



NIRC-ICSI *Insight*

NEWSLETTER

"Issuance of Securities" Issue

Theme of NIRC-2014: Change, Emerge & Lead

National Best Regional Council (2004, 2007, 2008, 2009, 2010 & 2011)

Jaipur Chapter: Valedictory Session of MSOP (16.4.2014): Mr. O P Agrawal, (Chairperson, JECRC University, Jaipur) addressing. Others from L to R Mr. Rajesh Gupta, Dr. Girish Goyal, CS Shyam Agrawal, CS Vimal Gupta and CS Rahul Sharma



Inauguration of 192nd MSOP (22.4.2014): Group photograph of participants alongwith CS (Dr.) G.B. Rao (Past President, ICSI), CS Shyam Agrawal, CS Rajiv Bajaj, Mr. S K Nagar and CS Alka Arora.



Inauguration of 190th MSOP at Lucknow (19.4.2014): Group photo of participants alongwith Shri R.K. Sharan (Regional Director, PHD Chamber of Commerce; Eminent Guest - Shri Aditya Vidyasagar, CS Anuj Tiwari, CS Rajeev Kumar, CS Subhash Tiwari & CS Amit Gupta.



Valedictory Session of 192nd MSOP (9.5.2014): Sitting from L to R CS Alka Arora, CS Subhash Setia (Chief Corporate Affairs & Company Secretary, DLF Ltd.) and Mr. S K Nagar. Best participants/best presenters standing.



Inauguration of 191st MSOP at Noida (21.4.2014): Group photo of participants alongwith CS Rajiv Bajaj, CS Ashutosh Kumar Pandey and CSA K Gurnani.



The Regional Council

Chairman	• CS Shyam Agrawal	09314923451
Vice-Chairman	• CS NPS Chawla	09958535300
Secretary	• CS Manish Gupta	09212221110
Treasurer	• CS Dhananjay Shukla	09873347280
Members	• CS Ashu Gupta (Ms.)	09899021740
(In alphabetical order)	• CS Avtaar Singh	09999789891
	• CS Deepak Kukreja	09871315000
	• CS M.G. Jindal	09814170354
	• CS Punit K. Abrol	09872600007
	• CS Rajiv Bajaj	09811453353
	• CS Ranjeet Pandey	09810558049
	• CS Vineet K Chaudhary	09811577123
Ex-officio Members	• CS Atul Mittal	09810065744
	• CS Harish K. Vaid	09810188683
	• CS Nesar Ahmad	09810044367
	• CS Pradeep K. Mittal	09811044365
	• CS Sanjay Grover	09810144530
Regional Director	• S K Nagar	09313339897

Disclaimer:

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Dear Professional Colleagues,

"Progress is a nice word. But change is its motivator. And change has its enemies."

Robert Kennedy

Change is everywhere and it happens irrespective of our choice, whether we want it or not. Adapting to change is difficult for most people, and having to change our behaviour and pattern is annoying and frustrating, and takes us out of our comfort zone. Nonetheless, some people welcome the new change and find the ways to turn the unexpected into a chance for growth and development. Change is constant in our lives, and the skills required to meet various needs keep changing throughout our lives. When we accept change, we keep learning new things. Once we are able to mentally adapt to a situation, we can formulate a plan and implement it by adjusting to the situation. A person who can accept change and adjust to life is the one who is able to focus the mind in new directions and make choices based on his or her desired outcomes.

Companies Act, 2013 has on one hand created various opportunities for Company Secretaries but simultaneously has also thrown various challenges. We at Regional Council are very much cautious of our duties & responsibilities towards our profession. We are deeply concerned about the dilutions made by MCA by exempting one person companies and small companies from the requirement of precertification of most of the e-forms to be filed by the said companies. This unexpected move of the MCA will lead to non-compliances and serious governance issues in said class of companies, which cannot be the intent of the lawmakers. Another big blow came by derecognizing PCS colleagues from pre-certifying the new e-form AOC-4 (pari-materia to e-form 23AC and 23ACA), despite the fact that PCS have always been the front runner in efficient handling of the work relating to annual filings of the companies. Further, e-Forms requiring pre-certification has a specific declaration from Practising Professionals, which would require greater diligence and care from the practising members as they will be exposed to higher responsibilities.



I have already communicated the above concerns to the President, ICSI as well as suggestions on monitoring of quality and conduct of Secretarial Audit and Annual Return Certification, provisions relating to Registered Valuer and Internal Audit under Companies Act, 2013 and rules made there under (Details can be downloaded from NIRC portal <https://www.icsi.edu/nirc>) and we are also in process of forwarding other various concerns. We have also requested the President and Vice President, ICSI and the Central Council Members from the North to discuss the way forward and address the queries & issues of members arising out of New Rules and e-forms in the days to come.

In the meantime, I wish to invite your attention on New Rules and the Forms (including Physical Forms) and appeal each and every member to kindly review these Rules and Forms and send the suggestions to NIRC.

Being mother legislation for all of us, there is an urgent need to unlearn the Companies Act 1956 and learn the provisions of the new act. I urge upon you through this communication to build your capacities in the new areas given under the Companies Act, 2013 by attending the various programmes being organised on company law. In this direction, NIRC is duty bound to organize professional development programs specifically focusing on the Companies Act, 2013 for the knowledge updation of our members throughout the Northern Region so that they can provide quality and value added services to their organization/clients. On 17th May, 2014, NIRC is organizing One Day Mega Workshop on Companies Act, 2013 specifically covering critical analysis of Chapters XI, XII & XIII and invited Dr. K R Chandratre, Past President, ICSI as a speaker for the seminar and also an extensive discussion on e-voting by senior experts of NSDL, apart from other various seminars, Meeting for Company Secretaries in Practice, Study Circle and Study Groups Meetings on the various topics of Companies Act, 2013 and other topics of corporate relevance.

I am glad to share that NIRC, in its Constant Endeavour to coordinate the best possible placement for our young members, had been successful in placing young members at an attractive package of Rs.15 lakh per annum. NIRC will continue to focus on providing best of the placements to our members and we are in process of organising further placement camps for the members of the institute.

The Institute is offering various PMQ & certificate courses to concentrate on capacity building. I take this opportunity to appeal all of you to pursue Post Membership Qualification in Corporate Governance & Corporate Restructuring and Insolvency which would enhance the scope for practising members and members in employment. Detailed announcements relating to the same is being published elsewhere in the newsletter for your reference.

I request all of you to kindly come forward with your suggestions on the theme/structure of the programs to be organized by NIRC. I also request you to send your views/suggestions on the draft Guidelines for "Use of Individual Logo by Company Secretaries in Practice" and also on "Revised Exposure Drafts of Secretarial Standards with respect to General and Board Meetings. (Detail is available on ICSI web portal <http://www.icsi.edu>)

This is not the time for despair, but to reaffirm our faith in ourselves and identify the opportunity knocking at our door. We have to remain positive in this environment and build our capacity for the future. Our unequivocal support for the President and the Central Council will certainly go a long way in achieving our objectives to lead the profession in the right direction and command the respect we truly deserve.

Regards,

Yours sincerely,

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ISSUANCE OF SECURITIES UNDER THE COMPANIES ACT, 2013*

– CS Pankaj Jain, pankaj.jain@ukca.in



This column deals with the new concepts introduced and the changes made to the existing provisions relating to the issue of securities by public and private limited companies under the new Companies Act, 2013 ("2013 Act").

The provisions of Chapter III and IV of the 2013 Act and Companies (Prospectus and Allotment of Securities) Rules, 2014 and Companies (Share Capital and Debentures) Rules, 2014 govern the offer, issuance and allotment of securities. The provisions for issuance of securities under the 2013 Act has been evocatively re-arranged.

The provisions are now applicable on issuance of any securities as opposed to shares under the Companies Act, 1956 ("1956 Act"). Securities have been defined under the Securities Contracts Regulation Act, 1956 ("SCRA") to include rights and interest in securities and other instruments as well.

The 2013 Act subjects private companies to greater control and compliances while withdrawing most of the exemptions available to private companies under 1956 Act.

The 2013 Act has introduced a new section (section 23) to explicitly provide the ways in which a public company or private company may issue securities in any of the following manner:

PUBLIC COMPANY

- To public through prospectus
- Private placement
- Rights issue or a bonus issue

PRIVATE COMPANY

- Private Placement
- Rights or Bonus Issue

Kinds of share capital:

Like the 1956 Act the kinds of share capital allowed under the 2013 Act are (a) Equity shares with voting rights or (b) Equity shares with differential rights as to voting, dividend or otherwise; and (c) Preference shares. However the exemption available to private limited companies for preferential issue of shares and issue of differential voting rights shares are no longer available.

Highlights of the provisions related to issuance of securities under the 2013 Act.

- Exemption from preferential allotment norms available to private companies under the 1956 Act is no more available and they need to comply with all the

conditions applicable to public companies for preferential issue of securities.

- Private placement offer can be made upto 200 persons per financial year per class of securities. Offer to more than 200 persons per financial year will be deemed as public offer.
- Preferential issue of shares or other securities would need to comply with cumbersome private placement norms along with preferential issue norms.
- Rules related to issue of shares with differential voting rights now applicable to private companies as well, earlier they were exempted.
- Unlike the 1956 Act, shares cannot be issued at discounted price other than sweat equity shares.
- Securities holder (individuals) can nominate any person to whom securities would vest in the event of their death.
- Disclosure requirement enhanced as well as detailed process laid for issuance of securities.
- Shareholders' approval through special resolution and valuation by Registered Valuer provided for most cases of issuance of securities.
- Companies now allowed to issue fresh preference shares to redeem unredeemed portion including dividends payable thereon as per its terms of issue with the approval of NCLT.
- Accumulation of voting rights on preference shares due to non payment of dividend to accrue uniformly after 2 years both for cumulative and non cumulative preference shares.
- Rights issue can be made without shareholders approval or as provided in Articles of Association.
- Class Action suit can be pursued in case of mis-statement in prospectus
- Exit opportunity to dissenting shareholders in case of variation of terms or objects stated in the prospectus
- Provision for issuance of bonus shares and employee stock options introduced
- Equity shares with differential voting rights shall not exceed 26% of the total post-issue paid up equity share capital.

Given below are various modes through which a company can issue securities under the 2013 Act:

1. Public Offer:

A public limited company can issue securities through public offer by issue of Prospectus. Public Offer includes initial

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He has over 11 years of experience in advising clients on corporate restructuring (including mergers, demergers, hive-off and capital restructuring), takeovers, buy-back, listing and delisting, exchange control matters and other regulatory issues. He has represented clients before various regulatory authorities like SEBI, Stock Exchanges, ROC, RBI, CLB, BIFR and Courts. He specializes in the corporate restructuring, general corporate and securities law matters.

*Views expressed by the Author are solely his own view and the Firm, NIRC or ICSI does not accept any responsibility.

public offer, further public offer or offer for sale by any existing shareholder. Some of the provisions related to issue of securities to public through prospectus are as follows:

- In the 2013 Act, the information to be included in the prospectus is specified in section 26. The 2013 Act and rules mandates specific disclosure to be made in prospectus including details of:
 - Any litigation or legal action pending or taken by a government department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company.
 - Sources of promoter's contribution.
 - Details with respect to utilised and unutilised money of earlier issue.
- Compliance with the 2013 Act, SEBI Act, SCRA and regulations made thereunder.
- Auditors Report on the assets and liabilities of business shall not be earlier than 180 days before the issue of the prospectus.
- Date indicated in the prospectus should be deemed to be date of publication of prospectus.
- Specific provisions for class action suits introduced for action in case of misleading prospectus.
- Exit opportunity to be provided to dissenting shareholders by the promoters or the controlling shareholders in case of diversion of funds raised for specified objects in the public issue.
- Subscription money received shall be kept in a separate bank account in a scheduled bank unless utilised for adjustment against allotment of securities or for the repayment of monies where the company is unable to allot securities. Specific provision for offer for sale (deemed as Prospectus) by existing shareholders introduced, whereby the relevant shareholders in consultation with the board of directors, may offer a part of their shareholding to the public. The selling shareholders reimburse the company all expenses incurred by it.
- Application money to be refunded in case minimum amount has not been subscribed and the sum payable on application is not received within a period of fifteen days from the closure of the issue. Delay in repayment would be subject to interest @ 15% p.a.
- Return of allotment of securities shall be filed with the Registrar within thirty days of allotment.

2. Private Placement (New)

Taking a lesson from the SEBI/ Sahara battle, wherein the Sahara group companies issued unsecured optionally fully-convertible debentures ("OFCDs") to approx 3 crores investors and raised substantial sums from public amounting to more than Rs 27,000 crores, and as held by Apex Court to be in violation of the provisions of the 1956 Act and the SEBI public issue norms ie SEBI (Disclosure and Investor Protection) Guidelines, 2000 and various provisions of the SEBI (Issue of Capital and Disclosure Requirements)

Regulations, 2009, the 2013 Act now provides full check and balances to curb the misuse of preferential issue norms and also uses the term securities instead of shares thus curbing all likely malpractices in private placement/ preferential issue process and also ensures greater controlling and consistency between SEBI and MCA by regulating such offers.

- Private Placement has been specifically defined to mean any offer of securities or invitation to subscribe securities to a select group of persons by a company other than by way of public offer through issue of a private placement offer letter.
- Provision of private placement is also applicable to private companies.
- Prior approval of shareholders by special resolution is required.
- The explanatory statement to shareholders should contain the basis or the justification for the proposed issue price.
- Offer shall be made in Form PAS-4 to selected persons by the company (other than by way of public offer).
- Company shall maintain the list of persons to whom offer under private placement shall be made and their names recorded prior to the invitation in Form PAS-5.
- Offer letter shall be sent either in writing or in electronic mode, within a time period of 30 days of recording of name.
- Company shall file private placement offer letter with the Registrar of Companies within 30 days of circulation of offer.
- Offer can be made to maximum of 200 person (per class of securities), excluding Qualified Institutional Buyer and employees to whom stock options are issued.
- Value of offer or invitation per person shall be with minimum investment size of Rs. 20,000 of face value of the securities.

The above mentioned limit of 200 persons and Rs. 20,000/- face value of investment shall not be applicable to NBFCs and housing finance companies. Provided they comply with the regulations made in respect of offers on private placement basis, by RBI or National Housing Board (NHB). However, if RBI or NHB has not specified any similar regulations, even such companies would be required to comply with the provisions of Companies Rules.

- If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the 200 persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions public offer.
- Subscription money shall be received in cheque or draft or through banking channels, receiving cash is not permitted.
- Payment of subscription money shall be made from the bank account of the person subscribing to such securities.

- Subscription money received shall be kept in a separate bank account which could only be utilised for adjustment against allotment of securities or for the repayment of monies where the company is unable to allot securities.
- Allotment of securities to be made within 60 days from date of receipt of the application money or the company shall refund application money within 15 days of the said 60 days in case securities cannot be allotted.
- Return of allotment for private placement shall be filed within 30 days of allotment.

3. Issue of Bonus Shares (New)

1956 Act had no specific conditions for issue of bonus shares except in the model Articles of Association, however 2013 Act has introduced enabling provisions for issue of bonus shares by the company. Bonus issue refers to further issue of shares made by a company to its existing shareholders for free or without any obligation to pay.

- Bonus shares can be issued by utilising any of the following:
 - (a) Free reserves
 - (b) Securities premium account
 - (c) Capital redemption reserve account
- 2013 Act provides that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
- Fully paid-up bonus shares can be issued by complying with the following conditions:
 - (a) It is authorised by the Articles of Association.
 - (b) It is recommended by the Board and approved by the shareholders of the company at general meeting.
 - (c) Partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
 - (d) No default is made in respect of payment of interest or principal on fixed deposits or debt securities.
 - (e) Company has not defaulted in payment of statutory dues of the employees.
- Bonus shares shall not be issued in lieu of dividend.
- Once recommended by Board bonus issue cannot be withdrawn.
- Company shall issue share certificates pursuant to allotment of bonus shares and register to be updated accordingly.

4. Issue of sweat equity

Sweat equity shares means such equity shares issued by the company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. Provisions for issue of sweat equity shares provide that:

- Employee means permanent employee of the company or of subsidiary company or of holding company who

has been working in India or outside India, for at least last one year; or a director of the company or of subsidiary company or of holding company, whether a whole time director or not..

- Value additions means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee..
- Shareholders approval by special resolution is mandatory and the resolution will remain valid for 12 months for making allotment of sweat equity.
- The explanatory statement to shareholders shall contain the following particulars:
 - Date of the Board meeting at which the proposal for issue of sweat equity shares was approved
 - Reasons or justification for the issue
 - Class of shares and the total number of sweat equity shares intended to be issued
 - Class or classes of directors or employees to whom such equity shares are to be issued
 - Principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation
 - Time period of association of such person with the company
 - Names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and KMP;
 - Price at which the sweat equity shares are proposed to be issued;
 - Consideration including non-cash consideration, if any to be received for the sweat equity
 - Ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;
 - Statement to the effect that the company shall conform to the applicable accounting standards; and
 - Diluted EPS in accordance with the applicable accounting standards
- Company can issue sweat equity shares only after one year from the date of commencement of business.
- Company can issue sweat equity shares upto higher of the following limits in a financial year:
 - Upto 15% of the existing paid up equity share capital
 - Shares of the issue value of INR 5 Crores
- Issuance of sweat equity shares at any point of time shall not exceed 25% of the paid up equity capital of the company.
- Sweat equity shares shall be locked in for a period of 3 years from the date of allotment.

- Pricing of sweat equity shall be undertaken with a Registered Valuer. It would be interesting to note that how would this provision effect going forward given that the Act allows issuance of sweat equity shares at a discount.
 - The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a Registered Valuer, who shall provide a proper report to board of directors.
 - Copy of both the above valuation reports should be circulated to the shareholders along with the notice of the general meeting.
 - Where sweat equity shares are issued for a non-cash consideration, the same shall be treated in the following manner in the books of account of the company-
 - Where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards
 - Where above clause is not applicable, it shall be expensed as per accounting standards.
 - The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the 2013 Act if the following conditions are fulfilled:
 - Sweat equity shares are issued to any director or manager; and
 - They are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.
 - Directors Report shall inter-alia contain following details of sweat equity shares issued during the year:
 - Class of director/ employee to whom sweat equity shares were issued;
 - Class of shares issued as sweat shares;
 - Number of sweat equity shares issued to the directors, their relatives, 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 1% or more of the issued share capital ;
 - Reasons/justification for the issue;
 - Principal terms and conditions for issue of sweat equity shares, including pricing formula;
 - Total number of shares arising as a result of issue of sweat equity shares;
 - Percentage of the sweat equity shares of the total post issued and paid up share capital;
 - Consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
 - Diluted EPS pursuant to issuance of sweat equity shares.
 - The company shall maintain a register of sweat equity shares in Form SH.3.
 - Entries in the register shall be authenticated by Company Secretary or by any other person authorised by the Board.
- 5. Issue of shares on preferential basis**
- Preferential Offer means an issue of shares or other securities by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.
- Issue on preferential basis should also comply with conditions laid under Private Placement norms
 - Preferential Offer must be authorized by its articles of association
 - Company can issue shares on preferential basis only if it is approved by the shareholders of the company by a special resolution
 - Allotment of securities on a preferential basis shall be completed within a period of twelve months from the date of passing of the special resolution
 - The securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment
 - The explanatory statement to shareholders shall contain the following particulars
 - Objects of the issue;
 - Total number of shares or other securities to be issued;
 - Price or price band at/within which the allotment is proposed;
 - Basis on which the price has been arrived at along with report of the registered Valuer
 - Relevant date with reference to which the price has been arrived at;
 - Class or classes of persons to whom the allotment is proposed to be made;
 - Intention of promoters, directors or key managerial personnel to subscribe to the offer;
 - Proposed time within which the allotment shall be completed;
 - Names of the proposed allottees and the percentage of post preferential offer capital that may be held by them
 - Change in control, if any, in the company that would occur consequent to the preferential offer;
 - Number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;

<ul style="list-style-type: none"> - Justification for the allotment proposed to be made for consideration other than cash together with valuation report of the Registered Valuer - Pre issue and post issue shareholding pattern of the company • Valuation by a Registered Valuer is mandatory for the shares or other securities to be issued on preferential basis, either for cash or for consideration other than cash • Return of allotment of securities shall be filed with the Registrar within thirty days of allotment. • Company shall issue share certificates pursuant to allotment of shares on preferential basis and register to be updated accordingly. <p>It seems that issuance of any other securities which are non-convertible into equity shares (say redeemable preference shares, debentures, etc.) would be outside preferential offer norms but may need to follow specific conditions for issuance of that specified securities (ie relevant rules for issuance of preference shares, debentures, etc.). The provision seems to have been aligned with the SEBI (ICDR) regulations.</p> <p>Further, given that the provisions are relatively new it may need to be explored whether issuance of any type of shares (ie equity, DVR shares or redeemable preference shares or equity convertible preference shares) under a rights issue to all the existing equity shareholders can be issued just by compliance of conditions related to rights issue and none other conditions attached to the issue of the relevant shares.</p> <p>6. Issue of ESOP (new)</p> <p>Employee stock option means the right given to the directors, officers or employees of a company or of the group companies, to purchase at a future date, the securities offered by the company at a pre-determined price. It is a good management tool for retention of human talent and guards against poaching of staff by competitors. The employee is also benefitted by having stock ownership rights in the company.</p> <ul style="list-style-type: none"> • Company can offer ESOP to the following: <ul style="list-style-type: none"> - Permanent employee of the company who has been working in India or outside India or - Director of the company, whether a whole time director or not but excluding an independent director; or - Employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company. <p>Provided further that any employee, who is promoter or belong to promoter group or director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company shall not be eligible for ESOP.</p> <ul style="list-style-type: none"> • Prior approval of the shareholders, by a special resolution is required for issuance of shares under ESOP. • The explanatory statement to shareholders shall contain the following particulars <ul style="list-style-type: none"> - Total number of stock options to be granted; 	<ul style="list-style-type: none"> - Identification of classes of employees entitled to participate in the ESOP ; - Appraisal process for determining the eligibility of employees to the ESOP; - Requirements of vesting and period of vesting; - Maximum period within which the options shall be vested; - Exercise price or the formula for arriving at the same; - Exercise period and process of exercise; - Lock-in period, if any; - Maximum number of options to be granted per employee and in aggregate - Method which the company shall use to value its options; - Conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct; - Specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and - Statement to the effect that the company shall comply with the applicable accounting standards. <ul style="list-style-type: none"> • The approval of shareholders by way of separate resolution shall be obtained by the company in case of- <ul style="list-style-type: none"> - Grant of option to employees of subsidiary or holding company; or - Grant of option to identified employees, 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 of option. • Minimum vesting period is one year from the date of grant. • Company have freedom to determine the exercise price in conformity with applicable accounting policies, if any. • Terms of ESOP not exercised by employees may be varied by company by special resolution, provided such variation is not prejudicial to the interests of the option Holders. • No mandatory lock in period specified by the Act, however company can specify lock-in period for the shares issued pursuant to exercise of option. • The employees/ option holder shall not have right to dividend or voting rights nor be entitled to any other benefits as shareholder of the company till shares are issued upon exercise of option • Stock options will be non-transferrable, except under specified circumstances like death of employee. • Options granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered.
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- Directors Report shall inter-alia contain the following details of ESOP issued in the year
 - Options granted;
 - Options vested;
 - Options exercised;
 - Total number of shares arising as a result of exercise of option;
 - Options lapsed;
 - Exercise price;
 - Variation of terms of options;
 - Money realized by exercise of options
 - Total number of options in force
 - Employee wise details of options granted to KMPs; or any other employees receiving 5% of the total options issued during the year; or identified employees who were granted options > 1 % of the issued capital of the company.
- The company shall maintain a register of employee stock options in Form SH.6 and the entries therein shall be duly authenticated by Company Secretary or any person authorised by the Board.
- 7. Issue of equity shares with differential rights (DVR shares):**
- Equity shares with differential rights as to dividend, voting or otherwise can be issued by the companies having share capital under the 2013 Act, subject to the following conditions:
 - Authorisation in the Articles of Association.
 - Issue is approved by shareholders by an ordinary resolution or through postal ballot (if applicable)
 - DVR can be issued upto 26% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time.
 - Consistent track record of distributable profits for the last 3 years.
 - No default in filing financial statements and annual returns for immediately preceding 3 financial years in which it is decided to issue such shares;
 - No subsisting default in the payment of a declared dividend or repayment of its matured deposits or redemption of its preference shares or debentures or payment of interest on such deposits or debentures or dividend on preference shares.
 - No Default in payment of any term loan or interest payable thereon or statutory dues of its employees payable to any authority or default in crediting the amount in Investor Education and Protection Fund.
 - No penalty is levied by Court or Tribunal during the last 3 years for any offence under the RBI Act, 1934, SEBI Act, 1992, the SCRA, 1956, FEMA, 1999 or any other Special Act, under which such companies are being regulated.
- The explanatory statement to shareholders shall inter-alia provide complete material facts concerned with the issue of such DVR shares including the following:
 - Total number of DVR shares issued.
 - Details of the differential rights.
 - Percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time
 - Reasons or justification for the issue.
 - Price at which such shares are proposed to be issued either at par or at premium;
 - Basis on which the price has been arrived at.
 - In case of private placement or preferential issue-
 - Details of total number of shares proposed to be allotted to promoters, directors and KMP.
 - Details of total number of shares proposed to be allotted to persons other than those referred above and their relationship, if any with promoters, directors and KMP.
- In case of public issue - reservation, if any, for different classes of applicants including promoters, directors or KMP.
 - Percent of voting right which the equity share capital with differential voting right shall carry to the total voting right.
 - Scale or proportion in which the voting rights of such class or type of shares shall vary.
 - Change in control, if any consequent to the issue of equity shares with differential voting rights.
 - Diluted EPS as per the applicable accounting standards.
- Directors Report shall inter-alia contain following details of equity shares with differential rights issued during the year.
 - Total number of shares allotted with differential rights;
 - Details of the differential rights relating to voting rights and dividends
 - Percentage of voting rights which the DVR shares shall carry to the total voting right ;
 - Issue price of DVR shares
 - Details of promoters, directors or KMP to whom such shares are issued;
 - Change in control, if any
 - Diluted EPS, as per applicable accounting standards
- Register of members shall contain the particulars of DVR shareholder.
- The Rules also provide that a company shall not convert its existing equity share capital with voting rights into

equity share capital carrying differential voting rights and vice-versa.

8. Issue of Preference Shares

Under the 2013 Act redemption period for preference shares have been maintained for the maximum term of 20 years, except for a company engaged in the setting up and dealing with infrastructure projects or infrastructural facilities which may issue preference shares redeemable within 30 years. Such companies may redeem a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

Further, where dividend in respect of any class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall have a right to vote on all resolutions placed before the general meeting of the company.

Conditions for issue of preference shares are as follows:

- Issue is authorised by Articles of Association.
- There is no subsisting default in the redemption of preference shares issued either before or after the commencement of 2013 Act or for payment of dividend due thereon.
- Issue is authorised by shareholders by way of a special resolution.
- Resolution shall inter-alia contain following details relating to preference shares:
 - Priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;
 - Participation in surplus fund;
 - Participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
 - Payment of dividend on cumulative or non-cumulative basis.
 - Option for conversion of preference shares into equity shares.
 - Voting rights.
 - Redemption period and terms.
- The explanatory statement to shareholders shall provide complete material details for the issue of preference shares including the following:
 - Size of the issue, number of preference shares to be issued and nominal value of each share;
 - Nature of such shares i.e. cumulative or non-cumulative, participating or non-participating, convertible or non-convertible;
 - Objectives of the issue;
 - Manner of issue of shares;
 - Price at which such shares are proposed to be issued along with basis for arriving at such price
 - Terms of issue and redemption
 - Manner and modes of redemption;

- Current shareholding pattern of the company;
- Expected dilution in equity share capital upon conversion of preference shares.

- Register of Members shall contain details of preference shareholder.

9. Issue of Debenture:

Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. Provisions for issue of debentures provide that:

- Convertible debentures, partly or wholly can be issued only by special resolution of shareholders
- Debentures shall not carry any voting rights
- Creation of Debenture Redemption Reserve (DRR) out of the profits of the company available for payment of dividend
- DRR to be utilised for redemption of debentures
- Appointment of debenture trustee is mandatory if company issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred

Every company issuing secured debentures shall comply with the following additional conditions, namely:

- Date of redemption of secured debentures shall not exceed ten years from the date of issue and in case of infrastructure projects exceeding ten years but not exceeding thirty years
- Issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company having sufficient value to repay the debentures and interest thereon
- Appoint a debentures trustee before issue of prospectus or letter of offer for subscription of its debentures, irrespective of number of person
- Execute debenture trust deed in Form SH.12 within 60 days of allotment of debentures
- Creation of DRR out of the profits of company and equivalent to at least 50% of amount raised through debentures issue before redemption commences
- Every company shall on or before 1st April each year invest or deposit, a sum at least 15% of amount maturing on 31st March of succeeding year in the following:
 - Deposits with any scheduled bank, free from any charge or lien;
 - Unencumbered securities of the Central Government or State Government;
 - Permissible unencumbered securities and bonds under section 20 of the Indian Trusts Act, 1882.
- The amount so invested or deposited above shall be utilised only for redemption of matured debentures
- In case of partly convertible debenture DRR to be created only for non convertible portion.

SUMMARY PROVISIONS FOR ISSUANCE OF VARIOUS SECURITIES AND THEIR MODE OF ISSUE

Type of Offer	Type of Shareholders Resolution	Valuation by	Allotment Period	Maximum Limit/ Allotees
Public Offer	-	-	Within 15 days of receipt of application money	Public - unlimited persons
Private Placement	Special Resolution	-	Within 60 days of receipt of application money	200 person in a financial year(per class of securities) excluding allotment to QIBs and employees under the ESOP scheme
Preferential Allotment	Special Resolution	Registered Valuer (for unlisted companies)	Within 60 days of receipt of application money	200 person in a financial year (per class of securities) excluding allotment to QIBs and employees under the ESOP scheme
Right Issue	-	-	Offer to remain open for 15 days to 30 days	Offered to existing shareholders Unless restricted by Articles, renunciation by a member to other person is permitted
Bonus Issue	Ordinary Resolution	Not Applicable	-	All the existing equity shareholders (including equity shares with differential voting rights)
Sweat Equity	Special Resolution	Registered Valuer	Within 12 months from passing of special resolution	Higher of the following in a financial year a) Upto 15% of the existing paid up equity share capital; or b) Upto Rs 5 crores However, sweat equity shares shall not exceed 25% of paid up capital at any time.
ESOP	Special Resolution	Not Applicable	Upon exercise of options	To the employees/ directors. Independent Directors cannot be issued stock options.
Equity shares with differential rights	Ordinary Resolution	Not Applicable	Not Applicable	Equity shares with differential rights shall not exceed 26% of the total post-issue paid up equity share capital.
Preference Shares	Special Resolution	Not Applicable	Not Applicable	Preference shares can be issued by a company with a redemption date of not beyond 20 years except in case of companies engaged in infrastructure projects/ infrastructural facility wherein it can be redeemed within 30 years
Debentures (Non-convertible)	Not Applicable	Not Applicable	Not Applicable	Appointment of debenture trustee is compulsory for issue of debentures to more than 500 persons.
Debentures (convertible)	Special Resolution	-	-	Appointment of debenture trustee is compulsory for issue of debentures to more than 500 persons.

The changes introduced by the 2013 Act on issue and allotment of securities, strengthens the investors and minority shareholders protection measures and is seen as a step in the right direction. It may also mitigate scams witnessed in the past involving loss to minority shareholders and public at large.

The onerous conditions imposed for issuance of equity shares with differential voting rights would also affect structuring of private equity and venture capital investments in companies and it seems that convertible preference shares or debentures would find a flavour among them.

Greater control has now been enforced upon private limited companies with regard to preferential issue and issue of DVR shares and fund raising options have by and large been limited with the requirement of shareholders approval.

The 2013 Act introduces numerous measure aimed at transparent disclosure regime for corporate as they will now required to disclose most of the details related to issuance of securities to the securities holders, in the notice, reports or company's website and also to the regulator in the relevant returns or forms.

CAREER AWARENESS PROGRAMS/CAREER FAIRS

NIRC has organised 15 Career Awareness Programs/Career Fairs during the month of April, 2014 in various schools & colleges located in Delhi and surrounding areas. Officials of NIRO addressed in these Career Awareness Programs/Career Fairs. The students were apprised about the mode of registration in the course, syllabus, structure of the course and also the avenues available after completion of the Company Secretaryship Course both in employment and in practice.



COMPLIANCE CHECKLIST FROM 1ST MAY TO 10TH JUNE, 2014

Central Excise Related Compliance					
S. No.	Activities	Sections/Rules / Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
1.	Last Date for payment of Excise Duty Non SSI units (April) *(in case of Payment through Internet banking)	Rule 8	Central Excise Rules, 2002	05 th May *06 th May	Central Excise Authorities
2.	Monthly Return of information relating to Principal Inputs (April, 2014) (Form No. ER-6)	Rule 9A	CENVAT Credit Rules, 2004	10 th May	Central Excise Authorities
3.	Filing of Return of Central Excise and Cenvat Credit for the month of April, 2014 (Form No. ER-1) (Non SSI Units)	Rule 12 / Rule 9(7)	Central Excise Rules, 2002/ CENVAT Credit Rules, 2004	10 th May	Central Excise Authorities
4.	Monthly Excise return by EOU for the month of April, 2014 (Form No. ER-2)	Rule 17(3)	Central Excise Rules, 2002	10 th May	Central Excise Authorities
5.	Last Date for payment of Excise Duty Non SSI units (May) *(in case of Payment through Internet banking)	Rule 8	Central Excise Rules, 2002	05 th June *06 th June	Central Excise Authorities
6.	Monthly Return of information relating to Principal Inputs (May, 2014) (Form No. ER-6)	Rule 9A	CENVAT Credit Rules, 2004	10 th June	Central Excise Authorities
7.	Filing of Return of Central Excise and Cenvat Credit for the month of May, 2014 (Form No. ER-1) (Non SSI Units)	Rule 12 / Rule 9(7)	Central Excise Rules, 2002/ CENVAT Credit Rules, 2004	10 th June	Central Excise Authorities
8.	Monthly Excise return by EOU for the month of May, 2014 (Form No. ER-2)	Rule 17(3)	Central Excise Rules, 2002	10 th June	Central Excise Authorities
Service Tax Related Compliances					
9.	Pay Service Tax in Challan GAR - 7, collected for the month of April 2014 by persons other than individuals proprietors and partnership firms. *(in case of Payment through Internet banking)	Section 68 Read with Rule 6	Finance Act, 1994 Service Tax Rules, 1994	05 th May *06 th May	Service Tax Authorities
10.	Pay Service Tax in Challan GAR - 7, collected for the month of May 2014 by persons other than individuals proprietors and partnership firms. *(in case of Payment through Internet banking)	Section 68 Read with Rule 6	Finance Act, 1994 Service Tax Rules, 1994	05 th June *06 th June	Service Tax Authorities



Income-tax Related Compliances					
S. No.	Activities	Sections/Rules / Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
11.	Contractor's Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (April, 2014)	Section 194C Section 194J	Income-tax Act, 1961	07 th May	Income Tax Authorities
12.	Monthly payment of TCS (April, 2014)	Section 206	Income-tax Act, 1961	07 th May	Income Tax Authorities
13.	TDS from Salaries for the previous month (April 2014)	Section 192	Income-tax Act, 1961	07 th May	Income Tax Authorities
14.	Deposit TDS from salaries for the previous month in Challan No.281 (April)	Section 192	Income-tax Act, 1961	07 th May	Income Tax Authorities
15.	Quarterly Statement of collection of tax at source (TCS) for the Quarter Ending March 31.	Section 192	Income-tax Act, 1961	15 th May	Income Tax Authorities
16.	Quarterly TDS return for the period Jan-March, 2014	Section 195 read with rule 37A	Income-tax Act, 1961	15 th May	Income Tax Authorities
17.	Quarterly issuance of certificate of tax deducted at source (other than salary) for the quarter ending March 31.	Section 203	Income-tax Act, 1961	30 th May	Income Tax Authorities
18.	Quarterly issuance of Certificate of collection of tax at source (TCS) for the Quarter Ending March 31.	Section 192	Income-tax Act, 1961	30 th May	Income Tax Authorities
19.	Certificate of tax deducted at source (TDS) to employees in respect of salary paid during the previous financial year	Section 192	Income-tax Act, 1961	31 st May	Income Tax Authorities
20.	Contractor's Bill / Advertising / Professional service Bill - TDS collected for the previous month Section 194J (May, 2014)	Section 194C Section 194J	Income-tax Act, 1961	07 th June	Income Tax Authorities
21.	Monthly payment of TCS (May, 2014)	Section 206	Income-tax Act, 1961	07 th June	Income Tax Authorities
22.	TDS from Salaries for the previous month (May 2014)	Section 192	Income-tax Act, 1961	07 th June	Income Tax Authorities
23.	Deposit TDS from salaries for the previous month in Challan No.281 (May)	Section 192	Income-tax Act, 1961	07 th June	Income Tax Authorities
RBI Related Compliances					
24.	Monthly return (NBS-6) on exposure to capital market	Para 13B	NBFC Prudential Norms (Reserve Bank) Directions, 1998	07 th May	RBI



S. No.	Activities	Sections/Rules / Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
25.	Monthly Return on Important Financial Parameters	DNBS (RID) C.C. No.57/02.05.15/2005-06 dated Sep 6, 2005	Circular	07 th May	RBI
26.	Reporting of actual transactions of ECB in form ECB-2 within 7 working days (April)	ECB Rules	FEMA, 1999	08 th May	RBI through Authorized Dealer
27.	Monthly statement of short term dynamic liquidity in Form ALM-I	DNBS (PD).CC.No.15/02.01/2000-2001 dated June 27, 2001	Circular	10 th May	RBI
28.	Monthly return (NBS-6) on exposure to capital market	Para 13B	NBFC Prudential Norms (Reserve Bank) Directions, 1998	07 th June	RBI
29.	Monthly Return on Important Financial Parameters	DNBS (RID) C.C. No.57/02.05.15/2005-06 dated Sep 6, 2005	Circular	07 th June	RBI
30.	Reporting of actual transactions of ECB in form ECB-2 within 7 working days (May)	ECB Rules	FEMA, 1999	09 th June	RBI through Authorized Dealer
31.	Monthly statement of short term dynamic liquidity in Form ALM-I	DNBS (PD).CC.No.15/02.01/2000-2001 dated June 27, 2001	Circular	10 th June	RBI
Economic, Industrial & Labour Law Related Compliances					
32.	Monthly payment of Provident Fund (PF) (Non Corporate)	(a) Paragraph 38 of Employees Provident Funds Scheme, 1952 (b) Section 418 of the Companies Act, 1956	(a) Employees' Provident Funds and Misc. Provisions Act, 1952 (b) Exempted Scheme	15 th May	Provident Fund Authorities Trustees of Provident Fund
33.	File monthly return for employees leaving / joining during the month of April (Form No.5)	Paragraph 20(2) read with Paragraph 36(1) & (2)	The Employees Pension Scheme, 1995 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	15 th May	Provident Fund Commissioner



S. No.	Activities	Sections/Rules / Clauses, etc.	Acts/Regulations etc.	Compliance Due Date	To whom to be submitted
34.	i) File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF)) ii) File monthly Return for members of Insurance Fund leaving service during the month of April (Form no. 3(IF)) iii) File monthly return of members joining service during the month of April (Form no.F4(PS))	Paragraph 10	The Employees Deposit Linked Insurance Scheme, 1976 (For exempted establishments under Employees Provident Fund and Misc. Provisions Act, 1952)	15 th May	Provident Fund Commissioner
35.	Payment of ESI contribution for the previous month	Regulation 31	Employees' State Insurance Act, 1948 and Employees State Insurance (Gen.) Regulations, 1950	21 st May	ESIC Authorities
36.	Monthly return of Provident Fund for the previous month (April) Provident funds	Paragraph 38 of Employees' Provident Act, 1952	Employees Provident Funds and Misc. Scheme, 1952	25 th May	Provident Fund Authorities
37.	Monthly return of Provident Fund for the previous month with respect to International Workers.	Paragraph 36	The Employees' Provident Funds Scheme, 1952	25 th May	Provident Fund Authorities
Stock Exchange / Listing Compliance					
38.	Submission of unaudited financial result along with copy of limited review report	Clause 41	Listing Agreement	15th May	Stock Exchange
Depositories					
39.	Submit monthly statement on substitution of names of depositories in the previous quarter.	Regulation 54(5)	SEBI (Depositories & Participants) Regulations, 1996	07th May	Depositories
40.	Submit monthly statement on substitution of names of depositories in the previous quarter.	Regulation 54(5)	SEBI (Depositories & Participants) Regulations, 1996	07th June	Depositories

Note : While every care has been taken in the preparation of this Compliance Check List for the Month of May, 2014, to ensure its accuracy at the time of publication, NIRC - ICSI assumes no responsibility for any errors which despite all precautions, may be found therein. Members are requested to check the latest position with the original sources before acting upon on the information published in this newsletter. Neither this Newsletter nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/ substitute professional advice that may be required before acting on any matter.

LEGAL UPDATES**Indian Bank Association and others****... Petitioners****Vs.****Union of India and others****... Respondents****WRIT PETITION (CIVIL) NO.18 OF 2013**

Does Section 138 to Section 147 of Negotiable Instruments Act, 1881 (the Act) really provide relief to the holders of bounced cheques?? Or there is need to enhance credibility of cheques????

The Supreme Court while deciding the scope of Section 138 to 147 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'), has overruled its previous decision thus importing true character to the intent of the legislature by laying down procedure for criminal Courts to expedite disposal of cheque bouncing cases.

FACTS OF THE CASE

This Writ Petition, under Article 32 of the Constitution of India, has been preferred by the Indian Banks' Association (IBA) along with Punjab National Bank and another, seeking the following reliefs :-

- (a) Laying down appropriate guidelines/directions to be followed by all Courts within the territory of India competent to try a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act) to follow and comply with the mandate of Section 143 of the said Act read with Sections 261 to 265 of Criminal.
- (b) Procedure Code, 1973 (Cr.P.C.) for summary trial of such complaints filed or pending before the said Courts Issue a writ of mandamus, directing the respondents, to adopt necessary policy and legislative changes to deal with cases relating to dishonor of cheques so that the same are expeditiously disposed off in accordance with the intent of the Act and the guidelines to be laid down by this Hon'ble Court.
- (c) The Petitioners submit that the banking industry has been put to a considerable disadvantage due to the delay in disposing of the cases relating to Negotiable Instruments Act. The Petitioner banks being custodian of public funds find it difficult to expeditiously recover huge amount of public

fund which are blocked in cases pending under Section 138 of the Negotiable Instruments Act, 1881.

- (d) Legislature has noticed that the introduction of Sections 138 to 147 of the Act has not achieved desired result for dealing with dishonoured cheques, through summary trial as well as making the offence compoundable. But, no uniform practice is seen followed by the various Magistrate Courts in the country, as a result of which, the object and purpose for which the amendments were incorporated, have not been achieved.
- (e) Petitioner also brought to the notice of Court that Sections 138 to 142 in Chapter XVII has been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed forth Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.
- (f) Also Petitioner brought to the notice of Court that as per the proviso to the Section 142 of the NI Act requires the complaint to be made within one month of the date on which the "cause of action" arises under clause (c) of the proviso to Section 138 i.e. failure of the drawer to make payment within 15 days of receipt of notice by the holder/payee. So, an essential question which arose for determination is when does a "cause of action" arise and whether a payee/holder can in due course initiate proceedings under Section 138 after a subsequent dishonour of cheque by the drawer if he has not initiated any action on earlier cause of action?
- (g) A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act in various courts in the country. under Section 138 of the Negotiable Instruments Act,

Judgement

The Apex Court Felt that the current practice adopted by the courts and the time spent to arrive at a final decision has inadvertently failed to meet the intent

of the Legislature behind this provision and made it worthless in the statute books. The case to be dealt with subsequently is an apt example depicting the inability of the courts to provide speedy remedy as in this case, the aggrieved party had to strive for a period of ten years (approximately) before they could be accorded relief.

Supreme Court laid down procedure for criminal Courts for speedy and expeditious disposal of cases falling under section 138 of the Negotiable Instruments Act to expedite disposal of cheque bouncing cases.

- (1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.
- (2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.
- (3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest. Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence,

unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.

- (4) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court²². We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.

We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.

Writ Petition is, accordingly, disposed of, as above.

Conclusion

The landmark judgments of the Supreme Court overruling its previous decisions are inevitable in as much they have given effect to the true intention of the legislature by adopting a fair and just approach and fulfilling the purpose for which the statutes have been enacted that is to protect the interests of different classes of people. However, the frequent negation of earlier judgments is not a healthy approach and should be discouraged unless a substantial question of law is involved or it is mandatory to do so in the interests of promoting justice and equity.

Compiled by

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CS Manish Gupta, manish@rmgcs.com

CONGRATULATIONS

CS (Dr.) S.P. Sharma (FCS-1790) of Ludhiana on his completion of Ph. D. degree in the subject of Finance under the faculty Commerce & Management on the Topic **“Role of Private Banks in Housing Finance in India”** from CMJ University, Meghalaya

**NEWS FROM NIRC**

NIRC organised the following programs:

<i>Date</i>	<i>Program</i>	<i>Chief Guest/Speakers</i>	<i>Present</i>
19.4.2014 to 4.5.2014	190th Management Skills Orientation Program held at Lucknow	Chief Guest : Shri R.K.Sharan, Regional Director, PHD Chamber of Commerce; Eminent Guest - Shri Aditya Vidyasagar	CS Anuj Tiwari, CS Subhash Tiwari, CS Rajeev Kumar, CS Amit Gupta and participants
21.4.2014 to 7.5.2014	191st Management Skills Orientation Program held at Noida	-	CS Rajiv Bajaj, CS Ashutosh Kumar Pandey CS A K Gurnani & participants
22.4.2014	Inauguration of 192nd Management Skills Orientation Program	Chief Guest: CS (Dr.) G B Rao, Past President, The ICSI	CS Shyam Agrawal, CS Rajiv Bajaj, Mr. S K Nagar, CS Alka Arora and participants
26.4.2014	Professional Development Program	Ms. Monika Sudhir, Corporate Trainer & CS Pritika Nagi	Mr. S K Nagar & students
9.5.2014	Valedictory Session of 192nd Management Skills Orientation Program	CS Subhash Setia, Chief Corporate Affairs & Company Secretary, DLF Limited	Mr. S K Nagar, CS Alka Arora & students
12-21.5.2014	43rd Executive Development Program (EDP)	Members of the Institute	Students of the Institute

LIGHTER SIDE OF THE PROFESSION

"Sir, what happened to the revised loan application for our company's NOIDA project?"

"It is under our active consideration."

"When should we get back to you?"

"There is no need for that. We will ourselves get back to you with a "NO" as soon as possible."

"Paramjeet Singh, what defence you have for your client who is facing counterfeiting charges?"

"Your honour, kindly give me some time."

"Why?"

"Because I have to fabricate a solid defence for that."

– CS PRAMJEET SINGH, pslawadvisers@yahoo.com

Members may send their contribution for this column at e-mail niro@icsi.edu for publication in the NIRC Newsletter-Insight. Decision of the Editorial Board of Newsletter in this regard will be final.



CHAPTERS ACTIVITIES			
<i>Name of Chapter</i>	<i>Date of Program/Meeting</i>	<i>Program/Meeting & topic- Chief Guest/Speaker(s) dignitaries</i>	<i>NIRC Member/Chapter Committee Member Present</i>
Ghaziabad	3.5.2014	Guidance Programme for the Students (The main objective of the programme was guiding and preparing students for the upcoming exams in June)	Faculty and students
	1-7.4.2014	Student Induction program (SIP)	CS Deepa Singhal & students
Jaipur	19-27.03.2014	33rd Executive Development Program (EDP)	Dr. Girish Goyal & students
	29.03.2014	Holi Sneh Milan	Dr. Girish Goyal, CS Vimal Gupta, Other Members of Managing Committee & Members
	30.03.2014	Meeting on Emerging Trends for CS	Dr. Girish Goyal & Members
	01-16.04.2014	10th Management Skill Orientation Program Inaugural Chief Guest- Shri Lal Morani, Professor, University of Rajasthan Valedictory:- Chief Guest: Shri O P Agrawal, Chairman JECRC	CS Shyam Agrawal, Dr. Girish Goyal, CS Vimal Gupta, CS Neetu Maheshwari & participants
	12.04.2014	Full day Conference on Export financing & Companies Act, 2013 Speakers : Mr. R G Agarwal & Mr. Lalit Kumar	Dr. Girish Goyal, CS Vimal Gupta, CS Neetu Maheshwari & Members
	13.04.2014	Study Circle meeting on Companies Act, 2013 Speaker: CS P K Jain	Dr. Girish Goyal, CS Vimal Gupta, CS Neetu Maheshwari & members
	21-28.04.2014	110th Student Induction program (SIP)	Dr. Girish Goyal & students
Jodhpur	25.4.2014	Career Guidance Talk at PLV Memorial College	Managing Committee Members of the Chapter
	2-3.5.2014	BSE IPF Investor Awareness Camps	Managing Committee Members of the Chapter
	8.5.2014	Career Guidance Talk at Mahaveer Public School	Managing Committee Members of the Chapter



<i>Name of Chapter</i>	<i>Date of Program/Meeting</i>	<i>Program/Meeting & topic- Chief Guest/Speaker(s) dignitaries</i>	<i>NIRC Member/Chapter Committee Member Present</i>
Lucknow	28.3.2014	Seminar on Inner Strength in Youth (Goal Settings and Achievements) & Felicitation of Merit Holders of Dec 2013 Exam. Shri Shishir Srivastava (Author & Motivational Speaker)	CS Anuj Tiwari, CS Rajeev Kumar, Members and students
	19.4.2014 to 4.5.2014	Management Skills Orientation Program (MSOP) Chief Guest : Shri R.K.Sharan, Regional Director, PHD Chamber of Commerce; Eminent Guest - Shri Aditya Vidyasagar	CS Anuj Tiwari, CS Subhash Tiwari, CS Rajeev Kumar, CS Amit Gupta and participants
Noida	1-9.4.2014	42nd Student Induction Program (SIP)	CS Ashutosh Kumar Pandey & students
	11-20.4.2014	8th Executive Development Program (EDP)	CS Ashutosh Kumar Pandey & students
	21.4.2014 to 7.5.2014	Management Skills Orientation Program (MSOP)	CS Rajiv Bajaj, CS Ashutosh Kumar Pandey CS A K Gurnani & participants

COMPANY SECRETARIES BENEVOLENT FUND

Members enrolled as Life Members of the Company Secretaries Benevolent Fund from Northern Region from 21.03.2014 to 20.04.2014

<i>S.No.</i>	<i>Name</i>	<i>Mem. No.</i>
1.	CS Hitesh Kumar Rathi	ACS - 27709
2.	CS Rajinder Pal Jolly	ACS - 6631
3.	CS Rashmi Saurakhia	FCS - 7510
4.	CS Sukhwinder Singh	ACS - 28990
5.	CS Rakesh Bisht	ACS - 31834
6.	CS Nisha Agarwal	ACS - 22732
7.	CS Amit Agarwal	ACS - 28574
8.	CS Reema Jain	ACS - 25865
9.	CS Sunil Kumar Jain	ACS - 11223
10.	CS Anil Paul	FCS - 7526
11.	CS Vivek Sah	ACS - 35315
12.	CS Kunal Madaan	ACS - 32429
13.	CS K V Radhakrishnan	ACS - 35149
14.	CS Manish Kumar	ACS - 33859
15.	CS Gaurav Gurnani	ACS - 31596



CORPORATE MEMBERSHIP FOR PROFESSIONAL PROGRAMS

The concept of Corporate Membership for Professional Development Programs, as started by NIRC, is well appreciated and acknowledged by the members and corporates as it is convenient to make payment/take approval at onetime to attend different Professional Development Programs during the year.

The Corporate Membership scheme will continue for the financial year 2014-2015. Members are invited to opt for Corporate Membership for Professional Development Programs for the financial year 2014-2015 (April 2014 to March 2015) at the following fee structure.

Table with 3 columns: S. No., Particulars, Amount*. Rows include: 1. For Members (Rs. 9,500/-), 2. For PCS (Rs. 8,900/-), 3. For Non-Members (Rs. 10,500/-), 4. For Senior Citizens (Rs. 7,800/-)

The terms & conditions/benefits of the scheme shall be as under:

- (a) To attend all the paid professional development programs (except Workshops and Residential programs) organized by NIRC free of charge throughout the year.
(b) The member may depute some other officer only from his/her organization with authorization on letter head of the company and certifying that the nominated person is from his/her organization.
(c) The individual member/PCS may depute his partner, employee or trainee authorizing in writing to attend the program.
(d) Credit hours will be given to only those members who joins the programs upto 11.00 a.m.

Your Regional Council is committed and dedicated to consistently deliver excellent services and is duty bound to regularly organise quality programs on diversified issues of professional interest.

During the year 2013-14, NIRC has successfully organised 16 high quality Professional Development Programs for the Corporate Members free of cost.

Corporate Members were invited free of cost to the Cultural Program/New Year Eve Celebrations and other social activities as organised by NIRC for members and their families during this year.

Every Corporate Members of NIRC is also given a Annual Compliance Planner-2014 of NIRC as token of appreciation for participating in the NIRC Corporate Membership Scheme.

All members of NIRC are kindly requested to obtain the Corporate membership for the year 2014-2015 and take part in all the activities of the NIRC.

*Inclusive of Service Tax (Rounded off to nearest rupee)

FORM OF CORPORATE MEMBERSHIP FOR PROFESSIONAL DEVELOPMENT PROGRAMS FOR FINANCIAL YEAR 2014-15

Form fields for: (1) Name of Nominated Person, (2) Membership No (ACS/FCS), (3) Corporate Membership No. of NIRC, (4) Sponsoring Organisation, (5) Details of Payment of Fee. Includes fields for Telephone, Fax, Mobile, E-mail, Cash/Cheque/DD No, Bank, and Amount.

Date : Signature

Note : Cheque/DD to be issued in favour of "NIRC of the ICSI" and sent to Regional Director, NIRC of ICSI, 4 Prasad Nagar Institution Area, New Delhi.



THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body an Act of Parliament

NORTHERN
INDIA
REGIONAL
COUNCIL



is organising
ONE DAY WORKSHOP
on
"COMPANIES ACT, 2013"

(Special arrangements for Webcasting for Chapters of NIRC)

Coverage: **Extensive discussion on Chapters XI to XIII of Companies Act, 2013**

(Directors, Meetings of the Board and Appointment & Remuneration of Managerial Personnel)

(By Dr. K R Chandratre, Past President, ICSI)

(Two back to back sessions starting at 9.30 AM to 11.30 AM & 11.50 AM to 1.50 PM)

&

Extensive discussion on e-voting

(By Sr. experts from National Securities Depository Limited(NSDL)

(Two hours session from 2.30 PM to 4.30 PM)

on **Saturday, the 17th May, 2014**

Registration: **9.00 AM onwards** (Program will start at 9.30 AM sharp,)

at **Hotel Le-Meridian (Souverign Hall), Janpath, New Delhi -110 001**

Fee: Rs.2250/- per delegate inclusive of service tax FREE for Corporate Members of NIRC (2014-15)

Registration: In order to make necessary arrangements, Members are requested to enrol well in advance with Regional Director, NIRC-ICSI, 4, Prasad Nagar Institutional Area, New Delhi. The cheque for delegate fee may please be drawn in favour of NIRC of ICSI payable at New Delhi. Tel.:+91-11-49343000, Fax: 25722662 E-mail: niro@icsi.edu

Special arrangements for depositing corporate membership fee at the venue

(Credit Hours will be given to only those members who will join the programs upto 10.30 AM. and mark the attendance both at the beginning & conclusion of the program)

**COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMS BY THE MEMBERS OF ICSI
(DATE OF CURRENT BLOCK OF THREE YEARS EXTENDED UPTO 30TH JUNE 2014)**

1.	Current block of three years	April 1, 2011 to March 31, 2014 (EXTENDED UPTO 30TH JUNE, 2014)
2.	Minimum number of Programme Credit Hours (PCH) to be acquired by Members in Practice	15 PCH in each year or 50 PCH in a block of three years w.e.f. April 01, 2011
3.	Minimum number of PCH to be acquired by Members in Employment (i.e. members in whose name Form 32 has been filed to work as CS under the provisions of Sec. 383A of the Companies Act, 1956)	10 PCH in each year or 35 PCH in a block of three years w.e.f. April 01, 2011
4.	Min. number of PCH to be acquired by Members above the age of 60 years	Presently the members of the age of 65 years are not required to obtain PCH. This age limit stands reduced to 60 years and the members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years w.e.f. April 01, 2011.

PMQ COURSES OFFERED BY THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Dear Professional Colleague(s),

As you all are aware that the Institute, as a part of building capacity of its members, offers Post Membership Qualification (PMQ) courses on new and emerging areas with the aim to provide application oriented knowledge to the members to enable them to render quality services in diversified areas. A brief description of these PMQ Courses offered by the Institute is as under:

1. PMQ COURSE IN CORPORATE GOVERNANCE

Post Membership Qualification Course in Corporate Governance aims to enable the members to gain acumen, insight and thorough knowledge relating to various aspects of corporate governance.

Salient features

- Two parts, viz., Part I and Part II
- Part I: Written examination covering five papers.
- Part II: Dissertation or project report.

Award of Diploma Certificate

A candidate successfully completing the Post Membership Qualification Course in Corporate Governance shall be awarded a Diploma Certificate and shall be entitled to use the descriptive letters "DCG (ICSI)" to indicate that he/she has been awarded "Post Membership Diploma in Corporate Governance".

Course Fee:

Rs.12,500/- payable at time of registration for the course

Rs.12,500/- payable after completion of Part-I and before commencement of Part-II

2. PMQ COURSE IN CORPORATE RESTRUCTURING AND INSOLVENCY

The Post Membership Qualification (PMQ) Course in Corporate Restructuring and Insolvency aims at capacity building of members in practical and application oriented aspects of corporate restructuring, rehabilitation, insolvency and matters related thereto. The Course structure entails participation in workshop for case studies and a written examination.

Salient features

- Two modules, viz., Module A and Module B
- Module A: Written examination covering four papers.
- Module B: One day workshop covering presentation on case studies and interaction with experts.

Award of Diploma Certificate

A candidate successfully completing the Post Membership Qualification Course in Corporate Restructuring and Insolvency shall be awarded a Diploma Certificate and shall be entitled to use the descriptive letters "DCRI (ICSI)" to indicate that he/she has been awarded "Post Membership Qualification Course in Corporate Restructuring and Insolvency".

Course Fee:

Rs. 25,000/- at the time of registration

Rs. 25,000/- at the time of Workshop

ELIGIBILITY CRITERIA AND REGISTRATION FOR THE PMQ COURSE(S)

A person who is a member of the Institute is eligible for admission to the PMQ course. A copy of the prospectus(es) giving the registration procedure and other details can be obtained on payment of Rs.500/- from the Institute Headquarter.

For further details, please visit: www.icsi.edu or contact at pmq@icsi.edu or 011-45341039/45341014

With regards,

Yours sincerely,

CS SHYAM AGRAWAL
Chairman, NIRC-ICSI

Posting date 8-9.05.2014
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COMPANY SECRETARIES BENEVOLENT FUND

Be a proud member of CSBF-Saathi Haath Badhana

Dear Professional Colleagues,

As you may be aware that in recent past, some of our members have died leaving behind the spouse and minor children. In some cases providing adequate financial assistance to the bereaved family becomes an impediment. Although the Managing Committee of the CSBF wanted to help the bereaved family members, but it was constrained to do so in view of financial position of the Fund.

The fund can provide the much needed financial assistance in such cases if the corpus of the Fund increases substantially which is possible if more number of members are enrolled to the fund. The members in all earnestness are therefore sincerely requested to become the members of the CSBF by paying one time Life membership fee of ₹ 7,500/-.

The payments made to the Fund are exempted under Section 80G of the Income Tax Act, 1961.

Following benefits are presently provided by the CSBF:

Financial Assistance in the event of Death of a member of CSBF:

Upto the age of 60 years

- Group Life Insurance Policy for a sum of ₹ 5,00,000

Above the age of 60 years

- Upto ₹ 2,00,000 in deserving cases on receipt of request subject to the Guidelines approved by the Managing Committee from time to time.

Other benefits subject to the Guidelines approved by the Managing Committee from time to time:

Reimbursement of Medical Expenses

- Upto ₹ 60,000/-

Financial Assistance for Children's Education (one time)

- Upto ₹ 20,000/- per child (Maximum for two children) in case of the member leaving behind minor children

I appeal to the members who have yet not become members of CSBF are requested to fill up Form-A (available on website of the Institute i.e. www.icsi.edu) and send the same along with a cheque for ₹ 7,500/- favouring 'Company Secretaries Benevolent Fund' payable at New Delhi to the Regional Director, NIRC of ICSI, 4, Prasad Nagar Institutional Area, New Delhi. Members may also apply online at www.icsi.edu

Looking forward to receive positive response for this noble cause.

Yours sincerely,

CS SHYAM AGRAWAL

Chairman, NIRC- ICSI

Mobile : 09314923451

Email : info@shyamagrawal.com; chairman.nirc@icsi.edu

If undelivered, please return to :
Northern India Regional Council of the
Institute of Company Secretaries of India
4, Prasad Nagar Institutional Area,
New Delhi-110005