

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

» **Focus on**

Risk

Management



» **958**

**The Securities
Laws (Amendment)
Ordinance, 2013**



**THE INSTITUTE OF
Company Secretaries of India**

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



01



03



05



07

01 >> Investor Protection and Awareness Programme – Sachin Pilot (Hon'ble Minister of State for Corporate Affairs (I/C), Govt. of India) addressing. Others sitting on the dais from Left: Sunita Mohanty, Dr. Navrang Saini (RD, MCA), Balwinder Singh (Advisor, MCA), Naved Masood (Secretary, MCA), Nilimesh Baruah (Director, SFIO) and Ramesh Mahapatra (President, Uttal Chamber of Commerce & Industry).

03 >> 14th National Conference of Practising Company Secretaries on Integrating Growth, Governance and Challenges Beyond – Sitting on the dais from Left: Deepak Kumar Khaitan, Ashok Pareek, M Damodaran (Former Chairman, SEBI), Somnath Chatterjee (Former Speaker, Lok Sabha), S N Ananthasubramanian, R Sridharan, Anil Murarka and Sutanu Sinha.

05 >> 2nd Meeting of Indo-Netherlands Joint Working Group held at The Hague – Group photo of dignitaries of the meeting.

07 >> Launching of Certified Banking Compliance Professional Course jointly by the ICSI and the IIBF at Mumbai – Dr. K.C. Chakrabarty (Deputy Governor, Reserve Bank of India) launched the Certified Banking Compliance Professional Course in the presence of S.N. Ananthasubramanian, Dr. R. Bhakaran (CEO, IIBF) and Allen Pereira (Director, NIBM) at Mumbai.



02



04



06



08

02 >> National Seminar on Investor Education and Protection for Inclusive Growth – Naveen Patnaik, Hon'ble Chief Minister of Odisha addressing. Others sitting on the dais from Left: Ashok Pareek, Ashishkumar Chauhan (MD and CEO, BSE Ltd.), U K Sinha (Chairman, SEBI), S N Ananthasubramanian, M S Sahoo and Arabinda Acharya.

04 >> National Seminar on Financial Consumer Protection - Agenda for Inclusive Growth organised by ASSOCHAM with ICSI as Academic Partner – Sitting on the dais from Left: M S R Manjunatha (Director, Brickwork Ratings), Sonali Sen Gupta (GM, RBI, Delhi), Yogesh Agarwal (Chairman, PFRDA), M S Sahoo, Y.C. Jain (GM, IOB) and D. S. Rawat (Secy. General, ASSOCHAM).

06 >> SIRC - Madurai Chapter - One day Seminar on Indian financial Code, Deferred Taxation Provision & Transfer Pricing - Valedictory Session - E.M. Sudarsana Natchiappan (Hon'ble Minister of State for Commerce & Industry, Government of India) addressing. Others sitting on the dais from Left: Kumararajan S, Paramasivan S and Dhanapal S.

08 >> Signing of MoU between ICSI and The New India Assurance Company Ltd. – Standing from Left: Rakesh Kumar (GM, The New India Assurance Company Ltd.), G Srinivasan (CMD, The New India Assurance Company Ltd.), S N Ananthasubramanian and Sutanu Sinha.

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From the **President** | 884Legal **World** | 946 (LW-86-97)From the **Government** | 958 (GN-155-173)News from the **Institute** | 978Our **Members** | 1016

Articles (A 266-324)

Understanding the Securities Laws (Amendment) Ordinance, 2013	886
Risk Aggregation And Reporting: Basel Committee Principles (2013) Toward Sustainable Banking	890
Risk Management 2.0	895
Credit derivatives: Device of Credit Risk Mitigation and Synthetic Trading in Credit	901
Ten Commandments of Financial Risk Management for Corporate Treasurers	906
Risk Management in Securities Market	912
Safety - A critical Management Activity	917
Enterprise Risk Management and Company Secretary	921
Analysis of Interest Rate Exposure & Hedging Techniques of Banking Companies	926
Emerging Cross Border Risks in Global Business	933
Credit Risk Management	939

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Articles (A 266 - 324)

P-886

Understanding the Securities Laws (Amendment) Ordinance, 2013

P-886

Dr. K. P. Krishnan and Ramesh Krishnamurthi

Besides regulating the hitherto unregulated means of pooling of funds which have emerged post 1999 amendment, the SEBI (Amendment) Ordinance, 2013 has introduced many welcome provisions to strengthen the hands of SEBI to deal with frauds and irregularities in securities market in the interests of investors. It is expected that these amendments in securities laws would give SEBI the legal backing to clamp down on unscrupulous entities that are using newer methods to take gullible investors for a ride. The promulgation of the Ordinance demonstrates the firm commitment and resolve of the Government to act with speed and alacrity to curb irregularities and frauds in financial markets.

Risk Aggregation And Reporting :Basel Committee Principles (2013) Toward Sustainable Banking

P-890

Dr. Manipadma Datta

In a world with fast changing profile of risk and uncertainty, risk management is becoming more and more difficult now a days. Even the conventional techniques, however smart they could be, are at times found to be of little use. Environment related risk has come up to such an extent that many times they preponderate over the normal business risk management we have been long used to. Declining ethicality, dwindling governance and mounting social pressures are also worth mentioning here. The need of the hour is an independent risk management system duly equipped with an appropriate risk aggregation and reporting mechanism. The Basel document of 2012 as finalized in 2013 is a timely move in right direction.

Risk Management 2.0

P-895

K. N. Vaidyanathan and Uday Sathe

Risk Management 2.0 framework helps in making more informed, timely and, hopefully, better decisions. The success of the risk management process depends largely on the response time. Sooner the information, the sooner the management can respond with more and better options. More mature risk culture, more are the chances of the organizations surviving against any eventuality, threatened by internal or external forces. Risk Management 2.0 provides early warning system.

Credit derivatives: Device of Credit Risk Mitigation and Synthetic Trading in Credit

P-901

Vinod Kothari and Nidhi Bothra

Credit derivative is an OTC derivative instrument that seeks to transfer the risk of default or movement in credit spreads of an entity. Credit spreads reflect the credit risk of a party and hence, by allowing a trade in credit spreads, credit derivatives allow generalised trade in credit risk. As such, credit derivatives can be used both for hedging and trading, and in fact, have been extensively used for trading rather than for hedging. In the heydays of structured finance prior to the subprime crisis, credit derivatives and index trading resulted into build of very high levels of leverage in the system which exacerbated the impact of the rising default rates in mortgages. In India, RBI has allowed a very narrow window of opportunity in credit default swaps – such that present level of activity is very very thin.

Ten Commandments of Financial Risk Management for Corporate Treasurers

P-906

Manish Bansal and Dr. Anupam Rastogi

While undertaking risk management programme, it is imperative for corporates to be clear about the objective of risk management and undertake independent decisions on

suitability/appropriateness of the products. Building internal competence and/or outsourcing would help. They also need to put internal processes in place to run hedging as a programme, review hedges along with underlying exposure and change the performance evaluation criterion for risk managers. One additional attitudinal change we need to bring in is to pay for the products. Lured by freebies could be very costly and experience of over last few years reveals this.

Risk Management in Securities Market

P-912

Dr V. R. Narasimhan

Securities markets play pivotal role in the economic development of the country as they help in channelizing savings into investments. In addition, the dynamics of securities markets result in withdrawal of investments from less efficient investment opportunity/assets as perceived by investors to more efficient ones as perceived by the investor. The robustness of the risk management system in the securities market in India is well tested and demonstrated in the form of near zero defaults. The regulatory framework that has evolved over a period of time is only improving its robustness further to make the securities clearing system in India one of the best in the world.

Safety - A critical Management Activity

P-917

Parimal Vasavada

With the changing world of business the operational aspects are changing too. Globalisation, new opportunities, competition, costs, alert employees, consumer movements, judicial activism, reputation, media, et al have brought a paradigm change in running a successful enterprise. No longer can things be taken for granted. There is almost no second chance. Safety is one such new challenge. Modern perspective of Safety is way beyond traditional workers safety procedures and laws. Time has come for organisations, particularly Indian organisations themselves, in their own interest, to very rigidly implement safety policies. Company Secretary being a principal officer and an officer with a very wide knowledge and capability stands a unique position to make a difference and lead an organization to futuristic and positive directions. It will be interesting to know some finer aspects of Safety Concept in a modern organisation.

Enterprise Risk Management and Company Secretary

P-921

Anand Verma

An ERM process enhances risk management across an organisation by using a sustainable risk management framework. It results in improved risk knowledge through portfolio view of risks, coordinated and informed business decision-making, confidence of Board and management and improved governance and accountability of risk management. Aligning risk appetite and business strategy, enhancing risk responsive decisions, reducing operational surprises and losses, seizing business opportunities, improve deployment of capital, helps an entity where it wants to go and provides entity with new competitive advantages with drive to maximize value. Goal of a good ERM program should be to create a risk-aware culture throughout the organization without creating a risk-averse culture. Like many management challenges, attaining that desired balance is very important yet very difficult. Entities are not well served by seeking to eliminate all high risks, since lower risks typically generate lower rewards.

Analysis of Interest Rate Exposure & Hedging Techniques of Banking Companies

P-926

Dr. Vinay K. Srivastava

The Indian banking sector has been gradually liberalized since last few years. Banks and regulators have been making sustained efforts to understand and measure the increasing risks in recent years. Risk management is an essential part of helping the bank grow while keeping an eye on the potential consequences if something goes wrong. This could be external factors such as a recession or stock market crash, or internal factors such as IT failure. There are all kinds of risks in business and these needs to be identified and



minimized. This article is an attempt to understand the different types of risks that banks are facing and also discuss the interest rate risk hedging tools to minimize the risk.

Emerging Cross Border Risks in Global Business

» P-933

Surya Narayan Mishra

Cross Border Businesses basically cover two types of business one Trade and the other Investment. All these International trade and investment associated with higher levels of diversified risks. A more diverse international footprint also exposes companies to higher levels of risk. Cross border businesses would contemplate assuming cross-border risk with a greater degree of caution. The basic law of business is nothing can be gained unless risks are taken, and risks cannot be eliminated entirely. However, risk can be minimized or managed through best practices and following the risk management techniques. Developing a risk management matrix will help in focusing on the potential risks.

A Risk Management Matrix will not only reveal the prospective risks, but also give guidelines to managing or mitigating risks. It is not only identifying the probability of risks occurring and the consequences if they do, it will also help to the priorities issues that cannot be ignored.

Credit Risk Management

» P-939

D. M. Chandgadkar

Credit Risk Management is a critical function in the Bank post liberalization and particularly after the implementation of Basel norms in Banks to make them globally competitive. Credit Risk Management is important for Banks in view of the fact that their major activity is lending of funds they garnered by way of deposits from the general public. It is essential to ensure safety and security of funds while generating earnings on the funds by deploying it in the loan as well as investment portfolio. Credit Risk management involves three pronged approach for the purpose of minimizing the credit risk. Banks need to identify the credit risk, measure the credit risk so identified and mitigate the risks so measured to maintain quality portfolio carrying least risk of default either of principal payment or of interest or of both and generate consistent revenue from the portfolio to service the depositors as well as the shareholders.

» Legal World (LW 86 - 97)

P-946

- ▶ **LW.69.08.2013** Shares of unlisted public companies are covered under the Securities Contract & Regulation Act, 1957. [SC]
- ▶ **LW.70.08.2013** The Company Court, in a petition for amalgamation, was perhaps not correct in either directing Director, Revenue Intelligence or the Reserve Bank of India though it was competent to issue direction under Section 237(a)(ii). [CAL]
- ▶ **LW.71.08.2013** We are also of the opinion that there were some disputes, and to what extent the disputes remained unresolved is not necessary to be examined. [KNT]
- ▶ **LW.72.08.2013** It is our considered opinion that Issuer Company has totally failed to satisfy SEBI regarding any factor beyond the control of the issuer which would have prevented it from converting the warrants in question into shares. [SAT]
- ▶ **LW.73.08.2013** The issue of dominance would not arise in a franchisee agreement of this nature. [CCI]
- ▶ **LW.74.08.2013** Collective action of the members of a trade association *per se* does not fall in the categories of agreements contravening section 3(3) of the Act. [CCI]
- ▶ **LW.75.08.2013** The termination of the petitioners has taken place within the initial period of probation itself. Consequently, there is no basis for the petitioners to claim that the respondent resorted to adoption of an unfair labour practice in the aforesaid factual

background. [DEL]

- ▶ **LW.76.08.2013** The necessary corollary that follows from it is that if the changes are more beneficial than the previous rules Section 9A has no application and merely because the beneficial rules were not circulated amongst the workmen it could not be held that the company was guilty of violating the provisions of Section 9A. [CAL]
- ▶ **LW.77.08.2013** Allowing deduction towards loss of the person supplying raw material to determine assessable value in the hands of the person undertaking manufacturing activity is not warranted. [CESTAT]
- ▶ **LW.78.08.2013** In case of export of Services, export is complete only when foreign exchange is received in India. Therefore, relevant date of export of services is date of receipt of foreign exchange. [CESTAT]

» From the Government (GN 155 - 173)

P-958

- ▶ The Securities Laws (Amendment) Ordinance, 2013
- ▶ FII/QFI investments in Security Receipts
- ▶ Revised Position Limits for Exchange Traded Currency Derivatives
- ▶ Arbitration Mechanism in Stock Exchanges
- ▶ Notification under regulation 3 of the Securities and Exchange board of India (Certification of Associated Person in the Securities Markets) Regulations, 2007
- ▶ Registration of Electoral Trusts as Companies under Section 25 of the Companies Act, 1956.
- ▶ Review of the policy on foreign direct investment in the Multi Brand Retail Trading Sector- amendment of paragraph 6.2.16.5(2) of 'Circular 1 of 2013-Consolidated FDI Policy'
- ▶ Clarification on Queries of Prospective Investors/ Stakeholders on FDI Policy for Multi-Brand Retail Trading
- ▶ Risk Management and Inter-Bank Dealings – Reporting of Unhedged Foreign Currency Exposures of Corporates
- ▶ Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation
- ▶ Risk Management and Inter Bank Dealings
- ▶ Risk Management and Inter-Bank Dealings- Liberalization of documentation requirements for the resident entities in the Indian Forex Market
- ▶ Foreign Investment in India – Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies
- ▶ Raising Money through Private Placement by NBFCs-Non-Convertible Debentures (NCDs) -Clarification

» Other Highlights

P-978

- ▶ Members Admitted / Restored
- ▶ Certificate of Practice Issued / Cancelled
- ▶ Licentiate ICSI Admitted
- ▶ News From the Regions
- ▶ Company Secretaries Benevolent Fund
- ▶ Our Members
- ▶ Guidelines for Authors
- ▶ Invitation of Articles for Special Issues of Chartered Secretary
- ▶ Prize Query
- ▶ Memorandum of Understanding between The ICSI and The New India Assurance Co. Ltd.
- ▶ Proceedings of Programmes.



From the President



“The price of power is the responsibility for the public good.”



- Winthrop W. Aldrich

Dear Professional Colleagues,

Responsibility is synonymous with accountability, an absolutely essential ingredient for good governance. Being responsible to oneself, which in other words is obedience to the unenforceable, is, in fact, the true hallmark of a true and committed professional. Professionalism demands not only ensuring compliance with what is stated and explicit but more significantly adherence to the implicit essence of what is sought to be complied with. This calls for conviction, communication and possibly courage to continue to do and to be seen to be doing the right thing. Many corporations amidst us have gone beyond their stated call of duty and acquired recognition through societal acceptance for their goods and services, low employee attrition, better investor support during tough times and sustained returns over a period of time. It needs to be noted, however, that with many barriers breaking down globally, these organisations are compelled to reinvent themselves to stay useful, relevant and competitive without in any way diluting the basic structure of their constitution.

The 14th National Conference of Practising Company Secretaries held on 19-20th July, 2013 was an attempt to refine, redefine and reinforce our commitment to emerge as governance professionals. The Conference with the innovative theme 'Integrating Growth, Governance and Challenges Beyond' had the presence of stalwarts, such as, Mr. Somnath Chatterjee, Former Speaker, Lok Sabha and a distinguished Parliamentarian and Mr. M. Damodaran, Former Chairman, SEBI and an assembly of celebrated faculty. This provided many interesting insights on governance or lack of it in Government, Corporates and NGOs, professional responsibility, peer review and code of conduct besides delving into emergent areas of practice. The Conference, which was well attended at the scenic setting of Vedic Village on the outskirts of Kolkata, saw the release of many publications, including the Guidance Note for Certification of Forms relating to Directors, a fall-out of a conscious decision to apprise our practising members of the safeguards they need to take so as to avoid needless defaults. I compliment my colleagues CS R. Sridharan, Chairman, Practising Company Secretaries Committee and CS Ashok Pareek, Chairman, Conference

Organising Committee for the total package on offer and congratulate Team-EIRC for leaving no stone unturned in its immaculate execution through selfless dedication to the task on hand and relentless pursuit for perfection.

The Conference witnessed the signing of MOU with New India Assurance Company Limited, which seeks to provide multiple benefits to our members including professional indemnity insurance to practising professionals, a long felt need having regard to the unknown unknowns associated in the performance of their duties. Mr. G. Srinivasan, C&MD of New India Assurance Company Limited, who chose to be present on the occasion, addressed the Conference on Governance in PSUs and expressed the hope and belief that our members would take advantage of the MOU which envisages a portal based service delivery model, wholly managed by the Company. I appeal to you to peruse carefully the details of the products on offer as mentioned elsewhere in the issue and available on the website, seek clarifications, if any, and make the best of this facility made available.

A week earlier on 12th July, 2013, Dr. K. C. Chakrabarty, Deputy Governor, Reserve Bank of India launched the Certified Banking Compliance Professional Course at a function organised by Indian Institute of Banking and Finance (IIBF) in Mumbai. The Certificate course is an outcome of conscious efforts made over a couple of years to make our members realise their innate capabilities in compliance and governance, recognise the gap and potential in the arena of banking compliance and align both to create a win-win situation. The Course envisages joint certification by ICSI and IIBF for those who pass online examinations in Risk, Regulation, Compliance and Governance, and complete a 5-day classroom training. With compliance upgraded to a key operational function in banks, hopefully, this Course would lead to many of our members choosing banking compliance as their area of specialisation, which offers immense opportunities for employment and growth. The launch of this Course validates the recommendation of the Ganguly Committee on Governance set up by Reserve Bank of India in 2002 that the Company Secretary should be appointed as the Chief Compliance Officer in banks. The details of the Course



would be made available shortly.

ICSI has long been in the forefront of spreading awareness about investor protection across the length and breadth of the country, in association with MCA, SEBI, Stock Exchanges and other agencies through its Chapters and Regional Councils. It was only appropriate, therefore, that the National Seminar on Investor Education and Protection for Inclusive Growth was organised in Bhubaneswar on 27th July, 2013 at which the Hon'ble Chief Minister of Odisha, Shri Naveen Patnaik and Chairman, SEBI, Shri U. K. Sinha were the Guests on our platform. Many frontline regulators including Ministry of Finance, RBI, SEBI, IRDA, and Stock Exchanges addressed the Seminar and the inevitable conclusion was that investor education and protection and inclusive growth were inseparable phenomena.

This was preceded the week earlier by another Seminar organised in Bhubaneswar by Ministry of Corporate Affairs in association with ICSI at which the Hon'ble Minister for Corporate Affairs (I/C), Shri Sachin Pilot was the Chief Guest and Secretary, Ministry of Corporate Affairs, Shri Naved Masood was the Guest of Honour. The Seminar, addressed by many senior officials of MCA, SFIO, RBI, SEBI and other partner associations provided several insights into practices adopted by unscrupulous entities vis-a-vis unsuspecting investors and their gullible behaviour as also the way forward to prevent frauds and provide investor protection. Both Seminars were very well received by members and others. I compliment the Bhubaneswar Chapter on its capabilities in the organisation and conduct of these mega events.

Our association with Sustainability Reporting has been thick and steady. Our Guidance Note on Non-Financial Disclosures released in 2011 became the reference point during my address at an Integrated Reporting Workshop in Mumbai in early July which was followed by the Second Workshop on Business Responsibility Reporting in CCGRT. This Workshop dealt on the finer aspects of Reporting as envisaged by the Listing Agreement and made applicable for certain class of companies. It is with the firm belief that given the significance and the anticipation of this Reporting requirement for more companies in the days to come, similar workshops are proposed to be held for the benefit of one and all of us.

While Company Secretaries are called upon to play Governance Professionals, we need to prepare the students early on for the emerging responsibilities. We are continuously revisiting the curriculum and the training requirements of the Course to meet the dynamic requirements of the stakeholders. To support the student community across India and abroad to learn in a cost effective manner we have created e-library portal on the website of the institute. The Institute has launched on its website the e-library services for its students at a concessional price of Rs.500/- per annum for access to the contents of the e-library. This would not only cater to the curriculum requirement of the students in terms of Bare Acts, Regulations and Amendments thereon, and case laws, but also provide access to video lectures, digital books, articles, etc. in the days to come.

The ICSI National Awards for Excellence in Corporate Governance, 2013 is tentatively scheduled to be held in December, 2013 at Kolkata. Hon'ble Justice Shri M. N. Venkatachaliah, former Chief Justice of India has very kindly agreed to grace the jury as its Chairman. To support the jury, the Institute has

constituted an Expert Group under the chairmanship of Mr. K. R. Ramamoorthy, former C&MD, Corporation Bank and ING Vysya and a member of our Institute. As part of consultative process and to further improve the process of evaluation of participating companies, we invite your considered views/suggestions on the First and Second Questionnaires for the year 2013 which have been placed on the website of the Institute. I urge all members to send their views and suggestions on the questionnaire.

The two-day WIRC Conference in Pune provided a pleasant validation and authentic assurance of the modified theme of 'Transitioning from Company Secretary to Governance Professional' for the 41st National Convention to be held in Chennai in November, 2013. The following words of Shri S. K. Jain, President, Maharashtra Chamber of Commerce Industries and Agriculture, the Chief Guest at the Inaugural Session, captures the imminent transition succinctly:

"The fraternity of Company Secretaries having a distinct and important role of a custodian of the interest of the shareholders has always been considered an important institution in the development of an excellent corporate culture. In the last few decades after the liberalisation, privatisation and globalisation of the Indian economy and more so its integration with the world economy, the role of company secretaries has evolved drastically. This totally changed corporate scenario has transformed a Company Secretary from a mere record keeper to a key member of the Corporate Governance and administration team. The Boards of Directors consider him to be a trusted advisor and consultant. In a globalised economy where international partnership is imperative, ethical and transparent governance of an organisation is the main factor for concluding and sustaining such partnerships. Today, the corporate secretary of a public company also fulfills the duties of a Chief Governance Officer and in such a situation the Board's reliance and expectations from the Company Secretaries have increased tremendously. The role of the Company Secretary has expanded to bring in the highest transparency in the corporate affairs."

The message is clear; the messenger is not our member and it is time to seize the moment and make it possible. I take this opportunity to invite you to schedule your calendar, mark your diary carefully and assemble in Chennai at the 41st National Convention of Company Secretaries on November 7-8-9, 2013. The details about the Convention would be shortly uploaded on the ICSI website.

Perhaps this quote by Charles Darwin says it all: "It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change."

With kind regards,

Yours sincerely,

New Delhi

July 31, 2013.


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Understanding the Securities Laws (Amendment) Ordinance, 2013

➤ The Securities Laws (Amendment) Ordinance, 2013 promulgated on July 18, 2013 empowers SEBI to regulate hitherto unregulated means of pooling of funds. The Ordinance has also introduced many welcome provisions to strengthen the hands of SEBI to deal with frauds and irregularities in securities market in the interests of investors.

The Securities and Exchange Board of India Act, 1992, as originally enacted, empowered Securities and Exchange Board of India (SEBI) to register and regulate Collective Investment Schemes (CIS). However, there was no clarity as to what CIS meant as it was not defined. An amendment to the Act in 1999 introduced section 11AA which defined CIS to include hitherto unregulated activities like planatation schemes within its ambit. It also amended the definition of "securities" in the Securities Contracts (Regulation) Act, 1956 to include within its ambit the units or any other instruments issued by any CIS to the investors in such schemes. This brought the CIS as well as the market for instruments issued by CIS firmly within the regulatory jurisdiction of SEBI. This enabled SEBI to clamp down illegal CIS and to take a variety of enforcement actions against them.

The recent years have, however, witnessed mushrooming of a variety of new and innovative ways of pooling funds outside regulatory jurisdiction. These do not exactly fit into the description of either CIS or any other regulated scheme like chit funds. The gullible investors have become victims of such pooling, particularly in eastern India, as they do not have recourse to any remedy. The

people behind such pooling have succeeded in keeping regulators at bay by claiming lack of regulatory jurisdiction and engaging in frivolous and dilatory litigation.

In a recent decision in the case of *P. G. F. Limited and Others v. Union of India and Anr* (Civil Appeal No. 6572 of 2004), the Supreme Court, while upholding the constitutional validity of Section 11 AA of the Act, observed as under:

"..... we have noticed that on from many occasions a challenge to a provision of law, as to its constitutionality is raised with a view to thwart the applicability and rigor of those provisions and as an escape route from the applicability of those provisions of law and thereby create an impediment for the concerned authorities and the institutions who are to monitor those persons who seek such challenges by abusing the process of the court. Such frivolous challenges always result in prolongation of the litigation, which enables such unscrupulous elements who always thrive on other people's money to take advantage of the pendency of such litigations preferred by them and thereby gain, on the one side, unlawful advantage on the monetary aspect and to the disadvantage of innocent victims, and ultimately, gain unlawful enrichment of such ill-gotten money by defrauding others".

It is in this background that the Securities Laws (Amendment)

* The understanding expressed here is personal.



Ordinance, 2013 was promulgated on July 18, 2013 to empower SEBI to regulate hitherto unregulated means of pooling of funds which have merged post 1999 amendment. The Ordinance has also introduced many welcome provisions to strengthen the hands of SEBI to deal with frauds and irregularities in securities market in the interests of investors. This paper attempts to explain the provisions of the Ordinance.

Provision of information

SEBI's power to call for information, as provided in the Act prior to the Ordinance, was restricted to intermediaries and persons associated with the securities market. It could also call for information from authorities established or constituted by or under any law in respect of any transaction in securities. However, SEBI often needed information from persons who are not associated with the securities market and information relevant to an investigation in respect of securities transactions to detect irregularities in securities market and to establish charges against the offenders of securities laws. For example, in order to establish flow of information between tipper and tpee involved in insider trading, it is useful to have records of telephone calls (not tapping of phone conversations) between them. In the absence of powers to call for telephone records from a telephone company, SEBI was handicapped. There have been instances where telephone companies declined to share the call records on the ground that they are not persons associated with the securities market. The Ordinance has now armed SEBI to call for such crucial information from a person who may not be associated with the securities market. Further, it can now call for any information relevant to investigation in respect of securities transactions and not merely the information in respect of securities transactions.

There is growing mismatch between the limited authority of National Regulators and global reach and location of financial intermediaries. This increases the chances of systemic risks in one country spilling over to other countries. The Regulators, domestic and overseas, need to co-operate and exchange vital information more frequently than ever before. Keeping this in view, the Ordinance has empowered SEBI to obtain or furnish

» An effective investigation often requires search of premises and seizure of records. However, prior to this Ordinance, SEBI could conduct search and seizure only after approval from the Judicial Magistrate of the First Class. This could potentially delay proceedings especially when speed was of essence in any investigation.

information to other Regulators abroad who have similar functions to those of SEBI in matters relating to prevention, detection, enforcement and investigation of violations in respect of securities. For the purpose of sharing information with and receiving information from any authority outside India, it may enter into a memorandum of understanding with the prior approval of the Central Government.

Ambit of Collective Investments Schemes

In terms of Section 11AA of the SEBI Act, 1992, a scheme to be a CIS must be offered by a company and satisfy all the four criteria stated therein. However, many non-company structures emerged and pooled funds under investment contracts and thereby avoided regulatory discipline of SEBI. The investors in such investment contracts, therefore, did not have protection. Incidentally, Supreme Court in the matter of *P.G.F. Ltd. & Ors. v. Union of India & Anr.* observed: "... it is apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section (3) of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors". Hence the Ordinance omitted the reference to 'company' in section 11AA(2). Now a scheme meeting all the four criteria would constitute CIS whether it is offered by a company or not.

It is possible that a scheme, which does not meet all the four criteria, pools funds. Such scheme is not a chit fund, insurance contract, pension scheme, etc. which is regulated by one of the Regulators. In such cases, the scheme avoids regulatory jurisdiction. To deal with this deficiency, the Ordinance has introduced a deeming provision. It provides that any pooling of funds involving a corpus of at least Rs.100 crore and not regulated otherwise would constitute CIS. This would bring ponzi schemes, time share schemes, gold purchase schemes, emu farming, goat farming and deposit collection for real estate development schemes, etc., within the regulatory ambit of SEBI.

Thus, any pooling of funds above Rs.100 crore is now CIS. Any scheme meeting all the four criteria is also CIS irrespective of the



Article

Understanding the Securities Laws (Amendment) Ordinance, 2013

size of corpus. It is still possible that unscrupulous elements come up with a scheme for pooling funds involving a corpus of less than Rs.100 crore and not meeting the four criteria to ensure that it is outside CIS. In order to deal with such eventualities, the Ordinance empowers SEBI to bring any scheme or arrangement within the ambit of CIS that meet the conditions to be specified in the regulations. This provision would enable SEBI to deal with 'innovative' schemes which as on date would not fall within the definition of CIS even under the amended Act.

Search and Seizure

An effective investigation often requires search of premises and seizure of records. However, prior to this Ordinance, SEBI could conduct search and seizure only after approval from the Judicial Magistrate of the First Class. This could potentially delay proceedings especially when speed was of essence in any investigation. Further, SEBI was not allowed to conduct search and seizure of a listed company or a public company (non-intermediary) which intended to list its securities on a recognised stock exchange unless such company indulged in insider trading or market manipulation.

In this context, it is worth noting the concerns of the Supreme Court in the case of *N. Narayanan v. SEBI*, Civil Appeal Nos. 4112-4113 of 2013, Order Dated April 26, 2013, as under:

"A word of caution: SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate 'market abuse' and that we are governed by the 'Rule of Law'. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunities behaviour of Directors and insiders of the listed companies so as to safeguard market's integrity."

The power now conferred by the Ordinance would enable SEBI to address the concerns raised by the Supreme Court as above. It permits conduct of search and seizure with the authorization of Chairman of the Board. However, search and seizure needs to be conducted as per Regulations. This would make SEBI more effective in its investigation and respond quickly in situations

where there may be an attempt to destroy evidence or delay in providing documents required in an investigation.

Establishment of Special Courts

The law [Section 26 of the SEBI Act, Section 26 of the SC(R) Act and Section 22 of the Depositories Act] provides that no court inferior to that of a Court of Sessions shall try any offence under these Acts. The securities market requires swift action to deal with violations of securities laws in order to have necessary impact. SEBI has a large number of prosecutions pending due to procedural complexities while there is a shortage of judges / courts with necessary expertise in securities laws. The special Courts as provided under the Ordinance shall take cognizance and try all the prosecutions in securities laws, including prosecutions which are already filed and pending.

After the amendment to the SEBI Act in 2002, no court inferior to Court of Sessions could try an offence under SEBI Act. There were conflicting opinions by the Delhi High Court and Bombay High Court in respect of jurisdiction of Sessions Court in trial of offences committed prior to the amendment. The Delhi High Court, in *Panther Fincap and Management Services Ltd. & Others v. SEBI*, held that Sessions Courts have the requisite jurisdiction to try offences under the SEBI Act irrespective of the date of commission of the offence (Judgment dated 05.09.2006). The same view was also held in another judgement of the Delhi High Court in *Mahender Singh & others v. SEBI* (Judgment dated 11.01.2008). However, the Bombay High Court, in *Videocon International Ltd. v. SEBI*, has held that the offences committed prior to the amendment need to be tried by the Magistrate Court (Judgment dated 16.01.2008). Accordingly, all such cases pending for trial in the Sessions Court, Mumbai were sent back to Magistrate Courts. The Ordinance sets at rest any dispute with regard to the jurisdiction of Sessions Court in the trial of offences relating to securities laws.

In terms of Section 225 of the Code of Criminal Procedure, 1973,





a session trial is to be conducted by a public prosecutor. The public prosecutors appointed by State Governments may not always have expertise in and knowledge of securities laws and occasionally this was an impediment to SEBI in effectively prosecuting violators of securities laws before the courts. After the Ordinance, the lawyers appointed by SEBI who have requisite experience and knowledge of the securities laws shall be deemed public prosecutors.

Attachment and Recovery

Prior to the Ordinance, SEBI had no effective means to realise various penalties or dues. For example, it could not recover the monetary penalties levied by its adjudicating officers for various violations of securities laws. Reportedly as on date, penalties aggregating Rs.120 Crore approximately are yet to be realized. This means that the wrongdoers have not suffered the penalty and, therefore, enforcement action is not effective in these cases. Similarly, SEBI has issued a large number of orders seeking disgorgement of unlawful gains from the wrongdoers. Reportedly, an amount aggregating about Rs.80 crore, which was to be disgorged by wrongdoers, has not yet been received by SEBI. Quite often SEBI has directed the wrongdoers to refund monies raised from investors such as by 'vanishing companies' and Collective Investment Schemes. This refund is estimated at Rs.3500 crore in respect of CIS only. These refunds could not be enforced. At times, SEBI has failed to recover the fees from market participants and intermediaries. An estimated amount of Rs.60 crore is yet to be recovered from as fees from intermediaries.

This is essentially because it did not have power to attach movable or immovable properties. The power to freeze assets in section 11(4)(f) was available only with regard to an asset forming part of a transaction and it did not provide for a measure to provide remedy to investors from any other assets. In the matter of Saharas, SEBI has passed such orders attaching property and other assets on the directions of the Supreme Court.

Now the Ordinance empowers SEBI to attach and sell movable and immovable property of the defaulters without recourse to any Court of law, in pursuance of any of its orders or directions or recover fees and other regulatory charges due from various market intermediaries or penalties which are outstanding. In addition, it has also been empowered to make a reference to Income Tax authorities for recovery of the penalty as tax dues under the Income Tax Act. This power to recover monies would help SEBI in -

- taking effective enforcement action where it is satisfied that an entity has disappeared or has raised monies in contravention of securities laws or has fraudulently diverted the money raised from public through any offer document or scheme/ plan/arrangement
- enforce compliance with its directions to refund monies collected from public by illegal means
- to recover disgorged illegal gains or

- to recover unpaid fee levied under the SEBI Act.

The Ordinance has introduced a few other critical amendments to provide explicit clarity to powers inherently being exercised by SEBI under the general powers to supervise and regulate securities markets under Section 11 and powers to issue directions under Section 11B of the SEBI Act. Similar amendments have been affected in the SC(R) Act and the Depositories Act to ensure consistency and alignment with the changes made in the SEBI Act. SEBI has been undertaking a variety of actions under its inherent powers in the interest of investors. For example, it has been directing wrongdoers to disgorge illegal gains made by them by invoking its inherent powers under Section 11B of the SEBI Act. Though SEBI has been passing disgorgement orders and the same has been upheld by the Securities Appellate Tribunal as well as Supreme Court, an explicit provision in the Act now made by the Ordinance makes the position unambiguous.

Prior to this Ordinance, SEBI used to credit the disgorged amounts, which could not be distributed among the victims of the misdemeanour, to Consolidated Fund of India. SEBI is now empowered to credit all disgorged monies to its Investor Education and Protection Fund and utilise the said monies in accordance with the regulations made in this behalf, *inter alia*, for compensating the investors who have suffered losses due to related fraud and other investor protection measures.

Prior to this Ordinance, enforcement proceedings were being settled through consent orders passed under a 2007 circular issued under the implied mandate given under section 15T(2) of the SEBI Act. A writ petition (*Deepak Khosla v. SEBI* - Civil WP No. 6949 of 2011) filed in the Delhi High Court has challenged the vires of the 'Consent Circular' dated April 20, 2007, for being violative of several provisions of the SEBI Act, including Sections 11, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15T and 24A. The Circular was issued by SEBI in exercise of its powers under section 11(1) of the SEBI Act. Measures under section 11(1) are wide and no fetters are placed on the same except that the measures provided for must be in furtherance of the mandate of SEBI specified in section 11(1) and in the Preamble. Though sections 15T(2) and 24A of the SEBI Act (which provides the basis for SEBI's power to pass consent orders) may not in itself explicitly provide for the consent mechanism, the content of these sections recognize the ability or power of SEBI to pass consent orders for the purpose of bringing a finality to enforcement proceedings. The provisions of the Ordinance put at rest any doubts regarding SEBI's implied powers to settle actions, by providing explicitly that SEBI may settle any civil or administrative actions.

It is expected that these amendments in securities laws would give SEBI the legal backing to clamp down on unscrupulous entities that are using newer methods to take gullible investors for a ride. The promulgation of the Ordinance demonstrates the firm commitment and resolve of the Government to act with speed and alacrity to curb irregularities and frauds in financial markets. CS



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Risk Aggregation And Reporting: Basel Committee Principles (2013) Toward Sustainable Banking

➤ Effective risk aggregation and reporting constitute the basic pillars of a strong risk management system, particularly in banks and financial institutions, in view of the series of financial crises the world has been witnessing since last decade, which is, in fact, far from being over. In such a situation, the Basel Committee on Bank Supervision has rightly come forward to announce principles of risk aggregation and reporting. This article discusses the principles and issues involved with a search for an ideal reporting framework to evolve for sustainable economic development.

INTRODUCTION

Effective risk management is a key to the banking success. With the crises that started and aggravated with the sub-prime fiasco in the US during the last decade and its engulfing impact the world over, which is far from being over, risk management has never become so important ever before. The threat is no less severe to other business too, particularly in view of the fast emerging sustainability related issues. The Bank for International Settlements with its publication of the consultative document (BCBS, 2012) has finally come out with the final version (BCBS, 2013) that has delivered us with a comprehensive package of the principles to be adhered to in phases. This could well be described as the start of a new age in international bank management. There are however many a theoretical opinion as expressed from different quarters as to the possible effectiveness of such an attempt to unify the system of

risk aggregation and reporting. But in this article, for all practical purposes, an attempt has been made mainly to focus on the issues of risk aggregation and reporting in view of the Basel Committee on Banking Supervision's 2013 document with possible changing face of international banking with some critical observations at the end to improve the overall process.





RISK, REPORTING AND LEADERSHIP: A FEW EMPIRICAL OBSERVATIONS

Reporting risk is an integral part of risk management for obvious reasons and a clear and principled mechanism for aggregating the risks at different levels and forms in firm that too in a banking company in particular, acts as a necessary prerequisite to an effective and appropriate risk reporting system. There is now a wide spread agreement in the business world that the firms should report better information about the risks they face (ICAEW, 2011). Such unanimity in attitude can easily be attributed to the present urge to avoid another global financial crisis in future. Inefficiency and incomprehension in risk reporting constitute the root cause of a financial crisis of colossal magnitude across the globe in the post liberalization era because the information the system generates for the stakeholders including the investors and public leads them to wrong conclusion. This is exactly why an efficient system of risk reporting framework equipped with an equally efficient aggregation mechanism is needed to be instituted in organizations. It has been evident in the recent crises that failure to report the aggregate risk in a comprehensive and precise manner remained a crucial reason for financial failures. Many banks lacked the ability to aggregate risk exposures and identify concentration quickly and accurately at the bank group level, across business lines and between legal entities (BCBS, 2013). In a recent survey done by the Chartered Institute of Management Accountants (Woods, 2010), the fast changing and expanding character of risk reporting has been discovered quite evidently. The key findings are found very interesting and worth mentioning here in defence of effecting risk reporting not only in banking firms, but also as a whole. Let us have a look at some of those findings :

- Risk reporting and management is no longer solely a financial discipline, nor is it simply a concern for the internal control system.

This is no surprise at all. The definition of 'stakeholders' has become much broader than ever before by including workers, society and the world at large breaking traditional contours of 'shareholders only'. It is fast emerging that a reporting system produces information that can well extend to score of other areas than only the business internals.

- Organizations although tend to retain a discrete risk management cadre, the ultimate success depends on embedding risk awareness in the inside culture of the entire firm.

This reinforces the inevitability of the first observation indeed. While a firm's risk is a subject of concern to whosoever is handling the stake, the success in its management naturally would come from an effective system of capturing and reporting it to the broadened group

➤ Risk aggregation broadly refers to the efforts by the firms to develop quantitative risk measures that incorporate multiple types or sources of risk. The most common approach is to estimate the amount of economic capital that a firm believes is necessary to absorb potential losses associated with each of the included risk.

of stakeholders.

- Effective risk management is conditional to a proper leadership with clearly defined goals and open-mindedness to potential threats and opportunities.

This observation emphasizes the quality of an open-minded leadership being the main determinant to identifying the new and emerging risk perceptions in a turbulent world. In fact, the sub-prime crisis could have been avoided had there been a good leadership at work to ensure intuitive reporting mechanism rather than depending on a conventional management system that failed to deliver (Datta, 2009). The role of human greed perhaps could only be mitigated through a stable ethical leadership.

RISK AGGREGATION AND REPORTING *vis-à-vis* EFFECTIVE RISK MANAGEMENT

Risk aggregation broadly refers to the efforts by the firms to develop quantitative risk measures that incorporate multiple types or sources of risk. The most common approach is to estimate the amount of economic capital that a firm believes is necessary to absorb potential losses associated with each of the included risk (BCBS, 2013). The low-level risks are rolled up in the process to higher level in the areas of cost, schedule, performance, and any other area that the management may decide. The aggregation is accomplished through mathematical and/or statistical techniques designed to assess the likelihood of potential adverse outcomes, although the use of specific stress scenarios is also relatively common. Within each area and process the individual risks are to be evaluated against a set of established criteria to determine the overall aggregate risk rating for the area. Aggregation criteria need to be established separately for likelihood and consequence and preferably not be clubbed.

Risk aggregation is very crucial, a step towards integrating the firm's risk, appropriately aggregated it provides the proper basis for defining banks economic capital and thus leads the bank to



value-based risk adjusted management (Skoglund, 2010).

THE ISSUES AND CHALLENGES

In practice, different approaches are followed for risk aggregation: Top-down and Bottom-up. In the first approach, risk is measured on the sub-risk level, e.g. operational, credit, market, and so on. At the end, the aggregation takes place using a suitable model. In the Bottom-up approach, the sub-risks are simulated jointly and then are aggregated bottom up using a joint model of risk and correlation between the sub-risks. Bottom-up approach appears more comprehensive theoretically. However, at times the aggregation task becomes very difficult due to the fact that all the sub-risks are not measured with the same time horizon (Skoglund, 2010). The approaches as practiced greatly differ in between themselves since many banks use a combination in different convenient proportions. The BIS Forum too did not find a single approach based risk aggregation in use amongst the banks interviewed (BCBS, 2013).

To build up a common thread between all these approaches, which is indeed needed for efficient risk reporting, the following challenges may be identified:

- Business strategies and business models adopted by a firm have enormous influences on the risk aggregation framework;
- Heterogeneous portfolio holding firms are found to have strong tendency to aggregate into a single or limited number of total group wide measures. On the other hand, more business-line focused firms appear to some extent skeptical to aggregate risks of different kinds and sources into a single risk figure and diversify thereafter.
- Risk aggregation process imposes significant information

challenges. The task requires management huge volume of information from multiple external systems too. Information Technology System is also required to be coping with the problem of disparity and data flows.

- to match different systems
- to provide necessary flexibility and
- to maintain computing capacity.
- In response to such challenges, the firms tend to 'bundle' as much information as possible within a common expression.
- A lot of mathematical formulas are also in use under different sets of assumptions which more often than not run another type of risk of being too simplistic in nature.

Thus the aggregation task remains really very challenging with many a complexity in the process although some of the firms also have been found to have developed clear internal policies and different risk expressions.

GUIDING PRINCIPLES FROM BASEL COMMITTEE

In January, 2013, the Basel Committee published 'Principles for Effective Risk Data Aggregation and Risk reporting' superseding the earlier consultative document under the same title issued in June, 2012. In fact, this document stems from the recommendations made by the Bank's (BIS) Financial Stability Committee (FSB) that was constituted for coordination between national financial authorities across the world and institutional standards setting boards. This document lays out the high level Principles for Governance of Risk Data and Reporting Capabilities. To start with, the Principles laid out are expected to be implemented in G-SIBs only as identified by the FSB in 2011 and 2012. (Please see the Note at the end). However the national regulators could apply the principles to a wider section too depending on the circumstances. In EU nations, for example, all the G-SIFIs are asked to provide specific risk information to their respective regulatory authorities. The existing G-SIBs are expected to perform a self assessment in 2013. The Basel Committee on Banking Supervision shall start tracking the progress forward 2013 end. The subsequently added banks to this list will have to meet the Principles within three years from thus being designated.

The fourteen Principles as identified are briefly given as follows:

Overarching Governance and Infrastructure

1. **Governance:** It should be ensured that the aggregation and reporting of risks is done with very strong and appropriate governance arrangements consistent with other risk principles and guidance already in use.
2. **Data Architecture and IT Infrastructure:** It has been observed that adequate system architecture is not there





many a time. It focuses on the competent and efficient IT network.

Risk data Aggregation Capabilities

3. **Accuracy and Integrity:** Risk aggregation and reporting should be made on the basis of data generated with accuracy and integrity out of a largely automated and independent process to avoid error probability.
4. **Completeness:** All material data should be included and shown by business-line, assets type, industry, legal entity, regions and so on.
5. **Timeliness:** Timing shall depend on the nature of the risk being measured and the overall risk of the enterprise and its frequency in reporting.
6. **Adaptability:** Banks should be able to generate aggregate risk data to address a broad range of on-demand ad hoc risk reporting requirements including requests during stress/ crisis situations and requests due to changing internal needs.

Risk Reporting Practices

The next set of principles is related to risk reporting. Data graduate to information only when they are accurate, complete and timely. To help in informed decision-making process is the goal of an effective reporting system. That should be kept in mind in case of designing a reporting framework. It may be advised here to strictly ensure that there exists no trade-off that could materially affect risk management decisions. In case there is any, the Board of the particular bank should necessarily be aware of this and any other shortcoming. The spirit is to ensure, as far as practicable, to introduce optimum dose of objectivity into the reporting process.

7. **Accuracy:** Risk management reports should accurately and precisely convey aggregated data and risk in an exact manner. Reports should be reconciled and validated.
8. **Comprehensiveness:** A risk report should cover all material risks within the enterprise in conformity with its size and complexity and in response to the recipients' requirements.
9. **Clarity and Usefulness:** Reports should include meaningful information tailored to the user needs.
10. **Frequency:** Report frequency shall be exactly in response to the user need for information. Frequency should invariably increase during the period of risk stress. Frequency is indeed a parameter to understand the nature of information requirement and the speed in the decision making process across the enterprise. Frequency also depends on the type of risk in reality.

11. **Distribution:** Risk management reports should be distributed to the relevant parties while ensuring full confidentiality is maintained.

Supervisory Review, Tools and Cooperation

12. **Review:** Supervisors should regularly review and ensure compliance with all the eleven principles mentioned so far.
13. **Remedial Actions:** Supervisors should have and use the appropriate tools and resources to require effective and timely remedial action by a bank to address deficiencies in its risk data aggregation capabilities and risk practices. Supervisors should have the ability to use a range of tools, including Pillar 2.
14. **Home/Host co-operation:** Supervisors should cooperate with relevant supervisors in other jurisdictions regarding the supervision and review of the Principles, and the implementation of any remedial action if necessary.

The above principles-based approach of the BIS has been developed with the sole objective of ensuring financial stability in the banking system across the globe with lessons from contemporary history. In fact, the present time has been witnessing financial crisis across the globe in different magnitudes and that too in the countries where the system is traditionally believed to be more strong than their counterparts in the third world. The continuity of EU arrangement is also in question at times. The whole concern nowadays is to ensure a stable financial system that can sustain the volatilities of time. For this what is needed, above technology, is a system that would be as independent as to be trusted by all. But unfortunately what we face is exactly the trust of it. A principle based approach is perhaps the best way in such a situation of heterogeneity and hegemony. In case of banking and finance, there is nothing above the financial stability of the system and the institutions under it. If that loses the predictability, the whole economy would be in great jeopardy as we have started witnessing since early 2000.

A FRAMEWORK FOR FOLLOW UP

The G-SIBs are likely to improve their position by gradually adopting the principles into their risk management and reporting system. To ensure the expected outcome, they may also be recommended to take a few steps in the following direction:

- Banks may have a review of the *status quo* and thus identify what's to be taken care of
- Banks may have to evaluate how they can coordinate with each other in view of reaping the best from adopting the principles
- The institutions now on, have to ascertain whether, how and how much they are having the knowledge and resources to perform independent and in-depth validation of data governance
- The set of principles to be followed would require the



Article

Risk Aggregation And Reporting: Basel Committee Principles (2013) Toward Sustainable Banking



The present time has been witnessing financial crisis across the globe in different magnitudes and that too in the countries where the system is traditionally believed to be more strong than their counterparts in the third world. The continuity of EU arrangement is also in question at times. The whole concern nowadays is to ensure a stable financial system that can sustain the volatilities of time. For this what is needed, above technology, is a system that would be as independent as to be trusted by all.

institutions to go for rational approximation where no risk data is available. To ensure this, a reorganization of internal resources is also recommended

- Because of the competitiveness *vis-à-vis* complexity of the task, the institutions may require extensive review and coordination in their data management and IT infrastructure to ensure improvement
- Banks now surely need to develop data definitions more diligently to support reporting requirements in response to the mandates of the respective regulatory bodies
- Banks have to develop now an inventory of the models used falling under Base Pillars 1 and 2. For better sustainability purposes, they should take steps for strengthening their stress taking capacity and power of raising alert well in advance.

CONCLUDING REMARKS

Basel Committee's recommendations from the very beginning have tried to change the bank management situation the world over and in fact, there will be no denial on the count that a lot of improvement is evident. The world economy has changed all the earlier equations after wide scale liberalization and market reorientation in recent times starting from 90's. We have witnessed various situations where the solvency and stability factors are in serious questions. International regulatory framework is still far from having a uniform, independent and trusted status enjoying faith. In a globalized situation we certainly deserve a much improved financial order. A banking system is at the core of all economic activities. The global goal and demand is a sustainable financial system that would provide us faith and sustainability for growth.

In a world with fast changing profile of risk and uncertainty, risk management is becoming more and more difficult in these days. We are much beyond the traditional milieu of risk management any more due to the fact that many an uncertainty has been emerging on the horizon that challenges the sustainability of this small planet. Even the conventional techniques, however smart they could be, are at times found to be of little use (Taleb, 2007). Environment related risk has come up to such an extent that many times they preponders over the normal business risk management we have been long used too. Declining ethicality, dwindling governance and mounting social pressures are also worth mentioning here.

The need of the hour is an independent risk management system duly equipped with an appropriate risk aggregation and reporting mechanism. The Basel document of 2012 as finalized in 2013 is a timely move in right direction. We are to wait to see that we have a banking system evolving around us that would address issues in newer light and the newer issues from different perspective. The ramifications are bound to reach other segments too. The world surely deserves a true 'banking and financial system' to accelerate sustainable economic development.

Notes and References:

Note:

A global systematically important bank (G-SIB) is a bank whose failure might trigger a financial crisis across the globe. In November, 2011, the FSB published an integrated set of policy measures to address the systematic and moral hazard risks associated with systematically important financial institutions (SIFIs). In that, the FSB also identified an initial group of G-SIFIs, viz. 29 G-SIBs, using a methodology developed by the Basel Committee on Banking Supervision (BCBS). This list is updated every November.

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Risk Management 2.0

- Some of the risk factors presented by Apple Board to its shareholders tell us lot about the way the Risk Management Framework has been structured at Apple and the maturity level it has achieved. It makes interesting reading in terms of description, mitigation and impact.

APPLE INC. – A STORY IN ITSELF!

"The Company's Retail business has required and will continue to require a substantial investment and commitment of resources and is subject to numerous risks and uncertainties."

"The Company is exposed to credit risk on its trade accounts receivable, vendor non-trade receivables and prepayments related to long-term supply agreements. This risk is heightened during periods when economic conditions worsen."

The couple of sentences quoted above have been picked up from the Annual Report submitted by Apple Inc. to the US Securities and Exchange Commission. The Company has identified certain 'Risk Factors' that may affect the future performance and have been given as caveat to the forward looking statements that involve risks and uncertainties. It is worth studying the risks disclosed in the document along with the mitigation plan and analysis of impact. It highlights the way the risk management model has been built and the effective horizon of the Company's risk management activity.

For the sixth consecutive year Apple Inc. has been ranked as No. 1 in Fortune's 'Most Admired Companies' list. Lot has been said and written about the success and accolade achieved by Apple. No wonder, the related case studies have been taken up by many leading management institutes in their curriculum. For studying the risk management process it is very interesting to look at the way the risk management framework has been designed and developed by Apple. Some of the risk factors presented by Apple Board to its shareholders tell us lot about the way the Risk Management



Framework has been structured at Apple and the maturity level it has achieved. It makes interesting reading in terms of description, mitigation and impact. The complete text is available at: <http://www.sec.gov/Archives/edgar/data/320193/000119312511282113/d220209d10k.htm>

RISK MANAGEMENT 2.0

In comparison, it is worthwhile studying the process followed by Indian corporations. Though a few organizations had initiated Risk Management process on their own, the real force behind adoption of the process by Indian corporations was the revision by SEBI of Clause 49 of the Listing Agreement. Clause 49 of the Listing Agreement which deals with Corporate Governance norms that a listed entity should follow was introduced in 2000-01 based on the recommendations of the Kumar Mangalam Birla Committee and later revised in 2004. As per the disclosure requirements specified in the revised Clause 49, it became mandatory to lay down



procedures to inform Board members about the risk assessment and mitigation plans that are reviewed by the Board at periodic intervals.

In hindsight, even after a decade of the introduction of the concept, the risk management process has not crossed a level of 'compliance'. The global financial crisis of 2008 exposed the level of preparedness of a number of Indian (and global) corporations to the risks that devolved. Further, the changes in the business culture brought in by globalization, ever increasing burden of regulatory compliance and the multi-dimensional risks associated with the technological advancement are not getting reflected in the risk management framework.

There is long way to go for the risk culture to sink in, settle and reach to a certain level of maturity in our country. There is a need to look at the entire process with a fresh approach and an innovative perspective. This article brings in the newer outlook to the entire gamut of the Risk Management process and articulates the innovative way of looking at risk management. This article is an attempt to present the next progressive level of risk management.

HENCE, RISK MANAGEMENT 2.0

What is Risk?

Uncertainty is part of everyday life. 'Risk' is basically linked to uncertainty of the future. The uncertainty associated with the outcome of an event that can lead to loss or profit is known as Risk. Every event has got an impact associated with it; either positive or negative. The negative impact represents risk. Traditional definitions of risk stop with uncertainty.

However, the aspect of vulnerability is also required to be considered to understand this concept. The 'risk' perceived by one individual or organization not necessarily becomes the aspect of worry to others. Circumstances differ; the strengths and weaknesses differ and at the same time the level of controls built in the processes differ from entity to entity. As a result the risks are required to be identified, assessed, monitored and reported on the backdrop of an associated 'vulnerability' to the organization. If two people drink street water, the threat of the water is a constant; the difference is the level of immunity or vulnerability between the two people.

In technical terms Risk has been defined as, "Any event that will impact achievement of the Company's objectives, including financial as well as non financial, for its short term and long term objectives. Or, the level of exposure to uncertainties and level of vulnerability that the Company must understand and effectively manage as it achieves its objectives."

In brief, risk means:

- Event having an impact on the Company's objectives
 - Financial/ non-financial
 - Long term/ short term
- Exposure to uncertainty

➤ Risk Management is the process of measuring or assessing risk and developing strategies to manage the risk. Risk Management is often treated just as compliance issue. Ideally many of the risks that could severely damage the organization can be resolved by laying down basic rules and strict adherence to those.

- Exposure to vulnerability

Uncertainty refers to events outside the Company that could result in an unfavourable outcome of a business decision and/or action and the probability of such events is either not known nor can be precisely estimated.

Whereas vulnerability is an indication of the susceptibility of the Company in the future, notwithstanding uncertainties in the environment. This measures the Company's shortcomings in its state of readiness, agility, adaptability or even business continuity.

Risk and Opportunity... two sides of the same coin!

'Crisis', when written in Chinese consists of two characters 危机 - WEI meaning 'danger' and CHI meaning 'opportunity'. Thus, risk and opportunity are the two sides of the same coin of 'strategy'.

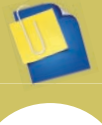
Every business decision inherits associated risks. No business transaction takes place without taking risk. As a matter of fact, the risk associated with every commercial transaction creates an opportunity for the organization.

To put it in simple terms, when master-blaster Sachin Tendulkar comes out of the crease and hits the ball with full swing of his bat, he takes the 'risk' (getting caught at the hands of a fielder placed at the boundary line) but that 'risk' gets translated/ converted into an 'opportunity' if he succeeds in hitting a six. Imagine the outcome of the match if Sachin lays-off his ability to take risks.

The safest thing is to keep funds invested in government bonds or say in fixed deposits with banks. However, the yield earned would not always justify the purpose for which the funds have been allotted. By investing the idle funds in various business options (risks!) the opportunities would be created.

Simply, 'Turtle makes progress only when it sticks its neck out'.

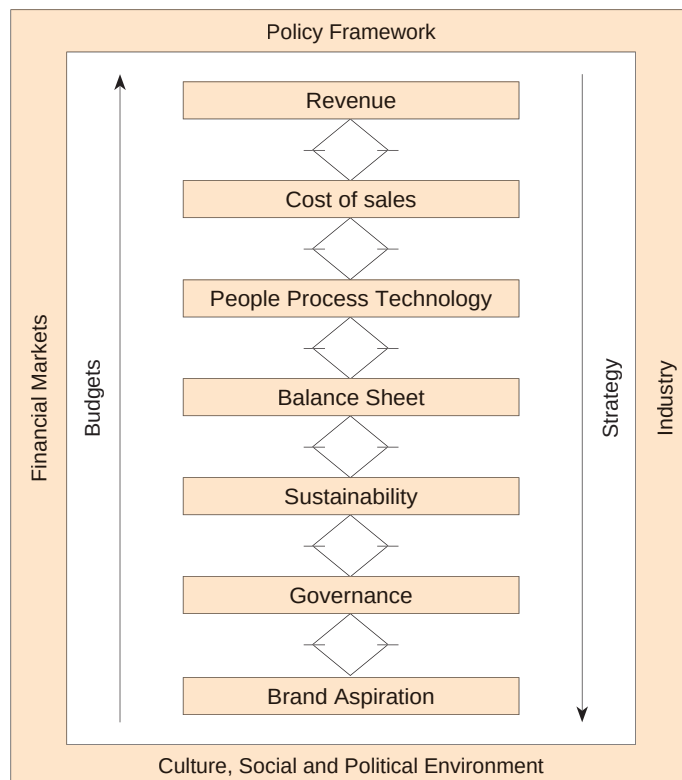




Risk Ecosystem

Risk Management is the process of measuring or assessing risk and developing strategies to manage the risk. Risk management is often treated just as compliance issue. Ideally many of the risks that could severely damage the organization can be resolved by laying down basic rules and strict adherence to those. However, strict rules set out for managing risks will not reduce the likelihood or the magnitude/ impact of a disaster. However, the impact can be controlled by putting in place the risk mitigation plan.

The risk management process revolves around (and ideally must always and only revolve around) the basic goals and objectives of any organization. It is an integrated approach with a focus on enhancing shareholder value. Certain key aspects related to the survival and growth of any organization and parameters indicating the health and progress of any organization have been shown at the core of the following chart.



An organization's survival and growth basically depends on certain parameters such as sales volumes, cost structure and other critical aspects such as manpower, processes and the use of technology. Higher weightage is given to certain key aspects such as sustainability, governance culture and brand value as the organization matures. The strong financial position as reflected in the financial statements support all these initiatives. To achieve these initiatives organizations lay down strategies, which are

relatively long term in nature and budgets are prepared to achieve the set goals in a defined time frame.

However, the strategies, deployment of resources and the financial strength of the organization are greatly affected by external forces. The external environment influences the organization internally. Factors such as consumer behaviour, political ideologies and framework, environmental factors relating to sustainability, supply of natural resources, social situation, status of technological advancement, economic and financial market condition and legal framework impact the achievement of the objectives of an organization and create both threats and opportunities. Risk Management 2.0, therefore, presents the risk framework that recognizes an organization in the context of the total eco-system.

Classification of Risk

Organizations are exposed to different types of risks that can be classified into various categories basically based on their nature, source of their origin and core aspects required for the survival and growth of organization (refer the Risk Ecosystem Chart given above). Some of the important types of risks have been listed over here. Risks are classified to group individual risks having logically similar expectations of loss. The classification facilitates risk assessment and provides a clear risk framework.

- Volume at Risk • Value at Risk • Cost at Risk • Growth at Risk
- Governance at Risk • Brand at Risk

• Volume at Risk

Volume of risk is adverse events which impact sales volume of the Company usually measured in terms of quantity of measures (Tonnes, Mega Watts) or numbers/ units. The Volume is influenced by numerous factors - controllable and uncontrollable, internal and external factors. Illustrations of likely causes of certain risks related 'Volume' have been tabulated in three categories.

Risk to Assumptions	Risk from Actions	Risk from External
• Market opportunity • Market Share; • Competitive Position • Bargaining power vs. Customers; vs. Suppliers; vs. Dealers • Government policy • Macro Economy / Financial Markets	• New product launch – delay, cancel • Product / Customer Mix • Relationship with JV/ Alliance/Technology/ Channel Partners • Product / Service failure • Production/Technology failure	• Change in Buyer behaviour • Product alternatives from competition • Change in product standards – regulatory/ statutory

• Value at Risk

The Value at Risk refers to adverse events which impact value realized of the Company usually measured in monetary terms. Certain examples emanating from management actions and external factors have been given in the adjacent table.

Risk from Actions	Risk from External
• Pricing policy – own & competition • Dealer margin / Cost of Sales – own vs. competition	• Revenue leakage – customer default; collection policy, debts management • Cost of financing products • Regulatory / Legal fiat – Competition Commission, Consumer protection, etc. • Forex and Hedging options



• Cost at Risk

Cost at risk indicates adverse events which impact cost of the Company's product/ services usually measured in revenue in currency (Rupees, \$ etc.). Factors influencing include -

Gross Margin (Contribution)	Operating Margin (EBIT)	Net Margin (PBT)
• Operating efficiency • Repairs / Breakdown • Raw material costs • Outsourcing costs	• Administrative overheads • People costs • IT Systems, Networks, Hardware, Data • Disaster Recovery – Fire, Flood, Power / Tech Outage	• Interest costs • Forex rates • Transfer pricing & Tax

• Growth at Risk

Risks related to 'Growth' are the events which impact growth of the Company, such as new product launch / market entry, new / expansion of facilities, M&A, etc. An illustrative list of possible causes or the constraints which put 'Growth' of the organization at risk are listed below.

• Project Management • Plant & Machinery • Spares & Service • Product Trials/ Testing • Legal Contracts • Regulatory Clearance	• Management Bandwidth • Cash Flows • Capital availability & cost – Equity / Debt • Credit Rating • Human Resources	• Business Continuity / Disaster Recovery • Morale & Motivation • Knowledge Management
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• Governance at Risk and Brand at Risk

Adverse events which impacts compliance with best practices, statutory / regulatory / corporate citizenship requirements of the Company are categorized as Governance at Risk, whereas the adverse events which impacts reputation of the Company signify Brand at Risk.

Governance at Risk	Brand at Risk
• Compliance – Legal, Statutory, Regulatory • HR Policies – Recruitment/ Retrenchment / Reward • Downward/Upward Communication – bad news/crisis management • Conflict of interest – Important Customer – Minority Shareholders – Good corporate citizenship	• Company Performance/ Shareholder Returns • Customer Satisfaction – Scores/ Indices, Service Standards, Grievance redressal • Product Failure / Crisis Management • Sustainability – People/Planet/ Profits • Press / Media engagement/ relationship • Code of Conduct / Ethical Practices – Employees – Directors / Senior Management – Dealers / Suppliers

Risk Management Process

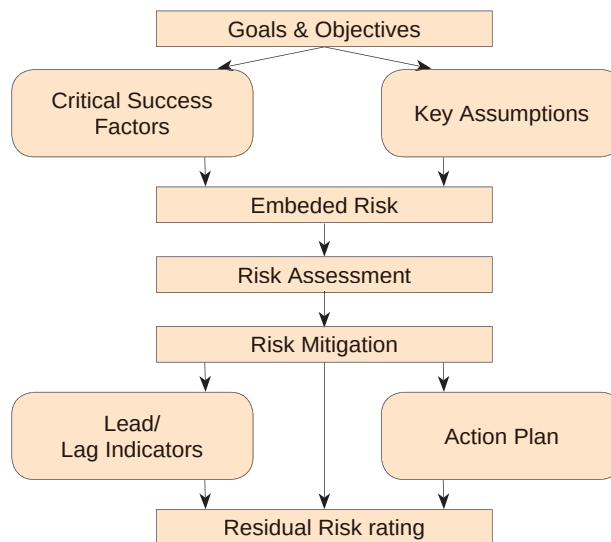
Enterprise Risk Management (ERM) has been defined by the Committee of Sponsoring Organizations of the Treadway

Commission (COSO) as, 'A process, effected by an entity's Board of directors, management and other personnel, applied in a strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.'

Risk management is a continuous process across the organization designed to identify, assess and frame a response to threats that affect the achievement of its objectives. It enables management to prepare for risks before they devolve to improve the operational effectiveness. Determination of the risk appetite allows management to deploy resources according to the need. As it progresses it enables the management to develop a mature risk culture within the organization.

Important components of risk management process as described in COSO are; aligning risk appetite and strategy, enhancing risk response decisions, reducing operational surprises and losses, identifying and managing multiple cross-enterprise risks, seizing opportunities and improving deployment of capital.

Risk Management 2.0 puts forth a framework that facilitates deploying a systematic approach to a complex process. The implementation of risk management process can be approached by various steps depicted in the following flowchart.



Steps in implementing Risk Management 2.0

The risk management framework prepares the organization to achieve long term goals, effective and efficient use of resources, dependable reporting and compliance with law.

Every management sets objectives flowing through the organization. The objectives are aligned with the long term strategies and targets or goals set for the shorter terms. Certain objectives such as



reporting and adherence to laws are within the control of the organization. Whereas objectives which are strategic in nature might depend more on uncontrollable external factors.

Certain assumptions are made while setting the business objectives. Also, the objectives are dependent on Critical success factors (CSFs), the term used to indicate the key elements on which the success of any project is dependent. Though assumptions are uncontrollable, the same are presumed to remain static till the goals are achieved. As against that the CSFs are to be achieved by the organization by using its resources. As a result, anything that has an impact upon CSFs constitutes a risk. This is the basis of the structured approach to identifying risk. Since the CSFs are aligned to the result areas to be achieved by the employees of the organization, one of the most effective ways to implement the risk management process is to link it to performance management. This can be achieved by integration of risk management in a company's performance management tool. The risks are to be identified by scanning the goals and objectives. Thus CSFs can be considered as a base for identifying the risks. All the activities which add value within the organization are to be evaluated.

In addition to the knowledge of the goals and objectives, risk identification requires complete information of the organization, the market conditions and the legal, social cultural and political environment. Potential events that affect the achievement of objectives are identified from internal or from external sources. The same have been covered earlier in the Risk Ecosystem. Since events do not take place in isolation, it is required to study the relationship and assess the impact.

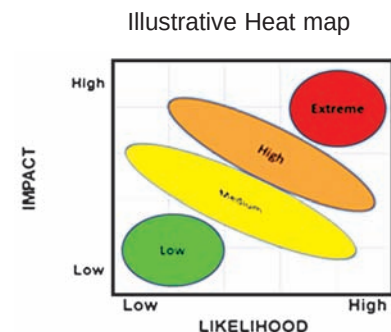
Such identified risks are 'rooted' to the organization, its goals and objectives. The same are termed as embedded risks. These are risks that might be present in an organization as a result of the activities undertaken. An effective risk management system covers all such embedded risk areas. The internal and external risk factors in uncontrollable state without any action from management are the inherent risks. However, it is important to focus on risks that are important and relevant.

Carrying out a comprehensive risk assessment considering the

inherent and residual risk is an important step. Further, understanding the interrelationships among various risks help in evaluating the cause and impact of various risks.

Risk assessment allows an entity to consider how potential event might affect the achievement of objectives. Management assesses events from the perspectives of likelihood and impact. Also, risks are assessed or evaluated for probability and severity for both inherent risks and residual risks.

Once the risks are assessed, a prioritization is done for risk response and reporting to various stakeholders. Many organizations represent the risk portfolio as a collection of risks plotted on a risk map, often called as a heat map. Heat map is a two-dimensional graph presentation of impact and likelihood. Risk levels are designated for each area of the graph, where the higher combined Impact and Likelihood ratings represent higher overall risk level.



Often it has been observed that the likelihood of the risk is underestimated. As a result such 'toned down' risks remain unattended. For example, before the global financial crisis of 2008, the risk of a steep correction in US housing prices was grossly under-estimated. Or, more recently, the vulnerability of Indian Rupee, again was under-estimated.

The next step after the identification of the risks is determination of suitable response. The decision of the management as regards the risk reduction, transfer, avoidance or retention depends on many factors such as the risk appetite, risk attitude, risk capacity, risk profile of the organization and the cost related to treating the risk. The risk response is the actions required to be taken to alter the risk, with the intention of mitigating the negative effects or maximizing the benefits.

The success of the Risk Management Framework depends on the efforts taken to mitigate/ reduce either the probability or consequence of the risk/ threat. Thus the risk mitigation is the selection and implementation of controls (taking actions) to reduce the risk to a level acceptable to management. The responses to critical risks are required to be attended to on priority. The critical risks can be identified by prioritizing the risks. The risks having the residual value beyond the risk appetite of the organization should be treated as critical risks and related actions need prioritization.

It is essential to review and monitor the combination of performance drivers; Lead and Lag Indicators, in a situation where the Risk Management process is linked to performance management.



Article

Risk Management 2.0



Monitoring and reporting are important aspects of the Risk Management Framework. Monitoring can take place through evaluation procedures or through ongoing activities. It involves an assessment of presence of the process as well as the functioning of its components and quality of performance over time. The aim of reporting is to provide assurance about the effectiveness of the risk management processes, provide assistance in understanding and preparedness of the risk events and changes in risk profiles. The risk information is utilised to aid decision making, monitor progress of treatments and compliance.

Leading Indicators are often captured at the level of individual processes, whereas Lagging Indicators may be the result of changes in a number of Leading Indicators. Leading Indicators enable the pre-emptive actions to improve chances of achieving strategic goals.

Residual Risk implies the risk that remains after management's response to the risk. The assessment of risks at the residual level helps determine whether the current risk position of the Organization is acceptable or requires improvement.

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Various terminologies used in the Risk Management Process described above can be better explained by studying the following examples.

Terms used	Example 1 Volume of Risk	Example 2 Value at Risk
Event	Drop in volumes of 5% v Budget. Likelihood 3 Impact 5.	Sales realization drop by 3% Likelihood 2 Impact 5.
Root Causes	- Slow down in economy - Drought forcing rural India to reallocate resources	- Increased competition due to new players. - Market size not growing.
Lead Indicator	- Product Life extended. - Replacement demand affected.	- Discounts offered by competition up by Rs 10,000 - Dealer margins—money/terms – of competition
Impact	Profit impact ~ INR 100 crores	Profit impact of INR 75 crores

Mitigation	- Focus on customer service - Consider 'trade in' policy for new against old (Discount) - Focus on dealer relationships	- Offer non cash incentives to dealers – longer warranty - Offer 'volume' discounts – those linked to actual sales volume
Residual Risk	Likelihood 3 Impact 3	Likelihood 2 Impact 3
Rating	HIGH	MEDIUM

CONCLUSION

Risk avoidance is not risk mitigation. When it comes to doing 'business', obviously what comes first is 'risk', which may be a calculated one, and successfully so if a strong risk management process is in place. By successfully harmonizing the decision making and risk management, one can bring out the value add to the fore and increase the acceptability of the process, beyond theory. Organizations should develop a model suitable to their structure. New approach can be developed in identification, assessment and classification of risks.

Risk Management 2.0 framework helps in making more informed, timely and, hopefully, better decisions. The success of the risk management process depends largely on the response time. Sooner the information, the sooner the management can respond with more and better options. More mature risk culture, more are the chances of the organizations surviving against any eventuality, threatened by internal or external forces. Risk Management 2.0 provides early warning system.

You exercise not to prevent a heart attack but to be better prepared should there be one. Organizations need to adopt comprehensive risk management to improve the probability of success and reduce the probability of failure. The entire process needs to be looked at beyond mere 'compliance'. Because business organizations 'play to win', Risk Management 2.0!

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Credit derivatives: Device of Credit Risk Mitigation and Synthetic Trading in Credit

➤ Credit derivatives emerged over 1994-95, and over a short span of time grew into a business estimated to be about several trillion dollars and then took a deep plunge in recent times. During the subprime crisis, many lost money on credit derivatives deals. The massive growth in credit derivatives as also news of banks and insurance companies writing off millions on credit derivatives exposures invokes lot of interest in what credit derivatives are all about.

Meaning of credit derivatives

OTC and exchange-traded derivatives

Credit derivatives are a part of the over-the-counter or OTC business: they are not exchange-traded derivatives such as futures and options in equities, or commodities. The OTC derivatives market consists of interest rate swaps, exchange rate swaps, equity linked swaps, property derivatives and other complex products, besides, of course, credit derivatives. This market is huge - last data as at the end of 2012 on BIS site shows nearly \$ 632 trillion outstanding.¹

Meaning of credit derivatives:

A credit derivative is a device to trade in generic credit risk of an entity. Generic credit risk means credit risk in general, not risk of default to a particular lender. The generic credit risk of an entity is the probability that the entity's credit risk may worsen, or eventually, the entity may default or may have to restructure its obligations. The generic credit risk is reflected in spreads, that is, the yield that the

credit obligations of the entity provide over a risk free rate. While a credit derivative trade inherently captures the fluctuations in credit spreads, it is actually structured as a potential for happening of certain well defined "credit events", defined in the documentation for credit derivatives, which, like in case of most other OTC derivatives, have been developed by International Swaps and Derivatives Association (ISDA). Therefore, two parties entering into credit derivative transaction, let us call them PB and PS, are expressing view on whether the entity in question will suffer a credit event or not. PB is the protection buyer; PS is the protection seller, and the entity whose credit risk is being traded is called the reference entity.

The simplest way to understand a credit derivative would be to think of a hedging transaction. Let us say, PB has an exposure in reference entity, to the tune of \$ 200 million. PB wants to reduce that exposure by \$ 100 million. PB has the option of selling a part of the loan, or the following transaction. PB enters into a credit derivative with PS, where PB pays a certain premium or spread to PS, say 60 basis points (0.60%) on a value of \$ 100 million (notional value). PS agrees that in the contingency of reference entity suffering defined credit events during the term of the contract, PS will make a certain protection payment to PB. Thereby, PB has shed a part of its

¹ <http://www.bis.org/statistics/dt1920a.pdf>



Article

Credit derivatives: Device of Credit Risk Mitigation and Synthetic Trading in Credit

» Credit derivatives are also trades in the credit quality of a firm, which is a product of its asset value. As the value of net assets of an entity increases, the value of equity increases, bond yields fall (as prices increase), and credit default swap spreads narrow down.

exposure in the reference entity to PS; PS has acquired such exposure by selling protection. We will call this transaction a credit default swap (CDS), the largest component and really the very standard contract in the credit derivatives market.

Bit of reflection will reveal that PS, selling protection on the reference entity, is taking a credit risk which is similar to that of a lender to reference entity. Assume, if PS was to provide actual funding to the reference entity, it would go at spread of 90 bps. If PS was to actually lend money, PS would have to refinance its own balance sheet, say at a cost of 30 bps. In other words, PS is left with a spread of 60 bps, which is exactly what PS gets by selling protection. Thus, selling of protection is an unfunded way of assuming credit exposure. We may say, PS, by selling protection, has synthetically created a credit asset being exposure in reference entity. And for PB, it is a synthetic way of transferring or selling an exposure.

Hedging and trading motives

While hedge transactions are the easiest way to understand credit derivatives, the market for credit derivatives is not limited to hedges. In fact, more than majority of trades are not hedges. Credit derivatives are synthetic trades in the credit of the reference entity, as the following discussion shows.

Assume that PB in our example above did not have any exposure in the reference entity to begin with. And PB still buys protection, paying a 60 bps premium to PS. The credit spreads on major reference entities are quoted in the credit default swaps market, which is quite a liquid market. Let us suppose the credit quality of the reference entity deteriorates, and therefore, the spreads widen to 75 bps. Now, PB may simply pocket a profit by selling protection in the market at the prevailing rate of 75 bps, making a difference of 15 bps. Likewise, PS has taken a hit as he has sold protection at a price of 60 bps, against prevailing price of 75 bps. In other words, either party may look at the credit derivative transaction as a trade, instead of as a hedge.

As a trading transaction, a credit derivative allows parties to express a view on the credit of the reference entity. PB is expressing a

negative or bearish view; PS is expressing a positive or bullish view. We may say, by selling protection, PS has gone long the credit asset; PB has gone short the credit asset. The potential for such exercises provides exactly similar opportunities as one sees in the equity or bond market. For instance, a trade in equity is a trade in the residual value of a firm. A trade in bonds is also a trade on the credit quality of the firm, sans the residual value. Likewise, credit derivatives are also trades in the credit quality of a firm, which is a product of its asset value. As the value of net assets of an entity increases, the value of equity increases, bond yields fall (as prices increase), and credit default swap spreads narrow down.

Portfolio default swaps, or bundles of risks

The above discussion demonstrates how credit exposure in a particular entity can be commoditised and made transferable by creating a CDS with reference to the entity. These CDS contracts are called single name CDS, obviously to distinguish from another variant – a portfolio CDS.

While the essential meaning of a portfolio CDS, will be easy to understand from the above meaning of a single name CDS – a CDS applied to a bunch of credits, there is a very significant difference. Let us suppose PB has 100 credit assets of \$ 10 million each, adding to pool value of \$ 1000 million. Assume each of these have a probability of default of 5%. It will not be difficult to understand that over a period of time, say 5 years, it is highly unlikely that all 100 of these names will default. They all have a potential of defaulting, but they cannot default together. Hence, put the portfolio on a probability distribution, something that shows the probabilities of different levels of loss, that is, total loss incurred by way of defaults in the above pool. Assuming that all these 100 names are completely uncorrelated, assuming a recovery rate of 30%, the following probability distribution emerges :²

Total number of names in the pool	100
Amount per obligor	10 Million
Total pool value	1000
Probability of default for every name	5%
Recovery rate for every name	30%

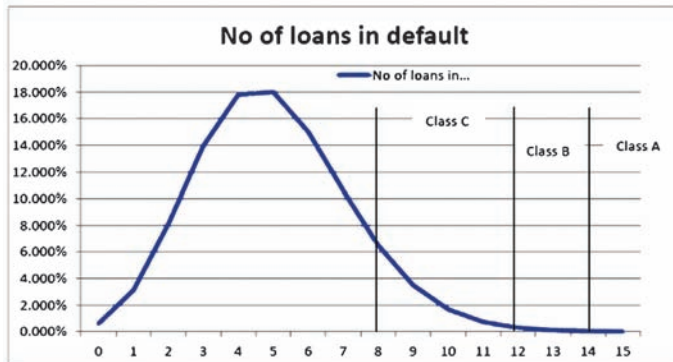
No of defaulting names	Marginal probability of default	Cumulative probability of default	Probability of loss exceeding given level	Pool value in default	Loss (after recovery)	Loss as per cent of pool value
0	0.592%	0.592%	99.408%	0	0	0.000%
1	3.116%	3.708%	96.292%	10	7	0.700%
2	8.118%	11.826%	88.174%	20	14	1.400%
3	13.958%	25.784%	74.216%	30	21	2.100%
4	17.814%	43.598%	56.402%	40	28	2.800%
5	18.002%	61.600%	38.400%	50	35	3.500%
6	15.001%	76.601%	23.399%	60	42	4.200%
7	10.603%	87.204%	12.796%	70	49	4.900%
8	6.487%	93.691%	6.309%	80	56	5.600%

² This is obtained by applying a binomial distribution.



9	3.490%	97.181%	2.819%	90	63	6.300%
10	1.672%	98.853%	1.147%	100	70	7.000%
11	0.720%	99.573%	0.427%	110	77	7.700%
12	0.281%	99.854%	0.146%	120	84	8.400%
13	0.100%	99.954%	0.046%	130	91	9.100%
14	0.033%	99.986%	0.014%	140	98	9.800%
15	0.010%	99.996%	0.004%	150	105	10.500%

The probability distribution will be as under :



As may be observed from the above table, the risk of no default in the portfolio is 0.592%, the risk of more than 5 defaults is 38.4% and that of more than 10 defaults is only 1.147%. The probability of defaults that exceed 12 is only 0.146%.

It will not be difficult to understand that an entity's risk management policies cannot provide for an entity protecting itself for all the risks. In the example above, as the risk above a level of 12 defaults becomes meagre enough, and the entity may not need to protect itself above that level it may cover itself only for upto 12 defaults, or a loss level of 8.4%. This gives a possibility of creating tranches indicating differential levels of risk. In the above case, for example, one may create several tranches:

D tranche: Upto 5.6% loss or up to 8 defaults
 C tranche: 5.6% - 8.4% loss or up to 12 defaults
 B tranche: 8.4% - 9.8% loss or up to 14 defaults
 A tranche: above 14 defaults

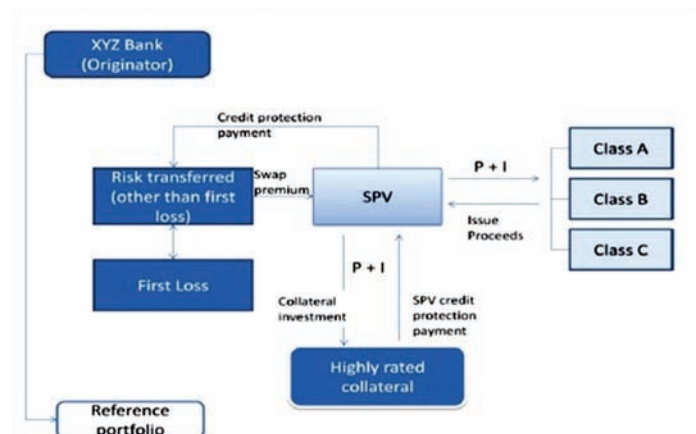
It may not be difficult to understand that the lowest tranche, tranche D, is the first level of losses for any pool, and it makes tremendous sense for an entity to retain the first layer of risks to itself. This may be called the equity tranche or first loss tranche. As for the senior-most tranche, A, it may be unnecessary to protect since the risk is negligible. Therefore, an entity may simply protect itself against tranches B and C. Since tranches B and C represent only a small proportion of the entire pool, PB would have paid a very small cost to buy protection, which, effectively protects it against the entire \$1000 million pool value, though above the first loss level of 5.6%.

Synthetic CDO

The portfolio default swap example shown above may very quickly

lead us to synthetic collateralised debt obligations (CDOs). A CDO, in general, is a pool of corporate exposures. It is called synthetic because the exposures are not transferred actually – they are transferred synthetically using credit default swaps.

In the above discussion if we were to super-impose an SPV, we already have a synthetic CDO. Here, the so-called XYZ Bank, PB in our example, is holding a reference pool of \$ 1000 million. It retains a first loss piece of 5.6%, and thereafter, transfers a risk of, say 5% on the pool of \$ 1000 million, over and above the first loss tranche of 5.6%, to the SPV. The SPV, thus, issues securities equal to \$ 50 million (5% of \$ 1000), consisting of Class C (\$ 28 million – 2.8 % of the pool), Class B (\$ 14 million), and Class A \$ 8 million. The entire funding of \$ 50 million raised by the SPV is kept invested in highly rated collateral, typically, government securities. Thus, the SPV will have to make protection payments to XYZ Bank if losses on the pool exceed 5.6%. The total amount that may be paid by the SPV, of course, will be limited to \$ 50 million.



Credit Derivatives Indices

The concept of synthetic CDOs led to the evolution of credit derivative indices, which analogically, is based on the concept of indices in stock or bond market.

In the market for equities and bonds, investors may acquire exposure to either a single entity's stocks or bonds, or to a broad-based index. The logical outcome of the increasing popularity of credit derivatives was credit derivatives indices. Thus, instead of gaining or selling exposure to the credit risk of a single entity, one may buy or sell exposure to a broad-based index, or sub-indices, implying risk in a generalized, diversified index of names. The major credit derivative indices in the market are CDX.NA (an index of 125 North American entities); iTraxx Europe (index of 125 European names), iTraxx Asia (index of certain Asian names), etc. As credit derivatives emerged not only with reference to entities but also asset backed securities, there are also indices of credit derivatives on asset backed securities, like ABX.HE (index of certain home equity securitisations), CMBX (index of certain commercial mortgage-backed securitisations), and so on.



Article

Credit derivatives: Device of Credit Risk Mitigation and Synthetic Trading in Credit

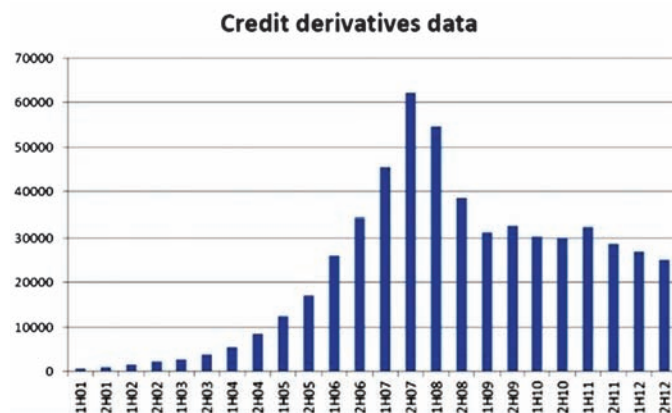
The idea of tranching or structured credit trading is essentially similar to that of seniority in the bond market – one may have senior bonds, *pari passu* bonds, or junior bonds. In the credit derivatives market, this idea has been carried to a much more intensive level with tranches representing risk of different levels. These principles have been borrowed from the structured finance market. Thus, on a bunch of 100 names, one may take either the first 3% risk, or the 3% to 7% slice of the risk, or the 7% to 10% slice, and so on.

The combination of tranching with the indices leads to trades in tranches of indices, opening doors for a wide range of strategies or views to take on credit risk. Traders may trade on the generic risk of default in the pool of names, or may trade on correlation in the pool, or the way the different tranches are expected to behave with a generic upside or downside movement in the credit spreads, or the movement of the credit curve over time, etc.

Credit Derivatives market overview

Credit derivatives initially were thought of as a hedging device soon became a generalised tool for trading in credit risk of entities. Within fifteen years, credit derivatives grew into a USD 62 trillion market end of 2007. This was obviously the turning point, as the subprime crisis soon scared whole lot of people from what Warren Buffet once called 'weapons of mass destruction'.

Volumes have significantly come down over the last few years, and are currently seen to have stabilised.



Source: Data accumulated from BIS

Credit Derivatives Documentation

The credit derivatives market has been following the International Swaps and Derivatives Association, Inc. (ISDA) documentation and the ISDA documents have been referred to as 'comprehensive lexicon governing credit derivatives transactions.'

ISDA's standard documents with regard to credit derivatives deals include a master agreement, a confirmation and a schedule containing the major financial terms and also the optional information. The master agreement is intended to cover all OTC derivatives

transactions between two parties. Hence there is one master agreement for all derivative deals. Confirmation of a trade is a legal memo of a transaction. Parties sign a confirmation after they agree to carry out a particular trade. Each confirmation is backed by definitions and the ones relevant for credit derivatives are the 2003 Credit Derivatives definitions.³

ISDA standard documents have been used in credit derivatives deals all through. It was only recently in 2013 that ISDA has proposed overhaul of credit derivatives documentation governing credit default swaps. The Greece restructuring raised concerns over the potential flaws in insurance contracts. ISDA has requested for marker participants thoughts on the possible changes in the standard, however no time frame has been set for the feedback.

Credit Derivatives in India

In India, the Reserve Bank of India has been contemplating the introduction of credit default swaps since 2003. RBI has published draft guidelines on the introduction to CDS in 2003 and in 2007 and these were again introduced in the Second Quarter Review of Monetary Policy of 2009-10 wherein RBI proposed the introduction of plain vanilla OTC single-name CDS for corporate bonds for resident entities subject to appropriate safeguards. Later, RBI placed its draft report of the Internal Group on Introduction of Credit Default Swaps (CDS) for Corporate Bonds on 4th August, 2010.

It was only in May 2011, that the RBI published guidelines⁴ on Credit Default Swap for Corporate Bonds which places the operational framework for introduction of plain vanilla OTC single-name CDS for corporate bonds in India. The guidelines were to become operative from October, 2011 and date for operationalization was later changed to November 2011 for arrangement for the necessary institutional framework for the launch of the product.

The key highlight of the Guidelines is that users are permitted only to use CDS for hedging purposes, and that too, only for certain types of bonds. Not surprisingly, this has kept the volumes of CDS in India abysmally low – virtually close to naught.

Significant features of the guidelines are:

- **Guidelines for Users and market makers**

- Eligible participants for CDS market are users and market makers.
- Users can buy protection for hedging purposes only. Holding short positions in CDS contracts and selling protection is not permitted. Users can exit bought positions by unwinding them with the original counterparty or by assigning in favour of the buyer of underlying bond. Offsetting of bought position with a sale contract is not permissible. Only market makers can buy protection

³ https://www.jpmorgan.com/cm/BlobServer/ISDA_credit-spg_2003_definitions.pdf?blobkey=id&blobwhere=1320601082580&blobheader=application/pdf&blobheadername1=Cache-Control&blobheadervalue1=private&blobcol=urldata&blobtable=MungoBlobs

³ <http://rbi.org.in/scripts/NotificationUser.aspx?Id=6432&Mode=0>



without having the underlying bond. Further, Users cannot buy CDS for an amount higher than that of corporate bonds or for a tenor greater than corporate bonds held by them

- Reference entity – Reference entity should be a single legal resident entity, users and market makers to be resident entities as well. FIIs are an exception to the list.
- **Reference Obligation** – The reference obligation would be:
 - listed corporate bonds
 - unlisted but rated bonds of infrastructure companies
 - unlisted/unrated bonds issued by the SPVs set up by infrastructure companies
- **Prohibitions on writing a CDS** –
 - Obligations such as asset-backed securities/mortgage-backed securities (structured financial products), convertible bonds and bonds with call/put options shall not be permitted as reference and deliverable obligations
 - CDS cannot be written on interest receivables or on securities with original maturity upto 1 year
 - Dealing in derivative products with CDS itself as an underlying is not permissible
- **Other operational issues**
 - CDS contract is irrevocable except in circumstances of protection buyer defaulting under the terms of the contract and CDS contracts should be a direct claim on the protection seller and the protection seller shall not have a recourse to the protection buyer for credit event losses.
 - Settlement methodologies for the CDS transactions shall be determined upfront and would be determined in the CDS documentation and for transactions involving users physical settlement would be mandantory.
 - The protection sellers will have limits on the exposure in single entities and aggregate of individual gross position

in relation to their capital funds.

RBI later indicated that NBFCs could only participate in CDS market as users and they were permitted to buy credit protection only to hedge their credit risk on corporate bonds they held. NBFCs were not permitted to sell protection, that is, enter into short positions in the CDS contracts.

In 2013, RBI amended the guidelines for CDS based on the feedback received from the market and certain relaxations were provided to the CDS market. The revised guidelines allowed CDS on unlisted but rated corporate bonds even for issues other than infrastructure companies, in addition to listed corporate bonds, CDS are permitted on securities with original maturity up to one year like Commercial Papers, Certificates of Deposit and Non Convertible Debentures with original maturity less than one year as reference / deliverable obligations and user are allowed to unwind their CDS bought position with original protection seller at mutually agreeable or FIMMDA price. If no agreement is reached, then unwinding could be done with the original protection seller at FIMMDA price.

The idea of introducing CDS for corporate bonds was to provide a tool for redistribution of risk. CDS enhance investments and borrowing opportunities, reducing transaction cost, hiving credit risk so as to increase the interest of the investors' in corporate bonds that would lead to the development of the corporate bond market in India. However the market of credit default swaps in India has remained very very small, almost non-existent.

Conclusion

From USD 62 trillion rallied in good old times to a deep plunge of USD 24 trillion in 2013 credit derivatives have moved from being eye-candy of the markets to being abhorred and blamed for causing the financial crisis. Being largely an unregulated market, the speculative derivatives bubble was opaque to the regulators and market alike; poorly capitalised underwriting of CDS and naked CDS triggered the meltdown and have been accused of causing the global challenges of the recent times.

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Ten Commandments of Financial Risk Management for Corporate Treasurers

➤ The reason for many financial risk management products to go sour is that corporate treasurers get lured by the sellers into believing that complex derivative products on offer would not cost them anything. Corporate treasurers, on the other hand, are not armed with requisite expertise to carry out due diligence on these products. Besides explaining the functioning of some exotic derivative products such as Target Accumulation Redemption Notes (TARNs), Zero Cost Structures and Carry Trades, this article enumerates ten tenets which corporate should follow to ensure that financial risk management tools do not turn into financial disaster.

Introduction

Financial markets have witnessed unprecedented moves across the asset classes – commodities, securities, currencies and interest rates. Top management, across the businesses, has voiced concern on the subject of risk management and indeed, subject is being debated in board rooms, today. Number of news items on the subject – wrong hedges, mark to market (MTM) losses on existing derivative transactions, disputed cases in the court etc. has been growing continuously. Some corporate balance sheets are under tremendous stress as MTM losses on their hedging transactions are more than their profit after tax (PAT) and/or net worth. These topical issues have encouraged us to restate some fundamental principles of risk management for users of the financial risk management products and corporate treasurers in particular on the basis of our empirical research on the subject matter.

In simple words, a hedge is about buying a product to protect against some risk. For example, in the case of the death of single bread earner of a family, there is a risk of financial distress for the entire family. Therefore, a responsible head of the family buys life insurance to protect part of the standard of living in case of his untimely death. Similarly, we buy medical insurance to take care of unexpected hospital bills. Likewise, corporates being exposed to several risks including the fluctuations in prices of commodities, foreign exchange, interest rates, etc. need to protect their profits against unexpected risks. Regulators have defined the broad guidelines for corporates to undertake these risk management products.

First, we enumerate these risk management products called derivatives. Generic derivative products are forward, futures and options. While forward/futures create obligation for the buyer/seller to buy/sell the underlying at the contracted price in the future; in case of options, buyer of option has no obligation but a right to act on the option. If it is option to buy



(called call option), he may buy the underlying and if it is option to sell (called put option), he may sell the underlying if it is profitable for him to do so. The option buyer would act on the option only if cash markets are against him. If cash markets have moved in his favor, he would simply not exercise his option and would go to market to buy/sell the underlying asset to realize his gains.

Given this basic nature of hedging and hedging products, it should be easy to use it. In practice, however, users have entangled themselves into complex derivative products in pursuit of super normal profits, wrong understanding or no understanding of characteristics of products under changing market conditions as described in this paper. This is further complicated by sellers, where buyers are enticed by offering them such products at no upfront payment.

Based on our empirical work, if corporate treasurers keep in mind ten commandments related to hedging, it is unlikely that they would go wrong. These tenets are (i) Hedging is to create certainty in future, (ii) Hedging is a serious business not a hobby, (iii) Hedging cannot make money regularly, (iv) Always review the hedges along with underlying exposure, (v) Performance evaluation for treasurers – Not to make money but save money, (vi) Pay for buying protection, (vii) Zero cost may be very costly later, (viii) Do simple stuff, (ix) Take responsibility of your actions, and (x) Do not be carried away by free money. We explain these tenets in some detail now.

Ten Commandments

(i) Hedging is to create certainty in future

It should be distinctly understood by the corporates that risk



» In zero cost hedging structures, to begin with, there is no cost to be paid by a corporate upfront and the structure of the product is such that on one side corporate would receive money and on the other side bank would receive money as underlying asset price change. In a sense, both – bankers and corporate – play on the uncertain future outcome of the move in price of underlying asset.

management is not about maximizing profits and/or minimizing losses; it is all about creating certainty. When a company enters into a forward contract, it removes the uncertainty associated with future price moves in the underlying asset. Whatever happens to the price of asset in future, it would be fixed at the contracted price. Alternatively, when a company undertakes options, it virtually defines its worst case scenario because if markets move in its favor, the company lets the option expire and in case markets move against it, it exercises the options. Therefore, hedging is essentially to create certainty in future cash flows of the company.

(ii) Hedging is a serious business not a hobby

Hedging is not a hobby. Unfortunately, most of the corporates (in % terms approximately 99%) run the risk management function as hobby. Indeed, risk management is one of the most neglected and non-priority areas among corporates. Little wonder that the results are disconcerting. Let us elaborate a little more what we mean by this. Lack of seriousness means lack of commitment, dedication and discipline on the part of the top management. In most companies, treasury managers “also undertake hedging” activity. Because hedging is one of the several activities, these managers perform poorly due to lack of expertise. Primary reason for such an outcome is that knowingly or unknowingly, these managers accumulate toxic assets from bankers under the title “hedging transactions”. This unwanted stuff may come in the form of limited upside but unlimited downside for the corporates.

We need to appreciate that a banker, who is coming to sell these sophisticated products to corporate treasurers is full time into selling these products. He seems to be doing his job of selling well but corporates clearly are not doing their job of buying the products with due diligence.

Our observation is that hedging is always triggered as a



Article

Ten Commandments of Financial Risk Management for Corporate Treasurers

response to panic situation. When oil was US\$147 per barrel, people were buying long term and sellers were not ready to sell expecting further higher levels. When Indian rupee was trading around Rs 39-40 to a dollar in the last quarter of 2007, corporates were selling \$ for 5 years as if there would never be tomorrow (bankers aggravating panic by showing level of Rs 35 to a dollar at that time). Such is the human behavior. To escape this, we need to put the hedging programme in place and undertake hedges each month or quarter irrespective of the levels with chosen set of simple products. This would eliminate our own bias, temptation to time the market and would definitely save us a lot in the long run from mental agony for not hedging or over hedging or wrong hedging etc.

To ensure that a company carries out its homework diligently, it is important for the company to dedicate resources for the purpose through either developing competence internally or hiring it (outsourcing). It is worth paying money to hire competent professionals to carry out due diligence and provide a brief on the outcome when market turns against and corresponding loss to the company rather than paying lots of money later when things go wrong.

(iii) Hedging cannot make money regularly

A strange question asked by many of the corporates is “Are my hedges making money?” This clearly reflects lack of awareness about the objective of hedging. Let us ask a question: Having bought life cover (life insurance), do we want to make money out of it? Answer is “NO”. We continue to pay premium on the life insurance policy year after year to protect our dependents from the untimely event. Similarly, when we are buying risk protection (hedging) against currency or commodity or any other asset, why should we look for making money? Indeed, as long as we are partly hedging our risks (as most of us do), we would always be better off losing money paid as ‘premium’ to seller of the hedge as described in the next paragraph.

(iv) Always review the hedges along with underlying exposure

Risk management is not about jettisoning the entire risk, as hedging of entire 100% risk would definitely be expensive and will not leave any upside potential. Therefore, pragmatic approach is to hedge part of the risk depending on risk appetite of the company. A conservative company may hedge more, say 60-70% of its risk and an aggressive company hedge less, and say 30-40% of their risk.

An example can illustrate this important aspect of hedging. An aviation company is consuming, say, 1 million barrels of oil per month. It goes for hedging, let us say 25% of that, for the next 6 months at the prevailing price of \$80 (assume that product used is a simple forward contract – contract to buy oil every month @ \$80/bbl irrespective of the price of the fuel prevailing in spot (cash) market). Now, for hedge to make money, oil



needs to go higher than \$80/bbl. But, please note that in that scenario, company would be paying higher than \$80 for the entire purchase of one million barrels and would be covered from the hedge only to the extent of 25% of this consumption. Therefore, overall company would be paying more for the oil. On the other hand, if price of oil were to go down, hedge would make the company lose money but it is better off as the company would be paying only on 25% of the total purchase to hedge counterparty, while taking benefit of lower price on the entire purchase of one million barrels of crude oil.

The import of this example is that we need to review the portfolio of “hedge and underlying together” and not “hedge independently”. And, important lesson here for a corporate treasurer is that as long as we are partly hedged, we will always be better off not making money from hedge or losing money on hedge.

(v) Performance Evaluation for Treasurer – Not to make money but save money

All of us want to be a winner – especially when one is betting. If a corporate treasurer is driven by betting instinct to hedge, his objective metamorphosizes into making money from hedges; And, he may be tempted to undertake aggressive/exotic hedging products in pursuit of making money. Hence, these products may not really qualify to be “Hedge – Hedge” or suitable products from the corporates’ perspective. Products like Target Accumulator Redemption Notes (TARN) are the real life example of this¹. To begin with, these products are in

¹ TARN signifies that further gains would end after they reached a ‘target redemption’. Also see Dodd (2009)



the money for customers and look very attractive and tempting. Given day-to-day reporting and sales techniques used by sellers of complex derivative products, a corporate treasurer may believe, albeit wrongly, that here is an opportunity to make easy money. However, risk at the end of long tail of these products (later part of the product life) could be poisonous enough to kill the hedger. Without going into the specifics of any of the existing cases, we can say that many corporates have lost large sums of money in this product.

The prudent way to prevent such situations in a company is to change the performance evaluation criterion of the risk managers. Their job is not to make money but save money. As explained above, if corporate are evaluating the performance of risk managers on the basis of hedges independently, that would always lead to the usage of so called exotic and nonsensical products for hedging in pursuit of that dollar and it is clearly not in the overall interest of organizations.

(vi) Pay for buying protection

Another trend observed in market is that people want to hedge but do not want to pay for hedging. This tendency is prevalent and better known in insurance sector. The share of pure term insurance in overall portfolio of an insurance company is very small. Most people prefer money back policy or equity linked insurance or a combination of the two and not a pure risk cover provided by a term insurance policy. In the process, a product becomes less of an insurance product (with little or tiny risk cover) and more of an investment product. Also, the money bankers charge on these products is implicit rather than explicit. The insured mistakenly thinks that he has saved cost but he does not know how much money the salesman has kept

in the implicit manner. We need to understand that no one can offer a product (hedge) and not charge for the risk, he is taking.

Similar to insurance business, pure risk management products do not sell well in absence of willingness on the part of corporates to pay up premium. Bankers, in turn, have structured something called “Zero cost hedging structures”. In zero cost hedging structures, to begin with, there is no cost to be paid by a corporate upfront and the structure of the product is such that on one side corporate would receive money and on the other side bank would receive money as underlying asset price change. In a sense, both – bankers and corporate – play on the uncertain future outcome of the move in price of underlying asset.

Let us illustrate it using the Ranbaxy \$ and Rs swap deal in 2007-08. The trade detail reported by media is:

- Underlying asset – Rs/\$ receivable
- Spot Reference Rs/\$ – 39.90 (i.e. Rs/\$ exchange rate at the time of the deal.
- Tenor of trade – 8 years.
- Specified quantity each month – 1:2.5. If favoring Ranbaxy, quantity sold is \$1million otherwise \$2.5 million
- Notional sum of the trade – not known
- Strike Price Rs/\$ – 43.50

This was one of the simplest so called “Zero cost hedging structures”. In this transaction, Ranbaxy bought monthly series of put options at strike price of Rs/\$ 43.50 on \$1million notional sum and to finance this purchase (to make it zero cost), Ranbaxy sold monthly series of call options at same strike \$/Rs. 43.50 on \$2.5 million notional sum (leveraged transaction). It is apparent from the transaction that Ranbaxy's view was that \$ is going to be below Rs 43.50 for next 8 years. And, if it goes above this level, Ranbaxy would allow the benefit of price above Rs 43.50 to go to bank on two and a half times of the hedged quantity.

When Ranbaxy received money in the first few months, the trade looked great. But, when Rs/\$ headed up, Ranbaxy found itself losing lots of money. Ranbaxy is reported to have lost significant amount of money on that trade.

As corporates do not have to pay upfront for buying such products, they like zero cost hedging structure. Unfortunately, in the recent past they have learnt that losses on these structures could be really large if markets go against them. Lesson here is that, if someone is offering you a product saying there is no cost, be skeptical and cost could be much more than what you can ever imagine as explained in the next paragraph.

(vii) Zero cost may be very costly later

Fashion among corporate risk managers is to undertake zero cost hedging structures. These structures are the combinations



Article

Ten Commandments of Financial Risk Management for Corporate Treasurers



No one can sell us anything if we are not willing to buy, no matter what. Therefore, instead of blaming someone else for miss-selling we need to talk about miss-buying. Corporate treasurers should not buy the products, they do not understand or they think they do but reality is that they do not. Important point is to take responsibility of your actions and acknowledge the mistake, because that is the only way to change the future. There is no point blaming someone else for your impulsive actions.

of various options. Intuitively, as long as we are only buying hedge, we would be paying. But, to make the transaction zero cost, it is obvious that we would have to sell some options so that the premium generated from these sold options pay up for the options we are buying. In other words, we need to take risk on underlying move in certain direction. And, unfortunately, in this pursuit of zero cost, corporates, most of the time, end up doing structures where the protection from the hedging structure is limited and loss unlimited. To worsen the situation, sometimes these structures are leveraged, which accelerates the loss for the corporate customers.

An interesting example of zero cost transaction is of Ceylon Petroleum Corporation (CPC), Sri Lanka. CPC decided to hedge its oil imports in the OTC Market at the beginning of 2008. One may recollect that oil prices were scaling new peaks each day in the first half of 2008. It put the following hedges on its books:

- Quantity hedged around 30% of its import (almost 1MM bbls of oil per month)
- Underlying used for hedge – WTI crude oil
- Tenor of these trades – 1 year, settling each month for the stated quantity
- Product – Leveraged Target Accumulation Redemption Note (Leveraged TARN)
- Structure of the trade (similar to the following transaction)-
 - Δ CPC buys 100,000 bbl of oil at \$135/bbl each month as long as price of oil remains above \$135/bbl
 - Δ CPC buys 200,000 bbl of oil at \$135/bbl each month if price of oil goes down below \$135/bbl
 - Δ Knock Out (KO) condition –CPC receives a total of \$20/bbl from the counterparty. For counting \$20/bbl, only positive cash flows to CPC to be counted.

It may be noted that the forward one year WTI contract rate at that time was \$143/bbl. Means, trade was with positive carry of \$7/bbl to begin with. One may think of the consequences of this trade in the last quarter of 2008, when prices of oil came down substantially to around \$40-45/bbl.

In this structure, CPC bought series of call options at \$135 with Knock Out (KO) condition linked to positive payoff over the life of trade - \$20/bbl. In simple words, maximum positive cash flow to CPC was capped at \$20/bbl. Therefore, structure

provides part protection in case market keeps going up as hedge would KO with maximum pay out of \$20/bbl. To finance purchase of this call option, CPC sold series of put options at \$135 for double the quantity (leverage).

When CPC received money in the first few months, it advertised in the newspapers all around. Things appear great as long as oil was up and up. But, when oil headed down, CPC found itself in a great mess. At one time, reported CPC MTM loss was around \$700-800 MM on all these hedges. In no time, these trades with all the banks went sour. Various parties filed petitions against these losses in the court. On November 28, 2008, Supreme Court directed the following:

- Chairman of CPC Mr. Ashantha to go. The court questioned the qualification and experience of Chairman in the context of hedging
- Petroleum minister Mr. A. H. M. Fowzie to go
- Probe in the transactions by central bank/bribery commission
- Suspension of payout to various banks

Several questions were also raised by various parties on banks' selling practices and CPC's buying practices. We believe that hedges were absolutely against the fundamental principle of hedging – protection was limited (\$20/bbl) and potential loss on the trade was unlimited for CPC.

Lesson here is that zero cost structures are zero cost at the beginning but could end up in losing lots of money at a later date. This is where many of the corporates are stuck today. Another important issue in any complicated product is the issue of pricing, understanding, and the ability to find competitive quotes.

(viii) Do simple stuff

One simple principle to be remembered is that the more complicated the product, the more competitive the disadvantage. In a complex product having a couple of buying and selling and trigger points, it becomes difficult for corporates to price the structures as they may not have the requisite competence and/or systems. Further, they may not be able to compare prices with others as customization leads to different products being offered at different prices. If a product is simple, we may understand it better and may be able to price it ourselves. Otherwise a treasurer may call for competitive



quotes from the other banks and then decide to do the deal. Though, it is beneficial for counterparty to sell a complicated product, it is more appropriate and suitable for the corporate to buy a simple product. One needs to suppress his urge of showing off his competence level by undertaking complicated things. Most of the times, it does not pay in the long run.

(ix) Take responsibility of your actions

Frequently, we hear corporates stating "We were miss-sold the product". Unfortunately, we have rarely heard any one saying "We miss-bought the product". And, as long as this statement does not change from "miss-sold" to "miss-bought", the story would remain the same.

We tend to believe that bankers are doing their job well of selling products and making money. And, in that pursuit, they would indeed attempt to sell more complicated products as they would always make more money on the products, which corporates do not understand. The driving force here is compensation policies of banks, wherein the profit on these trades is recognized upfront irrespective of tenor of the trade. Salesmen are paid bonuses on profits which makes them more vulnerable to selling toxic products. Alas! who as a salesman cares for tomorrow as the objective is to make money today. These are hard facts of banking which are coming to light after the 2008 financial meltdown.

Anyway, we should not blame bankers for selling complicated products as they are doing their job. Important lesson here is that corporates also need to do their job diligently i.e. job of buying appropriate products. We need to appreciate that no one can sell us anything if we are not willing to buy, no matter what. Therefore, instead of blaming someone else for miss-selling we need to talk about miss-buying. Corporate treasurers should not buy the products, they do not understand or they think they do but reality is that they do not. Important point is to take responsibility of your actions and acknowledge the mistake, because that is the only way to change the future. There is no point blaming someone else for your impulsive actions.

(x) Do not be carried away by free money

Carry trades on the books of corporate have become popular in recent times. In simple words, carry trades on liability side of the balance sheet means move a liability from higher interest rate currency to lower interest rate currency and on asset side, move a low interest rate currency to high interest rate currency. Let us use an example to explain the carry trade from liability side.

Many of Indian corporates have undertaken liability side carry trades by moving their rupee (INR) liabilities to low interest rate currencies like Yen or Swiss Franc (SF). As Yen or SF interest rates were lower than INR interest rates, these trades started

with good positive carry to begin with. Important risks in this trade were the currency moves - Yen appreciation against \$ and \$ appreciation against INR which, we can say with reasonable confidence, many of the corporates did not understand. In some cases, some protection was also offered by the so called prudent bankers² but, to leave some positive carry, it was important for corporates to take some currency risk - if not fully, partly. Today, many of these trades look very ugly in the books of corporates as both Yen against \$ and \$ against INR have moved significantly over last 4-5 years.

Important lesson for corporates is not to forget that there is no one in market place to just dole out money to them. And, any money coming home would bring in corresponding risk. Being seduced by the easy money without understanding the risks involved in the trade is like running in a dynamite factory with fire in hand. Even if one comes out safely, one should be called a fool.

Conclusion

To conclude, in a globalized world, we all are set to encounter increasingly complex business environment and uncertainties as we have no control over the market factors. However, we do have a choice of handling this uncertainty with strategic use of financial products (derivatives), available for the purpose. We believe that distinction between leaders and laggards in corporate world would be determined based on their ability to handle uncertainties in an efficient and effective manner. Therefore, it has become very critical for corporates to understand risks they are carrying, available risk management products and their strategic use to create values for the business.

While undertaking risk management programme, it is imperative for corporates to be clear about the objective of risk management and undertake independent decisions on suitability/appropriateness of the products. Building internal competence and/or outsourcing would help. They also need to put internal processes in place to run hedging as a programme, review hedges along with underlying exposure and change the performance evaluation criterion for risk managers. One additional attitudinal change we need to bring in is to pay for the products. Lured by freebies could be very costly and experience of over last few years reveals this. Finally remember, there is no free lunch. CS

Reference:

- Dodd Randall (2009) – *Playing with Fire, Finance and Development*, Volume 46, No. 2, International Monetary Fund, Washington.



² We need to appreciate that full protection on currency risk would have brought the cost back to the INR cost.



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Risk Management in Securities Market

➤ An efficient securities market framework is one which ensures that risk taken by the investor is limited to the credit risk and market risk they take and do not end up in taking other risks like liquidity risk, risk arising out of information asymmetry, default risk, risk of deceit or mis-selling. This article focuses attention on managing the default risk at the Exchange.

It is a common knowledge that securities markets play a pivotal role in the economic development of the country as these markets help in channelizing savings into investments. In addition, the dynamics of securities markets result in withdrawal of investments from less efficient investment opportunity/assets as perceived by investors to more efficient ones as perceived by the investors. These perceptions arise out of Credit Risk and market risk (price risk) as assessed by investor based on whatever information that they have at their command. An efficient securities market framework is one which ensures that risk taken by the investor is limited to credit risk and market risk they take and do not end up in taking other risks like liquidity risk, risk arising out of information asymmetry, default risk, risk of deceit or mis-selling.

Regulators like SEBI, RBI, MCA, through regulations, endeavor to reduce the risk arising out of information asymmetry, risk of fraud, etc. Transaction platforms viz., stock exchanges and clearing corporations work to mitigate the liquidity risk and default risk. This article will focus attention on managing the default risk at the exchange.

It is necessary to step back into history to appreciate issue relating to containing default risk. Before the advent of National Stock Exchange and National Clearing Corporation, stock exchanges were functioning like conduit for transferring credit



risk from one member to another. As the risk was getting transferred from one to another, the possibility of risk getting concentrated on a few members in the exchange was not ruled out. If the member who accumulated the risk on his account was not resourceful enough, all those investors and constituents of that member were taking the default risk of that member. The National Stock Exchange introduced the concept of 'novation' in securities trading on the exchange platform. With novation in place, legally the clearing corporation stands as the seller for buy by an investor (ie., clearing corporation will be the seller) and

¹ Views expressed in this article are the personal views of the author.



buyer for sell by an investor. In this novation arrangement the whole default risk will get concentrated in the clearing corporation. While investors have the comfort of having clearing corporation as the counterparty, it is necessary that clearing corporation should have the necessary financial capability and legal empowerment to handle this risk. National Clearing Corporation, which has not less than 80% of the market share has settled an amount of Rs 80,000 Cr, 90,000 Cr and 88,000 Cr worth of cash and securities during the months of April, May and June 2013 respectively. At the market level on an average clearing corporations settle trades worth about Rs 1, 00,000 Cr every month. Therefore, clearing corporations, having assumed the securities market default risks upon themselves are too big to fail. Their failure will have a huge cascading effect on the market; institutional investors who have traded in the market may not be able to settle claims of their investors and banks which have lent on securities will get impacted and so on.

RISK MANAGEMENT BY CLEARING CORPORATIONS – BIMAL JALAN COMMITTEE REPORT

SEBI, in 2009, constituted a committee under the chairmanship of former Governor of RBI, Mr. Bimal Jalan to examine the stability of market infrastructure institution (MII). Some excerpts from the report are given here below to appreciate the importance of MIIs and clearing corporations:

1. "The primary purpose of securities /capital market is to enable allocation/reallocation of capital/financial resources. This movement helps optimal use of money in the economy and fosters economic development. Well-functioning MIIs have a net positive effect on society like any other infrastructure institutions."
2. "MIIs constitute the nucleus of capital allocation system and are indispensable for economic growth. They are therefore, 'vital economic infrastructure'. The recent financial crisis has shown the importance of financial institutions to economic stability. Unlike typical financial institutions, the number of stock exchanges / depositories / clearing corporations in an economy is limited due to the nature of its business, although catering to the entire marketplace. Any failure of such an MII could lead to even bigger cataclysmic collapses that may result in an overall economic downfall that could potentially extend beyond the boundaries of the securities market/ country. Therefore, such MIIs are considered systemically important institutions."
3. "A well-functioning clearing corporation is the most important element of risk management in the securities markets. The regulatory responsibilities of a clearing corporation include:
 - settlement guarantee/ novation
 - sound risk management

➤ Risk Management framework of Clearing Corporation has three elements to it viz., Capital Adequacy, Margins System and Regulations. In addition, Stock Exchanges have their own measures to reduce risk of failure of members/constituents viz., strict entry eligibility criteria for members, surveillance mechanism to identify risks and advise the members before the risk become unmanageable, circuit breakers to limit losses due to unusual events gripping market moods/sentiments leading to panic responses, etc.

- member regulation (registration of members, inspection and enforcement action)

A clearing corporation performs the functions of clearing and settlement of trades that are executed on the stock exchange platform. Settlement of trades involves ensuring that the net obligations that have been determined at the clearing member level (a clearing member clears and settles trades on behalf of self and other trading members) are settled. As per the terms of the transaction executed on the stock exchange, the clearing corporation interposes itself between the buyer and the seller and undertakes to fulfill the obligations on behalf of the counterparties to the transaction. For ensuring settlement, the clearing corporation adopts stringent risk management practices to ensure settlement of obligations. The risk management function aims to reduce the chances of default during settlement. However, no system howsoever robust it may be is fail proof. By its role, even if there is failure/default by any member to meet its liability, the clearing corporation has to meet its liability to all others. In such an eventuality, it makes pay-out of funds on behalf of the defaulter (in case of funds shortage) and obtains securities through auction buy-in (in case of securities shortage). Thus ensuring that the system does not have any counterparty risk."²

Based on the recommendations of Bimal Jalan Committee Report, SEBI issued the Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (SECC Regulations) which has prescribed the criteria for ownership of Clearing Corporations, Capital Adequacy norms for

² Bimal Jalan Committee Report.



Article

Risk Management in Securities Market

clearing corporations, norms for governance of clearing corporations and general obligations of stock exchanges and clearing corporations. SECC has defined a good framework for establishment and governance of clearing corporations. All stock exchanges in the country have to clear the trades only through a clearing corporation recognized by SEBI under SECC.

Risk Management framework of Clearing Corporation has three elements to it viz., Capital Adequacy, Margins System and Regulations. In addition, Stock Exchanges have their own measures to reduce risk of failure of members/constituents viz., strict entry eligibility criteria for members, surveillance mechanism to identify risks and advise the members before the risk become unmanageable, circuit breakers to limit losses due to unusual events gripping market moods/sentiments leading to panic responses, etc.

CAPITAL ADEQUACY

Clearing corporation should have adequate capital for itself and capital should be strengthened continuously. Clearing corporations are set up as separate legal entities distinct from stock exchange. They have a balance sheet which is ring fenced from the financial fortunes of the stock exchange. As per the SECC Regulations, a clearing corporation in India should have minimum capital of Rs 300 Crores. The Regulations also require that the capital/net worth of the clearing corporation is held in liquid form. Further, not less than 25% of profits earned by the clearing corporation shall be transferred to general reserve before dividends, if any are declared.

In addition to its own capital adequacy, clearing corporations are entitled to prescribe Base Minimum Capital (BMC) for a member to get registered as a clearing member. The form of the BMC and the way in which it is computed is also prescribed by the clearing corporation. In addition to the base minimum capital, minimum net worth is also prescribed as eligibility criteria. Usually no market exposure is allowed on the BMC.

Clearing corporations are required to conduct 'stress test' periodically (every two months) to check whether their financial resources are good enough to withstand default by the members. Stress test methodology as prescribed by SEBI requires clearing

corporation to check whether the financial resources are adequate if top ten members of the exchange simultaneously default in their payments in a settlement.

MARGIN SYSTEM

The risk management framework is based on upfront margins, i.e. members are required to provide collateral on an upfront basis to meet the margin requirement. The margins are calculated and charged at client level.

Margins

The essential purpose of margin is to help cover possible loss to the counterparty in case the original party fails to deliver the security or pay in funds. In case of such failure, the clearing corporation has to buy the security or arrange for the funds by purchase of securities from the market or sell the securities to others. Such an event may result in losses. Margins will help cover such losses. Margins also serve the purpose of assuring that the contract party puts in serious efforts to fulfill its obligations under the contract to prevent financial losses.

The Clearing corporation calculates positions and margin requirements for all members uniformly, up to client level, on an online basis based on well tested principles. These margins may be paid either in the form of cash or in the form of collaterals (securities).

The Margin system is also used to prevent concentration of trades in a single or some scrips, regulate volatility in one or more scrips, to regulate extreme losses, etc. Margins may be imposed market wide or on some members to regulate their trading patterns if such trading patterns are likely cause higher risk to the market.

The margin requirement framework for the various segments and in varying situations is as follows:

Cash Market

The margin framework for cash market is as follows:

Categorization of securities for margining

If securities are offered as margins, clearing corporation may have to sell such securities to ensure funds flow. Sale of securities will have an impact on the market prices (sudden increase in supply; if the market knows that clearing corporation is selling – it will be considered as a distress sale). Further, all securities are liquid enough for immediate sale. Therefore Securities are categorized into three categories on the basis of their liquidity and impact cost.

- The Stocks which have traded at least 80% of the days for the previous six months shall constitute the Group I and Group II.
- Out of the scrips identified above, the scrips having mean impact cost of less than or equal to 1% are categorized under Group I and the scrips where the impact cost is more than 1, are categorized under Group II.





The essential purpose of margin is to help cover possible loss to the counterparty in case the original party fails to deliver the security or pay in funds. In case of such failure, the clearing corporation has to buy the security or arrange for the funds by purchase of securities from the market or sell the securities to others. Such an event may result in losses. Margins will help cover such losses. Margins also serve the purpose of assuring that the contract party puts in serious efforts to fulfill its obligations under the contract to prevent financial losses.

- The remaining stocks are classified into Group III.

In order to regulate the composition of securities deposited as collaterals, different levels of 'hair cuts' are imposed – that value reckoned for the security will be at a discount to their current market value – it could vary from 20% to 50% discount.

Value at Risk Margin

Value at Risk (VaR) margin is charged as follows:

- For the securities listed in Group I, scrip wise daily volatility calculated using the exponentially weighted moving average methodology is applied to daily returns. The scrip wise daily VaR is 3.5 times the volatility so calculated subject to a minimum of 7.5%.
- For the securities listed in Group II, the VaR margin is higher of scrip VaR (3.5 sigma) or three times the index VaR, and it is scaled up by root 3.
- For the securities listed in Group III the VaR margin is equal to five times the index VaR and scaled up by root 3.

Extreme Loss Margin

The Extreme Loss Margin for any security is higher of:

- 5%, or
- 1.5 times the standard deviation of daily logarithmic returns of the security price in the last six months. This computation is done at the end of each month by taking the price data on a rolling basis for the past six months and the resulting value is applicable for the next month.

Mark to Market Margin

Mark to market loss is calculated by marking each transaction in security to the closing price of the security at the end of trading. In case the security has not been traded on a particular day, the latest available closing price at NSE is considered as the closing price. In case the net outstanding position in any security is nil, the difference between the buy and sell values shall be considered as notional loss for the purpose of calculating the mark to market margin payable.

The mark to market margin (MTM) is collected from the member before the start of the trading of the next day.

The MTM margin is collected/adjusted from/against the cash/cash equivalent component of the liquid net worth deposited with the Exchange.

Equity Derivatives

Initial Margin

Upfront initial margin

Clearing Corporation (CC) collects initial margin up-front for all the open positions of a CM based on the margins computed by CC. A Clearing member (CM) is in turn required to collect the initial margin from the TMs and his respective clients. Similarly, a Trading Member (TM) should collect upfront margins from his clients.

Initial margin requirements are based on 99% value at risk over a one day time horizon. However, in the case of futures contracts (on index or individual securities), where it may not be possible to collect mark to market settlement value, before the commencement of trading on the next day, the initial margin is computed over a two-day time horizon, applying the appropriate statistical formula. The methodology for computation of Value at Risk percentage is as per the recommendations of SEBI from time to time.

Premium Margin

In addition to Initial Margin, Premium Margin is charged to members. The premium margin is the client wise premium amount payable by the buyer of the option and is levied till the completion of pay-in towards the premium settlement.

Assignment Margin

Assignment Margin is levied on a CM in addition to Initial margin and Premium Margin. It is levied on assigned positions of CMs towards interim and final exercise settlement obligations for option contracts on index and individual securities till the pay-in towards exercise settlement is complete.

The Assignment Margin is the net exercise settlement value payable by a Clearing Member towards interim and final exercise settlement and is deducted from the effective deposits of the Clearing Member available towards margins.

Exposure Margin

The exposure margins for options and futures contracts on index are as follows:

- For Index options and Index futures contracts:
3% of the notional value of a futures contract. In case of



options it is charged only on short positions and is 3% of the notional value of open positions.

- For option contracts and Futures Contract on individual Securities:

The higher of 5% or 1.5 standard deviation of the notional value of gross open position in futures on individual securities and gross short open positions in options on individual securities in a particular underlying. The standard deviation of daily logarithmic returns of prices in the underlying stock in the cash market in the last six months is computed on a rolling and monthly basis at the end of each month.

Currency Derivatives

Initial Margin

The Clearing Corporation collects initial margin up-front for all the open positions of a CM based on the margins computed by CC. A CM is in turn required to collect the initial margin from the TMs and his respective clients. Similarly, a TM is required to collect upfront margins from his clients.

Initial margin requirements are based on 99% value at risk over a one day time horizon. However, in the case of futures contracts, where it may not be possible to collect mark to market settlement value, before the commencement of trading on the next day, the initial margin is computed over a two-day time horizon, applying the appropriate statistical formula. The methodology for computation of Value at Risk percentage is as per the recommendations of SEBI from time to time.

Premium Margin

In addition to Initial Margin, Premium Margin is charged to members. The premium margin is the client wise premium amount payable by the buyer of the option and is levied till the completion of pay-in towards the premium settlement.

Extreme loss margin

Clearing members are subject to extreme loss margins in addition to initial margins. The applicable extreme loss margin on the mark to market value of the gross open positions is a fixed percentage as specified by the relevant authority from time to time.

Cross Margins

Cross margining is available across Cash and F&O segment and to all categories of market participants. The positions of clients in both the Cash and F&O segments to the extent they offset each other are being considered for the purpose of cross margining. Cross margin benefit is available for the following offsetting positions:

- Index futures and constituent stock futures in F&O segment
- Index futures and constituent stock positions in Cash segment
- Stock futures in F&O segment and stock positions in Cash

segment

Pre trade risk controls: Risk reduction mode

A Member shall be compulsorily placed in risk reduction mode, when 90% of the member's capital is utilized towards margins. Risk reduction mode is applicable in Capital Markets Segment and F&O segment. When a member moves in to risk reduction mode -

1. All unexecuted orders shall be cancelled once the 90% limit is breached.
2. Fresh orders placed by members to reduce open positions shall be accepted.
3. Fresh orders placed by members that increase open positions shall be checked for sufficiency of margins and orders that do not satisfy sufficiency of margins will be rejected.
4. Fresh orders with immediate or cancel (IOC) attribute shall be permitted.
5. Members will be able to trade in normal mode as and when the utilization goes below 85%.

REGULATION OF MEMBERS

Clearing Corporations in India have been empowered through bye laws and agreements between clearing members and the clearing corporation to create its own regulatory framework to manage the risk.

Clearing corporations have a two tier structure to manage the default risk. CCs deal only with clearing members (CMs) and Professional Clearing Members (PCMs). Banks and financial institutions take up the role of PCMs and large brokerage firms take up the role of CMs. Trading members who trade on the exchange have to clear/settle their trades only through CMs or PCMs. Thus CMs and PCMs accumulate risks of all trading members at their level. While doing so, they ensure that TMs financial status is worthy enough to allow TM to trade both at admission stage and on on-going basis.

CCs regularly monitor the exposure (potential risk) of each of the TM and calibrate the amount of exposure that can be allowed for a TM. In this process, CC evaluates the inherent value of collaterals offered by CMs and may call for additional collaterals as and when required. The regulatory framework empowers the CC to modify, reduce or deny exposure limits to CMs.

CONCLUSION

Robustness of risk management system in the securities market in India is well tested and demonstrated in the form of near zero defaults. The regulatory framework that has evolved over a period of time is only improving its robustness further to make the securities clearing system in India one of the best in the world.

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Safety - A Critical Management Activity

➤ Health, Safety and Environment have now become the key areas of a business and not just welfare. Any compromise on HSE aspects could have serious direct financial, personnel, personal, governance and reputational implications. Businesses have now been realizing this and HSE is increasingly becoming critical business activity.

The world of business has changed. New businesses, new technology, new laws, severe competition, global markets, social awareness, complex processes, demanding and highly skilled employees have completely created a different profile for a business. True, that constantly innovative technology has made project engineering seamless but expectations of the society, complexity of projects and strained resources have added focus on the aspect of the way a business is done and just rightly. No longer can things be taken for granted. In this context Health, Safety and Environment, or HSE in brief have now become the key areas of a business and not just welfare. Any compromise on HSE aspects could have serious direct financial, personnel, personal, governance and reputational implications. Businesses have now been realizing this and HSE is increasingly becoming a critical business activity. When the role of Company Secretaries is increasing it is important for them to comprehend these aspects and being responsible professionals also propagate them in order to facilitate an essential perspective to their organizations.

Safety as part of HSE is inclusive and all pervading across functions of a business both internally and externally. If we talk about Safety, basically we have to understand that most of the accidents are really not 'accidents' but result of somewhere something not done, the way it should be. This means, except for act of God, all

accidents are preventable. And yes, 'disasters' are most of man-made than nature's. A business or any movement is a flow of activity and activity involves tasks.

It will be interesting to disseminate the safety factor in a task. There are various tools to create a safe management. Let's first understand some of the Safety Jargons.

Hazard

Hazard means an element or object of danger which causes damage while performing a task, triggering 'incident'. This damage could be to persons, property, reputation etc. Hazard can be real hazard or potential hazard, meaning arising on happening of an event. Thus incidents happen because of existence of hazards, which also means gravity of an incident depends on gravity of hazards involved.

Risk

The element of existence of hazard/s and triggering of it/them leading to impact/s (happening of an incident) can be called risk/s involved in performance of a task. When apparently we apprehend scaled risks in a task, we say the task or job is risky. But in fact risk/hazard lies in almost all activities.

Incident

An 'Incident' is happening of an event, which involves a safety



Article

Safety - A Critical Management Activity

issue. When a hazard is successful in creating an impact incident happens. In common parlance we may call it an accident. An incident is measured in terms of loss time, known as Loss Time Injury or LTI i.e. working time loss due to injury. Success of a Safety Policy could be measured in terms of LTI Free time.

Assessment of a Risk

Now each task will have different exposure to risk. A risk can be divided into low risk, medium risk and high risk. A task is evaluated on the basis of risks involved in performing it. i.e. Low risk task, medium risk task and high risk task. It's typically called 'Risk Matrix'. Severity of a consequence of a risk could also be rated from 0 to 5 and sub divided into its impact on People, Assets, Environment and Reputation. The risks can again be divided into several categories e.g. never heard, industry specific, frequency in an organization or location etc.

Assessment of a risk involved in a task comes from experience, trends, standards/codes and laws.

In order to create an effective control mechanism to avoid and mitigate risks and consequences a well thought of Risk Matrix of tasks undertaken by a company is very important. Better risk assessment leads to better safety mechanism and incident free task performance. A risk matrix could be one of the likes shown here.

A Risk Matrix:

Severity	Consequences				
	People	Assets	Environment	Reputation	
0	No injury or health effect	No damage	No	Impact	No
1	Slight injury or health effect	Slight damage	Slight	Impact	Slight
2	Minor injury or health effect	Minor damage	Minor	impact	Minor
3	Major injury or health effect	Moderate damage	Moderate	impact	Moderate
4	Some fatalities	Major damage	Major	impact	Major
5	Major fatalities	Massive damage	Massive	impact	Massive

Figure 1

We have now known that a task involves risks in form of hazards and they can create problems. Now therefore, If one is able to minimize hazards or control their impact, one minimises risks/ incidents and its impact. How do you do that? By creating barriers. What is a barrier?

Barrier

A Barrier is a safety device to avoid/mitigate impact of a hazard. Various safety devices, both tangible and intangible are created to ensure that during the flow of a task damages from hazards are prevented, impact diluted. Control mechanisms are applied to each

task depending upon risks assessed in performance of a task. Multiple barriers may be needed for a safe task performance. This is to arrest different risks and controlling a risk at different levels, should it escape through hole/s.

These are called Control Frameworks. Various rules and regulations, dos and don'ts, equipment, exist in an organization, for performing a task e.g. Permission, Alcohol and Drug Policies, Road safety rules, a host of process safety and maintenance rules, Safety clothing and accessories etc. Stricter are they applied lesser are chances of an incident. An objective of an organization will naturally be to keep risks as low as possible. The figure shown here will illustrate the Barrier mechanism.

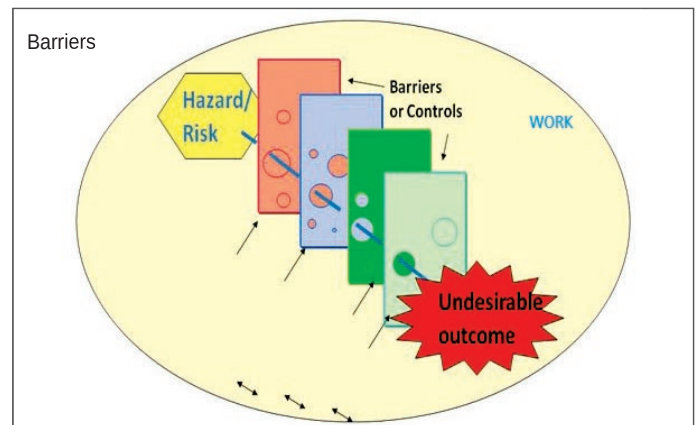


Figure 2

This leads us to an approach of ALARP.

ALARP:

ALARP is abbreviation for the phrase "as low as reasonably practicable". Reducing Risks to ALARP means constant efforts in reducing risk in a task to a level which costs and efforts can maximum achieve. i.e. the lowest level risk achievable, acceptable. How do we read this? See here.

The ALARP decision flow:

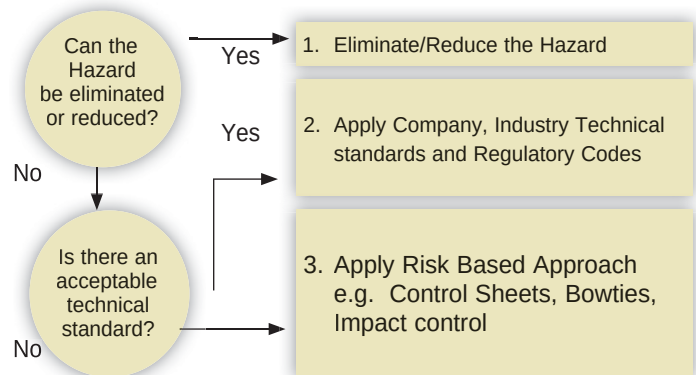


Figure 3



An organization can gradually enhance its safety culture by effectively implementing various Safety Control Mechanisms. A safety culture is moving from no responses or physical simple straight responses to gradually reach to a level where safety becomes a natural way of doing tasks so much so that it also influences other subjects to do the same way.

Bow-tie:

The entire process of risk control mechanism can be represented in a hazard bow tie model. When presented pictorially relations between the hazards, threats and consequences resemble a bow-tie. Preparing a bow-tie for major hazards helps:

1. To identify controls required to effectively manage the hazard
2. To demonstrate the risks associated with the hazards are tolerable and ALARP
3. To identify critical tasks required to manage the hazard
4. To communicate the hazard management process
5. To capture best practices to manage the hazard

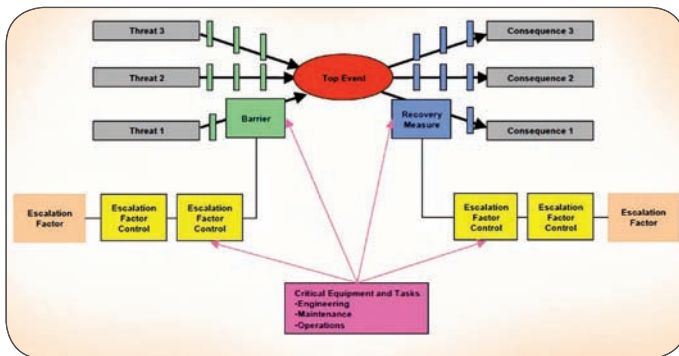


Figure 4

The above diagramme shows how various threats /hazard impacts are being controlled by creating different barriers. It's interesting to note here that gravity of a hazard may escalate when combined with other factors. It's therefore essential that all such forces are perceived and control mechanisms are put in place. While in most cases the impact of hazard will be nullified by the barriers and a task will be accomplished safely, still however, in some cases impact of hazard may push through holes (lacunae) in barriers and create a 'Top Event.' Top Event is actually happening of damage. The right side of a bow-tie indicates how salvage mechanism should work. A typical bow-tie assessment will suggest, controlling impact of damage, recovery from the impacts and remedial measures. Again these can be aided by other positive factors. As we see there could be more than one consequence and it's important that most are visualized. Each bow-tie incident is learning in itself and helps strengthening control mechanisms.

Now how do you achieve creating a bow-tie or risk control mechanism? As narrated initially this comes from experience, trends, standards/ codes and laws, and most importantly keeping a close watch on happening within organization i.e. potential acts of near missing happening of an incident. We can call them near misses.

Risk Pyramid

Near Miss is a situation which explains an incident almost happening. In an organization hundreds of tasks are performed involving various situations, locations, people and equipment. As we understood there is a potential of a risk involved at each step of each task. A popular Risk Pyramid known as Heinrich's Law exists in industry per graph attached.



Figure 5

Herbert Heinrich, a 19th century American and an industrial safety pioneer, propounded that in a workplace, for every accident that causes a major injury, there are 29 accidents that cause minor injuries and 300 accidents that cause no injuries. Meaning that most accidents share common causes and it's therefore critical to check on all 'incidents' and situations that can cause incidents.

Heinrich's work is the basis for the theory of Behaviour-based Safety which holds that as many as 95 percent of all workplace accidents are caused by unsafe acts and that 88 percent of all workplace accidents and injuries/illnesses are caused by man-failure. It's not enough just blaming workers for causing accidents without conducting detailed investigations into the root causes. No matter how strongly the statistical records emphasize personal faults or how imperatively the need for educational activity is shown, no safety procedure is complete or satisfactory that does not provide for the correction or elimination of physical hazards.

It's, therefore critical to check on all near misses and evolve corrective measures. Companies must encourage their staff to report to each near miss. Each near miss will provide learning into holes in barriers and hence provide opportunities to fill them up and create an effective bow-tie.



Safety Management:

A typical safety management activity could be reflected in graphs shown here.



Figure 6

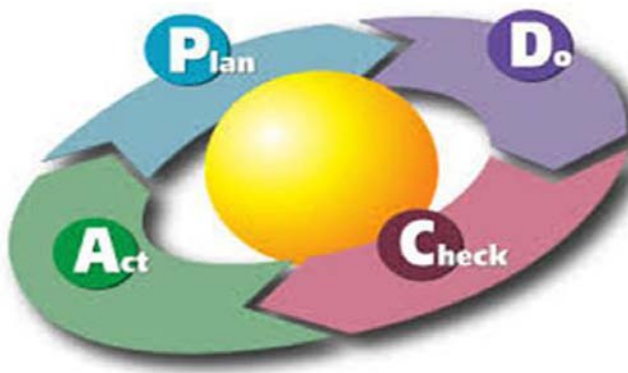


Figure 7

All the tools, models, figure mentioned here are indicative, some are followed in our organization or are based thereon. They provide snap shots of risk factors and attempt to eliminate risks in tasks. There could be other models also. A good company will have various safety mechanisms/tools to mitigate risks. They may have certain Dos and Don'ts, Safety Policy, Procedures, Rules, Code of Conducts, Job Hazard Analysis, etc. A constant unease helps in identifying hazards and mitigating risk impacts. Too much of silence is a signal of laxity and calm before a tempest.

Culture of Safety

All these parameters help creating a culture of safety in an organization. An organization can gradually enhance its safety culture by effectively implementing various Safety Control Mechanisms. A safety culture is moving from no responses or physical simple straight responses to gradually reach to a level where safety becomes a natural way of doing tasks and so much so that it also influences other subjects to do the same way. We can map it in terms of Cultural Ladder. A Safety culture involves various stages of safety levels e.g. Pathological, Reactive, Calculative, Proactive, Generative. [See next illustration (Fig. 8)].



Figure 8

Each level has distinct characteristics and is a progression on the one before. Every company has a certain level of cultural maturity and can see which rung of the ladder they are on, where they have been and what the next step looks like. The goal should be to climb to next step of safety ladder.

We may tend to believe that it's only project or process engineering which needs these lessons. No. Safety is important everywhere. May be at project execution the risks are higher. Thus even at most sophisticated office chance of a person slipping on a floor does exist. At homes when you hold a knife and cut eatables, when you drive, when at a function, everywhere you are exposed to risks. Isn't it? More vigilant a company is, more conscious we are on these tools, safer are we, our people, properties, assets, processes and results. A smiling circle of safety reflects on a successful business. Employees and their families believe that they are safe in working. In a company like ours, it's so much strict that one may choose to ignore Life Saving Rules (LSRs as they are called) to choose not to work with the company. Each industry may have different codes for safety.

Safety- an attitude

Safety is essentially an attitude. Safety is both a personal and collective effort. It requires some extra vision, motivation and preparedness. We do not even realise at what risks we are working, be it home or work. Results from such risks are also a way of our life. We believe that it's like this only. No. It's Not like that. It cannot be, must not be. We need to change our perspective. A chronic unease should sustainably prevail. The constant questions are 'is there a risk', 'There has to be done something'. 'ok what can be done?' We need to look at the things a fresh and from different angles. Each of my staff is important to me as much as each equipment and each result. Each of my act or act of my family is important. I do not have right to harm others. Before I expect something I need to make sure what I need to do to him/her to make him/her comfortable doing the job. Circle of Safety is critical. Each employee should be able to come to work and go back home smiling and loved ones assured of this and what more joy than this it could be?

CS



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Enterprise Risk Management and Company Secretary

- Enterprise risk management assists those entities that have an attitudinal shift in a healthy functioning with a professional like company secretary who has a pivotal role to facilitate businesses. The subject matter of this article transforms the role of a company secretary from compliance-oriented to a mixture of compliance-cum-business oriented professional. Strategic planners, Board members, analysts, consultants, risk compliance officers, CFOs, external and internal auditors and general counsels will also benefit from this discussion.

OBJECTIVE

ERM process enhances risk management across an organisation by using a sustainable risk management framework, executing a continuous and proactive risk assessment process, integrating ERM process with key decision-making processes and aggregating key risk information across the enterprise. A system of enterprise risk management will assist those entities that have an attitudinal shift in a healthy functioning with a professional like company secretary who has a pivotal role to facilitate businesses. The subject matter of this article transforms the role of a company secretary from compliance-oriented to a mixture of compliance-cum-business oriented.

What does an ERM process result in

ERM results in improved risk knowledge through portfolio view of risks, coordinated and informed business decision-making, confidence of Board and management and improved governance and accountability of risk management.

Risk in itself is not bad

What is bad is risk that is mismanaged and misunderstood. There

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are six ways enterprises mismanage risk –relying on historical data by underestimating plunge in future, ignore risk which shouldn't be, overlooking knowable risk (outside class of risk, hedging & market risk and concentration risk), overlooking concealed risk by not reporting, failing to communicate risk (poor, belated or distorted information to CEO and BOD) and not managing risk in real time.

Global Risk Landscape

People are living under a risk landscape that is ever greater than it has been in the past. One way to classify global risk is to understand and manage economic uncertainties risk, governance failure, systemic financial risk, food and energy security risk, supply chain risk, climate change risk, cyber risk, globalization, shifting demographics, rapidly changing technology.

Some of the examples of risk attributable to the said classification could be described as under:

- (i) **Macro imbalances** – wealth and income disparities threatening social and political stability, unsustainable economic development like forex rate volatility and fiscal crisis, asset price collapse (like housing and securities), inflation risk, high level of debt in advanced economies, unfunded liabilities (like social security and pension); governance failures – state fragility,



global illicit trade (\$1.3 trillion a year and still growing), organized crime and corruption which keep countries in poverty and instability.

- (ii) **Systemic financial risk** that leads to abrupt loss of liquidity, economic slowdown and falling asset values (examples like the equity crash of October 1987, Japanese asset price collapse in 1990s, Russian default of 1998 that led to collapse of the U. S.-based LTCM hedge fund, 2007-2008 global financial crisis).
- (iii) **Global food security risk** at the nexus of which are uncontrolled population growth, changing lifestyle, growing use of food crop for bio-fuels and climate change that may shift the World into a more volatile one with sustained high prices besides risk of water and energy due to ever increasing demand that may lead to irreparable environmental damage and social instability.
- (iv) **Supply chain vulnerability risk** - as the global economy has become more integrated, economic optimization of supply chains with geographic concentration has enhanced systemic vulnerability of supply chain failure (example: semiconductor prices doubled globally due to quake in Taiwan in 1999).
- (v) **Risk of energy security** and climate change (example: unprecedented high oil prices at \$160 a barrel in 2008 and demand-supply mismatch, failure to negotiate a successor to the Kyoto protocol that expires at the end of 2012).

Resolution of the sovereign debt crisis is still unclear; consumers and businesses are still hanging fire because of doubts over the U. S. tax and spending policies and how euro zone's debt and banking crisis will unfold?

Remedy against global risk: A concerted international action is required but cannot be achieved due to man-made 'conflict of interest'.

Definition of Risk

Risk is the potential that a chosen action or activity will lead to a loss. There isn't any single definition.

Mathematical Quantification of Risk

$\text{Risk} = (\text{probability of the accident occurring}) \times (\text{expected loss in case of an accident})$.

Need of an ERM System

Every entity exists to provide value for its stakeholders. Entities also face uncertainties. Challenge for management is how much uncertainty to accept, to grow shareholder value. Uncertainties present both risk and opportunities, with potential to enhance or erode value.

Business drivers of an ERM initiative

Corporate governance issues (increased market capitalization & shareholder value, reduced risk and improved communication), competitive advantages in marketplace, earnings protection and enhanced computer technology, are the business drivers of an ERM initiative.

Principles of risk management (what an ERM can do)

Aligning risk appetite and business strategy, enhancing risk responsive decisions, reducing operational surprises and losses, seizing business opportunities, improve deployment of capital, helps an entity where it wants to go and provides entity with new competitive advantages with drive to maximize value.

Definition of an ERM

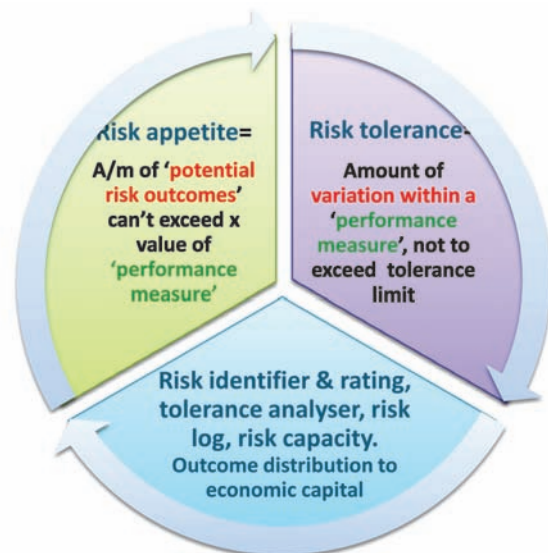
An ongoing process at every level, applied in strategy setting, designed to identify and assess risk, manage risk with risk appetite, keeping unwanted outcomes to minimum acceptable, risk management is important part of the Business Case.

Process of risk management

Establishing the context, identification of potential risks, assessment as to severity of potential loss, create a risk management plan (heart of ERM), implement and review business plan comprises the process of risk management.

Creating a risk management plan

Many of the failings of companies can be attributed to acceptance of excessive risk or poor management of those risks. Risk appetite, risk tolerance, risk target and risk limits are a critical element of a prudent business management. See the diagram below:



Articulating the risk appetite

It requires an entity to consider what its overarching attitude to risk-taking is and how this attitude relates to expectations of its stakeholders. Risk appetite becomes actionable when directly calibrated to company's targeted financial performance indicators.



If the amount of potential risk outcomes fall within the acceptable performance measures (targets), such an amount establishes the total amount of risk appetite.

Testing risks against shareholder value model will enable organisations to have a much better understanding of which risks are important at a much earlier stage.

Desired risk appetite helps facilitate business portfolio decisions (retain v. review).

Risk-receptive or risk-averse risk appetite statements can be set out by management for selection by those charged with governance.

Risk tolerance

Risk tolerance reflects the acceptable level of variation in a performance measure selected for risk appetite. Tolerance gives the outer boundary of risk appetite beyond which entity isn't prepared to take risk. Conveys the actual amount an entity is prepared to put at risk.

Sub-optimal business performance

Business would yield sub-optimal results if the entity takes lower or higher risks than appetite and tolerance level.

Governance analyser of risk appetite plus questions for Boardroom

If a risk appetite is to be of any use to an organisation, it is essential that it is subject to good governance – approve measure, monitor, learn.

Risk types and measurement techniques

Credit risk (risk of default and change in credit quality) is measured for example by (i) stress testing – one shock is given to specific risk drivers by projecting future cash flows based on a particular extreme scenario but for which probability is not specified; or (ii) scenario-based models measuring impact of specific scenarios covering multiple risk drivers; or (iii) static factor model – identify risk drivers, measure risk for each driver by sensitivity analysis, aggregating resulting loss and determine risk capital by applying VaR or conditional tail expectation methods.

Market risk results from volatility and uncertainty inherent in the market value of future cash flows of business from its assets and liabilities. It is measured by changes in value of financial instruments & commodities, in interest and exchange rates, by reduction in asset value or increase in liability value.

Operational risk is the loss resulting from failed or inadequate internal process, people and system, or from external events such as new competitors, business paradigm, major regime change in political, tax and regulatory matters, disasters beyond entity's control. Operational risks are either quantitatively modeled or

qualitatively assessed and may not lead to a capital charge.

Liquidity risk – bank should monitor gap between its assets and liabilities in terms of maturities as banks must honor their commitment by making sure there is enough liquidity. Any mismatch must either rectify liquidity shortfall or anticipate losses due to such shortfall.

Economic capital and measurement techniques

Weaknesses in formulaic approach to assessment of required solvency levels have been noted whilst establishing a link with physical capital (accounting & regulatory). Formulaic approach doesn't necessarily cope with changes in markets (introduction of new products) and cannot deal with all types of risk.

Formulaic approach focuses on difference between the values of assets and liabilities on a balance sheet.

This explains why economic capital is of such primary concern to businesses and their executives, shareholders and regulators.

The concept of economic capital is widely used in management of an entity's resources. 'Economic' refers to a realistic or market-consistent valuation of all risks and 'capital' refers to discounted (present) capital values of future cash flows or to the resources within an entity's balance sheet. $PV = FV \cdot (1+i)^{-n}$

Thus, the concept of economic capital can be used either (i) to measure and optimize the capital resources already existing within a business, or (ii) to determine the amount of capital required by a business to meet the risk inherent in its liabilities and business operations.

Economic capital is measured either by (i) producers' surplus – price received minus lower price a producer is agreeable to supply for a unit of goods or service or (ii) excess of capital over target financial strength acceptable for a specific rating or (iii) discounted present value of future cash flows or (iv) existing capital resources in the balance sheet.

For ERM, economic capital is calculated, so that it is sufficient to cover a certain level of possible losses due to holding risks, and thus it focuses on downside risks in comparison to upside opportunities.

It is important to account for all risks that a business is exposed to for the purpose of economic capital calculation – often a difficult aspect of calculating economic capital. Available economic capital ensures that an enterprise could remain afloat or solvent in the worst case scenario.

Credit risk, market risk, operational risk and liquidity risk are some important categories of risks that need be considered in economic capital calculation.



Developing capital management plan and business plan

An illustrative business and CMP needs to be developed by management for it to be linked with the risk management system for deciding the level of operation allowed within risk appetite chosen by an enterprise.

Example of an efficient risk management model

For example, an effective risk management model can be depicted as follows showing a range of risk appetite, tolerance and risk level (a) risk capacity: available economic capital \$6m (b) risk appetite: \$3 million overall desired level of risk to pursue entity objectives, (c) risk tolerance: of \$4-5 million being acceptable variation in outcome of unit objectives or actual capital put to risk and (d) risk level: low less than \$1 million and high \$5-6 m.

Changes in risk profile calls for revisiting risk appetite and tolerance.

Examples of areas of application of risk management

- (i) Market risks like
 - (a) equity risk, interest rate change risk (by following Value-at-Risk, yield curve technique);
 - (b) repricing risk of assets or liabilities (for example a loan with variable rate will generate more interest income when rates rise);
 - (c) option risk, for example, optionality that is embedded in certain assets or liabilities like a mortgage loan presents significant option risk due to significant prepayment speeds when interest rates fall leaving banks with uninvested cash or slower repayments when interest rates rise;
 - (d) currency risk resulting from change in spot rates in future for exchanging one currency for another;
 - (e) transaction risk that arises due to unfavourable change in exchange rates in spot markets over time which can be hedged against forward exchange contracts;
 - (f) translation risk is an accounting risk held proportionately to assets and liabilities held in foreign currency as this risk flows from differential monetary policy and growth in productivity which results in different inflation rates;
 - (g) commodity risk that deals with fluctuations in prices of commodities caused by uncertainties of future market value of basic resources like crude oil, iron ore, coal, agriculture produce, gold, silver, aluminium, paper, milk, ethanol, etc.
- (ii) Credit risk against debtor's non-payment of loan or receivable, on revolving products like credit cards and overdrafts which have credit limits assigned, credit rating to estimate credit worthiness of a corporation or individual or a country.
- (iii) Operational risk in execution of business functions.
- (iv) Benefit risk resulting from actual benefits being lower than projected benefits by over or underestimation of cost estimates

(example: channel tunnel between the U. K. and France where benefit shortfalls coincided with largest cost overrun, also cost overruns in Sydney Opera House, Millennium Dome in London and Montreal Olympic Stadium), application of reference class forecasting technique that predicts outcome of a planned action based on actual outcomes of similar actions to that being forecast developed by Prof. Kahneman of Princeton University that won him the Noble Prize of 2002 (example: reference class forecasting was used by the British Government for the Edinburg tram extension project and also followed by the Netherland, Switzerland, Denmark and the U. S.)

World financial crisis 2007-09

Non- existent ERM system in place to manage and monitor risk at the transaction level rather than wait for the outcome of delinquencies and losses, lost output, lost jobs and lost wealth.

Risk profile management

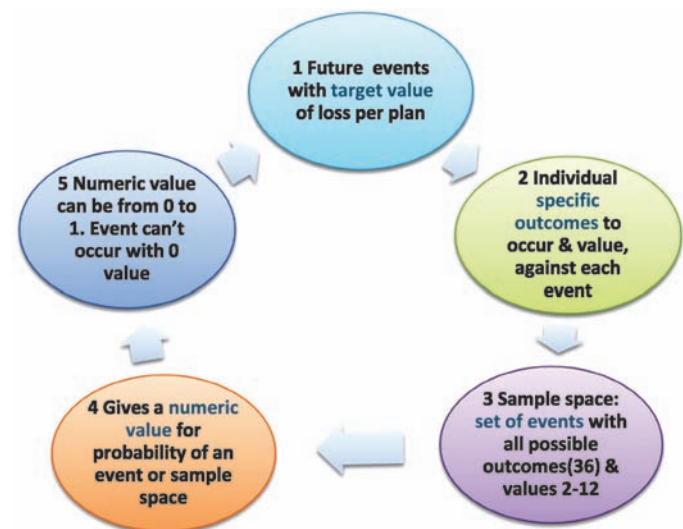
This is a tool for risk identifier, risk ratings, tolerance analyser, tolerability level, risk log, risk outcome distribution to economic capital in proportion of risk rating, for proper and efficient risk management in enterprises.

Probability measurement techniques

For a specific outcome to occur as a result of an event or set of events (called sample space) probability measurement technique is an important skill set to acquire.

Probability is one of the two components of quantifying a potential risk loss, the other one being estimated loss.

Probability, when applied to estimated loss from a potential event, gives the reduced risk amount that only needs be backed up with the risk or economic capital by an enterprise. See diagram below for steps to quantify probability:





Other aspects to be remembered

Risk owners need be identified and management should be budgeting for risk management.

Risk types to remember – global risks, chronic global risks (economic damage of \$10b or more), event-driven global risk (pandemics).

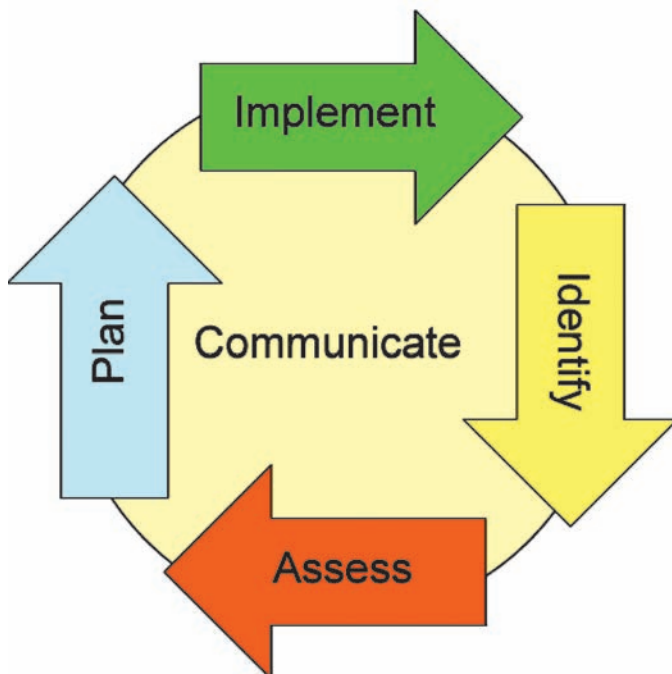
Risks to watch – cyber security, demographic change, resource security, WMDs.

Risk strategy *vis-à-vis* revenue and profit strategy – Like an enterprise has revenue and profit strategy, it should also have a risk strategy, to succeed.

Corporate finance as financial risk

Capital investment decisions include (i) investment decision, (ii) financing decision and (iii) dividend decision. These decisions present a financial risk if shareholder value is not enhanced. One important objective of ERM is to enhance shareholder value by leveraging good financial decision-making.

Risk management at a glance



Target audiences for an ERM initiative

Managers and professionals across corporates and businesses, including MNCs, banks, public sector enterprises and industry chambers.

Anticipated skill-sets

Become a business consultant to help decide strategies to address business risk (e.g., marketing – risk of loss of demand of leading products, new product development), risk analyst by designing risk programmes for marketing and procurement processes, become a project management leader due to multiple phases of ERM process and become a chief risk officer whilst implementing ERM.

Readers could acquire a wide range of quantitative techniques of risk measurement and economic capital, after practicing the concepts.

Quiz: Test your ERM knowledge

Answer Yes or No

- 1 An ERM system is a passive, as against proactive, risk assessment process.
- 2 An ERM system provides a portfolio view of risk, as against individual risk.
- 3 An ERM system requires application of quantitative techniques to measure risks and economic capital.
- 4 Is rapidly changing technology, though good for businesses, a risk?
- 5 Which of the following is true or false?
(a) Business uncertainties present only risk.
(b) Business uncertainties present both risk and opportunities.
- 6 Is risk-taking considered bad always?
- 7 Is risk appetite and tolerance management determined depending upon if entity is risk receptive or risk averse?
- 8 Do risk appetite and tolerance (part of risk capacity) consume the economic capital?
- 9 Is economic capital reflected by realistic or market consistent valuation of all entity risks?
- 10 Is it right to say that there are measurement techniques to estimate (i) probability of specific outcome (example: destruction of signage) to occur as a result of an accidental event (rain storm) and (ii) expected loss in case of the accident (\$200)?
- 11 Is it correct to say that risks are distributed to available economic capital based on risk rating priority?
- 12 Does individual risk above tolerability level requires action by the risk owner –mitigate?
- 13 Does risk rating give tolerability level of each risk in risk log?
- 14 Are capital investment decisions (investment, financing and dividend) subject to financial risk (not maximizing shareholder value)?

[Answers: 1.Proactive; 2. Portfolio view of risk; 3.Yes; 4.Yes; 5.(a) False; 5. (b)True; 6. No; 7. Yes; 8.Yes; 9.Yes; 10.Yes; 11.Yes; 12. Yes; 13.Yes; 14. Yes]

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Analysis of Interest Rate Exposure & Hedging Techniques of Banking Companies

- The objective of risk management in banks is to minimize the negative effects of risks that can affect the financial result and capital of a bank. Banks are therefore required to form a special organizational unit in charge of risk management and also prescribe procedures for risk identification, measurement and assessment, as well as procedures for risk management.

INTRODUCTION

Risk can be defined as the volatility of the potential outcome. It is the possibility of something adverse happening. The dictionary meaning of risk is a probability of damage, liability, loss, or any other negative occurrence that is caused by external or internal vulnerabilities, and which may be avoided through preemptive action. A risk can be defined as an unplanned event with financial consequences resulting in loss or reduced earnings. Therefore, a risky proposition is one with potential profit or a looming loss. Risk stems from uncertainty or unpredictability of the future. In commercial and business transactions risk generates profit or loss depending upon the way in which it is managed. Risk Management is a process of identification, assessment, analysis and either acceptance or mitigation of uncertainty in investment decision-making to reduce the risk to an acceptable level and maintaining that level of risk. Essentially, risk management occurs anytime an investor or fund manager analyzes and attempts to quantify the potential for losses in an investment and then takes appropriate action given their investment objectives and risk tolerance. Inadequate risk management can result in severe consequences for companies as well as



individuals. Thus, one can say that after the risks have been identified, risk management attempts to lessen their effects. This is done by applying a range of management techniques. For example, the risk may be reduced by taking out insurance or using derivatives or re-plan the whole project. Risk Management is a very



important area of banking and it has a controlling role in the business. For example, we make sure that the bank does not take too much money from the client, or push them into liabilities. Basically we want to know they can repay the debt (Diana, Frankfurt).

Banks started realizing the importance of analysis and management of risk in the Indian economy during the post liberalization era. The foremost among the challenges faced by the banking sector today is managing the risk. The very nature of the banking business is having the threat of risk imbibed in it. Hence, having regard to international banking rules, Basel Committee Accords and RBI guidelines the investigation of risk analysis and risk management in banking sector has assumed added significance.

OBJECTIVES OF THE STUDY

The essential function of risk management is to identify, measure and more importantly monitor the profile of the bank. While NPA is the legacy of the past, risk management system is the pro-active action in the present for the future. Managing risk is nothing but managing the change before the risk occurs. Keeping the above points in mind the following are the objectives of the present study.

- To identify the risks faced by the banking industry
- To analyze various types of risks associated with banks
- To trace out the process and system of risk management
- To examine the techniques adopted by banking industry for interest rate risk management

RESEARCH METHODOLOGY

The present study is a theoretical modal based on extensive research for which secondary source of information has been gathered. The sources include online publications, Books and journals.

REVIEW OF LITERATURE

There have been lots of studies relating to the performance of commercial banks. The present study reviews the risk management with reference to management of non performing assets, associated with public and private sector banks in India.

The study of Zacharias Thomas (1997) related to the performance effectiveness of nationalized Bank by taking Syndicate Bank as case study. The study found that Syndicate Bank got 5th Position in Capital adequacy and quality of assets, 15th in Profitability, 14th Position in Social Banking, 8th in Growth, 7th in Productivity and 15th position in Customer Service among the nationalized banks.

Das, Abhiman (1999), studied the profitability in public sector banks with decomposition model. He tried to make all attempts to compare the interbank performance of public sector banks

» Risks can be primarily divided into financial and non-financial risks. Financial risks involve all those aspects which deal mainly with financial aspects of the bank. This can be further subdivided into credit risk and market risk. Non-financial risks entail all the risks faced by the bank in its regular workings.

during the reforms period. The study found a certain convergence taking place in the performance of the public sector banks during the years of study.

Lahiri, A. & Mokashi, R. (2000), emphasised on capital adequacy for strong banking system risk management. They suggested that meeting regulatory capital requirement, is however, not a substitute for banks own assessment of their economic capital and all banks eventually need to arrive at and comply with their economic capital levels where they exceed the regulatory capital levels.

Talwar, S. P. (2000) emphasized that financial stability requires appropriate action at both the micro and macro level. The micro dimensions consist of three pillars - institutions, market and infrastructure. Preventive attention by the regulators must then focus on each of the three pillars supporting both the domestic and international financial system namely, the good health of financial institutions through appropriate regulation and supervision, proper functioning of the market and establishment of a sound infrastructure, establishing transparent accounting and adequate disclosure standards.

Jain, J. (2000) discussed some solutions for a strong risk management in banking. He suggested that technology changes, human resource development, improvement in corporate governance, reforming legal system and rural finance will help in making banking system strong.

Kaveri, V. S. (2001) in his study dealt with some strategies suggested by RBI to prevent the NPAs. Other strategies to prevent the NPAs are stock inspection, study of ledger book transactions, scrutiny of periodicals statements and discussions with borrowers and co-bankers.

Samal, B. (2002) opined that it is not possible to eliminate totally the non-performing assets in the banking business but it can only be minimized. It is always wise to follow the proper



Article

Analysis of Interest Rate Exposure & Hedging Techniques of Banking Companies

policy appraisal, supervision and follow-up of advances to avoid NPAs. For reduction of NPAs, though there is a greater need of political threat and effective enactment of laws to recover NPAs, the banks should also take advantage of Debt Recovery Tribunals, Lok Adalat, the legislations enacted by the state government and one time settlement scheme.

Chhimpa, J. (2002) found that bank credit itself is being encroached by other financial instruments and non-banks. In these competitive times, bank lending decisions require relevant and credible information architecture to control credit process and help framing future views on the activity under lending consideration, interest rates, flow of money etc.

Gujral, N. (2003) found that with the enactment of the landmark Securitization Act, a giant leap forward has been taken, but there is still a long way to go. It is a tool and not a weapon in the hands of the bank to shoot the defaulters. It is an enabling provision, an extra right, which will be used by banks very sparingly, as a last resort to nail the persistent defaulters only.

Ram Mohan T. T. (2003), in his study on Long run performance of public and private sector bank stocks made an attempt to compare the three categories of banks – Public, Private and Foreign – using Physical quantities of inputs and outputs, and comparing the revenue maximization efficiency of banks during 1992-2000.

Gupta, S. and Kumar, S. (2004) found that the redeeming feature of banking sector reforms is the continuing fall in gross and net NPAs as a proportion of total assets for all bank groups except private sector banks.

Vashisht, A. K. (2004), studied the recent global developments, which have transformed the environment in which commercial banks operate. The study found that globalization has expanded economic interdependence and interaction of countries greatly.

Singla H K (2008), in his study on financial performance of banks in India examined how financial management plays a crucial role in the growth of banking. The study reveals that the profitability position was reasonable during the period of study when compared with the previous years.

Surprisingly very less research materials is available on the risk management of commercial banks in India. Therefore, an important research gap can be easily identified here paving the way of empirical investigation.

CLASSIFICATION OF RISK

Risks can be primarily divided into financial and non-financial risks. Financial risks involve all those aspects which deal mainly with financial aspects of the bank. This can be further subdivided into credit risk and market risk. Non-financial risks entail all the



risks faced by the bank in its regular workings. Let us discuss the various types of risks associated with banking companies under the following sub-headings:

1. **Credit Risk** is the risk of negative effects on the financial result and capital of the bank caused by borrower's default on its obligations to the bank. This is a bank's internal credit approval and monitoring functions of the bank. It looks at how risky transactions are going to be, and whether they are really worth that risk. For example, it will set the levels of 'risk-adjustment' on credit arrangements. In other words, lending to a company with a poor credit rating will probably mean setting a high level of interest on the loan. This is a really important element of the bank's business because managing the credit risk is vital.
2. **Market Risk** is the risk of change in the market price of securities, financial derivatives or commodities traded or tradable in the market. It includes interest rate and foreign exchange risk.
3. **Interest Rate Risk** is the risk of negative effects on the financial result and capital of the bank caused by changes in interest rates. The risk that an investment's value will change due to a change in the absolute level of interest rates, in the spread between two rates, in the shape of the yield curve or in any other interest rate relationship. Such changes usually affect securities inversely and can be reduced by diversifying or hedging. Interest rate risk affects the value of bonds more directly than stocks, and it is a major risk to all bondholders. As interest rates rise, bond prices fall and vice versa. The rationale is that as interest rates increase, the opportunity cost of holding a bond decreases since investors are able to realize greater yields by switching to other investments that reflect the higher interest rate. For example, a 5% bond is worth more if



interest rates decrease since the bondholder receives a fixed rate of return relative to the market, which is offering a lower rate of return as a result of the decrease in rates.

4. **Foreign Exchange Risk** is the risk of negative effects on the financial result and capital of the bank caused by changes in exchange rates.
5. **Operational Risk** is the risk of negative effects on the financial result and capital of the bank caused by omissions in the work of employees, inadequate internal procedures and processes, inadequate management of information and other systems, and unforeseeable external events. This department covers the risks associated with the day-to-day running of the bank. There are different types of operational risks; some of them are Internal fraud (tax evasion, bribery); external fraud (theft of information, hacking); employment practices and workplace safety (health and safety, discrimination); clients, products and business practice; damage to physical assets; business disruption and systems failures; execution, delivery and process management.
6. **Investment Risk** includes risks of bank's investments in entities that are not entities in the financial sector and in fixed assets. If the bank acquires another company there will be a whole new set of risks associated with the new company. All these risks need analyzing, and that is one of the tasks of the investment risk manager. The new company will also need to have its risk processes aligned with the parent company.
7. **Country Risk** is the risk of negative effects on the financial results and capital of the bank due to bank's inability to collect claims from an entity for reasons arising from political, economic or social conditions in such entity's country of origin. Country risk includes political, economic,

and transfer risk.

8. **Liquidity Risk** is the risk of negative effects on the financial result and capital of the bank caused by the bank's inability to meet all its due obligations.
9. **Exposure Risks** include risks of bank's exposure to a single entity or a group of related entities, and risks of banks' exposure to a single entity related with the bank.
10. **Strategic Risk** is the risk of loss caused by a lack of a long-term development component in the bank's managing team.
11. **Reputational Risk** is the risk of loss caused by a negative impact on the market positioning of the bank.
12. **Legal Risk** is the risk of loss caused by penalties or sanctions originating from court disputes due to breach of contractual and legal obligations, and penalties and sanctions imposed by regulatory bodies.

HEDGING TECHNIQUES OF INTEREST RATE RISK

Risks are part of the normal life of commercial banks and in order to remain competitive, the borrower might choose to manage those risks through the use of one or more techniques. Banks are more and more aware of the value of hedging their Interest Rate risks actively. The number of products and strategies available has grown considerably over the last few years. Derivative is one of the most commonly used hedging techniques for Interest Rate risk hedging. As the name suggests, "derivative" is a product derived from standard transactions on underlying instruments. The underlying instrument may be an interest rate, currency, equity or bond. The price of a derivative varies amongst others according to the price of the underlying instrument. The following derivative techniques can be used to hedge interest rate risk.

Forward Rate Agreement

A FRA is an agreement between two parties who agree on a fixed rate of interest to be paid / received at a fixed date in the future. The interest exchange is based on a notional principal amount for a term of not greater than six months. FRA's are used to help banking companies manage their interest rate exposures. A FRA can be arranged for terms ranging from one to six months and beginning up to 18 months from deal date. It is an agreement between the Bank and borrowers to exchange the net difference between a fixed rate of interest and a floating rate of interest. This exchange is based on the notional amount that require for the term nominated. The net difference between the two interest rates is applied against the underlying borrowing.

Example-1: A Banking company, which has borrowed on a variable interest rate basis, has formed the view that interest



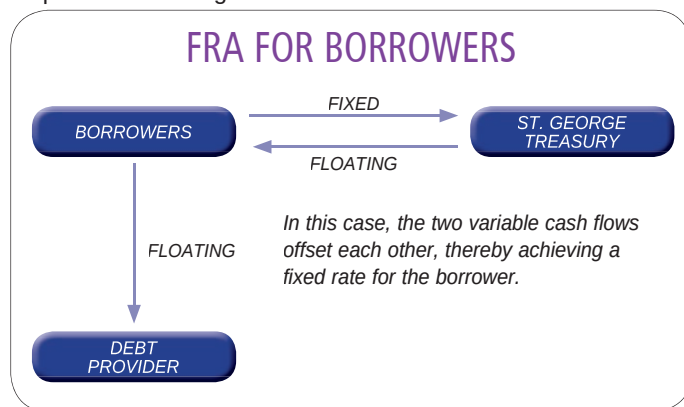
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Analysis of Interest Rate Exposure & Hedging Techniques of Banking Companies



Risks are part of the normal life of commercial banks and in order to remain competitive, the borrower might choose to manage those risks through the use of one or more techniques. Banks are more and more aware of the value of hedging their Interest Rate risks actively.

rates are likely to rise. The company elects to pay fixed rate for all or part of the remaining term of the borrowing using an FRA or a series of FRA's, while their underlying borrowing remains variable, but hedged. This process can be explained with the help of the following illustration:



Source: <http://www.stgeorge.com.au>

In this case, the two variable cash flows offset each other, thereby achieving a fixed rate for the borrower.

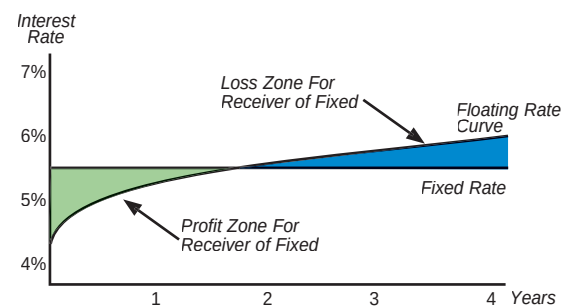
Interest Rate Swap

Banks are doing large number of transactions involving loans, derivatives contracts and other investments. The bulk of fixed and floating interest rate exposures typically cancel each other out, but any remaining interest rate risk can be offset with interest rate swaps. Interest Rate Swap is an agreement whereby two parties agree to periodically swap an interest rate over a specific period for a specific underlying amount. The parties do not exchange any capital, but swap only the interest rate structures they have agreed generally - a fixed rate against a floating rate. It is a financial deal in which two parties agree to exchange cash flows relating to an interest rate, such as the State Bank of India's base rate. The agreement is based on a specified amount of money, or Notional Principal, over a specified period of time.

A bank attorney is contacted by a client wishing to enter into an interest rate swap agreement. In the example shown in the graph below, the investor has elected to receive fixed in a swap contract. If the forward LIBOR (London Interbank Offered Rate) curve, or floating-rate curve, is correct, the 5.5% he receives will initially be better than the current floating 4% LIBOR rate, but

after some time, his fixed 5.5% will be lower than the floating rate. At the inception of the swap, the "net present value," or sum of expected profits and losses, should add up to zero.

At Typical Swap Transaction At Inception



When an investor enters into a swap, the difference between the fixed rate payments and expected future floating rate payment should be zero (the blue zone equals the gray zone)

Source : PIMCO

However, the forward LIBOR curve changes constantly. Over a period of time, as interest rates implied by the curve change and as credit spreads fluctuate, the balance between the gray zone and the blue zone will shift. If interest rates fall or stay lower than expected, the "receiver" of fixed will profit. If rates rise and hold higher than expected, the "receiver" will lose. If a swap becomes unprofitable or if a counterparty wishes to shed the interest rate risk of the swap, that counterparty can set up a countervailing swap – essentially a mirror image of the original swap – with a different counterparty to "cancel out" the impact of the original swap. For example, a receiver could set up a countervailing swap in which he pays the fixed rate (Investment Basics).

Callable Interest Rate Swap

A callable interest rate swap means that you have a better rate than with an IRS by giving bank the right to cancel the IRS contract after a certain period. Usually, one can have a non-call period. A callable interest rate swap enables a party to pay a lower rate than the fixed interest rate. During the non-call period (period for which you have a guaranteed fixed rate) you will definitely benefit from a lower rate. However there is also risk being unhedged after the non-call period. During the callable period bank has the right to cancel the structure on a quarterly basis. Consequently one may pay a floating rate if the bank cancels the structure. After such period, the bank will have the



right to cancel the contracted IRS on each comparison date. Similar to a regular swap, a Callable Fixed Rate Swap provides the borrower with fixed rate protection without upfront fees. However, on a given "call date", one party owns the one-time right to call or cancel the swap without penalty. If a bank owns the right to cancel, the transaction is priced at a discount to a regular fixed rate swap. If the client owns the right to cancel, the transaction is priced at a slight premium to a regular fixed rate swap. Callable Swaps are an attractive alternative for borrowers who are concerned about the potential cost or loss that may arise if the hedge is terminated early.

Example-2: Supposing a bank has just closed on a 3-year interim bank financing for a particular construction project. The bank may like to sell the stabilized property after 20 months and want to terminate the hedge. The bank could enter into a 3-year Callable Swap with the right to terminate after, say, a 20 month lockout period. After 20 months, the swap can be terminated without any risk of penalty, even if interest rates have fallen. Further, if a hedge is still desired, the existing swap can be terminated and reset at the lower market rate. If the hedge is cancelled during the lockout period, the company will incur the risk of an early termination penalty. However, the risk applies only to the remaining term of the lockout period.

Cap, Floor and Collars

Companies that borrow at a margin over a floating rate of interest will incur additional costs in case of interest rates rise. In a rising interest rate environment some companies may wish to eliminate this risk by entering into a Cap with a Knock in Floor. Interest Rate Caps, Floors and Collars are option-based interest rate risk management products. These option products can be used to establish maximum (cap) or minimum (floor) rates or a combination of the two which is referred to as a collar structure. These products are used by investors and borrowers alike to hedge against adverse interest rate movements.

Interest Rate Cap: A cap is a derivative in which the buyer receives payments at the end of each period in which the interest rate exceeds the agreed strike price. For instance an agreement to receive a payment for each month the LIBOR rate exceeds 2.5% is an example of cap. It provides variable rate borrowers with protection against rising interest rates while also retaining the advantages of lower or falling interest rates.

Example-3: If current market rate is 6%, you would pay more for a Cap at 7% than a Cap at 8.5%. The premium for an Interest Rate Cap also depends on the rollover frequency and how you make your premium payments.

Interest Rate Floor: A floor is also a derivative contract in which the buyer receives payments at the end of each period in which the interest rate is below the agreed strike price. This is exactly



opposite of a cap in that a floor pays out when the reference rate falls below the strike rate. This would be used by an institution that wished to protect against a fall in income caused by a fall in interest rate, e. g. a commercial bank with a large proportion of floating-rate assets and for the floor buyer, the payoff at a reset date is as follows if the value of the reference rate at the reset date is less than the floor rate.

Example-4: If current market rate is 6%, you would pay more for a Floor at 5% than a Floor at 4.5%.

Interest Rate Collars: The simultaneous purchase of an interest rate cap and sale of an interest rate floor on the same index for the same maturity and notional principal amount. The combination of a cap and a floor creates a collar, which is a corridor that fixes interest payment or receipt levels. A collar is sometimes advantageous for borrowers because it is a lower cost than a straight cap. It protects against a rise in rates, and provides some gain if there is a fall down to the floor rate. The cheapest structure is a collar with a narrow spread between cap and floor rates.

Example-5: As a borrower with current market rates at 6%, you would pay more for an Interest Rate Collar with a 4% Floor and a 7% Cap than a Collar with a 5% Floor and an 8.5% cap.

Twin Cap

If the bank thinks that the short-term interest rate will rise but narrowly, it can enter a Twin cap structure as an alternative to standard cap hedging. There are two different guarantee levels in this structure. The premium will be lower than with a standard cap. With a Twin cap you will have two different levels of protection corresponding to the two cap rates. For each period



Article

Analysis of Interest Rate Exposure & Hedging Techniques of Banking Companies

we will compare the Euribor and the different cap rates. There are 3 possibilities- 1. The Euribor is under the first cap rate. You will not exercise your right. You will continue to borrow at the market rate, 2. The Euribor is between the 2 cap rates. You will exercise your right and borrow at the first cap rate, and 3. The Euribor is above the second cap rate, your protection at the first level will be cancelled but you will still be protected at the second level. The difference in interest between the Euribor and the cap rate will be set two business days before the start of each period but will only be paid out at the end of the period. A twin cap can be concluded as from a notional amount of €250,000. Generally the duration is from 1 to 10 years (ING wholesale banking).

CONCLUSION

There have been tremendous changes in banking sector. The future of banking industry will undoubtedly rest on risk management dynamics and only those banks that have efficient risk management system will survive in the market in the long run. The objective of risk management in banks is to minimize negative effects of risks that can affect the financial result and capital of a bank. Banks are therefore required to establish special organizational units in charge of risk management. They are also required to prescribe procedures for risk identification, measurement and assessment, as well as procedures for risk management. Risk management in Indian banks is a relatively new practice, but has already shown to increase the efficiency in governance of these banks as such procedures tend to increase the corporate governance of a financial institution. In times of volatility and fluctuations in the market, financial institutions need to prove their mettle by withstanding the market variations and achieve sustainability in terms of growth and well as have a stable share value. Hence, an essential component of risk management framework would be to mitigate all the risks and rewards of the products and service offered by the bank. Thus the need for an efficient risk management framework is paramount in order to factor in internal and external risks. Commercial banks are also subject to regulations depending on the type of bank, specialization and state in which they operate, commercial banks work within a framework of legal regulation because when regulations change, the bank's operational framework changes, which may impact its ability to generate profits from loans.

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Emerging Cross Border Risks in Global Business

➤ Cross border businesses are hedged with several risks and therefore there is an imperative need for such business entities to take adequate precaution to safeguard themselves against the risks by putting in place an effective risk management system and reviewing the same from time to time.

Introduction

Cross Border Businesses basically cover two types of business namely Trade and Investment. The days when business enterprises were purely nationalistic in their business strategies are almost over. Even many of the smallest companies now operate across multiple jurisdictions. In fact, some companies are today 'born global' and derive a high proportion of their revenues from overseas customers from their inception. E-Commerce is a special category of borderless business or having limits in its operation beyond borders. For e-Commerce, the world is indeed "flat."

Cross-Border Businesses, Multinational Corporations (MNCs) or Transnational Corporations (TNCs), Foreign Institutional Investors (FIIs), Foreign Direct Investors (FDIs) have long played an important role in the world economy. Greater international exposure introduces companies with potential opportunities. Local opportunities for revenue growth constrained for some years bound many companies across the region – both in Europe's better performing and 'deep crisis' economies – are directing their exports and capital investments beyond the European Union (EU). Greater specialization and supply chain complexity can also cause companies to look overseas, because the best – and often the cheapest – services, such as manufacturing or business process

outsourcing, may be found many thousands of miles away from corporate headquarters. All these International trade and investment associated with higher levels of diversified risks.

DIFFERENT TYPES OF RISKS

Micro and Macro Risks

These are risks that a foreign government may significantly alter its policies or other regulations so that it negatively impacts the business climate in that country or the returns on a particular industry, company, or project. Macro-country risk deal with policy changes that harm, say, exporters or foreign-owned businesses in general, while micro-country risk implies that a government will deliberately target a particular company or way of making a living. For example, the political climate of a country in which defense contractors operate may turn against one particular company because of its perceived excesses or against defense contractors in general. This may cause the government to revoke contracts for one or more defense contractors.

Political Risks

Political risk is the risk that a foreign government will significantly alter its policies or other regulations so that it significantly affects one's investment. Political risk is a fact of commercial life for companies and institutions with overseas investments and contracts. More broadly, it can apply to the risk that a nation will



Article

Emerging Cross Border Risks in Global Business

refuse to comply with an agreement to which it is a party, or that political violence will hurt an investment or business. For example, if one exports goods to a foreign nation, and that nation elects a new government that enacts protectionist tariffs, this will negatively impact the export business. Recent events in the Ivory Coast, Egypt, Greece, Italy and Libya have highlighted the growing risk issues around cross border trading. Many businesses are more than aware of the physical and more obvious risks in this area, but are less familiar with the potential for interruption caused by politically driven regulation including sanctions, arising from multiple multilateral, national, regional and domestic sources. Politically motivated violence, wars, terrorism and civil wars continue to affect over half of the countries of the world and many do not have the institutional robustness to absorb such events. Furthermore, there have been plenty of examples in recent years of resource nationalism, Government restrictions on capital flows and breach of contract. Politics are exerting ever greater influence over cross border trade and it seems that this influence will continue.

Foreign Exchange Risk

In foreign exchange, the risk is that a foreign central bank will significantly alter its monetary policy or other foreign exchange regulations so that it significantly affects one's currency trades. More broadly, it can apply to any political risk that a nation will refuse to comply with an agreement to which it is a party. For example, if one conducts a currency trade involving a pegged currency and the country in question decides to let its currency float, it can significantly impact the profitability of the currency trade. Governments can impose restrictions on levels of foreign ownership, foreign exchange availability and rates, or movements of cash and securities. Any of these events, especially when they occur without prior notice, can impede and/or delay settlement in the related market. To the extent that relationships exist between transactions in the restricted market and other markets, liquidity and credit risks can increase, ultimately spreading to other markets.

In Fixed Currency, the government may link the value of another currency or, rarely, some valuable commodity like gold. For example, under the Bretton Woods System, most world currencies fixed themselves to the U.S. dollar, which in turn fixed itself to gold. A government may fix its currency by holding reserves of the other currency (or the asset to which it is fixed) in the central bank. For example, if a country fixes its currency to the British pound, it must hold enough pounds in reserve to account for all of its currency in circulation.

Geographic Risk

This is a risk to an investment in a specific geographic area. Specifically, it refers to the possibility that a natural disaster to which an area is prone will negatively impact an investment. For example, a company pumping oil in the Gulf of Mexico carries a geographic risk that a hurricane will destroy its infrastructure. In Turkey Regional Investment Incentives Scheme Instruments are provided to the Investors to invest in six different regions. The

Government of India has put in place several policy measures and incentives to attract investors to establish business into the underdeveloped or least developed and Special Economic Zones. The Industrial zones of Baddi in Himachal Pradesh, Pauri in Uttarakhand come under Himalayan region.

Environmental Risk

It is an estimate of the likelihood or probability of an adverse impact on the environment resulting from human activities. The environment is important because of its ecological, economic or social significance to an ecosystem. All species human, animal and plant have an intrinsic right to a healthy environment and this right extends beyond the present generation to the future generations. A factor affecting ecosystem processes functions or attributes, which are related to human actions. Impacts from past pressures have resulted in a variety of cumulative effects (e.g., land use decisions, dam construction, etc.)

The Union Carbide Gas disaster in Bhopal is a classic case of Environmental impact. The Vedanta Alumina has established a 1 mtpa plant in Lanjigarh in Odisha and they are now not allowed to get Bauxite from Niyamgiri which is a tribal inhabitation and a relentless campaign has been launched against mining of bauxite by certain sections of society, political class, NGOs, in the name of environment and tradition. In certain cases the business has adverse impact and in some cases there is opposition perceiving environment impact.

Financial Risk

Financial risk is an umbrella term for multiple types of risk associated with financing, including financial transactions that include company loans in risk of default. Risk is a term often used to imply downside risk, meaning the uncertainty of a return and the potential for financial loss. In addition to financial risks, there are five broad categories of investment risks known as five risks. Financial risk more particularly covers credit risk and market risk. Other types include Foreign exchange, Share Volatility, Sector, Liquidity, Inflation risks, etc. Market risk is the risk of losses in positions arising from movements in market prices. Some market risks include:

- Equity risk, the risk that stock or stock indexes (e.g. NSE 50, etc.) prices and/or their implied volatility will change.
- Interest rate risk, the risk that interest rates (e.g. Libor, Euribor, etc.) and/or their implied volatility will change.
- Currency risk, the risk that foreign exchange rates (e.g. INR/USD, EUR/GBP, etc.) and/or their implied volatility will change.
- Commodity risk, the risk that commodity prices (e.g. corn, copper, crude oil, etc.) and/or their implied volatility will change.

Risk of rapid and extreme changes in value due to: smaller markets; differing accounting, reporting, or auditing standards; nationalization, expropriation or confiscatory taxation; economic conflict; or political or diplomatic changes. Valuation, liquidity, and regulatory issues may also add to foreign investment risk.



» Among the many challenges facing risk managers one crucial issue is how to effectively manage cross-border risks, which is more important today than in the past. The risks associated with cross-border transactions are high and risk aversion is high, but the margin for error is low. This means that risk managers' job has become more difficult.

Report of the Payments Risk Committee of US Securities Settlement Sub-Committee on Cross-Border Risks

The Payments Risk Committee of US Securities Settlement Sub-Committee in its Report on Cross-Border Risks has identified six significant areas of risk that arise from both local and cross-border activity. The consequences of these risks tend to be more complicated with cross border activity. There are other risks (e.g. market risk) that may arise during periods of cross border settlement; however, it was felt that these are the primary risks and should be the focus of the report. To a large extent these risks are interrelated; the occurrence of one risk often gives rise to another. In addition to a definition of each of the risks, the following discussion provides a brief overview of the Sub-Committee's concerns.

Liquidity Risk

In the context of this Report, Liquidity Risk reflects the possibility that a party will have insufficient funds to settle an obligation for full value when due, but will have funds to cover settlement obligations on some unspecified date thereafter. In non-bankruptcy situations, the allowable methods to cover short positions are generally driven by local market conventions. As a result, liquidity could be adversely affected by prohibitions on transactions such as Repos, Reverse Repos and Securities Lending. In a participant default that leads to a significant liquidity shortfall (either cash or securities) in one settlement system, positions of the defaulting institution might be unwound in order to attain a zero or near zero position. In an unwind, both the securities and cash sides of transactions are assumed to be reversed. The result may be that other non-defaulting participants in the market may attempt to withhold movements of transaction assets (either cash or securities) where possible, to minimize their liquidity shortfalls. The vast concentration of liquidity risk is generally felt to be incurred by the local and cross-border clearing agents and ultimately dealers.

Credit Risk

Credit Risk is the risk that a counterparty will not settle an obligation for full value when due and a loss will result. Credit risk, includes

replacement cost risk. It is not uncommon for an unwind rule to be only one of many features, often the last, to be employed in the event of a settlement problem. This statement takes the hypothetical case of a settlement system that relies on an unwind as a first alternative for supporting settlement and achieving finality. The period can be either intra or inter-day. This risk may result from market rules that force settlement on the basis of prior matching of transactions without the opportunity to cancel.

Time Gap Risk

Time Gap Risk, a dimension of credit risk, is defined as the risk of loss that arises from the lack of timing synchronization of key milestones in the settlement process. The lack of synchronization of cut-off times in the settlement processes between markets (instruction deadlines, cash finality, securities finality) increases the risk that a cross-border clearing intermediary may be required to settle one half of a back-to-back transaction when it is known that the second trade will fail. For timing related analysis, the best case scenario exists when a cross-border transaction consists of a country pair situated within the same time zone. This at least increases the likelihood that settlement will overlap in terms of time. In this situation the concern is limited to absolute differences with regard to irrevocable commitment and finality. The worst case exists when the countries are situated in different geographic regions as this introduces additional timing differences and may allow for limited processing overlap.

Systemic Risk

Systemic Risk is commonly referred to as the inability of one institution to meet its obligations when due which will cause other institutions to be unable to meet their obligations. A settlement system where the primary means of settling in a default is an unwind increases the risk of subsequent defaults or fails by other local or cross-border intermediaries. Depending upon the availability of cash and/or securities to complete trades, unwinds could have a liquidity domino effect on otherwise non-defaulting parties.

Legal Risk

Legal Risk, is defined as the risk of loss that arises from an unexpected application of law or regulation or because a governing contract cannot be enforced. The outdatedness and discordant nature of various countries' lien and bankruptcy laws may jeopardize the ability to obtain clearly perfected collateral interests. This in turn may lead to reluctance to undertake transactions, failure by intermediaries to protect themselves by taking collateral, or the upsetting of legitimate commercial expectations if arrangements in which collateral is assigned are not respected by a bankruptcy court.

Sovereign Risk

Sovereign Risk arises when a government takes an action, with or without notice, which affects the market price of assets or restricts movement of assets and funds. Governments can impose restrictions on levels of foreign ownership, foreign exchange



Article

Emerging Cross Border Risks in Global Business



Identifying and assessing the risks is not enough; prioritizing of these is crucial. To ensure effective risk management, there ought to be risk management plans to handle the risks based on the priorities of the business. The factors involved in the risks identified must be considered and the accuracy of the assessment is very important.

availability and rates, or movements of cash and securities. Any of these events, especially when they occur without prior notice, can impede and/or delay settlement in the related market. To the extent that relationships exist between transactions in the restricted market and other markets, liquidity and credit risks can increase, ultimately spreading to other markets.

Cultural Diversity Risk

Multinational corporations are facing increasingly diverse, complex and exotic cultural diversity risks, and may not have all the resources in place to manage them effectively. In Cross Border Mergers and Acquisitions the cultural risk is more visible. In the case of TATA's acquisitions of Jaguar Land Rover the cultural difference has been seen by the organization. The working cultural differences are quite significant between the two countries especially in the Power Distance index & Individualism index. Power Distance Index (PDI) indicates the inequality in the working culture. In India the workers accept and expect that power is distributed unequally. The company leader will have absolute power and their decisions are generally undisputed. Interaction between the field workers and the managers are generally non-existent. Individualism (IDV) in the UK working culture is very high compared to India. In the UK the employees are expected to look after themselves whereas in India the employees have a collectivism attitude and simultaneously they have to face the Human Resource issues also. The failure of several Mergers and Acquisitions (M&A) has been a matter of concern. HR issues are a key factor in unlocking value through the M&A route. The extent to which the firm and the host country are culturally dissimilar affects the business.

Reputational risks under foreign law

There are two main types of risk arising under supervisory jurisdictions outside country: risks associated with the cross-border provision of financial services, and those associated with the cross-border supply of financial products. Both are subject to restrictive requirements in many legal systems (e.g. physical presence, registration). From a tax and criminal law perspective, there is the risk of financial intermediaries or their employees becoming party to tax offences under foreign law committed by foreign clients (e.g. as an aider or abettor). In addition, frequent cross-border activity and the regular physical presence of institution representatives in specific countries could in themselves give rise to tax liability on the part of financial intermediaries. Further legal and reputational risks could arise under foreign anti-money laundering legislation and civil law, conflict of law rules and procedural rules. There may also be risks linked to other areas of commercial law in certain countries. The compliance to different jurisdictional laws are required to be

complied with; otherwise it would attract legal and reputational risk. The case of Vodafone in India with regard to taxation is an example of taxation and legal risk.

Regulatory Risk

Regulatory risk is the risk arising from change in laws and regulations will materially impact a security, business, sector or market. A change in laws or regulations made by the government or a regulatory body can increase the costs of operating a business, reduce the attractiveness of investment and/or change the competitive landscape. The issue arising from new or existing regulations is now one of the greatest threats to cross border business. Regulation and compliance risks top the list in E&Y 2010 survey. Many of these threats are related to the aftermath of the global financial crisis.

In India Regulatory bodies like SEBI, CCI, DIPP, TRAI etc, and Ministry of Corporate Affairs and the other law enforcement agencies of Governments are changing their regulation every now and then which has adverse impact on the investment. Government's tariffs like customs duty, taxation policy and DTAA have significant impact on trade and investment.

RISK MANAGEMENT

A more diverse international footprint also exposes companies to higher levels of risk. It is only natural in this transformed landscape that cross border businesses would contemplate assuming cross-border risk with a greater degree of caution. A combination of a decade of globalization, decoupling in growth patterns between the developed and developing worlds, and the seemingly constant nature of political change implies a new risk profile – whether trading or investing in developed or emerging economies.

Indeed, the rapidity with which political upheaval dominates the air waves has many risk managers assessing their firm's readiness for the increasingly unpredictable and fragile markets to which they are exposed and the due diligence is required for more secured trade and investment in other countries.

Among the many challenges facing risk managers one crucial issue is how to effectively manage cross-border risks, which is more important today than in the past. The risks associated with cross-border transactions are high and risk aversion is high, but the margin for error is low. This means that risk managers' jobs have become more difficult.

As value chains become more extended and complex, companies



must be able to identify, assess and mitigate risks across multiple and less familiar jurisdictions. This requires a highly robust risk management and insurance framework, and an alertness and adaptability that depend on the right local knowledge and global capability to deal with highly divergent political, economic and regulatory environments.

The responsibility for fundamental strategic decisions concerning risks lies with the board of directors. As part of its systematic risk analysis and the internal control system based on it, this body is charged with supervising and controlling, capturing, limiting and monitoring all substantial risks. This also includes the legal and reputational risks associated with the cross-border business. Executive management, for its part, must develop appropriate processes that enable cross-border business risks to be identified, measured, evaluated, assessed and controlled. In the context of the cross-border business, high importance should be attached to establishing risk tolerance, defining target countries (e.g. countries from which a large proportion of existing clients come, or in which clients are to be actively solicited in future) and the associated marketing strategies, because these factors have a substantial impact on an institution's strategic orientation.

The basic law of business is nothing can be gained unless risks are taken, and risks cannot be eliminated entirely. However, risk can be minimized or managed through best practices. Therefore, disclosure of the operational risks taken by the company to the public every quarter of the year has become a customary best practice. This is why certain risk management techniques have become a standard requirement.

There are many risk management techniques and they vary according to the type of business. Nonetheless there are five basic risk management techniques recommended and generally applicable to all types of businesses. These include:

Analyzing Features of Effective Management

This involves identifying the tangible and intangible assets. The tangible assets, such as capital can be at risk, while intangible assets such as reputation and name of the company can be damaged. Once the risks have been identified, the extent of the damage can be assessed by determining the probability and then multiplying it with the cost of the event.

Considering Priority Risks

Identifying and assessing the risks is not enough; prioritizing of these is crucial. To ensure effective risk management, there ought to be risk management plans to handle the risks based on the priorities of the business. The factors involved in the risks identified must be considered and the accuracy of the assessment is very important.

Type of Business

The type of business governs the type of risk management technique. There are various types of business and there are as many risk management techniques. The four basic efforts require are;

1. Avoidance: This requires one to stay away from implicative activities. However, this only minimises the risk, it does not eliminate it.
2. Risk Reduction: The business owner must take measures to reduce the risks identified.
3. Risk Transfer: When there are options it may be transferred to a specialized agency like purchasing insurance policies.
4. Risk Retention: When the probability of risks occurring is very less, or the costs of mitigating the risk, this is the only way out. Further, in some businesses transferring the risk may be prohibitive, and the business has to consider risk retention.

Retention of Capital

Retaining the capital is more important than making profit all the time. This implies, if proper risk management is implemented as a best practice massive capital losses can be prevented.

Potential Threats

Global financial and economic instability has increased in recent times and resultantly risk for most businesses has increased. This has made government risk managers less risk tolerant and they choose to ensure total security by eliminating the possibilities of risk. If best practices are not implemented they may become potential threats. This leaves corporate risk managers with little choice but to ensure compliance.

Risk Management Method

Managing cross border risks is a process of thinking systematically about all possible undesirable outcomes before they happen and then setting up procedures that will either avoid or minimise these risks, or help to cope with their impact.

There are six basic elements in the risk management process:



Article

Emerging Cross Border Risks in Global Business

- Establish the context of the risks
- Identify the risks
- Assess probability and possible consequences of the risks
- Develop strategies to mitigate these risks
- Monitor and review the outcomes
- Communicate and consult with all parties involved.

Developing a Risk Management Matrix

A Risk Management Matrix will not only exhibit the risks the organization may face, but also give guidelines for managing or mitigating risks. Risk Management Matrix may be developed by creating a simple list of potential risks. A Risk Management Matrix is not only a good way to identify the probability of risks occurring and the consequences if they do, but will also help to priorities issues that cannot be ignored.

Some examples, which could be included in a risk matrix:

Risk type	Ranking (Low/ Medium/ High)	Consequences	Steps to manage or mitigate this risk
Political Risk	Medium	Government policies like Incremental Tariff will hurt export and restriction on capital flow will impact on investment.	Intergovernmental talk on these issues will help in reducing the risks.
Exchange rate risk (USD/ Rupee rate changes)	High	Payments in USD will not cover invoiced amount resulting in losses or eroded profit margin	Company policy to hedge all export orders taken in USD currency at time of order receipt
Legal risk: product liability laws in USA	High	Legal action could be initiated against us with subsequent financial claims by customers	Ensure up to date legal advice on liability laws in USA and take out insurance
Non payment	Medium	Difficulty in chasing overseas debtors and resultant , financial losses	Credit checks on customers to whom we provide credit ; to, check debtors list before shipping any orders. First order to be prepayment or L/C
Environmental Risk	Medium	Delay or stoppage in start up of operation. If environment impact is more due to highly polluting nature of the industry business may get adverse remarks from the regulator	Obtain necessary environmental clearance and respect the local law. Reduce the pollution by utilising new technology. In case of Nuclear energy risk export is necessary
Regulatory Risk	High	Threat of fine and closure of business	Harmonization and unification of the law of international trade.
Acquisitions	High	Failure of business and threat of cultural issues	Joint ventures and holding investments may be potential mechanisms for reducing uncertainty in cross-border acquisitions. Good HR practices may be beneficial in reducing the cultural barrier.

Grading of risks helps in focusing on critical areas and to mitigate the adverse effects before they become a crisis. For example, if all



export business is with a single client in Indonesia, and that company becomes insolvent, the outcome could be disastrous. If the likelihood of insolvency is low, risk ranking for that event is more moderate, although it may still require monitoring. It is advisable to review the Risk Management Matrix regularly to ensure to cover any emerging market changes.

CONCLUSION

While understanding the cross border risks is challenging, it is possible and this understanding will be key to successful trade and investment in the current and future international business environment. There is also a well established insurance market that can underwrite risks associated with international trade and investment, which together with appropriate risk analysis provide many businesses with the security and confidence to realize trading opportunities in the challenging environment we operate in today. Inadequacies in the law need to be addressed suitably by the government. Choosing right partners and the right professional advisers is a major step in mitigating risks. Bankers, corporate advisors like Company Secretaries, Lawyers, Insurers and Accountants are able to provide knowledgeable advice about the risks the business may face in overseas markets. A Risk management checklist needs to be prepared defining the areas where the overseas risk differs from the domestic risk profile. List these risks and prepare an action plan as to how to manage or mitigate them by developing a risk management matrix. Regular review of risk profile is necessary to avert the possible risks. 

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Credit Risk Management

➤ Credit risk is the potential that a bank borrower or counterparty will fail to meet its obligations in accordance with agreed terms. It therefore follows that credit risk can be severe as loss of assets and earnings. Credit risk would also mean deterioration in quality of assets due to downgrade in credit rating. How banks should deal with such a risk is what has been outlined here.

Background

Despite the fact that Risk taking is an age old practice amongst banks, Credit Risk Management gained currency in the recent past post liberalization measures unleashed in 1992. Prior to liberalization, In India banking activities were happening in a regulated environment. Reserve Bank of India (RBI) has been the regulator and a central bank for all the commercial banks and co-operative banks operating in the country. Interest rates on deposits as well as on advances used to be decided by RBI. On the interest front therefore, there was no competition amongst banks. Added to that was the non-existence of prudential norms for treatment of NPAs. Bank's profitability was therefore not affected by the non-recovery of loans. The capital market had not opened up. For raising of capital, companies had to adhere to the stringent guidelines of the Comptroller of Capital Issues under the Companies Act. Companies therefore had no incentive for meeting its fund requirements from the general public through Capital Market. Corporate India therefore was heavily dependent on the Banks' funds. The supply of credit was scarce in relation to demand due to which for advances, there was walk-in business. Since the borrowers were at receiving end, the concept of efficiency such as Turnaround time (TAT) was non-existent. Credit was rationed for working capital purposes by defining the norms for levels of

inventory and receivables for various industries. Added to the above, Banks were required to follow the Credit Authorization System, which required banks to take prior permission of RBI before sanctioning business proposals beyond a limit. For Co-operative Banks based on the total deposits, various limits were prescribed. Banks were allowed to sanction upto Rs. 40 lakh per borrower. It means beyond said limit, we had to approach RBI for its approval. The highest limit to which this level was enhanced was Rs. 250 lakh. Similar limits, though on higher side, existed for scheduled commercial banks as well. On the industry front, manufacturing companies were subjected to license raj. Installed capacity used to be decided by the bureaucrats instead of market forces. Entire economy was characterized by restrictions, controls, approvals and hence by limited demand and limited supply.

The opening of the economy in 1992 threw open new opportunities and poised challenges in every segment of the society. While the imports were liberalized in a phased manner, many export promotion initiatives were taken. Entry of foreign companies was allowed in every type of industry in different forms. Automobile industry and pharmaceutical industry witnessed direct competition from the multi-nationals.

Banks were allowed to decide the interest rates on deposits as well as on advances based on the market forces. Interest rates



on savings however continued to be administered by RBI. The freedom to decide interest rates has poised many challenges and risks for Banks.

Prudential norms introduced by RBI required every bank not only to derecognise interest as income of accounts where actual recovery is not made within 90 days after it is due, but also to provide for the principal outstanding based on the age of the asset.

While Banks have been allowed to decide the exposure limits per borrower or group based on its paid up capital and free reserves, capital adequacy norms as per BASEL accord I and II have been stipulated in a phased manner.

While Rupee convertibility on current account has been allowed to the corporates, freedom to borrow foreign currency loans as well as abolition of Controller of Capital issues has opened new vistas for raising capital from the Capital market. This has brought about disintermediation and reduced dependence of large corporates on Banks for the fund requirements. These reforms have multiplied the risk profile of banks as well as its complexity in the recent past.

Credit Risk defined

The Basel committee defined Credit risk as the potential that a bank borrower or counterparty will fail to meet its obligations in accordance with agreed terms. It therefore follows that credit risk can be severe as loss of assets and earnings. Credit risk would also mean deterioration in quality of assets due to downgrade in credit rating. Basel (1999) reports that for most banks, loans are the largest and most obvious source of credit risk; however, throughout the activities of a bank, which include in the banking book as well as in the trading book, and both on and off the balance sheet, there are also other sources of credit risk. The credit risk can emanate in any one of the following types of transactions:

Lending: Traditionally Banks do lending to individuals and or corporates. Loans are given for various purposes to these segments. The borrower may default in making payment either willfully or due to loss in business for which loan is availed or change in trade cycle.

Investment in Bonds: Banks invest in tradable securities such as bonds, commercial papers and securities of sovereign nature. In case of bonds and commercial papers floated by entities in the private sector or public sector, there is likelihood of default for similar reasons for which such entities can default in case if the loan is taken. However in case of sovereign securities till the Euro crisis surfaced, likelihood of default was almost nil. However, we have witnessed in the recent past, bailout packages approved for saving the default by the nations such as Greece.

Settlement risk: On account of the time differences, such risks emerge. Usually the parties involved in such transactions are Banks. The default of such nature is very rare. However, default was seen of such type in case of Germany based Bank Herstatt.

Off Balance sheet exposures in the forms of guarantees, letters of credit derivative transactions

Though the default on account of such transactions is infrequently witnessed, we have seen that the 2007 crisis was due to securitization of assets on an abnormal scale. In this crisis, It has been seen that to rake the regulatory arbitrage on account of absence/limited capital adequacy requirement for off balance sheet exposures, securitization of mortgages reached to the peak level and all innovations were engineered during 2005-2007.

Credit risk denotes the volatility of losses on credit exposures in two forms: the loss in the value of the credit asset and the loss in the earnings from the credit. The default in repayment can be intentional or due to factors beyond the control of the borrower. In both the cases, the Bank will incur a loss of principal as well as interest thereon or if the partial payment is made towards interest, to the extent of non-payment bank will incur a loss.

The loss on account of credit risk can be absolute or intermediate. If there is no recovery forthcoming from the borrower in spite of rigorous efforts and follow up, the loss can be absolute. However, Banks encounter situations of intermediate credit risk. This happens when the credit grade which was determined at the time credit sanction deteriorated during the currency of credit. The credit grade is arrived at based on the internal rating system practiced in the Bank or based on the rating assigned by the external rating agencies. Deterioration in grade gives an opportunity to the Banks to nurse and monitor the account and revive it such that there would be no default.

Objective of Credit Risk Management

The goal of credit risk management is to maximize a bank's risk-adjusted rate of return by maintaining credit risk exposure within acceptable parameters. "In spite of the risky world they operate in, banks are truly risk machines in the economies. They take risks, they transform them, and they embed them in banking products and services. The risk taking is an obvious role that Bank has to play while being engaged in lending activity."¹ There is a thin demarcation between risk taking attitude and rash behavior and or risk taking nature and speculative mind. The Bank has to ensure that in lending and or investment, risk is taken only after being informed of all the positive and negative factors involved in it whether within the control of the bank or not. This is essential because bank is

1. Evaluation of Credit Risk Management Policies and Practices in a Vietnamese Joint-Stock Commercial Bank's Transaction Office (2010) by Dam, Dan Luy.



undertaking the activity of lending and investment on behalf of the depositors who have kept their deposits for safety and security as well as for earning reasonable returns on the amount so deposited. Risk taken therefore must fetch returns by keeping the deposits intact.

Credit risk management therefore must be directed to ensure that the above said objective is achieved on a continuous basis. For this purpose, it is necessary to take following steps:

- (i) Establishing an appropriate credit risk culture: Credit culture covers the “attitudes, perceptions, behaviors, styles, and beliefs that are conducted and practiced throughout the credit organization as a result of management attitudes towards credit risk”. It is usually presented in “the mission, objectives, and lending strategies to legitimize the value placed on credit quality and safe sound lending practices”. (Colquitt 2007, 30-34) Credit culture supplies a general framework to guide day-to-day credit decisions.
- (ii) Operating under a sound credit-granting process: Banks need to have well established practices for credit assessment, credit granting and credit administration in place.
- (iii) Maintaining an appropriate credit administration, measurement and monitoring process; and
- (iv) Ensuring adequate controls over credit risk.

Although specific credit risk management practices may differ among banks depending upon the nature and complexity of their credit activities, a comprehensive credit risk management program will address these four areas. These practices should also be applied in conjunction with sound practices related to the assessment of asset quality, the adequacy of provisions and reserves, and the disclosure of credit risk, all of which have been addressed in Basel Committee documents.

Genesis of Credit Risk

In spite of well established credit culture and credit granting practices in the organization, Accounts go bad and Banks account for such accounts as non performing loans. The origin of such cases can be traced back in following problems:

1. **Lack of due diligence in loan processing:** Absence of due diligence or its exercise in a hurried way can lead to account becoming non-performing. In a competitive environment, to expedite the credit decisions, due diligence is compromised.
2. **Lacunae in credit rating/credit scoring:** Credit decisions are influenced to a great extent by the credit rating or credit scoring arrived at for the given credit proposal. Mechanical adoption of the rating adversely affects credit decisions and lead to incidence of NPA in the credit portfolio. Besides

➤ Credit risk denotes the volatility of losses on credit exposures in two forms: the loss in the value of the credit asset and the loss in the earnings from the credit. The default in repayment can be intentional or due to factors beyond the control of the borrower. In both the cases, the Bank will incur a loss of principal as well as interest thereon or if partial payment is made towards interest, to the extent of non-payment bank will incur a loss.

above, credit rating indicates the quality of the loan proposal at the entry point. If the credit rating does not automatically change following adverse changes in the external factors such as economy, inflation and fluctuations in the exchange rates and the demand and supply situation, the deteriorating health of the account would go unnoticed. Credit rating system too has to be evaluated and validated on a continuous basis to ensure its authenticity and reliability.

3. **Over reliance of collateral:** In many a cases, due diligence exercise is compromised due to the kind of collateral offered by the prospective borrower. Moreover, the value of the collateral may either undergo adverse change or may become illiquid which had influenced the credit decision.
4. **Concentration of credit:** A high level of concentration exposes the bank to adverse changes in the area in which the credits are concentrated. At times, the credit or lending is concentrated in few borrowers or group of borrowers or amongst the borrowers of the same industry or borrowers located in the same geographic area. For example, credit concentration in the commercial and residential property market in Thailand and Hong Kong contributed to the financial crisis in Southeast Asia during 1997, and in the residential property market in the United States resulted in the U.S. financial crisis during 2007. Usually the regulator stipulates restriction on single party exposure or the group exposure. Banks in keeping with the restrictions so specified set the prudential limits for individual exposure or group exposure. Banks also define the exposure level to a particular industry in its overall portfolio. However the exposure limits so defined have to be reviewed on a continuous basis in view of changes in the trade cycles of industries, changes in the external factors and exposure level reached *vis-à-vis* the total credit portfolio. The non-



Article

Credit Risk Management



Credit risk in investment refers to the probability of default on account of nonpayment of principal by the counter party. Usually Counter party default is seen in cases where Banks have invested in debentures, commercial papers and bonds issued by listed companies.

conventional type of concentration risk emerges from common risk factors, or from linkages between different risk factors. It may also arise from large exposure concentration, if there is economic or price shock, or from structured financing or asset securitization. The Asian financial crisis of 1997 to 1998 has shown that there is a strong correlation between credit risk, foreign exchange risk, and liquidity risk. The depreciation in exchange rate increased the risk of foreign banks, which had large foreign currency exposures in some of the emerging markets of Asia. The adverse exchange rate movement increased the repayment obligations of the banks' borrowers in terms of domestic currency. Consequently, credit defaults increased and banks' liquidity positions deteriorated. Non-conventional type of concentration risk also arises in cases of structured financing, or it may surface from securitization of the pools of assets through the leveraged special-purpose vehicles during the downturn of the economy, as it happened from securitization of residential property mortgages in the United States, particularly during 2000 to 2006.²

5. **Absence of credit monitoring or laxities in credit supervision:** After credit is disbursed, it is essential to monitor it on a continuous basis. During monitoring process, Banks can ensure the utilization of credit for the purpose for which it was granted, validate the assumptions made based on which credit was given against the actuals, compare the sales levels and the projections made, ensure that the repayment is being made as per the terms agreed to and continuously have a watch on the external factors impacting the industry in which the borrower is operating. The biggest problem in banks is the absence of credit monitoring due to inadequate skilled staff available, shifting priorities from monitoring to enhancing credit levels to meet targets set and over reliance on the information given by the borrower.

IDENTIFICATION OF CREDIT RISK

Credit risk exists in loans and advances, investments, payment settlement and off-balance sheet exposures. The level of severity of risk varies due to a variety of factors in each of these categories. These factors are detailed below:

Credit risk in Loans and Advances: Total Loans and advances portfolio has to be viewed from different perspectives

to appreciate and identify the credit risk therein. Constitution of the borrower helps bank assess the level of credit risk. The exposure to a limited company borrower is considered less risky as compared to the exposure to a proprietary concern and or a partnership firm. This is because, company operations are governed by the Company law, regulator like SEBI and the requirement to adhere to the generally accepted accounting practices as stipulated by Chartered Accountants of India.

Credit risk in Loans and advances is perceived high or low depending on the purpose for which it is given. While loans and advances for productive purposes are expected to generate cash flows and hence service loans availed, in case of non-productive loans, the repayment is not guaranteed.

Credit risk is influenced by the period for which it is extended. In case of loans of long maturity, risk is considered very high and in cases where the maturity is low, risk is also low. One exception can be stated in this regard. In case of loans extended for housing purpose of long maturities, the credit risk has remained at a very level. In India, HDFC has been successful in spearheading the housing loan portfolio with least risk.

Credit risk in Investments: Credit risk in investment refers to the probability of default on account of nonpayment of principal by the counter party. Usually Counter party default is seen in cases where Banks have invested in debentures, commercial papers and bonds issued by listed corporates. Banks take exposure in these papers based on the credit rating assigned to it by the known rating agencies and the internal assessment of the corporate. However, in case of investment, assessment is more from the perspective of market risk emanating from the market variables such as changes in interest rates and or changes in exchange rates and less from credit default angle. The New Basel Capital Accord requires banks to hold additional capital against credit risk in financial instruments.

Credit risk in off balance sheet exposures: Banks consider off balance sheet exposure as the source of generating fee based income without parting funds to the counter party. The risk in most of the cases is contingent and may not materialize. This very nature overshadows the fact that this portfolio too carries credit risk. Different types of off-balance sheet exposures carry different levels of credit risk. The relative degrees of credit risk arising from different types of off-balance-sheet instruments differ in their intensity and can be broadly grouped into three

2. Managing risks in commercial & retail Banking by Amalendu Ghosh.



categories of credit risk.

In "The Management of Banks' Off-Balance-Sheet Exposures" (March 1986), the BCBS has suggested the classification of off-balance-sheet activities into three categories of risks:

1. "Full risk": "where the instrument is a direct credit substitute and the credit risk is equivalent to that of an on-balance-sheet exposure to the same counterparty."
2. "Medium risk": "where there is a significant credit risk but mitigating circumstances which suggest less than full credit risk."
3. "Low risk": "where there is a small credit risk but not one which can be ignored."

Measurement of Credit Risk

Credit risk so identified is to be measured and steps are required to be taken to mitigate it. The credit risk in banks should be measured by size as well as scope of the exposure, and as pointed out by Lowe (2002), all kinds of credit risk measuring approaches comprise of four common building blocks, including the probabilities of borrowers defaulting (PDs), the correlation of PDs across borrowers, the possible loss in the event of default (LGD) and the correlation between PDs and LGD. Based on these elements, the approaches may differ in assumptions and modeling methodologies.³

Credit rating for wholesale credit and credit scoring for the retail credit is useful for measuring the credit risk. In fact credit risk ratings may reflect not only the likelihood or severity of loss but also the variability of loss over time. Credit rating and credit scoring models get evolved in the bank over a period of time based on the profile of credit portfolio, continuous back testing of the models so defined and put to practice. Credit rating in fact has been recognized by Basel II and Basel III for assessing the credit risk that Bank has been carrying in its balance sheet and off balance sheet and the capital that it needs to have to cover the risk.

Mitigation of Credit Risk

Banks efforts of mitigating the risks are manifested in its Credit policy approved by the Board of directors as well as the regulatory external policies stated from time to time by the regulator. Following are the critical components of the credit policy aimed at mitigating the credit risk.

Exposure to individual/group

Every bank has its niche market as far as lending activity is concerned. Since most of the co-op banks are small in size having local presence, they prefer to concentrate on the small ticket advances to individuals. In one co-op Bank that we came across, of the total advances given, more than 95% were to the employees of a municipal corporation. The average size of the



advance is limited to Rs.50000 per individual. In contrast to this case, in case of large Bank which is the largest co-op Bank having total owned funds over Rs.1500 crore, its niche area is lending to Small and medium enterprises from different business verticals. You can make out from the above discussion that each bank has to decide the exposure limit based on its niche area, its own funds and the quantum of deposits that it has. Exposure to individual and exposure to a group is the important facet that is to be addressed in the Credit Policy. RBI has given the guidelines in this regard and has allowed lending maximum upto a limit which is linked to the paid up capital and reserves of the Bank as at the end of the preceding year. Every Bank however has to set its own limit which spells out the credit risk appetite of the Bank. If the maximum exposure per individual / group is kept at a low level, it enables the Bank to spread its credit risk over the wider canvas. If the limit is kept at a high level, it has the risk of advances portfolio being concentrated in few hands. While deciding the maximum exposure, Banks also have to ensure that it has the adequate skill sets to assess the credit proposals involving large exposures. In many cases, Banks are tempted to rely on the assessment of the Lead Bank in case of consortium advance. Even if it is assumed that the assessment by the lead bank is in minute details, it is essential that the officials of small bank understand the details and intricacies highlighted in the credit appraisal by the lead bank. In addition to the credit appraisal, it is essential to have online monitoring of such advances based on operations in the account, interaction with the officials of borrowing company and access to information about the industry in which the borrower is operating.

Negative list/Caution list

Every Bank has to decide the list of industry verticals to which it would not lend or it would lend by taking extra precautions. Here care has to be taken that the industry which is

3. Credit Risk Management in Major British Banks By Xiuzhu Zhao



technologically advanced or is passing through a recessionary phase about which Bank officials do not have enough know-how should be put in the negative list. In case of diamond industry, it passed through a recessionary phase in the recent past. In case of industries which are witnessing volatility in the market demand and or about which bank officials do not have adequate understanding of the activity, such industries should be on the caution list. Financing to software units or lending to real estate are the cases in this regard. It is to be noted that the negative list is important not only for direct lending to units in such industries, but also for financing to individuals employed in such units.

Tenure of credit

Banks have been accepting deposits from the public which are payable on demand or on the maturity of the deposit. While CASA deposits are repayable on demand, term deposits are repayable after a period of time. Term deposits though payable after a period of time, no bank accepts the deposits for a period maturing after five years. In the existing market, even customer is also cautious and is not inclined to keep the deposits for a period longer than three years. Given this nature of deposit portfolio, Bank has to ensure that it does not lend deposits so accepted for a period more than five years. In cases like housing loans where it lends for more than five years, it should ensure that exposure to such advances is restricted to a certain level. In fact RBI too has issued guidelines in this regard. In Banks where exposure to industrial units exists, period of advance should not be more than seven years. In case of existing units it should not lend for more than five years and in case of new units it may relax the period upto seven years on a case to case basis.

Consortium finance/Multiple Banking

In case of medium to large sized Banks, they have the option of lending to medium to large size units through this route. This route has advantages as well as the disadvantages. In case of consortium lending, small banks have the benefit of relying on the assessment of lead bank. However the officials of the Bank should be competent enough to comprehend the assessment done. In many cases, it is noticed that the share in consortium advance is given to small banks, when the lead bank or one of the member banks opts out of consortium. Unless the proper reasoning is understood for offloading the limit, banks should not venture in such cases. Consortium lending is useful in cases where the unit is existing one for quite some time having good profitability for the last three years with sound financial position. Since its ticket size is large, it helps in deploying surplus funds of the Bank in a short time. Operational costs are minimum. In case of multiple lending, Banks should take the risk of lending only if it has adequate knowledge about the industry to which borrower belongs and that the officials of the Bank have adequate knowledge of credit appraisal. In the credit policy therefore, Banks have to highlight the guidelines for taking over

advances in consortium or through multiple banking route. Following is the indicative list of guidelines for taking over consortium advances:

1. Unit is existing for more than five years operating in industries not included in the negative list;
2. Profitability of the industry is consistently rising since last three years and that the share of profit by way of other income is not more than five percent in the overall profitability;
3. The share of advance of existing members is not reduced or that the existing member has not opted out of consortium;
4. Industry in which the unit is operating is not passing through recessionary phase or is not witnessing volatility in its market demand;
5. The clientele list of the unit should be broadbased and that its sales to one of its clients should not be more than 25% of its total sales;
6. The promoters/directors of the industry should have adequate knowledge/experience of the activity and also adequate stake in the unit.

Credit Appraisal system

Banks should have appropriate credit appraisal system in place. This means that the proposal should be assessed in a pre-defined format approved by the Board of Directors of the Bank. The credit appraisal format should ensure that it highlights assessment of the proposal covering following major factors:

1. Promoters' background, experience, and financial stake in the unit;
2. Need of the Borrower;
3. Existing exposure and additional exposure;
4. Security offered;
5. Financials which should highlight profitability of the unit and its financial position for the last three years and its projection for the following three years;
6. Analysis of the financials using important ratios;
7. Operations in the account if the unit is existing one;
8. Credit rating of the unit as per the internal credit rating exercise; and
9. experience of units to which Bank has already lent and are in the same industry in which borrower is operating and or proposing to operate.

Apart from the credit appraisal format, Bank has also to decide about its delegation of powers. The delegation of powers helps in deciding the hierarchy through which each credit proposal has to pass before it is finally approved. While many layers would help in the detailed analysis from different perspectives, it also delays the decision making. Delegation therefore has to be decided based on the quantum of advance. In case of proposals with large exposure, it should be screened by multiple layers.

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Corporate Laws

LW.69.08.2013

BHAGWATI DEVELOPERS PVT LTD v. PEERLESS GENERAL FINANCE & INVESTMENT COMPANY LTD & ANR [SC]

Civil Appeal No.7445 of 2004

Chandramauli Kr. Prasad & V. Gopala Gowda, JJ.

[Decided on 15/07/2013]

Securities Contracts (Regulation) Act, 1956 - Sections 2(h)(i), 13 & 16- sale of shares by borrower to lender - sale of shares of unlisted public company - sale was not spot delivery - place of sale was a notified area - seller and buyer were not members of stock exchange - company refusing to register - whether correct - Held, Yes. Whether shares of unlisted companies are marketable securities - Held, Yes.

Brief facts

Tuhin Kanti Ghose, hereinafter referred to as 'Tuhin', Respondent No.2 herein, approached the appellant, Bhagwati Developers Private Limited, hereinafter referred to as 'Bhagwati' for a loan of Rs.38,83,000/- for purchasing 3530 equity shares of Respondent No.1, Peerless General Finance & Investment Company Limited, hereinafter referred to as 'Peerless'. Bhagwati advanced the loan in 1986 and Tuhin agreed to transfer 3530 shares of Peerless to Bhagwati by way of repayment of the aforesaid loan. In the light thereof, Tuhin handed over the original share scrips as also the transfer deeds for doing the needful by Bhagwati. Thereafter, Peerless issued bonus shares and the total number of shares of Tuhin with Bhagwati became 14120 shares in 1991.

When Tuhin did not accede to the request of Bhagwati for transferring the entire shares, it filed a suit in the Court of Civil Judge at Allahabad and also settled the issues by compromise whereunder, Tuhin acknowledged the sale of 14210 shares to Bhagwati and Bhagwati paid additional sum of Rs.10 lakhs to Tuhin. Trial Court passed consent decree in terms of the above settlement, in 1994.

Armed with the decree, Bhagwati lodged the transfer deeds in respect of 14120 shares with Peerless for their transfer. Peerless, however, did not accede to the prayer of Bhagwati and refused to register the said shares, inter alia, on the ground that the said transfer of shares by Tuhin in favour of Bhagwati was in violation of the provisions of Securities Contracts (Regulation) Act, 1956; hereinafter to be referred to as 'the Regulation Act'. According to Peerless, the contract for sale of shares was not a spot delivery contract. Bhagwati, aggrieved by that, approached the Company Law Board, which also dismissed the application filed by Bhagwati holding that transfer of shares in favour of Bhagwati was against the provisions of Sections 13 and 16 of the Regulation Act and as such, illegal. In the opinion of the Company Law Board Peerless rightly refused registration of transfer.

Assailing the aforesaid judgment and order of the CLB, Bhagwati preferred an appeal before the High Court, which upheld the decision of the CLB. That is the reason for the appellant to come before the Supreme Court.

Decision: Appeal dismissed.

Reason

From a plain reading of the aforesaid provision [i.e.section13], it is evident that contract in relation to securities in notified areas is illegal if made otherwise than between the members of recognized stock exchange. It is not in dispute that the place where the contract for sale of shares in question has been entered is a notified area for the purpose of Section 13 of the Regulation Act. Further, the contract is not between the members of a recognized stock exchange.

The first question which falls for our determination is as to whether the provisions of Regulation Act will apply to the shares of a public limited company which are admittedly not listed on any stock exchange?

Admittedly, the shares of Peerless, a public limited company in respect of which the appellant had sought rectification are not listed in the stock exchange. In our opinion, notwithstanding that if shares come within the definition of "securities" as defined under Section 2(h)(i) of the Regulation Act, the indictments contained in Section 13 would apply.

From a plain reading of the aforesaid provision [i.e.Sec.2 (h)(i)], it is evident that for shares of a public limited company to come within the definition of securities they have to satisfy that they are marketable. The word, 'marketable' has not been defined in the Regulation Act and hence to understand it, we have to revert to its dictionary meaning.

As is evident from the dictionary meaning set out above, the expression "marketable" has been equated with the word



saleable. In other words, whatever is capable of being bought and sold in a market is marketable. The size of the market is of no consequence. In other words, the number of persons willing to purchase such shares would not be decisive. One cannot lose sight of the fact that there may not be any purchaser even for the listed shares. In such a case can it be said that even listed shares are not marketable? In our opinion what is required is free transferability. Subject to certain limited statutory restrictions, the shareholders possess the right to transfer their shares, when and to whom they desire. It is this right which satisfies the requirement of free transferability. However, when the statute prohibits or limits transfer of shares to a specified category of people with onerous conditions or restrictions, right of shareholders to transfer or the free transferability is jeopardized and in that case those shares with these limitations cannot be said to be marketable. In our opinion, therefore, shares of public limited company though not listed in the stock exchange come within the definition of securities and hence, the provisions of Regulation Act apply.

We are fortified in our view from a judgment of this Court in the case of *Naresh K. Aggarwala & Co. v. Canbank Financial Services Ltd. and Another* (2010) 6 SCC 178, wherein this Court considered the term "securities" as defined under Section 2(h)(i) of the Regulation Act, with reference to the notification issued under Section 16(2) and held that the definition does not make any distinction between listed securities and unlisted securities.

When the word 'Securities' has been defined under the Regulation Act, its meaning would not vary when the same word is used at more than one place in the same Statute, otherwise it will defeat the very object of the definition Section. Accordingly, our answer to the first question set out earlier is that the provisions of the Regulation Act would cover unlisted Securities of Public Limited Company. In other words, shares of Public Limited Company not listed in the stock exchange is covered within the ambit of Regulation Act.

As stated in the preceding paragraph of the judgment, the Company Law Board has held that transfer of shares in favour of Bhagwati was also against the provisions of Section 16 of the Regulation Act. Section 16(1) of the Act confers power on the Central government to prohibit contracts in certain cases.

From a plain reading of the aforesaid provision it is evident that in order to prevent undesirable stipulation in specified securities in any State or area the Central Government by notification is competent to declare that no person in any State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification. The Central Government in exercise of the aforesaid power issued notification dated 27th of June, 1969 and declared that in the whole of India "no person" shall "save with the permission of the

Central Government enter into any contract for the sale or purchase of securities other than such spot delivery contract" as is permissible under the Act, the Rules, bye-laws and the Regulations of a recognized stock exchange. The appellant, therefore, can come out of the rigors of Section 16 of the Act only when it satisfies that the transaction comes within the definition of "spot delivery contract".

The second question, therefore, which falls for our determination is as to whether the contract in question is a spot delivery contract. This expression is defined under Section 2(i) of the Regulation Act.

According to the definition, a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract. When we consider the facts of the present case bearing in mind the definition aforesaid, we find that the contract in question is not a spot delivery contract. True it is that by letter dated 30th of October, 1987 written by Tuhin to Bhagwati, he had stated that the formal agreement had been executed between them on 10th November, 1986 and as per the agreement he is transferring the entire 3530 shares of Peerless purchased from the loan amount and the transfer is in its repayment. However, the agreement dated 21st November, 1994 between Bhagwati and Tuhin which formed part of the compromise decree provides that the sale of shares took place on 30th October, 1987 and in consideration thereof Bhagwati paid a sum of Rs. 10 lakhs on 21st November, 1994 and further the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs.8,64,850 to be retained by Tuhin. In the face of it, the plea of Bhagwati that the payment of Rs. 10 lakh was made to buy peace, is not fit to be accepted and, in fact, that forms part of the consideration for the sale of shares. Once we take this view, the plea of the appellant that it is a spot delivery contract is fit to be rejected. We agree with the reasoning and conclusion of the Company Law Board and the High Court on this issue.

Both the contentions of the appellant having no substance, we do not find any merit in this appeal and it is dismissed accordingly but without any order as to costs.

CS

LW.70.08.2013

MAHAK VYAPAAR PVT LTD v. REGISTRAR OF COMPANIES
[CAL]

A.P.O. No. 119 of 2013, A.P.O. No. 164 of 2013, A.P.O. No. 165 of 2013, A.P.O. No. 172 of 2013, C.A. No. 250 of 2013.

Ajay Rastogi, J.
[Decided on 19/06/2013]



Companies Act, 1956 - sections 391 and 394 - amalgamation - court's power - whether court has power to direct investigation of money trail by RBI and DRI - Held, No.

Brief facts

The appellant filed an application before the learned Single Judge proposing a scheme of amalgamation with Magic Tradelink Pvt. Ltd. and Moonlite Technochem Pvt. Ltd. both having registered office at New Delhi. We were told, Delhi High Court already directed meetings to be held to ascertain the wishes of the shareholders. The application before this Court was on behalf of the first transferor company who would intend to amalgamate itself with Moonlite. The learned Judge initially directed the Registrar of Companies to conduct an investigation and file a report. Accordingly, the Registrar filed a report on April 3, 2012. The report would reveal, the company had issued share premium to large number of companies mostly private companies on the same day and used funds for investments to a small extent and made advances to others. There were crores of investments involving a large number of private companies. His Lordship directed the Director, Revenue Intelligence to conduct an enquiry as to whether there was any money trail. The company preferred an appeal. On August 8, 2012 we disposed of the appeal by observing, "in case His Lordship would pass any order on the basis of the report His Lordship should give opportunity to the appellant to deal with the same before any order was passed against them."

On August 31, 2012 His Lordship expressed displeasure as the Director, Revenue Intelligence did not carry out the order of this Court. His Lordship directed the Ministry of Corporate Affairs to do so. Accordingly, the Ministry of Corporate Affairs asked the SFIO to conduct such investigation. SFIO submitted a report *inter alia* pointing out irregularity in the affairs of the company. The matter came up before His Lordship on March 21, 2013 when the said report was placed. His Lordship directed the reports to be kept in a safe custody. The company preferred an appeal. We did not intervene at the initial stage and directed paper book to be filed. His Lordship passed subsequent orders on April 26, 2013 and May 10, 2013. By the order dated April 26, 2013 His Lordship directed the Regional Director to indicate the steps to be taken in terms of the report. By the order dated May 10, 2013, Reserve Bank was asked to submit a preliminary report. Reserve Bank submitted a preliminary report observing, "the company may have carried on business of non-banking financial company without any registration." His Lordship passed an order on May 16, 2013, directing Reserve Bank to take further steps in the matter and directed matter to appear on June 4, 2013.

The Company preferred four appeals against the orders dated February 11, 2013; March 21, 2013; April 26, 2013 and May 10, 2013. We heard all the four appeals on the abovementioned dates and intend to dispose of the same by this common

judgment and order.

Decision: Appeals dismissed..

Reason

From the backdrop as discussed above, it would be clear, we did not interfere with the exercise that His Lordship undertook to conduct an investigation into the affairs of the company that raised doubt in the mind of His Lordship.

We have considered the rival contentions. Section 391 imposed wide discretion upon the learned Judge. Learned Judge expressed doubt as to the function of the company. Such doubt ultimately came true as we find from the reports particularly of the SFIO. Hence, before the company was permitted to go ahead with the scheme, the Court was duty bound to remove doubt if any, in its mind as to whether such scheme was being propounded for an oblique purpose. The Court was not a mere Rubber Stamp as observed by the Bombay High Court in the case of *Bedrock Ltd.* reported in 1998 Volume-IV Company Law Journal page-475. We are in full agreement with such observation.

In the present case we find, His Lordship passed series of orders directing various agencies to carry out investigations. Looking to the facts we are in full agreement with His Lordship, there would certainly be a justification to carry on investigation. If we look to the Income Tax Assessment order appearing at pages 298-299 we would find, for the assessment year 2007-2008 the Company earned net profit for Rs.290/-. They suffered penalty. The total income that was assessed was Rs.3,400/- only and the company paid tax for Rs.1,046/-. Such an insignificant company proposed scheme of amalgamation involving crores through allotment of shares at a huge premium.

However, His Lordship was perhaps not correct in either directing Director, Revenue Intelligence or the Reserve Bank of India. His Lordship was competent to issue direction under Section 237(a)(ii). His Lordship was right in sending the issue to the Ministry of Corporate Affairs being the appropriate authority of the Central Government. However, it is for the Central Government to decide which authority would investigate. Be that as it may, the report of SFIO would clearly show, despite being informed, the company did not appear. We do not wish to make any comment on the irregularity. It is a fit and proper case for the Central Government to consider as to whether an investigation should be carried out by appropriate agency having authority in law followed by action that is permitted in law.

Considering the backdrop, we do not feel it inclined to permit the appellant to proceed with the proposed scheme of amalgamation.

Hence, we dismiss the application for convening meeting of the shareholders treating the same as on the day's list. The reports referred to above, so filed before His Lordship, would always be available to the Central Government for appropriate consideration



so that they could take the issue to a logical conclusion in accordance with law. The Central Government would be free to take any decision that may be appropriate in the facts and circumstances of this case.

CS

LW.71.08.2013

RAINBOW DENIM LTD. v. GOKALADAS IMAGES PVT. LTD.
[KNT]

OSA No.1/2013

D. V. Shylendra Kumar & B.S. Indrakala, JJ.
[Decided on 03/07/2013]

Companies Act, 1956 - Sections 433, 434 & 483 - winding up - single judge rejected the petition as in his opinion the debt amount claimed disputed bonafidely - whether dismissal of petition tenable - Held, Yes.

Brief facts

This appeal under Section 4 of the Karnataka High Court Act, 1961 read with Section 483 of the Companies Act, 1956 is by the Company Petitioner in Company Petition No. 191/2011 and directed against the order dated 21st November, 2012 whereunder the Company Petition presented under Sections 433 and 434 read with Section 439 of the Companies Act, came to be dismissed without being admitted.

The learned Company Judge felt that the claim of the company petitioner that a sum of Rs.26,14,265/- an admitted debt as on the date of issue of statutory notice under Section 439 of the Companies Act issued on 11.6.2011 is not a debt undisputed as claimed by the company petitioner but even prior to the issue of notice, there were some disputes about such an amount being due by the company. The learned Company Judge also found that on examination of the financial position of the company, it cannot be concluded that the company was unable to pay its admitted debt and that the company is not a solvent company etc. The learned Company Judge also recorded a finding that the dispute raised regarding the liability is a bonafide dispute and therefore, it is not a fit case for admission and therefore dismissed the petition.

Decision: Appeal dismissed.

Reason

It is now submitted by the appellant that the respondent company had systematically went on reducing the amount that it had offered; that it had offered an amount of Rs.16 lakhs in the beginning but when the matter was adjourned, they got it reduced but it is submitted that Rs.16 lakhs offered by the respondent company was not acceptable to the appellant

company and therefore, the matter remained, but when the matter went before the Mediation Centre etc., the respondent company only offered a further reduced amount and when the matter is now pending before this Court and even otherwise also, they have reduced the offer to Rs.10 lakhs etc. which only shows that there is liability but the respondent company is evading payment etc.

The dispute relating to the quality and quantity of goods supplied viz., fabrics, its colour etc. was a dispute which on perusal of the records reveals to be an existing one and as to whether that can, in any manner, reduce the amount as claimed by the appellant or even can be a bigger amount than the claim, as is submitted by the learned Counsel for the company and that the respondent company had also a counter claim, is not a matter which is further required to be examined in this appeal.

The learned Single Judge found that there was some bonafide dispute and therefore could not be taken as an admitted debt. We are also of the opinion that there were some disputes and to what extent the disputes remained unresolved is not necessary to be examined. The matter getting adjourned time and again for settlement but settlement not taking place, we do not think it is proper for this Court to keep such matters pending without being admitted and it may be bargaining in one way or the other. We do not find any good ground to admit the appeal and to keep it pending and we do not find any ground calling for interference and therefore, this appeal is dismissed.

CS

LW.72.08.2013

BOMBAY RAYON FASHIONS LIMITED & ANR v. SEBI [SAT]

Appeal No. 203 of 2012

Jog Singh, Presiding Officer & A S Lamba, Member
[Decided on 28/06/2013]

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 - Regulations 75, 77, 109(c) - preferential allotment of optionally convertible warrants - part not converted into equity shares within the prescribed period - Board refused to grant relaxation - whether Board is correct - Held, Yes.

Brief facts

Appellant No. 1 made, under the ICDR Regulations of 2009, preferential issues of 10 million optionally convertible warrants at the conversion exercise price of Rs.263/- per warrant including premium to B R Machine Tools Pvt. Ltd and allotment of 10 million warrants was made by Appellant No. 1 in favour of Reynold Shirting Ltd on September 13, 2009 at the conversion exercise price of Rs.193/- per warrant including premium. Pursuant to the above said allotment of 20 million warrants, 12.5 million warrants were converted into equity shares within the



creeping acquisition limit as prescribed by SAST Regulations, 1997. Thus, 7.5 million warrants remained to be converted into equity shares and the prescribed limitation of 18 months for conversion of such warrants into shares was to expire on April 3, 2012.

Appellant No. 2 did not convert the balance 7.5 million outstanding warrants on account of proviso to sub-regulation (2) of Regulation 3 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereinafter referred to as "SAST Regulations, 2011". The said Regulation provides that no further acquisition of shares by any acquirer is permissible if such acquisition results in bringing the aggregate shareholding of the acquirer (including PACs) above the maximum permissible non public shareholding which is 75%. According to the Appellants, Appellant No. 2 was, therefore, restrained from exercising its conversion option in respect of 7.5 million outstanding warrants and this peculiar situation which had arisen entirely due to coming into force of SAST Regulations, 2011 w.e.f. October 23, 2011. As such, the Appellants approached the Respondent under Regulation 109(c) of the ICDR Regulations, 2009 for grant of relaxation from the strict enforcement of Regulations 75 and 77 of the ICDR Regulations, 2009 by letter dated March 14, 2012.

By letter dated April 17, 2012, the Respondent rejected the request for relaxation from the strict enforcement of Regulation 77(4) of the ICDR Regulations, 2009. The said letter was challenged by the Appellants before this Tribunal by way of Appeal No. 139 of 2012 and the same was disposed of by order dated July 5, 2012 setting aside the impugned order dated April 17, 2012 and remanding the matter back to the Respondent while directing it to pass a speaking order as to the request made by the Appellants. Accordingly, the Respondent has once again reconsidered the whole matter and the request of the Appellants and has passed the impugned order dated August 10, 2012 rejecting the same by way of an exhaustive and reasoned order, which is under challenge in this appeal.

Decision: Appeal dismissed.

Reason

We have heard both the learned counsel for the parties at length and have perused the appeal along with the documents brought on record. Chapter VII of the ICDR Regulations, 2009 deals with the subject of 'Preferential Issue' and Regulations 70 to 74 provide for the various conditions, including the methodology resorted to, for the purpose of allotment of 'Preferential Issue'. Regulation 75 deals with the "Tenure of Convertible Securities" and provides that it shall not exceed 18 months from the date of their allotment. Similarly, Regulation 77 provides for the payment of consideration and its forfeiture. Sub-regulation (4) of Regulation 77 specifically provides that in case the warrant holder does not exercise the option to take

equity shares against warrants held by him, the consideration paid in respect of such warrants under sub-regulation (2) of Regulation 77 shall stand forfeited. Undoubtedly, this provision is mandatory and the actual events in the present case duly demonstrate that Appellant No. 2 had more than adequate number of opportunities to convert the warrants in question into shares. In this regard it is pertinent to deal with Regulation 109(c) of the ICDR Regulations, 2009 under which the exemption is being vociferously claimed by the Appellants. It is evident from the facts of the case that the non-compliance would in no way be caused owing to any factors ostensibly beyond the Appellants' control.

It is seen from the pleadings that the Promoter Group in Appellant No. 1 increased their shareholding in a systematic manner from 31.54% to 93.15% during December 2009 to December 2011. The process of conversion of warrants into equity shares went on till September 30, 2011 when Appellant No. 2 converted atleast 2.5 million warrants into shares. It is pertinent to note here that the new SAST Regulations, 2011 had already been published in the official Gazzette on September 23, 2011 and as such the Appellant No. 2 was fully aware of the implication of the said Regulations which were to come into force on October 23, 2011 i.e. after 30 days of their being Gazzetted. In fact, the threshold limit of 25% regarding minimum public holding prescribed by Rule 19(A) of SCRR, 1957 appears to have been breached at that time itself by increasing the shareholding of the promoters along with the person acting in concert with them beyond 75% i.e. up to 93.15%.

Indeed Appellant No. 2 should have atleast approached the Respondent for any relaxation or exemption from the applicability of Regulation 3(2) of the SAST Regulation, 2011 immediately after the same were Gazetted on September 23, 2011 or after October 23, 2011 when they were brought into force and a further window of one month, was provided by the Respondent for considering and clearing such issues as remained unconverted. But no such application was preferred by Appellant No. 2 at that time. It is also relevant to note that Regulation 35 (2)(b) of the SAST Regulations, 2011 saves any right, privilege, obligation or liability acquired, accrued or incurred under SAST Regulations, 1997. But Appellant No. 2 faltered in not making any application to the Respondent seeking clarification or exemption till March 14, 2011 when a joint application was moved in collaboration with Appellant No. 2, knowing well that the 18 months period provided by the Regulation for conversion of warrants in question was on the verge of expiry.

It is our considered opinion that Appellant No. 2 has totally failed to satisfy the Respondent regarding any factor beyond the control of the issuer which would have prevented him from converting the warrants in question into shares. The Respondent, therefore, rightly did not exercise its jurisdiction to permit any relaxation in the matter.

CS



Competition Laws

LW.73.08.2013

M/S. OFFICIAL BEVERAGES v. SAB MILLER INDIA, SKOL BREWERIES LTD. & ORS [CCI]

Case No. 81/2012

Ashok Chawla (Chairperson), H.C. Gupta, Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, Justice S. N. Dhingra (Retd.) & S. L. Bunker (Members)
[Decided on 31/05/2013]

Competition Act, 2002 - Sections 26(1) & 26(2) - abuse of dominance - investigation into abuse of dominance - termination of franchise agreement for non-payment of royalty - whether results in abuse of dominance - Held, No.

Brief facts

The Informant was engaged in manufacturing and selling soda, packaged drinking water and also running a franchisee business in Andhra Pradesh. OP1 was owner of trademark Hayward's 5000 and FOSTERS and carrying business of marketing of products manufactured under the trademark Hayward's 5000 and FOSTERS. The Informant and OP1 entered into a franchise agreement on 01.03.2009, valid for a period of three years, further renewable by mutual consent, by which OP1 granted license to the informant for manufacture of packaged drinking water, sparkling water, packaged soda etc. in pet bottles of different sizes, under trademark of the OP1, (hereinafter referred to as 'Products') in Andhra Pradesh. OPs (2 to 13) were clearing and forwarding agents for the products manufactured by the Informant, under the trademark of OP1. The Informant entered into various agreements with OPs 2 to 13, to market and sell the products in Andhra Pradesh.

OP1 by its letter dated 10.02.2012 terminated the agreement between Informant and OP1, for breach of terms of agreement for non-payment of Rs. 80 lakhs outstanding towards royalty and for wrongly not placing orders for supply of bottled waters to enterprises from whom Informant had taken money. The Franchise Agreement was terminated before the stipulated period of three years.

Informant complained to CCI alleging that (i) OP1 was in a dominant position in market and the terms of the Agreement between OP1 and Informant were completely one sided and favoured OP1 and OP1 adopted an unfair trade practice of predatory pricing by fixing uncontrolled royalty and brand promotion charges and the Informant was under a constant fear of the Franchise Agreement being terminated by OP1; (ii) after the termination of the Agreement, OP1 and Opposite Parties 2 to 13 withheld the sale consideration to be paid to the Informant and formed a cartel and boycotted the business of the Informant causing irreparable loss to it and (iii) OP1 as a brand was in a dominant position in the relevant market and it abused its position of strength and acted in connivance with the other opposite parties to affect business of the Informant unless it carried business as per their abusive terms and conditions.

Decision: Case closed.

Reason

The agreement between the informant and OP-1 was in the nature of a franchisee agreement. Under a franchisee agreement, a franchiser agrees to pass on its knowhow to the franchisee and provides it with necessary promotional and other assistance, without running a risk that this might benefit its competitors. Such agreements give substantial advantage to both the franchiser and franchisee. Such agreements allow the franchiser to derive financial benefit from its expertise without having to invest its own capital and to enlarge its geographical reach. The franchisee gets benefitted because it could receive, even without any past experience of trade, access to trading methods, technology, knowhow, quality control and goodwill which the franchiser had built over the years and for which it had gained reputation. Therefore, a franchisee agreement always protects and contains the legitimate expectations of franchiser and it contains restrictive conditions for the franchisee.

A franchiser can reasonably ask the franchisee to maintain quality, hygiene and other standards to do business in such a manner so that the reputation of the franchiser does not suffer. If there is a breach of franchisee agreement, the aggrieved party can claim damages under law of contract from the other.

In the present case, the agreement between the informant and OP-1 was a franchisee agreement in respect of manufacturing and selling drinking water and soda packaged under trade name of OP1 & as per specifications of OP-1. The drinking water and soda was to be marketed under the trade mark of OP-1 in the bottles/containers as prescribed by OP-1. The dispute between the parties was business/commercial dispute regarding implications of the franchisee agreement. No competition issue arises in this case. When the informant entered into a franchisee agreement with OP-1, he had many options, as many players were active in the field of selling packaged drinking water and soda. It cannot be said that OP-1 had no competitors and therefore was able to operate



independent of competition. The issue of dominance would not arise in a franchisee agreement of this nature. The technology of manufacturing drinking water and soda is not a secret technology. Anybody can manufacture drinking water and soda. Basically informant wanted to take benefit of the name and the goodwill of the trade name of OP-1 by marketing drinking water and soda in the trade name of OP-1. He had the option of even manufacturing/ marketing soda & drinking water under his own brand name and would not have to pay the royalty. There is no case of abuse of dominance. CS

LW.74.08.2013

ADVERTISING AGENCIES GUILD v. INDIAN BROADCASTING FOUNDATION & ITS MEMBERS [CCI]

Case No. 35 of 2013

Ashok Chawla (Chairperson), Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, Justice (Retd.) S. N. Dhingra & S.L. Bunker (Members)
[Decided on 01/07/2013]

Competition Act, 2002 – Section 26(2) - abuse of dominance - formation of cartel - respondent shifted to net billing basis from gross billing basis - advertising agencies were asked to agree to the same - Agency that has not agreed denied broadcasting - whether abuse of dominance - Held, No.

Brief facts

Informant was an association of small and medium sized advertising agencies set up to look after the interest of small and medium sized agencies besides interacting with professional bodies such as the Indian Newspaper Society (INS), Government, advertising agencies and associations. Indian Broadcasting Foundation (IBF) (OP 1) was a section 25 company, claimed to be India's premium apex organization of television broadcasters. OP 1 was stated to consist of major broadcasters with more than 250 TV Channels enjoying a unique position as the accredited spokesman of the broadcasting industry.

Informant alleged formation of a cartel by the members of IBF through the medium of OP 1. It further alleged that OP 1 and its members had been acting as a cartel for a long time and even during the MRTP regime OP 1 was suspected of acting as a cartel. The informant association averred that the members of OP 1 wanted to shift from the time tested and industry wide practice of gross billing basis to a net billing to the advertising agencies and were forcing the advertising agencies to agree to the new mechanism. They collectively boycotted and did not broadcast advertisements on their Channels for two days viz. 01.05.2013 & 02.05.2013.

The informant stated that the Advertising agencies had no other option but to agree to the demands of OP 1 as it directed all its

members to stop screening advertisements during the aforementioned period and thereby forced the advertising agencies to shift to the new billing system. This act of OP 1 was described in the information as a classic case of a group boycott/ cartel where all the channels boycotted the advertisement agencies.

Decision: Case closed.

Reason

The informant highlighted two grievances against the opposite party association of broadcasters. Firstly, the agreement amongst the members of IBF and the decision taken by IBF to switch to a net billing method and; secondly, the decision taken by IBF to drop advertisements from TV on 01.05.2013 & 02.05.2013-both of which were alleged to be anti-competitive agreements having appreciable adverse effect on competition

Undoubtedly, there has been a collective action by OP 1 and its members but primarily the trade associations are for building consensus among the members on policy/other issues affecting the industry and to promote these policy interests with the government and with other public/private players. Such activities may not necessarily lead to competition law violation. To perceive otherwise will render the trade association bodies as completely redundant, being opposed to competition law. The trade association provide a forum for entities working in the same industry to meet and to discuss common issues. They carry out many valuable and lawful functions which provide a public benefit e.g. setting common technical standards for products or interfaces; setting the standards for admission to membership of a profession; arranging education and training for those wishing to join the industry; paying for and encouraging research into new techniques or developing a common response to changing government policy. Therefore, membership and participation in the collective activities of a trade association cannot by itself amount to violation of competition law as such. However, when these trade associations transgress their legal contours and facilitate collusive or collective decision making with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services as defined in section 2(c) of the Act, by its members, it will amount to violation of the provisions of the Act.

In the present case the OPs collectively took the decision to shift from the gross billing method to net billing method. The reason given by the OPs (as stated in the information) related to the Income Tax department's mandate which requires the members of OP 1 to deduct TDS on the 15% Discount (which amounts to commission to the advertising agencies) given to the advertising agencies (which include members of the informant association). Since OPs were not deducting TDS on the 15% discount/ commission, they decided to start billing at net 85% instead of showing gross bill as 100% reduced to 85% after showing discount on the invoice.

The Commission does not find any competition issue involved in



the change of this billing system. In the net billing method, only the net bill or the charges of the broadcaster are to be indicated and the trade discount which was reflected in the bills is no longer to be mentioned in the invoices. The informant alleged that this decision would significantly affect the members of the advertising agencies industry and the advertisers as it would result in a sudden stoppage of a practice that was well established and running without any problem. This contention seems to be without any logical basis and lacks existence of any competition issue involved in which the Commission should interfere.

The informant alleged violation of section 3(1) read with section 3(3) of the Act. At this juncture, it may be stated that section 3(3) of the Act is applicable when there is a horizontal agreement between players operating at the same level in a particular market. Such agreement may be in the form of price fixation, market sharing, collusive bidding etc. which will have an appreciable adverse effect on competition within the market in which they are operating. Collective action of the members of a trade association *per se* does not fall in the categories of agreements contravening section 3(3) of the Act. Simply, a collective action taken at the level of the trade association to change the billing system *prima facie* does not amount to any contravention under the Act.

On the basis of aforesaid, the Commission is of the view that there is no *prima facie* case for directing DG to investigate the matter. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.

CS



Industrial & Labour Laws

LW.75.08.2013

MAHESH CHAND & ORS v. M/S.LE MERIDIEN [DEL]

W.P.(C) 5311/2000 and C.M.A. No. 19796/2012 (Arising out of I.D. No.725/91 decided by the Labour Court on 07.10.1999) W.P.(C) 5312/2000 and C.M.A. No. 314/2013 (Arising out of I.D. No.726/91 decided by the Labour Court on 07.10.1999) W.P.(C) 5345/2000 and C.M.A. No. 318/2013 (Arising out of I.D. No.727/91 decided by the Labour Court on 07.10.1999)

Vipin Sanghi, J.

[Decided on 01/07/2013]

Industrial Disputes Act, 1947 - Section 2(oo) - termination of probationers - whether retrenchment - Held, No.

Brief facts

This batch of writ petitions has been preferred to assail the awards passed by the Labour Court in respect of each of the petitioners. By the impugned awards, the references made in respect of each of the workmen with regard to termination of their services, have been answered against the petitioner workmen. The basis of the impugned awards is that the services of the petitioners, who were admittedly on probation, have been terminated in terms of the appointment condition; during the period of probation, and; that their discharge simpliciter is not stigmatic, or by way of punishment. It has been held that the termination of the services of the petitioners does not tantamount to retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 (the Act), since it is covered by clause (bb) of the said provision.

Decision: Petitions dismissed.

Reason

The cornerstone of the submission of the learned counsel for the petitioner is the Constitution Bench judgment (Five Judges) of the Supreme Court in *Punjab Land Development and Reclamation Corporation Limited, Chandigarh v. Presiding Officer, Labour Court, Chandigarh & Others*, (1990) 3 SCC 682. He submits, by placing reliance on the said decision, that the termination of the services of a probationer also tantamount to retrenchment within the meaning of section 2(oo) of the Act. He submits that this Constitution Bench judgment not having been considered in the aforesaid subsequent decisions of the Supreme Court, the said decisions would be of no avail, and they are *per incuriam*.

At the cost of repetition, I may observe that the Constitution Bench was not called upon to examine the issue whether the termination of the services of a probationer, in terms of a stipulation contained in the contract of employment, tantamount to retrenchment within the meaning of section 2(oo) of the Act in the face of clause (bb) thereof. The decision in *Punjab Land Development (supra)*, therefore, does not advance the petitioners case in any way. The said issue, namely, whether the termination of the services of a probationer amounts to retrenchment, or not, in the light of the definition of the expression "retrenchment" as is now contained in the Act, has squarely been considered and answered in *Kalyani Sharp India Ltd v. Labour Court No.1 Gwalior & Anr.*, (2002) 9 SCC 655, *Escorts Limited v. Presiding Officer & Anr.*, (1997) 11 SCC 521, *M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. and Anr.*, (1994) 2 SCC 323, and a Division Bench decision of this Court in *Management of Apparel Export Promotion Council v. Surya Prakash*, (2011) III LLJ 335 (Delhi).



Since the judgment in Punjab Land Development (*supra*) is not an authority for the proposition decided in Kalyani Sharp India Ltd (*supra*), Escorts Limited (*supra*), M. Venugopal (*supra*), Management of Apparel Export Promotion Council (*supra*), the ratio of the judgment in Punjab Land Development (*supra*) does not render the subsequent decisions referred to above, *per incuriam*.

What is of relevance is the stipulation for termination contained in the contract of employment and not the capacity in which the workman is employed, i.e., whether as a trainee, apprentice, on casual basis or against a temporary or permanent post. Even an apprentice could be appointed on probation.

The submission that clause (bb) of Section 2(o) can be invoked only when the work is of a temporary nature, i.e., where the workman is employed in a project or a scheme of temporary nature - also has no merit.

There can be no quarrel with the proposition that where the employer resorts to repeated extension of the probation period only with a view to exploit the workman, it may tantamount to an unfair labour practice. However, that is a matter to be examined in the facts of each case and that exercise shall be undertaken a little later. But mere extension of the probationary period would not raise a presumption against the employer - that the employer has resorted to an unfair labour practice.

I now proceed to consider the submission of the petitioner that the continuation of the services of the petitioners on probation amounted to an unfair labour practice in the light of the facts of each of these cases.

The last pay drawn by each of the petitioners was Rs.750/- per month. The aforesaid tabulation clearly shows that each of the petitioners was initially appointed as casual Houseman. These appointments were on casual basis. Not long after the said initial appointment on casual basis, the petitioners were appointed as Room Attendants on probation on 01.09.1988. These appointments were made between 6 to less than 8 months of the initial appointment on casual basis. Therefore, it cannot be said that the appointment as Room Attendant on probation was done so as to defeat any right that the petitioners may have got vested with - as casual Houseman. Within less than 11 months of the said appointment on probation, and during continuation of the probation, the services of the petitioners have been terminated. Their terminations have not been claimed by the petitioners to be stigmatic. The letters of appointment clearly state that the petitioners would be treated as under probation until such time the petitioners have been confirmed by a special order confirming them in service, irrespective of the expiry of the period of probation stipulated in the offer of appointment. The period of probation in the letters of appointment of each of the petitioners was stated to be one year. The termination of the petitioners has taken place within the initial

period of probation itself. Consequently, there is no basis for the petitioners to claim that the respondent resorted to adoption of an unfair labour practice in the aforesaid factual background.

For all the aforesaid reasons, I find no merit in these writ petitions and dismiss the same leaving the parties to bear their respective costs. CS

LW.76.08.2013

ASSAM CARBON PRODUCTS LTD v. STATE OF WEST BENGAL & ORS [CAL]

W. P. No. 593 of 2011

Sambuddha Chakrabarti, J.
[Decided on 28/06/2013]

Industrial Disputes Act, 1947 - Section 9A - change of service rules - new service rules were introduced in 1984 in the place of 1969 rules - new rules were not circulated but workers took benefits of the same for years - after 13 years dispute was raised that the new rules were not circulated before implementation - whether tenable - Held, No.

Brief facts

The principal issue which cropped up for consideration in the industrial dispute before the tribunal below was whether the management of the writ petitioner was justified in changing the existing Service Rules of 1969 by new Service Rules of 1984.

The company had its factories in Guwahati and Hyderabad and had its corporate office in Kolkata. The service conditions of the workmen were guided by the General Service Rules of the company of 1969 along with periodical terms of settlement. The workmen represented by the union were aware of the facts of the General Service Rules of 1969. After the implementation of those rules appointment letters to different employees were issued. So far as one Sri Aditya Kumar Das is concerned there was dispute relating to the age of his retirement. It appears that the company circulated another service rules of 1984 for the Calcutta through a Memo dated January 30, 1997. The grievance of the workmen is that the company at no point of time intimated them that another service rule of the company was in existence. The company, in fact, always relied on the 1969 Rules and the settlements were also arrived at in terms thereof. Several instances of post 1984 appointments have been cited where it was particularly mentioned that service would be governed by the 1969 Rules.

The further grievance of the workmen was that the 1984 Rules were prepared without the consent of the workmen represented by the union which amounted to contravening the provisions of the Industrial Disputes Act, 1947 (the Act, for short). The new Rules of



1984 aimed at curtailing the age long right and service protection benefits of the workmen which they had been enjoying under the 1969 Rules. The real areas of difference between the existing service benefits under the old rules and the new rules have been tabled under the Award impugned. Since the company was unwilling to accede to the demands of the workmen it raised an industrial dispute and ultimately it resulted in a reference.

The learned trial judge of the tribunal below after considering the respective submissions made by the respective parties and the evidence on record concluded that the union had the *locus standi* to raise the dispute before the appropriate forum and though the leaned judge was of the view that the 1984 Rules were more beneficial but no benefit could be given to the company as it failed to comply with the provisions of Section 9A of the Act and the Tribunal was of the view that the company was not justified in changing the existing Service Rules.

Decision: Petition allowed.

Reason

The principal issue involved in this writ petition is whether a notice under Section 9A of the Act was required to be issued for the introduction of the new rules in place of the 1969 Rules when the members of the union have taken benefit of the subsequent rules. The petitioner has particularly assailed the Award by holding that the Tribunal itself having held that the 1984 Rules were more beneficial than the earlier one the question of the latter Rules adversely affecting the right of the workmen did not arise.

Admittedly no notice was issued to the Union by the company at the time of introducing the 1984 Rules. In support of their contention the respondents have referred to the case of *M/s. Tata Iron and Steel Company Limited v. The Workmen and Others*, reported in (1972) 2 SCC 383. In that case the Supreme Court had held that the real object and purpose of enacting Section 9A of the Act is to afford an opportunity to the workmen to consider the effect of the proposed change and if necessary to represent their point of view on the proposal. In order to effectively achieve the object underlying Section 9A it would be more appropriate to place on the Fourth Schedule read with Section 9A a construction liberal enough to include change of weekly rest days from Sunday to some other week day. The Supreme Court had further held that prior consultation with workmen serves to stimulate the feeling of common joint interest of management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect harmonious and sympathetic cooperation in improving the dignity and status of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital.

The learned trial judge relied on this judgement and concluded that prior to change of rule an employer should comply with the

provisions of Section 9A read with 4th Schedule of the Industrial Disputes Act. This is evident from a bare reading of Section 9A itself which *inter alia* injuncts an employer from effecting any change in the conditions of service applicable to a workman in respect of any matter specified in the 4th Schedule to the Act without giving to the workmen likely to be affected by those changes a notice in the prescribed manner of the nature of the change proposed to be effected or within twenty-one days of giving such notice provided that no notice shall be required for effecting any such change.

I find sufficient force in the submission that the Tribunal below having itself held that the 1984 Rules are more beneficial in nature could not come to the conclusion about the violation of Section 9A simultaneously. The Tribunal below made a comparative chart showing the benefits under the respective Rules of 1969 and of 1984 and came to the clearest conclusion that workmen were enjoying the more benefits under the 1984 Rules and after thirteen years they raised the dispute. The Tribunal below unmistakably concluded that the 1984 Rules were more beneficial than the 1969 Rules but in spite of that it held the company guilty of violation of Section 9A. The necessary corollary that follows from it is that if the changes are more beneficial than the previous rules Section 9A has no application and merely because the beneficial rules were not circulated amongst the workmen it could not be held that the company was guilty of violating the provisions of Section 9A. The Tribunal below having held that the subsequent rules are more beneficial it should have simultaneously held that there was no dispute to be raised over the issue and in such view of it the Tribunal erred in holding against the writ petitioners for violating Section 9A of the Act..

CS



Tax Laws

LW.77.08.2013

CCE, PONDICHERRY v. RAVISHANKAR INDUSTRIES PVT. LTD.
[CESTAT]

Appeal No. E/1287/2004 & E/CO/39/05

P.K. Das, Judicial Member & Mathew John, Technical Member
[Decided on 19/07/2013]



Central Excise Valuation Rules, 2000 - job work - duty payable by job worker - whether losses incurred by the manufacturer is deductible for duty purposes - Held, No.

Brief facts

The Respondents acted as job-workers for M/s KODAC India Ltd, Chennai ("KODAC" for short), for manufacture of Unexposed Cinematography Colour Polyester Positive Films. The raw material was supplied by KODAC and KODAC also paid job-work charges to the respondent. The respondents were paying excise duty on the manufactured products as per provisions in Notification 36/2001-CE (NT) dated 26/06/2001.

KODAC furnished a cost construction certificate w.e.f. 19-09-2000 showing an assessable value of Rs. 5.69 per linear meter of the film after deducting a loss of 0.27 per linear meter toward loss incurred by M/s KODAC and respondent was paying duty based on assessable value of Rs. 5.69 per meter.

Revenue was of the view that excise duty should be paid on the cost of manufacture of the film by respondent and not based on the selling price of KODAC which involves a loss of Rs. 0.27 per linear meter. Based on such reasoning a show cause notice was issued for the period Jul 01 to Nov 01. The adjudicating authority dropped the demand on the ground that the provisions of Notification 36/2001-CE (NT) would imply that excise duty is to be paid on the price at which KODAC was selling the goods and the cost certificate furnished by KODAC was not really required for deciding the assessable value. Revenue filed an appeal with Commissioner (Appeal) against this decision arguing that the traders loss cannot be a factor to be taken into account while determining the manufacturing cost of goods which should be the assessable value in the hands of the job-worker. Commissioner (Appeal) rejected the appeal filed by Revenue based on the argument that the Central Excise Valuation Rules, 2000 do not have a specific rule to deal with valuation of goods manufactured on job-work basis and having regard to Rule 11 and the general principles of valuation in the said rules it is proper to accept the sale price of KODAC as assessable value of the respondent though the sale price involved some loss to KODAC. Aggrieved by the order of the Commissioner (Appeal) Revenue has filed this appeal.

Decision: Appeal allowed.

Reason

It is seen from the notification that there is nothing in the notification which speaks of the method of determining value of goods in the hands of the job-worker. The notification exempts the person supplying the raw material from provisions of Rule 9 of Central Excise Rules and also enjoins on him certain responsibilities to furnish certain relevant information. The notification is not relevant for anything more. So the question of deciding valuation has to be done with regard to Central Excise Act, 1994 and Central Excise Valuation Rules and relevant judicial pronouncements.

It is quite true that till 01-04-2007 the Central Excise Valuation Rules did not have clear providing how to arrive at value of goods manufactured on job-work basis. So this issue was subject matter of many litigation and finally decided by the Apex Court in the case of *Ujagar Prints Etc. v. UOI* [1989 (39) ELT 493(SC)] and the decision was followed till 01-04-2007 when rule 10A has been introduced in the valuation rules. Ever since that the issue is still under dispute. But that is really not relevant for deciding the dispute at hand because it relates to the period prior to 01-04-2007.

In view of the decision of the Apex Court in the case of *Ujagar Prints (supra)* we are of the view that for determining the assessable value in the hands of job-worker only the value of the raw materials plus the value of the job work done plus the manufacturing profit and the manufacturing expenses but not any other subsequent profit or expenses be taken. Just as traders profit cannot form part of the assessable value traders loss cannot result in reduction in assessable value of the goods in the hands of the job-worker. The decision of the Tribunal in the case of *Chemdye Manufacturing Company Pvt. Ltd* distinguishes the decision in the case of *Ujagar Prints* by stating that in those cases the trader's prices were not known. Such statement is not supported by the facts of the case and in fact the whole dispute in the matter of levying duty was whether the principal manufacturers selling price should be adopted for collecting duty when goods are manufactured by the job-worker. Further the Apex Court in the case of *CCE v. Fiat India Pvt. Ltd*-2012 (283) ELT 161 (S. C.) did not find it proper to give deduction from cost of manufacture incurred by the actual who incurs cost of material and does the manufacturing activity by himself. So, allowing deduction towards loss of the person supplying raw material to determine assessable value in the hands of the person undertaking manufacturing activity is not warranted. So, we follow the decision of the Apex Court in the case of *Ujagar Prints* and hold that duty was payable by the respondent without allowing any deduction for loss incurred by the respondent. The demand for differential duty amounting to Rs. 3,94,978/- is confirmed.

Since this is a legal dispute we do not agree with the proposal to impose any penalty on the respondent. 

LW.78.08.2013

BECHTEL INDIA PVT LTD v. CCE, DELHI [CESTATJ]

ST/45-48/2009

Justice G. Raghuram(P) & Sahab Singh (MT)..

[Decided on 17/07/2013]

Cenvat Credit Rules - Rule 5- Export of service - refund claim made within one year of realisation of proceeds in foreign exchange - rejection on the ground of limitation on the ground



that claims were made after one year of export - whether rejection tenable - Held, No.

Brief facts

The appellants are provider of Consulting Engineers Service and they are exporting majority of services under provisions of Export of Service Rules, 2005. They filed four refund claims for the period July 2005 to September 2005, October 2005, November 2005 and December 2005 on 29.09.2006, 31.10.2006, 30.11.2006 and 29.12.2006 respectively under Rules 5 of the Cenvat Credit Rules read with notification No. 5/2006 dated 14.03.2006. These claims were rejected by the original adjudicated authority on the ground of time bar as claims were filed beyond period of 1 year as stipulated under Section 11B of the Act and also on the ground that Rules 5 was applicable only to manufactures and only with effect from 14.03.2006 service providers become entitled for refund as appellant claims were pertaining to period July 2005 to December 2005, they are not entitled for refund. Original authority has also observed that there is no need to examine whether assessee have fulfilled the requirements of Notification 5/2006 dated 14.03.2006. Appellants challenged the Orders in Original before Commissioner (Appeal), who held that appellants would have been entitled to refund of unutilized credit even prior to date of amendment i.e. 14.03.2006 but he rejected their claim on ground of time bar under Section 11B of Central Excise taking relevant date as date of export of service. Appellants have filed these appeals against the impugned order.

Decision: Appeal allowed.

Reason

Issue involved in these appeals is whether claims filed by the appellants are time barred as held by lower authorities or in time as claimed by the appellants.

On going through the provisions for claiming refund under Rule 5 of the Cenvat Credit Rule 2004, output service is required to be exported in accordance with procedure laid down in Export of Service Rule 2005 (as per condition 1 of the Appendix to Notification 5/2006). Once service is exported refund claim can be filed subject to limitation as prescribed under Section 11B of the Act.

In the instant case export of service is complete only when foreign exchange is received in India as per Export of Service Rule 2005 (i). In Section 11B, relevant date for refund of export of goods is date of export. Section 11B is made applicable for claiming refund under Rule 5 of the Cenvat Credit Rules as per condition 6 of Notification 5/2006. In case of export of Services, export is complete only when foreign exchange is received in India. Therefore relevant date of export of services is date of receipt of foreign exchange. In the present case all the four claims have been filed with 1 year from the date of receipt of foreign exchange and are therefore filed in time and cannot be held as time barred. CS

ATTENTION ! PRACTISING COMPANY SECRETARIES

EMPANELMENT AS A "PEER REVIEWER"

(AS PER THE GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTICING COMPANY SECRETARIES)

The Council of the Institute approved the Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries at its 202nd Meeting held on August 25-26, 2011 at New Delhi.

A copy of the Guidelines is available on the ICSI website (<http://www.icsi.edu/LinkClick.aspx?link=2242&tabid=2220&mid=4498>) and also published in the September, 2011 issue of the Chartered Secretary Journal.

The Guidelines have come into effect from October 1, 2011. The Peer Review exercise has already commenced from January 4, 2012. The Peer Review Board has been organising extensive training programmes for Peer Reviewers at various locations throughout the country and many more programmes have been scheduled in the months of August-September 2013.

The nature and complexity of peer review requires the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- a) Be a member;
- b) Possess at least ten years experience; and
- c) Be currently in the practice as Company Secretary.

Members in practice are invited to empanel themselves as a Peer Reviewer under the Guidelines for Peer Review of Attestation Services by PCS if they fulfill the aforesaid qualifications for being empanelled as a Peer Reviewer.

The Proforma for Empanelment as a "Reviewer" is available on the webpage of the Peer Review Board on ICSI website (<http://www.icsi.edu/AppointmentReviewer/tabid/2240/Default.aspx>). The duly filled in proforma may be sent to - The Secretary, Peer Review Board, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi 110 003 (email: prb-icsi@icsi.edu).



From the Government



Corporate Laws

01 The Securities Laws (Amendment) Ordinance, 2013*

[Issued by the Ministry of Law and Justice (Legislative Department) and vide Notification Published in the Gazette of India (Extraordinary) Part II-Section I dated 18.07.2013]

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

CHAPTER I PRELIMINARY

1. Short title and commencement.

- (1) This Ordinance may be called the Securities Laws (Amendment) Ordinance, 2013.
- (2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

CHAPTER II AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

2. Amendment of section 11.

In section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) (hereafter in this Chapter referred to as the principal Act),-

- (i) in sub-section (2),
 - (a) for clause (ia), the following clause shall be substituted, namely:-

“(ia) calling for information and records from any person including any bank or any other authority or

board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;”;

- (b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:-

“(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;”;

- (ii) after sub-section (4), the following sub-section shall be inserted, namely:-

“(5) The amount disgorged, pursuant to a direction issued under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or section 19 of the Depositories Act, 1996 (22 of 1996) as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.”.

3. Amendment of section 11AA.

In section 11AA of the principal Act,-

- (i) in sub-section (1)-
 - (a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;
 - (b) the following proviso shall be inserted, namely:-

“Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.”;
 - (ii) in sub-section (2), in the opening portion, for the word “company”, the word “person” shall be substituted;
 - (iii) after sub-section (2), the following sub-section shall be inserted, namely--

“(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations

* No.8 of 2013. Promulgated by the President in the Sixty-fourth Year of the Republic of India.



made under this Act.”;

(iv) in sub-section (3),-

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:-

“(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,”.

4. Amendment of section 11B.

In section 11B of the principal Act, the following Explanation shall be inserted, namely:-

“Explanation.-For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

5. Amendment of section 11C.

In section 11C of the principal Act,-

(i) for sub-section (8), the following sub-section shall be substituted, namely:-

‘(8) Where in the course of an investigation, the Investigating Authority has reason to believe that any person or enterprise, as the case may be, to whom a notice under subsection (3) has been issued or might be issued,-

(a) has omitted or failed to provide the information or produce documents as required in the notice; or

(b) would not provide the information or produce documents which shall be useful for, or relevant to, the investigation; or

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation,

then, the Chairman may, after being satisfied that it is necessary to do so, authorise the Investigating Authority or any other officer of the Board (the officer so authorised in all cases being hereinafter referred to as the authorised officer), to-

(i) enter and search, with such assistance, as may be required, the building, place, vessel, vehicle or aircraft where such information or documents are expected or believed to be kept;

(ii) break open the lock of any door, box, locker, safe almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available;

(iii) search any person who has got out of, or is

about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account or other documents;

(iv) require any person who is found to be in possession or control of any books of account or other documents, maintained in the form of electronic record, to provide the authorised officer the necessary facility to inspect such books of account or other documents.

Explanation.- For the purposes of this sub-clause, the expression “electronic record” shall have the meaning assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

(v) seize any such books of account or other documents found as a result of such search:

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(vii) record on oath the statement of any person who is found to be in possession or in control of the information or documents referred to in sub-clauses (i), (iii) and (iv).”;

(ii) for sub-section (9), the following sub-section shall be substituted, namely,-

“(9) The Board may make regulations in relation to any search or seizure under this section; and in particular, without prejudice to the generality of the foregoing power, such regulations may provide for the procedure to be followed by the authorised officer-

(a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(b) for ensuring safe custody of any books of account or other documents or assets seized.”;

(iii) in sub-section (10), the words “and inform the Magistrate of such return” shall be omitted.

6. Insertion of new section 15JB.

After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:-

“15JB. Settlement of administrative and civil proceedings.

(1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-1, may file an application in writing to the Board proposing for settlement



From the Government

of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.”.

7. Amendment of section 15T.

In section 15T of the principal Act, sub-section (2) shall be omitted.

8. Amendment of section 26.

In section 26 of the principal Act, sub-section (2) shall be omitted.

9. Insertion of new sections 26A, 26B, 26C, 26D and 26E.

After section 26 of the principal Act, the following sections shall be inserted, namely:-

“26A. Establishment of Special Courts.

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Offences triable by Special Courts.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

26C. Appeal and revision.

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the

local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

26D. Application of Code to proceedings before Special Court.

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

26E. Transitional provisions.

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under this section.”.

10. Insertion of new section 28A.

After section 28 of the principal Act, the following section shall be inserted, namely:-

‘28A. Recovery of amounts.

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section IIB or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of the person’s movable property;
- (b) attachment of the person’s bank accounts;
- (c) attachment and sale of the person’s immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the



person's movable and immovable properties, and for this purpose, the provisions of sections 221 to 227, 228A, 229, 231, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.-For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.--Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.-Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961 (43 of 1961) shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non compliance with any direction issued by the Board under section 11 B,

shall have precedence over any other claim against such person.

(4) For the purpose of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.' .

11. Amendment of section 30.

In section 30 of the principal Act, in sub-section (2),--

(i) after clause (c), the following clauses shall be inserted, namely:-

"(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;

(cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;";

(ii) after clause (d), the following clauses shall be inserted, namely:-

"(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations."

CHAPTER III AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

12. Amendment of section 12A.

In section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this Chapter referred to as the principal Act), the following *Explanation* shall be inserted, namely:-

Explanation.-For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

13. Insertion of new section 23JA.

After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007,



From the Government

namely:-

“23JA. Settlement of administrative and civil proceedings.

(1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply.

(4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be, under this section.”.

14. Insertion of new section 23JB.

After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:-

‘23JB. Recovery amounts.

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 221 to 227, 228A, 229, 231, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said

provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.- For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank-accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.- Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.- Any reference to appeal in Chapter XVIIID and the Second Schedule to the Income-tax Act, 1961, (43 of 1961), shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.

(4) For the purposes of sub-section (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.’.

15. Amendment to section 26.

In section 26 of the principal Act, sub-section (2) shall be omitted.

16. Insertion of new sections 26A, 26B, 26C, 26D and 26E.



After section 26 of the principal Act, the following sections shall be inserted, namely:—

“26A. Establishment of Special Courts.

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2.) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working,

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Offences triable by Special Courts.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (20 of 1974), all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

26C. Appeal and Revision.

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 2 of 1974. on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

26D. Application of Code to proceedings before Special Court.

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post,

for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

26E. Transitional provisions.

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) :

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.”.

CHAPTER IV

AMENDMENTS TO THE DEPOSITORIES ACT, 1996

17. Amendment of section 19.

In section 19 of the Depositories Act, 1996 (22 of 1996) (hereafter in this chapter referred to as the principal Act), the following Explanation shall be inserted, namely:-

“*Explanation.*--For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

18. Insertion of new section 19-IA

After section 19-I of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:-

“19-IA. Settlement of Administrative Civil Proceedings.

(1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 19 or section 19H, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

(3) For the purpose of settlement under this section,



From the Government

the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply.

(4) No appeal shall lie under section 23A against any order passed by the Board or the adjudicating officer under this section.”

19. Insertion of new section 19-IB.

After section 19-IA of the principal Act as so inserted, the following shall be inserted, namely:-

“19-IB. Recovery of amounts.

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely: -

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 221 to 227, 228A, 229, 231, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.- For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case

may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.- Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.- Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961 (43 of 1961), shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23A of this Act.

(2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1),

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 19, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.”

20 . Amendmen of section 22.

In section 22 of the principal Act, sub-section (2) shall be omitted.

21. Insertion of new sections 22C, 22D, 22E, 22F and 22G.

After section 22B of the principal Act, the following sections shall be inserted, namely:-

“22C. Establishment of Special Courts.

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

22D. Offences triable by Special Courts.

Notwithstanding anything contained in the Code of



Criminal Procedure, 1973 (2 of 1974) all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

22E. Appeal and Revision.

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

22F. Application of Code to proceedings before Special Court.

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974)

(2) The person conducting prosecution referred to in subsection (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

22G. Transitional Provisions.

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.”

22. Amendment of section 23A.

In section 23A of the principal Act, sub-section (2) shall be omitted.

PRANAB MUKHERJEE
PRESIDENT

P. K. Malhotra
Secy. to the Govt. of India

02 FII/QFI investments in Security Receipts

[Issued by the Securities and Exchange Board of India vide CIR/IMD/FIIC/9/2013 dated 09.07.2013]

1. The consolidated FDI policy circular issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, effective from April 05, 2013, states that FII investments in Security Receipts issued by Asset Reconstruction Companies should be within the FII limit on corporate bonds prescribed from time to time.
2. Accordingly, the investments in Security Receipts issued by Asset Reconstruction Companies by FII's shall be reckoned against the extant Corporate Debt Limits.
3. The investments of FIIs in Security Receipts shall be subject to terms and conditions as specified by the Reserve Bank of India from time to time.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under SEBI Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

A copy of this circular is available at the web page “F.I.I.” on our website www.sebi.gov.in. The custodians are requested to bring the contents of this circular to the notice of their FII clients.

S Madhusudhanan
Deputy General Manager

03 Revised Position Limits for Exchange Traded Currency Derivatives

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/22 /2013 dated 08.07.2013]

1. This is in partial modification of SEBI Circular No. SEBI/DNPD/Cir-38/2008 dated August 6, 2008, SEBI/DNPD/Cir-45/2009 dated March 24, 2009, CIR/DNPD/5/2010 dated July 30, 2010 and CIR/DNPD/2/2012 dated May 23, 2012 which, *inter-alia*, specified the position limits applicable for Client and Trading Member for Exchange Traded Currency Derivatives.
2. In consultation with RBI and in view of the recent turbulent phase of extreme volatility in USD-INR exchange rate, it has been decided to curtail position limits and increase margin requirements for Currency



From the Government

Derivatives as follows:

- a. **Margins:** Initial and extreme loss margins shall be increased by 100% of the present rates for USD-INR contracts in Currency Derivatives.
 - b. **Client level position limits:** The gross open position of a client across all contracts shall not exceed 6% of the total open interest or 10 million USD, whichever is lower.
 - c. **Non-bank Trading Member position limits:** The gross open position of a Trading Member, who is not a bank, across all contracts shall not exceed 15% of the total open interest or 50 million USD whichever is lower.
3. Stock Exchanges are directed to:
 - a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant byelaws, rules and regulations;
 - b) implement provisions of this circular with effect from July 11, 2013;
 - c) bring the provisions of this circular to the notice of the trading members/clearing members and also disseminate the same on its website.
 4. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema

Deputy General Manager

04 Arbitration Mechanism in Stock Exchanges

[Issued by the Securities and Exchange Board of India vide CIR/MRD/ICC/20/2013 dated 05.07.2013]

1. Reference may be made to circular no. CIR/MRD/DSA/24/2010 dated August 11, 2010. Para 8 of the said circular no. CIR/MRD/DSA/24/2010 dated August 11, 2010 is being modified. The para 8 of aforementioned circular dated August 11, 2010 shall now read as under:

"8. Place of Arbitration

8.1 The Stock Exchanges (SEs) having nationwide terminals, shall provide arbitration facility (i.e arbitration as well as appellate arbitration) atleast at all centres specified by SEBI from time to time. However, the SEs having nationwide terminals may provide arbitration facility at additional

centres, if SEs so desire. The arbitration and appellate arbitration shall be conducted at the centre nearest to the address provided by Client in the KYC form.

8.2 Other stock exchanges shall provide the arbitration facility, including appellate arbitration, at the place where it is located.

8.3 The application under section 34 of the Arbitration and Conciliation Act, 1996, if any, against the decision of the appellate panel shall be filed in the competent Court nearest to the address provided by Client in the KYC form."

2. The stock exchanges are advised to:-
 - a. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately;
 - b. bring the provisions of this circular to the notice of the members of the stock exchange and also to disseminate the same through their website; and
 - c. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Reports to SEBI.
3. SEBI inspection of stock exchange shall cover implementation of this circular.
4. This Circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect immediately.
5. This Circular is available on SEBI website at www.sebi.gov.in.

B K Gupta

Deputy General Manager

05 Arbitration Mechanism in Stock Exchanges

[Issued by the Securities and Exchange Board of India vide CIR/MRD/ICC/21/2013 dated 05.07.2013]

1. Reference may be made to circulars no. CIR/MRD/DSA/24/2010 dated August 31, 2010, CIR/MRD/SA/03/2012 dated January 20, 2012 and CIR/MIRSD/2/2012 dated February 15, 2012 regarding investor service centres providing inter alia arbitration



06

Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Person in the Securities Markets) Regulations, 2007

[Issued by the Securities and Exchange Board of India vide No. LAD-NRO/GN/13/6109. Published in the Gazette of India (Extraordinary) Part III-Section 4 dated 19.06.2013]

In terms of sub-regulation (1) of regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (the Regulations), the Board may require, by notification, any category of associated persons as defined in the Regulations to obtain requisite certification(s).

- facility (arbitration as well as appellate arbitration). Presently, these facilities are being provided at 8 centres viz. Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Hyderabad, Kanpur and Indore.
2. With a view to extend these facilities, it has been decided to increase the number of investor service centres providing inter alia arbitration facility (arbitration as well as appellate arbitration). Increasing the number of centres shall reduce the travelling and other incidental costs to investors in case they choose to avail these facilities. The following is decided:
 - a. Stock Exchanges with nation-wide terminals shall set up investor service centres at Bangalore, Pune, Jaipur, Gaziabad, Lucknow, Gurgaon, Patna and Vadodara. These centres shall provide investor grievances redressal mechanism and arbitration facility (arbitration as well as appellate arbitration).
 - b. The investor service centres at Bangalore, Pune, Jaipur and Gaziabad shall be established before December 31, 2013.
 - c. The investor service centres at Lucknow, Gurgaon, Patna and Vadodara shall be made functional by June 30, 2014.
 - d. Accordingly, all Stock Exchanges with nation-wide terminals would have to set-up these facilities at all 16 places mentioned above by June 30, 2014.
3. The stock exchanges are advised to:-
 - a. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately;
 - b. bring the provisions of this circular to the notice of the members of the stock exchange and also to disseminate the same through their website; and
 - c. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Reports to SEBI.
4. SEBI inspection of stock exchange shall cover implementation of this circular.
5. This Circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect immediately.
6. This Circular is available on SEBI website at www.sebi.gov.in.

B K Gupta

Deputy General Manager

2. Accordingly, it is notified that with effect from the date of this notification, Investment Advisers and their associated persons, including their representatives and partners, offering investment advice, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as "NISM") by passing the NISM-Series-X-A: Investment Adviser (Level 1) Certification Examination (hereafter referred to as "IACE-1") as mentioned in the NISM communiqué No. NISM/Certification/Series-X-A: IA-L1/2013/01 dated May 21, 2013:

Provided that if such an associated person has obtained certification by passing NISM Certified Personal Financial Advisor (CPFA) Examination as on the date of this notification, he shall not be required to obtain certification by passing IACE-1, till the validity of the said certification.

3. Further, such associated persons who pass the IACE-1 or CPFA shall also obtain certification for the purpose of sub-regulation (2) of regulation 7 of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 from NISM by passing NISM-Series-X-B: Investment Adviser (Level 2) Certification Examination, as and when notified by the Board.

Notwithstanding anything contained in this notification, such associated person, may, in alternative, also obtain certification from organizations and institutions accredited by NISM, for the purpose of sub-regulation (2) of regulation 7 of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.

U. K. Sinha

Chairman





07

Name Availability Guidelines, 2011 - Registration of Electoral Trusts as Companies under Section 25 of the Companies Act, 1956.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 12/2013 dated 28.06.2013]

In continuation to this Ministry's circulars no. 45 dated 8.7.2011, 48/2011 dated 22.07.2011 and 7/2012 dated 25.04. 2012 on the subject cited above and to say that in para no.9 (iii) of General Circular No.45 dated 08.07.2011 is modified as under:-
“(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed For e.g: Cooperative, sehkari, trust, LLP, Partnership, Society, proprietor, HUF, Firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.

Explanation: i) Name including phrase '**Electoral Trust**' may be allowed for Registration of companies to be formed under section 25 of the Companies Act, 1956 under the Electoral Trusts Scheme, 2013 as notified by the Central Board of Direct Taxes (CBDT).”

2. However, the company to be formed under section 25 of the Act, shall be the new company and such company will be required to comply with section 293-A of the Act. Further, Name application may be accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme as notified by the CBDT.
3. This issues with the approval of competent authority.

B.N.Harish
DII (policy)



Economic Laws

08

Review of the policy on foreign direct investment in the Multi Brand Retail Trading Sector- amendment of paragraph 6.2.16.5(2) of 'Circular 1 of 2013-Consolidated FDI Policy'

[Issued by the Ministry of Commerce and Industry (DIPP) vide Press Note

No.3 (2013 Series) dated 04.07.2013]

1.0 Present Position:

1.1 As per paragraph 6.2.16.5 of 'Circular 1 of 2013-Consolidated FDI Policy', effective from 5.4.2013, FDI, up to 51%, under the government approval route, is permitted in the multi-brand retail trading sector, subject to specified conditions.

1.2 The list of States/Union Territories which have conveyed their agreement for the policy in Multibrand retail trading is contained in Paragraph 6.2.16.5 (2) of the said Circular, amended vide Press Note 1 (2013 series) dated 3.6.2013, as under:

6.2.16.5 (2) LIST OF STATES/ UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(1)(viii)

1. Andhra Pradesh
2. Assam
3. Delhi
4. Haryana
5. Himachal Pradesh
6. Jammu & Kashmir
7. Maharashtra
8. Manipur
9. Rajasthan
10. Uttarakhand
11. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

2.0 Revised Position:

2.1 The Government of Karnataka has given its consent to implement the policy on multi-brand retail trading in Karnataka in terms of paragraph 6.2.16.5 (1) (viii). The list of States/ Union Territories as at paragraph 6.2.16.5 (2) therefore, is amended to read as below:

S. No.	Sector/ Activity	% of FDI Cap/ Equity	Entry route
6.2.16.5	Multi Brand Retail Trading	51%	Government
	(1) FDI in (2) LIST OF STATES/ UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(1)(viii) 1. Andhra Pradesh 2. Assam 3. Delhi 4. Haryana 5. Himachal Pradesh 6. Jammu & Kashmir 7. Karnataka		



8 . Maharashtra
9. Manipur
10. Rajasthan
11. Uttarakhand
12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

3.0 The above decision will take immediate effect.

Anjali Prasad

Joint Secretary to the Government of India

09 Clarification on Queries of Prospective Investors/ Stakeholders on FDI Policy for Multi-Brand Retail Trading

[Issued by the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion]

Issue	Clarification/ comment
30% sourcing from Small and Medium Enterprises: (a) Can the Foreign Investor purchase the 30% of the total procurement of manufactured or processed goods by the SME but distribute them either through the retail operation and/ or cash & carry operations and/ or export for the Foreign Investor's International retail & trading operations? (b) Whether a 'small industry' referred to the actual legal entity of manufactured/ processed products purchased with investment within USD 1 million which shall not include its parent company, subsidiaries, affiliates and/or franchisor? Whether farmer, cooperative, agro-business including dairy, poultry and fresh, distributor and reseller of major branded companies will be counted as a SME if its investment is within USD 1 million?	(a) No. The 30% sourcing will be reckoned only with reference to the front end store. As such a multi-brand retailing entity cannot engage in any other form of distribution. (b) The phrase used in the FDI policy is 'small industries' with maximum investment in Plant & Machinery at USD 1 million. The sourcing condition pertains only to manufactured and processed products. Procurement of fresh produce is not covered by this condition.
50% investment in back-end infrastructure (a) Can the new retail entity to be set up acquire supply chain/back-end assets or stake from an existing company having such assets and will such assets /stake values be counted towards the back-end investment requirement? (b) Would investment (equity stake less than 100%) in a company engaged in development of back-end infrastructure be considered part of the investment in back-end infrastructure if one can certify its use towards back-end capacity? (c) Whether investment in back-end infrastructure for instance for storage, warehouses, agricultural produce infrastructure in non-FDI approved	(a) No. Entire investment in back-end infrastructure has to be an additionality. The entity can invest only in greenfield assets and it will not be possible to acquire supply/ chain/back-end assets or stakes from an existing entity. (b) No. Such investment in the equity of the existing infrastructure company will not be treated towards the fulfillment of the conditionality of 50% investment in back-end infrastructure. (c) FDI in these activities is already allowed throughout the country. As far as MBRT is concerned FDI in non-FDI approved States in back-

states will be counted towards investment in back-end infrastructure.

(d) Will the new retail entity include back-end facilities that have the capacity to supply its own businesses and other businesses. It should be free to supply back-end services (e.g. logistic supply, goods) to related or third party companies, including but not limited to the company's existing wholesale entity and the retail franchisee operated by its partners.

(e) Would a company operating in wholesale trading/ cash & carry trading be considered as a company providing back-end infrastructure in efficiently distributing the goods to the small retailers and professional/ business users?

(f) Would the minimum investment of 50% of the total FDI in back-end infrastructure be mandatorily invested in the same state where the retail store is proposed to be set up?

Investment in Front-end / back-end infrastructure

(a) If the same foreign investor is an investor in various companies for logistics, services etc., will the back-end investment made by such investor be aggregated?

(b) Can back-end and front-end infrastructure be held by separate entities? Can the back-end entity be 100% owned by a foreign entity since 100% FDI is permitted under the automatic route for a company engaged in back-end infrastructure related?

Small industry certification:

Suppliers should have some form of authentication to confirm their status as 'small industry'.

Population Restrictions on operations

(a) For determining whether a city has a population of more than 10 lakh, it should not be limited to the data as per the 2011 census. When a city reaches such population level after 2011, it should be allowed to self-certify that it has achieved the population. Further, the population restriction should recognize that twin cities or co-located cities may be eligible based on their combined population.

end infrastructure will be counted provided it is an additionality.

(d) As per the conditions for wholesale cash & carry trading, such an entity is not permitted to undertake retailing of any form. Therefore, both the businesses have to be kept separate through different entities. As regards supplies by MBRT company to franchisees run by its partners, it is clarified that the policy envisages multi-brand trading in retail. The MBRT entity is not envisaged to undertake wholesale activity i.e. B2B. The front-end stores set up by MBRT entity will have to be 'company owned and company operated' only.

(e) No. The wholesale trading/ cash & carry trading cannot be considered to be providing back-end infrastructure. FDI in MBRT will require fresh investment in back-end infrastructure.

(f) The investment towards back-end infrastructure can be made across all states irrespective of the fact whether FDI in MBRT is allowed in that state or not.

(a) No. Investments in multiple infrastructure companies would not be counted towards fulfillment of condition of investing 50% in the back end infrastructure.

(b) The back-end entity may be 100% owned by a foreign entity as long as the investor in MBRT has been able to satisfy the condition that 50% of the FDI brought into the country for MBRT has been utilized in back-end infrastructure as an additionality.

Certificate issued by District Industries Centre would be adequate authentication to confirm status of supplier as 'small industry'.

(a) Census data is the most authoritative source of population data, which is accepted by all the States. Therefore, no other data source or self-certification can be permissible.



From the Government

State Discretion: (a) The policy should not give states that have approved FDI in multi-brand retail the ability to change the fundamental rules of the FDI policy including but not limited to the 30% 'small industry' sourcing and minimum investment in back-end infrastructure requirements. (b) In case, the foreign investor approaches a State Government for setting up a retail store, can the state Government put additional conditions to operate in that state? (c) In case, the foreign investor approaches a State Government not included in the list of states supporting FDI in MBRT, would the approval of such new state be valid before they are	(a) States which have opted for inclusion in the FDI policy have already been notified. Any amendment in the policy falls under the domain of the Central Government. However, State laws/regulations will apply. (b) FDI policy in MBRT is subject to the applicable State/Union Territory laws/ regulations. The State Governments have the prerogative of imposing additional conditions accordingly. (c) If the foreign investor approaches a State Government not included in the list of states supporting FDI in MBRT, consent from the State Government would be sufficient, and
notified to the DIPP for addition in the list?	a suitable amendment to the policy will be issued by Central Government.
Policy on E-commerce Allowing online sales will enable the Company to better serve Indian customers through enhanced convenience and assortment as well as improve the site customer experience. This will allow the company to make significant investments in Logistics.	Multi-brand retail trading by way of e-commerce is not permitted.
Front end retail franchise stores in non- FDI states: Whether the back-end infrastructure could support front end retail franchise stores in non-FDI states at arm's length price.	Back end infrastructure, so developed, can be used across the states by any entity. Franchisee model is not permissible as per extant FDI policy on MBRT. The front-end stores set up by MBRT entity will have to be 'company owned and company operated' only.
Investment in greenfield or brownfield front-end entities Can the minimum investment of US\$ 100 Million be used to acquire existing retail stores or setting up new retail stores or a combination of both?	50% of the investments brought in, must be invested in back-end infrastructure, and any amount spent in acquiring front end retail stores would not be counted towards back-end infrastructure. The front-end retail stores must also be set up as an additionality and not through acquisition of existing stores.

Following issues are under consideration:

- Sourcing restriction amongst 'group companies'.
- Requirement of 50% investment in 'backend infrastructure' within three years of the first tranche of FDI.

- Requirement of 30% sourcing from 'small industry'. Whether sourcing from such 'small industry' can be allowed towards fulfillment of this conditionality, if it outgrows, and if so, till what period?



Banking Laws

10 Risk Management and Inter-Bank Dealings – Reporting of Unhedged Foreign Currency Exposures of Corporates

[Issued by the Reserve Bank of India vide RBI/2013-14/151 A.P. (DIR Series) Circular No.17 dated 23.07.2013.]

- Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to Section B paragraph 1(i)(h) and Section G Para (ii) of A.P. (DIR Series) Circular No. 32 dated December 28, 2010 on "Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks" and C.O. Circular FE.CO.FMD. 7472/02.03.075 (Policy) /2012-13 dated October 5, 2012, in terms of which AD Category – I banks are required to submit a quarterly statement in prescribed format (Annex V), on foreign currency exposures and hedges undertaken by corporates based on bank's books.
- It has now been decided that AD Category – I banks should submit the above quarterly report as per the revised format online only from quarter ended September 2013 through the Extensible Business Reporting Language (XBRL) system which may be accessed at <https://secweb.rbi.org.in/orfsxbrl/>. AD Category – I banks which require login ID / passwords for accessing XBRL system may submit their e-mail addresses and contact numbers to email ids. In case of system related issues, banks may call on 022-22610640 (D) and 022-22601000 Extn. 2529 or mail.
- The Directions contained in this circular have been



issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge

12 Risk Management and Inter Bank Dealings

[Issued by the Reserve Bank of India vide RBI/2013-14/127 A.P. (DIR Series) Circular No. 7 dated 08.07.2013.]

Attention of Authorized Dealers Category – I (AD Category – I) banks is invited to the A.P.(DIR Series) Circular No.129 dated May 21, 2012 regarding participation in Currency Futures / Exchange Traded Currency Options markets.

11 Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation

[Issued by the Reserve Bank of India vide RBI/2013-14/147 A.P. (DIR Series) Circular No.14 dated 22.07.2013.]

1. Attention of Authorised Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 52 dated November 20, 2012 extending the enhanced period for realization and repatriation to India, of the amount representing the full value of goods or software exported, from six months to twelve months from the date of export up to March 31, 2013. Further, in terms of A.P. (DIR Series) Circular No. 105 dated May 20, 2013 it was decided, in consultation with the Government of India to bring down the above stated realization period from twelve months to nine months from the date of export valid till September 30, 2013.
2. In this connection, it is clarified that as the realization and repatriation period stipulation in terms of A.P. (DIR Series) Circular No. 52 dated November 20, 2012 was valid till March 31, 2013 only, the time period for realization and repatriation of export proceeds from April 01, 2013 onwards till September 30, 2013, shall be reckoned as nine months from the date of export.
3. The provisions in regard to period of realization and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged.
4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
5. The directions contained in this circular have been issued under sections 10 (4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

C. D. Srinivasan
Chief General Manager

2. On a review of the evolving market conditions, it has been decided that AD Category – I banks should not carry out any proprietary trading in the currency futures / exchange traded currency options markets. In other words, any transaction by the AD Category – I banks in these markets will have to be necessarily on behalf of their clients.
3. These instructions shall come in to effect immediately and shall be in force till further orders.
4. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge

13 Risk Management and Inter-Bank Dealings- Liberalization of documentation requirements for the resident entities in the Indian Forex Market

[Issued by the Reserve Bank of India vide RBI/2013-14/118 A.P. (DIR Series) Circular No.02 dated 04.07.2013.]

Attention of Authorized Dealers Category – I (AD Category – I) banks is invited to A.P. (DIR Series) Circular No. 32 dated December 28, 2010 issued on Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks. In the annex to this circular, under paragraph (II) sub-paragraph (b) (ii) it has been stated that in the case of contracted exposure, AD Category I banks must obtain “Quarterly certificates from the statutory auditors of the users, that the contracts outstanding at any point of time with all AD Category I



From the Government

banks during the quarter did not exceed the value of the underlying exposures”

2. In view of the recommendations of the Technical Committee on Services / Facilities for the Exporters (Chairman: Shri G. Padmanabhan, Executive Director, Reserve Bank of India) regarding rationalization of the documentation process, it has now been decided that AD banks, while offering hedging products under the contracted exposure route to their customers may obtain an annual certificate from the statutory auditors to the effect that the contracts outstanding with all AD category I banks at any time during the year did not exceed the value of the underlying exposures at that time. It is reiterated, however, that the AD bank, while entering into any derivative transaction with a client, shall have to obtain an undertaking from the client to the effect that the contracted exposure against which the derivative transaction is being booked has not been used for any derivative transaction with any other AD bank.
3. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
4. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions /approvals, if any, required under any other law.

C D Srinivasan
Chief General Manager

14 Foreign Investment in India – Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies

[Issued by the Reserve Bank of India vide RBI/2013-14/117 A.P. (DIR Series) Circular No.01 dated 04.07.2013.]

Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified by the Reserve Bank vide Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

2. The Department of Industrial Policy and Promotion (DIPP),

Ministry of Commerce & Industry, Government of India had, vide Press Notes 2 and 3 (2009 series) dated February 13, 2009, issued guidelines for calculation of total foreign investment, i.e., direct and indirect foreign investment in Indian companies and for establishment of Indian companies/ transfer of ownership or control of Indian companies from resident Indian citizens to non-resident entities, in sectors with caps. Further, DIPP, vide their Press Note 2(2012 series) dated July 31, 2012, had made certain other changes. The Consolidated FDI Policy Circular 1 of 2013 dated April 5, 2013, available at www.dipp.gov.in comprehensively incorporates the contents of the Press Notes.

3. (i) The regulatory framework comprises:
 - (A) definitions;
 - (B) concept of direct and indirect foreign investment;
 - (C) method of calculation of total foreign investment;
 - (D) guidelines for establishment of Indian companies and transfer of ownership or control of Indian companies, from resident Indian citizens and Indian companies to non-resident entities, in sectors with caps;
 - (E) downstream investment by an Indian company which is not owned and/or controlled by resident entity /ies.

These guidelines, summarised in the Annex, shall come into force from the date(s) mentioned in the Notification No.FEMA.278/2013-RB dated June 07, 2013 and notified vide G.S.R.393(E) dated June 21, 2013.

- (ii) Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009 would not require any modification to conform to these guidelines. All other investments, after the said date, would come under the ambit of these new guidelines.
- (iii) As regards investments made between February 13, 2009 and the date of publication of the FEMA notification, Indian companies shall be required to intimate, within 90 days from the date of this circular, through an AD Category I bank to the concerned Regional Office of the Reserve Bank, in whose jurisdiction the Registered Office of the company is located, detailed position where the issue/transfer of shares or downstream investment is not in conformity with the regulatory framework now being prescribed. Reserve Bank shall consider treating such cases as compliant with these guidelines within a period of six months or such extended time as considered appropriate by RBI in consultation with Government of India.
4. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents



concerned.

5. As stated above, Reserve Bank has since amended the Regulations and notified vide Notification No. FEMA.278/2013-RB dated June 07, 2013 and notified vide G.S.R.393(E) dated June 21, 2013.
6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar

Chief General Manager-In-Charge

Annex

Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies

A. Definitions

- 1 (i) Ownership and Control
 - a) Company 'Owned by resident Indian citizens' shall be an Indian company if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens; Company shall be considered 'Controlled' by resident Indian citizens if the residents Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company;
 - b) Company 'Owned by non-residents' means an Indian company where more than 50% of the capital in it is beneficially owned by non-residents; Company 'Controlled by 'non-residents' ' means an Indian company where non-residents have the power to appoint a majority of its directors in that company;
- (ii) Direct foreign investment' shall mean investment received by an Indian Company from non-resident entities regardless of whether the said investments have been made under Schedule 1, 2, 3, 6 and 8 of the Notification No. FEMA. 20/2000-RB dated May 3, 2000, as amended from time to time;
- (iii) 'Downstream investment' means indirect foreign investment, by one Indian company into another Indian company, by way of subscription or acquisition;
- (iv) 'Holding Company' would have the same meaning as defined in Companies Act 1956;
- (v) 'Indian Company' means a company incorporated in India under the Companies Act, 1956;

(vi) 'Indirect foreign investment' means entire investment in other Indian companies by an Indian company (IC), having foreign investment in it provided IC is not 'owned and controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens or where the IC is owned or controlled by non-residents. However, as an exception, the indirect foreign investment in the 100% owned subsidiaries of operating-cum-investing/ investing companies will be limited to the foreign investment in the operating-cum-investing/ investing company.

(vii) 'Investing Company' means an Indian Company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings/securities;

(viii) 'Non-Resident Entity' means 'person resident outside India' (as defined at Section 2(w) of FEMA, 1999);

(ix) 'Resident Entity' means 'person resident in India' (as defined at Section 2(v) of FEMA, 1999), excluding an individual;

(x) 'Resident Indian citizen' shall be interpreted in line with the definition of person resident in India as per FEMA, 1999, read in conjunction with the Indian Citizenship Act, 1955.

(xi) 'Total foreign investment' in an Indian Company would be the sum total of direct and indirect foreign investment.

B. Direct and indirect foreign investment in Indian companies – meaning

2. Investment in Indian companies can be made by both non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise both resident and non-resident investments. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be a cascading investment, i.e. through multi-layered structure.

C. Guidelines for calculation of total foreign investment, i.e., direct and indirect foreign investment in an Indian company.

3. (i) Counting of Direct foreign investment: All investments made directly by non-resident entities into the Indian company would be counted towards 'Direct foreign investment'.
- (ii) Counting of indirect foreign Investment: The entire indirect foreign investment by the investing company into the other Indian Company would be considered for the purpose of computation of indirect foreign



From the Government

investment. However, as an exception, the indirect foreign investment in the 100% owned subsidiaries of operating-cum-investing/investing companies will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception has been made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

(iii) The methodology for calculation of total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.

(iv) Additional requirements

(A) The full details about the foreign investment including ownership details etc. in Indian company /ies and information about the control of the company /ies would be furnished by the Company /ies to the Government of India at the time of seeking approval.

(B) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any inter-se agreements between/ amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such *inter-se* agreements for determining ownership and control when considering the case for approval of foreign investment.

(C) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/ held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.

(D) In the I & B and Defence sectors where the sectoral cap is less than 49%, the company would need to be "owned and controlled" by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

(a) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term "largest

Indian shareholder", used in this clause, will include any or a combination of the following:

(aa) In the case of an individual shareholder,
(aai) The individual shareholder,
(aaii) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(aaiii) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(ab) In the case of an Indian company,

(abi) The Indian company

(abii) A group of Indian companies under the same management and ownership control.

(b) For the purpose of this Clause, "Indian company" shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

(c) Provided that, in case of a combination of all or any of the entities mentioned in sub-clauses (aa) and (ab) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

(E) If a declaration is made by persons as per section 187C of the Indian Companies Act about a beneficial interest being held by a non resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

4. The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or a rule there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the insurance sector which will continue to be governed by the relevant Regulation.

D. Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens and Indian companies to non-resident entities, in sectors with caps.

5. In sectors/activities with caps, including, inter-alia, defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/ FIPB approval would be required in all cases where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity or
(ii) An Indian company is being established with foreign



investment and is not controlled by a resident entity or

- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/ passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/ demerger, acquisition, etc. or
- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition, etc. or
- (v) It is clarified that these guidelines will not apply to sectors/activities where there are no foreign investment caps, that is, where 100% foreign investment is permitted under the automatic route.
- (vi) For the purpose of computation of indirect foreign investment, foreign investment shall include all types of direct foreign investments in the Indian company making downstream investment. For this purpose portfolio investments either by FIIs, NRIs or QFIs holding as on March 31 of the previous year would be taken into account. e.g. for monitoring foreign investment for the financial year 2011-12, investment as on March 31, 2011 would be taken into account. Besides, investments in the form of Foreign Direct Investment, Foreign Venture Capital investment, investments in ADRs/GDRs, Foreign Currency Convertible Bonds (FCCB) will also be taken into account. Thus, regardless of the investments having been made under Schedule 1, 2, 3, 6 and 8 of the Notification No.FEMA. 20/2000-RB dated May 3, 2000, as amended from time to time will be taken into account.

E. Downstream investment by an Indian company which is not owned and/or controlled by resident entity/ies.

- 6. (i) Downstream investment by an Indian company, which is not owned and/ or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

Note: with effect from 31st day of July 2012 Downstream investment/s made by a banking company, as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, incorporated in India,

which is owned and/or controlled by non-residents/ a non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

- (ii) Downstream investments by Indian companies will be subject to the following conditions:

- (a) Such a company has to notify Secretariat for Industrial Assistance, DIPP and FIPB of its downstream investment in the form available at <http://www.fipbindia.com> within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);
- (b) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of its Board of Directors as also a Shareholders' Agreement, if any;
- (c) issue/transfer/pricing/valuation of shares shall continue to be in accordance with extant SEBI/ RBI guidelines;
- (d) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not use funds borrowed in the domestic market. This would, however, not preclude downstream operating companies, from raising debt in the domestic market. Downstream investments through internal accruals are permissible by an Indian company engaged only in activity of investing in the capital of another Indian company/ies, subject to the provisions above and as also elaborated below:

- Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company /ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in Annex-B of Schedule 1 of FEMA Notification No. 20 dated May 3, 2000 as amended from time to time;
- Those companies, which are Core Investment



From the Government

Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

- For infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Note: Foreign investment into other Indian companies would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

- (e) The FDI recipient Indian company at the first level which is responsible for ensuring compliance with the FDI conditionalities like no indirect foreign investment in prohibited sector, entry route, sectoral cap/ conditionalities, etc. for the downstream investment made by in the subsidiary companies at second level and so on and so forth would obtain a certificate to this effect from its statutory auditor on an annual basis as regards status of compliance with the instructions on downstream investment and compliance with FEMA provisions. The fact that statutory auditor has certified that the company is in compliance with the regulations as regards downstream investment and other FEMA prescriptions will be duly mentioned in the Director's report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the Reserve Bank of India, Foreign Exchange Department (FED), Regional Office (RO) of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO of having intimated it of the qualified auditor report. RO shall file the action taken report to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Central Office Building, Shahid Bhagat Singh Road, Mumbai 400001.

15 Raising Money through Private Placement by NBFCs-Non-Convertible Debentures (NCDs) -Clarification

[Issued by the Reserve Bank of India vide RBI/2013-14/115 DNBS(PD) CC No.349/03.10.001/2013-14 dated 02.07.2013.]

Please refer to our circular DNBS (PD) CC No.330/03.10.001/2012-13 dated June 27, 2013.

2. We have received a number of queries in the matter from the industry. The main refrain of the sector is that the withdrawal of the current facility of issuing NCDs without any restrictions would result in adversely impacting their Asset Liability Management (ALM). In this connection, it is clarified, that the freedom currently available to NBFCs to raise funds through NCDs without any restriction has resulted in inadequate resource planning and higher transaction cost. One of the main objectives of the said circular is to promote discipline in resource planning and raising.
3. Nevertheless, in order to facilitate the process of moving into a more robust ALM in a non-disruptive manner, it has been decided that the instruction with regard to minimum gap between two successive issuances of privately placed NCDs may not be operationalized immediately. A decision on the appropriate minimum time gap would be taken by the Bank in due course. NBFCs, in the meantime, are advised to put in place before the close of business on September 30, 2013, a Board approved policy for resource planning which, inter-alia, should cover the planning horizon and the periodicity of private placement.
4. With regard to some of the other issues on which clarifications were sought by the industry, the position is as under:
 - i. Keeping in view the Primary Dealers' obligations with regard to G-Sec market, it has been decided that the provisions of the said circular shall not be applicable to Primary Dealers.
 - ii. The restrictions contained in paragraph 2.iii of the Annex to the Circular shall not be applicable to Core Investment Companies.
 - iii. The provisions of paragraph B of the Annex to the said circular shall not apply to subordinated debt, as defined under paragraph 2(1)(xvii) of the Non-Banking Financial (Non-Deposit Accepting or Holding Companies Prudential Norms (Reserve Bank) Directions, 2007.
5. Further, paragraph 1.i of Annex to the circular may be read as follows:
"private placement means non-public offering of NCDs by NBFCs to such number of select subscribers and such subscription amounts, as may be specified by the Reserve Bank from time to time. "
6. There shall be no change in the other provisions of the said circular.

N. S. Vishwanathan
Principal Chief General Manager

Invitation of Articles for Special Issues of Chartered Secretary

It has been decided to bring out special issues of Chartered Secretary as under:

Issue	Last Date for receiving Articles for this Issue	Theme	Broad Coverage
October, 2013	September 15, 2013	FEMA	• Foreign investment in India • Investment routes and procedures • Foreign direct / portfolio investment • Foreign exchange management • External commercial borrowing • Foreign currency convertible bonds • Deferred payment protocols • U K Sinha committee report • Chandrasekhar committee report • Overseas business opportunities and financing thereof • Joint ventures / branches of overseas companies /opening of branches abroad by Indian companies • Indian depository receipts • Offences, contraventions and compounding provisions • Common adjudication authority • Currency derivatives • Provisions in Indian financial code
November, 2013	October 15, 2013	Transitioning from Company Secretary to Governance Professional	• Role of Professions in Economic Development • Role of CS in Governance • Governance in Government • Governance in Companies • Governance in not-for-profit Organisations • Regulation of the Profession of CS, Development of the Profession of CS • CS as Independent Directors
January, 2014	December 15, 2013	Novelties in the Companies Bill, 2012	• One person company • Investor protection • Class actions • Gender diversity • Whistle blower policy • Corporate social responsibility • Business responsibility reporting • Subordinate legislation • Disgorgement • Auditing standards • Secretarial standards • E-governance • Role of CS
March, 2014	February 15, 2014	Gloomier Side of Business	• Corporate fraud • Violations of corporate laws • Securities market manipulation • Violations of securities laws • Enforcement Actions • Benami Transactions • Money laundering • Financing of terrorism • Serious fraud investigation office • Financial intelligence unit • Financial action task force • Economic offences

Articles on the aforesaid subjects are welcome for consideration by the Editorial Advisory Board for publication in the said special issues. Contributors may also refer to the general guidelines for authors published elsewhere in this issue.

The articles may kindly be forwarded to:

The Deputy Director (Publications)

The Institute of Company Secretaries of India, 22, Institutional Area
Lodi Road, New Delhi – 110003.

e-mail: ak.sil@icsi.edu copy to: ks.gopalakrishnan@icsi.edu





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216	Ms. Shivani Sharad Karmarkar	ACS - 33098	WIRC	278	Ms. Shruti Jain	ACS - 33160	WIRC
217	Ms. Keerti Kusum	ACS - 33099	WIRC	279	Mr. Ramabhupal Reddy Marrikunta	ACS - 33161	SIRC
218	Ms. Bhavna Bharath Awatramani	ACS - 33100	WIRC	280	Ms. Anita Venkatesh Gupta	ACS - 33162	SIRC
219	Mr. Abhishek Kumar Jain	ACS - 33101	WIRC	281	Mr. Rajeshkumar J Kumavat	ACS - 33163	WIRC
220	Ms. Tejal Pratap Solanki	ACS - 33102	WIRC	282	Ms. Ankita Suresh Agarwal	ACS - 33164	WIRC
221	Ms. Kiran Bhushan Shah	ACS - 33103	WIRC	283	Mr. Ketanbhai Vrijlal Darji	ACS - 33165	WIRC
222	Mr. Prasad Ravikant Sawant	ACS - 33104	WIRC	284	Mr. Nitesh Kumar Ranga	ACS - 33166	NIRC
223	Ms. Pooja Gopalkrishna Somani	ACS - 33105	WIRC	285	Ms. Nipa Nitinchandra Shah	ACS - 33167	WIRC
224	Mr. Suneet Vishwas Pande	ACS - 33106	WIRC	286	Mr. Bholi Kumar Pandey	ACS - 33168	NIRC
225	Ms. Deepshikha Garg	ACS - 33107	NIRC	287	Ms. Vidya Hariharkrishna	ACS - 33169	EIRC
226	Ms. Garima Baghla	ACS - 33108	NIRC	288	Mr. Mukul Bajaj	ACS - 33170	NIRC
227	Ms. Tanvi Arora	ACS - 33109	NIRC	289	Ms. Priyanka Kumari	ACS - 33171	NIRC
228	Mr. Hiranand T Bhatia	ACS - 33110	SIRC	290	Mr. Vishal Bipinchandra Mehta	ACS - 33172	WIRC
229	Mr. Ankur Adlakha	ACS - 33111	NIRC	291	Ms. Namrata Nandakishore Paithane	ACS - 33173	WIRC
230	Mr. Shanal Khandelwal	ACS - 33112	EIRC	292	Mr. Vaibhav Sisodiya	ACS - 33174	WIRC
231	Mrs. Neelam Agarwal	ACS - 33113	NIRC	293	Mr. Gunjan Ladia	ACS - 33175	EIRC
232	Mr. Ratan Kumar Sharma	ACS - 33114	EIRC	294	Ms. Ankita Sati	ACS - 33176	NIRC
233	Mr. Ankit Kumar Jain	ACS - 33115	NIRC	295	Ms. Pragya	ACS - 33177	NIRC
234	Mr. Abhishek Kumar Pandey	ACS - 33116	EIRC	296	Ms. Deepika Khandelwal	ACS - 33178	NIRC
235	Ms. Shipra Dhandhanania	ACS - 33117	EIRC	297	Mr. Kumar Pal Mahendra Mehta	ACS - 33179	NIRC
236	Ms. Sneha Jaiswal	ACS - 33118	EIRC	298	Ms. Reshma M	ACS - 33180	SIRC
237	Mr. Dheeraj Kumar	ACS - 33119	NIRC	299	Ms. Purvee Gautam Jain	ACS - 33181	WIRC
238	Mr. Vivarth Dosar	ACS - 33120	NIRC	300	Mr. Hiteshkumar Vasudev Bhamare	ACS - 33182	WIRC
239	Mr. Upender Jajoo	ACS - 33121	NIRC	301	Mr. Rahul Sitaram Bhilare	ACS - 33183	WIRC
240	Ms. Suchita Khanna	ACS - 33122	NIRC	302	Ms. Devika Chauhan	ACS - 33184	WIRC
241	Ms. Sonal Agarwal	ACS - 33123	NIRC	303	Mr. Koduri Venkata Hari Babu	ACS - 33185	WIRC



RESTORED*

1.	Sh. A Kannan	ACS - 15957	SIRC
2.	Ms. Rita Dedhwal	ACS - 25506	NIRC
3.	Sh. Harish G Bhambhaney	ACS - 7028	WIRC
4.	Sh. Richin Sangwan	ACS - 21796	NIRC
5.	Sh. R K Gupta	FCS - 3777	NIRC
6.	Sh. Milind Ramesh Gandhi	ACS - 20043	WIRC
7.	Sh. Hasamukh R. Patel	ACS - 9840	WIRC
8.	Sh. R Varahamoorthy	FCS - 2496	SIRC
9.	Sh. H Ram Prakash	ACS - 21327	NIRC
10.	Ms. Geeta Khanduja	ACS - 16681	NIRC
11.	Ms. Minakshi Sharma	ACS - 27966	NIRC
12.	Sh. M Sivasubrahmanyam	ACS - 9252	NIRC

36.	Ms. Priyanka Jaiswal	ACS - 32596	12050	EIRC
37.	Mr. Vijay Bharatkumar Anadkat	ACS - 32795	12051	WIRC
38.	Mr. Sivasubramanian R.	ACS - 22289	12052	SIRC
39.	Mr. Kunal Jain	ACS - 31942	12053	NIRC
40.	Mr. Mir Irfan Bashir	ACS - 31520	12054	NIRC
41.	Mr. Banne Singh Tanwer	ACS - 32220	12055	NIRC
42.	Ms. Mahima Suri	ACS - 31768	12056	NIRC
43.	Mrs. Richa Nitin Gole	ACS - 13120	12057	WIRC

44.	Ms. Reecha Bhagvanjibhia Bopaliya	ACS - 32594	12058	WIRC
45.	Mr. Ravi Shankar Kumar	ACS - 32681	12059	NIRC
46.	Mr. K Sridhar	ACS - 32861	12060	SIRC
47.	Mr. Rajkiran Parshuram Phadatare	ACS - 32877	12061	WIRC
48.	Ms. Suchi Agrawal	ACS - 22632	12062	EIRC
49.	Mrs. Poonam Chawla	ACS - 28637	12063	NIRC
50.	Ms. Dolly Jhabak	ACS - 32260	12064	EIRC
51.	Mr. Mohamed Javed Sherif	ACS - 31741	12065	SIRC
52.	Ms. Vijayalakshmi K	ACS - 23320	12066	SIRC
53.	Sh. Sanjeev Choudhary	ACS - 24795	12067	NIRC
54.	Ms. Pavana Jyothi Ayaluru	ACS - 32818	12068	SIRC
55.	Ms. Charu Aggarwal	ACS - 32157	12069	NIRC
56.	Ms. Jaya Yadav	ACS - 24582	12070	NIRC
57.	Ms. Nehal Chanak Doshi	ACS - 21304	12071	WIRC
58.	Mr. Pawan Kumar Kaushik	ACS - 27522	12072	NIRC
59.	Mrs. Rashmi Gupta	ACS - 25279	12073	NIRC
60.	Mr. Binay Kumar Pandey	ACS - 32458	12074	EIRC
61.	Mr. Mitul Biharilal Thacker	ACS - 32579	12075	WIRC
62.	Ms. Madhuri Sharma	ACS - 32090	12076	EIRC

63.	Ms. Sampada Suresh Nandgaonkar	ACS - 32410	12077	WIRC
64.	Mr. Sameer Shukla	ACS - 32715	12078	NIRC
65.	Mrs. Natasha Chaudhary	ACS - 29818	12079	NIRC
66.	Mr. Bhanu Prakash Pant	ACS - 32809	12080	NIRC
67.	Sh. Malhar Majumder	ACS - 12405	12081	EIRC
68.	Mr. Mayank Bhartiya	ACS - 31347	12082	NIRC
69.	Ms. Sumedha Rastogi	ACS - 32771	12083	EIRC
70.	Sh. Ajay Kumar Jain	FCS - 5826	12084	NIRC
71.	Sh. Rakesh Kapur	FCS - 3863	12085	WIRC
72.	Sh. S C Saxena	FCS - 1280	12086	NIRC
73.	Ms. Daxa Rasik Suhagiya	ACS - 29121	12087	WIRC
74.	Ms. Mayuri Sharma	ACS - 26342	12088	EIRC
75.	Ms. Tushita Sisodia	ACS - 30752	12089	NIRC
76.	Mr. Himansu Srivastava	ACS - 32210	12090	NIRC
77.	Mrs. Ritika Agarwal	ACS - 32886	12091	WIRC
78.	Mr. Praveen Kumar	ACS - 32898	12092	NIRC
79.	Mr. Gautam Kumar Chhaparia	ACS - 32900	12093	NIRC
80.	Mr. Ronak Jhuthawat	ACS - 32924	12094	NIRC
81.	Ms. Gayathri G	ACS - 32949	12095	SIRC
82.	Sh. Marshall Joseph Mendonza	FCS - 2244	12096	WIRC
83.	Mr. Hemant Popatrao Sonawane	ACS - 32964	12097	WIRC
84.	Ms. Ankita Jain	ACS - 32982	12098	WIRC
85.	Ms. Richa Dhamija	ACS - 31348	12099	NIRC
86.	Sh. Rajendrakumar B Uparkar	ACS - 8950	12100	WIRC
87.	Mr. Baburao Maruti Tupare	ACS - 30195	12101	SIRC
88.	Mrs. Sujata Shirish Padwal	ACS - 31386	12102	WIRC
89.	Ms. Gunjan Saluja	ACS - 27677	12103	NIRC
90.	Mr. Rakesh Kumar Gupta	ACS - 32018	12104	EIRC
91.	Ms. Jagadheeswari R	ACS - 29716	12105	SIRC

Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
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ISSUED**

1	Mr. Mihen Jyotindra Halani	ACS - 32176	12015	WIRC
2	Ms. Antareepa Goswami	ACS - 27201	12016	EIRC
3	Ms. Varinder Kaur Ghai	ACS - 32553	12017	NIRC
4	Mr. Deepak Goel	ACS - 29311	12018	NIRC
5	Ms. Priya Balbirchand Agarwal	ACS - 31659	12019	NIRC
6	Ms. Puja Sharma	ACS - 32622	12020	EIRC
7	Mrs. Pinki Jain	ACS - 32763	12021	EIRC
8	Ms. Sangeeta Ajith	FCS - 7200	12022	WIRC
9	Ms. T S Sundarambal	FCS - 2811	12023	SIRC
10	Mr. Ujwal Rameshchandra Nikam	ACS - 32697	12024	WIRC
11	Ms. Akshi Gandhi	ACS - 28670	12025	NIRC
12	Sh. Yogesh Pahuja	ACS - 25524	12026	NIRC
13	Ms. Deepika Vishnoi	ACS - 25765	12027	NIRC
14	Mr. Ajitkumar Jagdishprasad Sharma	ACS - 32696	12028	WIRC
15	Mr. Satyam Tiwari	ACS - 30383	12029	NIRC
16	Ms. Pragnya Parimita Pradhan	ACS - 32778	12030	NIRC
17	Ms. Sonali	ACS - 32544	12031	NIRC
18	Sh. Sachidananda Nayak	ACS - 25645	12032	EIRC
19	Mr. Neeraj Mangal	ACS - 32576	12033	NIRC
20	Ms. Archana Maheshwari	ACS - 21469	12034	WIRC
21	Ms. Anju Yadav	ACS - 32111	12035	NIRC
22	Ms. Puja Gupta	ACS - 28664	12036	NIRC
23	Ms. Swati Sandhal	ACS - 32484	12037	NIRC
24	Ms. Sweta Agarwal	ACS - 32705	12038	NIRC
25	Sh. Anil Kumar Sehgal	FCS - 2307	12039	NIRC
26	Ms. Neha Saluja	ACS - 20986	12040	NIRC
27	Ms. Neha Gajaria	ACS - 19922	12041	WIRC
28	Mr. Mohit Arora	ACS - 32319	12042	NIRC
29	Sh. Jatinbhai Harishbhai Kapadia	ACS - 26725	12043	WIRC
30	Mr. Ajay Kumar Pandey	ACS - 31697	12044	NIRC
31	Mr. Satya Pradeep Roy	ACS - 32714	12045	EIRC
32	Mr. Kapil Dayya	ACS - 31975	12046	NIRC
33	Ms. Amruta Shashikant Bhagwat	ACS - 32337	12047	WIRC
34	Mrs. Shikha Kapadia	ACS - 20733	12048	WIRC
35	Sh. S S Bhattbhatt	FCS - 1347	12049	WIRC

* Restored from 21st May 2013 to 21st June 2013

** Issued during the month of June 2013





News From the Institute

92	Ms. Priyanka Ruia	ACS - 31957	12106	EIRC
93	Sh. Suresh B. Menon	ACS - 16202	12107	WIRC
94	Ms. Payal Sharma	ACS - 32222	12108	NIRC
95	Ms. Akshi Jain	ACS - 32912	12109	NIRC
96	Ms. Ritu Arora	ACS - 30730	12110	NIRC
97	Sh. M J Mahadev Prakash	ACS - 16350	12111	SIRC
98	Mr. Rajesh Kumar Shaw	ACS - 32890	12112	EIRC
99	Ms. Megha Agarwal	ACS - 30269	12113	EIRC
100	Mrs. Rashmi Gupta	ACS - 21622	12114	SIRC
101	Ms. Julie Chakraborty	ACS - 31572	12115	EIRC

CANCELLED*

1	Mr. Lav Kumar	ACS - 31676	11697	WIRC
2	Mr. M Ramamoorthy	FCS - 4814	11104	SIRC
3	Mr. Alok Nath Singh	ACS - 31643	11820	NIRC
4	Ms. Nikita Madan	ACS - 25370	11249	NIRC
5	Ms. Ritu Ajmera	ACS - 20512	7548	SIRC
6	Ms. Swati Singhal	ACS - 28199	10070	NIRC
7	Ms. Anubhuti Arora	ACS - 31545	11618	NIRC
8	Ms. Jayata Dashottar	ACS - 29551	10592	WIRC
9	Ms. Aarti Rohatgi	ACS - 28173	10592	WIRC
10	Mr. Rohit Anil Ghaisas	ACS - 30073	11020	WIRC
11	Ms. Aarti	ACS - 25690	9507	NIRC
12	Ms. Ritu Agarwal	ACS - 21378	8661	NIRC
13	Ms. Manju Vohra	ACS - 25661	10691	NIRC
14	Ms. Neha Gupta	ACS - 26325	11120	NIRC
15	Ms. Krutika Dilip Shah	ACS - 31279	11487	WIRC
16	Mr. Anil Xavier	ACS - 29393	11530	SIRC
17	Ms. Anuradha Mishra	ACS - 31595	11603	NIRC
18	Manish Rakesh	ACS - 29424	11792	NIRC
19	Mr. Sandeep Kumar	ACS - 29777	10821	NIRC
20	Ms. Nisha Gattani	ACS - 32019	11860	EIRC
21	Mr. Rakesh Kumar	ACS - 32443	11912	NIRC
22	Mr. Sunil Mishra	ACS - 18396	11313	SIRC
23	Ms. T. K. Sudha	ACS - 11250	4606	SIRC
24	Mr. Sridhar S	FCS - 7041	11751	SIRC
25	Ms. Sakshi Sharma	ACS - 25396	9108	NIRC
26	Ms. Sejal K Parikh	ACS - 11972	2652	WIRC
27	Ms. Pratibha Sabharwal	ACS - 29484	11218	NIRC
28	Mr. Satyajit Prasad	ACS - 28731	10653	EIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
ADMITTED**			
1	Sh. Pratik Jayanti Gala	6543	WEST
2	Sh. Prasanna J.B.	6544	SOUTH
3	Sh. Abhishek Ranjan	6545	NORTH
4	Sh. Abdul Oadir Monammad Husain	6546	WEST
5	Sh. Shailesh Ravindra Bhandakkar	6547	WEST
6	Sh. L Santosh	6548	SOUTH
7	Sh Amit Toshniwal	6549	NORTH
8	Ms. Anjali Sameer Divecha	6550	WEST

* Cancelled during the Month of June 2013

** Admitted During the Month of June, 2013

Payment of Annual Membership and Certificate of Practice Fee for the Year 2013-14

The annual membership fee and certificate of practice fee for the year 2013-14 **became due for payment w.e.f. 1st April, 2013. The last date for payment of fee was 30th June 2013 which has now been extended upto 31st August, 2013.**

The membership and Certificate of Practice fee is as follows:-

1] Annual Associate Membership fee	Rs. 1125/-
2] Annual Fellow Membership fee	Rs. 1500/-
3] Annual Certificate of Practice fee	Rs. 1000/-(*)

* The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

- On-Line (through payment Gateway of the Institute's web-site (www.icsi.edu) by following the steps given below:-
The payment can be made online through Institute's portal www.icsi.edu by following the steps given below:-
Kindly ensure that your browser is IE8, IE9, Mozilla 15.0.1 and above, Chrome 21.0, Safari 4.0.3 and the best resolution for view is 1024x768 pixels.
 - Login to portal www.icsi.edu.
 - Click online services on the right top corner and then click 'Member's Tab' on page.
 - Login for self profile by entering the membership number (like A1234) as per the sample given on the page and password. In case you do not have a password. You may retrieve your password in case your email is correctly registered in the institute alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu
 - After login, select the 'Member Option' then click on "Online Services "
 - Select the check box if you are CP holder (for COP payment).
 - Click on Proceed for Payment button for payment.
 - Keep the generated acknowledgment for future reference and record.
- Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- Cash/ local cheque drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.

Demand draft / Pay order drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

For queries, if any, the members may please contact Mr. D.D. Garg, Admn. Officer or Mrs. Vanitha Dhanesh on telephone Nos.011-45341062/64 or Mobile No.8130454693 / through e-mail ids: annualfee@icsi.edu, cp@icsi.edu



Company Secretaries Benevolent Fund

MEMBERS ENROLLED REGIONWISE
AS LIFE MEMBERS OF THE
COMPANY SECRETARIES
BENEVOLENT FUND*



Sl. No.	LM No.	Name	Mem No.	City
EIRC				
1	10053	Sh. Jayakrushna Das	ACS - 13650	KOLKATA
2	10062	Sh. Sanat Kumar Mishra	ACS - 17836	RANCHI
NIRC				
3	10049	Ms. Deepa Khatri	ACS - 14968	DELHI
4	10052	Mr. Chander Sawhney	ACS - 33092	NEW DELHI
5	10054	Sh. R N Tripathi	ACS - 9112	NOIDA
6	10060	Sh. Mahesh Kumar Arora	ACS - 4052	SOLAN DISTT
7	10061	Mr. Trilok Chand Garg	ACS - 30019	NEW DELHI
SIRC				
8	10047	Sh. S Elavazhagan	FCS - 7233	COIMBATORE
9	10048	Ms. Hari Priya	ACS - 22232	HYDERABAD
10	10050	Ms. Sheela Arvind	ACS - 32648	BANGALORE
11	10051	Ms. Nithya Suresh	ACS - 32950	MADURAI
12	10057	Mr. B Ullas Kiran Pai	ACS - 23419	BANGALORE
13	10058	Sh. Rahul Jain	ACS - 25833	HYDERABAD
WIRC				
14	10055	Sh. Ranganath Athreya	ACS - 7356	MUMBAI
15	10056	Sh. Rajesh Kumar Pathak	ACS - 17751	THANE
16	10059	Sh Upendra Kumar R Pathak	ACS - 21441	MUMBAI

APPOINTMENT REQUIRED

A closely held Private Limited Company having its registered office in Mumbai requires a Full Time Company Secretary. The applicant should be essentially a member of The Institute of Company Secretaries of India with minimum of 5 years of experience in Secretarial and Legal Matters (Law Graduate Candidates will be preferred). Interested candidates may apply to:

Please Contact –

Box No. 606, C/o Chartered Secretary, The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi 110003.

ATTENTION MEMBERS

The soft copy (CD) of List of Members of the Institute as on 1st April, 2013 is available at Rs.250/- (Rupees Two Hundred and Fifty only) for the Members of the ICSI and at Rs.500/- (Rupees Five Hundred only) for others.

Those desirous to have a copy of the CD may send a request in writing along with the requisite charges by way of a Demand Draft/at par Cheque drawn in favour of "The Institute of Company Secretaries of India" and payable at Delhi.

Kindly send your request together with the like amount to J.S.N. Murthy, Administrative Officer, The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003.

For queries, if any please contact at
Tel.No. 011-45341049.

* Enrolled from 21st June 2013 to 22nd July, 2013





News From the Institute



List of Companies Registered for Imparting Training During the Month of June 2013

Region	Training Period	Stipend (Rs.)			
Eastern					
Nilachal Refractories Ltd. Block 'D', Chowringhee Mansion 30, Jawaharlal Nehru Road Kolkata-700016	3 Months Practical Training	Suitable	JD Universal Infra Ltd. 1008, Sector-13 Urban Estate Karnal	15 Months & 3 Months Practical Training	Suitable
IKF Technologies Ltd. 2nd Floor, Plot No. J-1/12 Block-EP & GP, Sector-V Salt Lake Kolkata-700091	15 Months & 3 Months Practical Training	2000/-	Navjeevan Equity Broking Pvt. Ltd. 403, Axis Mall, C-50, Bhagwan Das Road C-Scheme, Jaipur-302001 Rajasthan info@navjeevanbroking.com	15 Months & 3 Months Practical Training	Suitable
AI Champdany Industries Ltd. 25, Princep Street Kolkata-700072	15 Months & 3 Months Practical Training	Suitable	Hero Steels Ltd. E-1, Qutab Hotel Complex, Shaheed Jeet Singh Marg New Delhi-110016	3 Months Practical Training	Suitable
Emerald Mineral Exim Ltd. Suite No. 302, Krishna Buliding 3rd Floor 224A A.J.C. Bose Road Kolkata-700017 business@emeraldgroupasia.com	15 Months & 3 Months Practical Training	Suitable	General Cable Energy India Pvt. Ltd. Iris Tech Park, 508-510a, Sector 48 Sohna Road Gurgaon-122018 Haryana	15 Months & 3 Months Practical Training	Suitable
K.H. Petrochem Pvt. Ltd. 16, East Topsia Road Kolkata-700046	15 Months & 3 Months Practical Training	Suitable	Granules India Ltd. 508-510a, Sector 48 Sohna Road Gurgaon-122018 Haryana mail@granulesindia.com	3 Months Practical Training	Suitable
Lumino Industries Ltd. "Usha Kiran", 12A, Camac Street Room No: 5a, 5th Floor Kolkata-700017 lumino@lascables.com	3 Months Practical Training	Suitable	Yutaka Autoparts India Pvt. Ltd. Spl-2c, Tapukara Industrial Area Khushkhera, Bhiwadi Distt Alwar-301707 Rajasthan manasendu.nayak@yutakaindia.com	15 Months & 3 Months Practical Training	7000/-
Jaroli Vincom Pvt. Ltd. 410 Mangalam 'A' 24 Hemanta Basu Sarani Kolkata-700001 j.vincom@yahoo.in	15 Months & 3 Months Practical Training	Suitable	Buena Vista Resorts Pvt. Ltd. Flat No. 103/9, LSC Allied Bhawan, Madangir New Delhi-110062 accounts@jlbts.com	3 Months Practical Training	Suitable
Sr Textfab Pvt. Ltd. 247-248, Om Textile Tower Pur Road, Bhilwara Rajasthan	15 Months & 3 Months Practical Training	Suitable	Akme Fintrade (India) Ltd. 4-5, Subcity Center Savina Circle Udaipur-313002 Rajasthan	15 Months & 3 Months Practical Training	2000/-
			J.K. Cotton Spinning & Weaving Mills Co. Ltd. Kamla Tower Kanpur-208001 Uttar Pradesh	15 Months Training	Suitable
			DLF Pramerica Life Insurance Company Ltd. 4th Floor, Building No.9b Cyber City, DLF City Ph.III Gurgaon-122002 Haryana	15 Months & 3 Months Practical Training	Suitable



Fenwal India Pvt. Ltd. Echelon Institutional Area Plot No.11, Sector-32 Gurgaon-122001, Haryana	3 Months Practical Training	Suitable	Quest Retail Pvt. Ltd. 7th Floor, Tower-A, Infinity Tower Dlf Cyber City, Dlf Phase-II Gurgaon-122002 Haryana	15 Months & 3 Months Practical Training	Suitable
SRG Securities Finance Ltd. 322, S.M. Lodha Complex Near Shashtri Circle Udaipur-31300, Rajasthan srcsecurities@gmail.com	15 Months Training	Suitable	Lok Priya Nursing Home Ltd. Samrat Palace Garh Road Meerut - 250003 upasna.cs@gmail.com	15 Months & 3 Months Practical Training	Suitable
Ciena India Pvt. Ltd. Plot No.14, Sector 32 Echelon Institutional Area Gurgaon-122001, Hararyana	15 Months Training	Suitable	Southern		
Adroit Commodities Services Pvt. Ltd. 141-142, 1st Floor, Supertech Rameshwar Shopprix Complex, Plot No. H-1 Kaushambi, Ghaziabad-201010 Uttar Pradesh info@adroitfinancial.com	15 Months Training	5000/-	Bhartiya Samruddhi Finance Ltd. 3rd Floor, Surabhi Arcade Troop Bazar, Koti Hyderabad-500001 info@basixindia.com	15 Months Training	Suitable
Anand Rath IT Pvt. Ltd. Mahesh Hostel Complex Opp. Bombay Motors Chopasani Road, Jodhpur	15 Months & 3 Months Practical Training	Suitable	Lotus Chocolate Co. Ltd li Floor, IvrcI Towers Avenue-4, Street No.1 (Old Road No. 10) Banjara Hills, Hyderabad-500034 Andhra Pradesh info@lotuschocolate.com	15 Months & 3 Months Practical Training	Suitable
AI-Dua Food Processing Pvt. Ltd. 22, Central Lane Near Bengali Market Connaught Place New Delhi-110001 info@aldua.in	15 Months & 3 Months Practical Training	Suitable	Century Real Estate Holdings Pvt. Ltd. No.74, 4th Floor, Prestige Feroze Cunningham Road Bangalore-560052 info@centuryrealestate.in	15 Months & 3 Months Practical Training	Suitable
Rajasthan Knowledge Corporation Ltd. 7a, Jhalana Institutional Area Behind R.T.O Jaipur-302004	15 Months & 3 Months Practical Training	Suitable	Western		
Kuvam Fashions Pvt. Ltd. 353, Industrial Area-A Ludhiana-141003, Punjab sales@kuvam.com	15 Months & 3 Months Practical Training	Suitable	Siddharth Education Services Ltd. 301, Prestige Chamber Near Hotel Regency Thane (W), Maharashtra-400601	15 Months & 3 Months Practical Training	Suitable
Sankalp Share Brokers Pvt. Ltd. 14, Netaji Subhash Road, 3rd Floor Room No. 13 Kolkata-700001 info@sankalpcares.com	15 Months & 3 Months Practical Training	Suitable	El-O-Matic (India) Pvt. Ltd. 296/A/1/5, St.Patrick's Town Pune-411013	15 Months Training	Suitable
Rajasthan Urban Infrastructure Finance and Development Corporation Ltd. Old Working Women Hostel Behind Nehru Place Lal Office Kothi Tonk Road, Jaipur-302015 ruifdco@gmail.com	15 Months & 3 Months Practical Training	Suitable	Gujarat State Seeds Corporation Ltd. "Beej Bhavan", Sector-10/A Gandhinagar-382010 info@gurabini.com	15 Months Training	Suitable
			Lykis Ltd. Morya Classic, 405/406 4th Floor, Opp.Infinity Mall Off New Link Road Andheri(W) Mumbai-400053	15 Months Training	Suitable
			Serco Bpo Private Ltd. Serco House Plot Cst No. 1406-A/28 Mindspace, Malad(West) Mumbai-400090, Maharashtra	15 Months & 3 Months Practical Training	Suitable



News From the Institute

Champion Agro Fresh Pvt. Ltd. Survey No. 217, Plot No.2 Veraval Main Road Veraval(Shapar)-360024 Distt. Rajkot, Gujarat info@championagro.com	15 Months & 3 Months Practical Training	Suitable	Maahi Milk Producer Company Ltd. 3rd & 4th Floor, Sakar Building Opp. Rajkumar College Dr. Radhakrishnan Road Rajkot-360001, Gujarat	15 Months	Suitable
Tata Capital Housing Finance Ltd. One Forbes, Dr. V B Gandhi Marg Fort Mumbai-400001 Maharashtra	15 Months & 3 Months Practical Training	Suitable	Sharan Hospitality Pvt. Ltd. Ground Floor, Gys Infinity Paranjpe 'B' Scheme Subhash Road, Vile Parle (East) Mumbai-400057	15 Months & 3 Months Practical Training	Suitable
Mahindra Ugine Steel Co. Ltd. Musco Stampings, 371, Takwe Road, At&Post: Kanhe Pune-412106 Maharashtra	3 Months Practical Training	10000/-	 List of Practising Members Registered for the Purpose of Imparting Training During the Month of June, 2013		
Aphelion Finance Pvt. Ltd. 4, Mulund Vaibhav Zaver Cross Road, Mulund(West) Mumbai-400080 Maharashtra admin@aphelionsoftwares.com	15 Months Practical Training	Suitable			
Astonfield Renewables Pvt. Ltd. 29, Free Press House 215 Free Press Journal Marg Nariman Point, Mumbai-400021	15 Months & 3 Months Practical Training	Suitable	CS PRABHLEEN KAUR Company Secretary in Practice K-130, 1St Floor, Krishna Park Extn Near Pastry Palace, Outer Ring Road Opp. Vikas Puri, New Delhi – 110 018		PCSA – 3490
Bosch Rexroth (India) Ltd. Sanand Viramgam Highway Mouje Iyava, Ta. : Sanand Ahmedabad-382170	15 Months & 3 Months Practical Training	Suitable	CS ABHILASHA JOHN Company Secretary in Practice 70/238, Pratap Nagar, Sangner, Jaipur – 302 033		PCSA – 3491
Bobcards Ltd. Baroda House Behind Dewan Shopping Centre S.V. Road, Jogeshwari(W) Mumbai-400102 Maharashtra	15 Months & 3 Months Practical Training	Suitable	CS NUZHAT FATIMA Company Secretary In Practice Shop No:1, 4th Floor Roshpa Tower, Main Road Ranchi – 834 001		PCSA – 3492
L&T Investment Management Ltd. 6th Floor, Mafatlal Centre Nariman Point Mumbai-400021, Maharashtra	15 Months & 3 Months Practical Training	8000/-	CS GURVINDER SINGH Company Secretary in Practice 351/1, Rose Park, Near Gulab Devi Road Jalandhar – 144 001		PCSA – 3493
India Steel Works Ltd. 1101, Tower 2 Indiabulls Finance Centre Senapati Bapat Marg, Elphinstone (W), Mumbai-400013 Info@Indiasteel.In	15 Months & 3 Months Practical Training	Suitable	CS DEEPALI KAUSHIK GAUR Company Secretary in Practice Flat No. B 1/3, Hahnemann Enclave Plot No. 40, Sector 6, Dwarka New Delhi – 110 075		PCSA – 3494
Aditya Birla Finance Ltd. One Indiabulls Centre Tower 1 18th Floor, Jupiter Mill Compound 841, Senapati Bapat Marg Elphinstone Road Mumbai-400013	15 Months & 3 Months Practical Training	Suitable	CS ANKUR SULTANIA Company Secretary in Practice Kesho Rai Ki Lane, Chowk, Patna City Patna -800 008		PCSA – 3495
			CS TEHSIN MASOOD Company Secretary in Practice 4140 G.F, Nizamul Mulk Street Near Dariya Ganj, Urdu Bazar Delhi – 110 006		PCSA – 3496



CS JAGVEER SINGH TANWAR Company Secretary in practice B-566, IInd floor Nehru ground, NIT Faridabad-121 001	PCSA – 3497	CS AMRUTA PRASHANT KOTHARI Company Secretary in Practice 602, Ranuja Ramdev Padmavati Nagar, 150Ft Road Bahyander (W) Thane - 401 101	PCSA – 3508
CS PRIYANKA AGARWAL Company Secretary in Practice Ga-145, Bhawani Nagar Near Murlipura School Sikar Road, Jaipur – 302 039	PCSA – 3498	CS JYOTI SIPANI Company Secretary in Practice C/O Chunnilal Ashok Kumar 30, Cotton Street 3Rd Floor, Burrabazar Kolkata- 700 007	PCSA – 3509
CS AARTI GOSWAMI Company Secretary in Practice Rz 300 T Ext Solanki Road Vishwas Park, Uttam Nagar New Delhi – 110 059	PCSA – 3499	CS BHARTEE SRIVASTAVA Company Secretary in Practice N 9/90, 1 B C B Shiva Enclave Janki Nagar Colony, Patia Varanasi – 221 109	PCSA – 3510
CS MANJUNATH S Company Secretary in Practice # 16/1, 1St Stage, 4Th Cross Near Janatha Bazar, Brindavan Extension Mysore – 570 020	PCSA – 3500	CS SITA RAM P R Company Secretary in Practice F-8, Sai Madhura Grace Apts 1St Floor, 7Th Cross Banasthnkari, 3Rd Stage Bangalore – 560 085	PCSA – 3511
CS SAMA UPENDER REDDY Company Secretary in Practice F.No. 616 B, 6Th Floor Babukhan Estate Basheer Bagh, Hyderabad – 500 029	PCSA – 3501	CS V RAMKUMAR Company Secretary in Practice 750/27, Iii Rd Floor, Gowtham Center Avinashi Road Coimbatore – 641 018	PCSA – 3512
CS RUPESH AHARWAL Company Secretary in Practice 11-F, Pocket IV, Mayur Vihar Phase I Delhi – 110 091	PCSA – 3502	CS MUKESH KUMAR DUKIA Company Secretary in Practice 207, Harsha House Commercial Complex Near Milan Cinema Karampura, New Delhi – 110 015	PCSA – 3513
CS NAIDI JAIPAL REDDY Company Secretary in Practice #. 6-6-412/5/1 Gandhi Nagar, Behind Praga Tools Kavadiguda, Hyderabad – 500 080	PCSA – 3503	CS SIDHARTH SHARMA Company Secretary in Practice E-95/2, Naraina Vihaar New Delhi – 110 028	PCSA – 3514
CS ULHAS SODANKOOR BHAT Company Secretary in Practice Fah Arcade, Shop No.5, 1st Floor Opp.Bus Stand Chokkabettu Junction, Surathkal Mangalore – 575 014	PCSA – 3504	CS DEVENDRA KUMAR JAIN Company Secretary in Practice 584, Kalani Nagar, Air Port Road Indore - 452 058	PCSA – 3515
CS VIJAY KUMAR SOMANI Company Secretary In Practice II Floor, House No. 61, Sector -10-A Vasundhra, Ghaziabad – 201 012	PCSA – 3505	CS RAMELA RANGASAMY Company Secretary in Practice A-6, Aaryaa Harmony Apartment Olympus, Ramanathapuram Coimbatore – 641 045	PCSA – 3516
CS SWANAND PRAVIN PATHAK Company Secretary in Practice 133, West Gajanan Housing Society Karad, Satara Distt – 415 124	PCSA – 3506	CS MONA SUDHIRKUMAR CHHAPIA Company Secretary in Practice Block No. 6, First Floor, Sarathi Appartment, Panchvati Society, Nr Panchvati College Jamnagar – 361 002	PCSA – 3517
CS SUNIL RAMDAS NAYAK Company Secretary in Practice Flat 602 A, Nisarg Chs, Santoshi Mata Road Dahisar (W), Mumbai – 400 068	PCSA – 3507		



News From the Institute

CS VIKAS KUMAR VERMA
Company Secretary In Practice
812A, Kirti Shikhar Tower
District Center
Janakpuri
New Delhi – 110 058

PCSA – 3518

CS AMIT KUMAR
Company Secretary in Practice
156 A, Daryapur Kalam
Delhi -110 039

PCSA – 3523

CS RAKESH JOSHI
Company Secretary in Practice
Near Pushkerna Stadium
Back Side of Jiya Bhawan
Bikaner – 334 001

PCSA – 3519

CS GUNJAN KUMAR SINGH
Company Secretary in Practice
H-85, Shakarpur, Delhi -110 092

PCSA – 3524

CS JAGDISH RATANLAL AHUJA
Company Secretary in Practice
Ug-329, Dreams The Mall,
Lbs Road
Bhandup West
Mumbai -400 078

PCSA – 3520

CS DIPIKA SONI
Company Secretary in Practice
E-1/504, Sahajanand City
Shyam Developers, Nr. Swagat Residency
Kudasan Gandhi Nagar -382 421

PCSA – 3525

CS GURUPRASAD GOVIND NADGOUDA
Company Secretary in Practice
1748, E Ward, Rajarampuri
5Th Lane, Kolhapur -416 008

PCSA – 3526

CS KOMAL HUDA
Company Secretary In Practice
501, Mayura Garden Apartments
28Th Cross
Ejipura Main Road
Bangalore – 560 047

PCSA – 3521

CS SNEHA SHAH
Company Secretary in Practice
401/403, Ganesh Chs
Raheja Township
Malad (E), Mumbai

PCSA – 3527

CS ANKITA SHARMA
Company Secretary In Practice
A-82, Anand Vihar
Railway Colony
Jagatpura
Jaipur

PCSA – 3522

CS MAULIK ANILKUMAR BHAVSAR
Company Secretary in Practice
3- Krishnakunj Appt.,
B/H.Saraswati School
Ratanpark Road
Uttamnagar, Nikol
Ahmedabad -382 350

PCSA – 3528

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI)

AND

THE NEW INDIA ASSURANCE CO. LTD.

The Institute of Company Secretaries of India signed an MOU with The New India Assurance Co. Ltd. on 19th July, 2013 at Kolkata. The objective of the MOU is to facilitate various insurance covers at competitive rates exclusively to the members, employees and students registered with the Institute through various insurance schemes.

Under the MOU various types of policies offered are as under:

1. Professional Indemnity policy for practicing Members of the Institute
2. Office Protection Shield Policy for Members of Institute
3. Mediclaim policy for Members, Employees and Students of Institute
4. Personal Accident Cover (For self and Family Members) for Members, Employees and Students of Institute
5. Motor (Private Car and Two Wheelers) Insurance Policy for Members, Employees and Students of ICSI

For easy facilitation and access, a Portal has been launched to apply for insurance on web enabled proposal form and payment of premium through payment gateway. The portal allows remittance of premium through payment gateway by credit card, debit card or net banking. The weblink for the aforesaid is [http:// icsi.newindia.co.in](http://icsi.newindia.co.in). The portal can be accessed using Membership Number/ Registration Number/ Employee code issued by ICSI.

Under the MOU, Claims shall be processed in the following manner:

1. Claims shall be preferred by Insured in writing as per the terms of the policy.
2. Claims shall be processed by the insurer expeditiously and settled within fifteen days from the date of receipt of claim papers.
3. Insurer shall communicate the Insured within two working days in case claim application is not complete in all aspects.

This is an Institute's endeavor for the benefit of its stakeholders.

APPOINTMENT

Required Company Secretary

A full time qualified Company Secretary proficient in English and well acquainted with Company Law and legal matter with minimum experience of 3 years, is required for a Private Limited MNC in Bawal, Haryana.

Interested candidates may send in their applications with detailed resume giving information about professional experience.

Interested candidates may please mail resume on following address:

The Manager
Human Resources
SKP Crossborder Consulting Private Limited
B-376, 3rd Floor, Nariman Vihar
New Delhi 110092

Tel: +91(O) 11 22428454 / 55

EVEREST GROW MORE FINANCE PVT. LTD.

(A Non Banking Finance Company)

104 Harsha House, Karampura Commercial Complex, New Delhi - 110 015

Requires

COMPANY SECRETARY

A young dynamic male with experience of 1 to 2 years

The candidate should be able to independently handle all the secretarial matters, compliance under Corporate Laws, with analytical vision & writings, as per RBI directions, guidelines, liaison with RBI for their compliance and Listing formalities with Stock Exchanges will be preferred.

Interested candidate can email their C.V. With Photograph to:

**everestgrowmore@gmail.com
Mob.:09212418688**

Date of coming into force of all the provisions of the Trade Marks (Amendment) Act, 2010

[Issued by the Ministry of Commerce and Industry (DIPP) vide F. No. 8/29/2009-IPR-IV (Part) dated 05.07.2013]

In exercise of the powers conferred by sub-section (2) of section 1 of the Trade Marks (Amendment) Act, 2010 (40 of 2010), the Central Government hereby appoints the 8th day of July, 2013 as the date on which all the provisions of the said Act shall come into force.

D.V. Prasad

Joint Secretary to the Government of India

Date of coming into force of all the provisions of the Trade Marks (Amendment) Rules, 2013

[Issued by the Ministry of Commerce and Industry (DIPP) vide F. No. 8/29/2009-IPR-IV (Part) dated 05.07.2013]

In exercise of the powers conferred by sub-section (1) and (2) of section 157 of the Trade Marks Act, 1999 (47 of 1999) and the Trade Marks (Amendment) Act, 2010 (40 of 2010); the Central Government hereby appoints the 8th day of July, 2013 as the date on which all the provisions of the Trade Marks (Amendment) Rules, 2013 shall come into force.

D.V. Prasad

Joint Secretary to the Government of India

ATTENTION MEMBERS

IDENTITY CARDS FOR MEMBERS

Members who are yet to get the Identity Card issued from the Institute are requested to apply for the same along with their latest two coloured passport size photographs in the format given below (indicating on the reverse the Name and Membership Number) to the Membership Section of the Institute at ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003. For queries, if any, contact on -

Phone No. 011 45341061

Mobile No. + 91 9868128682

Email Ids member@icsi.edu / acs@icsi.edu

Request for issue of Member's Identity Card

Please send latest two coloured passport size photographs mentioning your name & membership no. on the reverse of the photograph alongwith the following details:

Membership No. ACS/FCS

Name
(in block letters) (First Name) (Middle Name)
(Surname)

Date of birth

Phone: Office:

Residence:

Mobile No.

E-mail address

Passport
size coloured
photograph

Signature with date



News From the Regions

» Eastern India Regional Council

HOOGHLY CHAPTER Half Day Workshop

On 7.7.2013 a half day workshop on Important Clauses of Listing Agreement was organized at ICSI - Hooghly Chapter Conference Hall, Rishra.

CS Anup Sharma, Vice President, V C Corporate Advisors Pvt. Ltd., was the guest speaker who while describing Listing Agreement, said that it is a contract which a company signs when being listed on the Stock Exchange, in which it promises to abide by stock exchange regulations. Companies enter into a Listing agreement with the Exchange and make certain disclosures and perform certain acts. He further illustrated the various clauses of the Listing Agreement in detail. The workshop witnessed the presence of more than 40 participants.

CS

» Northern India Regional Council

Vaishali Study Group Meeting on IPO by SMEs

On 8.6.2013 at the Vaishali Study Group Meeting on IPO by SMEs, CS Rajeev Goel, Advocate was the speaker.

Study Circle Meeting on Enhancing Proficiency through End User Computing

On 21.6.2013 at the Study Circle Meeting on Enhancing Proficiency through End User Computing, Deepanwita of First Computers was the speaker.

One Day Seminar on Indirect Taxes - Issues & Prospects

On 22.6.2013 at the One Day Seminar on Indirect Taxes - Issues & Prospects Chief Guest was Manoj K Arora, Additional Director General of Export Promotion, Department of Revenue, Ministry of Finance. The Chairman of the Technical Session was CS Upender Gupta, Additional

Commissioner Central Board of Excise & Custom. The Guest Speakers were Anjlika Chopra, Director, Deloitte Touche Tohmatsu India Pvt. Ltd., CA Rakesh Garg, CS Bimal Jain, R Krishnan, Advocate, Puneet Agrawal, Partner, Athena Law Associates & Siddharth Srivastava, Managing Partner - SKS Associates-Law Firm.

West Zone Study Group Meeting on Stamp Duty Implication and Role of CS

On 22.6.2013 at the West Zone Study Group Meeting on Stamp Duty Implication and Role of CS, CS Satwinder Singh, Past Chairman, NIRC-ICSI was the speaker.

North Zone Study Group Meeting

On 23.6.2013 at the North Zone Study Group Meeting, CS Rajeev Goel, Advocate was the speaker.

Meeting of Company Secretaries in Practice on Corporate Banking – Role of Company Secretary

On 24.6.2013 at the Meeting of Company Secretaries in Practice on Corporate Banking – Role of Company Secretary, CS Manoj Sharma, Managing Partner, Browster Consultancy was the speaker.

South Zone Study Group Meeting on Opportunities for CS under Indian Competition Act, 2002

On 28.6.2013 at the South Zone Study Group Meeting on Opportunities for CS Under Indian Competition Act, 2002, M.M. Sharma, Head, Competition Law and Policy, Vaish Associates, Advocates, New Delhi was the speaker.

East Zone Study Group Meeting on Mergers and Demergers – Practical Implications

On 29.6.2013 at the East Zone Study Group Meeting on Mergers and Demergers – Practical Implications, CS NPS Chawla, Secretary, NIRC-ICSI was the speaker.

Valedictory Session of 176th MSOP

On 21.6.2013 at the Valedictory session of 176th MSOP organized by NIRC-ICSI, CS B B Nagpal, was the Chief Guest. CS M G Jindal, Chairman, NIRC while delivering his address expressed confidence that participants must have learnt a lot in MSOP. He said that participants are free to choose between employment and self-employment. He strongly recommended for reading of Chartered Secretary, the monthly journal of the Institute and advised them to follow Professional Code of Conduct.

CS B B Nagpal congratulated the participants for completing their last leg of training i.e. MSOP. He welcomed the participants to the elite group of professionals. He advised the participants to be extremely careful and methodical in their approach towards work. He also



advised them to learn the art of being firm and polite at the same time. He emphasized that participants must have a combination of intelligence, integrity and hard work.

CS Manish Gupta, Treasurer, NIRC in his address expressed hope that the participants must have learnt a lot from the MSOP. He advised them to follow the tips given to them by faculties. He wished the participants the best in their future endeavor.

CS Shyam Agrawal, Vice Chairman, NIRC concluded the valedictory session and said that one should adjust to the changes in global economy. He advised the participants to be Manager of company, home and society at large. He gave the example of the family of Lord Shiva, where despite each one so different from one yet is together. He emphasized on implementing the same management approach at work place also.

177th MSOP

On 25.6.2013 the NIRC-ICSI inaugurated 177th MSOP at ICSI-NIRC Building, New Delhi. CS Ravi Batra, Chief Risk Officer, SRL Ltd. was the Chief Guest. The programme was inaugurated by the Chief Guest and Regional Council Members present on the occasion.

CS Vineet Chaudhary, Member, NIRC while initiating the proceedings of the programme emphasized on knowing one's strength and working on it. He advised the participants to take full advantage of the 15 days MSOP.

CS Rajiv Bajaj, Member, NIRC while addressing the participants said that approach of participants is the key for making MSOP batch a success. He said as the name suggests MSOP is to make all the participants a good Manager, Skillful, Oriented toward bigger things in life. He also spoke on the theme of NIRC for current year i.e. Brand Building & Innovation.

CS Deepak Kukreja, Member, NIRC said that during the MSOP all the participants will be students and after the completion they will be treated as Members of the ICSI. He said that the participants should not limit themselves to compliances only and suggested them to diversify their area of work. He also suggested them to be updated as the industry look up for updated advises and opinions. He said that participants are free to choose between employment and self-employment.

CS Ravi Batra, in his address congratulated the participants for completing the final examination of the ICSI and joining Management Skills Orientation Programme. He said that CS plays a vital role in corporate world and emphasized that responsibility and risk goes side by side. He motivated the participants by throwing light on various avenues available for budding Company Secretaries. He advised them to be honest, loyal and sincere towards their work. He concluded by advising the participants to prove their worth to themselves.

On 12.7.2013 at the Valedictory Session CS S C Khaneja, was the Chief Guest and CS Mohinder Bajaj was the Guest of Honour.

CS Avtaar Singh, Member, NIRC anchored the proceedings of the valedictory session. While congratulating the participants for completing 177th MSOP of NIRC he appealed to them to take the membership of the Company Secretaries Benevolent Fund.

CS M G Jindal, Chairman, NIRC expressed confidence that participants must have learnt a lot in MSOP. He suggested the participants to keep themselves updated with all the developments taking place. He advised them for reading Chartered Secretary, the monthly journal of the Institute. He also advised the participants to follow Professional Ethics & code of Conduct.

CS Mohinder Bajaj discussed various attributes which make a successful professional. He gave various suggestions to the participants and said that they should be ready to accept higher and higher responsibilities, study the organization in its entirety and must understand all the requirements of the organization, not to limit them to the Company Law and keep them updated every moment for becoming a successful professional.

CS P K Mittal, Central Council Member, the ICSI shared his practical experience with the participants and gave them certain suggestions/tips for becoming a successful professional.

CS S C Khaneja said that continuous updation is the need of the profession and suggested the participants that it is necessary for effective discharge of the professional responsibilities also. He advised the participants to read Chartered Secretary, the journal of the Institute and suggested them to initially join smaller companies and only if they will do the job with passion then only perfection will come. At the end, he wished the participants for their great professional career.

One day Seminar on Indirect Taxes-Issues & Prospects

On 22.6.2013, NIRC-ICSI organized a one day seminar on Indirect Taxes-Issues & Prospects at New Delhi. Manoj K Arora, Additional Director General of Export Promotion, Department of Revenue, Ministry of Finance was the Chief Guest on the occasion.

Inaugural Session: CS Vineet Chaudhary anchored the inaugural session of the seminar. He in his address said that the indirect tax is levied by the Ministry of Finance, Government of India and Central Board of Excise & Customs is the final body for issuing various circulars, notifications and clarifications in the matters related to indirect taxes. There are Tribunals for settlement of various issues relating to indirect taxes. The professional like Company Secretaries can play a major role in both the stages. He said that indirect taxes have undergone tremendous changes in the last few years. In order to keep members of the ICSI updated and also for highlighting various opportunities available in indirect taxes, the topic of the seminar was chosen.

CS MG Jindal, Chairman, NIRC said that there is immense scope for professionals in indirect taxation. He mentioned that Company



News From the Institute & Regions

Secretaries can provide various services in Central Excise, VAT, Service Tax etc. and play a vital role for ensuring various regulatory compliances. He said that only such professionals can deliver best to their clients or industry who keep pace with the fast changing Corporate World and keep on updating themselves regularly.

Chief Guest Manoj K Arora said that Direct and Indirect taxes are the major source of revenue of the Central Government. Various reforms are taking place in these areas. On the Direct taxes front it is Direct Tax Code which takes almost 60 years old system to a new system where the efforts are being made to keep the system transparent and efficient. On the Indirect taxes side it is Service tax in which more than 120 services are under tax net. Only seven services are under negative list. After coming of GST there would be major transition, most of the issues in State Government have been resolved and Department is prepared for the new system of Tax Administration. There is going to be huge challenge of Compliance after coming of new tax regime and the professionals like Company Secretaries have to resolve these challenges. For ensuring Compliance in fair manner under Central Excise and Service Tax there is a dearth of serious Professionals like Company Secretaries.

CS Manish Gupta, Treasurer, NIRC arranged the presentation of awards to the Best participants and Best Presenters of the 175th & 176th Management Skills Orientation Programme.

CS Shyam Agrawal, Vice Chairman, NIRC while concluding the inaugural session of the seminar said that the main domain of the Company Secretaries is Company Law and if one has got expertise in it then he can always venture into different fields and diversify his domain. Around 400 members including Regional Council Members were present at the inaugural function of the seminar.

First Technical Session: CS Deepak Kukreja, Member, NIRC anchored the first technical session of the seminar. CS Upender Gupta, Additional Commissioner, Central Board of Excise & Customs chaired the first technical session. He while addressing the gathering, said that Indirect Taxation is a field where one has to work hard but at the same time immense opportunities are available for professionals. He requested and appealed the members that they should take care of the reconciliation of tax returns and Annual Accounts. He informed that GST is a combination of all indirect taxes and suggested the members to keep themselves updated about what is happening in GST.

Anjalika Chopra, Director, Deloitte Touche Tohmatsu India Pvt. Ltd. spoke on important obligations and Input tax Credit Mechanism under VAT. She discussed the important obligations under VAT viz. registration, obligations under Works Contract, Accounts & Records, Returns, Self Assessment, Deduction of tax at source and payment of tax. She discussed in detail the Input Tax Credit Mechanism, its availability, negative list, reversal, Input Tax Credit on Capital Goods and also refund of Input Tax Credit. She also briefly touched the introduction of Goods and Service Tax and said that the proposed GST is based on a dual mode of taxation, one is Central GST, levied by the

Centre and the other is State GST, levied by each State.

Rakesh Garg, Chartered Accountant spoke on Procedural & Practical aspects of VAT. He initiated his discussion by saying that when Acts are complex then it is very difficult to practice and resolve the issues. He mentioned that in case of VAT, complexity arises where the transaction is to be taxed. He discussed various situations or transactions where the complexities arise. He made a comparison between VAT & CST. He gave some tips to be kept in mind while advising the clients.

CS Bimal Jain spoke on Overview of new Service Tax Regime/Major changes, VCES, 2013, Reverse/Joint Charge and Directors/Partners Service. He discussed in detail the definition of service, declared service and the taxable event under Service tax. He mentioned that a service except those mentioned in the negative list/exempted list and those are eligible for other abatements are to be taxable under the negative list approach. He discussed the budget notifications issued under Service Tax Laws. He discussed Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES). He also discussed the changes in the Finance Bill 2013 viz. changes in negative list, advance rulings, changes in mega exemption list, changes in abatement services and reverse charge etc.

After all the presentations of the first technical session, participants present asked various queries, which were very well responded by the guest speakers.

Second Technical Session: CS Deepak Kukreja anchored the second technical session of the seminar.

R Krishnan, Advocate spoke on Search Seizure proceedings, replying to show cause notices, adjudication of show cause notices, filing of appeals/stay applications/misc. applications - covering practical & procedural aspects - role of Practising Company secretaries as counsel or authorised representatives in the above eventualities. He very elaborately explained the various points to be taken care of / kept in mind while dealing with the above mentioned issues / situations. He shared his rich experience with the delegates.

Puneet Aggarwal, Partner, Athena Law Associates spoke on New Penal Provisions & Practical Aspects of Handling Adjudication and Litigation under Service Tax Law. He initiated his discussions with the assessment provisions under Service Tax law and also the provisions relating to recovery of Service Tax, appeals etc. At the end, he discussed the various avenues available to Company Secretaries.

Siddharth Srivastava, Managing Partner, SKS Associates spoke on Business Impact of Changing Valuation Principles under Central Excise & Service Tax. Starting with the historical background of the valuations concepts under Central Excise and Service Tax he also discussed the new valuation concepts. He discussed various controversial decisions relating to these concepts.

After all the presentations of the second technical session, participants present raised various queries which were very ably replied by the



guest speakers.

CHANDIGARH CHAPTER

Talk on Non-Banking Financial Companies

On 27.6.2013, Chandigarh Chapter of NIRC of the ICSI organised a talk on Non-Banking Financial Companies (NBFCs). Key Speaker Satya Narayan, Deputy General Manager, RBI, Chandigarh in his presentation explained various provisions and their applicability under Foreign Exchange Management Act, RBI Act, etc. He then replied the queries raised by the participants. CS Vishwjeet Gupta, Chapter Secretary coordinated the talk. More than 50 professionals and students attended the talk.

GHAZIABAD CHAPTER

Professional Development Programme / Full Day Seminar

On 13.7.2013, Ghaziabad Chapter of NIRC of ICSI organized a Professional Development Programme/Full Day Seminar. Chief Guest CS Ranjeet Pandey, Past Chairman NIRC of the ICSI inaugurated the session and took the first half of the technical session on Corporate Restructuring – Mergers and Takeovers. He spoke at length on the types of Mergers and the legal provisions governing them in Companies Act, 1956, Company Court Rules, 1959, Stamp Duty, SEBI Regulations, Listing Agreement, FEMA. He also discussed in detail the Income Tax implications on Mergers & Takeovers. He threw light on the concept of Back Door Listing and valuation aspect of the Mergers. The technical session was received very well and around 100 members and students were present. There were numerous queries throughout the session which were satisfactorily replied by the speaker.

Post lunch CS Monica Suri in her session on Communication and Interview skills said that in the highly competitive environment it is imperative that a company secretary keeps himself abreast with excellent communication and interview skills. CS Monica Suri emphasized on the need of reading, writing, speaking and listening abilities to improve communication skills. She also threw light on the challenges faced during the interview and the steps to overcome them. The session was followed by an activity wherein members and students were encouraged to speak by standing on the podium and raised various queries. Media persons also made their presence and covered the programme.

JAIPUR CHAPTER

Study Circle Meeting on Compliance of Clause 41 of Listing Agreement

On 29.6.2013 a Study Circle Meeting was organized by the Chapter on Compliance of Clause 41 of Listing Agreement. Guest Speaker CS Manoj Maheshwari informed about various compliances of Clause 41 of Listing Agreement. Relevant study material was also distributed among the attendees.

Career Awareness Programme

On 6.7.2013, the ICSI Jaipur Chapter Organized a Career Awareness Programme at SV Public School, Jaipur. Rajesh Gupta, Executive Officer, Jaipur Chapter addressed the students who were apprised about the mode of registration in the CS course, syllabus, structure of the course, fee structure, and also the avenues available after completion of the CS Course both in employment and in practice. Pamphlets explaining Career in CS Course were distributed to the students. The school's administration provided very good support in organizing the programme. About 300+ students participated in the said programme. Anshul Jain, Chapter Chairman also informed about the CS course and the future dynamics of the course. The students were inquisitive about the profession, time period of the course, role of a CS, fee structure, contents, cut off dates, and opportunities available after becoming CS professional, etc. The details of various schemes and fee concession for economically backward students, viz. Education Student Fund Trust and fee concession for SC/ST/Physically Challenged students were also explained. The coaching facility available to the students in the form of Oral Coaching Classes was also explained.

LUCKNOW CHAPTER

Career Awareness Programme

On 15.7.2013 the Chapter conducted a career awareness programme at Study Hall School, Lucknow. The School arranged the programme in their AV room and 60 class 12 students from all the streams of the school attended the programme which was very interactive. CS Anuj Tiwari, Chapter Secretary addressed and interacted with the students. He informed the students about the Institute, admission procedure, prospects of CS course and fee structure, etc. Brochures and pamphlets explaining the CS course were distributed to the students who attended the programme. A Presentation about the CS course was also given to the students. Queries raised by the students were replied by CS Anuj Tiwari. Students were also informed to call or visit the Chapter in case of any doubt/query. They were also told to visit the Institute's website for more information about the CS Course. CS

» Southern India Regional Council

One-day Seminar on FEMA and Intellectual Property Rights

On 8.6.2013 the ICSI – SIRC organized a one day seminar on FEMA and IPR at ICSI – SIRC House, Chennai. Guest Speaker of the First Technical Session, Amith Raj A N, Tax and Regulatory Services [M&A], Pricewaterhouse Coopers Private Limited, Bengaluru spoke on Investing in India – Overview of FDI regulations and income tax implications. Amithraj started with the history of FDI in India and



News From the Institute & Regions

explained that the New Industrial Policy of 1991 abolished the industrial licensing excepting 16 industries and threw open India's door to FDI. He also narrated the functions of Department of Industrial Policy and Promotion [DIPP], Foreign Investment Promotion Board [FIPB] the Foreign Exchanges Department of RBI. On talking about the foreign investment into an Indian company, he spoke on the automatic and approval routes. The speaker also spoke elaborately on funding options, repatriation options, downstream investments, conversion of companies into LLP with FDI and compounding.

The speaker for the Second Technical Session was CS P B Madhavan, Advocate, Chennai who spoke on Professional Ethics. Madhavan observed that it is the inbound duty of all the professionals to follow ethics in their profession. Madhavan, while speaking on ethics to be followed by the CS, explained that the code should be understood as the application of ethics to corporate affairs and formulated to enhance the standard of corporate governance. Madhavan opined that in the performance of duties, a CS should strive for professional competency and at all times exhibit a high degree of skill and proficiency in the performance of the duties to his employer.

R Sathish Kumar, Advocate was the speaker for the Third Technical Session and spoke on Intellectual Property Rights. The speaker dealt with various laws relating to trademarks, copyrights, designs and patents.

Inauguration of 16th MSOP

On 12.6.2013 the 16th batch of MSOP was inaugurated by E Selvaraj, Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai. CS Dr. B Ravi, Member, SIRC in his address emphasized the growing significance of the role of CS in the corporates. He also urged the participants to form a network among them and share the knowledge.

E Selvaraj in his address advised the participants to go always by law and follow good ethics. He also observed that in the present scenario, the corporates expect the CS to be a multi faceted personality. Hence, the CS should not confine within the secretarial work, but also get well versed in other related areas also. He invited constructive suggestions and feedback from the young CS about the MCA initiatives. He concluded by advising the participants to fear god, fear law and fear wisdom.

CS Ramasubramaniam C, Treasurer, ICSI – SIRC advised the participants to make best use of the programme in updating their knowledge.

Study Circle Meeting on Salient features of SARFAESI Act

On 12.6.2013 B Dhanaraj, Advocate spoke on the SARFAESI Act at the Study Circle Meeting of the ICSI – SIRC. Dhanaraj explained that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, allows banks and financial institutions to auction properties (residential and commercial) when

borrowers fail to repay their loans and it also enables banks to reduce their non-performing assets by adopting measures for recovery or reconstruction. He further narrated that this law restricts its application to such debts as are classified by the secured creditor as non performing assets. The Securitisation Act provides that where the dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal that is situated within the local jurisdiction or a competent court, for the recovery of the balance amount from the borrower. He further stipulated that no borrower shall, after receipt of notice transfer either by sale, lease or otherwise any of his secured assets, without prior written consent of the secured creditor.

Study Circle Meeting on Corporate Litigations – How to Safeguard Directors and Company

On 21.6.2013 the Regional Council conducted a Study Circle Meeting on Corporate Litigations – How to Safeguard Directors and Company. CS A Mohan Kumar, Assistant General Manager, Legal and Company Secretary, Allsec Technologies Limited, Chennai was the speaker who in his address explained the term litigation and elaborately dealt with litigations pertaining to Factories Act, Weights & Measures Act, Negotiable Instruments Act (Sec. 138), ESI, PF Cases and Sub contracting, Employee Dismissal Domestic enquiry, Fixed Deposits repayment and winding up. While talking about the cases against companies, he observed that every person at the time the offence was committed, was in charge of, and was responsible for the conduct of the business of the company is liable to be prosecuted. He added that the Directors, Secretary and officers of the company may also be held liable. He also spoke elaborately on Directors Liabilities under various Laws.

Half-day Seminar on Recent Circulars of SEBI and Drafting of Foreign Collaboration Agreements

On 28.6.2013 Manjesh S Roy, Deputy General Manager, Southern Regional Office, SEBI, Chennai was the speaker for the First Session on Recent Circulars of SEBI on Mergers and Acquisitions and Amendments in SAST Regulations 2011. Manjesh elaborated the members on SEBI rules, issues on merger and amalgamation of listed companies, etc. He made a comparison about the past and previous M&A process pertaining to limited companies. Manjesh explained in detail the amendments in the SAST Regulations 2011. K Ramesh, Advocate, the speaker of the Second Session spoke on the important factors in drafting of joint venture and foreign collaboration agreements. He also threw light on the legal and financial aspects of technology transfer agreements.

Valedictory Session of 16th MSOP

On 28.6.2013 at the valedictory session of the 16th MSOP conducted by the Regional Council, CS Ananthasubramanian S N, President, The



ICSI while delivering the valedictory address observed that the profession of CS is in transition to Corporate Governance professional. He urged the CS to think smart and be prepared to handle the situation diligently at any point of time. Ananthasubramanian advised the participants not to confine within the secretarial work but to specialize on diversified areas. He also advised the participants to concentrate on the communication skills and learn from their experience. The President concluded by quoting that the illiterate of future is the one who refuses to learn, unlearn and read.

The participation certificates were handed over to the participants by the President, The ICSI. CS Nagendra Rao D, Secretary, ICSI - SIRC urged the participants to be the member of the CSBF and also suggest the colleges/schools for conducting career awareness programmes.

Press Meet with President, the ICSI

On 29.6.2013, CS Ananthasubramanian S N, President, Council of the ICSI addressed the media people at Chennai. Around 20 media men from various presses were present at the meet. The press meet was also covered by Sun TV, a famous Tamil TV channel. The President briefed the media about the CS profession and its scope. He also explained them about the CS course. While talking about the initiatives of the ICSI, he informed that the ICSI will be shortly introducing the short term courses for members, in association with the Indian Institute of Bankers and National Institute of Securities Markets in the specialized areas of insurance and banking. The President also observed that it is now time for Company Secretaries to transform themselves into Corporate Governance Professionals with focus on compliance.

2nd ICSI Convocation – Southern Region

On 29.6.2013 the Institute of Company Secretaries of India (ICSI) organised ICSI Convocation 2013 – Southern Region at Chennai to formalize the Award of Associate Membership of the Institute and to recognise the achievements of the students in their studies.

Dr. R. Thandavan, Vice-Chancellor, University of Madras awarded the Associate Membership of the Institute and recognised the achievements of the students at the 2nd ICSI convocation – Southern Region 2013. Dr. Thandavan in his address, said that a Company Secretary has a multi tasking role to play in an organization and he performs multipronged role across the spectrum of responsibilities – from ensuring proper legislation of norms through rational implementation of the same to conflict resolution among stake holders. The Vice Chancellor also advised the members to work on the communication skills. He also observed that the course of CS has become more popular among the students of commerce and management. The Vice Chancellor also assured all help to educate the students of the affiliated colleges of University of Madras, about the CS course. He concluded by mentioning that the CS are the pillars who will be shaping the future of the organizations as well as the collective destiny of India.

CS S.N. Ananthasubramanian, President, Council of the ICSI, in his address congratulated the new Members of the Institute and said,

“Members are entering a world that increasingly rewards individual aspiration and persistence and can measure precisely who is contributing and who is not and It is in this context that this 2nd ICSI Annual Convocation-2013 is being held”. He advised that, each of the students should consider investing in himself so as to witness the transformation which will happen in each one. He said “before starting investing in oneself, a SAP - Self Awareness Programme to identify traits, angularities, sweet-spots, strengths etc. should be undertaken. This investment could be anything; it may be in the form of additional languages, grooming skills, dramatics, music and many more because as one grows in life, the need to keep reinventing oneself is far more paramount.” He also expressed, “With this investment which is essentially long term one will gain market appreciation over time. Like companies which practise good governance gain in their value overtime and provide long-term gains in the form of dividends and price-appreciation, students should too govern themselves well. For that one should remember one thing that one will be known in the society by what he is as a person and what he can deliver and this calls for strict adherence to ethical values”. He also added “The need to remain credible is the most critical challenge today as your words hold out for you, your employers, your clients etc. Being credible is nothing else but doing what you say and saying what you do. The ability to distinguish between right and wrong has always been the most challenging assignment in life which is never taught in the classrooms”. The President concluded by quoting the words of Winston Churchill, ‘Never, Never, Never, Give Up’.

CS Gopalakrishna Hegde, Council Member, the ICSI and Chairman Convocation Sub-Committee, while congratulating the students said that the CS has a wide role to play in the times to come and advised them to take up the challenges. He also suggested the members not to confine within the traditional role of CS, but also to work on the diversified related areas.

CS M. S. Sahoo Secretary, Council of the ICSI administered the oath. CS Sutanu Sinha Chief Executive of the Institute in his concluding remarks congratulated all the newly admitted members and meritorious students. He advised them that they should take care of performance in whatever they do and the wealth would take care of itself. He reiterated the fact that the path to success is through hard work and perseverance and not through accumulation of wealth. He also stated that there are instances of overnight success stories which ultimately doomed as the persons involved chased the wealth and lost track of their real success. To Excel in the right sense is chasing your professional/personal goals and letting the results take care of themselves, making the process of achievement supreme and making the result irrelevant. He advised the students to perfect the process of performance and not to allow the pressure of the result to choke your performance.

BANGALORE CHAPTER Inauguration of 13th MSOP

On 3.6.2013 the Bangalore Chapter of SIRC of the ICSI organised the



News From the Institute & Regions

inaugural function of its 13th Management Skills Orientation Programme (MSOP). CS & CA Venkat Narayana K., Executive Director - Finance & CFO, Prestige Estates Projects Ltd., Bangalore was the Chief Guest and inaugurated the MSOP. He in his address stated that the most important role of Company Secretary is to bring in compliance and integrity in the organization and advised the participants to hone their leadership skills. He stated that above all this was the need to enjoy one's work, maintain high levels of integrity and honesty and learn to be a team player and add value to any work undertaken.

On 19.6.2013 at the valedictory function CS Gopalakrishna Hegde, Central Council Member, The ICSI & Ex-officio, Bangalore Chapter was the Chief Guest. Gopalakrishna Hegde in his address to the participants advised them to always keep smiling and always be the reason for many more to smile. He stated that Smile, value, respect, loyalty and learning are some of the professional traits to be inculcated by the budding professionals for a successful career. He also stated that above all this was the need to enjoy one's work, maintain high levels of integrity and honesty. The Chief Guest then distributed the Best Participant award to Ramkumar H.N and the prizes for the Best Project to the team comprising Deepak P Jain, Ramkumar H.N, Geeta Parmar and Ravindra Babu for their Project on Buy Back of Shares. Chethana and Hemanth, Participants, shared their feedback about the MSOP.

31st Annual General Meeting

On 21.6.2013 the Bangalore Chapter of SIRC of the ICSI conducted its 31st Annual General Meeting at its premises. On ascertainment of requisite quorum, the Chairman called the meeting to order. The meeting commenced with the welcome address by CS M Manjunatha Reddy, Chapter Chairman who also highlighted the major activities of the chapter for the year under review. The Chairman read out the notice and CS S.C Sharada, Vice Chairperson, Bangalore Chapter of the ICSI read out the Auditor's Report. CS M Manjunatha Reddy presented the Managing Committee Report and Audited Accounts to the Members and invited their comments and suggestions on the accounts. Thereafter the Chairman moved the resolution for adoption of audited financial statements for the year ended 31st March 2013 which was passed unanimously by 22 Members present.

Career Awareness Programme

On 27.6.2013 the Bangalore Chapter of SIRC of the ICSI conducted a Career Awareness Programme on Career as a Company Secretary for BBA Student of Christ University. Noor Sumayya, Asst. Education Officer of the Chapter Office explained in detail the CS course offered, eligibility criteria for the course, examination, requirements of training etc, the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. She also highlighted the opportunities available to anyone who has completed the Company Secretary ship course and further enumerated the emerging areas of practice and the changing role of a Company Secretary. She also focused on what would be the mindset and preparation required from a student who wanted to pursue the Company Secretary ship Course. Brochures explaining CS Course

were distributed to the students.

Full-day Seminar on Mergers & Amalgamations

On 29.6.2013 the Bangalore Chapter of SIRC of the ICSI organised a full day Seminar on Mergers & Amalgamations at Bangalore. Pratap Giri S., Director, VSL Growth Capital and Investments, Bangalore, speaker for the First Technical Session on Overview of M&A in his presentation highlighted the topic under Indian regulatory framework giving insight on the strategy and stakeholders behind it. The relative key challenges, key structuring aspects and pertinent cases were also dealt with in detail. Further he emphasized on the current trends and outlook of Mergers and Acquisitions and the possible reasons for its failure

The Second Technical Session on Tax Implications of M&A was dealt by Amithraj A.N., M & A Tax Team - PWC, Bangalore. The Speaker in his presentation gave an overview of methods involved in M&A and the external and internal reorganisation which are the key drivers of M&A. He further dealt with investment options and structures under the direct route and SPV route. Later he explained in detail the tax implications for capital gains under section 50(b) related to asset sale and slump sale. He then briefed on section 2(1B) – Amalgamation, section 2(19AA) – Demerger, section 2(19AA) – Demerger.

The Third Technical Session on Procedural Aspects of M&A was addressed by Krishna Prasad, M & A Tax Team - PWC, Bangalore. Krishna Prasad explained in detail the process of Mergers and Demergers and highlighted the SEBI Implications. The process for Business transfer, closure and the valuation techniques were also dealt with in detail by the speaker.

The Fourth Technical Session was addressed by K. Srinivas, Senior Partner, Indus Law Associates, Bangalore who made his presentation on Legal Complications of M&A. There was very lively interaction by the 188 Members present.

Study Circle Meeting on an Overview of Transfer Pricing on Specified Domestic Transactions (SDT) and its Implications

On 21.6.2013 the Chapter organised a Study Circle Meeting on the above topic wherein CS K. Chandra Sekhar, Company Secretary, Ace Designers Limited, Bangalore was the speaker. CS K Chandra Sekhar in his presentation gave an overview of Transfer Pricing on Specified Domestic Transactions (SDT) and its Implications and highlighted the tax payers who are covered under the specified domestic transactions and its compliance requirements.

COIMBATORE CHAPTER

Joint Workshop on Promotion of Limited Liability Partnership

On 7.6.2013 Coimbatore Chapter of SIRC of the ICSI along with



Coimbatore Chapter of ICAI and Coimbatore Chapter of ICAI (CMA) organized a workshop on Limited Liability Partnership. E. Selvaraj, Regional Director, Ministry of Corporate Affairs, Chennai, Dr. M. Manuneethi Cholan, Registrar of Companies, Coimbatore graced the session with their presence and valuable inputs. CS M. R. Thiagarajan, Practising Company Secretary, Coimbatore deliberated on various benefits and opportunities available for corporates and entrepreneurs in the form of Limited Liability Partnership. More than 75 participants attended and benefited from the programme. The Members and Students of the ICSI were awarded with 2 PCH and 4 PDP credit hours respectively.

Career Awareness Programmes

On 22.6.2013 the Chapter organized a Career Awareness Programmes at Angappa School, Saibaba Colony, Coimbatore. Shyama Vijayaraghavan, Assistant Education Officer, Coimbatore interacted with more than 65 students and explained them about ICSI, the opportunities available in the profession of CS.

Again on 28.6.2013 the Career Awareness Programme was held at GRD college of Arts and Science. CS R. Hariram, Chapter Treasurer interacted with more than 60 students and imparted the benefits of CS course.

Annual General Meeting

On 28.6.2013 the Chapter presented the Audited Financials for the year 2012-13. CS P. Eswaramoorthy, Chairman, Coimbatore Chapter along with other office bearers welcomed the members of the Coimbatore region and briefed them on the developments in the Chapter and also its performance for the year ended on 31st March, 2013.

HYDERABAD CHAPTER

Lecture Meeting on Anti Money Laundering & Latest Developments

On 28.6.2013 the Chapter organised a Lecture meeting on Anti Money Laundering & Latest Developments, at its premises. CS B. Venkateswarlu, Practising Cost Accountant was the speaker of the day. He explained what is Money Laundering, conceptual approach of money laundering, methods of money laundering, Anti Money Laundering Legislation in India, Implications of AML/CFT Measures on the Financial Sector, International Scenario, Key Issues, Provisions under Anti Money Laundering Act, What offences come under the purview of Money Laundering? Obligations of Department of Posts, risk categories, Suspicious Activity (Anti-Money Laundering), the Process of Money Laundering and Financing of Terrorism, case study of fraud and money laundering in the banking sector, etc. He also dealt with Case Studies – Abroad, International Initiatives, Indian Scenario, Basis for Laundering, Use of Computers in Fraud and Money Laundering - Exposure and Due Diligence Laws for Banks etc.

KOCHI CHAPTER

Joint Workshop on Promotion of LLP

On 21.6.2013 a Joint workshop on promotion of Limited Liability Partnership was organised as a combined initiative of the Kochi Chapter of the Institute of Company Secretaries of India, the Ernakulum Branch of the Institute of Chartered Accountants of India, and the Cochin Chapter of the Institute of Cost Accountants of India.

E. Selvaraj, Regional Director, Ministry of Corporate Affairs, Chennai was the Chief Guest on the occasion and addressed the gathering emphasizing the need to popularize the concept of LLP by professionals. He highlighted the advantages of LLP as an emerging form of business organisation and the importance of unique workshop on promotion of LLP. K G Joseph Jackson, RoC, Kerala & Lakshadweep, was the Guest of Honour who narrated the situation of Kerala with respect to the registration and governance of LLPs. He advised the professionals to look into the aspects described by the Chief Guest and expressed his confidence that joint initiatives by three professional institutions would boost up the registration of LLPs in the state.

CS M.R. Thiagarajan, Practising Company Secretary, Coimbatore was the main speaker of the workshop. Thiagarajan while addressing the gathering highlighted the entire legislation and corresponding procedures in a very lucid manner. He covered almost all the provisions of the Act explaining in simple language the practical situations. The audience representing professional community, bankers and students were highly inspired and the programme ended with a question - answer session. During the interactive session, the delegates explained their experiences and sought clarifications for their doubts. The Regional Director, ROC and the speaker clarified them. Around 114 delegates attended the workshop.

Annual General Meeting

On 22.6.2013 the Annual General Meeting of Kochi Chapter for the Financial Year ended on 31.3.2013 was held at Kochi. The meeting started with a silent prayer. Chapter Chairman CS Jayan K. delivered the welcome address and touched upon the activities undertaken by the Chapter after the end of the Financial Year till the date of the Annual General Meeting. He also briefed on the immediate future plans under consideration of the Managing Committee for the betterment of the Chapter.

CS Rohini Varma K, Chapter Treasurer presented the Audited Financial Accounts for the Financial Year 2012-13. The members discussed the financial statements in detail and necessary clarifications were given to all the queries. The meeting considered and approved the Annual Report, Audited Annual Accounts and Auditors Report unanimously. 15 members attended the meeting.

MADURAI CHAPTER

Career Fair

On 20.5.2013 the Hindu Education Plus conducted Career Counseling Fair 2013 in Tirunelveli. Collector of the district Samayamoorthy while addressing the students accompanied with their parents said that as India is an emerging economy, students apart from their academic



News From the Institute & Regions

excellence should also develop entrepreneurship skills and must explore all the avenues available to them and should also be job provider and not job seeker. CS. S.Kumararajan, Chapter Chairman represented ICSI and enumerated various avenues available to company secretaries. Further the new Companies Bill 2012 is yet to come into play replacing the existing Companies Act, 1956 in which the role of company secretaries is widened apart from statutory compliance company secretary's role would further widen as Key Managerial Personnel (KMP) in the company's administration.

BLOOD DONATION CAMP

On 15.7.2013 the Chapter in association with Tamilnadu Government Rajaji Hospital Madurai arranged for Blood Donation Camp at its premises. S.Kumararajan, Chapter Chairman presided over the function. Around 45 students, members and staff donated blood on the day. The blood bank authorities appreciated and thanked Madurai Chapter of the ICSI for organising the blood donation camp. CS

Western India Regional Council

Understanding Financial Statements, Balance Sheet and Ratio Analysis

On 22.6.2013 ICSI-WIRC organised a full day programme on Understanding Financial Statements, Balance Sheet and Ratio Analysis at Adhere West, Mumbai. Pritesh Mehta, Practising Chartered Accountant and Sanjoy Gupta, Chartered Accountant covered various aspects of the topic by giving practical exercises. Members appreciated the theme of the programme and quality of faculty and insisted that more such seminars be organised in the future.

Programme on Securities Laws

On 29.6.2013 the WIRC of the ICSI jointly with WE School organised a full day Programme on Securities Laws at Mumbai. The Programme was inaugurated by Dr.Uday Salunke, Group Director, WE School who in his address spoke on the changing role of higher education and the need and significance of Management Education in today's corporate scenario. Hitesh Buch, Chairman, ICSI-WIRC during his address complimented the efforts taken by WE School in joining hands with ICSI-WIRC for organising the programme. He opined that Company Secretaries being Compliance Officers should have good Management acumen. During the inauguration Dr.Uday Salunke released ICSI-WIRC publication on "Supreme Court judgements on SEBI Act, Rules and Regulations" co-authored by Shailashri Bhaskar and Prakash Pandya. Later on various aspects of Securities laws were discussed in detail by eminent speakers. Sumit Agrawal, Assistant Legal Advisor, SEBI and Rafique Dada, Senior Advocate, Mumbai. Queries raised by the participants were satisfactorily responded by the speakers. Over 100 participants

from various parts of Western Region attended the programme.

Programme on Independent Directors

On 13.6.2013 WIRC of the ICSI organised a programme on Independent Directors at its premises in Mumbai. The speakers for the programme were Sanjay Buch, Solicitor & Partner, Crawford Bayley & Co., Mumbai. Bhagirat Merchant, Chairman, Tarragon Capital Advisors (India) Pvt. Ltd and Ramaswami Kalidas, Company Secretary, Reliance Power Limited.

The speakers covered various aspects of the topics like Role and Responsibilities of Independent Director, Case laws and judgments on Independent Directors, International Standards, Company Secretary's view on Independent Directors etc. The sessions were interactive and the speakers responded to the queries raised by the participants. Over 60 participants from across the region attended the programme.

Programme on Enhance Your Effectiveness (EYE)

On 22, 23, 29 and 30.6.2013 the ICSI-WIRC organized its Second Programme on Enhance your Effectiveness (EYE) at the WIRC Auditorium, Mumbai. Pramod Palekar, Managing Director & Principal Faculty of Sumances Consultrainers Pvt. Ltd was the faculty. Various aspects pertaining to the theme including How to Build Self-Confidence, Body Language, Business Etiquette, How to Think Positive, Goal-setting, Good Relationship – Secret to Success, Techniques for Presentation Skills & use of Audio Visual Aids, How to Develop Creativity in Communication, How to Create Humour in Speeches, How to Generate Audience Interest, etc. were covered during the course of the programme. During the programme video recordings were held on the first day and the last day which enabled participants to understand, evaluate and improve on their presentation abilities.

Sameer Shelar assisted Pramod Palekar during the programme. Hitesh Kothari, Regional Council Member who was also a participant of the programme in his address complimented the efforts made by Pramod Palekar in helping professionals to enhance their effectiveness. He opined that the programme was beneficial for him and has enabled him to understand his strength and opportunities. Other participants also complimented the coverage of the programme and expressed their interest in attending such programmes at regular intervals.

30th Management Skills Orientation Programme

From 11.6.2013 to 27.6.2013, the ICSI-WIRC organized its 30th MSOP at its premises. Rakesh Puri, Founder Director of Exact Advisors & Consulting Private Limited was the Guest of Honour. Hitesh Buch, Chairman, ICSI-WIRC in his address congratulated all the participants for successfully completing the CS course. He said that the youngsters should not confine themselves only to normal secretarial activities but should explore new horizons of



the profession.

Puri during his address spoke on the changes which he has seen in CS profession in the last two decades. He spoke on the significance of unity and said that members should have bondage. He cited few examples where good rapport with other members has helped him in his professional career. He also defined success and how a person has to strive for success. Puri opined that there are no shortcuts in profession and one should not get disheartened if results are delayed. He stressed on the point that efforts will never go waste.

Mahavir Lunawat, Former Chairman, ICSI-WIRC was also present during the inaugural function and shared his thoughts. He together with Hitesh Buch replied the queries raised by the participants pertaining to the Institute and its curriculum.

A group of expert professionals and Company Secretaries from different core areas belonging to employment and practice took various sessions of contemporary relevance like IPO, Compliance of Listing Agreement, Practical Aspects of Mergers and Amalgamations, Appearing before various judicial bodies, FEMA, Service Tax, Legal Drafting and writing skills, practical aspects of Board Meetings, etc.

Sessions on Personality Development, Life Skills, Communication and Presentation Skills, Team Building and Leadership, Stress Management, Emotional Intelligence, Campus to Corporate etc. were also covered during the programme. During the programme a visit was organised to RBI for an interactive session. RBI officials responded to all banking related queries raised by the participants. This was followed by visits to RBI Museum and Cheque Clearing Cell.

On 27.6.2013 at the Valedictory Session Ramamoorthy Rajagopal, EVP & Chief Administrative Officer, DSP Black Rock Investment Managers Pvt. Ltd. and Dr. Pritesh Majmudar, VP – Compliance Officer & Company Secretary, DSP BlackRock Investment Managers Pvt. Ltd. were the Guests of Honour. Ramamoorthy and Dr.Pritesh interacted with the participants and shared their experience. In conclusion the dignitaries present distributed certificates to the participants.

BHOPAL CHAPTER

Study Circle Meeting

On 24.6.2013 the Bhopal Chapter of WIRC of the ICSI organized a Study Circle Meeting at its premises on Merger & Amalgamation. The programme was inaugurated by CS Dhanraj Singh Thakur, Chapter Chairman. CS Y C Rao, Chairman-Raipur Chapter was the main speaker of the programme.

PUNE CHAPTER

Half day Seminar on Knowledge

Refresher Course

On 1.6.2013 Pune Chapter of the ICSI organized a half day programme on Knowledge Refresher Course at Pune. Dr K R Chandratre, Past President, the ICSI was the faculty for the seminar. In total 96 delegates attended the programme. The technical session was very informative and appreciated by the gathering at large. Two (2) PCH was allotted to members who attended the programme and students were allotted four (4) PDP for the programme.

Study Circle Meeting on CS Role in Risk Management

On 1.6.2013 Pune Chapter of the ICSI organized a Study Circle Meeting on CS Role in Risk Management at Pune. CS Omkar Kothari was the faculty for the meeting. In total 10 members attended the programme. The technical session was very informative and appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme and students were allotted two (2) PDP for the programme.

Study Circle Meeting on Dishonour of Cheque - Practical Aspects

On 8.6.2013 Pune Chapter of the ICSI organized a Study Circle Meeting on Dishonour of Cheque at Pune. Adv Gautam Karnik was the faculty for the meeting. In total 24 members attended the programme. The technical session was very informative and appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme and students were allotted two (2) PDP for the programme.

Study Circle Meeting on Revised Schedule VI under the Companies Act, 1956

On 15.6.2013 Pune Chapter organized a Study Circle Meeting on Revised Schedule VI under the Companies Act, 1956 at Pune. CA C V Deshpande was the faculty for the meeting. A total of 55 members attended the programme. The technical session was very informative and appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme and students were allotted two (2) PDP for the programme.

VADODARA CHAPTER

Study Circle Meeting

On 28.6.2013 the Vadodara Chapter of WIRC of the ICSI organized a Study Circle Meeting at the Chapter premises. CS Jaydev Betai, Practicing Company Secretary, Ahmedabad, addressed the Members and Students on the theme Life and Goals –Mantras for Success and Happiness. Ninety- five CS Members and Students attended the Study Circle Meeting. Members and Students actively participated in the discussions and exchanged their views and question-answer. The Meeting was quite knowledge enriching for the participants.

CS





ICSI - CCGRT

Workshop on Critical Issues in Corporate laws

On 22 and 23.6.2013 the ICSI-CCGRT In order to give an in-depth understanding to the company secretaries and other professionals of the real life critical issues which they may face during their day-to-day working and to help them to resolve the same, organised a two days Workshop on Critical issues in Corporate Laws at the ICSI-CCGRT Training Hall in CBD Belapur. The panelists for the First day of the workshop were S V Subramanian, Chairman, SSB; K Sethuraman, Group CS & Chief Compliance Officer, Reliance Industries Limited, Mumbai and Shashikala Rao, Practising Company Secretary, Mumbai and for the second day were Arvind Salvi, Former DGM, RBI, Dr. V R Narasimhan, Chief – Regulations, NSE Ltd. and Suresh Thakurdesai, Company Secretary, Mumbai.

The issues discussed were based on the experiential learning of senior members. Real life situations were converted into case studies and circulated to the participants in advance. Participants, in turn, came out with solutions of their own, under the guidance of the panelists present. The panelists also gave their expert view on each issue. Supplementary questions which required debate were also raised by the participants and deliberated during the workshop.

Certain critical issues in Companies Act and other Corporate Laws were covered on the first day of the workshop, whereas certain critical issues under FEMA and Capital Markets were covered on the second day.

Based on the positive feedback of the participants, it has been decided to repeat a workshop with other critical issues tentatively in the month of September 2013.

Two Days Workshop on Compliance with Listing Agreement with NISM

On 29 & 30.6.2013, ICSI-CCGRT in collaboration with National Institute of Securities Markets (NISM), an Educational initiative by SEBI conducted a unique Two Days Workshop on Compliance with Listing Agreement at the ICSI-CCGRT Training Hall in CBD Belapur.

Dr. Sunder Ram Korivi, Dean, NISM who was also the coordinator of the programme set the tone to the proceedings and explained the theme of the programme.

V S Sundaresan, Chief General Manager, Securities and Exchange Board of India (SEBI), Mumbai inaugurated the workshop and gave the introductory remarks. Speaking about the role of SEBI and the players in the capital market, he said that SEBI has been given the job of development of capital

market keeping in mind the 3 players (3 Is) viz. Intermediaries (who brings other 2 players together), Issuers (who demand money) and Investors (who supply money). He pointed out that the existence of top 2 players depends on the sustained interest of the last player i.e. investors since they are the backbone of the capital markets. He linked the process of getting listed in stock exchange with the process of a person going abroad and said that getting clearance from SEBI for listing is like getting Passport, in-principle approval from stock exchange is like VISA, trading approval from stock exchange is like immigration clearance and the ongoing listing compliances are the responsibilities of the person on entry to a foreign country. Explaining the benefits of continuous timely disclosures and its impact on price through case studies, he reiterated that compliance of all requirements of the Listing Agreement by the issuer is very critical as it creates credibility of the company over a period of time and thereby builds investor confidence.

Pooja Makhija, Assistant General Manager, SEBI in her session on SEBI (ICDR) Regulations, 2009 pointed out with the help of statistics that the trend of IPO has not been encouraging. She explained certain important provisions of the ICDR Regulations namely the eligibility criteria for listing, routes of listing, lock-in provisions, Offer documents etc. She also threw light on the recent major reforms introduced by SEBI in the capital markets to bring in retail investors viz. Safety Net Mechanism, Disclosures in offer documents, Pricing, SEBI (Framework for Rejection for Draft Offer Documents), Measures to avoid price aberrations in initial days etc. and analysed the impact of these reforms, which has been positive.

The other speakers for the 2 days workshop included Sudhir Bassi, Executive Director – Capital Market, Khaitan & Company who spoke on Due Diligence in Public Issue, Paritosh Dere, Manager, NSE who threw light on the Corporate Bond Market, Shailashri Bhaskar, Practising Company Secretary & Former DGM, SEBI who took an awe-inspiring session on all the recent amendments in the equity listing agreement with particular reference to Clause 40A and 49, Manu Thomas, BSE who made a presentation on Listing on BSE & Listing Compliance on SME Exchange and Dr. Sunder Ram Korivi, Dean, NISM who ran through IPO – Facts & Features.

Dr. V R Narasimhan, Chief-Regulations, NSE Ltd. made the concluding remarks where he gave the stock exchange's perspective on compliance with listing agreement with special reference to Disclosure of Price Sensitive Information (Clause 36), Business Responsibility Reporting (Clause 55), Qualified Audit Report and Remuneration Committee. He shared some of his practical experiences where companies gave frivolous reasons for non-compliance with the listing agreement and advised the company secretaries to ensure avoidance of the same.



A cross-section of participants from different parts attended this intensive participation-oriented two days workshop. Certificates were awarded by NISM at the end of the workshop to those who successfully completed the workshop based on their evaluation.

Two days Workshop on Business Responsibility Reporting (BRR)

The changing global marketplace increasingly rewards the companies that go beyond the legal requirements in terms of managing their economic, environmental and social impacts. Companies that act in a sustainable manner not only help maintain the well-being of the planet and people but also create businesses that will survive and thrive in the long run. Considering the importance of sustainability in businesses, the Ministry of Corporate Affairs (MCA) in July 2011 issued National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (NVGs). These guidelines strongly encourage reporting on environment, social and governance issues. In August 2012, SEBI has mandated the top 100 listed entities to include Business Responsibility Report (BR Report) in their Annual Report in order to assess fulfillment of the environmental, social and governance responsibilities.

In this backdrop, ICSI – Centre for Corporate Governance, Research & Training (CCGRT) on behalf of ICSI, as a capacity building initiative for the Company Secretaries, conducted a two days Workshop on Business Responsibility Reporting jointly with CII-ITC Centre of Excellence for Sustainable Development on 3 and 4.7.2013 at ICSI-CCGRT, CBD Belapur.

Sandip Ghose, Director, NISM was the Chief Guest on the occasion who in his inaugural address, reiterated that good business should become a part of DNA of corporates in order to sustain the business. The spirit of BRR is doing things ethically even when no one is watching and thus set a platform for other companies to emulate. Citing examples on the need for rules in business, he stated that rules enable corporates to play best games within the set standards of practice. Companies should not only have a best code of conduct but also implement the same.

S N Ananthasubramanian, President, the ICSI gave a special address on the occasion, where he pointed out that BRR is expected to be gradually made applicable to all listed entities and hence is a high-end area of practice for company secretaries, especially since company secretaries are rising as corporate governance professionals. He, therefore, appealed to all company secretaries to attend this workshop; series of which is being organised by the ICSI.

Shikhar Jain, Principal Counsellor, CII-ITC Centre of Excellence

for Sustainable Development, who was the main speaker, covered the Concept of Sustainability – its Relevance & trends and clearly brought out the difference between Sustainability Reporting & BRR; BRR is a subset of Sustainability Reporting. He made it clear that Sustainability Reports are required to be vetted by a company secretary since it is in public domain and therefore is subject to scrutiny and open to challenges. With the introduction of BRR in the listing agreement, it has now become the responsibility of the company secretary, by law, to integrate the Sustainability Reports & BRR and have in place the internal control mechanism in respect of the two. Speaking on the evolution of the concept of Sustainability Reporting & BRR, he pointed out that NVGs issued by MCA, which itself has come from a global document, is the base for SEBI's BRR and hence answers to the questions in the BRR format lies within the NVGs. In conclusion, he discussed in detail with the help of already published reports, the section-wise preparation of Business Responsibility Reports as per the SEBI Circular and the FAQs on BRR issued by SEBI.

V S Sundaresan, Chief General Manager, SEBI, in his concluding remarks, explained the objective of SEBI in introducing the concept of BRR. SEBI found that while disclosure by top 100 listed companies by Market Capitalization for the years 2009-10, 10-11 and 11-12 on Governance parameters averaged at 53%, average disclosure on Environmental and Social indicators stood at a dismal 15% and 14% respectively, which is glaringly inadequate. Thus, SEBI took an initiative forward and issued Circular dated August 13, 2012 mandating top 100 listed companies to submit BRR. The basic aim of BRR is to help businesses to use their entrepreneurship to effectively contribute to the economic & social betterment of communities and to make their operations sustainable in a manner that enables them to meet their current needs without compromising the needs of the future generation. The objective of incorporating a framework, which is designed on "Apply-or-Explain" principle, is to help businesses to reach to their stakeholders with necessary information and data, demonstrating adoption of Principles. He pointed out that companies have to adopt each of the 9 Principles to function responsibly rather than picking and choosing what might suit them. He summarised the BRR Principles in his own words as follows: Principle 1 – Promote good conduct, Principle 2 – Promote consumer awareness and product efficiency, Principle 3 – Promote congenial work environment, Principle 4 – Impact awareness, Principle 5 – Respect human rights, Principle 6 – Optimal utilization of resources, Principle 7 – Consistency in policy advocacy, Principle 8 – Promote social well-being and Principle 9 – Promote competition and fair play. In conclusion, he analysed the BRRs of few listed companies in the banking and technology sector and brought out the positives and the areas of improvement in the same. He also said that the companies have an option to provide BRR in soft copy. Company secretaries and compliance professionals of top



companies attended this intensive participation-oriented two days workshop, which was well received.

'Certified Banking Compliance Professional Course' launched jointly by the Institute of Company Secretaries of India (ICSI) and the Indian Institute of Banking and Finance (IIBF) at Mumbai

The 'Certified Banking Compliance Professional Course' by The Institute of Company Secretaries of India (ICSI) and Indian Institute of Banking and Finance (IIBF) was launched at the hands of Dr. K.C. Chakrabarty, Deputy Governor, Reserve Bank of India on 12.7.2013 at Mumbai.

This Course will be offered as a joint certificate by ICSI and IIBF to ICSI's members and IIBF's members (CAIIB) with a view to develop compliance professionals who can work in banks. It consists of two parts namely an online examination followed by class room learning for candidates who have passed the online examination. Other details are available on the website of the respective Institutes.

CS S.N. Ananthasubramanian, President, Council of the ICSI, CS M.S. Sahoo, Secretary, ICSI, CS Sutanu Sinha, Chief Executive, ICSI, S V Subramanian, Chairman, Secretarial Standards Board of ICSI, Dr. R. Bhaskaran, CEO, IIBF, Allen Pereira, Director, NIBM, Shri M V Tanksale, CMD, Central Bank of India and S S Mundra, CMD, Bank of Baroda were present on the occasion of the launch amongst other distinguished guests.

Earlier a Memorandum of Understanding (MOU) to this effect was also signed between the two Institutes at the ICSI- Centre for Corporate Governance Research and Training (CCGRT), Navi Mumbai.

While speaking on the occasion, Dr. K.C. Chakrabarty, complimented the two Institutes on launching the course, which he felt is an excellent and commendable initiative and is a sort of a dream come true for him, especially since the compliance function is acquiring increasing importance in banks on account of growing regulatory complexity and also creating a demand for competent banking compliance professionals. Sharing his perspective on the significance of the compliance function in banks and its evolution in the Indian context, he stated that banking compliance can be broadly segregated into three parts viz. Internal compliance including SRO standards, Regulatory Compliance and Legal Compliance. Bankers deal with complicated legal, regulatory and supervisory issues all the time, transcending various spheres of banking operations and it is in this context that a dedicated framework for overseeing the implementation of directions/guidelines issued by the

regulator/supervisor is required in the banks. The objective of the compliance function is to minimize the deviations; or when they actually do occur, to ensure that there is a process to promptly respond to and redress the anomalies. Citing a Few Posers, Dr. Chakrabarty raised certain critical issues on the compliance in banks in present times and made it clear that each bank must have an effective compliance framework, the basic building blocks of which are constituted by Compliance Policy, Compliance Structure, Compliance Manual/ Checklist, Compliance Personnel and Compliance Audit. He reiterated the fact that non-compliance is a costly affair and not compliance as is largely perceived in banking sector and pointed out that having company secretaries, who are well versed with various laws as compliance officers would imply having in place the right persons for the right job given the fact that legal knowledge is essential in ensuring proper compliance. In this direction, he believed that the certificate course being launched would help create a cadre of suitably trained banking compliance professionals and can give competitive advantage to banks, besides contributing to the strength and resilience of individual banks and the entire financial system.

CS S.N. Ananthasubramanian in his address, reiterated the importance of banking sector in the economy and the compliance function therein. He pointed out that ICSI has had a long and mutually rewarding association with the banking sector; be it the introduction of Diligence Report as part of RBI Circular in September 2008 on Exchange of Information for multiple banking/ consortium banking arrangements; or ICSI's thought leadership amply demonstrated recently through its association with Indian Financial Code; or ICSI's association with IIBF, which started in 2008 and has grown from strength to strength with the launch of this Course. He also pointed out that the new Syllabus for Professional Examination for the CS Course commencing from 1st September 2013 contains an elective subject on Banking Laws and Practice for which again the Study Material has been structured, designed and developed by IIBF. He added that this collaboration with IIBF would engender the creation of a cadre of compliance professionals employed as Compliance Officers in banks across territories and in various levels. He wished that this partnership with IIBF lasts forever and advised the members of ICSI, young and not so young to seize this opportunity to enroll for this Course and become eligible to become Compliance Officers in banks thereby fulfilling a crying need. In conclusion, he expressed his sincere thanks to Dr. Chakrabarty for sparing his valuable time and launching the Certificate Course. He also thanked IIBF and ICSI-CCGRT for their enormous contribution and untiring and dedicated efforts towards the launch of this Course.

Earlier Dr. R Bhaskaran made a presentation on the IIBF and its activities as well as gave a brief about the course being launched.

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

CENTRE FOR
CORPORATE
GOVERNANCE,
RESEARCH &
TRAINING (CCGRT)

PCH - 8

Announces

PDP - 16

TWO Day Program on

CORPORATE RESTRUCTURING THROUGH MERGERS AND TAKEOVERS

Introduction	Corporate restructuring implies reorganising company's business or system, total makeover of business structure and financial restructuring. Restructuring may be by Compromise, Arrangement (merger/ amalgamation/ demerger/ takeovers / buyback), Reconstruction and Reorganisation. Corporate restructuring has enabled many organizations around the world to respond more quickly and effectively to new opportunities and unexpected pressures, thereby re-establishing their competitive advantage.
Objective	The program is designed to help company secretaries, other professionals, managers and students to learn to identify and respond to potential restructuring opportunities through mergers, amalgamations and takeovers. The participants should obtain an understanding of the methods for creating value through restructuring.
Days, Dates & Timings	Saturday, August 24 & Sunday, August 25, 2013 09.30 a. m.-05.30 p. m. (with lunch and background material)
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Focus of Coverage includes	☐ Modes of Restructuring ☐ Legal and Regulatory aspects of Mergers and Amalgamations ☐ Legal and Regulatory aspects of Takeovers ☐ Due Diligence in Mergers and Takeovers
Speakers	Eminent speakers with practical exposure to the subject will address the participants.
Participant Mix	Company Secretaries, Chartered Accountants, Cost Accountants, Other Professionals, Consultants and students of various professional courses
Fees (Inclusive of Service Tax@12.36%)	₹ 2,400/- for Members of ICSI ₹ 1,800 /- for Students ₹ 3,600/- for Others to cover the cost of program kit, background material, lunch and other organizational expenses
Discount	Early bird discount of ₹ 200/- per participant for registration with payment upto August 16, 2013.

Registration : The Fees maybe drawn by way of D.D / local cheque payable at Mumbai in favour of "ICSI-CCGRT A/c" and sent to Shri Gopal Chalam, Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614
Phone : 022-27577814, 4102 1515 / 01, [email:ccgrrt@icsi.edu](mailto:ccgrrt@icsi.edu)

*** Prior registration is desirable**





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PDP - 8

Announces

PCH - 4

Orientation Program on

VALUATION

Background	ICSI-CCGRT is organising this program on Valuation to give the participants a practical exposure to the different facets of Valuation and give them an orientation to carry out valuation assignments.
Coverage	Valuation tools- DCF, relative valuation, etc Industry analysis Interpreting credit rating of company Forecasting revenues, growth and profitability Assessing company's management Peer group comparison
Days, Dates & Time	Sunday, August 11, 2013 09.30 a.m. to 05.30 p.m. (with lunch and background material)
Venue	MDP Centre, SIES College of Arts, Science & Commerce, Jain Society, Ground Floor, Sion (W), Mumbai - 400 022.
Principal Faculty	Speakers with practical exposure to the subject will address the participants.
Fees (Inclusive of Service Tax@ 12.36%)	Members of ICSI ₹ 1,200/- per participant Students ₹ 900/- per participant General ₹ 1,500/- per participant To cover the cost of backgrounder, kit, lunch and other organisational expenses.

Registration : The Fees may be drawn by way of D.D / local cheque payable at Mumbai in favour of **"ICSI-CCGRT A/c"** and sent to Shri Gopal Chalam, Dean, ICSI-CCGRT, Plot No. 101, Sector -15, Institutional Area, CBD Belapur, Navi Mumbai 400 614

Phone : 022-27577814, 4102 1533, email: ccgrt@icsi.edu

Limited seats and hence prior registration is desirable

Other Forthcoming Programmes:-

- Two Days Program on "Corporate Restructuring through Mergers and Takeovers" on Saturday, August 24 & Sunday, August 25, 2013
PCH - 8 / PDP - 16
For details and registration form please visit www.icsi.edu/ccgrt
- Three full days Workshop on Secretarial Practice, FEMA and Tax Laws on Sunday, September 08, 15 & 22, 2013
PCH - 12 / PDP - 24
- Full Day Program on XBRL on Sunday, September 01, 2013
PCH - 4 / PDP - 8

Gist of Proceedings of the 14th National Conference of Practising Company Secretaries

The Institute organised the 14th National Conference of Practising Company Secretaries on the Theme “Integrating Growth, Governance and Challenges Beyond” at The Vedic Village Spa Resort, Rajarhat–Kolkata on July 19-20, 2013. The Conference was attended by over 300 delegates.

INAUGURAL SESSION

Shri Somnath Chatterjee, former Speaker Lok Sabha, the Chief Guest, inaugurated the Conference. Shri M Damodaran, IAS (Retd.) & Former Chairman, SEBI delivered the Key Note Address, CS S N Ananthasubramanian, President, the ICSI delivered the Presidential Address, and CS Anil Murarka, Past President, the ICSI delivered the Special Address, CS Ashok Pareek, Council Member, the ICSI and Programme Director delivered the welcome address and CS R Sridharan, Council Member, the ICSI and Chairman of Practising Company Secretaries Committee introduced the theme of the Conference. CS Sutanu Sinha, Chief Executive, the ICSI, gave concluding remarks and proposed a Vote of Thanks. CS Deepak Kumar Khaitan, Chairman, EIRC of ICSI was also present on the dais.

In his Inaugural Address, Shri Somnath Chatterjee, congratulated the ICSI on selecting the very relevant theme and sub-themes of the Conference as integration between Growth and Governance is a huge challenge. He said that Company Secretaries have been recognised for appointment to various corporate positions and are important contributors to the national wheel. He apprised the participants of the multifarious challenges being faced by the country today and the need for company secretaries to adopt strategies for combating the same and ensuring balanced development of the Indian economy. The Nation as a whole should deal with the problems of poverty, unemployment and under-employment, and in doing so ethics and morality would be the guiding principles, he added.

Shri M. Damodaran, IAS (Retd.) & Former Chairman of Securities and Exchange Board of India (SEBI) in his Key Note Address said that Company Secretaries are the custodians of the faith, in whose heart the best interests of stakeholders reside. Now is the time to shift the focus from corporate governance to governance of the country he opined. The books on Corporate Governance make us believe that Corporate Governance was the gift of the western world to the developed nations, but, long before the Adrian Committee, Mahatma Gandhi made a statement that, “Businesses are trusts and businessmen are trustees”. This clearly brings the Indian belief in Corporate Governance he emphasized and added that the companies must be run in a manner in which the interests of the stakeholders can be safeguarded to the best.

Colonisation of territory can be dealt with, but colonisation of mind is much more difficult to deal with, he lamented and said that, we have paid the price of adopting the models which have failed overseas and we are now prisoners of process. We believe that compliance is governance. There is a need to look beyond the tick box exercise. Company Secretaries have the duty to work in the best interests of the stakeholders. Better enforcement of laws is the need of the hour. India has a huge youth power and company secretaries need to rise to the occasion, work beyond the prescriptions under the Companies Act, and lead the corporate sector towards adoption of good governance practices for overall growth of the nation, he added.

CS S N Ananthasubramanian, President, the ICSI, in his Presidential Address expressed that, it would not be out of place to reinforce the thought that however much we in ICSI may be compelled to debate on many issues pressing and relevant, we are eventually persuaded by an innate force perhaps to deliberate about issues on governance in general and corporate governance in particular. ICSI's DNA perhaps is good governance having exclaimed so in its Vision and Mission statements about what it seeks to be and which space it aims to occupy. Governance or the lack of it has assumed centre-stage not only here but across the globe and also acquired the mindshare of those who matter that sooner than later, we could have our members being appointed as Chief Governance Officers/ Governance Professionals, he opined.

The debate is long dead whether good governance is a prelude or precondition to growth he said, adding that while there is no alternative to growth, growth itself is now being seen to be having different connotations- inclusive growth without qualitative enhancement in life is seen as empty rhetoric as much as growth without governance is a roller coaster ride. In fact it would benefit us if we understand what is governance? It signifies the prevalence or existence of an order or a state of being, predicated by principles, practices and programs regulated or not. It is the sustenance of this order which is uppermost in the discerning minds. With the powers that be trying hard to restore and rediscover our honour and rightful place as a credible investment destination among nations and nationalities, it is fair to assume that good governance is as much relevant today to government as it is to corporates, he emphasised.

Further, the President added that as per estimates there are more than seven lakh NGOs in the country and apart from those which are companies very little is known and understood about them, their governance processes as also about their regulatory governance and it is perhaps time that we start the debate sooner than later. Referring to the Companies Bill, 2012, he said that the Bill which makes us Key Managerial Personnel and makes Secretarial Audit

mandatory for certain class of companies, in fact, places a certain kind of responsibility on the Company Secretaries perhaps not witnessed so far and would if acquitted with distinction and character would make us men from boys and women from girls. Perhaps with the series of scams and scandals which hit the headlines frequently we have a much larger and critical role to perform and that is to ensure responsible compliance of the laws and regulations in order to become eligible to be called as governance professionals in the days to come. "Say No to Wrong doing is what comes to my mind as the Mantra for the morning and I am sure, we will collectively raise to the occasion and be counted for our strength of character and content besides competence in whatever we claim to profess", he added.

CS Anil Murarka, Past President, the ICSI in his address said that today businesses are announcing diversification and expansion and for that they need the services of professionals. The service sector constitutes 56% of the GDP of the country which has encouraged rapid reliance on professionals as service providers. He added that in the era of today's governance and growth, we professionals have huge challenges in the highly regulated regime and continued revenue generation as well as regulatory compliance to the satisfaction of our clients. These two elements are in conflict but the survival of business lies with the timely and sufficient compliance. Growth in any form offers huge opportunity. One has to recognize the right time and the right place. Wait for an opportunity, don't miss it, it's a traditional advice. But create an opportunity in your favour and encash it to your advantage immediately is the modern day advice.

CS Ashok Pareek, Council Member, the ICSI and Programme Director, 14th National Conference of Practising Company Secretaries in his Welcome Address, said that, Company Secretaries as governance professionals have proven their knowledge and skills at various levels and a Company Secretary is recognised in the corporate hierarchy as a crucial key link between management and the stakeholders. He stressed that professionals need to develop a right attitude to ensure that the services are rendered in a professional manner, adhering to the professional standards and the tenets of professionalism.

CS R. Sridharan, Council Member, the ICSI and Chairman, Practising Company Secretaries Committee, while introducing the theme of the 14th National Conference of Practising Company Secretaries- 'Integrating Growth, Governance And Challenges Beyond', informed that the two day Conference will deliberate on the aspects such as Enhancing Quality of Service; Emerging Areas of Practice in Governance and Professional Accountability, Responsibility & Regulation.

CS R. Sridharan indicated that, "the conference would be an opportunity for the participants to express their creative and innovative ideas to the growth of our profession coupled with business ethics". Regulators across the Board are adopting the policy of 'growth-enhancing governance', he said adding that,

'Growth' and 'Good Governance' being strongly correlated have opened up new vistas of practice for Governance Professionals coupled with Challenges of ever changing dynamics of growth and governance."

Release of Publications

On this occasion, Shri Somnath Chatterjee, released the Souvenir of the Conference and also the following publications :

- Referencer on Annual Return,
- Referencer on Pre-certification of e-forms related to Directors, and
- Guidance Note on Compliance Certificate for Listing at SME Platform of Stock Exchanges.

Signing of MoU with New India Assurance Company Limited
The Institute signed an MoU with The New India Assurance Company Limited to provide insurance products at competitive rates exclusively for the members, students and employees of ICSI. The policies being offered include Personal accident, health Insurance, professional Indemnity and motor insurance covers.

The MOU signed by Shri Rakesh Kumar, General Manager (Distribution channels) and Mrs Alka Kapoor, Joint Director (Professional Development), ICSI, was exchanged by Shri G Srinivasan, Chairman cum Managing Director, New India and CS S N Ananthasubramanian, President, ICSI in the august presence of Shri Somnath Chatterjee and other dignitaries.

TECHNICAL SESSIONS

First Technical Session: Enhancing Quality of Service

The First Technical session on 'Enhancing Quality of Service' was chaired by Shri Nagendra Prasad, SP, CBI and addressed by CS R Sridharan, Council Member, the ICSI and CS Sanjay Kumar Gupta, Practising Company Secretary. CS Umesh H Ved, Council Member, the ICSI introduced the guest speakers at the session and CS Anjan Kumar Roy, Member, EIRC of ICSI delivered the vote of thanks.

Shri Nagendra Prasad made the session very lively and enlightening for the delegates by presenting quotes from the Bhagavad Gita and other scriptures in line with ethical conduct and professional behavior expected by PCS in rendering various professional services to their clients. He left the entire audience in awe and inspired thought process of the professionals in determining as to whether what they were doing was correct and would lead them to success in the long run.

CS Shri Sanjay Kumar Gupta deliberated on the Code of Conduct as a tool for enhancing the quality of professional services rendered by a PCS. He explained the relationship between ethics and the Code of Conduct in a very lucid manner and seamlessly carried the delegates through the position of a Company Secretary in the entire governance structure of a company.

CS R Sridharan, Council Member, ICSI explained in detail the

concept, meaning, objectives, need, scope, advantages and other aspects of Peer Review as a tool towards enhancing the quality of services rendered by PCS. He also spoke about the Guidelines for Peer Review of Attestation Services rendered by PCS, issued by the Council of the Institute. He also discussed the importance of Peer Review in enhancing quality of services in other professions and the peer review practices prevailing in the country and overseas.

Second Technical Session: Emerging Areas of Practice in Governance

The Second technical session on 'Emerging Areas of Practice in Governance' was chaired by CS Ardhendu Sen, Council Member, ICSI. CS B Narasimhan, Council Member, the ICSI introduced the sub-theme, CS S N Ananthasubramanian, President, the ICSI spoke of Governance Practices in India and elsewhere and the recent trends and developments in the field. CS Atul H Mehta, Council Member, the ICSI delivered the Vote of Thanks at the session.

CS S N Ananthasubramanian, President, ICSI informed the audience about the study on "Elevating the Role of the Company Secretary", conducted by Lintstock Ltd., UK in May 2012 which reports that a number of respondents have felt that the Company Secretary could have more to offer in terms of strategy than is currently being drawn upon for the benefit of the Board. He added that the Company Secretary should strive to becoming senior strategic-level corporate officer who shall lead the company's corporate governance. He further added that Company Secretary in its newer role of Chief Governance Officer needs to understand the intricacies of business- stakeholder relationship and have some extraordinary skills to ensure and protect the trust of the company and the interest of the stakeholders including the regulators.

Shri G Srinivasan, Chairman and Managing Director, the New India Assurance Company Limited while addressing the participants shared his views on the various governance challenges faced by PSUs in the light of the changing economic and business environment. He informed that the PSUs are faced with a lot of pressure to perform and give returns to the stakeholders and also to perform their social obligations. He added that, the existing system doesn't allow any PSU to perform unless and until they keep a balance between the business requirements of vigilance and audit this is the biggest challenge before any PSU to synchronise itself along with the clutches and pace of the system.

Shri A P Singh, Past International Director, Lions Club International spoke about the governance challenges faced by NGOs in the absence of specific law governing them. He said that the diversity in the organization structure of the NGOs poses typical governance issues, further the huge inflow of contributions and donations from the west to such NGOs needs regulation and reporting in order to ensure better transparency, accountability and control of the NGOs. The NGOs perform a trusteeship function on behalf of the

Government and there is a great need for ethical conduct on their part. He emphasized on the role of professionals in the functioning of NGOs.

CS Ardhendu Sen, Council Member, the ICSI and chairman of the session aptly concluded that the governance is essential for the growth of the economy. It transcends the jurisdictional and sectoral boundaries; it permeates through government, corporate world and civic organisations for the benefit of the stakeholders and that Corporate Governance cannot be looked at in isolation it is heavily influenced by the overall governance eco-system. He mentioned that the concept of good governance practices has become a concerned issue after witnessing the Asian financial crisis of 1998 and the more recent sub prime crisis of U.S in 2008. To this, he questioned the existence of more than two decades old concept of corporate governance by putting forth related questions such as: Has the concept worked in practice? What is the assessment? Is the Government Sector and the NGO sector learning from the experience of companies to make themselves more accountable? He further mentioned some remarkable initiatives of the government like the RTI Act, but questioned transparency of the NGO sector. He further said that although Government and NGOs may not directly be the concern of company secretaries, it is necessary to take stock of these issues because companies on their own will not succeed in improving governance. Parallel changes must occur in other sectors as well, he concluded.

Interactive Session

The Second day of the conference started with an Interactive Session for Practising Company Secretaries. CS S N Ananthasubramanian, President, the ICSI briefly informed the recent initiatives taken by the Institute. The members raised a few of their concerns and gave their suggestions for the betterment of the profession. All queries raised were satisfactorily answered.

Third Technical Session: Panel Discussion on Professional Accountability, Responsibility and Regulation

The Third session was a panel discussion on 'Professional Accountability, Responsibility and Regulation'. The panelists were Dr. Suman Mukerjee, Principal and Dean, Bhartiya Vidya Bhawan Institute of Management Sciences, Shri Anindya Mitra, Barrister-at-Law, Kolkata and Dr. Kunal Sarkar, Cardiothoracic Surgeon. Shri Utpal Chatterjee, Former Hon'ble Sheriff of Kolkata moderated the session. The panelists shared their thoughts about professional accountability, responsibility and regulation in their respective professions in a very lucid manner. They also provided the participants an insight into the transformation that their professions have gone through over the years. Almost all of the panelists pointed at the need for ethical behaviour amongst professionals and withholding of stakeholder interest as paramount. The session was very thought provoking and lively as evidenced by the queries raised by the delegates to the panel. CS Ranjeet Kr. Kanodia, former Chairman, EIRC delivered the Vote of Thanks at the session.

Valedictory Session

CS Ashok Pareek, Council Member, the ICSI and Programme Director introduced the Chief Guest and Guest of Honour of the Valedictory Session.

Shri R Bandyopadhyay, IAS (Retd.) and Member, Central Administrative Tribunal, Kolkata Branch was the Chief Guest at the Valedictory Session of the Conference. Dr. Navrang Saini, Regional Director, Ministry of Corporate Affairs was the Guest of Honour.

CS S N Ananthasubramanian, President, CS R Sridharan, Chairman, Practising Company Secretaries Committee and CS M S Sahoo, Secretary, the ICSI addressed the delegates. CS Sutanu Sinha, Chief Executive, the ICSI, gave the concluding remarks and proposed a vote of thanks.

Shri R Bandyopadhyay, while delivering the valedictory address informed in his opening remarks that he was the Chief Guest at the 10th National Conference of Practising Company Secretaries and that the profession of Company Secretaries has grown many folds since then. He appreciated the role played by our professionals in ensuring better governed corporate sector and the manner in which the Practising Company Secretaries had readily shouldered the responsibilities cast upon them by the regulators. He also referred to various verses from the Bhagvad Gita during his presentation and provided photographic memoirs of his close association with the Institute during his tenure as Secretary, Ministry of Corporate Affairs.

Dr. Navrang Saini, Regional Director, Ministry of Corporate Affairs, in his address opined that the profession of company secretaries had grown substantially in the last ten years. In this growth the contribution of the Ministry of Corporate Affairs cannot be forgotten. He recalled the days when company secretaries used to come to his office mentioning that there were no job opportunities for Company Secretaries, nor opportunities in practice. The members had made a request to the MCA to initiate action against the defaulting companies. But the scenario had changed after the introduction of the MCA21 wherein certification by professionals was introduced alongwith introduction of the compliance certificate. But still the profession needs a lot of opportunities and the opportunity has to be generated. Ofcourse, the Institute is doing its best to create more and more opportunities by creating professional courses and by getting various recognitions from the organizations. But simultaneously, we also have to create certain things from our side, we should not depend upon the legislation itself. Integrity alone would help us all grow, he concluded.

CS M S Sahoo, Secretary, the ICSI in his address said that the Company Secretaries Profession has gained the trust of the government, regulators and other stakeholders during the last 25 years. Referring to famous quote of Penelope Trunk, he mentioned that the next 25 years would be more interesting. He said that we, as professionals, should ask what we can do for the country and not

what the country can do for us. He added that the company secretaries need to undertake activities useful in the common interest. The Company Secretary needs to take care of the interest of the government, public and the society in each company. The changes in the business environment for the profession during the last twenty five years have brought about a change in the client base and the scope of activities of a PCS. More than ten lac companies are registered in the country today. The securities markets, banking industry, forex markets, etc. are all seeking the services of a PCS more than ever before. The businesses are getting complicated and more globally integrated thereby creating more opportunities for PCS. There is a qualitative difference in the demand in service delivery and we need to shift from mere compliances to application of mind, he emphasized and closed by saying that PCS need to look for more ways to serve the society.

CS R Sridharan, Council Member, the ICSI and Chairman Practising Company Secretaries Committee, in his address thanked the members of the Organising Committee, team ICSI, the volunteers and delegates for making the Conference a grand success.

Earlier, CS S N Ananthasubramanian, President, The ICSI in his address said that, the time has come when Company Secretaries need to shift their focus from being mere compliance officers to Governance Professionals and keep themselves abreast of the latest regulatory prescriptions and developments which would enable them to shoulder newer responsibilities on Corporate Boards.

Concluding Remarks and Vote of Thanks

CS Sutanu Sinha, Chief Executive, the ICSI while making his concluding remarks and proposing the vote of thanks said that the deliberations during the two days of the Conference had given enough food for thought to lead the Company Secretaries to further heights of excellence and achievement.

While proposing a vote of thanks to Shri R Bandyopadhyay, he expressed sincere thanks and gratitude to him for acceding to the Institute's request to be the Chief Guest at the Valedictory Session and for his guidance on the path of value added professionalism.

He also expressed gratitude to Dr. Navrang Saini, Guest of Honour and all the speakers/presenters. He placed on record his sincere thanks to CS S N Ananthasubramanian, President and CS M S Sahoo, Secretary, ICSI, the Council Members, particularly CS Ashok Pareek, Programme Director, CS Deepak Kumar Khaitan, Chairman, EIRC & Programme Co-ordinator, CS Arun Kumar Khandelia, Programme Facilitator and the Members of Management Committee of EIRC of ICSI, and also the Team-ICSI for their untiring zeal in making this conference a grand success.

CS Deepak Kumar Khaitan, Chairman, EIRC expressed his heartfelt thanks to all for making the 14th National Conference of Practising Company Secretaries a grand success.

Gist of Proceedings of MCA Programme on Investor Protection and Awareness Organised by ICSI as Lead Partner on July 19, 2013 at Bhubaneswar

The Institute of Company Secretaries of India (ICSI) has been undertaking investor education and protection programmes to promote investor awareness and to explore options for further strengthening the mechanism to protect investors' interests. In this direction at the behest of Ministry of Corporate Affairs, the Institute organised 'Investor Protection and Awareness Programme' on July 19, 2013 at Hotel MAYFAIR Convention Hall, Bhubaneswar. The Institute was the lead partner and RBI, SEBI and ICAI were the Partners in the Programme.

Shri Sachin Pilot, Hon'ble Minister of Corporate Affairs (I/C), Government of India was the Chief Guest and inaugurated the programme. Shri Naved Masood, Secretary, Ministry of Corporate Affairs also graced the occasion. Shri U.N. Behera, IAS, Additional Chief Secretary, Odisha and Shri B.K. Sharma, ADG, Crime Branch, Odisha also attended the programme. Distinguished speakers from the government- Ministry of Corporate Affairs, regulators- SEBI, RBI, stock exchanges and academia addressing on the occasion include Shri Nilimesh Baruah, Director, Serious Fraud Investigation Office; Shri Balwinder Singh, Adviser, Ministry of Corporate Affairs; Dr. Navrang Saini, Regional Director, Ministry of Corporate Affairs; CS M.S. Sahoo, Secretary, ICSI; Shri Ramesh Mohapatra, President, Utkal Chamber of Commerce & Industry; Shri P. Vijaya Bhaskar, Executive Director, RBI; Shri S.V. Krishnamohan, Regional Manager, SEBI; Dr. D.V. Ramana, Professor of Finance, Xavier Institute of Management; CA Prasant S Panda, Member of Professional Development Committee of Institute of Chartered Accountants of India.

There were more than 700 participants including common investors, regulators, self regulatory organizations, market intermediaries, officers of state functionaries, professionals, corporate executives and senior journalists and Media.

INAUGURAL SESSION

Shri Sachin Pilot while addressing the gathering emphasized on the need to protect the interest of the investors. There are approximate 10 lakhs companies registered in India and out of approximately 7 lakhs companies are actively working, stated Hon'ble Minister and explained that some of the companies promise the poor rural people to multiple their money in short span of time and follow fraudulent and double standard in their action. He emphasized on the need for collective efforts to make investors better informed. There is a need to take action against such fraudulent companies who are making false promises to the common people living in remote areas by motivating them to

double/triple their money in short run. These unscrupulous companies are also using electronic and print media for spreading wrong information and misguiding the people, he added and stressed upon strengthening information mechanism with advanced technology at lower cost which can be used by the common man for accessing the correct information before investing their hard earned money in any investment plan.

It is important for the media persons to have self inspection/self regulation and also ensure to spread correct and legitimate information through simple language, emphasised Hon'ble Minister and added that the language should not be in pure legal/technical language. The information should not only be in English or Hindi rather, it should be in all other local rural languages which can simply describe what is legal or illegal.

He advocated that the regulators should take collective responsibilities for checking such type of frauds. He announced that one Serious Fraud Investigation Office (SFIO) would be opened in Odisha to investigate the fraud by Chit Fund companies. If any company violates the provisions of law, we have to take stringent legal steps to penalize these companies. This would set example for others, it is important to create a stable regulatory environment so that the investors can invest their money without any hesitation, emphasised Hon'ble Minister.

Explaining that the session will be quite beneficial and useful for all the common investors, he announced that there would be more such events in the interior part of the Odisha state to educate the common investors. He further assured that the Government will provide all kind of support to such type of programmes, in the interest of the common people, to educate people for which there will be no dearth of funds and same should be organised across the country.

In his concluding remarks, Hon'ble Minister, thanked the ICSI, the lead partner along with the other partners ICAI, RBI & SEBI for organizing mega programme for educating the people of Odisha so that they can safely and securely invest their money.

Earlier, Shri Ramesh Mohapatra, President, Utkal Chamber of Commerce & industry, expressed his heartiest gratitude to the Hon'ble Union Minister, Sri Sachin Pilot for organizing this mega programme at Bhubaneswar and congratulated ICSI for organizing mega programme so nicely with a good gathering of people coming from different strata of the society to witness it through its

Bhubaneswar Chapter. He stressed on the need to find out ways and means to check the unscrupulous companies who are cheating the people.

Shri Balwinder Singh, Adviser, Ministry of Corporate Affairs, Government of India while addressing the gathering, analysed the way how unscrupulous and dubious fund companies are attracting billions of small and marginal investors by misleading advertisements and communications by offering high rate of returns on investment. He cautioned the investors to be careful of such fraudulent companies which are collecting money in a disguised manner and diverting money for several purposes. These companies are collecting money through a pyramid structure he added and deliberated on the categories of investors and explained the ways as to how to restore their confidence for making investment in a safe market.

Shri Nilimesh Baruah, Director, SFIO in his address elaborated on the role and functions of the Serious Fraud Investigation Officer (SFIO) in checking frauds through its various offices and its coordination with the Government. He expressed that the structure and financial products of unscrupulous and dubious fund companies bypasses the existing regulations and it becomes very difficult for the regulators to take appropriate action against them. SFIO is taking necessary steps in this regard for protecting the investors, he informed.

Shri Naved Masood, Secretary, Ministry of Corporate Affairs in his address, while explaining the various agencies of the Central & State Governments available to find out the fraudulent companies who are cheating the investors, opined that it is the need of the hour for all of us to protect the interest of the Investors. He thanked the ICSI for its efforts for organizing such mega event in Odisha along with other partners so that the investors of Odisha can be benefited from such programmes. He also urged that more such programmes be organized to create more awareness amongst the investors.

(Dr.) Navrang Saini, Regional Director (MCA), Eastern Region while proposing a vote of thanks applauded the efforts of the ICSI, the lead partner and other partners ICAI, SEBI and RBI for organizing such an event in a large scale.

TECHNICAL SESSION

CS M.S. Sahoo, Secretary, the ICSI Chaired the session 'Investor Education and Financial Literacy.' At the outset he gave an introduction about the theme of the programme and some tips for the common investors who want a safe market for putting their money. He informed that today's securities market is getting more and more complicated due to availability of numerous financial products. He informed that Government has been emphasizing on Investor Awareness and Education and all other central/ state agencies i.e. MCA, SEBI, Stock Exchanges, Chambers have Investor Education and Protection Fund. He stressed on the need that the regulators should create confidence in the minds of the

investors that they do not suffer from fraud and are indemnified by the regulatory mechanism for the loss. However, the common investors should first be educated so as to avoid any kind of fraud as they are not so educated as compared to institutional investors. He informed about the Indian Financial code where all regulatory agencies will work under single agency and financial consumer can file his grievance related to financial fraud at single place i.e. grievance redressal agency irrespective of fraud related to different financial product.

Shri P. Vijaya Bhaskar, Executive Director, RBI while addressing, stressed on the need for collective responsibility for prevention and redressal of investors' grievances. He advised that the investors should spend some time before making investment in order to take the right decision as the earnings of the lifetime should be invested carefully. He cautioned to be careful if somebody offers free lunch and repeatedly said to think twice before signing or if somebody is offering hefty return. He informed there are no registered Chit fund companies in Odisha. Registered chit funds cannot take public deposits unless it complies with the provisions of the Act. He made a presentation on various types of companies and organizations registered under different authorities and the features which distinguish NBFC companies from other companies. He cautioned to be careful as many companies, though not strictly NBFC companies represent themselves as NBFC companies.

Shri S.V. Krishnamohan, Regional Manager, SEBI stated that the objective of SEBI is to regulate the capital market. Investor Education and Investor Protection are complimentary to each other. He stressed that long term investment in equity gives the highest return compared to other assets. He explained different types of products about which the investors should have knowledge so as to make a proper planning. He emphasized that Financial education, is important for selecting the financial products and assessing the risk involved in it and informed that SEBI has engaged a large number of resource persons to spread the financial literacy among the common man.

Dr. D.V. Ramana, Professor of Finance, XIM, Bhubaneswar made a very analytical presentation looking at the real problem. He said that it is not collective responsibility, rather it is the individual responsibility to read between the lines and spread the spirit behind the lines to educate the people to avoid becoming victims of the financial fraud. He stressed upon the need that we should not focus taking action against the companies indulged in fraud, but the intermediaries who are advising the companies should also be held responsible for such kind of frauds. It is really sad if the common man is cheated through an intelligent advice.

CA. Prasant S Panda, Member of Professional Development Committee of the Institute of Chartered Accountants of India, while speaking on the occasion, expressed how the unscrupulous companies implement such huge frauds. The Companies Act was amended allowing companies to accept deposits from public. This was meant for regulating deposits collected by structured companies.

He suggested that Audit should be stringent and gave comments on how things can be worked out to check the unscrupulous companies from cheating the public. This can also happen through investor education as prevention is always better than cure.

In his concluding remarks, CS M.S. Sahoo, Chairman of the Session summed up the discussion and explained the need to

locate loopholes in the existing legal framework and address the present problems quickly.

There was an interactive question and answer session at the end of the technical session. The seminar was well covered by National & Local newspapers and also telecast in all the TV Channels of Odisha.

Gist of Proceedings of ICSI National Seminar on Investor Education and Protection for Inclusive Growth on July 27, 2013 at Bhubaneswar

The Institute organised National seminar on "Investor Education and Protection for inclusive Growth", on July 27, 2013 at Hotel Crown, Bhubaneswar. Shri Naveen Patnaik, Hon'ble Chief Minister, Odisha inaugurated the Seminar as Chief Guest and Shri U. K. Sinha, Chairman, SEBI was the Guest of Honour. Shri Ashishkumar Chauhan, Managing Director and CEO, BSE Ltd. gave the special address on the occasion.

INAUGURAL SESSION

Shri Naveen Patnaik, Hon'ble Chief Minister, Odisha while addressing a gathering of about 400 participants expressed that he was extremely delighted to be at the ICSI National Seminar on Investor Education & Protection for Inclusive Growth. Hon'ble Chief Minister observed that experts on Financial Markets are of the opinion that countries with strong investor protection laws tend to have most stable markets and attract more capital. The Central Government has by legislation provided for establishment of Investor Education and Protection Fund for promotion of investors awareness and protection of the interest of investors. The activities undertaken relating to investors' education and awareness includes education programmes through media, organizing seminars and symposia and collaborations with institutions engaged in similar activities.

He opined that depositors and investors are exposed to risk everywhere. In case of deposits with the bank the small depositors are insured up to a maximum of Rupees one lakh for both principal and interest. However, in the aftermath of the global financial crisis, protection of the investor's money has assumed utmost significance.

Securities and Exchange Board of India (SEBI) has been set up for the protection of the interest of investors in the stock market and its development. It has issued regulations and guidelines for protection of the investors. SEBI has been successfully discharging its duty as a Regulatory Authority of the Securities Market. It has opened a regional office at Bhubaneswar to take care of investor protection and investor education within the State of Odisha, added Hon'ble Chief Minister.

While emphasising that safeguarding of the interest of depositors and investors needs to be addressed in a two pronged strategy, Hon'ble Chief Minister advised that adequate efforts need to be made to provide alternate mode of investment to small depositors and investors in far-flung areas of the State. More number of branches of scheduled banks in the inaccessible and rural areas need to be increased to provide the investors, alternate option for investment. Presence of these institutions will also catalogue in dispensing with financial literacy and the risks involved with the investments. Savings Banks in the post offices should also be strengthened to outreach the rural investors.

Hon'ble Chief Minister further emphasised that in spite of all the legal and enforcement measures what matters most is financial literacy to make the public aware about safety, liquidity and reasonable return on their investments. If the prospective investors can be made aware of various financial market instruments like debt and equities, at least they would be assured of safe return on the capital invested. They should also be educated about investment in various Small Savings instruments and Government securities which offer avenues for reasonable return and safety of the investment.

Shri U. K. Sinha, Chairman, Securities and Exchange Board of India (SEBI) highlighted that SEBI has initiated action against 552 companies and 138 companies have got conviction. Action has already been taken against 11 companies with a direction to the Directors not to receive further money and to refund the money already received. Besides enforcement action, SEBI is also taking initiatives to ensure coordination among different agencies at State level. The crux of the problem is the lack of sharing of information among various agencies, and that gives the dubious companies scope to run away with the hard-earned money of the investors. Regulatory authorities, like Reserve Bank of India, SEBI, Ministry of Corporate Affairs and Economic Offence wings in the State Government and all other agencies will meet to exchange information about the companies committing such type of frauds and the problems faced by the investors, he informed.

SEBI Chairman stressed that it is necessary to create confidence in the mind of the investors through enforcement and also redressal of the grievances of the investors and announced that SEBI has launched a toll-free number by which the common investor can lodge their complaint with SEBI for redressal of their grievances. The toll-free number is operating in 14 languages. He further informed that about 1,10,000 complaints have been received and all the complaints have been taken to their logical end. In addition, SEBI has also come out with computerized system of grievance redressal. He further announced that almost 50% of the grievance received from the system have been redressed in less than 30 days.

According to a study by NCAER, 32% of people who have invested money in the market are investing on the advice of agents, friends and relatives who are not financially literate. Therefore, financial literacy has to spread among the common investors by which people can choose the best option for investment, he emphasised.

Speaking on the occasion, Shri Ashishkumar Chauhan, Managing Director and CEO, BSE Ltd. stated that financial literacy and financial inclusion go together. He said that for creation of right platform for investment for millions of people to invest is need of the hour. He referred to schemes like Chit fund in which people are attracted by companies with fancy return on their investment which ultimately results in scam. He further mentioned that Investment in gold and real estate which do not create jobs and in order to make investment to create jobs, people should be educated to invest through stock market for which financial literacy is necessary. He opined that people who are financially excluded are also socially excluded.

CS S N Ananthasubramanian, President, the ICSI said that the ICSI has been conducting similar programmes throughout the Country through its Regional and Chapter Offices. He informed that ICSI has long been in the forefront in this social endeavour, i.e., organising investor awareness/education programmes across the country, often in partnership with Government and front line regulators. He further said that ICSI being, regulatory body with responsibility to groom company secretaries who are de facto chief governance officers in companies holds investor awareness events as parts of its social obligation.

While referring to the positioning of Company Secretaries in Corporate sector, he said, they provide the key interface between enterprises and the investor community. He mentioned that ICSI actively pursues investor protection, investor awareness and all that need to be done in the interests of investors. He also referred to such programmes being organized by ICSI not only in state capitals, but also in district headquarters and small towns. While concluding, he reiterated that to make inclusive growth a reality, all of us need to have a distinct and a defined role to perform.

CS Ashok Pareek, Council Member, the ICSI and Programme Director while introducing the theme of the seminar said that we need investors to support the 5 – 10% growth in the economy. Unless we adequately protect the interests of investors and prepare the investors to participate in the market, we would not get the support of investors. The governments, regulators, and self-regulatory organisations have been taking systemic measures to prevent any kind of inconvenience to investors and to remedy the inconveniences that arise despite such systemic measures. They are strengthening the hands of investors through investor education and financial literacy programmes to avoid becoming victims of fraud or manipulation and to seek effective redressal before the appropriate fora.

CS M.S. Sahoo, Secretary, the ICSI emphasised that the fraudulent companies are structuring such schemes which escape the regulatory provisions and through this type of scheme they collect money freely and use the same for any purpose they like.

CS Arabinda Acharya, Chairman, Bhubaneswar Chapter and Co-ordinator of the Seminar proposed a hearty vote of thanks to the Hon'ble Chief Minister, Odisha, the Chairman, SEBI, MD & CEO, BSE Ltd and the distinguished gathering and print & electronic media for their presence in the ICSI National Seminar.s.

TECHNICAL SESSIONS

First Technical Session

The theme of First Technical Session was 'Investor Protection: Preventive, Remedial and Compensatory Measures, Investor Protection Funds, Grievance Redressal, Role of Investor Associations, etc.'. Shri Bijay Kumar Patnaik, Chairman, Odisha Staff Selection Commission (Former Chief Secretary, Odisha) was the Chairman of the session and the distinguished speaker included Shri S. V. Muralidhar Rao, Executive Director, SEBI, Shri Ashishkumar Chauhan, MD & CEO, BSE Ltd., and Shri V. Ramachandra Rao, Regional Director, RBI. Shri Deepak Khaitan, Chairman EIRC of ICSI was the convenor of the session.

Shri Ashishkumar Chauhan, Managing Director and CEO, BSE Ltd. speaking on the occasion stated that the investor needs protection. BSE has an investor protection fund to compensate upto Rs.15 lakh for investor, if the money of the investor is lying with any broker then the exchange has provision to compensate the investor.

Shri S.V. Muralidhar Rao, Executive Director, SEBI spoke about the measures initiated by SEBI for protection of investors, and informed that SEBI has taken preventive measures, remedial measures and grievance redressal measures. The preamble of SEBI Act is to protect the interest of the investors, promote and develop the market and regulatory system. The investors interest always comes in the forefront. In addition, efforts have been made for investors education. In 2011 web-based central

grievance redressal system has been started. By this, the Investor can lodge their complaint round the clock. A panel of arbitrator has also been made available to investors to ensure neutrality in redressing their grievances.

Shri M.V. Ramachandran Rao, Regional Director, Reserve Bank of India, Bhubaneswar stated that RBI is a regulator for depositors' protection. RBI has a system of banking ombudsman to take care of the deposits of the investors. Besides, RBI is also regulating the activities of NBFCs which are registered with RBI to take any deposits from the people anywhere in the country. He also explained the business conducted by NBFCs registered with RBI. RBI is also looking for opening more and more branches of Banks in rural areas which will create banking facility and help the common man deposit their money to ensure financial inclusion, he added.

Shri Bijay Kumar Patnaik, Chairman, Odisha Staff Selection Commission and former Chief Secretary, Government of Odisha stressed upon the need of proper communication with the common investors to make them aware of the safeguards available in the system before the investors decide to put their money in one scheme or the other. Redressal of grievances come after the fraud happens. But to prevent such fraud, proper awareness is necessary he emphasised and suggested that deliberation should properly be made to the people who opt to know about the regulation systems and safeguards etc. available for them. He further suggested that safe driving is always much better. Therefore, whether you invest in mutual fund or in chit fund, the people selling the products should advise, which should be safe and objective.

Shri Deepak Khaitan, Chairman, EIRC of ICSI proposed a vote of thanks to the speakers for their deep insight and giving a wonderful deliberation on the topic.

Second Technical Session

The theme of Second Technical Session was Investor Education and Financial Literacy. This technical session was structured to deliberate on the initiatives taken by governmental and other organizations towards empowering Investors, Financial Literacy Mission, Cost Effective Investor Education, Public Private Partnership, Investor Education Initiatives of Regulators etc. Dr. C.S. Mohapatra, Adviser, Ministry of Finance chaired the session and Ms. Yegnapriya Bharath, Joint Director, IRDA, Shri S. V. Krishnamohan, Regional Manager, SEBI, Shri Debaraj Biswal, CEO, Bhubaneswar Stock Exchange Ltd. were the panellists. Ms. Sunita Mohanty, Secretary, EIRC of ICSI was the convenor of the session.

Dr. C.S. Mohapatra, Adviser, Ministry of Finance, and Chairman of the session explained the recommendation of Justice Srikrishna Commission such as right to receive suitable advice, protection from conflict of interest of advisers, access to redressal agencies for

redress of grievances. He further explained that the financial service providers must act with professional diligence. The investor should get protection against unfair contract terms, unfair conduct and for personal information. The code provides for fair disclosure and redressal of complaint by financial service providers.

While concluding he stressed upon the need for inter regulatory co-ordination to protect the interest of the investors particularly, the unsophisticated investors.

Ms. Yegnapriya Bharath, Joint Director, IRDA speaking on the occasion indicated that intermediaries are not educating the people about their rights. IRDA is looking at bringing elders as a part of financial inclusion. IRDA is also looking for creating proper platform for the investors particularly the vulnerable sections of the society i.e. women and children. In order to reach the people, advertisement campaign through various channels are made. IRDA has also opened consumer affairs department to take care of the interest of the people. IRDA is also taking steps to disseminate information about the insurance products available. Policy holders handbooks in several languages containing the detail information about the products are also available. Animation film and video games are also being used to educate people and young children to learn about insurance. The consumer education website is available to know about the different products. It is a multi-pronged strategy to educate and make people aware to ensure that stakeholders are investing in it, she informed.

Ms. Bharath also pointed out that biggest problem is miss-selling. The intermediaries is not telling everything to the consumers. Now IRDA is coming with guidelines for educating people about insurance products. The insurance company should develop a prospective products market system about different insurance products for better choice of consumers, she advised.

Shri S. V. Krishnamohan, Regional Manager, SEBI stated that investor education and investor protection are complementary to each other. Educated investor is an empowered investor. Since, in the country, the literacy level is low, the financial literacy is much lower. The financial education is very much required to make the investor aware of his rights and duties. Due to lack of financial literacy, miss-selling is happening in financial market. Therefore to mitigate this problem, financial education and literacy can play an important role. Even educated persons also complain that they have been offered wrong products which they do not want. Sophisticated consumers also complain about failure of the hedging in forex products market because of lack of transparency while selling the products, he informed.

Shri Debaraj Biswal, CEO, Bhubaneswar Stock Exchange Ltd. explained various problems being faced by the small investors because of lack of transparency in the system. People have lost

their money. People also lose money because of inflation reducing the value of the money. For sustainable and inclusive growth, steady investment is required for which investors have to be properly educated. He expressed that products are being sold to the consumers through friends and relatives who are not educated enough to tell consumers to make right choice. Looking to the complicity of the products in the changing economy environment, even after scam, no publicity has been made in the front page of the news paper for educating the people about what has happened, whether they will get their money or not and what will happen in future. He further stated that the Indian economy has seen a sea-change in the last 10 years after globalization. The middle class people is driving the economy. He advised that people should be educated to know how to put the money in the stock market for a long term period to get better return.

CS Sunita Mohanty, Secretary, EIRC welcomed the speakers and introduced the theme of the session. She also proposed a hearty vote of thanks to the distinguished speakers for their deep deliberation insight on the topic, at the conclusion of the session.

Third Technical Session

The Third Technical Session was on the theme "Protection of Financial Consumer: The Way Forward". Dr. K. C. Mishra, Vice Chancellor, Sri Sri University chaired the session. Shri Somasekhar Sundaresan, Partner, J. Sagar Associates, Advocates & Solicitors, Dr. D. V. Ramanna, Professor, Xavier Institute of Management, and CS M. S. Sahoo, Secretary, ICSI, were the panellists. CS Manoranjan Mishra, Vice-Chairman of Bhubaneswar Chapter of ICSI was the convener of the session.

CS M.S. Sahoo, Secretary, ICSI while speaking on the occasion discussed consumer protection and KYC (Know Your Consumer). Further he discussed that there is no way to ensure how an investor knows about the product and the dealing person, he does not know whether he is authorized or not. Investor Awareness is required across the boundaries but still there is no regulation for Investment Adviser for the last 20 years in the country. Only in 2013, SEBI came out with a regulation in this regard, informed Shri Sahoo and explained that according to SEBI Act, 1992, Investment Adviser must be registered and regulated. Investment Advisor must be able to holistically assess the needs of investor and also scan the suitability of all financial products available in the financial market or website. Like ICSI is developing a particular profession, an institution should be set up to develop Investment Advisor who can lend hand holding support to Investors. That will be helpful in increasing financial literacy and inclusive growth, opined Shri Sahoo.

Dr. Ramana, Professor of Finance, Xavier Institute of Management, Bhubaneswar speaking on the occasion said that Regulator/Investor can not regulate the market. While explaining the Indian

Financial Code Dr. Ramana discussed upon Caveat Emptor and Suitability. He explained that financial firms could be trusted to exercise self regulation and show optimal behaviour for the good of the society. All Financial Firms should share all information about the financial product so that buyers can take proper decision. Economist says – reality is not the assumption. Assumptions go astray. Therefore Markets failed particularly due to ignorance.

Dr. Ramana further pointed out that in pursuit of making law simple we should ensure that simple product and simple law are not path to disaster in that it may compromise with the protection and safety of the consumer. Applauding the thinking of the secretary ICSI regarding regulation for creating professional investment advisors, he said that an Institution is a better manager than an individual because Institution has better resources which an individual cannot afford.

It is not the responsibility of the buyer to find out which product is suitable, opined Dr. Ramana and explained that it is also the responsibility of the seller to tell which product is suitable after consideration of relevant circumstances. Specific programme for ladies and housewives will be also more useful as they are better finance managers at home, he added.

Shri Somasekhar Sundaresan, Partner, J. Sagar Associates, Solicitors and Advocates, said that do not expect the law to codify upfront every problem that human behavior can create and write solution to it. Law is only rules of conduct of human behaviour listing down what is acceptable and not acceptable and hope that one must behave in that pattern. It is not unreasonable to expect that a consumer believes that his money would be double in 9 months or 12 months and then say protect me because I lost my money. The Indian Finance Code clearly says that ordinarily the consumer will be responsible for his decision. We need to have a law which enable a consumer to become strong enough to understand and to become responsible, he emphasised.

Dr.K.C.Mishra, Vice Chancellor of Sri Sri University, Bhubaneswar and Chairman of the Session explained that if business has to look after the customized requirements of every customer and business has to have that onus, how can you scale up business. But business man has to be transparent after establishing the suitability of the product. But some degree of unification is required for simple regulation. If we have a single regulator in a super financial market it will at least have oversight over the entire company.

CS Manoranjan Mishra proposed the vote of thanks to the distinguished speakers and participants on behalf of the organizers.

There was active floor participation throughout the seminar. The Programme was supported by BSE Investors' Protection Fund. Hindu Business Line was the Print Media partner.

Gist of Proceedings of 8th International Professional Development Fellowship Programme 17-24 June 2013 (Istanbul, Prague, Vienna, Salzburg, Budapest)

The Institute organised 8th International Professional Development Fellowship Programme on June 17-24, 2013 covering Istanbul, Prague, Vienna, Salzburg, Budapest.

The delegates visited the Turkish Exporters Assembly TIM on 18th June 2013. Mr. Mustafa Mente, General Secretary, Turkish Exporters Assembly while welcoming the delegates spoke about the role and functioning of the Turkish Exporters Assembly TIM and informed that TIM is working with the objective of being a solution center for the export issues, establishes policies towards the development of the export in addition to representation duty.

Mr. Bekir Polat, Senior Project Director, Investment Support and Promotion Agency of Turkey (ISPAT), deliberated on the investment environment of Turkey. He stressed upon the investment opportunity available in Turkey and how it was 3rd fastest growing economy in the World in 2011. As per OECD survey, Turkey will be the fastest growing economy among the OECD countries, he informed.

Ms. Ozlem Nudrali, Representative of Republic of Turkey Prime Ministry of Economy General Directorate of Incentives Implementation and Foreign Investment, reiterated that there was very conducive environment of foreign investment in Turkey including single window clearance, apart from land arrangements. There are many incentive plans for investment in different regions of Turkey, she added.

Mr. Onur Partal, Expert, Republic of Turkey Istanbul Development Agency, made a presentation on Istanbul at a Glance.

8th International Conference on Responsible Investment, Governance & Reporting

8th International Conference was organized at Prague on 20th June 2013 at Hotel NH Prague on the theme "Responsible Investment, Governance & Reporting". The conference was supported by NFCG as Principal Supporter and CSIA.

Mr. Nesar Ahmad, Immediate Past President the ICSI

and CSIA inaugurated the Conference and deliberated on the evolution of Governance from ancient Vedic period to modern day management tool. Good governance has always been issue that stimulated fundamental thinking right from ancient times, added Mr. Nesar Ahmad and explained that corporate governance refers to the system by which corporations are directed and controlled. Governance provides the structure through which corporations set and pursue their objectives, while reflecting the context of the social, regulatory and market environment, he explained.

Mr. B Narasimhan, Central Council Member, the ICSI deliberated on the SEBI Consultative Paper on Review of Corporate Governance Norms in India and ICSI response to some of the suggestions. He emphasized upon the appointment of Lead Independent Director and the meeting of the Independent Directors as good Corporate Governance practices to be adopted by the Companies. The presentation stressed upon various aspects of the Corporate Governance, like, Risk Management, Whistle Blower Policy, Different Committees and regulations. He suggested that the ICSI may provide a framework for Corporate Governance Rating for the companies.

The First Technical Session was on Corporate Governance: Developments in European Union. Mrs. Shalini Budathoki, Executive Director, NFCG spoke on the developments of Corporate Governance in European Union. Mrs. Savita Jyoti, Practicing Company Secretary spoke on OECD principles of Corporate Governance.

The Second Technical Session was on CSR and Business Reporting. Mr. Nesar Ahmad chaired the session. Mr. Atul Mehta, Central Council Member, the ICSI deliberated on the Business Reporting and triple bottom line approach of the organization. Mr. B Narasimhan, discussed in detail the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business prescribed by MCA. Mrs. Shalini Budathoki also deliberated on issues pertaining to Corporate Social Responsibility.

The Conference concluded with a vote of thanks to the learned speakers and delegates.



Our Members

CONGRATULATIONS

Shri Subhash Agrawal, FCS, on his taking over as Chairman & Managing Director of Triveni Structurals Ltd., Allahabad in addition to holding the position of Director Finance of Cement Corporation of India Ltd., New Delhi.

Shri Hitender Mehta, FCS, on his being nominated as Co-Chairman of National SEZ Council of ASSOCHAM for the year 2013-14.

ELEVATION

Shri Anil Kumar Dhingra, ACS, Joint Advisor in Telecom Regulatory Authority of India. Earlier he was working as Deputy Advisor (FA) in Telecom Regulatory Authority of India, New Delhi.

41ST NATIONAL CONVENTION OF COMPANY SECRETARIES

Days & Dates

Thursday-Friday-Saturday
7-8-9 November, 2013

THEME

"TRANSITIONING FROM COMPANY SECRETARY TO GOVERNANCE PROFESSIONAL"

Venue

Chennai



The Registration Procedure, Fee, Hotel and other details about the National Convention would be made available on the ICSI website (www.icsi.edu) shortly.

Kindly Block your dates and be a part of grand congregation of Governance Professionals.

CS QUIZ

A charitable fund deposited with a company Rs.75 lacs. The Company became sick and BIFR approved a Scheme for Rehabilitation. Before it became sick and BIFR approved the Scheme, the Charitable Fund preferred a petition to the Company Law Board for ordering the repayment of deposit and interest, which the Company Law Board did after hearing the contention of the parties. In compliance with the Order of the Company Law Board the company refunded the principal but did not make payment towards interest. The charitable fund again approached the Company Law Board, which ordered for the payment of interest. The Company approached the Company Law Board for recall of its order on the ground that it is a sick company and BIFR has approved a rehabilitation Scheme. Will the action of the company in approaching the Company Law Board stand to legal scrutiny?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th September, 2013.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query August, 2013 Issue**' and addressed to :

Deputy Director (Publications)

The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

OBITUARIES

"Chartered Secretary" deeply regrets to record the sad demise of the following members:

Shri A. J. Joseph, FCS (06.03.1937 - 16.05.2013), a Fellow Member of the Institute from Kochi.

Shri S. Sreenivasan, FCS (01.03.1949-13.02.2013), a Fellow Member of the Institute from Chennai.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed Souls rest in peace.

Panel of Examiners for CS Examinations

INVITATION OF APPLICATIONS FOR PANEL OF PAPER SETTERS AND/EXAMINERS FOR THE COMPANY SECRETARIES EXAMINATIONS

The Institute is inviting applications for preparing a panel of Paper Setters and/Examiners for evaluation of answer books from suitably qualified, competent and experienced persons having academic flair and willingness to undertake such academic and confidential assignments in the following subjects of Company Secretaries examinations:

I	LEGAL DISCIPLINE SUBJECTS	
	(a) Law:	
	(i) Economic and Commercial Laws	Executive Programme
	(ii) Company Law	Executive Programme
	(iii) Industrial, Labour and General Laws	Executive Programme
	(iv) Capital Markets and Securities Laws	Executive Programme
	(b) Law and Practice:	
	(i) Tax Laws and Practice	Executive Programme
	(ii) Company Secretarial Practice	Professional Programme
	(iii) Drafting Appearances and Pleadings	Professional Programme
	(iv) Corporate Restructuring and Insolvency	Professional Programme
	(v) Advanced Tax Laws and Practice	Professional Programme
	(c) Law and Management:	
	(i) Strategic Management, Alliances and International Trade	Professional Programme
	(ii) Due Diligence and Corporate Compliance Management	Professional Programme
	(iii) Governance, Business Ethics and Sustainability	Professional Programme
II	ACCOUNTING AND FINANCE DISCIPLINE SUBJECTS	
	(i) Company Accounts and Auditing Practices	Executive Programme
	(iii) Cost and Management Accounting	Executive Programme
	(iii) Financial, Treasury and Forex Management	Professional Programme

QUALIFICATIONS:

A person applying for empanelment of his/her name as Paper Setter or Examiner should be holding professional qualification as member of the Institute of Company Secretaries of India/Institute of Cost Accountants of India/Institute of Chartered Accountants of India at least for five years and/or a Doctorate Degree/Postgraduate Qualification with at least second class in the discipline of Law, Management, Finance, Accounting, Commerce, etc., with five years experience either in an academic position or in practice or in employment in the concerned field/discipline having relevance to the subjects of examinations.

DESIRABLE EXPERIENCE:

Persons having adequate experience of teaching and as Head Examiner/Moderator/Paper Setter/Examiner in subjects of Law, Management, Finance, Accounting, etc. at graduate/post-graduate level or professional examinations or in writing book(s) or study material in the relevant subject(s) or any other specialised graduate/post-graduate level course (s) with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

SCALE OF HONORARIUM FOR EVALUATION OF ANSWR BOOKS

Sl No.	Stage of Examination	Rate
(i)	Executive Programme	Rs.80/- per answer book.
(ii)	Professional Programme	Rs.100/- per answer book.

HOW TO APPLY:

Candidates fulfilling the above conditions and not registered as a student of the Institute may send their bio-data in the prescribed application form along with relevant certificates to the **Joint Director, Directorate of Examinations, The Institute of Company Secretaries of India, C-37, Institutional Area, Sector - 62, NOIDA – 201 309.** The prescribed application form can be downloaded from the Institute's website: <http://www.icsi.edu/webmodules/member/forms/examnew.pdf>

Publications Released

at The 14th National Conference of Practising Company Secretaries

Referencer on Annual Return

Price: Rs.150/-
(Postage extra Rs. 50/-)

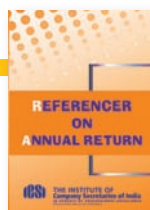
Edition: 2013

Annual Return is required to be filed by every company annually with the Registrar. It gives bird's eye view of the various aspects of the company including its capital structure, constitution, its management, details of securities, share transfers and indebtedness etc. A study of Annual Return can provide valuable and up-to-date information about the company as it contains the facts upto the date of Annual General Meeting. In the Companies Bill, 2012 which is passed by Lok Sabha in December 2012 and awaiting clearance from Rajya Sabha, significant additional disclosures of non-financial information are envisaged in Annual Return as compared to the existing format.

Annual Return is required to be signed by the Company Secretary of the company along with a director. In the case of listed companies, it is also required to be certified by a Company Secretary in Practice.

In view of the considerable responsibility which is cast on the Company Secretary who is required to certify the correctness, it is imperative that he scrutinizes the documents carefully before signing.

With a view to serve as a handy guide while signing the Annual Return, the Institute of Company Secretaries of India has developed a Referencer on the same. This Referencer includes the legal provisions relating to Annual Return, checklists for signing of Annual Return and the relevant Guidelines.



form or return are as per the books and records of the company and are true and correct. This Referencer has been prepared to highlight some of the important aspects in the form of checklists which a Practising Company Secretary and the management of the company may examine before certifying the e-forms relating to Directors. This Referencer also contains important notes with respect to each of these e-forms.

Guidance note on Compliance Certificate for Listing at SME Platform of Stock Exchanges

Price: Rs.100/-
(Postage extra Rs. 50/-)

Edition: 2013

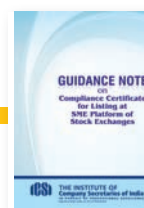
The Small and Medium Enterprises (SMEs) play a very important role in terms of significant contribution to employment, national income, balanced development, value addition, and exports.

In recognition of their role in economic development of the country, Securities and Exchange Board of India (SEBI) and the Stock Exchanges have recently laid down a conducive regulatory framework for raising resources by them from the market, keeping in view the interests of investors. According to the framework, a SME that meets the norms of listing on SME Platform of a Stock Exchange can list itself on a stock exchange and raise resources from the market.

In order to ensure that various formalities and procedures relating to issue and listing of shares at the SME Platform / Exchange are adhered to, the Institute of Company Secretaries of India (ICSI) has developed a Compliance Certificate for listing / issue of shares by SMEs, in consultation with BSE Ltd. (BSE) and the National Stock Exchange of India Ltd. (NSE), to be issued by a Practising Company Secretary (PCS).

This Compliance Certification provides the necessary comfort and assurance to the regulator and stock exchanges to the effect that the proposed listing of a SME conforms to all regulatory prescriptions and adequately protects the interest of investors.

To guide the PCS in issuing the said Certificate, ICSI has developed a Guidance Note on the same. This Guidance Note requires a PCS to verify the level of adherence of the SME to the SEBI Act, the Securities Contracts (Regulation) Act and the rules and regulations made thereunder. While considering a request from an SME for listing, the Stock Exchanges take various inputs into account. One critical input taken by the Stock Exchanges these days is the Compliance Certificate issued by a PCS as per this Guidance Note.



Referencer on Pre-Certification of E-forms Relating to Directors

Price: Rs.200/-
(Postage extra Rs. 50/-)

Edition: 2013

The Ministry of Corporate Affairs (MCA) has entrusted practicing professionals like members of the Institute of Company Secretaries of India (ICSI) with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. The system accepts most of these documents online without approval by Registrar of Companies or other officers of the Ministry. (MCA vide Circular 14/2011 dated 08.04.2011).

Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the

