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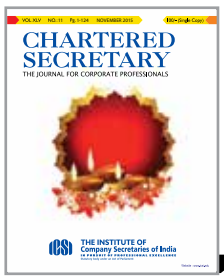

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01 Meeting of ICSI delegation with Minister of State I/C for External Affairs – Standing from Left: CS Ashish C Doshi, CS Mamta Binani, CS Atul H Mehta, CS Ashish Garg, CS Sutanu Sinha and Dr. (Gen.) V K Singh (Minister of State (MOS) I/C for External Affairs, MOS I/C for Statistics and Programme and MOS I/C for Implementation & Development of North Eastern Region).

02 Meeting of ICSI delegation with Hon'ble Chief Minister of Delhi – Seen in the picture from Left: Dr. S K Dixit, CS Vineet Chaudhary, CS Atul H Mehta and Arvind Kejriwal (Hon'ble Chief Minister of Delhi).

03 Meeting of ICSI Delegation with Chief Secretary, Govt. of Odisha - Sitting from Left: CS Sunita Mohanty, CS Mamta Binani, Gokul Chandra Pati (IAS, Chief Secretary, Govt. of Odisha), R. Balakrishnan (IAS, Additional Chief Secretary, Finance, Govt. of Odisha), CS A. Acharya and CS D. Mohapatra.

04 15th London Global Convention on Corporate Governance & Sustainability of Institute of Directors, India on Effective Corporate Governance & Sustainability: Mandate of the Board - CS Atul Mehta addressing. Others sitting on the dais from Left: Sudhir Deroas (Managing Director, TRF Limited, India), Andrew Harding {Managing Director, Chartered Institute of Management Accountants (CIMA)}, Vandana Gandhi (CEO and Founder, British Orchard Nurseries, UAE), Peter Swabey, FCIS (Policy & Research Director, Institute of Chartered Secretaries and Administrators (ICSA), UK) and Paul Moxey (Professor in Corporate Governance, London South Bank University).

05 OECD Asian Roundtable on Corporate Governance held at Bangkok, Thailand - CS Makarand M. Lele, addressing the delegates during Panel Discussion on Family-controlled Businesses in Asia.

06 OECD Asian Roundtable on Corporate Governance held at Bangkok, Thailand - CS Alka Kapoor was a lead discussant at the Break-out session on Board Nomination and Election.

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07 ICSI IT – Legal National Conclave – N P Singh (DM, Gautam Budh Nagar) addressing. Others sitting from Left: CS Alok K Kuchhal, CS Ramasubramanian C, G K Agarwal, CS Vineet Chaudhary and CS Sutanu Sinha.

08 NIRC – Kanpur Chapter – Full Day Seminar on Emerging Opportunities for Company Secretaries under the Companies Act, 2013 – Sitting on the dais from Left: CS Kaushal Saxena, CS Ranjeet Pandey, CS Atul H Mehta, CS Ankur Srivastava, CS Rajiv Bajaj and CS Amit Gupta.

09 SIRC – Hyderabad Chapter –One Day Seminar on Dissection of Annual Forms & MCA Updates –CS Ahalada Rao V addressing. Others sitting on the dais from Left: CS Venkata Ramana R, CS Issac Raj P G and CS Ramakrishna Gupta R.

10 WIRC – Pune Chapter - Workshop on Annual Filing – 2015 - On the dais from Left: CS Makarand Lele, CS Ashish Doshi, CS Vineet Choudhary, K M S Narayanan (Asst. Director, MCA, New Delhi) and Ankit Jain (Official from Infosys, New Delhi).

11 WIRC – Vadodara Chapter –Inauguration of Renovated Premises of Vadodara Chapter - CS Atul Mehta Inaugurating the renovated premises. Others standing from Left (Front Row): CS Nishant Javlekar, CS Ashish Doshi, Dipti Mehta, and CS Ashish Garg.

12 WIRC – Bhayander Chapter - Full Day Seminar on SEBI Listing and Annual Compliance – Sitting on the dais from Left: CS Manish Baldeva, CS Manoj Mimani, Adv. Yogesh Chande, CS Praveen Soni and CS Rakesh Gupta.

at a Glance

Articles P-11

Appointment and Remuneration of Managerial Personnel under the Companies Act, 2013 P-11

Sanjay Grover & Devesh Kumar Vasisht

A company having adequate profits may pay upto 10% of its profits to its managerial personnel. However, a company having no profits or its profits are inadequate, shall not pay to its managerial personnel by way of remuneration any sum except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government. Companies other than listed companies and subsidiary(ies) of a listed company may without Central Government approval pay remuneration to its managerial personnel beyond Schedule V subject to certain conditions. The provisions of the Companies, 2013 intends to regulate the payment of remuneration by listed companies and its subsidiaries to its managerial personnel and this article aims to discuss some practical aspects on the subject.

SEBI introduces more stringent provisions vide new Regulations on Insider Trading P-19

Vijaya Agarwala

With the unearthing of substantial frauds globally, the time was ripe enough for the corporate regulators to revamp the laws to befit the needs of the emerging India Inc. and ensure high standards of corporate governance. After the introduction of the Companies Act, 2013 and the notification of revised corporate governance framework for NBFCs by the MCA and the RBI respectively, it is now turn for the capital market watchdog to replace the two decade framework on insider trading.SEBI has notified the Prohibition of Insider Trading Regulations, 2015("Regulations") to be effective from 120th day of its publication, i.e. the 15th day of May, 2015. Provisions of the new Regulations have been analysed in this article.

Private Placement P-26

Shuchi Sharma

After the new Companies Act, 2013 the words "Private Placement" got the official recognition in the Act, which was not there in the earlier Companies Act, 1956. The incorporation of specific provisions for private placement is a welcome step for preventing the companies from raising huge funds from public at large under the shelter of private placement.

Checklist on Contents of Board's Report P-31

Debabrata Dutt

The Board's Report is an important document attached to Financial Statement in which the Board gives a complete review of the performance of the Company during the year under review and other information. There is no restriction to put any matter in the Board's Report, if the Board intends to mention it. However, certain matters, as part of statutory compliance, needs to be put in the Board's Report in terms of the Companies Act, 2013; the Listing Agreements (for listed companies) and several other enactments, as may be applicable to it. This article consolidates the contents to be disclosed in the Board's Report as per the provisions of the Companies Act, 2013 read with various Rules framed thereunder; the Equity Listing Agreements and some other specific enactments. The conclusive paragraph deals with provisions for contravention of Section 134 of the Companies Act, 2013.

Hiving Off *versus* Demerger P-44

Rajendra Sawant

Hiving off or demerger are the mode of the corporate restructuring for transfer of undertaking or division into subsidiary or separate entity. The reason for hiving off or demerger can be for creating effective management model, raising capital through separate entity, obtaining better economies of scale of operations, availing tax advantage, sell off or divestment of particular business, concentration on core business activities, etc. Both Hiving off or demerger result transfer of undertaking or division, hence hiving off and demerger are commonly misunderstood by the corporate and are considered as one and the same thing. This article analyses the concept of hiving off and demerger from legal and tax perspective.

Shut Down of Regional Stock Exchanges a bane or a boon for investors P-52

Anang Kumar Shandilya

Inspite of various regulatory moves to revive Regional Stock Exchanges (RSEs), restart of trading operations could not be made possible in these RSEs and eventually the prime capital market regulator, SEBI has to come up with guidelines for their exit. Investor protection and investor empowerment angles are missing in the guidelines and circulars for exit of RSEs issued by SEBI. Not even a single circular says for creation of dedicated platform where investors who had invested their hard earned money in these RSE listed Companies can raise their concern and get proper redressal of their grievances. Scrips of Companies which could not be listed on other recognized stock exchanges having nationwide trading terminals will become illiquid and ultimately the innocent investors will lose the option to unlock their money stuck in these Companies since many years. SEBI must take care of interest of investors who had invested in these Regional Stock Exchanges listed Companies and their money got stuck because of non-functioning of these RSEs.

Online Brand Protection and Dispute Resolution Mechanisms under the New Top Level Domains P-59

Ravi Goyal

The world of internet is at the moment undergoing considerable changes with the introduction of several hundred new Generic Top Level Domain [gTLD] extensions such as .sucks, .rocks, .adult, .yoga, .world, etc. Until now, domain names have always been registered under familiar gTLDs such as .com, .org, .net or .in, .co.in – in case of India. But with the introduction of over a thousand new gTLDs, businesses and brand owners can now select and register domain names with gTLDs relevant to their business. However, this increase in the number of gTLDs also brings with it significant reputational

and legal implications where domain names could be registered by cybersquatters or competitors and may be used for nefarious and illegal activities. It is thus absolutely necessary for businesses to protect their brand on the internet and to understand the new dispute resolution mechanisms introduced by ICANN to protect and safeguard the rights of trademark owners under the new gTLDs.

Corporate Social Responsibility and *Swachh Bharat Abhiyan* P-64

Sathyanarayana Reddy P & Dr. V. Balachandran

As per the Companies Act 2013, with effect from April 1, 2014, every company, private limited or public limited, which either has a net worth of Rs. 500 crore or a turnover of Rs. 1,000 crore or net profit of Rs.5 crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on Corporate Social Responsibility (CSR) activities. An analysis of CSR reports of BSE-listed 100 companies presents that 27% of companies have spent more than prescribed CSR spend and 64% of companies have spent less than the prescribed CSR. The companies are also required to disclose CSR activities and the amount spent on them in their annual reports. In October 2014, the Government has widened the activities coming under CSR ambit and the contributions to 'Swachh Bharat Kosh' and 'Clean Ganga Fund' would be considered as social welfare spending work. The highlights of the First Year (FY: 2014-15) of the mandatory CSR spending are the exciting facts.

Legal World P-72

▸ LWLW: 90:11:2015 Whether the petitioner is entitled to performance of the terms of the said MOU dated 17th July, 2013 is the precise dispute between the parties. Therefore, in terms of the arbitration clause contained in the said MOU dated 17th July, 2013, the dispute is liable to be referred to arbitration by appointment of an arbitrator. [SC] ▸ LW: 91:11:2015 It would not be unfair or fanciful to favour the view that the Defendant-Appellant's delayed user was to exploit the niche already created and built-up by the Plaintiff-Respondents for themselves in the market. The 'first in the market' test has always enjoyed pre-eminence. [SC] ▸ LW: 92:11:2015On the facts in the present case, it is clear that this Court has already determined both that the juridical seat of the arbitration is at London and that the arbitration agreement is governed by English law. This being the case, it is not open to the Union of India to argue that Part-I of the Arbitration Act, 1996 would be applicable. [SC] ▸ LW:93:11:2015It is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties the government is bound thereby and the rule in-question has to be interpreted in accord with this understanding of the rule maker itself. [SC] ▸ LW: 94:11:2015Whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. [SC] ▸ LW: 95:11:2015 It is clear, therefore, that on and after 14.5.2003, the position is that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal. [SC] ▸ LW: 96:11:2015Merely because the employee was an Assistant General Manager in the Hindustan Commercial Bank does not mean that the Regulations of 1977 would not be applicable to him or that the Assistant General Manager (P) in the PNB could not have issued a charge-sheet to him.[SC] ▸ CS: LMJ: 1/11/2015 The Company would be juristic person created artificially in the eyes of law capable of owning and transferring the property. Method of transfer is provided in law. One of the methods prescribed is dissolution of the transferor company by merger in the transferee company along with all its assets and liabilities. Where any property passes by conveyance, the transaction would be said to be inter vivos as distinguished from a case of succession or devise. [SC]

From the Government P-82

▸ Relaxation of additional fees and extension of last date of filing of AOC-4, AOC-4 XBRL and MGT-7 E-Forms under the Companies Act, 2013 - reg. ▸ Disclosures in the Abridged Prospectus and Price Information of past issues handled by Merchant Bankers ▸ (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2015 ▸ Risk management for Regional Commodity Derivatives Exchanges ▸ Format of uniform Listing Agreement ▸ Review of the capacity planning framework of stock exchanges and clearing corporations ▸ Investments by FPIs in Government securities ▸ Comprehensive Risk Management Framework for National Commodity Derivatives Exchanges ▸ Guidelines on overseas investments and other issues/clarifications for AIFs/VCFs ▸ Registration of Members of Commodity Derivatives Exchanges ▸ Frequently Asked Questions on Sebi (Delisiting of Equity Shares) Regulations, 2009 ▸ Foreign Direct Investment (FDI) upto 100% in White Label ATM Operations under automatic route ▸ Streamlining the Procedure For Grant of Industrial Licenses ▸ Review of the existing Foreign Direct Investment policy on Partly Paid Shares and Warrants ▸ Clarification on FDI Policy on Facility Sharing Arrangements between Group Companies

Other Highlights P-100

- Members Admitted / Restored
- Certificate of Practice Issued / Cancelled
- Licentiate ICSI Admitted
- Company Secretaries Benevolent Fund

From the President

"India should walk on her own shadow
- we must have our own development model."
- A. P. J. Abdul Kalam

The Make in India campaign, is attracting businesses from around the world to invest and manufacture in India and eventually taking up policy reforms involving changes in laws to ensure ease of doing business in the country. This has helped in improving India's ranking of Ease of Doing Business by 12 places from its original ranking last year and four places from its rank on a revised list to 130 of 189 countries.

With an unbeatable combination of an ancient civilization and democratic context, Indian markets have significant potential to offer high profitability regime to entice and retain investors. The 'Make in India' campaign further intends to foster a business friendly environment concentrating to fulfill the purpose of job creation, enforcement of secondary and tertiary sector, boosting of the national economy, fostering innovation, developing skills, facilitating investment and build a sustainable eco-system for the holistic development of the nation converting India into a self-reliant country.

The contributions of professionals are predominantly attributable to their calibre for employment generation and role as catalyst for development of other sectors. Company Secretaries play a crucial role in setting up businesses right from the stage of inception of the business idea and contribute to the growth of the Nation in areas like corporate governance, compliances, legislative reforms, corporate social responsibility, reporting, accounting and taxation etc. Further, over the past few years, Company Secretaries are also playing an increasing role in policy formulation in various capacities and thereby partaking in ensuring sound functioning of the economy. With this, Company Secretaries are well in tune with the vision of 'Make in India' and are contributing a lot in achieving the vision of self sustained nation. The Company Secretaries have a significant role to play in making the 'Make in India' compaign a grand success by creating awareness about the positive benefits of legislative reforms and procedural simplification towards ease of doing business.

Secretarial Standards

The Secretarial Standards on Meetings of the Board of Directors (SS-1) and Secretarial Standards on General Meetings (SS-2) issued by the Institute of Company Secretaries of India (ICSI) are applicable to the companies w.e.f. 1st July 2015 and the Company Secretaries in employment as well as in practice are entrusted to ensure the compliance of the applicable Secretarial Standards. SS-1 and SS- 2 are a codified set of good governance practices which seek to integrate, harmonize and standardise the diverse secretarial practices followed by companies with respect to conduct of Meetings. Further, SS-1 and SS-2 have also clarified certain aspects with respect to conduct of Meetings, especially where law is silent or multiple practices are followed due to varied interpretations of law. Secretarial Standards have been introduced for the first time in the world and it is understandable that any new initiative would have some teething problems but we are sure that time will prove the indispensable role of Secretarial Standards in enhancing the corporate culture and governance.

I am pleased to share that ICSI proposes to release the Guidance Note on Meetings of the Board of Directors (SS-1) and the Guidance Note on General Meetings (SS-2) as guidance for the stakeholders in implementation of SS-1 and SS-2. These Guidance Notes elucidate, wherever necessary, the basis for setting the particular Standard, explain its ingredients and nuances and give illustrative examples. The Guidance Notes also address various issues/queries/concerns raised by the stakeholders on the particular Standard after their issuance.

Compliance, Governance and Risk Management in Insurance
Institute of Company Secretaries of India (ICSI) and Insurance Institute of India (III) have jointly launched an academic course titled "Certificate Course in Compliance, Governance and Risk Management in Insurance" focusing on regulatory compliances in the Insurance industry with the objective to create a cadre of professionals in the Insurance industry to be well versed in risk management, governance and regulatory compliances. I appeal to members to join this certificate course to gain acumen and expertise in Insurance Sector.

CSIA Council Meeting
The Institute is playing a significant role in forging international cooperation amongst the professional bodies, which are sharing our common aspirations and goals. Corporate Secretaries International Association (CSIA) is an International Body of Institutes of Company Secretaries and Governance Professionals. The ICSI is one of the founding members of CSIA. I along with the Chief Executive and Officiating Secretary of the Institute attended CSIA Council Meeting on October 29-30, 2015 at Johannesburg, South Africa. We also took the opportunity to attend and participate in Annual Corporate Governance Conference on October 27-28, 2015. It was a privilege for me to address the participants of the Conference on Governance in India under the Companies Act, 2013.

I am pleased to inform you that the ICSI has been inducted as member of the Executive Committee of CSIA and myself has been elected as Secretary of the CSIA. The CSIA Council discussed about potential new members and sponsors, global trends, emerging issues and the activities of other global governance bodies. The CSIA Council also discussed the strategic plan for 2015-17. The CSIA Council decided that India will continue to drive the CSIA initiative towards creation of new sectoral classification on corporate governance, compliance and secretarial advisory services under WTO.

I am of the firm belief, that being largest body of Company Secretaries in the World, let us aggressively pursue our vision to be global leader in promoting good corporate governance and expand our reach beyond the borders through collaborations and networking.

IOD London Global Convention
On the invitation of Institute of Directors (IOD) India, I along with a delegation of the Institute attended IOD's London Global Convention (2015) during October 7-9, 2015 at London. The theme of the Global Convention was "Effective Corporate Governance and Sustainability - Mandate of the Board" and was attended by leaders in business, finance, environment, parliament, policy makers, academicians, jurist and social thinkers, from across the globe. It was a great opportunity to address the participants on emerging role of company secretaries in Board Room. During the stay, the meetings were held with the Institute of Chartered Secretaries and Administrators (ICSA), UK and Chartered Institute of Securities and Investment (CISI), UK, our MOU partner and International Corporate Governance Network (ICGN) our network partner.

It was a privilege to address the past presidents of ICSA, London during our meeting. The Past Presidents appreciated the development in India on Company Law, particularly in respect of enhancement of the role of Company Secretaries and also implementation of Secretarial Standards and introduction of Secretarial Audit. I took the opportunity to invite the President and Chief Executive of ICSA to attend the 43rd National Convention of Company Secretaries. During our discussion with ICSA officials, a need was felt to have more regular interaction between the two Institutes; exchange of journal, course material and publications. We offered support to ICSA, UK for developing Secretarial Standards.

During the meeting with another MOU partner, the Chartered Institute of Securities and Investment (CISI), we emphasized on the need for organizing more CPE programmes in India for ICSI members and supporting them in job opportunities in other countries. We have also discussed the matter relating to recognition of ICSI-CCGRT as accredited training centre of CISI and that the ICSI website link may be provided on the CISI website. The matter of sharing and printing of articles in each other's journals was also discussed during the meeting. During the meeting with representatives of ICGN it was discussed to jointly work towards matters relating to corporate governance and to organize ICGN International Conference in India, in addition it was also discussed to share research based articles on corporate governance.

OECD Asian Roundtable on Corporate Governance
On the invitation of OECD, an ICSI delegation represented the Institute at OECD Asian Roundtable on Corporate Governance held on 29-30 October, 2015 at Dusit Thani Hotel, Bangkok, Thailand. OECD Roundtable was attended by delegates from more than 14 countries to discuss the governance issues of family-controlled businesses, institutional investors, disclosure of beneficial ownership and control, and how corporate governance policies and practices have evolved or should be adjusted to respond to recent challenges and opportunities. The members of ICSI delegation were the panelist at the session on "Family-Controlled Businesses in Asia" and lead discussant at the Break-out session on "Board Nomination and Election" respectively. ICSI delegation apprised the delegates on recent development on Corporate Governance in India including introduction of Secretarial Standards and Secretarial Audit and also shared the perspectives on the revised OECD Principles of Corporate Governance, their relevance and implementation in Asia.

From the President

Students' Initiatives

With the continuous developments in the external environment, the role of professionals is being redefined continuously demanding us to prepare our students to face the challenges in a better manner. In a constant endeavour to make our students more competitive, the Institute has been taking a number of initiatives in the past few years to provide efficient services to its students. Taking forward our continued efforts to facilitate our students, the Institute has introduced Module wise Revisionary Papers containing solved model question papers, in the subjects of Executive programme and Professional programme. Practice Manual for Financial Treasury and Forex Management (Professional programme) and Company Accounts and Auditing Practices (Executive programme) have also been released to build competency in practical oriented subjects by providing the students with a pool of solved practical problems.

The students, who wish to procure printed copies, may purchase from sale counters at ICSI Regional offices/ Chapter offices or order it online through e-cart on ICSI website. Further, in order to enrich study resources available under the head MOOCs on ICSI website, few more videos have been uploaded. I hope these initiatives will serve as significant preparation resources for the students appearing in examination, as they could be used as an effective tool to revise the concepts, self assessment and to build confidence to write the examination.

Infrastructure Development

In line with one of the top ten goals to improve infrastructure with special attention to Regional offices and Chapters, the Institute has undertaken a number of projects at various Chapters. Some of the projects are in initial stages, some are nearing completion and some of the projects have been completed. Among them the renovated building of Vadodara Chapter has been inaugurated on October 14, 2015; the building of Faridabad Chapter has almost been completed. I am pleased to inform you that the Institute has acquired new premises at Sector 62 Noida, the transfer cum sale deed was executed in the month of October, 2015.

Nationwide Knowledge Sharing on Company Law and Governance

The governance is important at all levels of administration including corporate administration and governance. In this context, the Institute being leader in compliance and corporate governance has conceptualised an idea of creating awareness about Company Law and need for good corporate governance at municipalities, and panchayat level. Under this concept, the Institute is studying the governance under Panchayat system and developing a model governance structure for gram panchayat and a training module for creating awareness and to train panchayat level officials about importance of compliances, conduct of meetings, writing of minutes, etc.

Interface with Regulators on Company Law and Governance

The Institute has taken similar initiative to organise workshops for regulators and legislators in the States. In this direction, the Institute already conducted workshops for the officials of the Reserve Bank of India and Securities and Exchange Board of India. Recently Ms. Mamta Binani, Vice President of the Institute conducted a workshop on Investigation of Corporate Frauds and Stock Market Fraud for the officials of the Swami Vivekanand State Police Academy, Barrackpore, West Bengal. This workshop was attended by around 30 Deputy Commissioners and Inspectors of Police Services from West Bengal. Shri Shyam Agarwal, Council Member, ICSI has initiated discussions with the Hon'ble Speaker Legislative Assembly of Rajasthan for conducting workshop on Company Law, Corporate Governance and CSR for the members of Legislative Assembly of Rajasthan. The response is encouraging and I am sure, the Institute will organise this workshop in this month.

IT - Legal National Conclave

In the era of globalisation and e-technology the entire world has become a global village and we have to get ourselves fully equipped with the latest developments in each field. Keeping this in view, the Institute has organised a National level IT -Legal Conclave on 17th October, 2015 at Hotel Radisson Blu, Noida. The theme of the programme was "Cyber Crime & Security - Proofing against Cyber Crime & Role of CS". The conclave provided an opportunity to deliberate on the potential cyber threats, prevention techniques, provisions of Information Technology Act and the role of Company Secretaries thereunder. I am pleased to inform that the second IT – Legal National Conclave was organised on 7.11.2015 at Chennai. The third National Conclave in the series is being organised on 21.11.2015 at Kolkata. I place on record my appreciation for Shri C. Ramasubramaniam, my colleague on the Council, for this initiative.

43rd National Convention of Company Secretaries

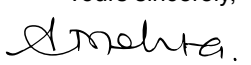
The Institute has received encouraging response from the members towards delegate registration for the 43rd National Convention of Company Secretaries to be held at Kempenski Ambience Hotel, Delhi during December 17-19, 2015. I thank the members who have already registered for the National Convention and cordially invite the others to register themselves along with their friends and family members through the online mode using the link at the Institute's website.

In the changing times, professionals are facing new challenges and fortunately, we are not hesitant to embrace these challenges. I am sure we will capitalize on these challenges into opportunities. Before I conclude, I take this opportunity to convey my best wishes for the festive season and pray to the Almighty that this Diwali shower on all of us more professional wisdom, peace and prosperity. Have a safe and bright Diwali.

With kind regards,

Yours sincerely,

November 05, 2015.



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Appointment and Remuneration of Managerial Personnel under the Companies Act, 2013

The Article aims to provide a practical understanding on Appointment and Remuneration of Managerial Personnel under the Companies Act, 2013. Managerial Personnel i.e. managing director, whole-time director or manager play a very vital role in the growth of a corporate and also direct and control the Company's day to day operations under the overall supervision of the Board and provide strategic guidance to ensure that the Company achieves its mission and objectives.

INTRODUCTION

Chapter XIII read with Schedule V of the Companies Act, 2013 (herein after referred as the Act) governs the Appointment and Remuneration of Managerial Personnel. The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (herein after referred as the Rules) further elaborates the subject.

As per section 2(78) of the Act, "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961 (43 of 1961).

APPOINTMENT OF MANAGERIAL PERSONNEL

Appointment of managing director, whole-time director or manager (Section 196)

Applicable for Private and Public Companies

- No company shall appoint or employ at the same time a managing director and a manager.
- No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

  Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

  No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who-

- is below the age of twenty-one years or has attained the age of seventy years:
- Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution;
- is an un-discharged insolvent or has at any time been adjudged as an insolvent;
- has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

PUBLIC COMPANIES

- Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval-
  - by a resolution at the next general meeting of the company; and
  - by the Central Government in case such appointment is at variance to the conditions specified in that Schedule. {Section 196(4)}

  The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

  A return in e-form MR-1 shall be filed within sixty days of such appointment with the Registrar of Companies.

- Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.{Section 196(5)}

  Ministry of Corporate Affairs vide its Notification dated June 5, 2015 has exempted private companies from applicability of the provisions of Section 196(4) and (5) of the Act. This means-

  The private companies are not required to obtain the approval of its shareholders for appointment and payment of remuneration to its managing director, whole-time director or manager unless otherwise required by its Articles of Association.

- The return in e-form MR-1 is not required to be filed with the Registrar of Companies. It is hereby clarified that such companies are required to file relevant e-form for change in designation i.e. DIR-12, if required.
- Approval of the Central Government is not required even if conditions mentioned in schedule V are not satisfied.

Part I of Schedule V: Conditions to be fulfilled for the appointment of a managing director, whole-time director or a manager without the approval of the Central Government

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts mentioned including the Companies Act, 2013 (Sixteen Acts are mentioned therein);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Where the Central Government has given its approval to the appointmentof a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the ageof seventy years:

Where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(d) where he is a managerial person in more than one company,

he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;

(e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,-

(i) for taking up employment in India; or

(ii) for carrying on a business or vacation in India.

Explanation II.-This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

A person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

As per section 203(1) of the Act, every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,-

(i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
(ii) Company Secretary; and
(iii) Chief Financial Officer;

As per section 203(4) of the Act, if the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

As per Rule 8, every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

It is implied from the above that public companies, even not covered under Rule 8 and if appoints a managing or whole-time director or a manager, are required to comply the provisions of Part I of Schedule V and if not, need to take approval of the Central Government.

REMUNERATION OF MANAGERIAL PERSONNEL

The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company except with the approval of the Central Government. As per the provisions of section 197 of the Act, overall maximum managerial remuneration which a public company may pay to its directors and managers is under:-

Table-1

Particulars	Ceiling of Remuneration
Total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager	11% of Net Profits
the remuneration payable to any one managing director; or whole-time director or manager	5% of Net Profits
if there is more than one such managing director; or whole-time director or manager, remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together	10% of Net Profits
the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed if there is a managing or whole-time director or manager	1% of Net Profits
the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed if there is no managing or whole-time director or manager	3% of Net Profits

The net profits of that company for that financial year shall be computed in the manner laid down in section 198 of the Act except that the remuneration of the directors shall not be deducted from the gross profits.

A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. However, an independent director shall not be entitled to any stock option and may receive remuneration by way of sitting fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

REMUNERATION BY WAY OF SITTING FEE

The percentages aforesaid in Table-1 shall be exclusive of any sitting fees payable to directors. A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board. A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof

which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

A company having no profits or its profits are inadequate, it shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.

Payment of Remuneration without Central Government approval by companies other than listed companies and subsidiary of a listed company

As per Rule 7(2), the companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely-

- payment of remuneration is approved by a resolution passed by the Board and also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for payment of remuneration beyond the said limit.
- the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel.
- the approval of shareholders by way of a special resolution at ageneral meeting of the company for payment of remuneration for a period not exceeding three years.
- the explanatory statement of Notice shall contain the informationas per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons andjustification for payment of remuneration beyond the said limit.
- the company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies.

Payment of Remuneration under Schedule V by Listed Company and its subsidiary without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the following:-

Table -2

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crore	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Further, the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Effective Capital, as defined in Explanation I in Section IV of Part II of Schedule V, means:

the aggregate of	the paid-up share capital (excluding share application money or advances against shares)
	amount, if any, for the time being standing to the credit of share premium account
	reserves and surplus (excluding revaluation reserve)
	long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements)
as reduced by	the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities),
	accumulated losses and
	preliminary expenses not written off

A company having no profits or its profits are inadequate, it may pay remuneration to the managerial person without Central Government approval based on effective its capital as mentioned Table-2 subject to the following conditions mentioned in the Schedule V to the Act:

- The payment of remuneration is approved by a resolution passed by the Remuneration & Nomination Committee;
- The Company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
- A special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;

- A statement along with a notice calling the general meeting is given to the shareholders containing the information as mentioned in Schedule V.

Example: Calculation of Maximum Remuneration payable per annum to a managerial person based of the effective capital

Table -3

Effective Capital [Rs. In Crores]	Maximum Remuneration payable per annum to a managerial person, if Ordinary Resolution is passed [Rs. In Lacs]	Maximum Remuneration payable per annum to a managerial person, if Special Resolution is passed [Rs. In Lacs]
(- 0.1)	30	60
67	42	84
104	60	120
350	61	122
3000	87.50	175

It may be noted here that above maximum remuneration can be paid by a company per annum to each of its managerial personnel.

PAYMENT OF REMUNERATION TO PROFESSIONAL

In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, - 2.5% of the "current relevant profit". If the resolution passed by the shareholders is a special resolution, this limit shall be doubled.

As per Explanation VI(A), for the purposes of Schedule V, "current relevant profit" means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4(l) of Section 198 of the Act in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.

Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances

Further, Section III of Schedule V deals with remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances. A company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above In the following circumstances:-

(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company-

(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or

(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

The limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:-

(i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;

the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.

(ii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

(d) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2,40,00,000 per annum.

PAYMENT OF REMUNERATION WITH APPROVAL OF CENTRAL GOVERNMENT

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person exceeding the limits mentioned in Table-2 above with the approval of Central Government and the application will be filed in e-form MR-2.

Further, if a company has adequate profits but is not able to comply any of the conditions mentioned in Schedule V e.g. the Company has made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person, that company may pay remuneration to the managerial person only with the approval of Central Government.

If the conditions mentioned in Rule 7(2) are not met by companies (other than the listed companies and subsidiaries of a listed company) having no profit or inadequate profit, such companies shall require approval of the Central Government for payment of remuneration beyond ceiling specified in Section II, Part II of Schedule V.

When the profits will be treated as inadequate:-We can understand the concept of inadequate of profits with the help of following example:-

ABC Limited is a listed company and financial summary of ABC Limited for the financial year 2014-15 is as under-

Particulars	Rs. in Crores
Turnover	5000
Effective Capital	1000
Net Profit earned as per books	230
Net Profit as per Section 198	200
10% of Net Profit as per Section 198	20
5% of Net Profit as per Section 198	10
Remuneration paid to four Managerial Personnel	30

A company may pay maximum 10% of its net profits to all its executive directors; however, ABC Limited has paid 15% of its profits i.e. Rs. 30 Crores out of its Net Profit as per Section 198 of the Act to four of its Managerial Personnel. Therefore, payment made to every director will be treated as excess remuneration and accordingly, separate application will be filed for each executive director. There are two ways to calculate excess remuneration in such a situation-

Option 1: maximum remuneration payable i.e. 10% of net profits will be equally distributed amongst the Managerial Personnel and from remuneration paid to each director allocated amount will be deducted and remaining amount will be treated as excess:-

Rupees in Crores

Sr. No.	Name & Designation	Remuneration Paid	% of Net Profits (A)	Equal distribution of 10% of Net Profit (B)	Excess % of profits paid (A)-(B)	Excess remuneration
1	Mr. AB, Managing Director	10	5	2.50	2.50	5
2	Ms. CD, Whole-Time Director	8	4	2.50	1.50	3
3	Ms. EF, Whole-Time Director	6	3	2.50	0.50	1
4	Ms.GH, Whole-Time Director	6	3	2.50	0.50	1
		30	15	10.00	5.00	10

Option 2: maximum remuneration payable i.e. 10% of net profit will be distributed inproportion to remuneration paid to each of the Managerial Personnel and accordingly, from remuneration paid to each director proportionate amount will be deducted and remaining amount will be treated as excess:--

Rupees in Crores

Sr. No.	Name & Designation	Remuneration Paid	% of Net Profits (A)	Proportionate distribution of 10% of Net Profit (B)	Excess % of profits paid (A)-(B)	Excess remuneration
1	Mr. AB, Managing Director	10	5	3.33	1.67	5
2	Ms. CD, Whole-Time Director	8	4	2.67	1.33	3
3	Ms. EF, Whole-Time Director	6	3	2.00	1.00	1
4	Ms.GH, Whole-Time Director	6	3	2.00	1.00	1
		30	15	10.00	5.00	10

Out of the above options, option II is more practicable and acceptable method.

In the above example, the remuneration paid to its each of the Managerial Personnel by ABC Limited is within the ceiling of 5% of the net profits; however, total remuneration paid exceeds 10% ceiling and therefore, payment made to every director will be treated as excess remuneration and accordingly, ABC Limited is required to take approval of Central Government for each Managerial Personnel.

APPROACH OF CENTRAL GOVERNMENT

As per section 200 of the Act read with Rule 6, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under

section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to-

- the financial position of the company;
- the remuneration or commission drawn by the individual concerned in any other capacity;
- the remuneration or commission drawn by him from any other company;
- professional qualifications and experience of the individual concerned;
- the Financial and operating performance of the company during the three preceding financial years;
- the relationship between remuneration and performance;
- the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company;
- whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference;
- the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year;

The approach of Central Government (Ministry of Corporate Affairs) is very conservative while deciding the application for payment of remuneration to a managerial person. For example:-

- The remuneration drawn by a managerial person during last three is one of criteria considered by MCA while deciding the application for payment of remuneration to that managerial person. However, if that managerial person was working out of India during last three years immediately before his/her appointment in a Indian Company, in such cases, MCA does not consider his/her remuneration drawn by that appointee from a body corporate registered out of India;
- If the Company had incurred losses in the last financial year for any reasons whatsoever, MCA allows the payment of remuneration only as per Schedule V based on the effective capital whether the appointee is a promoter or a professional who not related to the promoters/ do not have any material interest in the capital of the Company;

We suggest that MCA should devolve a progressive system for consideration of applications filed under section 197 of the Act so that the Indian Companies can retain the best managerial skill in even during adverse business conditions.

CONCLUSION

The provisions of section 196 (4) & (5) of the Act are not applicable on the private companies and therefore, such companies may appoint any person as its managerial personnel without Central Government approval. Further, such private companies may also pay any amount of remuneration to directors without Central Government approval even if having losses or inadequate profits.

All public companies and subsidiary of a public company shall require approval of the Central Government if the person to be appointment as managerial person does not satisfies the conditions mentioned in Part I of Schedule V.

Public companies (other than the listed companies and subsidiaries of a listed company) may pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the conditions enumerated in Rule 7(2).

The listed companies and subsidiaries of a listed company, in the event of no profit or inadequate profit, may pay remuneration to its managerial personnel based on its effective capital as specified in Schedule V subject to the other conditions mentioned therein. Further, such companies may pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V only with the approval of Central Government.

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SEBI introduces more stringent provisions vide new Regulations on Insider Trading

SEBI has come out with new SEBI Insider Trading Regulations effective from 15th day of May, 2015. Besides broadening the definitions and the ambit, the new Regulations stipulate grave consequences for violation of its provisions . Provisions of the new Regulations have been analysed in this article.

INTRODUCTION

With the unearthing of substantial frauds globally, the time was ripe enough for the corporate regulators to revamp the laws to befit the needs of the emerging India Inc. and ensure high standards of corporate governance. After the introduction of the Companies Act, 2013 and the notification of revised corporate governance framework for NBFCs by the MCA and the RBI respectively, it is nowthe turn for the capital market watchdog to replace the two decade framework on insider trading.

SEBI notified the SEBI (Prohibition of Insider Trading) Regulations, 2015("Regulations") to be effective from 120th day of its publication, i.e. the 15th day of May, 2015. On a bird's eye view of the new regulations, it is pertinent that besides broadening the definitions and ambit, this new piece of regulatory measure provides for grave consequences for violation of its provisions .

Although SEBI does not have the power to impose any civil penalty on the violators, Section 11 of the SEBI Act bestows it with the power to ensure investor protection by means of all such measures as it may deem fit. As stated by an expert the *"SEBI, like Harry Potter, has powers it does not know of ."*[1] In this article, the provisions of the new Regulations have been analysed.

INSIDER DEFINITION

The definition of SEBI is at par with the meaning of insider under US laws which covers along with connected people, any other person who is deemed to be in possession of an Unpublished Price Sensitive Information (UPSI). Hence, insider has two appendages as depicted in the figure below:

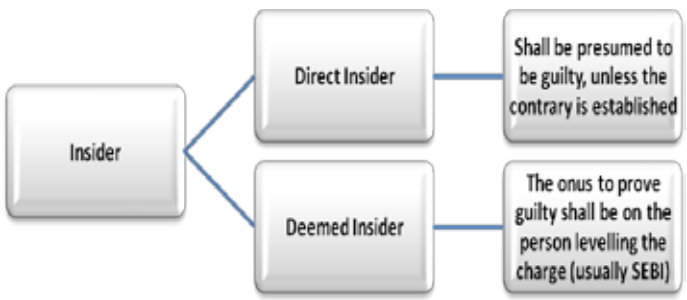


Figure- 1 Types of insiders

1 http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=275878d3-e9c8-4de4-9bd0-3f30b34db853&txtsearch=Subject:%20Capital%20Market

> The definition of connected person now covers anyone who has a connection with a company that is expected to put him in possession of insider information. The earlier regulations covered only an explicit set of populace under the definition. Since, the new Regulations require the Compliance Officer (CO) of the Company to monitor trading by the connected person and employees, it is going to be an uphill and tedious task for the CO.

However, the SEC includes in its definition of insider even such persons who have temporary or constructive access to the material information. Courts in the US have also ruled that this applies to even such people who do not have any ties with the company whatsoever.

MEANING OF INSIDER TRADING

It means trading in the securities of a quoted Company by its insiders based on their access to unpublished price sensitive information. It is a criminal offence of eating into the shareholders' wealth and stage-manage with the price discovery mechanism of securities in the open market.

However, such a trade might not tantamount to be insider trading provided it is carried out in the nature of an inter-se transfer between the insiders of the company in the off-market based on conscious and informed trade prudence. In the case of Rakesh Agarwal vs. SEBI[2], it has been held that the intention of the parties while trading in the scrip matters. In the present case, Rakesh Agarwal, the MD of ABS Industries Limited had through his relative purchased the shares of the Company preceding the open offer made by Bayer in regard to a takeover deal with ABS. The act was in contravention of Regulations 3 & 4 of the erstwhile Insider Trading Regulations. On a detailed investigation it was found that Rakesh had done so, in the interest of the Company, as he wanted the deal to click and pursuant to Bayer's condition to acquire at least 51% shares of ABS, he tried his best at his personal level to supply them with the requisite number of shares. Hence, SAT decided that he was not guilty of any offence and the allegations could not be sustained on the grounds that Rakesh Agarwal did that in the interests of the company (ABS) to help Bayer AG. to acquire his company.

UNPUBLISHED PRICE SENSITIVE INFORMATION

Although no definitive list can be provided, UPSI shall mean to include every such information which is not generally available and if it is known in the public domain, it is likely to affect the share prices significantly. Some common examples of such events include:

- regular matters (financials, dividend etc.) (declaration of dividend at a consistent rate over several years in the past shall not be termed as an UPSI[3])
- extraordinary matters (restructuring, entering into an important agreement, resignation of CEO etc.)
- premature removal of auditors before the expiry of their term etc.

RESTRICTIVE DISSEMINATION OF UPSI

While the Board of Directors of any issuer company is responsible for the promulgation of UPSI, the actual onus lies on the Compliance Officer, who is any officer so designated by the Company for the purpose of complying with the provisions of this Regulation.

However, the issuer company may ensure the following in disclosing price sensitive information:

- UPSI should be promptly announced after it becomes known to the directors, key managerial personnel and other white collar officials;
- The afore mentioned officials should keep the information confidential till the date of such disclosure;
- Whenever, it is observed that despite appropriate measures, secrecy has been breached, an announcement should be made and the information should be made available to the market as a whole;
- UPSI should always be disclosed as a whole and not selectively so as to avoid any privileged dealing position to an insider.

WHAT EXACTLY DOES THE REGULATION INTENDS TO RESTRICT?

Regulation 3(2) clearly restricts every person from either procuring any UPSI or communication of UPSI by an insider of a listed/quoted / proposed to be listed company. However, if the same is done in furtherance of legitimate purposes, performance of duties or discharge of legal obligations, it shall not be restricted.

Hence, the restriction purely lies in the procurement and communication of UPSI. Whether there has been dealing on the basis of UPSI is irrelevant and strictly prohibited.

2 http://indiankanoon.org/docfragment/1443541/?formInput=insider%20trading%20price%20sensitive%20information%20meaning

3 http://www.india-financing.com/images/Articles/SEBI_Insider_Trading_Regulations_2015.pdf

CONNECTED PERSON

The Regulations define it as: (i) any person who is or has during the six months prior to the concerned act been associated with a company, *directly or indirectly*..... (*emphasis supplied*)

The definition of connected person now covers anyone who has a connection with a company that is expected to put him in possession of insider information. The earlier regulations covered only an explicit set of populace under the definition. Since, the new Regulations require the Compliance Officer (CO) of the Company to monitor trading by the connected person and employees, it is going to be an uphill and tedious task for the CO.

In 1909, the Supreme Court of the United States ruled in Strong v. Repide[4] that a director who expects to act in a way that affects the value of shares cannot use that knowledge to acquire shares from those who do not know of the expected action. Even though in general, ordinary relations between directors and shareholders in a business corporation are not of such a fiduciary nature as to make it the duty of a director to disclose to a shareholder the general knowledge which he may possess regarding the value of the shares of the company before he purchases any shares from a shareholder, yet there are cases where, by reason of the special facts, such duty exists.

Table below depicts the various persons included in the definition of connected person under the Regulations:

CONNECTED PERSONS	CONDITION	CASE LAWS	RELATED FIGURES
Employers & Employees	Where such person directly or indirectly has access to unpublished price sensitive information, or is reasonable expected to allow such access. [Employees who are associates of Directors / Shadow Directors[5]].	Securities and Exchange Commission v. Keith A. Seilhan(deep water horizon rig)[6,7]	Refer Fig.1
Any professional engaged by the Company	Professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants	Ian Charles Hannam[8]	--
An Investment Company/ Trustee Company or Asset Management Company inclusive of member of Board of Trustee and member of Board of Directors	A Trustee of a settlement, is connected with: (a) the settler, (b) any person connected with the settler, (c) a close company, whose participators include the trustees of, or a beneficiary under the settlement.	Securities and Exchange Board of India v. Sameer C. Arora[9]	
Individuals and their relatives	Relatives for this purpose include the following: Parents; Spouse; Siblings and Children; For the purpose of this Regulations, 'relatives' would include only such relatives, who are either financially dependent on the connected person or consult such person in taking decisions relating to trading in securities.		Refer Fig.2
A Banker of the Company	Since, the Regulation stresses on communication which is on a frequent basis, only the concerned bank employee who directly deals with the Company on a regular basis. In most cases, it is the relationship manager.	SEC v. Charles E. Mitchell[10]	-

4 https://supreme.justia.com/cases/federal/us/213/419/
5 http://www.internationallawoffice.com/newsletters/detail.aspx?g=c0e3ca20-f14f-4981-87af-6b4daf4f8fe4
6 http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541517274
7 http://www.sec.gov/litigation/complaints/2014/comp-pr2014-77.pdf
8 http://www.fca.org.uk/static/documents/final-notices/ian-charles-hannam.pdf
9 http://www.sebi.gov.in/satorders/samirarora.html
10 https://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-58.pdf

The diagrams below explain the table above:

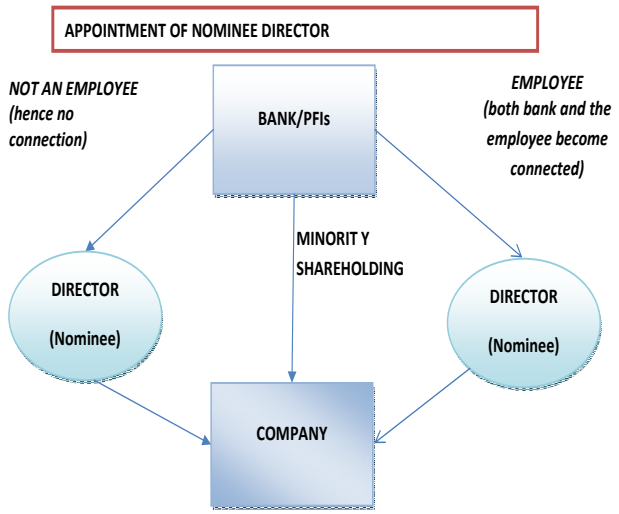


Figure-1: Connection through appointment of nominee director
Source: International law office newsletter[11]

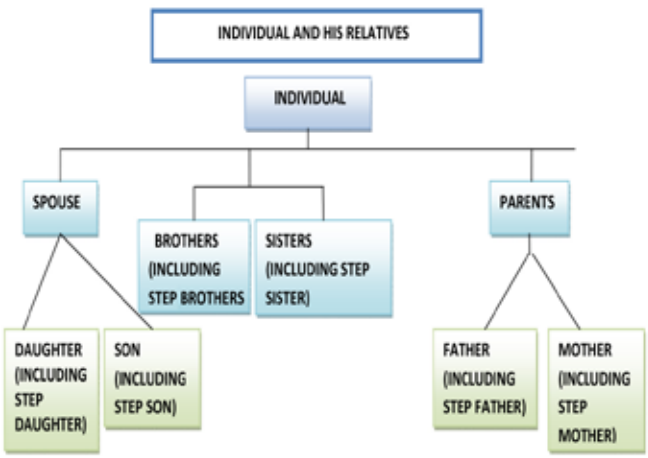


Figure-2: Individuals and their relatives as connected persons

ARE HOLDING/ SUBSIDIARIES AND ASSOCIATES DEEMED TO HAVE ACCESS TO EACH OTHER'S UPSI?

No. In the case of Hindustan Lever Limited (HLL), the Company had purchased 8,00,000 shares of Brooke Bond Lipton India Limited (BBLIL) from UTI on the basis of UPSI, prior to the announcement of merger of HLL and BBLIL on April19, 1996. SEBI on suspecting insider trading had enquired and passed an order on March, 1998.

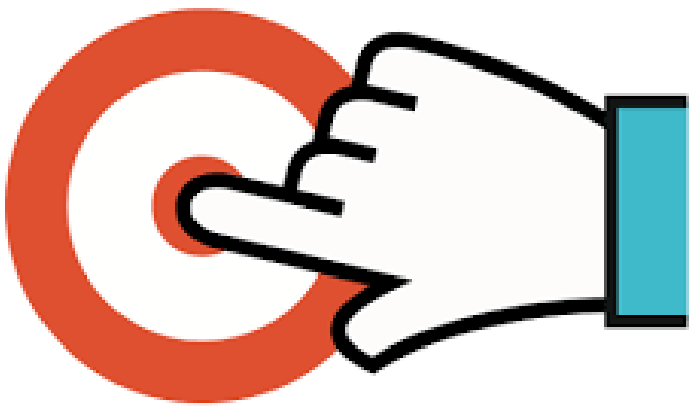
HLL and BBLIL were fellow subsidiaries under the common parentage of London based Unilever, and thereby are deemed to have knowledge about the merger. HLL wanted to maintain Unilever's shareholding at 51 percent and not realise any financial gains (although insider trading is irrespective of whether profits are made or not).

HLL was not found guilty of Insider Trading by SEBI, based on the following points:

- no company can be an insider to itself;
- the fact of merger was a generally available information;
- the decision of purchasing shares by HLL of BBLIL did not adversely affect the interest of the shareholders of the respective companies;
- acquisition of such shares by way of preferential allotment would have instead diluted the interest of other shareholders;
- merely by being a fellow subsidiary, one company cannot be said to have access to UPSI of another. Such an allegation shall require the lifting of the corporate veil.

Further, no such allegation was levelled by SEBI when shares of TOMCO was purchased by HUL before the merger of the two companies in a similar fashion. Although being a party to the arrangement, HUL was having access to UPSI and was an insider.

However, now the holding and subsidiary fall under the definition of connected person, so company should take discourse or apply its code to them, their directors, key managerial personnel etc.



11 http://www.internationallawoffice.com/newsletters/detail.aspx?g=c0e3ca20-f14f-4981-87af-6b4daf4f8fe4

Under the upcoming corporate scenario, where every trade of an insider shall have to be in nothing but in consonance of the submitted plan, one would really feel like an outsider, if one has ever been an insider. The idea however, seems impractical as sitting at today it is impractical to predict as to what would happen after six months and plan trade accordingly.

COMMUNICATION OF INFORMATION BY A PROFESSIONAL IN PROPER COURSE OF EXERCISE OF EMPLOYMENT, PROFESSION OR DUTIES AND IN FURTHERANCE OF LEGITIMATE PURPOSES

The issue was first addressed by the Financial Conduct Authority (FCA) in the case of Ian Hannam Charles[12] wherein Mr. Ian Hannam, a senior banker at J.P. Morgan was a key advisor to Heritage Oil Plc, an oil and gas exploration and production company. During the term of his engagement, Mr Hannam shared vital update on discussions between a potential acquirer of Heritage Oil and an estimate of the per-share value of the acquisition offer update on discussions between a potential acquirer of Heritage Oil and an estimate of the per-share value of the acquisition offer. His second email, he also blind copied another third-party adviser, included as a postscript: "PS— Tony [Buckingham, Heritage Oil's CEO] has just found oil and it is looking good"(emphasis supplied). Since, it could not be established that any dealing in the shares of the Company was made on the basis of the foregoing information,Mr.Hannam claimed that such disclosure was in the proper course of exercise of his professional duties.

It was held by the Court that in order to determine to what extent the disclosure of inside information to another person shall be considered to be in the proper course of exercise of one's employment, profession or his duties shall be determined having regard to the following:

a) the recipient should be subject to express confidentiality obligations and understand that the information is (or may be) inside information; and

b) to the extent the relevant information relates to a prospective bid for a listed company, such disclosure should not be in violation of any Takeover Regulations, for the time being in force.

Mr.Hannam was found guilty of insider trading as:

a) he an insider given his access to unpublished price sensitive information;

b) his behavior was not in the proper course of his employment, profession or duties. He disclosed inside information where this was unnecessary, unwarranted and purely in furtherance of his client's commercial interests. Doing so was not reasonable, nor was it in fulfillment of a legal obligation.

POSSIBLE POTENTIAL DEFENCE CONTENTIONS/ STRATEGIES AGAINST SUCH PROVISIONS

Dealing in securities while in possession of UPSI shall be presumed to be malafide, unless otherwise the following is established by the defendant/ accused [refer Reg. 4]:

- the transaction is an off-market inter-se transfer between promoters, both of whom are in possession of the UPSI and have consciously indulged in the trade decision.
- the trade was in pursuance of the trading plan submitted to the Company in accordance with Regulation 5;
- transaction and dealing in securities preceded the act of acquiring knowledge of UPSI;
- transaction was structured in a manner to ensure that the extant provisions of the law are not violated;
- no direct relation can be established between the person in possession of UPSI and the person taking trading decisions;
- that UPSI was only being shared on a need to know basis and there was a Chinese Wall preventing any unauthorised access to the same;

12 http://www.fca.org.uk/static/documents/final-notices/ian-charles-hannam.pdf

- even if the dealing in securities was by an immediate relative of a connected person, the UPSI was not communicated by the connected person.

It is pertinent to note that 'presumed guilty' shall be applicable only in case of connected persons. In other cases, the onus to prove guilty shall be on the Board (SEBI).

CODE OF PRACTICES AND PROCEDURES FOR FAIR DISCLOSURE OF UNPUBLISHED PRICE SENSITIVE INFORMATION [REGULATION 8(1)]

As per regulation 8 read with Schedule A of the Regulations, all listed companies shall frame such a code (Code) to disseminate UPSI unanimously without discrimination. The Policy shall inter alia lay down the principles and practices to be followed by a company in the application of this Code. The code of practice along with amendments thereto shall be intimated to the stock exchange where the securities are listed.

TRADING PLAN [REGULATION 5]:

Insider trading regulations never intended to prohibit trades by insiders. In fact, employees of several publicly traded entities hold stock options which they can trade in. However, it must be noted that an insider cannot plea innocence of not having traded based on the UPSI while conducting a trade. Possession of such an information alone shall be sufficient violation in such an instance.

The only recourse to the forgoing can be if the insider can prove that the trades were conducted as part of a pre-existing contract or investment plan for trading in future. Based on this, SEBI has come up with the concept of trading plan, wherein the trades shall be approved by the compliance officer and made public ahead of time.

Under the upcoming corporate scenario, where every trade of an insider shall have to be in nothing but in consonance of the submitted plan, one would really feel like an outsider, if one has ever been an insider. The idea however, seems impractical as sitting at today it is impractical to predict as to what would happen after six months and plan trade accordingly.

DISCLOSURES UNDER THE REGULATION [REGULATION 7]

The concept of disclosure in listed companies is based on the rationale that 'if companies tell us more, insider trading will be worth less[13]'. Unlike periodic disclosures under the erstwhile regulations, the 2015 Regulations envisages event based disclosures of the two following categories:

Initial Disclosure: Every director, promoter and key managerial personnel shall-

- Within June 14, 2015 disclose their shareholding in the particular scrip
- Within 7 days of appointment or becoming a promoter

Note: Initial disclosure shall not be required to be submitted with the stock exchange. Only preservation of the same by the company is required.

Continual Disclosure: Every promoter, director or employee of the Company shall disclose within 2 working days of such transactions the value of which (individually or in aggregate) exceed 10 lakh rupees in a calendar quarter.

The company in return shall file the same with the Stock Exchange within 2 (two) working days of receipt of the above disclosure from the connected persons. Further, the Company may from time to time require other connected persons to make requisite disclosures under the Regulations.

Although, in a layman's view such disclosures are a perfunctory requirement of the law, not many know that it is this disclosure that has formed the basis of investigation and unveiling of several scams in the past. In the case of Sabero Organics Gujarat Limited[14] (Coromondel International Limited), the transaction of insider trading was done between the date of the creation and disclosure of the UPSI. The pattern of trading and the impact of the same on the share prices reveal the difference between a malafide trade and an ordinary trade by a regular market trader. In the instant case the share prices of Sabero had increased from Rs. 58 on May

13 Quote by James Surowiekihttp://www.brainyquote.com/quotes/authors/j/james_surowiecki.html

14 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1432204414395.pdf

16, 2011 (date of creation of UPSI) to Rs. 127 on June 9, 2011 (date of disclosure was May 31). Further, on detailed investigation it was found that the alleged insiders had not traded in the scrip ever before. However, the volume of trade during the stated period was humungous enough to manipulate the share prices.

TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS

Investment transactions in the normal or ordinary course of business[15] need not be reported to the Stock Exchange. In the case of Gujarat NRE Mineral Resources Ltd vs. Securities and Exchange Board of India[16], the Board of FCGL Industries Limited (a core investment company), the Company had decided to liquidate its holding in one of the group companies being the petitioner in the instant case, to generate fund to invest in Australian mines.

While both the mine acquisition transaction and share divestment transaction were approved by FCGL at the same board meeting, its press release only specified the mine acquisition without making public the divestment of shares in Gujarat NRE Coke. The adjudicating officer of SEBI found FCGL guilty of violating the insider trading due to non-disclosure of the divestment of shares as they were found to constitute unpublished price sensitive information.

It was held by the Hon'ble Bench of SAT that FCGL is an investment company whose business is only to make investments in the securities of other companies. It earns income by buying and selling securities held by it as investments. This being the normal activity of an investment company, every decision by it to buy or sell its investments would have no effect, much less material, on the price of its own securities. If that were so then no investment company would be able to function because every time it would buy or sell securities held as investments, it would have to make disclosures to the stock exchange(s) where its securities are listed. Such decisions of an investment company, in our opinion, do not affect the price of its securities.

LIABILITY FOR INSIDER TRADING

The legal responsibility of violating insider trading regulations cannot be avoided merely because the transaction was not the outcome of a quid pro quo arrangement and all parties to the transaction either knew or should have known that the information is an UPSI.

In 1984, the Supreme Court of the United States ruled in the case of *Dirks v. SEC*[17] that tippees (receivers of second-hand information) are liable if they had reason to believe that the tipper had breached a fiduciary duty in disclosing confidential information and the tipper received any personal benefit from the disclosure. Since, Dirks disclosed the information to expose a fraud, rather than for personal gain, nobody was liable for insider trading violations in his case.

Insider trading is a criminal offence and punishable under both SEBI Act as well as Companies Act, 2013. The punishment imposable shall be as per the table below:

Governing provision of law	Punishment
Section 195 of the Companies Act, 2013	• Imprisonment ≤ 5 years or; • [Fine ≥Rs. 5,00,000 and ≤Rs. 25,00,00,000 or; • 3 X Amount of profits made out of insider trading] or; • Both
Section 15G of the SEBI Act, 1992 [As amended by the Securities Laws(Amendment) Act, 2014]	• Fine ≥Rs. 10,00,000 and ≤ 25,00,00,000 or; • 3 X Amount of profits made out of insider trading
Section 24(1) of the SEBI Act, 1992[18] [As amended by the Securities Laws(Amendment) Act, 2002]	• Imprisonment upto 10 years or; • Fine uptoRs. 25,00,00,000 or; • Both
Section 24(2) of the SEBI Act, 1992[As amended by the Securities Laws(Amendment) Act, 2002]	• Imprisonment ≥ 1 month ≤ 10 years or; • Fine uptoRs. 25,00,00,000 or; • Both

ISSUES WITH THE REGULATIONS

Although the new set of Regulations is shining in its novelty, certain provisions are still uncertain, ambiguous and await clarification:

a) The Regulations not only prescribe dealing in securities but also possession and communication of insider information, except were this is in furtherance of, among other things "legitimate purpose". However, the very phrase has not been defined.

b) The definition of connected persons has become wider and thus, practically it may be difficult to identify such persons and apply codes to them as company will also have to disseminate information to all and also inform them of closure of trading window etc. This is going to be burdensome task for big companies with thousands of employees

CONCLUSION

The new regulations seem to be more promising, relevant and for the most part in line with the global regulations on insider trading. The Regulations are all set to ensure better compliance and enforcement. It's certainly not just a step but a leap forward.

15 For understanding Ordinary Course read- http://www.india-financing.com/images/Articles/Ordinary_course_of_business_in_the_context_of_related_party_transactions.pdf
16 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1321605333083.pdf
17 http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=463&invol=646
18 http://www.sebi.gov.in/cms/sebi_data/attachdocs/1379572440984.pdf

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NSL Group
Hyderabad

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Private Placement

Private placement has the advantage of reducing transactional and ongoing costs because of its exemption from many of the extensive Central and State registration and reporting requirements. It also enables a company to structure a more complex and confidential transaction, since those to whom it is offered are typically a small number of sophisticated investors. In addition, a private placement permits more rapid penetration into the capital markets than would a public offering of securities requiring registration with the SEBI.

BACKGROUND

Choosing the right sources of capital is a decision that will influence a company for a lifetime. Most businesses face capital needs at some point in their developmentand requires regular injections of capital to enter new markets, generate growth or develop new product lines. To grow the business, a company can raise money either from the debt market in the form of loans/ debts or from equity market in the form of capital/public offering. Debt markets allow borrowing of funds on a short term basis, while capital markets allow companies to gain long-term funding to support expansion.

Over the last 20 years, India has taken several steps to streamline and strengthen financial market regulations. To enter into capital market, a company issues securities to the investors. Securities not only include shares but also debentures and bonds. In terms of Section 23 of the Companies Act, 2013, a*public company* may issue securities—

(a) to public through prospectus (Public Offer); or
(b) through private placement; or
(c) through a rights issue or a bonus issue.

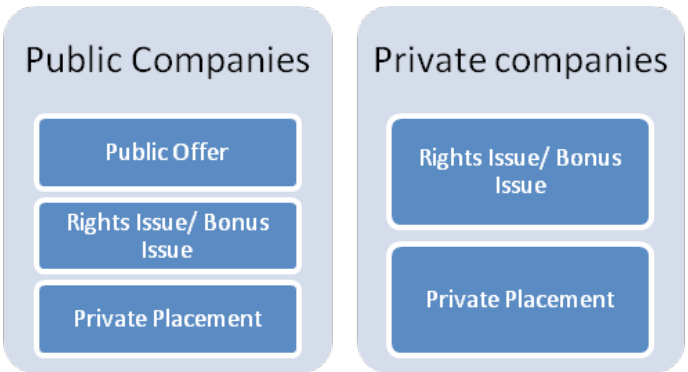
On the other hand a*private company* may issue securities—
(a) by way of rights issue or bonus issue; or
(b) through private placement.

For Public Companies, listed or desirous of listing its securities on arecognized stock exchange in India, the issue of securities is governed by the Companies Act, SecuritiesContract Regulation Act, 1956, the SEBI Act, 1992 and the Issue of Capital and Disclosure Requirements(Regulations), 2009.In the case of all issues by Private Companies, the same is governed by the Companies Act, 2013 andthe power of administration is exercised by the Central

> Keeping in mind the interpretation by the Supreme Court in Sahara case, the Companies Act, 2013 defines Private Placement to mean any offer of securities or invitation to subscribe securities by a company to select group of persons not exceeding 200 [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option], in a financial year through issue of a private placement offer letter.

Government, the Tribunal or the Registrar ofCompanies as the case may be.

For accessing the capital markets through Public Offer, SEBI has laid down entry norms i.e. Profitability Route and QIB Route. Whereas, no such complex, expensive and time consuming process is involved for raising of capital through Private Placement. So, in case of a private company, to generate capital quickly and in cost effective manner, a private placement may make more sense than for going for an Initial Public Offer.



(Different modes of raising Capital- Section 23 of the Companies Act, 2013)

Private placement is the opposite of a public issue (securities are made available for sale in the open market). It is the sale of securities to a relatively small number of select investors as a way of raising capital.

Private placement has the advantage of reducing transactional and ongoing costs because of its exemption from many of the extensive federal and state registration and reporting requirements. It also enables a company to structure a more complex and confidential transaction, since those to whom it is offered are typically a small number of sophisticated investors. In addition, a private placement permits more rapid penetration into the capital markets than would a public offering of securities requiring registration with the SEBI.

ADVANTAGES AND DISADVANTAGES OF USING PRIVATE PLACEMENTS

The advantages to using private placements to raise finance for the business are:

- allow you to choose your own investors;
- allow you to remain a private company;
- provide flexibility in the amount and type of funding;
- require less investment of both money and time;
- provide a faster turnaround on raising finance.

There are also some disadvantages of using private placements to raise business finance such as:

- reduced market for issue of securities;
- limited number of potential investors may not want to invest substantial amounts;

DEFINITION OF PRIVATE PLACEMENT

In the earlier Companies Act, 1956, Private Placement was not defined anywhere. Companies Act, 2013 has made a good attempt by specifically providing provisions for Private Placement to prevent the raising of huge funds from public at large under the shelter of private placement.

Earlier, in terms of Section 67(3) of the Companies Act, 1956, the following offers of shares or debentures or invitation to subscriber for shares or debentures to any section of the public were not regarded as public issues:

a. Where shares or debentures are available for subscription or purchase only to those receiving the offer/invitation.

b. Offer/invitation is domestic concern of the issuer and those receiving the offer/invitation

These above were excluded from the scope of public issue and therefore, impliedly were referred as private placement.

Thereafter, in Sahara India Real Estate Corporation's case, the Supreme Court interpreted the above said Section 67(3) of the Companies Act, 1956 in the sense that if the limit of 49 persons is violated and the shares/ debentures are allotted to more than 49 persons, it would be treated as public issue.

Keeping in mind the interpretation by the Supreme Court in Sahara case, the Companies Act, 2013 defines Private Placement to mean any offer of securities or invitation to subscribe securities by a company to select group of persons not exceeding 200 [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option], in a financial year through issue of a private placement offer letter.

VIOLATION OF SECTION 42

With the enormous increase in the penalties for violation of provisions of Companies Act, 2013, it is necessary to discuss about the penalties for non-compliance or violation of the provisions of Sections in the beginning. So that the Company Secretaries (being the Compliance Officer) of the Company can make the management understand about the seriousness of the relevant provisions of the Companies Act, 2013.

There are two impacts of violation of Section 42:

1. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of the Companies Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. Two points need to be noted here:

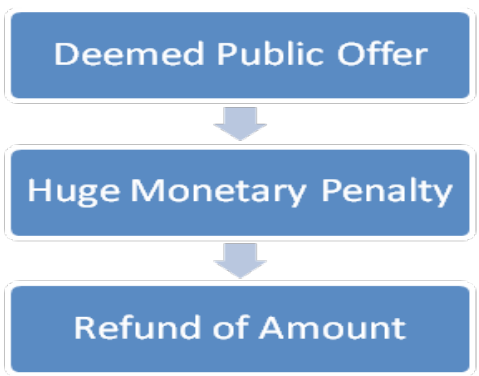
- If a company makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than 200 persons in a financial year, whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public.

  (Not Applicable to NBFCs and Housing Finance Companies, if they are complying with the regulations made by RBI or National Housing Bank respectively)

- If a company makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to not more than 200 persons in a financial year, but in contravention of any other provision of Section 42, then also the same shall be deemed to be an offer to the public.

2. Monetary penalty for contravention of the provisions of Section - 42 -

The company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.



(Effect of violation of Section - 42 of the Companies Act, 2013)

CONDITIONS TO BE FOLLOWED

The following are the conditions to be mandatorily followed by the Companies making private placement of its securities under Section 42 of the Companies Act, 2013:

1. Special Resolution

- Prior approval of the shareholders by way of a Special Resolution in the General Meeting is a pre-condition for

each of the Offers or Invitations.

- In case of non-convertible debentures, it shall be sufficient if the company takes prior approval of shareholders by passing a special resolution only once in a year for all the offers or invitation for such debentures during the year.
- The justification for the price at which the offer or invitation is being made shall be disclosed in the explanatory statement annexed to the notice for the general meeting:

2. Private Placement Offer Letter (PAS-4)

- Private Placement Offer Letter shall be in Form PAS-4.
- It shall be accompanied by an application form. Application form to be:
  a. serially numbered
  b. addressed specifically to the person to whom the offer is made
  c. sent within 30 days of recording the names of such persons either in writing or in electronic mode.
- No person other than the person so addressed in the application form shall be allowed to apply.

3. Number of Persons

The offer of securities or invitation to subscribe securities, shall be made to not more than 200 persons in the aggregate in afinancial year excluding offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option. The limit to be reckoned individually for each kind of security.

(Not Applicable to NBFCs and Housing Finance Companies, if they are complying with the regulations made by RBI or National Housing Bank respectively)

The section limits the maximum number of persons but do not specify any minimum number of persons. But Section 42(2), Explanation II (ii) defines private placement as "offer of securities to a select *group of persons"* which should be implied as more than one person. Therefore, allotment to only one person would not be treated as group of persons and should not be covered under private placement.

4. Value

The minimum investment size shall be not less than Rs.20,000of face value of the securities. *(Not Applicable to NBFCs and Housing Finance Companies, if they are complying with the regulations made by RBI or National Housing Bank respectively)*

5. Completion of Earlier Offers

No fresh offer or invitation shall be made unless the allotments with respect to any offer or invitation made earlier have been completed / withdrawn / abandoned by the company.

6. Payments for Subscription

- Payments for subscription shall be made from the bank account of the person subscribing to such securities. In case of joint holders, it shall be paid from the bank account of the person whose name appears first in the application.
- Cash - Not Acceptable.All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

7. Monies to be kept in separate Bank Account

All the moneiesreceived on application shall be kept in aseparate bank account in a scheduled bank and shall not be utilised for any purpose otherthan—

a) for adjustment against allotment of securities; or

b) for the refund of monies in case the company is unable to allot securities.

8. Allotment of Securities

A company making an offer or invitation shall allot its securities

- within 60 days from the date of receipt of the application money,
- otherwise refund the same within 15 days from the date of completion of sixty days; and
- if fails to repay the application money within the said period, then refund the amount along with interest at the rate of 12% p.a. from the expiry of the sixtieth day.

9. Complete Records of Offers

Offer to be made to only such persons whosenames are recorded by the company prior to the invitation to subscribe. A complete record of such offers shall bekept by the company in Form PAS 5 which is required to filed within 30 days of circulation of offer alongwith PAS 4 (offer letter) with the MCA.

10. Return of Allotment

The Company shall file with the MCA, a return of allotment in PAS 3 within 30 days of allotment, includingthe complete list of all security-holders containing -

a. the full name, address, PAN and E-mail ID of security holders;
b. the class of security held;
c. the date of allotment of security ;
d. the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

CHECKLIST FOR ALLOTMENT OF SHARES THROUGH PRIVATE PLACEMENT

1. To ensure that Articles of Association of the Company contains provisions for private placement.

2. Hold the board meeting for the following items:

   - to finalise the Offer Letter
   - to approve issue of shares through Private Placement
   - to identify persons to whom option will be given
   - to approve draft notice of General Meeting
   - Ensure that the explanatory statement annexed to the notice for the general meeting shall disclose the basis or justification for the price (including premium, if any) at which the offer or invitation is being made.

3. Hold the General Meeting and pass the special resolution and approve the draft offer letter.

4. If the said offer or invitation is for non-convertible debentures, it shall be sufficient if the company has passed a previous special resolution during year for all the offers or invitation for such debentures.

5. File Form MGT-14with the Registrar within 30 days of passing the resolution.

6. Issue Letter of Offer to the proposed subscribers in Form PAS-4 within 30 days of passing of resolution along with application form.

7. To ensure that the offer or invitation shall not be made to not more than 200 persons in the aggregate in a financial year excluding QIBs and employees offered securities under ESOP.

8. To ensure that the value of such offer or invitation per person shall be with an investment size of not less than Rs. 20,000 of face value of the securities.

9. To ensure that all monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

10. Maintain the record of the Bank account from where such payments for subscriptions have been received.

11. Maintain the complete record of private placement offers in Form PAS-5.

12. File form PAS-5along with the private placement offer letter (Form PAS-4)with the Registrar within a period of 30 days of circulation of the private placement offer letter in Form GNL 2 and where the company is listed, the same is also required to be filed with SEBI.

13. Conduct Board Meeting for allotment of shares and make allotment of shares within sixty days of receipt of application money.

14. File the return of allotment of securities with the Registrar within thirty days of allotment in Form PAS-3along with a complete list of all security holders containing the required details.

15. Issue the Share certificates for the new allotment and update minutes book and registers.

Debabrata Dutt, FCS
Practising Company Secretary
D. Dutt & Co.
Company Secretaries
Kolkata

debabrata@ddc.org.in;

Checklist on Contents of Board's Report

The Board's Report is to be prepared on the basis of stand-alone financial statements of the Company and it should contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented. This article outlines the contents to be disclosed in the Board's Report in terms of the Companies Act, 2013 read with the Rules framed thereunder, the Listing Agreements and other enactments.

INTRODUCTION

The Board's Report is an important document attached to Financial Statement in which the Board gives a complete review of the performance of the Company during the year under review and other information. There is no restriction to put any matter in the Board's Report, if the Board intends to mention it. However, certain matters, as part of statutory compliance, needs to be put in the Board's Report in terms of the Companies Act, 2013; the Listing Agreements (for listed companies) and several other enactments, as may be applicable to it.

The Board's Report is to be prepared based on the stand-alone financial statements of the Company and it should contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

The following article consolidates the contents to be disclosed in the Board's Report as per the provisions of the Companies Act, 2013 read with the Rules framed thereunder; the Listing Agreements and other enactments.

The views expressed herein are the personal views of the author and not the views of any Institute.

	Company Type wise Checklist on contents of Board's Report		Company Type						Y - Applicable N - Not Applicable
Sl. No.	**Particulars / Disclosure / Contents**	**Provisions**	**OPC**	**Small**	**Private**	**All Public**	**Select Public [#]**	**Listed**	**Remarks**
[#] Select Public Companies – reference has to be made to detailed provisions in the Act / relevant Rules to decide applicability.									
A. Contents / Disclosures as per Companies Act, 2013									
1	Loan to Employees (Other than director or KMP) for purchase of Company's shares under a Scheme Where the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board of Directors shall, inter alia, disclose in the Board's report for the relevant financial year the following details, namely:- (a) the names of the employees who have not exercised the voting rights directly; (b) the reasons for not voting directly; (c) the name of the person who is exercising such voting rights; (d) the number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company; (e) the date of the general meeting in which such voting power was exercised; (f) the resolutions on which votes have been cast by persons holding such voting power; (g) the percentage of such voting power to the total voting power on each resolution; (h) whether the votes were cast in favour of or against the resolution.	Proviso to Section 67(3) Rule 16(4) of the Cos (Share Capital and Debentures) Rules, 2014	N	Y	Y	Y	Y	Y	
2	Extract of Annual Return [Form MGT-9 is the prescribed format of Extract of Annual Return]	Sec 134(3)(a); Sec 92(3) Rule 12 of the Cos (Mgt and Admin) Rules, 2014	N	Y	Y	Y	Y	Y	
3	Number of Meetings of Board (including dates of Board & Committee meetings indicating the number of meetings attended by each Director in every FY)	Sec 134(3)(b); Secretarial Standard- 1	N	Y	Y	Y	Y	Y	SS-1 mandatory for all companies except OPC with effect from 1st July, 2015

4	Directors' Responsibility Statement to include the following: (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures; (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period; (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (d) the directors had prepared the annual accounts on a going concern basis; and (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. Explanation.—For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.	Sec 134(3)(c); Sec 134(5)(a) to (f)	N	Y	Y	Y	Y	Y	Sec 134(5)(e) is applicable only to listed companies
5	Details in respect of frauds reported by Auditors other than those which are reportable to the Central Government	Sec 134(3)(ca) Sec 143(12)	Y	Y	Y	Y	Y	Y	
6	Independent Directors' Declaration	Sec 134(3)(d); Sec 149(6)	N	N	N	N	Y	Y	
7	Disclosure on Reappointment of Independent Director(s) disclosing his / their eligibility and recommending special resolutions for such re-appointment	Sec 149(10)	N	N	N	N	Y	Y	Event Based Disclosure
8	Company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of directors etc. Nomination and Remuneration Committee shall formulate a policy relating to the remuneration for the directors, KMPs and other employees and such policy shall be disclosed in the Board's Report.	Sec 134(3)(e); Sec 178(1) Sec 178(3)	N	N	N	N	Y	Y	Government Companies exempted vide Notification F No. 1/2/2014-CL.V dated 05.06.2015
9	Explanations or Comments by the Board on every qualification, reservation or adverse remark or disclaimer made by Auditor in his Report	Sec 134(3)(f) & Sec 134(4)	Y	Y	Y	Y	Y	Y	The report of BOD for OPC, mean a report containing explanations, comments by the BOD on every such qualification, reservation, adverse remark, disclaimer made by the auditor in his report.

10	Explanations or Comments by the Board on every qualification, reservation or adverse remark or disclaimer made by a PCS in his Secretarial Audit Report	Sec 134(3)(f)	N	N	N	N	Y	Y	
11	Loans, Guarantees & Investments u/s 186	Sec 134(3)(g)	N	Y	Y	Y	Y	Y	The disclosure can be similar to the requirements of Section 186(4) for disclosure of full particulars of Loans, Guarantees & Investments u/s 186 as would be made in financial statements
12	Related Party Transactions u/s 188(1) To report in prescribed Form AOC-2 *	Sec 134(3)(h) Rule 8(2) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	* CII has taken up the matter with MCA suggesting that section 188(1) does not cover contracts or transactions at arm's length basis in the ordinary course of business. Therefore, item 2 of Form AOC-2 is beyond the scope of the Act and may be deleted. No clarification has yet been received from MCA.
13	State of the Company's Affairs	Sec 134(3)(i)	N	Y	Y	Y	Y	Y	
14	Amounts, if any, proposed to be carried to Reserves	Sec 134(3)(j)	N	Y	Y	Y	Y	Y	
15	Amount recommended to be paid by way of Dividend [Declaration of interim dividend also may be stated here]	Sec 134(3)(k)	N	Y	Y	Y	Y	Y	
16	Material changes & commitments affecting financial position of the company occurring between the date of Financial Statements and the Board's Report	Sec 134(3)(l)	N	Y	Y	Y	Y	Y	
17	Conservation of energy, technology absorption, foreign exchange earnings and outgo (A) Conservation of energy- (i) the steps taken or impact on conservation of energy; (ii) the steps taken by the company for utilising alternate sources of energy; (iii) the capital investment on energy conservation equipments; (B) Technology absorption- (i) the efforts made towards technology absorption; (ii) the benefits derived like product improvement, cost reduction, product development or import substitution; (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)- (a) the details of technology imported; (b) the year of import; (c) whether the technology been fully absorbed; (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and (iv) the expenditure incurred on Research and Development. (C) Foreign exchange earnings and Outgo- The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.	Sec 134(3)(m) Rule 8(3) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	

18	A Statement indicating Development & Implementation of Risk Management Policy including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company	Sec 134(3)(n)	N	Y	Y	Y	Y	Y	
19	Details of CSR Policy & its implementation (applicable to select private and public companies) during the year Report to state the following: - Composition of CSR Committee - Contents of CSR Policy - If 2% of average net profit is not spent the reasons thereof - Annual Report on CSR Activities in the Proforma as prescribed in Annexure to CSR Rules	Sec 134(3)(o) Sec 135 Rule 9 of the Cos (Accounts) Rules, 2014 Annexure to CSR Rules, 2014	N	N	Y	Y	Y	Y	
20	Manner in which Formal Annual Evaluation of Performance of Board, its Committees & Individual Directors has been carried out (Questionnaires to be made ready)	Sec 134(3)(p) Rule 8(4) of the Cos (Accounts) Rules, 2014	N	N	N	N	Y	Y	This shall not be applicable to a State / Central Government Company in case the Directors are evaluated by the Ministry or Department of the State / Central Government which is administratively in charge of the Company and evaluation is done as per its own methodology
21	Financial Summary or highlights	Sec 134(3)(q) Rule 8(5)(i) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	
22	Change in nature of business, if any	Sec 134(3)(q) Rule 8(5)(ii) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	
23	Directors / KMP appointed /resigned during the year	Sec 134(3)(q) Sec 168(1) Rule 8(5)(iii) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	Section 168(1) requires the Company to disclose Director's Resignation in the Board's Report to be laid in immediately following AGM
24	Names of companies which has become / ceased to be Subsidiaries, JVs or Associates during the year	Sec 134(3)(q) Rule 8(5)(iv) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	

25	Following details relating to Deposits under Ch V of CA 2013 - the details relating to deposits, covered under Chapter V of the Act, (a) accepted during the year; (b) remained unpaid or unclaimed as at the end of the year; (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved- (i) at the beginning of the year; (ii) maximum during the year; (iii) at the end of the year; - the details of deposits which are not in compliance with the requirements of Chapter V of the Act;	Sec 134(3)(q) Rule 8(5)(v) & (vi) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	Chapter V on DEPOSITS is not applicable to NBFCs. Board Report to contain disclosure as per relevant NBFC Directions
26	Details of Significant & Material Orders passed by the regulators, courts, tribunals impacting the going concern status and company's operations in future	Sec 134(3)(q) Rule 8(5)(vii) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	
27	Details in respect of adequacy of internal financial controls with reference to Financial Statements	Sec 134(3)(q) Rule 8(5)(viii) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	
28	Separate section containing a report on performance and financial position of each of Subsidiaries, JVs Associates included in the Consolidated Financial Statement of the Company	Rule 8(1) of the Cos (Accounts) Rules, 2014	N	Y	Y	Y	Y	Y	
29	Details of Establishment of Vigil Mechanism, if applicable [Whistle Blower Policy as per Listing Agreement]	Proviso to Sec 177(10) Rule 7 of Cos (Meetings of Board and its Powers) Rules, 2014	N	Y	Y	Y	Y	Y	Applicable to select small and private companies also, if they have accepted deposits from public or borrowed money from Banks / FIs in excess of Rs. 50 Crore
30	Details of any MD / WTD / Director who receives commission from the company and shall not be disqualified from receiving commission or remuneration from the company's holding or subsidiary. Such fact has to be disclosed by the Company in the Board's Report	Sec 197(14)	N	N	N	Y	Y	Y	Event Based Disclosure

31	Director / KMP Remuneration (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; (ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year; (iii) the percentage increase in the median remuneration of employees in the financial year; (iv) the number of permanent employees on the rolls of company; (v) the explanation on the relationship between average increase in remuneration and company performance; (vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company; (vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year; (viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration; (ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company; (x) the key parameters for any variable component of remuneration availed by the directors; (xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and (xii) affirmation that the remuneration is as per the remuneration policy of the company. Explanation.- For the purposes of this rule.- (i) the expression "median" means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one; (ii) if there is an even number of observations, the median shall be the average of the two middle values.	Sec 197(12) Rule 5(1) of Cos (Appt and Remuneration of Managerial Personnel Rules, 2014	N	N	N	N	N	Y	

32	Following details of certain employees WHO: (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees; (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month; (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company. The statement referred to above shall also indicate - (i) designation of the employee; (ii) remuneration received; (iii) nature of employment, whether contractual or otherwise; (iv) qualifications and experience of the employee; (v) date of commencement of employment; (vi) the age of such employee; (vii) the last employment held by such employee before joining the company; (viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) above; and (ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager: Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports.	Rule 5(1) of Cos (Appt and Remuneration of Managerial Personnel Rules, 2014	Y	Y	Y	Y	Y	Y	

33	Companies which have issued Equity Shares with Differential Rights: (a) the total number of shares allotted with differential rights; (b) the details of the differential rights relating to voting rights and dividends; (c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital; (d) the price at which such shares have been issued; (e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued; (f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights; (g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards; (h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of Rule 4. [Distribution Schedule as per Clause 35 of Listing Agreement]	Sec 43 Rule 4(4) of the Cos (Share Capital and Debentures) Rules, 2014	N	Y	Y	Y	Y	Y	Event Based Disclosure
34	Companies which have issued Sweat Equity Shares: (a) the class of director or employee to whom sweat equity shares were issued; (b) the class of shares issued as Sweat Equity Shares; (c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them , if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital; (d) the reasons or justification for the issue; (e) the principal terms and conditions for issue of sweat equity shares, including pricing formula; (f) the total number of shares arising as a result of issue of sweat equity shares; (g) the percentage of the sweat equity shares of the total post issued and paid up share capital; (h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares; (i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.	Sec 54 Rule 8(13) of the Cos (Share Capital and Debentures) Rules, 2014	N	Y	Y	Y	Y	Y	Event Based Disclosure

35	Companies which have offered its shares to its employees under an Employees Stock Option Scheme: (a) options granted; (b) options vested; (c) options exercised; (d) the total number of shares arising as a result of exercise of option; (e) options lapsed; (f) the exercise price; (g) variation of terms of options; (h) money realized by exercise of options; (i) total number of options in force; (j) employee wise details of options granted to;- (i) key managerial personnel; (ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year. (iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.	Sec 62(1)(b) Rule 12(9) of the Cos (Share Capital and Debentures) Rules, 2014	N	Y	Y	Y	Y	Y	Event Based Disclosure
36	Composition of Audit Committee: Composition of Audit Committee If Board has not accepted any recommendation of Audit Committee, the same shall be disclosed along with reason	Sec 177(8)	N	N	N	N	Y	Y	
37	Detailed reasons for voluntary revision of financial statement or Board's Report, in the event it does not comply with Section 129 or Section 134 of the Act	Sec. 131	Y	Y	Y	Y	Y	Y	This section has not yet been notified
38	Secretarial Audit Report has to be attached in Form MR-3.	Sec 204(1)	N	N	N	N	Y	Y	
39	Disclosures as per Part II (IV) of Schedule V – For approval of Remuneration of Non-Promoter Director / Promoter's Non-Related Directors / Professional Directors The following shall have to be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:— (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors; (ii) details of fixed component and performance linked incentives along with the performance criteria; (iii) service contracts, notice period, severance fees; (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.	Schedule V Part II (IV)	N	N	N	Y	Y	Y	Event Based Disclosure

B. Contents / Disclosures as per Listing Agreements									
1	If there are shares in the suspense account : (i) Aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year; (ii) Number of shareholders who approached issuer for transfer of shares from suspense account during the year; (iii) Number of shareholders to whom shares were transferred from suspense account during the year; (iv) aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year; (v) that the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares	Clause 5.A.I.g	N	N	N	N	N	Y	
2	The company shall also disclose the following details in its Annual Report till the time the shares are in the Unclaimed Suspense Account:- (i) Aggregate number of shareholders and the outstanding shares lying in the Unclaimed Suspense Account at the beginning of the year; (ii) Number of shareholders who approached the issuer for transfer of shares from the Unclaimed Suspense Account during the year; (iii) Number of shareholders to whom shares were transferred from the Unclaimed Suspense Account during the year; (iv) Aggregate number of shareholders and the outstanding shares lying in the Unclaimed Suspense Account at the end of the year.	Clause 5.A.II.h	N	N	N	N	N	Y	
3	i) In case the shares are delisted, it shall disclose the fact of delisting, together with reasons thereof ii) In case the securities are suspended from trading, explain the reason thereof iii) The name and address of each stock exchange at which the issuer's securities are listed and also confirm that Annual Listing Fee has been paid to each of the exchange.		N	N	N	N	N	Y	
4	If there are material variations between the projections and the actual utilisation/profitability, the company shall furnish an explanation therefor in the advertisement and shall also provide the same in the Directors' Report.	Clause 43(c)	N	N	N	N	N	Y	
5	**Corporate Governance Report**	Clause 49	N	N	N	N	N	Y	
	The criteria for performance evaluation, as laid down by the Nomination Committee.	49(II)(B)(5)(b)							
	The details of the familiarization programmes for Independent Directors shall be disclosed on the company's website and a web link thereto shall be given in the Annual Report.	49(II)(B)(7)(b)							
	The Board shall lay down a code of conduct for all Board members and senior management of the company, which shall be affirmed by them on annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO	49(II)(E)(2)							
	The policy for determining material subsidiaries shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report.	49(V)(D)							

	The Policy on dealing with Related Party Transactions shall be disclosed on the Website and a web link thereto shall be provided in the Annual Report.	49(VIII)(A)(2)							
	If a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.	49(VIII)(B)							
	All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company.	49(VIII)(C)(1)							
	The following disclosures shall be made on the remuneration of directors: a) All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc. b) Details of fixed component and performance linked incentives, along with the performance criteria. c) Service contracts, notice period, severance fees. d) Stock option details, if any - and whether issued at a discount as well as the period over which accrued and over which exercisable.	49(VIII)(C)(2)							
	The Company shall publish its criteria of making payments to non-executive directors in its Annual Report. Alternatively, this may be put up in the Company's website and reference drawn thereto in Annual Report.	49(VIII)(C)(3)							
	The number of shares and convertible instruments held by non-executive directors	49(VIII)(C)(4)							
	A Management Discussion & Analysis report, which should include discussion on the following matters within the limits set by the company's competitive position: a. Industry structure and developments. b. Opportunities and Threats. c. Segment–wise or product-wise performance. d. Outlook e. Risks and concerns. f. Internal control systems and their adequacy. g. Discussion on financial performance with respect to operational performance. h. Material developments in Human Resources / Industrial Relations front, including number of people employed.	49(VIII)(D)(1)							
	In case of the appointment of a new director or re-appointment of a director, the shareholders must be provided with the following information: a) A brief resume of the director; b) Nature of his expertise in specific functional areas; c) Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and d) Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v).	49(VIII)(E)(1)							
	Disclosure of relationships between directors inter-se.	49(VIII)(E)(2)							
	There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in Annexure - XII to the Listing Agreement and list of non-mandatory requirements is given in Annexure - XIII to the Listing agreement.	49(X)(A) & 49(XI)(B)							

	Also as per Clause 49(XI)(A), the company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in Clause 49 and annex the certificate with the Directors' Report.								
C. Contents / Disclosures as per other applicable laws									
1.	Report to the Shareholders under section 23(1)(b) of the Sick Industrial Companies (Special Provisions) Act 1985 (SICA) Provisions of Section 23(1)(b) of SICA provides that if the accumulated losses of a company as at the end of any financial year have resulted in erosion of fifty per cent or more of its peak net worth during the immediately preceding four financial years the Company within a period of sixty days from the date of finalization of the audited accounts for the financial year is required to: i. report the fact of such erosion to the Board for Industrial and Financial Reconstruction and ii. hold a general meeting of the Shareholders of the company for considering such erosion and forward to every member of the company a report as to such erosion and the causes for such erosion.	Sick Industrial Companies (Special Provisions) Act, 1985							Event based disclosure for potentially sick 'Industrial Undertakings'
2.	Information in Annual Report as per Section 22 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: The Annual Report has to disclose the following: a) The Company has in place an Anti Sexual Harassment Policy in line with the requirements of The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013. b) Internal Complaints Committee (ICC) has been set up to redress complaints received regarding sexual harassment. c) All employees (permanent, contractual, temporary, trainees) are covered under this policy. d) The following is a summary of sexual harassment complaints received and disposed off during the year 20....-20..... * No of complaints received: * No of complaints disposed off:	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013							All entities having female employees, trainees, etc.

Apart from above there are business / sector specific Laws like Banking Regulation Act, Reserve Bank of India Act, Petroleum Act, NBFC Prudential Guidelines, Guidelines for Asset Management Companies, DPE Guidelines, Implementation of official language, Appointment of SC, ST, OBC Employees, Equal opportunities of male and female employees, ISO Certifications, GMP Certifications etc. applicable to specific companies / industries pursuant to which specific disclosures have to be made in respective Companies Annual / Board's Report. These are not included here.

CONCLUSION

As per Section 134(8) of the Companies Act, 2013, if a company contravenes the provisions of Section 134 relating to Board's Report, the company shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25 lacs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 lacs, or with both.

Thus, it is very important that at the time of framing of the Board's Report it is essential to keep the various provisions of the Companies Act, 2013 as well as Listing Agreement relating to the disclosure of contents in the Board's Report in mind, being the minimum contents that should be incorporated therein. However, certain contents which are required to be disclosed in the Board's Report in terms of two different statutory requirement of law but which are common, needs to be taken care of.

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Hiving Off *versus* Demerger

There is a general misconception that 'demerger' and 'hiving-off' are one and the same. However these are conceptually and procedurally two different modes having a common objective. This article throws more light on the two important concepts of corporate restructuring.

INTRODUCTION:

Hiving off or demerger are the mode of the corporate restructuring for transfer of undertaking or division into subsidiary or separate entity. The reason for hiving off or demerger can be for creating effective management model, raising capital through separate entity, obtaining better economies of scale of operations, availing tax advantage, sell off or divestment of particular business, concentration on core business activities, etc. Both Hiving off or demerger result transfer of undertaking or division, hence hiving off and demerger are commonly misunderstood by the corporate and are considered as one and the same thing. This article analyses the concept of hiving off and demerger from legal and tax perspective.

HIVING OFF

A straight forward hiving-off of any business of the company, for a lump-sum price, is mostly routed through section 180(1)(a) of the Companies Act, 2013, which is an enabling provision. It facilitates sale of business, which the section calls, 'the whole or substantially the whole undertaking or one or more undertakings'. By resorting to the mechanism provided in this section, any company can sell the whole of its business or any one of its businesses as a going concern.

Explanation (i) to the section 180(1)(a) provides that for the purpose of this clause "undertaking" means an undertaking in which the investment of the company exceeds twenty per cent of its net worth as per the audited balance sheet of preceding financial year or an undertaking which generates twenty percent of the total income of the company during previous financial year. Explanation (ii) to the said section provides that the expression "substantially whole of the undertaking" in any financial year means twenty per cent or more of the value of the undertaking as per audited balance sheet of preceding financial year.

In the hiving-off, the business or the undertaking is sold and transferred by the company to the buyer at a pre-determined price, under an agreement between the seller and the buyer. The various properties and assets and their values are not individually identified and determined. The price is a lump-sum or a 'slump-price'.

> a transfer of the undertaking under section 180(1)(a) of the Companies Act is generally in consideration for cash as the words used in the section "the use, disposal or investment of the sale proceeds which may result from the transaction" seem to indicate and they will attract provisions of slump sale under section 50B of the Income Tax, 1961 and capital gains tax will become payable under the same as the transfer under section 180(1)(a) will not fit within the definition of demerger under the Income tax Act, 1961 and the benefits therein shall not be available.

Section 2(42C) of Income Tax Act, 1961 defines Slump Sale as "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1 to section 2(42C) of Income Tax Act, 1961 provides that for the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to section 2(19AA).

Explanation 1 to section 2(19AA) of Income Tax Act, 1961 provides that for the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Section 180(1)(a) falls under the chapter note of "Meeting of board and its powers" and the title of the section reads as "Restrictions on powers of board". In other words it says that a company has the power to sell, lease or otherwise transfer but such a power can be exercised by the Board of directors only after obtaining the consent of the members by way of special resolution. Section 110 read with Companies (Management & Administration) Rules, 2014 provides that item of business under section 180(1)(a) shall be transacted only by means of voting through a postal ballot. Further section 180(4) says that "Any special resolution passed by the company consenting to the transaction such as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction.

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act."

Thus, it can be interpreted to mean that a transfer of the undertaking under this section is generally in consideration for cash as the words used in the section *"the use, disposal or investment of the sale proceeds which may result from the transaction"* seem to indicate and they will attract provisions of slump sale under section 50B of the Income Tax, 1961 and capital gains tax will become payable under the same as the transfer under section 180(1)(a) will not fit within the definition of Demerger under the Income tax Act, 1961 and the benefits therein shall not be available.

Where the company has raised the loan against the security of assets which are being transferred under hiving off or the company has given restrictive covenants to the lenders that it shall not dispose of its whole or substantially whole of assets without the consent of the lenders, the consent of the concerned creditors or lenders is required for hiving off that assets or undertaking.

Under hiving off the rights, liabilities and obligation of creditors, debtors, employees and other affected persons of the undertaking are protected as it provides for going concern concept of the undertaking without any interruption. The buyer of hived off undertaking inherits all the benefits as well as past liabilities of the hived off undertaking. The agreement between the parties for hiving off the undertaking should clearly specify the liabilities of the parties with respect to the period prior to the hiving off.

TAX IMPLICATIONS OF HIVING OFF

Section 50B of the Income Tax Act, provides for special provisions for the computation of Capital Gains in case of slump sale.

Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

DEMERGER

Demerger has not been defined in the Companies Act, 1956 but section 2(19AA) of the Income Tax act defines a Demerger as "Demerger, in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that-

(i) All the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(ii) All the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(iii) The property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(iv) The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(v) The shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) The transfer of the undertaking is on a going concern basis;

(vii) The demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include - (a) The liabilities which arise out of the activities or operations of the undertaking;

(b) The specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(c) In cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

As per section 2(19AAA) of the Income Tax Act, 1961 "demerged company means the company whose undertaking is transferred pursuant to a demerger, to a resulting company. As per Section 2(41A) of the Income Tax Act, 1961 "resulting company means one or more companies including a wholly owned subsidiary to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking, issues shares to shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of the demerger".

Section 391 of the Companies Act, 1956 deals with the right of the companies to enter into a compromise or arrangement (a) between itself and its creditors or any class of them (b) between itself and its members or any class of them. It covers restructuring, merger, demerger and hiving off a unit by the company.

As the present case contemplates transfer of the undertaking to a wholly owned subsidiary and as a consequence of which there shall be a reorganisation of share capital of the transferor company, it falls squarely within the four corners of Section 391 to 394 of the Companies Act, 1956. Section 391 is a complete code in itself. In HCL Infosystems Ltd (2003) 46 SCL 365, it was held by the Supreme court "A scheme which satisfies the requirements of these sections can be sanctioned and there is no need to comply

with the provisions of section 293(1)(a) for sale, lease etc of the company property."

An example of such demerger is the case of *In re: Ultratech Cement Ltd* (2005) 3 CompLJ 110 (Bom). In this case, an application was made for sanctioning a scheme of demerger. The relevant sections of the Companies Act covered the sanctioning of a scheme of demerger. By the application, the cement undertaking of the petitioner, L & T and issue of shares by Cemos, a WOS of L&T to shareholders of L&T and both company continued to exist were prayed for. The Court sanctioned the scheme.

This procedure would make the transfer of undertaking fall within the definition of Demerger under the Income Tax Act, 1961 and certain benefits would become available like Capital gains tax is not attracted [Section 47(Vib)], certain tax reliefs to shareholders of demerged company etc.

Thus, it is necessary that the procedure laid down under Section 391 to 394 of the Companies Act, 1956 be followed as it would fall under "Reconstruction".

PROCEDURE OF DEMERGER

1. Preparation of scheme of demerger-

- The articles should authorise the Board to effect such an arrangement or else the Articles of Association has to be altered by a special resolution.

- A scheme is prepared in consultation with all the interested parties and in principle approval of the board of directors is obtained at the meeting after issuing notice to all the directors as per section 173 of the Companies Act, 2013. Every officer of the company whose duty it is to give notice of the meeting and fails to do so will be liable to penalty of Rs 20000. Appoint an independent valuer for valuing shares to determine the share exchange ratio and merchant banker to give fairness report on valuation of shares / assets done by the independent valuer.

2. Both the demerged company and resulting company must make an application to respective high Courts to take out judge's summons ex parte for a meeting of the members/ creditors or any class of them likely to be affected by the proposed demerger and its details as an exhibit along with an affidavit, after the receipt of observation letter from the stock exchanges.

3. The aforesaid summons shall be in Form no 33 of the Companies (Court) Rules, 1959 and an affidavit in support must be in Form no 34. Affidavit must be before filing, either notarised by the Notary public or sworn before the oath commissioner.

4. In the application for summons the class of members or creditors whose meetings are to be held should be indicated.

5. Upon hearing of the summons or any adjourned hearing thereof, the Judge shall, unless he thinks fit for any reason to dismiss summon, give such directions as he may think necessary in respect of the following matters-

   - Determining the class or classes of creditors and/of members whose meeting have to be held for the purpose of considering the proposed demerger.

   - Fixing the time and place of such meetings.

   - Appointing a chairman or chairmen for the meeting or meetings to be held.

   - Fixing the quorum and the procedure to be followed at the meeting including voting by proxy.

   - Determining the values of the creditors and/or members or of any class whose meetings have to be held.

   - Notice to be given of the meeting and the advertisement of such notice.

   - The time within which the chairman of the meeting is to report to the Court and the result of the meeting.

The order made on the summons shall be in Form No. 35 with such variations as may be necessary.

6. The notice of the meeting to be given to the creditors and/ or members, or to the creditors or members of any class, as the case may be, shall be in Form No. 36, and shall be sent to them individually the chairman appointed for the meeting, or, if the Court so directs, by the company (or its liquidator), or any other person as the Court may direct, by post under certificate of posting to their last known address not less than 21 clear days before the date fixed for the meeting. It shall be accompanied by a copy of the proposed compromise or

arrangement and of the statement required to be furnished under section 393, and a form of proxy in Form No. 37.

7. The notice of the meeting shall be advertised in such newspapers and in such manner as the Judge may direct, not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form No. 38.

8. Furnish to every member entitled to attend the meeting convened by the concerned High Court free of charge and within 24 hours of requisition being made in this behalf a copy of the proposed demerger together with a statement required to be furnished under section 393 of the Companies Act, 1956 unless the same has already been furnished to the member.

9. The chairman appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit not less than seven days before the date fixed for the holding of the meeting or the holding of the first of the meetings, as the case may be showing that the directions regarding the issue of notices and the advertisement have been duly complied with.

10. After the meeting is held as directed by the court, and if in the meeting majority in number representing three-fourths in value of the members or creditors or their class, as the case may be present either in person or by proxy agree to the demerger, the scheme when sanctioned by the Court shall be binding upon all members or creditors or the class as the case may be.

11. The concerned High Court before sanctioning the scheme needs to be satisfied that the company moving the application has disclosed by affidavit or otherwise, all material facts relating o the company, such as the latest financial position of the company, latest auditor's report on the accounts of the company, the pendency of any investigation proceedings under sections 235 to 251 of the Companies Act, 1956 or applicable provisions of Chapter XIV of the Companies Act, 2013 dealing with Inspection, Inquiry and Investigation.

12. Furnish all the material facts and the documents in this behalf along with the application itself for taking out the summons.

13. The chairman has to give a report to the High Court after the demerger is sanctioned by the shareholders and creditors.

14. On such report being given, a petition in Form no 40 of the Companies (Court) Rules, 1959 should be moved for confirming the scheme.

15. The concerned high court shall fix a date of hearing of the petition and a notice will be issued in the newspapers in which the original notice of the meeting was given about ten days before the date of hearing.

16. When the concerned High Court sanctions the scheme, the said court will pass an order and in the order such directions as the court deems fit.

17. The Court shall also direct that a certified copy of the order shall be filed with the ROC within 14 days from the date of order or within such time as the Court may deem fit. The order shall be in Form 41 of Companies (Court) Rules, 1959.

18. After the filing of the order with the ROC, it shall become fully binding and effective.

19. In future, with any memorandum of association that may be issued by the company, a copy of the order of the concerned High Court must be annexed. In case of default, every officer in default is punishable with fine of Rs 100 for each copy in which default is made.

REQUIREMENTS FOR LISTED COMPANIES

1. Clause 24 (f), (g) (h) and (i) of the Listing Agreement[1] provides-

   (f) The company agrees that it shall file any scheme/ petition proposed to be filed before any court or tribunal under sections 391, 394 and 101 of the Companies Act, 1956 with the Stock Exchange, for approval, at least a month before it is presented to the court or tribunal.

   (g) The company agrees to ensure that any scheme of arrangement/amalgamation/merger/reconstruction/ reduction of capital etc to be presented to any court or tribunal does not in any way violate, override or circumscribe the provisions of the securities laws or the stock exchange requirements.

   Explanation: For the purpose of this sub-clause,

1 SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 w.e.f. December 01, 2015

'securities laws' mean the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under section 55A thereof, the rules, regulations, guidelines etc. made under these Acts and the Listing Agreement.

(h) The company agrees that in the explanatory statement forwarded by it to the shareholders under section 393 or accompanying a proposed resolution to be passed under section 100 of the Companies Act 1956, it shall disclose the pre and post arrangement or amalgamation (expected) capital structure and shareholding pattern, and the "fairness opinion" obtained from an Independent merchant bankers on valuation of assets / shares done by the valuer for the company and unlisted company.

(i) The company agrees that, while filing for approval any draft Scheme of amalgamation / merger / reconstruction, etc. with the stock exchange under sub clause (f), it shall also file an auditors' certificate to the effect that the accounting treatment contained in the scheme is in compliance with all the Accounting Standards specified by the Central Government in Section 211(3C) of the Companies Act, 1956.

Provided that in case of companies where the respective sectoral regulatory authorities have prescribed norms for accounting treatment of items in the financial statements contained in the scheme, the requirements of the regulatory authorities shall prevail.

Explanation – For this purpose, mere disclosure of deviations in accounting treatments as provided in para 42 of AS-14 shall not be deemed as compliance with the above.

2. The listed company is required to comply with SEBI Circular no. CIR/CFD/DIL/5/2013[2] dated February 4, 2013 read with SEBI Circular no. CIR/CFD/DIL/8/2013[3] dated May 21, 2013.

Some of important requirements of aforesaid circular are produced herebelow.

4.1. All listed companies undertaking a Scheme of Arrangement under Part IV and Chapter V of Part VI of the Companies Act, 1956, (Amalgamation/Merger/ Reconstruction/ Reduction Of Capital, etc.) are required to submit a valuation report in terms of Para (I) (A) read with Part A, Annexure I of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

4.2. However, 'Valuation Report from an Independent Chartered Accountant' need not be required in cases where there is no change in the shareholding pattern of the listed company / resultant company.

4.3. For the limited purpose of this Circular, 'change in the shareholding pattern' shall mean;

(a) change in the proportion of shareholding of any of the existing shareholders of the listed company in the resultant company; or

(b) new shareholder being allotted equity shares of the resultant company; or

(c) existing shareholder exiting the company pursuant to the Scheme of Arrangement

4.4. Further, a few examples meaning 'no change in shareholding pattern' are illustrated below:

i. In case a listed entity (say, "entity A") demerges a unit and makes it a separate company (say, "entity B");

a. if the shareholding of entity B is comprised only of the shareholders of entity A; and

b. if the shareholding pattern of entity B is the same as in entity A; and

c. every shareholder in entity B holds equity shares in the same proportion as held in entity A before the demerger.

it will be treated as 'no change in shareholding pattern'.

ii. In case a wholly-owned-subsidiary (say, "entity X") of a listed entity is merged with the parent listed company (say, "entity Y"), where the shareholders and the shareholding pattern of entity Y remains the same, it will be treated as 'no change in shareholding pattern'.

4.5. In all other cases, 'Valuation Report from an Independent Chartered Accountant' shall be required.

4.6. For the limited purpose of this Circular, 'resultant company' shall mean a company arising / remaining after the listed company undertakes a Scheme of Arrangement.

5.16(a) Listed companies shall ensure that the Scheme

2 Rescinded w.e.f. December 01, 2015
3 Rescinded w.e.f. December 01, 2015

In case of demerger the consideration to the shareholders of demerged company is the allotment of shares of the resulting company in the share exchange ratio determined by the independent valuer and approved by the shareholders. The tax liability on the shareholders arises in the previous year in which the shareholder transfer the shares and not on allotment of shares by the resulting company.

submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution, in the following cases:

i. Where additional shares have been allotted to Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the listed company, or

ii. Where the Scheme of Arrangement involves the listed company and any other entity involving Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group.

iii. Where the parent listed company, has acquired the equity shares of the subsidiary, by paying consideration in cash or in kind in the past to any of the shareholders of the subsidiary who may be Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the parent listed company, and if that subsidiary is being merged with the parent listed company under the Scheme.

Such Schemes shall also provide that the Scheme shall be acted upon only if the votes cast by the public shareholders in favor of the proposal are more than the number of votes cast by the public shareholders against it. The term 'public' shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.

5.16 (b) For all other cases, the requirements stated at 5.16 (a) shall not be applicable. In such cases, the listed entities shall furnish an undertaking certified by the auditor and duly approved by the Board of the company, clearly stating the reasons for non-applicability of Para 5.16 (a).

5.16 (c) The undertaking as referred to in Para 5.16 (b) above shall be displayed on the websites of stock exchanges and the listed company along with other documents submitted, as stipulated under Para 2, Part A, Annexure I, of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

5.16 (d) Any mis-statement or furnishing of false information with regard to the said undertaking would be viewed seriously and liable for punitive action as per the provisions of applicable laws and regulations.

5.16 (e) For the purpose of this Circular, 'Related Party' shall carry the same meaning as defined under AS 18 or IND AS 24.

Part A of Annexure I of the aforesaid SEBI circular lay downs the requirements for Listed Companies while submitting draft scheme of arrangement and Part B of Annexure I gives the requirements for stock exchanges/listed companies while submitting scheme sanctioned by the Hon'ble High Court.

Para 5 of Part B of Annexure I provides that the transferee entity shall confirm that it has taken steps for listing of its equity shares, within thirty days of the receipt of the order of the Hon'ble High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the transferor entity are/were listed.

3. Under clause 31(c) of the Listing Agreement, a listed company is required to forward to the stock exchange three copies of all the notices, call letters or any other circulars including notices of meetings convened under section 391 or section 394 read with section 391 of the Companies Act, 1956, together with the annexure thereto, at the same time as they are sent to the shareholders, debenture holders or creditors or any class of them or advertised in the press.

4. Under clause 36 of the Listing Agreement, a listed company is immediately required to disclose all material information to all the stock exchanges where the securities are listed, of decision regarding acquisition, merger, de-merger,

amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.

5. As per clause 29 any change in the general character of the business has to be notified to the stock exchanges.

STAMP DUTY PAYABLE ON ORDER OF HIGH COURT SANCTIONING SCHEME OF DEMERGER.

Under Entry 63 of List II (State List) of Seventh Schedule to the Constitution of India, Legislature of any State has exclusive power to make laws for such State or any part thereof with respect with the rates of stamp duty in respect of documents other than of bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

While some of the States in India have enacted their own Stamp Acts others have adopted the Indian Stamp Act, 1899 with their state amendments. Stamp Duty is levied on the instrument.

Section 2(l) of the Maharashtra Stamp Act defines Instrument as "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded but does not include bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. In Hindustan Lever & another v/s State of Maharashtra & another 2004(3) Bom C R 767 it was held that order passed under section 394 of the Companies Act, sanctioning scheme of amalgamation would be an 'instrument' within the meaning of section 2(i) of Bombay Stamp Act which includes every documents by which any right or liability is transferred.

Section 2(g)(iv) of the Maharashtra Stamp Act "conveyance" includes every order by the High Court under section 394 of the Companies Act, 1956 in respect of amalgamation or reconstruction of companies; and every order made by the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 in respect of amalgamation or reconstruction of Banking Companies; by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested, in any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I.

The States like Maharashtra, Gujarat, Karnataka, Rajasthan etc who have enacted their own Stamp Acts have amended the definition of conveyance to levy stamp duty on order of the High Court under Section 394 of the Companies Act, while some of the other States like Madhya Pradesh, Andhra Pradesh etc which have adopted the Indian Stamp Act, 1899 have made state amendments to the definition of conveyance to levy stamp duty on High Court under Section 394 of the Companies Act. While in the Stamp Acts of the States like Delhi, Orissa etc which have adapted Indian Stamp Act, do not find any State amendment for levying stamp duty on the order of High Court under Section 394.

The order of the High Court sanctioning scheme of arrangement under Section 394 is required to be filed with the stamp office for adjudication of stamp duty in the State where the immovable property to be transferred under scheme of arrangement is located and also with stamp office of the States where registered offices of the transferor and transferee companies are situated. The application for adjudication of stamp duty payable on order of High Court should be made within 1 month of pronouncement of the order.

TAX IMPLICATION OF DEMERGER

In case of demerger the consideration to the shareholders of demerged company is the allotment of shares of the resulting company in the share exchange ratio determined by the independent valuer and approved by the shareholders. The tax liability on the shareholders arises in the previous year in which the shareholder transfer the shares and not on allotment of shares by the resulting company.

The assets and liabilities of the undertaking demerged are transferred to the resulting company at the value appearing in the books of accounts of demerged company immediately before the demerger. The resulting company can avail the benefits of unabsorbed depreciation / loss with respect to demerged undertaking.

CONCLUSION

1. In hiving off values are not being assigned to individual assets and liabilities and the sale of undertaking is for a lump sum consideration called slump price. In demerger, valuation of individual assets and liabilities are mandatory.

2. In case of demerger, the shareholders of demerged company has to be issued the shares of resulting company and in case of hiving off the issue of shares does not take place.

3. Demerger results in reorganization of capital where as hiving off does not result in reorganization of capital.

4. In case of demerger, the resulting company has to continue the business of transferred undertaking of demerged company, where as in hiving off it is not so.

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Shut Down of Regional Stock Exchanges a bane or a boon for investors

Considering the fact that the Regional Stock Exchanges had invested substantially in the infrastructure, which included building, hardware and software for automated trading, several initiatives were taken to revive these exchanges so that the infrastructure could be put to productive use.A close perusal of all the guidelines and circulars issued by SEBI for exit of RSEs shows that investor protection and investor empowerment is missing .

EVOLUTION OF REGIONAL STOCK EXCHANGE IN INDIA

As per the present Capital Market regime prevailing in the Country, a stock exchange in India is recognized by the Central Government for the purposes of assisting, regulating or controlling the business of buying, selling or dealing in securities, after it is satisfied that it would be in the interest of the trade and also in the public interest to grant such recognition. This power to grant recognition to a stock exchange is exercised by Securities & Exchange Board of India (SEBI).

Over a period of time, stock exchanges came to be set up almost in every State. These stock exchanges set up regionally were known as the Regional Stock Exchanges (RSEs). The objective of establishing the RSEs was to strengthen the capital augmentation capabilities of companies in the respective geographical locations and at the same time providing a local platform amongst investors across the length and breadth of the country enabling them to convert their savings into investment easily. In other words, RSEs were established with the objective of providing a regional market for raising capital by companies in the respective regions by garnering regional savings to help achieve a balanced regional development and to spread the equity investment option among investors in the country. This objective had been fairly served by the RSEs for a length of time.

With the availability of nationwide access to a liquid market, the need for compulsory listing on the RSEs lost its relevance. Regional listing proved to be an unnecessary burden in terms of cost to companies which were listed on NSE and BSE. SEBI therefore issued the SEBI (Delisting of Securities) Guidelines, 2003 vide circular SMD/Policy/Cir-7/2003 dated February 17, 2003 which, inter-alia, did away with the requirement for existing companies to remain listed on any stock exchange merely because they were incorporated or did business from a region, provided such companies were also listed on either of the two national exchanges.

EMERGENCE OF STOCK EXCHANGES WITH NATIONWIDE TRADING PLATFORMS

The game changing day was the day of establishment of National Stock Exchange in 1994 with nation-wide electronic trading terminals. Bombay Stock Exchange Limited (now BSE Limited) followed the route and converted its manual trading system into a nation- wide electronic trading system. Between 1995 and 1998, all the remaining stock exchanges also converted themselves into electronic exchanges but the problem with RSEs was that they could not expand their reach as competitively as required and subsequently allowing NSE & BSE to capture their respective regions.

This advent of automated trading and advancements in technology facilitated the BSE and NSE to expand their reach across the country. At present, both NSE and BSE have their terminals in more than 400 cities. This had an impact on the trading of securities in RSEs.

In the absence of modern telecommunication and automation, listing of securities of companies was always permitted in more than one exchange. To encourage regional industrial development, the regional companies were compulsorily required to list on the RSE which was closest to the registered office of the company, in addition to any other stock exchange. In addition, shares listed in exchanges were also allowed to be traded on other exchanges as a class of "permitted" securities. It was, therefore, common for one company to be listed on BSE (and later on the NSE) as well as on one or more RSEs and also trade on multiple stock exchanges. But the expansion of the terminals of NSE and BSE across the country provided access to all investors to two large, liquid and deep national markets in all these securities. Other stock exchanges, thus, found little incentive to simultaneously expand their terminals.

HOW RSEs LOST THEIR RELEVANCE

Out of the 22 recognised stock exchanges in India (SEBI has refused renewal of recognition to Mangalore Stock Exchange), NSE and BSE accounted for almost 100% of the total turnover. As far as RSEs were concerned, except for the Calcutta Stock Exchange (CSE), there was no trading on any other stock exchange and even on the CSE, the business was negligible if compared to other running Exchanges. The financial condition of the RSEs was by and large also weak. This state of affairs has been prevailing for the past several years.

A decline in liquidity and dwindling of business in the RSEs was inevitable. As the RSEs ceased to provide a liquid market in active stocks which were also listed on BSE/ NSE, the liquidity in the securities of companies which were exclusively listed on the RSEs also declined. The cost of membership in BSE and NSE was comparatively higher than in the RSEs and all large brokers in the RSEs obtained membership of BSE or NSE. They had little commercial interest in continuing with the RSEs or promoting them. The smaller brokers were not able to garner sufficient resources to obtain membership of the two national exchanges. This, in turn, also led to increase in the number of inactive members in the RSEs. The business done on the RSEs was adversely affected as a result of the cumulative impact of these factors. Whatever business was left, was mainly on account of varied account period settlement cycles across the RSEs which allowed for a product differentiation of sorts among the RSEs.

On deep analysis of the past events and regulatory moves, it can be concluded that three factors have been primarily responsible for this situation of Regional Stock Exchanges:

a) the advent of automated trading and extension of nationwide reach of BSE and NSE which offered a large and liquid market to investors across the country;

b) the introduction of uniform rolling settlement from June 2001 in place of account period settlement with varying settlement cycles and

c) the abolition of the concept of regional listing.

With the availability of nationwide access to a liquid market, the need for compulsory listing on the RSEs lost its relevance. Regional listing proved to be an unnecessary burden in terms of cost to companies which were listed on NSE and BSE. SEBI therefore issued the SEBI (Delisting of Securities) Guidelines, 2003 vide circular SMD/Policy/Cir-7/2003 dated February 17, 2003 which, inter-alia, did away with the requirement for existing companies to remain listed on any stock exchange merely because they were incorporated or did business from a region, provided such companies were also listed on either of the two national exchanges. Freedom was given to companies to list on a stock exchange of their choice. Companies, therefore, chose to remain listed on BSE and NSE and opted for delisting from the RSEs. This resulted in further loss of revenue by way of listing fees for the RSEs.

REGULATORY MOVES TO REVIVE RSEs

Considering the fact that the RSEs had invested substantially in the infrastructure, which included building, hardware and software for automated trading, several initiatives were taken to revive these exchanges so that the infrastructure could be put to productive use.

The first among them was the setting up of the ICSE platform to regroup the RSEs to provide a third national market. The ICSE was promoted in 1998 by 14 RSEs for providing an additional trading platform where the shares listed on any of these 14 exchanges would be traded. The ICSE was thus conceptualized as a stock exchange to provide a common trading platform to members of all participating stock exchanges, mainly with the objective of boosting trade in the securities listed on the participating stock exchanges. It was felt that such trading across different stock exchanges would generate renewed trading interest among investors by providing them an opportunity to trade in large number of shares that were listed on the participating exchanges. But this did not happen. The existing regional order books of the participating exchanges continued. This fragmented the order book and thus depleted the liquidity in the shares exclusively listed and traded on the RSEs. On account of lack of liquidity, ICSE did not succeed.

The second effort was to permit the RSEs to set up broking subsidiaries which could pool the financial resources of regional brokers and of the exchanges and obtain membership of the BSE and NSE. The regional brokers could then act as sub brokers to the subsidiaries (which had registered as brokers) and have access to the markets of BSE and NSE. Even the ICSE set up such a broking subsidiary. Though the scheme maintained the purity of the functions of the exchanges, though dysfunctional, most subsidiaries became successful brokers in the market of other exchange(s). Although the subsidiaries were basically brokers, there were several differences between them and corporate broking firms, primarily because these were subsidiaries of the stock exchanges.

SEBI took the initiative to encourage the BSE and the smaller stock exchanges to set up the BSE Indo Next trading platform as a separate trading platform under the present BOLT trading system of the BSE. It was a joint initiative of the BSE and the Federation of Indian Stock Exchanges (FISE) of which 18 RSEs are members. The BSE IndoNext market was intended to be an SME specific market. The BSE IndoNext trading platform was supposed to be implemented in phases. But it has not yet gone beyond the first phase in which the major.

With a view to inject fresh vigour in the Regional Stock Exchanges and adding transparency and good corporate governance in their management, SEBI introduced Demutualization Scheme in the year 2005.The procedure for Corporatization and Demutualization of stock exchanges laid down in sec. 4B of SCRA envisages that majority of the shareholding of a demutualised stock exchange in India should be held by the public or in any manner as may be specified by SEBI regulations, within a period of one year from the date of publication be SEBI of the order approving the scheme. Any non-compliance with the provisions of C&D scheme, including failure to increase the public shareholding within the stipulated time would result in withdrawal of recognition of a stock exchange under sec. 5(2) of the SCRA. Most of the Stock Exchanges opted for Demutualization and Corporatization and completed the process within the prescribed timeline.

> SEBI has further given an option to exclusively listed companies to opt for voluntary delisting before the de-recognition of the stock exchanges by following the delisting norms of SEBI in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform.

DE-RECOGNITION AND EXIT OF RSEs

Although most of the RSEs were demutualized and corporatized, yet it was difficult for them to restart their trading operations and compete with the running exchanges having nationwide trading terminals. The idea of Government to give a productive use of assets pool lying with these RSEs had failed miserably.

On 29 December, 2008 SEBI issued a Circular prescribing Guidelines in respect of exit option to Regional Stock Exchanges. As per the wordings of the Circular, in case of companies exclusively listed on those derecognized stock exchanges, it shall be mandatory for such companies to either seek listing at other stock exchanges or provide for exit option to the shareholders as per SEBI Delisting Guidelines / Regulations after taking shareholders' approval for the same, within a time frame, to be specified by SEBI, failing which the companies shall stand delisted through operation of law.

Further to this, on May 30, 2012 SEBI came up with Exit Policy for De-recognized/ Non-operational Stock Exchanges directing Stock exchanges where the annual trading turnover on its own platform is less than Rs 1000 Crore to apply before SEBI for voluntary surrender of recognition and exit, at any time before the expiry of two years from the date of issuance of that circular i.e. till May 29, 2014.

The Circular further stated that in case the stock exchange was not able to achieve the prescribed turnover of Rs 1000 Crores on continuous basis or did not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of Circular, SEBI shall proceed with compulsory de-recognition and exit of such stock exchanges, in terms of the conditions as may be specified by SEBI.

With regard to exit option to shareholders of exclusively listed companies, on stock exchanges seeking de-recognition and/ or exit and de-recognised stock exchanges, the following process was prescribed for the exclusively listed companies and SEBI directed the respective exiting exchange to monitor the process given below until its exit:

1) Exclusively listed companies were advised to get listed on any other recognized stock Exchange and such other recognized stock exchanges were supposed to facilitate the listing of exclusively listed companies, and, if required, changes to be carried out in their listing eligibility criteria, in the interest of investors. However, it was clarified by SEBI that Stock exchanges may have differential listing criteria for such exclusively listed companies in respect of Market Capitalization, Dividend paying track record, profitability, and paid-up capital.

2) The exclusively listed companies, which fail to obtain listing on any other stock exchange, will cease to be a listed company and will be moved to the dissemination board by the exiting stock exchange. Therefore, in the interest of investors of exclusively listed companies, a mechanism of dissemination board will be set-up by stock exchanges having nationwide trading terminals.

3) Under this Dissemination Board mechanism, a willing buyer and seller will be given an opportunity to disseminate their offers using the services of brokers of stock exchanges hosting dissemination board. The mechanism of dissemination board shall be given wide publicity for the benefit of the investors of exclusively listed companies. Every stock exchange hosting a dissemination board shall clearly bring out the guidelines in respect of the Dissemination Board on its website.

4) As per the SEBI Circular, the exiting Stock Exchanges will be required to enter into an agreement with at least one of the stock exchanges with nationwide trading terminals providing the Dissemination Board. The SEBI had further clarified that Exchanges having nationwide trading terminal will not have listing agreement with companies which have been referred to their Dissemination Board, however, information received from such companies will be disseminated and the stock exchanges hosting dissemination board shall issue uniform operational guidelines for the dissemination board.

Seven days before expiry of the period as prescribed under SEBI Circular dated May 30, 2012, SEBI came up with a Circular on May 22, 2014, advising all the exclusively listed companies of such non-compliant stock exchanges that these companies may opt for listing in nation-wide exchanges after complying with listing norms of main board or the diluted listing norms, if any, on or before the exit of the exchange, either on voluntary or compulsory basis. Nation-wide stock exchanges shall facilitate the listing of these companies on priority basis in a time bound manner. For this purpose, these nation-wide stock exchanges shall immediately create a separate dedicated cell to expedite processing the listing

requests from such companies.

SEBI has further given an option to exclusively listed companies to opt for voluntary delisting before the de-recognition of the stock exchanges by following the delisting norms of SEBI in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform.For giving an easy delisting way, SEBI has waived the requirements of 'Minimum Public Shareholding' prescribed in Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement on these companies opting for voluntary delisting.

In case of companies exclusively listed in the non-operational stock exchanges that are not traceable or where the data available is more than three years old, the process of inclusion in list of companies identified as 'Vanishing' (maintained by Ministry of Corporate Affairs) may be initiated by the respective stock exchanges.

As per the 'Exit Circular' the exclusively listed companies, which fail to obtain listing on any other stock exchange, which do not voluntary delist or which are not considered as 'Vanishing companies', will cease to be listed company and will be moved to the dissemination board by the existing stock exchange. It shall be the responsibility of the exchanges which are being derecognized either on voluntary or compulsory basis, to place their exclusively listed companies on the dissemination board. These exchanges shall ensure that the database of the exclusively listed company is transferred to SEBI and to those stock exchanges on whose dissemination board, the shares of these companies are available.

OPTIONS WITH COMPANIES LISTED ONLY WITH RSEs

In view of the guidelines issued by SEBI for exit of Regional Stock Exchanges, the companies which were listed on these RSEs are mongering clueless to know exactly what to do next. The number of Companies in these regional exchanges is huge and so many investors in these companies are in a fix regarding their investment in these Companies. The quantum of Companies which are listed on these Regional Stock Exchanges are as follows

Ahmedabad	676	Jaipur	179
Bangalore	255	Ludhiana	290
Bhubaneshwar	46	Madhya Pradesh	268
Calcutta	1875	Madras	664
Cochin	140	OTCEI	108
Coimbatore	96	Pune	173
Delhi	1744	Uttar Pradesh	347
Guwahati	170	Vadodara	325
Source : As per Article published in the Business Line Newspaper			

DIRECT LISTING / SECONDARY LISTING

The Companies which have been referred to Dissemination Board are having Option to apply for Direct Listing / Secondary Listing with Stock Exchanges having nationwide trading terminals namely Bombay Stock Exchange (BSE), National Stock Exchange (NSE) or Metropolitan Stock Exchange (MSE) (earlier MCX-SX).

Summary of the eligibility crieterion fixed by these exchanges can be depicted as per table below:

S.NO.	PARTICULAR	BSE	NSE	MSE
1	Issued and Paid up capital and Net worth and Market capitalization	Paid up share capital should be Rs. 3 Cr. & Net worth should be positive	1. Paid up shall not be less than Rs. 10 cr. & market capitalization should not be less than Rs. 25 cr (Such application is not required in case of listing of securities issued by Government Companies, Public Sector Undertakings, Financial Institutions, Nationalized Banks, Statutory Corporations and Banking Companies. 2. Paid up equity share capital shall not be less than 25 cr. (if market capitalization is less than Rs. 25 crore and equity share should be traded for at atleast 25% of the trading the last twelve months preceding the date of submission of application, on at least one of the stock exchanges where it is traded 3. Market capitalization shall not be less than 50 CR. 4. Net worth of not less than 50 crores in each of the three preceding financial years and company should submit a certificate from statutory auditor.	Minimum issued and paid-up equity capital of Rs. 3 crores and market capitalization of the company shall not be less than Rs. 10 crores. In cases where issued and paid-up equity share capital is less than Rs. 3 crores, market capitalization should be at least Rs. 100 crores

2	Profit making track record	The Company should have profit track record of at least 1 out of 2 immediately preceding financial years based on audited financial results.	Profit track record of at least three years track record of either applicant or promoter/ promoting Company Applicant shall submit Annual reports of three financial year to NSE and also provide a certificate to the exchange in the following:- 1. company has not referred to the BIFR. 2. Net worth has not wiped out by accumulated losses. 3. The Company has not received any winding up petition.	Not prescribed
3	Listing track record with Recognized Stock Exchange	Listed on any Recognized Stock Exchange since last three years	Listed on any other recognized stock exchange for at least last three years or listed on national wide exchange for at least one year	Not prescribed
4	Dividend	No Criteria of Dividend	The applicant has paid dividend in at least 2 out of the last 3 financial years immediately preceding the year in which listing application has been made or The applicant has distributable profits (as defined under section 205 of the Companies Act, 1956) in at least two out of the last three financial years (an auditors certificate must be provided in this regard). or The networth of the applicant is atleast 50 crores	Not prescribed
5	Public Shareholding	As per clause 40(a) at least 25% public shareholding	As per clause 40(a) atleast 25% public shareholding	As per clause 40(a) atleast 25% public shareholding
6	No. of public shareholders	500	Not prescribed	Not prescribed
7	Trading in Compulsory Demat	Minimum of 50% of the public shareholding and 100% of Promoter and Promoter Group Shareholding should be held in dematerialized Form	Minimum of 50% of the public shareholding and 100% of Promoter and Promoter Group Shareholding should be held in dematerialized Form	Minimum of 50% of the public shareholding and 100% of Promoter and Promoter Group Shareholding should be held in dematerialized Form
11	Compliance Status by Company	The company shall furnish the compliance status with the critical clauses of the listing agreement viz. Clauses 15, 16, 31, 35, 40a, 41, 47, 49, 54 and Sec Audit, filings under SEBI regulations/ circulars, SCRA and SCRR for the last 1 year	The company shall furnish the compliance status with the critical clauses of the listing agreement viz. Clauses 15, 16, 31, 35, 40a, 41, 47, 49, 54 and Sec Audit, filings under SEBI regulations/ circulars, SCRA and SCRR for the last 1 year	The company shall furnish the compliance status with the critical clauses of the listing agreement viz. Clauses 15, 16, 31, 35, 40a, 41, 47, 49, 54 and Sec Audit, filings under SEBI regulations/ circulars, SCRA and SCRR for the last 1 year
12	Action against company/ promoters/ promoter group entities/ directors	Where the company or the promoters or promoter group entities or the directors are have been debarred or disciplinary action taken by SEBI or a recognized stock exchange, then a period of at least 1 year has elapsed since the expiry of the debarment period.	Not prescribed	Not prescribed

13	Reference to BIFR or winding up	Should not be referredto BIFR and no winding up order	Company has not referred to the BIFR.	Company has not referred to the BIFR.
14	Company website	Shall have website as per clause 54 Listing Agreement containing information about products, management team, annual reports for last three financial years, shareholding pattern, quarterly results, report on corporate governance, code of conduct, name of the company secretary & compliance officer and contact details, RTA - name and contact details.	Shall have website as per clause 54 Listing Agreement containing information about products, management team, annual reports for last three financial years, shareholding pattern, quarterly results, report on corporate governance, code of conduct, name of the company secretary & compliance officer and contact details, RTA - name and contact details	Shall have website as per clause 54 Listing Agreement containing information about products, management team, annual reports for last three financial years, shareholding pattern, quarterly results, report on corporate governance, code of conduct, name of the company secretary & compliance officer and contact details, RTA - name and contact details
15	SCORES authentication	The company shall also submit nil Investors Complaints Report extracted from SCORES.	The company shall also submit nil Investors Complaints Report extracted from SCORES.	The company shall also submit nil Investors Complaints Report extracted from SCORES.
16.	Processing Fee	Rs. 10 Lakhs	Rs. 1 Lakh	Rs. 3.5 Lakhs

DELISTING OF SHARES

The Companies which are listed with any Regional Stock Exchange may get delisted following the norms prescribed under SEBI (Delisting of Equity Shares) Regulations, 2009. Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform. Further to this, with a view to facilitate voluntary delisting, if they so desire, it was clarified that for such companies as referred to at Para 2(ii) above, the requirements of 'Minimum Public Shareholding' prescribed in Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, shall not be applicable.

One point to be noted here is that Exchanges which have been derecognized or have been given permission to exit by the SEBI can no more give delisting approval. This option is no more available with those Companies listed with derecognized Stock Exchanges. There is no formal guideline for delisting of shares of Companies at Dissemination Board has been given by SEBI.

CONCLUSION

On a perusal and analysis of the eligibility criteria and extant direct / secondary listing guidelines prescribed, it is evident that Exchanges with nationwide trading terminals have not softened the norms of Direct / Secondary Listing as advised by the SEBI Circular. This has somehow created a hindrance to the Companies which are willing to get listed with the Recognized Stock Exchanges. Scrips of Companies which could not be listed on other recognized stock exchanges will become illiquid and ultimately the innocent investors will lose the option to unlock their money stuck in these Companies since many years. Although BSE & MSE have revised their guidelines two three times enabling companies to find it easy to get listed yet NSE has not taken any step in this regard.

If we minutely analyze all the guidelines and circulars issued by the prime capital market regulator, SEBI for exit of RSEs, it becomes crystal clear that investor protection and investor empowerment angle is missing in these guidelines and circulars. Not even a single circular says for creation of dedicated platform where investors who had invested in these regional listed Companies can raise their grievances and get proper redressal of their grievances. SEBI must take care of interest of investors who had invested their hard earned money in these Regional Stock Exchange listed Companies and their money got stuck because of non-functioning of these RSEs. Apart from this, Promoters of several RSE listed Companies are treating these Companies as unlisted one and trying to offload the investment of shareholders which is a gross violation of Good Corporate Governance spirit which is a need of the hour specially in the current capital market situation prevalent in India. These kind of negligent and irresponsible behavior on the part of promoters and other participants will not only make investors feel cheated but at the same time put a big question mark on the credentials of current regulatory framework of the Country which claims to have create a conducive environment for investment having empowered and informed investors at large.

The Regulators and other participants should take immediate action in the context so as to protect investors' interest and empower the investors to safeguard their investments from being washed out because of exit of Regional Stock Exchanges.

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Online Brand Protection and Dispute Resolution Mechanisms under the New Top Level Domains

Under the amended Indian Information Technology Act, 2000 it has become important and urgent for a brand owner to not delay in securing its brand on the internet. Section 43A of the Act places the onus on the right holders [brand owners] to ensure that 'reasonable security procedures' are in place. Organisations including their employees who are negligent in protecting their brand can face huge penalties under Section 43A read with Section 85 if such unauthorised domain names/websites engage in cyber fraud or other illegal activities.

In the last few years internet has become one of the most crucial and integral components of conducting a successful business. This is true not only for Social Media or Internet and e-commerce companies such as Amazon, Facebook, Flipkart, Housing, etc., but for all other companies and brands as well.

Internet has severally impacted the way business has been done by traditional companies. These days, business models, marketing campaigns, products and service offerings, all are developed with due consideration to the internet and its millions of users. It is now safe to say that the 'world wide web' has become an indispensable part of all business strategies and can deliver unbelievable results and success if used wisely and correctly. In fact, many newer business models such as Housing, PayTM, Tinder, Zomato, etc. are entirely based on the internet and have almost zero physical interaction with their consumers or target audience. Thus, an

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> The Trademark Clearinghouse [TMCH] is an ICANN mandated centralized repository of data on trademarks that are registered, court validated, or protected by a statute/treaty. This database provides authenticated information about trademarks to registries and registrars of the new gTLDs. Trademark owners can register their trademarks with the Trademark Clearinghouse by paying the requisite fee - that is 150 USD per trademark registration per year.

important aspect of today's business models is to create a strong brand reputation on the internet by harnessing the reach and interactivity of the internet. Thus, there can be no doubt that domain names today are considered very important as they are the primary address or point of contact of the brand for an internet user. It is for this reason that recently Housing purchased the domain name www.housing.com from its owner for around half a million dollars[1].

However, apart from developing and creating an 'internet' brand it is also very crucial for companies to continuously monitor and safeguard their brand from abuse on the internet. For instance, it is common practice for third parties, unscrupulous persons or competitors to register exact brand identifiers such as domain names or social media accounts [Twitter handles or Facebook usernames] to confuse or mislead internet users. In a recent case[2], the domain name www.firefox.in was transferred to the complainant – Mozila Foundation, when it was found that the domain name (i) was registered by an unauthorised person; and(ii) had pay per click ads. Thus, first and foremost it is absolutely necessary for companies, especially for those companies which have a substantial part of their business model based on the internet, to register all important Generic Top Level Domains [gTLDs] such as .com, .net .org as well as Country Code Top Level Domains [ccTLDs] extensions such as .in, .co.in, etc. [in case of India] to avoid instances of brand abuse. But with the recent introduction of new top level domain names as part of the 'New gTLD Programme'[3] by the Internet Corporation for Assigned Names and Numbers [ICANN], trademark owners may now find it difficult to register domain names across all the gTLDs. Through this programme, which is expected to increase competition as well as choices on the internet for businesses and brand owners, the number of top level domains will increase from 22 to around 1,300 in the coming few years and will include generic terms such as .club, .porn, .rocks, .world, .yoga as well as brand names such as .apple, etc. This increase of generic top level domains from a handful to hundreds of top level domains certainly poses challenges as well as exciting opportunities for businesses.

With this new wave of top level domains it is much easier than before for a cybersquatter to register a domain name related to a brand. Such registrations can lead to serious reputational loss as well as cyber security issues and legal liabilities for the brand if the cybersquatter decides to use the domain name to mislead or defraud internet users. It is for this reason that, as reported in several news articles[4], Taylor Swift - a well known musician as well as Microsoft registered the .porn and .adult domains related to their brands, that is www.taylorswift.porn and www.taylorswift.adult in case of Taylor Swift; and www.office.porn and www.office.adult in case of Microsoft. Such registrations are known as defensive registrations which effectively blocks the chance of someone else registering and misusing these domain names.

It is also pertinent to mention that under the amended Indian Information Technology Act, 2000 it has become important and urgent for a brand owner to not delay in securing its brand on the internet. Section 43A of the Act puts the onus on the right holders [brand owners] to ensure that 'reasonable security procedures' are in place. Organisations including their employees that are negligent in protecting their brand can face huge penalties under Section 43A read with Section 85 of the Act if such unauthorised domain names/websites engage in cyber fraud or other illegal activities. It is thus absolutely necessary for brand owners to have a proactive approach when it comes to securing and protecting their brands on the internet.

To this effect, ICANN has introduced several new Rights Protection Mechanisms [RPMs] to safeguard the rights of trademark owners from cybersquatters and infringers in the new gTLDs. These

1 See http://techcircle.vccircle.com/2013/09/26/housing-co-in-buys-housing-com-domain-national-no-for-1m-as-first-step-for-international-expansion/
2 Mozila Foundation v. Md. Riyaz; INDRP/663
3 See http://newgtlds.icann.org/
4 See http://www.telegraph.co.uk/culture/music/new-music/11489281/Taylor-Swift-and-Microsoft-buy-their-porn-domains.html

RPMs, as well as the more than a decade old Uniform Domain Name Dispute Resolution Policy [UDRP], have been discussed below to assist brand owners effectively manage and secure their brand during their transition to the new and dynamic domain name landscape.

TRADEMARK CLEARINGHOUSE [TMCH][5]

The Trademark Clearinghouse [TMCH] is an ICANN mandated centralized repository of data on trademarks that are registered, court validated, or protected by a statute/treaty. This database provides authenticated information about trademarks to registries and registrars of the new gTLDs. Trademark owners can register their trademarks with the Trademark Clearinghouse by paying the requisite fee - that is 150 USD per trademark registration per year. The benefits of registering a trademark with the Trademark Clearinghouse include access to Sunrise registration for new gTLDs and a notification from the Clearinghouse when a domain matching the registered trademark is being registered. The TMCH can thus be divided into the following two programmes:

TRADEMARK CLAIMS SERVICE

The Trademark Claims Service is an interesting concept and one which clearly protects brand owners. Under this service, during at least the first 60 days of the general registration period for domain names in the new gTLDs, the registry operator or the registrar will notify an applicant if its proposed domain name could impact the rights of a pre-existing trademark owner, based on the information present in the Trademark Clearinghouse. If the domain name is ultimately issued, the Registrar will notify the trademark owner so that it can take action against the registrant if it so desires. In most cases, the applicant will not pursue the registration of the domain name as soon as it is notified that it is infringing on someone else's rights. However, in the rare instance if the applicant does proceed to register the proposed domain name it will be doing so after acknowledging the rights of the brand owner in the said domain name. This acknowledgment on part of the applicant/ registrant of the domain name will certainly be helpful in proving the registrant/applicant's bad faith and infringement of rights in an UDRP or URS proceedings.

SUNRISE PERIOD

Sunrise registration period is a period during which trademark owners can purchase domain names corresponding exactly to their trademark before the registrations are opened for the general public. The Trademark Clearinghouse provides trademark owner[s] access to such Sunrise Periods for the new gTLDs, during which trademark owners can register domain names corresponding to their mark before the registrations are made public.

Thus, by registering a trademark with the Trademark Clearinghouse, a trademark owner will be entitled to the following benefits:

- Participation in every Sunrise Period of the new gTLDs.
- Alerting the applicant if the domain name he is trying to register matches with a trademark registered with the TMCH. The applicant will then have to acknowledge the trademark owner's rights in the said mark before completing the registration.
- Notification to the trademark owner in case the applicant still registers the domain name. This would enable the trademark owner to take immediate action against the domain name registrant.

DEFENSIVE REGISTRATION

Defensive registration of trademarks in the newly launched gTLDs should be the ideal step once the mark has been registered at the Trademark Clearinghouse. However, owing to the vast number of gTLDs which are going to be launched in the coming few years, it will be difficult and impractical for trademark owners to register their trademarks in each and every new gTLD. Moreover, if the mark has been registered with the Clearinghouse, the trademark owner will be intimated as soon as someone registers a domain name identical to their mark and immediate remedial action can thus be taken against the infringer. But in some cases such as the .sucks gTLD this 'wait and see' approach may not be effective since legitimate use as well as parody or criticism websites can prove difficult to challenge under the UDRP[6]. Thus, it is advisable for trademark owners to register multiple domain names – including variants – corresponding to their mark in such 'high risk' gTLDs. Even then, given the dynamic nature of domain names and the multitude of options available to cyber squatters, the best bet for trademark owners will be continuous monitoring of domain names and action against the infringers under the UDRP or URS.

5 See http://www.trademark-clearinghouse.com/

6 Midland Heart Limited v. Uton Black, WIPO Case No.D2009-0076, <midlandheart.com>; Sermo, Inc. v. CatalystMD, LLC, WIPO Case No.D2008-0647, <sermosucks.com>

The Trademark PDDRP is a dispute resolution mechanism under which a complaint can be filed against a Registry Operator that is intentionally and systematically infringing trademarks in its top level domain, either by itself or by aiding third parties. However, the complainant is required to notify the Registry Operator of the alleged infringing conduct and express a willingness to meet and resolve the issue at least 30 days prior to filing a formal complaint.

UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY [UDRP]

The Uniform Domain Name Dispute Resolution Policy [UDRP] was adopted by ICANN in the year 1999 for the resolution of domain name disputes. Since then the UDRP has been highly successful and has been widely used by trademark owners to contest domain name registrations infringing their rights. The UDRP is an out of court dispute resolution mechanism and applies to all gTLDs – new and old[7] as well as a few ccTLDs which have adopted UDRP or a similar variant for the resolution of domain name disputes [for example: .ma for Morocco, .fr for France, etc.]

In order to prevail in a UDRP proceeding, the complainant must prove the following three elements as laid down in paragraph 4[a] of the policy:

i) the domain name registered by the domain name registrant is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

ii) the domain name registrant has no rights or legitimate interests in respect of the domain name in question; and

iii) the domain name has been registered and is being used in bad faith.

If the complaint is successful, the infringing domain name is transferred to the complainant following a ten day waiting period in the event the respondent seeks recourse to a court of competent jurisdiction.

UNIFORM RAPID SUSPENSION SYSTEM [URS]

The Uniform Rapid Suspension system [URS] complements the existing Uniform Domain Name Dispute Resolution Policy [UDRP] by offering an expedited and low cost procedure for rights holders experiencing the most clear-cut and direct cases of infringement under the new gTLDs. While the substantive criteria of the URS[8] are similar to the UDRP, the URS carries a higher burden of proof for complainants. Further, as opposed to UDRP which applies to all gTLDs [and ccTLDs that have adopted it], the URS applies only to new gTLDs and ccTLDs that have adopted the URS.

A complainant under the URS needs to assert and prove, by clear and convincing evidence, that a registered domain name is identical or confusingly similar to a word mark owned by the complainant. In order to be successful in an URS proceeding, the complainant needs to prove the following[9]:

1. The domain name is identical or confusingly similar to a word mark, for which the complainant holds a valid national or regional registration which is in current use, or which has been validated by court proceedings or is specifically protected by statute or treaty.

2. The respondent has no legitimate right to or interest in the domain name.

3. The domain name was registered and is being used in bad faith.

It is to be noted that as opposed to UDRP proceedings where the remedy granted by the panel is the transfer of the disputed domain name, the only remedy a URS panel can grant a successful complainant is the temporary suspension of a domain name for the remainder of the registration period. The said domain name cannot be transferred, deleted or modified during the life of the registration, and the complainant itself is not entitled to use it. The complainant can however extend the suspension for an additional year by extending the registration period and paying the renewal registration fees.

Thus, before proceeding with an URS complaint, the complainant should carefully review the facts of the case and the desired remedy. In case the complainant feels that its case is not that clear-cut or strong, then initiating proceedings under the UDRP may be more prudent.

POST-DELEGATION DISPUTE RESOLUTION PROCEDURES [PDDRP]

The Post-Delegation Dispute Resolution Procedures [PDDRP] have been developed by ICANN as an alternative to court action regarding registries – organizations that own and operate the new

7 The existing/old gTLDs are: .aero, .arpa, .asia, .biz, .cat, .com, .coop, .edu, .gov, .jobs, .info, .int, .mil, .mobi, .museum, .name, .net, .org, .post, .pro, .tel, .travel, and .xxx

8 See http://newgtlds.icann.org/en/applicants/urs/procedure-01mar13-en.pdf

9 Paragraph 1.2.6 of the Uniform Rapid Suspension System [URS]

gTLDs. This administrative procedure allows trademark owners to address certain scenarios and issues where a Registry Operator's operation or use of a domain leads to or supports trademark infringement. The PDDRP thus enables trademark owners to take action against Registry Operators in case they are involved in trademark infringement or related misconduct. The PDDRP has been divided into three different procedures: the Trademark PDDRP, the Public Interest Commitments PDDRP [PICDRP], and the Registration Restrictions PDDRP [RRDRP].

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE [TRADEMARK PDDRP][10]

The Trademark PDDRP is a dispute resolution mechanism under which a complaint can be filed against a Registry Operator that is intentionally and systematically infringing trademarks in its top level domain, either by itself or by aiding third parties. However, the complainant is required to notify the Registry Operator of the alleged infringing conduct and express a willingness to meet and resolve the issue at least 30 days prior to filing a formal complaint. Under the PDDRP, trademark owners will be required to demonstrate, by clear and convincing evidence: i) affirmative conduct by a registry at the top level that infringes a trademark and/or ii) at the second level, affirmative conduct by a registry that amounts to a substantial pattern or practice of specific bad faith intent by the registry to profit from the sale of domain names that infringe trademark rights. If the Trademark PDDRP proceedings result in an Expert Determination in favour of the complainant, that Determination will include recommended remedies which ICANN will have the discretion to impose.

PUBLIC INTEREST COMMITMENTS DISPUTE RESOLUTION PROCEDURE [PICDRP][11]

The PICDRP allows for the submission of an initial report claiming that a Registry may not be complying with one or more of its Public Interest Commitments [PICs] as per Specification 11 of its Registry Agreement with ICANN. Once the complaint has been submitted, ICANN will conduct an initial review of the complaint to ensure that it is complete, has a claim of non-compliance with at least one Public Interest Commitment, and that the reporter/complainant is in good standing. If the report passes this initial review, the complaint will then be sent to the Registry Operator. If the reporter/complainant does not believe the Registry Operator has resolved the complaint within 30 days, ICANN can then, at its discretion, either forward the complaint to a Standing Panel or launch a Compliance Investigation to determine whether there is non-compliance.

10 See http://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf
11 See http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf

REGISTRATION RESTRICTION DISPUTE RESOLUTION PROCEDURE [RRDRP][12]

The RRDRP allows for the submission of an initial report claiming that a Registry Operator is not complying with its mandatory registration restrictions, as stated in Specification 12 of its Registry Agreement with ICANN. Once the complaint has been submitted, ICANN will conduct an initial review of the complaint to ensure that it is complete, has a claim of non-compliance with at least one registration restriction, and that the reporter/complainant is in good standing. If the report passes the initial review, the complaint will be sent to the Registry Operator. If the reporter/complainant still believes that the Registry Operator is not complying with one or more of its registration restrictions, it can then file a complaint with one of the approved RRDRP Service Providers such as the National Arbitration Forum [NAF].

CONCLUSION

Owing to the steep rise in the number of gTLDs, trademark owners should be extra cautious and proactive in securing and defending their brand from cybersquatters and related ilk. As a preventive first step, it is advisable to register all valuable and important trademarks with the Trademark Clearinghouse [TMCH] so as to ensure a certain level of brand protection. Subsequently, defensive domain name registration should also be carried out – atleast in some of the gtLDs. Lastly and most importantly, it is imperative that trademark owners continuously monitor the internet for domain name infringement as well as other types of online brand abuse so as to maintain the reputation, safety and integrity of the brand and the product or service associated with it.

12 See http://newgtlds.icann.org/en/applicants/agb/rrdrp-04jun12-en.pdf

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Corporate Social Responsibility and *Swachh Bharat Abhiyan*

In a bid to invite corporate funds for the flagship schemes, like Swachh Bharat and Clean Ganga initiatives, the Government has decided that corporate contributions towards these two key initiatives will now be counted as CSR spend. However to make it more clear the Ministry of Corporate Affairs has amended Schedule VII of the Companies Act, 2013 to specify that contributions to 'Swachh Bharat Kosh' and 'Clean Ganga Fund' would be an eligible CSR spend.

INTRODUCTION

India is the first country to implement mandatory Corporate Social Responsibility (CSR) for certain class of companies which are required to shell out at least 2 per cent of their three year annual average net profit towards Corporate Social Responsibility activities under the Companies Act, 2013. CSR norms, which came into effect from 1st April, 2014 are applicable to companies having at least Rs. 5 crore net profits, or Rs 1,000 crore turnover or Rs 500 crore net worth. Such companies would need to spend 2 per cent of their 3 year average annual net profit on CSR activities in each financial year, beginning 2014- 15 fiscal year. There is a lot of confusion among corporates whether or not spending on the 'Swachh Bharat Abhiyan' will be considered a valid CSR activity. It is to be noted that various heads for social welfare spending have already been defined by the law. With Prime Minister's emphasis on Swachh Bharat Abhiyan, it is up to the corporates on whether to join or not as the law has clearly stated the heads on which CSR spend has to be done.In a bid to invite corporate funds for the flagship schemes, like Swachh Bharat

and Clean Ganga initiatives, the Government has decided that corporate contributions towards these two key initiatives will now be counted as CSR spend. However to make it more clear the Ministry of Corporate Affairs has amended Schedule

*Views expressed in this artile are the personal views of the authors.

> SEBI has prescribed a format for 'Business Responsibility Report' as a mandatory requirement for top 100 listed companies by a Circular. Other companies are encouraged to use the Business Responsibility Report for making disclosures to their stakeholders. Business Responsibility Report must be submitted as a part of the Annual Report.

VII of the Companies Act, 2013 to specify that contributions to 'Swachh Bharat Kosh' and 'Clean Ganga Fund' would be an eligible CSR spend.

The structure for social welfare spending on CSR activities under the Companies Act, 2013 is absolutely well drafted allowing corporates to spend money towards CSR activities without any ambiguity. The heads under which CSR spend has to be made have been well defined and the spending can be done in a clear way without any ambiguity.

WHAT IS CORPORATE SOCIAL RESPONSIBILITY (CSR)

Corporate Social Responsibility (CSR) is the integration of social and environmental concerns in the business operations of companies. Through CSR, companies achieve a balance of economic, environmental and social imperatives or what is called the 'Triple-Bottom-Line approach' of people, planet and profits, through the business model itself, or through charity, sponsorships or philanthropy.

Corporate social responsibility is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large, to improve their lives in ways that are good for business and for development. The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc from the society. By performing the task of CSR activities, the companies are giving something back to the society.

While the Companies Act, 2013 used CSR as a nomenclature without actually defining it, the notified rules have defined the term 'CSR' to mean and include but not limited to: (i) projects or programs relating to activities specified in the Schedule; or (ii) 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.

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. However, it would be interesting to watch this space and see whether such autonomy (if given) can have any significant multiplier effect - both for the economy and corporates. It also needs to be seen whether such autonomy will allow flexibility to companies in choosing activities from outside the list of Schedule.

REQUIREMENT OF CSR UNDER THE COMPANIES ACT, 2013

Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 requires companies with a net worth of Rs.500 crore or more / turnover of Rs.1,000 crore or more / net profit of Rs.5 crore or more, during any of the three preceding financial years, to contribute at least 2% of the average net profits of the company during the three immediately preceding financial years towards CSR activities as listed out in Schedule VII to the said Act. This is in furtherance of powers provided to the Central Government under Section 469 and Section 467 of the Companies Act to make and alter rules, regulations etc. and any provisions contained in any of the schedule under the said Act.

REQUIREMENT OF CSR UNDER THE EQUITY LISTING AGREEMENT

Clause 55 of the Equity Listing Agreement read with SEBI Circular No. CIR/CFD/DIL/8/2012 dated August 13, 2012 mandates inclusion of Business Responsibility Report (BRR) describing the initiatives taken by them from an environmental, social and governance perspective, in the specified format, as a part of the Annual Report for top 100 listed entities. The said reporting requirement is in line with the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs) notified by Ministry of Corporate Affairs, Government of India, in July, 2011 and shall be effective from financial year ending on or after December 31, 2012.

WHAT IS BUSINESS RESPONSIBILITY REPORT (BRR)?

Business Responsibility Report is a disclosure of adoption of responsible business practices by a listed company to all its stakeholders. This assumes significance considering the fact that these companies have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive disclosures on a regular basis. SEBI has prescribed a format for 'Business Responsibility Report' as a mandatory

requirement for top 100 listed companies by supra cited SEBI's Circular. Other companies are encouraged to use the Business Responsibility Report for making disclosures to their stakeholders. Business Responsibility Report must be submitted as a part of the Annual Report.

A Business Responsibility Report contains a standardized format for companies to report the actions undertaken by them towards adoption of responsible business practices. Business Responsibility Report has been designed to provide basic information about the company, information related to its performance and processes, and information on principles and core elements of the Business Responsibility Reporting. Business Responsibility Report has to be furnished to the Stock Exchange where it is listed in electronic format. Failure to provide Business Responsibility Report will be construed as non-compliance with Clause-55 of Equity Listing Agreement.

PRINCIPLES TO ASSESS COMPLIANCE WITH ENVIRONMENTAL, SOCIAL AND GOVERNANCE NORMS

The following are the nine principles to assess compliance with Environmental, Social and Governance norms which may be referred to while preparing information on responsible business practices in the specified disclosure format.

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability.

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.

Principle 3: Businesses should promote the wellbeing of all employees.

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

Principle 5: Businesses should respect and promote human rights.

Principle 6: Business should respect, protect, and make efforts to restore the environment.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.

Principle 8: Businesses should support inclusive growth and equitable development.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner.

TAXATION OF CSR SPENT AND THE IMPACT ON CORPORATES

Explanation II to sub-section (1) of Section 37 of Income Tax Act, 1961 says that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to under section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. This is effective from 1st April, 2015 and accordingly will apply to the assessment year (AY) 2015-16 and subsequent years.

In this scenario, resulting percentage spent by companies on CSR activities would be higher than the required 2% of the average three years' net profits. It is understood that the aggregate corporate taxation is 33.9% (taking a surcharge of 10%). Since the CSR spend is not included while calculating the net profit, the actual CSR spending percentage can be derived from the following formula: 2% / 1 – 33.9%. Thus the actual CSR spend of companies come to about 3.02% of the net profits, which is much higher than the required 2%.

It has been perceived by many industrialists that 2% of average net profit of the three preceding financial years is a huge spending for companies apart from other mandatory legal obligations. Corporates are already sharing the 30-35% of its net profit with government by corporate taxes as compared to the global average of 24%, so the government should not be diffident for allowing tax sops to CSR spending. If the present tax treatment of CSR continues, then it results in companies only inclined to give funds to those organizations under sections 35 or 80 where they get maximum tax benefit.

CSR CONTRIBUTION FOR SWACHH BHARAT ABHIYAN AND CLEAN GANGA MISSION

'Swachh Bharat Kosh' has been set up to attract funds from various entities, including corporates, for activities related to Swachh Bharat initiative. The 'Clean Ganga Fund' is aimed at pooling money for taking up works to clean the Ganga River. Swachh Bharat and Clean Ganga are among the major initiatives of the Modi government, which has embarked on a major drive to ensure cleanliness across the country. Swachh Bharat Abhiyan and Clean Ganga Mission have been included as CSR activities under Schedule VII of the Companies Act, 2013 from 24th October, 2014. As regards contribution made by companies under CSR towards Swachh Bharat and Clean Ganga, no specific tax exemption has so far been made available.

Section 135 of the Companies Act, 2013, Schedule VII of the said Act, and the Companies (Corporate Social Responsibility Policy)

> For the purposes of section 37(1) of the Income-tax Act any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

Rules, 2014 have come into force only from 1st April, 2014. This is the first year of the implementation of Corporate Social Responsibility (CSR) by companies under the Act. Honorable Prime Minister of India Shri Narendra Modi had launched the Swachh Bharat Abhiyan on 2nd October, 2014. The details of the amount spent and nature of activities undertaken by the companies would be available only after the mandatory disclosures of CSR expenditure are made by companies, which would be due after September, 2015.

GLOBAL SCENARIO OF CSR REQUIREMENTS IN A FEW COUNTRIES

(A) The following countries are not having mandatory guidelines for CSR spending or reporting:

1. U.K. - Voluntary guidelines in place for CSR Reporting
2. U.S.A. - Voluntary reporting by companies in Sustainability reports
3. China - Voluntary reporting by companies in Sustainability reports
4. Germany - Voluntary reporting by companies in Sustainability reports
5. Australia - Voluntary reporting by companies in Sustainability reports

(B) The following countries are having mandatory guidelines for CSR spending or reporting:

1. France - Mandatory reporting for listed companies in Annual reports on CSR activities
2. Denmark - Investors and state owned companies to include information on CSR in their annual financial reports
3. Sweden - Mandatory reporting by state-owned companies
4. Indonesia - Natural Resource based companies must allocate budgets for CSR programs and the programs must be run according to government regulations
5. Malaysia - Compulsory for companies listed on Bursa Malaysia to disclose their CSR activities or practices

IMPLICATIONS FOR INDIAN SUBSIDIARIES OF FOREIGN CORPORATIONS

If the Indian company undertaking CSR is a subsidiary of a United States entity, or if its business activities touch the U.K., then the U.S. Foreign Corrupt Practices Act (FCPA) or the U.K. Bribery Act (UKBA), respectively, as well as other regulatory laws of these jurisdictions, may apply to the Indian company's CSR payments. This may raise serious issues of compliance and liability. The sheer amounts of money that must now be spent on CSR in India have increased substantially the dangers of violating U.S. and U.K. law, and we expect that there will be close scrutiny of companies' CSR payments by United States and U.K. authorities.

TAX EXEMPTIONS FOR COMPANIES' CSR EXPENSES UNDER THE INCOME TAX ACT, 1961

Under the existing provisions of Section 37(1) of the Income Tax Act, 1961 expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income. CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company.

Therefore, for the purposes of section 37(1) of the Income-tax Act any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed as deduction under those sections subject to fulfillment

of conditions, if any, specified therein.

As per Schedule VII of the Companies Act, 2013 there are certain activities which coincides with that of Sections 30 to 35 of the Income Tax Act, 1961 but there is one prior condition that once these activities are chosen, the company should spend on the same activities in the succeeding years. Some of the activities are as follows.

Section 35CCA - Donation for Development Fund (Claim 100%) that includes (i) Rural Development program (Schedule VII) (ii) Association engaged in training programs in rural area (Schedule VII) (iii) National urban poverty eradication fund (Schedule VII). Sec-35CCD - Expenditure on skill development program (Claim-150%). It is covered under CSR Schedule VII as vocational training.

Section 35AC - Any eligible project notified by the Central Government for promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups (Schedule VII).

Section 35(2AA) - Donation to National Lab / IIT etc. (Claim-200%) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government (Schedule VII). under section 80G donation directly or to registered NGO or to PM National Relief Fund, or for promoting family planning etc. 100% (50% in some cases) of such donation is allowed. However, donation in kind is not allowed.

Under section 35AC expenditure incurred on project or scheme for promoting the social and economic welfare or upliftment of the public as approved by the national committee set up for this purpose, 100% of such expenditure is admissible. But the activity of association to whom the donation is made should be stated under Schedule VII of the Companies Act, 2013. under section 35CCD expenditure on skill development project as notified by the board is eligible with weighted deduction of 1.5 times of such expenses.

FAILURE TO COMPLY WITH CSR POLICY

This is the first year of implementation of CSR by companies under the Act. Information on compliance by companies in this regard will be available only after statutory annual returns on CSR are filed by companies, including private sector companies, which are due after September 2015. If the minimum CSR amount is not spent, the board is required to disclose this fact, with reasons therefor, in its annual Director's Report to the shareholders. It is still not clear whether failure to comply is a legal offense of any sort. Thus, the Act is the advent of a new regime in Indian corporate law of the concept of "comply or explain." What is clear, however, is that failure to explain non-compliance is a punishable offence under the Act. It is therefore likely that any company that fails to comply with its CSR obligations will be subject to investigation by the authorities.

HIGHLIGHTS OF THE FIRST YEAR (FY 2014-15) OF THE MANDATORY CSR SPENDING

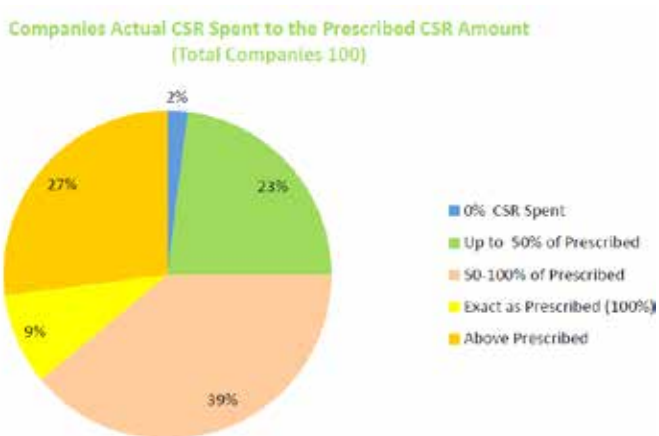
As few companies have announced their annual report of the last financial year (FY 2014-15), it has been exciting to analyze them and find a few points that can present an overview of CSR spending and CSR compliances among the companies.

THE ANALYSIS

NGOBOX have selected 100 BSE-listed companies that have published their annual report and where information about the CSR spending was available as on July 16, 2015. These 100 companies are a good representation of large and medium companies and account for 33 sectors as per the BSE sector classifications. They have kept Public Sector Units and Public Sector Banks out of the purview of this analysis as the required information was not available. The details are depicted in the "Annexure: List of the 100 companies in the study".

Key Findings of the Study

- Nearly one-fourth (27%) of the companies spent more than the prescribed CSR spend and about two-third (64%) of the companies spent less than the prescribed CSR spend.
- 2% of the companies spent zero amount from their prescribed CSR spend and 9% of the companies spent exactly same as the prescribed CSR amount. 39% of the companies spent more than 50% of the prescribed CSR spent but missed the target of the prescribed CSR spend.



Source: NGOBOX

TOP 10 COMPANIES (PERCENTAGE-WISE) IN

SPENDING MORE THAN THE PRESCRIBED CSR

VIP Industries Ltd. emerges as the best performer by spending more than the double of prescribed CSR spend, followed by Tech Mahindra Ltd. and UPL Ltd.

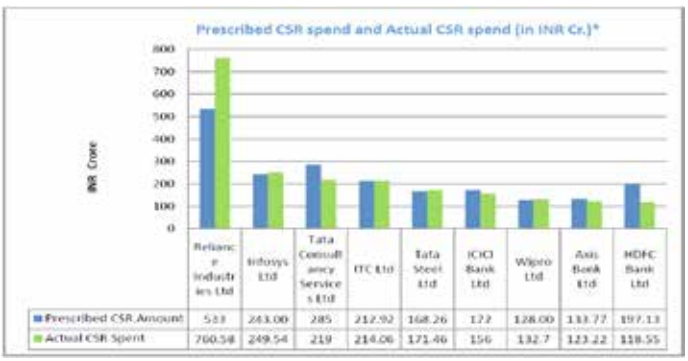
Source: NGOBOX

	Companies	Actual CSR spend to the % of the Prescribed CSR	Prescribed CSR Spent (INR Cr.)	Actual CSR Spent (INR Cr.)
1	VIP Industries Ltd	210.1%	1.19	2.5
2	Tech Mahindra Ltd	172.3%	30.88	53.21
3	UPL Ltd	153.2%	6.93	10.62
4	Reliance Industries Ltd	142.7%	533	760.58
5	Godrej Consumer Products Ltd	129.6%	12.41	16.08
6	Marico Ltd	117.8%	9.50	11.19
7	Torrent Pharmaceuticals Ltd	109.6%	13.69	15.01
8	Bharat Forge Ltd	106.3%	10.56	11.23
9	Tata Power Co Ltd	104.4%	29.80	31.1
10	Wipro Ltd	103.7%	128.00	132.7

Source: NGOBOX

TOP 10 COMPANIES (VOLUME-WISE) IN ACTUAL CSR SPENT

Reliance Industries, Infosys and TCS emerge as the top three CSR spenders, volume-wise with Reliance Industries spending almost 42% more than the prescribed while TCS has missed the target by one-fourth of the amount.



Source: NGOBOX

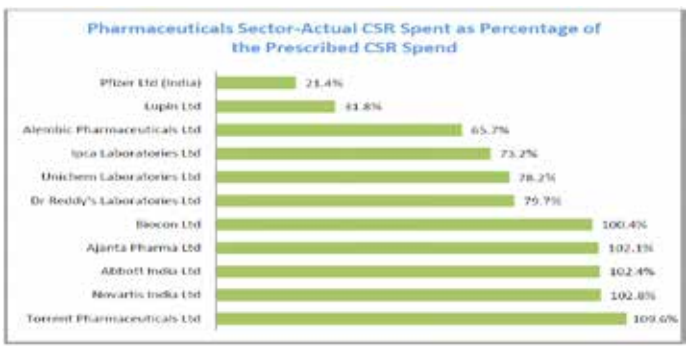
BOTTOM 10 COMPANIES (PERCENTAGE-WISE) IN SPENDING PRESCRIBED CSR SPENDS

Bottom 10 Performers	Prescribed CSR	Actual CSR	
Monsanto India Ltd	1.8	0	0.0%
Nilkamal Ltd	1.15	0	0.0%
Motherson Sumi Systems Ltd	11.7	0.15	1.3%
Oberoi Realty Ltd	6.96	0.16	2.3%
Finolex Cables Ltd	3.03	0.11	3.6%
Dewan Housing Finance Corp Ltd	11.58	0.45	3.9%
Sonata Software Ltd	0.68	0.034	5.0%
IFB Industries Ltd	0.724	0.046	6.4%
Bajaj Electricals Ltd	2.076	0.1628	7.8%
Shriram Transport Finance Co Ltd	38.15	6.924	18.1%

Source: NGOBOX

CSR SPENDING IN PHARMACEUTICAL SECTOR COMPANIES

Out of 11 pharmaceuticals sector companies only 5 companies could spend the prescribed CSR amount.



Source: NGOBOX

Company	Prescribed CSR Spend (INR Cr.)	Actual CSR Spend (INR Cr.)
Torrent Pharmaceuticals Ltd	13.69	15.01
Novartis India Ltd	3.24	3.33
Abbott India Ltd	4.52	4.63
Ajanta Pharma Ltd	3.74	3.82
Biocon Ltd	7.10	7.13
Dr Reddy's Laboratories Ltd	36.6	29.17
Unichem Laboratories Ltd	3.08	2.41
Ipca Laboratories Ltd	9.68	7.09
Alembic Pharmaceuticals Ltd	4.72	3.1
Lupin Ltd	39.6	12.6
Pfizer Ltd (India)	6.02	1.29

Source: NGOBOX

CSR SPENDING IN BANKING & FINANCE SECTOR COMPANIES

Only one company managed to spend the prescribed CSR spend among 17 Banking and Finance sector companies. Almost 50% of the companies could not spend even half of the prescribed CSR spend. While Mahindra & Mahindra Financial Services managed to spend all of the prescribed CSR spend while DHFL could spend only 3.9% of the prescribed CSR making it to the last spot in the list.

Company	Prescribed CSR Spend	Actual CSR Spend	Percentage of the Prescribed
Mahindra & Mahindra Financial Services Ltd	24.87	24.87	100.0%
IDFC Limited	47	46.5	98.9%
Axis Bank Ltd	133.77	123.22	92.1%
ICICI Bank Ltd	172	156	90.7%
Bajaj Holdings and Investment Ltd	5.47	4	73.1%
Bajaj Finserv Ltd	1.48	1	67.6%
Cholamandalam Investment & Finance Co. Ltd.	8.6	5.73	66.6%
SREI Infrastructure Finance Ltd	2.26	1.38	61.1%
HDFC Bank Ltd	197.13	118.55	60.1%
Housing Development Finance Corp	9.93	4.49	45.2%
Manappuram Finance Ltd	10.173	4.46	43.8%
Yes Bank Ltd	38.02	15.71	41.3%
Capital First Ltd.	1.93	0.75	38.9%
Magma Fincorp Ltd.	3.78	1.26	33.3%
Kotak Mahindra Bank Ltd	39.2	11.97	30.5%
Shriram Transport Finance Co Ltd	38.15	6.924	18.1%
Dewan Housing Finance Corp Ltd	11.58	0.45	3.9%

Source: NGOBOX

Annexure: List of the 100 companies in the study

	Company	Prescribed CSR Spend (INR Cr.)	Actual CSR Spend (INR Cr.)	Actual CSR spend as % of the prescribed CSR	Sector
1	Abbott India Ltd	4.52	4.63	102.4%	Pharma
2	Ajanta Pharma Ltd	3.74	3.82	102.1%	Pharma
3	Alembic Pharmaceuticals Ltd	4.72	3.1	65.7%	Pharma
4	Alstom India Ltd	3.4	0.62	18.2%	Electric Equipment
5	Apollo Tyres Ltd	8.47	5.68	67.1%	Tyres
6	Ashok Leyland Ltd	1.72	1.77	102.9%	Automobile
7	Asian Paints Ltd	29.87	19.01	63.6%	Paints & Varnish
8	Atul Ltd.	3.95	3.95	100.0%	Dyes & Pigments
9	Axis Bank Ltd	133.77	123.22	92.1%	Banking & Finance
10	Bajaj Auto Ltd	86.33	42.91	49.7%	Automobile
11	Bajaj Electricals Ltd	2.076	0.1628	7.8%	Domestic Appliances
12	Bajaj Finserv Ltd	1.48	1.0	67.6%	Banking & Finance
13	Bajaj Holdings and Investment Ltd	5.47	4.0	73.1%	Banking & Finance
14	Balkrishna Industries Ltd	11.01	11.01	100.0%	Tyres
15	Berger Paints India Ltd	5.8	1.53	26.4%	Paints & Varnish
16	Bharat Forge Ltd	10.56	11.23	106.3%	Cast & Forging
17	Biocon Ltd	7.10	7.13	100.4%	Pharma
18	Birla Corp Ltd	5.60	5.67	101.3%	Cement
19	Bombay Dyeing & Manufacturing Co Ltd	1.47	1.38	93.9%	Diversified
20	Cairn India Ltd	129.8	70.36	54.2%	Oil & Power, Refinery
21	Capital First Ltd.	1.93	0.75	38.9%	Banking & Finance
22	Carborundum Universal Ltd	2.386	2.183	91.5%	Abrasive
23	Castrol India Ltd	4.73	2.7	57.1%	Lubricants
24	CEAT Ltd	4.02	3.24	80.6%	Tyres
25	Cholamandalam Investment & Finance Co. Ltd.	8.6	5.73	66.6%	Banking & Finance
26	CMC Ltd	4.18	4.18	100.0%	Computer-Hardware
27	Colgate-Palmolive India Ltd	13.17	13.28	100.8%	Personal Care
28	Coromandel International Ltd	13.23	10.28	77.7%	Fertilizers
29	Crompton Greaves Ltd	13.54	6.59	48.7%	Electric Equipment
30	Cummins India Ltd	15.9	8.1	50.9%	Engines
31	Dabur India Ltd	14.66	14.71	100.3%	Personal Care
32	DB Corp Ltd	7.36	3.7	50.3%	Media & Entertainment
33	Dewan Housing Finance Corp Ltd	11.58	0.45	3.9%	Banking & Finance
34	Dr Reddy's Laboratories Ltd	36.6	29.17	79.7%	Pharma
35	eClerx Services Ltd	4.63	4.63	100.0%	Computer-Software
36	Emami Ltd	7.55	7.59	100.5%	Personal Care
37	Finolex Cables Ltd	3.03	0.11	3.6%	Cables
38	Godrej Consumer Products Ltd	12.41	16.08	129.6%	Personal Care
39	Godrej Properties Ltd	2.13	1.47	69.0%	Construction
40	Grindwell Norton Ltd	2.69	0.54	20.1%	Abrasive
41	Havells India Ltd	9.92	9.785	98.6%	Electric Equipment
42	HDFC Bank Ltd	197.13	118.55	60.1%	Banking & Finance
43	Hindustan Unilever Ltd	79.82	82.35	103.2%	Personal Care
44	Housing Development Finance Corp	9.93	4.49	45.2%	Banking & Finance
45	ICICI Bank Ltd	172	156	90.7%	Banking & Finance
46	IDFC Limited	47	46.5	98.9%	Banking & Finance
47	IFB Industries Ltd	0.724	0.046	6.4%	Domestic Appliances
48	Infosys Ltd	243.00	249.54	102.7%	Computer-Software
49	Ipca Laboratories Ltd	9.68	7.09	73.2%	Pharma
50	ITC Ltd	212.92	214.06	100.5%	Diversified
51	JSW Steel Ltd	42.86	43.39	101.2%	Steel
52	Jyothy Laboratories Ltd	1.67	1.21	72.5%	Personal Care
53	Kansai Nerolac Paints Ltd.	6.108	4.508	73.8%	Paints & Varnish
54	Kirloskar Oil Engines Ltd	5.19	5.37	103.5%	Engines
55	Kotak Mahindra Bank Ltd	39.2	11.97	30.5%	Banking & Finance
56	Lupin Ltd	39.6	12.6	31.8%	Pharma
57	Magma Fincorp Ltd.	3.78	1.26	33.3%	Banking & Finance

58	Mahindra & Mahindra Financial Services Ltd	24.87	24.87	100.00%	Banking & Finance
59	Mahindra & Mahindra Ltd	83.03	83.24	100.3%	Automobile
60	Manappuram Finance Ltd	10.173	4.46	43.8%	Banking & Finance
61	Marico Ltd	9.50	11.19	117.8%	Personal Care
62	McLeod Russel India Ltd	4.99	4.3	86.2%	Plantation-Tea-Coffee
63	MindTree Ltd	6.85	4.009	58.5%	Computer-Software
64	Monsanto India Ltd	1.8	0	0.0%	Pesticides & Agro-chem
65	Motherson Sumi Systems Ltd	11.7	0.15	1.3%	Auto Ancillary
66	Navin Florine Int Ltd	3.002	1.317	43.9%	Chemical
67	Nestle India Ltd	15.35	8.51	55.4%	Food Processing
68	NIIT Technologies Ltd	3.628	3.628	100.0%	Computer-Software
69	Nilkamal Ltd	1.15	0	0.0%	Plastics
70	Novartis India Ltd	3.24	3.33	102.8%	Pharma
71	Oberoi Realty Ltd	6.96	0.16	2.3%	Construction
72	Page Industries Ltd	3.552	0.893	25.1%	Textiles
73	Persistent Systems Ltd	5.15	5.196	101.0%	Computer-Software
74	Pfizer Ltd (India)	6.02	1.29	21.4%	Pharma
75	Polaris Consulting & Services Ltd	3.31	3.31	100.0%	Computer-Software
76	Rallis India Ltd	3.5	2.13	60.9%	Pesticides & Agro-chem
77	Ramco Cements Ltd	8.6	7.8	90.7%	Cement
78	Reliance Industries Ltd	533	760.58	142.7%	Oil & Power, Refinery
79	Shriram Transport Finance Co Ltd	38.15	6.924	18.1%	Banking & Finance
80	Sonata Software Ltd	0.68	0.034	5.0%	Computer-Software
81	SREI Infrastructure Finance Ltd	2.26	1.38	61.1%	Banking & Finance
82	SRF Ltd	7.71	4.42	57.3%	Textiles
83	Tata Chemicals Ltd	11.6	10.2	87.9%	Chemical
84	Tata Consultancy Services Ltd	285	219	76.8%	Computer-Software
85	Tata Power Co Ltd	29.80	31.1	104.4%	Oil & Power, Refinery
86	Tata Steel Ltd	168.26	171.46	101.9%	Steel
87	Tech Mahindra Ltd	30.88	53.21	172.3%	Computer-Software
88	Thermax Ltd	9.88	8.43	85.3%	Infrastructure
89	Titan Co Ltd	19.36	12.32	63.6%	Miscellaneous
90	Torrent Pharmaceuticals Ltd	13.69	15.01	109.6%	Pharma
91	Tube Investments Of India	2.99	2.64	88.3%	Miscellaneous
92	TVS Motor Co Ltd	6.3	6.3	100.0%	Automobile
93	Unichem Laboratories Ltd	3.08	2.41	78.2%	Pharma
94	UPL Ltd	6.93	10.62	153.2%	Chemical
95	VIP Industries Ltd	1.19	2.5	210.1%	Plastics
96	Wipro Ltd	128.00	132.7	103.7%	Computer-Software
97	Yes Bank Ltd	38.02	15.71	41.3%	Banking & Finance
98	Zee Entertainment Enterprises Ltd	19.3	16.8	87.0%	Media & Entertainment
99	Zensar Technologies Ltd	3.94	2.57	65.2%	Computer-Software
100	Zydus Wellness Ltd	1.79	1.79	100.0%	Computer-Software

Source: NGOBOX

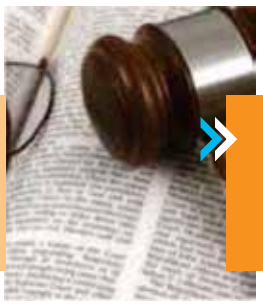
As the present corporate philanthropy policy is not giving any express autonomy to companies in choosing their CSR activities, thereby, not yielding the desired outcome. By allowing only selected list of activities within the Schedule in a sectional manner is ending up in encouraging only a passive participation by corporates towards CSR activities. There is no specific tax deduction or exemption available for all expenditure incurred by domestic companies towards fulfilling their CSR obligations under the Companies Act except in a few cases.

CONCLUSION

An analysis of CSR reports of BSE-listed 100 companies discloses that 27% companies have spent more than prescribed CSR spend and 64% companies have spent less than the prescribed CSR. Only 1 Banking & Finance sector company could spend the prescribed CSR amount. VIP Industries Ltd. emerges the top performer by spending almost double of the prescribed CSR spend. One-fourth of the companies could spend more than the prescribed CSR, whereas two-third missed the target. In order to identify, implement, promote, and monitor CSR initiatives across the Indian spectrum we do need to be armed with knowledge and access, routinely liaise with organizations, individuals and policymakers, with a view to inspire, engage, and connect them on sustainable, environment-friendly, socially supportive, and inclusive growth models and initiatives. As the country attempts to usher in a new era of inclusive growth, we do need to act as enablers / facilitators of that change, and aim to not only inform, but also establish long-term partnerships with different stakeholders, ultimately creating a synergy between available resources and needs of communities. Tax deductibility of the CSR expenses is essential to encourage corporates to participate on a sustainable basis in government's social sector initiative through the CSR regulations. In order to enable corporates to participate fully in the philanthropy space, the participation must start with a more inclusive management of CSR policies where government and industry work side by side.

REFERENCES

1. *The Companies Act, 2013*
2. *The Companies (Corporate Social Responsibility Policy) Rules, 2014*
3. *The Income Tax Act, 1961*
4. *The Equity Listing Agreement*



General Laws

LW: 90:11:2015

SANGHI BROTHERS (INDORE) PVT LTD v.MUKTINATH AIRLINES (P) LTD & ANR [SC]

Arbitration Case (Civil) No.37 of 2014

Ranjan Gogoi, J. [Decided on 15/10/2015]

Arbitration and Conciliation Act, 1996 – agreement to sell a helicopter–advance paid by the buyer–no delivery effected–application to appoint arbitrator–buyer's defence that there is defect in the contract–whether arbitrator could be appointed–Held, Yes.

Brief facts:

The respondent No.1 - Muktinath Airlines Private Limited through its POA respondent No.2 – Galaxy Aviation Incorporation Private Limited entered into MOU dated 17/07/2013 with the petitioner to sell one Helicopter.The price was agreed upon and an advance amount of Rs. 5,00,000/- (Five Lakhs only) was paid by the petitioner to the Respondent 1. The respondent No.1 did not sell the helicopter with in the stipulated period of 2 months and therefore the petitioner approached the Supreme Court for the appointment of an arbitrator.

Decision: Petition allowed.

Reason: I have heard the learned counsels for the parties and I have considered the submissions advanced. Clause 24 of the MOU dated 17th July, 2013 which provides for arbitration is in the following terms:

"24) This MOU will be governed by the provision of Indian Arbitration and Conciliation Act, 1996 and any other modification or re-enactment thereof. The arbitration proceedings shall be held in New Delhi and the language of arbitration shall be English."

There is no manner of doubt that the said MOU dated 17th July, 2013 was executed by and between the petitioner on one hand and respondent No.1 represented by respondent No.2 as its power of attorney holder on the other. Clearly and evidently, sale and purchase of the Helicopter and delivery thereof in terms of the aforesaid MOU dated 17th July, 2013 has not materialized till date. Whether the petitioner is entitled to performance of the terms of the said MOU dated 17th July, 2013 is the precise dispute between the parties. Therefore, in terms of the arbitration clause contained in the said MOU dated 17th July, 2013, the dispute is liable to be referred to arbitration by appointment of an arbitrator. The grounds on which the respondent No.1 seeks to resist the appointment of an arbitrator, namely, that the period contemplated under the MOU dated 4th July, 2013 (one month) within which payment was to be made to the respondent No.1 by the respondent No.2 is over; that clause 12 and clause 19 of the MOU dated 4th July, 2013 had been materially altered by changing the period of payment from one month to three months; and further that the power of attorney was forged by the respondent No.2 are questions that cannot be gone into by the court. These are matters which can be raised before the learned Arbitrator and answered by the said authority.

Consequently and in the light of the above, the court allows the present petition and appoints Shri Justice Mukul Mudgal, Chief Justice (Retd.), Punjab & Haryana High Court, as the Arbitrator.

LW: 91:11:2015

NEON LABORATORIES LTD v. MEDICAL TECHNOLOGIES LTD. & ORS [SC]

Civil Appeal No. 1018 of 2006

Vikramajit Sen & Shiva Kirti Singh, JJ. [Decided on 05/10/2015]

Trademarks – coined name PROFOL is of the Respondent plaintiff– name ROFOL is of the appellant defendant–whether plaintiff is entitled for injunction against the use of name ROFOL by defendant–Held, Yes.

Brief facts:

The Plaintiff-Respondents are engaged in the business of manufacture and marketing of pharmaceutical products and medicinal preparation, and as pleaded by them, have acquired high reputation and goodwill in the market. Hematal Biologicals Ltd. or Core Health Care Ltd., the predecessor-in-title of Plaintiff-Respondents is stated to have introduced the molecular preparation and generic drug "Propofol" in India, in respect of which an application had been filed before the Drug Controller of India on 22.4.1998. Product Permission was received on 2.5.1998 from the Commissioner of Food and Drugs Control Administration. It has been pleaded that the predecessor-in-title of Plaintiff-Respondent No.1 had coined and invented the trademark PROFOL in April 1998 and not applied for registration of the said

trademark on 24.5.1998 in Class V.

After amalgamating with its predecessor-in-title on 17.2.2000, Plaintiff-Respondent No. 1 became the owner of the trademark PROFOL, and has been using it since 2000, when it also applied for its registration. Plaintiff-Respondent No. 2 is a licensee of Plaintiff-Respondent No. 1. On coming to learn that Defendant No. 1, the Appellant before us, had introduced into market the same generic drug under the trademark ROFOL, the Plaintiff-Respondents filed the present suit on 17.7.2005, on the predication that ROFOL is identical and deceptively similar to the Plaintiff-Respondents' trademark PROFOL. As is to be expected, the assertion in the plaint is that the Defendant-Appellant is marketing and passing off its products as that of the Plaintiff-Respondents.

The Defendant-Appellant contended that it had received registration for its trademark ROFOL in Class V on 14.9.2001 relating back to the date of its application viz. 19.10.1992. It contends that the circumstances as on the date of its application are relevant, and on that date, the Plaintiff-Respondents were not entities on the market.

Decision: Appeal dismissed.

Reason: We must hasten to clarify that had the Defendant-Appellant commenced user of its trademark ROFOL prior to or even simultaneous with or even shortly after the Plaintiff-Respondents' marketing of their products under the trademark PROFOL, on the Defendant-Appellant being accorded registration in respect of ROFOL which registration would retrospectively have efficacy from 19.10.1992, the situation would have been unassailably favourable to it. What has actually transpired is that after applying for registration of its trademark ROFOL in 1992, the Defendant-Appellant took no steps whatsoever in placing its product in the market till 2004. It also was legally lethargic in not seeking a curial restraint against the Plaintiff-Respondents. This reluctance to protect its mark could well be interpreted as an indication that the Defendant-Appellant had abandoned its mark at some point during the twelve year interregnum between its application and the commencement of its user, and that in 2004 it sought to exercise its rights afresh. It would not be unfair or fanciful to favour the view that the Defendant-Appellant's delayed user was to exploit the niche already created and built-up by the Plaintiff-Respondents for themselves in the market. The 'first in the market' test has always enjoyed pre-eminence.

Since we are confronted with the legal propriety of a temporary injunction, we must abjure from going into minute details and refrain from discussing the case threadbare, in order to preclude rendering the suit itself an exercise in futility and the decision therein a foregone conclusion. All that we would say in the present Appeal is that since the Plaintiff-Respondents have alleged, and have prima facie supported with proof, that they had already been using their trademark well before the attempted user of an identical or closely similar trademark by the Defendant-Appellant, the former would be entitled to a temporary injunction, in light of the abovementioned 'first in the market' test. We find that the Plaintiff-Respondents have made out a prima facie case. The two other factors in an interim injunction, namely the balance of convenience and an irreparable loss, are both in favour of the Plaintiff-Respondents, given the potential loss of goodwill and business they could suffer should an injunction be denied. The Defendant-Appellant has been injuncted from using the mark ROFOL since 2005, after having launched products bearing the mark only in the previous year, so the balance of convenience is in favour of allowing the injunction to continue.

For manifold and myriad reasons, we are of the opinion that the decision of the Trial Court, as affirmed by the First Appellate Court, is reasonable and judicious, and does not suffer from perversity by any dialectic that the Defendant-Appellant may proffer. The Appeal is accordingly dismissed, but with no order as to costs.

LW: 92:11:2015

UNION OF INDIA v. RELIANCE INDUSTRIES LTD & ORS[SC]

Special Leave Petition (Civil) No.11396 of 2015

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 22/09/2015]

Arbitration and Conciliation Act, 1996–international arbitration–venue of arbitration and applicable law is of London–whether London is the seat of arbitration–Held, Yes.

Brief facts:

The present case arises as a sequel to this Court's decision delivered on 28th May, 2014 in Reliance Industries Limited and another v. Union of India, (2014) 7 SCC 603.

A brief résumé of the facts that led to the judgment of this Court on 28th May, 2014 are that two Production Sharing Contracts (hereinafter referred to as "PSC") for the Tapti and Panna Mukta Fields were executed between Reliance Industries Limited, the Union of India, Enron Oil and Gas India Limited and the ONGC. Clause 33.12 of the PSCs provided as under:

"The venue of conciliation or arbitration proceedings pursuant to this Article, unless the Parties otherwise agree, shall be London, England and shall be conducted in the English Language. The arbitration agreement contained herein shall be governed by the laws of England. Insofar as practicable, the Parties shall continue to implement the terms of this Contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute."

It needs to be mentioned that the PSCs were amended to substitute Enron Oil & Gas India Limited with BG Exploration and Production India Limited on 10.1.2005. Since certain disputes and differences arose between the Union of India and Reliance Industries Limited sometime in 2010, the Union of India invoked the arbitration clause and appointed Mr. Peter Leaver, QC as Arbitrator. Reliance Industries

Limited appointed Justice B.P. Jeevan Reddy as Arbitrator and Mr. Christopher Lau SC was appointed as Chairman of the Tribunal. On 14.9.2011, the Union of India, Reliance Industries Limited and BG Exploration and Production India Limited, agreed to change the seat of arbitration to London, England and a final partial consent award was made and duly signed by the parties to this effect. On 12.9.2012, the Arbitral Tribunal passed a final partial award which became the subject matter of a Section 34 petition filed in the Delhi High Court by the Union of India, dated 13.12.2012. The Delhi High Court by a judgment and order dated 22.3.2013 decided that the said petition filed under Section 34 was maintainable. This Court in a detailed judgment dated 28.5.2014 reversed the Delhi High Court.

Continuing the narration of facts, the present SLP arises out of a judgment dated 3.7.2014 whereby the Delhi High Court has dismissed an application filed under Section 14 of the Arbitration and Conciliation Act, 1996, dated 12.6.2013, on the ground that this Court's judgment dated 28.5.2014 having held that Part-I of the Arbitration Act, 1996 is not applicable, such petition filed under Section 14 would not be maintainable.

It needs further to be pointed out that a review petition against the said judgment dated 28.5.2014 was dismissed on 31.7.2014 and a curative petition filed thereafter was also dismissed.

Decision: Petition dismissed.

Reason: On the facts in the present case, it is clear that this Court has already determined both that the juridical seat of the arbitration is at London and that the arbitration agreement is governed by English law. This being the case, it is not open to the Union of India to argue that Part-I of the Arbitration Act, 1996 would be applicable. A Section 14 application made under Part-I would consequently not be maintainable. It needs to be mentioned that Petitioner's valiant attempt to reopen a question settled twice over, that is by dismissal of both a review petition and a curative petition on the very ground urged before us, must meet with the same fate. The argument citing the case of Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613, that *res judicata* would not attach to questions relating to jurisdiction, would not apply in the present case as the effect of clause 34.2 of the PSC raises at best a mixed question of fact and law and not a pure question of jurisdiction unrelated to facts. Therefore, both on grounds of *res judicata* as well as the law laid down in the judgment dated 28.5.2014, this application under Section 14 deserves to be dismissed. It is only after moving under the UNCITRAL Arbitration Rules and getting an adverse judgment from the Permanent Court of Arbitration dated 10.06.2013 that the present application was filed under Section 14 of the Arbitration Act two days later i.e. on 12.6.2013. Viewed from any angle therefore, the Delhi High Court judgment is correct and consequently this Special Leave Petition is dismissed.

Tax Laws

LW: 93:11:2015

SPENTEX INDUSTRIES LTD v.COMMISSIONER OF CENTRAL EXCISE & ORS [SC]

Civil Appeal No. 1978 of 2007 with batch of appeals.

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 09/10/2015]

Central Excise – export of goods–duty paid on inputs as well as on the finished goods–assesse claimed refund of both these duties–department's contention is that either one of the duty only will be allowed–whether tenable–Held, No.

Brief facts:

In all these appeals, the basic question of law which arose for consideration was as to whether or not the manufacturer/exporter was entitled to rebate of the excise duty paid both on the inputs and on the manufactured product, when excise duty was paid on a manufactured product and also on the inputs which had gone into manufacturing the product and such manufactured product was exported?

It may be pointed out at the outset that, as per the scheme provided by the relevant Rules two options are admissible in respect of exemption from excise duty which is to be given when the goods manufactured are meant for export and are actually exported. A manufacturer/exporter can either export the said goods without payment of duty by executing a bond to the effect that goods are meant for export and would be actually exported and also undertakes to satisfy other stipulated conditions, to earn the exemption from payment on excise duty. Other option is to pay the duty on intermediate products and/or final products and thereafter claiming rebate from the Government once the goods are actually exported. When the manufacturer/exporter exercises first option, admittedly no duty is to be paid either on intermediate products or on final products. However, the dispute has arisen when second option is executed. In such a case, the Department has taken

the stand that as per the relevant rules, the rebate is admissible in respect of one duty alone, i.e., either on the duty paid excisable goods or duty paid on materials used in the manufacture or processing of such goods but not on both the final as well as intermediate products. The authorities below, as would be noticed, in all these cases have accepted the version of the Revenue. Therefore, in these four appeals, assessees are the appellants.

Decision: Appeals allowed.

Reason: After giving due consideration to the respective submissions, in the light of statutory scheme envisaged for grant of rebate in the Act and Rules, we are constrained to hold that the High Court has not taken correct view, which we feel is a myopic view and ignores the overall scheme pertaining to grant of rebate in respect of goods exported out of India. There are multiple reasons for arriving at this conclusion which are discussed hereinafter.

It is manifest from the reading of the aforesaid Rules of 1944 that from the very beginning, two alternative methods were provided enabling an exporter of goods to get rid of the burden of paying the excise duty; both on excisable goods as well as on materials used in the manufacture of goods. The exporter could either claim rebate when the duty was paid. Or else, he was free not to pay excise duty at all on both types of goods by executing a bond in the prescribed form and fulfilling the conditions prescribed in this behalf. The grant of rebate, in either of the options, has always been in respect of both kinds of excise duties, i.e. on the final product that is exported as well as on the intermediate product on which excise duty is paid/payable and the same is used as raw material in the manufacture of goods. Under these Rules also, Notification No. 41/94- CE(NT), dated September 12, 1994 and Notification No. 42/94-CE(NT), dated September 21, 1994 were issued for grant of rebate of duty on export of all excisable goods, except minerals oils and ship stores and rebate on materials used in manufacture of goods exported out of India, respectively.

The aforesaid Rules of 1944 were replaced by Central Excise Rules, 2001. In these rules, relevant provisions were Rules 18 and 19. Under these Rules also similar Notifications were issued, i.e., Notification No. 40/2001-CE(NT) dated June 26, 2001 and Notification No. 41/2001-CE(NT) dated June 26, 2001 providing for rebate of whole of duty on excisable goods when exported as well as rebate of inputs used in manufacture/processing of export goods. Likewise, Notifications 40 and 41 dated June 26, 2001 were issued under Rule 19 of these Rules.

Central Excise Rules, 2001 were superseded by the present Rules, viz. Central Excise Rules, 2002 and these Rules provide two alternatives to the exporter enabling him to get the benefit of exemption from paying the excise duty. Under Rule 19, exporter is not required to pay any excise duty at all. At the time of removal of these goods from the factory gate of the producer or the manufacturer or the warehouse or any other premises, he is supposed to comply with the conditions, safeguards and procedure, as may be notified by the Board. Such a procedure provides for execution of a bond which, inter alia, lays down the condition that the goods which are cleared are actually meant for export and he is to furnish the proof that those goods are actually exported. What is important is that when the exporter opts for this method, with the approval of the Commissioner, he is not required to pay duty either on the final product, i.e., on excisable goods or on the material used in the manufacture of those goods. The intention is loud and clear, namely, the goods which are meant for exports are free from any excise duty. It extends not only to the material which is used in the manufacture of goods but also on the goods that are produced and ultimately exported. Once we keep in mind this scheme, it cannot be the intention of the Legislature to provide rebate only on one item in case a particular exporter/manufacturer opts for other alternative under Rule 18, namely, paying the duty in the first instance and then claiming the rebate. Giving such restrictive meaning to Rule 18 would not only be anomalous but would lead to absurdity as well. In fact, it would defeat the very purpose of grant of remission from payment of excise duty in respect of the goods which are exported out of India. It may also lead to invidious discrimination and arbitrary results.

It is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties the government is bound thereby and the rule in-question has to be interpreted in accord with this understanding of the rule maker itself.

The aforesaid discussion leads us to inevitable conclusion, namely, that the exporters/appellants are entitled to both the rebates under Rule 18 and not one kind of rebate. The impugned judgments are, accordingly, set aside allowing these appeals.

LW: 94:11:2015

C.C.E. MUMBAI -IV v. FITRITE PACKERS [SC]

Civil Appeal No. 2733 of 2007

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 07/10/2015]

Central excise–manufacture–printing of specific name on the GI paper–whether constitutes manufacture–Held, Yes.

Brief facts:

The respondent/assessee herein purchased GI paper from the market which is already duty paid base paper. On this paper, the process of printing is carried out by the assessee according to the design and specifications of the customers depending on their requirements. This printing is done in jumbo rolls of GIP twist wrappers. Bulk orders are received from Parle, which needs the said paper as a wrapping/ packing paper for packing of their goods. On the paper, logo and name of the product is printed in colorful form. After carrying out the printing

as per the requirement of the customers, the same is delivered to the customers in jumbo rolls without slitting. The issue is as to whether this printing process amounts to manufacture or not?

Decision: Appeal allowed.

Reason: We have considered the aforesaid submissions of the learned counsel for the parties. In order to discern the principles that are to be applied for ascertaining as to whether a particular process amounts to manufacture, it is not necessary to refer to various case laws on the subject. Our purpose would be served by referring to a recent decision, which was rendered by this very Bench, in the case of *Servo-Med Industries Pvt. Ltd.* v. Commissioner of Central Excise, Mumbai 2015 (319) ELT 578 (SC).Our reason for saying so is that in this decision many earlier judgments are taken note of, considered and principles laid down therein are culled out in four categories of cases as under:

(1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.

(2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

(3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

(4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place.

On the facts of the present case, it is to be determined as to whether the case would fall under category (2) or category (4). We have already taken note of printing process. A cursory look into the same may suggest, as held by the Tribunal, that GI paper is meant for wrapping and the use thereof did not undergo any change even after printing as the end use was still the same, namely, wrapping/ packaging. However, a little deeper scrutiny into the facts would bring out a significant distinguishing feature; a slender one but which makes all the difference to the outcome of the present case. No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. We are, therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier.

As a result, present appeal is allowed setting aside the order of the Tribunal and restoring the Order-in-Original passed by the Adjudicating Authority.

LW: 95:11:2015

CCE, NAGPUR v.ISPAT INDUSTRIES LTD [SC]

Civil Appeal No. 637 of 2007

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 07/10/2015]

Central excise–freight including insurance–whether includible in the assessable value–Held, No.

Brief facts:

The issue involved in the present appeal is whether, by virtue of a transit insurance policy in the name of the manufacturer, excise duty is liable to be recovered on freight charges incurred for transportation of goods from the factory gate to the buyer's premises, treating the buyer's premises as the place of removal.

Ispat Industries Limited (Ispat), the respondent herein, is engaged in the manufacture of H.R. sheets/coils, C.R. sheets/coils, and Galvanized/colour coated/sheets. Intelligence revealed that Ispat were indulging in evasion of central excise duty by a mis-declaration that their factory gate was the place of removal, and not the buyer's premises, consequent to which freight charges recovered from their buyers was sought to be added in determining the amount of central excise duty payable by them. The period involved in the present appeal is from 28.9.1996 to 31.3.2003. Five show cause notices were issued to the respondents stating that the property in goods manufactured by them remained with Ispat while the goods were in transit as Ispat had taken out an insurance policy to cover the risk of loss or damage to the goods while in transit. Purchase orders as well as agreements with transporters did not suggest that the transporters were taking delivery on behalf of the buyers.

It was thus stated that the buyer's place or the place of delivery should be treated as the place of removal of the goods for the purpose of Section 4 of the Central Excise Act, and this being so,

the necessary consequence would be that the freight charges paid by the buyers to Ispat ought to be included in the excise duty payable by Ispat.

Decision: Appeal dismissed.

Reason: It will be seen that three important changes have been made in the amended Section 4 so far as the present case is concerned. First, the value of excisable goods is deemed to be the "normal price" thereof that is the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade. Where the goods are sold at different prices to different classes of buyers, each such price shall be deemed to be the normal price. "Place of removal" has been defined for the first time to mean not only the premises of production or manufacture of excisable goods but also a warehouse or any other place or premises wherein such goods have been permitted to be deposited without payment of duty and from where such goods are ultimately removed. Interestingly, in Section 4(2), which is introduced for the first time, where in relation to excisable goods the price thereof for delivery at the place of removal is not known, and the value is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery is statutorily excluded.

It will thus be seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Sub-clause (b) (iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are obviously places which are referable only to the manufacturer. Even the expression "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is stated to be where excisable goods "are to be sold". These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. If we are to accept the contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to the buyer's premises.

It is clear, therefore, that as a matter of law with effect from the Amendment Act of 28.9.1996, the place of removal only has reference to places from which the manufacturer is to sell goods manufactured by him, and can, in no circumstances, have reference to the place of delivery which may, on facts, be the buyer's premises.

By an Amendment Act which came into effect on 1.7.2000, Section 4 was substituted yet again. A cursory reading of the substituted provision makes it clear that the concept of "normal value" has given way to the concept of "transaction value". Thus, no longer is there a normative price for purposes of valuation of excisable goods. The actual price that is paid or payable on each removal of goods becomes the transaction value. Interestingly, it will be noticed that under Section 4(3) (c), the place of removal is defined as it had been defined in the substituted Section 4 (by the 1973 Amendment) before its further amendment in 1996. What is conspicuous by its absence in the present Section is Section 4(2) and sub-section (b) (iii) in the previous Section 4 (after its amendment in 1996). It is clear therefore that for the second period in question in the present case, namely, 1.7.2000 to 31.3.2003, the depot, premises of a consignment agent or any other place from which excisable goods are to be sold after their clearance from the factory are no longer places of removal. Also, the definition of "transaction value" makes it clear that freight or transportation expenses are not included in calculating the excise duty payable.

The actual cost of transportation from the place of removal up to the place of delivery of excisable goods is excluded from the computation of excise duty provided it is charged to the buyer in addition to the price of goods and shown separately in the invoices for such goods. Interestingly, despite the substituted Section 4 not providing for a depot or other premises as a place of removal, Rule 7 deals with the normal transaction value of goods transferred to a depot or other premises which is said to be at or about the same time or the time nearest to the time of removal of goods under assessment.

It is clear, therefore, that on and after 14.5.2003, the position as it obtained from 28.9.1996 to 1.7.2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.

It will thus be seen that, in law, it is clear that for the period from 28.9.1996 up to 1.7.2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore the Commissioner's order and Revenue's argument based on that order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1.7.2000 to 31.3.2003 there will be no extended place of removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case.We, therefore, dismiss this appeal with no order as to costs.

Industrial & Labour Laws

LW: 96:11:2015

JAGDISH LAL GAMBHIR v. PUNJAB NATIONAL BANK & ORS [SC]

Civil Appeal No. 6975 of 2009

Madan B. Lokur & R. K. Agrawal, JJ. [Decided on 06/10/2015]

Industrial dispute–amalgamation of banks–dismissal of employee of the absorbed bank by the absorbing bank–whether tenable–Held, Yes.

Brief facts:

Gambhir was working as an Assistant General Manager in the Hindustan Commercial Bank Limited, which was amalgamated with the Punjab National Bank. On amalgamation, the services of 28 or 29 officials of the Hindustan Commercial Bank including Gambhir were not taken over by the Punjab National Bank (for short the 'PNB').

Pursuant to the directions of the court, the PNB was obliged to take over the officials of the Hindustan Commercial Bank including Gambhir. It was also directed if there was any necessity of initiating disciplinary proceedings against any of the transferred employees, the transferee banks including PNB were at liberty to do so.

In view of the above, the PNB issued a charge-sheet to Gambhir and ultimately he was dismissed from the services for misconduct. The dispute after going through all the forums below, finally reached the Supreme Court.

Decision: Appeal dismissed.

Reason: As far as the principal ground that the charge-sheet could not have been issued to Gambhir by the Assistant General Manager in the PNB is concerned, we find no merit in the contention. The admitted position is that Gambhir was a Scale-III officer in the PNB while the rank of the Assistant General Manager in the PNB is Scale-V. Gambhir could only have been placed in Scale–III in terms of his responsibilities and keeping in mind the corresponding scale upon the amalgamation of the Hindustan Commercial Bank with the PNB.

There is no allegation by Gambhir at any point of time that he was either reduced in rank or that his placement was incorrect or any similar grievance. That being the position, it is now too late in the day for Gambhir to contend that his placement in the PNB was erroneous and therefore the issuance of the charge-sheet by the Assistant General Manager in the PNB was vitiated in any manner.

We are in agreement with the view of the High Court that the rules applicable to Gambhir were the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977. In terms of these Regulations, as discussed by the High Court, the disciplinary authority of Gambhir was the Assistant General Manager (P). That being the position, merely because Gambhir was an Assistant General Manager in the Hindustan Commercial Bank does not mean that the Regulations of 1977 would not be applicable to him or that the Assistant General Manager (P) in the PNB could not have issued a charge-sheet to Gambhir.

At this stage, it may be mentioned that in *Chairman, Canara Bank, Bangalore* v. *M.S. Jasra*(1992) 2 SCC 484 an employee of the Lakshmi Commercial Bank (which had amalgamated with Canara Bank at the same time when Hindustan Commercial Bank amalgamated with the PNB) the contention of the employee was that the age of retirement (60 years) in Lakshmi Commercial Bank could not be varied to his disadvantage (58 years) on the amalgamation of that Bank with the Canara Bank. This contention was rejected by holding that the employee became an employee of the Canara Bank and was, therefore, entitled to the rights given to employees of the Canara Bank.

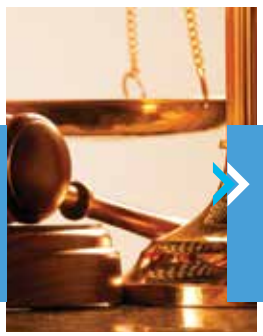
Applying this principle to the facts of this case, it is clear that Gambhir became an employee of the PNB and was subject to the discipline of all its rules and regulations, including those pertaining to misconduct.

It is also contended that the allegations against Gambhir had already been inquired into by the Hindustan Commercial Bank and therefore the PNB could not reopen issues relating to the alleged misconduct and hold an inquiry into them. We do not find any merit in this submission also. There were a large number of transactions which were alleged to be irregular and in which Gambhir was said to be involved. It is possible that there may have been an overlap in respect of some of them (although no such overlap has been shown to us) but that is not an indication that the alleged irregularities committed by Gambhir in respect of other transactions were condoned. In fact, Gambhir has not pointed out which were the transactions which were the subject matter of concern in the Hindustan Commercial Bank and which were the transactions which were the subject matter of inquiry by the PNB. This would have certainly given us a far clearer picture.

However, on a random consideration of the allegations made, it does appear that there were certain transactions particularly the transactions pertaining to R. K. Tandon & Co. which were not inquired into by the Hindustan Commercial Bank. It may be recalled that it is the admitted position that in respect of one alleged irregular transaction,

the Hindustan Commercial Bank could not take any decision one way or the other due to the amalgamation of that Bank with the PNB. We have not found any duplication in the allegations and are not inclined to carry out any investigation in this regard at this stage.

In view of the above, we find no reason to interfere with both the judgments delivered by the Calcutta High Court. The appeal is dismissed.



Corporate Laws

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LANDMARK JUDGEMENT

CS: LMJ: 1/11/2015

HINDUSTAN LEVER & ANR v. STATE OF MAHARASHTRA & ANR [SC]

Civil Appeal Nos. 8231, 8232, 9237 & 10208 of 1996

R.C. Lahoti & Ashok Bhan, JJ. [Decided On: 18/11/2003]

Citations: AIR 2004 SC 326; [2003] 117 Comp Cas758 (SC); (2004)9 SCC 438; (2004)1 CompLJ 148(SC).

Section 394 of the Companies Act,1956 read with section 2 of the Bombay Stamp Act,1958–amalgamation of companies- transfer of property from transfer or company to transferee company- Whether court order sanctioning amalgamation is an instrument- Held, Yes- Whether stamp duty is payable on the court order sanctioning amalgamation- Held, Yes. Whether amalgamation of companies is a voluntary act of shareholders- Held, Yes. Whether amalgamation is by operation of law-Held, No.

Brief facts:

Tata Oil Mills Co. Ltd amalgamated with Hindustan Lever Ltd [HLL] under a scheme of amalgamation, which was sanctioned by the Court on 24.11.1994. On presentation of the certified copy of the Court's order the Registrar of Companies, Maharashtra issued a certificate amalgamating the two companies.

The authorities under the Bombay Stamp Act, 1958 ("the Stamp Act"] demanded stamp duty on the transfer of assets and properties effected under the sanctioning order passed by the High Court, from HLL. In view of this HLL filed writ petition in the Bombay High Court challenging the constitutional validity of the provisions of the Stamp Act. By the impugned order the Division Bench of the High Court has dismissed the writ petition. HLL appealed to the Supreme Court mainly on the following grounds:

(i). Amalgamation being an act by operation of law, transfer of immovable properties effected under the court order sanctioning the scheme of amalgamation is an "involuntary transfer" in nature, and therefore, not liable to stamp duty as only "voluntary transfer" under the head "conveyance" is subject to stamp duty.

(ii). Court order is not an instrument subject to stamp duty.

Decision: Appeals dismissed.

Reason: The issue which is debated before us is: (1) whether the State Legislature had the legislative competence to impose stamp duty on the order of amalgamation passed by a court? and (2) whether an order sanctioning a scheme of amalgamation under Section 394 read with Section 391 of the Companies Act, 1956 is liable to be stamped in accordance with the provisions of the Bombay Stamp Act in its application in the State of Maharashtra?

It was contended by the learned counsels appearing for the appellants that an order of amalgamation under Section 394 is not under simplicitor of transfer of property by an act of parties with imprimatur of the Court. "It is an order made by the Court after judicial scrutiny and transfer of the property under such an order would not be an act of parties to which the Court puts its seal of approval. Stamp duty can be levied on "documents" or "instruments". The Order of the Court in exercise of its judicial functions is not "a document" or an "instrument". Once the Court passes an order or a decree, it is required to be implemented or executed as such. The same cannot be subjected to stamp duty otherwise the orders passed by the Courts would become subject to interference by the revenue authorities and would not be admissible in evidence unless the stamp duty is paid.

It is difficult to subscribe the view propounded by the learned counsels for the appellants. As stated earlier, the order of amalgamation is based on a compromise or an arrangement arrived at between the two companies. No individual living being owns the company. Each shareholder is the owner of the company to the extent of his shareholding. By enacting Sections 391 to 394 a method has been devised to give effect to the will of the prescribed majority of shareholders/ creditors. Even in the absence of individual agreement by all the shareholders and creditors the decision of the majority prescribed in Section 391(2) binds all the creditors and the

shareholders. The Scheme after being sanctioned by the Court binds all its creditors, members and shareholders including even those who were opposed to the scheme being sanctioned. It binds the company as well. While exercising its power in sanctioning the scheme of amalgamation, the Court is to satisfy itself that the provisions of statute have been complied with. That the class was fairly represented by those who attended the meeting and that the statutory majority was acting *bona-fide* and not in an oppressive manner. That the arrangement is such as which a prudent, intelligent or honest man or a member of class concerned and acting in respect of the interest might reasonably would take. While examining as to whether the majority was acting bona-fide the Court would satisfy itself to the effect that the affairs of the company were not being conducted in the manner prejudicial to the interest of its members or to public interest. The basic principle underlying such a situation is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties the same being that it should not be unfair, contrary to public policy and unconscionable or against the law.

Orders passed by the Court resulting in transferring the rights in property have been subjected to levy of stamp duty in several situations. It is there from the date of the inception of the Indian Stamp Act 1899. Section 2(m) of the Indian Stamp Act 1899 defines "instrument of partition" to mean any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any civil Court and an award by an arbitrator directing a partition. This provision specifically provide that any final order effecting partition by any Court, Revenue Authority or award made by the Arbitrator directing partition would be an instrument of partition.

The Court held that the thing, which is made liable to stamp duty is the "instrument". It is not a transaction of purchase and sale, which is struck at it is the "instrument" whereby the purchase and sale are affected which is struck at. It is the "instrument" whereby any property upon the sale thereof is legally or equitably transferred and the taxation is confined only to the instrument whereby the property is transferred. If a contract of purchase or sale or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument the case would not fall within the Section and no tax can be imposed. Taxation is confined to the instrument by which the property is transferred legally and equitably transferred.

Point as to whether the stamp duty was leviable on the Court order sanctioning the scheme of amalgamation was considered at length in *Sun Alliance Insurance Ltd.* v. *Inland Revenue Commissioners* 1971 (1) All Eng. LR 135. The point which arose for determination, as to whether the stamp duty was payable on the order of the Judge sanctioning the scheme of arrangement under Section 206 of the Companies Act, it was held:-

"It follows that it is the court order that effects the transfer, and this is nonetheless so because the scheme is not operative until an office copy has been delivered to the Registrar of Companies for registration, for the court order itself ordered that to be done and the Act so provides; nor because London has still to cause the name of Sun Alliance to be entered on to the register, as the holder of the shares. The registration of the transferee occurs in every case where a transfer is executed, and merely perfects the title of the transferee. The same thing occurs in the case of registered land, where one finds a transfer and subsequent registration. I have therefore come to the conclusion that by the court order the shares were transferred to Sun Alliance, or, to use the words of section 54, by that order property was transferred to a purchaser."

Expression "conveyance on sale" as provided in Section 54 of the Stamp Act 1891 is similar to Section 2(g) of the Bombay Stamp Act The expression "conveyance on sale" as defined in the said Section includes every instrument, and every decree or order of any Court or any Commissioner, whereby any property, or a estate or interest in any property, upon the sale thereof was transferred or vested in the purchaser, or any other persons on his behalf and on his direction.

The Court further considered as to whether the order of the judge is an 'instrument' executed in any part of the United Kingdom for the purposes of Section 14(4) of the Stamp Act, 1891; it was held that it was an instrument executed in the United Kingdom within the meaning of Section 14(4) of the Stamp Act 1891. It was further held that order of the Court was liable to stamp duty as it resulted in transferring the property and that the order passed by any Court which results in transfer of property would be an instrument as it includes every document.

Section 394(2) of the Companies Act 1956 provides that the properties and liabilities of the transfer or company stand transferred to the transferee company by virtue of an order of court. The statutory form of an order under Section 394(2) of the Companies Act provides for three different Schedules in order to incorporate therein the properties transferred.

The transfer of assets and liabilities takes effect by an order of the Court. The order also provides for passing of consideration from the transferee company to the shareholders of the transfer or company. The consideration for sale in a transaction like this is the shares. The share exchange ratio is decided on the basis of number of factors including the value of net assets of the transfer or and transferee company. To arrive at this figure of net assets the liabilities have to be set off against the gross value of the assets. The share value is fixed. The properties belong to the company and the company belongs to the shareholders. Once the shareholders of the transferor company receive the consideration it would be deemed as if the owner has received the consideration.

A document creating or transferring a right is an instrument. Can it be said that an order effectuating the transfer is a document? The answer has been given in the affirmative by this in Court in *Haji Sk. Subhan* v. *Madhorao*, AIR 1962 SC 1230, wherein it was held that the question is whether the word "document" includes a decree of the Court. It was held that there was no good reason why a decree of the court when it affects the proprietary rights and is in relation to them should not be included in this expression. This question more pointedly arose before this Court in *Ruby Sales and services (P) Ltd.* v. *State of Maharashtra*, (1994) 1 SCC 531. In that case in a suit for specific performance the property

was conveyed to the vendee by a consent decree. The question arose whether the consent decree is an instrument and liable to be stamped. The consent decree contained a recital to the effect that "this decree does operate as the conveyance from the defendants in favour of the plaintiffs in respect of the said property more particularly described in exhibit A to the plaint." The Court held that "there is no particular pleasure in merely going by the label but which is decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an "instrument" under which title has been passed over to the appellant/ plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs." The aforesaid decree was based on an agreement between the parties. So is the case with an order under Section 394 of the Companies Act which is also based on an agreement between the transfer or company and the transferee company.

Learned counsel for the appellants argued that the Ruby Sales and services (P) Ltd., (*supra*) was a case of consent decree where the term of the settlement was admittedly a conveyance, transferring property alone. That the order passed by the High Court under Section 394 of the Companies Act cannot be equated with a consent order. This submission cannot be accepted. The Court held that consent decree was an instrument. It was not held to be an instrument because it was a consent decree. It was held to be an instrument because it conveyed the title in the property in dispute from the defendant to the plaintiff. It was held to be an instrument because it had the effect of conveying the title and not because it was a consent decree. Once this definition is kept in view it would be clear that consent or no consent when the decree or order of the Court purports to transfer title in the property, it becomes an instrument. Court negatived the submission made, that, prior, to introduction of Section 2(g) (iii) the consent decree was not included in the definition of "conveyance" and "instrument" was negatived by observing "it appears to us that the amendment was made out of abundant caution and it does not mean that the consent decree was not otherwise covered." It clearly shows that the Court was of the opinion that consent decree which purports to convey the title in the property was in an instrument liable for stamp duty at all times and it was only by way of abundant caution that the Legislature had included the consent decree in the definition of the word "conveyance".

In view of the aforesaid discussion, we hold that the order passed by the Court under Section 394 of the Companies Act is based upon the compromise between two or more companies. Function of the Court while sanctioning the compromise or arrangement is limited to oversee that the compromise or arrangement arrived at is lawful and that the affairs of the company were not conducted in a manner prejudicial to the interest of its members or to public interest that is to say it should not be unfair or contrary to public policy or unconscionable. Once these things are satisfied the scheme has to be sanctioned as per the compromise arrived at between the parties. It is an instrument which transfers the properties and would fair within the definition of Section 2(1) of the Bombay Stamp Act which includes every document by which any right or liability is transferred. The State Legislature would have the jurisdiction to levy stamp duty under Entry 44, List III of the seventh Schedule of the Constitution of India and prescribe rates of stamp duty under Entry 63, List II.

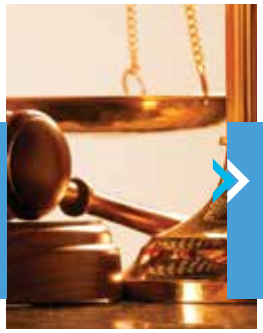
As discussed above, the order passed under Section 394 is founded on consent and this order is an instrument as defined under Section 2(1) of the Bombay Stamp Act. The State Legislature would have the jurisdiction to levy stamp duty under Entry 44 List III of the Seventh Schedule of the Constitution and prescribes rate of stamp duty under Entry 63 List II. It does not in any way impinge upon any entry in List I. Entry 44 of List III empowers the State Legislature to provide for stamp duties other than duties or fees collected by means of judicial stamps. Along with this. Entry 63 of List II empowers the State Legislature to prescribe rates of stamp duty in respect of documents other than those specified in the provisions of List I, that is to say, rates of stamp duty in respect of Bill of Exchange, cheques, promissory notes, Bill of landing, letter of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. By sanctioning of amalgamation scheme, the property including the liabilities are transferred as provided in Section 394 of the Companies Act and on that transfer instrument, stamp duty is levied. It, therefore, cannot be said that the State Legislature has no jurisdiction to levy such duty.

Under the Bombay Stamp Act conveyance includes any instrument by which property, whether movable or immovable, or any estate or interest in any property is transferred to or vested in, any other person, *inter vivos*. The word "i*nter vivos*" has not been defined in the Act or in the General Clauses Act. The meaning assigned to the word "*inter vivos*" in the Black's Law Dictionary, 6th Edn. is:

"Between the living; from one living person to another. Where property passes by conveyance, the transaction is said to be *inter vivos*, to distinguish it from a case of succession or devise. So an ordinary gift from one person to another is called a "*gift inter vivos*".

It was contended that since the transaction was not between the 'living beings', the same was not "*inter vivos*" as the transfer of property had not taken place between the Jiving beings. We do not agree. "Transfer of Property" has been defined in Section 5 of the Transfer of Property Act 1882 to mean an act by which a living person conveys property, in present or in future to one more other living persons. Company or association or body of individuals, whether incorporated or not, have been included amongst the "living person" in this Section. It clearly brings out that a company can effect transfer of property. The word "inter vivos" in the context of Section 394 of the Companies Act would include within its meaning also a transfer between two "juristic persons" or a transfer to which a 'juristic person' is one of the parties. The transaction between a minor or a person of unsound mind with the other person would not be recognised in law, though the same is between two living beings, as they are not juristic persons in the eyes of law who can by mutual consent enter in a contract or transfer the property. The company would be juristic person created artificially in the eyes of law capable of owning and transferring the property. Method of transfer is provided in law. One of the methods prescribed is dissolution of the transfer or company by merger in the transferee company along with all its assets and liabilities. Where any property passes by conveyance, the transaction would be said to be *inter vivos* as distinguished from a case of succession or devise.

For the reasons stated above, we do not find any merit in these appeals and dismiss the same with no order as to costs.



Corporate Laws

01 Relaxation of additional fees and extension of last date of filing of AOC-4, AOC-4 XBRL and MGT-7 E-Forms under the Companies Act, 2013 - reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No.14/2015, F.01/34/2013-CL.V No., dated 28.10.2015.]

In continuation of this Ministry's General Circular No.10/2015 dated 13.07.2015, keeping in view the request received from various stakeholders, it has been decided to relax the additional fee payable on forms AOC-4 and AOC-4 XBRL upto 30th November, 2015. The additional fee requirement for MGT-7 E-Form is also relaxed for all such forms filed till 30th November, 2015, wherever additional fee is applicable.

2. This issues with the approval of competent authority.

K.M.S. Narayanan
Assistant Director

02 Disclosures in the Abridged Prospectus and Price Information of past issues handled by Merchant Bankers

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CFD/DIL/7/2015, dated 30.10.2015.]

1. SEBI has prescribed the disclosure requirements in the abridged prospectus inaccordance with the provisions of SEBI (Issue of Capital and DisclosureRequirements) Regulations, 2009 and the Companies Act, 2013.

2. It has been observed that the abridged prospectus has become voluminous andthereby defeats the very purpose of abridged prospectus. With a view to addressthe issue, the disclosure requirements in the abridged prospectus have beenrationalized in consultation with Investor Associations and market participants.The revised abridged prospectus improves the readability and contains relevantinformation for the investor to take well informed investment decision. Also, theinvestor has the option to obtain full prospectus from the market intermediariesassociated with the public issue and can also download from the websites ofstock exchanges, merchant bankers and SEBI.

3. The revised format of abridged prospectus as per Regulation 58 (1) and Part D ofSchedule VIII of SEBI (Issue of Capital and Disclosure Requirements)Regulations, 2009, is placed at Annexure I.

4. Further, the format for disclosure of price information of past issues handled bythe merchant bankers as specified vide SEBI Circular no. CIR/CFD/DIL/5/2011dated September 27, 2011, has been revised and is placed at Annexure II.Pursuant to applicability of this Circular, the aforesaid SEBI Circular datedSeptember 27, 2011 shall stand rescinded.

5. This Circular shall be applicable on issues opening for subscription fromDecember 1, 2015 and a copy of abridged prospectus shall be filed with SEBI.

6. This Circular is issued in exercise of the powers conferred under Section 11 andSection 11A of the Securities and Exchange Board of India Act, 1992 read withRegulation 58(1) of SEBI (ICDR) Regulations, 2009 and Section 33 read withSection 2(1) of the Companies Act, 2013.

This Circular is available on SEBI website at www.sebi.gov.in under thecategories "Legal Framework" and "Issues and Listing".

Narendra Rawat
Deputy General Manager

This is an abridged prospectus containing salient features of the Red Herring Prospectus (RHP). You are encouraged to read greater details available in the RHP.

THIS ABRIDGED PROSPECTUS CONTAINS 'XYZ' PAGES. PLEASE ENSURE THAT YOU HAVE RECEIVED ALL THE PAGES.

You may obtain a physical copy of the Bid-cum-Application form and the RHP from stock exchange/s, syndicate members, registrar to issue, share transfer agents, depository participants, stock brokers, underwriters, bankers to the issue, investors' associations or Self Certified Syndicate Banks. You may also download the RHP from the websites of SEBI, Book Running Lead Managers and Stock Exchanges that is www.sebi.gov.in; www.nseindia.com; www.bseindia.com; websites of BRLM's (to be specified).

NAME OF THE ISSUER COMPANY

Registered Office and Corporate Office:

Contact Person: Telephone:

E-mail: Website: CIN:

NAMES OF PROMOTER OF THE COMPANY

ISSUE DETAILS, LISTING AND PROCEDURE

This is an **initial public offering (IPO)** of equity shares or convertible securities of face value Rs [.] each of the company and we plan to raise (amount to be specified) by issuing equity shares or convertible securities at offer price of Rs. [.] each including a premium of Rs. [.] each. **These equity shares are proposed to be listed on (to be specified) (designated stock exchange) and (to be specified).**

The price band and the minimum Bid lot size for the IPO shall be advertised at least five (5) working days prior to bid/issue opening date in English national daily (to be specified), Hindi national daily (to be specified) and regional daily (to be specified). Details about the basis for the Issue Price will be available on the websites of BSE and NSE.

Procedure:

If you wish to know about processes and procedures applicable to public issues, you may request for a copy of the General Information Document from Book Running Lead Managers (BRLMs) or download it from the websites of (stock exchanges to be specified along with website address) and the BRLMs (websites to be specified).

ELIGIBILITY FOR THE ISSUE - Regulation 26(1) / 26 (2) of SEBI (ICDR) Regulations, 2009

Whether the company is compulsorily required to allot at least 75% of the net offer to public, to qualified institutional buyers - **Yes / No**

INDICATIVE TIMETABLE

Bid Opening Date		Initiation of Refunds	
Bid Closing Date		Credit of Equity Shares to demat accounts of Allotees	
Finalisation of basis of allotment with the Designated Stock Exchange		Commencement of trading of Equity Shares on the Stock Exchanges	

** The company may consider participation by Anchor Investors. The Anchor Investors shall Bid during the Anchor Investor Bidding Period, i.e., one Working Day prior to the Bid Opening Date.*

GENERAL RISKS

Investments in equity and equity-related securities involve a degree of risk and investors should not invest any funds in this Issue unless they can afford to take the risk of losing their investment. Investors are advised to read the risk factors carefully before taking an investment decision in this Issue. For taking an investment decision, investors must rely on their own examination of the Issuer and this Issue, including the risks involved. The Equity Shares have not been recommended or approved by the Securities and Exchange Board of India ("SEBI"), nor does SEBI guarantee the accuracy or adequacy of the contents of the Red Herring Prospectus. Specific attention of the investors is invited to the section titled "Risk Factors" at page XXX of the Red Herring Prospectus and on page XX of this Abridged Prospectus.

PRICE INFORMATION OF BRLM'S*

Issue Name	Name of Merchant Banker	+/- % change in closing price, (+/- % change in closing benchmark)- 30th calendar days from listing	+/- % change in closing price, (+/- % change in closing benchmark)- 90th calendar days from listing	+/- % change in closing price, (+/- % change in closing benchmark)- 180th calendar days from listing
		+1% (+5%)	-2% (-5%)	

* Disclosures subject to recent 7 issues (initial public offerings) in current financial year and two preceding financial years managed by each Merchant Banker with common issues disclosed once.

Names of Book Running Lead Manager/s and contact details (telephone and email id) of each BRLM	
Names of Syndicate Members	
Name of Registrar to the Issue and contact details (telephone and email id)	
Name of Statutory Auditor	
Name of Credit Rating Agency and the rating or grading obtained, if any	
Name of Debenture trustee, if any	
Self Certified Syndicate Banks	The list of banks is available on http://www.sebi.gov.in/sebiweb/home/list/5/33/0/0/Recognised-Intermediaries
Non Syndicate Registered Brokers	You can submit Bid cum Application Forms in the Issue to Non Syndicate Registered Brokers at the Non Syndicate Broker Centres. For further details, see section titled "Issue Procedure" beginning at page XXX of the Red Herring Prospectus
Details regarding website address(es)/link(s) from which the investor can obtain list of registrar to issue and share transfer agents, depository participants and stock brokers who can accept application from investor (as applicable)	

PROMOTERS OF ISSUER COMPAMY

Details of promoter/s in not exceeding 1000 words explaining their experience and names of top 5 largest listed group companies as per Part A, Schedule VIII, Regulation 2, Item (IX) (C) (2) SEBI (ICDR) Regulations, 2009

BUSINESS MODEL / BUSINESS OVERVIEW AND STRATEGY

500 word limit in total.

BOARD OF DIRECTORS

Sr. No.	Name	Designation (Independent / Whole time / Executive / Nominee)	Experience including current / past position held in other firms (20 - 40 words for each Director)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

OBJECTS OF THE ISSUE

Details of means of finance -

The fund requirements for each of the objects of the Issue are stated as follows: (Rs in crores)

Sr. No.	Objects of the Issue	Total estimated cost	Amount deployed till	Amount to be financed from Net Proceeds	Estimated Net Proceeds Utilization	
					Fiscal 20__	Fiscal 20___
1						
2						
3						
4						
5	General corporate purposes					
	Total					

Details and reasons for non-deployment or delay in deployment of proceeds or changes in utilization of issue proceeds of past public issues/rights issues, if any, of the Company in the preceding 10 years.

Name of monitoring agency, if any

Terms of Issuance Of Convertible Security, if any

Convertible securities being offered by the Company	
Face Value/ Issue Price per Convertible securities	
Issue Size	
Interest on Convertible securities	
Conversion Period of Convertible securities	
Conversion Price for Convertible securities	
Conversion Date for Convertible securities	
Details of security created for CCD	

Shareholding Pattern

Sr. No.	Particulars	Pre Issue number of shares	% Holding of Pre issue
1.	Promoter & Promoter Group		
2.	Public		
	Total		100%

Number / amount of equity shares proposed to be sold by selling shareholders - if any

RESTATED AUDITED FINANCIALS

Standalone

	Latest Stub period	FY 5 (Last audited financial year prior to issue opening)	FY 4	FY 3	FY 2	FY 1
Total income from operations (net)						
Net Profit / (Loss) before tax and extraordinary items						
Net Profit / (Loss) after tax and extraordinary items						
Equity Share Capital						
Reserves and Surplus						
Net worth						
Basic earnings per share (Rs.)						
Diluted earnings per share (Rs.)						
Return on net worth (%)						
Net asset value per share (Rs.)						

Consolidated

	Latest Stub period	FY 5 (Last audited financial year prior to issue opening)	FY 4	FY 3	FY 2	FY 1
Total income from operations (net)						
Net Profit / (Loss) before tax and extraordinary items						
Net Profit / (Loss) after tax and extraordinary items						
Equity Share Capital						
Reserves and Surplus						
Net worth						
Basic earnings per share (Rs.)						
Diluted earnings per share (Rs.)						
Return on net worth (%)						
Net asset value per share (Rs.)						

INTERNAL RISK FACTORS

(Minimum 5 and maximum 10 risk factors to be specified)

The below mentioned risks are top 5 or 10 risk factors as per the RHP. (500 word limit in total)

SUMMARY OF OUTSTANDING LITIGATIONS, CLAIMS AND REGULATORY ACTION

A. Total number of outstanding litigations against the company and amount involved

B. Brief details of top 5 material outstanding litigations against the company and amount involved

Sr. No.	Particulars	Litigation filed by	Current status	Amount involved

C. Regulatory Action, if any - disciplinary action taken by SEBI or stock exchanges against the Promoters / Group companies in last 5 financial years including outstanding action, if any (200 - 300 word limit in total)

D. Brief details of outstanding criminal proceedings against Promoters (200 - 300 word limit in total)

ANY OTHER IMPORTANT INFORMATION AS PER BRLM / ISSUER COMPANY

DECLARATION BY THE COMPANY

We hereby declare that all relevant provisions of the Companies Act, 1956, the Companies Act, 2013 and the guidelines/regulations issued by the Government of India or the guidelines/regulations issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in the Red Herring Prospectus is contrary to the provisions of the Companies Act, 1956, the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992 or rules made or guidelines or regulations issued there under, as the case may be. We further certify that all statements in the Red Herring Prospectus are true and correct.

Annexure II

Format for Disclosure of Price Information of Past Issues Handled By Merchant Banker(s)

TABLE 1

Sr. No.	Issue Name	Issue Size (Rs. Cr.)	Issue Price (Rs.)	Listing Date	Opening Price on listing date	+/- % change in closing price, [+/- % change in closing benchmark]- 30th calendar days from listing	+/- % change in closing price, [+/- % change in closing benchmark]- 90th calendar days from listing	+/- % change in closing price, [+/- % change in closing benchmark]- 180th calendar days from listing

TABLE 2: SUMMARY STATEMENT OF DISCLOSURE

Financial Year	Total no. of IPOs	Total amount of funds raised (Rs. Cr.)	No. of IPOs trading at discount - 30th calendar days from listing			No. of IPOs trading at premium - 30th calendar days from listing			No. of IPOs trading at discount - 180th calendar days from listing			No. of IPOs trading at premium - 180th calendar days from listing		
			Over 50%	Between 25-50%	Less than 25%	Over 50%	Between 25-50%	Less than 25%	Over 50%	Between 25-50%	Less than 25%	Over 50%	Between 25-50%	Less than 25%
20..-20..														
20..-20..														

Note:
1. Disclosures to be given for three financial years (current financial year and two financial years preceeding the current financial year)
2. Disclosures are subject to maximum 10 issues (initial public offerings) managed by Merchant Banker in Table 1
3. In Table 1, percentage change for benchmark indices to be provided in brackets with positive or negative sign, as applicable
4. Separate table for each merchant banker responsible for pricing the Issue

03 (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2015

[Issued by the Securities and Exchange Board of India vide No. SEBI/ LAD-NRO/GN/2015-16/025, dated 27.10.2015. Published in the The Gazette Of India, Extraordinary, Part - III - Section 4, dated 27.10.2015]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:—

1. These Regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2015.

2. They shall come into force on the 1st day of December, 2015.

3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009,-

   (i) in regulation 58, in sub-regulation (1), the words, symbols and numbers "of the memorandum prescribed under sub-section (3) of section 56 of the Companies Act, 1956 and additional disclosures" shall be omitted.

   (ii) in Schedule VIII, for Part D, the following shall be substituted, namely-

"PART D

[See regulation 58(1)]

DISCLOSURES IN ABRIDGED PROSPECTUS

Disclosures:

(I) Information as is material and appropriate to enable the investors to make an informed decision shall be disclosed in the abridged prospectus.

(II) An issuer making a public issue of specified securities shall make the disclosures in the abridged prospectus as per the format specified by the Board from time to time.

General Instructions:

(I) The abridged prospectus shall be submitted to the Board (one copy).

(II) The abridged prospectus including the application form shall not exceed 5 sheets(printed both sides).

(III) Information which is of generic nature and not specific to the issuer shall be brought out in the form of a General Information Document (GID) as specified by the Board.

(IV) Abridged Prospectus shall be printed in a booklet form of A4 size paper.

(V) The Abridged Prospectus shall be printed in a font size which shall not be visually smaller than Times New Roman size 11 (or equivalent) with 1.0 line spacing.

(VI) Information required to be given in Tabular Format shall not appear in running text format.

(VII) The order in which items appear in the abridged prospectus shall be as specified by the Board.

(VIII) The application form shall be so positioned that on the tearing-off of the application form, no part of the information given in the abridged prospectus is mutilated."

U. K. Sinha
Chairman

04 Risk management for Regional Commodity Derivatives Exchanges

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CDMRD/DRMP/2/2015, dated 21.10.2015.]

1. Pursuant to Section 131 of the Finance Act, 2015 and Central Government notification F.No. 1/9/SM/2015 dated August 28, 2015, all recognized associations under the Forward Contracts (Regulation) Act, 1952 are deemed to be recognized stock exchanges under the Securities Contracts (Regulation)Act, 1956 with effect from September 28, 2015. This circular applies to Regional Commodity Derivatives Exchanges as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations)(Amendment) Regulations, 2015.

2. Exchanges shall comply with the following norms latest by April 01, 2016:

   a. Member Deposits: Exchanges shall continue with their practice of keeping exposure free member deposits at the current level.

   b. Ordinary margins: Exchanges shall levy minimum ordinary margins of 4% on the open outstanding positions.

   c. Other margins (delivery period margins, additional margins etc.):Exchanges may levy appropriate delivery period margins, additional margins etc. based on their evaluation.

   d. Additional Ad-hoc Margins: Exchanges have the right to impose additional risk containment measures over and above the risk containment system mandated by SEBI. However, the Exchanges should keep the following three factors in mind while taking such action:

      i. Additional risk management measures (like ad-hoc margins) would normally be required only to deal with circumstances that cannot be anticipated or were not anticipated while designing the risk management system. If ad-hoc margins are imposed with any degree of regularity, exchanges should examine whether the circumstances that give rise

to such margins can be reasonably anticipated and can therefore be incorporated into the risk management system mandated by SEBI. Exchanges are encouraged to analyse these situations and bring the matter to the attention of SEBI for further action.

ii. Any additional margins that the exchanges may impose shall be based on objective criteria and shall not discriminate between members on the basis of subjective criteria.

iii. Transparency is an important regulatory goal and therefore every effort must be made to make the risk management systems fully transparent by disclosing their details to the public.

e. Margin computation at client level: Exchanges shall levy ordinary margins at the level of each individual client comprising his positions in futures contracts across different maturities. For member level margin computation, margins shall be grossed across various clients. The proprietary positions of the member should also be treated as that of a client for margin computation.

f. Margin Collection and Enforcement: All applicable margins shall be collected by Exchanges before start of trading on the next trading day. If the member's collateral is insufficient to cover the required margin and deposit requirements, member shall not be allowed by Exchanges to further increase his open positions.

g. Collateral type to cover margin/deposit requirements: Exchanges shall collect collateral from their members only in the following form:

- Cash
- Pledging of Bank Fixed Deposits
- Bank Guarantee

h. Mark to market settlement: Daily mark to market settlement of open positions (both gains and losses), based on the Daily Settlement Price (DSP), in cash, before start of trading on the next trading day. DSP shall be reckoned and disseminated by the Exchange at the end of every trading day.

3. The risk management norms stipulated/approved by FMC to the extent not covered in this circular shall continue to remain in force.

4. The Exchanges are advised to:

i. take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same.

ii. bring the provisions of this circular to the notice of the members of the Exchange and also to disseminate the same on their website.

iii. communicate to SEBI, the status of the implementation of the provisions of this circular.

5. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. This circular is available on SEBI website at www.sebi.gov.in.

Shashi Kumar
General Manager

05 Format of uniform Listing Agreement

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CFD/CMD/6/2015, dated 13.10.2015.]

The requirement of executing a listing agreement with the Stock Exchange is specified under different regulations related with initial issuance of capital, the details of which are as under:

Type of Securities	Regulation	Regulation No.
Specified Securities (Equity & Convertible Securities on Main Board or SME or ITP) or Indian Depository Receipts	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR")	Regulation 109
Non-Convertible Debt Securities	Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS")	Regulation 19A
Non-Convertible Redeemable Preference Shares	Securities and Exchange Board of India(Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 ("NCRPS")	Regulation 16A
Securitised Debt Instruments	Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 ("SDI")	Regulation 35A
Mutual Funds	Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 ("MF")	Regulation 31B

2. In order to give effect to the requirements of Regulations mentioned at para 1 above, asimplified listing agreement which is uniform across all types of securities/listed entities is being

specified under Annexure I.

3. A listed entity which has previously entered into agreement(s) with a recognised Stock Exchange(s) to list its securities shall execute a fresh listing agreement with such Stock Exchange within six months of the date of notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) i.e. September 2, 2015.

   Notwithstanding such novation, any action taken or purported to have been done or taken by the Stock Exchanges or SEBI, any enquiry or investigation commenced or show cause notice issued in respect of the existing listing agreement shall be deemed to have been done or taken under the corresponding provisions of the Listing Regulations in force.

4. This circular is issued in exercise of the powers conferred under sections 11(1) and 11A of the Securities and Exchange Board of India Act 1992.

5. This circular is available on SEBI website at www.sebi.gov in under the categories "Legal Framework" and "Issues and listing", "Mutual Funds", "Corporate Debt Market" "Continuous Disclosure Requirements".

Harini Balaji
General Manager

Annexure I

LISTING AGREEMENT

This Agreement is made on this ..... day of ..... by ..... a Company / any other entity duly formed and registered under the relevant Indian Act / statutory enactment of appropriate jurisdiction, including overseas jurisdiction, wherever applicable, and having its registered office at..... (hereinafter called "the Issuer") with the..... (Name of the Stock Exchange) (hereinafter called "the Exchange").

WHEREAS:-

a. It is a requirement of the Exchange that the Issuer shall submit a listing agreement duly executed along with an application for admission and continued admission of the securities to dealings on the Exchange.

b. The Issuer is desirous of continuing the listing of its securities on the Exchange,

   or

   The issuer is desirous of listing its securities as mentioned in the application and made part hereof.

c. The Issuer is desirous of executing this Agreement in compliance with the aforesaid requirement of the Exchange.

   NOW THEREFORE in consideration of the aforesaid, the Issuer hereby covenants and agrees with the Exchange as follows:

1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:-

   i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time,

   ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time,

   iii. such other directions, requirements and conditions as may be imposed by SEBI / Exchange from time to time.

3. That it shall pay listing and such other fees / fines as may be specified / levied by the Exchange from time to time within the prescribed period.

4. That it shall keep intimated the Exchange about change in any information/ details of the issuer.

5. The admission and continued admission of the securities to dealings on the Exchange is subject to the discretion of the Exchange and subject to the powers of the Exchange to prohibit, suspend or withdraw the listing of the securities on the Exchange.

6. That the board of directors or a committee duly authorized by the board of directors of the issuer has passed a resolution for initial listing of the securities on the Exchange at its meeting held on the ..... day of .... 20.....(not applicable in cases where the securities are already listed on the Exchange).

7. Both parties agree that earlier listing agreement stands rescinded and novation carried out in accordance with respective regulations (viz. ICDR, ILDS, NCRPS,etc.) shall not affect any right already accrued or liability incurred by either party nor effect any enquiry or investigation or any other action undertaken by the Exchange or SEBI.

   This Agreement is duly executed on the day, month and year first mentioned above by the authorized signatories duly authorized by the board of directors or committee there of in their.....meeting held on.....(date).

SIGNED AND DELIVERED by the within named.....)
(Name of the Issuer).....)
Through its Authorised Signatories.....)
Name(s):.....)
Designation(s):.....)
SIGNED by the authorized signatory of Stock Exchange)
Name:.....)
Designation:.....)
*Note: Stock Exchange may strike off whichever is not applicable.

Information about the Company and Securities

Name of Issuer:		
CIN No.		
Registered office Address		
Corporate office Address		
Telephone No.	Fax No.	
Website address	e-mail id	

Name of the Company Secretary/ Compliance officer		
Telephone no.	Fax No.	
e-mail id		

Securities applied for listing (Please tick (V) the appropriate boxes)	Specified securities (Main Board)	
	Specified securities (SME Exchange)	
	Specified securities (Institutional Trading Platform)	
	Non-convertible debt securities	
	Non-convertible redeemable preference shares	
	Perpetual debt instrument	
	Perpetual non-cumulative preference shares	
	Indian depository receipts	
	Securitized debt instruments	
	Units issued by Mutual Funds	
	Others (Please specify)	

06 Review of the capacity planning framework of stock exchanges and clearing corporations

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/MRD/DP/17/2015, dated 08.10.2015.]

This has reference to the circulars dated June 16, 1998 and August 06, 2008, wherein the following requirement was inter alia specified as an eligibility criteria to be complied by the stock exchange while providing trading platforms in equity derivative and currency derivatives segments respectively.

"The per-half-hour capacity of the computers and the network should be at least 4 to 5 times of the anticipated peak load in any half hour, or of the actual peak load seen in any half-hour during the preceding six months."

2. Being critical infrastructure of the securities market, it is imperative for the stock exchanges and clearing corporations to continuously assess and monitor their system capacities. Over the years, stock exchanges and clearing corporations have experienced increase in volumes owing to the growth of the market and have accordingly taken steps to increase capacities of their trading,clearing and settlement infrastructure.

3. The framework adopted by the stock exchanges and clearing corporations for planning of their capacities was recently reviewed by the Technical Advisory Committee (TAC) of SEBI. Based on the recommendation of the committee, ithas been decided to direct stock exchanges and clearing corporations to ensure the following requirements while planning capacities of their trading, clearing and settlement and risk management related infrastructure:

   i. The installed capacity shall be at least 1.5 times (1.5x) of the projected peak load.
   ii. The projected peak load shall be calculated for the next 60 days based on the per-second peak load trend of the past 180 days.
   iii. All systems in trading, clearing and settlement ecosystem shall be considered in this process including all technical components such as network, hardware, software, etc., and shall be adequately sized to meet the capacity requirements.
   iv. In case the actual capacity utilisation exceeds 75% of the installed capacity, immediate action shall be taken to enhance the capacity.

4. Stock exchanges and clearing corporations shall implement suitable mechanisms, including generation of appropriate alerts, to monitor capacity utilisation on a real-time basis and shall pro-actively address issues pertaining to their capacity needs.

5. Stock exchanges and clearing corporations are directed to:

   i. take necessary steps and put in place necessary systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations, within three months from the date of this circular.
   ii. bring the provisions of this circular to the notice of the stock

brokers and also disseminate the same on its website; and

iii. communicate to SEBI the status of implementation of the provisions of this circular.

6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Manoj Kumar
Chief General Manager

07 Investments by FPIs in Government securities

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/IMD/FPIC/8/2 015, dated 06.10.2015.]

1. RBI in its Fourth Bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015 has announced a Medium Term Framework for FPI limits in Government securities in consultation with the Government of India.

2. It has been decided that the limits for FPI investment in debt securities shall henceforth be announced/fixed in rupee terms.

3. Further, it has been decided to enhance the limit for investment by FPIs in Government Securities as follows:

   a. Limit for FPIs in Central Government securities would be increased to INR 129,900 crand INR 135,400 cr on October 12, 2015 and January 01, 2016 respectively from the existing limit of INR 124,432 cr.

   b. Limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies,Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government securities would be increased to INR 36,600 cr and INR 44,100 cr on October 12, 2015 and January 01, 2016 respectively from the existing limit of INR 29,137 cr.

   c. There will be a separate additional limit for investment by all FPIs in State Development Loans (SDL). Debt limits of INR 3,500 cr each would be released on October 12, 2015 and January 01, 2016 respectively under this category.

4. Accordingly, the revised FPI limits would be as follows:

Type of Instrument	Present Upper Cap (INR cr)	Revised Upper Cap with effect from October 12, 2015 (INR cr)	Revised Upper Cap with effect from January 01, 2016 (INR cr)
Government Debt	124,432	129,900	135,400
Government Debt - Long Term	29,137	36,600	44,100
State Development Loans	0	3,500	7,000
Total	153,569	170,000	186,500

5. With regard to FPI investments in Central Government securities, it has also been decided to prospectively put in place a security-wise limit of 20% of the amount outstanding under each Central Government security. Existing investments in the Central Government securities where aggregate FPI investment is over 20% may continue. However, fresh purchases by FPIs in these securities shall not be permitted till the corresponding security-wise investments fall below 20%.

6. The Central Government securities in which the aggregate FPI investment is more than 20% of the outstanding would be placed in a negative investment category in which fresh investments would not be permitted. This negative investment list as well as the aggregate security-wise holdings by FPIs at the end of every day will be made available by the depositories (NSDL andCDSL) on their websites. The security-wise limit shall be effective from October 12, 2015.

7. In partial modification to Para 2 of SEBI circular CIR/IMD/FIIC/19/2014 dated October 09,2014, all future investments by Long Term FPIs, including the limits vacated when the current investment by a Long Term FPI runs off either through sale or redemption, shall be required tobe made in Central Government securities having a minimum residual maturity of 3 years.

8. The stipulation on minimum residual maturity of three years shall also apply to SDLs.

9. The free limit as on October 09, 2015 within the INR 124,432 cr limit along with the new debt limits of INR 5,468 cr shall be auctioned on the exchange platform on October 12, 2015. All other existing terms and conditions pertaining to FPI debt limit auctions shall continue to apply.

10. The incremental limit of INR 7,463 cr for Long Term FPIs shall be available for investment ontap with effect from October 12, 2015.

11. The separate additional limit for SDLs shall also be available for investment on tap by FPIs with effect from October 12, 2015.

12. Investment of coupons received by FPIs on their existing investments in Central Government securities as well as SDLs shall continue to be outside the applicable limits. The terms and conditions for investment of coupons specified vide SEBI circular CIR/IND/FIIC/2/2015 dated February 05, 2015 shall, mutatis mutandis, apply to SDLs.

13. The depositories (NSDL and CDSL) shall put in place the necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate on their websites the negative investment list, the aggregate security-wise holdings by FPIs and the coupon investment data along with the daily debt utilization data.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
Deputy General Manager

08 Comprehensive Risk Management Framework for National Commodity Derivatives Exchanges

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/CDMRD/DRMP/01/2015, dated 01.10.2015.]

1. Pursuant to Section 131 of the Finance Act, 2015 and Central Government notification F.No. 1/9/SM/2015 dated August 28, 2015, all recognized associations under the Forward Contracts (Regulation) Act, 1952 are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 with effect from September 28, 2015. This circular applies to National Commodity Derivatives Exchanges as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment)Regulations, 2015.

2. This circular is issued with an objective of aligning and streamlining the risk management framework across national commodity derivatives exchanges (hereinafter referred to as exchanges). The comprehensive risk management framework has been finalised after a due consultative process with the exchanges. The detailed risk management framework is placed at Annexure-I.

3. The provisions of this circular shall be implemented by national commodity derivatives exchanges latest by January 1, 2016 unless specified otherwise in any specific clause of this circular.

4. The norms specified by Forward Markets Commission shall continue to be in force to the extent not modified or repealed by this circular.

5. The exchanges are also advised to:

   i. ensure that their risk management framework is in line with the provisions contained in the annexure and take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the same,

   ii. bring the provisions of this circular to the notice of their members and also to disseminate the same on their website.

   iii. communicate to SEBI, the status of implementation of the provisions of this circular.

6. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors insecurities and to promote the development of, and to regulate the securities market.

7. This circular is available on SEBI website at www.sebi.gov.in.

Shashi Kumar
General Manager

Annexure I

Comprehensive Risk Management Framework for National Commodity Derivatives Exchanges

1. Overview

The core of the risk management system of national commodity derivatives exchanges (Exchanges) shall comprise of the following:

a. Liquid Assets: Liquid assets shall be deposited by members with theExchanges in compliance with the norms specified herewith to cover variousmargin and deposit requirements.

b. Initial Margins (IM): Value at risk (VaR) margins to cover potential losses forat least 99% of the days subject to minimum percentage floor value asprescribed by SEBI from time to time.

c. Extreme Loss Margins (ELM): Margins to cover the loss in situations that lieoutside the coverage of the VaR based initial margins.

d. Additional Margins: Margins imposed on both long and short sides over andabove the other margins, would be called additional margins.

e. Tender Period Margin/Pre-expiry Margin: Exchanges

shall levy tenderperiod/pre-expiry margin which may be increased gradually every daybeginning from the pre-determined number of days before the expiry of thecontract as applicable.

f. **Delivery Period Margin:** Appropriate delivery period margin shall be levied byExchanges on the long and short positions marked for delivery till the pay-in iscompleted by the member. Once delivery period margin is levied, all otherapplicable margins may be released.

g. **Minimum Liquid Networth Requirement:** Initial margins, ELM, Additionalmargins or any other margins as may be specified by SEBI from time to timeshall be deducted from the liquid assets of a clearing member. The clearingmember's liquid assets after adjusting for applicable margins shall be referredto as 'Liquid Networth' of the clearing member. Clearing Members shallmaintain 'Liquid Networth' as specified by SEBI from time to time.

h. **MTM (Mark to Market) Settlement:** Mark to market settlement on all open positions of clients/members shall be done on daily basis in cash.

i. **Base Minimum Capital:** Exposure free deposit required from all members (Trading members/ Clearing members).

j. **Settlement Guarantee Fund (SGF):** Exchanges shall maintain SGF which shall be used by Exchanges only for the purpose of providing settlement guarantee.

2. Liquid Assets:

The types of liquid assets acceptable by Exchanges from their members and the applicable haircuts and concentration limits are listed below:

Item	Minimum Haircut (see Note 'a')	Limits
Cash Equivalents		
Cash	0	No limit
Bank fixed deposits	0	No limit
Bank guarantees	0	Limit on exchange's exposure to a single bank (see Note 'b')
Securities of the Central Government	10%	No limit
Units of liquid mutual funds or government securities mutual funds (by whatever name called which invest in government securities)	10%	No limit
Other Liquid Assets		
Liquid (Group-I) Equity Shares (see Note 'd')	Same as the VaR margin for the respective shares (see note 'd')	Limit on exchange's exposure to a single issuer (see Note 'e')
Mutual fund units other than those listed under cash equivalents	Same as the VaR margin for the units computed using the traded price on stock exchange, if available, or else, using the NAV of the unit treating it as a liquid security (as per methodology given in Para 5.1 of circular MRD/DoP/ SE/Cir-07/2005 dated February 23, 2005).	
Corporate Bonds having rating of AA or above(or with similar rating nomenclature) by recognised credit rating agencies	Fixed percentage based or VaR based Haircut. A higher haircut may be considered to cover the expected time frame for liquidation. To begin with the haircut shall be a minimum of 10%	Not to exceed 10% of the total liquid assets of the clearing member. (see Note 'e')
Bullion	20%	Total commodities collateral for any clearing member shall not exceed 15% of the total liquid assets of the clearing member. (see Note T)
Gold ETF	20%	
Steel	60%	
Agricultural Commodities	40%	

Notes:

a. The valuation of the liquid assets shall be done on a daily basis after applying applicable haircuts.

b. The exchanges shall lay down exposure limits either in rupee terms or as percentage of the total Liquid Assets that can be exposed to a single bank directly or indirectly. The total exposure towards any bank would include Bank Guarantees issued by the bank as well as debt or equity securities of the bank which have been deposited by members towards total liquid assets.

Not more than 1% of the total liquid assets deposited with the exchange, shall be exposed to any single bank which has a net worth of less than INR 500 crores and is not rated P1 (or

P1+) or equivalent, by a recognized credit rating agency or by a reputed foreign credit rating agency, and not more than 10% of the total liquid assets deposited with the exchanges shall be exposed to all such banks put together.

c. Cash equivalents shall be at least 50% of liquid assets. This would imply that Other Liquid Assets in excess of the total Cash Equivalents would not be regarded as part of member's liquid assets as well as total liquid assets.

d. For determination of which Equity shares are falling in Group-I and what would be the appropriate VaR margin for these securities, data disseminated by Stock Exchanges having equity platform shall be referred. Stock Exchanges are already required to compute the same on regular basis in accordance with SEBI CircularMRD/DoP/SE/Cir-07/2005 dated February 23, 2005.

e. Exchanges shall adequately diversify their collateral so as to avoid any concentration of exposure towards any single entity and the same shall be within the limits as maybe prescribed by SEBI from time to time.

f. Agricultural commodities to be accepted as collateral should be of same quality specification which is deliverable under the contract specification of agricultural commodities derivatives being traded on the Exchange.

g. Exchanges shall accept liquid assets as collateral only as per the list of liquid assets specified in the table above. However, exchanges may decide not to accept certain types of liquid assets specified in the above list based on their risk perception,capability to hold and arrangements for timely liquidation. Exchanges may stipulate concentration limits at member level / across all members as may be necessary.

h. Exchanges shall make necessary arrangements to enable timely liquidation of collaterals accepted by them.

3. Initial Margins (IM)

Currently Exchanges are computing VaR based initial margins using Exponentially Weighted Moving Average (EWMA) method to obtain the volatility estimate and then calculating initial margin by multiplying the volatility estimate by scaling factor. In order to bring uniformity in calculation of IM across all Exchanges, following is prescribed:

a. **VaR Based:** The Initial Margin requirement shall be so as to cover a 99% VaRover one day horizon. In order to achieve this, the estimated EWMA volatility(standard deviation) shall be scaled up by a factor of 3.5.

b. **Minimum value for Initial Margin:** Minimum value of initial margin would be subject to commodity specific floor value as may be specified by SEBI from time to time. Currently floor value of IM applicable for Nickel shall be 5% and for all other commodities it shall be 4%.

c. **Margin Computation at client portfolio level:** Margins shall be computed at the level of portfolio of each individual client comprising his positions in futures contracts across different maturities. For Trading/ Clearing Member level margins computation, margins would be grossed across various clients. The proprietary positions of the Trading Member would also be treated as that of a client for margin computation.

d. **Spread margin benefit:** -Spread margin benefit shall be permitted in the following cases:

i. Different expiry date contracts of the same underlying

ii. Two contracts variants having the same underlying commodity

Exchanges shall charge minimum 25% of the initial margin on each of the individual legs of the spread. In case of such spread positions additional margins shall not be levied. No benefit in ELM would be provided for spread positions i.e. ELM shall be charged on both individual legs. Exchanges are free to charge margins higher than the minimum specified depending upon their risk perceptions.

e. **Real Time Computation:** The margins should be computed on real time basis. The computation of portfolio initial margin would have two components. The first is the computation of initial margin (EWMA volatility scaled up by 3.5) for each individual contract. At the second stage, these contract initial margins would be applied to the actual portfolio positions to compute the portfolio initial margin. The exchanges are permitted to update EWMA volatility estimates for contracts at discrete time points each day (with a gap of not more than 2 hours between any two consecutive updates and at the end of the trading session) and the latest available scaled up WMA volatility estimates would be applied to member/ client portfolios on a real time basis.

4. Extreme Loss Margin (ELM):

ELM of 1% on gross open positions shall be levied and shall be deducted from the liquid assets of the clearing member on an online, real time basis.

The ELM shall be implemented latest within six months of the date of this circular. Until the time any exchange starts charging ELM, the minimum value of initial margins shall be subject to following floor values:-

- Minimum IM For Nickel: 6%
- Minimum IM for other commodities:5%

5. Additional Margins:

Exchanges may levy Additional Margins based on their evaluation in specific situations as may be necessary.

6. Tender Period Margin:
Exchanges shall levy Tender period/Pre-expiry margin which shall be increased gradually every day beginning from the pre-determined number of days before the expiry of the contract as applicable. Exchanges shall determine the quantum of tender period margin as appropriate based on the risk characteristics of the particular commodity.

7. Delivery Period Margin:
Appropriate delivery period margin shall be levied by Exchanges on the long and short positions marked for delivery till the pay-in is completed by the member. Once delivery period margin is levied, all other applicable margins may be released.

8. Margin Collection and Enforcement:
All applicable margins shall be deducted by Exchanges from the Liquid Assets of the clearing members on an online, real time basis.

Margins applicable on client positions have to be compulsorily collected from the clients and reported to the Exchange by the members.

The members are required to collect Initial Margin and ELM up front from their clients as applicable at the time of the trade. For other margins (MTM margin, Additional margin, delivery margin or any other margin as prescribed by the Exchange) members shall have time till T+2' working days to collect from their clients. The period of T+2 days has been allowed to members to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed two days to pay margin due from them.

9. Mark to Market (MTM) Settlement:
All open positions of a futures contract would be settled daily, only in cash, based on the Daily Settlement Price (DSP). DSP shall be reckoned and disseminated by the Exchange at the end of every trading day. The mark to market gains and losses shall be settled in cash before the start of trading on T+1 day. If mark to market obligations are not collected before start of the next day's trading, the exchange shall collect correspondingly higher initial margin (scaling up by a factor of square root of two) to cover the potential losses over the time elapsed in the collection of margins.

10. Base Minimum Capital (BMC):

i. Exchanges shall have BMC requirements for their members (Trading members/Clearing members) as given below (to be complied within six months from the date of this circular coming into effect):
   a. Members without Algo trading - INR 10 Lacs
   b. Members doing Algo trading - INR 50 Lacs

ii. No exposure will be given by the Exchange on this BMC.

iii. 25% of the above deposit shall be in the form of cash and balance 75% can be in the form of Fixed Deposit/Bank Guarantee.

iv. These funds would be kept in a separate account by the Exchange.

v. BMC would be refunded to the members at the time of surrender of membership provided that there is no unsettled claim against member and no arbitration cases are pending against the member.

11. Risk Reduction Mode (RRM)

Exchanges shall ensure that the trading members/clearing members are mandatorily put in risk-reduction mode when 90% of the member's Liquid Assets available for adjustment against margins/deposits gets utilized for margins/deposits (to be complied within six months from the date of this circular coming into effect). Such risk reduction mode shall include the following:

a. All unexect/tecf orders shall be cancelled once trading member himself orhis clearing member breaches 90% collateral utilization level.

b. Only orders with Immediate or Cancel attribute shall be permitted in this mode.

c. All new orders shall be checked for sufficiency of margins and such potential margins shall be blocked while accepting the orders in the system.

d. The trading member shall be moved back to the normal risk management mode as and when the collateral utilization level of the trading member as well as his clearing member is lower than 90%.

12. Additional Ad-hoc Margins

Exchanges have the right to impose additional risk containment measures over and above the risk containment system mandated by SEBI. However, the Exchanges should keep the following three factors in mind while taking such action:

a. Additional risk management measures (like ad-hoc margins) would normally be required only to deal with circumstances that cannot be anticipated or were not anticipated while designing the risk management system. If ad-hoc margins are imposed with any degree of regularity, exchanges should examine whether the circumstances that give rise to such margins can be reasonably anticipated and can therefore be incorporated into the risk management system mandated by SEBI. Exchanges are encouraged to analyse these situations and bring the matter to the

attention of SEBI for further action.

b. Any additional margins that the exchanges may impose shall be based on objective criteria and shall not discriminate between members on the basis of subjective criteria.

c. Transparency is an important regulatory goal and therefore every effort must be made to make the risk management systems fully transparent by disclosing their details to the public.

09 Guidelines on overseas investments and other issues/clarifications for AIFs/VCFs

[Issued by the Securities and Exchange Board of India vide CIRCULARCIR/IMD/DF/7/2015, dated 01.10.2015.

1. SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") were notified on May 21, 2012 repealing and replacing the erstwhile SEBI (Venture Capital Funds) Regulations, 1996. As on August 31, 2015, there are 165 Alternative Investments Funds (AIFs) registered with SEBI.

2. In this regard, it is specified as under:

A. Overseas Investment by Venture Capital Funds (VCFs) registered under SEBI (Venture Capital Funds) Regulations, 1996 *(now repealed)*

a. VCFs registered under erstwhile SEBI (Venture Capital Funds)Regulations, 1996 are permitted to invest in Offshore Venture Capital Undertakings which have an Indian connection upto 10% of the investible funds of a VCF in terms of the SEBI circular no. SEBIA/CF/Cir no. 1/98645/2007 dated August 09, 2007.

b. SEBI has received several representations from the industry that there has been, in recent times, an increased interest of Indian entrepreneurs outside India. Many Indian entrepreneurs have been setting up their headquarters outside India with back end operations and/ or research and developments being undertaken in India. Therefore, there is a need to allow higher overseas investment byVCFs beyond the existing 10% limit.

c. The representations also state that such investments would provide opportunities to the funds to generate better returns globally, getting exposure to the international markets practices, etc.

d. As such investments are required to have an Indian connection, It is anticipated that such investments will generate indirect benefits to India through bringing in resources, technology upgradation, skill enhancement, new employment, spill-overs, etc.

e. In view of the above, in partial modification of the circular no. SEBIA/CF/Cir no. 1/98645/2007 dated August 09, 2007, it is stated as under:

i. VCFs are, from the date of this circular, permitted to invest in Offshore Venture Capital Undertakings which have an Indian connection upto 25% of the investible funds of the VCF.

ii. VCFs shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments.

iii. VCFs shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route.

iv. VCFs shall comply with all requirements under RBI guidelines on opening of branches/ subsidiaries/Joint venture/undertaking investment abroad by NBFCs, where more than 50% of the funds of the VCF has been contributed by a single NBFC.

v. The VCFs desirous of making investments in offshore venture capital undertakings shall submit their proposal for investment (in the attached format at Annexure) to SEBI for its prior approval.

B. Overseas Investment by Alternative Investment Funds

a. Under Regulation 15(1)(a) of AIF Regulations, "Alternative Investment Fund may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time."

b. In this regard, Reserve Bank of India (RBI) vide its A.P.(DIR Series)Circular No. 48 dated December 09, 2014 has permitted an Alternative Investment Fund (AIF), registered with SEBI, to invest overseas in terms of the provisions issued under the A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively.

c. In accordance with the aforesaid RBI circular, it is stated as under:

i. AIFs may invest in equity and equity linked instruments only of offshore venture capital

undertakings, subject to overall limit of USD 500 million (combined limit for AIFs and Venture Capital Funds registered under the SEBI (Venture Capital Funds) Regulations, 1996).

ii. AIFs desirous of making investments in offshore venture capital undertakings shall submit their proposal for investment (in the attached format at Annexure) to SEBI for prior approval. It is clarified that no separate permission from RBI is necessary in this regard.

iii. For the purpose of such investment, it is clarified that "Offshore Venture Capital Undertakings" means a foreign company whose shares are not listed on any of the recognized stock exchange in India or abroad.

iv. Investments would be made only in those companies which have an Indian connection (e.g. company which has a front office overseas, while back office operations are in India).

v. Such investments shall not exceed 25% of the investible funds of the scheme of the AIF.

vi. The allocation of investment limits would be done on 'first come-first serve' basis, depending on the availability in the overall limit of USD 500 million.

vii. In case an AIF who is allocated certain investment limit, wishes to apply for allocation of further investment limit, the fresh application shall be dealt with on the basis of the date of its receipt and no preference shall be granted to it in fresh allocation of investment limit.

viii. The AIF shall have a time limit of 6 months from the date of approval from SEBI for making allocated investments in offshore venture capital undertakings. In case the applicant does not utilize the limits allocated within the stipulated period, SEBI may allocate such unutilized limit to other applicants.

ix. These investments would be subject to Notification No. FEMA120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004] including amendments thereof and related directions issued by RBI from time to time.

x. AIFs shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments.

xi. AIFs shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route.

xii. AIFs shall comply with all requirements under RBI guidelines on opening of branches/subsidiaries/ Joint Venture /undertaking investment abroad by NBFCs, where more than 50% of the funds of the AIF has been contributed by a single NBFC.

C. Other issues/clarifications:

a. It is clarified that from the date of this circular, the tenure of any scheme of the AIF shall be calculated from the date of final closing of the scheme.

b. All managers shall:

i. organise, operate and manage the AIFs and its schemes in the interest of unit holders of the AIF/scheme.

ii. carry out all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and as amended from time to time in accordance with AIF Regulations and circulars issued by SEBI.

iii. ensure that the placement memorandum is provided to the investors prior to providing commitment or making the investment in the AIF and ensure that an appropriate acknowledgement is received from the investor for such receipt.

iv. ensure scheme-wise segregation of bank accounts and securities accounts.

v. not make any exaggerated statement, whether oral or written, either about their qualifications or capability to render investment management services or their achievements.

c. The AIF, manager, trustee and sponsor shall:

i. act in the interest of unit holders of the AIF/ scheme and not take any action which is prejudicial to the interest of the unit holders and not place the interest of the sponsor/manager/ trustee of the AIF or any of their associates above the interest of the unit holders of the scheme/AIF.

ii. maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment.

iii. not offer any assured returns to any prospective investors/unitholders.

3. This Circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities

market and to promote the development of, and to regulate the securities market.

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

Barnali Mukherjee
Chief General Manager

Annexure

Proposal for Overseas Investment by Alternative Investment Funds

To
Securities and Exchange Board of India
Mumbai

Name of Alternative Investment Fund (AIF)/ Venture Capital Fund (VCF)	
Category of the AIF	
Registration number and date	
Name of the scheme	
Amount proposed to be invested in Offshore Venture Capital Undertaking - in USD	
Total Investible corpus of the scheme -in USD	
Name and Address of the branch of the bank through which Foreign Currency Transaction are proposed to made	
Indian connection of the offshore VCU	

Declarations to be attached with the application duly signed, dated and authorised:

1. The manager has exercised due diligence with respect to the investment decision. (Declaration to be provided by manager)

2. The Trustee is satisfied that the proposed investment in offshore venture capital undertaking is consistent with the investment objective of the scheme/fund (Declaration to be provided by trustee. In case the AIF is not a Trust, sponsor shall provide such declaration).

3. The AIF/VCF shall not invest in Joint venture/Wholly Owned Subsidiary while making overseas investments. (Declaration to be provided by manager)

4. The AIF/VCF shall adhere to FEMA Regulations and other guidelines specified by RBI from time to time with respect to any structure which involves Foreign Direct Investment (FDI) under Overseas Direct Investment (ODI) route. (Declaration to be provided by manager)

5. The AIF/VCF shall comply with all requirements under RBI guidelines on opening of branches/subsidiaries/Joint venture /undertaking investment abroad by NBFCs, where more than 50% of the funds of the AIF/VCF has been contributed by a single NBFC. (Declaration to be provided by manager)

(Declarations to be provided by the manager/trustee/sponsor as applicable)

Name: Signature:
Place: Date:

10 Registration of Members of Commodity Derivatives Exchanges

[Issued by the Securities and Exchange Board of India vide CIRCULAR CIR/MIRSD/4/2015, dated 29.09.2015.]

1. Pursuant to the Notification No. SEBI/LAD NRO/GN/2015-16/017 dated September 07, 2015 amending the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as Stock Broker Regulations), all existing members of commodity derivatives exchanges who satisfy the eligibility requirements for membership, as prescribed in the rules, regulations and bye-laws of the exchange of which it holds membership, shall be eligible to apply for registration to SEBI, within a period of three months from September 28, 2015.

2. Such existing members of commodity derivatives exchanges shall be required to meet the eligibility criteria as specified under Rule 8 of Securities Contract (Regulation) Rules, 1957 (hereinafter referred to as SCRR), within a period of one year from the date of transfer and vesting of rights and assets of the Forward Market Commission (FMC) with SEBI i.e., by September 28, 2016.

3. Any person desirous of becoming a member of any commodity derivatives exchange(s), on or after September 28, 2015, shall have to meet the eligibility criteria to become a member of an exchange and conditions of registration, asspecified in SCRR and Stock Broker Regulations, respectively.

4. The application for registration shall be made in the manner prescribed in the StockBroker Regulations, through the commodity derivatives exchange, of which it holdsmembership, in the prescribed form, along with the applicable fees. The applicationshall be accompanied by Additional Information as prescribed vide SEBI Circular No.SMD/POLICY/CIR-11/98 dated March 16, 1998.

5. The minimum net worth specified for members of commodity derivatives exchanges,as per Stock Broker Regulations, shall have to be computed as per the formulaprescribed vide SEBI Circular No. FITTC/DC/CIR-1/98 dated June 16, 1998.

6. It is clarified that, "business in goods related to the

underlying" and/ or "business inconnection with or incidental to or consequential to trades in commodity derivatives", by a member of a commodity derivatives exchange, would not be disqualified under Rule 8(1)(f) and Rule 8(3)(f) of the Securities Contract (Regulation) Rules, 1957.

7. The Stock Exchanges are directed to -

   a. bring the provisions of this circular to the notice of the commodity derivatives brokers, self-clearing members and clearing members as the case may be, and also disseminate the same on their websites;

   b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above; and

   c. communicate to SEBI, the status of the implementation of the provisions of this circular.

8. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 29 & 30 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

9. This Circular is available on the SEBI website (www.sebi.gov.in) under the section SEBI Home > Legal Framework > Circulars.

Rajesh Kumar Dangeti
Deputy General Manager

11 Frequently Asked Questions on Sebi (Delisiting of Equity Shares) Regulations, 2009

[As available on SEBI website]

These FAQs offer only a simplistic explanation/clarification of terms/concepts related to the SEBI (Delisting of Equity Shares) Regulations, 2009 ["Delisting Regulations, 2009"]. Any such explanation/clarification that is provided herein should not be regarded as an interpretation of law nor be treated as a binding opinion/guidance from the Securities and Exchange Board of India ["SEBI"]. For full particulars of laws governing the delisting of equity shares, please refer to actual text of the Acts/Regulations/ Circulars appearing under the Legal Framework Section on the SEBI website.

1. What is meant by delisting of securities?

The term "delisting" of securities means removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be traded at that stock exchange.

2. What is the difference between voluntary delisting and compulsory delisting?

In voluntary delisting, a company decides on its own to remove its securities from a stock exchange whereas in compulsory delisting, the securities of a company are removed from a stock exchange as a penal measure for not making submissions/ complying with various requirements set out in the Listing agreement within the time frames prescribed.

3. What is the exit opportunity available for investors in case a company gets delisted?

SEBI (Delisting of Securities) Regulations, 2009 provide an exit mechanism to the existing shareholders in the following manner:

Voluntary delisting whereby the exit price is determined through the Reverse Book Building process- The floor price is calculated in accordance with the regulations and the shareholders have to make a bid at a price either on or above the floor price. The exit price would be decided on the basis of bidding by the public shareholders. If the exit price so determined is acceptable to the promoter, the promoter pays that price to the investors and the investors can exit.

Those investors who do not participate in the Reverse Book Building process have an option to offer their shares for sale to the promoters. The promoters are under an obligation to accept the shares at the same exit price. This facility is usually available for a period of at least one year from the date of closure of the delisting process.

Voluntary Delisting for a small company- Any company with paid up capital of less than Rs. ten crore and net worth less than Rs. twenty five crores, whose equity shares have not been traded in any recognized stock exchange for a period of one year and has not been suspended for any non-compliance in the preceding one year would not be required to follow the Reverse Book Building process. In such cases, the promoter decides the exit price in consultation with the merchant banker. The promoter writes to all public shareholders informing the proposal for delisting. Once the requisite consent is received, the promoter makes payment of consideration for the same and the shareholders can exit.

4. Whether a company listed on more than one stock exchange has to provide exit offer to shareholders in case it delists from one stock exchange but remains listed on the other stock exchange?

A company which delists its equity shares from a recognised stock exchange but continues to remain listed on another recognised stock exchange would not be required to provide an exit opportunity to its shareholders provided the equity

shares remain listed on any recognised stock exchange which has nationwide trading terminals.

5. **Whether the same merchant banker appointed to carry out due-diligence on behalf of the company in terms of Regulation 8(1 A) of Delisting Regulations can act as a Manager to the offer?**

   Yes, the same merchant banker can conduct due-diligence on behalf of the company and also act as the Manager to the Delisting Offer.

6. **What is the reference date for calculation of floor price under the delisting Regulations?**

   The reference date for computing the floor price would be the date on which the recognized stock exchanges were notified of the board meeting in which the delisting proposal would be considered.

7. **What would constitute demonstration of delivering the letter of offer to allthe public shareholders in terms of the proviso to regulation 17(b) of Delisting Regulations in cases where atleast 25% of the public shareholders do not participate in the book building process?**

   In this regard, it is clarified as under:

   a. If the acquirer or the Merchant Banker sends the letter of offer to all the shareholders by registered post or speed post through India Post and is able to provide a detailed account regarding the status of delivery of the letters of offer (whether delivered or not) sent through India Post, the same would be considered as a deemed compliance with the proviso to regulation 17(b) of the Delisting Regulations.

   b. If the Acquirer and Merchant Banker are unable to deliver the letter of offer to certain shareholders by modes other than speed post or registered post of India Post, efforts should be made to deliver the letter of offer to them by speed post or registered post of India Post. In that case, a detailed account regarding the status of delivery of letter of offer (whether delivered or not) provided from India Post would also be considered as deemed compliance with the proviso to regulation 17(b) of the Delisting Regulations.

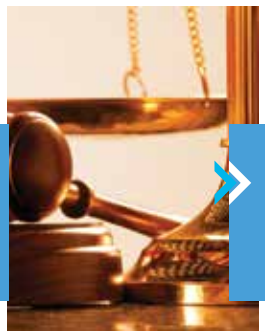
8. **In case any third party acquirer makes a delisting offer instead of an open offer under regulation 5A of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, whether the requirement of Board approval and MB due diligence would apply?**

   Yes, the requirement of Board approval and due diligence by the Merchant Banker would apply in such cases as well.

9. **Can cash component of the escrow account in the delisting offer process be maintained in an interest bearing account?**[1]

   Yes, the cash component of the escrow account may be maintained in an interest bearing account. However, the merchant banker shall ensure that the funds are available at the time of making payment to shareholders.

1. inserted on 02.11.2015.



Economic Laws

12 Foreign Direct Investment (FDI) upto 100% in White Label ATM Operations under automatic route.

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion vide D/o IPP File No.: No. 5/4/2013-FC-I, Press Note No. 11 (2015 Series) dated 01.10.2015.]

The Government of India has reviewed the extant FDI Policy and decided to allow Foreign Investment up to 100% in White Label ATM Operations, under the automatic route. Accordingly, a new sub-para 6.2.18.8.3 in the paragraph 6.2.18.8 of the of the Consolidated FDI Policy Circular is added in the following manner:-

6.2.18.8 Non-banking Finance Companies (NBFC)

Sector/Activity	% Equity/ Foreign Investment Cap	Entry Route
6.2.18.8.3 White Labelled ATM Operations	100%	Automatic
Any non-bank entity intending to set up WLAs should have a minimum net worth of Rs. 100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times.		
In case the entity is also engaged in any other 18 NBFC activities, then the foreign investment in the company setting up WLA, shall also have to comply with the minimum capitalization norms for foreign investments in NBFC activities, as provided in Para 6.2.18.8.2.		
FDI in the WLAO will be subject to the specific criteria and guidelines issued by RBI vide Circular No. DPSS.CO.PD. No. 2298/02.10.002/2011-2012, as amended from time to time		

2. The above decision will take immediate effect

Atul Chaturvedi
Joint Secretary

13 Streamlining the Procedure for Grant of Industrial Licenses

[Issued by the Ministry of Commerce and Industry, Department of Industry Policy & Promotion, vide DIPP File No. 9(8)/2014-IL(IP), Press Note No. 10 (2015 series), dated 22.09.2015.]

The initial validity of Industrial License for Defence Sector, as per Press Note 5 (2015 series), is presently seven years, further extendable up to 10 years.

2. In partial modification of the above mentioned Press Note, the initial validity of Industrial License for Defence Sector is being revised to 15 years, further extendable up to 18 years for existing as well as future Licenses. However, in case a license has already expired, the Licensee has to apply afresh for issue of license. This is being done as a measure to further promote ease of doing business, in view of the long gestation period of Defence contracts to mature.

Shubhra Singh
Joint Secretary

14 Review of the existing Foreign Direct Investment policy on Partly Paid Shares and Warrants

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion vide D/o IPP File No. 5/5/2009-FC-I dated 15.09.2015.]

1.0 The Government has reviewed the provisions of the extant FDI policy on the captioned subject and it has been decided to allow partly paid shares and warrants as eligible capital instruments for the purposes of FDI policy. Accordingly, the following amendments are made in the 'Consolidated FDI Policy Circular of 2015', effective from May 12, 2015:

(i) Para 2.1.5 is amended to read as below:

"'Capital' means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures and warrants.

Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, 'warrant' includes Share Warrant issued by an Indian Company in accordance to provisions of the Companies Act, as applicable."

(ii) Insertion of a new para after para 3.3.3 of Consolidated FDI Policy Circular of 2015:

3.3.3 bis: Acquisition of Warrants and Partly Paid Shares - An Indian company may issue warrants and partly paid shares to a person resident outside India subject to terms and conditions as stipulated by the Reserve Bank of India in this behalf, from time to time.

2.0 The above decision will take immediate effect.

Atul Chaturvedi
Joint Secretary

15 Clarification on FDI Policy on Facility Sharing Arrangements between Group Companies

[Issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion vide D/o IPP File No. 12/15/2009-FC-I dated: 15.09.2015]

This Department has received certain references on the issue as to whether entering into facility sharing agreements through leasing/ sub-leasing arrangements within group companies for the larger purposes of business activities would be construed to mean 'real estate' business within the provisions of Consolidated FDI Policy Circular of 2015.

2. In this regard it is hereby clarified that:

"Facility sharing agreements between group companies through leasing/subleasing arrangements for the larger interest of business will not be treated as 'real estate business' within the provisions of the Consolidated FDI Policy Circular of 2015, provided such arrangements are at arm's length price in accordance with relevant provisions of Income Tax Act 1961, and annual lease rent earned by the lessor company does not exceed 5% of its total revenue."

R. D. Diwakar
Under Secretary

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255	MS. NIKITA GARG	ACS - 41363	EIRC
256	MR. BHARAT BHUSHAN BHATT	ACS - 41364	NIRC
257	MR. GAURAV SHARMA	ACS - 41365	NIRC
258	MS. RADHIKA VERMA	ACS - 41366	NIRC
259	MR. AISHWARYA TRIPATHI	ACS - 41367	NIRC
260	MS. NIDHI JOHARI	ACS - 41368	NIRC
261	MS. AMRITA MAHARANA	ACS - 41369	NIRC
262	MS. EKTA SHARMA	ACS - 41370	NIRC
263	MR. SHIVAM KUMAR MISHRA	ACS - 41371	NIRC
264	MS. HIMANSHI SALUJA	ACS - 41372	NIRC
265	MS. KUSUM	ACS - 41373	NIRC
266	MS. SURBHI	ACS - 41374	NIRC
267	MS. SAKSHI JAISWAL	ACS - 41375	NIRC
268	MR. NITIN VEDI	ACS - 41376	NIRC
269	MS. PAYAL KUMARI BANSAL	ACS - 41377	NIRC
270	MR. VIKAS GAUTAM	ACS - 41378	NIRC
271	MS. MANPREET KAUR	ACS - 41379	NIRC
272	MR. ANOOP KUMAR	ACS - 41380	NIRC
273	MS. PRIYA AGGARWAL	ACS - 41381	NIRC
274	MR. ISHANT	ACS - 41382	NIRC
275	MS. MEENAKSHI KHIANI	ACS - 41383	NIRC
276	MS. DIVYA MATHUR	ACS - 41384	NIRC
277	MS. HEENA MADHVI	ACS - 41385	NIRC
278	MS. MOHINI SHARMA	ACS - 41386	NIRC
279	MR. ANISH KUMAR	ACS - 41387	NIRC
280	MS. POOJA UPREJA	ACS - 41388	NIRC
281	MR. CHAITANYA PURI	ACS - 41389	NIRC
282	MR. AKASH RAJAK	ACS - 41390	NIRC
283	MR. KARAN ARORA	ACS - 41391	NIRC
284	MS. DIVYA MEHTA	ACS - 41392	NIRC
285	MS. ANUSHA S	ACS - 41393	SIRC
286	MS. CHITRA RANI M S	ACS - 41394	SIRC
287	MR. AL LAXMAN	ACS - 41395	SIRC
288	MR. SANTOSH K	ACS - 41396	SIRC
289	MS. RITU YATENDER VERMA	ACS - 41397	WIRC
290	MS. SADIYA BAIG	ACS - 41398	WIRC
291	MS. DRASHTI ANANDPRAKASH SHARMA	ACS - 41399	WIRC
292	MS. AMMANABOLU SUSHMA	ACS - 41400	SIRC
293	MS. JYOTI RATHI	ACS - 41401	SIRC
294	MR. MOHAMMED YASAR	ACS - 41402	SIRC
295	MS. HANITA RAJENDRA MASRANI	ACS - 41403	SIRC
296	MR. SHARMA SACHIN	ACS - 41404	SIRC
297	MR. VASANT PARAMESHWARA BHAT	ACS - 41405	SIRC
298	MR. AMIT NAMDEV PATIL	ACS - 41406	WIRC
299	MS. SWATI ISHWAR CHIMANE	ACS - 41407	WIRC
300	MR. ASHISH AJAY GINIWALA	ACS - 41408	WIRC
301	MS. PRIYANKA RAJENDRA BAJAJ	ACS - 41409	WIRC
302	MS. KRUPALI HIMATLAL PATEL	ACS - 41410	WIRC
303	MS. PRIYANKA VASTIMAL JAIN	ACS - 41411	WIRC
304	MS. NIDHI PATEL	ACS - 41412	WIRC
305	MS. MAYURI JAIN	ACS - 41413	WIRC
306	MS. PALAK KAUR RATANBIR KOHLI	ACS - 41414	WIRC
307	MS. AVANI RAVI GANDHI	ACS - 41415	WIRC
308	MS. ZEHRA ZAHIRBHAI RAJKOTWALA	ACS - 41416	WIRC
309	MS. ANISIA MARIA DSOUZA	ACS - 41417	WIRC
310	MS. SHRUTI MANWANI	ACS - 41418	WIRC
311	MR. JAYESH SHARAD KULKARNI	ACS - 41419	WIRC
312	MS. SWATI RAJVIR SINGH CHAUHAN	ACS - 41420	WIRC
313	MS. NIDHI DEVANGKUMAR PARIKH	ACS - 41421	WIRC
314	MS. APOORVA ASHOK MANGRULKAR	ACS - 41422	WIRC
315	MR. NILESH TIWARI	ACS - 41423	WIRC
316	MR. ANIL KUMAR DHANOTIYA	ACS - 41424	WIRC
317	MS. NEHA VISHNU AGARWAL	ACS - 41425	WIRC
318	MS. VIDHI BHARATKUMAR DESAI	ACS - 41426	WIRC
319	MS. RUCHI JAYESHBHAI SHAH	ACS - 41427	WIRC
320	MS. POOJA DILIP RAMBHIA	ACS - 41428	WIRC
321	MR. SURESH KUMAR	ACS - 41429	NIRC

322	MR. MADHAVENDRA KRISHNA BHATT	ACS - 41430	NIRC
323	MS. JYOTI SHYAMSUKHA	ACS - 41431	EIRC

MEMBERS RESTORED*

Sl.No.	Name	ACS/FCS	No.	Region
1	SH. SUDHAKAR AWASTHI	FCS	4652	NIRC
2	MS. SANTOSH KHANDELWAL	FCS	4968	NIRC
3	SH. PANKAJ NARANG	FCS	5310	NIRC
4	SH. AMRIK SINGH MANN	ACS	4179	NIRC
5	SH. MAHEENATH ANANDA	ACS	4650	SIRC
6	SH. A SATYAMURTI	ACS	4878	SIRC
7	SH. PRAKASH D MEHTA	ACS	6868	WIRC
8	SH. M V RAMANAMURTY	ACS	7541	WIRC
9	SH. T V ANANTHA NARAYANAN	ACS	9996	SIRC
10	MS. SHIPRA GARG	ACS	13766	NIRC
11	SH. ANAND PRASAD SAKHARA DATE	ACS	19254	SIRC
12	MRS. KOMAL ASHUTOSH DOBHAL	ACS	22486	NIRC
13	SH. RAKESH RUPCHAND KANKARIYA	ACS	24523	WIRC
14	SH. INDIRA KALYAN ELESELA	ACS	25573	SIRC
15	MR. PRATEEK MEHTA	ACS	27995	NIRC
16	MR. MANMAY KIRAN KALYANKAR	ACS	29264	WIRC
17	MS. TRUPTI RAMESH LAD	ACS	30068	WIRC
18	MS. HIMANI GUPTA	ACS	30175	NIRC
19	MS. PRAJKTA MALAJIRAO PAWSHE	ACS	30827	WIRC
20	MS. PRIYANKA JAIN	ACS	30898	NIRC
21	MS. ISHA BHATIA	ACS	35363	NIRC

Certificate of Practice**

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	SH. BAL KRISHAN SHARMA	FCS - 3619	15186	NIRC
2	SH. JITENDER SHARMA	ACS - 14740	15187	NIRC
3	SH. DEBANANDA NAYAK	ACS - 25881	15188	EIRC
4	MR. MANENDRA SINGH BISHT	ACS - 40229	15189	NIRC
5	MR. SACHIN SONI	ACS - 40400	15190	NIRC
6	MS. SEEMA RAJESH KOLWADKAR	ACS - 40737	15191	WIRC
7	MR. GAGAN KHANDELWAL	ACS - 40627	15192	WIRC
8	SH. HEMANG M BAKSHI	ACS - 8694	15193	WIRC
9	MS. ANKITA BOHANIA	ACS - 38551	15194	EIRC
10	MR. SACHIN RAMCHANDRA MOTGHARE	ACS - 36206	15195	WIRC
11	MR. RAJU	ACS - 35933	15196	SIRC
12	MR. BHAVESHKUMAR VITTHLABHAI KOLADIYA	ACS - 40504	15197	WIRC
13	MR. MOHIT JAIN	ACS - 40841	15198	NIRC
14	SH. VINOD KUMAR GARG	FCS - 4143	15199	NIRC
15	MR. ROHIT KUMAR	ACS - 39790	15200	EIRC
16	MS. ISHA DEEPAK SHAH	ACS - 35253	15201	WIRC
17	MS. FALGUNI BIPIN SHAH	ACS - 37656	15202	WIRC
18	MS. SARITA YADAV	ACS - 40566	15203	NIRC
19	MS. SHEETAL	ACS - 38958	15204	NIRC
20	MR. ROHIT KUMAR	ACS - 37781	15205	EIRC
21	MS. RICHA AGARWAL	ACS - 34475	15206	WIRC
22	MS. NIKITA ASHOK JAIN	ACS - 26352	15207	WIRC
23	MS. JYOTSNA	ACS - 40952	15208	NIRC
24	MRS. PRAJAKTA V GOKHALE	ACS - 20142	15209	SIRC
25	MS. JALPA RAMANLAL PATEL	ACS - 38009	15210	WIRC
26	MR. SANTOSH PANDEY	ACS - 40908	15211	NIRC
27	SH. RAMACHANDRA RAO KARANDIKAR	ACS - 97	15212	WIRC
28	MS. GEETA GOSWAMI	ACS - 24228	15213	NIRC
29	SH. BIPIN BIHARE	ACS - 19437	15214	NIRC
30	SH. MOHAMMED NAYEEM ANSARI	ACS - 27172	15215	NIRC
31	MS. SWETA MATHUR	ACS - 35617	15216	NIRC
32	MS. APARNA RAI	ACS - 36060	15217	NIRC
33	MS. MAYURI JAIN	ACS - 36158	15218	WIRC
34	MR. RAGHAVENDAR REDDY M	ACS - 36172	15219	SIRC
35	MR. HARSH GOLCHHA	ACS - 29919	15220	NIRC
36	MR. RAJENDRA SAND	ACS - 37428	15221	EIRC
37	MS. RADHA TIWARI	ACS - 38414	15222	NIRC
38	MR. RAHUL GOEL	ACS - 40829	15223	EIRC
39	MR. SURYA J RAMANI	ACS - 40887	15224	SIRC
40	MR. MURALI DEVARAJ	ACS - 30131	15225	SIRC
41	MR. SARAL NAITHANI	ACS - 40789	15226	NIRC
42	MRS. NUPUR GUPTE	ACS - 34091	15227	WIRC
43	SH. SANDEEP SINGH	ACS - 25187	15228	NIRC
44	SH. VIKRAM YADAV	ACS - 27290	15229	NIRC
45	MS. SWATI AGARWAL	ACS - 28917	15230	NIRC
46	MS. ARCHANA BHANGLE	ACS - 29953	15231	WIRC
47	MS. DASVINDER KAUR CHAWLA	ACS - 33095	15232	NIRC
48	MS. DEEPIKA	ACS - 39441	15233	NIRC
49	MR. GAURAV JAIN	ACS - 39741	15234	NIRC
50	MS. PREETI JAIN	ACS - 40208	15235	NIRC
51	MR. KAPIL KAUSHIK	ACS - 40551	15236	NIRC
52	MR. KAMALJIT SINGH	ACS - 40780	15237	NIRC
53	MS. JAYATI GUPTA	ACS - 40854	15238	NIRC
54	MS. SAPTASIKHA JHAMPATI	ACS - 40963	15239	EIRC
55	MS. RIYA ARORA	ACS - 39623	15240	EIRC
56	MS. SALONI MANDLIYA	ACS - 38701	15241	WIRC
57	MR. AMIT KUMAR	ACS - 41000	15242	NIRC
58	MR. SHREYAS RASHMIN MEHTA	ACS - 38639	15243	WIRC
59	MS. SAYED SUBUHI HUSSAIN	ACS - 40856	15244	NIRC
60	SH. SUMANTRA SINHA	ACS - 11247	15245	EIRC
61	SH. G S CHANDARAN	ACS - 11848	15246	WIRC
62	MRS. SWETA BAHETI	ACS - 21882	15247	EIRC
63	MS. POOJA GUPTA	ACS - 25898	15248	NIRC
64	MS. AMBIKA V S	ACS - 31369	15249	SIRC
65	MR. JAY SODANI	ACS - 36519	15250	WIRC
66	MS. ANKITA PARMAR	ACS - 36576	15251	NIRC
67	MS. SAKSHI JAIN	ACS - 37149	15252	NIRC
68	MR. ZORAWAR SINGH	ACS - 37855	15253	NIRC
69	MR. P S SENTHIL KUMARAVEL PANDIAN	ACS - 39905	15254	SIRC
70	MR. ANAND MISHRA	ACS - 37922	15255	EIRC
71	MR. RITESH SHRIVASTAVE	ACS - 38158	15256	NIRC
72	MR. MANISH	ACS - 38865	15257	NIRC

*Restored during the month of September, 2015.
**issued during the month of September, 2015.

73	MS. NISTHA MISHRA	ACS - 39952	15258	NIRC
74	MR. SOURAV KEDIA	ACS - 40951	15259	EIRC
75	MS. M SUJANI	ACS - 12645	15260	SIRC
76	MR. SIDDHARTH GAUTAM	ACS - 36657	15261	NIRC
77	MS. PRIYANKA SHARMA	ACS - 39509	15262	EIRC
78	MS. KRUPA JAGDISH JOISAR	ACS - 41023	15263	WIRC
79	MS. SHOBHA AMBURE	ACS - 39715	15264	WIRC
80	SH. SAMIR BISWAS	FCS - 8333	15265	NIRC
81	MS. PRIYANKA GUPTA	ACS - 40553	15266	NIRC
82	MRS. SARRAH HUSSAIN KATAWALA	ACS - 40385	15267	WIRC
83	MR. RAVINDER NEGI	ACS - 31244	15268	NIRC
84	SH. BAIJ NATH MALI	FCS - 1505	15269	NIRC
85	SH. VISHAL MEHTA	ACS - 22991	15270	WIRC
86	SH. GHANSHYAMKUMAR G. DOBARIYA	ACS - 24977	15271	WIRC
87	MS. MAMTA GUPTA	ACS - 28794	15272	NIRC
88	MR. MAYANK JAIN	ACS - 36182	15273	WIRC
89	SH. DAVENDRA SINGH	FCS - 4788	15274	NIRC
90	SH. C J JOSEPH	ACS - 11206	15275	SIRC
91	SH. PRADEEP KUMAR RAY	ACS - 15367	15276	NIRC
92	SH. B VENKA REDDY	ACS - 17439	15277	SIRC
93	MS. NIKITA KUMARI SHARMA	ACS - 26866	15278	WIRC
94	MS. SHIKHA AGARWAL	ACS - 31326	15279	EIRC
95	SH. SANJEEV M MAHAJAN	FCS - 3437	15280	WIRC
96	MR. MANISH KUMAR MISHRA	ACS - 36496	15281	NIRC
97	MS. PAYAL DHIREN DEDHIA	ACS - 37500	15282	WIRC
98	MS. SUJITA BIDESHI	ACS - 38202	15283	WIRC
99	MS. HITASHA	ACS - 38753	15284	NIRC
100	MS. DEEPIKA DUREJA	ACS - 39083	15285	NIRC
101	MS. MENKA KUMARI GUPTA	ACS - 39429	15286	EIRC
102	MR. HERAMB VISHWANATH CHARATI	ACS - 40073	15287	WIRC
103	MS. RUCHIKA SUKANRAJ BOHRA	ACS - 40806	15288	WIRC
104	MR. VIKAS VIJAY GUPTA	ACS - 40943	15289	WIRC
105	MS. VINCY GEORGE	ACS - 22688	15290	SIRC
106	MS. SANCHI SANADHYA	ACS - 35779	15291	NIRC
107	MS. AMRITA SINGH	ACS - 38444	15292	EIRC
108	MS. VIRAL ARVINDBHAI GARACHH	ACS - 39943	15293	WIRC
109	MS. NISHITA NARESH JAIN	ACS - 40532	15294	WIRC
110	MR. BHASKARJIT GOSWAMI	ACS - 41141	15295	EIRC
111	MS. DEEPIKA KAPOOR	ACS - 39042	15296	NIRC
112	SH. C MURUGANANDAM	ACS - 12232	15297	SIRC
113	SH. K V SUBRAMANYAM	ACS - 11828	15298	SIRC

CANCELLED*

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MR. SANJEEV SHARMA	ACS 38027	14405	NIRC
2	MS. SHILPI BHARDWAJA	ACS 24444	10508	NIRC
3	MS. MERLENE ANNE JOSEPH	ACS 17046	14020	NIRC
4	MR. NIRAJ KUMAR AGRAWAL	FCS 6146	5283	WIRC
5	MS. SRAVANTHI GADIYARAM	ACS 25754	10582	SIRC
6	MS. TULIKA AGARWAL	FCS 6420	6357	NIRC
7	MR. RAJ KUMAR	ACS 36310	13890	NIRC
8	MS. T RADHIKA	ACS 15464	5004	SIRC
9	MR. JAMEELU BABU KOLLA	ACS 35456	13278	SIRC
10	MR. KUSHAL JAIN	ACS 38817	14853	EIRC
11	MR. GIRISH KAMLAKAR SATHE	ACS 12499	11452	WIRC
12	MS. PRIYANKA RUIA	ACS 31957	12106	EIRC
13	MR. MEHUL CHANDULAL NALIYADHARA	ACS 39558	15059	WIRC
14	MR. NAVEEN YADAV GONTI	ACS 34783	13446	SIRC
15	MR. SONECHA CHIRAG RAJENDRA	ACS 34535	13779	WIRC
16	MR. UTKARSH GUPTA	ACS 38064	14299	NIRC
17	MS. SHIKHA CHADHA	ACS 24734	14166	NIRC
18	MS. NITASHA GUPTA	ACS 17327	13847	EIRC
19	MS. PRATIBHA SHARMA	ACS 38211	14231	NIRC
20	MR. DINESH LOHIA	ACS 29566	10873	EIRC
21	MR. K M VENKATESWARAN	ACS 67	3336	SIRC
22	MS. SUSHMA KEJRIWAL	ACS 20926	14034	EIRC
23	MR. ANKIT JAIN	ACS 35551	13363	EIRC
24	MR. ASHWANI KUMAR	ACS 30681	11905	NIRC
25	MS. ANISHA JAISANI	ACS 34017	13805	NIRC
26	MR. ANANT PRAKASH	ACS 29224	13321	NIRC
27	MS. KIRTI SHRIRAM MODAK	ACS 35369	14898	WIRC
28	MR. SAILESH KUMAR CHOUBEY	ACS 37233	14683	EIRC
29	MS. ALHEENA KHAN	ACS 33254	12457	WIRC
30	MR. MANISH CHETANI	ACS 29459	11852	EIRC
31	MS. SWEETY MURARKA	ACS 32070	11886	EIRC
32	MRS. SHREYA RAHUL CHAUDHARY	ACS 29501	12536	WIRC
33	MS. BHARTIA BHALLA	FCS 7687	8557	NIRC
34	MS. NIKITA SINGH	ACS 29199	11600	WIRC
35	MR. GANESH UMASHANKAR	ACS 15771	14328	WIRC
36	MR. BHALCHANDRA CHIDAMBAR JOSHI	ACS 40263	14948	WIRC
37	MR. RAGHAVA REDDY SADHU	ACS 14428	12669	SIRC
38	MS. AMI DEEPAK PARIKH	ACS 27703	14089	WIRC
39	MS. PRIYANKA GUPTA	ACS 23749	13400	WIRC
40	MR. ANKURBHAI KAMLESHBHAI SHAH	FCS 8170	9221	WIRC
41	MS. RUMA CHATURVEDI	ACS 16343	8185	NIRC
42	MS. SHALLU SURYAVANSHI	ACS 22572	13945	NIRC
43	MS. PRATIBHA VIJAY	ACS 35746	13664	NIRC
44	MR. KESHAV JHA	ACS 22127	12450	NIRC
45	MR. RAHUL KISHOR VED	ACS 34791	13309	WIRC
46	MR. DHANAJI BALASAHEB SHINDE	ACS 27355	14046	SIRC
47	MS. ANU KUMARI	ACS 30972	14377	SIRC

LICENTIATE ICSI**

Sl. No.	L.No.	NAME	Region
1	6781	MR SAHIL HARJAI	NIRC
2	6782	MR. ANKIT SUDARSHAN MADAN	WIRC
3	6783	MS KRITIKA SAINI	NIRC
4	6784	MR SHOBHIT GERA	NIRC
5	6785	MS RENU GUPTA	NIRC
6	6786	MS. SONAXI KANHAIYALAL JAIN	WIRC
7	6787	MR. AKSHAY RAMPRAKASH VERMA	WIRC
8	6788	MR. KIRAN RAGHAVENDRA KANCHI	NIRC
9	6789	MS. PRIYSHA BAJAJ	NIRC
10	6790	MR. AMIT NANDKISHORE RUIA	WIRC
11	6791	Mr SUMIT ARORA	NIRC

*Cancelled during the Month of September, 2015.

**Admitted during the month of September, 2015.

Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND*

Region	LM No.	Name	Membership No.	City
EIRC				
1	11003	MR. RAJ KUMAR AGARWALLA	ACS - 35614	RANCHI
NIRC				
2	10997	SH. DINESH ARORA	FCS - 5393	GURGAON
3	11000	MRS. NISHA DHINGRA	ACS - 38554	DELHI
4	11002	MS. MAMTA	ACS - 39802	GHAZIABAD
5	11004	MR. SURENDRA KUMAR MITHARWAL	ACS - 38577	JAIPUR
6	11007	MR. MADHAVENDRA KRISHNA BHATT	ACS - 41430	DELHI
7	11009	MS. AMRITA MAHARANA	ACS - 41369	NOIDA
8	11011	MR. GANESH KUMAR JHA	ACS - 41347	DELHI
SIRC				
9	10995	MS. KUKKADAPU SINDHUSHA	ACS - 39539	HYDERABAD
10	10996	MR. MADHVENDRA PRAKASH	ACS - 33190	HOOGHLY
11	10999	MR. GANAPATHYRAMAN K	ACS - 41184	CHENNAI
12	11005	MS. V SUDHA	ACS - 41349	HYDERABAD
13	11006	MS. MADHURI UNDRAJAVARAPU	ACS - 41327	TANUKU
14	11008	MS. HANITA RAJENDRA MASRANI	ACS - 41403	HYDERABAD
WIRC				
15	10993	MR. SOBHESH KUMAR AGARWALLA	ACS - 41212	AHMEDABAD
16	10994	SH. MANISH TAMBOLI	ACS - 23241	INDORE
17	10998	MS. BHARTI ASHOK JANI	ACS - 29502	MUMBAI
18	11001	MR. PUSHPENDRA PRATAP SINGH	ACS - 33381	NAVI MUMBAI
19	11010	MS. NAMITA TRIPATHI	ACS - 40635	INDORE
20	11012	SH. RISHIKESH VYAS	FCS - 7424	MUMBAI

*Enrolled during the period from 21/09/2015 to 20/10/2015.

FORM – D
APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION OF CERTIFICATE OF PRACTICE
See Reg. 10, 13 & 14

To
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI HOUSE', 22, Institutional Area, Lodi Road, New Delhi -110 003
Sir,

I furnish below my particulars :

(i) Membership Number FCS/ACS:			
(ii) Name in full			
(in block letters) Surname Middle Name Name			
(iii) Date of Birth:			
iv) Professional Address:			
(v) Phone Nos. (Resi.)		(Off.)	
(vi) Mobile No		Email id	
(vii) Website of the member, if any			
(viii) Additions to or change in qualifications, if any			

Submitted for (tick whichever is applicable):
(a) Issue _____ (b) Renewal _____(c) Restoration _____

(a) Particulars of Certificate of Practice issued / surrendered/ Cancelled earlier

Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

(b) Unique Code Number
(i) Individual/Proprietorship concern (ii) Partnership firm

3. Area of Practice

Sl. No.	Area of Practice	Please tick (If Applicable)	
1	Corporate Law		
2	Financial Service and Consultancy		
3	Securities/Commodities Exchange Market		
4	Finance including Project/Working Capital/Loan Syndication(Specify the areas handling)		
5	Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc). Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)		
6	Excise/CUSTOMS (Filling of returns, Handling assessment, appearing before the appellate authority)		
7	Sales Tax/VAT Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
8	Income Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
9	Service Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
10	Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/returns, appearing before RBI etc)		
11	Foreign Collaborations & Joint Ventures		
12	Intellectual Property Rights (Specify the areas being handled)		
13	Depositories		
14	Monopolies/Restrictive Trade Practices/Competition Law		
15	Consumer Protection Laws		
16	Arbitration and Conciliation		
17	Import and Export Policy & Procedure		
18	Environment Laws(Specify the areas)		

19	Environment Laws(Specify the areas)		
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)		
21	Financial Consultancy		
22	Other Economic Laws		
23	SEBI / Securities Appellate Tribunal		
24	Banking and Insurance		
25	Any Other Service (Please specify)		

4. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.

ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.

iii. I hereby undertake that, I shall adhere to the mandatory ceiling as regards issuing of Secretarial Audit Report (pursuant to Section 204 of the Companies Act, 2013) and certification/ signing of Annual Return (pursuant to Section 92 of the Companies Act, 2013) in terms of the GUIDELINES FOR ISSUING SECRETARIAL AUDIT REPORT, SIGNING AND CERTIFICATION OF ANNUAL RETURN respectively issued by the Institute from time to time.

iv. I state that I have issued / did not issue _____ advertisements during the year 20__ in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.

v. I state that I issued _____ Corporate Governance compliance certificates under Clause 49 of the Listing agreement during the year 20____ … *

vi. I state that I have / have not undertaken _____ Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20… - … *

vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/ Firm of Practising Company Secretaries** issued by the Institute*.

viii. I hereby declare that I have complied with KYC norms issued by the Council of the ICSI.

ix. I undertake to subject myself to peer review as and when directed by the Peer Review Board.

5. I send herewith Bank draft drawn on _____ Bank _____Branch bearing No._____ _____ dated _____/ online payment vide acknowledgement No._____ dated _____/ Cash payment at ROs/Chapters vide Acknowledgement No. _____ dated _____ for Rs._____ towards annual certificate of practice fee for the year ending 31st March _____.

6. I hereby declare that I attended the following professional development programmes held during the financial year _____:

Sr. No.	Name of Programme	Organised by	Place	Date	Duration*	No. of Program Credit Hours Secured**	Details of Certificate for Program Credit Hours ***

* Please specify whether full day/half day/number of hour
** Extra sheet can be attached....
*** The extracts from ICSI portal about the Credit hours with self certification

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:
Date :

***Encl.

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* Applicable in case renewal or restoration of Certificate of Practice

** Rs. 1000/- Annual Certificate of Practice Fee (Rs. 500/- if applied during October-March)

***

- Copy of the relieving letter in case earlier in employment.
- Copy of Form DIR 12 regarding cessation of employment in case working earlier as Company Secretary.
- Copy of letter of cancellation of Certificate of Practice of other professional bodies if applicable.

List of Practising Members Registered For The Purpose of Imparting Training During The Month of September, 2015

A AJAY KUMAR BANTIA	SECOND FLOOR, APPLE CROSS 19, CRESENT PARK STREET, T NAGAR Pincode:600017	CHENNAI
ABHISHEK KUMAR PANDEY	C/O BABULAL DAS, 51/18, DUM DUM ROAD, Pincode:700074	KOLKATA
AKHIL MAHENDRA LODHA	13, ANUPAM AVENUE, SRINAGAR SOCIETY, PUSPKUNJ ROAD, MANINAGAR Pincode:380028	AHMEDABAD
AMBUJ GUPTA	63, CIVIL LINES, BEHIND PRAKASH TOWER Pincode:243001	BAREILLY
AMIT KUMAR	A-9/1, FIRST FLOOR, NARAINA INDUSTRIAL AREA, PHASE -1 Pincode:110028	NEW DELHI
ANAY NITIN KEMBHAVI	A-5, BANK OF INDIA, BEHIND BHAPKAR PETROL PUMP, PARVATI POST OFFICE Pincode:411009	PUNE
ANISH KUMAR	H. NO. 2002/5, SECTOR -32 C, Pincode:160047	CHANDIGARH
ANURAG GOURISARIA	BD-26A, GEMENI KUNJ, GROUND FLOOR, SAHAPARA, DESHBANDHUNAGAR, BAGUAITI Pincode:700059	KOLKATA
ARUN CHANDRAN KANJIRAMPARAMBATH	1ST FLOOR, THIRUVONAM BUILDING, SHORNUR ROAD Pincode:682018	THRISSUR
ASHIMA BHATNAGAR	F-4/A, CHANDER NAGAR WEST, NEAR SAI MANDIR, Pincode:110051	DELHI
AVINASH NOLKHA	8/88, VARDHMAN COLONY, Pincode:311001	BHILWARA
DEEPAK SHARMA	F -155, TIME SQUARE, CENTRAL SPINE, VIDHYADHAR NAGAR Pincode:302023	JAIPUR
DEVIKA SHARMA	G-239, NANAK PURA, MOTI BAGH -2, Pincode:110021	NEW DELHI
DIMPLE BHATIA	A-20, SECOND FLOOR, FATEH NAGAR, Pincode:110018	NEW DELHI
DINKAL BIPINCHANDRA SHAH	B-33, SUNDARAM TOWER, NR. MEDILINK HOSPITAL, SHYAMAL CROSS ROAD, SATELLITE Pincode:380015	AHMEDABAD
HARSHAL	RZ D2/65, FIRST FLOOR, GALI NO. 3, MAHAVEER ENCLAVE, PALAM Pincode:110045	NEW DELHI
HARSHIT JAISWAL	BESIDE PRAKASH SWEET HOUSE, BANTHRA BAZAR, KANPUR ROAD Pincode:227101	LUCKNOW
INDU JAIN	2999, IIND FLOOR, OLD BUS STAND ROAD, TRI NAGAR(NR KANHAIYA METRO STATION) Pincode:110035	DELHI
JAI SINGH BOHRA	HOUSE NO. 37/160, RAJAT PATH, MANSAROVAR, Pincode:302020	JAIPUR
JAYA VINAY SINGH	C-601, 6TH FLR, ANAND REGENCY, NEAR RBK GOBAL SCHOOL, INDRALOK PHASE 6, BHAYANDER E Pincode:401105	THANE
JIGNESH ASHVINKUMAR SHAH	2-SHESHADRI APARTMENT, PRABHUPARK SOCIETY, PUNIT MARG, MANINAGAR Pincode:380008	AHMEDABAD
KAMLESH KUMAR JAIN	800, SANGITA ELLIPSE, SAHAKAR ROAD, VILE PARLE (EAST) Pincode:400057	MUMBAI
KARISHMA FAIYAZ SHAIKH	WESTVIEW SOCIETY D BLDG, FLAT NO 6 OPP SALISBURY PARK, POST OFFICE GULTEKDI Pincode:411037	PUNE
KIMTI SATYANARAYAN SHARMA	FLAT NO. 501, `D`WING, KRISHNA, RESIDENCY, SUNDAR NAGAR, NEAR DALMIYA, COLLEGE, MALAD (W) Pincode:400064	MUMBAI
KIRAN KUMAR PRAFUL BHAI DHANANI	308, OPERA HOUSE, B/H SUPER DIAMOND MARKET, MINI BAZAR, VARACHHA ROAD Pincode:395006	SURAT
KOMAL SULANIYA	DAYA DEVI GARDEN, KALWAR ROAD, JHOTWARA Pincode:302012	JAIPUR
KUMAR PAL MAHENDRA MEHTA	2ND FLOOR, AAKASHGANGA COMPLE, PARIMAL UNDER BRIDGE, NEAR, SUVIDHA SHOPPING CENTER,PALDI Pincode:380007	AHMEDABAD
MADHURI RAJENDRA MORE	A-405, KASHI VISHWANATH, MADHAV SANSAR, KHADAKPADA, Pincode:400013	KALYAN (WEST)
MANDAR SUBHASH PALAV	1/8, MANISH APARTMENT, BHAUSAHEB PARAB ROAD,KANDARPADA, DAHISAR (W) Pincode:400068	MUMBAI
MANOJ KUMAR GURJAR	F-155, TIME SQUARE, CENTRAL SPINE, VIDHYADHAR NAGAR Pincode:302023	JAIPUR

MINAL MUKESH GOYAL	PLOT NO. 130, 131, WARD NP. 10-A, OPPOSITE IFFCO, GANDHIDHAM Pincode:370201	KUTCH
MOHAMMED IRFAN	H.NO: 16-2-241/D/55, T V TOWER, MALAKPET Pincode:500036	HYDERABAD
MOHIT GULATI	A-341, DDA COLONY, CHOWKHANDI, TILAK NAGAR Pincode:110018	NEW DELHI
MONIKA NARENDRA SANKHLA	807, SHALIN COMPLEX, 8TH FLOOR SECTOR-11, Pincode:	GANDHINAGAR
MURTUZA KAIZAR MANDORWALA	D-422, BG TOWER, OPP. DELHI DARWAJA, SAHIBAUG Pincode:380004	AHMEDABAD
MURTUZA SHAIKHJI	FLAT NO. 28, BLDG NO. 3, LOKMANYA NAGAR, L.B. SHASTRI ROAD Pincode:411030	PUNE
NAINA JINDAL	602, ANSAL SATYAM RDC, RAJ NAGAR, Pincode:201001	GHAZIABAD
NAWAJ WAHAB SAYYAD	F.NO. 394, BUILDING NO. 28, SAMARTH SOCIETY, LOKMANYA NAGAR Pincode:411030	PUNE
NEHA SHARMA	H. NO. 2258, SECTOR 13, 17, NEW HOUSING BOARD COLONY, Pincode:132103	PANIPAT
PALVAI VIKRAM REDDY	H. NO. 3-4-1/4/1, SHANTI NAGAR, RAMANTHAPUR Pincode:500013	HYDERABAD
PRASHANT BHARATKUMAR PATEL	407 AKSHAT TOWER, NR.PAKWAN RESTURANT-II, HAVMOR RESTAURANTLANE,BODAKDEV Pincode:380054	AHMEDABAD
PRINCE MOHAN SINHA	108-109, PARMESH BUSINESS CENTRE -1, KARKARDOOMA COMMUNITY CENTRE, KARKARDOOMA Pincode:110092	DELHI
PRIYA GUPTA	4/139, IIND FLOOR,LALITA PARK, LAXMI NAGAR, Pincode:110092	DELHI
RAHUL GUPTA	C-293, SURAJMAL VIHAR, Pincode:110092	DELHI
RAJANI RAWAT	SANTOSH KUMAR ANIL KUMAR RAWAT, OPP GIRLS SCHOOL, MAIN MARKET MANPUR, TEHSIL -SIKRAI Pincode:303509	DAUSA
RAJAT KHANEJA	B-44, KRISHNA NAGAR, Pincode:281004	MATHURA
RENU RAI	K-35/25, STREET NO. 51, SADATPUR (EXT.) Pincode:110094	DELHI
SAMEER SHUKLA	36 `S` BLOCK, YASHODA NAGAR, Pincode:208011	KANPUR
SAMIR SRIVASTAVA	117/L/111-A, NAVEEN NAGAR, KAKADEO Pincode:208025	KANPUR
SAPNA GARG	714, IMPERIAL BLOCK, SUPERTECH ESTATE, SECTOR-9, VAISHALI Pincode:201010	GHAZIABAD
SAVITA	71, SATAY NIKETAN OPPOSITE SAI, VENKATESWARA COLLEGE, Pincode:110021	NEW DELHI
SHIVLAL RAMAPATI MAURYA	79, GROUND FLOOR, VIRWANI, INDUSTRIAL ESTATE, WESTERN EXPRESS, HIGHWAY, GOREGAON Pincode:400063	MUMBAI
SIDDHANT BENARA	1/209B, PROFESSORS COLONY, HARIPARVAT, Pincode:	AGRA
SIDDHI DHANDHARIA	27, BRABAURNE ROAD, NARAYANI BUILDING, 4TH FLOOR, ROOM NO. 402 Pincode:700001	KOLKATA
SONESH JAIN	C/O MOTI LAL MALOO, 46/1, COLLEGE ROAD, OPP. -B.E. COLLEGE(MAIN GATE) Pincode:711103	HOWRAH
SURBHI BATHLA	1515-16, NEW HOUSING BOARD COLONY, Pincode:132103	PANIPAT
VAIBHAV SHARMA	DG-II, 268-A, VIKAS PURI, Pincode:110018	NEW DELHI
VIGNESH S S	39-A (FIRST FLOOR), THENNOLAIKARA MAIN STREET, EAR SOUTH KRISHNAN TEMPLE Pincode:625001	MADURAI
VIJAYITA CHOWHAN	2ND FLOOR, 61/1,NARAYAN NILAY, JALADARSHINI LAYOUT, NEW BEL ROAD Pincode:560094	BANGALORE
VINEET KUMAR	71, SATAY NIKETAN, OPPOSITE SRI VENKATESWA COLLEGE, Pincode:110021	NEW DELHI
VISHAKHA HARBOLA	K-40, IIND FLOOR, BK DUTT COLONY, NEAR JOR BAGH Pincode:110003	NEW DELHI
VISHAL GAMBHIR	K-111, IIIRD FLOOR, KIRTS NAGAR, Pincode:110015	NEW DELHI
VIVEKA FANIPATI HEGDE	317/7, 1ST FLOOR, 1ST 'F' CRS, SUBBANNA GARDEN MAIN ROAD, RPC LAYOUT, VIJAYANAGAR Pincode:560040	BENGALURU
VRAJANGNA JAYANTILAL CHOLERA	OS-61,2ND FLOOR,KANAKNIDHI COMPLEX, OPP.GANDHI SMRUTI BHAVAN, NANPURA Pincode:395001	SURAT

List of Companies Registered for Imparting Training during the month of September, 2015

AURUM CAPITAL SERVICES LLP
PLOT NO 92, GITA BUILDING, SECOND FLOOR, SION CIRCLE, NEXT TO CHAGGAN MITHA HP PETROL PUMP, SION EAST MUMBAI

CADILA PHARMACEUTICALS LIMITED
CADILA CORPORATE CAMPUS, SARKHEJ-DHOLKA ROAD BHAT, AHMEDABAD

CAWASJI BEHRAMJI CATERING SERVICES LIMITED
201/202, 2ND FLOOR, BENSTON-B WING,
NEAR RIZVI COLLEGE, SHERLY RAJAN ROAD
BANDRA WEST, MUMBAI-400050

CLYDE PUMPS INDIA PVT. LTD.
OFFICE NO. 162 , "THE CORENTHUM",
6TH FLOOR, TOWER A, PLOT NO. A-41,
SECTOR-62. NOIDA

CYGNUS MEDICARE PRIVATE LIMITED
1211, PEARLS OMAXE, NETAJI SUBHASH PALACE,
PITAMPURA, NEW DELHI - 110034

DISCOVERY COMMUNICATIONS INDIA
BULDING 9A, 9TH FLOOR, CYBER CITY, GURGAON

ENERGON POWER RESOURCES PRIVATE LIMITED
2/1, FIRST FLOOR , EMBASSY ICON ANNEXE, INFANTRY ROAD,OPP TO COFFEE BOARD, NEAR POLICE COMMISSIONER OFFICE, BANGALORE

FUTURE FINANCIAL SERVICESS PRIVATE LIMITED
NO. 90/4, ZONASHA APHA BUILDING, MARATHAHALLI OUTER RING ROAD

GUINESS CORPORATE ADVISORS PRIVATE LIMITED
BAJAJ BHAVAN, B-139,ROOM NO.111,BUILDING NO. 226,11TH FLOOR, NARIMAN POINT,MUMBAI-400021

HARMONY YARNS PRIVATE LIMITED
105 J.K TOWER ,NEAR SUB JAIL, RING ROAD, SURAT - 395002

HARSH CONSTRUCTIONS PVT. LTD
1,SANSKRUTI,MURKUTE LANE
NEW PANDIT COLONY, GANGAPUR ROAD, NASHIK

HITECH EXTRUSION LLP
PLOT NO. 3003-3007, GIDC PHASE-III, DARED, JAMNAGAR

INFIBEAM INCORPORATION LIMITED
9TH FLOOR, "A" WING, GOPAL PALACE, OPP. OCEAN PARK, NEHRU NAGAR, SATELLITE ROAD, AHMEDABAD

INVENTURE MERCHANT BANKER SERVICES PRIVATE LIMITED
2ND FLOOR, VIRAJ TOWER, NEAR LANDMARK, WESTERN EXPRESS HIGHWAY, ANDHERI EAST, MUMBAI

KESHLATA CANCER HOSPITAL LIMITED
KESHLATA HOSPITAL, DELAPEER, STADIUM ROAD, BAREILLY

KHANNA PAPER MILLS LIMITED
NH-1, MAJITHA BYEPAAS, AMRITSAR, PUNJAB

LA CHEMICO PRIVATE LIMITED
66/1A, BAITHAK KHANA ROAD, KOLKATA- 700009

LACORE PROPERTY ADVISORS PRIVATE LIMITED
SUITE 404, 4TH FLOOR, PS-IXL, ATGHARA, NEAR CHINAR PARK CROSSING, KOLKATA

M.P. POWER MANAGEMENT COMPANY LIMITED
SHAKTI BHAWAN, RAMPUR, JABALPUR

M/S.ASTUTE CONSULTING PRIVATE LIMITED
13TH FLOOR, BHAKTAWAR, 229, NARIMAN POINT
MUMBAI

ODISHA THERMAL POWER CORPORATION LIMITED (OTPCL)
3RD FLOOR, SETU BHAVAN, PLOT - 3 (D), OBCC BUILDING
NAYAPALLI, BHUBANESWAR

PRL DEVELOPERS PRIVATE LIMITED
PIRAMAL TOWER , 8TH FLOOR, GANPATRAO KADAM MARG, LOWER PAREL, MUMBAI

RAJNEESH SOOD & CO. LLP
B-82, II FLOOR, NARAINA VIHAR, NEW DELHI

SAH POLYMERS LIMITED
E-260 261 MEWAR INDUSTRIAL AREA, MADRI , UDAIPUR

SAMEERA PAPERS LIMITED
D.NO. 17-1-1/1B, BYPASS ROAD (ALAMURU ROAD), MANDAPETA, VISAKHAPATNAM

SHREE BALAJI ETHNICITY RETAIL LIMITED
UNIT NO.601, 6TH FLOOR, F WING, LOTUS CORPORATE PARK, LAXMI NAGAR, GOREGAON (E), MUMBAI-RO

STREETLIGHT SOFTWARE PRIVATE LIMITED
F/C 3/4 KARMA STAMBH, LBS MARG, VIKHROLI WEST
MUMBAI-400079

SYNERGY ELECTRIC PRIVATE LIMITED
TRISHUL BUILDING GROUND FLOOR, 35 ROWLAND ROAD
KOLKATA

TATA CLEANTECH CAPITAL LIMITED
I-THINK TECHNO CAMPUS BUILDING
A- 4TH FLOOR, OFF POKHRAN ROAD NO.2, THANE WEST
400607 MUMBAI

THE MOBILESTORE LIMITED
ESSAR HOUSE, 11, K. K. MARG, MAHALAXMI, MUMBAI
MUMBAI

TRINITY KITCHENWARE PVT. LTD
UNIT NO.426/427,ORCHID ROAD MALL, B WING,ROYAL
PALMS, AAREY COLONY,GOREGAON(EAST), MUMBAI-400065

VAB VENTURES LIMITED
60B, CHOWRINGHEE ROAD, 3RD FLOOR

KOLKATA-RO(19)
VIBHOR VAIBHAV INFRAHOME PRIVATE LIMITED
S-551, SCHOOL BLOCK, SHAKARPUR, DELHI

WONDERVALUE REALTY DEVELOPERS PRIVATE LIMITED
505 CEEJAY HOUSE DR. ANNIE BESANT ROAD, WORLI,
MUMBAI

YADU SUGAR LIMITED
5A, 18 POORVI MARG,VASANT VIHAR, NEW DELHI

COSCO (INDIA) LIMITED
2/8, ROOP NAGAR, DELHI-110007

ENNORE COKE LIMITED
1-B, SIGAPPI ACHI BUILDING-1ST FLOOR, 18/3, RUKMANI
LAKSHMIPATHI SALAI, EGMORE, CHENNAI

HINDUSTAN OIL EXPLORATION COMPANY LIMITED
LAKSHMI CHAMBERS, 192, ST. MARY'S ROAD, ALWARPET,
CHENNAI

MAFATLAL INDUSTRIES LIMITED
301-302 HERITAGE HORIZON, 3RD FLOOR, OFF: C.G.ROAD,
NAVRANGPURA, AHMEDABAD - 380009

MANGALAM SEEDS LIMITED
202, SAMPADA COMPLEX, B/H TULSI COMPLEX, MITHAKHALI
SIX ROAD, NAVRANGPURA, AHMEDABAD

MEWAR POLYTEX LIMITED
207 - A, ROAD NO. 11, MEWAR INDUSTRIAL AREA, MADRI
UDAIPUR

ORIENT GREEN POWER COMPANY LIMITED
SIGAPPI ACHI BUILDING, 4TH FLOOR, 18/3 RUKMINI
LAKSHMIPATHI ROAD, EGMORE, CHENNAI

PIL ITALICA LIFESTYLE LIMITED
KODIYAT ROAD, NEAR RAMPURA CIRCLE
VILLAGE - SISARMA, UDAIPUR

RATNAMANI METALS AND TUBES LIMITED
17, RAJMUGAT SOCIETY, NARANPURA CHAR RASTA
NARANPURA, AHMEDABAD

SABRIMALA LEASING AND HOLDINGS LIMITED
503, 5TH FLOOR, KLJ TOWER NORTH, NETAJI SUBHASH
PLACE, PITAMPURA
NEW DELHI

SILVER OAK (INDIA) LIMITED
102, FIRST FLOOR, AA-14, SCHEME NO. 54, VIJAY NAGAR
INDORE

WABCO INDIA LIMITED
III, MAIN ROAD, AMBATTUR INDUSTRIAL ESTATE, CHENNAI

Beginning November 2015 issue of the Chartered Secretary Journal, the publication of full text of the proceedings of the programme organised by the Regional Councils/ Chapters of the Institute has been done away with, and in its place the weblinks of the proceedings of such programmes are published. Readers may refer to the weblinks to view and read the detailed proceedings of the programmes.

EASTERN INDIA REGIONAL COUNCIL

HOOGHLY CHAPTER

Name of the Programme(s)	weblink(s)
7th Study Circle Meeting of 2015 on "Private Company Exemption Notification"	https://www.icsi.edu/hooghly/Home/NewsEventsandAnnouncements.aspx
8th Study Circle Meeting of 2015 on "The Companies (Amendment) Act, 2015 and its Impact on Related Party Transactions and Loans to Directors"	
Half Day Workshop on "Skill to Become a Successful Entrepreneur"	
Full Day Workshop on "Secretarial Standards – I & II"	
One-Day "Class Room Teaching" for the CS Students pursuing Executive Programme	
9th Study Circle Meeting of 2015 on "Filing of Form : AOC-4 (Profit & Loss Account & Balance Sheet)"	
10th Study Circle Meeting of 2015 on "Filing of Form : MGT-7 (Annual Return) & ADT-1 (Appointment of Auditor)"	
69th Independence Day Celebration	
Career awareness programmes	

RANCHI CHAPTER

Name of the Programme(s)	weblink(s)
Full Day Workshop and Observation of Swachh Bharat Abhiyan	(www.icsi.edu/portals/21/Publication Ranchi Sep-Oct'15.pdf).

NORTHERN INDIA REGIONAL COUNCIL

Name of the Programme(s)	weblink(s)
Valedictory Function of 218th MSOP	(http://www.icsi.edu/Portals/70/Chartered%20Secretary.pdf)
Study Session	
Master Class on SEBI Listing Regulations, 2015	
Practical Session on Pain Relief through Pencil Therapy	
Inauguration of 222nd Batch of MSOP	
Inauguration of 223rd Batch of MSOP	
Seminar on "Competition Law and Compliance – A Growth Enabler"	
Interactive Session on Annual Filing-2015 including XBRL	
Haryana State Conference on CS: Conquering the Challenge of Change	

SOUTHERN INDIA REGIONAL COUNCIL

BANGALORE CHAPTER

Name of the Programme(s)	weblink(s)
Study Circle Meeting on Deposits Under Companies Act 2013	http://bit.ly/1VVEFC2
Inauguration and Valedictory of 22nd& 23rd Batches of Management Skills Orientation Programme -	http://bit.ly/1G96MvG
Campus Recruitment Drive	http://bit.ly/1k9aV8R
Full Day Seminar on Notice for AGM & Board's Report	http://bit.ly/1PllkeF
Half Day Panel Discussion on Emerging Trends in Company Law in association with Acharya Patashala College of Commerce	http://bit.ly/1PllsKY
Student Study Circle Meetings	http://bit.ly/1hIfFAL
Career Awareness Programs	http://bit.ly/1js92Ek
Moot Academy - First Program on Excellent Research and Effective Drafting	http://bit.ly/1jG5YnG

HYDERABAD CHAPTER

Name of the Programme(s)	weblink(s)
Career Awareness Programmes	http://www.icsi.edu/hyderabad/CAP.aspx
Interactive session on Chapter XX of the Companies Act, 2013 – Winding up	http://www.icsi.edu/hyderabad/Programmes.aspx
Elocution Competition	
Interactive session	
Moot Court Competition	
Foundation Day Celebration	
Cricket Match	
Blood Donation Camp	
Study Circle Meeting	
Company Law Quiz Competition for CS Students	
Thought Leadership session – for Students – Ethics & Compliance – Path to Success	
ICSI-CSR 5 K Walk	
Independence Day Celebrations	
Teachers Day Celebrations & ICSI-CSR 5k Walk Success Meet	
Inauguration of 13th MSOP	
Valedictory Session of 13th MSOP	
Study Circle Meeting on SEBI(Listing Obligations and Disclosure Requirements) Regulations, 2015	
Inauguration of 78th Batch of Class Room Teaching	

WESTERN INDIA REGIONAL COUNCIL

Name of the Programme(s)	weblink(s)
Annual Regional Conference-2015	https://www.icsi.edu/wiro/NewsEvent.aspx
Seminar on Corporate Restructuring and Anomalies & Interpretation under Companies Act 2013	
Brain Storming session on "Critical Aspects of Corporate Laws" and 44th WIRC Foundation Day Celebration	
Video Links on ICSI-WIRC Webinar Series	

PUNE CHAPTER

Name of the Programme(s)	weblink(s)
Student Induction Programme	-https://drive.google.com/file/d/0B2dW_wq9LDXeTklmQlZLdzFVbUU/view?usp=sharing
2nd Two Days Induction Programme	
Study Circle Meeting on "Annual Return Under The Companies Act 2013"	
CS Day Celebrations.	
Students Induction Programme	
Study Circle Meeting	
Book & Education Expo – 2015	
Workshop – Unique Workshop On Annual Filing 2015	
Study Circle Meeting on "Boards Report Under Companies Act 2013"	

Limited seats – Upto - 40

First Innovative & Unique Program

THE INSTITUTE OF Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CENTRE FOR CORPORATE GOVERNANCE, RESEARCH & TRAINING (CCGRT)

PDP-24

ICSI - CCGRT

PCH- 10

All India Residential Research Circle Brain Storming Colloquium on INDIAN COMPANY LAW (A Three Days of Connoisseurs Congregation)

The Trajectory

In its endeavor to provide impetus to research activities and taking it to the pinnacle, CCGRT is organizing the aforesaid program to delve into various Sections and Critical Aspects of Companies Act, 2013 and to emerge with a literature that will be incredible and an exemplar in Indian Company Law with comparison to the analysis of other countries Company Law.

The First Move-Research Circle Formation & Gearing up

The pre-lunch session of the first day of the workshop will focus upon the idea behind formation of the Research Circle and its role as a catalyst in conducting research on Companies Act, 2013.

Panel Speakers and Organisers will explain extensively the significance of the workshop, the proposed outcome, its relevance for the Company Secretaries in practice and employment, Research Scholars, especially pursuing Ph.D in Law and other professional courses, students pursuing Company Secretary Course and Law.

The session will also throw light on the procedure or process to be embraced by the participants during the voyage of this workshop.

The Second Move: Intra-Circle Brainstorming

Once the participants will be conversant with the theory behind formation of the Research Group, its goals and process to be followed as a participant, the next move goes by the adage, "*Two Heads are Better than One*". Yes, we are talking about brainstorming, as in today's dynamic Legal, Business & Economic environment, decision taken by one expert may prove detrimental to the interest of the organization and stakeholders. So, in view of the immense value brainstorming holds, this session will unite various groups (*after formation of groups during the workshop*), who will engage into a detailed discussion on the assigned Chapters/Sections of the Companies Act, 2013 in comparison to other Indian Companies Act and other countries Companies Act. As various people have different perceptions and it consumes

paramount time to reach the point of reconciliation, keeping this in view, substantial time will be allocated for the mentioned session, so that all participants with the combination of 3Ds, '*Dedication, Determination & Discipline*' give their optimum output.

This will be in the presence of Moderators.

The Third Move: Inter Circle Debate & Discussion

After participants discussed their viewpoints among their group members, the next stage involves holding in-depth discussion with other group members. This will assist in forming better views or in formulating refined and impeccable conclusions on various Chapters/Sections of the Companies Act, 2013.

Since this session is a metamorphosis from a '*River to an Ocean*', since all group members share their thoughts/opinions, it demands ample time and so not few hours rather full-day is allocated for the mentioned session.

This will be in the presence of Panelist.

The Fourth Move: Validation

The workshop culminates with Validation process, where the inputs shared by the fellow participants will be validated by the Research Circle. As it is a crucial step and in absence of it no academic and research endeavor can be concluded, in view of this, half-day have been allocated for the mentioned session.

Date, Time and Venue

Day & Date: Friday, November 06 to Sunday, November 08, 2015; Time: 09:30 am to 05.30 pm

Venue: ICSI-CCGRT Auditorium, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614 (ICSI-CCGRT, Navi Mumbai). Tel No.022-41021501/15.

Fee Details (Inclusive of Service Tax@14%)

Early Bird Discount for participants registering on or before 2nd November, 2015- Rs. 5,500/-

Participants registering after 2nd November, 2015 – Rs. 6,500/-

For Registration

Fees may be paid through Pay U link(link available on CCGRT website) / local / Par cheque payable at Mumbai in favour of **"ICSI-CCGRT A/c"** and sent to: Dr. Rajesh Agarwal, Director, ICSI-Centre for Corporate Governance, Research & Training (ICSI-CCGRT), Plot No. 101, Sector-15, Institutional Area, CBD Belapur, Navi Mumbai- 400 614.

☎ 022-41021515/ 04, Fax: 022-27574384; email: ccgrt@icsi.edu

The Best Three Groups will be crowned with the title of –

1. Mavericks (Award worth Rs.10,000/-)
2. Shining Stars (Award worth Rs. 5,000/-)
3. Achievers (Award worth Rs. 3,000/-

Prerequisites for the participants: Participants must carry their own laptops, Books and other necessary items

Participation is limited to 40 only. If the number of registrations received is more than 40 than Institute reserve the right for screening the participants. However, priority will be given to the outstation registered candidates.

All Participants will be awarded with Participation Certificates

(CS Ahalada Rao)
Chairman
Research Committee, ICSI

(CS Ashish Doshi)
Chairman
ICSI-CCGRT Management Committee

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries

FAQs on Peer Review

1. What is Peer Review?

   Ans. Peer Review is a process used for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

2. To whom all would Peer Review be applicable?

   Ans. Peer Review is applicable to all Practicing Company Secretaries.

3. What is the meaning of Practice Unit?

Ans. Practice Unit means members in practice, whether practicing individually or a firm of Company Secretaries.

4. What are the practice areas covered under the scope of Peer Review?

Ans. The Review would only be in respect of the following services::

   a. Signing of Annual Return pursuant to Section 161(1) of the Companies Act, 1956

   b. Certification/ Signing of Annual Return pursuant to section 92 of the Companies Act, 2013

   c. Issue of Compliance Certificate pursuant to Section 383A(1) of the Companies Act, 1956

   d. Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013

   e. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges

   f. Certificate of reconciliation of Capital as per SEBI Circular dated Dec. 31, 2002

   g. Conduct of Internal Audit of Operations of Depository Participants

   h. Certification under Clause 49 of Listing Agreement

5. Whether the concept of Peer Review exists for CWA's and CA's?

Ans. The Institute of Chartered Accountants of India has a mechanism of Peer Review of their Members in Practice.

6. What are the advantages of the Peer Review to the Practice Unit (PU)?

Ans. It is expected to

   A) enhance the quality of attestation services.

   B) enhance credibility and provide competitive advantage.

   C) provide a forum for Guidance and knowledge sharing.

7. How much will it cost me to get Peer Reviewed?

Ans. You shall pay to the Peer Reviewer the fee of Rs. 10,000/- to the Peer Reviewer (inclusive of TA/DA and any out of pocket expenses) as may be prescribed by the Peer Review Board from time to time.

8. What is the frequency of Peer Review?

Ans. Initially, each Practice Unit would be required to be peer reviewed at least once in every five years.

9. How will I be selected for Peer Review?

Ans. You may apply to be peer reviewed or it may be done through random selection by the Peer Review Board.

10. If I have been Peer Reviewed can I disclose this on my website?

Ans. Only the fact of being Peer Reviewed can be stated. However, neither the Certificate nor the Peer Review Report may be given on the website.

11. Can I become a Peer Reviewer?

Ans. Any member of the Institute who fulfills the following criterion may apply to be empanelled as a Peer Reviewer-

(a) possesses at least 10 years of post membership experience

(b) is currently in practice as a Company Secretary.

12. Will the information disclosed by me be kept confidential by the reviewer?

Ans. The Peer Reviewer is bound by a Confidentiality Agreement with the Peer Review Board. If the Reviewer misuses the information disclosed by you he may be subject to disciplinary action by the Institute.

13. If I am Peer Reviewed and it is found that I have not maintained adequate records, will I be liable for any disciplinary action?

Ans. No.

14. Is the Peer Reviewer exposed to any liability?

Ans. The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

15. After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?

Ans. No. Peer Review is only a broad examination of the systems and procedures followed by the Practice Unit. The fact that you have been Peer Reviewed does not provide immunity from Disciplinary Action. However, neither Institute nor the Reviewer can file any complaint in respect of deficiencies observed during the course of Peer Review. (Refer Cl. 18 of the Guidelines for details)

16. What do I do if I am not satisfied with the Report of the Peer Reviewer?

Ans. You may refer your case to the Peer Review Board.

17. If I am selected for being Peer Reviewed, is it mandatory for me to offer myself for Peer Review?

Ans. Yes.

18. Do I need to disclose the records of my clients to the reviewers?

Ans. No.

19. A) Can any of my clients ask the Institute to get me peer reviewed?

Ans. Yes.

B) Who will pay the cost of such Peer Review?

Ans. The client shall pay the cost of such Peer Review.

20. Will ICSI be issuing any Certificate after Peer review?

Ans. Yes.

21. Will ICSI put up the names of the PU which have undergone PR on ICSI website?

Ans. Yes.

23. What are my obligations as a Practice Unit?

Ans. Refer Cl. 12 of the Guidelines

24. Can I volunteer to get Peer Reviewed?

Ans. Yes.

25. I have been Peer Reviewed once, will I be Peer Reviewed again?

Ans. Yes, if the Peer Review Board so decides.

26. Can I choose my Peer Reviewer?

Ans. The Peer Review Board would send you a panel of atleast three reviewers and you may choose any one name out of the panel sent to you.

27. Can I reject all the reviewers mentioned in the panel and ask for another reviewer from the same State or region?

Ans. Yes.

28. If I want a Peer Reviewer from out side my State or region what should I do?

Ans. You may make a special request to the Peer Review Board to provide names of such Peer Reviewers. However, in such a case you would have to bear the extra cost that would be incurred for TA / DA etc.

29. If I am not satisfied with the order of the Peer Review Board can I appeal to the Council?

Ans. Yes. You may appeal against the Order of the Peer Review Board to the Central Council of the Institute. (Refer cl. 17.3 of the Guidelines)

30. Can I refuse to get myself Peer Reviewed?

Ans. No. Any refusal to get Peer Reviewed shall be a misconduct under the Code of Conduct.

OBITUARIES

"Chartered Secretary" deeply regrets to record the sad demise of the following Members:

CS SURENDRA KUMAR JAIN (12.01.1935 – 12.12.2014), a Fellow Member of the Institute from New Delhi.

CS K M MALADAHIAR (17.07.1926 – 03.07.2014), a Fellow Member of the Institute from Patna.

CS VIJAYKUMAR D. LALL (22.09.1938 – 26.10.2014) , an Associate Member of the Institute from Mumbai.

CS B VENKATESH (10.11.1960 – 21.12.2014), an Associate Member of the Institute from Chennai.

CS CHHAJU RAM SINGHAL (27.09.1929 – 28.04.2015), an Associate Member of the Institute from New Delhi.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.
May the departed souls rest in peace.

Constitutional Validity NCLT and NCLAT

Decision of Supreme Court in Union of India Vs R. Gandhi, President, Madras Bar Association on constitutional validity of NCLT and NCALT – May 11, 2010

In the above case, Supreme court upheld the decision of the High Court that the creation of National Company Law Tribunal and National Company Law Appellate Tribunal and vesting in them, the powers and jurisdiction exercised by the High Court in regard to company law matters, are not unconstitutional and declared that constitution of NCLT and NCALT under Parts 1B and 1C of Companies (Amendment) Act 2002, are not unconstitutional.

Supreme Court Decision dated May 14 2015 on NCLT and NCALT

Though the verdict came in the year 2010, upholding the creation of NCLT and NCLAT, these two bodies could not be created and made functional immediately thereafter and the matter got stuck in imbroglio of one kind or the other. Writ Petition No.267/2012 was also filed by this very petitioner and was pending consideration. Said writ petition was listed before this Bench along with the present writ petition (2013 petition on which finally Supreme Court gave its judgement in 2015) and arguments were heard in petition as well. However, since the issues raised in the said petition necessitate further response from the Union of India, with the consent of the parties, it was deemed proper to defer the hearing in that petition, awaiting the response.

Adverting to the 2013 writ petition, it so happened that the Parliament has passed new company law in the form of Companies Act, 2013 which replaces the earlier Act of 1956. In this Act, again substantive provisions have been made with regard to the establishment of NCLT and NCLAT. The cause for filing the 2013 petition by the petitioner was the allegation of the petitioner that notwithstanding various directions given in 2010 judgment, the new provisions in the Act, 2013 are almost on the same lines as were incorporated in the Act, 1956 and, therefore, these provisions suffer from the vice of unconstitutionality as well on the application of the ratio in 2010 judgment. It is, thus, emphasized by the petitioner that these provisions which are contained in Sections 408, 409, 411(3), 412, 413, 425, 431 and 434 of the Act, 2013 are ultra vires the provisions of the Constitution and, therefore, warrant to be struck down as unconstitutional.

The issues

(i) Challenge to the validity of the constitution of NCLT and NCLAT;

(ii) Challenge to the prescription of qualifications including term of their office and salary allowances etc. of President and Members of the NCLT and as well as Chairman and Members of the NCLAT;

(iii) Challenge to the structure of the Selection Committee for appointment of President/Members of the NCLT and Chairperson/ Members of the NCLAT.

Challenge to the validity of the constitution of NCLT and NCLAT

The Court specifically affirmed the decision of the High Court which held that creation of NCLT and NCLAT was not unconstitutional. In view of this, it is not open to the petitioner even to argue this issue as it clearly operate as res judicata.

Qualification/Rank of members of NCLT/NCLAT

It was pointed out that in the 2010 judgment, the Constitution Bench took the view that since the NCLT would now be undertaking the work which is being performed, inter alia, by High Court, the technical Members of the NCLT/NCLAT should be selected from amongst only those officers who hold rank of Secretaries or Additional Secretaries and have technical expertise. Having regard to the aforesaid clear and categorical dicta in 2010 judgment, tinkering therewith would evidently have the potential of compromising with standards which 2010 judgment sought to achieve, nay, so zealously sought to secure. Thus, it was held that Section 409(3)(a) and (c) are invalid as these provisions suffer from same vice. Likewise, Section 411(3) as worded, providing for qualifications of technical Members, is also held to be invalid.

Why only Secretaries and Additional Secretaries?

As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as high court judges. This can be achieved not by giving the salary and perks of a high court judge to the members but by ensuring that persons who are as nearly equal in rank, experience or competence to high court judges are appointed as members.

This issue pertains to the constitution of Selection Committee for selecting the Members of NCLT and NCLAT. Provision in this respect is contained in Section 412 of the Act, 2013. Sub-section (2) thereof provides for the Selection Committee consisting of:

(a) Chief Justice of India or his nominee-Chairperson;

(b) a senior Judge of the Supreme Court or a Chief Justice of High Court Member;.

(c) Secretary in the Ministry of Corporate Affairs—Member;

(d) Secretary in the Ministry of Law and Justice—Member; and

(e) Secretary in the Department of Financial Services in the Ministry of Finance— Member.

The Court specifically remarked that instead of 5 members Selection Committee, it should be 4 members Selection Committee and even the composition of such a Selection Committee was mandated as follows;

(a) Chief Justice of India or his nominee – Chairperson (with a casting vote);

(b) A senior Judge of the Supreme Court or Chief Justice of High Court – Member;

(c) Secretary in the Ministry of Finance and Company Affairs - Member; and

(d) Secretary in the Ministry of Law and Justice – Member."

There is a deviation in the composition of Selection Committee that is prescribed under Section 412 (2) of the Act, 2013. The deviations are as under:

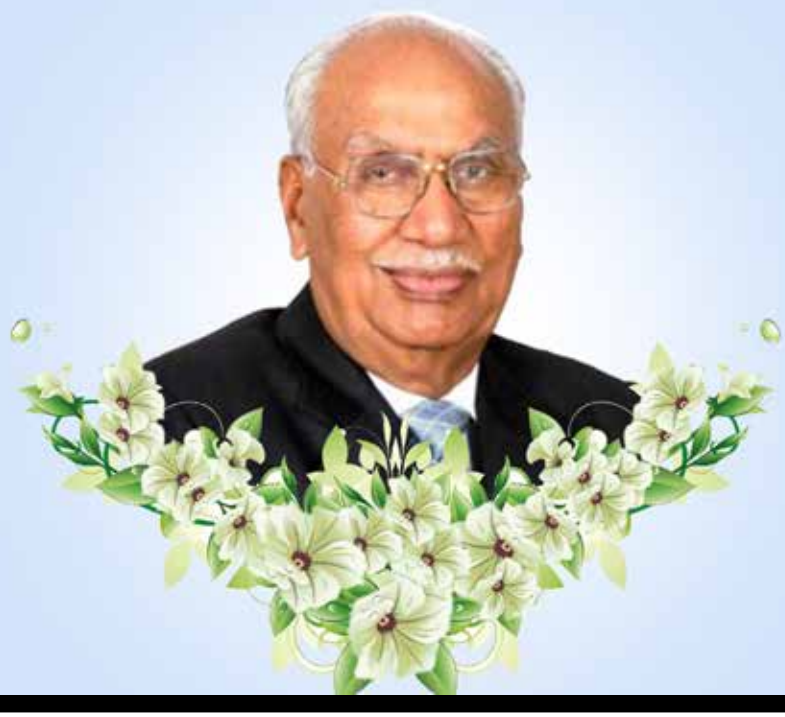
Though the Chief Justice of India or his nominee is to act as Chairperson, he is not given the power of a casting vote. It is because of the reason that instead of four member Committee, the composition of Committee in the impugned provision is that of five members.

The Court had suggested one Member who could be either Secretary in the Ministry of Finance or in Company Affairs. Now, from both the Ministries, namely from the Ministry of Corporate Affairs as well as Ministry of Finance, one Member each is included. Effect of this composition is to make it a five members Selection Committee, which was not found to be valid in 2010 judgment.

Out of these five Members, three are from the administrative branch/bureaucracy as against two from judiciary which will result in predominant say of the members belonging to the administrative branch, is situation that was specifically diverted from.

Supreme Court held that provisions of Section 412(2) of the Act, 2013 are not valid and direction is issued to remove the defect by bringing this provision in accordance with 2010 judgment and thus paving way for setting up of NCLT & NCLAT After long wait for almost 13 years finally, in 2015 the setting up of NCLT and NCLAT was paved way and we will be seeing the same set up in very near future.

OBITUARY



Shri Brij Mohan Lall Munjal

(1923 - 2015)

ICSI Parivar and Chartered Secretary deeply regret to record the sad demise of Shri Brij Mohan Lall Munjal, Chairman Emeritus of HeroMotoCorp on 1.11.2015 at the age of 92.

Recipient of the ICSI Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality in 2005 Sh. Munjal was also a member of the Jury for ICSI National Award for Excellence in Corporate Governance for the years 2001 and 2002.

With his demise the Country has lost one of its greatest business heroes and patriarch of Good Corporate Governance.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed soul rest in peace.

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COMPANY SECRETARIES EXAMINATIONS - DECEMBER, 2015
TIME-TABLE & PROGRAMME
EXAMINATION TIMING : 2:00 P.M. TO 5:00 P.M.

Date and Day	Professional Programme (Old Syllabus)	Executive Programme	Professional Programme (New Syllabus)
21.12.2015 Monday	Company Secretarial Practice (Module - I)	Cost and Management Accounting (Module-I)* OMR Based	Advanced Company Law and Practice (Module - I)
22.12.2015 Tuesday	Drafting, Appearances and Pleadings (Module-I)	Tax Laws and Practice (Module-I)* OMR Based	Secretarial Audit, Compliance Management and Due Diligence (Module - I)
23.12.2015 Wednesday	Financial, Treasury and Forex Management (Module-II)	Industrial, Labour and General Laws (Module-II)* OMR Based	Corporate Restructuring, Valuation and Insolvency (Module - I)
24.12.2015 Thursday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
25.12.2015 Friday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
26.12.2015 Saturday	Corporate Restructuring and Insolvency (Module-II)	Company Law (Module-I)	Information Technology and Systems Audit (Module - II)
27.12.2015 Sunday	Strategic Management, Alliances and International Trade (Module-Ill)	Economic and Commercial Laws (Module-I)	Financial, Treasury and Forex Management (Module - II)
28.12.2015 Monday	Advanced Tax Laws and Practice (Module-Ill)	NO EXAMINATION	Ethics, Governance and Sustainability (Module - II)
29.12.2015 Tuesday	NO EXAMINATION	Company Accounts and Auditing Practices (Module-II)	Advanced Tax Laws and Practice (Module - III)
30.12.2015 Wednesday	Due Diligence and Corporate Compliance Management (Module-IV)	Capital Markets and Securities Laws (Module-II)	Drafting, Appearances and Pleadings (Module - III)
31.12.2015 Thursday	Governance, Business Ethics and Sustainability (Module-IV)	NO EXAMINATION	Elective 1 out of below 5 subjects (Module - III)
			(i) Banking Law and Practice
			(ii) Capital, Commodity and Money Market
			(iii) Insurance Law and Practice
			(iv) Intellectual Property Rights - Law and Practice
			(v) International Business - Laws and Practices

*(The three papers, i.e., (i) Cost and Management Accounting; (ii)Tax Laws and Practice; and (iii) Industrial, Labour and General Laws to be held in OMR Mode on 21st, 22nd and 23rd December, 2015 respectively)

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