



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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e-CS Nitor



Newly elected President Chairing the first Meeting of the Council of the institute..



CS Atul H. Mehta (newly elected President of the Institute) presenting a bouquet to Naved Masood (Secretary, Ministry of Corporate Affairs).



Group Photo of ICSI Delegation with Secretary, MCA – Standing from Left: CS Mamta Binani (Newly elected Vice President of the Institute), CS Atul H. Mehta (newly elected President of the Institute), Naved Masood (Secretary, Ministry of Corporate Affairs), CS Sutanu Sinha (Chief Executive and Officiating Secretary, ICSI) and Alka Kapoor (Joint Secretary, ICSI).



Meeting of ICSI delegation with Special Secretary, MCA – Standing from Left (clock wise): CS Atul H. Mehta, CS Sutanu Sinha, Anjuly Chib Duggal (Special Secretary, Ministry of Corporate Affairs), CS Alka Kapoor and CS Mamta Binani.



Meeting of ICSI delegation with Joint Secretary, MCA – CS Mamta Binani presenting a bouquet to Amardeep Singh Bhatia (Joint Secretary, Ministry of Corporate Affairs). Others standing from Left: CS Sutanu Sinha, CS Atul H. Mehta and CS Alka Kapoor.



Meeting with delegation of Chartered Alternative Investment Analyst (CAIA) Association, USA – Standing from Left: Joanne Murphy (MD, Asia Pacific, CAIA Association), Keith Black (MD, Curriculum & Exams, CAIA Association), William J. Kelly (CEO, CAIA Association), CS Atul H Mehta (President, ICSI), CS Sutanu Sinha (CE & Officiating Secretary, ICSI), Dr. S. K. Dixit (JS, Professional Development, Perspective Planning and Co-ordination, ICSI), CS A. K. Dixit (Director, Discipline, ICSI) and CS Sonia Bajjal (Director, Academics, ICSI).



Discussion Meeting on Secretarial Audit held at Chennai-Atul H. Mehta Chairing the meeting.



Institute's Publication Counter at World Book Fair, New Delhi
February 14-22, 2015, Hall No. 14/188
11.00 am to 8.00 pm (everyday)



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Message from President



Dear Professional Colleagues,

“What is necessary to change a person is to change his awareness of himself”

Abraham. H. Maslow

It gives me immense pleasure to pen yet another missive to the members of our Institute. It is noteworthy to mention that our Institute has been making notable contributions towards promoting good governance and gaining its foothold in the corporate world. Here, I would also record my sincere appreciation to my colleagues, members and predecessors for contributing their bit to it.

The changing landscape in the legal domain is further enhancing the role of Company Secretaries, where each one of us has to ensure that we continue to imbibe in us the ethos and knowledge expected to be possessed as torch bearers of Good Governance. Keeping this in view, I would like to stress upon the four key qualities which each of us needs to cultivate within. These are : determination to face challenges; thirst for knowledge, quest to excel and last but not the least, courage to take a stand. If one possesses these qualities, he can surely climb the ladder of success against all odds.

The Institute is committed to provide quality services to its stakeholders. However, this requires committed-mutual efforts both on the part of the Institute as well as its members, to pool and exchange knowledge so as to ensure that we continue to grow, develop and contribute to each others’ success. With the hope that members will find this issue of e-CS Nitor enriching, and will continue to share their knowledge, I would like to quote the following words of **David Bailey**:

“The best advice I ever got was that knowledge is power and to keep reading...”

With best regards,

CS Atul H. Mehta
President

president@icsi.edu

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- **Circulars, Notifications, Orders, Amendments**
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Introduction of Insider Trading Regulations 2015: Will the paper tiger really bite this time?

CS Swetha Subramanian*

Partner – Lakshmmi Subramanian & Associates

INTRODUCTION

On January 15, 2015, the Securities and Exchange Board of India (SEBI) has notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 (2015 Regulations) to be effective from May 15, 2015, i.e 120th day from the notification of these Regulations, replacing the SEBI (Prohibition of Insider Trading) Regulations, 1992.

The 2015 Regulations are majorly based on the recommendations made by the Justice N.K. Sodhi committee constituted by SEBI, which submitted its report in December 2013.

The practice of insider trading was not established as illegal until the 1920s. In fact, it was the United States of America that came down heavily on using inside information to trade and deal in securities, and was the first country to formally enact a legislation to regulate dealing in securities while in possession of insider information in the year 1934. This garnered much criticism across the globe, with the Sunday Times in the UK mocking the introduction of legislation to check insider trading in an editorial in 1973 as insider trading was always regarded as a privilege bestowed on the officers holding high posts. Since then, strict norms have been enacted not only in the US and UK but across the globe to limit the effects of insider trading.

Insider trading, as a practice, is essentially use of unpublished price sensitive privileged information to garner profits or to avoid losses and India wasn't far behind when it came to putting on a leash on this practice. The first step to restrict insider trading was led in 1948 by PJ Thomas committee, which was formed to 'evaluate restrictions that can be imposed on short swing profits'. Following the recommendations of the committee, sections 307 and 308 were introduced in the Companies Act, 1956, dealing with disclosure of directors' shareholdings. Next, the Government of India constituted the Sachar Committee and the Patel Committee in 1978 and 1986, respectively to recommend further measures to control insider trading. However, it was the Abid Hussain Committee in 1989, which recommended for a separate statute to regulate insider trading. It was only in 1992, after the market was opened up, that the SEBI introduced the formal rules on insider trading. Ten years down the line, the Regulations had not undergone a full-blown structural review of any kind since its enactment, but independent and separate amendments to the Regulations had resulted in gaping holes in them. The first substantial amendment in the Regulations came in 2002 to fix the discrepancies arising from cases like Rakesh Agarwal vs. SEBI and Hindustan Levers Ltd. vs. SEBI. Despite that, the language used in the Regulations was working against the regulators, especially when it came to presenting evidence and proving that a trade had taken place for profit in possession of unpublished price

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



sensitive information. It was also a popular opinion in the industry that it was high time that the Regulations are modified to keep up with the changing times. And here is where the 2015 Regulations came in. Though the new Insider Trading Regulations is hailed, as much needed change, it has also received criticism for being too strict. A noteworthy feature of the 2015 Regulations is that, SEBI has introduced explanatory notes as a part of the Regulations that provide insight into the legislative reasoning of the intended law. Such notes are the first of its kind for a parent Regulations.

Comparison between 1992 Regulations and 2015 Regulations

A. DEFINITION

The litmus test for establishing insider trading both under 1992 Regulations and 2015 Regulations is the presence of any of the following:

1. Connected person Insider + Unpublished Price Sensitive Information (UPSI) + Trading in securities of listed companies or entities which is proposing to be listed
2. Other persons receiving UPSI + Trading in securities of listed or entities which is proposing to be listed

Therefore, the definition of the terms 'insider', 'connected person', and 'UPSI' become the cornerstone to the entire Regulations. Let us look at what changes have been introduced in the 2015 Regulations to these definitions in comparison to the 1992 Regulations.

I. DEFINITION OF INSIDER

<i>1992 Regulations</i>	<i>2015 Regulations</i>
An insider is "any person who (i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company; or (ii) has received or has had access to such unpublished price sensitive information."	An insider is "any person who is: i) a connected person; or ii) in possession of or having access to unpublished price sensitive information."

Impact of the Change:

The 2015 Regulations implicates anyone who is 'in possession of UPSI' as an insider unlike the 1992 Regulations which covers such persons who 'has had access' or 'has received' UPSI. With respect to a connected person insider, the role of SEBI is limited to establishing reasonable suspicion to bring a charge and the entire burden of proof falls on the connected person to prove his/her innocence.

II. DEFINITION OF CONNECTED PERSON

<i>1992 Regulations</i>	<i>2015 Regulations</i>
<p>“Any person who:</p> <p>(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or</p> <p>(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:</p> <p>Explanation:—For the purpose of clause (c), the words “connected person” shall [mean] any person who is a connected person six months prior to an act of insider trading”</p>	<p>“Any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access,” or</p> <p>(a) an immediate relative of connected persons specified in clause (i);</p> <p>(b) a holding company or associate company or subsidiary company;</p> <p>(c) an intermediary as specified in section 12 of the Act or an employee or director thereof;</p> <p>(d) an investment company, trustee company, asset management company or an employee or director thereof;</p> <p>(e) an official of a stock exchange or of clearing house or corporation;</p> <p>(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof;</p> <p>(g) a member of the board of directors or an employee, of a public financial institution as</p>

	<p>defined in section 2 (72) of the Companies Act, 2013;</p> <p>(h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; (i) a banker of the company; or</p> <p>(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest.”</p>
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Impact of the Change:

Any person associated with a company in a capacity that would allow such person access to UPSI relating to the company or whose association is reasonably expected to allow such access to UPSI would be a “connected person”. Hence, it can be inferred that the fact as to the actual possession of UPSI is irrelevant to bring a charge as long as a reasonable expectation can be established.

The definition of a connected person under the 2015 Regulations also includes persons deemed to be connected persons. This combines two separate definitions of the 1992 Regulations. Further, similar to the 1992 Regulations, the definition of a connected person includes any person who has been associated with the company during six months prior to the act of trading. The assumption being a person is not reasonably expected to have access to UPSI beyond a period of six months after severance of relationship with the target company.

Additionally, anyone who has been in frequent contact with an officer of a company is termed a ‘connected person’. In this regard the committee was of the view that it would necessarily be a question of fact and evidence to demonstrate a close contact with the company and there need not be a factual communication of UPSI so long as it is reasonable to believe that UPSI would have been passed on owing to the relationship.

The new definition of connected person in the 2015 Regulations comes through the reduction of the scope of the definition ‘relatives’. The 2015 Regulations covers only immediate relatives who are defined as “a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities.”

III. DEFINITION OF UPSI

<i>1992 Regulations</i>	<i>2015 Regulations</i>
<p>“Any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Explanation.—The following shall be deemed to be price sensitive information: —</p> <ul style="list-style-type: none"> (i) periodical financial results of the company; (ii) intended declaration of dividends (both interim and final); (iii) issue of securities or buy-back of securities; (iv) any major expansion plans or execution of new projects; (v) amalgamation, mergers or takeovers; (vi) disposal of the whole or substantial part of the undertaking; (vii) and significant changes in policies, plans or operations of the company; (k) “unpublished” means information which is not published by the company or its agents and is not specific in nature.” 	<p>“Any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –</p> <ul style="list-style-type: none"> (i) financial results (ii) dividends (iii) change in capital structure (iv) mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions (v) changes in key managerial personnel and, (vi) material events in accordance with the listing agreement.”

Impact of the Change:

UPSI is that information which is material and non-public on becoming generally available would affect the price of the securities to which it relates. As per the definition of generally available information in the 2015 Regulations, information that is accessible to the public on a non-discriminatory basis would be considered generally available information. The question “whether the information is available on a non-discriminatory basis would be a question of fact to be answered adopting the standard of a reasonable man,” says the committee in its report. Further, as per the Regulations information that is accessible to any person without the breach of any law would be considered generally available. For this purpose, reference can be made to the committee’s report to obtain a lucid understanding through practical examples as to the definition of generally available information. For example, if someone witnessed the CEO of a company faints inside the boardroom in a meeting of the board of directors, then this information would be considered as UPSI but if the CEO fainted at a hospital, it would be generally available information.

In order to publicly disseminate the information for it to be regarded as generally available it has to be published on a platform that would be accessible to the public such as the website of a stock exchange.



The 2015 Regulations emphasises on the fact that the list of information given in the definition is only an illustrative guidance and to conclude whether a piece of information is UPSI, it would be a mixed question of fact and law. The illustrative examples in the 2015 Regulations have two new entries as compared to the 1992 Regulations. These being change in key managerial personnel and material events in accordance with the listing agreement.

B. WHAT IS ILLEGAL AS PER THE REGULATIONS

I. COMMUNICATION ON PROCUREMENT OF UPSI

<i>1992 Regulations</i>	<i>2015 Regulations</i>
<p>“No insider shall communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:</p> <p>Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business”</p>	<p>“No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.</p> <p>No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.”</p>

Impact of the Change:

Under the 2015 Regulations, merely communicating the UPSI is an offence, no matter if the person utilised this for their personal gain. Such a stringent provision has been introduced in the new Regulations to maintain hygiene in the marketplace by ensuring that UPSI is not handled lightly and is handled only on a need-to-know basis.. Therefore, as long as it can be proved that UPSI was handled negligently to allow access to Insider it would tantamount to a punishable offence under the 2015 Regulations. The legislative notes also states "inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision."



II. TRADING WHEN IN POSSESSION OF UPSI

1992 Regulations	2015 Regulations
<p>“No insider shall either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information</p> <p>“No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.”</p>	<p>No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.</p>

Impact of the Change:

In the 2015 Regulations, the mischief sought to be curbed is trading in the securities of a company while in possession of UPSI as against a prohibition on dealing in securities of a company covered under the 1992 Regulations. The objective for the said change is to ensure that the provisions are made precise rather than left for wide and potential ambiguous interpretation..

III. VALID DEFENCES

1992 Regulations	2015 Regulations
<p>3B. (1) In a proceeding against a company in respect of Regulations 3A, it shall be a defence to prove that it entered into a transaction in the securities of a listed company when the unpublished price sensitive information was in the possession of an officer or employee of the company, if :...”</p>	<p>“3. (3) Notwithstanding anything contained in this Regulations, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would: ...”</p> <p>4.(1) “... Provided that the insider may prove his innocence by demonstrating the circumstances including the following: -...”</p>

Impact of the Change:

Under the 1992 Regulations, the valid defenses against the charge of insider trading was available to only Companies if any of the circumstances listed in sub-clause (a) to (d) of section 3B(1) existed. However, in the 2015 Regulations, the use of valid defense has been extended to any insider not just companies. The committee proposing this change remarked that, *“insider trading is not only a tort (civil wrong) but is also a punishable crime that could lead to insider being imprisoned for a period of*



upto10 years. Therefore, a charge of insider trading should be clear, precise and reasonable.” Accordingly, the list of defenses provided under the 2015 Regulations in a nutshell is as under:

1. Defense against prohibition to communicate or procure UPSI

Valid defense for Communication/procuring/allowed access to UPSI under Regulations³ of 2015 Regulations would be:

- If the information is communicated in connection with a transaction that would entail an obligation to make an open offer under the takeover Regulations by the recipient of UPSI, where the board of directors of the company is of the opinion that the proposed transaction is in the best interests of the company; or
- If the information is communicated in connection with a transaction that would NOT entail an obligation to make an open offer under the takeover Regulations by the recipient of UPSI but where the board of directors of the company is of the opinion that the proposed transaction is in the best interests of the company and if the UPSI will be made public within 2 working days prior to the transaction being effected

In both cases, it would be mandatory for the board of directors to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties receiving the UPSI.

Further, this provision is an acknowledgement of the necessity to communicate, provide, allow access to or procure UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control. Due diligence exercises undertaken prior to executing a transaction under Board’s consent should fall within the ambit of this provision as a valid defense.

2. Defense against prohibition to trade in securities when in possession of UPSI

Valid defenses for an insider who has traded when in possession of UPSI under Regulations⁴ of 2015 Regulations would be that:

- The transaction is an off-market inter-se transfer between promoters who were in possession of the same USPI without being in breach of Regulations³ and both parties had made a conscious and informed trade decision.
- in the case of non-individual insiders: –
 - (a) the individuals who were in possession of such UPSI were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such UPSI when they took the decision to trade; and
 - (b) appropriate and adequate arrangements were in place to ensure that these Regulations are not violated and no UPSI was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached; or
 - (c) the trades were pursuant to a trading plan set up in accordance with the Regulations.

Given the above, it would be noteworthy that the valid defences should be evident from the facts and circumstance of the case for SEBI to accept the defences against the blanket prohibition mentioned in the Regulations to which the defence relates.



C. CHECKS AND BALANCES AS PER THE REGULATIONS

I MANDATORY DISCLOSURES

<i>1992 Regulations</i>	<i>2015 Regulations</i>
<p>As per Regulations 13</p> <ul style="list-style-type: none">Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company the number of shares or voting rights held by such person, on becoming such holderThereafter, such persons shall intimate the company of every change in shareholding by 2%Further, any person who is a director or officer of a listed company shall make an initial disclosure to the company about his/her shareholding in the CompanyThereafter, in case of a change in holdings of directors, officers or promoters of the Company from the last disclosure, in excess of Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower shall be disclosed to the Company	<p>As per Regulations 7</p> <ul style="list-style-type: none">Every promoter, key managerial personnel and director of every company whose securities are listed shall disclose his holding as on the date of these Regulations taking effect, to the company within 30 days of the effective date of the RegulationsAny new promoter, key managerial personnel and director of every such company shall furnish a disclosure of his holdings in the Company within 7 daysThereafter, every promoter, employee and director of every such company shall disclose to the company the number of securities acquired or disposed of within 2 trading days of such transaction if the value of the securities traded, individually or aggregates to a traded value in excess of Rs. 10 Lakh.In addition, any company has the power to seek the information as to the shareholding of a connected person in the Company.

Impact of the Change:

The 2015 Regulations entail disclosure to be made by all employees of the Company unlike its predecessor where the disclosure was mandated only from designated officers of the Company. This enlarges the scope of disclosure requirements under the 2015 Regulations and would encourage every listed company to educate their employees of the disclosure requirements, to obtain accurate information from their trades in the securities of the company along with the information pertaining to the trades of their immediate relatives, track and audit the transactions undertaken by the employee and their immediate relatives to see if the threshold is exceeded. For this purpose it may seem, that, SEBI in its 2015 Regulations, provided an enabling provision to the listed company to seek information as to the shareholding of any other connected person at the discretion of the Company, in order to monitor the compliance with these Regulations.

II TRADING PLAN (NEWLY INTRODUCED)

Trading plan has been newly introduced in the 2015 Regulations to accord an opportunity for persons perpetually in possession of UPSI to trade in a compliant manner. According to Regulations 5, an



insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such a plan. The trading plan is required to meet other pre-requisite conditions laid down in Regulations 5(2) such as: the trading plan would be required to be in place for at least a year, no trading plans should entail overlap of any period for which another trading plan is in existence, etc.

While the concept of trading plan is novel to India it has already been in force in other jurisdictions like USA. Since, the concept has already been tried and tested in the USA, it has become evident that it is not a foolproof system and has its own defects. Trading plan by itself can become an instrument of abuse whereby UPSI is made generally available at a suitable time to make profits, though the trades are executed as per a pre-determined trading plan. In the Indian context, only time will tell if the trading plans will really bring about compliant trading.

III CODE OF CONDUCT AND CODE OF FAIR DISCLOSURE

Regulations¹² of the 1992 Act obligates all listed companies; intermediaries associated with the securities market and professional firms to frame and adopt a code of internal procedures and conduct. Similarly, the 2015 Regulations mandate that all listed companies and organizations associated with the securities market including intermediaries, self-regulatory organizations, recognized stock exchanges and clearing house or corporations, public financial institutions and professional firms should frame and adopt a 'Code of Conduct' as specified in schedule B to the Regulations.

Moreover, all other entities and agencies that would routinely be required to handle UPSI in the course of their business operations, and over which SEBI may not have jurisdiction would also have to frame a code of conduct as prescribed in Schedule B and designate a compliance officer as an in-charge of implementation of the same.

In addition to this, the 2015 Regulations prescribes a 'Code of Fair Disclosures', which lays down practices and procedures relating to fair disclosure about emergence of UPSI that warrants public dissemination. As per Regulations⁸, the board of directors of every listed company shall formulate and publish on its website, a code of fair disclosure as per the format prescribed in Schedule A.

CONCLUSION

The 2015 Regulations, that come into effect on May 15, 2015, have primarily been brought out by SEBI to clean up the market practices and maintain hygiene.

The new insider trading Regulations calls for higher degree of compliance and monitoring in order to be equipped with suitable facts about any trade undertaken by a potential insider. Since SEBI has made it extremely clear that the onus of proof that a person was not motivated by UPSI to trade in the securities of a listed entity would lie with the alleged insider. These overreaching rules could possibly render any highly placed finance person associated with listed companies an easy target for accusation of insider trading.

At the end of the day only time will tell how the amended Regulations work out for SEBI.

References:

- SEBI (Prohibition of Insider Trading) Regulations, 2015

- SEBI (Prohibition of Insider Trading) Regulations, 1992
- Report of Justice N.K. Sodhi committee
- News articles in Business Standard, and Mondaq

Integrated Reporting in 21st Century

CS Rakesh Kumar*

Assistant Education Officer, ICSI

“Capitalism needs financial stability and sustainability to succeed. Integrated Reporting will underpin them both, leading to a more resilient global economy”

-Jane Diplock AO, Director - Singapore Exchange Limited

INTRODUCTION

Today, the disclosures as part of ensuring transparency in corporate governance process has undergone major transformation from financial disclosures to non-financial disclosures encompassing environment, human rights, society and public. Businesses, large or small, have the same issues to contend with like greater expectations of their stakeholders, rising consumer power in the digital/information age, environmental constraints, economic and social uncertainty. This extends strategy and daily management beyond the pure financial to encompass the social and environmental factors that deeply affect a company's future viability in the 21st century. Integrated Reporting helps to bring together data that is relevant to the performance and impact of a company in a way that will create a more profound and comprehensive picture of the risks and opportunities a company faces.

Purpose

The primary purpose of an integrated report is to explain to providers of financial capital, how an organization creates value over time. It is a new dimension to reporting financial and non-financial performance, demonstrates the linkages between an organisation's strategy, governance and financial performance and the social, environment and economic context within which it operates. By reinforcing these connections, Integrated Reporting, helps business to take more sustainable decisions and enable investors and other stakeholders to understand how an organization is really performing, in a holistic perspective.

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Benefits

An integrated report benefits all stakeholders interested in an organization's ability to create value over time, including employees, customers, suppliers, business partners, local communities, legislators, regulators and policy-makers. The process of Integrated Reporting including the development of integrated thinking, will also benefit management and those charged with governance, as they will have better information on which to base decisions about how the organization can create value in the short, medium and long term.

Integrated Reports narrate the company's story of how it creates value and how it can create value in the future. The global financial crisis showed that a more understandable and holistic form of company reporting is crucially needed. Integrated reporting offered significant benefits, as it was a more transparent form of reporting. The capital markets also benefit from the improved presentation of corporate information, greater transparency, and more innovative strategy.

The company itself benefit from issuing an integrated report. The benefits could include a lower cost of capital, enhanced brand value and consumer loyalty, greater trust and reputation among stakeholders.

Developments in Integrated Reporting

The King Report on Governance for South Africa 2009 popularly known as King III report emphasized that the old form of annual report, focusing primarily on financial information and the short-term horizon, is no longer adequate to meet the needs of investors and other stakeholders. The King Committee recommended that organizations to issue integrated reports, connecting material, financial and sustainability information. Stakeholders could then make an informed assessment of the long-term sustainability of a business, and how the sustainability issues pertinent to the business had been incorporated into its strategic direction.

In the light of recommendation of King Report on Governance for South Africa 2009 (King III), South Africa became the first country to require integrated reporting of all listed companies in the Johannesburg stock exchange. Companies that do not prepare an integrated report need to explain why. This requirement is in effect for fiscal years starting on or after March 1, 2010. The growing



number of companies voluntarily producing integrated reports suggests that there are some very real benefits of doing so. The most immediate benefit is a better internal understanding of the relationship between financial and nonfinancial performance and how to improve both. A benefit that emerges over time is better engagement with shareholders and other stakeholders, resulting in a greater shared consensus regarding the company's goals and objectives. The result of both is a more sustainable strategy based on a secure license to operate and better management of reputational risk.

International Integrated Reporting (IR) Framework

Earlier there were no specific guideline or standard framework defining the content of an integrated report for listed companies exists in South Africa or elsewhere in the world. To address this need, the Integrated Reporting Committee (IRC) in South Africa was formed in May 2010, and invited Prof. Mervyn King to become its first chairman. Globally, the International Integrated Reporting Committee (IIRC) was formed in July 2010.

Now, the International Integrated Reporting Framework's framework has been issued by IIRC to facilitate the development of reporting in the coming decades. The framework can be used by the organization for preparation of integrated reports. The Framework's focus on value creation, and the 'capitals' used and affected by business to create value over time, contributes to a more financially stable global.

The framework was released following extensive consultation and testing by businesses and investors in all regions of the world, including the 140 businesses and investors from 26 countries that participate in the IIRC Pilot Programme. The purpose of the Framework is to establish Guiding Principles and Content Elements that govern the overall content of an integrated report, and to explain the fundamental concepts that underpin them.

ICGN Global Governance Principles - 2014

ICGN Global Corporate Governance Principles (2014) issued by ICGN require that the board should provide an integrated report that puts historical performance into context, and portrays the risks, opportunities and prospects for the company in the future, helping shareholders understand a company's strategic objectives and its progress towards meeting them.



The Principles aim to assert standards of corporate governance to which the ICGN believes that all companies should aspire. The Principles are intended to be of general application around the world, irrespective of legislative background or listing rules. These Principles are the ICGN's overarching set of Principles.

Integrated Reporting (IR) Lab

A new initiative on Integrated Reporting has been started in India. CII - ITC Centre of Excellence for Sustainable Development (CII-CESD), in partnership with the International Integrated Reporting Council (IIRC), has introduced Integrated Reporting (IR) to India and set up the country-level network the IR Lab India. The Lab is mandated to build capacities of companies in India on Integrated Reporting and provide the Indian perspectives to global discussions. The Lab aims to become a central warehouse of knowledge and expertise on IR in India, and to bridge with IIRC and country networks.

The Lab will invest in research, analysis and development of know-how that would aid advocacy and practice, and result in proliferation of IR in India.

Integrated thinking lead to Integrated Reporting

Integrated Reporting reflects what can be called “integrated thinking” – application of the collective mind of those charged with governance (the board of directors or equivalent), and the ability of management, to monitor, manage and communicate the full complexity of the value-creation process, and how this contributes to success over time. The effective communication of this process can help investors, and other stakeholders, to understand not only an organization's past and current performance, but also its future resilience.

Integrated thinking is the active consideration by an organization of the relationships between its various operating and functional units and the capitals that the organization uses or affects. Large organizations are made up of interacting, interrelated and interdependent operating and functional units. “Integrated thinking” enables an organization to understand better the relationship between these different units, helping to break down internal barriers to working, monitoring and managing information and to communicate its value-creation process.



The more that integrated thinking is embedded into an organization's activities, the more naturally will the connectivity of information flow into management reporting, analysis and decision-making. It also leads to better integration of the information systems that support internal and external reporting and communication, including preparation of the integrated report.

Conclusion

Currently, it is common for companies to publish financial and governance information in their annual reports and environmental and social information in their sustainability reports. However, in many cases it is difficult to see the link between the two. The aim of integrated reporting is that these aspects be brought together to produce an output that communicates the company's strategy and performance for a given period, and therefore can be communicated in many different formats to meet the needs of different stakeholders in a clear, concise, useful, balanced and comparable format.

References:

www.theiirc.org / www.sustainabledevelopment.in

Identification of Hypothetical Monopolist under Antitrust Laws

CS Lakshmi Arun*

Deputy Director, ICSI

A test called Small but Significant Non-transitory Increase in Prices (SSNIP) was introduced with the 1982 US Merger Guidelines and is widely used by competition authorities to define the relevant market, in case of horizontal mergers. The purpose of market definition is to identify competitive constraints. While choosing the criterion for defining the relevant market one should anticipate how market power might in fact be exploited.

When a product sold by one merging firm (Product A) competes against one or more products sold by the other merging firm, the Agencies define a relevant product market around Product A to evaluate the importance of that competition. Such a relevant product market consists of a group of substitute products including Product A. Multiple relevant product markets may thus be identified.¹

Hypothetical monopolist test is to identify a set of products that are reasonably interchangeable with a product sold by one of the merging firms. It requires that a product market contain enough substitute products so that it could be subject to post-merger exercise of market power significantly exceeding that existing prior to the merger. Specifically, the test requires that a hypothetical profit-maximizing firm, not subject to price Regulations, that was the only present and future seller of those products (“hypothetical monopolist”) likely would impose at least a small but significant and non-transitory increase in price (“SSNIP”) on at least one product in the market, including at least one product sold by one of the merging firms.

Groups of products may satisfy the hypothetical monopolist test without including the full range of substitutes from which customers choose. The hypothetical monopolist test may identify a group of products as a relevant market even if customers would substitute significantly to products outside that group in response to a price increase.

In Competition Act 2002, “relevant product market” as to mean “a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. The product market considers which products provide effective competitive constraints on those products produced by the parties under investigation. For example, if the pricing of Pepsi provides effective competitive constraints on the pricing of Coca-cola, then the relevant product will include both Pepsi and Coca-cola.²

The Act defines relevant geographic market as “a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas”. The relevant geographic market is defined with reference to the competitive constraints that firms located in one region pose for those firms located in the same region as the firm or firms under investigation.

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*

1 From Horizontal merger guidelines 2010-us DOJ and FTC

2 www.cci.gov.in



"Relevant product market" would be determined by Competition Commission of India (CCI), as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.

Delineation of the relevant product market (or markets) requires identification of the goods and/or services supplied by the combined firm and sources, or potential sources, of substitute products. Starting with the product (or products) supplied by the combined firm, each product market is gradually expanded to incorporate those firms which supply, or would supply, a closely substitutable product in the event of a significant price rise, or equivalent exercise of Dominant position, by the combined firm.

While delineating relevant product market, CCI should take into account demand side substitution. Demand-side substitution examines the extent to which customers could and would switch among substitute products in response to a change in their relative prices.

Following factors are to be taken into account by CCI in determining relevant product market as provided under section 19 (7) of the Competition Act, 2002

- physical characteristics or end-use of goods;
- price of goods or service;
- consumer preferences;
- exclusion of in-house production;
- existence of specialised producers;
- classification of industrial products.

CCI also has to consider how potential the closest substitutes of the product exist in the market. Price elasticity of that product in the relevant market, brand loyalty of the consumers and past history of consumers' behaviour in the relevant markets are also the determining factors of this analysis.

Circulars, Notifications, Orders, Amendments

F.No.05/09/2014-CSR
Government of India
Ministry of Corporate Affairs

5th floor, 'A' wing, Shastri Bhawan
Dr. R.P. Road, New Delhi - 110001.

Dated: 03.02.2015

OFFICE MEMORANDUM

Subject: Constitution of a High Level Committee to suggest measures for improved monitoring of the implementation of Corporate Social Responsibility policies by the companies under Section 135 of the Companies Act, 2013.

Undersigned has been directed to state that a High Level Committee has been constituted under the Chairmanship of Shri Anil Bajjal, Former Secretary, Govt. of India to suggest measures for monitoring the progress of implementation of Corporate Social Responsibility (CSR) policies by companies at their level and by the Government under the provisions of Section 135 of the Companies Act, 2013 and Rules thereunder.

2. The composition of the High Level Committee is as under:

Sr.	Name	Role
i.	Shri Anil Bajjal Former Secretary to Govt. of India	Chairperson
ii.	Prof. Deepak Nayyar Professor (Emeritus), Jawaharlal Nehru University, New Delhi	Member
iii.	Shri Onkar S Kanwar Chairman & Managing Director, Apollo Tyres Ltd.	Member
iv.	Shri Kiran Karnik Former President-NASSCOMM, New Delhi	Member
v.	Secretary, Department of Public Enterprises (Represented by an officer not below the rank of Joint Secretary)	Member
vi.	Additional Secretary (*) Ministry of Corporate Affairs	Member- Convener

(*) Economic Adviser, MCA will discharge the responsibility in the absence of Additional Secretary, MCA.

3. Terms of Reference of the Committee are as under:

- (i) To recommend suitable methodologies for monitoring compliance of the provisions of Section 135 (Corporate Social Responsibility) of the Companies Act, 2013 by the companies covered thereunder.
- (ii) To suggest measures to be recommended by the Government for adoption by the companies for systematic monitoring and evaluation of their own CSR initiatives.
- (iii) To identify strategies for monitoring and evaluation of CSR initiatives through expert agencies and institutions to facilitate adequate feedback to the Government with regard to efficacy of CSR expenditure and quality of compliance by the companies.

- (iv) To examine if a different monitoring mechanism is warranted for Government Companies undertaking CSR, and if so to make suitable recommendations in this behalf.
 - (v) Any other matter incidental to the above or connected thereto.
4. The Committee shall submit its report within Six months from the date of holding of its first meeting.
 5. Ministry of Corporate Affairs and Indian Institute of Corporate Affairs (IICA) shall jointly provide secretarial and technical support to the Committee. The Indian Institute of Corporate Affairs will render the necessary logistic support to the High Level Committee.
 6. This issues with the approval of Hon'ble Union Minister for Corporate Affairs.

(Dr. Pankaj Srivastava)
Director
Telephone: 011-23389263
E-mail: pankaj.srivastava@gov.in

To

- 1) Shri Anil Baijal, Former Secretary to Govt. of India, New Delhi
- 2) Prof. Deepak Nayyar, Professor (Emeritus), Jawaharlal Nehru University, New Delhi
- 3) Shri Kiran Karnik, Former President (NASSCOMM), New Delhi
- 4) Shri Onkar S Kanwar, Chairman & Managing Director, Apollo Tyres Ltd
- 5) Secretary, DPE, M/o Heavy Industries and Public Enterprises

Copy to:

- 1) DG & CEO, IICA for information and necessary action

Copy for information to:

- 1) PS to Hon'ble Minister of Corporate Affairs
- 2) PPS to Secretary/ PPS to Special Secretary, MCA
- 3) PS to JS(M)/JS (ADM)/JS(B)/ JS(SP)/EA/DII(NS)/DII(SBG)
- 4) All Regional Directors/ Registrar of Companies, MCA

General Circular No. 2/2015
No. 1/40/2013-CL-V-Part
Government of India
Ministry of Corporate Affairs

5th floor, 'A' wing, Shastri Bhawan
New Delhi – 110 001

Dated: 11th February, 2015

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders

Subject : Extension of time for filing of Notice of appointment of the Cost Auditor in Form CRA-2.

Sir,

In continuation to the General Circular No. 42/2014, the last date of filing of Form CRA-2 without any penalty/late fee is hereby extended upto 31st March, 2015.

2. This issues with the approval of competent authority.

Yours faithfully,

Sd/-

(Kamna Sharrna)

Assistant Director

Tel :233A7263

Post Graduate Certificate in Capital Markets (PGCCM)



About PGCCM

Students aspiring a career in securities markets, PGCCM is an extremely unique opportunity to obtain first-hand knowledge, both theoretical and practical. The faculty, consisting of academicians and practitioners, has the capability to deliver a high-quality programme to the students looking for knowledge and skill-sets as a solid foundation.

Informal estimates indicate that the securities markets would require about 32,000 professionals every year. The required skill-sets should be grouped as follows: (1) Fund Management, Analysis and Dealings (2) Sales, Product Management and Brand Management (3) Operations and Services (4) Information Technology (5) Compliance and (6) Financial Advice and Planning.

PGCCM thus seeks to prepare students to become Fund Managers, Analysts, Dealers, Institutional Sales Persons, Product Designers, Operations Managers, Compliance Officers, Risk Management Officers, Investment Bankers, and Investment Advisors in the securities markets.

Course Curriculum

PGCCM is for select students of ICSI who have cleared the executive level. PGCCM will cover the following course subjects.

Sr. No.	Course Subject
1	Economics
2	Financial Institutions & Markets
3	Corporate Finance
4	Fixed Income Securities
5	Securities Analysis & Valuation
6	Portfolio Management
7	Derivatives & Risk Management
8	Project Dissertation

The programme duration shall be 2½ months, full-time from March 2015 to May 2015. The batch size could be between 20 to 50. At the maximum, 2 batches of 50 each could be conducted at CCGRT.

Why PGCCM:

To become a complete securities markets professional.

Where can PGCCM lead to :

Equity and Fixed Income Research, Credit Rating, Financial Analytics, Stock Broking, Investment Banking Compliance, Risk Management, etc.

Who should do PGCCM :

Students of ICSI who are Executive Passed with a passion for securities markets. Experience of 6 months to 2 years is desirable but not essential. Admission shall be conducted through interviews.

Fee Structure :

Fees for this course is Rs. 89,000/- + Service Tax and other taxes as applicable. Fees should be paid in full. (This fee is inclusive of tuition and books and other administrative cost.)

ADMISSION PROCEDURE

Eligibility Criteria

Minimum Qualification: Graduate in any stream from a recognised University and Executive Or Professional Level Passed from Institute of Company Secretaries of India.

Age : There is no age limit for the programme, but it is desirable that the candidate is below 30 years of age.

Selection will be based on Scrutiny of application form by committee of experts, Interviews and Performance at easy writing. Approx batch size will be between 20-50 students per batch (Max 2 batch at a time).

Application form to be downloaded from website www.icsi.edu/ccgrrt and along with a DD of 500/- on the name of ICSI-CCGRT payable at Mumbai should be made from Nationalized bank only to be send to ICSI-CCGRT. Plot No. 101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

Important Timelines

1	Online Application Form	1st January 2015
2	Last date of Admission by payment of Fees	28th February 2015
3	Commencement of the Programme	March 2015

Contact For more Information

ICSI - CCGRT

Plot No. 101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

Tel: 022-2757 7814, 4102 1515/01/03/34/10 | Email : ccgrrt@icsi.edu

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Articles / Reviews invited for *e-CS Nitor*

We invite the members to contribute articles/checklist/reviews/points of view or any other relevant material pertaining to the Corporate Laws, Securities Laws, Corporate Governance, Taxation, Insurance etc. for inclusion in the coming issues of ***e-CS nitor*** through e-mail at: ecsnitor@icsi.edu. The article should ordinarily have 1500 to 2000 words.

ANNOUNCEMENT

The Institute of Company Secretaries of India is participating in the NEW DELHI WORLD BOOK FAIR being organised by National Book Trust, India from 14th to 22nd February 2015 at Pragati Maidan, New Delhi. Please visit the ICSI stall (Hall No.14/188) and avail 10% discount on ICSI publications.



**NEW DELHI
WORLD BOOK FAIR**
14 - 22 February 2015
Pragati Maidan

Vision

“To be a global leader in promoting good corporate governance”

Mission

“To develop high calibre professionals facilitating good corporate governance”



**THE INSTITUTE OF
Company Secretaries of India**

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

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