SIRC Salem Chapter

E-NEWSLETTER

June 2024

CELEBRATION OF INTERNATIONAL

Yoga Day

21 JUN 2024

"Yoga is the journey of the self, through the self, to the self."

- The Bhagavad Gita

4th Edition

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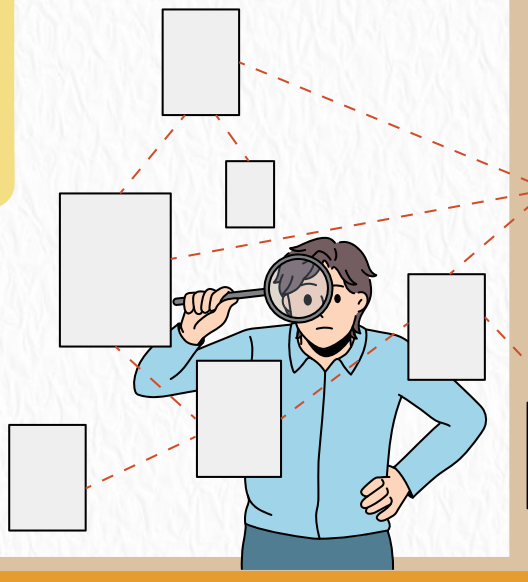

EDITORIAL TEAM

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CS Boopalan P

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CS Harish M

CLICK HERE
OR
SCAN TO VIEW

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A MESSAGE FROM CHAIRPERSON'S DESK

CS POORNIMA N S

Dear Members and Students,

As we step into the month of June after holidays, a month which gave the recognition and accountability for Company Secretaries in Practice. I wish all the Company Secretaries in Practice a Very Happy PCS Day..!!

"The only way to do great work is to love what you do." - Steve Jobs

During the month of May 2024, the Salem Chapter has conducted a Mega Career Awareness Programme which witnessed around 800 students. Salem Chapter also conducted Study Circle meeting for members on "Insights of Secretarial Standards & Strategizing ESG: Role of Professionals" on 26th May, 2024.

The Salem Chapter is all gearing up to host its 2nd Residential Conference at TGI Star Holidays Resort, Yercaud on July 19th - 21st 2024. We have planned for most relevant topics of professional interest which are going to be addressed by eminent speakers.

We have also planned for the engaging activities for spouse and children. I take this opportunity to invite all members for this conference. We are looking for you to host you all at Yercaud.

"Embrace the power of continuous learning. In the pursuit of knowledge, we uncover new horizons, expand our capabilities, and enrich our lives. Let curiosity be your compass, and may each lesson learned fuel your journey towards greatness."

I also wish all the members and students reading this E-Newsletter a Happy International Yoga Day..!!

Yoga is a powerful natural state that can inspire you in many ways..!!

STUDY CIRCLE MEET

CONDUCTED ON : 25.05.2024

TOPIC : Insights of Revised Secretarial Standards & Strategizing ESG: Role of Professionals

VENUE : Salem Chapter of ICSI

MEGA CAREER AWARENESS PROGRAMME

The Salem Chapter of ICSI participated in the mega career awareness program conducted by Salem Corporation on May 15, 2024, alongside Don Bosco Anbu Illam. The event was graced by the esteemed presence of Mr. S Balachander, IAS, Commissioner of Salem Corporation. In collaboration with various partners, the Salem Chapter played a pivotal role in making this program a success, focusing on the needs of rural and government school students.

MEGA CAREER AWARENESS PROGRAMME

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SALEM
CHAPTER

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

Motto
सत्यं वद। धर्मं चर। speak the truth; abide by the law

Mission
"To develop high calibre professionals facilitating good corporate governance"

Cordially inviting the Members, Students & Other delegates for

2nd RESIDENTIAL CONFERENCE

(3 DAYS)

of

Salem Chapter of the ICSI

Theme :

"Intellect, Integrate & Inspire - Shaping the future of CS"

CPE - 10
(Structured)

Topics	Speakers
Technical Session I : Demystifying Voluntary Liquidation - Essential legal steps	**Dr. CS Adv Mamta Binani,** Past President - The ICSI
Technical Session II : How to use ChatGPT and other AI tools by Governance professionals	**CA Pattabhi Ram V,** Practising Chartered Accountant, Chennai
Technical Session III : Unlocking the Art and Science of Valuation - with special reference to Financial Assets	**CS Vasudevan G,** Practising Company Secretary, Coimbatore
Technical Session IV : Compounding & Adjudication - Understanding process for Resolution	**CS Dushyantha Kumar,** Practising Company Secretary, Bengaluru

Date :19th to 21st July 2024 (Friday to Sunday)
Venue : TGI Star Holiday Resort, Yercaud

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Registration Fees – Per Head (Twin Sharing Basis) (Inclusive of GST 18%)		
PARTICULARS	**Early Bird Offer On or before 30th June, 2024**	**Registration on or after 1stJuly, 2024**
Members of ICSI	Rs. 9,440/-	Rs. 10,440/-
Spouse & Children (Above 10 years)	Rs. 8,850/-	Rs. 9,850/-
Students of ICSI	Rs. 5,310/-	Rs. 6,310/-
Others	Rs. 10,030/-	Rs. 11,030/-
Members of ICSI (Non-Residential)	Rs. 5,900/-	Rs. 6,900/-
Registration Fees – Per Head (Single Occupancy)		
Single Occupancy	Rs. 12,980/-	Rs. 13,980/-

Note :

1. The above fees includes
   Fees for seminar, Two nights 3 star hotel accommodation, Lunch - 3, Breakfast -2, Dinner - 2, High Tea - 4 & Conference kit.
2. Check in time 12.00 pm onwards on 19th July, 2024 & Check out time 11.00 am on 21st July, 2024.
3. Spouse / Children are not eligible for Conference Kit.
4. Accommodation will be allotted on first cum first serve basis.
5. Fees once paid will not be refunded or adjusted.
6. Transportation has been arranged from Salem. The details will be shared shortly.
7. All the delegates are requested to carry valid id proof for Check in. Kindly follow the terms & conditions of the resort.

Main Attractions:

1. Camp Fire with D J Music | 2. Trekking | 3. Swimming Pool | 4. Fun Games for Spouse & Children

Bank Details for Payment

Name : SALEM CHAPTER OF THE ICSI
Bank Name : Canara Bank, Alagapuram Branch
Account No. : 1225101053540
IFSC Code : CNRB0001225

Scan the QR Code for Payment

Link for Registration : https://forms.gle/3XJiCKuGT5PJYXYS7

Looking forward for your august presence.

For more details Contact – Mr. N Dhanabal, Chapter In-charge

Salem Chapter of the ICSI
173, Pearl Villa, 1st Floor, 3rd Cross, New Fairlands, Salem, Tamil Nadu – 636 016.
Contact No : 87543 40840 | Mail ID: salem@icsi.edu

CS POORNIMA N S
Chairperson

CS HARISH M
Secretary

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KNOW YOUR MEMBER

CS GNANASHEKARAN S

This month let us know about our senior member CS S Gnanashekaran, who is known for his active participation in the Salem Chapter of ICSI. He is an example for the saying **AGE IS JUST A NUMBER**.

Can you tell us about yourself?

I was born on 25th May 1938 to Sri. Subramaniam and Smt. Lakshmi. I did my Diploma in Commerce and joined State Government Service where I worked for 2 years. After that, I have joined Central Government employment in the Telephones department for 2 years.

After that, I have joined India Cements Limited where I worked for 35 years. From the year 2003, I am Practicing as Company Secretary in Tiruchengode. I am a Fellow member of the ICSI.

At present, I am also an Independent Director of Two Listed Companies located in Salem.

Can you share your memories with Salem Chapter of ICSI?

I have served as Counsellor of ICSI and conducted many Career Awareness Programmes for college students in Salem, Namakkal, Erode and Krishnagiri Districts. I was also General Observer for the Examinations conducted by the ICSI for three years. I was a party to sign MoU with educational Institutions to help Students to pursue CS Course.

I also served as Vice-Chairman of Salem Chapter of ICSI and Chairman of Salem Chapter of ICSI in the year 2017.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

CS Nachiket Sudhir Sohani
M.No. A48562

Introduction

Proxy advisory firms provide institutional investors with research and data, as well as recommendations on management and shareholder proxy proposals that are voted on at an organization's annual and special meetings. Operating as independent research firms, they digest and evaluate lengthy and complex filings on common corporate endeavors, including mergers & acquisitions, CEO salary, and more. By bringing their expert knowledge to bear on these issues, proxy advisors enable key shareholders to protect their interests by helping them make an informed voting decision. Proxy advisory firms provide these voting recommendations to institutional investors for the companies that they own shares in.

Some the areas that proxy advisory firms support include:

1) Environment, social, and governance (ESG)
2) Proxy voting
3) Proxy research
4) Executive compensation models
5) Board diversity

Proxy advisory firms exist to provide sound recommendations with regards to financial transactions, compensation, and more and can enhance an organization's stewardship and ESG program. By advising shareholders on these issues, proxy advisors help promote strong corporate governance.

Proxy advisors are research-based entities that formulate recommendations on the decisions of companies that require shareholder approval. The Securities & Exchange Board of India ("SEBI") has issued the SEBI (Research Analysts) Regulations, 2014, which defines proxy advisors *"as any person who provides advice, through any means, to institutional investor or shareholder of a company, in relation to exercise of their rights in the company including recommendations on public offer or voting recommendation on agenda items"*.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

Thus, Proxy Advisory firms guide shareholders to make sound investment decisions and exercise their voting rights effectively. Matters that require shareholder approval under the Companies Act, 2013, are of significant importance and include decisions pertaining to the appointment of directors (including managing director, whole-time directors and independent directors), manager, approval of their remuneration, alteration of Articles or Memorandum of Association of the company, etc. The clientele of the proxy advisory firms includes institutional investors, who are usually not privy to the affairs of the company. Thus, they may rely on the recommendations issued by the said entities.

As in the case of certain companies the shareholding/voting rights of such investors may be considerably large, the recommendations of a proxy advisory firm may substantially affect the decision-making by the investor, and in turn, the affairs of the company.

Understanding the difference between Proxy Advisors and Investment Advisors

Proxy Advisors are different from Investment Advisors. As per Regulation 2(1)(m) of SEBI (Investment Advisors) Regulations, 2013, 'investment advisor' means a person who is engaged in the business of providing investment advice for consideration. However, a proxy advisor is engaged into recommending voting decisions to shareholders and is not into recommending whether an investor or a potential investor should or should not make/keep an investment.

Investment advisors are entities that specifically provide financial advice. They undertake research in order to provide advice relating to investment decisions of their clients, separating them from proxy advisors, who provide voting recommendations on agenda items, which may also include approval of the public offer by the shareholders. Thus, the role of proxy advisors does not entail the provision of financial advice.

Benefits of appointment of Proxy Advisors

The following are some of the benefits of Proxy Advisors are as follows:

1) Help investors vote intelligently, especially when there is a time crunch to read and analyse a lot of data;

2) Help global investors receive informed analyses and recommendations, taking into account local as well as global good practice principles;

3) Able to provide a bird's eye view and a deeper dive into the companies being researched;

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4) Serve as "information-gatherers" for small investors, providing full access to all relevant company meeting materials and disclosed information, as well as voting recommendations;

5) Increased shareholder activism and pushed companies to adopt higher level of disclosures;

6) collect and translate key materials, translating legal and accounting jargon into plain English, and provide a consistent structure of relevant information across all companies in all markets.

Some of the possible disadvantages of Proxy Advisors are as follows:

1) Apply a one-rule-fits-all countries approach;

2) Sets a higher standard, travelling beyond prescription of law;

3) Not receptive to factual errors being corrected, thus causing outcomes not based on facts.

Global Scenario

Emergence of Proxy Advisors Globally, Institutional investors are encouraged to exercise their voting rights in the investee companies. This expectation arises from a number of principles and codes issued by regulators worldwide such as the UK Stewardship Code, ICGN Guidance on Institutional Investors Responsibility and so on. In India too, SEBI mandates mutual funds to disclose the manner of exercise of voting rights in respect of shares held by them.

Insurance Regulator (IRDAI) has implemented a stewardship code for insurers. In view of the demand by regulators around the world from investors to exercise their right to vote and uphold shareholder democracy, the concept of Proxy Advisors emerged.

Proxy Advisors are entities which research and give opinions to investors, generally institutional investors, on how to vote in shareholder meetings. Internationally, Proxy Advisors are quite persuasive and are relied upon by institutional investors. Shareholder's resolutions are no longer a mere formality. Companies are aware that there are Proxy Advisors scrutinizing their resolutions in order to safeguard shareholder's interest.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

Regulatory Framework governing Proxy Advisors in India

In India SEBI regulates the activities of Proxy Advisors in India under SEBI (Research Analyst) Regulations, 2014 ("SEBI Regulations"). As per the SEBI Regulations "Proxy adviser" means any person who provide advice, through any means, to institutional investor or shareholder of a company, in relation to exercise of their rights in the company including recommendations on public offer or voting recommendation on agenda items. Under these Regulations, such entities are required to register with SEBI and comply with the provisions pertaining to formation of internal policies and procedures, disclosures in the reports, code of conduct, maintaining record of voting recommendations etc.

Mandatory disclosure of manner of exercise of voting rights in India

SEBI mandates Mutual Funds to disclose general policies and procedure for exercising voting rights in respect of shares held by them, in the annual report and on the website of the AMC. Further, AMCs are required to disclose actual exercise of proxy votes in relation to certain matters viz. Corporate Governance matters, changes to capital structures, appointment/ removal of Directors, ESOP and any other issue that may affect interest of the shareholders and interest of unit holders in particular. Since, insurance companies are significant institutional investors in listed companies and the investment held by them as custodians of policyholders. It was felt that insurance companies should play an active role in the general meeting of investee companies and engage with managements at greater level to improve their governance. Thus, in March, 20174 IRDA had implemented a code for stewardship for the insurer vide Ref No. IRDA/F&A/GDL/CMP/059/03/2017. A stewardship code applicable for all the insurers comprising seven principles modelled on UK stewardship code.

Stewardship Code

The Stewardship Code is a part of UK company law concerning principles that institutional investors are expected to follow. It was first released in 2010 by the Financial Reporting Council ("FRC"), and in 2019 the FRC released an updated edition of the Stewardship Code.

The UK Stewardship Code ("Code") is a voluntary code for asset managers (investment managers), asset owners, and service providers (such as proxy advisers, investment consultants, and data providers).

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

Its stated aim is to encourage active and engaged monitoring of corporate governance in the interests of beneficiaries. Specifically, the Code aims to promote the responsible allocation, management, and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment, and society. In late 2019, the FRC substantially updated the original 2010 Code introducing new principles for different signatory groups as well as introducing new thematic issues centered on environmental, social, and governance (ESG) factors. The FRC also introduced a new reporting process.

The UK stewardship code's seven principles are as follows:

1) Publicly disclose their policy on how they will discharge their stewardship responsibilities;

2) Have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed;

3) Monitor their investee companies;

4) Establish clear guidelines on when and how they will escalate their stewardship activities;

5) Be willing to act collectively with other investors where appropriate; o Have a clear policy on voting and disclosure of voting activity;

6) Report periodically on their stewardship and voting activities.

Procedural Guidelines for Proxy Advisors issued by SEBI

The regulation of proxy advisory firms has proven to be a contentious issue in India. On August 3, 2020, SEBI issued 'Procedural Guidelines for Proxy Advisors' in order to streamline corporate governance practices at listed entities.

The voting decisions of institutional investors at shareholder meetings are shaped by the guidance and research analysis received from proxy advisors. Institutional investors involve financial institutions such as pension or mutual funds that accept deposits from third-party investors and invest on their behalf.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

The expertise of these firms contributes to greater shareholder activism and ensures that management or shareholder proposals are subject to piercing scrutiny. Therefore, they are employed by institutional institutors as fiduciaries to reduce the cost of monitoring the affairs of the company. Proxy advisory firms have assumed a critical role in recent years as they bridge the information asymmetry that used to disincentivize participation of institutional investors in the Indian corporate landscape. It has prompted SEBI to review its regulatory framework in furtherance of an expert committee's recommendations.

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Concerns raised by the SEBI Working Group on Proxy Advisors

Regulation 24(2) of the SEBI Regulations incorporates a Code of Conduct under its Third Schedule which seeks to address, inter alia, the critical issue of conflict of interest in proxy advisory firms.

However, the Code of Conduct did not specify the obligations expected to be undertaken in pursuance of due diligence.

In May 2019, the Working Group on Issues Relating to Proxy Advisors, appointed by SEBI, was entrusted with the task of reviewing the existing provisions relating to the Proxy Advisors. The Report of the Working Group highlighted that the decision-making by institutional investors was often characterized by 'robo-voting', i.e. mechanical adherence to the voting recommendations by proxy advisory firms. The recommendations of the firms thus had severe implications on company affairs. Additionally, the inclination among proxy advisors to prescribe higher governance standards than existing legal norms was evaluated. The Report opined that such the rationale behind such aspirational standards must be clearly spelt out to the investors.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

Even though factual errors were rare, disagreements with the proxy advisor's recommendations were also underlined as a bone of contention for companies.

The Working Group notably observed that conflict of interest in proxy advisory firms could have a detrimental impact on corporate governance.

Dominant shareholders in listed companies could influence their functions by incentivizing fraudulent practices as proxy advisors act as a countervailing force to their interests. The prevalence of concentrated shareholding patterns under the influence of promoter-families in the Indian jurisdiction thus presents a unique conundrum for regulators. Furthermore, a listed company or a group of listed entities could have a shareholding interest in the proxy advisory firm. An ancillary activity of the firm may also provide a wide range of business consultancy services to companies with respect to which institutional advisors were offered voting guidance. The prospect of board inter-locking poses another major threat to impartial decision-making. On this basis, the Working Group had proposed a voluntary best practices code for the proxy advisory industry that would adopt a 'comply or explain' regulatory model. The institutional investors were also advised to introduce an industry-wide stewardship code to stimulate transparent practices.

Recent interventions of SEBI

The Guidelines for Proxy Advisors formulated by SEBI came into effect from January 2021. The new regime provides an additional safety net to the Code of Conduct prescribed under the SEBI (Research Analysts) Regulations. It imposed an obligation upon proxy advisory firms to formulate voting recommendation policies and disclose such policies to the institutional investors. It also provided for an annual review of voting recommendations to safeguard its integrity. The methodologies adopted in its research practices and recommendations also must be explained to the clients such that the institutional investors can make informed decisions. A clear channel of communication was also to be stated by the proxy advisors besides alerting their clients of material revisions or factual errors in the voting recommendation.

Finally, the proxy advisors have been entrusted with the responsibility of sharing their reports with its clients and the company besides publicizing the sharing policy on their website. The Guidelines offer scope for the firms to revise their advisory reports by incorporating an addendum if the company has a contrary viewpoint.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

Finally, SEBI prescribed disclosures of conflict of interest, particularly those emanating from ancillary business activities of proxy advisory firms and seeks to institute robust measures to disclose and mitigate such conflicts.

Moreover, on August 4, 2020, SEBI released a grievance resolution mechanism for institutional investors in case of any divergence of opinion on voting recommendations offered by proxy advisory firms on agenda items at the general meetings.

It empowered SEBI to intervene and resolve concerns of non-compliance by proxy advisors with the provisions of Code of Conduct under the SEBI Regulations in addition to the recent Guidelines for Proxy Advisors. The redressal mechanism is instituted in order to enable active participation of minority shareholders such as the institutional investors in corporate governance decisions by exercising their ownership rights in furtherance of Regulation 4(2)(a) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Critical Analysis of SEBI framework

The revamp of the regulatory framework on proxy advisory firms affirms that market failures have contributed to information distortion resulting from positions of conflict of interest. The renewed focus on securing the independence of proxy advisory firms is thus a well-calibrated move. The revised framework is expected to usher in better corporate governance outcomes as it is likely to empower institutional investors to engage in shareholder activism. The institution of the dispute settlement system can be expected to improve accountability on the part of proxy advisory firms and enhance their efficacy as market intermediaries in response to the emphasis on due diligence under the revised norms.

However, the multiplicity of obligations can also be counterproductive as it is likely to increase costs of compliance for the proxy advisory firms and lead to delays in regular operations. The threat of being pulled up by SEBI for non-compliance may also create a chilling effect.

It is interesting to note that a defamation suit had been filed against a leading proxy advisory firm in the recent past for allegedly making unfavourable observations in its reports against the directors of a prominent company. Such instances could lead to further uncertainty as there is no established judicial precedent of the ideal conduct expected from the proxy advisory firms. SEBI's dispute resolution mechanism thus could be clogged by multiple allegations of recalcitrant conduct. As emphasized in the Working Group Report, mere differences in opinion based on authentic factual data must not become the subject of litigation.

Role of Proxy Advisory Firms in laying strong foundation for strong Corporate Governance

It remains to be seen if the economic impact of regulation is severe enough to dilute the quality of services rendered by these firms. Moreover, the onerous burden of compliance could result in undesired entry barriers for new firms to disrupt the oligopolistic status quo enjoyed by three domestic proxy advisory firms currently operating in the market. Curtailing the autonomy of the firms may not necessarily result in course-correction and eliminate malpractices. It is expected that SEBI should exercise its regulatory powers to facilitate a level-playing field in the market for proxy advisory firms such that the institutional investors sanction inaccurate analysis and voting recommendations as consumers in the long run.

Conclusion

From the above analysis, it has been highlighted the nature of the underlying market failures and the reason why the regulations of proxy advisory firms seems appropriate and necessary, it is also important to recognize that widespread use of proxy advisory firms reflects an attempt to find a solution to the inherent problems surrounding the role of shareholders in corporate governance. These include economies of scale and duplicative costs (across both shareholders and issues among firms) and free-rider issues in information production and voting implementation as well as limited competition.

In that sense, proxy advisory firms are an important market institution. Concurrently, their use can crowd out other sources of due diligence and bias corporate governance outcomes given the prejudices of the proxy advisors in ways that do not serve the interests of investors or the economy. While proxy advisory firms play an essential (perhaps even central) role in our governance system, given the aforementioned underlying frictions, this discussion illustrates the potential problem that can arise whenever the judgment of institutions (which are not inherently right) can lead to systemic consequences for our economy.

NSE PRIME

CS Sree Vimega G.S.
M.No. A73652

NSE Prime is a framework that prescribes higher standards of corporate governance for listed companies than those required by regulations. This initiative was launched by the NSE on 21st December, 2021.This framework has been effective from 1st July, 2022. These norms are voluntary and any NSE Listed entities falling within the eligibility criteria can opt to comply with these norms.

NSE Prime is a framework that prescribes higher standards of corporate governance for listed companies than those required by regulations. This initiative was launched by the NSE on 21st December, 2021.This framework has been effective from 1st July, 2022. These norms are voluntary and any NSE Listed entities falling within the eligibility criteria can opt to comply with these norms.

THE ELIGIBILITY NORMS INCLUDE:

1) The Applicant entity has been listed in NSE for at least 6 months prior to the date of application

NSE PRIME

2) The Applicant and its Promoter Group has to be in compliance with the Securities laws for continuous period of 3 years prior to the date of application

3) No proceedings have been admitted under Insolvency and Bankruptcy Code, 2016 for a period 3 years prior to the date of application

4) The Applicant shall have net worth of Rs. 300 Crores during the 3 preceding Financial Years prior to the date of application

5) The average daily turnover of the Applicant's equity shares on the cash segment of NSE's Main Board shall have been at least Rs. 5 Crores for a continuous period of 6 months prior to the date of application.

6) The Applicant, its Promoters, Directors, KMPs shall not have been,

- Convicted of fraud, offences involving moral turpitude or any economic offence
- Debarred, restrained or subjected to any disciplinary action by any statutory authority in India or elsewhere
- Categorised as a Wilful Defaulter

There are vide range of obligations provided under these norms, which are categorised as General and Specific Obligations.

THE SUMMARY OF SUCH OBLIGATIONS SHALL BE AS FOLLOWS:

1) Minimum public shareholding of at least 40%.

2) Minimum 8 directors on the board with the chairperson being a non-executive director

3) At least one audit committee meeting in a year shall be specifically dedicated towards dealing with issues other than financial accounts

4) The nomination and remuneration committee shall include at least one woman director

5) The chairperson of the stakeholders relationship committee shall be an independent director and the committee shall hold a meeting between 45 to 60 days prior to the date of the AGM of the company, at which meeting the significant shareholders or their nominees shall be entitled to participate and communicate their concerns and suggestions to the committee.

6) Mandatory constitution of a committee of independent directors consisting solely of independent directors.

NSE PRIME

7) The chairperson of the risk management committee shall be an independent director and the chairperson of the board shall not be eligible to be a member of the committee

8) Submission to NSE within 45 days of the close of each quarter and 60 days from the close of each financial year, a compliance/ secretarial audit report certifying its adherence to these Norms as well as the NSE Prime registration agreement. The said information is also to be published on the website of the entity.

9) Mandatory reporting of both essential and leadership indicators of Business Responsibility and Sustainability Reporting.

10) If the internal audit of the entity is carried out internally, the company shall appoint one of its employees as the person in-charge of internal audit, who shall have a direct reporting line to the Audit Committee.

THE ADVANTAGES AND DISADVANTAGES HAD BEEN ELABORATED HEREINBELOW:

Advantages:

1) Enhanced Market Access: NSE Prime membership provides enhanced market access and privileges, allowing members to access a broader range of trading opportunities and liquidity.
2) Priority Services: Members may receive priority services, including faster trade execution, dedicated support, and access to advanced trading tools and platforms.
3) Improved Visibility: Being part of NSE Prime may enhance a member's visibility and credibility in the market, potentially leading to increased business opportunities and partnerships.

Disadvantages:

1) Stringent Eligibility Criteria: The eligibility criteria for NSE Prime membership are stringent, requiring members to meet specific financial, compliance, and infrastructure requirements, which may pose challenges for some entities.
2) Increased Regulatory Scrutiny: Prime members may be subject to increased regulatory scrutiny and compliance requirements, which could entail additional administrative burdens and costs.
3) Market Volatility and Risks: While accessing a broader market may offer opportunities, it also exposes members to increased market volatility and risks, requiring robust risk management practices.
4) Competitive Pressures: Prime membership does not guarantee success in the market, and members may face intensified competition from other market participants, including other Prime members, which could impact profitability.

NSE PRIME

ANALYSIS OF THE NSE PRIME NORMS:

For promoters and Company management, NSE Prime membership presents both opportunities and challenges. One of the key advantages of NSE Prime membership is the enhanced market access it offers. By becoming a Prime member, promoters and the Company gain access to a broader range of market, which can facilitate capital raising, investment diversification, and business expansion strategies. This expanded market access can be particularly beneficial for Companies seeking to attract new investors, increase visibility, and enhance their market presence.

However, while NSE Prime membership offers significant advantages, it also entails certain challenges and considerations for promoters and company management. One of the primary challenges is meeting the stringent eligibility criteria set forth by the exchange. To qualify for NSE Prime membership, companies must meet specific financial, compliance, and infrastructure requirements. This may require significant investments in infrastructure upgrades, compliance measures, and financial restructuring, which could strain resources and impact profitability in the short term.

Moreover, NSE Prime members are subject to increased regulatory scrutiny and compliance requirements compared to non-Prime members. Promoters and company management must ensure compliance with regulatory standards and guidelines to maintain membership status and avoid potential penalties or reputational risks. Though the NSE Prime norms provides for voluntary exit from the NSE Prime membership, it poses threat to the prestige and brand value of the Company by such decision. Thus, it requires robust corporate governance practices, transparent reporting, and proactive risk management strategies to navigate regulatory requirements effectively.

In conclusion, NSE Prime membership offers significant opportunities for promoters and company management to enhance market access, streamline operations, and improve financial performance. However, achieving and maintaining Prime membership requires careful consideration of eligibility criteria, regulatory compliance, market risks, and competitive dynamics. By addressing these challenges proactively and leveraging the advantages of Prime membership, promoters and company management can unlock growth opportunities and create long-term value for shareholders.

MEDIATION ACT 2023 AN OVERVIEW

VASUNDARRA B
CS PROFESSIONAL

Introduction:

The Mediation Act 2023 helps to transform how the disputes are resolved by encouraging mediators effectively thereby promoting and facilitating Mediation. Mediation is an agreement in writing between two or more parties to submit to mediation all the disputes which have arisen between them. The mediation agreement may be in the form of a mediation clause in a contract or even a separate agreement.

Mediation Council of India:

The Government of India has taken several measures to revitalize and strengthen the commercial dispute resolution regime including Alternative Dispute Resolution. The Central Government has established a council known as Mediation Council of India to perform the duties and to discharge the functions as provided in the Mediation Act 2023. The Council shall be formed as a body corporate which shall possess its characteristics viz. having perpetual succession and a common seal with the power to acquire, to hold and to dispose of the property and to enter into contract and by the name, sue or to be sued.

Role of The Mediation Act, 2023:

The Act plays a significant role in providing recognition to Mediation and also helps in enabling the culture of out of court and amicable settlement of disputes. The amicable settlement of disputes between the disputing parties not only saves the time but also offers ease of living along with the contribution for the growth of the economy.

Appointment of Mediators:

A person of any nationality can be appointed as Mediator as agreed by the parties. If the mediator is a foreign nationality then such person shall possess the required qualification and experience as may be prescribed. If the parties fail to establish an agreement for appointment of mediator the same shall be made by making an application to the Mediation Service Provider from the panel of mediators maintained by them.

Proceedings:

The mediation proceedings shall be conducted at any place outside the territorial jurisdiction or may even be conducted online if mutually agreed by both the parties otherwise it has to be proceeded within the territorial jurisdiction of the court or the tribunal of competent jurisdiction.

When there is an existing agreement between the parties to settle the dispute, the date on which one party receives the notice from the other party to initiate mediation is considered to be the commencement of mediation process.

The mediator shall meet and assist the disputing parties in an unbiased manner in order to resolve the dispute between them thus bringing peace and harmony between them. It is important to note here that the mediators shall not be bound by the Code of Civil Procedure 1908 or the Indian Evidence Act 1872. The language to be used in the mediation process shall be decided beforehand by the mediator with the consent of the disputing parties.

Mediator and his role:

Once the language to be used in mediation process is decided, the mediator shall take all the necessary measures in order to facilitate voluntary resolution of disputes between the parties and shall exchange the ideas between both the parties to bring an understanding between them. It is to take note that the mediator appointed shall not act as an arbitrator or as a representative or be presented as witness in respect of the dispute which is the subject matter of the mediation proceeding.

The Mediation shall be completed within a period of 120 days from the date of first appearance before the mediator and shall be extended for further period of not more than 60 days, if agreed by the parties.

Mediated Settlement Agreement:

Once the disputes are settled in full or in partial manner through mediation, an agreement known as mediated settlement agreement is arrived between the parties which is reduced to writing and is signed by the parties.

If the mediator is not able to settle the dispute, the same shall be disclosed through a report in writing called Non-settlement report and shall be submitted to the mediation service provider, in case of institutional mediation and in all other cases, the signed copy shall be provided to all the parties to the dispute.

Confidentiality of information:

During the proceedings of mediation, the mediator shall maintain confidentiality of all the opinion, suggestions and any other information provided by the parties. In order to ensure confidentiality, the proceedings shall not be recorded through any audio-visual means or maintained by the parties whether conducted in person or through online mode.

The mediator shall not be prevented from disclosing the information received during mediation proceeding for research, reporting or for any training purposes, unless the participants or specific disputes are expressly or indirectly identified.

Online Mediation:

Chapter VII of The Mediation Act 2023 provides that including pre-litigation mediation, at any stage online mediation shall be proceeded with the prior written consent of the parties including the use of any electronic forms even e-mail services and chat rooms. The online mediation shall ensure that the integrity and confidentiality is maintained all the times by the mediator and the mediation service provider.

To conclude, the out of court settlement greatly helps to save the time of the courts and the cost involved in the court proceedings, thus The Mediation Act 2023 promotes and facilitates mediation to resolve the commercial or non-commercial disputes and helps in cost effective settlement of disputes.

References:

1. The Mediation Act, 2023, Ministry of Law and Justice
2. www.pib.gov.in

LOAN TO DIRECTORS

JAYARAM M S
CS EXECUTIVE

Introduction:

A company is a separate legal entity, incorporated under the Companies Act, 2013 or under any other previous company laws. Due to its unique legal existence, the members of the company are always different from the company, i.e., in spite of having a directorship or a shareholding or a promoter status with a company, these members are not entitled for any share of profit (other than dividends) or personal drawings from the company's assets.

The restrictions relating to loans provided by the company to its director or other related party has been mentioned u/s 185 of the Companies Act, 2013. The Companies Act restricts lending specifically to companies that are not closely-held, where there involve public funds. Directors are persons, who are responsible for the operations of the company, including management of funds provided by public. The main purpose of the Companies Act is to protect the interest of the public by restricting the officials in charge of handling the public's funds, because the public are not having direct control over the administrative affairs of the company.

Restriction u/s 185(1):

Usually, a company is not allowed to lend or advance any loan or to provide any guarantee to its directors, either directly or indirectly. Indirectly includes providing loans to:

- Relatives of directors (or)
- Companies or firms, where directors or their relatives holding interest

Relaxation u/s 185(2):

A company is permitted to advance loans or to provide guarantee or security with respect to the loans obtained by:

- A private company (borrowing company), where the director(s) of the lending company are director(s) or member(s)
- A body corporate (borrowing company), where the director(s) of the lending company together control at least 25% of the total voting power that is to be exercised in the general meeting

- A body corporate (borrowing company), where the lending company controls the composition and management of its board

Provided, the relaxation is provided only when:

- A special resolution is passed by the company in the general meeting
- Loans funds utilized by the borrowing company only for its principal business activities

The above restriction is placed simply to eliminate the effect of personal drawings by the members of the company, thereby ensuring protection of public's stake in that company.

Exemptions u/s 185:

- Government company, where prior approval has been sought from the Ministry or Department of Central Government or State Government in charge of the administrative affairs of that Government company.
- Private company, whose:
  - share capital does not include any investments from any other body corporate
  - borrowings from bank(s) or financial institution(s) or any other body corporate(s) is less than twice of its paid-up share capital or Rs. 50 crores, whichever is lower
  - has not defaulted in repayment of dues to the above
- Nidhi Company, where the loans advanced to its director or other related party have been properly disclosed in the annual accounts.

Non-Applicability of Restrictions u/s 185(3):

- Loans advanced to the managing director or to the whole-time director of the lending company as a part of the conditions of service that the company provides to all of its employees, after passing a special resolution for implementing the said scheme.
- Loans advanced to any director or other related party of the lending company in the ordinary course of business, provided terms and conditions of advances are at arms-length transaction value (such as terms of repayment, interest rate).
- Loans advanced to or guarantee provided for any loans borrowed by a wholly-owned subsidiary of the lending company, provided loans are utilized for principal business activities of subsidiary.
- Guarantee provided for loans borrowed from any bank or financial institution by a subsidiary of the lending company, provided loans are utilized for principal business activities of subsidiary.

LOAN TO DIRECTORS

Penalty for Contravention of Provisions u/s 185:

Person	Penalty
Company	Fine of Rs. 5,00,000 – Rs. 25,00,000
Every Defaulting Officer	Fine of Rs. 5,00,000 – Rs. 25,00,000 (or) Punishment up to 6 months
Borrower of Loan	Fine of Rs. 5,00,000 – Rs. 25,00,000 (or) Punishment up to 6 months (or) both

STUDENT TALENT PAGE

OIL PASTEL DRAWING

BHAVATHARANI N S
CS PROFESSIONAL

Answers May 2024

QUESTION NO. : 01

Whether the NCLT had the jurisdiction to direct the ED to release the Attached Properties, invoking Section 32A of the IBC, 2016.

Answer: Hon'ble Bombay High Court inter alia observed that Section 32A(2) of the IBC, 2016 protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP. Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan (the same ingredients as set out in Section 32A(1) are stipulated here too), the property of the corporate debtor would get immunity from further prosecution of proceedings. Clause (i) in the Explanation to Section 32A(2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an "action against the property" of the corporate debtor, from which immunity would be available, "shall include the attachment, seizure, retention or confiscation of such property under such law" as applicable. The reference being to any action against the property under any law would evidently bring within its compass, attachments made under the PMLA, 2002. Further the Hon'ble High Court in its summary of conclusions inter alia held that the NCLT in its capacity as the Adjudicating Authority under the IBC, 2016 has only interpreted the provisions of Section 32A and applied them to the facts at hand, to declare that the attachment of the Attached Properties by the ED must come to an end. It is possible that in a given case, the application of Section 32A of the IBC, 2016 may have an effect on existing and intended attachments and prosecution by enforcement agencies operating under laws such as the PMLA, 2002. However, since both Section 32A and Section 60(5) are non-obstante provisions, they would prevail, with no room for concern, real or imagined, about any conflict between legislations..... {Para 52(viii)}

For details:
https://ibbi.gov.in//uploads/order/a3a4302c2a9e607f9eff86a4d8fcd156.pdf

Answers May 2024

QUESTION NO. : 02

Whether corporate entities can make political contributions?

Answer: We can understand that Section 182 of the Companies Act, 2013 prohibits certain companies to make political contribution and restricts some companies to make political contribution subject to the compliances of Section 182.

These are:
1. A Government Company
2. A company which has been in existence for less than 3 financial years.

Other than the above companies, all other companies can make political contribution to a political party

QUESTION NO. : 03

Unless the Articles of Association of a company include the three conditions as specified in Section 2(68) of Companies Act,2013 the company cannot be treated as a 'private company'.

Yes or No ?

Answer: Yes

Answers May 2024

QUESTION NO. : 04

Can a trust or society or an LLP become a subscriber of a company ?

Answer: According to the Companies (Incorporation) Rules, 2014, the MoA and AoA of a company shall be signed by each subscriber to the memorandum. Rule 13(2), (3), (4) and (5) of the said Rules detail the various circumstances of subscription. Rule 13(4) reveals the manner in which a body corporate and an LLP being a subscriber to the memorandum of the company shall sign. While a cooperative society is categorized under body corporate under section 2(11) of the Act, there is no specific mention about trust. At the same time, under the 2013 Act there is no bar that a Trust cannot hold shares in a company. Accordingly there is no specific legal provision which bars a Trust to become a subscriber of a company. Hence, it may be concluded that a Cooperative Society or an LLP can be a subscriber of a company, and in so far as a registered trust is concerned it can subscribe to the memorandum through its Trustee acting for the trust and all compliances similar to those applicable for a body corporate must be complied with as if the trust is a body corporate and the Trustee should sign as subscriber in the capacity of the Trustee. Further a society registered under the provisions of Society Registration Act, 1860 cannot be subscriber to Memorandum of Association.

Questions
June 2024

QUESTION NO. : 01

Whether 'deal value threshold' rules for M&A transactions requiring CCI approval has been notified?

QUESTION NO. : 02

PRAVAAH Portal - The launch of PRAVAAH portal has opened a direct digital interface with the Reserve Bank of India (RBI) for seeking a host of approvals under the Foreign Exchange Management Act (FEMA).

Say – Yes or No

QUESTION NO. : 03

SEBI's rumour confirmation norms come into immediate effect for top 500 listed entities

Say Yes or No with supporting answer

QUESTION NO. : 04

In terms of Regulation 91E (1) of SEBI LODR Regulations, 2015, Social Enterprises which has registered or raised funds through SSE shall be required to submit Annual Impact Report to SSE by 31st October, 2024 for the Financial Year 2023-24.

Say Yes or No

REGULATORY UPDATES

June 2024

KEY AMENDMENTS IN LODR INCLUDES

a. New market Cap Formula, adopting a 6-month average calculation.

Method of Determination: Recognized stock exchanges are now mandated to prepare a list of entities ranked by average market capitalization from 1st July to 31st December each year

b. linking rumor verification to material price movement.

> SEBI
>
> Notification dated **May 17th 2024** on **SEBI (Listing Obligations and Disclosure Requirements) 2015**

c. mandating prompt and accurate responses from key executives for rumour verification :

Introduction of sub-regulation (11A) requiring timely responses from key individuals within listed entities to queries or explanations sought, enhancing regulatory compliance and investor confidence.

d. granting an extra time to fill key executive vacancies requiring regulatory approval (from Ministries/ RBI and other sectoral regulators etc).

e. Change in timelines for Prior intimation for Board meeting pursuant to Regulation 29 of LODR.

f. Key amendments to Regulation 30 of LODR.

FORM BEN-2 FOR LLP

Keeping in view of transition of MCA-21 from version-2 to version-3 and to promote compliance o' p1l of reporting Limited Liability partnerships, it is decided by the competent authority that LLPs may file Form LLP BEN-2 and LLP Form No' 4D, without payment of any further additional fees, up to July 1, 2024.

The relevant SEBI Circular shall be accessed at the below link:

SEBI | Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024

MCA

Notification dated **May 7th 2024** on **Extension for last date of filing form BEN-2 for LLPs**

FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) (FOURTH AMENDMENT) REGULATIONS, 2024

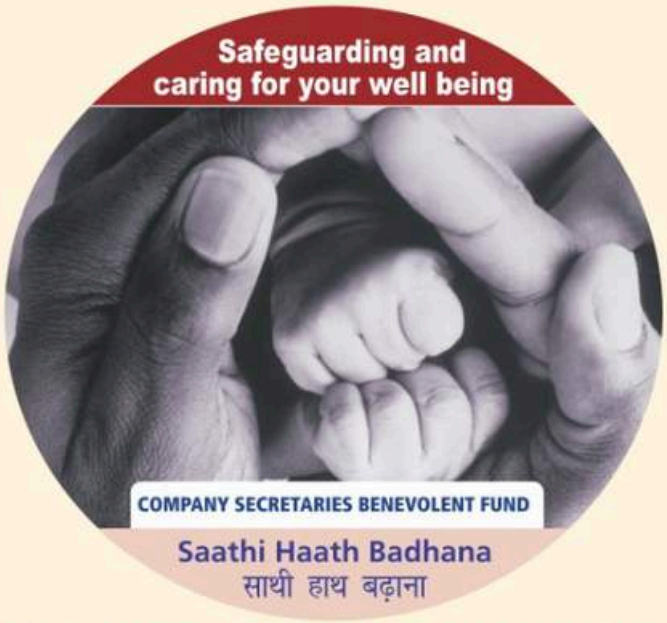
allows authorized dealers in India to permit non-residents to open interest-bearing accounts in Indian Rupees and/or foreign currency for the purpose of posting and collecting margin in India for permitted derivative contracts.

The relevant RBI notification shall be accessed at the below link:

Reserve Bank of India - Foreign Exchange Management Act Notification (rbi.org.in)

RBI

Notification dated **May 6th 2024** on **Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024**



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The Company Secretaries Benevolent Fund (CSBF) provides safety net to the Company Secretaries who are members of the Fund and their family members in distress.

CSBF

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- Subscription/Contribution to the Fund qualifies for deduction under section 80G of the Income Tax Act,1961
- Has a membership base of over 15000

ELIGIBILITY : A member of the Institute of Company Secretaries of India (ICSI) is eligible for the membership of the CSBF.

HOW TO JOIN : By making an online application using the link **https://stimulate.icsi.edu/** alongwith one time subscription of ₹10,000/-.

BENEFITS

- ₹10,00,000 in the event of death of a member under the age of 60 years
- Upto ₹3,00,000 in the event of death of a member above the age of 60 years
- Upto ₹50,000 per child on time (upto two children) for education of minor children of a deceased member upto the age of 60 years.
- Upto ₹75,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

DONATION : The donation to CSBF can be made online at link **www.icsi.in/ ICSIDonation**

CONTACT : For further information / clarification, please write at email id **csbf@icsi.edu** or contact on telephone no. 0120-4522000

For more details please visit https://www.icsi.edu/csbf/home/

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INVITATION TO CONTRIBUTE

- Members who wish to send articles for the E-Newsletter of Salem Chapter are requested to send in the word format along with their Full Name, Designation and Photo.
- Students who wish to send articles for the E-Newsletter of Salem Chapter are requested to send in the word format along with their Full Name, Registration No., Stage of Examination and Photo.
- In case of art works, students may send the same in PNG or JPG format.
- The article/material sent by you should be original, written or researched by you. In case of any references, kindly quote the same in the article.
- Articles should be sent before 20th of each month.

FOR MORE DETAILS CONTACT

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