E-NEWSLETTER October, 2013

CORPORATE JOURNAL

"TO FACILITATE OVERALL PROFESSIONAL DEVELOPMENT WITH ENLIGHTENED INFORMATION"

"EVERYTHING IN YOUR LIFE IS THE REFLECTION OF YOUR CHOICE YOU HAVE MADE, IF YOU WANT DIFFERENT RESULT, MAKE A DIFFERENT CHOICE."

⇒ INSIDE

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

CS Ankur Srivastava
Editor

Dear Professional Colleagues & Friends,

Companies Act, 2013 has not only inducted but also part thereof has been notified. Draft Rules are under the process of finalization. However, Companies Act, 1956 has not been repealed completely, which has created a lot of confusion in the mind of stakeholders at large. Therefore, MCA has issued a set of clarification for proper administration of the new Act.

The new Law has been put in place by the Government with best intentions and it is now the turn of the Corporate Sector to show that it will play accordingly. However, the Government on its part must keep watch.

After a short drama the Indian Rupee has attain its value, to an extent. The measures announced by the new RBI Governor Shri Raghuram Rajan on his debut combined with a fall in international crude prices have largely contributed to the rupee appreciation. However, regular reform-oriented policies and implementation thereof are required to maintain the momentum.

We live in the world of Change. Things change faster than one can keep up with them. To cope up with such change we need to educate ourselves and develop a habit of enlightening ourselves with every change. Even normal happenings around us have a tendency to educate us. Thus, step towards holistic and continues process of learning and developing yourself as a competent Professional.

Best wishes and safe time to all during the Festive Season.

All the Best and keep contributing towards the betterment of our profession.

Happy Reading.

CS Ankur Srivastava
Editor

================================ **ARTICLE** ==================================

CORPORATE SOCIAL RESPONSIBILITY

CS Shweta Sharma

As per the **new Companies Act, 2013**, which has replaced nearly six-decade old legislation in India, all profitable companies would have to spend every year at least 2 per cent of three-year average profit on CSR works.

This would apply to the companies with a turnover of Rs. 1,000 crore and more or net worth of Rs. 500 crore and more, or a net profit of Rs. 5 crore and more.

The new rules, which would be applicable from 2014-15, also requires the companies to set up a CSR committee of their board members, including at least one independent director on the CSR committee.

"This money would not come from the government of India. It is the companies' money and they can spend as per the decision taken by the CSR committee of their board. But they must report the same,"

The companies have been asked to give preference to their local area of operations for such CSR activities while those not being able to spend the required amount would need to specify the reasons for the same in their annual CSR report.

According to the draft rules, which would be finalised after taking into account the suggestions from all stakeholders and the general public, CSR should not be seen as "charity or mere donations". It has been proposed that the CSR activities should not be exclusively for the benefit of employees of the company or their family members, while only those CSR activities would be taken into consideration that are undertaken within India.

The companies would need to create a CSR corpus comprising of 2 per cent of net profit while any income from this corpus and the surplus arising out of CSR activities would need to be credited back to CSR corpus. According to industry estimates, the mandatory CSR rules would apply to close to 9,000-10,000 companies.

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MANDATORY PROVISIONS OF CSR:

It has been made mandatory for Corporates that make an average profit of at least Rs. 5 crore or have a net worth exceeding Rs. 500 crore, or their turnover exceeds Rs. 1,000 crore in the last three years to spend 2% of the net profit on CSR. A report by SMC Global Securities Limited states that in the last financial year the combined net profit of listed companies in India was to the tune of Rs. 4,37,167 crores, at 2% the CSR amounts to Rs. 8,700 crores. Undoubtedly such a large sum generated year on year has the potential to alleviate many social as well as environmental issues ailing the nation.

While there may be an overlap between philanthropy and CSR, Indian corporate led by Tatas and Birlas have been voluntarily investing in CSR. Hence, the provision to make CSR spending mandatory is more of an intrusion and it is apparent that by doing so the government is trying to abdicate itself of its social responsibilities. Will not the mandatory provision disrupt the business plans of a many companies? Going by an ETIG research, India Inc will have to scramble to meet the target as only two companies in the Nifty - Ambuja Cement and ITC - currently spend 2% of net profit towards CSR. While not all Tata group companies have disclosed their expenditure on CSR, Tata Steel's sustainability report mentions that the Tata group companies spend 4% of their net profit towards CSR. In fact, the new imposition takes out the sanctity of CSR making it more of a forced exercise and more so a new form of tax on profits.

Those in support of the move argue that by mandating CSR in the Companies Bill, the government has created a process whereby companies are forced to spend on social returns along with financial returns and they are forced to report on such spends. Such a mandatory provision, however noble its intentions may be, could lead to irregularities in revenue accounts and perhaps more corruption. The other point worth considering is will not the mandatory clause give government officials a strong tool to harass companies. Jagannadham Thunuguntla, Strategist & Head of Research, SMC Global Securities Limited, says "While the objective behind CSR is noble, but proper system and procedures need to be implemented for effective usage of such massive amount. Else, there is always a risk of misusage of noble intentions."

While reporting CSR spends in their annual reports and making it public is a measure of good corporate governance, enforcing spending on CSR would perhaps not motivate companies to become more socially responsible. In essence CSR should be done with passion and dedication, and not because it is thrust upon.

Cont…

================================ **ARTICLE** =================================

CSR FOR CORPORATES AS WELL AS FOR SMEs:

Although the corporate social responsibility (CSR) policies that have long been in place at large multinational corporations popular at small to medium-sized enterprises (SMEs), such companies continue to face resource and operational challenges. Argues that CSR is about the company having an ethos or set of values, sometimes expressed in the vision, mission and goals of the organization, and managing business practices to produce an overall positive impact on society. Suggests that the key lesson is that the types of CSR policies in place at multinational corporations are finding their way into smaller enterprises, often with global corporations acting as the drivers. Offers a four-step programme for implementing a CSR regime in a company. Concludes that, with more multinational customers imposing CSR requirements across their supply chains, the demands on SMEs will escalate not only to put in place citizenship initiatives, but to document, measure and report those efforts.

REGARDS,

ACS SHWETA SHARMA

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================================ ARTICLE ==================================

DIVIDEND MODELS & SHARE VALUATION

CMA Shriram Varadan

Introduction:

The two foremost facets of 'Decisions' for a company are "Investment" & "Financing" Decisions. Investing Decisions determines Companies 'Assets' while Financing Decisions determines Companies 'Liabilities'.

Wealth Maxim:

Investment decisions affect the wealth of the company through 'Return on Investment' (**IRR**) whereas Financing decisions affect the wealth of company through Cost of Capital (**Ko**). When IRR > Ko wealth increases and when IRR < Ko wealth decreases. Thus maximization of wealth is achieved by proper combination of above decisions. The company raises funds through various Sources of Finance, **Invest** in diverse ventures considering the forecasts and thereby earns **Profit**. These Profits are used to service the various finance providers i.e. Financial Institutions, Stakeholders, Suppliers, Customers etc. Out of these service providers, amount financed by the **Shareholders** plays a pivotal role as their contribution is significant and their expectation on return increases, particularly when the growth prospects increase. The predominant shareholders for the companies are Preference Holders, Debenture Holders, & Equity Holders.

A Contracted amount has to be paid as Consideration for Debenture and Preference holders, whereas for Equity Shareholders it is at the disposal of the company to discharge the profits or retain it (i.e. It is at the Option of the company whether to '**Pay Dividend or Not'**) If the company had decided to pay the Equity holders a return by dividend, the onus is on the dividend policy and the quantum of amount to be paid. If paid, the next question arises is that will payment of dividend have impact on shareholders wealth apart from companies wealth and its subsequent impact on share prices.

Dividend Policy Theories – A Phenomenon

Based on the above parameters, two theories have been postulated by Strategic Financial Analysts and are below:

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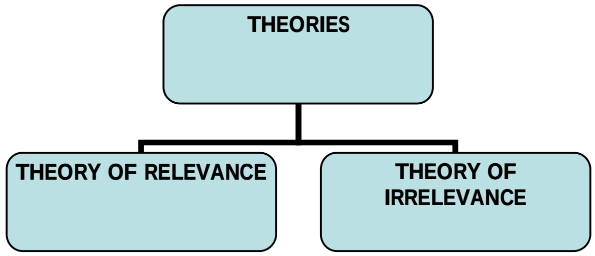
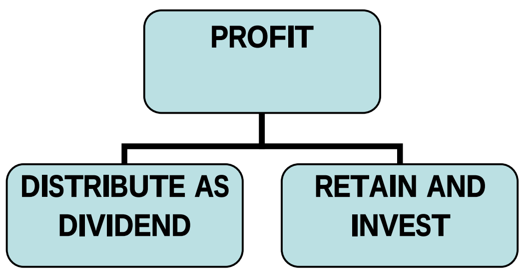


Theory of Relevance was propagated by **Walter** & **Gordon**. They suggested that **Issue of Dividend** erodes the **Wealth** of the company and there will be a decline in the **Share Price** of the company. On the contrary, 'Theory of Irrelevance' was formulated by **Modigliani & Miller** suggesting that issue of dividend has no relevance with share price or wealth of the company.

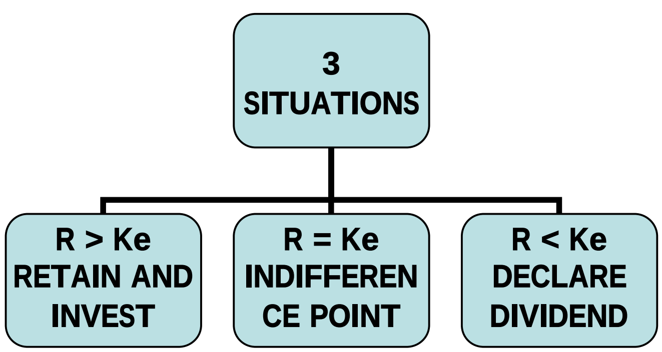
Lets us discuss the various propositions in detail:-

<u>WALTER'S MODEL:</u>

This Model suggests payment of dividend to the stakeholders considering certain key parameters. According to Walter, Companies Profit has two options



If it is to be distributed as Dividend, then Investor can invest on its own @ Ke (Cost of Equity). But if the profit is retained, the company will invest it on behalf of the investors at '**r**' (IRR of new projects). He formulates three situations based the share value on which the decision can be taken



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SITUATION I: The First Situation is defensive on the part of company to retain and invest the profits so that the company can earn more profits, which is far from the expectation of investors.

SITUATION II: Second situation is indifference between retaining and declaring the profits.

SITUATION III: The third alternative is to declare the profits as dividends to stakeholders. This occurs when the company forecasts itself that it will not be able to satisfy investor expectations by venturing into new projects

VALUATION OF SHARE UNDER WALTER MODEL:

D+R/KE [E-D] / KE

Where,

E-D = Retained Earnings (which will be company investments)

Ke - Cost of Equity (Investor expectation i.e. What Investor wants)

D/Ke - Present Value of Perpetual Dividends

E= 1-b/Ke-br (br- Growth rate)

GORDON APPROACH

Gordon's Model too suggests payment of dividend to the stakeholders. But unlike Walter, Gordon suggests Payout (Dividend) either at 100% or Nil %. He contemplates that if dividend is declared there will be no growth, since no growth EPS will be stagnant, i.e. Level at which profit is constant. Furthermore Current Dividend is safer than future profits which are uncertain and risky. Investor prefers such company as a good investing opportunity. He classifies Dividend policy into two angles '**RISK** & **RETURN**'

RETURN:

Growth in Return is possible, only if new investments are made, and such exploring is possible only when profit is retained hence thereon two situations arises:

LOW DIVIDEND PAYOUT & HIGH RETENTION - *LEADS TO HIGH GROWTH AND INCREASES IN COMPANY SHARE PRICE*

HIGH DIVIDEND PAYOUT & LOW RETENTION – *LEADS TO LOW GROWTH AND DECREASES IN COMPANY SHARE PRICE*

Cont…

RISK:

Investors feel Current Dividend is safer than the promised Capital Gain in future through Growth in Share Price. The two situations under Risk angle thereon:

LOW PAYOUT & HIGH RETENTION – MORE RISK, HIGH DISCOUNT RATE, LOW SHARE PRCE

HIGH PAYOUT & LOW PAYOUT – LESS RISK, LOW DISCOUNT RATE, HIGH SHARE PRIOCE

VALUATION OF SHARE UNDER GORDON MODEL:

$$\boxed{Po=E(1-b)/Ke-br}$$

Where, E=Earnings, b = Retention Ratio, 1-b = Payout,

br = growth rate; r =IRR of new Projects

Gordon concludes the model by suggesting that every Payout has Growth & Risk aspect and by using above formula whichever alternative as aforesaid listed gives highest share price, it can be considered as Optimal Payout

MODIGILANI & MILLER:

The only theory which suggests that issue of dividend doesn't affect the wealth of Shareholder as well as company is **M&M Approach.** They contend that the issue of dividend has no impact on the share price of the company. Their view is that only Investment Decisions will affect the wealth of the company and good Investment Opportunities will increase the Wealth of the Company.

Let's analyze their proposition in detail:

Eg: Profits $ 10000

The Company can utilise the same in following two ways:

Option 1: Company can invest $ 10000 in the shares of a company

Option 2: Or distribute it as Dividend to the shareholders and thereon raise money from the shareholders by making a fresh issue of Equity shares thereby creating a scope for new investments.

Benefit for shareholders is Dividend

Cont…

Cost to the company is more shareholders participation in the wealth of the company. Numerically,

Share Price before Issue of Dividend = 10000/1000 = 10 per Share

Share Price Post Issue of Dividend = 9000/1000 = 9 per Share

New shares – 111;

Wealth on Declaring Dividend – 1111 Shares * 9 per share = 10000

It is explicit that there’s no erosion in the wealth of shareholders as well as to the company irrespective of issue of dividend. Thus Dividend benefit is offset by the capital loss.

VALUATION OF SHARE UNDER M&M:

$$\boxed{NPO = P1(N+M-I+M)/1+KE}$$

Where, N= Existing Shares, M= New Shares (By investments), E=Earnings, Ke=Discount Rate, P1=Price at End of the year.

Thus M&M under this model suggests that there will be indifference between Dividend & Retention.

Thanks and Regards:

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=============================== ARTICLE ================================

RELATED PARTY TRANSACTIONS UNDER NEW COMPANY LAW

CS Ankur Srivastava

New Companies Act, 2013 emphasis on the Related Party Transactions and the manner of approval & disclosure thereof. Under section 188,

- consent of Board of Directors of company or in certain cases prior approval by special resolution required for every such contract or arrangement;
- Details of every such contract or arrangement shall be referred to in the Board's Report along with the justifications;
- Member who is related party to the any contract or arrangement shall not vote on the special resolution for approval of such contract or arrangement;
- Where any contract or arrangement is entered into by a director or any other employee, without complying with the provisions and if it is not ratified by the approving authority, such contract or arrangement shall be voidable at the option of the Board;
- The section also provides penalty for director or other employee of a company who had entered into or authorized the contract or agreement in violation of the provisions in case of listed company or unlisted company.

Corresponding provisions in Companies Act, 1956

Section 297: Board's sanction to be required for certain contracts in which particular directors are interested

Who is 'related party'

With reference to company, 'related party' world mean and include the following –

I. a director or his relative,
II. KMP or their relative,
III. a firm in which a director manager or his relative is a partner,
IV. a private company in which a director or manger is a director or holds along with his relatives, more than 2% of its paid-up share capital,
V. a person on whose advice, directions or instruction (except given in professional capacity) a director or manager is a accustomed to act,
VI. a holding/ subsidiary or associate company, subsidiary's subsidiary, and such person as would be prescribed.

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Related Party [Section 2(76)]

"Related Party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager is a member or director;

(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paidup share capital;

(vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

a. a holding, subsidiary or an associate company of such company; or

b. a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed.

Relative [Section 2(77)]

''Relative'', with reference to any person, means anyone who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed.

Key Managerial Personnel [Section 2(51)]

"Key Managerial Personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

Cont…

(v) such other officer as may be prescribed.

Related Party Transaction:

Under the new Act, except with the *consent** of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to-

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company.

In respect of companies having paid up capital of sum as may be prescribed or transactions exceeding such sums as may be prescribed, shall require prior approval of shareholders by way of Special Resolution.

Nature of transactions covered are comprehensive as they include routine to rare supply of goods or material either by way of direct sale, purchase or supply of any goods or services (technical support, maintenance, consultancy, advisory, leasing of property or sharing professional knowledge etc.) or by appointing agent for the same and underwriting financial instruments of the Company.

While entering into such type of transactions, Company will be required to take prior approval of Board of Directors, by way of a resolution passed in the board meeting.

The transactions done in ordinary course of business on arm length's basis shall be outside the scope of this provision.

Consent: Consent implies knowledge of the necessary facts and materials which leads to the consent. [*Walchandnagar Industries Ltd. v. Ratanchand Khimchand Motishaw*]

Cont…

Office or Place of profit

Office or place of profit would mean any office or place :

a) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

b) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation or otherwise.

Where the transactions mentioned above are carried out or done in the ordinary course of business and on the arm’s length transaction basis, then there is no requirement of obtaining approval from Board of Directors.

Arms Length Transaction

Arm’s length transaction would mean transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of a conflict of interest. The concept of an arm's length transaction is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other part.

Consequences of Contravention of provisions

In case, where any contract or arrangement is entered in to by a director or any other employee, without obtaining the consent of the Board or approval by as pecialre solution in the general meeting under sub-section (1)and, i) if it is not ratified by the Board or ii) by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contractor arrangement is with are related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Recovery of loss in related party transaction

Besides subsequent approval, it shall be open to the company to proceed against a director or any other employee who had entered in to such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it.

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Penal provisions

Any director or any other employee of a company, who authorised to enter into the contracts or arrangement, in violation of the provisions of this clause, shall be punishable as under -

i) In case of listed company – Any director or other employee of the listed company be punishable with,

a) imprisonment for a term which may extend to 1 year or

b) fine which shall not be less than twenty five thousand rupees but which may extend to

five lakh rupees or

c) with both.

ii) In case of other than listed company – Any director or other employee of the unlisted company be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

Thanks & Regards:
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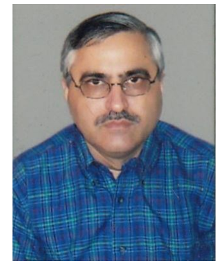
Hello Dear Friends,

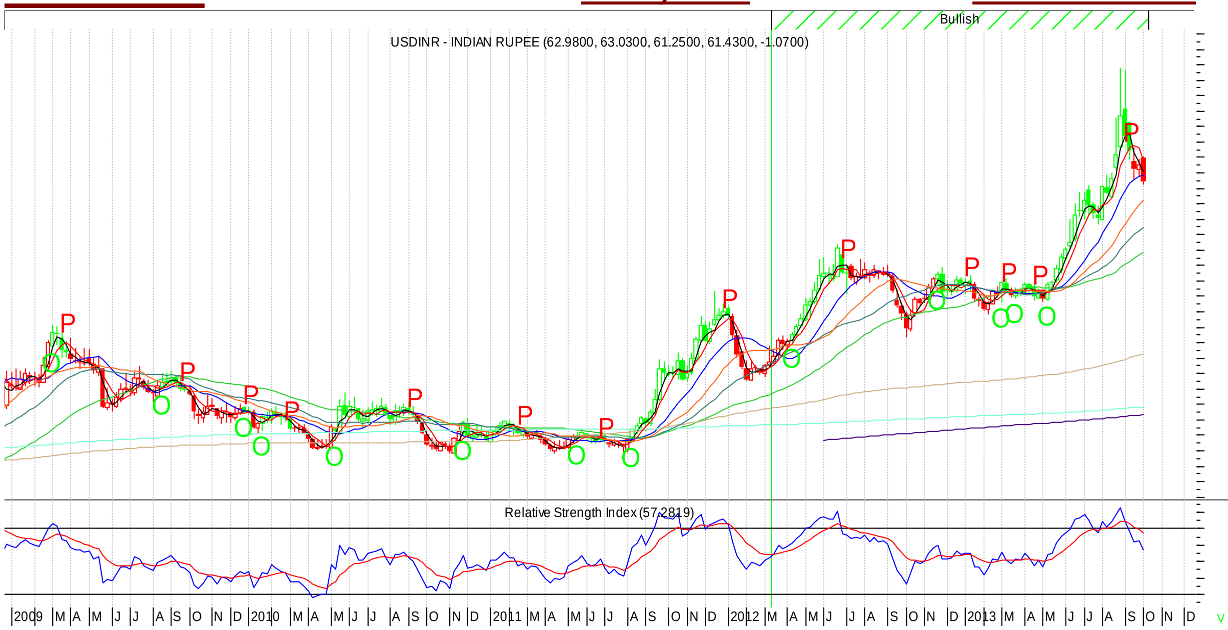
Greetings of the Day..!

It is my pleasure to share with you all, my weekly USD/INR hedging guide aimed at providing guidance to Importers and Exporters to hedge their forex exposure.



CMA D.S. Kapoor

USD / INR   Weekly Chart   Dated: 07/10/2013



Last week, it opened at 62.9800, high / low at 63.0300 / 61.2500, and closed at 61.4300 as against earlier week's closing at 62.5000.

Last week, we were of the view that the uptrend may continue next week and the currency should get resisted around 63.60 / 63.90; and further uptrend could be possible, only once these levels were crossed convincingly. Importers were advised accordingly to hedge short term payables / part of medium term payables around the current levels and to leave open balance medium term payables / full long term payables to be settled at further lower levels. We had also indicated earlier about signals visible on monthly & quarterly charts indicating trend reversal for the currency from up to down.

During the week, the currency could not cross our 1st resistance level of 63.60 and started retracing from 63.03 itself and finally closed at 61.43 much lower than last week's close of 62.50. The currency is presently running below 3MMA (63.23) / 5WMA (62.78) / 3WMA (62.05) / 5MMA (62.01).

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The Crossover signal on daily chart is running negative; however it is yet to give negative signal on weekly chart. The critical support level to be watched now should be 3QMA (61.1760). The resistances now to be watched should be around 62.01 (5MMA) / 62.78 (5WMA) / 63.00 (50DMA) / 63.23 (3MMA).

Four weeks ago, we had given a matrix of behaviour of the currency during last 5½ years and on the basis of past depreciation / appreciation, probable bottom targets for USD/ INR were extrapolated to be 61.40 - 60.00 – 58.50. These targets were expected to be achieved during next six months. Out of this, first target of 61.40 has been achieved during the last week.

Going Forward, if the currency manages to move above 62, the levels of 62.35 / 62.75 may be achieved next week. However, in case, it moves below 61.10 convincingly, the levels up to 60.25 may also be seen.

Importers are advised to settle short term payables at market rates. Part of medium term payables may also be hedged at current levels. Balance medium term payables / full long term payables may still be left open.

Exporters are advised to settle short term receivables at market rates above 62.00. Hedging for medium term receivables may be done in stages, once the rate starts moving above 63. This policy shall be reviewed next week.

Major Resistances : 62.00 / 62.35 / 62.75

Major Supports : 61.10 / 60.25 / 59.65

Regards,

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Ministry of Corporate Affairs

Government of India

98 Section of New Companies Act have been notified by the Ministry of Corporate Affairs w.e.f. 12th September, 2013

In exercise of the powers conferred by section 1(3) of the Companies Act, 2013, Central Government has appointed 12th Day of September as the date on which following sections of the said Act, shall come into force :

Chapter	Section	Notified Sections	Exceptions
Chapter I Preliminary	1 - 2	Section 2 Definitions	Clause (2), (7), (13), (23), (29)(iv), (31), (41), (42), (47), (48), (62), (67)(ix), (83), (85), proviso and explanation (d) to clause (87)
Chapter II Incorporation of Company and Matters Incidental Thereto	3 - 22	Section 19- Subsidiary company not to hold shares in its holding company Section 21- Authentication of documents, proceedings and contracts Section 22- Execution of Acts of exchange, etc	
Chapter III Prospectus and Allotment of Securities	23 - 42	Section 23- Public offer and private placement Section 24- Power of Securities and Exchange Board to regulate issue and transfer of securities, etc Section 25- Document containing offer of securities for sale to be deemed prospectus	sub section (1)(b) and (2)(b) sub section (3)

Cont….

		Section 23- Public offer and private placement	sub section (1)(b) and (2)(b)
		Section 24- Power of Securities and Exchange Board to regulate issue and transfer of securities, etc	
		Section 25- Document containing offer of securities for sale to be deemed prospectus	sub section (3)
		Section 29- Public offer of securities to be in dematerialised form	
		Section 30- Advertisement of prospectus	
		Section 31- Shelf prospectus	
		Section 32- Red herring prospectus	
		Section 33- Issue of application forms for securities	sub section (3)
		Section 34- Criminal liability for mis-statements in prospectus	
		Section 35- Civil liability for mis-statements in Prospectus	sub section (1)(e)
		Section 36- Punishment for fraudulently inducing persons to invest money	
		Section 37- Action by affected persons	
		Section 38- Punishment for personation for acquisition, etc, of securities	
		Section 39- Allotment of securities by company	sub section (4)
		Section 40- Securities to be dealt with in stock exchanges	sub section (6)

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Chapter IV Share Capital and Debentures	43 - 72	Section 44- Nature of shares or debentures Section 45- Numbering of shares Section 49- Calls on shares of same class to be made on uniform basis Section 50- Company to accept unpaid share capital, although not called up Section 51- Payment of dividend in proportion to amount paid-up Section 57- Punishment for personation of shareholder Section 58- Refusal of registration and appeal against refusal Section 59- Rectification of register of members Section 60- Publication of authorised, subscribed and paid-up capital Section 65- Unlimited company to provide for reserve share capital on re-registration Section 69- Transfer of certain sums to capital redemption reserve account Section 70- Prohibition for buy-back in certain Circumstances	sub section (2)
Chapter VI Registration of Charges	77 - 87	Section 86- Punishment for contravention	
Chapter VII Management and Administration	88 - 122	Section 91- Power to close register of members or debenture holders or other security holders Section 100- Calling of extraordinary general Meeting	sub section (6)

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		Section 102- Statement to be annexed to notice Section 103- Quorum for meetings Section 104- Chairman of meetings Section 105- Proxies	third and fourth proviso to sub section (1) and sub section (7)
		Section 106- Restriction on voting rights Section 107- Voting by show of hands Section 111- Circulation of members' resolution Section 112- Representation of President and Governors in meetings	
		Section 113- Representation of corporations at meeting of companies and of creditors	sub section (1)(b)
		Section 114- Ordinary and special resolutions Section 116- Resolutions passed at adjourned Meeting	
Chapter VIII Declaration and Payment of Dividend	123 - 127	Section 127- Punishment for failure to distribute dividends	
Chapter IX Accounts of Companies	128 - 138	Section 133- Central Government to prescribe accounting standards	

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Chapter XI Appointment And Qualifications of Directors	149 - 172	Section 161- Appointment of additional director, alternate director and nominee director Section 162- Appointment of directors to be voted individually Section 163- Option to adopt principle of proportional representation for appointment of Directors	sub section (2)
Chapter XII Meetings of Board and its Powers	173 - 195	Section 176- Defects in appointment of directors not to invalidate actions taken Section 180- Restrictions on powers of Board Section 181- Company to contribute to bona fide and charitable funds, etc Section 182- Prohibitions and restrictions regarding political contributions Section 183- Power of Board and other persons to make contributions to national defence fund, etc Section 185- Loan to directors, etc Section 192- Restriction on non-cash transactions involving directors Section 194- Prohibition on forward dealings in securities of company by a key managerial personnel Section 195- Prohibition on insider trading of Securities	
Chapter XIII Appointment And Remuneration of Managerial Personnel	196 – 205	Section 202- Compensation for loss of office of managing or whole-time director or manager	

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Chapter XXII Companies Incorporated Outside India	379 - 393	Section 379- Application of Act to foreign companies Section 382- Display of name, etc, of foreign company Section 383- Service on foreign company Section 386- Interpretation	clause (a)
Chapter XXIII Government Companies	394 - 395	Section 394- Annual reports on Government Companies	
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================================ UPDATES ================================

Ministry of Corporate Affairs

Government of India

CIRCULARS/ NOTIFICATIONS ISSUED DURING THE PERIOD

Ref No.	Date	Description
Companies (Removal of Difficulties) Order,2013	20.09.2013	Companies (Removal of Difficulties) Order,2013
General Circular No. 16/2013	18.09.2013	Clarification on the notification dated 12.9.2013.
General Circular No. 15/2013	13.09.2013	Clarification on the notification dated 12.9.2013.
Commencement Notification	12.09.2013	Commencement Notification Of Companies Act 2013

MCA APPEALS TO AVOID LAST MINUTE FILING OF RETURN

To avoid last minute rush and system congestion in MCA21 towards end of October and November 2013, I request all of you to expedite filing of balance sheet and annual return without waiting for the last days of the months. During October and November 2013. Please plan your filing accordingly.

Ministry of Corporate Affairs
Government of India

CLARIFICATIONS ISSUED ON THE NOTIFICATION DATED 12.09.2013

This Ministry had issued a notification on 12.09.2013 bringing into force to 98 sections or part thereof of the companies Act, 2013 on 12th September, 2013. In order to remove the difficulties faced by the stakeholders in implementation of the said provisions and to facilitate proper administration of the said Act, Ministry has further issued clarifications by way of circulars dated 13th and 18th September and order dated 20th Sepmber, 2013 on the said topic as under:

1. It is hereby clarified that with effect from 12.09.2013, the relevant provisions of the companies Act, 1956, which correspond to provisions of 98 sections of the companies Act, 2013 brought into force on 12.09.2013, cease to have effect from that date.

2. With a view to facilitate proper administration of the said Act, it is clarified that :

   a. Sub-section (68) of section 2:- Registrar of Companies may register those Memorandum and Articles of Association received till 11,9.2013 as per the definition clause of the .private company, under the Companies Act 1956 without referring to the definition of ,private company' under the said Act;

   b. Section 102:- All companies which have issued notices of general meeting on or after 12.09.2013, the statement to be annexed to the notice shall comply with additional requirements as prescribed in section 102 of the said Act;

   c. Section 133:- Till the Standards of Accounting or any addendum thereto are prescribed by central Government in consultation and recommendation of the National Financial Reporting Authority, the existing Accounting Standards notified under the Companies Ac! 1956 shall continue to apply;

   d. section 180:- In respect of requirements of special resolution under Section 180 of the said Act, as against ordinary resolution required by the Companies Act 1956, if notice for any such general meeting was issued prior to 12.9.20!3, then such resolution may be passed in accordance with the requirement of the Companies Act 1956.

Cont..

3. Ministry has also issued an order dated 20/09/2013. This Order may be called the Companies (Removal of Difficulties) Order, 2013 and further clarified that until a date is notified by the Central Government under sub-section (l) of section 434 of the Companies Act,20l3 for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter XXVII of the said Act, the Board of Company Law Administration shall exercise the powers of the Tribunal under sections 24,58 and section 59 in pursuance of the second proviso to sub-section (l) of section 465 of the said Act.

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

E-VOTING FACILITY OF NSDL

As you are aware, the e-voting system of NSDL was made available to companies in January-2012 after authorization by Ministry of Corporate Affairs (MCA) and obtaining the Website Quality Certificate from the Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Government of India. Companies can avail the services of the e-voting system of NSDL for their resolutions to be passed by postal ballot. Companies can save costs by availing the e-voting services of NSDL whereas the shareholders can conveniently cast their vote from home/office.

Recently in August-2013, the e-voting system of NSDL crossed a milestone of the 100th occasion of a company availing the e-voting services of NSDL. As on date, 85 companies on 107 occasions have already availed the services of the e-Voting system of NSDL for their postal ballot requirements. More than 20,000 shareholders have cast their votes conveniently in respect of postal ballots of various companies through the e-Voting system of NSDL. Top companies from big corporate groups, public sector corporations etc. have availed the services of e-voting system of NSDL. As on date, more than 200 companies have entered into agreements with NSDL to avail the services of e-Voting system of NSDL.

The details of the e-Voting system and other information such as the procedure for issuers availing the services of e-Voting system, User Manual for Issuers/R&T Agents and Shareholders etc. are also available on the e-Voting website of NSDL viz; www.evoting.nsdl.com.

For any further clarifications in this regard, you may contact the undersigned or Mr. Amit Vishal at (022) 2499 4360 / Mr. Rajiv Ranjan at (022) 2499 4738 / Mr. Sagar Dharankar at (022) 2499 4262.

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Standard Operating Procedure (SOP) for stock exchanges for suspension and revocation of trading of shares of listed entities for non-compliance of certain listing conditions

For non-compliance of listing conditions, exchanges have been suspending the trading of the shares of the listed companies, which affected the interest of non-promoters much more than the promoters as the exit route used to be closed for such investors after suspension of trading. Therefore, it is now decided that the exchange in case of non compliant companies would resort to several other measures such as imposition of fines, freezing of shares of the promoter and promoter group, transferring the trading in the shares of the company to separate category, etc., before suspending the shares of the company.

Accordingly, to maintain consistency and uniformity of approach by the stock exchanges for taking action against the listed entities for non-compliance with certain important listing conditions, such as Clause 35, Clause 41, Clause 49 of the listing agreement, SEBI vide Circular no. CIR/MRD/ DSA / 31 /2013 dated September 30, 2013 has prescribed Standard Operating Procedure (SOP) for suspension and revocation of suspension of trading in the shares. The salient features of the circular are as follows:

Imposition of fines (on per day basis) on the company for non compliance and delay in compliance with continuous Listing condition such as submission of shareholding pattern, financial results, corporate governance report, etc.

In case of non compliance for two consecutive quarters, moving the shares of non-compliant company to "Z" Category, where the trades would settle on Trade for Trade basis.

In case non-compliance continues, freezing the shares of the promoter and promoter group. This would be carried out before suspension of the trading of shares of the company. In order to provide exit window for the non-promoters, after 15 days of suspension, trading in the shares of non-compliant entity will be available on the "Trade for Trade" basis, on the first trading day of every week for 6 months.

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================================ **UPDATES** ================================

Fine shall be imposed in the following manner:

Clause of listing agreement	**Fine payable for 1st non-compliance**	**Fine Payable each subsequent and consecutive noncompliance**
Listing agreement Clause 31 Non-submission of the Annual Report within period prescribed under this clause.	If non-compliance continues for more than 5 days, `1,000 per day till the date of compliance.	` 2,000 per day till the date of compliance.
Listing agreement Clause 35 Non submission of the shareholding pattern within period prescribed under this clause.	`1,000 per day till the date of compliance and If non-compliance continues for more than 15 days additional fine of 0.1 % of paid up capital* of the entity or `1 crore, whichever is less.	`2,000 per day till the date of compliance and If non-compliance continues for more than 15 days additional fine of 0.1 % of paid up capital* of the entity or `1 crore, whichever is less.
Listing agreement Clause 41 Non submission of the financial results within period prescribed under this clause	`5,000 per day till the date of compliance and If non-compliance continues for more than 15 days additional fine of 0.1 % of Paid Up capital* of the entity or ` 1crore, whichever is less.	`10,000 per day till the date of compliance and If non-compliance continues for more than 15 days additional fine of 0.1 % of Paid Up capital* of the entity or `1 crore, whichever is less.
Listing agreement Clause 49 Non submission of the Corporate governance compliance report within period provided under this clause	`1,000 per day till the date of compliance.	`2,000 per day till the date of compliance.

**Paid up capital as on first day of the financial year in which the non compliance occurs.*

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The amount of fine realized as per the above structure shall be credited to the "Investor Protection Fund" of the concerned recognised stock exchange.

The recognised stock exchange shall disseminate on their website the names of noncompliant

listed entities that are liable to pay fine for non-compliance of the above clauses of the listing agreement.

Every recognised stock exchange shall review the compliance status of the listed entities within 45 days from the end of the each quarter (for clauses at 35 and 49) and within 15 days from the due date of submissions under the clauses 31 and 41 and issue notices to the non-compliant listed entities to ensure compliance and pay fine as per this circular within 15 days from the date of the notice.

If any non-compliant listed entity fails to pay the fine despite receipt of the notice as stated above, the recognised stock exchange may initiate appropriate enforcement action including prosecution.

Creation of a new category "Z" for trading:

1. The recognised stock exchange shall create a new category "Z" for trading of shares of such non- compliant listed entities wherein trades shall take place in 'trade for trade' basis.
2. If a listed entity commits two or more consecutive defaults in compliance of the aforesaid clauses of the listing agreement within 15 days from date of the notice issued under clause 4, the concerned recognised stock exchange shall, in addition to imposing fine as specified above, move the scrip of the listed entities to "Z" category.
3. The recognised stock exchange shall move back the scrip of the listed entity to the normal trading category, if it complies with respective clauses of the listing agreement and completely pays fine prescribed as above.
4. The recognised stock exchange shall give 7 days prior public notice to investors before moving the share of non- compliant entity to "Z" category or vice versa.

Standard Operating Procedure (SOP) for suspension of trading:

1. Criteria for suspension of the trading in the shares of the listed entities:
   a) failure to comply with clause 31 of listing agreement with respect to submission of Annual Report for 2 consecutive financial years;
   b) failure to comply with clause 35 of listing agreement with respect to submission of shareholding pattern for two consecutive quarters;

Cont…

c) failure to comply with clause 41 of listing agreement with respect to submission of financial results for two consecutive quarters;

d) failure to comply with clause 49 of listing agreement with respect to submission of corporate governance compliance report for two consecutive quarters;

e) failure to submit information on the reconciliation of shares and capital audit report, for two consecutive quarters;

f) receipt of the notice of suspension of trading of that entity by any other recognised stock exchange on any or all of the above grounds.

2. Before suspension of trading on any of the above grounds, except clause 1 (f), the concerned recognized stock exchange shall send written intimation to the noncompliant listed entity calling upon it to comply with respective requirement/s mentioned in clause (a) to (e) above and pay the applicable fine within 21 days of the date of the intimation.

3. If the non-compliant listed entity fails to comply with aforesaid requirement/s and pay fine despite the receipt of the intimation of the recognised stock exchange within the time as aforesaid, the concerned recognised stock exchange shall forthwith intimate the depositories to freeze entire shareholding of the promoter and promoter group of the non-compliant entity. Simultaneously, the recognised stock exchange shall give a 21 days (prior to the proposed date of suspension) public notice on its website proposing suspension of trading in the shares of the non-compliant listed entity.

4. If the non-compliant listed entity complies with respective requirement/s and pays fine five days before the proposed date of suspension, the trading in its shares shall not be suspended on the proposed date and the concerned recognised stock exchange shall intimate to the depositories to unfreeze, after one month from the date of compliance, the shares of the promoter and promoter group of the entity. Simultaneously, the recognised stock exchange shall give a public notice on its website informing compliance by the entity.

5. In case of failure to comply with respective requirement/s and/or pay fine as aforesaid, the recognised stock exchange shall suspend the trading in the shares of a non-compliant listed entity. The entire shareholding of promoter/prompter group of such non-compliant listed entity shall remain frozen till expiry of three months from the date of revocation of suspension.

6. While suspending trading in the shares of the non-compliant entity the recognised stock exchange shall send intimation of suspension to other recognised stock exchanges where the shares of the non-compliant entity are listed. On receipt of such intimation the other recognised stock exchanges shall also suspend trading in the shares of the entity.

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7. After 15 days of suspension, trading in the shares of non-compliant entity may be allowed on the "Trade for Trade" basis, on the first trading day of every week for 6 months. In this regard, the recognised stock exchange shall give instruction to its trading members/stock brokers to obtain confirmation from clients before accepting an order for purchase of shares of non-compliant entity on the 'Trade for Trade' basis.
8. The recognised stock exchange shall put in place a system to publish caution message "*Trading in shares of the company is under 'suspension and trade to trade basis' and trading shall stop completely if the company remains not compliant for six months* " on trading terminals.

SOP for revocation of suspension of trading

1. If the non-compliant listed entity complies with the aforesaid requirement/s and pays applicable fine within three months from the date of suspension, the recognized stock exchange may revoke the suspension of trading of its shares.
2. If the non-compliant listed entity complies with the aforesaid requirement/s and pays applicable fine after three months from the date of suspension, the recognized stock exchange may revoke the suspension of trading of its shares after a period of three more months from the date of such compliance.
3. The recognised stock exchange shall, 7 days prior to revocation of suspension of trading in shares of the entity, issue public notice on its website.
4. After 3 months from the date of revocation of the suspension, the recognised stock exchange shall send intimation to the depositories to unfreeze the shares of the promoter and promoter group.
5. After revocation of suspension, the trading of shares shall be permitted only in the 'Trade for Trade' basis for a period of three months from the date of revocation and after this period of three months, trading in the shares of the entity shall be shifted back to the normal trading category, after giving prior notice of 7 days to it.

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

EXPOSURE DRAFTS OF REVISED SECRETARIAL STANDARDS ON GENERAL AND BOARD MEETINGS

The Companies Act, 2013, after receiving the assent of Honorable President of India on August 29, 2013 has been notified in the Gazette of India on August 30, 2013. Section 118(10) provides that every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

With the enactment of the Companies Act, 2013, existing Secretarial Standards-1, 2, 5 & 7 issued by the Council of the Institute need to be revised as per the applicable Law.

Accordingly, the Secretarial Standards Board of the Institute of Company Secretaries of India has brought out Exposure Drafts of Revised Secretarial Standards-1, 2, 5 and 7 on General and Board Meetings. The text of the Exposure Draft of the following proposed revised Secretarial Standards is placed for public comments:

- Secretarial Standard on Meetings of the Board of Directors (SS-1),
- Secretarial Standard on General Meetings (SS-2),
- Secretarial Standard on Minutes (SS-5), and
- Secretarial Standard on Passing of Resolutions by Circulation (SS-7)

The comments and suggestions on the Exposure Draft may be sent to Shri Gopal Chalam, Dean, ICSI-CCGRT at Plot No- 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai-400614 (E-mail: t1025@icsi.edu or ccgrt@icsi.edu) so as to reach him by **October 30, 2013.**

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