E-NEWSLETTER January, 2013

CORPORATE JOURNAL

"TO FACILITATE OVERALL PROFESSIONAL DEVELOPMENT WITH ENLIGHTENED INFORMATION"

Knowledge is the combined feature of continious Learning and Sharing.

⇒ Editorial Board

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DISCLAIMER

Articles / other materials and suggestions are invited from the Members for publication in forthcoming Issues. All articles submitted will be subjected to review and published only after accepted for publication.

Kindly send the articles and other relevant material for publication along with your photograph at ankursrivastavacs5985@gmail.com. We assure that we empower you with the knowledge you seek.

========================== **FROM THE EDITOR** ==========================

Dear Professional Colleagues & Friends,

CS Ankur Srivastava
Editor

It gives me immense pleasure to present before you first E- Newsletter. I believe that to stand as a learned professional in the present corporate world, it is extremely essential to be familiar with the recent amendments made by the Government.

The growth of a profession depends upon the growth of the professional. The current corporate world requires smart professionals equipped with latest technical and professional knowledge and skills to cater to the new and emerging issues in addition to business strategies, compliance management and governance.

The scope and the role of Company Secretaries are expanding with each passing day. With the help of this E- News letter, I made an attempt to bind the we corporate sapience and highlight the update, share views and discuss the activities of the Institute and most importantly provide them opportunity to remain connected. As the quote use on the cover of this issue, *“Knowledge is the combined feature of continuous Learning and Sharing”* the E-newsletter will ofcourse provide you an opportunity to acquire knowledge by way of learning and sharing. It is also an embodiment of the manifold talents in our enthusiastic youth.

I would like to congratulate my co-member of the editorial board CS Shruti Srivastava for her support, motivation and co-operation to initiate this activity.
Happy Reading.

CS Ankur Srivastava
Editor

=============================== **ARTICLES** ===============================

Revised procedure for the Appointment of Cost Auditor by Companies

CS Ankur Srivastava

In continuation of the General Circular No. 15/2011 dated 11th April 2011, Ministry of Corporate Affairs has issued a Circular No. 36/2012 on 06th November, 2012 and further revised the procedure for the appointment of the Cost Auditors by the Companies as under:

(a) The company shall, within thirty days from the date of approval by MCA of the application made to the Central Government in the prescribed Form 23C seeking its prior approval for the appointment of cost auditor, issue formal letter of appointment to the cost auditor, as approved by the Board.

(b) The cost auditor shall, within thirty days of the date of formal letter of appointment issued by the company, inform the Central Government in the prescribed form 23D, along with a copy of such appointment letter.

(c) In case of change of cost auditor caused by the death of existing cost auditor, companies are allowed to file fresh e-form 23C, without any additional fee, within 90 days of the date of death.
The additional fee payable as per the Companies (Fees on Applications) Rules, 1999 [as amended] shall become applicable after expiry of the said 90 days. Accordingly, e-forms 23C and 23D are being modified to capture such details.

(d) In case of change of cost auditor for reasons other than death of the existing cost auditor, companies are required to file fresh e-form 23C with applicable fee & additional fee, clearly specifying the reasons of change. In case of change due to resignation of the existing cost auditor, e-form 23C should be accompanied by the resignation letter of the existing cost auditor. In case of change due to the management policy of periodical rotation, then attach a copy of the Board approved rotational policy with the e-form 23C. In any other case, the change should be duly justified and supported with the relevant documents.

(e) In order to ensure compliance of section 224(1-B) of the Companies Act 1956, required changes are being made in the MCA21 system to restrict the number of cost audit approvals to the limits specified in section 224(1-B) through a counter on the membership number of the sole proprietor or partner of the firm.

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It will be further ensured that in case of a sole proprietor, he has completed the audit and submitted the cost audit report. In case of a partnership firm, the partner so appointed or any other partner of the same firm is allowed to complete the audit & submit cost audit report subject to his total numbers not exceeding the limit specified in section 224(1-B).

Furthermore, all companies and cost auditors are hereby informed to carefully verify all particulars before uploading e-forms 23C or 23D on the MCA21 portal. In any rare case, if still any error/mistake is observed, it should be brought to the notice of MCA well before its approval enabling it to return the said e-form for re-submission after making the required corrections. Else, the companies and cost auditors shall be required to file fresh e-forms 23C & 23D containing correct particulars, along with the applicable fee and additional fee.

The modifications contained in this circular shall be effective from the financial year commencing on or after the **1st day of January, 2013.**

Thanks & Regards:
CS Ankur Srivastava
E-mail: ankursrivastavacs5985@gmail.com

================================ ARTICLES ================================

Companies Bill 2012

The much awaited Companies Bill has been passed by the Lok Sabha on the 18th of December whereby replacing the 55 year old Act. The Companies Act, 1956 was enacted with the object to consolidate and amend the law relating to the Companies and certain other associates. The said Act has been in force for a period about fifty five years and amended several times as and when deemed necessary.

The promulgation of the new Act is a step towards globalisation and is an attempt to meet the changing environment and is progressive and futuristic duly envisaging the technological and legal developments. The new law surely promises investor democracy and addresses the public concern over corporate accountability and responsibility and introduces industry friendly provisions.

The Companies Bill, 2011, is organized as 29 chapters, 470 sections and 7 scheduled. A substantial part of the law will be in form of Rules, to be prescribed separately. 33 new definitions have been introduced.

The key highlights of the new Companies Bill are summarized as under:

INCORPORATION

- A private company can have a maximum of 200 members as against 50 in the Companies Act, 1956.
- The concept of One Person Company has been introduced. This company shall be a private limited company.
- Concept of dormant companies has also been introduced. It can be formed for a future project or to hold an asset or intellectual property.
- All companies to follow uniform financial year, commencing on 1st April and running upto 31st March. Exceptions can however be made with the approval of NCLT.
- Prospectus has to be more detailed.
- Money raised through a prospectus cannot be used for dealing in equity shares of another company. If a company changes terms of the prospectus or objects for which the money is raised, it shall provide an exit opportunity to the dissenting shareholders.
- ‘Private placement‘ defined, with detailed provisions for such placement.
- If a Company having share capital at any time proposes to increase its subscribed capital by issue of further shares, such shares may also be offered to employees by way of ESOP, subject to the approval of shareholders by way of Special Resolution.

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- NBFCs to be governed by Reserve Bank of India Rules and not by the provisions relating to acceptance of deposits.
- Companies can accept deposits only from its members, that too after obtaining the approval of its shareholders. Acceptance of deposit shall also be subject to compliance with certain conditions.
- Public companies can accept deposit from public on compliance with certain conditions like credit rating.

ADMINISTRATION

- Listed companies are required to file a return in a prescribed form with the Registrar with regards to change in the number of shares held by promoters and top 10 shareholders of such company, within 15 days of such change.
- Postal Ballot to be applicable to all the companies, whether listed or unlisted.
- Interim dividend in a current financial cannot exceed the average rate of dividend of the preceding three years if a company has incurred loss up to the end of the quarter immediately preceding the declaration of such dividend.
- The National Advisory Committee on Accounting Standards renamed as The National Financial Reporting Authority.
- The authority to advise on Auditing Standards and Accounting Standards.

AUDIT & AUDITORS

- Financial statements include Balance Sheet, Profit & Loss Account and cash flow statements.
- Provisions for re-opening or re-casting of the books of accounts of a company provided.
- Every company is required at its first annual general meeting (AGM) to appoint an individual or a firm as an auditor. The auditor would hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting. The appointment of the auditor is to be ratified at every AGM.
- Individual auditors are to be compulsorily rotated every 5 years and audit firm every 10 years in listed companies & certain other classes of prescribed companies.
- Auditors have to comply with Auditing Standards.
- A company's auditor shall not provide, directly or indirectly, the specified services to the company, its holding and subsidiary company.
- A partner or partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal, as provided in this Bill or in any other law for the time being in force. If it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, then such partner or partners of the firm shall also be punishable

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================================ **ARTICLES** ================================

DIRECTORS

- Prescribed class or classes of companies are required to appoint at least one woman director.
- At least one director should be a person who has stayed in India for a total period of not less than 182 days in the previous calendar year.
- At least one-third of the total number of directors of a listed public company should be independent directors. Existing companies to get a transition period of one year to comply.
- Liability of independent directors and non-executive directors not being promoter or key managerial personnel to be limited.
- A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.

GOVERNANCE

- Companies with more than 1,000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year to constitute a Stakeholders Relationship Committee, with a non-executive director as a chairperson and such other members as may be decided by the board.
- A permission of Central Government is not required to give a loan to a director.
- The provisions on inter-corporate loans and investment (372A of Companies Act 1956) extended to include loan and investment to any person.
- No Central Government approval required for entering into any related party transactions or for appointment of any director or any other person to any office or place of profit in the company or its subsidiary.
- Prohibition on forward dealings in securities of company by any director or key managerial personnel.
- Prohibiting insider trading in the company.
- No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the Company's Auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under clause 133.
- Creation of treasury stock/trust shares is prohibited.
- Every listed company or such class or classes of companies, as may be prescribed, to establish a vigil mechanism.

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=============================== **ARTICLES** ================================

OTHER PROVISIONS

- Statutory recognition to audit committee, remuneration committee and stakeholders relationship committee of the Board and the Chief Executive Officer, Chief Financial Officer and the Company Secretary to be as Key Managerial Personnel.
- The Bill provides provisions related to Corporate Social Responsibility (CSR).
- The Bill provides for class action suit by specified number of members or depositors against the company except the banking company, which is prevalent in developed countries.
- The Bill provides for specific provisions related to any act of fraud.
- The process for declaring a company sick and its revival and rehabilitation has been rationalized.
- The National Company Law Appellate Tribunal shall now consist of a combination of technical and judicial members not exceeding 11, instead of 2 as provided in the Companies Act 1956.
- The Central Government may establish as many special courts as may be necessary to provide speedy trial of offences.
- The Central Government may establish a mediation and conciliation panel.
- The Bill makes provision for cross border amalgamations between Indian companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the central government.
- Where any valuation is required to be made of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the Act, it shall be valued by a registered valuer.

With Kind Regards:

CS Shruti Srivastava
E-mail: csshrutisrivastava@gmail.com

========================= MOTIVITAIONAL SIDE ==========================

Go Ahead

When u believe in yourself
Don't care about anyone else
If u think you are right
Then go ahead and follow your might.

If you are perfectly sure that you are not doing any wrong
Even its not harming anyone's right
Then go ahead and follow your guide

If you are confident that you will make it up
And can let the raising voice to shut
Then go ahead and make your future bright

> When you believe in yourself;
> Don't Care about anyone else;
> If you Believe in your Goal;
> Have guts to Move Alone;
> Then go ahead and fight for it till long.

If you believe in truth
And can fight against the wrong
Then go ahead and fight for it till long

If you believe in your goal
And have guts to go alone
Pack your satchel and move ahead.
Because you are one who can make difference.

Motivation Lines composed by :
CS Charu Srivastava

XBRL FILING-2012

FINANCIAL STATEMENTS

Vide General Circular No: 16/2012 dated 6th July 2012, Ministry of Corporate Affairs has decided that companies falling in the following categories will have to file their Balance Sheet and Profit & Loss Account under section 220 of the Companies Act, 1956 using the Extensible Business Reporting Language (XBRL) taxonomy for financial year commencing on or after 01.04.2011:-

1. all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
2. all companies having paid up capital of Rupees Five Crore and above; or
3. all companies having turnover of Rupees One Hundred Crore and above; or
4. all companies who were required to file their financial statements for FY 2010-11, using XBRL.

However, banking companies, Power companies, Non Banking Financial Companies (NBFC) and Insurance companies are exempted from XBRL filing till further order.

All XBRL filing companies are allowed to file their financial statements without any additional fee/penalty upto 15th January, 2013 or within 30 days of the date of their AGM, whichever is later.

For details, kindly see Ministry's General Circular No: 16/2012 dated 06.07.2012 and 34/2012 dated 25.10.2012

COST AUDIT REPORT AND COMPLIANCE REPORT

Ministry of Corporate Affairs has mandated filing of the Cost Audit Report and Compliance Report from the financial year 2011-12 onwards (including overdue reports relating to any previous year) by using the XBRL taxonomy vide General Circular No. 8/2012 dated 10.5.2012 [as amended on 29.6.2012] and No. 18/2012 dated 26.7.2012. All such companies that are NOT covered under the company specific Cost Audit Orders issued prior to 31.3.2011 and/or under the industry specific Cost Audit Order No. 52/26/CAB-2010 dated 2nd May 2011, 30th June 2011 and 24th January 2012 are not required to file Cost Audit Report. However, companies meeting with the threshold limits as prescribed in the relevant Cost Accounting Records Rules 2011 are required to file Compliance Report in the XBRL format.

All Cost Auditors and the Companies concerned are allowed to file their Cost **Audit Reports and Compliance Reports for the year 2011-12** [including the overdue reports relating to any previous year(s)] with the Central Government **in the XBRL mode, without any penalty, within 180 days from the close of the company's financial year to which the report relates or by January 31, 2013, whichever is later**.

================================ UPDATES ================================

NEW E-FORM 18 MODIFIED NEW

Ministry of Corporate Affairs has issued a notification dated 24/12/2012 and modified e-form 18 **w.e.f. 25/12/2012. Accordingly, the proof of the registered office is to be attached with e-form 18.** In case the office is not owned by the Company and not taken on lease following is to be attached with form 18:

1. No objection certificate from the director, if the office is owned by the Director and the company has not taken on lease; or

2. A proof that the company is permitted to use the address as the registered office of the Company if the same is owned by any other entity / person (not taken on lease by the Company).

Circulars issued by Ministry of Corporate Affairs during the Month of December, 2012

	Date	Description
General Circular No. 43/2012	26.12.2012	Filing of Cost Audit Report and Compliance Report in the eXtensible Business Reporting Language (XBRL) mode.
General Circular No. 42/2012	21.12.2012	Filing of Form 68 for rectification of mistakes in Form 1,Form 1A and Form 44
General Circular No. 41/2012	18.12.2012	Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode for the financial year commencing on or after 01.04.2011-Corrigendum to General Circular No:39/2012.
General Circular No. 40/2012	17.12.2012	NOC from the concerned regulator / Institute for LLP Name approval / incorporation
General Circular No. 39/2012	12.12.2012	Filing of Balance Sheet and Profit and Loss Account in extensible Business Reporting Language (XBRL) mode for the financial year commencing on or after 01.04.2011

================== COMPLIANCE OF LISTING AGREEMENT ==================

Compliance of Listing agreement for the quarter ended 31st December, 2012 are as under:

Sr. No.	Compliances	Time Period
1.	Notice of Board Meeting to the Stock Exchange to consider the Annual Results	At least 7 clear days before the Meeting excluding the date of meeting and notice
2.	Press release for Board Meeting (Eng.+Hindi)	Simultaneously i.e. as above
3.	Board Meeting to consider the Qtr. Results	Within 45 days form the end of Quarter.
4.	Fax of Qtr. Result to SE	Within 15 minutes of Board Meeting
5.	Submission of Qtr. Results	Immediately after board meeting and sending fax, Quarterly Results are to be submitted to Stock Exchange along with Limited review report.
6.	Publication of Qtr. Result (Eng.+Hindi)	Within 48 hours of Board Meeting
7.	Shareholding Pattern Under Clause 35	Within 21 days of end of Quarter
8.	Reconciliation of Share Capital Audit Report from PCS for reconciliation of physical share and Demat shares	Within 30 days of end of Quarter
9.	Quarterly Compliance Report on Corporate Governance Under Clause 49	Within 15 days of end of Quarter
10.	Limited Review Report from the Statutory Auditors (in case the results are Unaudited)	Within 45 days form the end of Quarter. (Limited review report is to be submitted along with quarterly results)