ICSI Post Membership Qualification Courses (E-Bulletin)

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Contents

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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LAUNCH OF PMQ COURSE IN COMPETITION LAW

India has witnessed two phases of development process with different policy regimes and institutional frameworks. In the first phase, since independence, the development of the Indian economy took place within a rigidly regulated and relatively closed economic framework. In the second phase, since 1991, the country embarked upon economic reform process and embraced market oriented policies.

Since 1991, the Government of India introduced a series of economic reforms, including policies of liberalisation, deregulation, disinvestment and privatisation. The broad thrust of the new policies was a move away from the centralised allocation of resources in some key sectors by the government to allocation by market forces. After a decade of reforms, restraints to competition such as state monopolies and protective measures and controls were replaced by relatively more competitive and de-regulated open market policies.

The Competition Act, 2002, replacing the MRTP Act, 1969, was enacted to provide, keeping in view of the economic development of the country for the establishment of a Commission, to prevent practices having adverse effect on competition, to promote and sustain competition in markets and to protect the interests. The basic purpose of the Competition Law, in any country, is to ensure that markets remain competitive, to the benefit of both business and consumers. The compliance by the market participants of competition law, rules and directions issued by competition authorities, is a precondition in achieving the purpose of law.

Competition authorities, the world over, encourage companies to seek advice from professional experts in compliance of competition law to assist them in designing, implementing and maintaining an effective compliance program. The Company Secretaries being compliance experts are most suitable professionals to play a wider role in enforcement and compliance of competition law. Company Secretaries are the professionals, who have expertise in providing total compliance solutions and imbibing good corporate governance practices in the veneer of company strategy, formulation, implementation and other aspects of company policies as a coherent whole.

In these underpinnings, the ICSI introduced Post Membership Qualification Course(PMQ) in Competition Law, for its members.

OBJECT

The PMQ Course in Competition Law aims at capacity building of Company Secretaries in the area of legal, procedural and practical aspects of Competition Law and matters related thereto.

OBJECTIVES

The objectives of the PMQ Course in Competition Law are that the members who complete the PMQ Course in Competition Law should –

- Appreciate various concepts of competition, economics of Competition including economic theories and policies that influence the aspects of Competition in the market and operation of Competition Law.
- Gain acumen, insight and thorough knowledge of law governing competition in India and major overseas jurisdictions.
- Understand and appreciate the interface between Competition Commission of India and Sectoral Regulators.
- Understand the Competition Law in practice and in particular procedures involved in various aspects of administration of competition law in India including dealing with Competition Commission of India and Competition Appellate Tribunal.
- Understand and appreciate the importance and structure of Competition Compliance Programme its effective implementation, monitoring and evaluation.
- Be able to apply the knowledge of Competition Law in commercial context.

COURSE STRUCTURE

PMQ Course in Competition Law comprises of following two parts, namely:

(a) Part I of the course comprises of written examination, and

(b) Part II of the Course comprises of 100 hours training.

The brochure of PMQ Course in Competition Law is available at:

http://www.icsi.edu/webmodules/PMQ_CL_Brochure_240618.pdf

PMQ COURSE IN COMPETITION LAW
A Snapshot

ELIGIBILITY → Course is open for the Members of ICSI

COURSE STRUCTURE

Part 1
Written Examination in four papers → Part 2
Practical Training of 100 hours

Papers covered

- Paper 1: Concept and Economics of Competition Law
- Paper 2: Anti-Competitive Agreements and Abuse of Dominance
- Paper 3: Regulation of Combinations
- Paper 4: Competition Compliance Programme and Case Study

FEE DETAILS

Prospectus & Application Form	Rs. 500/-
Registration Fee	Rs. 25,000/-
Examination Fee	Rs. 1,500/-

ADMISSION DETAILS

- Registration open throughout the year
- Registration is valid for 5 years
- Eligible to appear in exams, only if, registered 6 calendar months before the month of examination

QUALIFYING MARKS

- Minimum 40% marks in each of the four papers of Part I
- Aggregate of 50% in all the papers

DIPLOMA CERTIFICATE

Candidates successfully completing the course shall be awarded diploma → Eligible to use the descriptive letters and bracket "DCL (ICSI)"

For further details please visit www.icsi.edu or contact Director (Academics), ICSI, Lodhi Road, New Delhi, 011- 45341014, pmq@icsi.edu

ACADEMIC UPDATES

CORPORATE GOVERNANCE UNDER COMPANIES ACT 2013 INDIA – HIGHLIGHTS

The Companies Act 2013 envisages radical changes in the area of Corporate Governance and is set to have far-reaching implications. The new regime is expected to significantly change the manner in which corporates operate in India. It will have far reaching consequences on all companies incorporated in India.

The new Act promises to substantively raise the bar on governance and thrusts greater responsibility and obligation on the Board of Directors and Management in Indian companies. The penal consequences have been exponentially increased. There is a clear shift towards closely monitoring of unlisted public companies and large private companies with enhanced compliance requirements encompassing disclosures, transparency and governance procedures.

Some of the key highlights are given below:

Board structure and responsibility

- Enhanced responsibility for the board and its committees
- Specified unlisted companies to have independent directors (ID); mandatory code for IDs
- Mandatory woman director for certain companies
- Mandatory key managerial personnel (KMP) – CEO/MD/WTD, CFO and CS
- Performance evaluation of board and individual members

Disclosures and reporting

- Enhanced disclosures and assertions in Directors' Report – risk management, internal control for financial reporting, legal compliance, related party transactions, corporate social responsibility, etc.
- Compulsory consolidation of accounts; summary statements of associates / Joint Ventures / subsidiaries
- Disclosures of shareholding pattern
- Disclosures for public money lying unutilised

**Prepared by CS Nishita Singhal, AEO, ICSI*

Risk, controls and compliance

Boards now obligated to report on the following:

- Development and implementation of risk management policy
- Systems to ensure compliance to all applicable laws and their operating effectiveness
- Internal financial controls and their operating effectiveness (for listed companies)

Secretarial compliances

Stricter yet forward-looking procedural requirements for board proceedings:

- Minimum 7 days notice, board meetings permitted through electronic mode
- Presence of at least one ID must for board meeting at shorter notice
- Gap between two meetings should be less than 120 days
- ICSI Secretarial Standards mandatory

Related Party Transactions (RPT), loans and investments

- Scope of RPT significantly enhanced; concept of arm's length pricing introduced
- Central government approval not required , however, heavy penalties for non compliance
- RPT disclosure in Directors' Report along with justifications
- Stricter requirements for loans and investments including private companies

Audit and auditors

- Enhanced restrictions on appointment and rotation of auditors
- Statutory auditors prohibited from providing certain services
- Enhanced powers and role of auditors
- Mandatory internal audit and secretarial audit for prescribed class of companies
- Auditors to report on internal financial controls and their operating effectiveness

Corporate social responsibility (CSR)

Prescribed class of companies to:

- Form a CSR committee with atleast one independent director
- Form and approve a CSR policy
- Endeavour to spend atleast 2% of net profits
- Directors to explain inability to spend in the directors' report

CORPORATE SOCIAL RESPONSIBILITY UNDER NEW COMPANIES ACT, 2013

"Corporate social responsibility is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it... because it is good for our business" - Niall Fitzerald, Former CEO, Unilever

Introduction

The concept of Corporate Social responsibility has its roots in the philanthropic activities such as donations, charity, relief work, etc. of corporations. However with the passage of time the concept of CSR has evolved globally and now it encompasses all related concepts such as triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and business responsibility.

According to the UNIDO3, "Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (Triple-Bottom-Line Approach), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that."

The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses. CSR should address the well-being of all stakeholders. Philanthropic activities are only a part of CSR. Today some of the key CSR issues are environmental management, eco-efficiency, responsible sourcing, stakeholder engagement, labour standards and working conditions, employee and community relations, social equity, gender balance, human rights, good governance, and anti-corruption measures.

In India, CSR has traditionally been seen as a philanthropic activity. The practice of CSR in India is majorly within the philanthropic space, but has moved from institutional building (educational, research and cultural) to community development through various projects. CSR is getting more strategic in nature and a large number of companies are reporting the activities they are undertaking in this space in their official websites, annual reports, sustainability reports and even publishing CSR reports.

** Prepared by CS Nishita Singhal, AEO, ICSI*

The Companies Act, 2013 has introduced the concept of CSR to the forefront and through its disclose-or-explain mandate; it aims to promote greater transparency and disclosure. The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 which will come into effect from April 1, 2014.

Definition of the Term CSR

The term 'CSR' is defined in the Companies (Corporate Social Responsibility Policy) Rules to mean and include but not limited to:

- projects or programs relating to activities specified in the Schedule VII of the Act; or
- projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule VII of the Act.

By providing the definition of CSR, the scope and application of CSR that can be undertaken by the companies has been further clarified. The definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule. It also permits flexibility to companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy.

By keeping the definition of CSR inclusive, MCA acknowledges the urgent need of the industry to be given more freedom in choosing their CSR activities.

Applicability Criteria

As per section 135 of the Companies Act 2013, the CSR provision will be applicable to companies having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year.

The CSR Rules appear to widen the ambit for compliance obligations to include the holding and subsidiary companies as well as foreign companies whose branches or project offices in India fulfil the specified criteria. According to the CSR Rules, the CSR provision will also be applicable to every company including its holding or subsidiary, and a foreign company having its branch office or project office in India having net worth of rupees five hundred crore (500 Crore)or more, or turnover of rupees one thousand crore (1000 crore) or more or a net profit of rupees five crore (5 Crore) or more during any financial year.

If a company ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to -

a) constitute a CSR Committee; and

b) comply with the provisions contained in sub-section (2) to (5) of the said section till such time it meets the criteria specified in sub-section (1) of section 135.

Thus, the CSR Rules specify that a company which does not satisfy the specified criteria for a consecutive period of three financial years is not required to comply with the CSR obligations, implying that a company not satisfying any of the specified criteria in a

subsequent financial year would still need to undertake CSR activities unless it ceases to satisfy the specified criteria for a continuous period of three years. This could increase the burden on small companies which do not continue to make significant profits.

Provisions of Section 135 of the Companies Act 2013

Companies that trigger any of the aforesaid conditions must comply with following provisions:

(1) Every such company shall constitute a Corporate Social Responsibility Committee of the Board.

(2) The CSR committee shall consist of three or more directors, out of which at least one director shall be an independent director.

(3) The Board's report shall disclose the composition of the Corporate Social Responsibility Committee.

(4) The Corporate Social Responsibility Committee shall formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.

(5) The Corporate Social Responsibility Committee shall recommend the amount of expenditure to be incurred on the activities to be undertaken by the company as specified in Schedule VII.

(6) The Corporate Social Responsibility Committee shall monitor the Corporate Social Responsibility Policy of the company from time to time.

(7) The Board of every company referred to in sub-section (1) shall, (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed.

(8) The Board of every company ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(9) The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. This amount will be CSR expenditure.

(10) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

(11) If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.

CSR Committee

To formulate and monitor the CSR policy of a company, a CSR Committee of the Board needs to be constituted. Section 135 of the 2013 Act requires the CSR Committee to consist of at least three directors, including an independent director. However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee. Further, the CSR Rules have relaxed the requirement regarding the presence of three or more directors on the CSR Committee of the Board. In case where a private company has only two directors on the Board, the CSR Committee can be constituted with these two directors.

The CSR Committee of a foreign company shall comprise of at least two persons wherein one or more persons should be resident in India and the other person nominated by the foreign company.

Computation of net profit

The net worth, turnover and net profits are to be computed in terms of Section 198 of the 2013 Act as per the profit and loss statement prepared by the company in terms of Section 381 (1) (a) and Section 198 of the 2013 Act. Every company will have to report its standalone net profit during a financial year for the purpose of determining whether or not it triggers the threshold criteria as prescribed under Section 135(1) of the Companies Act.

Indian company: The CSR Rules have clarified the manner in which a company's net worth will be computed to determine if it fits into the 'spending' norm. In order to determine the 'net profit', dividend income received from another Indian company or profits made by the company from its overseas branches have been excluded. Moreover, the 2% CSR is computed as 2% of the average net profits made by the company during the preceding three financial years.

Foreign company: The CSR Rules prescribe that in case of a foreign company that has its branch or a project office in India, CSR provision will be applicable to such offices. CSR Rules further prescribe that the balance sheet and profit and loss account of a foreign company will be prepared in accordance with Section 381(1)(a) and net profit to be computed as per Section 198 of the Companies Act. It is not clear as to how the computation of net worth or turnover would be arrived at in case of a branch or project office of a foreign company

It has been clarified that if net profits are computed under the Companies Act, 1956 they needn't be recomputed under the 2013 Act. Profits from any overseas branch of the company, including those branches that are operated as a separate company would not be included in the computation of net profits of a company. Besides, dividends received from other companies in India which need to comply with the CSR obligations would not be included in the computation of net profits of a company.

Conduct of CSR Activities

- A company can undertake its CSR activities through a registered trust or society, a company established by its holding, subsidiary or associate company or otherwise, provided that the company has specified the activities to be undertaken, the modalities for utilization of funds as well as the reporting and monitoring mechanism.
- If the entity through which the CSR activities are being undertaken is not established by the company or its holding, subsidiary or associate company, such entity would need to have an established track record of three years undertaking similar activities.
- Companies can also collaborate with each other for jointly undertaking CSR activities, provided that each of the companies are able individually report on such projects.
- A company can build CSR capabilities of its personnel or implementation agencies through institutions with established track records of at least three years, provided that the expenditure for such activities does not exceed 5% of the total CSR expenditure of the company in a single financial year.

CSR Activities

Some activities are specified in Schedule VII as the activities which may be included by companies in their Corporate Social Responsibility Policies. They are activities related to :

- eradicating extreme hunger and poverty;
- promotion of education;
- promoting gender equality and empowering women;
- reducing child mortality and improving maternal health;
- combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- ensuring environmental sustainability;
- employment enhancing vocational skills;
- social business projects;
- contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women etc.

However, in determining CSR activities to be undertaken, preference would need to be given to local areas and the areas around where the company operates.

CSR Expenditure

Expenditure incurred on specified activities that are carried out in India only will qualify as CSR expenditure. Such expenditure includes contribution to the corpus or on projects or programs relating to CSR activities. Any activity undertaken solely for the benefits of employees and their families will remain outside the purview of CSR activity.

Expenditure incurred in undertaking normal course of business will not form a part of the CSR expenditure. Companies would need to clearly distinguish those activities which are undertaken specifically in pursuance of normal course of business and those that are done incrementally as part of the CSR initiatives.

Any surplus arising out of CSR activities will not be considered as business profit for the spending company. It is unclear whether the surplus will form part of the CSR Fund for the next financial year.

The CSR projects or programs or activities that benefit only the employees of the company and their families and the contribution of amount directly or indirectly to any political party under section 182 of the Act, will not be considered as CSR activities under section 135 of the Act.

Disclosure Requirements

The report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed in the CSR Rules setting out inter alia a brief outline of the CSR policy, the composition of the CSR Committee, the average net profit for the last three financial years and the prescribed CSR expenditure. If the company has been unable to spend the minimum required on its CSR initiatives, the reasons for not doing so are to be specified in the Board Report.

Where a company has a website, the CSR policy of the company would need to be disclosed on such website.

Reporting

It is mandatory for companies to disclose their CSR Policy, programs/projects undertaken and amount spent in their report and the CSR Rules provide for a separate format. The report containing details of such activities and CSR policies have to be made available on the company's website for informational purposes.

Conclusion

A properly implemented CSR concept can bring along a variety of competitive advantages to the companies such as enhanced access to capital and markets, increased sales and profits, operational cost savings, improved productivity and quality, efficient human resource base, improved brand image and reputation, enhanced customer loyalty, better decision making and risk management processes. The introduction of CSR provision in the Companies Act 2013 is a positive step towards this.

REVIVAL AND REHABILITATION OF SICK COMPANIES UNDER COMPANIES ACT 2013

Chapter XIX of Companies Act 2013 (Section 253-269) and the rules made there under provides for time bound rehabilitation or liquidation process and winding up is resorted only when the revival is not feasible.

The provisions of Chapter XIX of Companies Act 2013 inter-alia includes the following aspect to deal with the challenges in revival of Sick Companies.

Provisions of revival and rehabilitation of sick companies to apply to all companies and not only to an "industrial company".

Inability to pay debts is to be considered as criteria for determining a sick company. If a company fails to pay debts due to its secured creditor representing 50% or more of outstanding amount of debt within 30 days of demand, any secured creditor may file an application to National Company Law Tribunal (the tribunal) to declare such company as a "sick company". The company may also file an application to the tribunal to declare it as a sick company on above ground.

Where the Tribunal is satisfied that a company has become sick company, it shall after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts within a reasonable time.

On the determination of sickness by the tribunal, the applicant shall make an application within 60 days of determination, for measures to be adopted for revival or rehabilitation.

Where the Tribunal determines the Company as Sick and where the company has no draft scheme for its revival and rehabilitation, the Tribunal may direct the Interim administrator who shall be appointed by Tribunal from a panel maintained by the Central Govt.

When the interim administrator submits his report about the possibility of revival, then company administrator is appointed who undertakes the approval process by creditors and submits the same to the tribunal who would sanction the scheme within 60 days of approval by creditors.

**Compiled by CS Lakhsmi Arun, Deputy Director, Academics, ICSI. It may be noted that the provisions of Chapter XV, Chapter XIX and Chapter XX of the Companies Act 2013 and the draft rules made there under, dealing with Compromises, arrangements and amalgamations, Revival and rehabilitation of sick companies and winding up of companies respectively, are yet to be notified.*

Determination of sickness

1) Application by Secured Creditors to the Tribunal (Section 253(1)): When on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.

2) Application for stay of proceedings (Section 253(2) and (3)): The secured creditors who has made application to the tribunal for determination of sickness may make another application to the Tribunal for the stay of any proceedings for the following:

   a) for winding up of the company, or

   b) for execution, distress or the like against any property and assets of the company, or for appointment of a receiver in respect there of;

   c) for enforcement of any security against the company;

The stay order passed by the tribunal would be operative for 120 days. (Section 253 (3))

Application by Central/State Government/Reserve Bank of India/Scheduled Bank/Public Financial Institution /State Level Institution may make reference to Tribunal (Section 253(5)).

Without prejudice to the provisions of sub-sections (1) to (4) of Section 253, the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any company has become, for the purposes of this Act, a sick company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

A reference shall not be made as above in respect of any company by—

(a) the Government of any State unless all or any of the undertakings belonging to such company are situated in such State;

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

Obligation of Company on filing application to tribunal to declare the company, a sick company.

Where an application is made to the tribunal by the secured creditors or the company itself, as the case may be, ,—

(a) the company shall not dispose of or otherwise enter into any obligation with regard to, its properties or assets except as required in the normal course of business;

(b) the Board of Directors shall not take any steps likely to prejudice the interests of the creditors.

Determination by the Tribunal

The Tribunal shall, within a period of sixty days of the receipt of an application under sub-section (1) or sub-section (4) (i.e by the secured creditor or the company on its own), determine whether the company is a sick company or not:

It may be noted that no such determination shall be made in respect of an application made by a secured creditor under subsection (1) of Section 253, unless the company has been given notice of the application and a reasonable opportunity to reply to the notice within thirty days of the receipt thereof.

If the Tribunal is satisfied that a company has become a sick company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts referred to in sub-section (1) within a reasonable time.

If the Tribunal deems fit that it is practicable for a sick company to pay its debts referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified

in the order, give such time to the company as it may deem fit to make repayment of the debt.

Application for Revival on determination of Sickness (Section 254)

On the determination of a company as a sick company by the Tribunal, any secured creditor of that company or the company may make an application to the Tribunal within sixty days of the determination of sickness, for the of the measures that may be adopted with respect to the revival and rehabilitation of such company.

Over riding effect of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

If the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of Securitisation Company or Reconstruction Company which has acquired such assets.

that no reference shall be made under this section if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of

section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

In case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted, such reference shall abate if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

Application to tribunal with respect to measures for revival is to be accompanied by draft scheme of revival or rehabilitation in the prescribed manner, audited financial statement for the immediately preceding financial year and such other documents as may be prescribed.

Appointment of Interim Administrator (Section 256)

When an application for measures for revival or rehabilitation is received, the tribunal shall not later than seven days from such receipt;

(a) fix a date for hearing not later than ninety days from date of its receipt;

(b) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 257 to be held not later than forty-five days from receipt of the order of the Tribunal, appointing him to consider whether on the basis of the particulars and documents furnished with the application made under section 254, the draft scheme, if any, filed along with such application or otherwise and any other material available, it is possible to revive and rehabilitate the sick company and such other matters, which the interim administrator may consider necessary for the purpose and to submit his report to the Tribunal within sixty days from the date of the order:

If no draft scheme is filed by the company and a declaration has been made to that effect by the Board of Directors, the Tribunal may direct the interim administrator to take over the management of the company and issue such other directions to the interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the sick company and for its proper management.

Meeting of Committee of Creditors (Section 257)

The interim administrator shall appoint a committee of creditors with such number of members as he may determine, but not exceeding seven, and as far as possible a representative each of every class of creditors should be represented in that committee.

The holding of the meeting of the committee of creditors and the procedure to be followed at such meetings, including the appointment of its chairperson, shall be decided by the interim administrator.

The interim administrator may direct any promoter, director or any key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as may be considered necessary by the interim administrator.

Order of the Tribunal for revival or winding up and appointment of Company

Administrator in case of revival (Section 258 & 259)

On the date of hearing fixed by the Tribunal and on consideration of the report of the interim administrator filed under sub-section (1) of section 256, if the Tribunal is satisfied that the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that—

(a) it is not possible to revive and rehabilitate such company, the Tribunal shall record such opinion and order that the proceedings for the winding up of the company be initiated; or

(b) by adopting certain measures the sick company may be revived and rehabilitated, the Tribunal shall appoint a company administrator for the company and cause such administrator to prepare a scheme of revival and rehabilitation of the sick company:

The Tribunal may, if it thinks fit, appoint an interim administrator as the company administrator.

The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government. The terms and conditions of the appointment of interim and company administrators shall be such as may be ordered by the Tribunal. (Section 259(1) and (2)

Takeover of assets or management by Company Administrator (Section 259(3))

The Tribunal may direct the company administrator to take over the assets or management of the company and for the purpose of assisting him in the management of the company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.

Scheme of Revival and Rehabilitation (Section 261)

The company administrator shall prepare or cause to be prepared a scheme of revival and rehabilitation of the sick company after considering the draft scheme filed along with the application under section 254.

(2) A scheme prepared in relation to any sick company under sub-section (1) may provide for any one or more of the following measures, namely:—

(a) the financial reconstruction of the sick company;

(b) the proper management of the sick company by any change in, or by taking over, the management of such company;

(c) the amalgamation of—

(i) the sick company with any other company; or

(ii) any other company with the sick company;

(d) takeover of the sick company by a solvent company;

(e) the sale or lease of a part or whole of any asset or business of the sick company;

(f) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(g) such other preventive, ameliorative and remedial measures as may be appropriate;

(h) repayment or rescheduling or restructuring of the debts or obligations of the sick company to any of its creditors or class of creditors;

(i) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (h).

Sanction of scheme (Section 262)

Section 262 provides that the scheme for revival and rehabilitation prepared by the company administrator will be placed before the separately convened meetings of secured and unsecured creditors of the sick company within 60 days from the date of his appointment which shall be extended to 120 days. If the scheme is approved by the unsecured and secured creditors, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme.

If the scheme relates to amalgamation of the sick company with any other company, such scheme shall, in addition to the approval of the creditors of the sick company, be laid before the general meeting of both the companies for approval by their respective shareholders and no such scheme shall be proceeded with unless it has been approved, by a special resolution passed by the shareholders of the company.

The scheme shall be examined by the Tribunal and it may also cause the draft scheme to be published in newspapers, etc., for objections and suggestions, if any. The Tribunal may also make necessary modifications in the scheme in the light of suggestions and objections. On the receipt of the scheme, the Tribunal after satisfying that scheme had been validity approved pass an order sanctioning such scheme.

The Tribunal may review any sanctioned scheme and may make such modifications in such scheme as it may deem fit or it may also direct the company administrator to prepare a fresh scheme.

The sanction accorded by the Tribunal shall be conclusive evidence and a copy of the sanctioned scheme shall be filed with the Registrar by the sick company within a period of thirty days from the date of receipt of a copy thereof.

Implementation of the scheme (Section 264)

The Tribunal shall, for the purpose of effective implementation of the scheme, have power to enforce, modify or terminate any contract or agreement or any obligation pursuant to such agreement or contract entered into by the company with any other person. The Tribunal may, if it deems necessary or expedient so to do, by order in writing, authorise the company administrator appointed under section 259 to implement a sanctioned scheme till its successful implementation on such terms and conditions as may be specified in the order and may for that purpose require him to file periodic reports on the implementation of the sanctioned scheme.

When it is difficult to implement the scheme for any reason or the scheme fails due to non-implementation of obligations under the scheme by the parties concerned, the company administrator authorised to implement the scheme and where there is no such administrator, the company, the secured creditors, or the transferee company in a case of amalgamation, may make an application before the Tribunal for modification of the scheme or to declare the scheme as failed and that the company may be wound up. The Tribunal shall, within thirty days of presentation of an application under, pass an order for modification of the scheme or, as the case may be, declaring the scheme as failed and pass an order for the winding up of the company if three-fourths in value of the secured creditors consent to the modification of the scheme or winding up of the company.

Over residing effect of Securitisation Act

Where an application has been made before the Tribunal for modification of the scheme sanctioned and such application is pending before it, such application shall abate, if the secured creditors representing not less than three-fourths in value of the amount outstanding against financial assistance disbursed to the sick company have taken any measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Rules under Chapter XIX relating to Revival and Rehabilitation of sick companies- High lights

The rules deals with the aspects such as the prescribed format of application to the tribunal for declaring the company as sick company, for stay of proceedings under Section 254, giving notice to debtors before making application, format of application for revival, format of order appointing administrator, format of notice of meeting to creditors and other formats as required under Chapter XIX.

Every application made to the Tribunal under sub-section (1) of section 253 by one or more secured creditors of a company, (hereinafter referred to as 'Debtor Company'), for determination whether the debtor company is a sick company, shall be made in Form A (Prescribed in the Rules). The application can be made by the secured creditors collectively, wherein they can be mentioned as 'secured creditors' or a single secured creditor on behalf of others on authorization. It may be noted that the application for stay of proceedings etc., as specified under Section 254, shall also be made in prescribed for specified in the Rules.

The application is to be accompanied by the following prescribed fees as specified;

- copy of the initial demand notice issued by the applicant upon the debtor company and such notice should be dated at least ninety days prior to the date of making the application in the event of non-payment of debt;
- proof of service of the demand notice upon the debtor company;
- any acknowledgement and reply, if any, or correspondence, if any, received from the debtor company in pursuance of the demand notice;
- an up to-date statement of the ledger account of the respective secured creditors showing the amount receivable and the amount shown in the demand Notice;
- copies of the audited financial statements of last five financial years, if available, of the debtor company;.
- the authorisation issued by the respective secured creditors in favour of the creditor acting on authorization for filing the application and the original authorization issued by the secured creditor in favour of the signatory of the application; and
- any other document which the applicant or applicants may consider necessary for effective determination of sickness.

The application to tribunal for declaration as sick company or with respect to stay of proceedings as specified in Section 253 and Section 254 respectively shall not be made unless a notice thereof has been issued to the debtor company not less than fifteen days prior to the making of the application in prescribed form.

Every application made to the Tribunal under sub-section (1) of section 254 by one or more secured creditors of a sick company, or by the sick company, for determination of measures that may be adopted with respect to the revival and rehabilitation of such company shall be made in prescribed Form F.

For the purposes of section 256, the notice of meeting of creditors shall be issued to all creditors in prescribed Form K and not less than twenty one clear days shall be there between the date of issue of the notice and the date of the meeting.

The quorum for a meeting of creditors shall be the presence in person or by proxy of creditors representing not less than fifty one percent of value of debts owed by the sick company to the creditors or creditors representing such other percentage of value of debts owned by the sick company to that creditors as may be ordered by the Tribunal and even the presence of single creditor may be sufficient to form a valid quorum.

On the date of hearing, if the Tribunal is satisfied that the creditors representing three-fourth in value of the amount outstanding against the sick company present and voting had resolved that it is not possible to revive and rehabilitate the sick company it may after giving the sick company an opportunity of being heard, by order direct the winding up of the sick company or if such requisite majority had resolved that by adopting certain measures it is possible to revive and rehabilitate the sick company, it may, by order, appoint a company administrator directing him to prepare a scheme of revival and rehabilitation for the sick company. The order of the Tribunal shall be in Prescribed Form L if the Tribunal orders the winding up of the sick company and in prescribed Form M if the Tribunal orders to appoint a company administrator.

For the purposes of sub-section (2) of section 262, the company administrator shall issue a notice in Form O calling separate meetings of secured and unsecured creditors within sixty days of his appointment and place the scheme for their approval.

The quorum for such meetings of creditors shall be the presence in person or by proxy of creditors representing not less than three-fourth in value of the amount outstanding against the sick company, in case of secured creditors and one-fourth in value in case of unsecured creditors or representing such other percentage of value of debts owned by the sick company to that respective class of creditors as may be ordered by the Tribunal and even the presence of single creditor of that class may be sufficient to form a valid quorum.

The company administrator shall make an application in Form P to the Tribunal for sanctioning the scheme.

RECENT UPDATES IN THE WORLD OF CORPORATE GOVERNANCE

1. India: Corporate Governance – A New Outlook

Efficient, Transparent, and Impeccable Corporate Governance is vital for stability, profitability, and desired growth of the business of any organization. The importance of such corporate governance has now become more intensified, owing to ever-growing competition and rivalry in the businesses of almost all economic sectors, both at the national and international levels. Therefore, the new Indian Companies Act of 2013 has rightly introduced some new refining and innovative things, to make corporate governance in India optimally progressive, transparent, and beneficial to all the concerned people. Providing concise information about these newly-introduced things for betterment in the corporate governance in India, is the main objective of this web-article.

Corporate Governance is basically an approach of managing efficiently and prudently all the activities of a company, in order to make the business stable and secure, growth-oriented, maximally profitable to its shareholders, and highly reputed and reliable among all customers and clients concerned. The Board Structure and Top Management are directly and exclusively responsible for such governance. For these purposes, the top management of must have flawless and effective control over all affairs of the organization, regular monitoring of all business activities and transactions, proper care and concern for the interest and benefits of the shareholders, and strict compliances to regulatory and governmental bodies. Thus, corporate governance is strict and efficient application of all best management practices, and corporate & legal compliances, amid the contemporary and continually changing business scenarios.

For detail news, please click here.

2. BIBF and renowned Bahraini banking expert Saleh Hussain launch books on Corporate Governance

BIBF recently collaborated with Mr. Saleh Hussain, a renowned Bahraini expert and author in the banking industry, to launch two new books on Corporate Governance. The two books, titled "Authentic Governance - Aligning Personal Governance with Corporate Governance" co-written with branding, personal leadership and human performance management authority Mr. Hubert Rampersad, and "Corporate Governance - Effective Performance Evaluation of Board and Emerging Practices in Corporate Governance", Hussain offers useful guides to key aspects of corporate governance. These aspects include performance evaluation for self, peer, and Board-related activities, effective leadership and management strategies, and more

For detail news, please click here.

3. Corporate leaders say general counsel widely considered part of a company's executive team

A new BarkerGilmore survey shows that directors and CEOs increasingly look to GCs for their views on legal matters and corporate governance issues. General counsel are increasingly relied upon by CEOs and directors for their skills and opinions, according to a new survey.

In the 2014 "GCs In The Boardroom and Beyond" survey from BarkerGilmore, a legal recruiting firm, it was found that GCs are more likely to be considered a member of the executive management team than even ten years ago, the survey of CEOs and board members said.

The survey showed that 86 percent of those participating said the GC was considered as part of the executive management team, compared to 55.5 percent 10 years ago. In addition, 66.4 percent said the GC is also the company's corporate secretary.

For detail news, please click here.

4. Impact of new Act : Companies Act 2013 has raised the bar on corporate governance, even for SMEs

Small businesses, banded together as Small and Medium Enterprises (SMEs) form the backbone of the Indian economy. According to a 2011 study by Dun & Bradstreet, the SME sector employs about 73 million people in over 30 million units spread across the country. Yet, the issue of corporate governance was limited to large and listed firms, not the SME sector.

The Companies Act 2013, passed by Parliament last year and enforced from April 1 this year, attempts to address this lacuna. For the first time, a small business was defined under the Act itself. Next, a stringent reporting framework was proposed, which raised the bar on corporate governance, even for SMEs.

For detail news, please click here.

5. Kenya unveils corporate governance code for listed firms

Kenya's financial markets regulator released new rules that will transform how listed firms will report their earnings and appoint board members to enhance transparency and accountability.

The Capital Markets Authority (CMA) said the code of corporate governance practices is intended to move away from simple compliance and "box-ticking" towards fundamental change.

For detail news, please click here.

6. Zimbabwe: Code of Corporate Governance Crafted

Government and the private sector have finished crafting the National Code of Corporate Governance to provide a holistic solution to corporate failure and poor corporate governance. The code is the first of its kind in Zimbabwe and President Mugabe is expected to launch it soon. Among

other key issues, the code critically evaluates issues of corruption in the public and private sectors, corporate disclosure, communication and mechanisms for creating trust between shareholders, boards, management and employees.

For detail news, please click here.

7. Board Members' Compensation and Governance: Issues and Challenge -Research study by the Institute for Governance (IGOPP)

The Institute for Governance (IGOPP) has produced a report prepared by Dr. Michel Magnan, Professor and Stephen A. Jarislowsky Chair in Corporate Governance from John Molson School of Business at Concordia University, to provide a general survey of the issue and propose some recommendations. This IGOPP report highlights some important findings which are as follows:

- Over the 10 year period from 2001 to 2010, the average annual fees received by directors of Canadian public corporations have increased of 465%. However, this significant increase is not uniform among all corporations since the most substantial raises have occurred in the large financial institutions and in corporations in the oil and mining industries.
- The level of compensation paid to directors of Canadian corporations remains below that of comparable corporations in the United States.
- Directors' compensation has not attained levels that can be considered excessive after taking into account the growth in institutional and regulatory requirements during the same period.
- The debate over directors' compensation and independence should be seen as an issue of board composition and functioning. If cases arise in which directors' compensation is considered excessive, it only reflects more serious underlying governance problems that undermine the legitimacy, and possibly the credibility, of the board.
- We are in a context of fiduciary governance. The directors will therefore concern themselves with legislative and regulatory compliance and with the implementation and monitoring of the mechanisms and systems governing the controls, incentives and accountability. Their remuneration is thus a function of this role.
- The analysis shows that directors' compensation is only one facet of the board of directors' governance and is not necessarily the most strategic since it only adds little to the processes for the appointment and assessment of directors, which are already rigorous. The directors' compensation should reflect the fact that their responsibility is joint, continuous and focused on the long-term oversight of the corporation's interests as a whole, and not just the short-term interests of some shareholders. Consequently, this report propounds several recommendations, among which the following stand out:
- The board's priority in governance matters is to maintain and increase its legitimacy and credibility through rigorous practices and processes.

- Directors' compensation should not be based on the achievement of short-term objectives or goals.
- Directors' compensation must be sufficiently high to attract credible candidates that have integrity and specific skills corresponding to the corporation's objectives.
- The directors should hold a significant long-term investment in the corporation's shares.
- The directors' compensation should be uniform across individuals with similar tasks.
- Directors' compensation must rationally reflect the specific risks they face.
- Investors are not hesitating to challenge the skills of directors and their decisions. In this context, their compensation could become a major governance issue. Hence, this IGOPP report frames the debate with an analysis of the potential determining factors of directors' compensation and suggests principles and recommendations which will serve as guides for the boards' working on this issue.

For full report please click here

8. Revision of King III report to help smaller entities

THE King III report on corporate governance will be updated in order to make it easier for smaller entities, nonprofit organisations and even public sector entities to implement the principles set out in the report.

Several smaller entities have complained that the implementation of some of the proposed governance structures in the King report were too onerous, to expensive and in certain instances to difficult to interpret and implement.

The objective of the update was to ensure that these reasons for the "noncompliance", with the principles set out in the King report, would disappear, said Ansie Ramalho, Institute of Directors in Southern Africa CEO and head of the task team, which decided on the need for an update.

For detail news, please click here.

WE INVITE YOUR VIEWS/SUGGESTIONS ON THE SYLLABUS OF PMQ COURSE IN CORPORATE GOVERNANCE at pmq@icsi.edu

SYLLABUS FOR POST MEMBERSHIP QUALIFICATION COURSE IN CORPORATE GOVERNANCE

GROUP I – PAPERS (I, II and III)

PAPER I: CONCEPTUAL FRAMEWORK OF CORPORATE GOVERNANCE

Objective and scope: To provide an in-depth study of the Evolution and Development of Corporate Governance.

Detailed Contents:

- Economics of Organization and Information, Theories of the Corporation that have a shaping influence upon Corporate Governance Practices
- Evolution of Corporate Governance – Ancient and Modern Concept
- Concept of Corporate Governance, Generation of Value from Performance
- Principles of Corporate Governance
- Beneficiaries of Corporate Governance; Shareholder Activism and changing role of Institutional Investors
- Business Ethics vis-à-vis Corporate Governance
- Corporate Governance in various organizations
- Corporate Social Responsibilities and good corporate citizenship
- Impact of Information Technology and Non-stop Media Coverage giving unbridled access to company information and violating privacy rights
- Understanding of the shareholder vs stakeholder concept of governance

PAPER II: CORPORATE AND BOARD MANAGEMENT

Objective and scope: To provide a detailed insight into the concept, issues and practices that governs the corporate sector.

Detailed Contents:

- Corporate Business Ownership Structure
- Board of Directors – Role, Composition, Systems and Procedures
- Fiduciary relationship
- Types of Directors- Promoter/Nominee/Shareholder/Independent

- Rights, Duties and Responsibilities of Directors; Role of Directors and Executives– Responsibility for Leadership, Harmony between Directors and Executives
- Training of Directors- need, objective, methodology
- Scope and Responsibilities and competencies for directors
- Executive Management Process, Executive Remuneration
- Functional Committees of Board
- Rights and Relationship of Shareholders and Other Stakeholders
- Investor servicing and investor protection measures
- Good Secretarial practices and Standards for corporate disclosure
- Models of organizational behaviour and nature of managerial work
- Organisational cultures and controls
- Organisational Planning, Development and change
- Markets, Hierarchies and Networks
- Economics of Strategy; Strategic Management; Overview of Task of Strategic Management
- Theory of Multi-nationals, International Marketing and International Resource Management
- Attacks through hijacking of employees and customers
- Corporation and its Employees
- Customer Asset Management
- Recognition and Management of significant corporate risks; hedge funds (The work-life balance and corporate governance)
- Principles of Management Accounting and Audit
- Corporate Planning- Short term and Long term
- Disaster Management and Control

PAPER III: LEGAL AND REGULATORY FRAMEWORK OF CORPORATE GOVERNANCE

Objective and Scope: To provide expert knowledge of the legal and regulatory framework in respect of corporate governance in India and abroad.

Detailed Contents:

- Need for Legislation of Corporate Governance
- Legislative Provisions of Corporate Governance in Companies Act 1956, Securities (Contracts and Regulations) Act, 1956 (SCRA), Depositories Act 1996, Securities and Exchange Board of India Act 1992, Listing Agreement, Banking Regulation Act, 1949 and Other Corporate Laws
- Legal Provisions relating to Investor Protection
- Legislative Framework of Corporate Governance in US, UK and other developed countries including Common Wealth Association for Corporate Governance (CACG), Organization for Economic Cooperation and Development (OECD) etc.
- Listing Requirements- Indian and International perspective
- Management Information System (MIS) and Corporate Disclosure Requirements covering Accounting Standards and Secretarial Standards also.
- Statutory standards and procedures – National and international
- Securities and Exchange Board of India's (SEBI) Electronic Data Information Filing and Retrieval System (EDIFAR)

GROUP II – PAPERS (IV AND V)

PAPER IV: BOARD COMMITTEES AND ROLE OF PROFESSIONALS

Objective and Scope: To provide expert knowledge on the functioning of Board Committees.

Detailed Contents:

- Board Committees - Audit Committee, Remuneration Committee, Shareholders' Grievance Committee, other committees.
- Need, Functions and Advantages of Committee Management
- Constitution and Scope of Board Committees
- Board Committees' Charter
- Terms of Reference and Accountability and Performance Appraisals
- Attendance and participation in committee meetings
- Independence of Members of Board Committees
- Disclosures in Annual Report; Integrity of Financial Reporting Systems

- Role of Professionals in Board Committees
- Role of Company Secretaries in compliance of Corporate Governance

PAPER V: CORPORATE GOVERNANCE – CODES AND PRACTICES

Objective and Scope: To provide thorough knowledge of the global trends and developments so as to have an integrated view of the entire framework for corporate governance.

Detailed Contents:

- Major Expert Committees' Reports- India (including Naresh Chandra Report) and Abroad
- Study of Codes of Corporate Governance
- Joint Ventures-National and International
- Case Studies on Corporate business ownership structure, Core competency vis-à-vis diversified business, Working of Transnational Corporations, Public Vs Private Sector – National and International
- Case Studies on Corporate Governance - Indian and overseas perspective
- Best Practices of Corporate Governance
- Value Creation through Corporate Governance
- Corporate Governance Ratings (Rating mechanism in terms of firm disclosures)

VISION

"To be a global leader in promoting good corporate governance"

MISSION

"To develop high calibre professionals facilitating good corporate governance"

For any views/suggestions/feedback please write to: Director (Academics) at pmq@icsi.edu or contact 011-45341014/39