THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

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

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

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

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ICSI Global Connect

International Newsletter for Governance Professionals

Company Secretary

Mastering Global Corporate Governance

ICSI Global Connect

International Newsletter for Governance Professionals

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President Message

स्वस्तिप्रजाभ्य: परिपालयन्तां न्यायेन मार्गेण महीं महीशा:।
गोब्राह्मणेभ्य: शुभमस्तु नित्यं लोका: समस्ता: सुखिनो भवन्तु।।

May the well-being of all people be protected by the powerful and mighty leaders be with law and justice. May the success be with all divinity and scholars, May all the worlds become happy.

Dear Professional Colleagues,

The above Sanskrit verse is a Lokakshema which is a prayer for the 'welfare of the whole world'. While the English translation puts across the meaning perfectly; more importantly it aligns with the vision of the Institute of Company Secretaries of India “to be a global leader in promoting good corporate governance”.

With the first step taken by setting up an Examination Centre in Dubai to setting-up three Overseas Centres in three different nations and making the presence of ICSI felt beyond the territorial boundaries of the Indian nation, seem as not just good but great achievements to me as part of this magnanimous institute. Our presence at the CSIA or the Corporate Secretaries International Association, too, has been well applauded and appreciated.

President Message

Keeping in view all these and more, it indeed seems apt that steps and measures, initiatives and actions are taken on a continuous basis to connect with the Company Secretaries, Corporate Secretaries, and Governance Professionals across the globe, through more mediums than one. Knowledge sharing, constant updation, sharing of thoughts and opinions is indeed a much needed aspect of professionals globally. And while initiatives are taken for home Professionals regularly, for an Institute striving to be a global leader itself and holding strong on the agenda of strengthening governance frameworks globally, the impetus to initiate actions for global growth is much higher.

With technology diluting territorial barriers and the dynamics of economies and corporations altering globally, the need for an expansive spread out of knowledge is felt now more than ever. The ICSI Global Connect is a resultant of this thought and this need itself. Although the ICSI has a dedicated journal under the aegis of Chartered Secretary for the Governance Professionals in India, the idea was to develop a publication where ideas pour in from the professionals across the world and a forum of knowledge sharing is created for all of us.

Having celebrated the 50 glorious years of the Chartered Secretary Journal of ICSI, it gives me immense pleasure and delight to be penning down the first message of this Journal, the ICSI Global Connect, for I firmly hope and believe that this is going to be a historic move on the part of ICSI to connect with the professionals globally.

While giving a warm shout out to the Corporate Secretaries globally to connect with us through their academic contributions, I congratulate all the stakeholders of the ICSI for this new ground breaking initiative undertaken.

For as we have always said and believed,

"Together we can. Together we will."

CS Ashish Garg
President
The Institute of Company Secretaries of India

Recent Regulatory Development around the World

Italian Corporate Governance Code

The Italian Corporate Governance Code ("Code") applies to all companies with shares listed on the Italian main market ("Mercato Telematico Azionario", hereinafter "MTA") managed by Borsa Italiana ("companies").

Adoption of this Code is voluntary and is disclosed in the report on corporate governance and ownership structures ("corporate governance report").

The code has 6 articles and each article of the Code is divided into principles, which define the objectives of good governance, and into recommendations, which indicate the behaviour that the Code deems appropriate to achieve the objectives indicated in the principles.

The Code is neutral with respect to the governance model specifically adopted by the company (traditional; "one-tier", which includes the so-called "modello monistico" for Italian companies; "two-tier", which includes the so-called "modello dualistico" for Italian companies). For companies adopting the "two-tier" model, the Code requires that the supervisory board is to be assigned the task of deliberating on the company's strategic guidelines and transactions of strategic importance (so-called "high level" management powers).

Companies apply the Code according to the principle of substance over form and the recommendations thereof on a "comply or explain" basis.

Companies adopting the Code provide in their corporate governance report accurate, easily understandable and exhaustive, albeit concise, information on how the Code is applied. The application of the Code is based on principles of flexibility and proportionality. Companies disclose in their corporate governance report how they have specifically applied the Code's principles.

The choice to depart from one or more recommendations of the Code may depend on factors internal and external to the company, whereby the practice recommended by the Code may not be functional or compatible with its governance model. The application of the Code implies, however, that each deviation is clearly indicated in the corporate governance report and that companies: (a) explain how the best practice recommended by the Code has been disregarded; (b) describe the reasons for the deviation; (c) describe how the decision to depart from the recommendations has been made within the company; (d) if the deviation is limited in time, indicate when they plan to apply the related best practice; (e) describe any action adopted as an alternative to the best practice which they have not implemented and explain how this choice helps the company achieving the objective underlying the Code's principles and in any case contributes to good corporate governance.

In order to ensure a proportional application of the Code, some recommendations are calibrated according to the company's size and ownership structure, providing for:

- a set of recommendations intended only for larger companies ("large companies" category contained in the Code's "definitions");
- a simplified application of some recommendations by companies other than the "large" ones;
- the adaptation of some recommendations to companies with concentrated ownership (cf. the category of "companies with concentrated ownership" contained in the Code's "definitions").

In the presence of primary or secondary

regulations incompatible with the application of certain recommendations of the Code, disclosure of the reasons for their failed or partial application is not required. The Committee monitors the state of the Code's application, the evolution of the applicable regulatory framework and the international best practices, and is responsible for updating the Code. To this end, it evaluates a possible revision of the Code usually every two years. The application of the Code is facilitated by a set of Q&As, periodically updated also in consideration of any requests that might be submitted by those companies that apply the Code. The present Code was approved by the Committee in January 2020.

The companies adopting the Code are required to apply it starting from the first financial year that begins after 31 December 2020, while the disclosure shall be provided in the corporate governance report to be published during 2022. "Large companies" apply the recommendations regarding the presence of independent directors in the board of directors starting from the first renewal of the board of directors following 31 December 2020.

Source: https://ecgi.global/node/8009

Principles for Responsible Institutional Investors - Japan's Stewardship Code

In this Code, "stewardship responsibilities" refers to the responsibilities of institutional investors to enhance the medium-to long-term investment return for their clients and beneficiaries (including ultimate beneficiaries; the same shall apply hereafter) by improving and fostering the investee companies' corporate value and sustainable growth through constructive engagement, or purposeful dialogue, based on in-depth knowledge of the companies and their business environment and consideration of sustainability (medium- to long-term sustainability including ESG factors) consistent with their investment management strategies.

This Code defines principles considered to be helpful for institutional investors who behave as responsible institutional investors in fulfilling their stewardship responsibilities with due regard both to their clients and beneficiaries and to investee companies. By fulfilling their stewardship responsibilities properly in line with this Code, institutional investors will also be able to contribute to the growth of the economy as a whole.

Activities by institutional investors done to discharge their stewardship responsibilities (hereafter, "stewardship activities") should not be seen to be confined to voting, although voting is an essential element of stewardship activities. Stewardship activities include proper monitoring of the investee companies and constructive engagement with them done to discharge the stewardship responsibilities to foster sustainable growth of the companies.

In the Code, two categories of institutional investors are identified: "institutional investors as asset managers" (hereafter, "asset managers"), which are entrusted to manage funds and invest in companies; and "institutional investors as asset owners" (hereafter, "asset owners"), including providers of funds. The asset managers are expected to contribute to the enhancement of the corporate value of investee companies through day-to-day constructive dialogue with them.

The asset owners are expected to disclose their policies on fulfilling their stewardship responsibilities and contribute to the enhancement of the corporate value of investee companies through their own actions and/or the actions of the asset managers, to which they outsource their asset management activities. The asset managers should aim to know the intention of the asset owners so that they can provide services as expected, and the asset owners should aim to assess the asset managers in line with the Code, not placing undue emphasis on short-term performance.

Parties such as proxy advisors and investment consultants for pensions which provide services at the request of institutional investors, etc. to contribute to the institutional investors' effective execution of stewardship activities (hereafter "service providers for institutional investors") are expected to play important roles in enhancing the functions of the entire investment chain running from their clients and beneficiaries to the investee companies. Principle 8 of the Code specifically applies to service providers for institutional investors.

Source : https://ecgi.global/node/8065

Changes to Insolvency Law UK

The Corporate Insolvency and Governance Act has received Royal Assent and came into force on 26 June 2020. The Act is the largest change to the UK's corporate insolvency regime in more than 20 years.

Why/What has changed ?

The **Corporate Insolvency and Governance Act 2020** is an Act of the UK Parliament about companies and other entities in financial difficulty and makes temporary changes to laws (Insolvency Act 1986 and Companies Act 2006) relating to the governance and regulation of companies and other entities.

Some of the measures contained in the Act have been under development for years, while others have been introduced specifically to cater for the current coronavirus crisis. Some of these measures will only apply for an initial temporary period while UK parliament retains power to extend if necessary.

Purpose

1. Introduce new corporate restructuring tools to the insolvency and restructuring regime - to give companies the breathing space and tools required to maximise their chance of survival.

2. Temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability for wrongful trading and to protect companies from creditor action, and

3. amend Company Law and other legislation to provide companies and other bodies with temporary easements on company filing and annual general meetings.

Key Provisions

1. Moratoriums – allowing companies in financial difficulty to obtain 20 business days (extendable to another 20 days) in which they can seek restructure/investment without creditors actions, company affairs to be monitored by qualified insolvency practitioner for this period.

2. Arrangement and Reconstruction – allowing companies in financial difficulty to propose a restricting plan that can bind certain creditor/ shareholders.

3. Supplier Termination Clause – prevent suppliers from terminating contracts if continued to be paid only by reason of a company entering into insolvency proceedings.

4. Winding up Petition and Wrongful Trading - provides for temporary relief until 30 September 2020 from being subject to a winding up petition and from wrongful trading provisions where a business can demonstrate its difficulties arise from trading conditions arising from the COVID - 19 pandemic and

5. Changes to filling requirement – Extends the period to hold AGM, hold meetings and voting electronically etc. i.e. allowing companies to focus their full attention on effort to continue operations.

Source: https://www.gov.uk/government/news/major-changes-to-insolvency-law-come-into-force

DIFC Data Protection Law 2020

The new Dubai International Financial Centre (DIFC) Law No. 5 of 2020 Data Protection Law (DPL 2020) replaces the existing data protection law and brings the DIFC more closely into-line with data protection law in Europe, where the General Data Protection Regulation (GDPR) is applicable throughout. DPL 2020 aims to further DIFC's desire to be recognised internationally as a toptier jurisdiction for data protection. The law will hopefully prove to be the next step on the road to achieving "adequacy" status as a destination for free transfers of personal data from Europe.

The Data Protection Law prescribes rules and regulations regarding the collection, handling, disclosure and use of personal data in the DIFC, the rights of individuals to whom the personal data relates and the power of the Commissioner of Data Protection in performing their duties in respect of matters related to the processing of personal data as well as the administration and application of the Data Protection Law.

The Data Protection Law embodies international best practice standards, and is consistent with EU regulations and OECD guidelines and is designed to balance the legitimate needs of businesses and organizations to process personal information while upholding an individual's right to privacy.

Who is affected?

- Any business registered in the DIFC
- Any business which processes personal data within the DIFC as part of stable arrangements
- Any business which processes data on behalf of either of the above

Timing

- The DPL 2020 came into force on 1 July 2020 and will be actively enforced until 1 October 2020.

Under DPL 2020, entities can process data based on:

- the consent of the data subject – performing or entering into contract with the data subject
- compliance with legal obligations on the Controller
- to protect the vital interests of the data subject
- processing for a task in the interests of the DIFC or for the exercise of the DIFCA, DFSA, Court and Registrar's functions or powers legitimate interests of the controller or a third party.

Transfers out of DIFC Transfers, including to the UAE onshore, can only take place if:

- the transfer is to a country or international organization that provides an adequate level of data protection as determined by the Commissioner of Data Protection, or
- if appropriate safeguards are put in place (standard clauses, BCRs etc), or
- derogations or other specific circumstances apply (such as the explicit consent of the data subject)

Financial sanctions

Both controllers and processors may be subject to administrative fines of up to USD 100,000, and potentially unlimited fines for serious breaches, imposed by the Commissioner of Data Protection and both may also be liable under court order to pay compensation directly to data subjects. A processor is only liable for damage caused by processing where it has not complied with the obligations of the law specifically directed to processors, or where the processor has acted outside the lawful instructions of the controller. Where both a controller and a processor are liable for the infringing processing, their liability under the law is joint and several.

For more details log on to
https://www.difc.ae/business/operating/data-protection/

Dubai launches Global Retirement Programme

Under the directives of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, the Dubai Government announced the launch of Retire in Dubai, a global retirement programme that offers resident expatriates and foreigners aged 55 and above the opportunity to enjoy the emirate's distinctive lifestyle.

The first such scheme in the region, Retire in Dubai is spearheaded by the Department of Tourism and Commerce Marketing (Dubai Tourism) in collaboration with the General Directorate of Residency and Foreigners Affairs (GDRFA-Dubai). The new initiative showcases Dubai as the world's preferred retirement destination.

To ensure a competitive offering, Dubai Tourism has worked with its partners to develop key propositions for retirees covering healthcare, real estate, insurance and banking. Details of the offerings, designed to help retirees enjoy a happy and fulfilling life, and all information necessary to start the application process, are available on www.retireindubai.com.

Eligible applicants will be provided a Retirement Visa, renewable every five years. The retiree can choose between one of three financial requirements for eligibility: earning a monthly income of AED20,000 (approx. USD5,500); having savings of AED1 million (approx. USD275,000); or owning a property in Dubai worth AED2 million (approx.USD550,000).

In its initial phase, the programme will focus on UAE residents working in Dubai who have reached retirement age. The programme offers long-term residents of the city who are familiar with Dubai's value proposition an easy and hassle-free retirement option. Dubai's close proximity with the native countries of a large majority of residents makes it a convenient retirement destination for them.

For more details log on to
https://mediaoffice.ae/en/news/2020/September/02-09/DTc.

Legal & Regulatory Updates *from* India

सत्यमेव जयते

Ministry of Corporate Affairs

- The Companies (Amendment) Act, 2020
- SPICe+ Portal
- Business Responsibility Reporting

Ministry of Corporate Affairs
Companies (Amendment) Act, 2020

The Companies (Amendment) Bill, 2020 ('Bill) was introduced by the Government in the Parliament and was passed by Lok Sabha on 19th September, 2020 and Rajya Sabha on 22nd September, 2020. There are 66 clauses in the Bill through which amendments are proposed in various sections of the Companies Act, 2013 ('Act'), towards facilitating greater ease of doing business to law abiding corporate.

The major amendments are as follows :

i) Decriminalizing various non-compoundable offences.

ii) A new chapter added on producer companies.

iii) Direct listing in foreign jurisdictions.

iv) Reduced Penalty for Small Companies, OPC and Start-Up Companies

v) To exclude class of companies from the definition of a listed company.

vi) To exempt class of persons from complying with these requirements of declaration of beneficial holding.

vii) To extend the provision of payment of remuneration to Executive Directors to Non-Executive Directors including Independent Directors.

viii) To exempt companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees. The companies which spend amount in excess of CSR obligation can set off the excess amount towards their CSR obligations in subsequent financial years.

ix) The Central Government to require classes of prescribed unlisted companies to prepare and file periodical financial results, and to complete the audit or review of such results.

x) To establish benches of the National Company Law Appellate Tribunal.

xi) Exemptions from filing resolutions extended to NBFCs and HFCs.

The notification of The Companies (Amendment) Act, 2020 is available at
https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Ministry of Corporate Affairs

SPICe+ Portal

The Ministry of Corporate Affairs (MCA) has notified and deployed a web-form namely 'SPICe+' (pronounced SPICe Plus) vide notification no. GSR 128 dated 18.02.2020 (effective from 23.02.2020) as a part of Government of India's Ease of Doing Business (EODB) initiatives. This was stated by Shri Anurag Singh Thakur, Union Minister of State for Finance & Corporate Affairs in a written reply to a question in Lok Sabha.

Giving more details, Shri Thakur said that the said web-form offers 10 services by three Central Government Ministries and Departments (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance), one State Government (Maharashtra) and various Banks, thereby saving procedures, time and cost for Starting a Business in India.

These 10 services are:-

i. Name reservation
ii. Incorporation
iii. DIN allotment
iv. Mandatory issue of PAN
v. Mandatory issue of TAN
vi. Mandatory issue of EPFO registration
vii. Mandatory issue of ESIC registration
viii. Mandatory issue of Profession Tax registration (Maharashtra)
ix. Mandatory Opening of Bank Account for the Company and
x. Allotment of GSTIN (if so applied for).

Users may either choose to submit Part-A for reserving a name first and thereafter submit Part B for incorporation & other registrations or file Part A and B together at one go for incorporating a new company and availing the bouquet of registrations as above. The new web form facilitates On-screen filing and real time data validation for seamless incorporation of companies.

Mentioning the benefits, the Minister stated in the written reply that after introduction of the aforesaid new Web Form, the number of procedures has been reduced to 3 as against 10 earlier and time has also been reduced to 4 days as against 18 days earlier for starting a Business in the Country.

Further, vide notification no. 180(E) dated 06.03.2019 effective from 18.03.2019, this Ministry has amended the Companies (Incorporation) Rules, 2014 whereby zero fee is being charged for incorporation of all companies with authorized capital upto Rs. 15 lakh or upto 20 members where no share capital is applicable.

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1656755

Ministry of Corporate Affairs

Releases the Report of the Committee on Business Responsibility Reporting

Shri Rajesh Verma, Secretary, Ministry of Corporate Affairs (MCA) released the 'Report of the Committee on Business Responsibility Reporting (BRR)' here today.

The BRR was released in the presence of Dr. Sameer Sharma, DG, IICA; Shri Amarjeet Singh, Executive Director, SEBI; Shri Atul Gupta, president, ICAI: Shri Ashish Garg, president, ICSI and Shri R. Mukundan, CEO, Tata Chemicals, besides representatives from CII, FICCI, ASSOCHAM and individuals from business, academia and civil society organisations.

While releasing the report, Shri Rajesh Verma, Secretary, MCA, appreciated the efforts of the committee in proposing such a robust reporting framework and said that MCA will work closely with SEBI for its implementation. He also emphasised the fact that Indian companies are aspiring to have global foothold and thus they cannot ignore the emerging trend of Corporate Governance i.e. Responsible Business. He also urged the professional institutes and business associations to carry out the advocacy campaign for BRSR and capacity building of their respective members.

Highlighting the data and trends on Environmental, Social and Governance (ESG) investing globally, Shri Amarjeet Singh, Executive Director, SEBI said that due to increasing trends of ESG investing, the demand for non-financial reporting is also growing and in this respect the BRSR framework will set the stage for sustainable investing.

Talking about the recent national and international development in the field of Responsible Business, Dr. Sameer Sharma, DG, IICA, said that IICA is taking forward the initiative and launching a certificate course on Responsible Business Conduct (RBC) from August 2020.

As a chairman of the Committee on BRR, Shri Gyaneshwar Kumar Singh, Joint Secretary, MCA, highlighted the paradigm shift in the business operations from shareholder's perspective to stakeholders and importance of non-financial reporting. He also shared the key recommendations of the committee and acknowledge the efforts made by the committee members.

The Report of the Committee is available on the website of the Ministry of Corporate Affairs i.e. www.mca.gov.in.

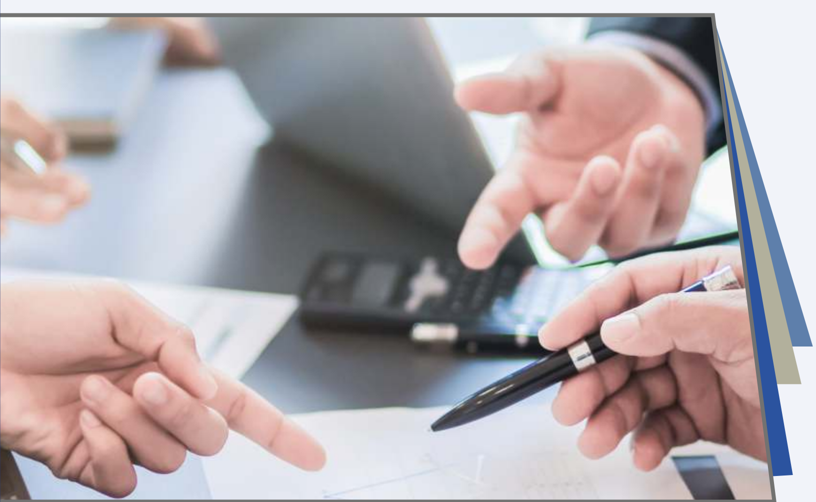
Background

The Ministry of Corporate Affairs has been taking various initiatives for ensuring responsible business conduct by companies. As a first step towards mainstreaming the concept of business responsibility, the 'Voluntary Guidelines on Corporate Social Responsibility' were issued in

2009. These guidelines were subsequently revised as 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 (NVGS)' after extensive consultations with business, academia, civil society organizations and the government.

The Securities and Exchange Board of India (SEBI) through its 'Listing Regulations' in 2012 mandated the top 100 listed entities by market capitalization to file Business Responsibility Reports (BRRs) from an environmental, social and governance perspective. These BRRs enabled business to demonstrate the adoption of the NVG principles and the attendant core elements with the intent of engaging businesses more meaningfully with their stakeholders going beyond regulatory financial compliance. This was extended to top 500 companies in FY 2015-16 and further extended to top 1000 companies in December, 2019.

Taking into account the national and international developments in the arena of business and human rights since 2011, the NVGs have been updated and released as NGRBC (National Guidelines on Responsible Business Conduct) in March 2019 to reveal alignments with the UNGPs, UN Sustainable Development Goals (SDGs), Paris Agreement on Climate change etc.



In furtherance to updation and formulation of the NGRBCs, the Ministry of Corporate Affairs had constituted a 'Committee on Business Responsibility Reporting' to develop new BRR formats for listed and unlisted companies. The Committee comprised of representatives from MCA, SEBI, three professional institutes, and two eminent professionals who had worked on developing the NGRBCs.

After extensive consultations with various stakeholders including businesses and their associations, professional institutes, academia, civil society organizations, central Ministries and Departments, the Committee submitted its Report to the Central Government. In its Report, the Committee recommended a new reporting framework called as the 'Business Responsibility and Sustainability Report (BRSR)' to better reflect the intent and scope of reporting on non-financial parameters. The Committee recommended two formats for disclosures: one 'comprehensive format' and the second a 'Lite version'. The Committee further recommended that the implementation of the reporting requirements should be done in a gradual and phased manner. The Committee also recommended that the BRSR be integrated with the MCA21 portal. As a long-term measure, the Committee envisions that the information captured through BRSR filings be used to develop a Business Responsibility-Sustainability Index for companies.

https://www.pib.gov.in/PressReleasePage.aspx?PRID=1645169

सत्यमेव जयते

Ministry of Commerce & Industry

- United Nations Declares Invest India The Winner of theInvestment Promotion Award 2020
- Shri Piyush Goyal invites the global investors to invest in India
- Promotion of FDI
- Single Window System for clearances and approvals of industry
- Ranking of states based on implementation of Business Reform Action Plan for the year 2019 declared
- National GIS-Enabled Land Bank System
- India ranked in the top 50 nations in the Global Innovation Index

Ministry of Commerce & Industry

United Nations Declares Invest India the Winner of the Investment Promotion Award 2020

The United Nations (UNCTAD) has declared Invest India- the National Investment Promotion Agency of India- as a winner of the 2020 United Nations Investment Promotion Award. The award ceremony took place on 7th December 2020 at UNCTAD Headquarters in Geneva.

The award recognizes and celebrates the outstanding achievements and best practices ofInvestment Promotion Agencies (IPAs) across the globe. The evaluation was based on UNCTAD's assessment of work undertaken by 180 Investment Promotion Agencies.

The COVID-19 pandemic has led to numerous challenges for Investment Promotion Agencies forcing them to shift focus from routine investment promotion and facilitation towards crisis management, notification of government emergency and economic relief measures, provision of crisis support services, and contribution to national COVID-19 business response efforts. All this was being done while agencies had closed offices, moved functions online and asked staff to work from home. In March 2020, UNCTAD constituted a team to monitor the response of IPAs to the pandemic. UNCTAD reported best practices from Investment Promotion Agencies in the IPA Observer publications in April and July 2020. The response of IPAs to the pandemic became the basis for the evaluation of the 2020 United Nations Investment Promotion Award.

UNCTAD highlighted good practices followed by Invest India,such as theBusiness Immunity Platform, Exclusive Investment Forum webinar series, its social media engagement and focus COVID response teams (such as business reconstruction, stakeholder outreach and supplier outreach) created as a response to the pandemic, in its publications. Invest India has also shared long-term strategies and practices being followed for investment promotion, facilitation and retention at UNCTAD's high-level brainstorming sessions.

This United Nations Investment Promotion Award is the most coveted award for Investment Promotion Agencies. UNCTAD is acentral agency that monitors performance of IPAs and identifies global best practices. Germany, South Korea and Singapore have been some of the past winners of the award.

Mr. Deepak Bagla, MD & CEO, Invest India said, "The award is a testament to the Hon'ble Prime Minister's vision of making India a preferred investment destination. It bears testimony to his focus on Ease of Living, Ease of Doing Business and creating an Aatmanirbhar Bharat".

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1678902

Leagal & Regulatory Updates from India

Ministry of Commerce & Industry

Shri Piyush Goyal invites the global investors to invest in India

The Union Commerce and Industry, Railways, and Food & public distribution Minister Shri Piyush Goyal has invited the global investors to invest in India, taking benefit of the huge domestic market, and conducive business environment in the country. In his Keynote Address today at Conference 'India: Drivers of Change' organized by the Bank of America, he said that the country offers fair value for their investments.

Shri Goyal said that India is being seen as a trusted partner in the global value chains. He said that India has a transparent system and open democracy. India is targeting to achieve rightful place in the comity of nations.He said that the Government is working as a team, breaking departmental silos. Shri Goyal said that there are large business opportunities in the country. Bold decisions are being taken to empower the businesses to think big and bold, and explore unchartered territories and businesses, he added.

Talking about today's cabinet decisions, Shri Goyal said that approval has been given to introduce the Production-Linked Incentive (PLI) Scheme in the 10 key sectors for Enhancing India's Manufacturing Capabilities and Enhancing Exports – Atmanirbhar Bharat. He said that the PLIs announced earlier for the telecom, APIs and medical devices have got encouraging response. The incentives will help India in becoming strong, self-sufficient, self-reliant, and meeting our domestic needs as well as for exporting. The Minister said that the government will do the hand-holding for these sectors over the next 5 years. He also mentioned about other initiatives for various other sectors like cluster development and logistics support. On the Viability gap funding scheme for the social sectors, he said that it will bring in private investment in the social sectors like drinking water, health and education, and help in meeting the needs of the people.

Shri Goyal said that the Indian economy is coming out of the Covid setback, and several datasets indicate that the country is returning back to the business. The PMI index is at a high level, not seen for a long time. Similarly, the Services index has also gone up. The GST collections in October were 10% more than the corresponding period of last year. Similarly, Indian exports were up by 5% in September. After a small dip in October, the exports in the first week of November have also shown 22% growth. He said that the imports are also picking up, showing that economic activity is normalizing. The Minister said that the railway freight in last two months has been 15% more than the corresponding period of the last year. The recent results of the Indian companies for the last quarter also show that things are returning back to normalcy.

The Minister said that the Start-up culture in the country has really gained pace, giving impetus to the spirit of innovation and entrepreneurship, and now people of India are aspiring to become job-creators rather than job-seekers.

Shri Goyal emphasised on 4 Cs-Courage, Confidence, competence, and compassion.He said that India is set to become $5 Tn economy by 2025, and set the bar to $10 tn in next 7 to 8 years.

On the issue of the Atamnirbharbharat campaign, he said that this is meant to not only make India self-reliant, but also engage with the world from a position of strength. He said that under the leadership of Prime minister Shri Narendra Modi, we have liberalized several sectors including defence, Agriculture, coal, Mining,space technology. More private investment is welcome in these sectors. He said that the government should be out of consumer-oriented businesses and non-core sectors.

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1671973

Ministry of Commerce & Industry

Promotion of FDI

Government has put in place a liberal and transparent policy for Foreign Direct Investment (FDI), wherein most of the sectors are open to FDI under the automatic route. The Government reviews the FDI policy on an ongoing basis and makes changes from time to time, to ensure that India remains an attractive & investor friendly destination. It has been the endeavor and intent of the Government to put in place an enabling and investor friendly FDI Policy.

FDI policy is an enabling policy which is uniformly applicable in the country across all scales of industries including small and medium enterprises.

Details of Foreign Direct Investment is maintained remittance-wise. The Foreign Direct Investment Equity Inflow data inter-alia includes the name of the Foreign company, Indian company including MSMEs, country, sector activity, amount and type of investment, etc. This data is very voluminous and available on the departmental website (www.dipp.nic.in).

India has one of the most liberalized FDI policy worldwide, wherein 100% FDI under automatic route is permitted in many sectors/ activities. There are only a few sectors/ activities where FDI is regulated i.e. subjected to government approval, with a cap or having other conditionality requirements. The FDI policy equally applies to the MSME sector. Further, the Government reviews the FDI policy on an ongoing basis and significant changes are made in the FDI policy regime, from time to time, to ensure that India remains increasingly attractive and is viewed as an investor-friendly investment destination. A liberalised FDI Policy is being pursued to ensure that along with attracting investment, modern and cutting edge technology is brought in the country to improve overall productivity and competitiveness.

Further, the extant FDI Policy on Single Brand Product retail trading contributes significantly to the development of MSME sector thereby encouraging increased sourcing of goods from India, thereby enhancing competitiveness of Indian MSMEs, providing access to global designs, technologies and management practices.

FDI Policy on Single Brand Product retail trading, in case of proposals involving foreign investment beyond 51%, mandates sourcing of 30% of the value of goods procured, to be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors.

Further, the FDI Policy on Multi Brand Retail Trading provides that, at least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million.

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1657330

Ministry of Commerce & Industry

Single Window System for clearance and approval of Industry

The Central Government is working on setting up a **Single Window System for clearances and approvals of industry** in the country. Despite the presence of several IT platforms for investing in India such as in departments of the Government of India and State Single Window Clearances, investors need to visit multiple platforms to gather information and obtain clearances from different stakeholders. To address this, the creation of a centralized Investment Clearance Cell which would provide end-to-end facilitation support, including pre-investment advisory, information related to land banks; and facilitating clearances at Central and State level was proposed and the same is also a Budget Announcement 2020-21.

The cell is being planned as a One-stop digital platform to obtain all requisite central and state clearances/approvals required to start business operations in India. The Investment Clearance Cell will be a National portal that integrates the existing clearance systems of the various Ministries/ Departments of Govt. of India and of State Governments without disruption to the existing IT portals of Ministries and will have a single, unified application form. This will eliminate the need for investors to visit multiple platforms/ offices to gather information and obtain clearances from different stakeholders and provide time-bound approvals and real time status update to investors.

All the concerned State Governments including Tamil Nadu and Central Ministries/Departments are being taken on board for the Single Window Clearance System.

Further, a GIS enabled land bank under Industrial Information System (IIS) is being developed, and it has been launched in a phased manner by the Department on 27th August, 2020 with integration of 6 States Haryana, Uttar Pradesh, Telangana, Gujarat, Odisha and Goa; other concerned states are being on boarded.

With the objective of facilitating investment, fostering innovation, building best in class manufacturing infrastructure, making it easy to do business and enhancing skill development, the Government is focusing on 27 sectors under Make in India 2.0. Department for Promotion of Industry and Internal Trade is coordinating action plans for 15 manufacturing sectors, while Department of Commerce is coordinating 12 service sectors.

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1655050

Ministry of Commerce & Industry

Ranking of states based on implementation of Business Reform Action Plan for the year 2019 declared

Top states under State Reform Action Plan 2019 are Andhra Pradesh, Uttar Pradesh and Telangana.

State rankings will help attract investments, foster healthy competition and increase Ease of Doing Business in each State.

Smt. Nirmala Sitharaman, Union Minister of Finance and Corporate Affairs, on 5th September, 2020 had announced the 4th edition of Business Reform Action Plan (BRAP) ranking of states.

The announcements were made in the august presence of Shri Piyush Goyal, Minister of Railways and Minister of Commerce & Industry; Shri Hardeep Singh Puri, Minister for Commerce & Industry and Minister of State (Independent Charge) of the Ministry of Housing and Urban Affairs; Minister of State (Independent Charge) of the Ministry of Civil Aviation; and Shri SomParkash, Minister of State in the Ministry of Commerce and Industry. Chief Ministers of Uttarakhand and Tripura, LGs of J&k and Laddakh, Industry Ministers of States and Union Territories, along with senior government officials were also present.

Ranking of States based on the implementation of Business Reform Action Plan started in the year 2015. Till date, State Rankings have been released for the years 2015, 2016 and 2017-18.The Business Reform Action Plan 2018-19 includes 180 reform points covering 12 business regulatory areas such as Access to Information, Single Window System, Labour, Environment, etc. The larger objective of attracting investments and increasing Ease of Doing Business in each State was sought to be achieved by introducing an element of healthy competition through a system of ranking states based on their performance in the implementation of Business Reform Action Plan. The ranking this time gives full weightage to the feedback from over thirty thousand respondents at the ground level, who gave their opinion about the effectiveness of the reforms. State rankings will help attract investments, foster healthy competition and increase Ease of Doing Business in each State.

“India is seen taking the reform process seriously which showed when foreign direct investment in the country increased even during the Covid-19 pandemic, amid what was called world’s strictest lockdown. Some states have shown extraordinary energy in putting together action plans and making sure that reforms happen. States have embraced the true spirit behind the State Business Reforms Action Plan," said Smt Sitharaman after release of the rankings.

Leagal & Regulatory Updates from India

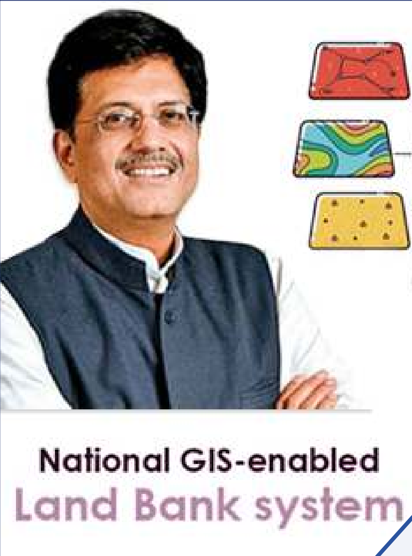
"The Ease of Doing Business rankings being released today are a reflection of the efforts made by states, the rankings are competitive; India is among the very few nations which has state-specific rankings, which will in turn help the nation improve its ranking," Shri Piyush Goyal said during the event.

"I would urge States to undertake steps to minimize the regulatory burden by removing renewal of licenses or extending their periodicity, simplifying application forms, introducing risk-based inspections or introduction of third-party inspections, digitizing approvals and undertaking measures to rationalize the regulatory regime," said Shri Hardeep Singh Puri.

The top ten states under State Reform Action Plan 2019 are:

1. Andhra Pradesh
2. Uttar Pradesh
3. Telangana
4. Madhya Pradesh
5. Jharkhand
6. Chhattisgarh
7. Himachal Pradesh
8. Rajasthan
9. West Bengal
10. Gujarat

Source: https://pib.nic.in/PressReleseDetailm.aspx?PRID=1651598



Ministry of Commerce & Industry

National GIS-Enabled Land Bank System

Government has integrated Industrial Information System (IIS) portal with the GIS System of six States in first phase to provide updates on land availability and plot level information to investors anywhere in the world on real time basis and help them make informed decisions.

For the development of National Land Bank, Government intends to solicit the details of industrial land with plot level information, connectivity thereto, basic facilities, other facilities available and contact details of authorities/developer of the park.

Government agencies are provided with unique User ID and password to upload the land details. However, the other investors can go to https://iis.ncog.gov.in/parks and simply register on the portal by creating a username and password and login to see the information available on the portal.

Jharkhand is one of the eight states in the second phase of integration of state land bank/GIS systems with the IIS portal. The state has uploaded land data manually on the portal in the past. The state is yet to align its portal as per the Standard Operation Procedures (SOP) of integration of the two systems. The technical teams of State of Jharkhand are in touch with MeitY team who are providing technical support to develop the GIS Based National Land Bank under IIS.

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1658141

Ministry of Commerce & Industry

India ranked in the top 50 nations in the Global Innovation Index

India has climbed 4 spots and has been ranked 48thby the World Intellectual Property Organization in the Global Innovation Index 2020 rankings. In midst of the Covid -19 pandemic, it comes as an uplifting news for India, and is a testament of its robust R&D Ecosystem. India was at the 52nd position in 2019 and was ranked 81st in the year 2015. It is a remarkable achievement to be in a league of highly innovative developed nations all over the globe. The WIPO had also accepted India as one of the leading innovation achievers of 2019 in the central and southern Asian region, as it has shown a consistent improvement in its innovation ranking for the last 5 years.

The consistent improvement in the global innovation index rankings is owing to the immense knowledge capital, the vibrant startup ecosystem, and the amazing work done by the public & private research organizations. The scientific ministries like the Department of Science and Technology, the Department of Biotechnology and the Department of space have played a pivotal role in the enriching the national innovation Ecosystem.

The NITI Aayog has been working tirelessly to ensure optimization of national efforts in this direction by bringing policy led innovation in different areas such as EVs, biotechnology, Nano technology, Space, alternative energy sources, etc. The India Innovation Index, which was released last year by the NITI Aayog, has been widely accepted as the major step in the direction of decentralization of innovation across all the states of India. A constant thrust in monitoring and evaluating India's position in global rankings has be provided by the NITI Aayog, including the global innovation index.

India must aim high and double its efforts in improving its ranking in the global innovation index. The call for Aatma Nirbhar Bharat by the Hon'ble Prime Minister could only be realized if India punches above its weight class and compete with global superpowers in developing scientific interventions. It is time that India brings a paradigm shift and aims to be in the top 25 countries in the next global innovation index rankings.

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1650886

सत्यमेव जयते

Ministry of labour & Employment

- **Parliament passes three Labour Codes to pave way for enactment of historic "Game changer" Labour Laws**

Ministry of Labour & Employment

Parliament passes three Labour Codes to pave way for enactment of historic "Game changer" Labour Laws

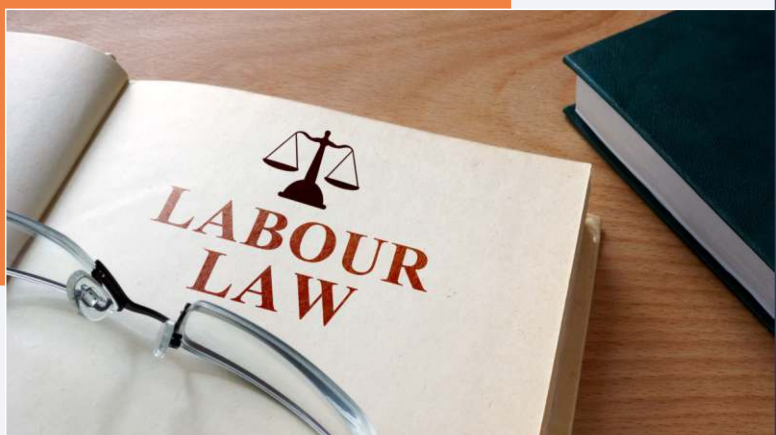
The Rajya Sabha in its sitting on 23rd September, 2020 passed three labour codes namely, (i) Industrial Relations Code, 2020 (ii) Code on Occupational Safety, Health & Working Conditions Code, 2020 & (iii) Social Security Code, 2020. With this, the decks for enactment of these codes have been cleared as Lok Sabha had passed these Bills on 22nd September, 2020.

Speaking during the discussions on the bills, Shri Gangwar described the Bills as historic game changer which will harmonize the needs of workers, industries and other related parties. He emphasized that the OSH Code envisages safe working environment for workers especially women. The Minister added that an effective dispute resolution mechanism is being ensured through Industrial Relations Code providing for time-bound dispute resolution system in every institution. The Minister further said that the Social Security Code provides a framework to include organized and unorganized sector workers under the ambit of comprehensive social security. The Social Security Code contains provisions relating to EPFO, ESIC, building construction workers, maternity benefits, gratuity and social security fund for unorganized sector workers.

Dwelling upon amalgamation 29 labour laws into four Labour Codes, Shri Gangwar said that extensive consultation was undertaken by the Government before finalizing the Labour Codes. These include discussions in nine Tripartite Meetings, 4 sub-committees, 10 inter-ministerial consultations, Trade Unions, Employers' Associations, State Governments, Experts, International Bodies and also invited public suggestions/comments from people by placing them in public domain for 2-3 months.

The Minister stressed that the objective of labour reforms is to have their labour laws in line with the changing world of workplace and provide an effective and transparent system, balancing the needs of workers and industries. He further said that in this journey of 73 years of independence, the atmosphere, technological phase, mode of working and the nature of work has changed drastically in today's new India. With this change, if India does not make the required changes in its labour laws, then we will be left behind in both the welfare of the workers and the development of industries", Shri Gangwar said.

He emphasized that the structure of welfare and rights of Atmanirbhar Shramik is based on four pillars. Regarding First Pillar which is salary protection, the Minister said that even after 73 years of independence, and despite having 44 labour laws, only about 30 percent of India's 50 crore workers had the legal right to minimum wages and all the workers were not paid on time.



Leagal & Regulatory Updates from India


The second important pillar of labour safety, Shri Gangwr said is to give him a safe working environment to protect his health and lead a happy life. For this, he said, for the first time in the OSH Code, annual health check-up has been provided for workers above a certain age. Additionally, to keep the standards related to safety effective and dynamic, they can be replaced with changing technology by the National Occupational Safety & Health Board. In order to provide a safe environment, workers and employers should decide together, for this, a safety committee has been provided for in all institutions.

He informed that the third important pillar for workers is Comprehensive Social Security. In line with this resolution, he said the scope of ESIC and EPFO is being extended in the Social Security Code. To increase the scope of ESIC, a provision has been made that now its coverage will be in all 740 districts of the country. In addition to this, the option of ESIC will also be for plantation workers, unorganized sector workers, gigs and platform workers, and institutions with less than 10 workers. If there is a risky work in an institute, that institute will inevitably be brought under the purview of ESIC even if it is a sole labourer. Similarly, to increase the scope of EPFO, the schedule of the institutions has been removed in the current law and now all those institutions which have 20 or more workers will come under the ambit of the EPF. Apart from this, the option of EPFO for institutions with less than 20 workers and self-employed workers is also being given in the Social Security Code.

Talking about Fourth Pillar, Shri Gangwar said that we have simplified and made effective IR Code so that peace and harmony prevail in the industrial units. On bringing Fixed Term Employment to the IR Code, engaged for a short period of their time and do not get service conditions, leave, salary, social security, gratuity etc. like regular employees, he said we have also ensured that Fixed Term Employees' service conditions, salary, leave and social security will also be the same as a Regular Employee. In addition, Fixed Term Employee has also been given the right to pro-rata Gratuity.

Shri Gangwar also informed that under various labour laws, there will be no need to have multiple registrations or multiple licenses to set up industries. "As far as possible, now we are going to arrange to provide registration, license etc. in a time bound manner and under online process", he added.

Shri Gangwar concluded saying that through these 4 Labour Codes we are ensuring the welfare of workers on the one hand, on the other hand it is an effort to develop new industries through a simple compliance system, which will create employment for our workforce. New opportunities should be created. "With enactment of new Labour Codes, the vision of our Prime Minister to have Sabka Sath, Sabka Vikas and Sabka Vishwas will get a big boost and India will march to the front league of developed nations", Shri Gangwar emphasized.

Source: **https://www.pib.gov.in/PressReleasePage.aspx?PRID=1658197**

सत्यमेव जयते

Ministry of Education

- Highlights of New Education Policy-2020

Ministry of Education

Highlights of New Education Policy-2020

Ministry of Education has announced the National Education Policy 2020 (NEP 2020) on 29.07.2020 which has been made available at Ministry of Education's website at https://www.mhrd.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf. The special features of NEP 2020 includes:-

i. Ensuring Universal Access at All Levels of schooling from pre-primary school to Grade 12;

ii. Ensuring quality early childhood care and education for all children between 3-6 years;

iii. New Curricular and Pedagogical Structure (5+3+3+4);

iv. No hard separations between arts and sciences, between curricular and extra-curricular activities, between vocational and academic streams;

v. Establishing National Mission on Foundational Literacy and Numeracy;

vi. Emphasis on promoting multilingualism and Indian languages; The medium of instruction until at least Grade 5, but preferably till Grade 8 and beyond, will be the home language/mother tongue/local language/regional language.

vii. Assessment reforms - Board Exams on up to two occasions during any given school year, one main examination and one for improvement, if desired;

viii. Setting up of a new National Assessment Centre, PARAKH (Performance Assessment, Review, and Analysis of Knowledge for Holistic Development);

ix. Equitable and inclusive education - Special emphasis given on Socially and Economically Disadvantaged Groups (SEDGs);

x. A separate Gender Inclusion fund and Special Education Zones for disadvantaged regions and groups;

xi. Robust and transparent processes for recruitment of teachers and merit based performance;

xii. Ensuring availability of all resources through school complexes and clusters;

xiii. Setting up of State School Standards Authority (SSSA);

xiv. Exposure of vocational education in school and higher education system;

xv. Increasing GER in higher education to 50%;

xvi. Holistic Multidisciplinary Education with multiple entry/exit options;

xvii. NTA to offer Common Entrance Exam for Admission to HEIs;

xviii. Establishment of Academic Bank of Credit;

xix. Setting up of Multidisciplinary Education and Research Universities(MERUs);

xx. Setting up of National Research Foundation(NRF);

xxi. ‘Light but Tight’ regulation;

xxii. Single overarching umbrella body for promotion of higher education sector including teacher education and excluding medical and legal education- the Higher Education Commission of India (HECI)-with independent bodies for standard setting- the General Education Council; funding- Higher Education Grants Council (HEGC); accreditation- National Accreditation Council (NAC); and regulation- National Higher Education Regulatory Council (NHERC);

xxiii. Expansion of open and distance learning to increase GER.

xxiv. Internationalization of Education

xxv. Professional Education will bean integral part of the higher education system. Stand-alone technical universities, health science universities, legal and agricultural universities, or institutions in these or other fields, will aim to become multi-disciplinary institutions.

xxvi. Teacher Education - 4-year integrated stage-specific, subject- specific Bachelor of Education

xxvii. Establishing aNational Mission for Mentoring.

xxviii. Creation of an autonomous body,the National Educational Technology Forum (NETF) to provide a platform for the free exchange of ideas on the use of technology to enhance learning, assessment, planning, administration. Appropriate integration of technology into all levels of education.

xxix. Achieving 100% youth and adult literacy.

xxx. Multiple mechanisms with checks and balances will combat and stop the commercialization of higher education.

xxxi. All education institutions will be held to similar standards of audit and disclosure as a ‘not forprofit’ entity.

xxxii. The Centre and the States will work together to increase the public investment in Education sector to reach 6% of GDP at the earliest.

xxxiii. Strengthening of the Central Advisory Board of Education to ensure coordination to bring overall focus on quality education.

xxxiv. Ministry of Education: In order to bring the focus back on education and learning, it may be desirable to re-designate MHRD as the Ministry of Education (MoE).

Source:
https://www.pib.gov.in/PressReleasePage.aspx?PRID=1654058

NEWS from the INSTITUTE


THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
A NEW MILESTONE ACHIEVED
ICSI PRESIDENT
CS ASHISH GARG
IS ELECTED CSIA PRESIDENT FOR THE YEAR 2021
ICSI proudly informs you that CS Ashish Garg, President ICSI, has been unanimously elected as the new President of Corporate Secretaries International Association (CSIA) for the year 2021.
This is yet another milestone achieved by ICSI in the direction of its vision "To be a global leader in promoting Good Corporate Governance".
We firmly believe that under his able leadership and guidance, the Company Secretary profession is sure to scale newer heights.
CSIA
CORPORATE SECRETARIES
International Association
VISION
"To be a global leader in promoting good corporate governance"
ICSI Motto
सत्यं वद। धर्मं चर। speak the truth. abide by the law.
MISSION
"To develop high calibre professionals facilitating good corporate governance"

Setting up of ICSI Overseas Centre, United Kingdom

The Institute of Company Secretaries of India was established with the vision "to be a global leader in promoting good corporate governance". Taking the vision forward as well as keeping in view the expectations of all our stakeholders, the ICSI embarked on its journeys of establishing Overseas Centres in UAE and USA.

The Institute had inaugurated its third Overseas Centre at, United Kingdom, on 24th August 2020, in the benign presence of Ms. Smriti Zubin Irani, Hon'ble Union Minister for Women & Child Development and Textiles, Government of India.

One of the main objectives of setting up this ICSI Overseas Centre , United Kingdom is to strengthen the global outreach of the profession while augmenting the professional opportunities for ICSI members internationally.

The ICSI Overseas Centre, United Kingdom will function from the below address with the following Committee of Member(s):

ICSI Overseas Centre, United Kingdom
46 Hibernia Road, Hounslow, London TW3 3RY
E-mail address: ukcentre@icsi.edu

1. CS Inderpreet Kaur Bedi, Chairperson
2. CS Manish Temani, Vice-Chairperson
3. CS Somya Rastogi, Secretary
4. CS Janak Popatlal Prajapati, Treasurer
5. CS Deepagrace Goudar, Member
6. CS Srikant Kankanala, Member
7. CS Sukhpreet Kaur Makkar, Member

The launch video is available at **https://youtu.be/30MucayyyfA**

The ICSI Overseas Centre, United Kingdom shall facilitate the members & students residing in UK and will pave way for expanding the dimensions of corporate governance.

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

ONLINE ENDORSEMENT OF MEMBER VERIFICATION UNDER ICSI-ICSA MOU

To expand the boundaries for our professionals and move and work beyond territorial barriers, the Institute of Company Secretaries of India (ICSI) entered into a Memorandum of Understanding (MoU) with the Institute of Chartered Secretaries and Administrators (ICSA) (now known as The Chartered Governance Institute) for providing reciprocal paper-wise exemption and membership for their members.

As per the provisions of the MoU, Members of the ICSI can study with the ICSA division of their choice, (subject to residency requirements in some countries) and Members of the ICSA can study with the ICSI at a range of centers in India.

Detailed information about the same is available at **https://www.icsi.edu/member/icsa/**

To register as a student of ICSA, documents are required to be submitted by ICSI members with the Endorsing Officer, ICSI through Post/Courier.

In an attempt to provide more efficient service and simplification of procedure, the ICSI has enabled the system of online Endorsement of Member Verification under the said ICSI-ICSA MoU. Members can access the same through their online account at the ICSI website. The user manual for the same is available at **https://www.icsi.edu/media/webmodules/UsermanualICSA.pdf**

Once the endorsement process is complete, the ICSI will directly send details of members to respective division (country) of ICSA after that Student Support Section of ICSA will contact the ICSI member for further process of registering as an ICSA student by email.

This initiative will expedite the existing process of member verification.

Connect with ICSI | www.icsi.edu | Online Helpdesk : http://support.icsi.edu

ARTICLE

Company Secretary as a Global Governance Professional

Governance, of late, has been the talk of the town in almost every field due to numerous reasons but primarily due to the overall impact on society, in general, in case of lapses in Governance. Throughout the world, increased importance is being placed on good Governance and its link to sustainability in the long-run. This article attempts to throw light on the need for Governance Professionals and how Company Secretaries are best poised to transition to the elevated role.

CS Aditya Ambastha

Assistant Vice President – Client Services
S. N. Ananthasubramanian & Co.
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What is Governance ?

Before discussing about how Company Secretaries are best poised to transition to the elevated role of Governance Professionals, let us try to understand the meaning of the term "Governance" in general. Dictionary meaning of the term "Governance" is "the action or manner of governing a state, organisation etc.," while "Governing" means "having authority to conduct the policy, actions and affairs of a state, organisation or people." In management, Governance is the "accountability for consistent, cohesive policies, processes and decision rights." In other words, Governance is the manner in which business is conducted while following the unwritten and rarely spoken rules of the society. Governance in the context of Corporates or Corporate Governance as per OECD's Corporate Governance means the "structure that specifies the distribution of rights and responsibilities among different participants in the company such as board, management, shareholders and other stakeholders; and spells out the rules and procedures for corporate decision-making; By doing this, it provides the structure through which the company's objectives are set along with the means of attaining these objectives as well as for monitoring performance."

Principles of Governance and its increasing importance

Transparency, accountability and fairness can be considered to be the principles on which Governance is based, be it in the context of Corporates or otherwise. Transparency, in common parlance is the extent of disclosures being made both mandatorily as well as voluntarily which should serve as accurate and reliable information for making decisions. Accountability essentially means understanding one's responsibility, accepting it and working

[1]https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en

towards discharging the responsibility sincerely. Fairness is treating everyone equally without any favouritism or discrimination. These principles of Governance have also been aptly included under Chapter II (Principles Governing Disclosures and Obligations of Listed Entity) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Governance is of utmost importance in every field as it is the root of every activity. Being well governed, in itself will reap better results as it will lead to activities being carried out inclusively i.e. with the maximum possible and required involvement of all stakeholders.

Relevant to note that a dilemma surrounding Governance is whether Governance should be in form or substance? – A dilemma which is worth a separate discussion altogether. To keep it short, for Governance to be complete and comprehensive, holistic and integrated, it is always form and substance.

The importance and push towards Governance in every field can be seen through the efforts being taken by the society at large. Towards this, "Good Governance Day" is observed in India annually on the 25th December. It was established in the year 2014 and is aimed at fostering awareness among the Indian people of accountability in government. A small yet significant step towards increasing the importance of Governance is the "Good Governance Index" launched by the Government of India on 25th December, 2019 which seeks to determine the status of governance as it exists today and provide a reference threshold for the future . It will also work towards increasing the awareness of Governance and its role.

Governance lapses and the need for Governance Professionals

Lapses in governance can generally be attributed to the ineffectiveness of the governance mechanism, if any, in place or the failure to act upon the red flags identified through the said mechanism. Ethics and values of each person in an organisation builds-up to create the overall culture of the organisation. After all, one's moral principles governs one's behaviour and conduct. Good Governance is expected to increase the performance while not Good Governance will lead to unpleasant consequences. Few instances of not Good Governance are a) 2001 – Enron – which perhaps had the most widespread ramifications with respect to the manner in which financial statements were reported, corporate governance practices as well as regulations were revised; b) 2009 – Satyam – which misled the market and other stakeholders by lying about the company's financial health, basic facts such as revenues, operating profits, interest liabilities and cash balances were grossly inflated to show the company in good health; c) 2012 – Reebok – fake sales and secret depots; d) 2016 – Ricoh India – which was similar to that of 2009 – Satyam. Modus operandi of all these instances depict that the principles of governance viz. transparency, accountability and fairness were compromised which lead to a lapse in the governance mechanism which could have been possibly avoided had there been a Governance Professional.

Although there has been an improvement in the overall governance culture, instances of lapses in

[2]https://en.wikipedia.org/wiki/Good_Governance_Day
[3]https://pib.gov.in/PressReleasePage.aspx?PRID=1597584
[4]Source: www.thehindubusinessline.com; www.hindustantimes.com; www.livemint.com

governance are still prevalent. Governance Professionals would be expected to guide and assist organisations in imbibing the principles of governance and in working towards creating a governance culture that nurtures and encourages adoption of best practices which will in-turn lead to sustainability in the long-run. It is also important to note that when an organisation finds itself in a complete mess, it is not just the organisation that takes the hit, its various stakeholders are also affected and in cases of large or systematically important organisations, it is also the industry which takes the hit. This, more often than not, leads to multifarious ramifications and does impress upon the need for Governance Professionals. Organisations do have individuals who have been entrusted with the responsibility of maintaining a good governance culture/ mechanism but quite often such responsibilities are given a secondary treatment. With Governance Professionals being a separate category of professionals, their primary responsibility will be to maintain a good governance culture/ mechanism within the organisation and also find ways and means to continuously improve upon the effectiveness of the mechanism. Governance is something which has to flow from the top and cannot be the other way around. The Board plays a pivotal role in creating, maintaining and evolving the governance culture/ mechanism on a continuous basis.

Governance is slowly yet steadily becoming a major area/ function requiring dedicated attention on par with other functions like finance, operations etc., which requires positions like Chief Financial Officer and Chief Operating Officer respectively. Merely creating policies and procedures will not lead to good governance. Such policies and procedures must be followed by everyone the in organisation in its true spirit to enable effective work and achieve the desired result. A governance mechanism provides the required checks and balances which ensures the sustainability of an organisation. As the ecosystem evolves or matures with time, the experience gained leads to devising ways and means to increase the efficiency. The recent creation of separate categories of professionals viz. Registered Valuers and Insolvency Professionals can be said to have a positive impact on the overall corporate ecosystem. Similarly, Governance Professionals would most likely also have a positive impact on the ecosystem. With cases of lapses in governance and the effects that it had in general, a category of professionals dedicated to governance could do a world of good.

Company Secretaries – At present and the opportunities ahead

Company Secretary is the bridge between the Board and the Management of an organisation and the profession is gaining increased importance and focus from the point of view of both the organisation as well as the stakeholders. Throughout the world, Company Secretaries have been recognized as being responsible to inter-alia ensure compliance with statutory and regulatory requirements. In India, the functions and duties of a Company Secretary have been prescribed in the Companies Act, 2013 and the relevant rules made thereunder. The functions include a) reporting to the Board about compliance with the provisions of the Act, the rules made thereunder and other laws applicable to the company; b) ensuring that the company complies with the applicable secretarial standards; while the duties include a) providing to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers; b) facilitating the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings; c) obtaining approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act; d) representing before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act; e)assisting the Board in the conduct of the affairs of the company; f) assisting and advising the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.

Company Secretary in India has been recognized as a Key Managerial Personnel (KMP) along with the Chief Executive Officer/ Managing Director/ Manager/ Whole-time Director and Chief Financial Officer under the Companies Act, 2013 and the Act prescribes for mandatory appointment of a Company Secretary in every Company belonging to such class or classes of Companies as prescribed. Such recognition depicts the trust on and expectations from the profession. As per ICSA The Chartered Governance Institute , Company Secretary is a strategic position of considerable influence at the heart of governance operations within an organisation. As per the Singapore Association of the Institute of Chartered Secretaries and Administrators , Company Secretary is effectively an organisation's chief administrative officer and corporate governance advisor on corporate matters to the Board of Directors and senior management. As per the Institute of Chartered Corporate Secretaries of Srilanka , Chartered Corporate Secretaries are high ranking professionals who are trained to uphold the highest standards of Corporate Governance, Effective Operations, Compliance

and Management. In India, Company Secretaries have been recognised as Compliance Officers under various regulations which further relates to the increasing importance of the role of Company Secretaries. As can be derived from the aforesaid, Company Secretaries are not just individuals who are responsible for maintaining minutes of meetings and records thereof as the title might suggest, instead, they have a far greater and important role to play within an organization.

It is not just about Company Secretaries in employment stepping up to be Governance Professionals, in fact Company Secretaries on the practising end may also build capacities through various means to play an important role in the governance ecosystem. Practising Company Secretaries have been providing services in the area of Corporate Governance, be it a review of the governance framework or consultancy in devising a governance framework which is commensurate with the size and operations of the organisation. Seminars/ webinars being conducted on topics like CS enabling Independent Directors' Competence, Compatibility and Responsibility by the Institute is a clear indication of the emerging role the profession and the vision. Considering the present industry scenario, there is no dearth of opportunities existing and opportunities that may come into existence for Company Secretaries as Governance Professionals.

[5] https://www.icsa.org.uk/professional-development/careers/being-a-company-secretary
[6] http://www.saicsa.org.sg/english/abouticsa/icsaprof.asp
[7] http://iccslk.org/

Transitioning as Governance Professionals

Governance is not just complying with the applicable laws, standards etc., it is also about building an ethical culture within an organisation. The responsibilities of the modern-day Company Secretary have evolved into a much broader role of advisors to the Board on various matters including governance issues. To carry out this role effectively, a Company Secretary needs to act ethically with the highest standard of honesty and integrity and the senior position also calls for an in-depth understanding of the applicable laws that govern the organisation's activities. Only when a person is strong on ethics and values, he can effectively discharge the responsibilities of a Governance Professional. Sound judgement could also be considered to be a key attribute apart from the aforesaid. A 2012 study in the United Kingdom determined that Corporate Secretaries should be "commercially minded" or aware in order to carry out their role effectively. This essentially means that the individual should understand the organisation's business and assist the Board in making effective decisions.

"In today's world, the role of the Corporate Secretary has no one meaning and covers a multitude of tasks and responsibilities. That said, the role lies at the heart of the governance systems of Companies and is receiving ever great focus." – David Jackson, Lawyer and Former Corporate Secretary, BP p.l.c.

This makes it even more important for Company Secretaries to evolve themselves in order to effectively manage the challenges posed by the increasing importance and focus on governance culture/ mechanism within an organisation including the role of Company Secretaries. The role of a Company Secretary itself is transitioning from a mere secretarial one to one of the key positions in an organisation. The skill-sets required to be a Governance Professional vis-à-vis a Company Secretary are more or less similar which is definitely an advantage that will help in the smooth transition to a Governance Professional. Modern-day Company Secretaries are multidisciplinary professionals having knowledge in inter-alia corporate laws and secretarial practice. A collective effort of the fraternity along with assistance and guidance from the Institute of Company Secretaries of India could further the Institute's mission of developing high calibre professionals facilitating good corporate governance. Company Secretaries in an organisation are entrusted with the responsibility of maintaining the governance mechanism, however such responsibility is often coupled with other roles such as Legal Head, Compliance Head etc., which may lead to the area of governance not being given its due attention or in other words, being compromised.

Being a Governance Professional requires much more than just technical or legal expertise as the goal is to create/ enhance governance culture within an organisation. Creating a good governance culture within an organisation requires the right mindset in its employees which needs to flow from the top. It should be

[8] https://www.societycorpgov.org/certification
[9] https://gpcanada.org/gpc-ep
[10] https://www.governanceinstitute.com.au/resources/governance-directions/volume-71-number-8/the-future-of-the-governance-professional/

remembered that if there is governance there is compliance but vice-versa may not be true. Company Secretaries are recognised as experts and at present are discharging responsibilities in the area of governance although combined with other responsibilities within the organisation. Core competencies of a Governance Professional could inter-alia be able to work within a multi-disciplinary setting to achieve consensus, maintaining appropriate perspective no matter how pressured a situation, able to read signals on the horizon and provide early warning to the Board. Such competencies are generally also expected from Company Secretaries. There is a similarity in the role being played by a Company Secretary vis-à-vis the role a Governance Professional is expected to play, only difference being that governance will be the primary responsibility of the latter unlike combined roles of Company Secretaries at present.

Boards these days have become extra vigilant of the governance culture in the organisation and expect Company Secretaries to effectively discharge their responsibilities towards maintaining/ evolving the governance culture as well as assist the Board in discharging its responsibilities effectively. There have been signs of a gradual change in the mindset of the collective Board as regards the governance culture. It is noteworthy that detailed courses/ certifications are being offered by institutions like the Society for Corporate Governance, Inc. , which offers the "Certified Corporate Governance Professional" certification; the Governance Professionals of Canada which offers the "Governance in Practice" education program comprising of three modules viz. Foundations of Governance, Applied Governance and Strategic Governance. Capacity building and more importantly inculcating the habit of following best practices in all walks of life is the need of the hour.

As per a study conducted by the Governance Institute of Australia , "Artificial intelligence and machine learning in business will change the role of the Company Secretary by making the role more interesting; Governance professionals will still need to have a solid understanding of financial, legal and IT issues, but will also require a greater range of soft skills." The disruptive impact of artificial intelligence and machine learning cannot be neglected and businesses as well as professionals should take proactive steps to stay relevant and evolve with changing times. As Heraclitus, the Greek philosopher said "The only constant in life is change"; one must develop the mindset to embrace changes and deal with it positively as Governance is not just compliance but one notch more. It is complying with the intent and spirit of the law and not just the law itself. This specialised role of the modern Company Secretary has poised them perfectly to transition as Governance Professionals.

THE ART OF VALUING PRIVATE COMPANY SHARES IN THE UK!

Small businesses continue to play a pivotal role in wealth creation, innovation and provision of employment opportunities to millions of people in the UK. Providing further impetus to their growth is a principle based regulatory landscape. Given the limited liability protection provided by the company form, most of these smaller enterprises are organised as private companies. Operating in a mature economy such as the one in the UK, to be successful smaller businesses ought to be flexible enough to adapt to the needs of a dynamic marketplace. The trickle-down effect of this flexibility could also be felt in the way the ownership of a private company is structured, with an ever-growing list of share structures such as alphabet shares, employee shares etc. Whether it is about a predator looking to gobble up competition, employees swapping their sweat for equity or an aggrieved minority shareholder getting edged out, valuation of private company shares assumes importance. This article briefly examines the 'art' of valuing private company shares in the UK.

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Of the 4,060,068 companies registered with the Registrar of Companies (Companies House) in the UK as of 31 March 2020, 92.8% are private companies. More than 99% of the UK business are small, and mostly organised as private companies. As politicians would say the UK is open for business, private companies subject to the small companies' regime in the UK enjoy all the benefits of a principle-based light touch regulatory landscape. Private companies do not need to have a company secretary(s.270 CA/06), neither there is a requirement to hold an annual general meeting. Except for those operating in some specific business sectors, statutory audit is generally not required so long as a company doesn't breach two or more of the three statutory thresholds (s.477 followed by s.382 CA/06): turnover of no more than £10.20 million, employees up to 50 and total assets on the balance sheet not exceeding £5.10 million. Members holding 10% ordinary share capital, however, could still ask for the accounts to be audited. Micro-entities (meeting two or more of the three thresholds which are up to: £632,000 in turnover, 10 employees, and balance sheet assets of £316,000) could prepare their financial statements adopting a teeny-weeny financial reporting standard FRS 105.

Despite nearly one hundred of the 1,300 sections of the Companies Act 2006 providing for criminal offences, criminal sanctions are rare. Majority of the offences are triable in the Magistrates' Court with a fine (standard sliding scale s.17 CJA/91) limited to £1,000, and during the financial year 2019-20 barely 5,080criminal convictions succeeded.

Since the UK is a mature economy, powered predominantly by smaller business enterprises, organic growth for businesses isa tough call. Acquisitions are, therefore, a commonbusiness strategy adopted by smaller enterprises for quicker growth.

In clear demonstration of how outdated the formal public listing route has become for smaller enterprises, capitalisation via the private equity market is very well organised, dynamic and an ever growing one. Boosted by an extremely friendly tax regime in the form of Enterprise Investment Scheme (EIS), and Seed EIS for micro entities,billions of pounds are raised by private companies every year.

Until Coronavirus altered the rules of the game, up until last year capital gains on disposal of shares in personal companies (with ownership of at least 5%) were taxed at a welcome 10% (entrepreneur's relief – s.169H TCGA/92). The Coronavirussimply took away one zero out of the lifetime cap on the relief that can be claimed by reducing it to £1 million now!

In a marketplace as dynamic as this, private company ownerships change handsquite often, regardless of whether such changes are triggered by incoming investments, employee participation in the equity, buybacks engineered by disputing

shareholders or by other cases of share re-organisation. Since, the UK tax laws (s.273 TCGA/92) mandate that unlisted shares ought to be valued atmarket values (a prudent purchaser proposing to purchase from a willing vendor at arm's length), it's common for the taxman (Her Majesty's Revenue & Customs, or HMRC for short) to mount a challenge should valuation appear to be defying logic.

Given this backdrop, private company share valuation assumes considerable significance and professional accountants' help is always in demand.

Valuation techniques

Choosing the right method of valuation could make or break a transaction, andwhether to choose theasset, earnings or cashflow based method isa matter down to who or what the valuation is for. Obviously, the taxman and the seller will choose a method that produces a value in sync with their respective intentions, whereas the buyer may prefer a conservative approach. An asset-based valuation may be suitable for an asset-rich company pregnant with, say a portfolio of properties but the grand-daddy of all valuations remains discounted cashflow method. The spoiler, however, with this method is that the discounting rate and the time horizon are mattersthat involve sufficient level of subjectivity. That leaves us with the most widely used method using a multiple of maintainable adjusted future earnings called the PE (price earning) multiple. A PE multiple that is most appropriate to the business sector, size and status is quite often the go to method. However, a desk valuation by two different valuers could produce two extreme outcomes as happened in a case involving a tax avoidance scheme(Brian Foulser and Mrs Doreen Foulser v HMRC [2015] TC 04413). The taxpayer in this case valued his 9% stake at £243,750 whilst the HMRC's calculator produced a value of £2.10 million forcingthe First-tierTax Tribunalto observe that "share valuation is not a science, there is no prescribed formula by which shares in a private company are to be valued".[The First-tier Tax Tribunal is the first port of call if you disagree with an HMRC decision].To complicate matters the tribunal came up with £1.75 million valuation for the same shares!

That having been said, it's not uncommon for a valuer to apply a combination of methodologies and take a call as to what the value should be.

Different class of shares

Unless voted out by the members, typically ordinary shares issued in the UK will have the following prescribed particulars of rights attached [s.555(4)(c)(i) CA/06] to them:

a) the right to vote

b) the right to receive dividend by participating in distribution, and

c) the right to receive liquidation proceeds on wind up

(The Companies (Shares and Share Capital) Order 2009)

Private companies in the UK have a long tradition of issuing alphabet shares (different class of shares denominated as A Shares, B Shares etc) tinkering with the rights attached to them, so as to suit a particular group or business or personal need. As dividends are taxed at relatively lower rates of tax, often a director shareholder would fancy a few A Shareshaving rights only to receive dividend or to receive a more favourable rates of dividend than the other shareholders. Mom and Dad companies would welcome alphabet shares to extract funds to pay off children's school fees without having to foota huge tax bill to Her Majesty's Revenue. Often tax advantaged employee share schemes may have no voting rights at all. However, it's a matter for another discussion altogether that the UK has a long history of the taxman successfully attacking creation of alphabet shares as plain tax avoidance. Invoking the settlement legislation (s.620 et seq. ITTOIA/05), for example, HMRC's tug of war with the tax planning industry is well

known. Meanwhile, the alphabet shares industry's innovative schemes continue to flood the market.

Obviously, being a need-based product, alphabet shares' potential to end up as a piece of paper having no commercial value, is very high.

Minority discounts

Even where there are no alphabets involved, the rights of a shareholder may still vary depending on the level of shareholding held in a UK company. Briefly:

- A shareholder with 5% or more shareholding could require a) the circulation of a written resolution, b) the company to call a general meeting and c) prevent the deemed re-appointment of an auditor.
- With a 10% shareholding one could call a poll vote at a general meeting and could require the company to have its accounts audited. More than 10% shareholdingmeans one couldblock consent to short notice for calling a general meeting.
- A 15% shareholder could apply to the court to object to a variation of share class rights
- A shareholding of more than 25% means special resolutions could be blocked
- Whilst a 50% shareholder could block ordinary resolutions, more than 50% shareholding enables one to pass ordinary resolutions.

These rights do have a bearing on what value a buyer may be prepared to pay for a minority share. As a consequence, discounts do apply. Whilst there is no firm rule set in stone as to what level of discounting should apply, often it would be down to what purpose the valuation is for. For example, in an unfair prejudice claim (s.994 CA/06) in Blue Index Ltd [2014] EWHC 2680 (Ch),the minority shareholder got away without a discount with the court observing that "it would substantially defeat the purpose of the [...] remedy if the oppressing majority were routinely rewarded by the application of a discount for a minority shareholding".

Still, the following table can be considered indicative of the prevailing practice as to what could be considered as a reasonable discount.

- Shareholding less than 10% - discount up to 75% or even more
- 10 to 25% – up to 50%
- 26 to 49% – up to 40%
- 50% interest – up to 25%
- Over 50% - up to 10%

It's very common, therefore, to the point of being a commercial necessity, for shareholders of private companies in the UK to have a shareholders' agreement which would set out remedies in the event of a conflict. Such an agreement, or in some cases even the Articles, could also insert in there the formula to be applied for valuing the shares. What could muddy waters further arespecial situations: the minority shareholders' right to veto decisions achieved via a shareholders' agreement, the right to appoint a director on the board, the right to a casting vote etc.

Clearly, for the professionals, the job of valuing private company shares is made difficult by the fact that there is no published data available relating to private company share transactions. Sector specific valuation data provided by listed companies may turn out to be irrelevant as often listed companies' size play the spoilsport.

Overall, this leads to a situation where the valuation of private company shares in the UK is becoming more of an art!

References:

CA/06 – the Companies Act 2006

CJA/91 – the Criminal Justice Act 1991

TCGA/92 – the Taxation of Chargeable Gains Act 1992

ITTOIA/05 – the Income Tax (Trading and Other Income) Act 2005

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