

Articles
Part-I

“Governance and Compliance: Need for Standardisation”

Rectification of Register of Members of a Company: Supreme Court re-confirms Summary Jurisdiction of NCLT under Section 58/59 of Companies Act, 2013 (54)

CS (Dr.) K R Chandratre, FCS

This article on ‘The Rectification of Register of Members of a Company: Supreme Court re-confirms Summary Jurisdiction of NCLT under Section 58/59 of Companies Act 2013,’ provides the necessary opinion on ‘The Rectification of Register of Members of a Company’.

Governance, Risk Management and Compliance (GRC) and Effective Implementation and Monitoring (59)

CS R Balakrishnan, FCS

The overall purpose of governance, risk and compliance management is to reduce risks and costs as well as duplication of effort. It is a strategy that requires company-wide cooperation to achieve results that meet internal guidelines and processes established for each of the three key functions. The three elements of GRC could name as; (a) governance, or corporate governance, is the overall system of rules, practices, and standards that guide a business; (b) risk, or enterprise risk management, is the process of identifying potential hazards to the business and acting to reduce or eliminate their financial impact; and (c) compliance, or corporate compliance, is the set of processes and procedures that a company has in place in order to make certain that the company and its employees are conducting business in a legal and ethical manner. This article is trying to explore the concept GRC in the long term interest and sustainability in an organization.

Risk Management Committee – A Step Forward in Risk Management and Corporate Governance (66)

CS Sudhakar Saraswatula, FCS

To ensure effective business working, the Companies Act, 2013 (herein after referred to as ‘the Act’), and the SEBI (LODR) Regulations, 2015 (herein after referred to as ‘the Listing Regulations’), brought about significant changes pertaining to the conduct of business in India. The Listing Regulations brought about the constitution of a risk management committee which

was supported by the Act in terms of disclosing the risk management policy in the Board’s report. In the instant case, an attempt is made to understand how the risk management committee contributes to risk control and effective corporate governance.

The Significant Role of Governance in Mitigation of Risk Assessment (71)

Dr. Jalpaben K. Patel

Within the context of today’s fast-paced and ever-changing global marketplace, effective risk management is an essential component of the decision-making process. The idea of governance, which includes the organizational structures, decision-making processes, and cultural norms that govern the administration of entities, plays an essential part in the reduction of risk. This is because governance encompasses the organizational structures, decision-making processes, and cultural norms. This in-depth research investigates the many roles that governance plays in the spotting, assessing, and mitigating of risks across a wide range of domains and levels, including corporate governance, national security, and public health.

Standardizing Foreign Exchange Laws (77)

CS Rolita Gupta, ACS

Foreign Exchange Management Act (FEMA), implemented in 1999, has been the backbone of India’s foreign exchange regulations. However, the changing dynamics of international trade, coupled with technological advancements, have rendered FEMA’s existing framework less effective. This article delves into FEMA’s evolution; the contemporary challenges faced by businesses, and propose comprehensive strategies for standardizing foreign exchange laws. Through detailed analyses, case studies, and expert insights, this article aims to provide a roadmap for India’s foreign exchange regulations in the 21st century.

The Digital Governance Blueprint for Unified Compliance Standards (85)

CS Shaily Gupta, ACS

In a dynamic and evolving regulatory landscape, compliance with laws and regulations is a critical aspect of running any business or organization. However, it is often the case that various laws in India have different provisions for different entities, leading to a lack of standardization. This lack of standardization leaves a significant gap when the law is silent on a particular issue, creating a need for a common standard to be followed. This is where the concept of compliance standards comes into play, and digital governance plays a crucial role in making this a reality.

Articles
Part-II

“Significant Beneficial Ownership”

Decoding The SBO Chain: An Insightful Analysis

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CS Ranjeet Pandey, FCS

CS Devendra V. Deshpande, FCS

The onus to comply or make a declaration under section 90 (1) lies on the Individual and while discharging said responsibility, the individual needs to satisfy himself that he is acting alone or together. While giving the declaration individual needs to specify the nature of his interest and other particulars and when he specifies the nature of interest, he may examine, whether said interest is the only interest or he owns some other interest together with anyone else. In order to determine whether he is acting alone or together one must give full attention to the "common intent or purpose of exercising any rights or entitlements or exercising control or significant influence". The main test here is "Common Intent or purpose of exercising rights, etc., which may be proved by analyzing the various factors such as intent or the agreement as the case may be.

SBO – Navigating Through The Framework to Reveal The True Owners

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CS Kalpana Chauhan, FCS

FATF is an inter-governmental body whose main focus is to sets international standards to prevent illegal activities that can cause harm to the society at large. It brings together almost 200 major countries who have committed to abide by the recommendations made by FATF and cause a crackdown on the organised crime network including terrorism, corruption, drug trafficking, money laundering, arms trade, cybercrime etc in their jurisdiction. The Financial Action Task Force (FATF) are required to collect and scrutinize such data from companies where ownership is not clearly visible through documentation available with the regulators. Member Countries are required to abide by the FATF recommendations in this respect and are peer reviewed for the processes followed by each country so that they are not tagged as a jurisdiction requiring monitoring or high-risk jurisdictions by the FATF which will affect the reputation of the country and in turn the financial inflow in the country.

Anomalies in Identification and Monitoring of Changes in SBO

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CS Deepti Jambigi Joshi, FCS

The mechanism for identification of 'beneficial owner' was already in existence under Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 ("PMLA Rules") and it was implemented as a part of KYC check by banks. But the attempt made by the Ministry of Corporate Affairs ("MCA") to find out SBO at each company level, has created a lot of awareness among corporates and practising professional as it has created

disclosure requirements to the MCA and continuous monitoring requirement on the part of corporates. The Article attempts to deep dive into this concept and also see some probable challenges in continuous monitoring of this mechanism.

Section 89 & 90 : Understanding the Spirit

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CS Harshad Narsinhbhai Patel, ACS

Beneficial ownership is the situation where a person enjoys the advantages of owning a company, fund, trust, etc., while the legal ownership title is held by someone else. This practice has been employed by celebrities and powerful individuals to safeguard their assets, shielding them from inclusion in their calculated net worth or taxable income, thereby increasing their financial gains. The Indian government has taken necessary actions to prevent and combat black money. The Indian Government aimed to gather comprehensive information for investigations and joined global efforts to address tax evasion. The Base Erosion and Profit Shifting (BEPS) initiative enables India to track tax avoidance by offshore tax havens. In 2017, the Companies (Amendment) Act replaced provisions related to Significant Beneficial Owners in the Companies Act. The Ministry of Corporate Affairs introduced the Companies (Significant Beneficial Owners) Rules in 2018.

Intricacies of SBO in the Context of Limited Liability Partnership

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CS Makarand M Joshi, FCS

vide two notifications one dated 11 February 2022 and dated 27 October 2023 the compliances of significant beneficial owner (SBO) and disclosures of beneficial interest (BI), respectively, has been made applicable to all Limited Liability Partnership(s) (LLP). While making SBO and BI applicable to LLP, framework applicable to companies has been taken as a base and made some minor modifications and adopted. Though both company and LLP enjoy limited liability and are incorporated bodies, other features are completely different and hence adopting SBO framework applicable to Companies for LLP, gives rise to ambiguities and anomalies.

Research Corner

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Plastic Waste Management Rules in India – Perspectives on overcoming implementation challenges

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CS Prajakta Gadkari, ACS

Plastic has become the mainstay material used in our daily life. The demand of plastics in India has increased to 20.89 million tonnes in FY 2021-22. Plastic waste generation has doubled during the 5-year period between 2015-16 to 2019-20, of this total plastic waste, ~ 40% plastic goes to landfill or is littered resulting in harmful environmental consequences. Taking cognizance

of the urgency to manage plastic waste effectively, the Government is taking steps to strengthen the Plastic Waste Management Rules, 2016 and has affected 5 amendments during the years 2021 to 2023. The aim of this paper is to understand the development of plastic waste management rules over a period of time and analyze the challenges faced. This paper tracks the focus of the recent amendments to ensure effective plastic waste management.

Legal World

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- **LMJ 11:11:2023** We answer question No.1 in the negative and hold that a winding up petition filed by Severn Trent in the capacity as a contributory is not maintainable.[SC]
- **LW 76:11:2023** This Tribunal is of the considered view that there are no substantial grounds for concluding that there was any Oppression or Mismanagement and therefore, the question of passing any Order directing buyout of shares, bringing to an end any matter complained of, cannot be done in the facts of this case.[NCLAT]
- **LW 77:11:2023** In conclusion, as per the facts of this case, the Bank Guarantee, provided by the Respondent No. 2/Bank is held to be covered by the exception provided in provisions of Section 14(3)(b) of IBC, 2016, and the Moratorium prescribed under Section 14(1) of IBC, 2016, shall not apply to its Encashment.[NCLAT]
- **LW 78:11:2023** It can be safely opined that there is financial integrity between the Society of the appellant as well as the Ideal Institute as substantial funds have been advanced to the Institutes by the Society and both the Institutes are functioning from the same premises.[SC]
- **LW 79:11:2023** The approval under Section 33(2) (b) of I.D Act is hereby accorded for the dismissal/removal order passed by the petitioner against the respondent.[DEL]
- **LW 80:11:2023** Since the averments in the complaint are insufficient to attract the provisions under Section 141(1) of the NI Act, to create vicarious liability upon the appellant, he is entitled to succeed in this appeal.[SC]
- **LW 81:11:2023** The principle underlying the orders of this Court dated 08.03.2021, 27.04.2021 and 23.09.2021, in In Re: Cognizance for Extension of Limitation, albeit those orders being passed, subsequent to the impugned order, would enure to the benefit of the applicants-defendants.[SC]
- **LW 82:11:2023** The plaintiff being a pledgor, who is guilty of default as per clauses 16 (j) and (h) of the SPA, cannot be permitted to vote against this scheme of arrangement in the meeting of equity shareholders.[DEL]
- **LW 83:11:2023** We thus find that the Impugned Order does not satisfy the basic tenet of adherence to the principle of natural justice which was ingrained in section 36 of the Competition Act. On these grounds, we set aside the Impugned Order.[NCLAT]

From The Government P-135

- The Companies (Amendment) Act, 2020, section 1 (29 of 2020)
- The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023
- The Limited Liability Partnership (Third Amendment) Rules, 2023
- The Companies (Management and Administration) Second Amendment Rules, 2023
- The Companies (Incorporation) Third Amendment Rules, 2023
- Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Qualified RTAs (QRTAs)

- Ease of doing business and development of corporate bond markets – revision in the framework for fund raising by issuance of debt securities by large corporates (LCs)
- Amendment to the Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 and Rules framed there under
- Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013
- Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg.
- Requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms
- Limited relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Centralized mechanism for reporting the demise of an investor through KRAs
- Banking Regulation (Amendment) Act 2020 - Change in Name of Co-operative Banks
- Clarification regarding Shifting of Branches/Offices/ Extension Counters within the same city, town or village by District Central Co-operative Banks (DCCBs) and Guidelines on Closure of Branches and Extension Counters by DCCBs
- Joining the Account Aggregator Ecosystem as Financial Information User
- Review of Financial Information Provider (FIP) under Account Aggregator Framework
- Review of Instructions on Bulk Deposits for Regional Rural Banks (RRBs)
- Non-Callable Deposits - Master Direction on Interest Rate on Deposits
- Framework for compensation to customers for delayed updation/ rectification of credit information
- Strengthening of customer service rendered by Credit Information Companies and Credit Institutions
- Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021: Presentation of unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund
- Appointment of Whole-Time Director(s)
- Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023
- Amendment to the Master Direction (MD) on KYC
- Reverse Repo transactions - Reporting in Form 'A' Return
- Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs) – Extension to Government NBFCs
- Gold Loan – Bullet Repayment – Primary (Urban) Co-operative Banks (UCBs)
- Status of March 31, 2024 for Government transactions through integration with e-Kuber

Other Highlights

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