaluation	As per the regulations Governance Report analyses	Subject to review by the employer.

From the above, it can be assumed that the 'tenure' system is much different from fixed term contract.

Advantages and Disadvantages of Tenure Employment

For years there has been debate about publicly elected officials' tenure and whether term limits ought to be enforced to prevent their becoming too entrenched and too distant from the people they were meant to represent. Now this type of debate seems to be bleeding over into the 'Board Room'. Most of the Boards-members tend to have the longest tenured directors by getting re-elected every time their tenure gets ended, as there is no restriction over the number of tenures. This indicates that some board members have potentially been overstaying their useful lives. Such companies undoubtedly are in need of new blood.

While tenure probably shouldn't be called out as a significant criterion for continued Board - membership, Boards do need to keep their talent refreshed. Organizations may want to consider the best range of tenure for the future, given the unique characteristics, and include length of service as one element they assess to enhance overall Board effectiveness.

More important, however, companies could benefit from being more strategic about managing their Board talent, just as they are becoming more conscious of managing their employee talent.

Benefits of limitless Tenure

Until recently, long tenure was rarely a concern. In fact, it was often a source of pride, particularly for Boards with elite membership. Directors joined Boards and simply stayed until there was an inciting reason to leave, such as a change in management, a change to the corporate structure, or a change in their personal situation and this system provided benefits, such as continuity of organizational knowledge; Credibility in the market; Improved Board dynamics and collegiality.

In some instances, these benefits have clearly led to improved performance.

With the recent scandals and new governance expectations, however, the risks associated with longer Tenure have become more visible and critical. Many of these risks are the flip side of the benefits. As members of the board become more entrenched, they may fail to keep up with changes to the business; they may be constrained to defend decisions and policies that they supported in the past, that are now of questionable applicability; they may lack new insights and solutions to the company's challenges; they may cease to operate independently because of the strong personal ties that they develop.

Visible Risks of Long tenures

Businesses are becoming more complex and changing more rapidly, so that it is increasingly difficult for directors to keep abreast of changes to technology, financial dealings, and business strategies. Recent scandals and legislation put additional pressures on directors and have: increased demands for specific expertise (i.e. financial); required more time for key decisions and interactions, especially in committee work; increased scrutiny of all activities resulting from the disclosure and compliance requirements. Despite these environmental changes, many companies have the same directors.

Optimum Tenure

The current environment calls into question whether these long stretches of service are always in a company's best interests, since businesses are becoming more complex and changing more rapidly, so that it is increasingly difficult for directors to keep abreast of changes to technology, financial dealings, and business strategies.

Recent scandals and legislation put additional pressures on directors and have increased demands for specific expertise (i.e. financial); required more time for key decisions and interactions, especially in committee work; increased scrutiny of all activities resulting from the disclosure and compliance requirements. Despite these environmental changes, many companies have the same Directors on the board as a decade ago, even though most experts agree that 10 to 15 years of service is probably long enough for most directors." It is difficult to nail down an optimum years of service that could apply to every board. In fact, an optimum tenure presumes that up to that time, board members add value and enhance performance, but beyond that period, their value contribution declines. This is frequently not the case. In reality, the answers to this question are likely to vary according to company leadership, culture, history, business situation, board dynamics, and board talent needs.

Use of tenure limits

Some companies have tried to use tenure limits to enforce an optimum tenure and ensure a regular infusion of new thinking into the board. Tenure limits have appeal because they are relatively easy to implement politically.

However, they carry some risk: Tenure limits may result in the departure of board members who are making significant contributions and whose departure would be a significant loss to the company.

“Although establishing limits on the number of times a director may be elected to the board provides a mechanical or ‘bloodless’ means for addressing ‘real’ or ‘potential’ performance-issue with a director, it does not take into considerations the fact that a board member’s effectiveness does not necessarily correlate with the length of board-service.”

Ideally, tenure can serve as a checkpoint that companies can use to monitor their current mix of director talent rather than a rigid limit imposed to assessment of the board’s current and upcoming talent needs, including regular performance evaluations. With the new requirements on governance imposed by the major stock exchanges, performance valuations are no longer an option, even though up to this point only a minority of companies actually conducted them.

Conclusion

There are benefits and risks in lengthy director tenure, but the biggest risk lies in not being strategic in your board talent management.

Continually assessing the mix of skills and experience required by the board now falls mainly to governance committees. As these committees become stronger and more accountable, the evaluation and rotation of board members will likely increase. Criteria like tenure will be placed in a broader context of strategic succession management, for the board as well as the CEO. Some board members may indeed be overstaying. For that matter companies should not become arbitrarily fixated as the culprit. Boards will do well to articulate their board composition strategy and ensure that they are using those valuable board seats to enhance the reputations of their organizations as well as they do for the other assets of their companies.

The provisions of the Act such as code for independent director, Auditor -rotation requirements, debut of class action suits are a fast march towards an investor friendly India Inc.

(Reference: Article by Judy Canavan, Blair Jones, and Mary Jo Potte.)

STRENGTHENING CORPORATE GOVERNANCE WITH INTERNAL AUDIT- COMPANIES ACT 2013¹

CS Nishita Singhal, Assistant Education Officer, ICSI

Introduction

Today, the biggest challenge facing companies is keeping the focus on good governance over the long term. An uncertain economic environment punctuated by financial scandals has pushed the idea of corporate governance to the forefront. Good corporate governance is a journey that begins with a broad, organizational perspective. Making steady progress requires committed senior leadership, integrated planning, coordinated execution, and constant monitoring. Internal audit performs critical roles in all aspects of corporate governance. Internal Audit involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system. Internal audit's responsibilities are growing due to increased regulatory scrutiny as well as directives from executives to strengthen controls and improve risk management.

The Companies Act 2013 marks a new era of corporate governance and transparency in the Indian corporate sector by making internal audit mandatory for certain classes of companies. The new requirements of adequacy of internal financial controls, effective risk management processes, anti-fraud controls and effective legal compliance framework etc. in the Act will be an important vehicle and an enabler of good corporate governance. An emphasis on internal controls, stemming from legislation will have the biggest impact on strengthening good corporate governance in the Indian corporate sector in coming times.

What is internal audit?

Internal Audit is an independent appraisal activity within an organization for the review of systems, procedures, practices, compliance with policies for accounting, financial and other operations as a basis for service to management. It is a tool of control –

- To measure and evaluate the effectiveness of the working of an organization

¹ CS Nishita Singhal, Assistant Education Officer, ICSI. View expressed by the Author is her personal views and not necessarily the views of the Institute.

- To ensure that all the laws, rules and regulations governing the operations of the organization are adhered to
- To identify risks and also suggests remedial measures, thereby acting as a catalyst for change and action.

The role of internal audit is to provide independent assurance that an organisation's risk management, governance and internal control processes are operating effectively. An effective internal audit function plays a key role in assisting the board to discharge its governance responsibilities. Thus, it contributes in accomplishment of objectives and goals of the organisation through ethical and effective governance.

The Institute of Chartered Accountants of India has defined Internal Audit –

“Internal audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity’s strategic risk management and internal control system.”

Modern definition of Internal Audit

The new modern definition of internal audit is given by Institute of Internal Auditors. *“Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”*

There are following four main elements in the modern definition of internal audit.

- Reliability and integrity of financial and operational information
- Effectiveness and efficiency of operations
- Safeguarding of assets
- Compliance with laws, regulations and contracts

Evolution of the internal Audit as an Extension of external audit

Internal audit developed as an extension of the external audit role in testing the reliability of accounting records that contribute to published financial statements. The nineteenth century saw the proliferation of owners who delegated the day-to-day management of their businesses to others. These owners needed an independent assessment of the performance of their organizations. They

were at greater risk of error, omissions or fraud in the business activities and in the reporting of the performance of these businesses. This first gave rise to the profession of external auditing. External auditors examine the accounting data and give owners an opinion on the accuracy and reliability of this data. More slowly the need for internal auditing of business activities was recognized. Initially this activity focused on the accounting records. Gradually it has evolved as an assurance and consulting activity focused on risk management, control and governance processes.

Paradigm Shift in Internal Audit:

The controls landscape within organizations today is quite different from those existing in the industrial-era traditional organizations for most of the 20th century. In this radically changed business environment, the internal audit function has become a major support function for management, the audit committee, the board of directors, the external auditors, as well as key stakeholders.

The traditional internal audit model has been transaction-based and cost-driven. Today, internal audit is undergoing significant change in migrating from a reactive, historically focused function to a proactive group that takes a risk based focus.

Today the internal audit is in the unique position of being able to see the organisation as a whole. The properly conceived and implemented, the internal audit function can play a critical role in promoting and supporting effective organizational governance. Internal Audit functions are now more committed to providing an assurance function that is aligned with business priorities. The role of Internal Audit has undergone significant growth and now includes a variety of requirements, including an increased focus on:

- ¾ Risk Management
- ¾ Internal Controls
- ¾ Overall Compliance Framework
- ¾ Fraud detection
- ¾ Consulting and operations

Companies Act 2013 – The New Internal Audit Charter

The Companies Act 2013 has enhanced the scope of internal audit to a great extent. There are many new requirements warranting organisations to provide assurance to the Board of Directors and Audit Committees on adequacy of internal financial controls, effective risk management processes, anti-

fraud controls and effective legal compliance framework etc. which has increased the role of internal audit in the organisation.

1. **Mandatory internal Audit:** The Act has made it mandatory for following class of companies to conduct internal audit of the functions and activities of the company and to appoint an internal auditor for conducting the internal audit of the company who may or may not be an employee of the company under section 138(1).

I. Every listed company

II. Every unlisted public company having –

- x paid up share capital of fifty crore rupees or more during the preceding financial year; or
- x turnover of two hundred crore rupees or more during the preceding financial year; or
- x outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
- x outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

III. every private company having –

- x turnover of two hundred crore rupees or more during the preceding financial year; or
- x outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

The Audit Committee or the Board is given the responsibility to formulate the scope, functioning, periodicity and methodology for conducting the internal audit. Through the audit committee, the internal audit function is accountable to the board for maintaining ongoing, constructive relationships and for regular reporting of assurance related issues.

An internal auditor may be chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

2. **Mandatory reporting on internal financial controls:** The Companies Act 2013 requires the Directors Report and auditor's report to comment on whether the company has adequate internal financial controls system in place and operating effectiveness for such controls.

Section 134 of the Companies Act, 2013, has added the following new requirements to be included in “Directors’ Responsibility Statement”: The directors, in the 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. Explanation – For the purpose of this clause, the term “internal financial controls” 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, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

Companies (Auditor's Report) Order, 2015: The Companies (Auditor's Report) Order, 2015 notified on 10th April 2015, also requires the auditor to report –

- y Whether there is an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services.
- y Whether there is a continuing failure to correct major weaknesses in internal control system.

Every report made by the auditor under section 143 of the Companies Act, for the financial year commencing on or after 1st April, 2014, shall contain the matters specified above.

Thus, the Act has significantly expanded applicability of internal financial controls to cover all aspects of operations of the company. Business leaders would now need to embed internal controls monitoring their operations, reporting and compliance processes within the business processes as opposed to financial reporting only. Organisations would need to shift from point in time testing to ongoing testing which would be facilitated by effective internal audit in the organisation.

3. **Risk Management:** Risk management is a central part of any organisation’s strategic management. Successful organisations seek to integrate risk management and internal control into all activities, through a framework of risk identification, risk assessment and risk response. Internal audit is third line of defense, which through its risk based approach provides reasonable independent assurance to the organisation’s board of directors and senior management on the effectiveness of risk management processes. In organisations where risk management implementation is in its initial stages, the role of internal audit is often that of a catalyst or facilitator to help foster development of the organisation’s risk management process. Further, the more risk mature the organization is, it is better for the internal audit function to provide a realistic picture to the board on risk management against its strategic objectives.

Section 134 of the Companies Act, 2013, has introduced the following new requirement to be included in the Report by the Board of Directors presented before a company in general meeting –

“134 (3)(n) 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 Board may threaten the existence of the company.”

Section 177(5), for the Audit Committee to evaluate internal financial controls and risk management systems clearly states as follows: *The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.*

Schedule IV of the Companies Act, 2013 specifies that the *Independent directors should satisfy themselves that systems of risk management are robust and defensible.*

There are specific requirements in the Act that a company needs to comply with in respect to Enterprise Risk Management. In addition, the board and audit committee have been vested with specific responsibilities in assessing the robustness of risk management policy, process and systems. The Act places a stronger emphasis than before on the role of the Audit Committee on internal financial controls and risk management. Given the importance of these areas, the role of internal audit is very important in helping audit committee directors fulfill their oversight responsibility and legal duties.

4. **Overall Compliance Framework:** In order to ensure compliance with laws and regulations prevailing in our country, the Companies Act 2013 is a step in this direction for making corporate India more accountable. Together with Clause 49 of the listing agreement, the government is seeking to make Directors of companies responsible for devising proper system to help ensure compliance with ‘Provisions of All Applicable Laws’ and that such systems are adequate and operating effectively. The Boards now need to periodically review compliance reports of all laws applicable to the company, prepared by the company, as well as steps taken by the company to rectify instances of non-compliance.

Now, the Directors’ Responsibility Statement” under section 134 of the Companies Act, 2013 will also include that – *“the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”*

The Board of Directors, and in particular, the independent directors will increasingly look upon to the internal auditors to give reasonable assurance that the Legal Compliance process is

adequate and operating effectively and is suitably evidenced. With these new expectations, it will be necessary for Internal Auditors to ensure a framework to check comprehensive compliance with all applicable laws and regulations.

5. **Fraud Detection:** Globalisation has also increased the scale and complexity of today's business environment. It has further been complicated by continual changes in the business environment, mounting competition and multitude of regulations creating significant pressures on management to effectively maintain oversight of all operations. These challenging scenarios create various vulnerabilities in systems, procedures and frameworks for manipulation and frauds.

Fraud negatively impacts the organisation in many ways including financial, reputational, psychological and social implications. Depending on the severity of loss, organisations can be irreparably harmed due to the financial impact of the fraudulent activity.

The new Act proposes vital changes in this context for the first time - it defines fraud, lays down severe penalties for delinquency, fixes extensive responsibility for senior management, independent directors and auditors, introduces the establishment of vigil mechanism and accords statutory status to Serious Fraud Investigation Office (SFIO).

- x Section 447 of the Act provides a specific definition of fraud and also makes extensive provisions for penalising fraudulent activities.
- x Under the act, liability and punishment for fraud is extended to every individual who has been a party to it deliberately, including the auditors of the company.
- x Companies are also required to establish a vigil mechanism for directors and employees to report genuine concerns, even directly to the chairperson of the Audit Committee for appropriate cases.
- x The mechanism should provide for adequate safeguards against victimisation of persons who use such mechanism. Importantly, the details of such mechanism are required to be disclosed by the company on its website and in the Board's report.
- x The directors' responsibility statement is required to include a confirmation regarding proper and sufficient care for the maintenance of adequate accounting records for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities. The companies will have to make sure they have adequate processes,

controls and oversight mechanisms to ensure that there are adequate fraud prevention controls.

The primary responsibility for prevention and detection of fraud rests with management and those charged with governance. Establishing a fraud risk management procedures would be of importance for preventing fraudulent situations and enabling timely and due monitoring and oversight by the directors. Internal audit is in a suitable position to identify potentially fraudulent situations during the course of the audit and thus plays a strong role in preventing fraud and other illegal acts. Internal auditors are often in a better position to detect the symptoms that accompany fraud. Internal auditors usually have continual presence in the organisation that provides them with a better understanding of the organisation and its control systems.

Clause 49 of Listing Agreement

The Securities and Exchange Board of India (SEBI) with the objective to align its provisions to the Companies Act, 2013 has specifically reviewed clause 49 of the Listing Agreement, to adopt leading industry practices on corporate governance and to make the corporate governance framework more effective.

The mandatory requirements of Clause 49 pertaining to internal audit are as follows:

- ¾ The audit committee shall mandatorily review with the management
 - (a) the performance of statutory and internal auditors and
 - (b) adequacy of the internal control systems.
- ¾ The audit committee shall mandatorily review the adequacy of internal audit function, if any, including
 - (a) the structure of the internal audit department,
 - (b) staffing and seniority of the official heading the department,
 - (c) reporting structure coverage and frequency of internal audit;
- ¾ The audit committee shall discuss with internal auditors of any significant findings and follow up there on.
- ¾ It shall also review the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
- ¾ It shall also review internal audit reports relating to internal control weaknesses.

- ¾ The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.
- ¾ The CEO and the CFO is required to certify to the Board of Directors that:
- (a) They accept responsibility for effectiveness of internal controls and that they have disclosed to the Auditors and the Audit Committee deficiencies in the design and operation of the internal controls and steps taken for rectification of the same.
 - (b) They have indicated to the Audit Committee and the internal as well as external auditors as to the following aspects:
 - (c) Any significant changes in internal controls.
 - (d) Any significant changes in the accounting policies and instance of significant fraud, if any, and that the same have been disclosed in the notes to the financial statements.
 - (e) Instances of any significant fraud and involvement, if any, therein of the management or any employee having a significant role in the internal control systems of the company.

The non-mandatory requirements of Clause 49 pertaining to internal audit are as follows:

- ¾ The Internal auditor may report directly to the Audit Committee.

Internal Audit as an enabler of good corporate governance

Keeping in view the enhanced role of Internal Audit under Companies Act 2013 and Clause 49 of Listing Agreement, an Internal Auditor now needs to review and re-define its role and fulfill its role as an important vehicle and an enabler of good corporate governance. Internal Audit function is suitably positioned to be an enabler of good corporate governance because-

- Internal audit is recognised as the third line of defense as it provides the governing body and senior management with comprehensive assurance based on the highest level of independence and objectivity within the organization. Internal audit provides assurance on the effectiveness of governance, risk management, and internal controls, including the manner in which the first and second lines of defense achieve risk management and control objectives. This high level of independence is not available in the second line of defense.
- Internal audit function has sound understanding of business strategy and the associated risks, ability to challenge the control environment and infrastructure supporting the strategy, visibility across the various functional areas/ business units.

- Internal audit is more than a compliance function. It is recognised by business leaders as a function providing quality challenge.
- Internal audit builds a strategic (two to three years) plan, developed in collaboration with the management, aligned to the organisation's risk profile.
- Internal audit is structured to enable both the maintenance of independence and objectivity, as well as proximity to the business, to establish and maintain relationships with an in-depth understanding of the business.
- Internal audit is a dynamic process with integrated quality assurance and learning programs.

Company Secretary as Internal Auditor

Company Secretaries are governance professionals who facilitate the process of good governance in the organisation. They have a significant impact on the level and quality of corporate governance and governance culture within an organisation, including a pivotal role in assisting the board to achieve the organisation's vision and strategy. Their role is to enforce a compliance framework to safeguard the integrity of the organisation and to promote high standards of ethical behavior.

Company Secretary is a key functionary in the corporate pyramid. A Company Secretary is a Key Managerial Personnel and an expert in Corporate Laws, Securities Laws, Competition Laws and Corporate Governance. With increasing emphasis on the principles of good governance and on compliances, responsibilities of Company secretary have increased manifolds towards safeguarding the interests of all stakeholders.

Section 138 (1) of the Companies Act 2013, states that the internal audit can be conducted by a chartered accountant or a cost accountant, or such other professional as may be decided by the Board. The Company Secretaries being governance professionals are aptly suitable to perform the role of internal auditor. The Company Secretaries can utilize the internal audit as a professional opportunity as an area of practice. Keeping in view the expanding responsibilities of internal audit and, consequently, the changing requirements of skill sets, the internal audit professionals like Company Secretaries should -

- x Focus on the future—take a proactive approach to risk identification
- x Integrate Enterprise Risk Management to develop a mix of risk and compliance based audit efforts
- x Augment skill sets (increasing the role of IT) and leverage resources
- x Focus on fraud, control environment, hotline activities, fraud risk assessments
- x Establish the role of an adviser
- x Build continuous audit capability and influence continuous monitoring techniques
- x Maintain independence and objectivity

- x Provide value-added assurance services beyond compliance

Conclusion

The Companies Act 2013 has brought into the forefront, many requirements which necessitate the internal audit function. The new purpose, authority, and responsibility of the internal audit activity must be formally defined in the new internal audit charter and presented to the senior management and the board for approval for good corporate governance. There are costs to improving governance and the returns may not be immediately measurable, but the long-term results of a successful governance program include better brand and reputation management, enhanced market value, compliance with regulations, sound business practices, and a more solid foundation for growth.

Currently, internal audit is synonymous to risk management and compliance. The future of audit lies in continuous risk monitoring, continuously updated audit plan, auditing at the speed of the business, providing assurance when it is needed and continuous reporting. To help meet expectations, the corporate world needs strategic thinkers who understand business issues, perceive the risks to the achievement of business objectives, can evaluate related control implications and communicate these effectively to senior management. Internal Audit Function is set to evolve into a more extensive, outward, forward looking and continuous activity playing an enhanced role in 'Integrated Assurance'.

NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL – THE GENESIS AND CHALLENGES¹

CS Lakshmi Arun, Deputy Director, ICSI

Eradi Committee – The Beginning(1999)

In the year 1999, the Government of India set up a High Level Committee headed by Justice V.B.Eradi, to examine and make recommendations with regard to the desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies; The Committee recognized after considering international practices that the law of insolvency should not only provide for quick disposal of assets but in Indian economic scene, it should first look at the possibilities of rehabilitation and revival of companies. The Committee also recommended that the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal instead of the High Court as at present. The Committee strongly recommended appointing Insolvency Professionals who are members of Institute of Chartered Accountant of India (ICAI), Institute of Company Secretaries of India (ICSI), Institute of Cost and Work Accountants of India (ICWAI), Bar Councils or corporate managers who are well versed in corporate management on lines of U.K. Insolvency Act.

The Committee addressed and recommended the following key points:

- The Committee recognized after considering international practices that the law of insolvency should not only provide for quick disposal of assets but in Indian economic scene, it should first look at the possibilities of rehabilitation and revival of companies.
- The Committee noted that there are three different agencies namely,
 - (i) the High Courts, which have powers to order winding up of companies under the provisions of the Companies Act, 1956;
 - (ii) the Company Law Board to exercise powers conferred on it by the Act or the powers of the Central Government delegated to it and
 - (iii) Board for Industrial and Financial Reconstruction (BIFR) which deals with the references relating to rehabilitation and revival of companies.
- The committee revealed data of time taken to wind up a company – it may run on an average upto 25 years; Eastern region being the worst.

¹ CS Lakshmi Arun, Deputy Director, ICSI. Views expressed by the Author are her personal views and not necessarily the views of the Institute.

Recommendations By N L Mitra Advisory Group (2001)

The Advisory Group examined the details of conflicting decisions on tribunalisation of justice. Tribunalised justice is a special character of civil law system. In a common law culture, there is an emphasis on judicial form and formalities. The conflict between the two systems is nothing new in India. Both the systems, that is the common law and the civil law systems, are now coming closer, common law systems adopting structure of administrative authority including administrative justice for the management of various state functions; and the civil law system on the other hand, incorporating the principles of accusatorial system and judicial process. In India, we have under the present constitutional paradigm partially adopted tribunalised form of justice under article 323 A and 323 B²⁰. But there are also judicial observations. It is true that in *L. Chandrakumar* ²¹, Supreme Court finally gave its nod in favour of tribunalised system of justice. But the reservation of judiciary against the erosion of judicial power especially at the High Court level is quite evident. It is not possible to oust the jurisdiction of the High Court under Articles 226 and 227 without amending the provision of Article 323B.

The Advisory Group discussed in details the possibility of avoiding the dualism in the system so that the whole process can be put into a straight line to avoid delay. In that context the following two methods have been discussed.

- x Constituting a National Tribunal with benches at the jurisdiction of each High Court to receive and deal with all petitions for bankruptcy, restructuring and finally for insolvency with an appeal lying to the High Court and SLP to the Supreme Court; and
- x Having a completely dedicated bench in each High Court dealing with the entire matter of bankruptcy; reorganization (similar to reorganization under Chapter 11 of the US code); and insolvency proceedings ensuring fast track liquidation, the only appeal being by way of a special leave petition to the Supreme Court.

The proposal (i) has two problems. Firstly, no question can be finalized at the stage of tribunal. Litigation may travel up and down in interlocutory matters. Secondly, it attracts a constitutional design in which avoidance of High Court's power is not possible without amending Article 323 B. Article 323B of the Constitution enables the appropriate Legislature to provide for adjudication or trial by Tribunals of disputes, complaints or offences with respect to all or any of the matters specified in clause (2). Clause (2) enumerates the matters in regard to which Tribunals can be constituted. The said list is exhaustive and not illustrative. The list does not provide for constitution of Tribunal for insolvency, revival and restructuring of the company. In the absence of any

amendment to Article 323B providing for a National Tribunal for revival of companies and winding up companies, there is no legislative competence to provide for constitution of NCLT and NCLAT.

Another matter has to be seriously discussed. Tribunalised justice as envisaged in (i) has not been taken in India in the way as has been designed in civil law society. The tribunals in the civil law society not only comprise of legal experts but also have specified professional experts in it (like the structure of Income Tax Tribunal in India, which has been functioning satisfactorily). But unfortunately in India, tribunals are constituted with retired High Court judges. Therefore, these are as good or as bad as our court systems.

J J IRANI COMMITTEE RECOMMENDATIONS (2005)

- x As per Companies (Second Amendment) Act, 2002, the National Company Law Tribunal (NCLT) is envisaged as the forum to address Insolvency issues. It is hoped that this forum is constituted speedily. The Committee however takes this opportunity to focus on some important aspects widely considered important for proper functioning of such a body.
- x The Insolvency Tribunal should have a general, non-intrusive and supervisory role in the rehabilitation and liquidation process. Greater intervention of the Tribunal is required only to resolve disputes by adopting a fast track approach. The Tribunal should adopt a commercial approach to dispute resolution observing the established legal principles of fairness in the process.
- x The Tribunal should set standards of high quality and be able to meet requisite level of public expectations of fairness, impartiality, transparency and accountability. Selection of President and Members of the Tribunal should be such so as to enable a wide mix of expertise for conduct of its work.
- x The Tribunal will require specialized expertise to address the issues referred to it. The law should prescribe an adequate qualification criterion for appointment to the Tribunal as well as training and continuing education for judges/members.
- x Rules should be made in such way that ensure ready access to court records, court hearings, debtors and financial data and other public information.
- x Standards to measure the competence, performance and services of the Tribunal should be framed and adopted so that proper evaluation is done and further improvements can be suggested.
- x The Tribunal should have clear authority and effective methods of enforcing its judgments. It should have adequate powers to deal with illegal activity or abusive conduct.

Decision of Supreme Court in Union of India Vs R. Gandhi, President, Madras Bar Association on constitutional validity of NCLT and NCAL – May 11, 2010

In the about case, Supreme court upheld the decision of the High Court that the creation of National Company Law Tribunal and National Company Law Appellate Tribunal and vesting in them, the powers and jurisdiction exercised by the High Court in regard to company law matters, are not unconstitutional and declared that constitution of NCLT and NCAL under Parts 1B and 1C of Companies (Amendment) Act 2002 as presently structured, are unconstitutional. However, Parts IB and IC of the Act, may be made operational by making suitable amendments. This case discusses in detail about tribunalisation, points in favour of tribunalisation, difference between the court and tribunals etc.,

Supreme Court Decision dated May 14 2015 on NCLT and NCAL

Though the verdict came in the year 2010, upholding the creation of NCLT and NCLAT, these two bodies could not be created and made functional immediately thereafter and the matter got stuck in imbroglio of one kind or the other. Writ Petition No.267/2012 was also filed by this very petitioner and was pending consideration. Said writ petition was listed before this Bench along with the present writ petition (2013 petition on which Supreme Court gave its judgment in 2015) and arguments to some extent were heard in petition as well. However, since the issues raised in the said petition necessitate further response from the Union of India, with the consent of the parties, it was deemed proper to defer the hearing in that petition, awaiting the response.

Adverting to the present writ petition, it so happened that the Parliament has passed new company law in the form of Indian Companies Act, 2013 which replaces the earlier Act, 1956. In this Act, again substantive provisions have been made with regard to the establishment of NCLT and NCLAT. The cause for filing the present petition by the petitioner was the allegation of the petitioner that notwithstanding various directions given in 2010 judgment, the new provisions in the Act, 2013 are almost on the same lines as were incorporated in the Act, 1956 and, therefore, these provisions suffer from the vice of unconstitutionality as well on the application of the ratio in 2010 judgment. It is, thus, emphasized by the petitioner that these provisions which are contained in Sections 408, 409, 411(3), 412, 413, 425, 431 and 434 of the Act, 2013 are *ultra vires the provisions of the Constitution and*, therefore, warrant to be struck down as unconstitutional.

The issues

- (i) Challenge to the validity of the constitution of NCT and NCLAT;
- (ii) Challenge to the prescription of qualifications including term of their office and salary allowances etc. of President and Members of the NCLT and as well as Chairman and Members of the NCLAT;

(iii) Challenge to the structure of the Selection Committee for appointment of President/Members of the NCLT and Chairperson/ Members of the NCLAT.

Challenge to the validity of the constitution of NCT and NCLAT

The Court specifically affirmed the decision of the High Court which held that creation of NCLT and NCLAT was not unconstitutional. In view of this, it is not open to the petitioner even to argue this issue as it clearly operates as *res judicata*.

Qualification/Rank of members of NCLT/NCLAT

It was pointed out that in the 2010 judgment, the Constitution Bench took the view that since the NCLT would now be undertaking the work which is being performed, *inter alia*, by High Court, the *technical* Members of the NCLT/NCLAT should be selected from amongst only those officers who hold rank of Secretaries or Additional Secretaries and have technical expertise. Having regard to the aforesaid clear and categorical dicta in 2010 judgment, tinkering therewith would evidently have the potential of compromising with standards which 2010 judgment sought to achieve, nay, so zealously sought to secure. Thus, it was held that Section 409(3) (a) and (c) are invalid as these provisions suffer from same vice. Likewise, Section 411(3) as worded, providing for qualifications of technical Members, is also held to be invalid.

Why only Secretaries and Additional Secretaries?

As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as high court judges. This can be achieved not by giving the salary and perks of a high court judge to the members but by ensuring that persons who are as nearly equal in rank, experience or competence to high court judges are appointed as members.

This issue pertains to the constitution of Selection Committee for selecting the Members of NCLT and NCLAT. Provision in this respect is contained in Section 412 of the Act, 2013. Sub-section (2) thereof provides for the Selection Committee consisting of:

- (a) Chief Justice of India or his nominee-Chairperson;
- (b) A senior Judge of the Supreme Court or a Chief Justice of High Court Member;.
- (c) Secretary in the Ministry of Corporate Affairs—Member;
- (d) Secretary in the Ministry of Law and Justice—Member; and
- (e) Secretary in the Department of Financial Services in the Ministry of Finance— Member.

The Court specifically remarked that instead of 5 members Selection Committee, it should be 4 members Selection Committee and even the composition of such a Selection Committee was mandated as follows;

- (a) Chief Justice of India or his nominee – Chairperson (with a casting vote);
- (b) A senior Judge of the Supreme Court or Chief Justice of High Court – Member;
- (c) Secretary in the Ministry of Finance and Company Affairs - Member; and
- (d) Secretary in the Ministry of Law and Justice – Member.”

There is a deviation in the composition of Selection Committee that is prescribed under Section 412 (2) of the Act, 2013. The deviations are as under:

Though the Chief Justice of India or his nominee is to act as Chairperson, he is not given the power of a casting vote. It is because of the reason that instead of four member Committee, the composition of Committee in the impugned provision is that of five members.

The Court had suggested one Member who could be either Secretary in the Ministry of Finance or in Company Affairs. Now, from both the Ministries, namely from the Ministry of Corporate Affairs as well as Ministry of Finance, one Member each is included. Effect of this composition is to make it a five members Selection Committee which was not found to be valid in 2010 judgment.

Out of these five Members, three are from the administrative branch/bureaucracy as against two from judiciary which will result in predominant say of the members belonging to the administrative branch, is situation that was specifically diverted from.

Supreme Court held that provisions of Section 412(2) of the Act, 2013 are not valid and direction is issued to remove the defect by bringing this provision in accordance with 2010 judgment.

INDIA INC. CALLING FOR GOODS AND SERVICES TAX¹

CS Saurabh Jain, Deputy Director, ICSI

Goods and Services Tax (GST) is one of the biggest indirect tax reforms in the country since independence slated to be made applicable in the country from April 2016. It is expected to bring about a 2% incremental GDP growth of the country. So GST is the need of the hour.

Why we need GST?

Presently in terms of Article 24 – Schedule VII of the Constitution of India we have got three lists, the Union List, the State List and the Concurrent List. Under the Union list only the Central Government can levy taxes. In respect of the items contained in the State List only the State Government can levy taxes. And under the Concurrent List both the Centre as well as the State Government can levy taxes.

A look at the Central Taxes reveals a list that includes Customs duty, Central Excise, Service Tax and to top it all we have education cess and secondary higher education cess. We have got product specific cess like automobile cess, research and development cess, etc., all central levy driven by Union List.

Coming to the State List we have value added tax (VAT) along with Central Sales Tax (CST). We have entry levy tax, octroi, entertainment tax, luxury tax and at the same time local body tax in some states such as Maharashtra. So we have multiple taxes both at the Central and State Level.

India Inc. is looking at some simplification, clarification and uniformity in indirect taxes. Hence GST is the need of the hour.

Issues in Central Excise, Service Tax and VAT -

Under Central levy we start with the customs duty when we import goods, we pay basic customs duty (BCD), we pay countervailing duty which is the equivalent of excise duty and applicable on like goods manufactured in India. We pay customs cess, we pay special additional duty (SAT) in lieu of sales tax. The existing problem in customs duty is that the manufacturer can claim the credit of CVD and SAT but he can't avail the credit of BCD and customs duty which become cost of production for the manufacturer.

¹ CS Saurabh Jain, Deputy Director, ICSI. Views expressed by the Author are his personal views and not necessarily the views of the Institute.

At the same time service provider can avail the credit of countervailing duty only. He can't avail the credit of SAT. So for the service provider BCD, Customs Duty and SAT become cost. This is just one of the problems from the credit perspective and the additional problems arise from inverted duty structure and accumulation of standard credit in the hands of the manufacturer in view of low value addition because they avail the credit of CVD and SAT but as there is not enough value addition, they are not able to utilize the credit and thereby there is accumulation. They can't go for the refund which is applicable to the importer of goods for the trading of imported goods. To find out a solution all manufacturers are looking for all these aspects in GST.

Moving from Customs duty to excise duty, we see that the taxable event is manufacturing of goods in India. So the term "manufacture" is very important. Manufacture means any activity which is incidental or ancillary to the completion of manufactured products or any activity which is defined in section note or chapter note of 1st Schedule to CETA. At the same time we have got deemed manufacture, which is any activity which may be packing, re-packing, labeling, re-labelling, alteration of retail sale price pertaining to the product specified in Schedule 3.

Then we have variable rates under Excise Duty such as 2% without CENVAT, multiple rates such as 6%, 10%, 18%, 24%, 27% and even 30%. We have multiple valuation system majorly which is followed on the basis of production capacity or on the basis of Maximum Retail Price (MRP). Under Section 4A of the Excise Act, we have transaction value which got a different dimension in view of the judgment of the Hon'ble Supreme Court in the case of Fiat India. Transaction Value is applicable on the price, i.e., sole consideration and the time and place of removal and the buyer and assessee are not related but in the Fiat judgment the concept of transaction value got changed and now transaction value should not be driven by any direct or indirect consideration flowing from the buyer to the assessee. Some exemptions under excise are absolute while some are conditional exemptions. At the same time we have excise free zones such as Uttarakhand and Himachal Pradesh, where there is absolute exemption. We have excise free zones by way of refund mechanism like in the State of Jammu and Kashmir and then we also have classification of Central Excise by way of Central Excise Tariff Act, 1985.

Service Tax

Service tax came into effect from 1st July 1994 on three services at the rate of 5%. Until 1st July 2012, service tax was applicable under the positive list regime of service tax. There has been paradigm shift from 1st July 2012 with the coming into being of the negative list regime of service tax. The taxable event for applicability of service tax is rendering of service. After 18 years of applicability of service tax we got the definition of service.

What would be service under GST scenario?

Under the 122nd Constitutional Amendment Bill the term, “Services” means anything other than goods. This broad definition of the term 'service' will altogether remove the disputes on the aspect whether something is goods or services (unless Government proposes different rates for GST on goods or services or both).

The law provides for reverse charge and partial reverse charge under service tax. Under the partial reverse service charge both the service provider and the service receiver have to pay service tax. There are four partial reverse service charge, viz., renting of vehicle for carrying passengers, supply of manpower, security services and works contract. It is applicable when the service provider is an individual, firm, HUF providing services to a body corporate registered as an entity in taxable territory.

Service Tax is a happening issue for Government of India and now service tax forms a major portion of the indirect taxes collected by the government as compared to excise duty and customs duty.

Moving on to State Taxes we have Value Added Tax (VAT), which is applicable on the value of the transfer of property in goods and then we have deemed sale concept. In terms of Article 366 (29A) deemed sale concept includes works contracts, air conditioned restaurants, etc. At the same time when VAT was implemented in the country, the respective Finance Ministers of all the states agreed to keep a uniform VAT rate - floor rates like 1%, 4%, 5% and 20%. But what is happening today is that the same states are charging VAT at different rates, we have some states charging 5% or 6% wherein the floor rate is 4%. Some of the states as against the floor rate of 12.% are charging 13.5% and even 18.5%, which is creating imbalance of trade between the states. At the same time under VAT we have multiple diversities. There is no uniformity in terms of registration, due date of payment, return filing, etc. The forms to be filed in various states are altogether different, thus, complicating the whole mechanism.

A business establishment having offices in three different states in the country has to follow the laws of the respective states. At the same time the assessment process is different, there is difference in the appellate process, difference in refund mechanism and different Input Tax Criteria (ITC) as given by the respective state provision.

There is diversity in the VAT procedures across the country, difference in rates of VAT, difference in forms and procedures from state to state, differences in determining the taxable event for charging VAT all complicate the system.

Central Sales Tax -

Central Sales Tax (CST) is applicable for inter-state sale of goods. No credit is available for CST. And it has been having a cascading effect on the cost of goods parallel to our indirect tax system.

Having seen the major indirect taxes from the Central Government's perspective and from the perspective of the states, we conclude that we have double taxation as the main problem in our indirect taxes system.

Comparing Excise and Service Tax – double taxation is applicable on software, designing, erection and commissioning equipment along with supply of goods. "Double Taxation" disputes are persisting for excise and service tax.

Comparing Service Tax and VAT – there are multiple line items wherein double taxation is applicable. Starting with construction, before completion both VAT as well as Service Tax are chargeable.

Take the case of Intellectual Property Rights (IPRs), e.g., software both VAT as well as Service Tax are chargeable.

In the case of dining at air conditioned restaurants, a buyer buying a coffee for Rs. 30/- has to pay VAT on Rs. 30/- and at the same time has to pay service tax on 40% of Rs. 30/-. Which is nothing but double taxation.

Looking back at the cascading effect of indirect taxes – customs duty, customs cess are cascading in the hands of the manufacturer as he cannot avail any credit for the same, and at the same time he has to pay excise duty on manufacture for which no credit is available at the hands of the VAT dealer. And to top it all there are entry tax and octroi. States allow credit of entry tax with a VAT liability. If there is not octroi, there is no credit available.

GST is clearly the need of the hour and solution to the cascading effect of so many indirect taxes. With GST coming into being, it is expected to give an incremental 2% in the GDP of the country.

Some important events in the evolution of Goods and Services Tax (GST):

- x In 1974 the L K Jha Committee suggested implementation of GST in the country.
- x In 1991 the Chelliah Tax Reforms Committee suggested either GST or VAT for the country.
- x On 1st July 1994 – Service Tax was implemented on three services at the rate of 5%.
- x During 1999-2000 the Empowered Committee of all States' Finance Ministers was formed and they prescribed a uniform floor rate for the VAT chargeable at the rate of 1%, 4% and 12.5%.
- x In 2003, Haryana became the first State in the country to implement VAT.

- x In 2004, MODVAT was abolished and the credit account was merged with service tax and excise to provide for cross utilization.
- x During 2005-2006 more than 25 states implemented VAT in the country.
- x In 2007, the Finance Minister of the country spoke about GST for the first time and on that premise the Central Sales Tax rate was reduced from 4% to 3%.
- x On 10th November, 2009 the first discussion paper on GST was released.
- x On 15th December, 2009 the Commission gave its report on GST.
- x In January 2010, the Department of Revenue commented on the first discussion paper on GST.
- x April 2010, the then Finance Minister suggested the probable GST rate.
- x In February 2011, a team was set up for laying down the road map for GST.
- x In March 2011, the 115th Constitutional Amendment Bill for GST was placed before the Parliament.
- x On 1st July 2012 the negative list regime of service tax was implemented.
- x In July 2013, the Parliamentary Standing Committee submitted its report on the 115th Constitutional Amendment Bill.
- x During April 2014, the 115th Constitutional Amendment Bill lapsed and was reintroduced as the 112nd Constitutional Amendment Bill on 19th December, 2014.

GST Models

A look at the various models of GST functioning across the world reveals that Australia and China levy a National GST with a provision for sharing the same amongst the states. Some countries follow the State GST model wherein the States levy GST. In countries like Brazil and Canada, the concurrent dual GST model is followed, wherein both the centre and the states levy taxes on Goods and Services. Another model known as the Cubic model involves States levying taxes on goods and the centre levying taxes on services. Only a few countries follow the cubic model and separate legislations are made by the centre and state governments for their tax collection, procedures, administration and amount of tax to be collected, etc.

India too can follow the concurrent dual GST model, wherein both the State as well as the Centre will levy taxes on both goods and services, provided there is political will for the same.

NATIONAL COMPANY LAW TRIBUNAL (NCLT)
&
NATIONAL COMPANY LAW APPELATE TRIBUNAL (NCLAT) ¹

Chittaranjan Pal & Dheeraj Gupta, Assistant Education Officers, ICSI

Introduction

In the corporate structure of our country, Judicial Forums play a very important role in the life of a company. There is discernible trend around the world towards rationalization of business processes and simplification of legislations governing them. This trend is being driven partly by the use of electronic communication and information technology that has speeded up business transactions as well as making them international. Time is, therefore, ripe to ensure that dispensation of justice and disposal of business matters by the court and authorities should be in tune with the speed with which business is being transacted. Further certain business matters require specialized domain knowledge for dealing with the matters justifiably. Keeping in view the pendency of legal matters and need for specialized knowledge of the persons discharging the responsibility of adjudicating the matters involving intricate issues relating to the subjects, the process of setting up of specialized tribunals has gained acceptability over a period of time.

Establishment of NCLT & NCLAT under the Companies (Second Amendment) Act, 2002 & Madras High Court Judgement

There was a growing need for empowering the Company Law Board and reducing the burden of High Courts by constituting a high-power Tribunal, which could take up all matters relating to Company Law and other Corporate Laws at one Forum.

In 2000 the Justice Eradi Committee was the first to recommend the creation of a National Company Law Tribunal & Appellate Tribunal that would subsume the company law board, BIFR and winding up cases in high courts. The rationale - to avoid long, drawn court proceedings.

Keeping this in view, the 2002 Amendment inserted new Parts IB & IC in the Principal Act for formation of National Company Law Tribunal (NCLT or Tribunal) and National Company Law

¹ Chittaranjan Pal & Dheeraj Gupta, Assistant Education Officers, ICSI. Views expressed by the Authors are their personal views and not the views of the Institute.

Appellate Tribunal (Appellate Tribunal) respectively. Necessary Section - Section 10FA was also inserted to provide for dissolution of the present Company Law Board.

The Companies (Second Amendment) Act, 2002 provides for the setting up of a National Company Law Tribunal and Appellate Tribunal to replace the existing Company Law Board and Board for Industrial and Financial Reconstruction. It also provides for dealing with various matters, which fall presently under the jurisdiction of High Court pursuant to various provisions contained in the Companies Act, 1956.

The Madras High Court in the matter of *R. Gandhi, President, Madras Bar Association v. Union of India* held that the Parliament's power to create National Company Law Tribunal and National Company Law Appellate Tribunal is clearly traceable to Entries 43 and 44 of List I. The Court also viewed that Parliament is thus competent to enact law with regard to the incorporation, regulation and winding up of Companies. The power of regulation would include the power to set up adjudicatory machinery for resolving the matters litigated upon, and which concern the working of the companies in all their facets.

The Madras High Court, however, declared that until the provisions in parts 1B and 1C of the Companies Act introduced by the Companies (Amendment) Act, 2002, which have been found to be defective in as much as they are in breach of the basic constitutional scheme of separation of powers and independence of the judicial function, are duly amended, by removing the defects that have been pointed out, it would be unconstitutional to constitute a Tribunal and Appellate Tribunal to exercise the jurisdiction now exercised by the High courts or the Company Law Board.

Supreme Court Judgement on NCLT & NCLAT (2010)

Appeals filed by the President of Madras Bar Association before the Supreme Court challenging the constitutional validity of Chapters 1B and 1C of the Companies Act, 1956 inserted by Companies (Second Amendment) Act 2002 providing for the constitution of National Company Law Tribunal ('NCLT' or 'Tribunal') and National Company Law Appellate Tribunal ('NCLAT' or 'Appellate Tribunal').

Supreme Court in the matter of *R. Gandhi, President, Madras Bar Association v. Union of India* vide its Judgment dated 11th May, 2010 has upheld the establishment of the National Company Law Tribunal and the National Company Law Appellate Tribunal, but has suggested certain amendments to be carried out in the Companies Act to make the NCLT and its Appellate Authority functional. In paragraph 56 of the Judgment, the Supreme Court tabulated the defects in Parts IB and IC of the Act and held that

(i) Only Judges and Advocates can be considered for appointment as Judicial Members of the Tribunal. Only the High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practiced as a Lawyer for ten years can be considered for appointment as a Judicial Member. Persons who have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and Indian Legal Service (Grade-1) cannot be considered for appointment as judicial members as provided in sub-section 2(c) and (d) of Section 10FD. The expertise in Company Law service or Indian Legal service will at best enable them to be considered for appointment as technical members.

(ii) As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as Technical members of the National Company Law Tribunal. Clauses (c) and (d) of sub-section (2) and Clauses (a) and (b) of sub-section (3) of section 10FD which provide for persons with 15 years experience in Group A post or persons holding the post of Joint Secretary or equivalent post in Central or State Government, being qualified for appointment as Members of Tribunal is invalid.

(iii) A 'Technical Member' presupposes an experience in the field to which the Tribunal relates. A member of Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of Company Law cannot be considered as 'experts' qualified to be appointed as Technical Members. Therefore Clauses (a) and (b) of sub-section (3) are not valid.

(iv) The first part of clause (f) of sub-section (3) providing that any person having special knowledge or professional experience of 15 years in science, technology, economics, banking, industry could be considered to be persons with expertise in company law, for being appointed as Technical Members in Company Law Tribunal, is invalid.

(v) Persons having ability, integrity, standing and special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy, may however be considered as persons having expertise in rehabilitation/revival of companies and therefore, eligible for being considered for appointment as Technical Members.

(vi) In regard to category of persons referred in clause (g) of sub-section (3) at least five years experience should be specified.

(vii) Only Clauses (c), (d), (e), (g), (h), and later part of clause (f) in subsection (3) of section 10FD and officers of civil services of the rank of the Secretary or Additional Secretary in Indian Company Law Service and Indian Legal Service can be considered for purposes of appointment as Technical Members of the Tribunal.

(viii) Instead of a five-member Selection Committee with Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and Secretary in the Ministry of Law and Justice as members mentioned in section 10FX, the Selection Committee should broadly be on the following lines:

- (a) Chief Justice of India or his nominee - Chairperson (with a casting vote);
- (b) A senior Judge of the Supreme Court or Chief Justice of High Court – Member;
- (c) Secretary in the Ministry of Finance and Company Affairs – Member; and
- (d) Secretary in the Ministry of Law and Justice – Member.

(ix) The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the concerned field. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as postretirement havens. If these Tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service.

(x) The second proviso to Section 10FE enabling the President and members to retain lien with their parent cadre/ministry/department while holding office as President or Members will not be conducive for the independence of members. Any person appointed as members should be prepared to totally disassociate himself from the Executive. The lien cannot therefore exceed a period of one year.

(xi) To maintain independence and security in service, sub-section (3) of section 10FJ and Section 10FV should provide that suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.

(xii) The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.

(xiii) Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special benches are constituted, the number of Technical Members shall not exceed the Judicial Members.

Hon'ble Apex Court uphold the decision of the High Court that the creation of National Company Law Tribunal and National Company Law Appellate Tribunal and vesting in them, the powers and jurisdiction exercised by the High Court in regard to company law matters, are not unconstitutional and declared that Parts 1B and 1C of the Companies (Amendment) Act, 2002 as structured, are unconstitutional. However, Parts 1B and 1C of the Act, may be made operational by making suitable amendments, as indicated above, in addition to what the Union Government has already agreed in pursuance of the impugned order of the High Court.

Further the Supreme Court in paragraph 18 of the Judgment support tribunalisation and stated that "the courts function under archaic and elaborate procedural laws and highly technical Evidence Law. To ensure fair play and avoidance of judicial error, the procedural laws provide for appeals, revisions and reviews, and allow parties to file innumerable applications and raise vexatious objections as a result of which the main matters get pushed to the background. All litigation in courts get inevitably delayed which leads to frustration and dissatisfaction among litigants. In view of the huge pendency, courts are not able to bestow attention and give priority to cases arising under special legislations. Therefore, there is a need to transfer some selected areas of litigation dealt with by traditional courts to special Tribunals. As Tribunals are free from the shackles of procedural laws and Evidence Law, they can provide easy access to speedy justice in a 'cost affordable' and 'user-friendly' manner. Tribunals should have a Judicial Member and a Technical Member. The Judicial Member will act as a bulwark against apprehensions of bias and will ensure compliance with basic principles of natural justice such as fair hearing and reasoned orders. The Judicial Member would also ensure impartiality, fairness and reasonableness in consideration. The presence of Technical Member ensures the availability of expertise and experience related to the field of adjudication for which the special Tribunal is created, thereby improving the quality of adjudication and decision-making."

Supreme Court Judgement on –NCLT & NCLAT (2015)

Chapter XXVII of the Companies Act, 2013 consisting of section 407 to 434 deals with NCLT and Appellate Tribunal. Companies Act, 2013 replaces the High Court with a Tribunal to be known as NCLT, which will consists of Judicial and Technical members.

The Madras Bar Association had challenged constitutional validity of provisions in the Companies Act, 2013 relating to setting up of NCLT and NCLAT alleging that it has proceeded to enact sections which are plainly contrary to requirements laid down by the apex court in 2010. The bench relied on the 2010 verdict of the apex court saying “it had specifically affirmed the decision of Madras High Court which held that creation of NCLT and NCLAT was not unconstitutional. In view of this, it is not open to the petitioner even to argue this issue as it clearly operate as res judicata.”

The Supreme Court in the matter of *R. Gandhi, President, Madras Bar Association v. Union of India vide its Judgment dated 14th May, 2015* upheld the constitutional validity of provisions of the Companies Act of 2013 relating to setting up of National Company Law Tribunal and National Company Law Appellate Tribunal but struck down provisions which permitted inclusion of civil servants of the level of Joint Secretary as technical members. The Hon’ble Supreme Court quashed Section 409(3)(a) and (c) and Section 411(3) of the Act providing for qualifications of technical members and held them to be invalid saying for appointment of technical members to NCLT, directions contained in 2010 judgment will have to be “scrupulously followed”.

The Supreme Court held that the Apex Court’s 2010 order holding that persons below the rank of a Secretary or Additional Secretary should not be appointed as a technical member to NCLT must not be tinkered with as it would have the potential of compromising with standards which it “so zealously sought to secure”. It also held as invalid Section 412 of the new Act which contemplates selection by a committee consisting of two Judges and three Secretaries, saying this very issue stands concluded by the 2010 judgment which is now a binding precedent.

“We are of the opinion that this again does not constitute any valid or legal justification having regard to the fact that this very issue stands concluded by the 2010 judgment which is now a binding precedent and, thus, binds the respondent equally. “The prime consideration in the mind of the bench was that it is the Chairperson, viz. Chief Justice of India, or his nominee who is to be given the final say in the matter of selection with right to have a casting vote,” it said while maintaining the 2010 verdict which had held that a selection committee must consist of four members.

The Supreme Court directed the Centre to ensure that the bodies are adequately manned and start functioning at the earliest. “Since, the functioning of NCLT and NCLAT has not started so far and it’s high time that these Tribunals start functioning now, we hope that respondents shall take remedial measures as per the directions contained in this judgment at the earliest, so that NCLT and NCLAT are adequately manned and start functioning in near future ”.

The court said the only step which is left to make the Tribunals functional is to appoint NCLT’s President and members and NCLAT’s Chairperson and members. The Madras Bar Association had challenged constitutional validity of provisions in the 2013 Act relating to setting up of NCLT

and NCLAT alleging that it has proceeded to enact sections which are plainly contrary to requirements laid down by the apex court in 2010. The bench relied on the 2010 verdict of the apex court saying “it had specifically affirmed the decision of Madras High Court which held that creation of NCLT and NCLAT was not unconstitutional. In view of this, it is not open to the petitioner even to argue this issue as it clearly operate as res judicata.”

Rejecting the lawyers body’s argument that the setting up of NCLT and NCLAT should be held unconstitutional for the same reasons as was done in the case of National Tax Tribunal (NTT), the bench said the two situations are different. “The NTT was a matter where power of judicial review hitherto exercised by the High Court in deciding the pure substantial question of law was sought to be taken away to be vested in NTT which was held to be impermissible. “In the instant case, there is no such situation. On the contrary, NCLT is the first forum in the hierarchy of quasi - judicial fora set up in the Act, 2013. The NCLT, thus, would not only deal with question of law in a given case coming before it but would be called upon to thrash out the factual disputes/aspects as well,” it said.

The bench added that NCLAT which is the first appellate forum provided under the Act, 2013 to examine the validity of the orders passed by NCLT, will have to revisit the factual as well as legal issues and “therefore, situation is not akin to NTT”. “We would like to point out that apart from giving other reasons for limiting the consideration for such posts to the Secretary and the Additional Secretary, there was one very compelling factor in the mind of the Court viz. gradual erosion of independence of judiciary, which was perceived as a matter of concern,” it said.

Powers of NCLT

The NCLT has been empowered to exercise the following powers:

- Most of the powers of the Company Law Board
- All the powers of BIFR for revival and rehabilitation of sick industrial companies;
- Power of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.;
- Power to wind up companies;
- Power to Review its own orders.
- The Tribunal and the Appellate Tribunal can formulate their own procedures and regulations for dealing with the cases and since the cumbersome procedures prescribed in the Civil Procedure Code will not be automatically applicable to the proceedings before the Tribunal or the Appellate Tribunal, protracted delays can be avoided and speedy decisions can be made.
- Tribunal and Appellate Tribunal will have the power to punish the contemnors, the orders of the Tribunal will receive the seriousness it deserves and such orders will be effectively implemented and this power to punish contemnor will act as a deterrent. Besides, this will avoid filing of affidavits to the Tribunal in a casual and lackadaisical manner.

- Power to order repayment of deposits
- Allow issue of redeemable preference shares
- Order in case of Reduction of share capital by companies
- Order in case of Variation of class rights
- Order in case of Refusal to register transfer of shares by companies
- Order redemption of debentures
- Order convening general meeting
- Order investigation of affairs
- Order in case of prevention of oppression and mismanagement
- Order in case of class action suit

Enhanced Role of Company Secretaries

The establishment of NCLT/NCLAT shall offer various opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/ Appellate Tribunal. Therefore, Practicing Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt with by the High Court viz. mergers, amalgamations, reduction of share capital and winding up proceedings under the Companies Act.

Practicing Company Secretaries have been permitted to act as Liquidator in case of winding up of company by the Tribunal and can be appointed as a Technical Member of NCLT.

Conclusion

In view of vast opportunities emerging with the establishment of National Company Law Tribunal, the Practising Company Secretaries should utilize this opportunity and provide services in assisting the Tribunal in dispensation of justice and speedier disposal of matters like merger, amalgamation, restructuring, revival and rehabilitation of sick companies and winding up of companies.

COMPETITION COMPLIANCE PROGRAMME

CS Surendra U Kanstiya, Practising Company Secretary, Mumbai

"Compliance is like the Truth, and not a mathematical formula to match the juggle. The industry must develop this culture and encourage competition."

Ashok Chawla, Chairman, Competition Commission of India
The Hindu Business Line, June 30, 2014

THE COMPETITION ACT, 2002

Competition is the best friend of enterprises as well as consumers. The Competition Act promotes fair and effective competition in the market. It ensures the availability of good quality goods and efficient services at lowest price, enhances efficiency and encourages innovation.

In India, the Competition Act, 2002 (the Act) has been playing a vital role in creation of a healthy competition culture in the economy. This Act provides for the establishment of the Competition Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets. Referring to the objectives of this Act, the Supreme Court¹, observed as under:

"The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are threefold: allocative efficiency, which ensures the effective allocation of resources, productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law."

SUBSTANTIVE ELEMENTS

Key provisions of the Act are contained in section 3, 4, 5 and 6. Through these sections, the Act declares anti-competitive agreements as void; prohibits abuse of dominant position, and regulates large combinations.

Section 3 mandates that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Such agreements are declared as void. Agreements between competitors, for fixing prices; limiting supplies; sharing markets; or colluding for bids are presumed to be anti-competitive under the Act.

Section 4 prohibits the abuse of dominance by an enterprise or a group. In case, a dominant enterprise is found following the practices listed under section 4(2), the same shall be guilty of abusing its dominant position. Dominant position is defined to mean a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour. The abuses can be classified in to two categories: exploitative abuses and exclusionary abuses. The exploitative abuses relate to the practices which exploit the consumers and exclusionary abuses relates to the practices which drive the competitors out from the market. Dealing with the appeals relating to the matter of DLF Limited, the Competition Appellate Tribunal held that:

“..... After all as a dominant player in the market, it has a special duty to be within the four corners of law. An abuse of dominance whether it is on one count or on many remains an abuse and therefore it must be dealt with iron hands.”

Section 5 and 6 provides for regulation of the combinations beyond the prescribed threshold. A combination includes the acquisition of control, shares, voting rights, assets as well as the cases of merger or amalgamation. Section 6 provides that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

COMPETITION AUTHORITIES

The Competition Commission of India (Commission) is established as an expert body and functions as a market regulator for preventing and regulating anti-competitive practices in India. All allegations relating to the anti-competitive agreements and abuse of dominance are inquired and investigated through the orders passed by the Commission. The Commission also grants approval to the applications pertaining to the combinations.

The Competition Appellate Tribunal (Tribunal) is a quasi-judicial body established to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission and to adjudicate claims on compensation and for passing of orders for the recovery of compensation

from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act.

CONSEQUENCES OF CONTRAVENTION

The contravention of any provision of the Act leads to serious consequences. Wide- ranging powers are given to the Commission to penalize all practices resulting in to anti-competitive scenario in the Indian economy. Non-cooperation with the investigating agencies and the delay in the filings also attract the penal provisions. The provisions under section 3 and 4 have been brought into force from 20th May 2009 and the provisions under section 5 and 6 have been brought into force from 1st June 2011. During the period from 20th May 2009 till 31st March 2015, the Commission had undertaken 590 cases² relating to section 3 and 4. Box A and Box B give an overview of the matters undertaken by the Commission and case status as on 31st March 2015.

In response to an unstarred question³ in the Lok Sabha, Hon'ble Minister for Ministry of Corporate Affairs, Mr Arun Jaitley informed that total penalty of Rs.12,474 crore has been imposed on 351 companies for contravention of the provisions of the Competition Act 2002. Of course, out of this total amount, only Rs.92.48 crore has been realized. Penalty amounting to Rs.12292.57 crore has been stayed and penalty of Rs.61.10 crore has been dismissed by the Competition Appellate Tribunal/Courts. Yet, these numbers give an idea as to how difficult is it to contravene the provisions of the Act. Following are the key outcomes of the contravention of legal provisions:

1. Imposition of huge fines/penalties: Huge fines or penalties may be imposed by the Commission if it is satisfied that there has been a contravention of any of the provisions of the Act.
2. Imprisonment: On contravention of the orders of the Commission, a person can be punished with imprisonment for a term which may extend to 3 years.
3. Cease & Desist orders: Such orders disable the enterprise from following certain business practices.
4. Unenforceability of an agreement: An anti competitive agreement is void *ab initio* and hence unenforceable.
5. Division of the dominant enterprise: The Commission is empowered to pass order for division of a dominant enterprise which may cause immense harm to the growth plans of the enterprise.
6. Awarding of compensation: Section 53N of the Act empowers the Tribunal to adjudicate any claim for compensation.
7. Legal cost: Challenging any order before appellate authorities is always an expensive affair.
8. Personal liability of officers: Penalties may also be imposed on the officers of the enterprise or office bearers of an association.
9. Disqualification under Companies Act, 2013: Schedule V of the Companies Act, 2013 disqualifies a person from being appointed as a managing or whole-time director or a manager if he had been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under various enactments, including the Competition Act, 2002.

10. Damage to reputation: The news on imposition of fines creates negative impression of the enterprise. A press release by the Commission highlighting the quantum of penalty causes immense harm to the brand equity of the erring enterprise.
11. Loss of business: Enterprises believing in fair business practices may not like to deal with an enterprise caught contravening the law.

COMPETITION COMPLIANCE PROGRAMME

Negative consequences contravention can be avoided by having a robust Competition Compliance Programme (CCP) in place, by an enterprise. The enterprise planning to have CCP has to design the same based on its own economic environment. A company from pharmaceutical sector and a company from banking sector can not have identical CCP. The CCP must have full support from the top management. It is a common practice to find the compliance with the competition law in the Code of Conduct for senior personnel. The Programme should involve the training of employees on an ongoing basis. Compliance Manual designed for the training should be regularly revised and updated. A 'competition compliance team' may be formed to conduct communication audit (with specific focus on e-mails) and competition audit (especially of the agreements by sales, purchase and marketing departments). Depending on the organizational set up, the CCP may be aligned with other compliance activities. A checklist, suggested by the Commission, for a CCP is given in Box C.

The Commission has strongly advocated the CCP by large enterprises. Chairman, Competition Commission has suggested the corporates to set up a high level Competition Compliance Committee in their respective organizations to review competition compliance. He also informed that SEBI would be requested to include competition compliance under Section 49 of Listing Agreements⁴. The Commission will soon come up with well-defined underlines for competition compliance and will also put them in the public domain for better awareness amongst the corporate and various levels of management within the companies⁵.

SHOULD CCP RESULTS IN TO LESSER PENALTY ?

Incentivise companies that put in place systems and processes to ensure compliance with the norms spelled out in the Competition Act, 2002, and consider it as a factor before deciding the quantum of penalty', is what India Inc has told the parliamentary panel examining the amendments to competition laws⁶. Companies should be provided with incentives to put in place systems to ensure compliance with competition norms and the same should be taken into account by fair trade watchdog Competition Commission before determining penalties on any erring entities, according to industry body CII. In a statement, CII said the Commission should consider framing penalty guidelines which could include existence of compliance programmes as mitigating factors while calculating fine on an infringing enterprise⁷.

As of now, neither the Act nor the Commission is in a position to grant leniency to an enterprise if it establishes to the satisfaction of the Commission that the contravention was unintentional. The Act is in the process of amendment which began with the tabling of the competition (Amendment) Bill 2012 in Lok Sabha on December 10, 2012. The demand from the corporate sector may be considered while drafting the next Amendment Bill. It is interesting to note the global practices in this regard, as stated by the OECD:

“There is no international consensus on whether competition law violators that had compliance programmes in place at the time of the violation should be given lighter sanctions. Some jurisdictions encourage companies to implement compliance programmes by granting a reduction in fines when there is a violation despite the existence of a bona fide programme. Other authorities are neutral towards compliance programmes, neither awarding reductions nor enhancing fines if a defendant has one in place. In rare instances, particularly when they are used as shams, some agencies have used or may use the existence of a compliance programme as a reason to enhance fines in the event of a competition law violation.” - “Promoting Compliance with Competition Law” dated 30th August 2012.

CONCLUSION

The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences⁸. Upon close scrutiny of the provisions of the Competition Act, 2002, it transpires that it is a complete Code in itself which even provides for award of compensation to the affected / aggrieved party⁹. Corporate sector should recognize the need to have a CCP in place to avoid imposition of huge penalties under the Act. Corporates need not wait for introduction of CCP only when the same is mandated through the Listing Agreement or the Competition Act. The Companies Act, 2013 has already paved the path for corporate governance and inclusion of CCP in the Corporate Governance agenda may be the right mode of commencing and cementing the process.

- 1.Competition Commission of India v. Steel Authority of India [2010] 98 CLA 278
- 2.Fairplay – The quarterly Newsletter of Competition Commission of India. Volume 12: January – March, 2015
- 3.Unstarred Question No. 755 answered on Friday, the 27th February 2015
- 4.Press Information Bureau, Government of India. Press release dated January 24, 2013
- 5.The Times of India, June 27, 2014
- 6.Indian Express, June 20, 2013
- 7.Zeebiz.com: Provide incentives to cos for competition compliance
- 8.Competition Commission of India v. Steel Authority of India [2010] 98 CLA 278 (SC)
- 9.Jindal Steel & Power Ltd. v. Union of India [2012] 107 CLA 453 (Del.)

Box A	
Matters Undertaken by CCI	
(Under section 3 & 4) (as on March 31, 2015) Total Cases: 590	
Particulars	No. of cases
Information filed u/s 19(1)(a)	490
Cases from MRTPC/DGIR u/s66	50
Suo moto cases u/s 19(1)	27
Ref. from Government u/s 19(1)(b)	22
Ref. from Statutory Authorities u/s 21	1
Source: Fairplay – The quarterly Newsletter of Competition Commission of India. Volume 12: January – March, 2015	

Box B	
Case status	
(Under section 3 & 4) (as on March 31, 2015) Total Cases: 590	
Particulars	No. of cases
Cases closed at prima facie stage	302
Cases decided or closed after DG's report	61
Cases continuing before commission	76
Cases continuing before DG	151
Source: Fairplay – The quarterly Newsletter of Competition Commission of India. Volume 12: January – March, 2015	

BOX C
CHECK LIST FOR COMPETITION COMPLIANCE PROGRAMME
☹☹Compliance Programme will have to be tailor-made for each enterprise, though number of elements will be similar ☹☹Compliance Officer: Identify a senior management personnel to oversee the implementation and monitoring of compliance programme ☹☹Regular and adequate training on points of law as well as in identifying potential violations

- ☹☹Have a comprehensive compliance manual, intelligible to employees in general. It should contain useful illustrations
- ☹☹Every enterprise should have a guidance or clearance procedure for situations where there may be doubt about possible course of action by employees for fear of violation of competition provisions
- ☹☹Agreements will invariably have to be processed in consultation with the legal department to ensure that the provisions therein are consistent with the provisions of Competition Act, 2002. These should be reviewed periodically from the competition angle
- ☹☹Familiarize the employees with a likely 'dawn raid'. In relatively large enterprises it would be useful to arrange mock 'dawn raid' to keep employees vigilant against possible violations
- ☹☹Employees should be educated about the use of language while communicating, whether it be verbal or written. Special care should be taken to ensure that the language used in email communication is appropriate
- ☹☹Ensure a proper system of recording/ minuting of meetings and other events that may serve as evidence of nonparticipation in anti-trust practices by the enterprise or its employees
- ☹☹Compliance Programme should be suited to the situation in all countries where the enterprise is operating
- ☹☹Active/dynamic risk management programme should be an essential element of the Compliance Programme
- ☹☹It would be advisable to integrate the competition Compliance Programme into the overall compliance programmes of the enterprise

Source: Competition Compliance Programme for enterprises, Competition Commission of India Advocacy Booklet No. 6

GUIDELINES FOR COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES BY THE MEMBERS¹

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. INTRODUCTION

The Company Secretaries Act, 1980 was enacted to make provisions for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

Members of the Institute in employment occupy important positions in industry. The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain category of companies. Our members in practice are also being recognized for issuing various certificates by various regulatory authorities.

In the present day scenario, a profession cannot maintain its cutting edge competencies unless its members regularly update their knowledge. Attendance and participation in Professional Development Programs, Participative Certificate Programs organized by the Headquarters and Centre for Corporate Governance Research and Training (CCGRT), and Seminars, Conferences, Study Circle Meetings organised by the Council, Regional Councils, Chapters and other recognised bodies enable members to –

1. Constantly upgrade professional competence and skills.
2. Sensitize them to new and emerging opportunities for service.
3. Assure users of professional services that they possess adequate skills commensurate with their professional responsibilities.
4. Improve their level of confidence to meet ever-changing demands on the profession.

1 As amended by the Council in its 223rd Meeting held at New Delhi on March 14, 2014.

The Perspective Planning Group constituted by the Council had recommended compulsory attendance by members at Professional Development Programmes as a means of ensuring constant updation of knowledge and skills of members. The ICSI, drawing strength from these recommendations, has now decided that the following guidelines are required to be followed for giving and recording credit as well as eligible programmes and the number of Program Credit Hours to be given for each program.

2. KEY DEFINITIONS

- 2.1 “Approved Learning Program” means any Professional Development Program, Continuing Education Program, Participative Certificate Program of the ICSI, *Programmes organised through electronic / distance mode** or any other program, Seminar or study circle meeting organised by the Council, Regional Council, Chapter or Satellite Chapter of the Institute, and programmes organised *[jointly with professional bodies or Chambers of Commerce]*.
- 2.2 “Year” for the purposes of these guidelines shall mean the period commencing from 1st day of April and ending on 31st day of March following.
- 2.3 “Learning Program Centre” (LPC) means any wing of the ICSI which conducts programs and includes the Council, any Committee of the Council, Regional Councils, Chapters and shall include any other centre, wing or any other entity as may be recognized by the Council from time to time for this purpose.

3. AUTHORISATION AND METHOD OF REGULATION

- 3.1 Under Section 9 of the Company Secretaries Act, 1980, the responsibility for management of the affairs of the Institute and for discharging the functions assigned under the said Act vests with the Council.
- 3.2 The Council considers that in the context of the liberalised economy and the competitive environment, proper regulation and maintenance of the status and standards of the Members is necessary for ensuring competency of the members.
- 3.3 Pursuant to the above-mentioned authorizations, these guidelines are therefore being issued for implementation.
- 3.4 Compliance with these guidelines is mandatory for the members in practice and recommendatory for other members.

* Amended by the Council in its 192nd Meeting held on March 18-19, 2010 at New Delhi.

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- 3.5 For the removal of doubts, it is clarified that all issues relating to the implementation and interpretation of terms used in these guidelines shall be the responsibility of the Professional Development Committee constituted by the Council. The Committee may discharge its duties in this regard (including issue of supplementary guidelines from time to time) for implementation within the limits of its authority as specified or prescribed by the Council.

4. POWER TO MODIFY GUIDELINES

To ensure that these guidelines are dynamic, the requirements, conditions or terms specified in these guidelines may be modified from time to time at the discretion of the Council on the recommendations of the Professional Development Committee of the Council.

5. APPLICABILITY OF THE GUIDELINES

- 5.1 It is mandatory for all members in practice of the Institute, except those specified in para 5.2 to secure **15 Program Credit Hours (PCH) in a year or 50 Program Credit Hours in a block of 3 years by attendance of approved learning program**. However, no carry forward for excess Program Credit Hours from block of three years to another block of three years will be allowed.
- 5.1.1 It would be sufficient if a member obtains atleast **fifteen credit hours in a year or 50 credit hours in a block of three years**. If a member takes a Certificate of Practice during the block, the requirement for obtaining Credit Hours shall be as under :

<i>Certificate of Practice taken during</i>	<i>The requirement of Credit Hours</i>
1st April of the first year of the block to 31st March following.	No requirement of Credit Hours in the First Year of the block Fifteen Credit Hours each in the second and third year of the block or 30 Credit hours in the block of three years
1st April of the second year of the block to 31st March following	No requirement of Credit Hours in the second year of the block Fifteen Credit Hours in the third year of the block
1st April of the third year to 31st March following	No requirement of Credit Hours in that block

No credit hours will be given to a participant who attends the programme partially.

Members whose reply to prize queries is published in the Chartered Secretary will be entitled to four Programme Credit Hours.

Members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years w.e.f. April 01, 2011².

5.1.2 Members in employment i.e. members in whose name Form 32 (in terms of the provisions of the Companies Act, 1956) / DIR -12 (in terms of the provisions of the Companies Act, 2013) has been filed by the Companies shall be required to obtain 10 Programme Credit Hours in each year or 35 Programme Credit Hours in a block of three years.

5.2 The requirement specified above shall not apply to :

- (a) A member who attains the age of 65 years during a particular calendar year.
- (b) A member, for the year during which he gets his Certificate of Practice for the first time.
- (c) A member or class of members to whom the Council may in its absolute discretion grant full/partial exemption either specific/general, on account of facts and circumstances in case of :

- (i) Maternity / Paternity Leave
- (ii) Accident/Medical Emergencies
- (iii) Unemployment
- (iv) Any other case, as may be deemed appropriate by the Council on a case to case basis.

6. FUNCTIONS OF THE LEARNING PROGRAM CENTRES

- 6.1 To conduct programs on current topics for the benefit of the members.
- 6.2 To maintain attendance record of the member attending the program in a manner which will be prescribed.
- 6.3 To furnish periodic Activity and Attendance Report to the Headquarters of the ICSI for updation in the master database.

7. OBLIGATIONS OF THE MEMBER

- 7.1 A personal record of compliance with the requirements of Program Credit Hours is required to be maintained by each member on an annual basis. This record shall be open to verification by the Institute.

² Amended by the Council in its 200th Meeting held on March 18, 2011.

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- 7.2 At the time of payment of annual membership fees, every member is required to confirm that they have secured the minimum annual Program Credit Hours (PCH) and that the record can be produced to the Institute for verification on request.

8. MANNER OF CALCULATION OF PROGRAM CREDIT HOURS (PCH)

- 8.1 No Program Credit Hours will be awarded for any learning program whose duration is less than 1 hour.
- 8.2 The basis of calculation of Program Credit Hours will be as under:

<i>No. of hours of Learning Program attended by the member</i>	<i>Program Credit Hours (PCH)</i>
Beyond 1 hour and upto 2 hours	1
Beyond 2 hours and upto 4 hours in a single day	2
Beyond 4 hours in a single day	4
Program spanning 1 ½ days	6
Program spanning 2 days	8
Program spanning 2 ½ days and above/National Convention	10

- 8.2.1 Members attending programmes in non-core areas such as Service Tax, Indirect Taxes, Accounting Standards, Labour Laws, Intellectual Property Rights, Competition Law and NCLT etc. shall be entitled for grant of 50% extra PCH than eligible for other programmes of the same duration.

- 8.3 A member whose article is published in the “Chartered Secretary” will be entitled to 4 Program Credit Hours.

In respect of joint authorship of the article, the two credit hours be awarded to each author. However, the joint authorship should be limited to two authors only.

The article published in the Souvenir of National Convention be treated at par with the article published in the Chartered Secretary for the purposes of grant of credit hours.

- 8.4 If the Course Coordinator attends the full program, full credit of the Program Credit Hours allotted for the program will be given.
- 8.5 No Program Credit Hours shall be given to a member for acting as a faculty in Oral Tuition Classes.
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- 8.6 There may be cases of members contributing articles in newspapers, working on research projects, preparation of or vetting of background or technical material, participating in interactive media programs, etc. All such cases will be decided by the Committee on case to case basis until fresh guidelines covering such instances are drawn up.
- 8.7 A member who acts as a Chairman or Speaker in any technical session at a Workshop, Seminar or Conference organised by the Program Learning Centre will be entitled to equivalent number of Program Credit Hours as is available for the said technical session.
- 8.8 For Members who reside in places beyond 100 km from the nearest Regional Council/Chapter and attend a program at any Program Learning Centre, they shall be awarded double the Program Credit Hours for which the concerned Program is entitled. However this will not apply to attendance at the National Convention/National Conference of Practising Company Secretaries/Regional Conferences organised by the Regional Councils. *Such members have also the option to prepare a research paper on a topic recommended by the Secretariat.*

Where the members in practice residing in remote places are not able to attend the professional development programmes, they may write to the Institute for approving a topic on which they can prepare research paper to get the exemption from securing programme credit hours.

The Research paper includes :

- (i) A concept paper on emerging areas of practice for Company Secretaries
- (ii) A Referencer/backgrounder on contemporary topics relevant to Company Secretaries
- (iii) A booklet on any topic relating to the areas of practice for Company Secretaries
- (iv) A monograph on any contemporary topic relevant to the Practising Company Secretaries
- (v) An empirical study of practical relevance to the Practising Company Secretaries

Members whose research paper is approved by the Professional Development Committee of the Council, will be exempted from the requirement of securing programme credit hours for a block of three years.

Members who reside in places beyond 100 Kms. from the nearest Regional Council/Chapter will be entitled for Eight Programme Credit Hours if their article/reply to prize query is published in the Chartered Secretary.

8A. Programme Credit Hours for Unstructured Learning Activities

The members shall be granted Programme Credit Hours (PCH) under these Guidelines for undertaking any of the following unstructured learning activities subject to a maximum of ten PCH in each year of the block:

	<i>Learning Activity</i>	<i>PCH</i>
1	Web based learning including elearning, subject to the production of Certificate, per year.	4
2	Publication of article in a journal of repute other than the Chartered Secretary Journal.	4
3	Publication of book(s).	8
4	Revision of Published Book	4
5	Acting as Guide / Supervisor for M.Phil. / LL.M. / Ph.D.	6
6	Suggestions on Questionnaires / Consultative Papers / Exposure Draft, etc. sought by the Institute.	2
7	Reviewing of Articles / Guideline Answers / Study Material and other publications of the Institute.	4
8	Publication of Research findings / Studies on the areas relevant to Corporate Sector, Capital Markets and Professional interest.	4
9	Publication of articles of professional interest in national dailies.	4
10	Visit to foreign countries as part of government delegation.	4
11	Acting as visiting faculty or guest faculty at the various Universities / Management Institutions / Institutions of National importance.	4

9. MONITORING REQUIREMENTS

9.1 The Professional Development Committee will monitor and review the programs conducted by the various Program Learning Centres from time to time and appraise the Council of the progress.

9.2 The said Committee shall set up an appropriate monitoring mechanism and provide clarifications (as it considers necessary) to all concerned for effective implementation of these guidelines *as per Annexure*.

10. These Guidelines are effective from 1st January, 2008.

**MECHANISM FOR MAINTENANCE OF ATTENDANCE RECORDS OF MEMBERS AT
PROFESSIONAL DEVELOPMENT PROGRAMMES AND ISSUANCE OF CERTIFICATES
FOR PROGRAMME CREDIT HOURS (PCH)**

The Council has considered and approved the following mechanism for maintenance of attendance records of members at professional development programmes and issuance of certificates for Program Credit Hours under the Guidelines for Compulsory Attendance of Professional Development Programmes by Members:

1. The Program Centre shall ensure the quality of the programmes organized by it by inviting faculty having adequate knowledge, expertise and experience in the given subject/topic for discussion.

The brochure for every professional development programme should indicate the programme Credit Hours to be awarded to the participants.

2. The Program Centre will record the attendance of the participants and maintain the same for future reference and issue the certificates for Program Credit Hours in the prescribed format.
3. The Directorate of Information Technology in the Headquarters will develop software for recording and maintaining the attendance of members at the Professional Development Programmes and send to all Regional Councils/Chapters.
4. The headquarters will initially provide to Regional Councils printed blank formats of certificates, which will be serially numbered.
5. *Regional Councils/Chapters will maintain the list of names and membership numbers of the participants as well as faculty/Chairman/Speaker and Program Credit Hours given to each of them together with their signatures duly authenticated by competent authority for this purpose.*

Explanation : *Competent authority means (i) in the case of Regional Council Chairman or Secretary of the Regional Council or Executive Officer (ii) in the case of Chapter/Satellite Chapter, Chairman or Secretary or Executive Officer, if any, of the Chapter/Satellite Chapter.*

A Register be prepared for recording names of participants and obtaining their signatures both at the beginning as well as at the end of the programme.

6. At the time of renewal of membership every year, the members will send a declaration stating the name of the programmes attended, program learning centre, place, date, duration and number of Program Credit Hours secured during the calendar year to the Directorate of Training and Membership of the ICSI.

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Northern/Eastern/Western/Southern India Regional Council

CERTIFICATE FOR PROGRAM CREDIT HOURS

Name of the Program Learning Centre:

This is to certify that Ms./Mr.
attended (Name of the Programme) held on
..... at for
days/hours as a participant/faculty/
speaker/ course coordinator/chairman in a technical session.

According to the Institute's Guidelines for Compulsory
Attendance of Professional Development Programmes by
Members, she/he is hereby awarded
..... Program Credit Hours.

Competent Authority

Date

Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

CERTIFICATE FOR PROGRAM CREDIT HOURS

This is to certify that Ms./Mr. has contributed an article in Chartered Secretary/Convention Souvenir, which was published in the Month of

According to the Institute's Guidelines for Compulsory Attendance of Professional Development Programmes by Members, she/he is hereby awarded Program Credit Hours.

Competent Authority

Date

Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

CERTIFICATE FOR PROGRAM CREDIT HOURS

This is to certify that Ms./Mr.
has contributed an article in a
Newspaper/worked on research project/prepared or vetted
backgrounder or technical material/participated in interactive media
programs

According to the Institute's Guidelines for Compulsory Attendance
of Professional Development Programmes by Members and as per
the decision of the Professional Development Committee at its
meeting held on she/he is hereby awarded
..... Program Credit Hours.

Competent Authority

Date

Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
(Constituted under the Company Secretaries Act, 1980)

ICSI Guideline No.2 of November, 2007

*[Pursuant to clause (1) of Part II of the Second Schedule to the
Company Secretaries Act, 1980 as amended]*

New Delhi, the 27th November, 2007

**GUIDELINES FOR REQUIREMENT OF MAINTENANCE OF A REGISTER OF
ATTESTATION[/CERTIFICATION] ¹ SERVICES RENDERED BY PRACTISING
COMPANY SECRETARY/FIRM OF PRACTISING COMPANY SECRETARIES**

In exercise of the powers conferred by clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-

1. For the purpose of maintaining quality of attestation [/certification]¹ services provided by Company Secretaries in Practice, every Practising Company Secretary/Firm of Practising Company Secretaries shall maintain a register regarding attestation [/certification]¹ services provided by him/her/it, which shall be open for inspection by such person as may be authorised.
2. The format of the register to be maintained by a Practising Company Secretary/Firm of Practising Company Secretaries regarding attestation[/certification]¹ services is as under :

Sl. No.	Name and Registration No. of the company to which attestation[/ certification] ¹ services* provided	Services rendered	Date of signing of Certificate/ Return/ Audit Report	Signature of the PCS	Signature of the person authorised for verification
1	2	3	4	5	6

*The various attestation[/certification]¹ services mean :

- (i) Signing of Annual Return pursuant to proviso to subsection (1) of section 161 of the Companies Act, 1956.

¹ Inserted by the Council in its 178th Meeting held on 29th December, 2007.

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- (ii) Issue of Compliance Certificate pursuant to proviso to sub-section (1) of section 383A of the Companies Act, 1956.
 - (iii) Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges.
 - (iv) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D&CC/FITTC/Cir-16/2002 dated December 31, 2002.
 - (v) Conduct of Internal Audit of Operations of the Depository Participants.
 - (vi) [Certification under Clause 49 of the listing agreement.]¹

3. These Guidelines are effective from 1st January, 2008.

GUIDELINES FOR PROFESSIONAL DRESS OF COMPANY SECRETARIES

With a view to enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India at its 148th Meeting held on 27th & 28th March, 2004 at New Delhi, has prescribed the following guidelines for professional dress for members while appearing before judicial / quasi-judicial bodies and tribunals:

- (a) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- (b) The professional dress for female members will be saree or any other dress of a sober colour with a Navy Blue jacket.
- (c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
- (d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

**GUIDELINES FRAMED BY THE COUNCIL RELATING TO APPROVAL
OF PROPRIETORSHIP CONCERN/FIRM'S NAME UNDER
REGULATION 169 OF THE COMPANY SECRETARIES REGULATIONS, 1982**

1. A trade or firm name shall be restricted to the name(s) of the proprietor/partners or a name which is already in use;
2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manners:
 - (i) For Sole proprietorship concern
 - (a) Name comprising surname, first name and/or middle name of the member
 - (b) Full first name or its initial and surname of the member
 - (c) Initials of the first name and/or middle name with full surname
 - (d) Initials of full name
 - (e) Any combination as permissible above.
 - (ii) For Partnership
 - (a) Full surname of two or more partners
 - (b) Full first name of two or more partners
 - (c) Combination of first names and/or surnames of two or more partners
 - (d) Combination of initials of first names and/or middle names or surnames of the two or more partners
 - (e) Combination of first names, middle names, surnames or initials of two or more partners
 - (f) Initials of names of two or more partners.
3. General
 - (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of offices of firms.

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- (ii) The trade or firm name shall be suffixed by the suffixes "& Co.", "& Company" or "& Associates" or their equivalents. Suffixes like "& Partners", "& Fellows" and other words as may be considered undesirable shall not be allowed by the Council.
 - (iii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
 - (iv) Descriptive trade/firm names shall not be allowed.
 - (v) Trade/firm names, which denote publicity, shall not be allowed.
 - (vi) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
 - (vii) In case any change in the status of the firm i.e. from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
 - (viii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members upto a period of three years of the closer of the firm. In event of removal of name of a practicing member, the firm name shall be reserved for a period of three years from the date of approval. After expiry of period of three years, the said trade/firm name may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
 - (ix) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of Firm/trade name in accordance with the same, he may be permitted to adopt or coin a Firm/ trade name out of the names of his/her family members provided that such name was not already registered by some other members. The term "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
 - (x) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170."
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**GUIDELINES FOR ADVERTISEMENT BY COMPANY SECRETARY IN
PRACTICE**

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

(Constituted under the Company Secretaries Act, 1980)

ICSI Guideline No. 4 of December, 2007

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-

1. Introduction

1.1 The Institute of Company Secretaries of India, (the Institute) constituted under the Company Secretaries Act, 1980 (the Act) is a statutory body to develop and regulate the profession of company secretaries in India. Members of the Institute who hold the Certificate of Practice issued by it are authorised to practise the profession of Company Secretaries and these members are known as Company Secretaries in Practice.

1.2 The areas in which the Company Secretaries in Practice can and do render their services and the names, addresses and other particulars of Company Secretaries in Practice are displayed on the website of the Institute.

1.3 Members of the Institute are required under the Act to maintain high standards of professional conduct.

1.4 Part I of the First schedule of the Company Secretaries Act, 1980, enumerates professional misconduct in relation to a member in practice and *inter-alia* includes if such a member :

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means :

Provided that nothing herein contained shall be construed as preventing or prohibiting—

- (i) any company secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in Practice; or
- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established

by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council :

Provided that a member in practice may advertise through a write up setting out

- the services provided by him or his firm and
- particulars of his firm subject to such guidelines as may be issued by the Council;

1.5 The Council of the Institute of Company Secretaries of India at its 178th meeting held on 29th December, 2007 approved the following Guidelines for Advertisement by Company Secretary in Practice.

1.6 The Guidelines herein, as issued by the Central Council of the Institute on 29th December, 2007 deal with the manner in which a Company Secretary in Practice can advertise the services provided by him or his firm and the particulars of his firm through a write-up.

1.7 Any non compliance or violation of these Guidelines as may be in force from time to time in any manner whatsoever shall be deemed to be an act of professional misconduct and the concerned member shall be liable to disciplinary proceedings under the Act.

2. Key Definitions

For the purposes of these Guidelines,

2.1 The “Act” means the Company Secretaries Act, 1980.

2.2 “Institute” means the Institute of Company Secretaries of India.

2.3 “Advertisement or advertising” means advertisement or advertising in any mode including written, recorded, displayed communication through print or electronic mode or otherwise including in newspapers, journals, internet, online, websites, banners, letters, circulars issued, circulated or published in accordance with these guidelines.

2.4 “Company Secretary in Practice” means a member of the Institute who holds a Certificate of Practice issued to him by the Institute.

2.5 “Firm of Company Secretaries” means sole proprietorship concern, the sole proprietor of which is a Company Secretary in Practice or a firm, wherein all partners are Company Secretaries and such firm is approved by the Council.

2.6 “write up” includes any writing or display setting out services rendered by a Company Secretary in Practice or firm of company secretaries and any writing or display of the particulars of the Company Secretary in Practice or of firm of company secretaries issued, circulated or published in accordance with these guidelines.

The terms not defined herein have the same meaning as assigned to them in the Company Secretaries Act, 1980 and the rules and regulations made thereunder.

3. Prohibition to Advertise

3.1 No Company Secretary or a firm of Company Secretaries is permitted to advertise the services as specified in the Act, rules, regulations framed thereunder except through a write-up as defined in Clause 2.6.

4. The Write-up shall be made in compliance with the following:

4.1 Applicability

These guidelines shall apply to advertisements issued by a Company Secretary in Practice not only in India but would also apply to those circulated, communicated, published, issued or allowed to be issued abroad.

4.2 Permitted list of information

- 4.2.1 Name of Company Secretary, Membership number, Certificate of Practice Number and date of issue (for each partner in case of firm)
- 4.2.2 Address and website (if any), telephone, mobile, e-mail, fax number of the member
- 4.2.3 Name of the firm in which the member is a partner
- 4.2.4 Year of Establishment
- 4.2.5 Date and place of Issue of Advertisement
- 4.2.6 Age
- 4.2.7 Gender
- 4.2.8 Additional recognized qualifications
- 4.2.9 Languages spoken by the partner(s)
- 4.2.10 Honours or awards in the field of teaching, research, authorship etc. conferred by nationally accredited institutions
- 4.2.11 Current teaching or research appointments at a university or college of advanced education or professional Institute
- 4.2.12 Name of firm in case of partnership
- 4.2.13 Details of networking through own office or through formal association in other places within & outside India
- 4.2.14 Number, name of employees of the firm and their qualifications and other particulars
- 4.2.15 Business address, telephone numbers (including email, fax and other details) of the firm

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- 4.2.16 Office hours and after office hours availability
4.2.17 Advertisement about setting up of certified filing centers
4.2.18 Frequently Asked Questions (FAQs) in conformity to these guidelines
4.2.19 Declaration indicating

- (a) willingness to accept work, either generally or in particular areas of practice;
- (b) unwillingness to accept work in particular areas;
- (c) willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.

- 4.2.20 The write-up may display the passport size photograph of the member or partners of the firm of Company Secretaries

- 4.2.21 Fees:

- (a) Willingness to give written estimates of fees;
- (b) Methods for determining fees;
- (c) Mode of Acceptance of Fees.

- 4.2.22 Speed of Service

- (a) willingness to give written estimates concerning completion of particular work;
- (b) maximum time within which specific services will be completed.

- 4.2.23 Write-up may include the names of clients and services rendered

- 4.2.24 Particulars of Services

- (i) The write-up to be circulated, distributed, published, issued by or on behalf of Company Secretary in Practice shall set out the professional services rendered or to be rendered by the advertiser.
- (ii) The write-up may explain the nature and usefulness of the professional services rendered by the Company Secretary in Practice.
- (iii) The write-up may include the names of clients and services rendered provided that the Company Secretary in Practice shall maintain record of his having provided such professional services.

- 4.2.25 In case of advertisement through website :

- (a) A Company Secretary or a firm of Company Secretaries may display photograph of the Company Secretary or partners of the firm of Company Secretaries in Practice.
- (b) While designing and/or hosting the particulars on the website, certain

keywords should be provided so as to enable the search engine/s to locate the website and these keywords will not be visible or displayed on the website. Any one of the following key words may be used for this purpose. Company Secretary/Company Secretary in Whole-time Practice/Company Secretary in Practice/Practising Company Secretary/Indian Chartered Secretary/Indian Certified Corporate Secretary/Indian CS/Indian Company Secretary/Corporate Advisor / Company Law Consultant/Secretarial Auditor/Secretarial Consultant/Indian Certified Public Secretary/CS/ ACS/FCS/PCS/CSP.

However, the keywords shall not be materially different from the designations used for a Company Secretary.

- (c) The website may provide a hyperlink to the website of ICSI, its Regional Councils and Chapters and other regulatory bodies of the Government, after obtaining necessary permission from the concerned body.
- (d) A Company Secretary in Practice may provide online advice to their clients or other members/ firms of Company Secretaries who specifically request for the same.
- (e) A Company Secretary or a firm of Company Secretaries may disclose the fact that he/she or their firm has been Peer Reviewed. Any such disclosure shall clearly state the period for which the Peer Review has been conducted and in case the member has more than one office or place of practice, then it shall be mentioned that the Peer Review has been done for which branch office.*

4.2.26 Changes in any of the above particulars.

4.3 Restrictions

The write-up shall :

- (i) not be false or misleading ;
- (ii) not claim superiority over any or all other Company Secretaries in Practice;
- (iii) not be indecent, sensational or otherwise of such nature as to be likely to bring the profession into disrepute;
- (iv) not contain testimonials or endorsements concerning the Company Secretary in Practice.
- (v) not refer the Company Secretaries in practice in terms such as “specialists” or “experts”.

* Inserted by the Council at its 216th Meeting held at New Delhi on June 21-22,2013.

(vi) In case of advertisement through website :

- (a) A Company Secretary in Practice or a firm of Company Secretaries shall ensure that no information contained in the website is circulated to other websites/e-mail accounts etc. through e-mail or otherwise without the same having been specifically requested for.
- (b) A Company Secretary in Practice or a firm of Company Secretaries shall not use logo(s) unless otherwise permitted by the Institute.

4.4 Declaration

The Advertiser shall declare that the contents of the advertisement are true to the best of his knowledge and belief and are in conformity with these Guidelines.

4.5 Disclaimer

The Advertiser shall also include the following Statement of Responsibility and Disclaimer in the Advertisement :

Disclaimer : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.

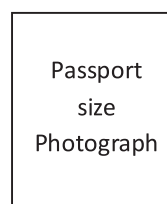
5. Responsibility for the observance of these Guidelines

5.1 The responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

6. Effective Date

6.1 These guidelines become effective from 1st January, 2008 and consequently the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

MODEL ADVERTISEMENT



- (i) Name of Company Secretary
- (ii) Membership number
- (iii) Certificate of Practice number and date of issue
- (iv) Website (if any)
- (v) Name of the sole proprietary concern under which the member is practicing/Name of the partnership in which the member is a partner
- (vi) Age
- (vii) Gender
- (viii) Languages spoken
- (ix) Number, name of employees and their qualifications and other particulars
- (x) Business address telephone numbers (including email, fax and other details)
- (xi) Office hours and after office hours availability
- (xii) Additional recognized qualifications
- (xiii) Current teaching or research appointments at a university or college of advanced education or professional Institute
- (xiv) Honours or awards conferred
- (xv) Frequently Asked Questions (FAQs)
- (xvi) Declaration indicating:
 - willingness to accept work, either generally or in particular areas of practice;
 - unwillingness to accept work in particular areas;
 - willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
- (xvii) Fees :
 - Mode of Acceptance of Fees
 - Methods for determining fees
 - Willingness to give written estimates of fees
- (xviii) Speed of Service :
 - willingness to give written estimates concerning completion of particular work;
 - maximum time within which specific services will be completed.
- (xix) Particulars of Services:
- (xx) **Declaration** : I declare that the contents of the advertisement are true to the best of my knowledge and belief and are in conformity with these Guidelines.
- (xxi) **Disclaimer** : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.
- (xxii) Date and Place of Issue of Advertisement :

GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTISING COMPANY SECRETARIES*

1. Introduction

The Company Secretaries Act, 1980 (the Act) was enacted to make provision for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain size of companies. Our members in practice are also being recognised for issuing certificates under various laws.

Excellence is the hallmark of success in a competitive environment. The performance can be judged and enhanced to that level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore, decided to introduce Peer Review for Practising Company Secretaries to periodically review the PCS firms and evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

The Council of the Institute of Company Secretaries of India has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that "the duties of carrying out the provisions of this Act shall be vested in the Council" and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review. These guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

2. Objectives

2.1 The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.

* ICSI Guideline No.1 of 2011. Approved by the Council in its 202nd Meeting held on 25-26 August, 2011.

2.2 Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable Technical Standards.

2.3 These guidelines provide a framework of the peer review process and the requirements of what is expected of a member during the conduct of a peer review.

3. Key Definitions - For the purpose of these guidelines.

3.1 *Attestation Services* - Means services involving the secretarial audit issuing of various certificates, but does not include:

- Management consulting Engagement;
- Representing a client before the Authorities;
- Testifying as expert witness; and
- Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, on the basis of facts provided by the client;
- The phrase 'Attestation Services' is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.

3.2 *Member* - Means a member of the Institute of Company Secretaries of India.

3.3 *Practice Unit* - Means members in practice, whether practicing individually or a firm of Company Secretaries.

3.4 *Peer Review* - Means an examination and review of the systems, procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/mandated by the Technical Standards and whether these were effective or not during the period under review.

3.5 *Peer Review Board* - Means a Board established by the Council in terms of these Guidelines to conduct peer review. The expression "Peer Review Board" is hereinafter referred to as "Board".

3.6 *Regulator* - Means Government or any regulatory body constituted by the Parliament or State Legislature who is/are empowered to regulate the Acts which include various attestation services which the Council may, from time to time, prescribe to cover as attestation services for the purpose of peer review.

3.7 *Reviewer* - Means any member engaged to carry out peer review of practice unit from the panel of reviewers.

3.8 *Technical Standards* - Mean and include:

- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;
- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

3.9 *Qualified Assistant* - means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of Clause 15.1 of the Guidelines.

3.10 Words and expressions used and not defined in these guidelines shall have the meanings assigned to them under the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 framed thereunder.

4. Authority of the Guidelines on Peer Review

4.1 The guidelines on Peer Review shall apply to all or any of the following cases :

- (a) Whenever a peer review is mandated
- (b) Whenever a peer review is requested
- (c) Whenever peer review is conducted.

4.2 The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
- to establish the expected conduct of members during a peer review.

5. Powers of the Council

- To constitute the Board and to fill in the vacancies arising in the Board from time to time.
- To decide upon, from time to time, the Technical Standards the implementation of which fall within the purview of the peer review process.
- To refer such matters to the Board as the Council may deem fit.

6. Peer Review Board

6.1 Establishment and Appointment

- (1) The Board shall be established by the Council.
- (2) The Board shall consist of a maximum of seven members to be appointed by the Council, of whom at least four shall be from amongst the Members of the Council.
- (3) The balance members of the Board shall be drawn from amongst prominent members of high integrity and reputation, including but not limited to, former public officials, regulatory authorities etc.
- (4) The Council shall appoint the Chairman and the Vice-Chairman from amongst the Members of the Council.
- (5) At least one-half of Council Members on the Board shall hold Certificate of Practice.
- (6) The tenure of the Peer Review Board shall be co-terminus with the tenure of the Council and the term of a member shall be for such period as may be prescribed by the Council.
- (7) Any vacancy(ies) on the Board shall be filled in by the Council.
- (8) Members of the Disciplinary Committee of the Institute of Company Secretaries of India shall not concurrently serve on the Board.

6.2 Meetings

- (1) No business shall be transacted at a meeting of the Board unless there are present at least three members, including the Chairman or, in his absence, the Vice-Chairman,
- (2) If there is no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place fixed by the Chairman or, in his absence, the Vice-Chairman.
- (3) The Board shall meet not less than four times in a year.

6.3 Reporting

The Board shall submit proceedings of the meeting of the Board within 30 days from the date of the meeting to the Council.

7. Scope of Peer Review

7.1 The peer review process is directed at the attestation services of a practice unit.

(1) Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review. Provided that the records of attestation services relating to years prior to the financial year beginning 1.04.2004 shall not be subjected to review.

(2) The Review shall focus on:

- (i) Compliance with Technical Standards.
- (ii) Quality of Reporting.
- (iii) Office systems and procedures with regard to compliance of attestation services systems and procedures.
- (iv) Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

8. Powers of the Board

8.1 The duty of carrying out the provisions of these guidelines shall be vested in the Board.

8.2 In particular, and without prejudice to the generality, of the foregoing powers, the duties of the Board shall include:

- (1) To call for information from practice units in such form as it deem fit.
- (2) To maintain a panel of Reviewers.
- (3) To define the terms of appointment of the reviewers.
- (4) To send a Panel of at least three reviewers (from the Board's own panel) to the practice unit and allow the practice unit to choose any one reviewer from the panel so forwarded to it;

Provided that in case the practice unit would like to have reviewers from another State/Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has his place of business.

- (5) To examine the aspects of basis of selection of records pertaining to the attestation services in terms of the appropriate Technical Standards.
 - (6) To arrange for such training programs for reviewers as may be deemed appropriate;
 - (7) To prescribe the system, practice and procedure to be observed in relation to peer reviews; and
 - (8) On considering the Report of a reviewer, to do any or all of the following:
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- (a) To issue recommendations to the practice unit;
 - (b) To order a further peer review to be carried out;
 - (9) After considering the report of the reviewer and compliance of recommendations by the Practice Unit, wherever deemed appropriate by the Board, to issue Peer Review Certificate.
 - (10) To guide the members on best practices on peer review.

8.3 Where deemed appropriate, after the conclusion of a cycle of reviews or at the end of each such period as may be determined, the Board shall have the powers to make a Special Report to the Council on:

- (i) General issues regarding the level of implementation and adherence to Technical Standards amongst practice units.
- (ii) Its own suggestions for further improvement in quality of attestation services.

8.4 The Board may perform any other thing or act as may be incidental to, or, which it considers necessary or expedient for the performance of its functions, or exercise of its powers as delegated to it by the Council, including the formation of sub-committees and regional benches of the Board for specific tasks.

9. Compliance with Peer Review Guidelines

9.1 Practice units are required to comply with the provisions of these guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in these regards from time to time, and as notified to the members.

10. Qualifications of the Reviewer

10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- (a) be a member;
- (b) possess at least ten years experience; and
- (c) be currently in the practice as Company Secretary in Practice.

10.2 The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

11. Members/ Firms Subject to Review

11.1 Peer review will be implemented on the basis of random selections from the practice units or at the request of practice unit.

11.2 If company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.

11.3 If Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.

11.4 The Peer Review Board may alter/change/modify the above method of selection with prior approval of the Council.

12. Obligations of the Practice Unit

12.1 Provisions of access to any record or document to a reviewer:

- (1) Any person to whom this clause applies and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:
 - (i) Produce to the reviewer or afford him access to, any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/ being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require;
 - (ii) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under sub clause (i) above, as the reviewer shall specify; and
 - (iii) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.
- (2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part or it in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.
- (3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.
- (4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy therefrom which may be required by the reviewer.

12.2 For the purpose of this clause a person means a Partner/ Sole Proprietor of the practice unit to which the particular review relates or any person employed by or whose services are engaged by such unit.

13. Periodicity of Peer Review

13.1 The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

14. Cost of Peer Review

14.1 The cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer has to conduct second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered separately.

15. Training and Development

15.1 To ensure that the objective of peer review is attained in letter and spirit, adequate training facilities shall/be provided, from time to time, to the Reviewer(s) and other persons who assist the Board as and when and in the manner considered appropriate by the Board. Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

16. Review Framework

16.1 Essentially, a peer review entails a review of attestation engagement records and related financial/other statements to ascertain that the practice unit is adhering to Technical Standards. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

16.2 The methodological approach involved in peer review can be defined in terms of three stages viz., planning, execution and reporting, which are summarized below:

(i) Planning

- Intimation - A practice unit will be intimated in writing about an impending peer review and will be sent a Questionnaire for completion together with a panel of three suggested names of reviewers. The practice unit will have to give its choice of reviewer within a period of 15 days from the day of receipt of the panel sent by the Board.
- Return of completed Questionnaire - The practice unit shall have to complete and return the Questionnaire to the reviewer within one month of receipt. The

information will be used for the planning of the review. In addition, practice units will be required to enclose a complete list of their attestation services clients, and to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit's client portfolio, for review.

(ii) *Sample of Attestation Services Engagements*

- (a) From the complete attestation services client list, an initial sample will be selected by the reviewer. Practice units will be intimated of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.
- (b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

(iii) *Confirmation of visit*

In consultation with the practice unit date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that members are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of intimation.

- (i) Peer review visits will be conducted at the practice unit's head office or other officially noted/recorded place of office. The complete on-site review of a practice unit may take at least a full day depending upon the size of the practice unit. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend beyond three working days.

(ii) *Initial meeting*

An initial meeting will be held between the reviewer and a partner/ sole proprietor of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.

(iii) *Compliance Review-General Controls*

- (a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be

reviewed. The following five key controls will be considered as General Controls:

- Independence
- Maintenance of Professional Skills and standards
- Outside Consultation
- Staff Supervision and Development
- Office Administration

Practice units are expected to address each of the five key control areas.

- (b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the kind of controls that are expected to be maintained, are installed and operated within practice units.
- (c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of the size and culture etc. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.

(iv) *Selection of Attestation Services Engagements to be Reviewed*

(a) The number of attestation services engagements to be reviewed depends upon:

- the number of practicing members involved in attestation services engagements in the practice unit;
- the degree of reliance placed, if any, on general quality controls; and
- the total number of attestation services engagements undertaken by the practice units for the period under review.

(b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list.

(v) *Review of records*

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

(a) Compliance approach-Attestation services Engagements

- The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.
- Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of

the documentation too elaborate for most of their clients and so should tailor their attestation services documentation to suit their particular circumstances with justification for doing so provided to the reviewer.

(b) Substantive approach-Attestation services Engagements

A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's specific controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory. This approach requires a review of the attestation working papers in order to establish whether the attestation work has been carried out as per norms of Technical Standards.

16.3 Reporting

(i) *Preliminary Report of Reviewer*

- At the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.
- The reviewer shall not name any individual in his reports.
- The practice unit shall have 21 days beginning the day after the day the preliminary report is received, by the practice unit from the reviewer to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

(ii) *Interim Report of Reviewer*

- (a) If the reviewer is satisfied with the reply received from the practice unit, he shall submit an appropriate Report to the Board. In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall accordingly submit his Interim Report to the Board.
- (b) In pursuance of the provisions contained in the above clause or on receipt of a request from the practice unit, the Board may instruct the reviewer to - again carry out the review after six months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- (c) On receiving a report from a reviewer in terms of these, the Board, having regard to the Report and any submissions or representations attached to it, may:
 - make recommendations to the practice unit concerned regarding the application by it of Technical Standards;
 - if it is of the opinion that
 - (1) in case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the

case may be, Technical Standards;

- (2) in case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;

Then:

- (3) issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and

- (4) specify in the instruction, the matters as regards which the review is to be carried out;

- (d) The Board will make recommendations to the practice unit where:

based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and

based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

(e) A follow up review will be required where the practice unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the Board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

- (f) In case the reviewer is not satisfied even at the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

(iii) *Final Report of Reviewer*

- (a) The reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.

- (b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered
-

appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.

- (iv) The reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

17. Referral of Disputes and Appeal

17.1 Where a dispute arises over the powers of reviewers or the process or conclusions reached after the review or to any other matter related to the review, the practice unit, the reviewer or both may refer the dispute, in writing, to the Board. Such referral shall have to be made within two months in such manner as may be prescribed by the Board in these regards.

17.2 Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant practice unit and/or the relevant reviewer, the Board-

- shall decide the dispute within six months and communicate such decision to each of the parties to the dispute;
- may issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them;
- shall convey its decision in these regards to the appellant within 15 days from the date of the decision, so as to provide the appellant sufficient time to respond.

17.3 Where a practice unit is dissatisfied with the decision of the Board, it may refer the matter to the Council within two months in such manner as may be prescribed.

18. Immunity

18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review.

18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

19. Confidentiality

19.1 Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.

19.2 Those persons subject to the secrecy provision:

- (1) Shall at all times after his/ their appointment preserve and aid-in preserving secrecy with regard to any matter coming to his/their knowledge in the performance or in assisting in the performance of any function, directly or indirectly related to the process and conduct of peer review.
- (2) Shall not at any time communicate any such matter to any other person; and
- (3) Shall not at any time permit any other person to have any access to any record, document or any other material if any form which is in his/their possession or under his/their control by virtue of his/their being or having been so appointed or his/their having performed or having assisted any other person in the performance of such a function.

19.3 Non-compliance with the secrecy provisions in the above clause shall amount to professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.

19.4 A statement of confidentiality (appended as Annexure 'A') shall be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers/ the members of the Board and others who assist them.

20. Procedural Departures

20.1 Where the persons who are responsible for the conduct of peer review (reviewers, the members of the Board and others who assist them) have not followed the prescribed procedures, they shall have to justify significant departures and such justification shall have to be mandatorily made known to the Council in the periodic Reports of the Board to the Council.

STATEMENT OF CONFIDENTIALITY

[In accordance with the Guidelines on Peer Reviews this statement of confidentiality is to be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers, members of the Board and others who assist them, individually. The Reviewer shall be responsible for taking this undertaking from all those persons who assist him or are likely to assist him in conducting peer reviews, and shall send the same to the Board. This statement of Confidentiality should be renewed every year.]

To,

The Chairman

Peer Review Board

The Institute of Company Secretaries of India

Sir,

I hereby declare that my attention has been drawn to the need for confidentiality in the conduct of peer reviews. I therefore undertake and assure that in so far as any or all of the following relate to me or are brought to my knowledge/attention, in any manner whatsoever, whensoever, I will ensure that on my part

- Working papers shall always be kept securely so that unauthorised access is not gained by anyone.
- The practice unit's attestation services procedures shall not be disclosed to third parties.
- Any information with regard to any matter coming to my knowledge in the performance or in assisting in the performance of any function during the conduct of peer reviews shall not be disclosed to any person.

Access to any record, document or any other material, in any form which is in my possession, or under my control, by virtue of my being or having been so appointed or my having performed or having assisted any other person in the performance of such a function, shall not at any time be permitted to any other person.

I understand that any breach of the provisions regarding confidential information contained in the Guidelines on Peer Review will be considered as gross negligence and, subject to investigation, will result in appropriate action.

Signature :

Name :

Designation:

Date :

Place :

Taken on record on date) By

Signature :

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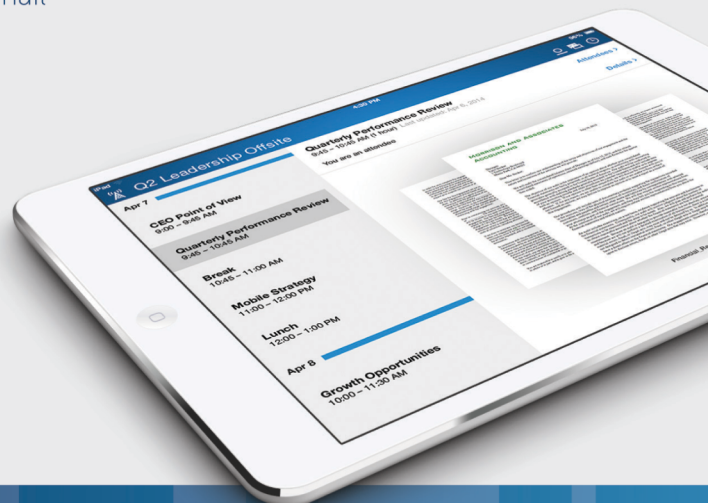


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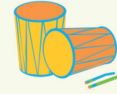
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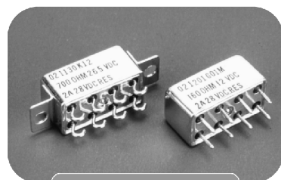
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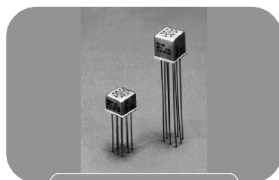
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