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‘प्रगतिश्च विकासश्च जीवनं जीवनं खलु।’

MONTHLY BULLETIN OF WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Welcome

2011





From the Chairman ...

Dear Professional Colleagues,

It is indeed my pleasure to reach to you through this communication as "Chairman WIRC" for the year 2011. At the outset let me convey my best wishes for New Year.

After conclusion of ICSI elections in December 2010, a new team of Regional Council members have joined the WIRC. I am happy to inform you that "Team WIRC" is a perfect blend of experience and enthusiasm. Your representatives from the entire region will serve through WIRC for next 4 years. I am happy to be a part of the "Team WIRC" and proud to be a first "Chairman" of the new team.

Our profession is passing through a transforming phase and demands more attention and nurturing. Expectations of members and students are manifold. We at WIRC are expected to meet these expectations by providing excellent training and academic facilities. We have already started working on these directions and attempting to clear long waiting list of students for various training programmes by organizing series of training programmes. TEFC committee is planning to hold two days regional students conferences across the Region to nurture professionalism among the students.

Keeping in mind the requirements of practising professionals to complete the Credit Hours before March 2011, we have lined up few one day programmes in coming months. WIRC will focus on quality of the programmes than quantity. New Programme Membership Scheme will be announced soon for the benefit of the members. Study Circles will be more strengthened to provide more interaction facilities to members.

Research Team at WIRC has taken a new stance and soon will come out with useful publications for the members. Placement Committee of WIRC is working on various employments related aspects and data base for the benefit of aspirant CS.

PCS Committee will arrange few quality programmes for the members across the region. We are also checking out the possibilities of creating new opportunities and recognitions for PCS members.

WIRC Newsletter "Focus" will have a new look and we expect more contribution from the members in this.

It's a talent and passion which counts in the success. "Team WIRC" possesses both Talent & Passion to attempt a success. We have to advance confidently in the direction of ICSI dreams, goals, vision and mission and I am sure one day we will meet with the success on our way. If we apply the right mental attitude, no one will stop us from achieving our goals.

Friends, I am sure that you will extend your wholehearted support to and all around contributions for "Team WIRC".

I look forward to more and more interaction with you in coming months. Keep sending your valuable suggestions and feedback to us.

Thanks & regards,

Makarand Lele

Chairman

WIRC of ICSI

Editorial Board: CS C. S. Kelkar – Editor, CS Amit Kumar Jain – Joint Editor.

NEW OFFICE BEARERS OF ICSI-WIRC FOR 2011

NAME		CONTACT NO.
Shri Makarand Lele Partner, MRM Associates Company Secretaries 1st Floor, Dnyansudha Apartments 77 Vijaynagar Colony 2147 Sadashiv Peth, Pune – 411 030	Chairman	Tel. No. Office - (020) 24324288/24325075 Fax – 020-24320368 Mobile - 9822394381 E-mail : makarand.lele@mrms.com
Shri Mahavir Lunawat Senior Manager Tax and Regulatory Services PricewaterhouseCoopers PwC House, 2nd Floor Plot 18/A, Guru Nanak Road, Bandra (West), Mumbai - 400 050	Vice Chairman	Tel. No. Office – 022 - 66891247/66891000 Mobile – 9004946789 Email : mahavir.lunawat@in.pwc.com mahavir.lunawat@hotmail.com lunawat.mahavir@gmail.com
Shri Prakash K. Pandya P. K. Pandya & Co., Practising Company Secretary 16, 1st Floor, Star Trade Centre, Sodawala Lane, Borivali (West), Mumbai – 400 092	Secretary	Tel. No. Office – 022 - 28903329/28929702 Mobile – 9987033384 Email : info@pkpandya.com
Ms. Ragini Chokshi Ragini Chokshi & Co. Company Secretaries 34, Kamar Building, 5th Floor Cawaji Patel Street, Fort Mumbai – 400 001	Treasurer	Tel. No. Office – 022 - 22831120 / 20310092 / 40022534 Fax – 022 - 22831120 Mobile - 9322246703 / 9702276703 Email : ragini.c@rediffmail.com / chokshiragini@gmail.com

The other Members of the Regional Council are S/Shri

- | | |
|----------------------------|-----------------------------|
| 1 Atul Mehta | 8 Ashish C. Doshi |
| 2 B. Narasimhan | 9 Ashish Garg |
| 3 S. N. Ananthasubramanian | 10 Chandrashekhar S. Kelkar |
| 4 Umesh H. Ved | 11 Hitesh D. Buch |
| 5 Vikas Y. Khare | 12 Hitesh Kothari |
| 6 Amit Kumar Jain | 13 Sanjay Kumar Gupta |
| 7 Ashish C. Bhatt | |

COMMITTEES OF ICSI-WIRC - 2011 and CHAIRMAN THEREOF

1. Mr. Makarand Lele, Chairman, Executive Committee
2. Mr. Ashish Doshi, Chairman, Training & Educational Facilities Committee
3. Mr. Sanjay Gupta, Chairman, Professional Development Committee and Accounts and Finance Committee
4. Mr. Ashish Garg, Chairman, Practising Company Secretaries Committee
5. Mr. C. S. Kelkar, Editor, FOCUS and Mr. Amit Kumar Jain, Joint Editor, FOCUS
6. Mr. Amit Kumar Jain, Chairman, Placement Committee
7. Mr. Hitesh Buch, Chairman, Research & Publication Committee
8. Mr. Hitesh Kothari, Chairman, Public Relation, Library and Building Renovation Committee
9. Mr. Ashish Bhatt, Chairman, Information Technology Committee



CASE LAW DIGEST

by CS Ajay Kumar, *Mumbai*

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

1. PENALTY FOR NOT FILING ANNUAL RETURN

Respondent filed a complaint against a company and its directors including Petitioner alleging that accused failed to hold AGM and to file Annual Return for financial year 2005-06 within stipulated time thereby committed an offence under section 159, punishable under section 162. Since Petitioner had resigned from his post of director in company on 30-4-1994 and same was accepted by company on 2-5-1994 and informed to Respondent on 4-8-2000, Petitioner had no connection with company's affairs, particularly during financial year 2005-06 and, therefore, criminal proceedings against Petitioner were to be quashed. – P. L. NARASIMHALU vs. ASSISTANT REGISTRAR OF COMPANIES [2010] 100 SCL 515 (MAD.)

2. COMPROMISE AND ARRANGEMENT

Petitioner-company sought for sanction of scheme of arrangement in name of demerger of a division of 'G' into Petitioner-company. Equity shareholders, secured creditors and unsecured creditors of both companies had approved said scheme. However, Regional Director sought for submission of latest financial statement of Petitioner and details of assets and liabilities of division of demerged company that was going to be transferred to and vested in resulting company. Petitioner stated that latest financial statement as provisional balance sheet had been served upon Regional Director and list of fixed assets of demerged division of 'G' was contained in Schedule XII of balance sheet annexed to company Petition. Since both requirements sought for by Regional Director stood satisfied, proposed scheme of arrangement was to be sanctioned. – ADITYA CONTAINER FREIGHT STATION (P) LTD., IN RE [2010] 100 SCL 512 (GUJ.)

3. CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP

Appellant was entrusted with some work by Respondent and same was done but Respondent failed to pay balance amount due despite statutory notice. Appellant filed winding up Petition against Respondent-company but same was resisted by Respondent stating that liability was neither settled nor payable. Single Judge dismissed winding up Petition. In absence of ascertained liability which was to be worked out by parties also in view of added circumstances that there was no admission made

by Respondent anywhere in any one of communication, no question of winding up of Respondent would arise. Therefore, Single Judge was right in dismissing winding up Petition. – VSL INDIA (P.) LTD. vs. MANICKAM ENGINEERS (P) LTD. [2010] 100 SCL 421 (MAD.)

4. APPLICATION FOR WITHDRAWAL OF PETITION DUE TO TECHNICAL DEFECT WITH LIBERTY TO FILE AND PURSUE FRESH PETITION. CAN IT BE ALLOWED WHERE PETITIONERS ARE YET TO COMMENCE ARGUMENTS ON MERITS IN VIEW OF RESISTANCE ON MAINTAINABILITY/TECHNICAL ISSUES – SECTION 397/398

Where the Petitioners have not yet commenced their arguments on the merits of the case in view of the resistance by the counsel appearing for the respondents on maintainability and technical issues, and since the respondents can raise the preliminary issues on maintainability even after the Petitioners have addressed the Bench of the Company Law Board on the merits of the case, the application will be allowed by permitting the Petitioners to withdrawal the same and pursue the fresh Petition. – PRAMOD JAIN vs. GOLDEN TOBACCO LTD. [2010] 97 CLA 470 (CLB)

5. SCHEME PROPOSING CHANGES IN CAPITAL CLAUSE OF MEMORANDUM/ARTICLES OF ASSOCIATION TO BE EFFECTED AS INTEGRAL PART OF SCHEME – DO THESE CHANGES REQUIRE SEPARATE PROCEDURE APPROVAL BY SHAREHOLDERS TO SCHEME – DOES IT AMOUNT TO APPROVAL TO ALL SUCH CHANGES – SECTIONS 391-394

Where the proposed scheme of amalgamation of transferor-company with transferee-company also proposes changes in the capital clause of the memorandum and articles of association of the transferee-company and the issues relating thereto have been dealt with in the company Petition, and the court is satisfied that all these changes are proposed to be effected as an integral part of the scheme, the approval granted by the shareholders at the meeting to the scheme as a whole amounts to approval to all such incidental proposals and no separate procedure is required to be followed as envisaged by sections 17, 31, 94 and 97, respectively. – AVANI PETROCHEM (P) LTD., IN RE. [2010] 98 CLA 465 (GUJ.)

ROC COLUMN



In a series of articles, I have been highlighting the common defects noticed in e-forms filed with the Office of the Registrar of Companies. The declared objective of Efficient Service Delivery can be accomplished by the Office of the Registrar of Companies only when the e-forms filed in the Office are free from defects. Moreover, frequent traffic of e-forms for carrying out corrections/clarifications will hamper the objective of Efficient Service Delivery. In this article, I would like to highlight the common defects noticed in Form-23 filed by companies for alteration of the object clause in the Memorandum of Association.

It has been observed in several cases that the Form-23 filed for alteration of object clause do not squarely fall within the ambit of Clauses (a) to (g) of Sub-section 1 of Section 17 of the Companies Act, 1956. It is expected that the company should explain clearly in the "Explanatory Statement" attached to the notice calling for the General Meeting the specific clause of sub-section 1 of Section 17 of the Companies Act, 1956 under which the object clause of the company is proposed to be altered/amended. It has been observed in many cases that this is not clearly brought out in the Explanatory Statement. For instance, there are several cases in which the company proposes to entirely delete the main object and substitute a total different set of unrelated main object which is not contemplated in any clause under sub-section 1 of Section 17 of the Companies Act, 1956. Such Resolutions amending the main object clause of the Memorandum of Association of the company are bound to be rejected.

Moreover, any alteration of the main object clause should also comply with the guidelines published by the Ministry of Corporate Affairs u/ss. 20 and 21 of the Companies Act, 1956 which provides that the name should be in consonance with the main objects. Here again, the company cannot change its name without complying with the Guidelines issued by the Ministry of Corporate Affairs u/s. 21 of the Companies Act, 1956. One of the Guidelines provides that the name can be changed only if the income derived from such activity is more than 50% of the total turnover. On account of non-compliance of the above Guidelines as well as the requirements of sub-section 1 of Section 17 of the Companies Act, 1956 several Form-23 filed by the companies u/s. 17 of the Companies Act, 1956 are unable to be approved by the Office of Registrar of Companies.

It may also be borne in mind that Form-23 relating to alteration of object clause of Memorandum of Association needs to be processed within ten (10) days. Therefore, if such documents are found to be defective and unable to be processed within the stipulated time, the documents become invalid on its own.

It is also a mandatory requirement that the Form-23 should be accompanied by the new Memorandum of Association with altered object clause as per the Special Resolution passed by the company in the General Meeting. In many cases, the companies have filed the Form-23 without the attachment of the revised Memorandum of Association and hence such Form-23 are unable to be approved. It is also a requirement in the case of listed companies that the alteration in the object clause of Memorandum of Association should be approved by shareholders through Postal Ballot as per Rule 4 under the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001. There are instances, where the listed companies have filed Form-23 without obtaining Postal Ballot.

The above observations may be borne in mind while filing Form-23 for alteration of object clause so that such forms can be approved expeditiously without any rejection.

(HENRY RICHARD)
REGISTRAR OF COMPANIES
MAHARASHTRA, MUMBAI

Telecom Commercial Communications Customer Preference Regulations, 2010

CS Anshul Kumar Jain; anshul@csanshul.com
Compliance Officer, Edelweiss Custodial Services Limited

Telecom Regulatory Authority of India ("TRAI") has notified the Telecom Commercial Communications Customer Preference Regulations, 2010 ("the Regulations") on December 1, 2010 effective from January 1, 2011.

TRAI has mentioned in its press release and explanatory note that "it may be recalled that in June 2007, TRAI had notified the Telecom Unsolicited Commercial Communications Regulations, 2007. Despite various measures taken by the Authority for curbing Unsolicited Commercial Communications, dissatisfaction on this account among telecom consumers continues. Although the number of unsolicited commercial voice calls had decreased to some extent, the number of unsolicited SMS had increased significantly causing inconvenience to telecom customers. As per the data released by TRAI till March 2010, a total of 3,40,231 complaints regarding receipt of unsolicited calls and SMS have been received about 65,000 complaints are received every month. This is just the tip of the iceberg as many customers do not lodge such complaints. Overall, there is every indication that the framework that has been put in place to curb such compliant has been less than effective and needs revision." Accordingly, it is to be noted that the primary objective of the Regulations to curb the dissatisfaction among the telecom consumers and also to bring SMSs within the regulatory purview.

Unlike the previous Regulations which provided only for a Do Not Call Registry, the Regulations provide a wide choice to the customer. He may choose to be under the 'fully blocked' category which is akin to the Do Not Call Registry under the previous Regulations or he may choose the 'partially blocked' category, in which case he will receive SMSs in the category/categories chosen by him. There are seven categories from which the customer can choose – 1. Banking/Insurance/Financial products/credit cards; 2. Real Estate; 3. Education; 4. Health; 5. Consumer goods and automobiles; 6. Communication/Broadcasting/Entertainment/IT; 7. Tourism and Leisure. Wherever the customer is in the 'partially blocked' category, he shall not get any commercial calls. The 'partially blocked' category is like a Do Call Registry. Thus, the customer can either choose his categories (Do Call), or choose to be under the fully blocked category (Do not Call) or not to register at all.

The scrubbing the data is also decentralized and two way scrubbing is provided at the end of telemarketer and service provider.

The defaulting telemarketer needs to pay heavy penalties and they may also face the revocation of telemarketer license for a period of two years.

The Regulations also provides relief to the customers like registration to do not call registry within a period of 7 days unlike 45 days earlier and also to lodge complaint with his service provider who is required to take appropriate action and inform the customer of the action taken within seven days.

A separate numbering series 70XXXXXXX will be allocated for telemarketers, so that all telemarketing calls can be easily identified. Any call that comes from any number beginning with 70 will be a commercial call and the customer has the choice of receiving or not receiving the call. Therefore, even a customer who chooses not to register at all, has a choice. Likewise, a unique SMS header has been mandated for easy identification of commercial SMSs.

The Regulations mandate that no commercial communication, even for unregistered customers, shall be sent between 9.00 PM and 9.00 AM, so as not to disturb the customers at night.

In order to facilitate communication between agencies having commercial transactions with their clients, the Regulation provide for transactional messages to be exempt.

Concerns have been expressed about the telemarketing calls/SMSs from unregistered telemarketers, who can be any of the 700 million subscribers. With a simpler registration process, it is expected that all telemarketers will register themselves with TRAI. Nevertheless, in order to minimise such instances, the Regulations provide that no service provider shall provide packages containing more than 100 SMSs per day. The Regulations also provide that in the event of such an Unsolicited Commercial Communication (from an unregistered ordinary subscriber) he will be warned on the first offence and his telephone disconnected on commission of the second offence.

The highlights of the Regulations are reproduced below: –

1. Regulation 2 deals with the definition part. Some of the important definitions are mentioned below: –
 - a. "Access Providers includes the Basic Telephone Service Provider, Cellular Mobile Telephone

- Service Provider and Unified Access Service Provider.”
- In simpler language it should be termed as the service provider.
- b. “Commercial Communication means any message, voice or SMS, made through telecommunications service, which is transmitted for the purpose of informing about, or soliciting or promoting any commercial transaction in relation to goods, investment or services.”
 - c. “National Customer Preference Register means a national data base containing a list of the telephone numbers of all subscribers who have registered their preferences regarding receipt of commercial communications.”
 - d. “Promotional message means message containing promotional material or advertisement of a product or service.”
 - e. “Telemarketer means a person or legal entity engaged in the activity of transmission of commercial communications.”
 - f. “Transactional message means an SMS containing only—
 - i. information sent to its customer(s) by the Bank or financial institution or insurance company or credit card company or Access Provider pertaining to the account of that customer(s);
 - ii. information given by Airlines or Indian Railways or its authorised agencies to its passengers regarding travel schedules, ticket booking and reservation;
 - iii. information from a registered educational institution to parents or guardians of its students;
 - iv. any other message as may be specified by the Authority, from time to time as “Transactional message”.

It is to be noted that the Transactional message can only be a SMS, it should be a voice call or in any other mode.
 - g. “Unsolicited commercial communication means any commercial communication which a subscriber opts not to receive but does not include—
 - i. any transactional message; or
 - ii. any message transmitted on the directions of Central Government or State Government or agencies authorized by it.
2. Chapter II of the Regulations is related to Customer Preference Registration. The Chapter mandated to set up a Customer Preference Registration Facility by the Access Provider for the purpose of registration and deregistration of preference of the customers regarding receipt of commercial communications. Such facility shall have a short code 1909 and it should be toll free. Any customer may make a request to his access provider for the registration and registration. It is, however, to be noted that any subscriber may change his preference only after three months from the date of registration or three months from the date of last change, whichever is later.
 3. It is mandated for every access provider to maintain and operate a register to be called as Provider Customer Preference Register for registration of preference of customer under full and partially blocked category. The existing registration shall continue in fully blocked category.
 4. The provider customer preference register should contain the name of each subscriber, telephone number of the subscriber including in case of wireline area code, the date and time of the request by the subscriber, the details of the preference made by the subscriber, the unique registration number.
 5. TRAI will authorise an agency to maintain National Customer Preference Register. This register will contain the details like the telephone number including in respect of wireline telephones area code, the details of preference, such other details as may be specified by the Authority from time to time. This register will be maintained by the agency authorised by TRAI for this purpose and the information will be provided by the access provider.
 6. Chapter III of the Regulations prescribed the provisions for the registration of telemarketer which will be impacting most of the companies who are actively involved in telemarketing. It is mentioned that no subscriber, who is not registered with TRAI as a telemarketer under the Regulations, shall make any commercial communication.
 7. TRAI will authorise an agency who will maintain a register for telemarketers to be called as National Telemarketer Register. The register should contain the details of the telemarketer such as registration date, application number and registration number, the details of the fees deposited by the telemarketer, the details of the telecom resources allotted to a telemarketer, the number of notices, along with the

date of such notices, served upon the telemarketer by the Access Providers for sending unsolicited commercial communication, the date of blacklisting of telemarketer as specified in regulation 18, if applicable and such other details as may be specified by the Authority, from time to time. The procedure for the registration is prescribed in Schedule III of the Regulations. The procedure for registration of telemarketers with TRAI has been simplified. All telemarketers now have the facility of registering online. They can also make payment of the necessary fees either online or offline. The registration will be immediate on payment of registration fee. Telemarketers currently registered with DOT should reregister. The fees for the registration are ₹ 10,000 for the new registration and ₹ 9,000 (towards customer education fee) for the existing telemarketers. The registration once granted is valid for three years. The telemarketer may deregister itself in accordance with the procedure prescribed specified in Schedule III.

8. Once the registration process with TRAI is completed, the telemarketer may apply for telecom resources from one or more access providers.
9. Every Access Provider shall, before providing any telecom resource to a telemarketer, verify the details furnished by the telemarketer in its application form, the registration number issued by TRAI and comply with the subscriber verification guidelines issued by the Department of Telecommunications, from time to time. Telecom resources provided to a telemarketer for making voice calls do not have facility for receiving incoming call and sending of SMS. It is also to be ensured that telecom resources provided to a telemarketer for sending transactional message do not have facility for receiving incoming call or SMS.
10. The access provider shall also enter into an agreement with the telemarketer. The standard agreements are prescribed in Schedule IV (for promotional messages) and Schedule V (for transactional messages) of the Regulations. It is to be noted for sending the transactional message the registration is required with TRAI. The telemarketer shall also pay ₹ 1 Lakh as security deposit with the access provider.
11. The agreements mentioned above deals with various operational issues. However, it also to be noted that the penalties for sending any unsolicited commercial communication are also governed through the agreements. The penalties will be recovered out of the security deposit paid by telemarketer to the access provider. It is the duty of the access provider to recover the penalties and deposit the same with TRAI.

12. A description of penalties are given as under: -

On issue of first notice from Access Provider to Telemarketer	₹ 25,000
On issue of second notice from Access Provider to Telemarketer	₹ 75,000
On issue of third notice from Access Provider to Telemarketer	₹ 80,000
On issue of fourth notice from Access Provider to Telemarketer	₹ 1,20,000
On issue of fifth notice from Access Provider to Telemarketer	₹ 1,50,000

On issue of each notice for sending unsolicited commercial communication by the telemarketer and telemarketer shall also make additional security deposit as mentioned below: -

On issue of first notice by the Access Provider to the telemarketer for sending unsolicited commercial communication to the subscriber whose telephone number appears in the National Customer Preference Register	₹ 2,00,000
On issue of third notice by the Access Provider to the telemarketer for sending unsolicited commercial communication to the subscriber whose telephone number appears in the National Customer Preference Register	₹ 4,00,000

13. The name of a telemarketer shall be entered into the black list upon (a) failure to furnish the additional security amount as agreed to by it in the agreement entered into with the Originating Access Provider; or (b) upon service of the sixth notice in a calendar year by any Access Provider on such telemarketer for sending unsolicited commercial communication. It is to be noted that notices served by any Access Provider on such telemarketer will be cumulatively reckoned. Once the blacklisting done the same shall be valid for a period of two years.
14. Chapter IV of the Regulations deals with Customer Complaints. It is mentioned that every Access Provider shall set up a facility for registration of the complaint of the customer regarding receipt of unsolicited commercial communications. The facility shall have a short code 1909. In case any subscriber receives unsolicited commercial communication after expiry of seven days from the

date of his registration in the Provider Customer Preference Register, he may make a complaint to his Access Provider, through voice call or SMS, mentioning therein the particulars of telemarketer, the telephone number from which the unsolicited commercial communication originated, the date, time and brief description of such unsolicited commercial communication as specified. Every such complaint shall be made by a subscriber within three days of receipt of the unsolicited commercial communication.

Once any complaint is received, the terminating access provider shall acknowledge the same and within seventy two hours verify the details and correctness of the complaint and if found to be correct, will forward the same the Originating Access Provider from whose network such unsolicited commercial communication has originated. The Originating Access Provider shall investigate the nature of call or SMS. In case such call or SMS found to be correct by the Originating Access Provider, he shall issue a notice to the telemarketer, forwarding the detail of the unsolicited commercial communication made by him and informing him of the deduction from the security deposit of an amount as agreed upon in terms of the agreement; intimate, the result of the investigation and the action taken by it on the basis of the complaint, to the Terminating Access Provider which forwarded the complaint; deposit the amount so deducted in an account specified by the Authority; update the action taken by it in the National Telemarketer register and inform the terminating access provider who in turn will inform to the complainant within twenty four hours.

In case the Originating Access Provider to whom a complaint has been forwarded finds that the unsolicited commercial communication originated from a subscriber who is not registered with TRAI as a telemarketer, it shall issue a notice to such subscriber to forthwith discontinue the sending of such unsolicited commercial communications and if such subscriber sends a commercial communication to any subscriber on a second occasion, disconnect the telecom resources of such subscriber.

15. Chapter V deals with the obligations of the access providers. Every access provider shall ensure the following: –
 - a. Not to provide the telecom resource to any telemarketer unless telemarketer is registered with TRAI;
 - b. To enter into the standard agreement with the subscribers;

- c. To provide the separate telecom resource to telemarketer for sending promotional and transactional messages;
 - d. To ensure that the telecom resource provided for sending transactional messages are not used for sending promotional messages;
 - e. To use the correct header for sending the messages;
 - f. To ensure that the telemarketer shall scrub the telephone number of the subscriber with the database received from National Customer Preference Register;
 - g. To ensure that no telemarketing SMS other than the SMS opted by the subscriber is sent to him;
 - h. To ensure no voice call is made to a subscriber register with National Customer Preference Register;
 - i. To ensure that no commercial communication, even for unregistered customers, shall be sent between 9.00 PM and 9.00 AM;
 - j. Not to provide packages containing more than 100 SMSs per day;
 - k. Not to send any commercial communication after mixing it with service communication;
16. In case any access provider contravene the provisions of the Regulations may be liable to pay the penalty of ₹ One Lakh and for second such violation in case of second such contravention, to pay an amount of ₹ Five Lakhs and ₹ Ten Lakhs in case of third or each subsequent such contravention.

The object of the Regulations is to provide an effective mechanism for curbing Unsolicited Commercial Communications. The Regulations have been framed keeping in view the interest of the customers and telemarketers while ensuring effective implementation.

TRAI also mentioned in its press release that it expects that all industry and services associations will impress upon their members not to utilise the services of unregistered telemarketers.

Accordingly, a Company Secretary, whether in practice or in employment, should ensure the compliance with the provision to avoid any action from the TRAI. Practising Company Secretaries must advise and guide their clients about the Regulations. They may also assist the clients in registration and other procedural aspects.

■■■

Gratuity to Working Directors

S. G. Gokhale

B.Com. (Hons.), LL. M, F.C.S., F.I.I.I., Advocate & Legal Adviser

My letter dated 10-6-2010 on the above subject, to the Editor, Focus is published in August, 2010 issue of Focus. Ms. Shashikala Rao, Practising Company Secretary has responded to it through "Note on Gratuity" published in Sep-Oct-Nov-2010 issue of Focus. I also received some feedback on the subject from my professional colleagues in person.

At the outset I compliment and thank Ms. Shashikala Rao for taking interest in the subject coupled with the efforts in preparing the said "Note on Gratuity". I also thank others for their feedback.

The issue for consideration is of base salary for calculation of gratuity, paid at any time. i.e. whether last drawn salary or salary of each of the respective years. The practice seems to be followed is of adopting last drawn salary and it is sought to be justified on the basis of the provisions of The Payment of Gratuity Act, 1972 (the Gratuity Act).

It appears that for better understanding of the subject, further analysis of the provisions of the Gratuity Act, and of The Companies Act, 1956 (the Companies Act) and their comparative study are necessary. The same is attempted in the paragraphs 1 to 6 below.

- 1) a) The Gratuity Act provides for payment of gratuity to employees with continuous service of not less than five years (with some exceptions). The gratuity is to be calculated on the basis of last drawn salary and the amount is subject to monetary ceiling. The amount of gratuity is minimum entitlement and maximum obligation i.e. statutory gratuity, in the absence of better terms under the award and agreement. For a claim of statutory gratuity, restrictive conditions are to be necessarily applied. On relaxation of any condition, the payment ceases to be statutory gratuity. The provision of last drawn salary cannot be picked up in isolation. It is observed in the practice followed that provision of last drawn salary is adopted very honestly in the name of applicability of the Gratuity Act, but simultaneously the condition of monetary ceiling is not held applicable for the reason of the payment being contractual pursuant the provisions of the Companies Act. This is certainly a case of double standard. In making the choice (if permissible) between the two enactments, the enactment as a whole should be considered. Only convenient provisions cannot be applied on pick and choose basis.
- b) Service/labour Laws recognize the distinction between the employments with superannuation and the others. The others are being contractual employments. The gratuity under the Gratuity Act is payable on termination of employment (i) on superannuation or (ii) on retirement or resignation or (iii) on death or disablement due to accident or disease. The expression "superannuation" is defined to mean vacation of employment on attaining certain age. The expression "retirement" is defined to mean termination before superannuation. Even in the absence of definition, the employment with superannuation means the employment expected to be continued up to attaining superannuation age. All the employments are presumed to be employment with superannuation, unless agreed otherwise. Thus, the Gratuity Act is applicable to the employments with superannuation. The employment of the Working Directors is contractual for a fixed term. Even with the renewal of contract without break, the nature of employment does not change from contractual employment to superannuation employment. Each contract is separate and independent. Therefore, the Gratuity Act cannot be said to be applicable

to the Working Directors being in the contractual employment. In view of this, the question of consideration of dictionary meaning and definition of "continuous" does not arise. In any case, the circulars issued by the Department of Company Affairs and the decision in *Krishna Mills Ltd. vs. The State*, (AIR 1956 Ajmer 78) is in the context of compliances under sections 269 and 303 of the Companies Act, having regard to the purpose and object of such compliances.

- c) The expressions employee and employer are defined under the Gratuity Act. The person to whom the affairs of the establishment are entrusted, whether called a manager or managing director or by any other name is also an employer. The Working Director, and certainly the managing director can be said to be a person to whom the affairs of the establishment are entrusted by the Board of Directors having ultimate control over the affairs. It is not possible to visualize that the Working Director and particularly the managing director can be both at a time i.e. employee and employer.
- d) Originally the employees drawing wages up to ₹ 1600/- p.m. were covered by Gratuity Act. The said wage limit was enhanced to ₹ 2500/- and again to ₹ 3500/- p.m. In the year 1994 the wage limit has been removed. Thus, if the Working Director was drawing wages above limit prior to 1994, he could not have been even the employee for the purpose of the Gratuity Act. However, there could be many cases of Working Directors having been paid gratuity on the basis of last drawn salary, the basis imported from the Gratuity Act.
- 2) a) The Companies Act regulates the managerial remuneration. The remuneration of the Working Director has direct nexus with the profit of that year. The Companies Act does not stipulate or provide for components of remuneration. A reference is found in the explanation in section 198 to the insurance, pension, annuity or gratuity. However, invariably a provision for payment of gratuity is found in the resolutions, which is reckoned with the salary. This is a case of contractual gratuity. While deciding the terms of remuneration, the quantum should be in ascertained/ascertainable amount for being comparable with the profit. If the contractual gratuity is said to be payable with reference to the unknown future salary, the remuneration of a particular year cannot be said to be in ascertained/ascertainable amount. The Board of Directors/Shareholders/ Central Government as the case may be, cannot be said to be taking decisions on the basis of unknown future salary. If the contractual gratuity for the years 1990-91 onwards is reckoned with the salary for the year 2010-11, the remuneration for the year 1990-91 onwards ceases to be comparable with the profit of the respective years apart from being beyond what is approved.
- b) The expression "remuneration" is incomplete without reference to the period of remuneration. In this case it is a financial year. The lump sum gratuity is not a remuneration of the year of payment. It accrues every year and becomes due at the end of the term. In fact, a provision is to be made in the accounts for the gratuity accrued and the payment is to be made against

- the provision and payment cannot exceed the provision. By deferring the payment to later point of time, the salary applicable to such later period i.e. whether the last year of the term or last year of the last term cannot be taken as basis of calculation. In case of provident fund, a contribution is made every month and no difficulty arises in respect thereof. Even in respect of the gratuity, if a contribution is made every year to a gratuity fund then it would be with reference to salary of that year and would be in ascertainable amount. The actual payment at any time in any amount would be out of the gratuity fund and not out of corpus of the Company. This is possible only if a Company has a gratuity fund. The explanation in Section 198 contemplating expenditure incurred towards providing insurance, provident fund, annuity or gratuity implies the ascertained/ascertainable amount. The Companies Act therefore cannot be said to be contemplating last drawn salary as basis for calculation of the gratuity. The Companies Act is of the year 1956 and the Gratuity Act is later in time i.e. of the year 1972.
- c) No consistency is found in clauses in the resolutions about the gratuity. some resolutions provide for gratuity at the rate of 15 days salary for each year of service. While some other resolutions provide for gratuity as per company's scheme or statutory provisions applicable from time to time. The clauses in the resolution or contract cannot override the statutory provisions. The said clauses are required to be read down to be in conformity with what is stated hereinabove. It is pertinent to note that Schedule XIII to the Companies Act makes specific reference to half a month's salary for each completed year of service and no vague reference to applicable statutory provisions etc. is made.
 - d) In the above background, the applying last drawn salary as basis would destroy the whole scheme under the Companies Act and therefore not permissible.
- 3) a) The Working Directors are held as employees in addition to as trustees and agents of the Company. However, unlike other employees, their terms of appointment and remuneration are regulated by the Companies Act and their employment is contractual. Thus, the Working Directors constitute a class of employees by themselves. Further, the remuneration regulated by the Companies Act is composite inclusive of gratuity, if any. As against this the Gratuity Act is applicable to employees in general and provides for only gratuity payment. In the above background the Companies Act is a special law and Gratuity Act is a general law on the subject. The Companies Act as special law overrides the Gratuity Act, a general law, even with the overriding provision in the Gratuity Act. The Karnataka High Court (DB) had an occasion to consider the overriding provision in the Gratuity Act vis-a-vis Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Journalists Act) in the case of *Management of Indian Express (Madurai) Pvt. Ltd. vs. J. M. Jaswant & Others* (1998 Lab. I.C.3062-Kant) and it held that notwithstanding overriding provision in the Gratuity Act, The Journalists Act prevails having regard to the totality of the scheme under the said Act.
 - b) The remuneration under the Companies Act does exclude even statutory payments, if any. Thus, while structuring the remuneration package, it should be so done to include statutory payments, if any. This can be conveniently done when liability towards statutory payment is accruing/becoming due in the same financial year. The provident fund is an instance. In the situation, where liability arises for the first time after the period, there has to be a post facto compliance. This is a case of co-existence of two Acts.
 - c) In the event it is considered that the Gratuity Act overrides the Companies Act then it is also to be held that the statutory gratuity is over and above the remuneration under the Companies Act including contractual gratuity, if any. This is because the contractual gratuity is not mandatory. Some may provide for it in the package and others not. However, this seems to be nobody's case.
 - d) What is stated in (a) to (c) above, is subject to what is stated in paras 1(b) and (c) above.
- 4) In the light of foregoing I have opined in my letter dated 10-6-2010 the Editor, Focus to the effect that the gratuity should be calculated on the basis of salary of the respective terms. If that being so, it would be perfectly in order to pay the gratuity upon expiry of each term. This would be a matter of right and beneficial also to the Working Directors. However, the payment seems to be postponed to the end of last term as device to have wrongful gain.
 - 5) Normally the salary of the Working Director remains constant during the term. Hence, I had originally suggested that the gratuity be paid at the expiry of each term and if paid at the end of all terms, it should be calculated separately for each term based on the salary of that term. I now realize that there can be different salary for different years during the same term. The salary for the last year or even for the last month can be increased manifold to snatch huge amount of gratuity under the guise of practice. Therefore, I have proceeded to write as hereinabove referring to salary of each year instead of each term.
 - 6) The above analysis is summarized as follows :
 - a) The payment pursuant to the Gratuity Act is subject to monetary ceiling (para 1(a))
 - b) The Gratuity Act is not at all applicable to the Working Directors (paras 1(b) and (c))
 - c) The gratuity, if any, as part of remuneration under the Companies Act is to be calculated with reference to the salary of each year and not on the basis of last drawn salary (para 2)
 - d) The Companies Act overrides the Gratuity Act or the Gratuity Act yields to the Companies Act (paras 3 (a) (b), subject to paras 1(b) and (c))
 - e) The effect of holding that the Gratuity Act overrides the Companies Act (para 3(c)).
 - 7) This is not an issue of pure academic discussion. It has financial impact and involves contraventions of Law. The wrongfully made payments are recoverable. The regulatory authorities, by being alive to their responsibilities, should take up the matter for consideration, particularly in view of the facts that the beneficiaries are themselves decision makers and the associated professionals, in whatever capacities, may find it difficult to take the position vis-à-vis their colleague, bosses or clients. The usual approach is to meet the situation when arises. It can arise only at the instance of regulatory authorities.

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NEWS FROM WIRC AND CHAPTERS

WIRC NEWS

1. A Study Circle meeting on Mergers and Acquisitions was organized by WIRC on 12th November, 2010 at WIRC. Shri B. Renganathan was the faculty for the seminar.
2. A Special Study Circle Meeting on Bhagavad Gita & Inner Strength for Professional Competence. Shri P.J. Desai (An Eminent and Veteran Member of the Institute who has authored a Book on the subject) on Sunday, 14th November, 2010 at 5.30 pm at Sardar Vallabhbhai Engineering College, Andheri, Mumbai.
3. A Half Day Seminar was organized by WIRC jointly with CCGRT and Navi Mumbai Chapter - Interactions with RD followed with session on Winding up and Interaction with Mr. S. M. A Millath, Regional Director on 14th November, 2010 at CCGRT, Navi Mumbai.
4. WIRC organized a Study Circle meeting on Corporate Borrowings on 21st November 2010 at RBK School, Mira Road. Shri Suresh Thakurdesai, Past Chairman, WIRC and eminent CS professional addressed the participants of the Study Circle. The meeting was attended by around 13 members.
5. ICSI-WIRC organized a Study Circle Meeting on 26th November 2010 at 06.00 pm at Room No.13, WIRC premises, Mumbai. Shri Sanjay Kher had a discussion of key issues relating to IPR. About 15 participants were present for the study circle meeting.
6. WIRC organized a full day seminar on Due Diligence on 27th November 2010 at Orchid Hotel, Vile Parle, Mumbai. Shri Sanjay Asher, Sr. Partner Crawford Bailey briefed the Legal aspects of Due Diligence. Shri Krishna Chaturvedi, Director, Deloitte discussed in detailed the financial aspects of Due Diligence. Shri M.V. Phadke, General Manager - Legal; IDBI discussed the Bankers Prospects and expectations from Company Secretary relating to Due Diligence. Ms. Neeta Phatarphekar, Company Secretary and Associate Director Pricewaterhousecoopers deliberated on issues relating to Accounts, Finance & Statutory with respect to Due Diligence for Analysis of Transactions.
7. A Study Circle Meeting - An Interactive session on 1. Compounding of offences under Companies Act, 1956 and 2. Practical Issues in registration of Secretarial Company was organized by WIRC on 28th November, 2010. Mr. Mahesh Kuvadia was the faculty for the Study Circle meeting.
8. Seminar on corporate social responsibility on 18th December, 2010
ICSI-WIRC under the aegis of NFCG organized a full day seminar on Corporate Social Responsibilities on Saturday, 18th December 2010 from 10 am to 5 pm at Terrace Hall, West End Hotel, New Marine Lines, Mumbai. Mr. Balakrishna Parab, Professional, JBIMS deliberated the participants on the issues relating to implantation of CSR. Mr. SMA Millath, Regional

Director, Ministry of Corporate Affairs briefed on the Role of Government towards CSR. There was a brief discussion on CSR a win-win Model.

Mr. Shirish Sangle, Professor NITIE explained the stages of Competitive Corporate Advantage with respect to CSR. Mr. Vishal Bhardwaj, General Manager, Ambuja Foundation gave an overview on the Strategic perspective of CSR.

Around 60 participants were present for the seminar.

9. HATTRICK CRICKET MATCH BETWEEN TEAM - ICSI-WIRC vs TEAM - MINISTRY OF CORPORATE AFFAIRS (WESTERN REGION)

It was Sunny Saturday, 8th January, 2011, this was Third Cricket Match organized at Azaad Maidan Cricket Ground, which is situated between CST (VT) & Churchgate Station, Mumbai. It was 9.15 am in the morning, there arrived Respected **Shri S. M. A. Millath**, Regional Director, Western Region, MCA, **Shri M. A. Kuvadia**, Joint Director, Regional Director, Western Region, MCA, **Shri Henary Richard**, Registrar of Companies, Maharashtra, they were warmly welcomed by Shri Atul Mehta, Central Council Member, **Shri Mahavir Lunavat**, Secretary, WIRC & **Shri Kaushik Jhaveri**, Event Co-ordinator. Earlier in the morning from 7.30 A.M onwards both the Teams of ICSI & MCA representatives had very intensive practice of Bowling, Fielding, Catching & Running across the Ground. Both the Teams were in T-Shirt sponsored by Future Group, ICSI-WIRC in Yellow colour and MCA team in Maroon Colour. Both the Teams also had 5 days advance intensive Net Practice, **with the one and only Dream and Mission of Winning Prestigious WIRC- ICSI - MCA Cricket Trophy. Both team expressed silence in the memory of Late Shri D. K. Gupta, former ROC, Maharashtra and Ms. Elssey Papachan, Senior Officer, ROC Office, Mumbai.**

The Captains of both the teams were

1. Mr. Sachin Jain (ICSI-WIRC)
2. Mr. Anil Nayar (MCA)

At 9.30 both sides captains along with Umpires and Shri S M A Millath, RD,(WR) Shri Mahesh Kuwadia, Co-ordinator - MCA team, Shri Henry Richard, ROC, Maharashtra, Shri Keyur Bakshi, Past President, ICSI, Shri Atul Mehta, Shri Mahavir Lunavat, Shri Kaushik Jhaveri visited to middle of Cricket pitch, and Shri Millath tossed the coin and it was won by ICSI Team, who elected to Bowl first. It was decided to have three matches out of which first two matches of 15 overs each. MCA scored 156 runs in first 15 overs. WIRC - ICSI Team achieved target 157 runs within 13 overs. In Second Match MCA scored 91 runs in 14 overs all out and the same was achieved by ICSI-WIRC in just 11 overs. Both matches were won by WIRC - ICSI and consequently Trophy was won by ICSI-WIRC Team.

There were also other Dignitaries present to witness this Historic Cricket Match between WIRC- ICSI and Ministry of Corporate Affairs, amongst them were:

1. Shri T. Amaranath, Joint Director, Regional Director, Western Region
 2. Shri Kannan, Deputy ROC, Mumbai
 3. Shri. Rama Rao, Ex- Official Liquidator
 4. Shri B. N. Narasimhan, Central Council Member.
 5. Shri Umesh Ved, Central Council Member
 6. Shri Pramod Shah, Past Chairman, ICSI-WIRC
 7. Shri S. K. Jain, Past Chairman, ICSI-WIRC
 8. Mrs. Ragini Chokshi, Western Region Council Member
 9. Mr. Sanjay Gupta, Western Region Council Member
 10. Mr. Hitesh Kothari, Western Region Council Member
- There was a lunch break around 12.30 P.M., when delicious Lunch was served to every one present at venue.

At the end of Two consecutive Cricket Matches, won by ICSI-WIRC, Umpires Adjudged...

1. Mr. Ram Shukla of ICSI-WIRC as All Rounder.
2. Mr. Balla of ICSI-WIRC as Best Bowler
3. Mr. Anshul Jain of ICSI-WIRC as Best Batsman and
4. Mr. Prashant Kohli of MCA as Best Fielder.

AWARD/TROPHY CEREMONY

At the end, around 4.30 P.M., there was a presentation of Trophy/Medal Ceremony to the Winning and Runner up Teams along with 4 Best Performers. During the Award Ceremony, Hon'able Shri S. M. A Millath, Regional Director, Shri Mahesh Kuwadia, Match Co-ordinator & Joint Director RD office, and Shri Henry Richards, ROC, Maharashtra were present and each of them delivered motivating and inspiring speech. **Mr. Millath, RD, Western region conveyed that Company Secretaries are the extended family Members of MCA and this type of friendly matches must be organized regularly.** He appreciated ICSI-WIRC for very well organised Third Goodwill Cricket Match between ICSI-WIRC and MCA Team.

At the end, Trophies were distributed by Dignitaries of MCA offices and Dignitaries of ICSI-WIRC as under:

From MCA Office	From ICSI-WIRC
1. Shri S M A Millath	1. Shri Atul Mehta
2. Shri Mahesh Kuvadia	2. Shri Mahavir Lunawat
3. Shri Henry Richard	3. Shri Hitesh Kothari
	4. Shri Sanjay Gupta
	5. Shri Kaushik Jhaveri

Shri Atul Mehta and Shri Mahavir Lunawat (Central & Western Region Council Members) appreciated and thanked all officers, Representatives of MCA Team, all players of WIRC-ICSI, Shri Kaushik Jhaveri, Event Co-ordinator and Staff members of WIRC-ICSI for organizing Third Cricket Event in a best friendly manner.

KANDIVALI STUDY CIRCLE – WIRC – ICSI

The Study Circle Meeting on 5th September, 2010 at Landmark Restaurant, Malad (West), Mumbai between 9.30 a.m. and 1.00 p.m.

Mr. Nilesh Trivedi - Practising Company Secretary & Director, Aretha Advisors Pvt. Ltd, was handed over a flower bouquet as

a token of acknowledgement from KANDIVALI STUDY CIRCLE – WIRC.

Mr. Nilesh Trivedi started his presentation on *Banking Regulations Act vs Companies Act* in detail with Power Point Presentation. The learned speaker also interacted with the Members and cleared all the doubts. The entire presentation was very lively and educative.

The experience on the subjects was shared extensively. The attendees were also conversant with the subjects and thus it happened to be very interactive and informative. All kinds of exceptions were discussed and the members were enlightened of various issues of the subjects.

The Meeting ended with a vote of thanks and as a token of love, the memento was presented to the speaker.

The Study Circle Meeting held on 10th October, 2010 at Landmark Restaurant, Malad (West), Mumbai between 9.30 a.m. and 1.00 p.m.

Mr. Anil Harish, Advocate, D.M Harish & Co, was handed over a flower bouquet as a token of acknowledgement from KANDIVALI STUDY CIRCLE – WIRC.

Mr. Anil Harish started his presentation on Direct Tax Code and its impact on Individual/Corporate Bodies/Wealth Tax in detail with Power Point Presentation. The learned speaker also interacted with the Members and cleared all the doubts. The entire presentation was very lively and educative. The experience on the subjects was shared extensively. The attendees were also conversant with the subjects and thus it happened to be very interactive and informative. All kinds of exceptions were discussed and the members were enlightened of various issues of the subjects.

The Meeting ended with a vote of thanks and as a token of love, the memento was presented to the speaker.

AHMEDABAD CHAPTER

14th Student Induction Programme from 1st Jan 2011 to 7th Jan. 2011 at Aadarsh Ahmedabad, Navrangpura, Ahmedabad

Chapter of ICSI had successfully conducted 13 Student Induction Programmes in the year 2010. 14th SIP started on the New Year Day at Aadarsh Ahmedabad. The training was led by Mr. Sureshbhai Patel eminent Management Trainee, CS Anand Soni, CS Dhawal Jadhav, Mr Sanjeev Sharma and Mr Jwalant Bhavsar. Shri. S. S. Khandwawala retired Director General Police, Gujarat addressed the students, students were so impressed by the speech he delivered to the youth. 50 Students attended the programme and were awarded with the training completion certificate.

15th Student Induction Programme from 17th Jan. 2011 to 23rd Jan. 2011 at Aadarsh Ahmedabad, Navrangpura, Ahmedabad

Chapter welcomed the students to 15th Student Induction Programme. Mr Suresh Patel – Management Trainee took the sessions of the training. He conducted training in areas of SWOT, which motivated them towards acquiring their goals. Mr. Sanjeev led the lectures from next day onwards. It started with yoga to bring Self Management and discipline in one's lives. The next level of training was to improve Communication and Leadership Skills. On the last day Mr Anand Soni provided valuable guidance to students about Institute and Profession as a Company Secretary. Participants were impressed by the special skills which they acquired during the week long training.

Training Oriented Programmes (11th, 12th & 13th) From 9th Nov., 2010 to 13th Nov., 2010 At Hira Raman Hall"

2nd Floor Aagam Complex Nr. Vasna Telephone Exchange Vasna Ahmedabad. by Ahmedabad Chapter

Ahmedabad Chapter of WIRC of ICSI had successfully conducted 3 Training Oriented Programmes with 125 students attending the programme. Ms Sumali Parikh – Admin Officer Ahmedabad Chapter was the Coordinator for the training which started from 9th Nov., 2010 to 13th Nov 2010 at “Hira Raman Hall” Vasna Ahmedabad.

TOP 11th, 12th, 13th

9th Student Induction Programme from 12th Nov., 2010 to 18th Nov., 2010 at Adarsh Ahmedabad, Navrangpura, Ahmedabad by Ahmedabad Chapter

12th Student Induction Programme from 19th Nov., 2010 to 24th Nov 2010 at Adarsh Ahmedabad, Navrangpura, Ahmedabad by Ahmedabad Chapter

13th Student Induction Programme from 25th Dec. 2010 to 31st Dec. 2010 at Adarsh Ahmedabad, Navrangpura, Ahmedabad by Ahmedabad Chapter

Full Day Programme on CSR “Corporate Social Responsibility” by The ICSI Ahmedabad Chapter on 18th December, 2010. At Inder Residency, Opp Gujarat College, Ellis bridge Ahmedabad

BHOPAL CHAPTER

SEMINAR ON MICRO FINANCE

Bhopal Chapter of WIRC of ICSI has conducted half day seminar on MICRO FINANCE on 24-1-2011 at Hotel Rajhans Regent, ISBT, Bhopal. Programme started with the felicitation of Mr AMIT KUMAR JAIN, newly elected member of Western Indian Regional Council (WIRC). Thereafter New Management Committee of Bhopal Chapter was introduced. Mr. M. M Chawla Chairman, Bhopal Chapter Inaugrated the session.

CS Amul Urdhwarshene gave the presentation on MICRO FINANCE. CS Piyusha Mantri, Member, Management Committee, Bhopal Chapter distributed the Certificates to the students present at the programme. Mr Dhanraj S Thakur, Secretary, Bhopal Chapter gave the vote of thanks. Programme ended with interactive Question Answer session.

INVESTOR AWARENESS PROGRAMME

Bhopal Chapter of WIRC of ICSI has conducted INVESTOR AWARENESS PROGRAMME on 24-1-2011 at Hotel Rajhans Regent, ISBT, Bhopal. CS Amreen Khan introduced the speakers of the Programme. Mr Rahul Dubey, Manager, L & T Mutual Fund briefed about concept of Mutual Funds in India. Mr. P K Rai, Vice Chairman Bhopal Chapter gave vote of thanks to him.

Thereafter Mr Vipin Kothari, Stock Analyst & Treasurer, Bhopal Stock Investor Association, gave his presentation on stock market and DO's & Dont's for the investors. Mr Avadhesh Parashar gave vote of thanks to him. Programme ended with the vote of thanks by CS Piyush Bindal, Member, Management Committee, Bhopal Chapter.

60-70 persons attended the programme.

PUNE CHAPTER NEWS

1. JOINT PROGRAMME ON COMPLIANCES UNDER FEMA, EXTERNAL COMMERCIAL BORROWINGS AND FOREIGN DIRECT INVESTMENTS

Pune Chapter had organized a Joint program with Centre for Corporate Governance, Research & Training [CCGRT], Navi Mumbai on “Compliances under FEMA,

External Commercial Borrowings and Foreign Direct Investments” on Saturday, November 13, 2010 at CCGRT, Mumbai.

The Programme received an overwhelming response from the Members and other participants. All the sessions were very informative and well appreciated by the gathering.

2. FULL DAY CONFERENCE FOR CS STUDENTS

Pune Chapter had organized a Full day Conference for students on November 27, 2010 at the Chapter Premises. Mr. Pramod Behere, Mr. Atul Gopal, Mr. Kishor Phadke, Mr. Mahesh Anant Athavale were the eminent faculties for the programme.

In all 75 students were present for the programme. The programme was well received by the members

3. 4th MANAGEMENT SKILLS ORIENTATION PROGRAMME [MSOP]

Pune Chapter had organized 4th MSOP programme from 6th December to 24th December, 2010 for CS Students who cleared their final/professional exams. Total 44 Students attended the programme at Cummins Hall, Pune Chapter of WIRC of ICSI. CS Shridhar Kulkarni Chairman Pune Chapter distributed MSOP certificates to all the participants.

4. PARTICIPATION IN SAKAL CAREER FAIR

Pune Chapter has participated in Sakal Career Fair from 9th December, 2010 to 12th December, 2010. The programme was well received by the members as well as students.

5. FULL DAY SEMINAR ON “DEMISTIFYING INTELLECTUAL PROPERTY RIGHTS”

Pune Chapter had organized a Full day seminar on “Demystifying Intellectual Property Rights” on December, 11, 2010 at MCCIA, Tilak Road, Pune. In all 37 delegates were present for the seminar.

Mr. Harish Sheth, Adv. Vaishali Bhagwat, Mr. Anirudha Valanskar were the eminent faculties for the Seminar. The Programme received an overwhelming response from the Members and other participants. All the sessions were very informative and well appreciated by the gathering

6. INAUGURATION OF FOUNDATION JUNE, 2011 OTC BATCH

Oral Tuition Classes (OTC) conducted at Pune Chapter are among the best in Pune and the new batch for Foundation level students for June, 2011 exams was started on December 13, 2010.

7. FULL DAY SEMINAR ON “DUE DILIGENCE”

Pune Chapter had organized a Full day seminar on “Due Diligence” on December 18, 2010 at Hotel Coronet, Pune. In all 45 delegates were present for the seminar.

Mr. J. Sundhareshan, Mr. Manik Mahajan were the eminent faculties for the Seminar. The Programme received an overwhelming response from the Members and other participants. All the sessions were very informative and well appreciated by the gathering

8. INAUGURATION OF EXECUTIVE BATCH OF OTC OF PUNE CHAPTER FOR JUNE, 2011 EXAMS

Oral Tuition Classes (OTC) conducted at Pune Chapter are among the best in Pune and the new batch for



Executive level students for June, 2011 exams was started on December 20, 2010.

9. 3RD STUDENTS INDUCTION PROGRAMME

Pune Chapter had organized its 3rd SIP programme from 20-12-2010 to 29-12-2010 for CS Students who registered for Executive programme level. Total 150 Students attended the programme at Pudumjee Hall, Mahratta Chamber of Commerce, Industries and Agriculture (MCCIA), Tilak Road, Pune.

NAVI MUMBAI

On January 9, 2011, a Study Circle meeting was organized by Navi Mumbai Chapter of WIRC and Mr. Harshul Shah, (Advocate), addressed the participants on an interesting topic titled "Stamp Duty An Overview" Mr. Harshul Shah made an excellent presentation of various aspects related to the Stamp Act and dealt with numerous finer issues and the related nuances in detail. The programme was very interactive with greater emphasis on practical tips and was attended by many members.

RAIPUR CHAPTER

Study Circle Meeting on Corporate and Individual Taxation

On 29-1-2011, Raipur Chapter of WIRC of the ICSI organized a Study Circle Meeting on Corporate and Individual Taxation at its premises. Speaker CS Mahendra Agrawal, a Member of the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India started his presentation with the introduction of the topic. During his presentation he explained some very important and useful provisions of taxation like concept of deemed dividend, provisions of Income-tax Act applicable to closely-held vs. widely-held companies, precautions to be taken while preparing the Income Tax returns, consequences of not filing of Income Tax return within the stipulated time, provisions relating to Minimum Alternate Tax (MAT) and Tax Deducted at Source (TDS), consequences of not depositing amounts deducted from the employees towards Provident Fund contribution by the Company. He also elucidated the current tax rates of Individuals as well as Companies. He further discussed latest amendments in the provisions of the Income-tax Act and discussed its consequences. The Speaker concluded its presentation with practical impact of e-filing of IT return under Income-tax Act. There were lively interactions throughout the presentation by more than 25 participants present in the meeting.

WIRC has conducted following Career Awareness Programmes in different locations:

Date	Name of School/ College	Total No. of participants
21 Dec. 2010	Royal College of Arts, Science and Commerce, Srishti Housing Complex, Thane-401 104	230
21 Dec. 2010	Bhavitavya 2010, Shroff College, Kandivali	Approx. 1,500
8 Jan. 11	Career Scope 2011, Lala Lajpat Rai Marg, Mahalaxmi Mumbai - 34	Approx. 2,000
8 Jan. 11	Lala Lajpat Rai College of Commerce & Economics, Lala Lajpat Rai Marg, Mahalaxmi, Mumbai - 34	120
18 Jan. 2011	B.N.N. College or Bhiwandi Nizampur Nagarpalika, Bhiwandi	260
18 Jan. 2011	Sanskardham Kelavani Mandal's Jashbhai Maganbhai Patel College of Commerce, Goregaon (W)	150

25 Jan 2011	THAKUR COLLEGE OF SCIENCE AND COMMERCE – Session on Career Awareness	250
25 Jan 2011	THAKUR COLLEGE OF SCIENCE AND COMMERCE KANDIVLI (E) – Session on Capital Market & its relation with professional studies	250
25 Jan 2011	THAKUR COLLEGE OF SCIENCE AND COMMERCE – Stall for Counselling	250

Career Awareness Sessions 2011 at Goa

18 Jan 2011	Government College of Arts, Science & Commerce, at Quepem, Goa	125
18 Jan 2011	Sheela Premanand Vaidya College of Science & Commerce, Assagao, Bardez	310
18 Jan 2011	Kendriya Vidyalaya, Vasco Da Gama	120
19 Jan 2011	Rosary College of Commerce & Arts, Navelim Salcete	600
19 Jan 2011	DM's College of Arts, S. P. Vaidya College of Science & V.N.S. Bandekar College of Commerce, Badez	160
20 Jan 2011	Fr. Agnel College of Arts & Commerce, Pilar	420
20 Jan 2011	KENDRIYA at BAMBOLIM CAMP, PANAJI	98

ICSI-WIRC

List of forthcoming programmes for February & March, 2011

Date	Particulars	Venue
27-2-2011	Study Circle Meeting on "Happening of Various Important Events and Relevant E- Filing Issues in MCA & Easy Exit Scheme, 2011"	Andheri
4-3-2011	Study Circle Meeting on Budget Analysis	WIRC Premises at 6.30 pm
5-3-2011	Full Day Seminar on "Risk Management"	Bajaj Bhavan, Nariman Point, Mumbai
18-3-2011	Study Circle Meeting on "IPR"	WIRC Premises
19-3-2011	Half Day Seminar	Ghatkopar
26-3-2011	Full Day Seminar on Corporate Social Responsibilities	IMC, Mumbai
27-3-2011	Study Circle Meeting	Andheri

KANDIVALI STUDY CIRCLE

ICSI-WIRC Kandivali Study Circle to hold 'Budget Analysis-2011' on 6 March, 2011 at Landmark Building, Link Road, Mithi Chowki, Malad West, Mumbai-400 064. Speaker: CA Mayur Naik Timings: 9.30 a.m. to 1.00 p.m. Free for members of Kandivali Study Circle and for others ₹ 250/- (breakfast included). Members in practice attending this study circle will be entitled to 2 credit hours. Co-ordinators: CS Prashant Diwan (09821136819) and CS Sanjay Dholakia (09870031365)





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

INDORE CHAPTER OF WIRC OF THE ICSI

Organize

TWO DAYS SEMINAR ON CRITICAL ISSUE IN COMPANY LAWS

Date : 5th-6th March, 2011, Saturday and Sunday

Topics to be covered and Galaxies of the Faculties

- Inaugural Session – Release of Chapters Directory - 2011
- Critical Issues on Corporate Laws – Dr K. R. Chandratre, Past President, ICSI
- FAQ on Merger/Demerger – CS Ashok Mehta, Ex Chairman, MPSE & WIRC
- Open House Session about recent development in the Profession
- FDI Rules and Provisions – CS Makarand Lele, Chairman, WIRC
- Government Companies – CS Piyush Mathur, CGM, M. P. Laghu Udyog Nigam Ltd
— CS S. K. Vidhan, Manager, M. P. Warehousing & Logistics Co. Ltd.
- Visionary Session on Professionals
— Shri Varun Gupta, CS, CEO Proton Business School

WIRC Chairman Shri Makarand M. Lele is visiting the Chapter for the first time after occupying the position of WIRC Chairman and hence Chapter has planned his felicitation.



Cultural Night



Programme will be followed with the Cultural Night.

FEES

(Incl. Backgrounder, breakfast, lunch, dinner & snacks)
•Members– ₹ 3,000/- •Students– ₹ 2250/-
(Early Bird Discount upto 25th February of ₹ 500/-)

For registration please contact:

Indore Chapter of WIRC of ICSI
B/1-2-3, Ashray Apartment, 2/1, Manoramaganj, Indore (MP) 452 018
Phone: 0731-2494552, 4248181, email: indore@icsi.edu & icsi.indore@gmail.com

(CS ASHISH GARG)
Programme Director – Member WIRC

(CS ASHISH KARODIA)
Secretary

(CS KAMLESH JOSHI)
Chairman

(CS RITESH GUPTA)
Chairman PDC

Raipur Chapter

Raipur Chapter jointly with Nagpur & Bhopal Chapter is hosting a Two Day programme on the theme

“Existing and Emerging Horizon of the Profession”
on 12th & 13th of March, 2011 at Raipur

A closely held Public Limited Company is desirous of appointing a Company Secretary and invites applications from prospective candidates. The candidate should be a Member of the Institute of Company Secretaries of India, preferably possessing experience of 4-5 years in related areas. Remuneration package will be commensurate with experience. Interested candidates may apply to :

Box No. 42045

The Institute of
Company Secretaries of India
Western India Regional Council (WIRC)
13, Jolly Maker Chambers No. 2,
1st Floor, Nariman Point,
Mumbai-400 021.

WANTED

A COMPANY SECRETARY

We are looking for a qualified Company Secretary for a Private Limited Company with at least 3 years relevant experience with a reputed company. A prospective candidate should have good knowledge of Secretarial, Legal, FEMA, Stock Exchange and Listing Agreement related matters. Freshers can also apply

Please send your resume to

Box No. 42047

C/o. The Institute of Company
Secretaries of India Western India
Regional Council (WIRC)
13, Jolly Maker Chambers No. 2,
1st Floor, Nariman Point,
Mumbai-400 021.

A Reputed Professionally Managed Investment/Trading Company having international affiliation requires following personnel for its office at Nariman Point

COMPANY SECRETARY

Candidate should be a member of the Institute of Company Secretaries of India.

The candidate should have good knowledge of Secretarial and Legal matters such as compliance with various laws, filing of various documents/returns with the RoC, drafting of minutes/agreements, mergers & amalgamations, trade marks, stamp duty and FEMA. Freshers can also apply

Salary & perquisites will not be constraint for the right candidate.

Apply with resume within 7 days to
Metmin Investment & Trading Pvt. Ltd.
161/162, Mittal Court, "A" Wing,
16th Floor, Nariman Point,
Mumbai-400 021.

A Public Limited Company engaged in manufacturing of chemicals is desirous of appointing a Company Secretary and invites applications from prospective candidates. The candidate should be a Member of the Institute of Company Secretaries of India, preferably possessing experience of 3-4 years in related areas. Remuneration package will be commensurate with experience. Interested candidates may apply to :

Box No. 42044

The Institute of Company Secretaries of India
Western India Regional Council (WIRC)
13, Jolly Maker Chambers No. 2,
1st Floor, Nariman Point,
Mumbai-400 021.

Dear Company Secretaries,

For professional services regarding distribution of Quarterly results, Media & Analyst meet, Plant visits as well as other Investor Relations requirements.

Please Contact,

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Address

**Next Level Media
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4th Floor, Podar Chambers,
S. A. Brelvi Marg,
Fort, Mumbai-400 001.

Email : info@nxtlmediacomm.com

WANTED

A COMPANY SECRETARY

A Limited Company providing financial and business services require a qualified Company Secretary having 3-4 years post qualifications experience. Freshers who have obtained practical experience prior to qualifying may also be considered on merits.

Interested candidates may apply within the next 15 days to

The HR Manager,

IRIS Business Services Ltd.

T-131, Tower 1, 3rd Floor,
International Infotech Park,
Vashi, Navi Mumbai-400 703.

REQUIRED

COMPANY SECRETARY

We are fast growing Satara based Engineering Company and looking for a Company Secretary. The position offers challenging work environment

Eligibility criteria:

CS with 3-5 years experience in similar industry. Persons with additional CA/ICWA qualifications will be preferred.

Interested candidates may send their resume mentioning current salary/earnings and expected salary to,

The HR Manager,
Kay Bouvet Engineering Pvt. Ltd.
N-3, Additional MIDC Area,
SATARA-415 004
Email : info@kaybouvet.com

WANTED

A COMPANY SECRETARY

A Private Limited Company providing management advisory services require a qualified Company Secretary having 1-2 years post qualification experience. Freshers who have obtained practical experience prior to qualifying may also be considered on merits.

Interested candidates may apply within the next 15 days to :

The Director,

**Diamond Management &
Technology Consultants P. Ltd.**

Room No. 1101, Taj Lands End,
Bandstand, Bandra (W),
Mumbai-400 050.

ICSI WIRC's seminar on Corporate Social Responsibilities held on 18-12-2010



Mr. Balkrishna Parab (*Professor, JBIMS*), Mr. Shirish Sangle (*Professor NITIE CSR a Strategic Perspective*), Mr. S. M. A. Millat (*Regional Director, MCA*), Mr. Vishal Bhardwaj (*General Manager, Ambuja Foundation*),
Venue : At Terrace Hall, West End Hotel, 45 New Marine Lines, Opp. Bombay Hospital Mumbai- 400020.

Cricket match 2011 organised by ICSI WIRC with MCA on Saturday 8-1-2011



Mr. S. M. A. Millat (*Regional Director, MCA*), Mr. Henry Richard (*Registrar of Companies*)



Group Photo of MCA Official & Few Members of WIRC
Venue : At Azad Maidan, Mumbai

Full Day Seminar on Due Diligence held on 27-11-2010



Mr. Krishna Chaturvedi (*Director, Deloitte*), Mr. M. V. Phadke (*General Manager, Legal IDBI*),
 Ms. Neeta Phatarphekar (*CS, Associate Director, Pricewaterhousecoopers*)
 Mr. Vijay Paradkar (*Senior Vice- President & Head Merger & Acquisition, Mahindra & Mahindra*),
 Mr. Narayan Shankar (*Company Secretary, Mahindra & Mahindra Limited*)
 Venue : At Orchid Hotel, 70C, Nehru Road, Vile Parle (East), Mumbai- 400099.

Half Day Seminar on Event of India Corporate Week IFRS held on 21-12-2010



Mr. Ram Mohan Bhawe (*CA, CS & ICWA, Ex-CFO, Reliance & Consultant IFRS*)
 Venue : At WIRC Premises

Study Circle Meeting On Practical & Finer Aspects of Merger & Amalgamation held on 30-1-2011



Mr. G. Hariharan (*Group Legal Council & Head Corporate Governance of Ak.*)
 Venue : At Sardar Vallabhbhai Engineering College, Andheri (West), Bhavan's College

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

Date of Posting

To

If undelivered, please return to :

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 • Fax : 2285 0109

Space for Address