

8th KARNATAKA STATE CS STUDENTS' CONFERENCE

Milaap 2012

.....MEETING OF MINDS

18th and 19th of February 2012

**St. Joseph's Indian High School Auditorium,
Vittal Mallya Road, Bangalore**

e-Souvenir



**Bangalore
Chapter**

**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament



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The Institute of Company Secretaries of India is a premier national professional body constituted under an Act of Parliament namely the Company Secretaries Act, 1980 (Act No. 56 of 1980), to develop and regulate the profession of Company Secretaries in India. The ICSI functions under the jurisdiction of Ministry of Corporate Affairs.

The Institute has on its rolls about 30,000 members including members holding certificate of practice. The number of current students is over 2.87 lakh. The Institute:

- ≈ Has its Headquarters at New Delhi, 4 Regional Councils at Chennai, Kolkata, Mumbai and New Delhi, 68 Chapters located in various cities all over India and the Center for Corporate Governance, Research and Training (CCGRT) at Navi Mumbai.
- ≈ Registers students with 10+2 and graduate qualifications for Foundation and Executive Program of Company Secretaryship respectively with course contents in Law, Management, Accounting and Finance disciplines;
- ≈ Conducts Company Secretaryship examination twice a year in June and December, at 66 centers spread all over India and one overseas center at Dubai;
- ≈ Provides postal/oral coaching and training enabling students to qualify as Company Secretaries;
- ≈ Provides e-learning for students through Web Based Training, Video Based Training and Live Virtual Classroom;
- ≈ Arranges practical training for Executive/Professional Program pass students in Companies/with Practicing Company Secretaries especially empanelled for the purpose;
- ≈ Enrolls qualified persons as Associate/Fellow members of the Institute and issues Certificate of Practice to members taking up practice;
- ≈ Conducts Post Membership Qualification Courses for members of the Institute;
- ≈ Conducts ICSA, UK Exams for members of the Institute;
- ≈ Publishes 'Chartered Secretary', a professional journal popular among all professionals;
- ≈ Publishes 'Student Company Secretary' and 'C.S. Foundation Program Bulletin' for the benefit of students;
- ≈ Publishes Online 'CS update' containing current notifications and circulars relating to various corporate and related laws;
- ≈ Exercises professional supervision over the members of the Institute, both in employment and in practice in matters pertaining to professional ethics and code of conduct;
- ≈ Undertakes research in Law, Management, and Finance and Capital Market disciplines and brings out research publications and guidance notes;
- ≈ Issues Secretarial Standards and brings out Guidance Notes thereon;
- ≈ Gives expert advisory opinion to members on intricate issues relating to various corporate laws;
- ≈ Organises Professional Development Programs and, International / National / Regional Conventions and Conferences.
- ≈ Organises Professional Development Programs in collaboration with Chambers of Commerce, Department of Public Enterprises, Sister Professional Institutes and other Professional Development / Management Bodies.
- ≈ Interacts with various National and Regional Chambers of Commerce with regard to various Government Policies and Legislations.
- ≈ Interacts with the Central and State Governments and Regulatory Authorities on matters of professional interests;
- ≈ Interacts with CS Institutions of other countries in respect of the International Federation of CS;
- ≈ Bestows ICSI National Award for Excellence in Corporate Governance to best governed Companies; Bestows Life Time Achievement Award on one eminent corporate personality for Translating Excellence in Corporate Governance into Reality.
- ≈ Founder Member of the National Foundation for Corporate Governance.
- ≈ Founder Member of International Federation of Company Secretaries.





BANGALORE CHAPTER OF ICSI

www.icsi.edu/bangalore

The Bangalore Chapter of The Institute of Company Secretaries of India (ICSI) is one among the 15 Chapters functioning under the jurisdiction of Southern India Regional Council of the Institute. The Bangalore Chapter is an 'A+' Grade Chapter of the ICSI and has about 1500 members in total who are occupying important positions as Company Secretaries in the corporate sector and around 300 members in whole-time Practice as Company Secretaries. The Chapter has about 8000 students who are currently pursuing the Company Secretaryship course.

The Bangalore Chapter has won the Best Chapter of the Institute award in the 'A-1' and 'A' Grade for the year 2004, 2005 & 2007 and 2008, respectively.

The Bangalore Chapter:

- ≈ Conducts Professional Development Programmes; Seminars/Workshops; National/Regional conference for the Members and Students on the topics of current interest to Company Secretaries/ Professionals/ Students.
- ≈ Conducts Professional Development Programmes in collaboration with Chambers of Commerce, Department of Public Enterprise, Sister Professional Institutes and other Professional Development/ Management Bodies.
- ≈ Conducts Study Circle Meetings on topics of relevance to Company Secretaries.
- ≈ Does instant registration of students for Foundation, Executive and Professional Programme and issues course material on the spot.
- ≈ Accepts the examination and other application forms (except de novo) submitted by the students and forwards them to the ICSI, New Delhi.
- ≈ Conducts coaching classes for the students and provides them with all assistance and guidance to excel in the profession.
- ≈ Conducts Moot Court Competition, Company Law Quiz and other competitions for Students'.
- ≈ Conducts the Student Induction Programme (SIP) which is mandatory for student registered for the Executive Programme before appearing for the Executive Programme examination.
- ≈ Conducts Professional Development Programmes (PDP) which is mandatory for students undergoing their Management / Apprenticeship Training.
- ≈ Conducts Executive Development Programme (EDP) which is mandatory for students, before they undergo Management Training / Apprenticeship Training. The objective of EDP is to help the students in acquiring knowledge and exposure about the environment and functions of the corporate sector, and prepares them to gain the maximum benefit from their training.
- ≈ Organises the Management Skills Orientation Programme (MSOP). The thrust of this Training Programme is to appraise students with the practical aspects of important areas of the Profession and expose them to Corporate and General Management techniques and latest developments in Corporate Legal World.
- ≈ Provides service in the area of "placement of students" for training and employment. Students, who approach the Chapter, looking for training, are given information in person, by email or by phone on the suitable opportunities available based on the requirements informed to the Chapter by companies and Company Secretaries in Practice.



My Dear Students,

“The future depends on what we do in the present” so said Mahathma Gandhi. By choosing the Company Secretary course, you have done a great help to yourselves. You have attempted to put yourself in higher plane compared to some of your own peers! The efforts you put today will yield results several years later. When you actually start enjoying the fruits, you would not like to remember how hard you worked. I am sure one day you all will realize that indeed you made a wonderful choice today. Good luck to all of you.

8th State level Students’ Conference – Milaap 2012 is a milestone in itself. It is the only programme we have at Bangalore which is being conducted year after year for the past 8 years. Congratulations to all the Students of our Institute, who not only demand such a State level programme but also demonstrate their organizing skills.

I am sure Milaap 2012 will rise above all expectations and create history of its own.

Good luck to you all, my dear students.

Best wishes for Milaap 2012.

S Kannan
Chairman, Bangalore chapter



Dear CS Students,

'Milaap' - Student Conference organised by Bangalore Chapter is facilitating 'Meeting of Minds' among CS Student fraternity. Since past seven years, Milaap has been a forum for the students to showcase their talent and skills and More importantly, has nurtured the fellowship among the budding professionals all over Karnataka. I Congratulate Bangalore Chapter for organising this wonderful program year after year. All the Best to Team Milaap and i wish all the success for the program"

Srilatha T G
Chairperson, Mysore Chapter

Mangalore
14/02/2012

To,
Chairman
Bangalore chapter of the ICSI
"Sheriff Chambers",
III Floor, Rear Block,
14, Cunningham Road,
Bangalore- 560052



Sub: Forwarding letter to the Bangalore chapter of the ICSI for organizing MILAP 2012.

With respect of the above mentioned subject matter, I on behalf of the Mangalore chapter of the ICSI would like to wish the Bangalore chapter of the ICSI the very best in organizing MILAP 2012. I would also like to take this opportunity to congratulate the Bangalore Chapter for having taken the initiative to organize such a wonderful event for the benefit of the students of the ICSI. I wish the student conference a grand success.

Thanking you
Yours faithfully,

Ullas Kumar Melinamogaru,
Chairman
Mangalore Chapter of the SIRC of the ICSI





MANAGING COMMITTEE FOR THE YEAR 2012



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CS. Dwarakanath C
Ex-officio



CS. Nagendra D Rao
Ex-officio





Sheela Adaveeshaiah,
CS Executive Student,
Research Scholar, National Law School, Bangalore
shee_mirza@yahoo.co.in
Co-Ordinator, e- Souvenir Team, Milaap 2012

"Take up an Idea, Devote yourself to it, Struggle on in patience and the Sun will rise for you."

"Don't look back—forward, infinite energy, infinite enthusiasm, infinite daring, and infinite patience—then alone can great deeds be accomplished."

-Swami Vivekananda

Above thoughts of Swami Vivekananda inspired many in past, motivates thousands in present and will ignite lacks of young brains in future. With these thoughts in my mind, I started my journey with my team.

Present emerging dynamic business environment demands efficient personality traits from the Company secretaries who have to shoulder greater responsibilities. Student Company Secretaries being prospective professionals must equip themselves in various skills, acquire multifunctional value and must aim at achieving excellence in whatever work we undertake. So, acquiring proficiency in writing skills stands out of utmost primary importance of our professionalism. In this context, we wanted to create an enthusiastic, motivated and student friendly environment where they voluntarily and enthusiastically pen down articles and send to us.

To be eco-friendly, this year, we thought of being innovative to opt for E-Souvenir. To achieve our goals, we devised multifarious strategies to reach them.



The greatest challenge to our E-Souvenir was to give publicity to it within our time constraints and of course with our all personal commitments. Most obvious choice opted by us was internet and telecom. Individual mails were sent to students, practising company secretaries and secretarial departments of corporate houses informing them about our E-souvenir. A help cell was created and their names with the contact numbers were circulated in many professional group web pages. I personally interacted with many fellow students assuring them all support and requesting them to attempt to write articles. We personally contacted many practicing secretaries and Secretarial heads of corporate houses seeking their support.

More than 1000 mails have been sent and innumerable calls have been made. It was amazing to receive queries and help my fellow students and that too students outside the Bangalore. With great perseverance, we got the fruits and the result was overwhelming. We received 63 articles and 3 poems from 61 participants from Bangalore, Mandya, Sirsi, Belgaum and Honnavara. Articles were

from different domains of knowledge such as Business law and Trade laws, Management, corporate practice, Soft skills, Book review of the "Professional" and Case comment on Vodafone International Holdings BV v/s Union of India (Indian Income Tax Department) judgement delivered by Supreme





Court of India on 21st January 2012. Participants were from varied age groups with special mention to 17 year old foundation student Arpitha to 57 year young Rajeswari madam who contributed a unique piece of article of Book review to us. It was awesome to see, in short span of 30 days even few enthused students have come up with their second and third articles and sent us. To add, variance to the bunch, we even received three inspirational poems from my fellow students.

Then I realised, yes, what Swami Vivekananda said, is right. Take up an idea, struggle for it and the sun will rise for you. For me, in my words, the sun is, this "E-Souvenir" which is the brain child of my team vision and timely channelized efforts. This is the sweetest gift which we are presenting to you all in this auspicious year of 2012.

I owe debt of heartiest thanks to our beloved CS. Dattatri H M for being backbone for all our activities and to his all his moral support that he has rendered to our team in this journey and to CS. Ravishankar Kandhi for his timely precious guidance and Editing and to CS. Swaroop Suryanarayana for his technical compilation and to CS. Vinod R Sunder for his enduring patience to judge our articles and sponsor the Best article award.

Special thanks to CS. Prasanna Patil, Advisory member to publicity committee and its team members for acting as publicity cell to all our activities.

Loving thanks note to my team member Tanushree Krishna, for her laudable co-operation in this journey.

I acknowledge my sincere thanks to all the practising company secretaries, heads of secretarial departments for their invaluable support that they rendered to us in this journey.

I thank all the 61 my fellow student participants and appreciate their interest shown to be the part of our E-Souvenir and wish them all the best for their future endeavours.

I also express my gratitude to Chairpersons of Bangalore, Mysore and Mangalore Chapter for their forwarding messages which stands distinguished part of our E-Souvenir.

I also acknowledge my sincere gratitude to the Additional Director, Institute of Company Secretaries of India, Ms. Sangeetha Flora, Bangalore Chapter and its supporting staff for their timely kind cooperation to all who have directly and indirectly contributed their valuable resource to publish this souvenir.

Last, but not the least, I acknowledge my sincere thanks to the management committee of Milaap 2012 for assigning me this great responsibility and providing this excellent opportunity to contribute to Milaap 2012.



Print Souvenir to e-Souvenir:

**Our contribution for
Greener Earth!**



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Nature of Instruments Issued for Investments into India

(As per FDI Policy)



Madhuri S. Ugare, B.Com,
Shamanewadi, Belgaum. madhuri.ugare@gmail.com



Today Indian corporate sector has indeed taken a giant leap. Indian businesses are acquiring companies' abroad, becoming world popular suppliers and are recruiting staff cutting across nationalities. This Article provides an overview of nature and features of the instruments issued into India for investment.

As per the FDI policy, the Indian Companies can issue the following types of instruments to the foreign investors for the investments into India:

Foreign Currency Convertible Bonds:

Foreign Currency Convertible Bonds has been defined to mean bonds issued in accordance with this scheme and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments.

Foreign Direct Investment policy issued by the Government of India is covered in Foreign Exchange Management Act, 1999 (FEMA). There are two broad areas of Foreign Investment regulatory policy i.e., sectors where Foreign Investment is allowed freely and on an automatic basis (Automatic Route) and sectors where prior approval of the Government of India is required (FIPB Route). For proposals not falling under the Automatic Route, specific and prior approval of the Government of India would be required. Government approvals are accorded on the recommendations of the Foreign Investment Promotion Board (FIPB). FDI in sectors/activities under the Automatic route does not require any prior approval of the Government of India (FIPB) or the Reserve Bank of India (RBI).

Indian Companies can also raise foreign currency resource abroad through issuance of the Foreign Currency Convertible Bonds (FCCB). Indian Companies can also raise foreign currency resource abroad through issuance of Foreign Currency Convertible Bonds or depository

receipts. The inward remittance received by the Indian company through issuance of such instruments is treated as FDI.

American Depository Receipts /Global Depository Receipts (ADRs/GDRs):

An Indian Company can also sponsor an issue of ADRs/GDRs. An Indian company can issue ADRs/GDRs if it is eligible to issue shares to persons resident outside India under the FDI policy. However an Indian company, which is not eligible to raise funds from the Indian capital Market including a company, which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI), is not eligible to issue ADRs/GDRs. ADRs/GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue.

Equity Shares:

Equity Shares referred to as ordinary share also represents the form of fractional ownership in which a shareholder, as a fractional owner, undertakes the maximum entrepreneurial risk associated with a business venture. The holders of such shares are members of the company and have voting rights.

A Company may present equity share capital with voting rights or with differential rights as to dividend, voting or otherwise in accordance with the Act.





Preference Shares:

Preference Shares are those shares that carry preferential right as to the payment of dividend at a fixed rate and as to repayment of capital in case of winding up of the company. They enjoy priority over the equity shareholders in payment of surplus. They carry voting rights only in matters directly affecting their interests. They may be convertible and or redeemable.

Debentures:

A debenture is an instrument of debt issued by the company acknowledging its obligation to repay the sum at a specified rate with a specified rate of interest. It includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not. Debentures may be secured or unsecured and may also be convertible. They do not carry any voting rights.

Under the FDI policy, equity shares, fully and mandatory convertible preference shares and debentures are to be issued to the subject to pricing guidelines and valuation norms under FEMA Regulations. The pricing of such capital instruments is decided upfront at the time of the issue. Issue of other types of shares require compliance with the guidelines applicable for the External Commercial Borrowings (ECB).

The FDI policy is periodically reviewed and modified. Changes in spectral policy are notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry.

Recent changes of this policy are:

Pricing of convertible instruments:

At the time of issue of the instruments and such price should not be lower than the fair value worked out, at the time of issuance of such instruments.

Issue of equity shares against consideration other than cash:

Consideration other than cash means, Import of Capital Goods/Machinery/Equipment (including second hand machinery), Pre-operative / Pre-incorporative expenses

and Share Swaps. One of the changes in allotting the shares against pre-incorporation expenses is to have a bank account in the name of the company. This condition is relaxed in the case of companies under incorporation, and it is mandatory to the foreign company to remit the funds to the Indian subsidiary's bank account directly, instead of paying it to third parties. Issue of shares against import of capital goods/ machinery or for pre-incorporation/ pre-operative expenses needs to satisfy the following general conditions:

- Special Resolution of the company for conversion
- Adherence to the pricing guidelines of RBI.

Removal of the condition of prior approval in case of joint ventures/technical collaboration in the same field:

There is a felt need to attract fresh investment and technology inflows into the country, as also to reduce the levels of state intervention in the commercial sphere. Keeping in view the above, Government has decided to abolish this condition. It is expected that this measure will promote the competitiveness of India as an investment destination and be instrumental in attracting higher levels of FDI and technology inflows into the country.

Downstream investments:

Downstream investments means indirect foreign investment by one Indian company into another Indian company, by way of subscription or acquisition, made in accordance with guidelines and conditions provided under the circular. To test this, companies have classified into two categories. Companies owned or controlled by foreign investors and companies owned and controlled by Indian residents. The new guidelines are aimed to comprehensively simplify and rationalize downstream investment, by removing the complex structure of investing companies, operating companies and investing cum operating companies.



CONCLUSION:

These changes are necessary for today's market. Under this FDI policy, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/ GDRs can be issued abroad. The proceeds of the ADRs/ GDRs issue are remitted back to India and distributed among the resident investors.



Business Restructuring

Under The Income Tax Act, 1961



Nethravathi Bhat

CS Professional Student, Sirsi

nethracs1@yahoo.co.in

In today's world of globalization, liberalization and increasing competition, to identify opportunities, to have command in the market and to create value for their shareholders, corporate entities are redefining their strategies. These pave way to Business Restructuring or Rearrangement.

Business Restructuring refers to rearrangement of corporate structure. Following are the **Methods of Business Restructuring:**

1. Amalgamation/Merger
2. Demerger and Spin off
3. Conversion of Partnership Firm into a Company
4. Conversion of Sole Proprietary Concern into a Company
5. Conversion of Private Company or an Unlisted Company into a Limited Liability Partnership
6. Slump Sale
7. Buy-Back of Shares
8. Capital Reduction
9. Reduction of Preference Shares
10. Conversion of Debentures into Shares

AMALGAMATION: Section 2(1B) of The IT Act, 1961 defines Amalgamation as a merger of one or more companies with another company, or the merger of two or more companies to form one company, provided all the properties and liabilities of the amalgamating company immediately before the amalgamation, shall become the properties and liabilities of the amalgamated company and shareholders holding not less than 75% in value of the shares in the amalgamating company shall become the shareholders of the amalgamated company.

Exemptions Available due to Amalgamation:

1. Section 47(vi):- Exemption to amalgamating companies for capital gain on transfer of assets to Indian amalgamated companies.
2. Section 47(vii):- Exemption to shareholders of amalgamating companies for capital gains on transfer of shares, only if,

- a. The consideration is in the form of shares; and
- b. The amalgamated company is an Indian Company.

3. Section 47(via):- Exemption from capital gains in case of International Restructuring:- In the case of amalgamation of foreign companies, capital gain on transfer of shares held in the Indian company by amalgamating foreign company to the amalgamated foreign company, exemption can be claimed if:
 - a. at least 25% of the shareholders of the amalgamating foreign company continue to remain the shareholders of the amalgamated foreign company; and
 - b. the amalgamation is tax free in the foreign company.

Benefits to Amalgamated Company: It is entitled to carry forward and set off the following losses and expenditures of the amalgamating company:

1. Unabsorbed business loss and Unabsorbed Depreciation Allowance
2. Capital expenditure on Scientific Research u/s 35
3. Preliminary Expenses u/s 35D
4. Expenditure wrt amalgamation u/s 35DD
5. Expenditure for obtaining licence to operate telecommunication services u/s 35ABB
6. Deduction for expenditure on prospecting etc. for minerals u/s 35E

It is important to note that the provisions of Section 41(1) in respect of deemed profit also applies to amalgamated company. Accordingly, recovery of any expenses, loss, trading liability including remission or cessation of a liability by the creditors for expenses, which were allowed earlier in the hands of amalgamating company are taxable in the hands of amalgamated company.



DEMERGER: Section 2(19AA) of the Income Tax Act, 1961 defines demerger in relation to companies as the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 by the demerged company of one or more of its undertakings to any resulting company. The transfer should be in such a manner that:

- (a) all the properties and liabilities of the undertaking of demerged company are transferred at their book values and they become the properties and liabilities of the resulting company;
- (b) the consideration is by issue of shares to the shareholders of the demerged company on a proportionate basis;
- (c) Shareholders holding not less than 75% in value of the shares of the demerged company become the shareholders of the resulting company;
- (d) The transfer is on a going concern basis;
- (e) The demerger is as per the conditions, if any, laid down by the Central Government.

Exemptions and Benefits:

1. Capital gain on transfer of assets as well as issue of shares to the shareholders is exempt if the above conditions are fulfilled.
2. As per section 2(22), issue of shares directly to the shareholders will not be treated as deemed dividend.
3. In respect of international demergers, provisions are similar to amalgamation of foreign companies.
4. Accumulated losses and depn., of the undertaking being transferred is allowed to be carried forward and set off in the hands of the resulting company.

CONVERSION OF PARTNERSHIP FIRM INTO A COMPANY: Capital gain on conversion of partnership firm into a company will not be charged to tax, if the following conditions are fulfilled:

1. All the assets and liabilities of the firm should become the assets and liabilities of the company;
2. All the partners of the firm immediately before its succession become the shareholders of the company in the same proportion as in the firm;
3. Consideration should be in the form of shares only;
4. The partners' aggregate shareholding in the company should not be less than 50% of the voting power in the company and their shareholding should continue to remain at least for 5 years.

CONVERSION OF SOLE PROPRIETARY CONCERN INTO A COMPANY:

All the provisions relating to Conversion of Partnership Firm into a Company are applicable to this also.

Benefits: The accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern shall be allowed to be carried forward and set off by the successor company, if the above conditions are satisfied.

CONVERSION OF PRIVATE COMPANY OR AN UNLISTED COMPANY INTO A LIMITED LIABILITY PARTNERSHIP (LLP): The taxation scheme for LLPs is same as that of general partnership firms. Clause (xiiib) of Sec. 47 provides that subject to conditions, on conversion of a company into a LLP, there will be no capital gain on:-

- (a) any transfer of a capital asset whether tangible or intangible, by a private company or unlisted public company to a LLP; or
- (b) any transfer of share held in a company by a shareholder

SLUMP SALE: It means transfer of the undertakings as a whole without assigning values to individual assets and liabilities. Profit on slump sale shall be chargeable to capital gain tax in the previous year in which the transfer took place.

BUY BACK OF SHARES: Section 2(22) provides that dividend does not include any payment made by a company on purchase of its own shares. As per section 46A, the difference between any consideration received by a security holder from any company on buy back of its securities and the cost of acquisition shall be deemed to be income chargeable under the head capital gains.

CAPITAL REDUCTION: Reduction in shareholders' rights due to capital reduction would amount to a transfer within the meaning of Section 2(47) and hence chargeable to capital gains tax – *Kartikeya V. Sarabhai vs. CIT*.

REDEMPTION OF PREFERENCE SHARES: It is same as that of buy-back of shares.

CONVERSION OF DEBENTURES INTO SHARES: If bonds, debentures, debenture stock or deposit certificates are converted into shares or debentures of that company, the same shall not be regarded as transfer under section 47(x). However, if any amount is paid in cash etc., the entire amount will attract capital gains tax.

Many companies enter into amalgamations, mergers, demergers, buy-back of securities agreements to avail the tax advantages. In order to get the maximum benefits, it is better to have a good knowledge of IT provisions in addition to company law matters.



GST - An Overview



B R RAMESH

Student - Executive programme
Exult Conserv Private Limited, Bangalore
rameshtotalsolutions@yahoo.co.in

GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits from the producer's point and service provider's point up to the retailer's level. It is essentially a tax only on value addition at each stage so that the final consumer will bear only the GST charged by the last dealer in the supply chain.

There was a burden of "tax on tax" in the pre-existing Central excise duty of the Government of India and sales tax system of the State Governments.

The introduction of Central VAT (CENVAT) has removed the cascading burden of "Tax on tax" to a good extent by providing a mechanism of "set off" for tax paid on inputs and services up to the stage of production, and has been an improvement over the pre-existing Central excise duty. Similarly, the introduction of VAT in the States has removed the cascading effect by giving set-off for tax paid on inputs as well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime.

Mechanism of GST

Stage of Chain	Supply	Purchase Value of Input	Value Addition	Value at which supply of goods & Services made to next stage	Rate Of GST (approx)	GST on Out put	Input Tax Credit	Net GST= on output -Input Tax Credit
Manufacturer		100	30	130	10%	13	10	13-10=3
Whole Seller		130	20	150	10%	15	13	15-13= 2
Retailer		150	10	160	10%	16	15	16-15=1

FEATURES OF PROPOSED GST

- Dual GST on all goods and services-two components- Central GST (CGST) & State GST (SGST) on the same tax base-no SGST on CGST component of sale price-facility of input tax rebate-however, no cross input tax rebate-between SGST and CGST.
- Separate legislations for levy of CGST and SGST-State legislations, rules and formats to be uniform.
- Certain goods and services to be exempted uniformly in all the States.
- Uniform threshold of annual turnover of Rs.10 lakhs proposed for SGST for both goods and services
- Threshold of Rs.1.5 Crores for CGST on goods recommended - an appropriately high threshold for CGST on services recommended.
- Composition scheme for annual turnovers upto Rs.50 lakhs under SGST- a floor rate of 0.5% recommended. The scheme would allow option for GST registration for dealers with turnover below the composition/compounding cut-off.
- Two rates of SGST and CGST for goods-a lower and higher standard rate, with a nominal rate for Precious metals and articles-single rate recommended for services.



- Concurrent administration by both Central and State tax authorities-common formats of returns for CGST and SGST-however, to be filed separately to Central and State authorities.
- Co-ordination between Central and State authorities in assessment, enforcement, etc.
- Taxpayer Identification Number to be based on PAN-13/15 digits likely.
- Central taxes to be subsumed (removed) under GST-Central Excise Duties, Additional Excise Duty, Service Tax, Additional Customs Duty, commonly known as Countervailing Duty (CVD), Special Additional Customs Duty (SAD) and related surcharges and cesses.
- State taxes to be subsumed (removed) under GST-KST on sugarcane, VAT/Sales Tax, Entertainments Tax, Luxury Tax and Betting Tax, state Cesses and surcharges, Entry Tax
- Sales Tax & Entry Tax on petrol, aviation fuel and diesel, alcoholic beverages to continue-crude to be brought under Local Sales Tax.
- Inclusion of natural gas under GST under discussion.



recommended.

TAXATION RELATES TO IMPORT / EXPORT TRANSACTION

- With Constitutional Amendments, both CGST and SGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services.
- Exports, purchase of capital goods, input tax at higher rate than output tax etc. where, again refund/adjustment should be completed in a time bound manner.
- Zero rating of exports- no SGST or CGST on exports goods and services - SGST paid on inputs including goods exported refundable to the exporter.
- Zero rating of sales/supplies to SEZ developers/units

TAXATION RELATES TO INTER -STATE TRANSACTION

- Levy of IGST on inter-State sales and transfers-a combined rate of SGST and CGST.
- IGST to be paid to the Central authorities-seller/supplier can pay IGST out of his IGST, CGST or SGST credit -seller/supplier to file details of inter-State transactions and IGST payments electronically.
- Purchaser/receiver to use IGST credit to pay his IGST, CGST or SGST liability.
- Reconciliation of payments/receipts to be handled by a Central Agency.
- IGST basically on goods.
- In respect of services where supplier and receiver or supply and consumption are in different States, rules to be framed to determine the place of supply of services for taxation by a State.

BENEFITS TO TRADE AND INDUSTRY

- Seamless input tax credit.
- Removal of current restrictions on input tax credit.
- Higher thresholds to benefit small businesses.
- Input tax credit even on tax paid on inter-State procurement.
- Uniform tax rates, legislations, procedures and formats across all the States.
- Common returns/formats under CGST and SGST making compliance easier and economical.

CONCLUSION

The Finance Ministry and the empower committee was working a road map to proposal of GST from past several years to adopt all over the state in the country, it will be expecting to implement in the coming year, by abolishing all Central & State Tax and making single mode of indirect tax in the uniformity of tax level.



Role of CS in Corporate Treasury Management



Shruthi Murali Kumar
Reg no: 320438793/07/2008
Management Trainee at ROC

Corporate treasury manages a company's cash flows in the most efficient and profitable fashion possible and forecasting future funding needs and best sources. The size of the treasury department depends on the corporation's size. Very large corporations may have regional treasury departments located in regional accounting offices.

Accounting Hierarchy

The main treasury department is usually led by a Senior Treasury Manager, who reports directly to the company's chief financial officer (CFO).

The Risks in Treasury management

1. Liquidity Risk: Perhaps the most important risk a treasurer must manage is liquidity risk, or the risk that the company will run out of cash either from insufficient revenue, excessive expenditure, or the inability to access funds from banks and other external sources. The inability to meet payment obligations as they are due can mark the end of a company if its creditors sell off its assets to pay corporate debts.

2. Credit Risk: Surplus cash can be invested to earn interest, and the treasurer must be sure that those issuing or insuring securities are financially sound and credit worthy. One way to do this is by checking an issuer's credit rating, which provides an independent assessment of the likelihood that a third party will pay on time and in full as expected. The treasurer must also be confident that counterparties to financial instruments used to manage risks (such as interest rate swaps) will perform as expected.

3. Currency Risks: Exporting companies face currency transaction risk when they translate proceeds from foreign sales into their home currencies and when the values of their foreign subsidiaries' assets and liabilities fluctuate upon conversion to a single home currency. Investors and

analysts may view currency moves that cause a drop in the value of consolidated foreign assets and in profits as a problem, potentially causing the share price to fall. When a competing company from another country experiences a more favorable currency translation the treasury comes under pressure.

4. Interest Rate Risk: Borrowing at variable interest rates allows companies to pay less if market interest rates fall, but raises their costs if rates go up. If a company does not pay interest because of insufficient cash, it may run into a liquidity crisis that could undermine its ability to raise debt in future, or to raise it only at higher interest rates that reflect its heightened credit risk to lenders.

5. Operational Risk: Operational risk is an internal treasury risk that reflects inadequate operational controls that could lead to a loss of company value. An example of inadequate controls might be if a treasury dealer borrows money under a company loan agreement, apparently for a business purpose, but transfers the proceeds to his or her own bank account because the treasurer is able to undertake both dealing and funds transfer activities. In a well-controlled treasury, such functions would be segregated and attempts to undertake both by the same individual would be immediately detected.

Risk Policies:

A treasurer will formulate a set of board approved policies that define the methods allowed to manage the above risks and the discretionary powers of the treasurer and other authorized personnel.

The treasury department's actions and its compliance with treasury policies must be assessed independently and regularly by the internal audit department and by a treasury committee comprised of senior management, including the treasurer. This committee, or an asset and liability committee (ALCO), will also regularly review and discuss financial risks across the company's assets and liabilities, and agree on appropriate actions to manage or transfer them. ALCOs will usually delegate the task of executing agreed-upon actions to the treasurer and his or her team.

Professional Development:

Traditionally, many treasurers were trained as accountants and undertook treasury activities as an offshoot to their accounting roles. However, with the development and proliferation of financial instruments and the globalization of financial markets and companies, treasury management has become more specialized, complex and time consuming. Large and multinational companies establish treasury departments as autonomous risk management units and corporate treasury management is now recognized as a profession distinct from accountancy.

Many countries have specialized professional bodies, such as the Association of Corporate Treasurers in the U.K., as well as specialized education programs. Although a treasurer is essentially a risk management specialist, his or her performance is enhanced by having a practical knowledge of various associated corporate support functions such as law, tax, insurance, accounting, economics and banking. In these areas, the corporate treasurer is also a generalist.

Role of a Company Secretary:

A company secretary should have practical knowledge of various associated corporate support functions such as law, tax, insurance, accounting, economics and banking as this is essential to advice the board and the senior management.

- ✦ Should be the part of the team to support the company to install a new treasury management system which will reduce the company's payment costs.
- ✦ Presenting to the Board on proposed maximum levels of risk which the company should be prepared to suffer in relation to movements in interest and foreign exchange rates.
- ✦ Implementing control procedures around making payments and devising appropriate internal management reporting of treasury positions and performance.
- ✦ Briefing senior managers in the company on the advantages and disadvantages of financial products available from the company's bank to reduce risks arising from a new contracts and agreements.
- ✦ Conducting treasury performance appraisal meetings with the Senior Management and advising them of training available and the implications on statutory compliances.
- ✦ Keep updating the Board and Senior Management on latest bulletin, recent changes to accounting and taxation affecting some of the company's most valuable contracts and agreements. Suggest changes in terms engagements etc.
- ✦ Meeting with representatives of an external credit rating agency to take stock of the situation, and put things in the right perspective explain to the board and Senior Management the company's current track records, goals, expansion plans, exit plans that would be good for business.



Conclusion

Treasurers are increasingly assuming more strategic roles in companies. They have moved beyond managing working capital to becoming increasingly involved with working with a company's senior management to manage risk and boost the bottom line.

Corporate treasury can be highly-paid, exciting and stimulating work. Its affinities with money management and investment banking add to its variety and intellectual interest, and can offer openings to these fields.



Members Of A Company



Sindhuja

Management Trainee,
J Sundharesan & Associates, Bangalore
sindhuja@jsunderesan.com

The Members of a company are its financial sponsors. A Company is an association of individuals incorporated as a company. In the case of a company limited by shares the expressions 'Members' and 'shareholders' are used interchangeably and refer to the same person(s) or entities.

Generally every shareholder is a member and every member is a shareholder. However, there are few exceptions to this. One example for the same is in the case of a company limited by guarantee, there is no share capital and therefore, strictly speaking, there are no 'shareholders' there are only 'members'. The **Subscribers to the Memorandum** of a Company shall be deemed to have agreed to become members of the Company, and on its registration, shall be entered as members in its register of members. Every other **person who agrees in writing** to become a member of a company and whose name is entered in its register of members, shall be a member of the Company. Every person holding equity shares capital of a company and whose name is entered as **beneficial owner** in the records of the depository shall be deemed to be a member of the concerned company.

Shareholder vs. Member:

A Division Bench of the Calcutta High Court in *CWT, West Bengal III v Smt. Sumitra Devi Jalan* 96 ITR 35, held that Art.19 of the Table A, says that the transferor shall be deemed to remain a holder of the shares until the name of the transferee is entered in the register of members in respect thereof. So, a person to be a member has to hold shares and the name of such person has to be entered in the register of members, kept by the company pursuant to Section 150 of the Companies Act, 1956 and such company obviously must be a company limited by shares, or by guarantee but having a share capital or an unlimited company where capital is held by indefinite shares.

Minor as a Member: Since a minor is incapable of entering into a contract because contract by a minor is void *ab initio*

and thereby not eligible to agree in writing to be a member, his name cannot be entered in the register of members.

Clarification by the Department of Company Affairs (now the Ministry of Corporate Affairs):

It has been clarified that when a guardian of a minor applies to be a member of a company, the Company can allot shares in the name of guardian, the guardian alone will be regarded as the shareholder by virtue of section 153 of the Companies Act, 1956 and he has to be represented by a registered guardian in his stead. It was held in the case of *Fazalbhoy Jaffar v Central Bank of India* that where the company transferred shares to a minor without being aware of this fact, the company could repudiate the transfer and the transferor would be liable by being restored to the register of members.

Registration of Shares in the name of a Minor:

There is no bar on the shares of a Company being registered in the name of a minor indicating therein the name of the guardian representing the minor. In India, parents of minor, with a view to provide for their major or minor children, do invest funds in several forms; all such investments are for the benefits of minors. Section 11 of the Contract Act 1872 is a beneficial provision enacted to protect the interests of minors such beneficial provision should not be used to the detriment of minors. Where a minor was allotted shares and he received dividend after attaining majority and raised no objection to inclusion of his name in register of members, he could not contend that he was not a shareholder.

...Article continued in page number 21



CSR: Unlocking The Value



Pooja B Shah

Trainee, J Sundharesan & Associates, Bangalore

puja.shah@jsunderesan.com

Corporate social responsibility (CSR) is a topic that is increasingly capturing the interest and imagination of people in the business world. The argument for CSR suggests that corporate accountability and self-regulation by companies should be dependent upon or geared towards socially responsible business behaviour.

CSR is not all about philanthropy or doing charity services for the community. This is not to say that such activities are unimportant. CSR should be understood as the right combination of enhancing shareholder value in the long-term and protecting the interests of various other stakeholders. One must consider the holistic attempt on the part of a firm, to engage and conduct a meaningful dialogue with a wide spectrum of Stakeholders. The goal of CSR is to embrace responsibility for the company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere.

"Social Responsibility is much bigger than supporting worthy causes, it includes anything that impacts people and their lives" -William Ford Jr. -Executive Chairman, Ford Motors.

Sec 293(i) (e) of the Companies Act, 1956 talks about contribution to charitable and other funds not directly relating to the business of the Company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed fifty thousand rupees or five per cent, of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

Section 293A of the Companies Act, 1956 places certain restrictions and limitations regarding political contributions. A government company or a company that has existed for less than three years is not permitted to make such contributions. All amounts so contributed to

political parties have to be disclosed in the company's profit and loss account, giving particulars of the total amount contributed and the name of the political party to which such amount was contributed.

The board of directors of the contributing company is required to pass a resolution at a board meeting, authorizing the company to make such a contribution

The importance of businesses in improving the quality of life is well recognized. CSR has become increasingly prominent in the Indian corporate scenario because organizations have realized that besides growing their businesses it is also vital to build trustworthy and sustainable relationships with the community at large. CSR is not a new concept in India. Corporates like the Tata Group, the Aditya Birla Group, and Indian Oil Corporation, to name a few, have been involved in serving the community ever since their inception. Today, CSR in India has gone beyond merely charity and donations, and is approached in a more organized fashion. It has become an integral part of the corporate strategy.

CSR is becoming an increasingly significant activity to businesses nationally and internationally. Global companies now recognise that how they respond to pressures for responsibility and accountability within issues such as human rights, ethics, and the environment will influence their success in future.

To remain competitive, firms, big and small, realise that they must take CSR into consideration. This is particularly challenging for firms in transitional and developing

countries. With a broader introduction to CSR and business ethics concepts and its relevance for staying competitive in the global knowledge based economy, there is a real danger that transitional economies and developing countries, unless they address these issues in a timely and systematic way, could face the risk of social and political unrest thus jeopardizing the development of a market economy and even democracy.

While the debate on whether responsibility of a business enterprise is only to its shareholders or to all stakeholders. One very strong argument against CSR is that the businesses are owned by their shareholders – any money they spend on so-called social responsibility is effectively theft from those shareholders who can, decide for themselves if they want to give charity.

The other argument that is put forward is that it's all very well for the very big companies with lots of resources at

their disposal, but for a small company which is too busy surviving hard times and for those fighting for survival, it's a very different picture, have to focus on core business. They cannot go spending money on unnecessary frills.

As CSR has its own pros and cons we may not be able to come to any conclusion as it is dependent on the nature and size of the business. But CSR can be practised on small and large scale which would bring beneficial results to the company and the public sphere. Incorporating CSR hand-in-hand with sustainable practices will ensure that your company remains competitive in today's consumer-savvy market.

To conclude a quote from Paul Hawken:

"The future belongs to those who understand that doing more with less is compassionate, prosperous, and enduring, and thus more intelligent, even competitive."

Article "Members of a Company" Continued from Page number 19

Shareholder whose name is not in the Register of Members cannot exercise right of a member:

Section 41, when read along with section 2(27), provides that members in relation to a company, does not include a bearer of a share warrant of the Company issued in pursuance of section 114. **It becomes evident** that entry in the register of members is a condition precedent to membership even if there is a resolution allotting the shares and the letter of allotment is issued. An applicant, who has failed to get his name entered in the register of members, cannot claim any right on the basis of the share certificates held by him.

If the Company fails to include in its Register of members the names of all or a substantial number of members of the Company the particulars entered in the register, may not be conclusive. In such case the shareholders in whose favour share certificates are issued can exercise rights as members of the company notwithstanding the omission of their names from the register.

Persons to whom share certificates have been issued can exercise their rights as members even if their names are not included in register of members.

Membership by a Subsidiary Company in its Holding Company:

A Company cannot be a member of its holding Company and any allotment or transfer of shares in a company to its subsidiary shall be void.

However, section 42(1) shall not prevent a subsidiary company from continuing to be a member of its holding company if it was a member thereof either at the commencement of the Act, or before becoming subsidiary of its holding. But in such cases a subsidiary shall have no voting right at the meeting of holding company or of any class of members thereof.

Membership by agreement in writing:

No person can become a member unless he has agreed in writing. Agreement in writing is a must in order to become a member of a company. Further that, an agreement to become a member cannot be inferred or implied from conduct. The agreement should be with the company after its incorporation and any agreement with promoters of the company before its incorporation will not be sufficient.

Conclusion: An Agreement to become a member and entry of the name of the person so agreeing, in the register of members of the Company, are the two important elements to be present for acquiring membership of a Company.



Corporate Frauds & The Serious Fraud Investigation Office



Ramya Bhatt, Trainee,
J Sundharesan & Associates, Bangalore
ramya@jsunderesan.com



Corporate social responsibility (CSR) is a topic that is increasingly capturing the interest and imagination of people in the business world. The argument for CSR suggests that corporate accountability and self-regulation by companies should be dependent upon or geared towards socially responsible business behaviour.

I. CORPORATE FRAUDS^{1 2}

With the increasing importance being placed on the role of Corporate India in the world economic development by business thinkers, it has become evident that corporate frauds in India, of any magnitude whatsoever, can no longer be kept away from media glare and scrutiny. The nature and frequency of occurrence of such frauds have a deep impact on the image of country. The need to deal with fraud risks firmly has become one of the objectives of the Ministry of Corporate Affairs (MCA). Lax standard of internal controls, poor business ethics and disregard for corporate governance practices have been some of the major causes for concern. Market Regulators and MCA have made constant efforts to protect and promote the interest of investors and shareholders. However, the question remains - Are these efforts adequate and more importantly effective enough to stop such serious and complex frauds from continuing?

II. CORPORATE GOVERNANCE MOVEMENT: *Mandate of Law and Beyond*

To minimize irregularities in the Corporate Sector, MCA has recommended adoption of corporate governance framework not just for listed companies but also for all unlisted companies regardless of its nature and size. While it is believed that good corporate governance practices would automatically immunize a company from failing, the recent corporate frauds are testimony to the fact that the very cause of occurrence of frauds is a result of poor governance practices.

¹ Clause 447 of the Companies Bill, 2011 defines: “*Fraud*” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

² Section 17 of the Indian Contract Act, 1872 defines Fraud as: “*Fraud*” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract:

- (i) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
- (ii) the active concealment of a fact by one having knowledge or belief of the fact;
- (iii) a promise made without any intention of performing it;
- (iv) any other act fitted to deceive;
- (v) any such act or omission as the law specially declares to be fraudulent.

Corporate Governance is the system by which companies are directed and controlled.³ It is the process by which the Board of Directors conducts and manages the affairs of the Company in the interests of its stakeholders.

Setting standards of governance and achieving compliance so as to move from mere compliance of mandatory laws to embracing higher benchmarks is recognized as an effective way of gaining investor trust and building the corporate image. Transparency and accountability by companies through timely disclosures and reporting is essential to justify why it deserves its stakeholders' patronage. It is necessary to understand and incorporate corporate governance as a primary requirement in a Corporate to better equip itself to handle risk, achieve compliance and avoid frauds. Having covered the preventive angle to corporate frauds, MCA has found it necessary to strengthen SFIO as a deterrent or punitive body to tackle serious cases of corporate frauds and other white collar crimes.

III. SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)

Though not all cases of corporate fraud may be referred to SFIO or be probed by SFIO, some of the more serious and complex cases are taken up, investigated and prosecuted by SFIO. To understand what cases may be handled by SFIO, its powers and functions, it is essential first to know the Investigating Body, its objectives etc since its inception.

The Government of India set up SFIO⁴ as an independent wing of MCA by way of a resolution dated 2.7.2003⁵ to professionally investigate white collar crimes and corporate frauds of serious nature under the provisions of the Companies Act, 1956.⁶ It is a multi-disciplinary organization consisting of experts in the field of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation for detecting and prosecuting or recommending for prosecution white collar crimes/frauds.



SFIO was set up pursuant to recommendations of the 'Naresh Chandra Committee on Corporate Governance'.⁷ The Committee had referred to the Serious Fraud Office, an independent UK Government Department that investigates and prosecutes serious or complex fraud and corruption while recommending a similar body in India.

The Charter of SFIO⁸ clarifies that SFIO shall normally take up for investigation only such cases which are characterized by:-

- (i) Complexity and having inter-departmental and multi-disciplinary ramifications;
- (ii) Substantial involvement of public interest to be judged by size, either in terms of monetary misappropriation or in terms of persons affected; and
- (iii) The possibility of investigation leading to or contributing towards a clear improvement in systems, laws and procedures.

The Director, SFIO has been designated as Head of Department for financial and administrative purposes and is empowered to take a view whether or not investigation should be taken up.

³Sir Adrian Cadbury, Cadbury Committee, 1992, Introduction

⁴ Official Website: www.s fio.nic.in

⁵ *Vide Resolution No. 45011/16/2003 - Admn I dated 2nd July 2003*; Notified in the Official Gazette – MCA, New Delhi, the 5th September 2005 – Part I Sec. 1 The Gazette of India, September 17, 2005 (Bhadra 26, 1927)

⁶ See Section 235 to 247 of the Companies Act, 1956

⁷ Set up by the Government on August 21, 2002, an expert Committee under the Chairmanship of Shri Naresh Chandra on 'Corporate Audit and Governance' to examine the entire gamut of Corporate Governance and to make suitable recommendations thereon.

⁸ Issued by the Government on August 21, 2003

During the period from 1st April 2010 to 31st December 2010, six cases were ordered for investigation under section 235/237 of the Companies Act, 1956 by the Central Government under separate orders. So far, 79 cases have been referred to SFIO for investigation. Out of these, SFIO has submitted investigation reports in 52 cases till 31.12.2010, two cases have been either stayed or dismissed by Courts and the remaining 25 cases are under investigation. Till 31.12.2010, 823 cases of prosecution have already been filed in the different Courts against the persons involved in fraudulent activities in the companies.⁹

IV. COMPANIES BILL, 2011 & THE SFIO

SFIO shot into prominence after its role in investigating the multi-crore rupee Satyam Accounting Fraud. Presently, SFIO has been carrying out many investigations at the instance of the Central Government. However, its powers to investigate are limited and the recommendations of the 'Vepa Kamesam Committee'¹⁰ panel clearly emphasized the need for a separate legislation for SFIO to make it autonomous and allow it to improve its investigation and enforcement. During the Satyam investigation, SFIO faced trouble in getting permission from courts to interrogate the suspects or conduct searches, something that has been seen as a handicap for an agency like SFIO.

The recommendations of the said Committee have been examined by MCA and are sought to be implemented in the Companies Bill, 2011¹¹. The Committee had opined that power of search and seizure, and attachment should be entrusted with SFIO as available with the Income Tax authorities, Customs, Enforcement Directorate etc. It has also suggested that SFIO be empowered to take up a case *suo moto* and even on source - based information if a fraud has been committed.

In the process of revamping the Company Law in India, the Minister for Corporate Affairs, Mr. Veerappa Moily has confirmed that the SFIO will be strengthened through legislation in the Companies Bill and will be given a statutory status along with powers to arrest in respect of certain cognizable offences. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. The changes are in line with the recommendations of the Vepa Kamesam Committee and seek to provide for stringent provisions.

V. CONCLUSION

With the 'Satyam' fiasco having become some sort of a cliché in the Indian Corporate Fraud scenario it has become imperative since, for MCA to relentlessly make efforts to modernize, reform and clean up the corporate sector while combating frauds. By revisiting corporate laws framework, to ensure that the law keeps pace with the many sophisticated ways and means to channelize corporate *mala fides* from becoming successful at the cost of investors and other stakeholders, the effort put in the Companies Bill in this regard is commendable.

To effectively combat corporate frauds and simultaneously promote corporate governance in the Corporate Sector of India, MCA has brought about the changes that were much needed. As with all other ways of the world, it remains to be seen how the role of SFIO pans out in the days to come.

SFIO - Clause 211 of the Companies Bill, 2011

⁹ SFIO - 1.15.4 - Annual Report – 2010-2011, MCA, Government of India, New Delhi

¹⁰ Vepa Kamesam Committee, an eight member committee, headed by former deputy governor of RBI Mr. Vepa Kamesam, set up in 2006 to review the functioning of the investigating agency.

¹¹ SFIO - Clause 211 of the Companies Bill, 2011

Pros & Cons of Outsourcing



Shambhavi.M

CS Professional Program Student

Trainee – Ganapathi & Mohan

Company Secretaries sham_ms3@gmail.com

Recently, companies have adopted a business strategy of outsourcing entire business activities, such as technology operations, customer relationship, logistics, finance, document processing, etc.

Business Processing Outsourcing and Knowledge Processing Outsourcing are growing in India.

Generally most of the companies operate in business with a common view of Providing Services and Making Profit. In order to achieve these goals, the policies applied for reducing cost relating to companies operations, making better use of time and energy costs, redirecting or conserving energy directed at the competencies of a particular business, or to make more efficient use of land, labor, capital, (information) technology and resources plays a vital role. With respect to this several companies opt for allocating their work to Specialists which is popularly known as “Outsourcing”.

Outsourcing may be defined as “The contracting or subcontracting of noncore activities to free up cash, personnel, time, and facilities for activities in which a company holds competitive advantage.” Investment Dictionary refers Outsourcing as a practice used by different Companies to reduce cost by transferring portion of work to outside suppliers or specialist rather than completing it internally.

Evolution and Types of Outsourcing:

Outsourcing dates back to the 1960s from where it has grown to different levels from the time-sharing data process model to Business Process Outsourcing (BPO) and then to Knowledge Process Outsourcing (KPO). Recently, companies have adopted a business strategy of outsourcing entire business activities, such as technology operations, customer relationship, logistics, finance, document processing, etc. The history of outsourcing started in the United States, when it was struck with economic stagnation and rising inflation rates. Since, then the US companies started outsourcing their service related jobs to cheaper locations to regain their profitability.

Business Processing Outsourcing (BPO) and Knowledge Processing Outsourcing (KPO) are the two major components of the outsourcing industry in India. Business process outsourcing may be defined as the delegation of one or more IT intensive business processes to an external agency, which in turn owns, administers and manages the selected process based on definite and measurable performance.

Knowledge process outsourcing may be defined as a high added value process chain where the achievement of objectives is dependent on the skills, domain knowledge and experience of the people carrying out the activity. It is being claimed that KPO is one step extension of BPO.

Outsourcing may be broadly classified into the following types under BPO and KPO:

- Information Technology (IT);
- Human Resource (HR);
- Customer Service;
- Engineering;
- Knowledge Services;
- R&D; etc.

Positive Impacts of Outsourcing:

Software and BPO industry in India has provided a major boost to the country's economy. It provides employment to millions of Indians. China has been a major competitor for the Indian outsourcing industry. But, India offers a cost advantage that is not easy to beat. But, rising wage bill of IT professionals and global financial meltdown is challenging India's position as a preferred destination for outsourcing business processes.

Nevertheless, the big boom in the BPO industry in India has generated a lot of employment opportunities with lots of benefits to their employees. Some of which are in the form of:

- Provident Fund and Gratuity;
- Group Med claim Insurance Scheme;
- Personal Accident Insurance Scheme;
- Subsidized Food and Transportation;
- Company Leased Accommodation;
- Recreation, Cafeteria, ATM facilities;
- Corporate Credit Card;
- Cellular Phone / Laptop;
- Personal Health Care (Regular medical check-ups);
- Educational Benefits;
- Performance based incentives;
- Flexi-time;
- Flexible Salary Benefits;
- Maternity Leave;
- Employee Stock Option Plan; etc.
- Generally, growth of BPO industry is largely influenced by the existing location factors of a country like size of workforce, wage differentials, stable and conducive business environment, telecom infrastructure, trade restrictions and language capabilities.

Negative Impacts of Outsourcing: Though outsourcing provides with positive impact, it is not free from negative impacts too. Several disadvantages of outsourcing on India are:

Indefinite Employment Guarantee: Although there is never any guarantee that a company will remain in business long enough to finish project, it is even more difficult to prove when the company is in another country. Credentials may be harder to verify unless other domestic companies have used them and can vouch for them.

Cultural Differences: If there are language barriers, or if both parties have different perspectives on how the work should be performed, misunderstanding can develop. India also operates in a different time zone. If this is overlooked, it can interfere with work schedules and deadlines.

Hackers: Especially in the IT world, companies run the risk of outsourcing to hackers who often have access to the company's computer system and information.

Piracy: The issue of piracy exists when outsourcing to India because an individual can take another person's material and claim it as his own; he can sell it and profit

from it. Because he is so far away, it is hard to find him, let alone penalize him.

Curbing of Creativity: As outsourcing companies offers good package and other incentives to our youths will opt for working under these companies rather than enhancing their own hidden skills, talents etc., which will curb the creativity of individual in one way and affecting the nation on the other way.

Effect on individual employees:

- Working in night shifts as clients are mainly US and UK based and there are differences in geographical and time zones of India and abroad. Thus, in order to meet cut-throat competition, the BPO employees have to work in night shifts. But, due to lack of normal sleep, their physical and mental health gets affected in the long run.
- Problem of sexual harassment at workplace, which leads to stress.
- Some of them gets addicted to drugs and/ or gets serious diseases, etc which effects health and lifestyle of employee.
- All the above will have an adverse effect on their family too.

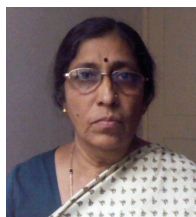
Challenges: Outsourcing is largely fragmented industry; there is more preference for young employees with good command over English and other foreign languages; facing cut-throat competition as well as severe shortages of trained and skilled manpower; non-existence of social security laws needed for checking the background of employees working in BPOs and call centers; at times, more focus on unproductive and non-core activities/ areas.

KPO involves providing of domain-based processes and business expertise rather than only process expertise. This requires advanced analytical, interpretation and technical skills in the workers. As a result, it is right to say that outsourcing of knowledge processes tends to face more challenges than BPO. Some of these can be listed as: more investment needed in KPO infrastructure, lack of highly-skilled and trained workforce, need of higher level of control, confidentiality and enhanced risk management, maintenance of higher quality standards, etc.

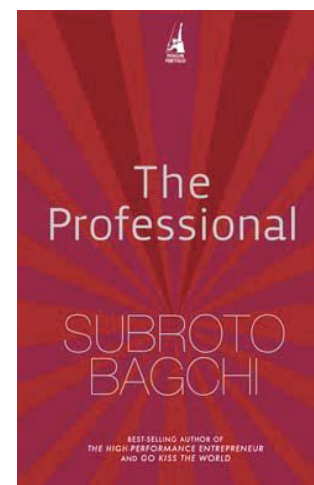
Pros and Cons of outsourcing are like two faces of a single coin. Government Authorities and business concerns need to take appropriate measures to overcome from negative impacts on society as well as on employees. Then it would be a boon, otherwise it turns into bane and destructs the development of a nation.



Book Review: “The Professional”



Rajeshwari S
Hemanth Biswajit & Co



‘In the garden of work, as long as the garden is alive, there is no last dry twig.’

‘Do not be fazed by the size of your adversary; the size of adversary determines the size of your success.’

Professionalism is often defined as the strict adherence to courtesy, honesty and responsibility when dealing with individuals or companies in the business environment. This trait often includes a high level of excellence going above and beyond basic requirements. Professional ethics is usually concerned with the personal values demonstrated by the professionals like Company Secretaries, Chartered Accountants, Lawyers or doctors who instill the faith and confidence into the society. A good professionalism and work ethic may include completing tasks in a timely manner with the highest quality possible and taking pride in completed tasks.

The book “The Professional” authored by Mr. Subroto Bagchi, founder of the company “Mind Tree Ltd.” gives an insight into the concept of professionalism and work ethics. Mr. Bagchi gives us his knowledge, based on his lifelong experience, of what it takes to be a great professional.

With interesting anecdotes and real life examples, this book takes us through the importance of professionalism in every walk of life. The author tries to answer questions like: What separates a skilled individual from a professional? How to make a professional choice, when faced with multiple options?

The author presents “The Professional” in seven parts- on the idea of Integrity, Self Awareness, Basic professional Qualities, and these three aspects are described as

foundational pillars on which every individual must build his professional life.

In the fourth part the author shows the way to deal with increasing volume of professional load which is directly linked to the size of our vision and how to relate it to our values. The professional qualities the seniors to deal with complex situations and problems are presented in the fifth part.

In the developing economies and in this age of global marketplace all the professionals need to be aware of five imperatives: viz. Inclusion of gender, cross cultural sensitivity, governance, intellectual property and sustainability –are extensively discussed.

In the seventh part the author discusses what it means to be a Professional’s Professional, where the author summarizes the ideas and also tells us what is unprofessional. The book you would come across a lot of illustrations ranging from a man who buries dead bodies to sportspersons to corporate professionals. The message is put across in a very simple language yet in a very meaningful way. We cannot remain silent readers without appreciating the way the author takes us to the environment of high caliber professionals. Examples of some good professionals and some bad ones are described in the book.

A Company Secretary or a pursuing student would find many interesting things in the book. The author explains how Satyam fiasco happened despite of having the most qualified and decorated board members. When professionals get together, they assume that the purpose of every meeting is to get consensus. But consensus is not always beneficial and can sometimes lead to disasters.

On reading this book we will believe in the ideas presented and find the courage to apply them in our life.

‘There is truly no beginning or end in being a professional. It is a lifelong learning curve.’

Some features to ponder on, having read the book are:

Professionalism and the work ethic demonstrated by individuals in the business environment may be built around an internal moral system or code of ethics. Morality and ethics usually represent the personal beliefs individuals display when working in business. Common traits often include transparency, honesty and integrity. These personal traits often display themselves publicly when individuals respond to various business situations. A professional work ethic may be seen as somebody “walking the walk” regarding their personal morality and ethics.

Function: Small businesses often use professionalism to help them establish a good reputation in the business environment. Because many small businesses have limited capital resources during the early years of operations, an important advertising strategy is word-of-mouth. Small businesses that treat each customer in a professional

manner and display a strong work ethic when completing business functions or responsibilities can help develop positive goodwill with consumers.

Effects: Business owners and entrepreneurs may decide to create a written set of guidelines outlining their company’s professionalism and work ethic expectations. These written guidelines can help the business owner translate his company’s mission or vision to employees. These guidelines may also be included in the company’s employee manual so business owners can properly train and educate individuals about the importance of the company’s professionalism and work ethic.

Considerations: Transforming an individual’s understanding of professionalism and work ethic may be a difficult process in small business. Many individuals may not have the same views on professionalism and work ethic as the business owner.

Business owners may hire these individuals if they have technical experience or expertise in the business, regardless of the employee’s personal moral or ethical beliefs. But employees often adopt the business’s professionalism and work ethic guidelines when working for a company, especially if they are well compensated.

What if I were....

- Sagar Prakash Kulkarni

*I wonder what if I weren’t a human,
And could do things beyond what is humane!!*

*I wish I were a colourful fish,
Acting as the blue ocean’s garnish!
What if I were a lengthy river,
Flourishing the lands with my flow thither!*

*I wish I were one of those lovely birds,
Filling the air with their sweet chirpy chords!
What if I were a butterfly,
Keeping the life’s colours in good supply!*

*I wish I were a huge tree,
Giving shelter to everyone for free!
What if I were a floating cloud,
Helping the harvest of seeds that are ploughed!*

*I wish I were a wax candle,
Lest the world slip into a dark wobble!
What if I were a medicinal herb,
Keeping the pain of ailments under a curb!*

*Alas! I know I am but just a human,
With a dream of making the world a better one!!*

Video Meetings



Seema Pai, Trainee,
J Sundharesan & Associates, Bangalore
seema@jsunderesan.com

A video conference is a set of interactive telecommunication technologies which allow people from two or more locations to interact via two-way video and audio transmissions simultaneously. It has also been called 'visual collaboration' and is a type of groupware.

Video conferencing uses telecommunications of audio and video to bring people at different sites together for a meeting. This can be as simple as a conversation between two people in private offices (point-to-point) or involve several sites (multi-point) with more than one person in large rooms at different sites. Besides the audio and visual transmission of meeting activities, videoconferencing can be used to share documents, computer-displayed information and whiteboards.

MEETINGS THROUGH VIDEO CONFERENCING:

Section 285 of the Companies Act, 1956 deals with the provisions and procedures of the meetings of the Board of the Company. It provides that every company whether public or private, registered under this Act, must hold at least one meeting of the Board members in every three months.

Due to the persistent demand and series of representations from trade and industry organizations, to permit the companies to hold their board meetings through video conferencing, the Ministry of Corporate Affairs (MCA) has vide its Circular No's 27 and 28 dated May 20, 2011 allowed participation of directors and shareholders in the board and general meetings respectively of Indian companies through Video Conferencing.

Video conferencing will help Indian companies bring international input at the board level, without having to face logistical problems.

Through web conferencing, people can attend more meetings at the least expense and enable active participation.

THE INFORMATION TECHNOLOGY ACT, 2000

As the meeting is carried out virtually, at least in part, it is relevant to consider the role of the Information Technology Act (IT Act). Section 4 of the Information Technology Act, 2000 which gives legal recognition to electronic records, Section 13 provides for time and place of dispatch and receipt of electronic record and Section 81 of the Act permits the Information Technology Act to have overriding effect over anything contained in any other law.

INDIAN EVIDENCE ACT, 1872

Section 65B (1) of the Indian Evidence Act, 1872, states that, notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

BOON

- **Green Initiatives:** This stride towards e-governance is a move which will largely support green initiatives.
- **Active participation:** It is a big boon of big corporate houses and Multi National companies which severely required this provision to enable active participation of their Board members being globally located in various Meetings.

- **Faster Decision Making:** Videoconferencing provides easier access to key personnel. Decisions are not only made faster, but with more consensus and agreement from everyone involved at different locations.
- **Intermediary:** The video conference facility enables all persons participating in a meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- **Curbs costs:** Video conferencing system can be an additional expense for most companies but it can be easily recouped especially in terms of savings on travel and representation expenses.
- **Standardizing work processes and keeping directors up-to-date:** The global nature of the business these days' demands that work processes be standardized to streamline operations and create an international workforce that can operate efficiently. Video conferencing companies can connect to directors at every location in exactly the same way, which assures company-wide compliance without the additional time and expense
- **Leveraging technical expertise across disparate locations:** Video conferencing enables technical expertise from directors spread across various locations.

BANE

- **Technical issues:** Video conferencing may result in issues regarding technical hurdles being faced during the meeting such as disconnection of any Director during the meeting or inability to get in contact with any Director during the commencement, re - commencement or conclusion of the meeting at the time of freezing summary.
- **Time Zones:** The companies should ensure timings of the meetings to suit person located at different time zones
- **Relevance of physical presence:** The circular does not provide for all Directors to be physically present in any specified meeting. In a sense, each Director may be physically present in different meetings, so the intent behind creation of provision regarding ensuring physical presence of each Director in at least one meeting of the Board/Committee might be lost.

- **Consequences of not complying with the provisions of circular:** A company might conduct Board/Committee meetings through Video conferencing however, may not abide with all the requirements of law therein. No provision is defined with respect to such repercussion. It might lead to general default and fall under the provision of Section 629A or based upon the nature of default conducted might fall under the specific provisions of Companies Act, 1956.
- **Expensive:** Setting up a video conferencing system can be an additional expense. For a listed company providing for video conferencing facility in at least 5 top places in India may be an expensive affair.
- **New users:** Video conferencing can also be complicated for new users.

CONCLUSION:

Technology can both be a boon or a bane to people, depending on how they make use of a particular technology. Allowing technology to make life and work easier should be the goal of every technology whiz. However, there are technologies that have two faces, meaning they can be helpful and can sometimes present disadvantages to its users.

Companies that wish to conduct video conferencing have to be equipped with computers. Video cameras, speakers and microphones and fast internet connection. They also have to subscribe to a service provider or they can buy software which may be expensive for small companies and for individuals. Setting up a video conferencing system can be an additional expense for most companies but it can be easily recouped especially in terms of savings on travel and representation expenses. It can also be complicated for new users but companies can always hire consultants to train their people or to guide them during the initial stages of the video conferencing.

Video conferencing will help Indian companies bring international input at the board level, without having to face logistical problems. Through web conferencing, people can attend more meetings at the least expense and enable active participation.

While video conferencing cannot fully substitute for personal communication, it is the best alternative that people can turn to considering its cost effectiveness and efficiency.



CS In Banking



Adithya K N Trainee,
J Sundharesan & Associates, Bangalore
aditya@sunderesan.com

Company Secretaries should leave an indelible mark in working of Banks through exchange of information and statutory compliance, instilling professional discipline in the working of the companies that have taken loan besides building up the necessary confidence in the state of affairs of the companies.

INTRODUCTION

Banking industry in every country plays a key role in the economic development by providing necessary impetus to each and every sector. The role of Company Secretary in the banking company derives from the nature of assignments performed by him in that organization. While it is statutory requirement to engage on whole time basis a Company Secretary for the banking company set up under the Companies Act, 1956 and having a Banking License from RBI to carry on banking business under the Banking Regulation Act, 1949. The other banking companies irrespective of their nature of corporate entities such as commercial banks, Regional Rural Banks, Non-Banking finance companies, Development Finance Institutions will be better placed where professionally qualified Company Secretaries are employed in view of their diversified knowledge in legal & related fields.

IMPORTANT TASKS ENTRUSTED TO A COMPANY SECRETARY IN BANKING ORGANIZATIONS

Some of the important tasks, generally entrusted to a Company Secretary and satisfactorily discharged by him in the Banking Organizations are enumerated below:

- Formulation of various Corporate Management policies for approval by the Board of Directors
- Smooth and systematic conduct of Board / Directors' Committees/ Shareholders' meetings in conformity with the provisions of the Companies Act, Banking Regulations Act etc. and to comply with all related statutory functions.
- Act as Secretary to different Directors' Committees constituted to look after various matters, either under Listing Agreement (Clause 49), or for better management practices.
- Act as Compliance Officer under the Listing Agreement, where the shares/ securities of the Banking Organization are listed with any Stock Exchange.
- To render proper and timely advice to the Board of Directors and other top executives in adhering to the various prudent corporate governance practices, not only as prerequisite for the listing agreement but also as a systematic development of Core Ethical standards.
- Plays an important role in the process of merger and amalgamation in the Banking Sector or for any takeover, acquisition of any target/ weak bank either as a strategic decision to bail out any weak bank, as may be advised / permitted by Reserve Bank of India or as a policy decision to expand the bank's business domain .
- Assessment of various risks involved such as credit risks, interest risk, market risk etc.
- For mobilization of resources by way of shares/ bonds/ etc., i.e. right from deciding on the nature of resources as per RBI norms up to the actual raising of such capital and during the course of servicing thereof.
- To keep a close liaison with the different departments in the organization to enable the Statutory Auditors to complete the audit process in time till the accounts are considered / recommended / approved by the audit committee/ Board and finally adapted by the shareholders at the Annual General Meeting.
- Offers suggestion in consultation with legal executives in the banks for timely action for recovery under the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, which has proved to be an effective tool for the bank management to realize dues from Non Performing Assets with greater promptness.

- Adherences to Regulatory Guidelines issued by Statutory Authorities/ Government Agencies include RBI, SEBI, Ministry of Finance/ Ministry of Corporate Affairs, Government of India issues related to Banking Sector.

BASEL-III NORMS & DUE DILIGENCE - BROADENING HORIZON OF COMPANY SECRETARIES

Regulatory requirements prescribed by RBI includes maintaining Statutory Liquidity Ratio, Cash Reserve Ratio, Capital Adequacy etc. in addition to ensuring compliance with the lending norms in different sectors as specified by RBI from time to time. In view of strict Banking governance norms especially to achieve Basel I/II Compliance targets, services rendered by Company Secretary, in this regard, deserve due recognition.

Now, starting 2013 Banks across the world would start implementing the Basel III norms in a phased manner up to 2019 (The Reserve Bank of India on 30th December, 2011 has released on its website, draft guidelines outlining proposed implementation of Basel III capital regulation in India.) Every measure has its own initial impact and so is this one. In the light of 2008 economic crisis wherein some big banks had crashed, the Basel III norms issued by the Bank of International Settlement, an International Banking body with majority of central banks as its members, through the Basel committee on banking supervision, known as BCBS, proposes to enhance the quality of Banks' in capital by enlarging the equity capital (Equity + Reserves) requirement by strengthening the loss absorption capacity of different form of capital. In other words, Basel III is a global regulatory standard on bank capital adequacy, liquidity and leverage agreed upon by members of the Basel Committee on Banking Supervision.

KEY FIGURES IN BASEL-III NORMS: **

The key proposed rules is that Banks will raise Capital Adequacy Ratio (CAR) from 8% (Basel II) to 10.5% in Basel III. This means, lenders are required to set aside Rs. 10.50 for every Rs. 100 funding although, a national regulator can prescribe a "Countercyclical buffer" of up to 2.5% which increases the total CAR requirement to 13%.

Thus, the new composition of CAR Ratio is out of 10.5%, total equity capital requirement is raised from existing 2% to 7%. However tier II capital i.e. Hybrid Capital (Fund raising through debt instruments) is dropped from 4% to 2%. This key challenge sustaining 10.50% CAR in the long run requires Indian Banks according to CRISIL to generate Rs. 8 Lakh Crore capital to meet the minimum capital adequate under Basel III although this amount is over and above their earnings between 2013 and 2019.**

DUE DILIGENCE IN BANKS:

So, as prospective successful Company Secretaries need to meet the expectations of the Banking Industry in implementation of Basel III norms in addition to the responsibility given by RBI to provide regular certification (**DILIGENCE REPORT**) by a professional preferably a Company Secretary through circulars issued from 2008-09 onwards advising all the scheduled commercial banks (excluding RRBs and LABs) to obtain certification regarding compliance of various statutory prescriptions that are in vogue in relation to lending under consortium arrangement / Multiple banking arrangement and also Primary Urban Co-operative banks have been advised to obtain diligence report.

CONCLUSION:

Company Secretaries should leave an indelible mark in working of Banks through exchange of information and statutory compliance, instilling professional discipline in the working of the companies that have taken loan

besides building up the necessary confidence in the state of affairs of the companies resulting in other professionals asking the question "*Why this CS professional is much ahead of us in Bank Governance?*" (Like how people wonder *why this Kolaveri di* song became a sensational hit) and potential / budding Company Secretaries should strive hard in all earnestness so that in immediate future there may be legal necessity to have a professional Company Secretary in place for all such Banking organizations with a view to ensure satisfying standard of governance; thereby paying a tribute to Swami Vivekananda on the occasion of his 150th Birth Anniversary celebrations whose famous quote is:

"Take up an Idea, Devote yourself to it, Struggle on in patience and the Sun will rise for you."



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Stakeholders Relationships



Chandrashekhar V K

Trainee, J Sundharesan & Associates, Bangalore

chandrashekhar@jsunderesan.com

The organizational-stakeholder relationship has recently been of crucial in the organizational studies. The relevance of this topic is even greater as a result of recent governance failures.

The notion of "paying attention to key stakeholder relationships" has been a major theme in the strategic management.

Reputation management has become a significant business tool. Not only it is a soft skill but also a core responsibility of each and every employee and other involved stakeholders within the organisation. The importance of stakeholder relationships is and will continue to play a vital role within the corporate world. An organisation's reputation is derived from how stakeholders perceive the organisation, its communication and behaviour within the marketplace. Stakeholders are the people behind an organisation's reputation and the representatives of the image of the organisation. The dynamics of stakeholder relationships should never be undermined. Building comprehensive stakeholder relationships should be embedded within all communication strategies. This will enable fostering of stakeholder relationships, building and optimising of long-term investment relationships, which in turn may render growth opportunities for an organisation within its scope of areas.

SOME DEFINITIONS OF A STAKEHOLDER:

- An individual or group with an interest in an organisation.
- Any individual or group who can affect or are affected by the achievement of a firm's objective.
- Groups/individuals that have an interest in the well being of the company and/or are affected by the goals, operations, activities of the organisation.

STAKEHOLDERS CAN BE CLASSIFIED AS:

- Internal stakeholders (e.g. employees, managers)
- Connected stakeholders (e.g. shareholders, customers, suppliers, financiers)
- External stakeholders (e.g. Government, society, self-interest groups)

THE MAIN STAKEHOLDERS IN ANY BUSINESS AND THEY LOOK FOR:

Shareholder	Prudent investment and good return
Employee	Fair pay, good working conditions and recognition
Supplier	Prompt payment and regular business
Customer	Fair price and quality, safe product
Society	Employment opportunities and welfare programmes
Government	Law compliances and prompt payment of tax
Environment	Less pollution and eco-friendly products

“STAKEHOLDER RELATIONS MANAGEMENT - A KEY SKILL”

Effective management of relationships with stakeholders is crucial to resolve the issues being faced by the organizations. By using their influence, stakeholders hold the key to the environment in which organization operates and subsequently impact on the financial and operating performance of the organization. The main steps in stakeholder relation management are:

Identify stakeholders- List the people, groups or organizations who are affected by your project, who have influence or power over it

Prioritize stakeholders- Some of the identified stakeholders may have the power either to suppress or support the activities. Some may be interested in the ongoing operations and others may not care. Having identified the main stakeholders, one needs to decide which of them are the most important.

Analysis of stakeholders - Stakeholder analysis identifies and organises their needs and leads to an understanding of what the stakeholders believe the project will produce. The analysis provides understanding of their needs and criteria to satisfy them, and it allows creating working relationships to balance and meet their expectations.

Balancing Stakeholder Needs - Stakeholders interest may be in significant conflict on a project and require careful balancing to ensure that overall project goals can be met. Therefore it demands the most attention and maps these against the project constraints. This requires ranking the needs in terms of relevance and influence to the project to clearly separate the essential, desirable and optional requirements.

STAKEHOLDERS’ APPROACH TO CORPORATE GOVERNANCE

Companies should design their corporate strategies considering the interest of stakeholders groups and individuals who can affect and be affected by the organisation goals. The corporate governance is basically a process of controlling managers and other organisation participants to ensure that they act in the interest of the Stakeholders. It is the system by which companies are directed and controlled. It provides a framework which defines clearly the fiduciary duties of Board of directors towards all people who carry stake in the Company. The effective Corporate Governance targets to protect interest of stakeholders by maximising value of business and by managing risk. It operates up on the principles of Transparency, Accountability, Fairness and Responsibility.

STAKEHOLDER COMMITMENT: WHY IS IT IMPORTANT?

All organisations and projects, securing stakeholder commitment has its significant rewards:

- Helps to incorporate technology-based solutions and practices that can have a transformational effect on learning, teaching and managing.
- Firms which create, and sustain stakeholder relationships based on mutual trust and co-operation will have a competitive advantage over other firms that do not act in this way thus helping in solving many problems.

WHY TRUST IS REALLY IMPORTANT?

The fundamental glue that holds any relationship together is trust. It is an important aspect which forms basis for positive relationship between an organisation and stakeholders. Trust between an organization and stakeholders depend greatly on the history of interactions between them. Trust is developed when behavior matches expectations. Trust is also related to reputation and ethics, and is crucial to business relationships because almost every business transaction requires a degree of good faith and trust. Being trustworthy with stakeholders generates a range of organizational benefits such as improved employee recruitment and retention, a better share price, investor’s confidence, enhanced customer relationships and loyalty.

CONCLUSION:

There are specific times in the development of any business when good stakeholder relationships become even more critical in determining the reputation of an organisation. To minimise damage to an organisation’s reputation, especially in crisis healthy relationship with all stakeholders becomes more crucial. The process of stakeholder relationship-building should be an ongoing one, to be observed as an opportunity for management to recognise that the relationship between individuals and the organisations is powerful.

As an organisation’s ally, stakeholders are an organisation’s best marketing tool but as an enemy, they can destroy it and its brand. Thus they can make an Organisation or mar it. So to create a WIN-WIN situation which results in benefit for both interacting groups, it is always important to effectively manage the relationship and interface between an organisation and its stakeholders.



Forward Looking Statement



Ashish Jain,

Trainee, J Sundharesan & Associates, Bangalore
aashish@jsunderesan.com

A projected financial statement is based on management expectations. A forward-looking statement involves risks with regard to the accuracy of assumptions underlying the projections. Actual future results and trends may differ materially from what was forecasted in forward-looking statements, expressed or implied.

INTRODUCTION

A projected financial statement is based on management expectations. A forward-looking statement involves risks with regard to the accuracy of assumptions underlying the projections. Discussions of these statements typically include words such as *estimate*, *anticipate*, *project*, and *believe*. Statements which are based on and describe about management's expectations, estimates, projections, objectives, intentions and assumptions are forward looking statements. Words such as "expects", "Anticipates," "plans," "believes," "scheduled," "estimates" and variations of these words and similar expressions are intended to identify forward-looking statements, which include but are not limited to projections of revenues, earnings, segment performance, cash flows. Forward-looking statements are made pursuant to the Companies Act, 1956, securities laws and all other applicable Acts, statues, rules and regulations as amended from time to time. These statements are not guarantees of future performance and involve certain risks and uncertainties, which are difficult to predict. Therefore, actual future results and trends may differ materially from what was forecasted in forward-looking statements, expressed or implied.

Securities Act, 1933(U.S Laws)

Within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended, and are intended to be covered by the "safe harbor" created by those sections. All statements, other than statements of historical facts, included in this Quarterly Report on Form 10-Q regarding the company's strategy, future operations,

future financial position, future net sales, projected costs, projected expenses, prospects and plans and objectives of management are forward-looking statements. The words "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. The safe harbor defines "forward-looking statement" broadly, including projections of future financial results, statements of plans and objectives for future operations, statements of future economic performance, required disclosures in MD&A, and statements of assumptions related to the foregoing Section 27A (i) (1).

Concept of Safe Harbor

The heart of the safe harbor is section 27A(c)(1)(A)(i), which provides that a company "shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the forward-looking statement is identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement. The statement must be "accompanied by a cautionary statement that the particular oral statement is a forward-looking statement; and that the actual results could differ materially from those projected in the forward-looking statement." Section 27A(c)(2)(A).

Even if an issuer fails to include sufficient cautionary disclosures, it can only be held liable for forward-looking statements if the plaintiff proves that the statement, "if

made by a natural person, was made with actual knowledge. That the statement was misleading." section 27A(c)(1)(B)(i). If the statement was made by a company, then the plaintiff must prove that the statement was "made by or with the approval of an executive officer of that entity with actual knowledge by that officer that the statement was false or misleading." Section 27A(c)(1)(B)(ii).

The Bespeaks Caution: The bespeaks caution doctrine generally protects an issuer or affiliate from liability based on forward-looking statements if the statements are tempered by the inclusion of cautionary language. This protection is not guaranteed and one court has noted that the 'bespeaks caution' doctrine reflects nothing more than 'the unremarkable proposition that statements must be analyzed in context. The doctrine is significant, however, in that it has been used to terminate securities fraud litigation on pre-trial motions to dismiss or for summary judgment.

Disadvantages of Forward Looking Statements

Historical Information: Financial statements contain historical information. Each accounting period has financial statements that report the information for the preceding month. Unfortunately, the information occurs in the past and does not predict future outcomes. While a company's management team can make forward looking statements regarding the information, the issues discussed do not actually portray actual events that will occur in the future.

Inaccurate: Accounting information may be inaccurate, whether by design or mistake. Companies that produce fraudulent financial statements look to mislead investors, hoping to secure funds for inappropriate use. Natural mistakes are also a problem, although there may be no ill will on the part of the company. Investors may not understand the errors or misleading information, leading to weaknesses when using financial statements to make decisions.

Myopic: A company's financial statements can provide a myopic look into the company's operations. Financial accounting information released to investors or the general public must meet generally accepted accounting principles. Managerial accounting information --- reports that stay within the business --- never see the outside world. Therefore, investors can have a potentially limited view of a company's overall operations. Managerial accounting documents can provide more information on a business' efficiency than financial accounting.

Difficult to Understand: Investors may find financial statements difficult to read and understand. Many investors may not understand the complicated transactions a company reports. This limitation may lead to an investor making an improper decision by misreading the financial statements. Investors may also not be able to identify specific entries or other items that may be the result of a company struggling during operations.

Advantages of Forward Looking Statements: Forward Looking Statements were encouraged by US authorities with one goal in mind which is to improve Company and Investor Relationship. Forward looking statements give an over view of the future of the Company, where it stands and where it proposes to reach. It gives out an estimate of the Companies goals and aims for the future. Even though not mandatory, it is encouraged by the authorities so as to educate the Investor and improve relations between company and its Investors.

Conclusion

The Company's forward-looking statements are based on management's current expectations and assumptions regarding the Company's business and performance, the economy and other future conditions and forecasts of future events, circumstances and results. As with any projection or forecast, they are inherently susceptible to uncertainty and changes in circumstances. The Company's actual results may vary materially from those expressed or implied in its forward-looking statements.

In the Indian Perspective, there are no substantial Laws on Forward Looking Statements. Therefore India needs to develop guidelines and Laws for Forward Looking Statements to improve Company - Investor Relationship and to keep the Investor educated so that they can make informed decision as like in the United States of America. The concept of Safe Harbor is not clearly mentioned in Indian Law but taking a cue from the US Laws the Authorities can include the same in the Indian Law and make it Compulsory for the Indian Companies to publish a yearly Forward Looking Statement to educate and Improve the relation between the investor and the company with necessary guidelines which would include Concept of Safe Harbor and Bespeaks Caution and it would lead to better Compliance and Disclosures.

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AN OVERVIEW OF Bancassurance



Kanthi P,

Trainee at V.C Krishnamurthy, Company Secretaries.

kraanti@gmail.com

The banking and insurance industry have changed rapidly in the changing and challenging economic environment throughout the world. In the competitive and liberalized environment, everyone is trying to do better than others and consequently survival of the fittest has come into effect. Insurance companies are to be competitive by cutting cost and serving in a better way to the customers. Now the time has come to choose and adopt appropriate distribution channel through which the insurance companies can get the maximum benefit and serve customers in manifold ways.

One of the recent examples of financial diversification is 'bancassurance', which means the distribution of insurance products through branches or other distribution channels of the banks. The concept originated in France, constitutes the dominant model in a number of European and other countries and it is fast catching up in India as well. For example, Federal Bank has tie up with IDBI, Canara Bank with Aviva Life Insurance Company, Axis Bank with Met Life India, Vijaya Bank with LIC, etc.

Bancassurance primarily banks on the relationship the customer has developed over a period of time with the bank and pushing risk products through banks is a cost-effective affair for an insurance company. While, for banks, considering the falling interest rates, fee based income coming in at a minimum cost.

The strategy for using the established distribution network for one product to market other new products has long existed in the consumer goods sector. Banks, too, have in the recent past adopted this strategy both in India as well as internationally. They have moved away from the classical model of deposit taking and credit disbursal to offer a wide range of products and services like security

One of the recent examples of financial diversification is 'bancassurance', which means the distribution of insurance products through branches or other distribution channels of the banks. Bancassurance primarily banks on the relationship the customer has developed over a period of time with the bank

broking and mutual funds. Change in regulatory regimes has also facilitated this diversification.

Growing disintermediation by corporate borrowers (direct borrowings by firms from the debt market for both working capital and term loans), better inventory practices that have reined in working capital needs and a liberalized external borrowing regime have reduced 'fund incomes' of banks. Banks have felt the need to offset these through growing fee incomes particularly from the retail side by offering more diversified product range.

NEED FOR BANCASSURANCE

Margins of fund based revenue are squeezed in the banks, so they felt a need to offset these through retail side.

For staff retention and motivation, banks must provide diversification in the work.

The banks are looking towards bancassurance, as a step towards universal banking approach to provide all financial products under one roof.

For customer retention, the banks have to provide additional services along with the usual banking services.

SWOT ANALYSIS IN THE CONTEXT OF INDIA:-

Strengths: In a country like India, there is a vast untapped potential for life insurance products. There are more than 900 million lives waiting for life cover, 200 million households waiting for household insurance policy. LIC & GIC have large branch network to implement bancassurance effectively.

Weaknesses: In the case of rapid growth of Information Technology, banks and insurance companies are still lacking its implementation and products are not tailor-made to the customer requirements.

Opportunities: Banks database is enormous and various homogeneous groups are chummed out to position bancassurance products. A good IT structure, merger and acquisition/ setting up of joint venture is pre-requisite in this direction.

Threats: In India, there is always a tendency to restrict any change whether its impact is favorable or not.

BENEFITS OF BANCASSURANCE

From the viewpoint of Bank:-

- ✓ The bank can increase Return on Assets (R.O.A) by increasing their income, by selling insurance products through their own channel.
- ✓ Banks have extensive experience in marketing to both existing customers and non-customers by using technology access multiple communication channels such as statement inserts, ATMs, telemarketing etc.
- ✓ When the loan is provided with insurance, the chances of loan becoming a non performing asset will reduce.
- ✓ Bancassurance provides an opportunity to the bank staff to harness their skills.
- ✓ By providing customers with both the services under one roof, they can improve customer satisfaction.

From the view point of Insurer: -

- ✓ Insurers can increase their volume of business through banking distribution channel.
- ✓ By cutting cost, insurers can serve better to the customer in terms of lower premium rate and better risk coverage.
- ✓ Insurers can exploit the banks wide network of branches for distribution of products.
- ✓ Customer database like customers' financial standing, spending habits, investment patterns etc. can be used to customize products.

From the customers' view point:-

- ✓ Comprehensive financial advisory services under one roof. i.e., insurance services along with other financial services.
- ✓ Risk reduction- In case of default, the property will remain to customer's legal heirs.

- ✓ Easy accesses for claims, as banks are a regular go.
- ✓ Customers can get innovative and better products.

ISSUES TO BE TACKLED

- Difference in working style and culture: Insurance is a 'business of solicitation' unlike a typical banking service, it requires great drive to 'sell/ market' the insurance products.
- There is a chance of conflict of interests, as some of the products offered by the banks, viz., 'term deposits' and other products which are mainly aimed at long term savings/ investments can be similar to the insurance products.
- Difference in the approaches of 'selling of insurance products' and the usual banking services- thorough understanding of the insurance products by the bank staff coupled with extra devotion of time on each customer may result in resistance to change.
- Unlike, the banking service, there is no guarantee for insurance products. Efforts that a bank staff spends in explaining to a customer would clinch the deal.
- Bankers are extremely naïve in insurance products; therefore they require strong motivation of both monetary and non monetary incentives.

CONCLUSION: Bancassurance, the emerging distribution channel for the insurers, will have a large impact on Indian financial services industry. Banks will bring in customer database; leverage their name recognition at both local and regional levels, which a new entrant cannot do. In customer point of view, a plethora of customized products would become available to him. Success of the bancassurance would depend on how well insurers and banks understand each other's businesses and seize the opportunities presented. The proper training of bank personnel, investment in IT and other support systems and regulatory issues also need to be addressed. Given these changes, bancassurance has a long way to go in India.

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Mutual Funds: A Preferred Investment



Deepak S.
Executive Student, Mandya
deepak2202@live.com



Mutual funds allow you to buy a whole basket of stocks with one investment. Unless you are an expert at picking stocks, mutual funds are a much safer way to go.

You need a lot of information or sound advice from someone you trust to make your way in the stock market.

Mutual funds are a vehicle to mobilize moneys from investors, to invest in different markets and securities, in line with the investment objectives agreed upon, between the mutual fund and the investors. Mutual funds allow you to buy a whole basket of stocks with one investment. Unless you are an expert at picking stocks, mutual funds are a much safer way to go. The fund manager does all of the buying and selling. Investing in stock market by buying individual stocks involves a lot of research and a fair amount of education. You need a lot of information or sound advice from someone you trust to make your way in the stock market. It is more, meaning you can lose a lot of money quickly or gain a lot quickly.

Types of Funds:

Open-Ended and Close-Ended Funds

- 1) Closed-ended funds: Investors can buy units of a closed-ended scheme, only during its NFO (New Fund Offer).
- 2) Open-ended funds: Open-ended funds are open for investors to enter or exit at any time, even after the NFO.

Equity, Debt and Hybrid Funds

- 1) Equity funds: Schemes with an investment objective to invest largely in equity shares and equity related investments.
- 2) Debt funds: Schemes with an investment objective that limits them to investments in debt securities like Treasury Bills, Government Securities, Bonds and Debentures.

- 3) Hybrid funds: A reasonable level of investment in both debt and equity.

Actively Managed Funds and Passive Funds

- 1) Actively Managed Funds are funds where the fund manager has the flexibility to choose the investment portfolio, within the broad parameters of the investment objective of the scheme. Investors expect actively managed funds to perform better than the market.
- 2) Passive funds invest on the basis of a specified index, whose performance it seeks to track. These schemes are also called as Index schemes.

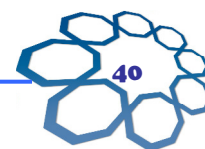
Types of Mutual funds also include Gold funds, Real Estate Funds, Commodity Funds, International funds, Exchange Traded Funds and Fund of Funds.

Advantages of Mutual Funds

- Increased diversification
- Professional investment management
- Tax benefits
- Liquidity
- Regulatory comfort
- Reduced brokerage fees
- Spreading risk over a larger quantity of stock
- Ability to participate in investments that may be available only to large investors

Benefits of Mutual Funds over Other Investments like:

- Equity Market
- Fixed Deposits



- Bonds & Debentures
- Certificate of Deposits
- Public provident fund
- Life Insurance

Investors of all categories could choose to invest on their own in multiple options but opt for mutual funds for the sole reason that all benefits come in a package.

One can avail of the benefits of better returns with added benefits of anytime liquidity by investing in open-ended debt funds at lower risk, unless like lock-in-period. Many people have burnt their fingers by investing in Fixed Deposits of Companies who were assuming high returns but have gone burst in course of time leading to distraught investors as well as pending cases in Company Law Board. This risk of default by any company that one has chosen to invest in, can be minimized by investing in Mutual Funds as the fund managers analyze the Companies financials more minutely than an individual can do as they have the expertise to do so. They can manage the maturity of their portfolio by investing in instruments of varied maturity profiles. Since there is no penalty on pre-mature withdrawal, as in the cases of Fixed Deposits, Debt funds, Certificate of Deposits provide enough liquidity.

Mutual funds are better placed to absorb the fluctuations in the prices of the securities as a result of interest rate

variation and one can benefit from any such price movement.

Capital markets interest people, not all for there are several problems associated. First issue is that of expertise. While investing directly into capital market one has to be analytical enough to judge the valuation of the stock and understand the complex undertones of the stock. One needs to judge the right valuation for exiting the stock too. It is very difficult for a small investor to keep track of the movements of the market. Entrusting the job experts, who watch the trends of the market regularly and analyze the valuations of the stocks will solve this problem for an investor. Mutual funds specialize in identification of stocks through dedicated experts in the field and this enables them to pick stocks at the right moment. Sector funds provide an edge and generate good returns if the particular sector is doing well.

A single person cannot invest in multiple high-priced stocks for the sole reason that his pockets are not likely to be deep enough. This limits him from diversifying his portfolio as well as benefiting from multiple investments. Here again, investing through Mutual Funds route enables an investor to invest in many good stocks and reap benefits even through a small investment. This not only diversifies the portfolio and generating returns from a number of sectors but reduces the risk as well.

Risk Return Profile

Risk Tolerance/Return Expected	Focus	Suitable Products	Benefits offered by Mutual Funds
Low	Debt	Bank / Company FD, Debt based funds	Liquidity, Better Post Tax Returns
Medium	Partially Debt, Partially Equity	Balanced Funds, Some Diversified Equity Funds and some debt funds, Mix of shares and Fixed Deposits	Liquidity, Better post-tax returns, Better Management, Diversification
High	Equity	Capital Market, Equity Funds (Diversified as well as sector)	Diversification, Expertise in stock picking, Liquidity, Tax free dividends

Conclusion

Investing in Mutual Funds is a better option for investors with little knowledge about Equity market, as the Fund Manager takes care about the investment decision. Spreading awareness about the benefits that are offered by Mutual fund schemes attract more investments, like in developed countries. Investors enjoy multiple benefits in a single platform with exposure to low risk and moderate returns. The benefits listed so far have essentially been for the small retail investor but the industry can attract investments from institutional and big investors as well. Liquid funds offer liquidity as well as better returns and so attract investors.

Electronic Meeting Management and Electronic Voting System - A View



Poornima Hegde
Trainee, GVSP & Associates
poornimahegde.2010@rediff.com

Electronic Meetings and Electronic Voting Systems are the most imperative examples of the advancement in the corporate practice today. Many companies have turned to technology to provide an alternative to face-to-face meetings and recognized the importance of driving profitability from e-meeting and e-voting in corporate meetings.

What is E-Meeting?

A meeting of that takes place over an electronic medium rather than in the traditional face-to-face fashion. The most common form of an e-meeting is done through web-based software which allows individuals and groups from different places.

Requisites:

The nature of the Internet requires that the content of e-meetings be recorded; as the digitized recording is passed from one third-party computer to the next, each computer must make a copy of the data. E-meetings may take a number of forms. To some extent, they share this feature with traditional meetings. With e-meetings, the preservation of legal rights, and the necessity for technological and legal intervention, depends on the facts and circumstances associated with the over-air or over-wire meeting.

Eg: Internet Talk and Internet Relay Chat, webconferences, videoconferences allow a sustained dialogue similar to a real-time conversation. Webcasting is another popular type of e-meeting.

As demonstrated by companies that have Webcast annual shareholder meetings, e-meetings may be used to fulfill statutory meeting requirements.

E-Meeting Vs. Traditional face-to-face Meetings:

- E-Meeting facilitates the widely held Companies to hold general meeting of the shareholders without physically travelling to an agreed upon location.
- E-Meeting facilitates to protections of information exchanged during e-meetings as the same privilege precautions as traditional meetings.
- Helps to increase the participation and interaction of shareholders.
- In case of E-Meeting s, less effort in preparation of meeting templates viz., Meeting minutes, Notices, Agenda etc.
- Automatic, comprehensive, unbiased documentation where in traditional meetings all required documents maintained in physical formats.
- E-Meetings facilitate repeatable e-meetings and workshop process through easy meeting templates.
- E-Meeting s helps to more sophisticated analysis by voting and analysis in real time.
- High infrastructure required to conduct e-meetings compare to traditional face to face e-meetings.
- Expert can only operate and does not support everyday use by the non-expert user in case of e-meetings.
- Only well known users with telephone and web conferences are comfort with the e-meetings

What is E-Voting?

E-Voting means a process for recording votes by the members/shareholders using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the e-Voting gets registered and counted in an electronic registry in a centralized server.

Voting company general meetings and a move from a show of hands to resolutions being taken by poll. These factors have led to a need to automate the voting process. In response to avoid many demerits of the show of hands in the meeting to pass a resolution, many large companies implemented an electronic voting system that simplifies the voting process. Shareholders are provided with handsets and Smartcards at registration that link voting rights to their shareholdings. Votes are recorded instantly and accurately with the option of results being displayed live on-screen. ➤

Registration:

All types of attendees (shareholders, corporate representatives, proxies, guests and press) are registered on arrival. Once attendees have registered, they are issued with a Smartcard, which, when inserted into a handset, will assign them their correct voting rights based on the size and class of their holding.

Electronic Polls:

Registration and voting can be managed at a number of locations simultaneously to allow attendees to participate in a meeting wherever they are in the world. A poll is conducted on every resolution with handset screens confirming that votes have been cast. Split voting can also be performed live while a vote is taking place and amended resolutions can be added instantaneously. ➤

Vote Monitor:

A live information monitor for the Chairman, Secretary and Scrutinizer displays up-to-date information including details of all attendees and proxy vote status. Potential swing as a result of live votes cast can be viewed prior to the event and a results summary allows vote status to be previewed before the poll is closed.

Reports:

Reports can be produced within minutes, allowing results to be released to the stock exchange without delay. A full audit trail and scrutinizers report are created together with

results by resolution, meeting attendees, votes by attendee and overridden proxy votes.

The Ministry of Corporate Affairs introduced paperless compliances, requirements and procedures through General Circular No.27/2011 and 28/2011 dated 20th May 2011 by its "Green Initiative in the Corporate Governance" to the Companies for validity of compliances under Companies Act, 1956.

As per the Ministry of Corporate Affairs the company must comply with the following requirements and procedures when company follows electronic meeting management and electronic voting system in its meetings.

In case of Board Meeting:

It is not mandatory for companies to provide its directors, the facility to attend meetings through video conferencing. Every director of the company must attend the meeting of Board /committee of directors personally at least one meeting in a financial year of the company. The place where the Chairman or Secretary is sitting during the Board Meeting shall be taken as place of meeting.

The company is free to select Video Conferencing facility of any agency. In the case of e-voting in general meetings, the Ministry of Corporate Affairs are presently authorizing only National Security Depository Ltd (NSDL) and Central Depository Services (India) Ltd (CDSL).

In case of General Meeting:

The notice of the meeting must inform shareholders regarding availability of participation through video conference, and provide necessary information to access the facility of video conferencing.

The Chairman of the meeting and secretary shall assume the responsibility of preparation of documents of the meeting and conducting the meeting through video conference.

Video recording of that part of meeting shall be preserved by the company for one year from the conclusion of that meeting. Draft minutes of the meeting shall be circulated in soft copies not later than 7 days from the meeting.

Conclusion

Electronic meeting management and electronic voting systems are the most efficient and accurate way of putting the company firmly in control of the meetings and empowering the shareholders of the company.



Listing of SMEs



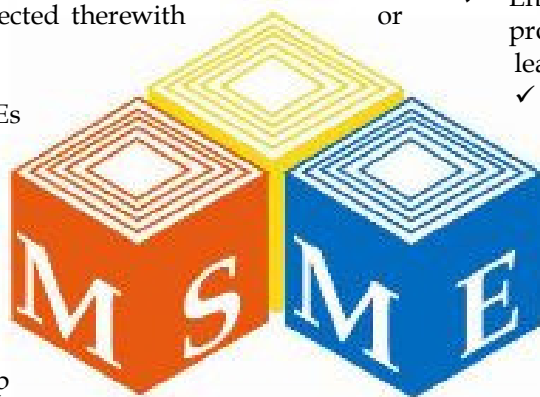
Prabhakar Tiwari
V2 Corporate Advisors LLP
prabhakar.84@gmail.com

In India, Micro, Small and Medium Enterprises (MSMEs) contribute 8% of its GDP, 45% of the manufactured output and 40% of exports. It provides employment to about 70 million people through 30 million enterprises. The MSME Sector is the largest generator of employment in the Indian economy.

The Micro, Small and Medium Enterprises (MSME) sector has been recognized as engine of growth all over the world. Particularly India like developing countries, they are the backbone of the nation's economy. They constitute bulk of the industrial base and also contribute significantly to their exports as well as to their Gross Domestic Product (GDP). In India, Micro, Small and Medium Enterprises (MSMEs) contribute 8% of its GDP, 45% of the manufactured output and 40% of exports. It provides employment to about 70 million people through 30 million enterprises. The MSME Sector is the largest generator of employment in the Indian economy. It forms a major portion of the industrial activity.

Recently the Govt. of India enacted a legislation Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 to facilitate the promotion and development and to enhance the competitiveness of MSMEs and to deal with matters connected therewith or incidental thereto.

Further, to facilitate SMEs to grow faster and expand their investor and business base, The Prime Minister's Task Force in January 2010 has recommended to set-up a dedicated Stock Exchange / Platform for SMEs. SEBI has also laid down the Regulations for the governance of SME Exchange/Platform.



Why SMEs Listing Required?

Though, SMEs segment play a very important role in development of a nation economy but Management of Finance has always been a big difficulty for SMEs. Generally, SMEs depend on long terms loans and needs to pay a higher interest but still millions of SMEs need more funds for various requirements. Followings are the needs of SMEs Listing.

- ✓ Provide SMEs with equity financing opportunities to grow their business – from expansion to acquisition;
- ✓ Equity Financing will lower the Debt burden leading to lower financing cost and healthier balance sheet;
- ✓ Expand investors' base which in turn will help for getting secondary equity financing, including private placement;
- ✓ Enhance Company's visibility. Media coverage can provide SMEs with greater profile and credibility leading to increase in the value of the shares;
- ✓ Incentive for greater venture capital participation by providing them an exit route;
- ✓ Greater incentive for the employees as they can participate in the ownership of the company and benefit from being shareholders;
- ✓ Encourage innovation and entrepreneurial spirit;
- ✓ Capital Market will help distribute risk more efficiently by transfer of risk to those who are best able to bear it;
- ✓ SME sector will grow better on two pillars of Financial system, i.e., Banking for debt capital and Capital Market for equity capital; and

- ✓ Initiating a dedicated Stock Exchange for SMEs will lead to diversification of resources of finance and help build a bridge between the SMEs, Private Equity and the Venture Capital by providing an exit route.

SMEs Exchange- An Overview

- ✓ SEBI has issued a final circular on May 18, 2010 for setting up a stock exchange/ platform by a recognized Stock Exchange having nationwide trading terminal;
- ✓ The necessary amendments have been made in the various SEBI Regulations;
- ✓ Model equity listing agreement has been notified by SEBI on May 17th, 2010;
- ✓ BSE is eligible for setting up SME exchange and already got the 'In Principle' approval from the capital market regulator 'SEBI' for launch of SME Exchange;
- ✓ Issuer with post issue face value capital up to Rs.10 crores shall be covered under the SME Platform, Issuer with post issue face value capital between Rs.10 – 25 crores may get listed at SME Platform and Issuer with post issue face value capital above Rs.25 crores has to necessarily listed at main board of the Exchanges;
- ✓ Suitable provisions for migration to/ from main board;
- ✓ The minimum application amount as well as minimum trading lot shall not be less than Rs.1,00,000/-;
- ✓ All existing Trading Members would be eligible to participate in SME exchange without any further registration;
- ✓ 100% underwritten issues and Merchant Banker/s shall underwrite 15% in their own account;
- ✓ The Merchant Banker to the issue will undertake market making through a stock broker who is registered as market maker with SME Exchange. The Merchant Banker shall be responsible for market making for a minimum period of 3 years;
- ✓ Shall be required to provide two way quote for 75% of time in a day, to be monitored by the Stock exchange;
- ✓ The minimum depth of the quote shall be Rs.1 lakh
- ✓ Not more than 5 market makers for a scrip;
- ✓ Market Makers may compete with the other Market Makers;
- ✓ Market Maker allowed to deregister by giving one month notice to the exchange;
- ✓ The exchange shall prescribe the minimum spread between Bid and Ask price; and
- ✓ During the compulsory market making period, the promoter holding shall not be eligible for the offering to market makers.

Benefit of SMEs Listing

- ✓ A dedicated exchange for these SMEs will help them in finding a solution to their financial requirements and crunching expansion plans.
- ✓ Listing of a company gives better valuation to the company. Equity financing lower the debt burden leading to lower financing costs. The debt and equity ratios will improve and balance sheet will look much healthier.
- ✓ The listed SMEs will unlock their wealth in the medium to long term and will do the wealth creation for the promoters and the investors.
- ✓ The listed SMEs will get better visibility among the investors. Greater public awareness gained through media coverage, publicly filed documents and coverage of stock by sector investment analysts can provide the SMEs with greater profile and credibility. The investor base of the company improves for the listed companies in medium term.
- ✓ The repose of faith by the investors – domestic and foreigners in the listed SMEs is high. Transparency and corporate governance will improve manifold by listing on SME Platform.
- ✓ Listed company will have easy accessibility to alternate funding options. The banks, P/E funds and other financial institutions provide them the loans very easily. The fund raising through ADRs and GDRs become easier. Also, the company can raise more funds through follow on public offering.
- ✓ The tax benefits are also immense. The long term capital gain tax on listed company is zero.

Concluding Remarks

The professionals like Company Secretaries, Chartered Accountants and Cost Accountants have an important role to play in educating the promoters of the SMEs and guiding them in raising equity capital on SME- Stock Exchange Platform which will help them generating finance and lowering the debt burden.

A combined source of financing will lead to reduction in cost of capital and ultimately lower cost of final products.

Listing of SME on Stock exchange is not only helpful to the SMEs but it's a benefit to various stake holders who deal with SMEs, by and large to the public, and ultimately in the development of India's economy.

Disclosure Of Interests By A Director



Roopali S.
Management Trainee,
J Sundharesan & Associates, Bangalore

Supreme executive authority controlling the management and affairs of a company vests with the board of directors of the company. Every director of a company must disclose his nature of interest or concern in a contract or arrangement to be entered into by a company at a meeting of board of directors.

Objective of Section 299

The objective of Section 299 is that the board of directors should be made aware of all contracts and arrangements in which any director has an interest in order to ensure fairness and reasonableness of the contract from the point of view of the company.

Applicability of Section 299

Section 299 of the Companies Act 1956 is **mandatory** and **applicable to all companies** and all directors including those nominated by Government on the Board of the Company **except companies incorporated under Section 25** of the Companies Act 1956, in respect of the cases to which sub-sections (1) and (2) of the Section 297 applies. The company is also required to record such transactions in the Register of Contract under section 301 of the Companies Act, 1956.

General Notice of Interest – [Section 299 (3)]

A general notice is to be given to the board as regards the interest of a director in any contract or arrangement, it is not effective, unless the director concerned either gives it at a meeting of the Board or takes reasonable steps to secure that it is brought up and read at the next meeting of the Board after it is given. The Notice then gets recorded in the minutes of the Board Meeting at which it is given or read. The Notice in Form No. 24AA as prescribed under Companies (Central Government's) General Rules & Forms, 1956, is also required to be given afresh year after year, so that new directors who may be coming into the Board may be aware of the interest of that particular

director. Once a director has given general notice of interest, it is not necessary for him to once again disclose his interest when the matter comes up before the Board.

However, nothing in Section 299 is applicable to any contract or arrangement between two companies, if any one or more of the directors of the one company together holds 2% or less of the paid-up share capital in the other company and this limit of 2% can be taken either as an individual director's holding or the aggregate holding of two or more directors.

Section 299 Vs Section 297

Sec. 299 applies to any contract or arrangement to which a company is party and in which a director is interested whereas Sec. 297 requires that a contract of specified nature can be entered into by a company only after obtaining the approval of the Board of Directors. Sec. 299 is wider in scope than Sec. 297, which refers to certain direct contracts only. Thus, the contracts falling within the purview of Sec. 297 necessarily attract Sec. 299, although the converse may not be true. A contravention of Sec 297 would also result in contravention of Sec. 299; hence its consequences would also follow.

Relationship between Sections 301, 297 & 299

The matters to be entered in the 301 Register can be divided into two:

1. Contacts and Arrangements to which Section 297 is applicable and to which Section 299 is applicable.
2. Disclosure made by a Director in Form 24AA, under Section 299(3).

Register under Section 301:

Part 1	Part 2
Section 297- Contract for sale, purchase, supply of goods, materials or service; or Contract for Underwriting for subscription of shares or debentures Section 299- Contract or Arrangement where Director has a direct or indirect, concern or interest.	Disclosure made by Directors in Form 24AA, each year.
Details entered in Part 2 will assist in determining whether Section 297 or 299 is attracted, in respect of any transaction.	

Penalty: Every director who fails to comply with sub-section (1) or (2) of Section 299 of the Companies Act 1956 shall be punishable with fine which may extend to fifty thousand rupees.

Conclusion: A Company is entitled to the collective wisdom of its directors and if all or any of them are interested in a contract with the Company, the Company loses the benefit of unbiased judgement. Thus, when a director is interested in a contract or arrangement, the

other directors must have knowledge of it. They should be enabled to take an unbiased decision which would be in the best interest of the Company and the terms of the contract and arrangement should be fair and reasonable and not solely beneficial to the interested director.

Thus keeping in mind the interest of the Company and for the best interest of the Shareholders of the Company, the provisions of Section 299 shall be duly complied with.

Lessons I learnt from Nature

I see a woman, she symbolizes creation and sacrifice
I realize that without her the world would lose its edifice!
I see a baby, it symbolizes happiness
I realize that life, with all its sorrow, is a festival of merriness!
I see a tree, it symbolizes life
I realize that life is a journey filled with joy and strife!
I see a rainbow, it symbolizes fusion
I realize that life is incomplete without all its illusion!
I see a beehive, it symbolizes unity
I realize that life is more of unity than greed and vanity!
I see a river; it symbolizes time and flow
I realize that life moves on, sometimes fast and sometimes slow!
I see the sun, it symbolizes truthfulness
I realize that truth is the only way of life despite its bitterness!
I see the moon, it symbolizes hope
I realize that life, even in its darkest wells, extends a survival rope!
I see the sky, it symbolizes eternity
I realize that relationships have no bounds in human fraternity!
I see stars, in the sky they shine
I realize that beneath a hill of struggle lies a joyous mine!
Finally, I see death, it symbolizes salvation
I realize that essence of life is to understand 'the' ONE and admire His creation!

By:

**Sagar Prakash
Kulkarni**

Transfer Pricing



Prabhat Joshi

CS Student

Lex Valorem India Private Limited, Bangalore

prabhatjsh@gmail.com

Transfer pricing represents the value of goods or service exchanged between two independently operating firms of a multinational enterprise. Generally the value of such transfer will be at cost price or even below cost price.

So one may wonder why a company will transfer its products at cost price or even at less than its cost price. The prime reason behind such transfer is to reduce the tax burden from the company's shoulders.

The above situation can be clearly understood by the following example:

A company manufacturing product X at a cost of Rs.100 marks a selling price of Rs. 200 for local market, thus making a profit of Rs. 100. But it can also transfer the same product to its associate company operating in a tax haven country at Rs.110 by keeping Rs.10 profit with it and transferring the rest Rs. 90 profit to the associate company where the tax rates are very low or nil, thereby increasing the profit (by paying less tax on the profit) of the parent company.

What are the major reasons behind transfer pricing?

Following are some of the strong reasons for such transfer pricing transfers:

1. To avoid high rate of Corporate tax
2. Restrictions relating to profit repatriation to the home country.
3. To overcome high rate of customs duty.

With MNCs working towards global tax optimisation India felt a need to regulate the international transactions in

Supreme executive authority controlling the management and affairs of a company vests with the board of directors of the company. Every director of a company must disclose his nature of interest or concern in a contract or arrangement to be entered into by a company at a meeting of board of directors.

order to ensure its fair share of taxes. Regulated under Indian income tax provisions and based on OECD guidelines, India introduced Transfer Pricing regulations in 2001. These regulations require international transactions between "Associated Enterprises" to be done on **Arms Length Price (ALP)**. ALP is a price at which the unrelated buyer will have an access to similar product in the similar market conditions to compare ALP with the Transfer Price.

These provisions become relevant for foreign companies intending to setup an establishment in India.

Following are 5 broadly used methods of determining ALP

1. Comparable uncontrolled price method (CUP)
2. Resale price method (RPM)
3. Cost plus method (CPM)
4. profit split method (PSM)
5. Transactional net margin method (TNM)

What is an International Transaction?

Any cross border transaction between the Associated Enterprises which involves transfer of tangible/intangible properties, exchange of services, lending or borrowing of money is treated as an "International Transaction" for the purpose of Transfer Pricing. Any transaction having an effect on profits/loss, income of the company is also treated as the International Transaction for this purpose.

The transactions between the companies who have agreed to share profit/costs are also covered under the ambit of International Transaction.

What is an Associated Enterprise?

Enterprises are said to be Associated Enterprises if any one of the enterprise participates in the management of another or has the controlling interest in such other enterprise or is interested in the other enterprise as the owner (capital contribution).

Maintenance of Documents

The entities engaged in International transactions with associate enterprises will have to maintain the following documents:

- Description of ownership structure like share holding pattern in the assessee enterprise along with the profile of MNC group
- Assesses nature of business including the nature of business transaction entered
- Other similar un controlled transactions for comparability
- Descriptions on the method selected to compute ALP including the reasons for selection of such method and the assumptions and policies considered
- Details of adjustments made to the Transfer Price to align them from ALP

The assessee will be exempted from maintaining such documents if the aggregate value of the International Transaction recorded in the books of account does not

exceed one crore rupees. The above exemption can be claimed only if the assessee is able to substantiate that the income from such International Transaction has been computed as per the provisions of section 92 of Income Tax Act, 1961

Penalties for non maintenance of records

Failure by the assessee to keep the necessary documents relating to the International Transaction entered will result in a penalty of 2% of the value of such International Transaction. Further if the assessee fails to furnish any information required by the relevant authority, he will have to pay an additional penalty of 2% for such failure. Additional 100% to 300% of the penalty will be levied in case of concealment of income by the Assessee.

Countries Adopting Transfer Pricing Regulations

More than 65 Governments including Government of India have adopted the Transfer Pricing Regulations and most of the Governments follow the Transfer Pricing guidelines given by organisation for Economic Co-operation and Development (OECD).

Some of the major countries that have adopted transfer pricing regulations are Argentina, Australia, Brazil, Canada, China, Denmark, Germany, India, Japan, Russia, Singapore, Spain, Sweden, Switzerland etc.

Showcase Event on Insider Trading

Mentor: CS. Pramod S M

IT Support: CS. Prasanna V Patil

Script: Pushpa Venkatesha Murthy

Participants:

✦ **Ramya Bhatt**
 ✦ **Raksha B R**
 ✦ **Chandni N M**
 ✦ **Rakesh Dange**
 ✦ **Vismmitha Prakash**
 ✦ **Mansi Piparia**

✦ **Rashika Dugar**
 ✦ **Varsha R S**
 ✦ **Megha Jain**
 ✦ **Kusum Gore**
 ✦ **Goutham**
 ✦ **Dheeraj M Athreyas**



Conversion into LLP of Private and Unlisted Public Companies



Rashmi Maheshwari

Management Trainee, Hemanth, Biswajit & Co.

rashmi.maheshwari@hbisc.in

Supreme executive authority controlling the management and affairs of a company vests with the board of directors of the company. Every director of a company must disclose his nature of interest or concern in a contract or arrangement to be entered into by a company at a meeting of board of directors.

Limited Liability Partnership:

The Limited Liability Partnership Act, 2008 was published in the official Gazette of India on 9th January, 2009 and has been notified with effect from 31st March 2009. A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. LLP has a separate legal entity, liable to the full extent of its assets; the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or un-authorized actions of other partners.

Difference between Company and Limited liability partnership Firm:

Features	Company	Limited liability Partnership Firm
Applicable Act	The Companies Act, 1956	The LLP Act, 2008
Minimum number of Owners	Two Shareholders	Two Partners
Maximum number of owners	50 in case of pvt ltd and in case of Unlisted public Company, no Limit	No Limit
Name	Name to contain 'Limited' or 'Private Limited' as suffix	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix
Documents Defining the structure	Memorandum of Association is the document defining the activities of the Company	LLP Agreement is the main document defining the activities of the LLP. If there is no agreement or it does not contain certain provisions then Schedule I of the Act will prevail.
Documents prescribing procedure to be complied with	Articles of Association	LLP Agreement is the document, which provides the procedure to be followed. If there is no agreement or it does not contain certain provisions then Schedule I of the Act will prevail.
Management	Board of Directors	Designated Partners
Minimum number of directors	Two in case of Private and three in case of Public Company	Two Designated Partners are to be appointed
Provisions for Registration of Charges	Charges are required to be registered	No provision for registration of charges

Conversion of Private and Unlisted Public Company into LLP:

Section 56 of the LLP Act, 2008 provides that a private company may convert into LLP in accordance with the provisions of Chapter X and the Third Schedule and unlisted company may convert into LLP in accordance with the provisions of Chapter X and Fourth Schedule to the LLP Act, 2008.

A company might be converted into LLP to avoid the formalities attached to the Company. Otherwise a Company and LLP are on the same footing. Legal requirements of LLP can be managed by a medium sized enterprises comfortably compared to company. Another major reason for conversion of a company into an LLP is on the tax front. Currently, the Income-tax Act, 1961, provides for payment of minimum alternate tax (MAT) as also for payment of dividend distribution tax (DDT) by companies. An LLP, which is not a company, is not liable to pay DDT, considering the legislative intent. If a listed company wants itself to convert into LLP, first it should get the shares unlisted from the stock exchanges wherever it is listed and then apply for conversion into LLP.

Major advantages as compared to Company:

- No need of converting into Public Company to have members more than 50, as there is no limit on maximum number of partners
- Minimal Government Intervention
- Minimal cost of conversion
- Less Compliance level
- No requirement of holding any meeting
- No requirement of maintenance of Large statutory records
- Limited Liability as in case of Companies
- No need to pay large fees for increasing the contribution, as required in case of capital
- LLP is also not liable to pay dividend distribution tax (DDT)

Eligibility for conversion of Companies into LLP:

- There is no security interest in its assets subsisting or in force at the time of application and
- If the partners of the proposed LLP comprise of all the shareholders of company and no one else.

Steps to be followed:

- Hold meeting of the Board of Directors for:
- authorizing to file necessary forms to the registrar

- Approval of names by the Board and authority to the director to file Form 1 for seeking name reservation;

- Approval of notice of the general meeting for seeking consent by way of Special Resolution for:

- ❖ Conversion of Company to LLP;
- ❖ Appointment of Designated Partners;
- ❖ Approval of LLP Agreement.

- Consent of all the Shareholders required in the prescribed form: Written Consent of all the shareholders of the Company is required and the same Consents needs to be attached in Form 18.

- Consent of all the Creditors: The consent of all the creditors whether secured or unsecured irrespective of their amount for conversion of the company into LLP is required to be obtained. If any creditor do not give his consent for such conversion, it is advisable to make full payment of such creditor. A complete list of creditors signed by the director along with consent of creditors in writing must be attached in Form 18.

- File all pending Balance sheet, Annual Return and other Documents with the Registrar: Before making application to the Registrar of LLP in Form 18, it is advisable to file all the pending balance sheet, annual return and other documents if any with the Registrar of Companies.

- Consent of all the members to act as partner is required to be obtained: All the members of the company shall be considered as partners of the LLP and consent to act as partners shall be required. The Consent shall be filed with the Registrar of LLP along with the Incorporation Documents.

- Forms to be Filed:

- i. Application shall be made in Form 1 for the availability of the proposed name with the Registrar (A Board resolution approving the conversion into LLP shall be attached)
- ii. Filing of Incorporation Document in Form 2
- iii. Application for conversion has to be made in Form 18. Attachments for Form 18 are as follows:
 - a. Statement of shareholders (may be attached in a tabular form)
 - b. Incorporation Document & Statement in Form 2 filed electronically.



Compliance and Governance



Veena Gopalakrishnan
Management Trainee,
J Sundharesan & Associates, Bangalore
veena@jsunderesan.com

Supreme executive authority controlling the management and affairs of a company vests with the board of directors of the company. Every director of a company must disclose his nature of interest or concern in a contract or arrangement to be entered into by a company at a meeting of board of directors.

Compliance Comes with Fear and Corporate Governance will help to overcome the Fear

The term Compliance means to adhere to all laws, rules, and policies. Compliance (regulation), the act of adhering to, and demonstrating adherence to, a standard or regulation. Every Company registered under the Companies Act of 1956 or under any act shall comply with their respective law. The Companies registered under the Companies Act, 1956 provides the legal basis for various corporate governance norms that are considered essential for proper corporate operation and protecting the rights of stakeholders. Violations of such norms are defined as offences with associated penalties. Essentially, law should be such that all the subjected entities should comply with it in their own interest. Nevertheless, it would not be realistic to expect that all companies would comply with the framework voluntarily. There would be some entities that would seek gains at the cost of legitimate rights of others, sometimes by fraudulent behaviour or through violation of the legal regime. However, law must also provide clear definition of what constitutes an offence and provide penalties that act as deterrent to companies from taking such action simultaneously, it should provide for procedures that enable application of penalties promptly and effectively.

E.g.: All Companies registered under Companies Act 1956 are required to hold an Annual General Meeting once in every calendar year. However if the Company fails to hold its Annual General Meeting on time the company will violate the provisions of Section 166, consequentially violating the provisions of Sections 210, 220 and 159 of the Companies Act 1956. The same shall

be considered as an offence as the company has not complied with the provisions of the Companies Act 1956.

How to overcome the Offence:

When Companies default in conducting Board Meeting or General Meeting or filing of required Forms within the prescribed time limit, in this case Companies shall have the fear of violating the relevant section under the Companies Act of 1956. The Companies can overcome this offence only by paying penalty or by compounding the offence.

Compounding of offence is subject to certain regulations, such as Section 621A of the Companies Act 1956 provides for compounding of offences of only those offences, which are not punishable with imprisonment only or with imprisonment and also with fine, either before or after the institution of any prosecution. Therefore a compoundable offence may be compounded, with the permission of the Court having jurisdiction to try the offence, subject to the regulations prescribed by the rules.

A compoundable offence is an offence in which the trial court can compound the offence and dispose the case without trial. A non compoundable offence is an offence in which the court cannot compound the case without trial. A compoundable offence is always a lesser degree offence punishable with a shorter jail term or fine. Compounding is permitted on payment of additional fine which should not exceed the quantum of fine prescribed by law in respect of any particular offence. On acceptance of compounding proposal, no prosecution will be launched and if the prosecution case is already before the Court. The Department of Company Affairs (DCA) has said that there is no legal bar for composition of an offence under Section 621A of the

Companies Act, 1956, provided the conditions specified in the Section and guidelines, if any, are fulfilled.

How to overcome the Fear Factor: (Prevention is better than cure)

Companies with a practice of good Corporate Governance can overcome factor of fear and Non-Compliance of the law. The term Corporate Governance refers broadly to the rules, processes, or laws by which Company are operated, regulated, and controlled. Good Corporate governance can be implemented by the Management of Company, its shareholders, its board and other stakeholders of the Company. Corporate Governance benefits the Director and managers of Companies through increased transparency and disclosure. It improves access to capital and financial markets, survival in an increasingly competitive environment through mergers, acquisitions, partnerships, and risk reduction through asset diversification. Further Corporate Governance helps to avoid conflicts of interest and to act openly, within the confines of law and internationally accepted guidelines and to implement 'best practice' policies in all control procedures. Ensure a smooth inter-generational transfer of wealth and divestment of Company's assets, as well as reducing the chance for conflicts of interest to arise. To monitor adherence to organizational controls and reporting procedures.

How to Maintain Good Corporate Governance:

The following are the Method for a Company to maintain good corporate governance:

- To maintain **integrity** by carrying out their duties in an ethical way.
- To maintain **regulatory framework**: Companies need to recognize the importance of corporate governance as an integral part of management.
- **Directors' training**: Corporate Governance should ensure Director training of the Company, including knowledge of the principles and practice of corporate governance
- Control the Corporate market.
- Monitoring large **shareholder and creditor**.
- **Internal control mechanisms**, i.e. the board of directors, non-executive committees and the design of executive compensation contracts.
- **External mechanisms**, i.e. product-market competition, external auditors and the regulatory framework of the corporate-law regime and stock exchange.

Conclusion:

Thus a Company that complies with the required rules and regulation as provided in the respective act, and maintains a good Corporate Governance will overcome the fear of violating the required rules, regulation and section under the Companies Act of 1956 or any other act.

Article "Conversion of Companies into LLP" continued from page 51

- c. Statement of Assets and Liabilities of the company duly certified as true and correct by the Chartered Accountant in practice.
- d. List of all the creditors along with their consent to the conversion (may be given in the form of a tabular statement).
- e. NOC from Income Tax authorities
- f. Particulars of pending proceedings from any court/Tribunal etc.
- g. Rejection letter of Registrar of any earlier application for conversion.
- iv. Registrar will issue the certificate of registration on conversion of the private limited company into LLP in Form 19 of the LLP Rules & Forms 2008. The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.
- v. Information with regard to LLP Agreement is to be filed in Form 3
- vi. Intimation of DIN and consent to become a partner/designated partner is to be Filed in Form 4
- vii. Converted LLP to file Form 14 within fifteen days of the date of registration, information to the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 (1 of 1956) about the conversion and of the particulars of the limited liability partnership.

Conclusion: On and from the date of registration specified in the certificate of registration issued by the Registrar for conversion of partnership firm into LLP. The Company shall be deemed to be dissolved. The Company's name shall be removed from the register of the Registrar of Companies On conversion of a Company into LLP, all properties, assets, interests, rights, privileges, liabilities, obligations of the private limited company is transferred to the LLP. The conversion does not affect the existing liabilities, obligations, agreements, contracts and continuation employment.



Vodafone Intl. Vs. IT



Sujay Menon

Management Trainee,
J Sundharesan & Associates, Bangalore
sujay@sunderesan.com

Supreme executive authority controlling the management and affairs of a company vests with the board of directors of the company. Every director of a company must disclose his nature of interest or concern in a contract or arrangement to be entered into by a company at a meeting of board of directors.

The Supreme Court of India in a landmark judgment dismissed the Indian Income Tax Department's jurisdiction over \$11.20 billion deal and virtually reaffirming almost each and every argument advanced by Vodafone International Holdings BV counsel Harish Salve, Chief Justice had unequivocally called the Hutch - Vodafone deal as one "composite transaction" and the CGP led structure of Hutchison Telecom as single consolidated bargain. Hence the Income Tax Department did not have any right to levy tax on the 'offshore share sale' of CGP by Hutchison to Vodafone.

It all began almost 5 years ago in February, 2007 when Vodafone (through its Netherlands entity) entered into an agreement with Hutchison Telecommunications International Limited, Cayman Islands ('HTIL'), for acquisition of 66.9848% equity and interests in the Indian telecom business of Hutchison Essar Ltd. (hereinafter referred to as 'HEL'). The total value of the transaction was \$ 11.206 billion. The IT Department alleged that Vodafone (Netherlands), the buyer, had failed to deduct Indian tax on the payment of consideration made to HTIL and a show cause notice was issued to Vodafone BV in September 2007 for failure to withhold tax.

The Hon'ble Bombay High Court, in September 2010, dismissed the writ petition filed by Vodafone, and held that share transfer had a significant nexus with India. The HC also held that the essence of the transaction was a change in the controlling interest in HEL which constituted a source of income in India. The transaction between the parties covered within its sweep, diverse rights and entitlements. The Petitioner (Vodafone) by the diverse

agreements that it entered into has a nexus with Indian jurisdiction. In these circumstances, the proceedings which have been initiated by the Indian

Income Tax Authorities cannot be held due to lack of jurisdiction.

Accordingly, the Bombay High Court held that the share transfer by Cayman entity is liable to tax in India. The total tax impact of the transaction is over Rs 11,000 Cr. Subsequently, Vodafone BV had filed an appeal before the Supreme Court against the Bombay High Court decision. A 3 judge bench of Supreme Court began the hearing in the Vodafone BV case on August 3rd, 2011.

One can narrow down the possibilities surrounding the Supreme Court ruling into 3 most likely scenarios - An Outright Vodafone win (which means IT Department has no jurisdiction to proceed further in this matter), An Outright IT Department victory (meaning over \$2bn in revenues) or the famous A+B theory propounded by the Bombay High Court (the Cayman share sale is an offshore transaction but there are other valuable rights in India which have been transferred by Hutch to Vodafone BV and therefore IT Department has jurisdiction).

Some of the key arguments from the Vodafone counsel are stated below:

- Sec 9(1)(i) of the Income Tax Act, 1961 allows taxation of income deemed to accrue or arise in India through the transfer of a capital asset 'situated in India'. It is abundantly clear from the provision that the capital asset ought to be 'situated in India'.

- Letter of law should be strictly construed and hence, transfer of a capital asset (in Hutch-Vodafone case, Cayman Island company's shares) situated outside India, falls outside the ambit of Sec 9(1)(i).
- Source of income lies where the transaction is effected and not where the economic interest lies. The IT Department was proceeding on a 'moving theory of nexus' on the basis that the economic interest and underlying assets were in India. How a share is valued is irrelevant for determining the status and therefore the location of the gains on its transfer.
- Without an express legislation or a look through provision, an offshore share transfer between Vodafone and Hutch cannot be taxed.
- Since there was no motive to evade tax, Revenue authorities are precluded from making further enquiry into upstream structure. To lift the corporate veil in a structure, 'timing and stage' of the transaction are very important and not 'motive' to save taxes.
- Cayman Island falls in the "Offshore Financial Centre" (OFC) category and is not a tax haven. Cayman Island was added to the deal structure as a 'tax neutral' jurisdiction and not for tax avoidance.



the CGP share passed outside India but there were other valuable rights which had passed through the SPA.

- If everything failed and the court accepted Vodafone's argument that the transaction was 'nothing but the share,' it would still fall within the 'widest' net cast by Sec 9.

The Supreme Court's decision will have implications in future transactions by foreign companies participating in merger and acquisitions with links to India. Such transactions may be liable to taxation in India and so it will be a point for negotiation between buyers and sellers as to who should bare the risk of this.

Whilst the Vodafone case confirms that tax planning through off-shore structures is permitted there needs to be more vigilance when structuring investments into India through offshore intermediary companies located in jurisdictions such as Mauritius, Singapore and Cyprus. These jurisdictions have in the past been used because of the tax efficiencies that they can provide on the investments made and it may be stated that on these investments there is deemed to be sufficient nexus with India so as to make any income arising on the disposal subject to tax in India.

Some of the key arguments from the Income Tax Departments counsel are stated below:

- By construing the Share Purchase Agreement (between Hutch and Vodafone) as it stands, along with interpretation of background facts and subsequent interpreting statements by both parties, the transaction be viewed as 'extinguishment of HTIL's property rights in India. One would then conclude that the share was merely a 'mode' to transfer the capital assets in India.
- The entire structure to be looked at as an 'artificial tax avoidance scheme', wherein CGP was 'shoved' into the structure at the last minute.
- If the above 2 arguments failed, then the Supreme Court adopt the Bombay High Court's approach, that

The Supreme Court's decision does however allow foreign companies to participate in merger and acquisition transactions with links to India, to argue that such transactions are not wholly taxable in India and to challenge the Indian Income Tax department on any apportionment matters. In future, the revised Direct Taxes Code 2010 will provide greater clarity on when the "foreign transactions" can be taxed in India.

The Code, which is currently in the process of being passed into law, states that the transfer of a foreign company's shares would be liable to taxation in India where the foreign company own at least 50% of its underlying assets in India. It is anticipated that the Code will come into force in 2012-13.



Writs: The Prerogative Remedies



Anukateja Reddy
CS Executive Student

The Constitution of India confers various rights upon the people citizens as well as non-citizens. The most important of these rights are those contained in Part III of the Constitution which guarantees a number of Fundamental Rights.

The Constitution of India confers various rights upon the people citizens as well as non-citizens. The most important of these rights are those contained in Part III of the Constitution which guarantees a number of Fundamental Rights. Quick, inexpensive and effective remedy for the purpose of protecting the Fundamental rights is provided in Articles 32 and 226 under which the Supreme Court of India and various State High Courts respectively have been empowered to issue writs.

LOCUS STANDI: The general rule governing issuance of writs is that it is only the aggrieved person who can apply for a writ under Article 32 or 226. There are, however, some well recognized exceptions to this general principle. In a Habeas Corpus petition, not only the person in detention or imprisonment but any person interested in him, e.g. next friend or next of kin, not being an utter stranger can apply. Similarly the writ of Quo Warranto also admits of relaxation or modification in appropriate cases.

AGAINST WHOM WRITS MAY BE ISSUED:

Writs are issued against:

1. Government
2. bodies or authorities situated outside the territorial jurisdiction of High Court
3. Legislature

WRIT JURISDICTION OF THE SUPREME COURT- Article 32

1. Territorial Jurisdiction: The Supreme Court can issue writ throughout the territory of India. The court can also issue a writ even outside the territory of India provided the body or authority against which it is issued is subject to the control of the Government of India.

2. Subject-matter: It may be noted that the writ jurisdiction of the Supreme Court under Article 32 is confined to enforcement of fundamental rights only. The writ jurisdiction of the High Courts is rather wide in as much as they can issue writs under Article 226 for the enforcement of the fundamental rights as well as for any other purpose.

3. The power of Supreme Court to issue writs is concurrent with that of the High Court: It will be seen that the power of the Supreme Court to issue writs for the enforcement of fundamental rights is not exclusive, but is concurrent with that of High Courts under Article 226. Thus in a case of violation of a fundamental right the aggrieved party is free to choose and decide whether to present his petition in a High Court or in the Supreme Court.

WRIT JURISDICTION OF HIGH COURTS-Article 226

1. Territorial jurisdiction:

A High Court has the power to issue writs throughout the territory of the State in relation to which it exercises its jurisdiction. After the Constitution (15th Amendment) Act, 1963, writs can be issued even to bodies and authorities situated outside the territorial limits of the High Court,

provided that the cause of action either in whole or in part arises within the State.

3. Subject-matter:

It has already been pointed out that the writ jurisdiction of the High Court under Article 226 is wider than that of the Supreme Court under Article 32.

4. The power to issue writs is discretionary:

Broadly speaking, writs mentioned in Article 226 cannot be claimed by the petitioner as of right. Whether or not a particular writ applied and prayed for is to be granted, is a matter solely dependent upon the discretion of the High Court. This certainly does not mean that the High Courts may or do exercise their discretion arbitrarily.

5. Suspension of Remedy By Way of Writs:

Article 359 empowers the President of India by order to suspend the enforcement of all or any of the fundamental rights guaranteed in Part III of the Constitution. It says while the proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the fundamental rights as may be mentioned in the order (except Article 20 and Article 21 and all the proceedings pending in any court for the enforcement of such rights shall remain suspended for the period during the Proclamation is in force or for such shorter period as may be specified in the order. An order suspending the enforcement of fundamental rights may extend to the whole or any part of the territory of India.



सत्यमेव जयते

TYPES OF WRITS

1) Habeas Corpus:

It is a latin term which literally means "you may have the body". This writ is issued in form of an order calling upon a person by whom another person is detained to bring that person before the court and to let the Court know by what authority he has detained that person. If the cause shown

discloses that detained person has been detained illegally the Court will order that he be released.

2) Mandamus:

The word mandamus means the "order". It is a order by a superior court commanding a person or a public authority (including the Government and public corporation) to do or forbear to do something in the nature of public duty or in certain cases of statutory duty.

3) Prohibition:

This writ is issued primarily to prevent inferior court or tribunal from exceeding jurisdiction, or acting contrary to the rules of natural justice. It is issued by Superior courts for the purpose of preventing inferior courts from usurping a jurisdiction with which it was not legally vested, or in other words compel the inferior courts to keep within the limits of their jurisdiction.

4) Certiorari:

This writ is issued by a Superior Court (Supreme Court and High Court) to an inferior court or body exercising judicial or quasi-judicial functions to remove a suit from such inferior court or body and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions.

5) Quo Warranto:

It means 'what is your authority'. By this writ a holder of an office is called upon to show to the court under what authority he holds the office. The object of the writ of quo warranto is to prevent a person to hold an office which is not legally entitled to hold.

Conclusion:

Fundamental rights are guaranteed by writs. Writ remedy under Article 32 and Article 226 is the sole of the constitution. It is the cheapest and time saving remedy. Drastic changes have been brought in the principles of Locus standi by virtue of many decisions delivered by the Supreme Court of India. Writ remedy can be interpreted as the sole of constitution.



Compounding Of Offenses



Medha Gokhale

Trainee at CS. Dwarakanath & Associates

minchugokhale@yahoo.co.in

Compounding of offenses protects public interest by ensuring that prior to compounding; the default is remedied by compliance of the applicable provision; by curbing compounding of repeat offences.

What if your car hits a passerby on road and he is injured? You will settle the matter by paying some money as compensation instead of instituting legal proceedings. This is a simple example of compounding of an offense. Similarly, The Companies Act, 1956 provides for compounding of certain offenses.

The Act by Section 621A provides for an alternative to prosecution for offenses, compounding of offenses. To 'compound' means to condone a liability or offense in exchange for money, to forbear from prosecuting, to come to terms with a person for forgoing a claim for an offense, to agree for payment or other consideration, not to prosecute, to forbear prosecution of an offense for a consideration.

This is a shortcut to avoid litigation which is not only time consuming but also which unduly diverts the attention of the companies. Compounding of offence is subject to certain regulations. Only those offences, not being an offence punishable with imprisonment only or with imprisonment and also with fine, either before or after the institution of any prosecution, may be compounded, with the permission of the Court having jurisdiction to try the offence, subject to the regulations to be prescribed by the rules.

What offenses are compoundable?

An offense committed by a company or any officer of a company may be compounded. But no offense can be compounded if it is committed by a person who is not an 'officer' of the Company within the meaning of Section 2(30) of the Act. The officer who has committed the offense may or may not be an officer in default within the meaning of Section 5 of the Act.

Compoundable offenses are those in which the trial court can compound the offence and dispose the case without trial. A non compoundable offence is an offence in which the court cannot compound the case without trial. A compoundable offence is always a lesser degree offence punishable with a shorter jail term or fine. When an offence is compounded, the party, who has been aggrieved by the offence, is compensated for his grievance.

Benefits of compounding

The effect of compounding of an offense is condonation from prosecution for an offense. The offenses under the Companies Act are punishable by the courts of magistrate for which a prosecution may be instituted in accordance with the provisions of the Act. Compounding of offenses eliminates the hassles of appearing before a criminal court. If a prosecution had already been launched, the compounding of offence puts an end to such prosecution. The compounding fee payable in consideration of the appropriate authority allowing the application for compounding is not same as a fine levied by a criminal court. A fine will be levied as part of the punishment for the offence committed preceded by the court convicting the accused of the offence.

Exercise of Power: Company Law Board (CLB) exercises the power of compounding an offense. The power should be exercised in a judicial manner in accordance with the provisions of law and having due regard to principles of natural justice. This is a discretionary power.

CLB may refuse to allow applications for compounding offences arising from seemingly technical defaults!



Single Brand Retail



Venkatesh Prasad S,
Management Trainee, J Sundharesan & Associates
venkateshprasad@jsunderesan.com

With corporate investments coming to organized retailing, its scope and growth is looking bright for Indian retail Industry. Retailing is becoming all about great ambience, more choice and convenient location. An emerging trend is also that of the value consciousness of the consumer."

For over 5 years now Malls have defined the way middle class India shops but as the economy faces a downturn, the frenzy inside malls has started to fade. As the excitement abates, the Single Brand Store emerges as an alternative for some shoppers. As it is accessible and has sustained an identity of its own.

What has given the single brand outlet a boost is the 100% Foreign Direct Investment allowed in these outlets by the government, something which multi-brand showrooms lack till date.

India being a most preferred retail destination amongst emerging global markets and also India being the largest economy in terms purchasing power parity has forced the government to roll out **new FDI policy for single brand foreign retailers' to own 100 per cent of their operations in the country, possessing fully-owned stores here.** However, the decision comes accompanied with a rider that 30 per cent of the value of products sold would have to be mandatorily sourced from small Indian industries/village and cottage industries, artisans and craftsmen, (collectively referred to as 'suppliers').

Traditional retailing continues to be the backbone of the Indian retail industry, with traditional/unorganized retailing contributing to over 95 per cent of total retail revenues. However the new policy is advantageous for modern/organized retailing say the international players like Gap, Starbucks, Adidas, Nike, etc, as it allows them to buy out domestic partners and fully own Indian operations. Also, according to reports in the newspaper, it is learnt that foreign brands still prefer the Joint Venture mode or franchise model of doing business in the country. The reasons for the same can be many, the immediate ones being a emerging luxury market, shooting real estate costs

and also, most importantly, the knowledge possessed by a local partner.

To facilitate easier flow of Foreign Direct Investments ("FDI") inflow, instead of having to seek Foreign Investment Promotion Board ("FIPB") approval, FDI up to 100 per cent is allowed under the automatic route for cash and carry wholesale trading and export trading.

FDI up to 100 per cent is allowed for retail trade in 'Single Brand' products with the objective of attracting investment, technology and global best practices and catering to the demand for such branded goods in India. This implies that foreign companies can now sell goods sold globally under a single brand, such as in the case of Reebok, Nokia and Adidas. However, retailing of multiple brands, even if the goods are produced by the same manufacturer, is presently not allowed.

The most common channels for entry of foreign retailers are as follows:

Strategic License Agreements - This route involves the foreign company entering into a licensing agreement with a domestic retailer or partnering with Indian promoter owned companies in the Middle East (UAE) or South East Asian countries (Singapore, Malaysia, Thailand, Indonesia).

Franchising - This is a widely taken entry route, with many international brands setting up shop via this provision. The franchising routes operable in India are:

- i. **Unit Franchisee:** Franchisee is granted rights to operate a single business unit.

- ii. **Multiple Franchisees:** Individual unit franchises are given to multiple outlets, a route primarily used by domestic brands.
- iii. **Master Franchisee:** Rights are granted for an entire territory to the master franchisee and the master franchisee can in turn grant unit and multiple franchisees in that territory.
- iv. **Regional Franchisee:** This route is similar to that of the master franchisee, but applicable on a larger scale.

The master and regional franchisee routes are the most preferred and the oft-adopted routes of entry into India by the international retailers.

- **Cash and Carry Wholesale Trading** - 100 per cent is allowed in wholesale trading which involves building a large distribution infrastructure to assist local retailers and manufacturers.
- **Joint Ventures** - International firms can enter into agreements with domestic players, and set up base in India.
- **Manufacturing** - International retailers can set-up manufacturing units for their products in India. Entry through this route entails the company the rights to retail the products in India through individual retailing outlets.
- **Distribution** - An international company can set up distribution offices in India and supply products to the local retailers. Franchisee outlets can also be set up in this route.

Key Drivers for International Single Brand Retailers to make an Investment in India:

- Emerging Economy
- Higher Disposable Incomes
- Easy availability of Credit
- Increasing Urbanization
- Increasing Investment Activity by International Retail Giants
- Increasing Technology Adoption

Hurdles for International Single Brand Retailers for Investing in India are as follows:

- Infrastructure
- Intermediaries domination in Value Chain
- Improper Public Distribution Systems

Effect of Single Brand Retail on various sects of society is as follows:

Government: The government can benefit, in terms of indirect and direct tax collection, from these more structured, “on-the-books” businesses. The benefits of FDI in retail will remain largely unrealized for the overall nation if there is no simultaneous investment by the government in the key areas like Transport, Infrastructure, and Education. The Indian government must be a ‘co-investor’ and active partner in developing and maintaining these aspects much more aggressively”

Economy: Retail is one of India’s largest industries, contributing to about 15 per cent of the GDP and providing employment to 20 per cent of the nation’s workforce. Indian retail business promises to be one of the core sectors of the Indian economy, with organised retail sector estimated to grow by 400 per cent of its current size by 2012-13. The growth and potential of the sector is being widely acknowledged both in the domestic as well as international forums.

Suppliers: The foreign companies in single brands will also have to follow stringent rules on local sourcing requirements and make mandatory investments in local supply chain. “The move will not only mean more FDI but also lead to employment and more choices for consumers. Global retailers are bound to bring in global best practices and technology that will lead to a more competitive marketplace benefiting the consumers. The sourcing clause which mandates 30% of procurement from will lead to a direct benefit for the SME sector”

Consumers: The Consumers would be left with more choices at a right price, ambience and good quality all under one roof.

Road Ahead:

India is a nation of shopkeepers and it has more outlets than any other country in the world. But retail outlets still exist in all shapes and sizes. Industry experts predict that the next phase of growth in the retail sector will emerge from the rural markets.

By 2015 the rural retail market is projected to have a total of more than 40 per cent market share. The total number of shopping malls is expected to expand at a compound annual growth rate of over 18.9 per cent by 2015.



CSR & Tax



Divya Salo Jacob Tharakan

CS Professional Student, Bangalore

divyajacobster@gmail.com

The MCA issued Voluntary Guidelines on CSR in 2009 with a view to strengthen the framework of corporate social responsibility. Later, the Ministry issued National Voluntary Guidelines on Socio-Economic and Environmental Responsibilities of Business as a refinement over the Voluntary Guidelines on CSR.

A key reform with respect to the Corporate Social Responsibility has been the **SEBI's mandatory requirement to submit Business Responsibility Reports** as part of their annual reports **by listed companies** describing measures taken by them along the key principles enunciated in the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' framed by the Ministry of Corporate Affairs (MCA). To start with, the requirement will be applicable to top 100 companies in terms of market capitalisation and would be extended to other companies in a phased manner.¹²

These guidelines throw focus on how businesses have to take responsibility for the impact of their operations on the society and environment. Emphasis is laid on inclusive development i.e. achieving the Triple Bottom Line (TBL) - People, Planet and Profit and endeavour towards sustainable growth and economic development.

Also, **Section 135 of the Companies Bill 2011**, proposes that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year must make every endeavour to **spend at least two per cent of the average net profits of the company made during the three immediately preceding financial years**. The new bill requires the aforesaid companies to **constitute a CSR Committee** consisting of at least one independent director. The role of the committee is to formulate and recommend to the board a CSR policy for the company. Once the board approves the policy, it must be announced by placing it on

the company's website. Also the bill, incorporates the **'comply or explain' approach**, wherein the company must specify reasons in the Directors' Report sent to shareholders annually if the requisite amounts have not been spent on CSR activities. While the debate as to whether CSR should be mandatory or voluntary persists, the importance of CSR spending can not be disputed.

Recently, Hon'ble High Court of Karnataka in the case of Infosys held that, to claim deduction under **Section 37** of the Income Tax Act 1961, **the expenditure should be wholly for the purpose of business of the company**. Infosys had shown a contribution of ` 6.93 lakh towards Bangalore City Traffic Police for regulation of traffic near its premises on Hosur Road for the assessment year 1996-97. The contribution was shown as part of its business expenditure to claim the benefit of deduction of income for computing taxable income. Infosys had contended that contribution was made out of business compulsions and a commercial expenditure and hence, eligible for deduction under Section 37 of the Income Tax Act 1961. However, the Hon'ble High Court has dismissed their contention and upheld the Income Tax Department's view of disallowing the same as business expenditure.

Thus, keeping in view the recent pronouncement, it can be deduced that **CSR spending is one area which needs thorough deliberation**.

At the outset there seems to be reluctance on the part of Income Tax Department to allow such expenditures as part of the business expenditure incurred by the corporates for social or environmental improvements causing the corporates to lose confidence in initiatives of the Government in the direction of CSR. It leaves the

¹² www.sebi.gov.in- PR No. 145/2011

corporates demoralized, when on one hand, the Government has been issuing guidelines and proposing mandatory corporate social responsibility expenditures and on other hand, there is a marked reluctance on the part of the Income Tax Department to allow such expenditure as part of the business expenditure.

The truth is, while the term CSR is being used extensively now, there is no statutory definition for CSR. The world accepts that, CSR is different from Charity/Philanthropy. But unfortunately the difference between the two concepts-Charity/Philanthropy & CSR is a blur which poses a huge problem for the corporates.

One of the definitions given by the European Commission, seemingly most appropriate for CSR is as follows: *"It is an integrated style within the company culture at all its operational levels and at all times. It is a concept through which companies integrate social and environmental preoccupations within their commercial activities."*¹³

From the above definition and a host of other definitions, it can be drawn that CSR is a conscious and socially responsible style of doing business. It is a way of **carrying out the core activity**, recognising the **company's responsibility to society as part of the business environment**. And that CSR does not mean a mere donation/charity i.e it is not a selfless act of giving away of goods, money, time and effort for any social need. Further, CSR is something out of which derives long term benefit.

While, an examination of the recent case of Infosys leads one to believe that the expenditure is not in nature of Philanthropy (since Infosys had only to gain in the long run with the increased productivity of employees as a result of them reaching to office on time because of the regulation of traffic), still the Department has disallowed the contribution to be considered as a business expenditure. **There is no doubt that that Government has to dispel the ambiguity around what constitutes CSR and what does not.** Efforts must be made by the Ministry, to address this issue by incorporating the definition of CSR in the proposed Companies Bill.

The Ministry has used a new term '**Responsible Business**' instead of '**CSR**' in its National Voluntary Guidelines on Socio-Economic and Environmental Responsibilities of Business. The problem cannot be addressed by avoiding the use of the term CSR. The problem still persists- **What is Responsible Business? What constitutes a social**

responsibility of a business? Will expenditure incurred on account of social responsibility be allowed as business expenditure in the computation of tax liability?

For the time being, to avoid any disallowance of contribution towards CSR or Responsible Business, by the Income Tax Department the company must make sure that:

1. The activities/projects identified to be undertaken as a corporate social responsibility must be **undertaken in connection with and in the close proximity to the companies' commercial activities as far as possible.**
2. The plan for CSR spending must be integrated with the business plan as far as possible.
3. Efforts must be made to **encourage project- based investment in CSR rather than mere donations to philanthropic or charity organizations.**

Companies may define their channel for CSR spending. They may choose in-house CSR activities or make contributions/donation eligible for tax deduction to:

1. A public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme (**Section 35AC** of Income Tax Act, 1961)
2. Associations and institutions for carrying out rural development programmes (**Section 35CCA** of Income Tax Act, 1961)
3. Associations and institutions for carrying out programmes of conservation of natural resources (**Section 35CCB** of Income Tax Act, 1961)
4. Funds, Charitable Institutions specified under Indian Income tax laws. (Section 80G of Income Tax Act, 1961)

While everyone agrees to the fact that corporate philanthropy falls outside the definition of CSR and that corporate philanthropy relates to the distribution of profits rather than to the manner in which they are earned. T

he Ministry of Corporate Affairs needs to put down in black and white - the difference between corporate philanthropy and CSR, the definition of CSR, and how much of the CSR spending would be eligible for deduction as business expenditure for computation of taxable income.

¹³ Organisation Management and CSE- Razvan Catalin, Lecturer, PhD

External Commercial Borrowings



Rajeshwari.R

CS Trainee, Ganapathi & Mohan Company Secretaries
r.chinnu.rajeshwari1@gmail.com

External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds) availed from non-resident lenders with minimum average maturity of 3 years. Foreign Currency Convertible Bonds (FCCBs) mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. Further the bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency convertible bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The policy for ECB is also applicable to FCCBs.

ECB can be accessed under two routes, viz Automatic Route and Approval Route.

ECB focuses mainly on following aspects:

1. Eligibility Criteria
2. Amount of Borrowings to be raised and their maturity
3. End use of funds raised
4. Reporting Arrangements

ELIGIBILITY:

Under **Automatic Route** Corporates registered under the Companies Act, 1956 (except financial intermediaries such as banks, financial institutions (FIs), housing finance companies and NBFCs) and Units in SEZ are eligible to raise ECB. However, under **Approval Route**, financial institutions dealing exclusively with infrastructure or export finance, Special Purpose Vehicles, Corporates

engaged in industrial sector and infrastructure sector and Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to raise ECB.

LENDERS: Borrowers can raise ECB from internationally recognized sources such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (iv) export credit agencies, (v) suppliers of equipment, (vi) foreign collaborators and (vii) foreign equity holders.

A "foreign equity holder" to be eligible as "recognized lender" would require minimum holding of equity in the borrower company as set out below:

- (i) For ECB **up to USD 5 million** – minimum equity of 25 per cent held directly by the lender.
- (ii) For ECB **more than USD 5 million** – minimum equity of 25 per cent held directly by the lender and debt-equity ratio not exceeding 4:1 (i.e. the proposed ECB not exceeding four times the direct foreign equity holding).

AMOUNT AND MATURITY:

- a) The maximum amount of ECB which can be raised by a corporate is USD 500 million or equivalent during a financial year.
- b) ECB up to USD 20 million or equivalent in a financial year with minimum average maturity of three years.
- c) ECB above USD 20 million and up to USD 500 million or equivalent with a minimum average maturity average maturity of five years.
- d) ECB up to USD 20 million can have call / put option provided the minimum average maturity of three years is complied with before exercising call / put option.

The MCA issued Voluntary Guidelines on CSR in 2009 with a view to strengthen the framework of corporate social responsibility. Later, the Ministry issued National Voluntary Guidelines on Socio-Economic and Environmental Responsibilities of Business as a refinement over the Voluntary Guidelines on CSR.

- e) Corporates in **infrastructure sector** can avail ECB up to USD **100 million** and Corporates in **industrial sector** can avail ECB up to USD **50 million** for Rupee capital expenditure for permissible end-uses within the overall limit of USD 500 million per borrower, per financial year, under Automatic Route.
- f) Corporates can avail of ECB of an additional amount of USD 250 million with average maturity of more than 10 years under the approval route, over and above the existing limit of USD 500 million under the automatic route, during a financial year. Prepayment and call / put options, however, would not be permissible for such ECB up to a period of 10 years.
- g) NGOs engaged in micro finance activities can raise ECB up to USD 5 million during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is hedged.
- h) Corporates in the services sector viz. hotels, hospitals and software companies can avail ECB up to USD 100 million, per borrower, per financial year, for import of capital goods.

END USE OF FUNDS:

Investment e.g. import of capital goods by new or existing production units, in real sector- industrial sector including small and medium enterprises and infrastructure sector – in India, Telecommunication, railways, road including bridges, sea port and airport, industrial parks, and urban infrastructure.

Overseas direct investment in Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) is subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad. Utilization of ECB proceeds is not permitted for investment in capital market, speculation in real Estate, working capital and repayment of existing Rupee loans.

REPORTING ARRANGEMENTS

The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. For allotment of loan registration number, borrowers are required to submit **Form 83**, in duplicate, certified by the **Company Secretary** (CS) or Chartered Accountant (CA) to the designated AD bank. One copy is to be forwarded by the designated AD bank to the Director, Balance of Payments Statistics Division, Department of Statistics and Information System (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051.

Borrowers are required to submit **ECB-2** Return certified by the designated AD bank on monthly basis so as to reach DSIM, RBI within seven working days from the close of month to which it relates.

CONVERSION OF ECB INTO EQUITY

As per RBI Master Circular No. 8 /2010-11 dated July 01, 2010, an Indian company is eligible to convert its ECB into Equity if it satisfies the following conditions:

- (a) The activity of the company is covered under the Automatic Route for Foreign Direct Investment or Government (FIPB) approval for foreign equity participation has been obtained by the company, wherever applicable.
- (b) The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any,
- (c) Pricing of shares is as per the pricing guidelines issued under FEMA, 1999 in the case of listed/ unlisted companies.

Conversion of ECB may be reported to the Reserve Bank as follows:

- (a) Borrowers are required to report full conversion of outstanding ECB into equity in the form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in form ECB-2 submitted to the DSIM, RBI within seven working days from the close of month to which it relates. The words "**ECB wholly converted to equity**" should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.
- (b) In case of partial conversion of outstanding ECB into equity, borrowers are required to report the converted portion in form FC-GPR to the Regional Office concerned as well as in form ECB-2 clearly differentiating the converted portion from the unconverted portion. The words "**ECB partially converted to equity**" should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.

Non-Compliance with ECB Guidelines:

The Borrower is responsible to ensure that ECB raised and utilized is complied with ECB Guidelines and Reserve Bank Regulations. In case of contravention of ECB guidelines and Reserve Bank regulations will invite penal actions under FEMA 1999.



Role of CS in Meetings through Electronic Mode



Sowmya Raghunath

CS Professional Program Student

Trainee-Ganapathi & Mohan, Company Secretaries

The MCA issued Voluntary Guidelines on CSR in 2009 with a view to strengthen the framework of corporate social responsibility. Later, the Ministry issued National Voluntary Guidelines on Socio-Economic and Environmental Responsibilities of Business as a refinement over the Voluntary Guidelines on CSR.

Advancement in science and technology have now, so to say, shrunk the world. Indian Corporate Regulators have recognized the mode of conducting meeting through electronic mode. The Ministry of Corporate Affairs vide Circular no. 28/2011 issued on May 20, 2011 has given permission to conduct meetings through electronic mode under Companies Act, 1956 subject to observance of certain parameters.

Some of the measures to be taken by Company Secretary while conducting meeting via electronic mode:

1. The Company Secretary of the meeting shall assume the following responsibilities:
 - to safeguard the integrity of the meeting via tele/videoconferencing
 - to find good tele /videoconference equipment /facilities
 - to record the proceedings for preparation of minutes of the meeting
 - to store for safekeeping and mark the tape recording/s and/or other electronic recording mechanism as part of the records of the corporation
2. The Company Secretary shall send out the notices of the meeting to all directors in accordance with the manner of giving notice as stated in the corporate by-laws.
3. The notice shall include the following:
 - Inquiry on whether the director will attend physically or through tele/videoconferencing;
4. If the director chooses tele/videoconferencing, he shall give notice and agenda of at least five days prior to the scheduled meeting to the Company Secretary. The latter shall be informed of his contact number/s. In the same way, the Company Secretary shall inform the director concerned of the contact number/s he/she will call to join the meeting. The Company Secretary shall keep the records of the details and on the date of the scheduled meeting, confirm and note such details as part of the minutes of the meeting.
5. In the absence of an arrangement, it is presumed that the director will physically attend the Meeting.
6. At the start of the scheduled meeting, a roll call shall be made by the Company Secretary. Every director and participant shall state, to record Full Name and Location of the participants. Further Directors attending through tele/video conferencing, shall confirm that:
 - Contact number/s of the Company Secretary and office staff that the director may call to notify and state whether he shall be physically present or attend through tele/videoconferencing;
 - Agenda of the meeting;
 - All documents to be discussed in the meeting, including attachments, shall be numbered and duly marked by the Company Secretary in such a way that all the directors, physically or electronically present, can easily follow, refer to the documents and participate in the meeting.

Contd.. in page number 67



Corporate Governance



Krishna K

CS Professional Student, krishna_sep14@gmail.com

Chetan V.S

CS. Executive Student, vallmschet@gmail.com

Code of CG should be redesigned to reflect international best practices stringent enforcement of Law More effective coordination and cooperation between SEBI and MCA.

In the Vedic Period - Corporate Governance was in the form of "Satyam Vada Dharmam Chara" as upheld in the Taittariya Upanishad to mean "Forever, speak the truth and follow the dharma". In Ramayana the Governance Concept was highlighted in the Ayodya Kanda by saying "the maximum happiness for the maximum number of people for the maximum period, based on the principles of Dharma - righteousness and moral values."

Driving Forces of Corporate Governance (CG) in London:

"Robert Maxwell's death ---cruising shone a spotlight on his company's affairs. A series of risky acquisitions in the mid-eighties had led Maxwell Communications into high debts, his disappearance, it emerged that the Mirror Group's debts (one of Maxwell's companies) vastly outweighed its assets. Eventually, in 1992 Maxwell's companies filed for bankruptcy protection in the UK and US. At around the same time the Bank of Credit and Commerce International (BCCI) went bust and lost billions of dollars for its depositors, shareholders and employees. Another company, Polly Peck, reported healthy profits one year while declaring bankruptcy the next.

Following the raft of governance failures, Sir Adrian Cadbury chaired a committee whose aims were to investigate the British corporate governance system and to suggest improvements restore investor confidence in the system. The Committee was set up in May 1991 by the Financial Reporting Council, the London Stock Exchange, and the accountancy profession. The report embodied recommendations based on practical experiences and with an eye on the US experience, further elaborated after a process of consultation and widely accepted. The final report was released in December 1992

and then applied to listed companies reporting their accounts after 30th June 1993."

Corporate governance is "the system by which companies are directed and controlled" (Cadbury Committee, 1992). It involves a set of relationships between a company's management, its board, its shareholders and other stakeholders; it deals with prevention or mitigation of the conflict of interests of stakeholders. Ways of mitigating or preventing these conflicts of interests include the **processes, customs, policies, laws and institutions** which have impact on the way a **company** is **controlled**. An important theme of corporate governance is the nature and extent of accountability of people in the **business** and mechanisms that try to decrease the principal-agent problem.

Driving Forces of CG in India: Unethical Business Practices Security Scams - Harshad Mehta Security Scam Equity allotments at discount rates to the controlling groups Disappearance of Companies (1993-94) - around 4,000 companies with 25,000 crores without starting business Mislead of Companies Plantation, Sheep rearing, etc. Impact of Globalization Integration with Foreign Market Foreign Investors expectations New Business Opportunities --- IT & ITES, BPO etc., New Capital formation - FII, FDI 3) Impact of Privatisation New structure of ownership Multinational Companies.

Securities and Exchange Board of India (SEBI) Committee on Corporate Governance defines Corporate Governance as the "acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business

conduct and about making a distinction between personal & corporate funds in the management of a company." It has been suggested that the Indian approach is drawn from the Gandhian principle of trusteeship and the Directive Principles of the Indian Constitution, but this conceptualization of corporate objectives is also prevalent in Anglo-American and most other jurisdictions.

As per The Institute of Company Secretaries of India, "Corporate Governance is the application of best management practices, Compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders".

Infosys Technologies: The Best among Indian Corporate
As per the Credit Lyonnais Securities Analysis (CLSA), the corporate governance ratings of the Software firms are higher than those of other Indian firms. Infosys, based in Bangalore, is a publicly held, ISO 9001 certified company offering information technology consulting & software

services. The software offered includes application development, E-Commerce & Internet Consulting, Software Maintenance. Respected across the country, with very strong systems, high ethical values & a nurturing working atmosphere. Net income of US 1,155 million and revenue of US 4,176 million. At present having US 20.4 billion market capitalizations.

Achievements: Achievements Voted as the Best Managed Company in Asia. Biggest exporters of Software. First to follow the US Generally Accepted Accounting Principles before going for Nasdaq listing in 1991. Championed Corporate Governance in India.

Concluding Observations: Code of CG should be redesigned to reflect international best practices stringent enforcement of Law More effective coordination and cooperation between SEBI and MCA. CG mechanism should be flexible and suitable overall ethical values in all segments should be promoted for effective accounting, auditing, disclosure and transparent system.

Continued from Page Number 66.....

- he can completely and clearly hear the others who can clearly hear him at the end of the line
- State whether he has received the agenda and all the materials for the meeting
- Specify type of device used

Thereafter, the Company Secretary shall confirm and note the contact numbers being used by the directors and participants not physically present. After the roll call, the Company Secretary may certify the existence of a quorum.

7. All participants shall identify themselves for the record, before speaking and must clearly hear and/or see each other in the course of the meeting. If a person fails to identify himself, the Company Secretary shall quickly state the identity of the last speaker. If the person speaking is not physically present and the Company Secretary is not certain of the identity of the speaker, the Company Secretary must inquire to elicit a confirmation or correction.

If a motion is objected to and there is a need to vote and divide the Board, the Company Secretary should call the roll and note the vote of each director who should identify himself.

If a statement of a director/participant in the meeting via tele/videoconferencing is interrupted or garbled, the Company Secretary shall request for a repeat or reiteration, and if required, the Company Secretary shall repeat what he/she heard from the director/participant for confirmation or correction.

8. It is required to preserve video recording by the Company for one year from the conclusion of the meeting.

Though electronic mode of meeting is a green initiative in the corporate governance few drawbacks could make inefficient i.e., domination of one or few member conversation, negative evaluation and requirement of high infrastructure which encumbers the traditional way of meetings. There are many advantages as well. It saves time, cost of travelling, cost of arranging meeting, increases participation as it could be conducted in any place and any time, most sophisticated, paper less compliance which leads to eco-friendly environment and comprehensive way which enables to take timely decision for the Company. Hence conducting meeting through electronic mode is one of the good progress in Corporate Governance.

Fast Track Exit Scheme :A Welcome Move



Bhavya Parvathi. K

Professional Programme Student
Trainee under PCS Vivek Hegde

Code of CG should be redesigned to reflect international best practices
stringent enforcement of Law
More effective coordination and cooperation between SEBI and MCA.

One of the most famous Murphy's Law quotes: **"Almost anything is easier to get into than out of"**

Justice Balkrishna Eradi committee revealed that winding up duration of some companies based on data pertaining up to 31st March 1999, runs to 25 years and more!!!

The mechanism of electronic filing (e-Filing) with the Registrar of Companies (ROC) introduced by Ministry of Corporate Affairs (MCA) in 2006 through the MCA-21 E-Governance Project has enabled speedy incorporation of a company but winding up still remains a protracted process owing to the rigid compliance demanded by the Statutes in force. Some of the reasons contributing to such delay cannot be deemed unjustifiable as an entity cannot abandon its responsibilities overnight. However from an investor/entrepreneur viewpoint, the nightmare caused by long-drawn closure of Companies proves to be discouraging, especially when a profitable business fails to materialize. The MCA has geared up to accelerate the closure of a nil asset or dormant Company through introduction and modification of several exit schemes from time to time. The issue of General Circular No. 36/2011 dated 7th June 2011 "Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Act" succeeds Easy Exit Scheme, 2011 which ended on 30th April 2011.

OBJECTIVE OF "GUIDELINES FOR FAST TRACK EXIT MODE":

To give an opportunity for fast track exit(FTE) of a defunct company by Filing Application with ROC through Form FTE for striking off the name of such Company from the

RoC. This FTE Mode has modified the then existing route of filing e-form - 61, which has hence been discontinued. The "Guidelines for Fast Track Exit mode" has been implemented w.e.f. 3rd July, 2011 and is in force to date.

CONTENTS OF THE GUIDELINES IN BRIEF:

1. Eligible Defunct Company :

- Any Company which has nil asset and liability and
 - ❖ Not commenced any business activity or operation since incorporation or
 - ❖ not carrying over any business activity or operation for last one year before making application under FTE
- The following companies have been excluded :
 - ❖ Listed companies;
 - ❖ Companies de-listed due to non-compliance of listing agreement or statutory laws;
 - ❖ Section 25 companies;
 - ❖ Vanishing companies ;
 - ❖ Companies where inspection or investigation is ordered , being carried out or yet to be taken up or with pending prosecutions thereof;
 - ❖ Companies where Sec 234 order has been issued by ROC and reply / prosecution in court is pending;
 - ❖ Companies against which prosecution for a non compoundable offence is pending in court;
 - ❖ Companies which have outstanding public deposits or which have defaulted in its repayment;
 - ❖ Company having secured loan, management dispute;

- ❖ Company in respect of which filing of documents have been stayed by court or company law board or central government or any other competent authority;
- ❖ Company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other central government or state government departments or authorities or any local authorities.

2. Application to ROC:

A defunct Company having active status or identified as dormant by the MCA may apply to the ROC for striking off its name from the Register of Companies by filing Form FTE electronically at the MCA portal accompanied by filing fee of ₹ 5000.

3. Annexure to Form FTE:

- ❖ A copy of Board Resolution showing authorization to file this application.
- ❖ A Statement of Account as per Annexure C to the Guidelines, prepared as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice.
- ❖ An Affidavit as per Annexure- A, by all existing director(s) individually to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations, as the case may be.
- ❖ An Indemnity Bond, duly notarized, as per Annexure B, to be given by every director individually or collectively.
- ❖ In case of foreign nationals and NRIs, Indemnity Bond and Affidavit must be notarized as per their respective country's law.
- ❖ A defunct Government Company must submit 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government
- ❖ A physical copy of the Form duly filled in and signed manually by a director authorized by the Board of Directors of the company, if the Form is not digitally signed by any of the directors or Manager or Secretary,
- ❖ If the applicant name is not available in the database of directors maintained by the Ministry, a certificate from a Chartered Accountant (CA) or Company Secretary (CS) or Cost and Works Accountant (CWA) (in whole time practice that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.

- ❖ Copy of relevant order for delisting from the concerned stock exchange.
- ❖ Other optional attachments.

A Defunct company subject to Pending prosecutions for non-filing of Annual Returns and Balance Sheet must have already filed a compounding application by applicants. Though Form FTE in such cases may be accepted, steps for final strike off of the name of the company will be taken only after disposal of compounding application by the competent authority.

The Form shall be certified by a CA, CS or CWA in whole time practice;

4. Procedure adopted by ROC:-

- (a) ROC shall examine the application and if found in order, shall give a show cause notice to the company by email giving thirty days time, to show cause failing which, its name will be struck off from the Register and the company will be dissolved;
- (b) The ROC shall put the name of applicants and date of making the applications under fast track exit mode, on daily basis, on the MCA portal, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;
- (c) In case of companies regulated by other Regulators namely RBI, SEBI; the ROC at the end of every week, shall send intimation of such companies availing fast track exit mode during that period to the concerned Regulators and to the office of the Income Tax Department giving thirty days time for their objection;
- (d) The ROC immediately after the end of the above mentioned duration for Company, stakeholders or Regulators to raise objections and on being satisfied that the case is otherwise in order, shall strike its name off the Register and the applicant company shall stand dissolved from the date of publication of the notice in the Official Gazette.
- (e) The Decision of ROC is final.

CONCLUSION: The list of hundreds of Companies which have recently embraced this scheme and pending strike off can be viewed at this link:

<http://www.mca.gov.in/MCA21/EES.html>

This substantiates that the scheme is a welcome move which has paved the path for a viable and speedy closure of various non functional defunct companies – a cue that, simplified hassle free procedures relieve the entrepreneurs from “Thinking twice before incorporating their dream projects”.

Audit Committee

(Section 292A of Companies Act Vs Clause 49 of Listing Agreement)



Vidya G Guttal

Trainee at CS. G. V. Sreenivasmurthy

vidyaguttal@hotmail.com

The audit processes and procedures relating to internal control and corporate reporting including an audit committee is established with the aim of enhancing confidence in the integrity of an organization's financial reporting.

Introduction:

Audit Committee provides an 'independent' reassurance to the board through its oversight and monitoring role. Among many responsibilities the boards entrust the Audit Committee are the transparency and accuracy of financial reporting and disclosures, effectiveness of external and internal audit functions, robustness of the systems of internal audit and internal controls, effectiveness of anti-fraud, ethics and compliance systems, review of the functioning of the whistleblower mechanism. Audit Committee may also play a significant role in the oversight of the company's risk management policies and programs.

The Companies (Amendment) Act (2000), among other things, provides for the formation and functioning of audit committees (section 292A). Similar requirements for audit committees are prescribed under clause 49 of the Listing Agreement issued by Securities and Exchange Board of India (SEBI). In India, perhaps the 1992 stock market scam and liberalization of the economy contributed more to the introduction of these requirements than did Enron. Be that as it may, these scams and corporate failures have shaken investors' confidence and the whole world is watching intently the steps being undertaken by the various statutory authorities in this respect. Below is a comparison between the regulations governing the audit committee. It points to a few prominent differences between the regulations in both.

Base of Diff.	Section 292A	Clause 49
Applicability	Section 292A applies to all public companies with a paid-up capital of Rs. 5 crore or more.	Clause 49 of the Listing Agreement covers most of the listed companies
Constitution and independence of the audit committee	Section 292A requires that the audit committee shall consist of not less than three directors and such number of other directors as the board may determine. Two-thirds of the total number of the audit committee shall be directors other than the managing or whole-time directors.	Clause 49 requires a minimum of three members, all being non-executive directors, with the majority of them being independent directors*, with at least one director having financial and accounting knowledge.
Role and powers of the audit committees	Section 292A gives the audit committee the authority to investigate into any matter in relation to the items specified in this section or referred to it by the board. The audit committee has full access to information contained in the records of the company and may take external professional advice, if it deems necessary.	Clause 49 gives specific powers to the audit committee to investigate any activity within its terms of reference, seek information from any employee, and obtain outside legal or professional advice. The role of audit committee has also been clearly defined under the clause 49.

Independence of audit committee members: Clause 49 defines 'independent directors' as directors who, apart from receiving directors' remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the board's view may affect their independent judgment. It may be noted that clause 49 has listed the powers of the audit committee while section 292A has left it to the discretion of the board.

It may be noted from the above analysis that the local regulations are generally stringent and comparable with international standards. However, considering the kind of Enron-like corporate failures that the world has faced in the recent past, these regulations need re-examination. Improvement in areas like remuneration of audit committee members, their training, and the extent to which they can be held liable in case of default, would enable them to discharge their responsibilities more effectively and efficiently. Following the footsteps of the US, the Naresh Chandra Committee was constituted to examine the entire gamut of issues pertaining to the auditor-company relationship and related issues. The committee has considered the above-mentioned issues and has submitted its recommendations. The writing is on the wall: the fundamentals of corporate governance in India will see radical change in the near future.

Benefits of the Audit Committee Effectiveness

An effective audit committee gives the board, investors, owners and stakeholders additional confidence in the organization's risk management, internal controls and compliance systems, audit functions and financial reports.

What Are The Advantages And Disadvantages Of An Audit Committee?

- ❖ The advantages and disadvantages of audit committees depend partly on who is providing the personnel within the appointed committee. There are three main ways in which an audit committee can be formed and appointed.
- ❖ A committee brought in from a relating business or department has the advantage of being independent, as well as being cost-effective, in particular as a similar service could be provided in return.
- ❖ The disadvantages in this scenario lie within the initial time required to set up and arrange the committee. This could also have adverse effects on

delivery of audit plans if arrangements were shared.

- ❖ Charging a group of individuals from an unrelated department within the company with the task of conducting the audit has the advantage of being independent, while control remains in house.
- ❖ Company protocols are known and senior management is able to lead. It is also a relatively cost-effective option
- ❖ Here, disadvantages lie in the fact that detailed technical knowledge with respect to the audit's function may be lacking, resulting in additional cost by providing relevant personnel to provide assistance.
- ❖ The other option is to appoint an external consultant or group of consultants to conduct the audit. The main advantage of this option is total independence of the performing auditor or audit committee.
- ❖ This approach has the disadvantage of being expensive, as well as again requiring the provision of internal personnel to give assistance as and when required.
- ❖ As a whole, the advantages and disadvantages of various forms of audit committees are pretty much balanced and it is up to each company to decide what best suits their needs.
- ❖ In either case, various methods can be used to ensure a committee's effectiveness. One such method is known as the evaluation form method. This popular method includes processes ensuring independence and objectivity of members.

Conclusion:

The Audit Committee has become one of the main pillars of the corporate governance system in Indian public companies. In steering companies through today's complex business environment, boards are going to need strong leadership from their audit committees. Expanding the field of vision, clearly defining who's tracking the company's risk radar, and taking a step back to re-evaluate its own performance are some of the important steps every Audit Committee should consider.

Corporate Debt Restructuring Scheme

Ganesh Kamath
ganeshkamathgk@gmail.com

What is CDR?

“It is a proactive step to avoid companies from slipping into a mess from where it may become difficult to make any recovery.”

CDR is a non-statutory and voluntary method for companies to resolve their unmet financial obligations. It is founded on the understanding that making such restructuring facilities available to companies in a timely and transparent manner goes a long way in ensuring their viability which is sometimes threatened by internal and external factors. Corporate debt restructuring as a remedial measure prevents incipient delinquency in corporate accounts. Therefore, this system resolves the financial difficulties of the corporate sector and enables entities to become viable.

Other available options to restructuring may include re-financing or filing for bankruptcy. In practice, restructuring brings to the table the interests of the company along with those of the creditors. This is what sets restructuring apart from other creditor friendly approaches.

This restructuring is multi-faceted. It usually involves the waiver of part of interest or concessions in payment, or converting the un-serviced portions of interests into term loans, re-phasing of recovery schedules, reduction in margins, reassessment of credit facilities including working capital, restructuring the management, reduction in equity capital to make more capital available for expansion, conversion of debentures into equity to give relief on the compulsory payment of interest on the debentures. In addition to these, often, additional finance may be sought for bringing about change in the working of the corporation.

CDR System & Practice: Eligibility Criteria: The scheme shall apply to debt involving multiple banking loan facility/syndication/ consortium debt only with outstanding exposure of Rs 10 Crores and above lent by banks and financial institutions to the Corporate.

Note:

- CDR is a non-statutory mechanism which is based on Debtor-Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA)
- This CDR scheme shall be approved by 75% of secured creditors by value and 60% number of creditors
- No CDR for willful defaulters, fraud or misfeasance cases
- CDR does not apply to accounts involving only one Financial Institution or one Bank

The audit processes and procedures relating to internal control and corporate reporting including an audit committee is established with the aim of enhancing confidence in the integrity of an organization's financial reporting.

CDR is classified under two categories. Category-I shall apply to accounts which are considered Standard or Sub Standard in books of the Lender and Category-II shall apply to accounts which are considered 'doubtful category' in books of Lender

Structure of CDR System: The mechanism established comprises of a 3 tier structure.

- 1.) CDR Standing Forum and Core Group
- 2.) CDR Empowered Group
- 3.) CDR Cell

Process of CDR: The Process through which a company reaches the Restructuring Mode can be divided into the following steps:

Process 1: The Proposal [Time Frame: 30 days]: The company may approach the CDR Cell with a preliminary restructuring plan prepared by either the lead institution (one of the banks) or by the majority stakeholder in the company. The selected proposal is binding on all the participating creditors. The agreement between the creditors usually notes that such plan as is decided by 75% of secured creditors by value and 60% number of creditors shall be executed and which shall be applicable to remaining creditors. The proposal contains within itself the Preliminary Plan in addition to other relevant details.

Process 2: Preliminary Scrutiny [Time Frame: 30 days]: The CDR Cell undertakes a scrutiny of the proposal submitted before it.

Process 3: Detailed Review [Time Frame 60/90days with maximum of 180 days]

Pursuant to this scrutiny, the Cell puts the plan before the Empowered Group for its prima facie consideration on its feasibility and for suggestions for modifications. While determining the viability of the company, a multitude of factors are taken into consideration. These include:

1. Return on capital employed
2. Debt Service Coverage Ratio
3. Extent of Sacrifice
4. Break Even Point
5. Gross Profit Margin
6. Loan Life Ratio
7. Gap between Internal Rate of Return and the Cost of Fund

Process 4: The Restructuring Mode [Time Frame: Variable]
If approved by the Empowered Group, the proposal is now in the Restructuring Mode. The Cell would now prepare a detailed Rehabilitation Plan for which it may seek the assistance of experts as well as consultations with the lead institution. CDR Cell shall issue Letter of Approval (LOA) to the individual lenders for sanctioning approved CDR package within time span of 45days. Throughout this process, the guidelines issues by the Standing Forum are applied under the leadership of the Core Group.

Other Aspects of the CDR System: At any time prior to a commitment by the Empowered Group, an **Exit option** is made available to the creditors through which they are given a free hand to take all necessary steps to secure their dues (for instance, seeking liquidation or winding up) whether individually or collectively.

The bulk of this mechanism hinged on the entering into certain contracts: The **DCA** (Debtor-Creditor Agreement) and the **ICA** (Inter-Creditor Agreement). A unique feature of the mechanism is its non-dependence on facts such as sickness of the company or previous default over any time period. Decisions are made solely on the basis of their potential, making it a flexible system for timely action. To ensure the smooth working of the system, DCAs usually incorporate what have come to be known as '**stand still clauses**'. Through these, the parties acknowledge that both the parties shall not proceed with other remedies available, outside of the agreed terms of the CDR process.

Should the need for any additional finance be required, the creditors are obliged to collectively provide it on a pro-rata basis. For creditors who fall within the minimum 75% (by value) and 60% (by number) who have opted in favor of going for debt restructuring, the pledging of this additional finance is mandatory. For those creditors who many be have been unwilling to proceed with the CDR, an exit option is available.

The cases pending with BIFR shall also be eligible for CDR scheme on case to case basis. Lenders shall have the right to convert up to 20% of the loan outstanding (interest-bearing term loan, WCTL and FITL) beyond seven years into equity at any time after seven years from the date of Letter of Approval issued by CDR Cell subject to compliance with guidelines issued by SEBI and RBI from time to time

One Time Settlements (OTS) / Negotiated Settlement (NS) generally involve an element of waivers / scarifies for the lenders in respect of their outstanding debt and basically means offers given by the borrowers based on certain resource-raising programme including equity issue, strategic investment, venture capital, international offering etc.

TRA agreements are entered between the borrower and lender giving the right to lender to recover the dues from the operating cash flows generate from the operations of the borrower.

An **Exit option** is given to borrower to come out of clutches of CDR provided that the borrower complies with Recompense Clause ie pre-payment of the premium for pre-mature exit and settling the scarified interest

Monitoring Restructuring Package: A Monitoring Committee (MC) is instituted to oversee the implementation of the package which files a report to the CDR Cell informing it of the success every month. This committee constitutes of various lenders with a varying degree of exposure to the company, thus ensuring that all interests are equally served. In the course of its functioning, the committee also invites experts and other representatives. For every major decision taken by a restructured company, due approval is required from the Committee and recommendations are invited from the Empowered Group.

References: CDR Master Circular- dated 3rd June 2009, RBI & CDR Circulars, www.rbi.org.in and www.cdrindia.org



Information Security



Satish Rajan

CS Professional Student

sathishrajan1982@gmail.com

The rapid developments in the Economy, the advancement in the areas of Science & Technology by leaps & bounds, the complications in the day to day functioning of the organizations, the speedy deliverables required by the clients have necessitated in the creation of CUSTOMER DELIGHT than a mere Customer Satisfaction .

Professionals now-a-days are equipping themselves with a repertoire checklist that act as a guide in the procurement of adequate manpower, infrastructure, knowledge, process stabilization & documentation, merging amongst themselves to counter a greater challenge and to seek a WIN-WIN situation with the economy as a whole. However, the greatest threat to the Professionals that makes them vulnerable is the information insecurity arising out of flow of information to unauthorized pranksters and concealment of information to authorized representatives that act as barricade in the completion of mission, satisfaction of clients' expectations and growth of the professionals.

Preview: This article mainly aims at proper perception, appreciation, utilization and protection of repository of information in the service industries, apart from the invaluable people and assets, from intrusion and third party exploitation.

Big corporate like Accenture, General Electric etc. have eminent work culture and standard information security practices that have helped them in achieving ISO27001 certification and emerge market leaders in the Global economy. It is high time the Professional concerns & firms also start elevating their information security practices & strive towards achieving ISO27001 requirements.

Code of CG should be redesigned to reflect international best practices stringent enforcement of Law More effective coordination and cooperation between SEBI and MCA.

The recent incidents like Satyam Fiasco, Enron collapse, Carlton towers fire tragedy in Bangalore, increasing rate of heart attacks including susceptible youth & incessant leakage of information have opened my eyes and necessitated me to share this article with you all. (Any inconvenience arising in agreeing to my views is regretted)

Practical application: Some of the measures have been shared below to enhance the protection and security of information, that can be made policies in the entities & circulated for strict adherence.

Induction with supplemental manuals: Educating the professionals, staff & trainees with various information security mechanisms to protect Entity, client & third party information restriction, supported by a **Easy-to-use Manual** as a supplemental booklet.

Securing systems & their acceptable use: Securing system access by creating and using enterprise Ids and passwords, restricting file tampering with "read only" option, password enablement, avoiding stealth viewing of system by people behind. Social networking sites and other abusive websites should be disabled to avoid distractions and increasing productivity.

Creating backup: The major incidents that have resulted in loss of information are system crash resulting in hard disk losing data (especially C Drive data) and mobile theft/spoilage that have resulted in loss of repository of contacts plus saved messages. Backup can be taken in auxiliary devices & data feeding in backup files.

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Foreign Direct Investment

Ramamurthy S

CS Executive Student

rama.amasl@gmail.com

Definition of FDI is usually understood as financial contribution to the capital of an enterprise or purchase of shares in the enterprise by a Non-Resident other than a citizen of Pakistan or an entity incorporated in Pakistan irrespective of whether this involves new capital or reinvestment of earnings.

Foreign investment is of two kinds –

- (i) Foreign Direct Investment (FDI)
- (ii) Foreign Institutional Investment (FII)

Usually where the company being invested and controlled by the foreign corporation, it plays an extraordinary and growing role in global business. It can provide a firm with new markets and marketing channels, cheaper production facilities, access to new technology, products, skills and financing. For a host country or the foreign firm which receives the investment, it can provide a source of new technologies, capital, processes, products, organizational technologies and management skills, and as such can provide a strong economic development and also it refers to the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor.

TYPES OF INSTRUMENTS:

Indian companies can issue equity shares, convertible debentures, and Convertible / Redeemable preference shares. The foreign direct investor may acquire voting power of an enterprise in an economy through any of the following methods:

- by incorporating a wholly owned subsidiary or company
- by acquiring shares in an associated enterprise
- through a merger or an acquisition of an unrelated enterprise
- participating in an equity joint venture with another investor or enterprise

INVESTMENT CONDITIONS AND RESTRICTIONS:

1. The foreign investment in India is governed by FDI policy announced by Government of India and the provisions of the

Foreign Exchange Management Act, (FEMA) 1999 & Foreign Exchange Management Regulations, 2000 issued by Reserve Bank.

2. The combined holding of all persons residing outside India in the equity share capital of a recognized stock exchange should not exceed 49% of the paid up capital, allowed cap of 26% for FDI and 21% for FII, **American Depository Receipts (ADR) / Global Depository Receipts (GDR)** are reckoned as part of FDI, Accordingly such issue would need to confirm to the existing FDI policy.
3. The company shall be a listed company which is engaged in a sector eligible to receive FDI.
4. FDI is allowed with specific prior approval of FIPB; and
5. FIIs can invest only through purchase in the secondary market

ENTRY ROUTES FOR INVESTMENTS:

FDI can be made in two routes – Automatic Route and Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the RBI & GOI for the investment. Under the Government Route, prior approval of the Government of India, Ministry Of Finance, and Foreign Investment Promotion Board (FIPB) is required.

PROHIBITION ON INVESTMENT IN INDIA:

FDI is prohibited in any form is prohibited in a company or a firm in the following activities.

- 1) Business of chit Fund, or
- 2) Nidhi company, or
- 3) Agricultural or Plantation activities exclude Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and mushrooms, or
- 4) Real estate business or construction of farm house exclude development of township, construction of residential / commercial premises, roads and bridges.
- 5) Trading in Transferable Development Rights (TDRs)
- 6) Retail Trading
- 7) Atomic Energy
- 8) Lottery Business
- 9) Gambling and Betting

India is a country that has been able to restore investor confidence in its markets, even during the toughest of times. Increase in capital inflows, (FDI) and overseas

entities participation reflect the fact that Indian markets have fared well in recent times. Increasing foreign investment can be used as the measure of growing economic globalization. It is a measure of the ownership of productive assets, such as factories, buildings, machinery, equipments. It is the sum of equity capital, other long-term capital, and short-term capital as shown in the balance of payments. It usually involves participation in management, joint-venture, transfer of technology and expertise. Depending on the industry sector and type of business, a foreign direct investment may be an attractive

and viable option. With rapid globalization of many industries and vertical integration rapidly taking place on a global level, at a minimum a firm needs to keep abreast of global trends in their industry. From a competitive standpoint, it is important to be aware of whether a company's competitors are expanding into a foreign market and how they are doing that. At the same time, it also becomes important to monitor how globalization is affecting domestic clients. Often, it becomes imperative to follow the expansion of key clients overseas if an active business relationship is to be maintained.

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Managing papers – The printouts must be collected immediately by the concerned person immediately after giving prints especially in a big entity having many people. The required papers should be filed and kept in drawers and others should be torn & put to thrash bin.

Restricting usage – Restricting recording, storage & voice communication devices usage for purposes other than the legitimate purpose of the business.

Managing lives – Regular first aid training should be imparted to protect lives and act spontaneously in emergencies. Certain life saving techniques such as CPR (Cardio Pulmonary Resuscitation) would be very helpful during heart attacks & taking them to Coronary Care Units in time.

Managing accidents – Smoke detectors, fire alarms & sprinklers should be installed to detect a fire breakout.

Periodic **Evacuation drills** should be conducted to educate people to use stairs instead of using lifts, crawl instead of running with panicky, properly using the fire extinguishers for respective kind of fire.



Managing emergencies – Helpline numbers should be posted on walls of the entity for getting immediate access and immediately informing the concerned representatives for help or guidance.

Managing and changing passwords – Enterprise, login & other ids plus passwords should be changed from time to time (say 15, 30 or 45 days) to avoid unauthorized access and misuse of information by intruders. Such details should be saved in a password enabled excel file to retrieve information in case of forgetfulness. **If a person opens his account in a Public system or kiosk, he needs to immediately change his password the next time he logs in as the automatic password option would have got enabled.**

These are some of the areas the Professionals need to work to have a better and safe work culture.

FDI in India: an Overview



Prathima Mariya Tellis

Trainee with CS. G V Sreenivasamurthy

prathima.tellis@gmail.com

India enjoys a stable democracy and fast growing market which is advantageous in attracting FDI. The world class scientific, technical and managerial manpower which is cost effective and highly skilled with a combination of abundance of natural resources adds on to the India's advantages.

How India an ideal Foreign Direct Investment destination?

India is one of the fastest growing economies in the World. India enjoys a strong position as a global investment hub, with high economic growth figures even during the peak of financial meltdown. As a result, overseas investors get attracted towards Indian economy which eventually boosts the foreign direct investments (FDI) in India. The sea changes in the trade and investment policies and the regulatory environment in the past decade, including trade policy and tariff liberalization, easing of restrictions on foreign investment and the deregulation and privatization of many industries, has probably been the most significant catalyst for FDI's expanded role in India. A major portion of FDI inflow in India is in the service sector. India is the seventh largest exporter and eleventh largest importer in the world. India enjoys a stable democratic environment and has a large and growing market which is advantageous to India in attracting FDI. The world class scientific, technical and managerial manpower which is cost effective and highly skilled with a combination of abundance of natural resources adds on to the India's advantages in attracting FDI.

FDI Policy in India: Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provisions of the Foreign Exchange Management Act, (FEMA) 1999. The Reserve Bank of India ('RBI') in this regard had issued a notification, which contains the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 (this notification has been amended from time to time). The Ministry of Commerce and Industry, Government of India is the nodal agency for monitoring and reviewing the FDI policy on continued basis and

changes in sectoral policy/ sectoral equity cap. The FDI policy is notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP).

FDI can be in the forms of,

- (i) Financial and technical collaborations.
- (ii) Joint ventures or strategic alliances
- (iii) Capital markets via Euro issues
- (iv) Private placement or Preferential allotments

FDI: Entry Strategies

- I. As an incorporated entity: Wholly owned subsidiary and Joint ventures
- II. As an unincorporated entity: Liaison office, Project office and Branch office

Why FDI:

- (i) Domestic capital is inadequate for the purpose of economic growth.
- (ii) Lower cost of capital in comparison with the domestic cost of capital
- (iii) During the period in which the capital market is in the process of development, foreign capital is essential as a temporary measure
- (iv) Foreign investors bring along with them other scares productive factors such as technical know-how, global business experience etc.

FDI: Prohibited Sectors: FDI is allowed in all sectors either through approval route or automatic route except under the following prohibited sectors:

- (a) Retail Trading (except single brand product retailing)
- (b) Lottery Business including Government /private lottery, online lotteries, etc.
- (c) Gambling and Betting including casinos etc.
- (d) Business of chit fund

- (e) Nidhi company
- (f) Trading in Transferable Development Rights (TDRs)
- (g) Real Estate Business or Construction of Farm Houses
- (h) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (i) Activities / sectors not opened to private sector investment including Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

Besides foreign investment in any form, foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

FDI Routes:

Automatic Route: FDI virtually for all items/activities can be brought in through the automatic route under powers delegated to the RBI, and for the remaining items/activities through government approval. FDI up to 100% is allowed for new and existing companies, joint ventures, firms under automatic route for all items except for those which fall under government approval route. Entry under automatic route only requires a post – entry notification to the regional office concerned of the RBI within 30 days of receipt of inward remittance in India and to notify in form FC-GPR within 30 days of the issue of shares to the non-resident investor and no prior approval is required.

Approval Route: FDI in activities not covered under the automatic route, requires prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB). Approvals of composite proposals involving foreign investment/foreign technical collaboration are also granted on the recommendations of the FIPB. Application for all FDI cases, except Non-Resident Indian (NRI) investments and 100% Export Oriented Units (EOUs), should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance. Application for NRI and 100% EOU cases should be presented to SIA in Department of Industrial Policy & Promotion.

Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. The companies are required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs. The Government approval for FDI through the FIPB is necessary for the following:

- (i) A foreign investor with an existing venture or collaboration (technical and financial) with an Indian partner in particular field proposes to invest in another area, such type of additional investment is subject to a prior approval from the FIPB, wherein both the parties are required to participate to demonstrate that the new venture does not prejudice the old one.
- (ii) All proposals relating to acquisition of shares in an existing Indian company in favour of foreign investor.
- (iii) All proposals falling outside notified sectoral policy / caps or under sectors in which FDI is not permitted.
- (iv) All proposals that require an Industrial License [Micro or Small Scale Enterprise cannot have more than 24% equity in its paid up capital from any industrial undertaking, either foreign or domestic. If the equity from another company (including foreign equity) exceeds 24%, even if the investment in plant and machinery in the unit does not exceed Rs 10 million, the unit loses its Micro or Small Scale Enterprise status and shall require an industrial license to manufacture items reserved for Micro or Small Scale Enterprise].

FDI: Merits

- ✓ Plays a prominent role in overall capital formation
- ✓ Employment generation
- ✓ Enhancement of productivity
- ✓ Encourages the transfers of technology, skills and capital
- ✓ Boosts the foreign exchange position
- ✓ Promotes competition within the local input market
- ✓ Increases exports and tax revenues
- ✓ Investments in needed infrastructure

FDI: Demerits

- ✓ A company may lose out on its ownership to an overseas investor
- ✓ Disturbance of domestic economic plans in favour of FDI-directed activities.
- ✓ Entry of FDI in the sectors which are already established and doing well in the market
- ✓ Large investments will be only in highly profitable sectors
- ✓ Technological Dependence on foreign technological sources.

Conclusion: India has liberalized foreign investment regulation in key sectors, opening up commodity exchanges, credit information services and aircraft maintenance operations. The foreign investment limit in single brand retail sector has been increased to 100% from the earlier 51%. Foreign airlines are currently barred from investing in Indian carriers though foreign investors are allowed up to 49% stake. But the proposal that the foreign direct investment (FDI) policy to allow foreign airlines to buy 49% stake in Indian carriers will be a major boost to the cash-strapped aviation industry. This move may allow domestic carriers access to capital and technical expertise. Overseas carriers too may become interested to take part in the Indian aviation market.

Consumerism, Customer Protection & Competition Policy

Naveen Kumar

CS Executive Student, Bangalore

naveensims2000@gmail.com

Consumerism - The term "consumerism" is used to refer to the consumerists movement, consumer protection which seeks to protect and inform consumers by requiring such practices as honest packaging and advertising, product guarantees, and improved safety standards. It is a movement or a set of policies aimed at regulating the products, services, methods and standards of manufacturers, sellers and advertisers in the interests of the buyer. In Economics, consumerism refers to economic policies placing emphasis on consumption.

The term "consumerism" was first used in 1915 to refer to "advocacy of the rights and interests of consumers" (Oxford English Dictionary). The movement seeking to protect and inform consumers by requiring such practices as honest packaging and advertising, product guarantees, and improved safety standards.

CONSUMER PROTECTION AND COMPETITION POLICY

Promotion of consumer welfare is the common goal of consumer protection and competition policy. Protection of consumers is accomplished by setting minimum quality specifications and safety standards for both goods and services and establishing mechanisms to redress their grievances. The objective of competition is met by ensuring that there are sufficient numbers of producers so that no producer can attain a position of dominance.

CONSUMER PROTECTION POLICY

The consumer movement in India is as old as trade and commerce. Until the late 1970s, there was no systematic movement in the country for safeguarding the interest of consumers. It is widely acknowledged that the level of consumer awareness and protection is a true indicator of development of the country and progressiveness of civil society. The main reason for this is the rapidly increasing variety of goods and services which modern technology has made available



On 15 March 1962, the Consumer Bill of Rights was proclaimed by the United States President a message to the Congress. The message proclaimed: (i) the right to choice, (ii) the right to information, (iii) the right to safety, and (iv) the right to be heard subsequently, the right to consumer education, the right to a healthy environment and the right to basic needs (food, clothing, and shelter) were added by Consumer International. In India, 24 December is celebrated as National Consumer Rights Day as the Consumer Protection Act, 1986 was enacted on that day. 15 March is observed as World Consumer Rights Day since 1983, when International Organization of Consumer Unions declared it so. In India, 15 March was also adopted as the National Consumers Day.

The concern in the Indian Constitution for protection and promotion of an individual's rights, and for the dignity and welfare of the citizen makes it imperative to provide for the welfare of the individual as a consumer, a client and a customer. The rights under the Consumer Protection Act, 1986 flow from the rights enshrined in Articles 14 to 19 of the Constitution of India. The RTI, 2005 which has opened up governance processes of our country to the common public also has far-reaching implications for consumer protection.

CONSUMER PROTECTION IN INDIA

The Consumer Protection Act was enacted in 1986 based on United Nations guidelines with the objective of providing better protection of consumers' interests. The

Act provides for effective safeguards to consumers against various types of exploitations and unfair dealings, relying on mainly compensatory rather than a punitive or preventive approach. The Act applies to all goods and services unless specifically exempted, and covers the private, public, and cooperative sectors and provides for speedy and inexpensive adjudication.

The rights provided under the Act are:

- The right to be protected against marketing of goods and services which are hazardous to life and property
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods and services, as the case may be, to protect the consumer against unfair trade practices
- The right to be assured of access to a variety of goods and services at competitive prices
- The right to be heard and assured that consumer interest will receive due consideration at appropriate forum.
- The right to seek redress against unfair or restrictive trade practices or unscrupulous exploitation of consumers.
- The right to consumer education

Under the Consumer Protection Act, 1986 a three tier, simple, quasi-judicial machinery has been established at the national, state and district levels for hearing cases raised by consumers. The Act had been amended in 1991 and again in 1993. A comprehensive amendment was last made in 2002 for making the Act effective, functional and purposeful. The amended Act provides for the attachment and subsequent sale of the property of a person not complying with an order. There are still serious shortfalls in achieving consumer welfare because of the deficiencies in quality infrastructure in the country. First, there is a regulatory deficit in many products and services which impact on the health, safety and environment of the consumers and mandatory standards have not been prescribed for such products as electrical and electronic goods, IT and telecom equipment, industrial and fire safety equipment and toys.

STRATEGY FOR THE ELEVENTH FIVE YEAR PLAN

Establishment of National Quality and Standardization Authority

- (I) Strengthening regulation

- (II) Extending voluntary standards into the services sector
- (III) National standards system
- (IV) Competition policy

COMPETITION POLICY

During the Tenth Plan period, the Competition Act, 2002 was enacted. The Act established the CCI to eliminate practices having adverse effect on competition, promote and sustain competition in markets, protect the interest of consumers and ensure freedom of trade. carried on by other participants, in markets in India. The Competition (Amendment) Act, 2007 passed by the Parliament in September 2007 has incorporated some changes in the Competition Act, 2002 including the establishment of a Competition Appellate Tribunal to hear appeals from the orders of the CCI. Until recently, as the substantive provisions were not notified, CCI was engaged in promotion of competition advocacy and creating awareness about competition issues. This activity will continue, even after the operationalization of the Competition Commission, which should happen soon.

During the mid-term appraisal of the Tenth Plan, it was recognized that there is an urgent need for articulating a National Competition Policy (NCP) in India, which should fully reflect the national resolve to accelerate economic growth, improve both the quality of life of the people of the country, national image and self-esteem

The broad objectives of the NCP should be:

- (i) to preserve the competitive process and to encourage competition in the domestic market so as to optimize efficiency, (ii) promote innovation and maximize consumer welfare, (iii) to promote, build and sustain strong competition culture within the country; (iv) to achieve harmonization in policies, laws and procedures regarding competition dimensions at all levels of governance, (v) to ensure competition in regulated sectors and to establish an institutional mechanism for synergized relationship between the Competition Commission and Sectoral Regulators, and (vi) to strive for a single national market.

An incentive scheme could be instituted by the government under which financial grants may be given to State Governments linked to the progress in aligning their policies and laws with the principles of NCP. The grants could be released based on the progress made by the various State Governments on the recommendations received from the Competition Policy Council.



Shareholders Agreements



Anitha Revanth

Management Trainee, Hemanth, Biswajit & Co

anitha.revanth@hbsc.in

Shareholders agreements are contracts among shareholders of a company (to which the company is also usually a party) that confer rights and impose obligations over and above those provided by company law. The agreements provide for matters such as restrictions on transfer of shares (right of first refusal, right of first offer), forced transfers of shares (tag-along rights, drag-along rights), nomination of directors for representation on boards, quorum requirements and veto or supermajority rights available to certain shareholders at board level or shareholder level.

The enforceability of such agreements under Indian law has been a vexed question. Since these agreements have acquired popularity in the Indian context only over the last two decades or so, courts have not been presented with sufficient opportunities to decide upon the enforceability of their provisions. The shareholders' agreement is intended to make sure that shareholders are treated fairly and that their rights are protected.

The agreement includes sections outlining the fair and legitimate pricing of shares (particularly when sold). It also allows shareholders to make decisions about what outside parties may become future shareholders and provides safeguards for minority positions. A shareholder agreement, therefore, should contain one or more processes for determining the fair market value of your stock and, ideally, provide a method for ensuring that when you retire, the PC has the necessary funds to buy you out.

Definition of 'Shareholders' Agreement:

An arrangement among a company's shareholders describing how the company should be operated and the

India enjoys a stable democracy and fast growing market which is advantageous in attracting FDI. The world class scientific, technical and managerial manpower which is cost effective and highly skilled with a combination of abundance of natural resources adds on to the India's advantages.

shareholders' rights and obligations. It also includes information on the regulation of the shareholders' relationship, the management of the company, ownership of shares and privileges and protection of shareholders.

A shareholder agreement typically covers three major areas:

- The financial relationship among the shareholders.
- The process of decision-making within the firm.
- The mechanism for transferring and selling shares.

What is covered by a Shareholder's Agreement?

Usually such an agreement includes provisions regulating the following inter alia matters:

- I. The Company Structure: Includes the composition of the share capital of the Company.
- II. The appointment and removal of directors: Includes provisions of the existence of unanimous consent of shareholders, for certain important matters, or the existence of specific majorities for the adoption of certain decisions, restrictions on the powers of the Board of Directors, etc.
- III. Shareholding restrictions and the transfer of shares: Includes pre-emption rights, provisions prohibiting transfers of shares or interests in shares, except in certain circumstances, the procedure of transfer of shares, and procedures of calculating the fair value for the shares.
- IV. Dividends: Includes the amount of profits to be allocated to shareholders, each year etc.
- V. Access to records and financial documents: Includes provisions securing the rights of Shareholders to have access on the Company's records, financial statements etc.

Advantages of Shareholder's Agreement:

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Minority Shareholders: A minority shareholder may be able to obtain extra rights that it would not otherwise be entitled to; these include, but are not limited to. Increased access to information relating to the company: Many people are unaware of how little information they are entitled to by law when they are simply a shareholder in a company.

A contractual right to nominate and have appointed a director to the board of the company: Parties can often agree to appoint someone to the board of a company at the outset of the relationship without realising that the company, usually acting through the majority shareholders, may remove that director by special resolution or appoint additional directors and have a majority for board decisions.

Pre-emption rights on new share issues: If the company decides to issue new shares, the minority shareholder shall be entitled to be allotted additional shares pro-rata to its existing shareholding so as to ensure its shareholding is not diluted. Offer-round rights on a share transfers. If any shareholder is selling shares in the company, the minority shareholder shall be entitled to purchase a portion of the shares on offer pro rata to its existing shareholding, again so as to ensure its shareholding is not diluted.

Majority Shareholders: A significant advantage for majority shareholders to enter into a shareholders agreement is the benefit of what is referred to as the drag along provision. Where this provision is included and the majority shareholder receives an offer for all of the shares of the company, the majority shareholder can force the remaining shareholders to also sell their shares to the purchaser. This is particularly useful where the purchaser only wants to buy 100% of the company, which is usually the case. Otherwise the majority shareholder may have to negotiate with the remaining shareholders to sell their shares to the purchaser, which could be costly, time consuming and might jeopardise the sale.

Investors: When investors are considering investing in a company, they will be concerned about how the company will be run. To address these concerns, suitable covenants can be entered into in the agreement which set out in detail how the company will be managed.

Privacy: A private company must file their articles of association with the Companies Registration Office, which is then available to the public to obtain. The advantage with the shareholders agreement is that it does not have to be filed with the Companies Registration Office and so the contents are private.

Death: The shareholders agreement can provide in the event that a Shareholder dies the company and/or the shareholders have the option to purchase the deceased shareholders shares. This avoids the situation where the remaining shareholders are forced to deal with a shareholder's estate or a beneficiary in a shareholder's will, who has no interest in the business. It can also provide certainty and comfort to the shareholders to know that their estate will benefit from arrangements being put in place where the company/ the other shareholders will be in funds to purchase the deceased shareholder's shares in the company at market value.

Disadvantages Shareholder's Agreement: There are really no disadvantages to putting a shareholders agreement in place. In almost all instances shareholders, whether they hold a majority or minority shareholding, will be in a better position than if they were only to rely on a company's articles of association to regulate the affairs of the company and the relationship between the shareholders.

In any negotiation of a shareholders agreement between an investor and a promoter there will be give and take on both sides. The commercial bargaining power of the parties will generally decide what controls and protections are put in place for each party.

Conclusion: A Shareholder Agreement is a valuable tool, for providing a procedural framework, to regulate and govern the internal management of a company, or joint venture. In addition, through the use of a Shareholder's Agreement, the Parties can achieve greater protection, of the rights of minority Shareholders, quick resolution of deadlocks, sufficient regulation of the rights of entry, or exit, of shareholders in the Company, secure methods of valuation of the fair value of the shares of the Company etc. Because the Shareholder's Agreement, has the additional advantage of not being available to public, unlike the Company's constitutions, sensitive details, regarding the role of the parties in the Company's management, their rights and obligations etc., may be set out in the Shareholders Agreement.

The Shareholders Agreement shall be signed by all registered shareholders of the Company, as well as by the Company, and in case of conflict between the terms of the Articles of Association, and the terms of the Shareholders Agreement, the terms of the latter, prevail and have superior effect.

Sources: <http://www.accountingnet.ie>
<http://www.investopedia.com>

Employees Stock Option



Asish Ghosh

Management Trainee, Hemanth Biswajit & Co.

asish.ghosh@hbsc.in

India enjoys a stable democracy and fast growing market which is advantageous in attracting FDI. The world class scientific, technical and managerial manpower which is cost effective and highly skilled with a combination of abundance of natural resources adds on to the India's advantages.

Introduction

An employee stock option is a call option on the common stock of a company, issued as a form of non-cash compensation. Employee stock options are mostly offered to management and executive level staff and also to employees as part of their compensation package to buy the company's share at a certain price either at the market price (price of the share currently listed on the stock exchange) or at a preferential price (price lower than the current market price). If the shares of the Company are not yet listed on any stock exchange, it could be at whatever price the management fixes it. The objective of employee stock option is to motivate the employees to perform better and improve shareholder's value and to retain the best employees by giving them incentives in the form of shares of the Company. Apart from giving financial gains to the employees, employee stock option also creates a sense of belonging and ownership amongst the employees.

History: To speak about the history of employee stock option, three important countries have to be spoken about to actually site the evolution of employee stock option.

UNITED STATES OF AMERICA (USA): Historically, the concept of ESOP was first developed in USA. It is said that "the employee stock option concept was developed in the 1950s by lawyers and investment bankers who argued that a capitalist system would be stronger if all the workers, not just a few shareholders, could share in owning capital producing assets".

UNITED KINGDOM (UK): It was seen in UK that the shareholders had a direct interest in improved company performance. But only few employees had such direct interest. So employee stock option scheme was introduced to encourage the employees to participate in the share ownership of the company.

INDIA: India has also accepted and adopted employee stock option from the last one decade. With the beginning of info-tech sector, employee stock option has spread across the services and manufacturing sector in India. The legislation related to ESOP in India is Income Tax Laws and Corporate Laws. Securities and Exchange Board of India (SEBI) has also issued guidelines to regulate the employee stock option of listed Company.

Rules and Regulations: Companies Act, 1956

The definition of the term Employee Stock option is given in section 2(15A) of the companies Act, 1956 which states that "Employee Stock Option means the option given to the employees, Whole-time directors or officers of the company, which gives such employees, whole-time directors and officers the benefit or right to purchase or subscribe at a future date, the securities offered by a company at a predetermined price".

There is no detailed provision in the Companies Act for the issue of ESOP. The Act only mentions the definition of the term. But the regulatory provisions are found in the SEBI regulations.

SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999:

The guidelines are applicable to any company whose shares are listed on any recognized stock exchange in India. This Guidelines provides a detailed terms and conditions which are required to be followed by a listed Company for issue of shares under Employee Stock Option Scheme or Employee stock purchase scheme. The Regulations provides the following schemes:

Employee Stock Option Scheme (ESOS): It refers to a scheme under which a company grants option to the permanent employees working in India or out of India or a director of the company whether whole time or not or an employee of a subsidiary in India or out of India or of a holding company of the company and which option gives such persons the benefit or right to Purchase or Subscribe at a future date, the securities offered by the company at a predetermined price

Employee stock purchase scheme (ESPS): It means a scheme under which the company offers shares to employees as part of a public issue or otherwise.

Issue of stock options requires approval of shareholders by way of a special resolution. This is not applicable for private companies who can issue stock options without shareholder approval but with approval by the Board of Directors.

Stock Exchange Requirements:

Intimation of Board Meeting in which the matter is to be discussed is required to be given to Stock Exchange and also Copy of Scheme, notices of General Meeting for approving the scheme, certified copy of special resolution, list of promoters, copy of latest audited annual report,

certificate of auditors, specimen copy of share certificate are also required to be filed with Registration Statement to Stock Exchange.

The shares arising pursuant to an ESOS and shares issued under an ESPS shall be listed immediately upon exercise in any recognized stock exchange where the securities of the company are listed subject to compliance of the following:

- (a) The ESOS/ESPS is in accordance with Guidelines issued by SEBI.
- (b) In case of an ESOS the company has also filed with the concerned stock exchanges, before the exercise of option, a statement as per Schedule V and has obtained in-principle approval from such Stock Exchanges.
- (c) As and when ESOS/ ESPS are exercised the company has notified the concerned Stock Exchanges as per the statement as per Schedule VI.

Conclusion:

Employee stock option is said to be an unmixed blessing because the aim of ESOP is to retain the best employees and also when the company performs too well, the value of the option will increase and it is the employees who have been benefitted most.

Winners in Milaap - 2012

Presentations:

First Best:

Topic: Board Compensations: A corporate Governance perspective

Presenter: Ramya Bhatt

Second Best:

Topic: Options Trading Strategies

Name: Deepak S.

Quiz:

Winning Team: Venkatesh and Raghu Rao E

Runners Up: Aruna, Somanna and Vijaya





Go Green

Ranjana.M

Management Trainee, Hemanth, Biswajit & Co

ranjana.m@hbhc.in

Milaap 2012



"In the long term, economic sustainability depends on ecological sustainability."- Cree Indian Prophecy.

What we sow, so we reap. So, it is a mutual agreement between the ecology and society. We corporate professionals can contribute for the good of our ecosystem by reducing the paper work and increasing the use of electronic mode in our professional lives.

To support this cause, the MCA has initiated to reduce paper at work by accepting electronic mode as a tool which replaces paper to a maximum extent. The recent Notification No: 17/95/2011 passed by Government of India with MCA is on "Green Initiative in the corporate governance", which is about participation of Directors in meetings of Board or Committee of Directors under Companies Act, 1956 through electronic mode.

- Section 13 of the Information Technology Act, 2000 provides details about dispatch of notices in electronic mode.
- The Board of Director's (BOD's) could previously conduct Board meetings either physically or as per section 289 of The Companies Act, 1956 they could pass a resolution by circulation.
- The Notification No:17/95/2011 given by the MCA has initiated for conducting the Board/Committee of Directors meeting through electronic mode that is video conferencing.

The rules applicable in this regard are:

- Every Director must attend minimum one meeting personally in a financial year of the company.
- The responsibilities of Chairman and Secretary for conducting a meeting in electronic mode are:
 - To safeguard the integrity of the meeting.
 - To ensure good technical facility.
 - To prepare the minutes of the meeting.
 - To ensure only the Directors or authorized participants are attending the meeting.
 - To arrange for a reiteration in case of any interruption caused due to technical challenges.
- The information about availability of attending the meeting through electronic mode should be mentioned in the notice and the Director shall confirm his mode of participation. The Notice must also contain the contact numbers/ e-mail address of the Secretary/ designated officer in this regard.

- If the Director doesn't confirm his attendance through electronic mode, then it is presumed that the Director is physically attending the meeting.
- Every meeting shall start with a roll call in which the Director shall state his full name, location and clarity of the audio visual equipment's. Only Directors and authorized participants shall attend the meeting and the Chairman will confirm the attendance. After the roll call the Chairman shall certify the existence of quorum. **"The Director attending the meeting through electronic mode shall be counted for quorum."**
- If Quorum is not present, meeting stands adjourned to next week, same place, day and time (Section 288 of The Companies Act, 1956). The place of adjourned meeting shall be the place where the Chairman or Secretary is sitting during the board meeting and recordings shall be at the same place.
- The Chairman shall call the roll for voting and the Director has to vote after identifying himself.
- The conclusion shall be with a summary and same should be preserved for a year from the end of the meeting.
- Minutes shall confirm the mode of attendance of Directors for three previous meetings i.e. whether attended personally or through electronic mode.
- The soft copy of the draft minutes shall be sent latest within 7 days from the end of the meeting and Section 193 of The Companies Act, 1956 shall be complied accordingly.

A similar notification has been given with regard to annual general meeting of the shareholders. The above is an effort from The Government of India with MCA supporting the cause for a Greener world. This can be summed up by noting few important advantages:

- The notice for AGM and notice for Board meetings can be sent through electronic mode.
- Video meetings help the ecosystem by reducing the consumption of fuel.
- The travelling time to the venue by the shareholders and the Directors is saved.

To conclude, as professionals we shall encourage companies to follow the green initiative taken by The Central Government through Ministry of Corporate Affairs.

Green Initiatives In Corporate Governance



Sunitha Shivapura

Asst Company Secretary in Golden Properties Limited, Bangalore
sunitha.shivapuri@gmail.com

We are living in the age of electronics. In today's global village scenario everything is expected to be over on a click of mouse. In spite of such fast moving trend it is unfortunate to notice that many state administrative and legal processes are yet in the manual process, which is a major cause retarding the efficiency of the legal and administrative system of the state, affecting overall governance and thereby the growth of the state. That is where the role of Information Technology Act, 2000 has raised its head and is getting established more extensively day by day. Many industrial experts and bodies have been giving representations for wider implementation of the same. There is no greater encouraging step for the good corporate governance than the facilitation of the convenient compliance modes, suiting the present trends. On the other hand the exploitation of the nature and its system has reached to an alerting stage and we have to realize our responsibility to protect our environment in all possible ways.

Realization of these facts has resulted in our ministry's initiative towards paperless corporate governance. Ministry of Corporate Affairs (MCA) is making step by step implementation of paperless compliances. Such e-governance green initiatives which have been implemented as of now are compiled in this article.

Before going in detail about the MCA's green initiatives, let's understand some of the provisions of the Information Technology Act, 2000, which have given the authority and strength to such initiatives.

Section 4 of the said Act deals about legal recognition of electronic records which provides that any information or matter provided under any law in written/ typewritten/ printed form can also be in electronic form being accessible to be used for subsequent reference.

Section 5 of the Act deals about legal recognition of digital signature, which provides that any information or matter

provided under any law being authenticated by affixing the signature or any document signed or bear the signature of any person, can also be authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government

Section 81 of the Act empowers the provisions of the Act to have overriding effect notwithstanding anything consistent therewith contained in any other law for the time being in force.

Considering the above provisions for legal validity of compliances under Companies Act through electronic mode, MCA has taken the "Green Initiatives in the Corporate Governance" by allowing paperless compliances by the Companies.

The first such initiative is with respect to Section 53 of the Companies Act, 1956 which provides for service of documents under 'Certificate of posting' as an accepted mode of service. But the Department of posts has recently discontinued the postal facility under 'Certificate of posting' which in fact triggered the MCA's green initiatives by considering provisions of Information Technology Act, 2000 which permits service of documents etc., in electronic mode provided the company has obtained e-mail addresses of its members for sending the notice/documents through email by giving an advance opportunity to every shareholders to register their email address and changes therein from time to time with the company.

Second green initiative is triggered by many representations from various Industry bodies to dispense with sending physical Annual Report of a Company comprising of Balance Sheet, Profit & Loss Account, Director's Report, Auditor's Report etc. to its Members as required under section 219 of the Companies Act, 1956. Now the companies are permitted to send the aforesaid documents by e-mail to its members subject to the fact that

company has obtained e-mail address of its member for sending the documents through e-mail, after giving an advance opportunity to the member to register his e-mail address and changes therein from time to time with the company or with the concerned depository and fulfillment of other requirements stipulated under MCA Circular No. 18 dated 29.04.2011.

Third green initiative is with respect to Voting by Electronic Mode. In order to have secured electronic platform for capturing accurate electronic voting processes, MCA mandates that the agency appointed for providing and supervising electronic platform for electronic voting shall be an agency duly approved by the MCA, by obtaining a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Govt. of India, Electronics Niketan, 6 CGO Complex, New Delhi - 110 003, INDIA.

Fourth green initiative recognizes participation by shareholders in meetings under the Companies Act, 1956 through electronic mode. Electronic mode here means video conference facility i.e. audio-visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.



For this purpose the company must also comply with the requirements and procedures, as stipulated in MCA Circular No. 27 dated 20.05.2011 in addition to the normal procedures required under the Companies Act, 1956 for holding general meeting.

As a next initiative the MCA has recognised participation by directors in meetings of Board/ Committee of directors under the Companies Act, 1956 through electronic mode i.e. video conference facility. In this case also the company must comply with the requirements and procedures, as stipulated in MCA circular No. 28 dated 20.05.2011 in addition to the normal procedures required under the Companies Act, 1956 for holding meetings of Board / Committee of directors.

The next green initiative is with respect to issue of certificates to the companies and other stakeholders by the

Registrar of Companies as required under the provisions of Companies Act, 1956 read with Companies Regulation, 1956. As per Companies Regulation 24 of Companies Regulation, 1956 every certificate or copy granted under the provisions of the Companies Act, 1956 shall be signed and dated by Registrar and shall bear his official seal which were issued physically under the manual signature of Registrar of Companies and issued by post. Under this initiative it has been decided that all certificates and standard letters issued by the Registrar of Companies will now be issued electronically under the Digital Signature of the Registrar of which are being developed and issued by phased manner on different documents.

Some thirteen (13) digitally signed certificates have already developed and the have been implemented which include Certificate of Registration of Mortgage etc, Certificate of Registration of Modification of Mortgage etc, Memorandum of Satisfaction of Mortgage, Certificate of

Incorporation, Certificate for Establishment of Place of Business in India, Fresh Certificate of Incorporation Consequent upon Change of Name, Fresh Certificate of Incorporation Consequent upon Change of Name on Conversion to Public Limited Company, Certificate of Registration of Company Law Board order for Change of State, Certificate of Registration of the Special Resolution Confirming Alteration of Object Clause(s), Fresh Certificate of Incorporation Consequent upon Change of Name on Conversion to Private Limited Company.

Apart from the above, some of the steps like online DIN process, online application to Central Government for its approval under Section 297 etc are such initiatives making convenient and encouraged compliance.

All these initiatives have definitely served the dual purpose of encouraged, convenient compliance ensuring good corporate governance and environmental protection avoiding use of manual stationeries mainly the paper. However let's hope for more and more such initiatives in the coming days. We may have some proposals in regard to maintenance of Statutory Registers and Minutes Sheets electronically, online Central Government approvals required under various provisions, petitions before Company Law Board, Regional Director or any other authority through simplified online mode.

CS Course: A New Career Dimension



Yashwanth. A. S.
Executive Programme,
as.yeshwanth@gmail.com

Introduction:

Company Secretaries (CS) Course is a course which has been supervised by The Institute of Company Secretaries of India (ICSI), New Delhi which was constituted under the Act of Parliament, i.e., The Company Secretaries Act, 1980 is the recognized professional body in India.

Initially, ICSI, New Delhi was formed by the Government of India in 1960 by setting up an Advisory Committee to standardize the basic qualifications needed for Company Secretary Course & to conduct the examination of CS Course.

The eligibility for CS Course is that should appearing 10+2 to the Foundation & if get passed the Degree in any manner excluding Fine Arts, the admission is the Executive Programme. Students are required to through several programmed conducted by the ICSI through its several Chapters, & get going.

Role of a Company Secretary:

The major contribution to industrial growth is from the Corporate Sector. A Company Secretary is important professional aiding the efficient management of the Corporate Sector. Company secretary is an officer by specifically designated who is in default under the Companies Act, 1956, he has a primary duty of to ensure all compliances. He is working with Board of Directors & is specifically included in the definition of "Principal Officer".

If the company's subscribed Capital is more than Rs.5crore, it must have an fully appointed Company Secretary. But if the Subscribed Capital of the Company is more than Rs.10lakh up to Rs.5crore, it is to be obtain a certification by a Practicing Company Secretary.

Functions of ICSI:

CS Course is the one, which facilitates Company Secretary at a higher position in an organization & giving thorough

knowledge about, what is happening in the corporate world & to be handling about a company in many fields like Legal responsibilities, IPO Grading, Taxation, Internal Auditing, etc.,

ICSI giving more & more opportunities for the students to get into the Corporate Sector with Corporate knowledge & with experience like 16 months Internship. The Oral Coaching facility giving by the ICSI which was much needed to the rural students & more helpful to them to explore to the Corporate Sector & M.N.C's. Students who are getting higher marks, ICSI supporting them by giving several awards.

It is the Course which requires day by day knowledge & Prediction about the tomorrow in the related fields of Corporate Sector. It is the Course which helpful to a Company Secretary to get Top Level Management in a company, & if in practice, more valuable as like the job in the organization.

Practicing Company Secretary can also recognized in the Corporate Sector & he will get more demand than whole time company secretary. It is the course which requires the personal ability of a person. Because, it is the job with higher responsible & high risk taking job in today's Corporate Sector. A Company Secretary one who must get the knowledge about all over business of an organization & must able to handle all type of situations.

Conclusion:

To conclude, would like to state that, any person, who has chosen the Company Secretary Course, make it possible to pass as earlier as he/she can, it will be exploring a glorious opportunity to came into the Corporate Sector.

A student who wants the help, the ICSI giving all type of helps through the internet & helpline & more helpful in opening the several Chapters all over India.



Board of Directors:

- An Overview



Arpitha Joshi

CS Foundation Student, Honnavara

arpita.92joshi@gmail.com

Director is a person who directs the affairs of the company. According to section 2(13) of the Companies Act a director means "Any person occupying the position of a director by whatever name called" U/S 252 of the Act a director can be defined as "An individual person appointed to discharge the work of the company". In simple words, director is a person appointed according to the law authorized to direct, control, conduct superintend the affairs of the company.

Eligibility: Directorship is a dream post to many aspirants. Following are the information regarding legal conditions to become a director:

The Act, does not lay down any qualification for a director except the holdings of a specified number of shares. But any provision in the Article of the company which requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than 2 months after his appointment as such shall be void. If no such share qualification has been laid down in the article, a director need not even be a member of the company. It follows that anyone can be a director provided he does not suffer from any of the statutory disqualifications. However according to the section 253 of the Act no body corporate association or firm can be appointed as a director of any company and only an individual can be appointed as director.

Number of Directors: The companies Act, 1956 specifies that every public company shall have at least 3 directors which is having a paid-up capital of 5 Crore rupees or more and one thousand or more small share holder. And every other company shall have at least 2 directors. Any increase in number of directors beyond the maximum, shall be permitted by the Central Government but where

The key of the success of a company lies with Board of Directors and especially with the Managing Director (MD).

Here is a focus on the Role & importance of the Director and Board of Director and the provisions of company law in this regards.

the increase in number does not make the total number of directors more than 12 no approval of the Central Government is needed.

Now let us see how Directors get appointed:

a) **Appointment of first directors:** The first directors are usually named in the Articles. If not so named in the Articles, the Article may authorize the subscriber to the memorandum to appoint the first director. In that event the subscriber or majority of them may appoint first director; section 254 states that all the subscriber to the memorandum who will hold the office till the first general meeting of the company

b) **Appointment by share holder in General Meeting:** In case of public company or private company, which is subsidiary of a public company, of the total number of directors only one third can be permanently appointed the remaining two third must retire by rotation at each general meeting. One third of these two thirds of directors are however eligible for reappointment. The vacancies thus created by retirement of directors are filled by share holder by appointment in the same annual general meeting by means of majority vote.

c) **Appointment by the Board:** Subject to the provisions of articles the board of director has the power.

- To appoint additional directors who hold office up to the date of the next annual general meeting according to section 260.
- To appoint alternate directors to act for a director during his absence for a period of not less than 3 months, according to section 313
- To fill casual vacancies if the office of any director appointed by the company in general meeting is vacated

before the expiry of his term due to death, inability, resignation etc.

d) Appointment by Central Government: The Central Govt. has the power to appoint the directors for the purpose of safe guarding the interest of the company, share holders or the public. The number of directors appointed has to be specified by the Company Law Board on an application of not less than 100 members of the company or of the members holding 1/10 of the total voting power that the affairs of the company are being conducted either in a manner which is prejudicial to the interest of the company or to the interest of the public. However the Companies' Act provides some restriction on appointment of directors. They are as follows:

- No person can be appointed as a director unless his consent in writing is taken and duly filed with ROC.
- No person can act as first director of the company unless he has undertaken to pay or purchase required number of qualification shares.
- No person can be appointed as a director unless he signs the prospectus.

Power, Duties and liabilities of director

Powers:

- Powers to make calls may be 1st call, 2nd call or final call
- Powers to issue debenture, may be convertible or non convertible
- Power to borrow money otherwise than on debenture say, by deposits from the public.
- Power to invest funds in approved securities may be govt. or non govt. securities.
- Power to make loans or borrow loans and advances from the bank or from the financial institutions.

Duties:

- Determination of minimum subscription amount to be disclosed in the prospectus.
- Holding statutory meeting & circulating and filing statutory report as per the Act.
- Convening an extra-ordinary general meeting for special purposes as required by law.
- Payment of dividend out of available profit.
- Determining to what extent books of accounts is kept open for inspection.

Liabilities: Directors' liabilities are unlimited!

- Director is liable for gross negligence in discharging duties.
- Liability for willful misconduct or misbehavior.
- Liability on account of fraud, misappropriation of money, misrepresentation or breach of trust.
- Liability on account of ultra virus action which is beyond the scope of memorandum but within the scope of article.
- Liability on account of bogus prospectus which contains false information.

Removal of Director.

a) Removal by the company: Section 284 states that a company may by ordinary resolution passed in general meeting after special notice remove a director before the expiry of his period of office excepting following conditions.

- The section does not apply to a director appointed by the central govt.
- In the case of private company the section does not authorize the removal of a director holding office for life on April 1st 1952.
- It does not apply to a company which has adopted the system of appointing two third of its directors by the principle of proportional representation.

b) Removal by the Central Government: The Central Govt. may remove managerial personnel from office on the recommendation of the Company Law Board / National Company Law Tribunal.

c) Removal by the Company Law Board: When the CLB finds an application made to it for prevention of oppression and mismanagement that relief has to be granted. It may terminate or set aside only agreement of the company with a director or managing director or other managerial personnel.

Managing Director: A managing director, as defined in section 2(26) of the Act "a director who is entrusted with substantial powers of management which would not otherwise be exercised by him". So the term includes a director occupying the position of managing director by whatever name called.

Conclusion: The remuneration of managerial personnel, including directors and MD are deliberately avoided in this article. Schedule XIII, sections 390, 310, 198, 349, 350, 309, and 11% & 5% limits, etc. along with permission of CG, Article, shareholder, etc., in my honest opinion does not justify the high remuneration paid to the managerial personnel, especially if we look at the Indian situation. There should be a central pay commission to fix and revise the remuneration of managerial personnel in the line of pay commissions appointed to fix the salaries to government employees. Otherwise the greater part of the earnings of the companies may go in to the pockets of very few people who are already wealthy. There is a soaring difference between the salary paid to company employees and the same company's managerial personnel. However, the success of the corporate company or business is not merely depending upon the directors or managing directors alone. It lies in the complete co-operation and co-ordination of every staff or employee of the organization.



XBRL – An overview



Leela K Shivashankar

Trainee at Tata Global Beverages Limited, Bangalore

rosepinky.16@gmail.com

XBRL stands for eXtensible Business Reporting Language. XBRL is in XML language, which is a set of rules for encoding documents in a format that is both human and machine readable format.

Introduction:

XBRL is defined as a tool for electronic communication of financial data which is making it easier to compile and share financial data. XBRL is a business reporting language and is revolutionizing the business world. It provides benefits in preparation, analysis and communication of business information. It helps in cost saving, greater efficiency and improved accuracy and reliability to all those involved in supply or using financial data.

XBRL is a software specification developed by a process of collaboration between accountants and technologists from all over the world. These collaborators formed an XBRL international which is now made of over 650 members including companies, accounting bodies, technologists, government and several financial bodies.

History of XBRL: In the year 1997, Charlie Hoffman, a CPA with a passion for technology, learnt about XML by reading various books about this technology. He started to investigate how XML can be used for electronic reporting of financial statements. He developed prototypes for financial statements and audit schedules using XML. XBRL Solutions, Inc. was incorporated to bring about a revolution in software solutions and services including the first XBRL Taxonomy Builder application to support the development of XBRL taxonomies to the market place around the world in the year 2000 in Washington. Today, XBRL is being adopted around the globe by the business community which sees the opportunity to transform the way it communicates and conducts business. XBRL projects are being implemented around the world.

Need for XBRL: XBRL is being adopted worldwide as an effective financial and business reporting standard. Before the introduction of XBRL, different terminologies were used by different organization for reporting their financial

details which often resulted in errors, lack of transparency and difficult in analysis. XBRL provides transparency and co-relates each line item in the financials with greater accuracy and provides complete information in depth. XBRL is secured and encrypted way of presenting financial statements. The authorities like Stock exchange, Supervisory and Regulatory bodies are looking forward for XBRL adoption. It helps in financial data comparison across the globe and also facilitates faster access to information. The financial data and business reports can be automatically tagged using XBRL which can be easily accessible and understandable by the users of financial statements.

Beneficiaries of XBRL Data: Regulators – it has lead to greater transparency, increase in data accuracy, reduced the time of process filings, rise in analyst productivity and validate and review of data efficiently and usefully.

- Corporate Community – it has provided common definitions, easy data handling, extract of data from accounting packages, availability of standard reports, cost saving and analysis of reports.
- Auditors – it helps in automate financial statements handling, provides accurate and quality data and also facilitates audit trail.
- Investors/ Bankers/ Analysts – access to financial data, selection and comparison of data, data analysis, validation and arranging of financial information is reduced.

XBRL Documents: XBRL data makes it readable using two documents, namely taxonomy and instance document. Taxonomy defines contains, elements and their relationship based on the regulatory requirements to map the data and reports using financial statements and to generate a valid instance document. The process of mapping means matching the corresponding element in the taxonomy.Contd in page 93

Soft Skills & Success



Chandrika

Trainee, MSPL Limited, Hospet
chandrika@mspllimited.com

Soft skills vis-à-vis Personal attributes

Soft skills are personal attributes that enhance individual's interactions, job performance and career prospects. Unlike hard skills, which are about a person's skill set and ability to perform a certain type of task or activity, soft skills relate to a person's ability to interact effectively with co-workers and customers and are broadly applicable both in and outside the workplace. In number of professions, soft skills are more important than occupational skills.

Soft skills like decision-making, conflict resolution, negotiation, communication, creativity and presentation skills are essential for entrepreneurial success and for maximizing human capital in any organization. When balanced with a good management team and an effective human resource management system, soft skills provide a way to get the highest return on the investment in terms of human capital. While professional skills may open the door of opportunity, soft skills keep a person in the prime position.

Current Scenario: It might be surprising to note that many managers and CEOs do not consider soft-skills are necessary for company's success. Nearly one-quarter of executives in high-tech positions are "in trouble" due to poor people skills, says Hagberg Consulting Group, a management consulting firm. According to Greg Netland, president of the IT division at New Boston Systems, "about 70% of managers we do business with feel soft skills are more important than they were five years ago." Technical skills get you in the door, but soft skills keep you in the job. Companies sink or swim based on soft skills regardless whether their technologies keep them afloat temporarily.

Soft skills are very essential for any individual, which are necessary for personal development. Soft skills are communicative skills, fluency in language, management qualities, ability to work as a team, positive attitude in critical situations, problem solving ability, decision making, stress techniques etc.

Great technology and mediocre management leads to sure failure.

Emotional Quotient Vs. Intelligence Quotient (EQ Vs IQ)

Soft skills is a sociological term which relates to a person's "EQ", the cluster of personality traits, social graces, personal habits, friendliness, and optimism that characterize relationships with other people. Soft skills complement hard skills (part of a person's IQ), which are the occupational requirements of a job and many other activities.

EQ i.e. Emotional Quotient helps a person become more successful. IQ addresses 'what' and EQ addresses 'when' and 'how' to get things done. Emotional intelligence competencies include self-awareness and self-control.

Self awareness – Self control: Self-awareness begins with knowing the role that are expected to play, strengths and weaknesses, style of communication and management (the effectiveness of it and how others perceive it), the context in which you assert yourself and the context in which you listen and your own intentions and expectations of yourself and others (stated and unstated).

Self-control means having a priority in terms of what needs to be done and when. Self-control has to do with the following: learning how to present yourself; when to focus on strengths (and assert point of view); when to be quiet and listen (even if it is right); when to 'pull people up' (just focusing on their tasks and making sure that they respect who they are); and when to let go allowing others to make their own mistakes (developing their leadership capabilities). Most importantly, it is about controlling

passion as well as anger, outbursts and frustrations in public.

Leadership: Leadership is one of the key soft skills along with communication, creativity, learning and teamwork. Leadership involves managing conflicts, interviewing and selecting prospective team members, delegating responsibility and authority, coaching, networking, and developing others.

Concluding remarks: While skills are good to develop by themselves, integrating them into a systemic practice develops new competencies for success. Competencies allow integrating skills and knowledge in the context of new projects. While starting something new, keep these six competencies in mind and consciously apply them in work and life and soft skills become integrated with professional skills over time.

- Be clear and intentional about what you want
- Be aware of what is going on around you and inside you
- Have empathy for one another
- Appreciate what you have and what others bring
- Know your limits and stretch beyond them
- Let go of what does not work

Sources:

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4. Robert Cooper, Ayman Sawaf, Executive EQ: Emotional Intelligence in Leadership and Organizations.
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Continued from Page 91.....

Taxonomies for Indian Companies are developed based on the requirement of Schedule VI, Accounting standards and SEBI Listing requirements. Taxonomy and Instance document together make up the XBRL document.

XBRL in India: ICAI is spearheading the XBRL initiative in the country and India is now a provisional jurisdiction of XBRL International. A separate company under section 25 is been created to manage the operations of XBRL India. Members of XBRL India are Reserve Bank of India, Insurance Regulatory and Development Authority, Securities and Exchange Board of India, Ministry of Corporate Affairs, Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE) and a few private companies. The MCA had mandated all listed companies to file their Financial Statements using XBRL for the financial year 2010-11.

Benefits to a company by using XBRL: XBRL increases the usability of financial statements by regulators, stakeholders and others which improve business relations and lead to a wide range of benefits. The need to re-key financial data for analytical and other purposes can be eliminated. XBRL adoption will automate company's data collection and various reports can be automatically generated.

Statement in XBRL created by Companies: There are a number of ways to create financial statements in XBRL:

- XBRL accounting software products allow users to map charts of accounts and other structures to XBRL tags.
- Financials can be mapped line by line using XBRL software tools designed for the purpose.
- Data from accounting databases can be extracted in XBRL format by using such software for transformation of the data to XBRL.
- Applications can transform data in particular formats into XBRL. The route which individual company/ other companies might take will depend on its requirements and the accounting software and systems it currently uses, among other factors.

XBRL Filing with MCA Portal: The filing of balance sheet and profit & loss account on MCA portal with the introduction of XBRL filing has to be done using new Form 23AC and 23ACA. The instance document created after tagging the financial data and other reports shall be attached with the respective forms and uploaded on MCA portal.

Conclusion: MCA will be coming up with new set of taxonomies and business rules applicable to companies as per the revised Schedule VI which is applicable from financial year 2011 onwards.

Insider Trading & Indian Law



Isha Jha

CS Executive Student, Bangalore

isha.jha24@gmail.com



Introduction

"No person including any director or key managerial personnel of a company shall enter into insider trading provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law". (Section 195 of the Companies Bill, 2011)

The term insider trading though generally perceived to be a negative term; encompasses both legal as well as illegal perspective. Conventionally, the term relates to a practice in which an insider like companies directors, company secretary etc. or a related party trades based on material non-public information obtained during the performance of the insider's duties at the corporation or otherwise in breach of a fiduciary relationship or transactions where the non-public information was misappropriated from the company¹⁴.

It is relatively easy for insiders to capture insider-trading like gains through the use of transactions called 'open market repurchases'. Such transactions being legal are generally encouraged by regulators through safe harbours against insider trading liability¹⁵. However, illegal insider trading decreases overall economic growth as it raises the cost of capital for securities issuers.

In the Indian corporate scenario, though after the recommendations of the Thomas Committee (1948), Section 307 and 308 of the Companies Act, 1948 were

incorporated providing for shareholding disclosures by companies directors and managers, it was only after 1970s that a need to take stringent actions was felt after the reports of the Sachar Committee (1977), Patel Committee (1984) and Abid Hussain Committee (1989) were laid and accordingly SEBI (Prohibition of Insider Trading) Regulations, 1992 was passed. Nevertheless, Indian laws on this aspect lag way behind US, where this concept was recognised as early as 1929 during the *Great Depression* supported by passing of the Securities Exchange Act, 1934. In fact, Jeffrey Archer's first bestseller *"Not a Penny More, Not a Penny Less"* is an insider's guide to this terminology which very well narrates, *"Making a million legally has always been difficult. Making a million illegally has always been a little easier"*¹⁶.

Legal Mechanism for Insider's Trading: India

According to Arturo Bris, if a country has insider-trading laws that are weak or rarely enforced, the situation is worse than having no insider trading rules at all¹⁷. A study conducted by international consultants Ernst & Young avows the fact that even though India has low rate of fraud contravened by insiders, nonetheless, they indulge in rampant insider's trading for personal gains, if not for benefitting the shareholders¹⁸.

The most recent and phenomenal change in this regard has been the incorporation of this concept in the Companies Bill, 2011 wherein Section 195 deals with the prohibition of

¹⁴ Insider Trading, US Securities and Exchange Commission

¹⁵ Michael Simkovic, *The Effect of Enhanced Disclosure on Open Stock Market Repurchases*, 6 BERKELEY BUS.L.J. 96(2009)

¹⁶ JEFFREY ARCHER, NOT A PENNY MORE, NOT A PENNY LESS, Pg 11

¹⁷ www.arturobris.com/index_files/it.pdf

¹⁸ <http://isid.org.in/pdf/CompLaw.pdf>

insider trading in securities. Explanation (a) to the Section defines “insider trading” as,

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person.

Further, Section 195(2) provides punishment for the same which shall be imprisonment extending up to a period of five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

The provisions of Companies Bill, 2011 has been framed to strengthen the legal mechanism on the subject, along with the pre-existing SEBI (Prohibition of Insider Trading) Regulations, 1992, which had been rechristened as SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 on 16th August, 2011.

Insider Trading scenario in India: Case Study

The conviction story has travelled a long path since the landmark judgment of **Hindustan Lever Ltd. v SEBI**¹⁹ which was one of the first cases where SEBI took an action on insider trading and HLL was found guilty of divulging ‘price sensitive information’ while entering into the transaction for purchase of 8 lakh shares of Brook Bond Lipton India Ltd from Unit Trust of India, regarding the impending merger of HLL and BBLIL.

In **Rakesh Agarwal Vs SEBI**²⁰, the collusive agreement between Rakesh Agarwal and his brother-in-law was found to be in contravention to the provisions of Section 3 and 4 of SEBI (Prohibition of Insider Trading) Regulation, 1992 and he was held liable to compensate ABS Industries.

Other important cases include **Samir C. Arora v SEBI**²¹, **Rajiv G Gandhi v SEBI**²².

The most recent and awaited trial happens to be in May, 2012 following the arrest of Rajat Kumar Gupta (ex-managing director of McKinsey & Company) by FBI on 26 October, 2011 on insider trading charges stemming out of the **US v Rajrathnam Case**²³, where he shall be facing imprisonment up to 20 years or more.

Lacunae in Indian Legal Mechanism

Two decades of the passing of SEBI (Prohibition of Insider Trading) Regulation, 1992 and an exiguous number of trials clearly adduce the lacunae in the legal mechanism dealing with insider trading. It testifies the fact that India remains one of those countries where insider trading enactments remain confined in the books and are rarely embarked upon for their practical enforcement. Not only does SEBI lack an exhaustive investigative mechanism but the entire approach towards these charges also seems to be grotesque. The Indian system, like any other criminal charge, lays unreasonable emphasis on motive rather than basing the judgment on profits realized and other financial aspects of the crime. Moreover, it gets difficult to convict on the basis of *misappropriation theory*, as it is the informal network of secondary insiders like brokers, clients etc in contradistinction to primary insiders i.e. directors, managers etc that are potentially responsible for misappropriating the quantum of companies’ inside information and it is an arduous task to track down these secondary insiders who often remain untouched by any legal convictions.

Conclusion

Though, the insider trading anguishes the investors, however, the market integrity remains unperturbed by the situation. Even in India, despite the insider trading trials, Indian market has become a hot-spot for foreign investors. Nevertheless, this fraudulent practice and disclosure of confidential information for profit-making asperses the duty of SEBI as an effective regulator, which is why the laws in this regard need to be remodelled to cover all aspects and the enforcement procedures should be a bit simplified to enable SEBI to track down the real culprits efficaciously.

¹⁹ 1998 SCL 311

²⁰ 2004 49 SCL 351 SAT

²¹ (2002) 38 SCL 422

²² 2008 84 SCL 192 SAT

²³ 1:09-cr-01184, U.S. District Court, Southern District of New York (Manhattan)



Way of being, not of doing



Shivali Kumar

CS Executive Student, Bangalore

shilly.2007@gmail.com

Emotions are nagging thoughts. They are unwelcome guests in our lives. Yet, they provide us with information which if ignored, can cause serious problems. If we are aware of our emotions in a rational way, then we will increase the odds in our favour.

Nihal and Aftab joined premier Indian Administrative Services at the same time with almost same and exceptional credentials. Both of them were from premier universities with high GPA's. The moment they joined their respective postings all similarities disappeared. Nihal had developed a sense of pride and would constantly put off people who worked with him. He was a recluse and never empathised with co-workers. As a result he was transferred every 6 months which left him wondering why. Whereas Aftab had a different approach. Everybody around him liked him and he was adept interpersonally. Eventually Aftab was termed successful. What do you think may have been the decisive factor?

Have you contemplated the fact as to why the brightest kid in a class doesn't end up being successful? Why some people are a pleasure to be with while some have a repulsive personality? How some people manage to remain buoyant in trying times while others get sunk with less resilience. If yes then explore more on this, if no then it is all the more a reason for you to read ahead. I am putting forth my viewpoint on the hottest management buzzword "emotional intelligence/ quotient (EI/EQ)". This topic being all the rage one can find numerous books, articles helping you to foster your EQ whereas from all the information I gathered and my personal experiences I have attempted to give a personal touch to my writing as I strongly feel for this topic and this is the best possible way I can be articulate and connect to each one of you reading this.

Anyone can be angry-that is easy. But to be angry with the right person, to the right degree, at the right time, for the right purpose and in the right way-that is not easy-Aristotle.

In the 1960s, psychologist Walter Mischel performed an experiment known as the "marshmallow test" with 4-year-old children. He placed one marshmallow in front of each child and told them it could be eaten now, but if the child waited, then they could have an extra marshmallow. Dr. Mischel would then leave the room for 15 to 20 minutes, while cameras captured the child's struggle. Some children were unable to hold out the temptation and would eat the marshmallow before Dr. Mischel returned, whereas other children were able to control themselves in order to receive that second marshmallow.

After years Dr. Mischel studied his subjects as teenagers, and found that the children who were able to resist the instant gratification of the marshmallow were more successful as teenagers. The kids who had eaten the marshmallow were lonely, easily frustrated and susceptible to stress, but the children who waited performed better on standardized tests, enjoyed greater popularity among peers and demonstrated more confidence.

The marshmallow test gained prominence because it links the control of emotions with success. And, indeed, if we take a profound insight at emotional intelligence, we find a lot more going on there than the contemplation of a marshmallow.

This is what EQ looks like in practical life scenario?

Tomorrow, what skills do you need to have at work besides your degree to forge 15 people from 4 different cultures, 3 religions, 2 generations, 6 ethnic backgrounds, 2 sexes, and 4 departments, with 2 learning styles, 2 occupations, 1 of whom is introverted, 2 are recluse, 1 of whom is hearing-impaired, 4 of whom are depressed, half

of whom are single, 2 are egoistic, 3 of whom are speaking a second-language, whose IQs range from 110-150, into a team able to produce a work product, on time and within budget?

Then go back to play a different role at the homefront. What do you think is will help you to run the show. You'll need emotional intelligence!

In the corporate world, IQ gets you hired while EQ gets you promoted. EQ synergistic with intelligence quotient is the quality of top performers Research has proved that IQ amounts to 20% of a persons success in life leaving the remaining 80% unexplained.

From what I can infer after reading various articles on this subject is that the ability to handle others, your team members lies in you understanding yourself better, ability to differentiate your thoughts and feelings, ability to put yourself in others place and know how it is to be at the receiving end. Emotional quotient consists of 5 important dimensions: knowing ones emotions, controlling ones emotions, recognising emotions in others (empathy), controlling emotions in others, self motivation.

If you are able to recognise your emotions you will be able to manage them. Everything that irritates us about others can lead to a better understanding of ourselves.

Let me bring in a personal experience where I was part of a management session consisting of about 70 students. We were asked a few random questions and asked to pen down any colour which struck our head in consonance with the question asked. And later based on the similarity in our thinking were formed into groups of 10.

There was a self elected leader for the group and I was given an opportunity to choose 4 more subordinates including me to play a 'serious game'. There was a particular person whom I wasn't comfortable with because

of the person's competitiveness which I found threatening to my standing in the group. Though my inner self did tell me to choose her, I didn't. At that instance I had let the emotions of my heart triumph over the reasoning of my brain. It is very important to understand that EI is not the opposite of intelligence, it is not the triumph of head over heart but the unique intersection of both, it combines

emotion with intelligence. To my relief the above incident doesn't scare me with a low EQ as EQ is not static, it can be developed.

Being selfish and managing your skill set and employability is a prerequisite of survival in today's corporate environment. Some people hold the view that self centeredness is the attribute needed to survive in the big bad corporate world. Recently the book I read named the "No Asshole Rule" funnily and defiantly

provides a timely rebuff to the mean spirited of today's working world. After reading that I slept on the issues raised and wondered if it is worth empathising with others. This is what I was educated with.

Can we sleep in peace?

Knowing that the tryst with destiny is not complete. Knowing that several amidst us are still children of a lesser God. Perhaps we can. Knowing that we filled out stomach snatching another's share. That we closed our eyes when we needed to see. That we pulled each other down when it was time to rise together.

But perhaps we should not...for the clarion call of 'Heal your thoughts, and you heal the world'.

Let's join hands - not to pull down one another but to move forward in harmony - for we are all in the same boat! Let's express the divinity within.

"The conventional definition of management is getting work done through people, but real management is developing people through work."

— Agha Hasan Abedi



Non-Banking Financial Companies



Nita Kejriwal

Management Trainee @ GMR Group

Nita.Agarwal2@gmrgroup.in

Non-Banking Financial Companies (NBFCs) flourished in India in 1980s against the backdrop of a highly regulated Banking sector. The simplified sanction procedures and low entry barriers encouraged the entry of hosts of NBFCs. Since then, NBFCs have turned out to be an integral part of the Indian financial system and have been increasingly recognized as complementary of banking system at competitive prices.

Pursuant to the provisions of Section 45-I (f) of the Reserve Bank of India (RBI) Act, 1934 "NBFC" means:

- (i) a financial institution which is a company;
- (ii) a non-banking institution which is a company and which has, as its principal business, receiving of deposits under any scheme or arrangement or in any other manner and lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the RBI may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

NBFC is a Company registered under the Companies Act, 1956 and is engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by government or local authority or other securities of marketable nature, leasing, hire-purchase, insurance business, chit business but does not include any institution having principle business of agricultural activity or any industrial activity or sale, purchase or construction of immovable property. A Company will be treated as NBFC on meeting both the following conditions:

- a) Financial assets are more than 50% of its total assets and
- b) Income from financial assets is more than 50% of gross income.

*** to be increased to 75% (as per RBI recommendation in Aug 2011). A time period of three years may be given to fulfill revised criteria.*



The term 'Financial Assets' means those assets that can be converted to cash in a reasonably short period of time - one year at most, but less time in many cases. Examples of financial assets include cash, bank deposits, bonds, stocks and accounts receivables etc. Financial assets are usually more liquid than tangible assets and are traded on financial markets.

In terms of Section 45-IA of the RBI Act, 1934, it is mandatory that every NBFC having net owned fund of Rs. 2 Crore should be registered with RBI to commence or carry on any business of non-banking financial institution.

The term 'Net Owned Fund' means:

- (a) The aggregate of paid up equity capital and free reserves as disclosed in the latest balance sheet after deducting there from-
 - i. Accumulated balance of loss;
 - ii. Deferred revenue expenditure;
 - iii. Other intangible assets and
- (b) Further reduced by the amounts representing Investments of such company in shares of Its subsidiaries; Companies in the same group, All other NBFC; and The book value of debentures, bonds, outstanding loans and advances (including hire purchase and lease finance) made to and deposits with Subsidiaries of such company and Companies in the same group, to the extent such amount exceeds ten% of (a) above.

CLASSIFICATION: NBFCs are divided into following categories with effect from December 6, 2006:

1. Asset Finance Company
2. Loan Company
3. Investment Company

- The above type of NBFCs can be further classified into NBFCs accepting public deposits (NBFCs-D) and NBFCs not accepting public deposits (NBFCs-ND). NBFCs-ND can be further classified into-
- **Systemically Important NBFCs-ND** (NBFC-ND-SI) is a NBFC-ND with an asset size of Rs.100 crores and more as per the last audited balance-sheet subject to maintaining minimum capital adequacy ratio of 15%.
- *The term Capital Adequacy Ratio means ratio of Capital fund to risk (weighted) assets expressed in percentage terms.*
- **Non-Systematically Important NBFCs-ND** is a NBFC-ND whose asset size does not exceed Rs.100 crore as per the last audited balance sheet.

In reference to the recent amendments to RBI Act and certain developments in NBFCs sector, the regulation and supervision over NBFCs has undergone a significant change. For this purpose of regulation of activities, NBFCs, in a broader way, are bifurcated into:

- those accepting public deposits;
- those which don't accept public deposits and are engaged in the financial business;
- core investment companies which hold atleast 90% of their assets as investments in the securities of their group/holding/subsidiary companies.

The term 'Securities' means Securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956. Securities inter alia includes shares, scrips, bonds, debentures, debentures stock, derivative, Government securities etc. or other marketable securities of a like nature in or of any incorporated company or other body corporate.

FUNDING BY NBFCs

NBFCs account for 11.2% of the assets of the total Indian financial system. NBFCs have emerged as an important financial intermediary especially in the small scale and retail sector. There are a total of more than 12,000 NBFCs (June 2010) registered with RBI consisting of NBFCs-D & NBFCs-ND. NBFCs are providing financial assistance for Construction equipments, Commercial vehicles and cars, Gold loans, Microfinance Institutions, Consumer durables and two wheelers, Loan against shares, Loan for Small and Medium Enterprise Financing. However NBFCs cannot provide any non-fund based assistance.

GOVERNANCE PRACTICES TO BE FOLLOWED BY NBFCs AS PER RBI GUIDELINES

- ❖ NBFCs having asset size of Rs. 50 crore and above are required to constitute an **Audit Committee** which shall have

same powers, functions and duties as laid down u/s 292A of the Companies Act.

- ❖ NBFCs-D with deposit size of Rs 20 crore and above and NBFCs-ND-SI may form a **Nomination Committee** to ensure that directors should be appointed with 'fit and proper credential' so that the management of NBFC was not prejudicial to the interest of its present and future depositors.
- ❖ NBFCs with public deposit of Rs.20 crore and above or having an asset size of Rs.100 crore or above have to constitute an **Asset Liability Management committee** to monitor the asset-liability gap and strategize action to mitigate the risk associated. Further to manage the integrated risk, a separate risk management committee may be formed.
- ❖ For NBFCs with public deposits/deposits of Rs.50 crore and above, the audit firms appointed shall rotate its Partners in every three years for fair auditing.
- ❖ The company must put before the board a periodic statement about progress made towards risk management system and conformity with corporate governance standards.
- ❖ NBFCs should not grant loans, advances to:

- a) Its Directors or their relatives or to any firm in which any Director is interested as Partner, Manager, Employee or Guarantor,
- b) To any individual in respect of whom any of its Directors is a Guarantor,
- c) To any company/subsidiary/holding company of which any of the Directors of the NBFC is a Director, Manager, Employee or Guarantor or any firm in which he holds substantial interest.

THE ROAD AHEAD

NBFCs have been playing a very important role both from the macroeconomic perspective and the structure of the Indian financial system. Considering the consistent growth of NBFCs over the last decade, RBI has over the time, stipulated various recommendations to monitor their growth and to bring NBFC regulations more in alignment with the rules that govern banks.

As per the recent RBI recommendations, NBFCs getting the benefit under SARFAESI Act, 2002 as well as income-tax benefits is a boost for NBFCs whereas the revised application of asset classification & provisioning norms would be difficult for NBFCs as currently they have a 180-day norm to classify an asset as Non-Performing Assets against a proposed 90-day norm. The issues of priority sector lending and External Commercial Borrowings, which are critical for NBFCs, are needed to be considered by RBI in coming years. Hence a suitable legislative amendment to NBFCs would go a long way in fortifying the faith of the investors and which in turn would greatly contribute to the growth of this Sector. The coming years will be very crucial for NBFCs and only those who will be able to face the challenge and prove themselves by standing the test of time will survive in the long run.

Protection to Auditors under Companies Act



Sini P. G

CS- Management Trainee @ GMR Group

Siini.PG@gmrgroups.in

Audit of accounts is an essential element of any business however, big or small it may be. During the course of business proprietor, seller, creditor etc has to deal with various financial statements. Relying on an audited financial statement prepared by the management would be just like having a judge while hearing a case in which he himself is a litigant. Hence, some independent and qualified authority like statutory auditor is essential in a company.

In view of this, section 224 of Companies Act, 1956 provides for compulsory appointment of an auditor by every company whether public or private. Every company shall at each annual general meeting; appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting. **Thus, the Act seeks to ensure that the appointment of auditors is not in the hands of the directors and is vested in the general body of shareholders.**

Provisions with regard to appointment of an auditor contained in sections 224 and 224A of Companies Act, 1956 can be divided into 3 categories.

- 1) Appointment of first auditors.
- 2) Appointment of subsequent auditors.
- 3) Filling up casual vacancy.

Appointment of first auditors

As per Section 224(5), the first auditors of the Company are appointed by the Board of Directors within one month from the date of incorporation of a company. The auditors, so appointed, hold the office until the conclusion of the first annual general meeting of the Company. If the Board fails to appoint the first auditor, the company may do so at a general meeting.



Appointment of subsequent auditors: As per section 224(1) every company must at each annual general meeting; appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and on appointment the company shall intimate the auditor so appointed within seven days of their appointment which shall be followed by auditors by filing eform 23B with the respective ROC within 30 days of his appointment.

Filling up casual vacancy: Section 224(6) speaks of filling of Casual vacancy. Casual vacancy is created in the office due to resignation, death or any other reasons during the tenure of the Auditors. The Board may fill any causal vacancy in the office of auditors other than by resignation. Vacancy caused by the resignation of auditors, can be filled only by shareholders in General Meeting. Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

The appointment of auditors is subject to limits specified in sub-sec (1B) section 224(1B) which reads that an auditor can take up audit work of 20 public companies out of which not more than 10 companies shall have paid up share capital of Rs 25 Lakhs or more. However provisions of section 224(1B) shall not apply to a private company.

Under section 173(1)(a)(iv), the appointment of auditors is an ordinary business to be transacted at the Annual General Meeting except in the circumstances under section 224A, mentioned below:

- (1) In the case of a company in which not less than twenty-five per cent of the subscribed share capital is held, whether singly or in any combination, by –

- a) a public financial institution or a Government company or Central Government or any State Government, or
- b) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one per cent of the subscribed share capital, or
- c) a nationalised bank or an insurance company carrying on general insurance business,

the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a ordinary resolution.

- (2) Where any company referred to in sub-section (1) omits or fails to pass at its annual general meeting from appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (3) of section 224 shall become applicable in relation to such company.

Explanation. – for the purposes of this section, –

- (a) “general insurance business” has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971 (17 of 1971);
- (b) “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) 2[or in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (10 of 1980)].]

In order to understand the appointment of auditor under practical circumstances the following cases have been discussed:

Case 1: If next AGM is not held in each calendar year as prescribed by section 166 of the Act:

As per section 224(1) every company must at each annual general meeting; appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting Hence, the auditor will continue in office until the next AGM is actually held and concluded and he cannot be deemed to have retired on the date when the meeting ought to have been held.

Case 2: When a new auditor is appointed in the place of existing auditor at the general meeting and the meeting is adjourned:

The new auditor can be appointed only from the conclusion of the meeting on the adjourned date and not from the date of passing of the resolution whereby the new auditor was appointed.

Re-appointment of Auditors: As per Section 224(2), subject to the provisions of sub-section (1B) and section 224A, at any AGM, a retiring auditor, shall be re-appointed, unless-

- a. he is not qualified for re-appointment;
- b. he has given the company notice in writing of his unwillingness to be re-appointed;
- c. a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or
- d. where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with.

Appointing Auditors other than retiring auditors in the AGM (Section 225):

- Members can appoint any auditor other than retiring auditor at AGM, if Special Notice has been received expressly providing that a retiring auditor shall not be re-appointed or for appointment of auditor other than retiring auditor. (Special notice of 14 clear days shall be served)
- Notice of above resolution should be sent to the retiring auditor and representation may be given by the retiring auditor which should be sent to shareholders along-with notice of AGM.
- If representation is received late or due to company's default representation is not sent to shareholders, it shall be read at the AGM.
- If representation is defamatory, after obtaining Central Govt, the same need not be sent.
- The same provisions shall apply to remove the first auditors

Removal of Auditors: Auditors, other than first Auditor appointed by the Board, can be removed if:

- An ordinary resolution is passed for such removal; and
- Previous Approval of Central Government is obtained.

Powers of Central Government has been delegated to Regional Director, Ministry of Corporate Affairs for granting approval.



How to Incorporate a LLP?



Suhas M.V.

Management Trainee at GMR Groups, Bangalore

Suhas.MV@gmrgroup.in

In the modern business scenario Limited Liability Partnership (LLP) has been a recognized as a Body Corporate for conducting business. LLP shall be registered with Registrar of Companies under the Limited Liability Partnership Act, 2008. The minimum number of persons to form a LLP is two & there is no limit in maximum number of partners, at least one of them shall be resident in India. In case any body corporate is a partner, it shall nominate any (Natural) person as its nominee. The partner's liability would be limited to the extent of their contribution in the LLP. No partner would be liable for the independent, un-authorized or wrongful business decision or professional misconduct of other partners. There is a protection available to each individual partner against the joint liability. The LLP is governed by the LLP agreement which contains the scope of business operation, rights & duties of the LLP & partners. The remuneration to partners will depend up on the LLP agreement and the ownership of the partners is evidenced by LLP Agreement. A Limited Liability Partnership may be incorporated as per the procedure explained below:

Step 1. Registration : User shall register on the website of Ministry of Corporate Affairs, developed for LLP services. User shall fill in the registration form by selecting their user name and password. Once the form is filled, User shall upload the digital signature certificate, and would be registered.

Step 2. Obtain DPIN: Minimum two designated partners are required to form an LLP, out of which one should be resident in India. Only individuals or nominees on behalf of the bodies corporate as partners can act as designated partners. All designated partners of the proposed LLP shall obtain "Designated Partner Identification Number (DPIN)" by online filing of DIN1 application individually with a payment of filing fee of Rs.100 through credit card/Internet Banking.

Step 3. Digital Signature Certificate: All Partner/ Designated partner of LLP/proposed LLP, whose signatures are to be

affixed on the e-forms has to obtain class 2 or class 3 Digital Signature Certificate (DSC) from any authorized certifying agency.

Step 4. Reservation of name : The user shall fill in the details in Form-1 for reservation of name, by Selecting name of the proposed LLP (up to 6 choices can be indicated). Any partner or designated partner in the proposed LLP may submit Form-1 and affix digital signatures and submit the e-form with a payment of necessary fee by credit card / Internet Banking. Free name search facility LLPs is available on MCA portal.

Step 5. Incorporation of LLP : Once the name is reserved by the Registrar, Form-2 "Incorporation Document and Statement" has to be filled. Prescribed registration fee as per the slab given in Annexure A of the LLP Rules, 2009, based on the total monetary value of contribution of partners in the proposed LLP has to be paid. Statement in the e-form is to be digitally signed by a person named in the incorporation document as a designated partner having permanent DPIN and also to be digitally signed by an advocate/company secretary/ chartered accountant/ cost accountant in practice and engaged in the formation of LLP.

On submission of complete documents the Registrar after satisfying himself about compliance with relevant provisions of the LLP Act will register the LLP, maximum within 14 days of filing of Form-2 and will issue a certificate of incorporation in Form-16. The status of the application shall be reflected in the MCA portal

Step 6. Filing of LLP agreement (Form-3) and Partners' details (Form-4): Form 3 (Information with regard to LLP agreement and changes, if any made therein) and Form-4 (Notice of Appointment of Partner/ Designate Partner, his consent etc.) may be filed with the prescribed fee simultaneously at the time of filing Form-2 or within 30 days of the date of incorporation or within 30 days of such subsequent changes.

The LLP is governed by the LLP agreement which contains the scope of business operation, rights & duties of the LLP & partners. The remuneration to partners will depend up on the LLP agreement and the ownership of the partners is evidenced by LLP Agreement.

Duties & Responsibilities of Directors

under The Companies Act, 1956 & New Companies Bill, 2011

Anup Sen Gupta

Management Trainee of GMR Group

Anup.Sengupta@gmrgroup.in

The long awaited Companies Bill 2011 has been tabled in the Parliament by the Minister of Corporate Affairs the Honorable Shri Veerappa Moily. The new Companies Bill, 2011 is a comprehensive corporate law. With reference to the above, I would like to through light on the topic *"Duties & Responsibilities cast on the Directors of the company under the Companies Act, 1956 and new Companies Bill, 2011"*.

Director can be defined as a person who is in charge of an activity, who supervises, controls, or manages the affairs of an institution or corporation. The board of directors is appointed to act on behalf of the shareholders to run the day to day affairs of the business. The boards of directors' are the key managerial personnel who ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its shareholders and stakeholders. In addition to business and financial issues, boards of directors must deal with challenges and issues relating to corporate governance, corporate social responsibility and corporate ethics. The Director of the Company can be classified as Executive Directors and Non Executive Directors (Independent Directors).

The **duties and responsibilities** of **Directors'** are a series of statutory, common law and equitable obligations owed primarily by members of the board of directors to the corporation that employs them. It is a central part of corporate law and corporate governance. Directors' duties are analogous to duties owed by trustees to beneficiaries, and by agents to principals.

Among different jurisdictions, a number of similarities between the frameworks for directors' duties and responsibilities exist. That can be said as:

- Directors owe duties to the corporation and not to individual shareholders
- Directors core duty is to remain loyal to the company, and to avoid conflicts of interest
- Directors are expected to display a high standard of care, skill or diligence
- Directors are expected to act in good faith to promote the success of the corporation
- Directors are directly accountable to the shareholders of the Company, they must provide a report to shareholders on the performance of the company, and its future plans and strategies
- Directors must ensure that the company follows a good corporate governance, good corporate social responsibility and corporate ethics practices in the Company and towards Society.

As per The Companies Act, 1956, the Board of Directors and Directors has been defined u/s 2(6) as "Board of Directors" or "Board", in relation to a company, means the Board of Directors of the Company, and u/s 2(13) "directors includes any person occupying the position of director, by whatever name called"

There is no exhaustive list defining the duties of the Board of Directors towards the company and the shareholders. It is difficult to describe the duty of directors in general terms, whether by way of analogy or otherwise. The nature of duties of director would depend on the nature of the company's business and on the manner in which the work of the company is distributed between directors and other officials.

Whereas, as per the New Companies Bill 2011, u/s 2(10) "Board of Directors" or "Board", in relation to a company,

means the collective body of the directors of the company and u/s 2(34), "director" means a director appointed to the Board of a company;

The newly introduced Clause 166 in the *Companies Bill 2011* has described the duties of the Board of Directors towards the company and the shareholders.

Clause 166, of the *New Companies Bill 2011*, seeks to provide that a director of a company shall act in accordance with the company's articles.

It further provides for various duties of directors. In case of contravention, director is punishable with fine and if a director is found guilty of making any undue gain either to himself or to his relatives, partners or associates, he shall also be liable to pay an amount, equal to that gain, to the company. The clause further provides penalty for director of a company if he contravenes provisions of this clause.

The *Companies Bill 2011* provides more clarity to the definition, as per the Clause 166 of the Companies Bill, 2011, the duties & responsibilities of Directors are:

- 1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
- 2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the Shareholders, the community and for the protection of environment.
- 3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- 5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain under sub-section (7), he shall be liable to pay an amount equal to that gain to the company.
- 6) A director of a company shall not assign his office and any assignment so made shall be void.
- 7) If a director of the company contravenes the provisions of this section such director shall be punishable with

fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Further section 149(7) of SCHEDULE IV of the New Companies Bill 2011, describes the CODE FOR INDEPENDENT DIRECTORS.

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

Apart from the above some more changes have been introduced in the new Companies Bill 2011,

✚ Activities which should be discharged by Board of Directors of the Companies towards Corporate Social Responsibility Policies, *sections (135) of Schedule VII*. Such Activities relating to:—

- Eradicating extreme hunger and poverty;
- Promotion of education;
- Promoting gender equality and empowering women;
- Reducing child morality and improving maternal health;
- Combating human immunodeficiency virus, acquired immune deficiency
- Syndrome, malaria and other diseases;
- Ensuring environmental sustainability;
- Employment enhancing vocational skills;
- Social business projects;
- Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socioeconomic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- Such other matters as may be prescribed.

✚ Introduction of the compulsory appointment of Women Directors on the Board of some classes of Companies under Clause 149.

As recommended by J.J. Irani Committee, "the Duties of directors should be inclusive and not exhaustive in view of the fact that no rule of Universal Application can be formulated as to the Duties of the Directors".

Restructuring: An Emerging Corporate Phenomenon

K. Chethan Kumar

Management Trainee of Corporate Secretarial Department,
GMR Group

A restructuring wave is sweeping the corporate world. Corporate India is witnessing a restructuring revolution. The somewhat guarded, tentative response of the early years of economic reforms is slowly giving place to more decisive initiatives in corporate restructuring. Consolidation at the group and industry levels through mergers and acquisitions, strategic divestitures to permit sharper focus, strategic alliances and to a lesser extent demergers and spin - offs etc; are transforming the ownership profile and competitive structure of the Indian Industry. Takeovers, mergers and acquisition activities continue to accelerate. From banking to oil exploration and telecommunication to power generation, companies are coming together as never before. Not only these new industries like biotechnology have been exploding but also the old industries are being transformed. Corporate restructuring through acquisition, amalgamations, mergers, arrangements and takeovers has become integral to corporate strategy today.

Corporate restructuring, out of all emerging concepts of findings ways to serve shareholders better, has been a very successful concept abroad and it's been followed all the more in high context cultures like India. The rapidity with corporate finance due to external factors like increased price volatility, a general globalisation of the markets, tax asymmetric, development in technology, regulatory change, liberalisation, increased competition and reduction in information and transaction costs and also intra-firm factors like liquidity needs of business, capital costs and growth perspective have lead to practice of corporate restructuring as a strategic move to maximise the shareholder's value.

Corporate restructuring has acquired a limelight in India in the recent times due to involvement of global players. Foreign private equity is coming into Indian companies, like Newbridge's recent investment in Shriram Holdings. Multinational corporations are also entering India. *Swiss cement major Holcim's investment in ACC and Oracle's purchase of a 41 per cent stake in i-flex solutions (for \$593 million) are good examples. Meanwhile, Indian companies are*

also sensing attractive opportunities outside the country and are venturing abroad. (eg.: Tata Steel has bought Singapore-based NatSteel for \$486 million, Videocon has bought the colour picture tubes business of Thomson for \$290 million).

Restructuring is the corporate management term for the act of reorganizing the legal, ownership, operational or other structures of a company for the purpose of making it more profitable or better organized for its contemporary needs. Restructuring may also be described as corporate restructuring, debt restructuring and financial restructuring.

The process of reorganizing a company may be implemented due to a number of different factors, such as:-

- 1) To expand the business or operations of the company.
- 2) To carry on the business of the company more economically.
- 3) To focus on core strength.
- 4) Cost Reduction by deriving the benefits of economies of scale.
- 5) Obtaining tax advantage by merging a loss making company with a profit making Company.
- 6) To have access to better technology.
- 7) To improve debt-equity ratio.
- 8) To have better market share.
- 9) To become Globally Competitive.

The term Corporate Restructuring encompasses three distinct, but related, groups of activities;

- 1) **Expansions** – including mergers and consolidations, tender offers, joint ventures, and acquisitions;
- 2) **Contraction** – including sell offs, spin offs, equity carve outs, abandonment of assets, and liquidation; and ownership and
- 3) **Control** – including the market for corporate control, stock repurchases program, exchange offers and going private (whether by leveraged buyout or other means).

Executives involved in restructuring often hire financial, legal and other professional advisors to assist in the transaction details and negotiation. It may also be done by a new Chief Executive Officer is hired specifically to make the difficult and controversial decisions required to save or reposition the company. It generally involves financing debt, selling portions of the company to investors, and reorganizing or reducing operations.

The basic nature of restructuring is a zero sum game [a situation in which a participant's gain (or loss) of utility is exactly balanced by the losses (or gains) of the utility of other participant(s)]. Strategic restructuring reduces financial losses, simultaneously reducing tensions between debt and equity holders to facilitate a prompt resolution of a distressed situation.

Corporate restructuring is the process of redesigning one or more aspects of a company. Restructuring a corporate entity is often a necessity when the company has grown to the point that the original structure can no longer efficiently manage the output and general interests of the company. For example, a corporate restructuring may call for spinning off some departments into subsidiaries as a means of creating a more effective management model as well as taking advantage of tax breaks that would allow the corporation to divert more revenue to the production process. In this scenario, the restructuring is seen as a positive sign of growth of the company and is often welcome by those who wish to see the corporation gain a larger market share.

Corporate restructuring may also take place as a result of the acquisition of the company by new owners. The acquisition may be in the form of a leveraged buyout, a hostile takeover, or a merger of some type that keeps the company intact as a subsidiary of the controlling corporation. When the restructuring is due to a hostile takeover, corporate raiders often implement a dismantling of the company, selling off properties and other assets in order to make a profit from the buyout. What remains after this restructuring may be a smaller entity that can continue to function, albeit not at the level possible before the takeover took place.

Restructuring may also take place in the form of financial restructuring. It may take place in response to a drop in sales, due to a sluggish economy or temporary concerns about the economy in general. When this happens, the corporation may need to reorder finances as a means of keeping the company operational through this rough time by adopting Turnaround Strategy. Costs may be cut by

combining divisions or departments, reassigning responsibilities and eliminating personnel. *Scott Paper Company a U.S based Company provides an inside look at a major corporate downsizing program led by the controversial turnaround manager, Al Dunlap. In less than a year, Dunlap oversaw the elimination of almost one-third of the company's 34,000 hourly and salaried employees, through layoffs and asset sales. By the end of the restructuring in late 1995, when Scott Paper Company was acquired by Kimberly-Clark, the market value of the Company's common stock had increased by more than \$3 billion (over 200%).* With this type of corporate restructuring, the focus is on survival in a difficult market and to also meet growing consumer demand.

A Glimpse on provisions related to Restructuring in Companies Bill, 2011

Clauses 230 to 240 of Chapter XV of the proposed Companies Bill deals with compromises, arrangements and amalgamations. Considering the importance of the Restructuring, in addition to the existing law the new bill facilitates for:

1. **Simplified procedure** for compromise or arrangement including merger or amalgamation of holding companies and wholly owned subsidiary(ies) between two or more small companies and for such other class/es of company by getting confirmation from Central government.
2. **Cross-Border Mergers**—A foreign company may with the prior approval of RBI, merge or amalgamate with a company registered under the Act or vice versa
3. **Squeeze out provisions**—Squeeze out provisions means provisions which confer the acquirer with a statutory right to squeeze out the minority i.e. acquire minority shareholdings on same terms when the acquirer's shareholding crosses a certain high percentage of the voting capital of the target company. Etc.

It is well accepted fact that restructuring has become integral part of today's corporate strategy today. Restructuring has become more a necessity because in globalising industries, only players with global scale and reach can survive. Hence, corporate restructuring is a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving its short-term and long-term corporate objectives. The new Companies bill also recognizes the essence of restructuring and has enshrined the provisions in the bill which facilitates the simplified procedures for restructuring which will benefit the corporate at large.

FDI in Retail Sector

Kusuma Yerra

CS. Executive Student, Bangalore

ksumayerra@yahoo.com

The term 'retail' as a sale for final consumption in contrast to sale for further sale or processing (i.e. wholesale). A sale to the ultimate consumer. Thus, retailing can be said to be the interface between the producer and the individual consumer buying for personal consumption. This excludes direct interface between the manufacturer and institutional buyers such as the government and other bulk customers. Retailing is the last link that connects the individual consumer with the manufacturing and distribution chain. A retailer is involved in the act of selling goods to the individual consumer at a margin of profit.

FDI refers to capital inflows from abroad that is invested in or to enhance the production capacity of the economy. Foreign Investment in India is governed by the FDI policy announced by the Government of India and under the provision of the Foreign Exchange Management Act (FEMA) 1999. The Reserve Bank of India ('RBI') in this regard had issued a notification, which contains the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000. This notification has been amended from time to time.

Foreign Direct Investment under the Industrial Policy 1991 and thereafter under different Foreign Trade Policies is being allowed in different sectors of the economy in different proportion under either the Government route or Automatic Route.

In retailing, presently

- a) FDI up to 100% for cash and carry wholesale trading and export trading is allowed under the automatic route.
- b) FDI up to 51 % with prior Government approval (i.e. FIPB) for retail trade of 'Single Brand' products, subject to Press Note 3 (2006 Series)[6].
- c) FDI is not permitted in Multi Brand Retailing in India.



If the above FDI policy is removed, the following may be the consequences.

• Unfavourable consequences

- (1) It will lead to closure of tens of thousands of mom-and-pop shops across the country and endanger livelihood of 40 million people
- (2) It may bring down prices initially, but fuel inflation once multinational companies get a stronghold in the retail market
- (3) Farmers may be given remunerative prices initially, but eventually they will be at the mercy of big retailers
- (4) Small and medium enterprises will become victims of predatory pricing policies of multinational retailers
- (5) It will disintegrate established supply chains by encouraging monopolies of global retailers

• Favorable consequences

- 1 It will cut intermediaries between farmers and the retailers, thereby helping them get more money for their produce
- 2 It will help in bringing down prices at retail level and calm inflation
- 3 Big retail chains will invest in supply chains which will reduce wastage, estimated at 40 percent in the case of fruits and vegetables
- 4 Small and medium enterprises will have a bigger market, along with better technology and branding
- 5 It will bring much-needed foreign investment into the country, along with technology and global best-practices
- 6 It will actually create employment than displace people engaged in small stores
- 7 It will induce better competition in the market, thus benefiting both producers and consumers



Reserve Bank of India



Nandhini Rao

CS Executive Student, Bangalore

greenwhicrao01@gmail.com



This article explains about Reserve Bank of India (RBI) and its functions, importance and controlling methods. The RBI is fully governed by Indian government and it is also called as "Central Bank of India". RBI is one and only sole authority which regulates all the primary and secondary function's of financial activities of our country. In India, RBI was established in April, 1935 with certain subscription from the government and it got nationalization in 1949. At present RBI is the central bank of India and the present governor of RBI is Dr. D. Subbarao. RBI is the apex institution of our financial system. RBI plays an important role in not only governing Indian financial system but also guide, help and provides advisory function to banking institution.

The Reserve Bank's affairs are controlled by central board of director's. full time official director's including governor and four deputy governors are appointed for four years. Among non-official director's ten directors from various fields and one government official are appointed for four years. Among other four directors, one each from four local boards are appointed for four years term.

Functions

- RBI has the monopoly power to print currencies of our country. Other than RBI none of the institution has the authority to issue notes. Thus RBI plays one of the fiduciary functions in printing notes and maintains a balanced state in the economy.
- RBI acts as Banker's bank by being a custodian of the cash reserves of the commercial banks and helps in interbank clearance. Where individual bank need to maintain certain deposit balance with RBI and use them to make payments to each other, which provides convenience and economy.

- RBI is the Central Bank of India, which act as the lender of the last resort and it is the final source of the supply of legal tender, it also provides cash loans to other institution. RBI can also alter money supply in the market by adjusting the volume of bill's discounted or rediscounted.
- RBI is the banker to the government, where it provides various assistance and services to the government and at times it also provides free banking services to the government. It has an written agreement with each government to which its an official banker.
- RBI acts as custodian of foreign exchange reserves. This function helps our financial system to operate efficiently and manage monetary affairs of our country effectively.
- RBI is the authority of management regulation of exchange rate. It has to maintain a stable exchange rate in order to maintain economy in the country.
- One of the important function of RBI is credit control, the main aim is to control credit borrowing's in the country and to maintain a balanced state in the economy.
- The RBI undertook a long term programme of expanding banking services to every nook and corner of the country and also strengthening weak banking units in a variety of ways.

Importance

- RBI is the apex monetary institution of the highest authority in India. RBI plays an important role in strengthening, developing, controlling and diversifying the country's financial and economic structure.
- RBI helps as the advisory board regarding exchange policies to the government.

- RBI uses very effective tools in order to control credit in the economy and to make proper utilisation of money supply in the economy.
- RBI serves as the banker to the central government and state government of the country, focussing on bank transaction of the government.
- RBI is the monetary authority of the country.
- RBI is the only institution which has the sole authority to print currencies of our country.

Control Methods

Quantitative Measures – This measure has an general effect on credit control system. This method is used to control total volume of credit in the economy. The measures are the following :

Bank rate policy – It is a traditional weapon of credit control used by RBI, where bank rate is the rate at which the RBI discounts the bills of commercial banks. When RBI needs to control credit in the economy, It raises the bank rate where commercial bank will not be able to borrow as the interest rate will be high for the term period. In the opposite scenario, where to encourage production and investment, RBI will decrease the bank rate, where commercial banks in turn will make borrowings. This is one of the policy employed by RBI to control credit in the economy. At present the Bank rate is 6%, which is fixed in the year , April 2003.

Open market operations – This system has an direct impact on sales and purchases of securities and bills in the market by RBI to control credit in the country. Where RBI sells securities in the open market to control credit, thus commercial bank make purchases to the extent, where cash decreases which is held with the commercial bank. In the other situation, where to make proper movement of money supply and its proper utilization, RBI purchases securities in the open market, by this method RBI tries to control and make proper utilisation of credit.

Variable Reserve Requirements: Under this method Two types of reserves are employed, which are mainly cash reserve ratio (CRR) & statutory liquidity ratio (SLR) .

When RBI wants to control credit, it increases CRR & SLR respectively, where in turn borrowing capacity of the bank's contract. vice versa, in order to encourage credit & boost production ,RBI decreases CRR & SLR respectively, where business firms & other institution's will be able to make borrowing's and proceed successfully in their business.

Qualitative measures: This method is also called as Selective measures where, this method is employed generally to control credit for specific purposes. The following are the various methods used to control credit in the economy.

Security loan regulations by fixation of margin requirements-RBI raise the margin and there by also fix the maximum amount which the purchaser of securities may borrow against those securities. Raising of the margin will contract the borrowing capacity of the security holder. In turn its the system to control credit in the economy. This method is also used to check inflation level in the economy without affecting other sectors.

Consumer Credit Regulation : This method suggest that RBI lays down certain rules regarding down payments and maximum maturities of instalment credit for purchase of goods. Raising the down payment limits and shortening of maximum period tend to decrease the demand for borrowing loans, in turn RBI control's credit in the economy.

- Issue of Directives: RBI uses directing to commercial banks, which can be form of oral or written statements, appeals or warnings, which help the RBI to contract credit borrowings.
- Rationing of credit: This method is used by RBI for controlling and regulating the purpose for which credit is granted or allocated by commercial banks.
- Moral Suasion: It's the persuasion made by RBI to commercial banks to co-operate with the general monetary policy of the government. RBI may also ask not to grant credit for speculative or non-essential activities. Its an psychological means of controlling credit, its purely informal and milder form of selective credit control.
- Direct Action: RBI may take direct action against commercial banks, it may refuse to re-discount their papers and grant excess credit or may charge a penal rate of interest over and above the Bank rate for credit demanded beyond a prescribed limit.

RBI is the apex institution in the monetary structure in the economy. RBI performs all the main functions of note issue, banker for the government, credit control, custodian of cash reserves, lender of the last resort, promotional functions, collection and publication of data and so many.

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Chairman, Bangalore Chapter

CS. Dattatri H M

Treasurer, Bangalore Chapter and
Chairman - Oral Coaching & Students Facilities and Information Technology

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		Prabha Kiren	Member
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		Anantha Raj	Member
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Suhas Athreyas	Member	Nitesh	Member
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		Divyashree V	Member
		Umamaheshwari V	Member
Nanjundaiah	Member	Fabin Edwards	Member
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CS. Swaroop Suryanarayan	Special Support
Sheela Adaveesaiah	Coordinator
Tanushree Krishna	Member

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		Suman Bhambore R	Member
		Navyashree R	Member
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		Girish M N	Member
		Megha Jain	Member
		Varsha Ravishankar	Member
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		Chandni N M	Member
		Guruprasad	Member
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		Shruti P	Member

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		Rashika	Member
Sathya Raja Swapna Srikanthan Bindu Guruprasad Surojit Sutradhar Vismmitha Prakash Krishna Ganesh Hegde	Member	Chandini	Member
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