

Regn. No.MH/MR/South-107/2009-11, TO POST AT PATRIKA CHANNEL, SORTING OFFICE, MUMBAI-400 001
REGISTERED WITH THE REGISTRAR OF NEWSPAPER NEW DELHI UNDER REGN. NO. 39907/82

Annual Subscription
Rs.100/-
Single Copy Rs. 10/-

ICSI - WIRC

VOL. XXVIII NO. 12, December, 2009

ICSI

FOCUS

‘प्रगतिश्च विकासश्च जीवनं जीवनं खलु!’

Monthly Bulletin of Western India Regional Council of The Institute of Company Secretaries of India.

Friday, 18th December, 2009

8.00 A.M. - Pooja at WIRO additional office premises

6.00 P.M. - Inaugural and Felicitation Function at
Maharashtra Chamber of Commerce Hall, Fort, Mumbai

ICSI National Award for Excellence in Corporate Governance

Saturday, 19th December 2009, from
4 P.M. to 6 P.M. at BSE International Convention Hall

All members are cordially invited



‘धर्माय राजा भवति, न काम कारणाय तू’



From the Chairman

Dear Members,

It was indeed a commendable display of commitment and participation levels of our members across regions which made the 37th National Convention of our Institute, held in Hyderabad last month a memorable one. The event, which had many unique features and was attended by a record number of delegates, stood out in many aspects and I am sure it was a rewarding experience to all those who could make it possible to be in Hyderabad.

I am happy to announce that the final seal of approval for the acquisition of Flats 56 and 57 has been received from Backbay Co-operative Society Limited and the offices are already functional and in use. We have planned a SPECIAL POOJA at the premises followed by a formal inauguration by Shri.Datla Hanumantha Raju,President ICSI on 18th December,2009. We have also organised an Inaugural and Felicitation Function at 6.pm on the same day and may I extend a warm invitation to you to participate in both the functions.

I am also pleased to inform that the function to confer ICSI National Award for Excellence in Corporate Governance will be held in Mumbai on 19th December 2009 and may I request you to attend and participate in the function.

WIRC continued its efforts in providing members yet another opportunity for updating their knowledge in IPR with a well conducted two-day workshop with accomplished faculty which was well received by the participants. A Study Circle on Naresh Chandra Committee Task Force on Corporate Governance and Secretarial Audit was held which provided several insights into the Code and the imperatives in introducing Secretarial Audit.

The 93rd SMTP the last in the series which began in mid-eighties, was held and in keeping with the requirements, the first Executive Development Program got under way, paving the path for the implementation of the New Training Structure adopted by the Council of ICSI in right earnest. A unique get-together of participants of 85th and 86th SMTP was held setting a platform for a lively interaction and exhibition of camaraderie.

In conclusion,as my tenure draws to a close next month and the reigns get passed on, I carry with me vivid memories of many events,happenings,issues and accomplishments which have made this phase of my life truly memorable and noteworthy.

More about all that later.....

Yours sincerely,

With regards

Atul Mehta
Chairman
ICSI-WIRC

Editorial Board :

CS Ashish Garg : Editor

*Other Members of Editorial Board : CS S. N. Ananthasubramanian, CS Ashish Doshi,
CS D. K. Jain (Dr.), CS Rakesh Garg,
CS Vikas Khare, CS Atul Mehta, CS Makarand Lele*

Meaning : King exist for governing his kingdom and caring his subjects; not for frolic and fun or for whims and caprices.



CASE LAW DIGEST

by CS Ajay Kumar, *Mumbai*

A Bird's-Eye View : Recent Judgments on Company Law

1. AMALGAMATION

Transferor-company and transferee-company proposed a scheme of their amalgamation. They filed an application for convening of meetings of equity shareholders and creditors of transferee-company for sanction of proposed scheme and also sought for dispensation of meeting of shareholders of transferor-company. Since entire paid-up share capital of transferor-company was owned by transferee-company and board of directors had already approved proposed scheme of amalgamation, no meeting of shareholders of transferor-company was required to be convened. Meetings of equity shareholders of transferee-company and creditors of transferor-company and transferee-company were to be held after appointing Chairman and alternate Chairman for such meetings. – **J. K. CEMENT LTD., IN RE [2009] 90 SCL 151 (ALL.)**

2. CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP

Appellant supplied certain raw materials to respondent-company. Appellant filed a petition for winding up of respondent-company on ground that respondent had failed to make payment of amount outstanding, despite statutory notices. Respondent resisted petition and denied transaction and asked Petitioner to produce original credit bills, along with due acknowledgement by respondent-company. Single Judge dismissed winding up petition. Since documents asked for by respondent were not filed by appellant, even assuming that there was an outstanding balance as claimed by appellant and, though it was definite, yet certain issues had to be decided by adducing evidence on both sides and only after that an order for winding up could be passed. – **JAI ENTERPRISES Vs. OMEGA CABLES LTD. [2009] 91 SCL 54 (MAD.)**

3. INTERIM ORDER PASSED BY COMPANY LAW BOARD TO REGULATE AFFAIRS OF COMPANY DURING PENDENCY OF COMPANY PETITION UNDER SECTION 397/398 – TENABILITY OF INTERFERENCE BY HIGH COURT – SECTION 10F READ WITH SECTIONS 403 AND 397/398

Under section 10F an appeal lies to the High Court only on a question of law. Finding of fact recordable by the

Company Law Board is final and is, therefore, not appealable. The mere fact that the High Court would have come to a different conclusion on the facts also does not make the matter appealable. Where during the pendency the company petition under section 397/398, the Company Law Board passes an interim order of regulating the company's affairs in the best manner, such discretionary order can not be interfered with as the Company Law Board has wide powers under section 403 to make any interim order, which it thinks fit for regulating the affairs of the Company. More so, where the interim order also accords with the provisions of the article of association of the Company – **PALANISAMY Vs. MILKA NUTRIENTS (P) LTD. [2008] 86 CLA 117 (MAD.)**

4. APPROPRIATE STAGE TO RAISE OBJECTIONS TO THE SCHEME – SECTION 391

It is premature to consider the objections relating to classifications of unsecured creditors, etc., once the meeting of the shareholders and creditors has been ordered to be convened on a certain date to consider and approve a scheme of arrangement which has then to come to the High Court for sanction. The High Court has wide powers to consider a scheme on its own merits even if it is approved by the members or creditors at the meeting with the requisite majority. The appropriate stage to consider all the objections is when substantive petition is filed for sanction of the scheme – **LANDESBANK BADENWURTTENBERG Vs. NOVA PETROCHEMICALS LTD. [2008] 86 CLA 113 (GUJ.)**

5. DIRECTORIAL COMPLAINTS – HOW FOR MAINTAINABLE IN PROCEEDINGS UNDER SECTION 397/398

Normally, as a principle, directorial complaints cannot be a ground in a petition relating to the rights *qua* a member yet in cases of family companies or companies in the nature of partnership, depending on the facts of the case, directorial complaints have always been adjudicated by Company Law Board in section 397/398 proceedings. – **O.K. AUGUSTY Vs. OFS INDUSTRIES (P) LTD. [2009] 89 CLA 182 (CLB)**



• Like this year, next year as well there will be a Cricket Match, where one team from MCA & one team from ICSI and a few more (Surprise!!) will participate in an one day Cricket Match on Saturday, 9th January 2010 (Saturday) at Azad Maidan. For participating in team ICSI send your name to wiro@icsi.edu / jd.wirc@icsi.edu or call Mr. Kaushik Jhaveri on his cell (9821034511). All are welcome.





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

Western India Regional Council of The Institute of Company Secretaries of India

Is pleased to announce the acquisition of additional office premises, 56 and 57 at 5th floor, Jolly Maker Chambers – II, Nariman Point, Mumbai

The inauguration of the premises would be done at the gracious hands of
CS Datla Hanumanta Raju – *President ICSI* in the august presence of
CS Vinayak Khanvalkar – *Vice President ICSI*,
CS N. K. Jain - *Secretary & CEO ICSI* and
Members of Central Council, ICSI and ICSI-WIRC.

To commemorate this solemn occasion an Inaugural and
Felicitations Function will be held

on Friday, 18th December, 2009 at 6.00 p.m.
at Maharashtra Chamber of Commerce Hall,
Oricon House Fort Mumbai 400001

We extend our warm invitation to you to participate in the function and grace the occasion

CS Atul Mehta
Chairman ICSI- WIRC

CS Makarand Lele
Secretary ICSI- WIRC

R.S.V.P.:

Prajakta- +919223583383
wircicsi@gmail.com



Premium RA of



“TCS Digital Signature Certificate”



Class 2: eFiling IT Returns & MCA
Class 3: eTendering & eProcurement

Become our **Reseller** and get **DSC** at best price ever.

- ✓Faster delivery
- ✓Full Technical Support
- ✓Highest Safety & Security

Website for Professionals

- Web designing • Web development • Domain Registration
- Web hosting • Flash animation • Search engine submission • SEO

Get professional website
designed as per ICSI guidelines.

2, Saket Shopping Center, Station Road, Goregaon (W), Mumbai - 400 062.
Tel.: 022 - 2876 3744 / 55 • Cell: 093210 28282 / 093222 85706
Email: dsc@acetechology.co.in • Website: www.acetechology.co.in

- ✓Bangalore
- ✓Delhi
- ✓Kolkata



NEWS FROM WIRC AND CHAPTERS

WIRC NEWS

ICSI-WIRC organized Two Days Workshop on IPR on 13th and 14th November 2009 at WIRC premises. Shri Rahul Chitnis, Legal Expert in LPO, CS Anil Fernandis, Senior Vice President Network 18, Shri Vinay Paralkar, Advocate, Smt. Kaushalya Shantanam, IPR Patent Attorney, CS. Sanjay Kher, Advocate, Shri M.P. Rao, Senior Advocate, CS. Nayan Rawal, Advocate & IP Attorney were the faculty of the Seminar.

ICSI-WIRC organized Study Circle Meeting on Corporate Governance Code and Secretarial Audit on 4th December 2009 from 06.00 pm to 08.00 pm at WIRC premises. Dr. S.D. Israni, Practising Company Secretary and Shri A. Anjeneyan, Company Secretary and Head – Legal, Tata Steel, addressed the Study Circle meeting. About 25 nos. of participants attended the meeting.

On 5th of December, Reunion of last year's SMTP was organized in WIRC in the evening. The young members shared slice of professional and personal experiences.

CHAPTER NEWS

AHMEDABAD CHAPTER

Members' Annual Get-together

Members' Diwali Get-together was organized by the Ahmedabad Chapter on 14th November 2009 at 7.00 pm at Lion Sharad Mehta Party Plot, Ahmedabad.

Full Day Programme on "Depository Participant Audit & Compliance" was organized on 21st November 2009 at Ahmedabad Chapter.

On 21st November, 2009, Ahmedabad Chapter of WIRC of ICSI organized a Full Day Programme on "Depository Participant Audit & Compliance" in association with National Securities Depository Limited.

BHOPAL CHAPTER

Bhopal Chapter of ICSI has organised A Half Day Workshop on 21st Nov. 2009 at Hotel Sudarshan Palore, Zone-II, M. P. Nagar, Bhopal, CS Renu Wadhwa was the Key Speaker. Members and Students have actively participated in the Question Answer Session held.

NASHIK CHAPTER

LECTURE ON 'ROADMAP TO GST'

Nasik Ojhar Chapter of Cost Accountants and Nasik Chapter of WIRC of ICSI had arranged a lecture on 'Roadmap to GST' by Mr. V.S.Datey, Author of Indirect Taxes and Chairman of Nasik Ojhar Chapter of Cost Accountants and Nasik Chapter of WIRC of ICSI, on 16th Nov. 2009.

Mr. Datey explained the background of proposed GST. He elaborated outline of GST on the basis of first discussion paper released by Empowered Committee on 10th November, 2009.

Mr. R. K. Deodhar, Vice Chairman, Nashik Ojhar Chapter of Cost Accountants welcomed the audience. Mrs. Shilpa Parkhi, Cost Accountant and Company Secretary proposed vote of thanks.

LECTURE ON 'HOW TO PREPARE FOR EXAMINATION'

Nashik Chapter of WIRC of ICSI had arranged a lecture on 'How to prepare for the Examination' by CS. R. T. Rajguroo, Chairman of Thane Chapter of WIRC of ICSI, held on 22nd Nov. 2009 at Prasanna Arcade, Old Agra Road, Nashik between 11.30 to 1.30 pm.

CS Rajguroo guided students about how to prepare for examination and Do's and Don'ts during the examination, Mindset & attitude during and after examination. He also motivated students to prepare self notes extensively in of disciplined and most sincere way.

NAGPUR CHAPTER

Full day seminar organised by Nagpur Chapter on 31st Day of October 2009. The topics included were Direct Tax Code, Debt Recovery Tribunal (D.R.T), L.L.P and Companies Bill, 2009. The Official Liquidator Mr. R. K. Tiwari of Company Law service was the Chief Guest. The prominent speakers were Mr. Kailash Jogani (tax expert), Adv. A. K.Natani, CS. Anand Shrinivasan and Dr. V. K. Jain. The programme was attended by more 80 members and students.

PUNE CHAPTER

1. 31st SECRETARIAL AND MODULAR TRAINING PROGRAMME HELD FROM October 22, 2009 TO NOVEMBER 7, 2009

With the increased demand from the Students, Pune Chapter conducted second batch of SMTP during the same session of the semester. The 31st Secretarial and Modular Training Programme started on October 22, 2009. CS. Vikas Gaikwad and CS. Gaurav Bhutada were the co-ordinators for the said programme. 29 students attended the said SMTP.

CS. Prajot Tungare, Chairman and CS Devendra Deshpande, Chairman, Student Committee of Pune Chapter address the gathering during the inauguration Session.

CS Devendra Deshpande, Chairman, Student Committee of Pune chapter and CS Sandeep Nagarkar, Member-Managing Committee of Pune Chapter were present at the Valedictory Session of the said SMTP. Certificates were distributed to all the participants during the valedictory session.

2. Managing Committee Meeting

Managing Committee Meeting of Pune Chapter was held on 17th November 2009 at Pune chapter. Several Agenda items along with Internal Audit Report for the Quarter ending September 2009 discussed and approved.

THANE CHAPTER

ORAL COACHING CLASSES AT THANE

The Thane Chapter under its regular activities started Oral Coaching classes for Foundation Level and Executive Level-Both Groups from 28th October 2009 and 2nd November, 2009. CS R. T. Rajguroo, Chairman inaugurated the classes and guided the students about the course contents, the manner in which regular studies to be made, how getting serious about the professional courses in general and CS in particular. Also how punctuality and regularity in attending the oral coaching classes are important was also impressed upon them.

STUDENT'S FORUM ACTIVITIES

The First paid programme was conducted by the Students Forum under the banner of ICSI-Thane Chapter on the topics of "Seminar on Capital Markets - A Practical Perspective. The session was conducted by Mr. Sunil Gawde — from NSE and CS Archibold Serrao, Faculty, ICSI-Thane Chapter and Compliance Officer of Nomura Fixed Income Securities Pvt. Ltd. addressed the students.

Also there was Examination Orientation Programme for the students appearing for December, 2009. CS R. T. Rajguroo Chairman ICSI-Thane Chapter & CS Pradeep Rath guided the students about Do's and Don'ts at the exams.

There were 105 students attendees for this Seminar and Programme.

CHAIRMAN'S VISIT TO NASHIK CHAPTER ON 22nd NOV 2009

CS R. T. Rajguroo Chairman visited to Nashik Chapter to address the students for as to how to prepare for Exam Do's Don'ts at the examination. There were 60 students present at the programme.



For us, "Inclusive Growth" means including the whole of India.

MCX-SX Currency Futures website now in 11 regional languages.

At MCX Stock Exchange (MCX-SX), we believe that systematic development of markets can take place only through Information, Innovation, Education and Research.

This philosophy has been affirmed by the launch of India's first currency futures website in हिंदी, मराठी, गुजराती, पंजाबी, आसामी, বাংলা, ଓଡ଼ିଆ, മലയാളം, தமிழ், తెలుగు, ಕನ್ನಡ

It is yet another effort by us to empower millions of SMEs, Corporate houses, Exporters and Importers by helping them understand currency futures in their own language.

Excluding language barriers. Including India.

MCX'SX
India's New Stock Exchange

Exchange Square, Suren Road, Andheri (East), Mumbai 400 093, India.
Tel.: +91-22-6731 9000 • Fax: +91-22-6731 9004 • Website: www.mcx-sx.com



My dear fellow members,

I am extremely grateful to you for your valuable suggestions and regular feedback on "FOCUS" which was indeed very motivating and highly inspirational. It has been a rewarding year for me in terms of my learning about many facets of our profession through FOCUS and I express my sincere gratitude to each one of you for having made it a memorable one.

As part of our efforts to inform our members of the enormous task of acquisition of new premises and also communicate the need to raise funds in time we have decided to bring out a Special Issue of FOCUS for January 2010, to be titled "ICSI-WIRC-13+56 and 57". This issue would apart from Council Members' messages, photographs of Pooja and Inauguration Function etc, also contain views and opinions of a cross-section of our members.

We also intend publishing the names of DONORS who have contributed or committed to contribute to this noble cause in FOCUS and this would be a regular feature in future.

Friends, I am looking forward to your invaluable suggestions which I believe would make this Special Issue a Collector's Item.

With warm regards

CS ASHISH GARG

Chairman - Editorial Board — FOCUS



Dear Members,

As you are aware by now, ICSI-WIRC has acquired Flats 56 and 57 of Jolly Maker Chambers II, Nariman Point, Mumbai, where our existing office is located on the 1st floor and after obtaining all necessary approvals, made them operational and functional for providing better and effective service to the students and members.

In this regard, I am pleased to enclose the messages of Shri S. N. Ananthasubramanian, Shri Keyoor Bakshi and Shri Atul Mehta seeking your support and patronage towards the fund raising drive initiated by ICSI-WIRC for this acquisition. Your generous and valuable contributions, we are sure, would substantially enable WIRC in meeting its obligation to ICSI-HO whose active encouragement, guidance and timely support made this task possible to be completed in time.

To commemorate this auspicious occasion a SPECIAL POOJA is being held in the new premises on Friday, 18th December 2009 (8.00 A.M. onwards).

Further with a view to formally inaugurate new office at the hands of President of ICSI and to felicitate all those who contributed to the accomplishment of this significant milestone of ICSI-WIRC, we have organized a function at 6 P.M. on Friday, 18th December, 2009 at Maharashtra Chamber of Commerce Hall, Fort, Mumbai.

I take privilege in extending a warm invitation to you to attend the POOJA and function and grace the occasions.

Thanking you,

Makarand Lele

Secretary-ICSI — WIRC





Dear Members,

I feel extremely privileged to write this communication to you as we move forward, after approval by Backbay Society, to make Flats 56 and 57 of Jolly Maker Chambers II operational and functional for use by ICSI-WIRC.

As indicated by Shri Ananthasubramanian and Shri Keyoor Bakshi, my colleagues in ICSI-WIRC, the acquisition of the above premises has been accomplished after huge efforts of many coupled with lots of support and encouragement from ICSI-HO.

I take this opportunity to reiterate the sentiments expressed by Shri Keyoor Bakshi in the accompanying Appeal seeking your generous contribution towards our fund raising drive and look forward to your wholehearted patronage which would substantially facilitate ICSI-WIRC to fulfil its obligation of repayment of Bridge Loan of Rs. 85 lakhs to ICSI-HO in time.

With a view to enable you to support this initiative, I request you to provide the following information along with your valuable contribution:

1. Name
2. Address
3. Amount
4. Cheque/DD Number /Name of the Bank
5. Permanent Account Number

May I add that contributions/donations to our Institute have been granted exemption u/s 80G of the Income-tax Act 1961(valid till 31-3-2010) and Cheques/Demand Drafts may please be drawn in favour of "The Institute of Company Secretaries of India".

Finally I am sure you would do your best in this noble endeavour and help enable ICSI-WIRC to hold its flag high for all times to come.



Yours faithfully,

Atul Mehta,
Chairman, ICSI-WIRC





Dear Members,

It is through the dedication of our illustrious senior members and the commitment of members, students, staff and well-wishers that the Western India Regional Council of our Institute continues to be a premier Regional Council of our Institute, with 16 Chapters, 6,541 members and 39,836 Students. Over the years, with the growth of membership and the increase in student registrations, there was a considerable strain on the physical infrastructure at the Regional Office in Mumbai and it was felt that this Regional Office should be upgraded to reflect its size, strength and stature.

The process of identifying suitable premises had been an on-going one for several years and now I am extremely pleased to inform you that we have acquired Flats 56 and 57 on the 5th Floor of Jolly Maker Chambers II, where currently the office of WIRC is located, on the first floor.

As someone who has been actively involved since 2002 in the search for suitable premises for this premier Regional Council, I am hugely gratified by this development, and indeed it will be a source of pride for all the members and students of our Region.

After numerous attempts to identify suitable premises, the search began again this year in right earnest across Mumbai and its suburbs and curiously, as it happens in life sometimes, it ended much sooner than envisaged, when the Backbay Society announced two flats for sale in our existing building. The presence of Shri Atul Mehta, Chairman, ICSI-WIRC, as a member of the Managing Committee of the Society facilitated the preliminary negotiations with the Society as well as finalisation of the initial proposal to be sent to ICSI-HO for an in-principle approval, after a consensus emerged on making another honest attempt to bid for the same.



ICSI-HO then constituted the ICSI-WIRC Building Committee and, armed with an in-principle approval from ICSI-HO in March, 2009, we were able to negotiate with the owner on the price and other parameters of the transaction. Once this process was in place, the final nod of the Central Council was obtained on 6th June, 2009 and the Deed of Transfer was executed and registered on 2nd September, 2009.

Now, I am happy to add that the formalities connected with the registration with the Society have also been completed and the two flats admeasuring 2205.8 sq. ft. have become the property of ICSI. In the process, the long cherished dream of many who have served WIRC with distinction and honour stands fulfilled. I must also add here for clarity that these two flats are in addition to the existing Flat No. 13 of WIRC, admeasuring 1173.27 sq.ft. which, incidentally, is the first acquisition of ICSI, made in 1976.

At this defining moment, I must confess while the enormity of the task was indeed daunting, the support, encouragement and guidance that I received was so overwhelming that, over time, the task assumed the mask of a mere transaction to be put across. I must now acknowledge my gratitude to my colleagues in the Building Committee, Mr. Milind Kasodekar, Mr. B. Narasimhan, Mr. Atul Mehta and Mr. Makarand Lele whose commitment to the task was total and exemplary.

I must also express my deep sense of gratitude to the ICSI-WIRC for their trust and confidence placed on the Committee and me which considerably eased the task on hand, and the great support and sponsorship of the Central Council whose unanimity lent credibility to the task and Shri N. K. Jain, Secretary & CEO, ICSI, whose active involvement in the entire process was highly commendable deserving appreciation and approbation.

I must also respectfully acknowledge the highly supportive role of Shri Sudipto Pal, Joint Director, ICSI-WIRC and his team as also Shri Gopal Chalam, Dean, ICSI-CCGRT and his team in the accomplishment of the task.

All in all, it has been a great experience; one that I will cherish for life and I am sure you will agree THIS IS IT FOR ICSI-WIRC! AND IT'S ALL OURS NOW!!!

S. N. Ananthasubramanian
 Chairman
 ICSI-WIRC Building Committee





Dear Members,

As expressed by Shri S. N. Ananthasubramanian, in the accompanying paragraphs, the acquisition of flats 56 and 57 of Jolly Maker Chambers II was an event by itself for ICSI, which I am sure would enable ICSI-WIRC to reach greater glory and higher altitude in the days and years to come.

As one would only expect, such a purchase transaction involved a total financial outlay of Rs. 7.92 crores which was wholly funded out of internal accruals of ICSI-WIRC and ICSI-HO.

As part of its commitment to ICSI-HO, ICSI-WIRC has to make do a sum of Rs. 85 lakhs, received as bridge loan, for which it was decided to form a Fund-Raising Committee and I wish to seek your wholehearted support and subscription to this noble cause.

To democratise this fund-raising campaign, we in ICSI-WIRC have conceived a formula or a method which I feel could be useful to all of us.

‘Each member contributes a minimum of Rs. 1,000 for each completed year of his or her membership of ICSI.’

While it is needless for me to add that your contribution as also the quantum is entirely your decision, what I have stated in the last para is merely a method and I am confident, each one of us would rise to this occasion and build a substantial CORPUS for ICSI-WIRC in the least possible time.

I take this opportunity to compliment the Building Committee for their extraordinary commitment and dedication to the assigned task, which only enabled this acquisition to be accomplished in a smooth manner and in the shortest possible time.

I am sure each one of us would join our hands together and extend our wholehearted support to this APPEAL in a befitting manner.



Keyoor Bakshi
Chairman
ICSI-WIRC, Fund Raising Committee





A COMPARATIVE ANALYSIS ON KEY CHANGES MADE BY WAY OF INTRODUCTION OF ICDR REGULATIONS, 2009

CS RISHIKESH VYAS - Senior Associate Company Secretary, Lodha Group of Companies

SEBI recently notified the SEBI (Issue of Capital and Disclosure Requirements or ICDR Regulations, 2009) repealing the erstwhile DIP Guidelines. The salient features along with a Comparison with DIP guidelines is as follows –

Eligibility to Access Public Money- Uniform Applicability

The exemptions available under the DIP Guidelines to certain banking and infrastructure companies from eligibility norms for making initial public offers (IPOs) have been done away with under ICDR Regulations, and thus eligibility norms have now been made applicable uniformly to all types of issuers. This is a logical move since these companies are now competitive and do not need such a privilege. Further, it now appears that, debarment from accessing capital markets pursuant to any order or direction of SEBI only applies to public or rights issue of specified securities i.e. equity shares/convertible securities, unlike under the DIP Guidelines where it applied to issue of all securities for all types of issues. This qualification was needed as ICDR no longer governs the issue of debt securities.

Offer for Sale by Listed Companies Allowed

Under the DIP Guidelines, an “offer for sale” was permitted only for unlisted companies proposing IPOs. The ICDR Regulations now permits an “offer for sale” even by listed companies (subject to certain eligibility criteria) through a new definition of “follow on offer”. ICDR Regulations provides that such offer for sale can be made if the shares are held by the seller for a period of at least one year prior to the filing of draft offer document with the SEBI. The holding period now includes the period when a convertible instrument was held, which has subsequently been converted to an equity share. These changes are desirable since there appeared no rationale for barring shareholders of listed companies from accessing the market through an offer for sale and convertible instruments are essentially equity and should be treated as such from the date the convertible instrument is issued.

No More Firm Allotments

The DIP Guidelines provided for pre-IPO placements on firm basis to the maximum percentage of 10% shares, a maximum of 10% of the issue amount for employees and a maximum of 10% of the issue amount to the shareholders. The eligible subscribers for allotment on firm basis under the DIP Guidelines included Indian Mutual Funds, Foreign Institutional Investors (including non-resident Indians and overseas corporate bodies), Indian and Multilateral Development Institutions and Scheduled Banks. Firm allotment, which was not frequently used by companies, has been removed in the ICDR Regulations providing a level-playing field to subscribers of a public issue. Often such firm allotments are bundled with several financial rights and privileges in favour of a single investor, which may hamper management decisions of a company having public money, post IPO. Further, introduction of alternatives like anchor investors portion, wherein, a company making a public issue is permitted to allocate up to 30% of the issue reserved for Qualified Institutional Buyers (QIBs) to anchor investors may serve the same purpose as firm allotment, without hacking the issue size available to general public. An anchor investor is a QIB, who is required to apply for a minimum issue of Rs. 10 crores and hold the securities for a minimum period of 30 days after allotment. The concept of anchor investors seems to

have the same objective as of the firm allotment, i.e. to give initial stability to the issue.

Minimum Promoters Contribution

Under the erstwhile DIP Guidelines, minimum promoters’ contribution in a public issue could be brought in by promoters/ persons belonging to promoter group/friend/friends, relatives and the associates of the promoters. Under the ICDR Regulations, only promoters are permitted to contribute the minimum promoters’ contribution. While this may compromise the ability of promoters to make this contribution, this provision is more meaningful since it recognizes the importance of a promoter in a company by increasing the onus on such person to show his commitment to the company, which is raising funds from the public.

Underwriting

The ICDR Regulations explicitly provide that the underwriting obligations would not be restricted to the minimum subscription level but to the whole issue, where applicable. The rationale to such change appears to be that while minimum subscription clause is valid for determining the success of any issue from legal point of view, an issuer may agree to have the issue underwritten with an understanding to get the full amount of funds. Thus, where 100% of the offer through offer document is underwritten, the underwriting obligations shall be for the entire amount underwritten, except cases where compulsory allotment to QIBs is prescribed. This provision gives a public issue greater reliability.

Preferential Allotment

Though the ICDR Regulations have introduced a new exception for preferential issue of equity shares pursuant to convertible debt instruments under sub-sections (3) and (4) of section 81 of the Companies Act, 1956. This exemption recognizes the need to do away with dual regulation since such conversion is subject to Central Government approval and specific rules. The Stock Exchange is now empowered to order revaluation of non-cash consideration for preferential allotment to promoters, their relatives, associates and related entities for consideration other than cash, if the Stock Exchange is not satisfied by the valuation submitted to it by the issuer. This ensures genuine valuations and guards against artificiality.

Efficient Procedure and Adequate Disclosures

Book Building Process: Under the DIP Guidelines, two types of book building was allowed, being 100% book building and 75% book building. The ICDR Regulations does away with the 75% book built route which was hardly used.

Issue, Allotment and Refund Period: Under the DIP Guidelines, in case there is a revision in the price band in a book building issue, issue period was not clear but the ICDR Regulations clarifying this lacuna has specifically provided the total issue period not to exceed 10 days, including any revision in the price band. Further, 30 days period for allotment/ refund in case of fixed price issue as provided under DIP Guidelines have been replaced with 15 days, as there was no valid reason to give an extra 15 days to complete the process in case of a fixed price issue, making the public issue process speedier and accountable to investors’ interest.





Other Disclosures and Definitions: Unlike the DIP Guidelines, where in case of a fix price public issue, the issuer was required to disclose price or price band for the shares, under the ICDR Regulations there is no requirement to disclose the price or price band in the draft red herring prospectus (DRHP). This is an important change from the issuer's perspective as in a fixed price issue it will allow the issuer to take into account market dynamics in determining the price closer to the issue date.

Now the ICDR Regulations require that any **pledge of shares** by promoters should be disclosed in the prospectus for the public issue. This change is in line with the recent changes in the Equity Listing Agreement and in SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997 and is an important indicator of the level of control exercised by the promoters in a company. This information coupled with the financial data would give a reasonable indicator of the likelihood of the promoters losing control of the company to the lenders/lender nominees.

The **definition of 'employee'** under the ICDR Regulations excludes permanent employee director of the subsidiary or holding company of the issuer and promoters and immediate relatives of the promoters. So in an IPO, the employee's reservation portion will only be available to employee/director of the issuer company and benefit of no-lock-in on options allotted to employees shall extend only to employee/director of the issuer company and the group companies.

A controversial change in the ICDR Regulations is to **prevent forecasts/projections to select investors outside the offer document. This change is in line with US practice.** This move is being resisted by institutional investors who argue that in developing markets many companies approaching the market lack a proven track record necessitating financial projections to gauge company potential. The counter view is that a level-playing field is necessary so that the same information is available to all prospective investors. SEBI is yet to decide on the suitability of this change. A good via media may be to publish such projections in the public domain rather than restrict such disclosures to certain investors.

ROC COLUMN

Henry Richard, Registrar of Companies, Maharashtra, Mumbai.



I am glad to meet all my professional friends through this column (though not physically) after I assumed charge as Registrar of Companies (ROC), Maharashtra, Mumbai on 5th November, 2009. I shall continue to meet you through this column so as to maintain continual association and share with you

uptodate knowledge affecting the Corporate Sector, with specific reference to the functioning of ROC office. The slogan of the current day after launching MCA21 is "EFFICIENT SERVICE DELIVERY". The Ministry of Corporate Affairs expects ROC to provide efficient Service Delivery to the Corporate Sector and other Stakeholders. I would like to make it very clearly that this laudable objective of the MCA cannot be achieved without proactive co-operation of professionals like you. ROC will not be able to provide efficient Service Delivery in the area of e-forms such as Incorporation of Companies (Form No. 1), Name Availability (Form No. 1A), Registration of Charges (Form No. 8) etc. unless these e-forms filed in the office of ROC are perfect in all aspects. If the documents are defective, the Back Office has to return the e-forms for correction which ultimately delays Service Delivery. This is not only affecting the image of ROC office but also angers the Corporate Sector and the Stakeholders. Therefore it is imperative that the Professional friends like you must take precaution while preparing the documents filed for registration in the office of the ROC office and ensure that the documents are perfect in all aspects so that ROC will be able to register the documents and issue certificate immediately. For example; if Incorporation documents are perfect in all aspects and the payment made through credit card/internet banking, the company can be registered within 30

minutes. But this could not be achieved because of huge e-form traffic arising out of numerous re-submissions/keeping the forms for clarification etc. which ultimately delays the process of registration work. The primary cause for returning incorporation documents for correction arises out of numerous objects stated in the "object clause" of Memorandum of Association, which the promoters may never intend to do. In this regard, professionals can help the ROC office to achieve Efficient Service Delivery by submitting perfect documents which can be registered without any further clarification or query.

Now the season for compliance is under way. The compliance rate in the office of ROC, Mumbai is very discouraging. About 46,280 companies have not filed Balance Sheets/Annual Returns for the year 2007-08. This puts the non-compliance rate in the office of ROC, Mumbai at a very high level. This compares unfavorably with the compliance rate in Countries like Singapore, U. K., Australia, Newzland, etc. where the compliance rate is above 95%. It is possible for us to achieve high rate of compliance through proactive role of Professionals like you who can prevail upon their client companies to be uptodate in filing of returns. Moreover, it should be noted that the compliance cost in India is the lowest in the World. The company having the Authorised Capital of Rs. 1 lakh has to spend only Rs. 200/- per year for filing Annual Return and Balance Sheet. This should encourage companies to be uptodate in filing returns but the reality is otherwise as revealed by statistics above. I wish that the professional friends will take this challenge and bestow best efforts to improve the compliance rate in the State of Maharashtra leading to better image of the Regulator as well as the Corporate Sector.





THE COMPANIES AMENDMENT BILL, 2009 - A BIRD'S EYE VIEW.

K.G. Saraf

Practising Company Secretary FCS: 1596 CP:642

A PRELUDE

Companies Act, 1956 is one of the most voluminous pieces of legislation India ever passed under her Constitutional obligations. The Companies Act, 1956 as amended from time to time regulates the affairs of the Joint Stock Companies.

Consequent upon the Dissolution of 14th LOK SABHA and the non-passage of the much awaited of the Companies Bill, 2008, the Companies Bill, 2009 was re-introduced in the same form before the PARLIAMENT on 3rd August, 2009, save as otherwise with logical re-codification.

The Statement of Objects and Reasons for the Introduction of this Bill is four-folded.

- 1) To contemplate modification in the Law dealing with Corporates in conformity with changing national and international economic environment.
- 2) To delete, improvise or regroup some of the redundant provisions.
- 3) To re-state or to simplify various provisions.
- 4) To bring about greater flexibility in the arena of rule making through technological support, thereby de-linking the procedural aspects from the substantive law.

The major changes which have been contemplated in the Companies Bill, 2009 affecting the Corporate Professional in particular and Corporate Sector on general are elucidated hereunder:

1. SECRETARIAL STANDARDS (Clause 107(10))

Every company shall observe such Secretarial Standards as may be prescribed in respect to Board Meetings and General Meetings.

As a Statutory Body constituted under Companies Act, 1956, The Institute of Company Secretaries of India (ICSI) have been releasing Secretarial Standards relating to different provisions of the Act. SS relating to Meetings have now been recognized under Bill-2009, for the benefit of Corporate Society.

2. KEY MANAGERIAL PERSONNEL (Clause 178(1))

Every Company belonging to such class or description of companies as may be prescribed shall have Whole-time Key Managerial Personnel (KMP). KMP of a Corporate is defined under Cl 2(zza) meaning thereby:

- i) The Managing Director, the Chief Executive Officer, or the Manager and when there is no Managing Director, CEO or Manager a Whole-time Director/s
- ii) The Company Secretary
- iii) The Chief Financial Officer (CFO)

While no distinct qualification has been prescribed for CFO, the Company Secretary by virtue of a definition contained in Cl 2(x) necessarily has to be a Member of ICSI. Such a qualified Company Secretary, a Key Managerial Personnel shall have to be appointed by Resolution of the Board, which *interalia* contain terms of such an Appointment. And where a company fails to appoint KMPs including a Company Secretary (who shall not hold office in more than one Company) it shall be liable to a penalty of Rs. 1,00,000/-. And every Director or KMP who is default shall be liable to a penalty of Rs. 25,000/- for each default.

3. ANNUAL RETURN (Clause 82(1))

Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding

- a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- b) its shares, debentures, and other securities and shareholding pattern;
- c) its indebtedness;

- d) its members and debenture holders along with changes therein since the close of the last financial year;
- e) its promoters, directors, key managerial personnel along with the changes therein since the close of the last financial year;
- f) meetings of the members or a class thereof, Board and its various committees along with the attendance details;
- g) remuneration to directors and key managerial personnel;
- h) penalties and punishments imposed on the company, its directors or officers and details of compounding of offences;
- i) matters related to certification of compliances, disclosures; and
- j) such other matters as may be prescribed,

And signed both by the Director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in Whole-Time Practice (PCS);

Since long the ICSI was contemplating for a radical growth of the profession of Company Secretaries through the introduction of Secretarial Audit. Though Secretarial Audit in its original form or text has not been envisaged for the time being, Annual Return Signing and Certification with abundant responsibilities is contemplated. This signifies the degree of confidence the Government would like to repose on the profession of Company Secretaries. The provision of signing and certification of Annual Return by PCS would apply to those companies which do not or are not required to appoint a Company Secretary by statute. It therefore implies that Annual Returns of all companies (Except small and one Person Company) private or public, listed or unlisted will be required to be signed by either Company Secretary in employment or by a PCS. This provision, therefore, on becoming a provision on the statute would throw open ample opportunities to the Profession of Company Secretaries. This assignment would be considered at par with the secretarial Audit pursuits as propelled by ICSI Head quarters.

*One Person Company is defined as and means a company which has only ONE person as a Member (Clause 2(1) zzk)

*small company means a company, other than a Public Company whose paid-up Share Capital does not exceed such amount as may be prescribed and the prescribed amount shall not be more than five crores Rupees; or whose turnover as per last profit and loss account does not exceed such amount as may be prescribed and the prescribed amount shall not be more than twenty crores rupees.

4. INTRODUCTION OF A NEW CONCEPT "DORMANT COMPANY" (Clause-414(1))

Where a company is formed and registered under the Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such company or an inactive company may make an application to the Registrar of Companies in such manner as may be prescribed for obtaining the status of a dormant company.

This is indeed a well devised step for formulating a new class of company whose status will be supervised and monitored by RoC. This category cover primarily those companies whose projects have not yielded any commercial considerations during the preceding two financial years, being gestation periods of the projects and consequently therefore classified as 'Inactive Company'

5. APPOINTMENT OF MANAGERIAL PERSONNEL (Clause - 174(5))

A Managing Director, Whole-time Director or a Manager shall be appointed by the Board of Directors at a Meeting with the consent of Directors present at such a meeting which shall be





subject to approval by a Special Resolution at the next General Meeting of the company.

It is imperative; therefore, the members are free to decide remuneration payable to Managerial Personnel. No statutory restrictions on remuneration to KMPs

6. DISQUALIFICATION AND RESIGNATION OF DIRECTORS (Clauses 148(6) & 149(1))

A director who remains absent for Board Meetings for a period of 12 months with or without obtaining Leave of Absence is disqualified to continue a Director.

A Director at his own instance is entitled to file details of his Resignation to RoC. It is now imperative that the company has no discretion in accepting or rejecting the Resignation of a Director. A Resignation is effective from the date of receipt of Resignation Letter or date specified on the Resignation Letter whichever is later.

7. ACCOUNTING AND AUDITING STANDARDS (Clauses 126(3) and 126(9)):

In backdrop scenario of Satyam Catastrophe, the Bill seeks to amend the present section 227 of the Companies Act, 1956 seeking to provide for powers and duties of Auditors. Every Auditor can have access to books of account, vouchers and seek such information and explanations from the company and probe into such matters as he deems fit and necessary. The auditor of the Holding Company can also have an access to the financial statements of the subsidiaries.

The integrity and independence of the audit process is envisaged. The Auditing standards shall be notified by the Central Government.

8. DISCLOSURE NORMS

With intent to harness 'Good Corporate Governance' detailed disclosure norms have been prescribed. The practising professionals will have to divest their skills and abilities to assist corporate to manifest their objectives in this regard.

9. REGISTRATION OF CHARGES (Clause 70)

Where a company fails to register a charge within a period specified in section 69, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, in such form and manner as may be prescribed and the Registrar may, on such application, within fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fee and additional fee as may be prescribed.

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fee or additional fee paid by him to the Registrar for the purpose of registration of charge.

10. RELATED PARTY TRANSACTIONS (Clause 166(2))

The provisions contained in sections 294, 297 and 314 are sought to be simplified and liberalized only in certain cases approved by the Central Government is desired. However, reporting of such transaction to the Board of Directors is essential.

Office or place of profits is defined as and means any office or place (a) in case the office or place is held by Director, if the Director is holding it obtain from the company anything by way of Remuneration overall and above the Remuneration to which is entitled to as such Director whether a salary, fee, commission, perquisites, the right to occupy any rent free premises as a place of residence or otherwise. (b) in case of office or place is held by individual other than Directors or by any firm, private company or other body corporate, if the individual, firm, private company

or other body corporate holding it obtains from the company anything by way of remuneration whether as salary, fee, commission, perquisites the right to occupy any rent free premises as a place of residence, or otherwise.

It appears that the loopholes found in the earlier enactment in this regard is sought to be plugged and streamlined. Further the definition of the Relative (Clause 2(1zzz)) is hereby sought to be amended and means (Relative with reference to an individual) the spouse, brother, sister and lineal ascendants and descendants of such individual related to him either by marriage or adoption. However, there exists anomaly the meaning of phrase related to him by marriage.

11. REPORT OF AGM BY LISTED COMPANIES (Clause 119)

The new clause seeks to provide that every listed company shall prepare and report for each Annual General Meeting including confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and rules made thereunder and the copy of the report shall be filed with the RoC.

This is a step in right direction as the public at large would know about the fate of the General Meetings on inspection of the records kept at RoC through MCA Portal.

12. SPECIAL COURTS (Clauses 396 and 397)

The Central Government by notification is empowered to set up special courts to try offences under the Companies Act, such as Merger and Amalgamation, Reduction of Share Capital, Insolvency including Rehabilitation, Liquidation and Winding up proposals etc.

All these proposals narrated in the Companies Bill deserve passing by the Parliament and thereafter the new Companies Act after a period of over of 5 decades will come into being.

Print - reprint or update

**MEMORANDUM
AND
ARTICLES OF ASSOCIATION
with soft-prints**

when amendments occurs due to :

- Name change of Company
- Alteration in Memorandum
- Alteration in Articles
- Split/Sub-division of Face Value
- Increase in capital
- Amalgamations, etc. etc.

We also undertakes dismantling and rebinding of your already printed books of MoA & AoA by removing pre-amended pages and replacing with amended/changed pages to avoid wastage of your already printed books.

Corporate Soft Prints

email : enquiry@corporatesoftprints.com / csprints9@gmail.com
web : http://www.corporatesoftprints.com
Pratik Photos, Ground Flr, 62, Bazargate Street,
28 Dwarkadas Lane, Fort, Mumbai 400 001.
Tel. : 98193 58623.



Required urgently Qualified Company Secretary for Private Limited Company having paid-up Capital of Rs. Five Crore. Fresh candidate may be considered. Knowledge of Company Law and allied rules, regulations etc. is necessary. Apply to the address with Bio-data, experience and expected remuneration etc.

RUNGTA RAYON TEX PVT. LTD.

Regd. Off.: 306, Kakad Market, 3rd Floor,
306, Kalbadevi Road, Mumbai-400 002.

Ph.: (022) 2205 5838 / 6634 2636 / 3254 7248
• Fax : 91-22-2206536

Factory : Plot No. 1503, Industrial Estate,
Village - KAKAD, U. T. of D & N.H.
Silvassa - 396 230
• Mob.: 0260 3205950

sms LIFE to 5676727

No matter what, my family will live with pride.

You have always provided for your family's dreams, hopes and joy. You've given them a life that they live on their own terms - a life of self respect and pride. With **Insurance Plans** from **HDFC Standard Life**, you ensure that your family continues to live such a life, no matter where you are. After all, who doesn't want to be there for his family, forever?

LIFE INSURANCE
HDFC STANDARD LIFE
Sar Utha Ke Jiyo

Toll Free No.: 1800-277-277 • e-mail: life@hdfcinsurance.com • Visit us on: www.hdfcinsurance.com

HDFC Standard Life Insurance Company Limited. Insurance is the subject matter of the solicitation.
*Normal call tariffs apply. ARN: MC/12/2008/588

TWO DAYS WORKSHOP ON IPR HELD ON 13TH & 14TH NOVEMBER, 2009 AT MUMBAI

- | | | | | | | |
|---|---|---|---|--|---|---|
|  |  |  |  |  |  |  |
| Shri Rahul Chitnis, Advocate Mumbai High Court | CS Nayan Rawal, Advocate & IP Attorney | CS Anil Fernandes, Senior Vice, Presidence Network 18 | Shri Vinay Parelkar, Advocate, | Smt. Kaushalya Shantanam, IPR Patent Attorney, | CS Sanjay Kher, Advocate | Shri M. P. Rao, Senior Advocate |



Scene of Audience

STUDENTS FORUM OF ICSI-THANE CHAPTER SEMINAR ON CAPITAL MARKETS



L to R - CS R. T. Rajguroo Chairman ICSI-Thane Chapter and CS Pradeep Rath



Scene of Audience

LECTURE ON 'HOW TO PREPARE FOR EXAMINATION' ORGANISED BY NASHIK CHAPTER



L to R - CS R.T. Rajguroo, Chairman, Thane Chapter of ICSI-WIRC CS Vrushal Saudagar, Secretary, Nashik Chapter of ICSI-WIRC



L to R - CS (Mrs.) Shilpa Parkhi, AICWA & CS, CS V.S. Datey, Chairman, Nashik Chapter of ICSI-WIRC, CS R.K. Deodhar, Vice Chairman, Nashik Chapter of ICSI-WIRC



**ICSI NATIONAL AWARD FOR
EXCELLENCE
IN CORPORATE GOVERNANCE
2009**

Promoting Good Governance Amongst Corporates

Saturday, 19th December, 2009

International Convention Hall, Bombay Stock Exchange Ltd., Mumbai

All Members are Cordially Invited



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

Printed and published by Mr. Sudipto Pal, Joint Director for and on behalf of Western India Regional Council of the Institute of Company Secretaries of India, 13, Jolly Maker Chambers No. II, First Floor, Nariman Point, Mumbai-400 021. Tel.: 22021826/22844073/22047569/22047580/22047604. Fax No.: 22850109 Email : wiro@icsi.edu and printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 24961685/24961605 Fax No.: 24962297 and published at Mumbai. Editor : CS. Ashish Garg, Regional Council Member of Western India Regional Council of the Institute of Company Secretaries of India.

Views expressed by contributors are their own and the Institute/WIRC does not accept any responsibility.

Date of Posting

To

If undelivered, please return to :

**WIRC of the Institute of Company Secretaries of India,
13, Jolly Maker Chambers No. II,
Nariman Point, Mumbai - 400 021.
Tel.: 2202 1826 • Fax : 2285 0109**

Space for Address