



Mysuru Chapter
e-Magazine

January 2021
201st Edition



Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इत्येकं तेन जगत् सर्वं विद्यते।

Mission

"To develop high calibre professionals facilitating good corporate governance"

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From the Desk of Chairman

CS Parvathi K R
Chairperson
Mysuru Chapter

Dear Professional colleagues,

My heartiest greetings to all of you and wish you all a very happy & prosperous New Year 2021 and also Wishing you a Very Happy Sankranti!

I deem it my privilege to have got an opportunity to serve as a Chairperson from past one year. It makes me feel proud to be a part of this great legacy of Company Secretaries. We have had certain landmark events in 2020; one of them certainly is the 'release of our 200th Edition of E-Magazine. To quote few more, Sports day 2020 and 2 days Seminar concluded before Covid-19 where we had great interaction with our Students and Members.

I extend my sincere thanks to SIRC and HQ for their support for various activities of the Chapter.

I wish all the best for the New Committee which shall resume Office from 19th January 2021.

My sincere thanks to our students and each one who have put their selfless efforts to conclude the December 2020 examination safely and successfully. I wish all the best and great success to all our Students.



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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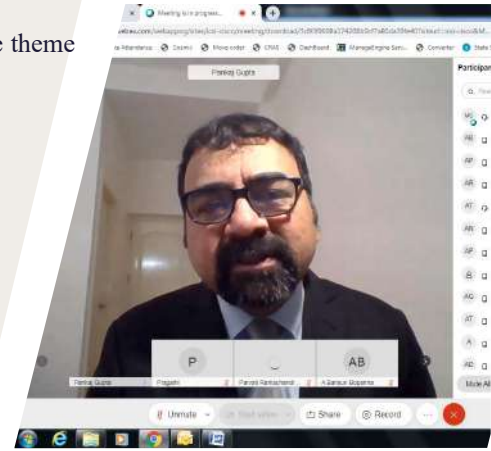


Chapter Activities

Webinar on Shaping the Post Pandemic World – Role of CSR

Chapter in association with MMK & SDM Mahila Maha Vidyalaya, Mysuru organized a webinar on the theme “Shaping the Post Pandemic World – Role of Corporate Social Responsibility” on 05.12.20, 10.30 am to 01.00 pm.

CS Parvati K R, Chairperson welcomed the gathering. CS Kannan S, Chairman, ICSI-SIRC was the Chief Guest. The resource persons of the session Prof. (Dr.) Pankaj Gupta, Professor & Dean, O P Jindal Global University & CS S Sudhakar, Vice President (Corporate Secretarial), Reliance Industries Limited explained on the important role of CSR in the post pandemic world. Another resource person CS K Chandra Sekhar, General Manager & Company Secretary, ACE Designers Limited addressed on the topic “Career as a Company Secretary & the role of CS”. Prof. Sainath Malligemadu, Principal, MMK & SDM College gave the presidential remarks. Smt. Srividhya B, HOD of Commerce Department proposed the vote of thanks. More than 400 faculties from various colleges of across India registered for the session. Members & students of ICSI Mysuru Chapter also participated in the webinar.



200th Edition of eMagazine Release and “Samadhan 2020”

On 13 December 2020, grand release of 200th Edition of eMagazine was celebrated in a virtual presence of the members and dignitaries. President of the Institute of Company Secretaries of India CS Ashish Garg as Chief Guest, CS Nagendra D Rao Vice President as Guest of Honor, CS S Kannan and CS Dattatri H M as Special Guest released the 200th edition. Dignitaries spoke on the occasion and recognized the efforts of the Chapter in bringing the eMagazine regularly till 200th edition and lauded the efforts of the team on bringing out newsletter with enriching content and innovativeness. On this special occasion, Chapter had organized a special session “Samadhan 2020” opportunity to resolve doubts in the Companies Act, 2013 from Experts. As part of the experts’ panel CS S Sudhakar, CS Anshul Kumar Jain, CS Anshu Agarwal, CS Narayan Shankar, CS Krishna Sharan Mishra, CS Pankaj Virmani, CS Manoj Singh Bisht, CS Shanmugasundaram, CS Amita Desai, CS Pramod S M, CS Padmavathi K and CS Amit Gupta had contributed to knowledge sharing. Hundreds of professionals from various parts of the country had participated and contributed to enriching the knowledge to fellow professionals. CS Parvathi, Chairperson of the Chapter welcomed the gathering, introduced the guests and CS A Harsha, Secretary proposed the vote of thanks.

Action Agenda for the Board of Directors in the Context of COVID-19



CS Dr S K Gupta

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Some say that corporate boards only have value when companies are in crisis. If that is true, the 2020 global pandemic presents a moment for corporate boards to step up like no other.

Corporate boards and management face serious challenges in navigating the COVID-19 pandemic. In this difficult environment, companies have to be mindful to apply best practices and exercise care to fulfill their duties of loyalty and care. The challenges are complex and the risks and fall outs are exponential. Corporate boards have to exercise responsible oversight by understanding the risks facing the company and the impact of the pandemic to day-to-day and strategic decision-making

Corporate management bears the day-to-day responsibility for managing the corporation's response to the pandemic. The board's role is one of oversight, which requires monitoring management activity, assessing whether management is taking appropriate action and providing additional guidance and direction to the extent that the board determines is prudent. Staying well-informed of developments within the corporation as well as the rapidly changing situation provides the foundation for board effectiveness. The role of corporate directors is all the more important at this time because they are the ones who must ensure that the corporation is able to plan for the return of normal operations, post-COVID-19. Directors are subject to a fiduciary duty to the corporation. Being obliged to act for the good of the company and to take into account the interests of all stakeholders, as directors are expected to have a broader perspective than the managers who are only involved in day-to-day operations.

Imperative Board actions

Running their business in the midst of a pandemic is an unprecedented challenge for Boards and business leaders worldwide. Management teams and their boards are juggling a wide array of concerns right now, from the health of their workforces to disruption in value chain, volatile equity markets to shuttered debt markets. So, what should boards do in a moment of crisis such as this?

Crisis Management: During this turbulent time, employees, shareholders, and other stakeholders will look to boards to take swift and decisive action when necessary. Consider whether an up-to-date crisis management plan is in place and effective. A well-designed plan will assist the company to react appropriately, without either under- or over-reacting.

Task force : To manage the current crisis, companies have to establish a task force reporting to the board with representatives from the various facets of business viz. compliance, human relations, legal, finance, audit, Information technology and security to coordinate information sharing, planning, implementation and communication to the public and other stakeholders.

Define crisis-response roles and responsibilities for the board: Boards need to get more proactively involved to help mitigate the impact of COVID-19 on their businesses. They should hold candid conversations with senior management to establish clear expectations about their respective roles and responsibilities in a crisis. This will help to reduce the risk of any unhealthy board-management dynamics and improve response / recovery actions. The team should be in regular contact with the board or a designated board member or committee.

Health and Safety : The key concern and responsibility of the Board and management is to set a tone at the top through communications and policies designed to protect employee wellbeing and act responsibly in the context of COVID-19 and thereby protect the personal health and safety of employees (and their families), customers, business partners and the public at large. Consider how to mitigate the economic impact of absences due to illness as well as closures of certain operations on employees

Employee/Talent Disruption: As more employees begin working remotely or are unable to work due to disruptions caused by COVID-19, continually assess what minimum staffing levels and remote work technology will be required to maintain operations. As companies rely on remote employee arrangements, companies have to assess increased cyber security and data risks. To the extent employees are relying on residential wi-fi access to the Internet, companies have to assess risk depending on the seniority and responsibilities of employees who may have access to confidential information. In these situations, employees have to exercise healthy cyber practices to avoid a possible data breach or attack from third parties.

Supply Chain and Production Disruption: Review with management the risks that a disruption in the supply chain will cause interruptions in operations and how to protect against such risks, including the availability of alternate sources of supply. Ask management to assess the risks that the company will have difficulty in fulfilling its contractual obligations and how management is preparing to address those risks, including through review of relevant provisions in customer contracts (e.g., force majeure, events of default and termination) to determine what recourse is available. Such an inquiry requires review and assessment of customer contracts, vendor/supplier contracts and capabilities, along with access to business insurance relating to these contracts.

Effective external communications: An effective external communication strategy is critical in the face of a crisis. Having an external communication strategy in advance will help to prevent any damaging message failures during a crisis. Boards should make sure that management strikes the right balance between being transparent to external stakeholders—including investors—about any possible impact and ensuring that the information is accurate. This becomes a real challenge in deciding what to disclose to investors about the risk exposure and in determining what is material, because the impact of the risk could quickly change if the virus disrupts more markets and regions.

Evaluate management's internal communications strategy: Providing information to employees without triggering panic is key in keeping the company moving smoothly during any crisis, but especially during a health crisis such as the present COVID-19 pandemic. Boards should advise management to develop an effective internal communication strategy to keep all the internal stakeholders duly informed about the evolving business / work scenario and the actions that are being taken by the management to appropriately respond to the situation.

Communication with Government authorities: Companies have to maintain open lines of communication with Central, state and local government representatives in order to keep current as to pandemic data and government policies, guidelines and actions. Companies have to duly consider and incorporate such data and government actions in relation to employee safety, business continuity and business disruptions.

Operational and Risk Oversight: Monitor management's efforts to identify, prioritize and manage potentially significant risks to business operations, through more regular updates from management between regularly scheduled board meetings. Depending on the nature of the risk impact, this may be a role for the audit or risk committee or may be more appropriately undertaken by the full board. Document the board's consideration of, and decisions regarding, COVID-19-related matters in meeting minutes. Maintain a focus on oversight of compliance risks, and duly watch for vulnerabilities caused by the outbreak of Covid 19 that may increase the risk of a cyber security breach.

Financial Impact and Liquidity: Review with management the near-term and longer-term financial impact (including the ability to meet obligations) of the COVID-19 pandemic and the related impact of the extreme volatility in the financial markets. Understand the assumptions underlying management's assessment and discuss the likely outcome if those assumptions prove incorrect. Consider the need to seek additional financing or amend the terms of existing debt arrangements. The current crisis is hitting corporate cash flow hard. Companies previously stable may soon be facing the prospect of insolvency or bankruptcy. In such situations, companies tend to make tough management decisions quickly, without taking a step back to ensure that they are truly justified or are in fact the best scenario.

How strong is our underlying business model is: Beyond the near-term liquidity, there is more fundamental matter regarding company's solvency. Board members must assess the long-term prospects of a company's underlying business model. Amid all of these pressures, boards, together with senior leadership, must traverse the delicate balancing act of thinking both long term and short term, and board members must not lose sight of their longer-term strategic oversight responsibilities. Crises can offer rare opportunities for innovation to not only defend the core business, but also explore opportunities for growth through distressed M&A.

How do we keep our company culture alive? : Boards must be alert to the need to defend the company culture and keep it strong in the face of heightened uncertainty. Despite the unusual circumstances in which companies find themselves today, a strong culture, backed up by solid, empathetic leadership is necessary to ensure that the company remains on solid ground. By actively managing the behaviors that are part of the company culture, employees will be more committed and feel like they are part of a team contributing to a collective effort to help address an unprecedented global crisis.

Ensure effective management reporting to the board: Appropriate Board Reporting framework should be developed regarding the information that directors are expected to receive during and post Covid 19 scenario. Boards should ensure that they receive relevant and timely updates to understand how the business is being affected enabling them to initiate timely desired actions.

Business Continuity and Contingency Plans: Consider whether business continuity plans are in place appropriate to the potential risks of disruption identified, including through a discussion with management of relevant contingencies, and continually reassess the adequacy of the plans in light of developments. A crisis is inherently unpredictable. However,

the company should endeavor to anticipate all potential crises to which it is vulnerable and develop contingency plans to deal with those crises to minimize on-the-fly decision-making. By way of example, what if the company's main suppliers are unable to supply components which are crucial to the company's manufacturing or provision of services? As far as possible, these concerns should be proactively addressed, especially in light of the duty that directors have to exercise reasonable care, diligence and skill, and this involves assessing and minimizing the risks in similar extreme situations.

Emerging Role and Responsibilities of the Directors: It is more relevant than ever for directors to approach their mandate with agility and skill, especially with a view of adding value to their organization. Agility will help them to sail to a safe harbor. Existing crisis management or business continuity measures or policies may be insufficient or outdated in the face of the current crisis. Benchmarking against best practices and updating this data on an ongoing basis, should be considered. It would also be advisable to consult crisis management specialists if the company does not have specialized resources in-house. Directors will require skill to pursue their mandate capably and with the highest standard of competence. However, In the current context and in light of the above, directors must balance the temptation to step into the role of manager against the need for an appropriate level of supervision of company activities that may give rise to personal liability. Ethics is at the heart of society, particularly in the context of the issues we are currently facing. The values of solidarity and concern for others will have to be taken into consideration by directors as the society will have new expectations from Directors and organizations.

Disclosures: With respect to regulated entities and companies listed on a regulated market which are subject to various laws and regulations aimed at securing investor protection, adequate disclosure without delay of information which should be made known to the public should remain a top priority. Going forward boards of such companies should thus continue to assess the situation, communicate with regulators, and provide public disclosure where it is needed or warranted as new information constantly emerges. Prudent assessments should be made to analyze the extent of the negative impact of COVID-19 related developments and to determine any corrective action that might be needed to mitigate such impact as far as possible, with constant disclosure of significant developments to the general public.

Conclusion

By most indications, the next several quarters, if not years, will be tough for boards, senior leaders, and the companies they run. In this scenario Boards do have a special role to play. They will help to recast the corporate role in the future global economy post-Covid-19. The recovery phase will be a time for soliciting feedback, reviewing the company's values and consolidating lessons learned. This process, based on dialogue with the various stakeholders, will help the Board / company to respond more effectively to the current scenario through preventive action, preparation, and an awareness of ethical considerations. COVID-19 crisis calls for reflection by corporate directors, who must carefully consider how to manage both the current risks within the organization as well as the collateral risks that could arise, while identifying areas for future improvements. The considerations as discussed above can serve as a guide for boards and senior business leaders as they navigate the current circumstances.

Case Law on Trademark Mahendra T. Thakkar V/s Ranga Rao & Sons



Anandteerth Hipparagi

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Company Secretaries*

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Parties:

1. N. Ranga Rao & Sons Private limited (herein after referred as Respondent/Plaintiff) is registered proprietor of trademark CYCLE and CYCLE Logo with the device of CYCLE in respect of safety matches. Plaintiff is Pioneer in the industry of fragrance i.e. Incense sticks and other allied products like Pooja oils and safety matches.
2. Mahendra T. Thakkar (herein after referred as Applicant/Defendants) is engaged in the manufacturing of safety matches under the trademark of THILAK and CHIDYA apart from these two trademarks other trademark under the brand name CYCLE has been adopted in the year 2003 for the Safety matches.

Brief facts about the case:

1. Applicant/defendant who is engaged in the manufacturing and selling of safety matches under the trademark CYCLE since 01-05-2003 for the sale in the state of Gujarat.
2. Respondent/Plaintiff who is engaged in the manufacturing of safety matches under the trademark CYCLE and CYCLE Logo with the device of CYCLE in respect of safety matches since 1954.
3. Applicant/defendant has made contention that the respondent/Plaintiff is offers safety matches as a complementary product to the buyers of cycle brand Agarbathi and has no independent use of Cycle brand for safety matches and Applicant/defendant further contended that order has been obtained without placing the registration for cycle brand in class 34.
4. Respondent has made an allegation against the Applicant/defendant that whereas applicant/defendant originally applied for registration of trademark at Ahmadabad which was specifically refused by the Registering Authority and again in 2018 applied for registration to claim as a prior user from 31-05-2003 and same has been opposed by the plaintiff/respondent on 24-01-2007 stating that the Cycle brand was registered in the year 1954 and mere filing of application at different register office cannot prove that they are the prior user.

ISSUE:

- Does the use of trademark CYCLE by the applicant/defendant on safety match boxes leads to infringement of trademark or not under the Trade mark Act, 1999.

Applicable laws:

Section 28 of the Trademark Act, 1999- Rights Conferred by the Registrar,

- Section 28 states that,
 - 1) Subject to the other provisions of this Act, the registration of a trademark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

- 2) The exclusive right to the use of a trademark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

Arguments by parties:

a. Plaintiff:

- The plaintiff alleged that defendant using the well-known trademark "CYCLE" on their safety matches, which is likelihood to cause confusion in mind-set of the people that plaintiff, has connection with defendant.
- The plaintiff further alleged that the Applicant/defendant has been applied for registration of trademark at Ahmadabad, which has been specifically refused by the registrar and again filed application at Chennai to claim the prior user. Filing of application at different location cannot decide the prior user of the trademark.
- Plaintiff alleged by producing all the certificate/documents regarding the registered trademark "CYCLE along with logo CYCLE" which has been using since 1954.

b. Defendant:

- The defendant alleged that plaintiff has been using match box as a complimentary to the main product Agarbathi, which is not separately registered under the Trademark Act, 1999.
- The defendant alleged that the plaintiff wantonly played fraud by suppressing and withholding their clause 34 Registration brand certificate brand which expressly shows that the plaintiff does not commercially manufacture or sell safety matches.
- The defendant further quoted that the order has been obtained without placing the registration certificate for Cycle brand in Class 34

Decision:

Ex-Parte Ad-Interim Injunctions Order Dated 28-04-2018:

- An Ex-parte ad-interim injunction order has been passed by the learned council stating that plaintiff has been using the trade mark CYCLE with logo CYCLE since 1954, which has acquired the substantial reputation and goodwill and that is evident from the sale of plaintiff products and plaintiff doing extension of business across the country and all over the world.

Order of Division Bench Court Dated 13-06-2018:

- Whereas Defendant filed two applications i.e. 7501 and 7502 of 2018 for vacating the Interim order dated 28-04-2018, division bench opined that that plaintiff herein has no right in respect of the Trademark "Cycle Brand" or device of "Cycle Brand" in respect of all the goods listed in alphabetic order under "Nice Classification" especially for products on which the Brand has not been used till now. Division bench also held that the plaintiff does not established the well know trademark.

Order of Honorable Supreme Court:

- Challenging the order of Bench Court dated 13-06-2018, plaintiff filed "Special Leave Petition" before the Supreme Court, whereas Supreme Court opined that the finding of the division bench was not correct and there was no evidence produced in this behalf to prove that the Petitioner not being a "well-known mark" within the meaning of Section 11(6) of the Trade Mark Act, 1999 and made it clear that Plaintiff mark has reputation, defendant who deceptively adopted such mark cannot claim that he is the prior user of the mark as far as the safety matches concerned. Accordingly, Interim Injunction order passed by the court dated on 28-04-2018 are made absolute.

Conclusion:

Application filed to vacate the Interim Injunction by defendant has been dismissed and it's been concluded that Interim order passed on 28-04-2018 are made absolute. Accordingly order has been passed in favor of the plaintiff stating that *"plaintiff would be the prior user of Trademark "CYCLE ALONG WITH LOGO CYCLE"*.

Secretarial Audit – Risk & Governance Management Tool Part I



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“Where the function of Compliance governance ends for a particular period, audit begins to determine the true and fair picture of such Compliance norms by examination and verification.”

It is not possible to control the fate of an organization without an excellent compliance management function. Historically, many corporate failures have been associated with the relegation of corporate risks, which would turn fatal later. An important example of this is the Satyam scam. Often, these failures were facilitated by corporate governance failures. It should be understood that effective corporate governance is not about eliminating risk taking, which is a fundamental driving force in business and entrepreneurship. The aim is to ensure that risks are understood, managed and communicated. It is the duty of the Board to review and provide guidance about the alignment of corporate strategy with corporate governance.

Secretarial Audit delivers robust assurance about compliance management which feeds up through the management and governance frameworks.

Secretarial Audit: It refers to a Compliance Check Mechanism to ensure efficient and effective Corporate Governance. It is a process to conduct inspection and examination via verification of information and records, the company's process, efficiency, data, etc. maintained by the organization. It is related to the inspection of compliance with applicable rules and regulations and it ensures the regulators, stakeholders and even employees that management of the company is compliant and has a disciplined approach, risk management, internal control and governance process in place.

Secretarial Audit is Mandatory for good Corporate Governance:

With an aim to protect the interest of the stakeholders of the Company and avoid the fine, Penalties, Legal actions against the Company, Ministry of Corporate Affairs (MCA) has introduced Section 204 of the Companies Act, 2013 which deals with Secretarial Audit for Bigger Companies w.e.f. 01.04.2014.

Need of Secretarial Audit:

The Corporate Sector is governed by several laws and regulations with complex nature. Post introduction of Secretarial Audit, there is no Compliance check mechanism to review the compliance norms of the company. In the absence of Secretarial Audit norms, implementation of various laws was not properly done and checked and the Corporate Sector suffered from various frauds and scams and affected Capital market and Economy as a whole.

And with the change in COMPANY LAW from 1956 to 2013, a mechanism has been introduced by MCA in the law to ensure that the company has complied with the legal and procedural requirements and other processes and compliance mechanisms are robust.

Provisions related to Secretarial Audit:

1. Under the Companies Act, 2013:

Section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Following companies are required to go through 'Secretarial Audit' from Independent Practicing Company Secretary (PCS):

- Every listed company
- Every public company having a paid-up share capital of Fifty Crore (50) rupees or more; or
- Every public company having a turnover of Two Hundred Fifty (250) Crore rupees or more.
- Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred (100) crore rupees or more (applicable w.e.f. from on or after 1st April, 2020)
- Private Company which is a subsidiary of a Public Company falls under the purview of Secretarial Audit.

Under Securities Law

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Regulation 24A: Secretarial Audit

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.

Benefits of Secretarial Audit

Compliance monitoring	It ensures the company management and affairs are being conducted in accordance with statutory requirements.
Risk management	It reduces the burden of the law-enforcement authorities
Corporate Governance	It is a Compliance Check Mechanism to ensure efficient and effective Corporate Governance

Identification of compliance gaps	The process will help to check whether the policies and processes are effective in meeting the compliance requirements
Improvement in compliance norms	Post identification, authorized officer can make improvements by implementing corrective and preventative actions in the compliance particulars for present and future as well.
Avoid penalties or legal trouble	Audit will help to identify the non-compliances done by company and help corporate to rectify them to avoid penalties and heavy litigations.
Confidence to the Management	Audit mechanism helps to the Directors & Key Managerial Personnel etc by giving them confidence that things are under expert supervision and the Compliance will be monitored with good Corporate Governance.
Goodwill	Audit will Strengthen the goodwill of a Company for their regulators and stakeholders.
Investment	A good compliant entity will attract investment. Audit helps the investor in taking knowledgeable investment decision.
Compliance monitoring	It ensures the company management and affairs are being conducted in accordance with statutory requirements.

Proactive Secretarial Audit on a constant basis would help the company in initiating remedial measures and establishing its compliance tool and processes.

- **Secretarial Audit Framework: A Step Towards Corporate Governance**

A Secretarial Audit Framework shall be established by the Organization to ensure Compliance on time without any delay and penalty.

This Framework will help to reduce Non - Compliance Risk via:

Prevent through	Detect through	Respond through
<ul style="list-style-type: none"> • Policies and Procedures • Risk and Assessment • Training 	<ul style="list-style-type: none"> • Monitoring • Audit • Authority 	<ul style="list-style-type: none"> • Inspection & Investigation • Communication • And Improvements

- **SCOPE of Secretarial AUDIT**

The scope of Secretarial Audit is much wider. It covers Company Law, SEBI, FEMA, ESOP, Secretarial Standards, Labour Laws, RBI, SEBI (Lodr) Regulations, 2015 And Other Applicable Laws Etc. applicable to an industry /sector/ factory. Under Audit process a thorough check of the company's policies and procedures is required with the goal of preventing prosecutions / lawsuits.

The Audit exhaustively covers the Rules and Legislations applicable to the client's industry or business enterprise and entails the following:

- Identification of all legislations governing the functioning of the company with special reference to the concerned business segment.

- Review of prevailing system, practices and level of compliance governing the business segment
- Evaluate, analyse and assess the compliance program in an environment of continually changing needs and emerging risks and lead towards a 100% legally compliant company.
- Produce a comprehensive audit report and gap analysis including risk analysis.
- Implementation of an effective compliance system - provides required guidance and necessary facilities, provide options and recommendations to diminish or eliminate the risk wherever possible in the areas of legal obligations.
- Suggestions for monitoring, self-audits and reporting system as part of MIS.

COMPLIANCE CHECK REQUIREMENTS UNDER SECRETARIAL AUDIT

GENERAL LAWS	EVENT BASED	SECTOR SPECIFIC LAWS	STATE WISE LAWS
<ul style="list-style-type: none"> • Corporate Laws • Taxations Laws • Industrial & Labour Laws • Property Laws 	<ul style="list-style-type: none"> • Intellectual Property Law • Custom Tax Law • FEMA • Consumer Laws 	<ul style="list-style-type: none"> • Manufacturing • Trading • Service • E-Commerce 	<ul style="list-style-type: none"> • Labour Welfare Act • Shops And Commercial • Establishment Act • Environmental Laws • Industrial Laws

AUDIT UNDER VARIOUS LAWS AS MENTIONED IN MR-3

The Companies Act, 2013 (the Act) and the rules made thereunder;	The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder	The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;	Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder	Secretarial standards issued by ICSI and The Listing Agreements entered into by the Company with
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The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-

- a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;
- c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 and amendments from time to time;
- d) The Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;
- e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009
- h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018

Other laws applicable specifically to the Company

Secretarial Audit Process

The Secretarial Audit process should ensure that the standards as laid down by various corporate laws are complied with. Let's have a quick look over Audit Process:

Step 1: Understanding of the Business of the Company, Location, Activities etc.

Step 2: Obtain Management Representation Letter

Step 3: Prepare a list of all Laws applicable to the Organization.

Step 4: List out the Relevant Checklist for applicable Laws.

Step 5: Need to check basic documents and information available in public domain:

- Ministry of corporate affairs
- Website of the company
- RBI filings through portals
- Stock exchanges websites

Step 6: Conduct a check on Key appointments like appointment and filings and minutes review.

Step 7: Find out the responsible officials for Compliance under the various Laws.

Step 8: Conduct the audit

Step 9: Examine the documents and verify the information provided by the Company.

Step 10: Seek Clarification, wherever required.

Step 11: Prepare an Audit Report post Compliance Check and send it to the management of the Organization.

To Be Continued....



Liquidated Damages in Infrastructure Contract



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1. Introduction

Infrastructure is the backbone for any economy and is sine qua non for sustainable development. The infrastructure sector has been ignored for quite some time in India especially after independence. In 21st Century, logistics have become the center stage for all round growth of an economy. Hence, the Central Government shifted its focus on infrastructure sector and accordingly allocated billions of Rupees in the budget to give an impetus to infrastructure projects which have been pending for long (Smart Cities, National Highways, etc). Since the development of public infrastructure is the prerogative of Government, the concerned State or Central Government (acting through the President or Governor respectively), award the contracts to companies registered under the provisions of Companies Act.

2. Award of a Project

The mode of awarding a contract starts from publication of a tender, which is an invitation to offer. Exception to the publication of tender arises in case of Swiss Challenge method, where the contractor puts up the proposal for infrastructure development). In response to the tender, the interested parties submit their bids (this is in the nature of “offer”). The offer is then accepted by the Tenderer (Government) by entering into a contract document.

Despite all the care and diligence, the infrastructure contracts get delayed for reasons best known to the parties involved. This implies that inordinate delays in execution of the project results in damages to both parties and it is obvious to seek reliefs for the damages so caused. In this context, it becomes imperative that the damages have to be attributed to a definite party to seek the reliefs through Alternate Dispute Mechanisms or at the Courts of Law.

3. Damages as Per Indian Contract Act 1872

The Indian Contract Act, 1872 categorises the damages as Compensatory damages, consequential damages, punitive damages/penalty, and Liquidated Damages. The party who suffers the loss on account of delay is entitled for damages. This article provides an insight into understanding the concept of Damages as laid down under sections 73, 74 and 75 of the Indian Contract Act 1872. The salient features of each of these sections thereof are as follows:

Section	Salient Features
73	No remote and indirect loss or damage is admissible under this section; Any person injured is entitled to receive compensation from the party in default as if such person had contracted when obligation resembling those created by contract are not discharged

74	<p>If the contract provides for a calculated sum to be paid in case of breach, such sums can be considered as liquidated damages. The parties have to genuinely arrive at such sums and agree thereon for the liquidated damages to be binding between the parties.</p> <p>A stipulation in a contract “<i>in terrorem</i>” (a threat or warning) is considered as penalty (as against Liquidated Damages) and hence the Court does not interfere in enforcing the same.</p> <p>In cases where bail bonds or other similar instruments, which is liable for forfeiture in case of breach; even though termed as “penalty” in the contract document, but turns out to be a pre-estimate of loss, shall be regarded as liquidated damages.</p>
75	<p>A claim for damages for loss sustained can be maintained when the party rightfully rescinds the contract. But, in the event where the Party wrongfully rescinds a contract, he will be stopped from claiming the damages. He can neither claim anything if the cause for rescinding the contract is for cause other than "non-fulfilment' of contract under question.</p>

It is pertinent to mention that the quantification of damages becomes imperative, especially in infrastructure contracts, so as to put the contractor and the owner of the project in the same (or similar) position or atleast compensate the parties for the breach that has occurred.

4. Liquidated Damages

More specifically, liquidated damages in infrastructure contracts refer to the amount which is already quantified and agreed upon at the time of contract negotiation to be paid by breaching party to the non-breaching party as compensation for non-performance or delayed performance. If a sum of money is previously agreed upon between the parties to a contract, to be paid, to either party, in case of breach of such contract whether or not actual damages is proved to have been caused thereby, it is called liquidated or stipulated damages which the party complaining of the breach is entitled to recover.

The contents of a typical clause for liquidated damages shall include

1. Circumstances that could lead to Liquidated Damages (LD)
2. List of breaches
3. Amount of Liquidated Damages
4. Method to calculate Liquidated Damages
5. Confirmation that all the parties agree to the quantum of LD, mode of calculating the LD and the list of breaches/ circumstances leading to LD
6. Clauses to mention if LD is the only remedy available to the non-breaching party or not

The sum fixed by the parties, if it is a genuine pre-estimate of the damage, which seems likely to be caused if the breach provided for would occur will be considered as liquidated damages by the court. It is a question of construction to be decided upon the terms and inherent circumstances of each particular contract, judged at the time of making the

contract, not at the time of the breach. Enforcement of LD is not based on the actual damages suffered by the affected party, the proof of breach is sufficient for the courts to award LD.

Often, in commercial language, LD and penalty are used interchangeably but legally, both the terms have different connotation. While LD is genuinely calculated and pre-estimated damage, penalty is unreasonable and extravagant. To determine if a clause is in nature of penalty or LD depends on the facts and circumstances of each case, but the thumb rule is to ascertain the character of transaction, special nature, the situation of the parties, rights and obligations arising out of such transaction and intention of the parties. Courts generally do not award penalties unless (i) sufficient cause is shown that the parties have agreed for penalties in the contract; (ii) actual damage has occurred; and (iii) such damage is attributable to the breaching party.

5. Difference between Liquidated Damages and Penalty

Basis	Liquidated Damages	Penalty
Calculations	When the amount of damages is fixed by the parties on the basis of a reasonable estimate of the probable actual loss which a party will suffer in case of breach is called liquidated damages.	On the other hand, if the amount of damages is not based upon a reasonable calculation of actual loss but is fixed by way of punishment and as threat is called penalty.
Compensation allowed by Courts	In case of liquidated damages English court allows only the amount stipulated, never more or less even though the actual loss is different from the amount mentioned	In case of penalty the court allows only reasonable compensation by way of damages but not exceeding the amount mentioned.
Award of amount	In case of liquidated damage the court is bound to grant the entire amount to the plaintiff.	In case of penalty the court has a power to discretion to grant or not to grant the amount mentioned in the contract.
Proof	The non-breaching party need not prove the actual loss	The actual loss has to be proven to claim penalty

The Courts are guided by the following principles to determine if a sum agreed is a LD or penalty

1. The term used in the agreement is irrelevant, the parties may use the words “Penalty” or “LD” interchangeably;
2. If the contract is for a specified sum, any sum in excess of that value is considered as penalty;
3. If the value of contract is unascertainable, the sum fixed is considered as LD

4. If the contract contains both ascertainable and unascertainable sums, and if penalty is applied to breach in one instance, the same cannot be recovered as LD for other breaches in same contract.
5. Damages shall be calculated as difference between contract price and market price on the date of occurrence of breach. The subsequent changes in the market price shall not affect the quantum of damages.

6. Are Liquidated Damages enforceable?

While the European Countries rely on enforcing the clauses of Contract, the Courts in US have required certain more specific language to be used. Despite both of these, enforcement of Liquidated damages in Courts in India is very difficult as Courts look into the following element while deciding on such instances.

- a. It is difficult for the parties to arrive to determine the mathematical calculations to quantify the damages.
- b.
- c. The Liquidated damages mentioned in the contract is fair and reasonable
- d. Amount must be to compensate the non-breaching party and not to penalise the breaching party
- e. The LD must be the only remedy for breach and the parties should not seek any other remedies under the Contract.





HELP YOURSELF *Food for Thought*



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The 5 AM Club

Own your morning, elevate your life.

- By Robin Sharma

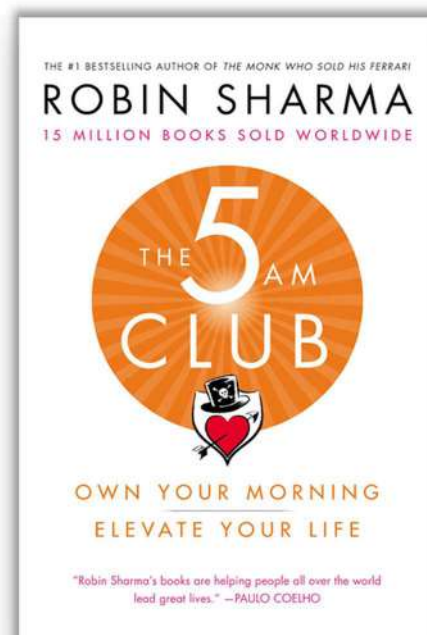
We are at the dawn of the year 2021 and picking up the book 5AM Club by Robin Sharma would be a great start for this year. If you have read it already, a re-read is definitely not a bad idea. Your mind would be brimming with resolutions, tasks and goals set for yourself to be achieved this year. Do yourself a favor and pick up this book to catapult your spirit and sportiveness to achieve them all.

If you are here for the first time, this column intends to impart bite sized knowledge from self-help books, biographies, autobiographies, and other genres of books relevant specifically to corporate professionals and aspiring professionals. Not every learning that a book enshrines can be fit in here, so this is not a summary nor a book review. The intent is to give you a touch of acquaintance to a new book, in every issue of this e-magazine, hoping that it will make you want to grab it and read for yourself.

Have you observed that people who wake up early seem to be of a different quality altogether? 'The 5 AM Club,' as you can make out from the title, spotlights the tremendous benefits that come with starting your day early. It also points out at the various drawbacks of the increasing population of people glued to the screens all day, browsing and reacting to unimportant stuff not realizing how detrimental it is to their overall growth. The book beautifully lights the path for us to break free from all those damaging habits and build the best version of ourselves.

There may be two types of people reading this right now- early birds or night owls. Being an early bird already does not rule out your necessity of reading this book. If you already have the habit of rising early, you're one step ahead than most of us. Next step is to elevate your life for which this book is the best guide.

The book has splendid insights on the effectiveness of rising early and those who are yet to inculcate this habit will have no reason not to do it. This book not only articulates how the brain and body functions before daybreak but also helps to build a sound morning routine for you to have the best of the day. It also supports you with extremely practical models, like the 20/20/20 model for example, implementing which you can soar to world-class.



Another wonderful trait of this book is that though it is for self-help, it is written in the form of a story which makes this one stand out. It is a narrative of a conversation between a billionaire who shares his learning from *The Spellbinder* with two strangers- one an entrepreneur, who was almost about to take her own life owing to complexities in her business relations and an artist who struggled to take his art from good to great. As you read the book, you find yourself relating to how the entrepreneur or the artist feel with each learning, each realization.

The book also has an avalanche of spirit-stirring quotes, from great achievers, that keep popping up in their conversations. Quotes that truly motivate us are wisdom in just a few lines but in reality, great words like those come after a lifetime of falling, rising and learning. That is why they are life changing.

The book is set in spectacular locations of the world which makes it exciting and all the more interesting. This book, I feel, gives the joy of reading self-help, fiction and non-fiction all in one. You will probably vouch for this when you read it. So, what are you waiting for? Grab the book, give it a read. Own your morning, elevate your life.



Tech Corner



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Cloud storage

Tech News is back with new way of storage. And the topic is cloud storage.

Everyone would have heard about this somewhere or the other but let us know about this in detail.

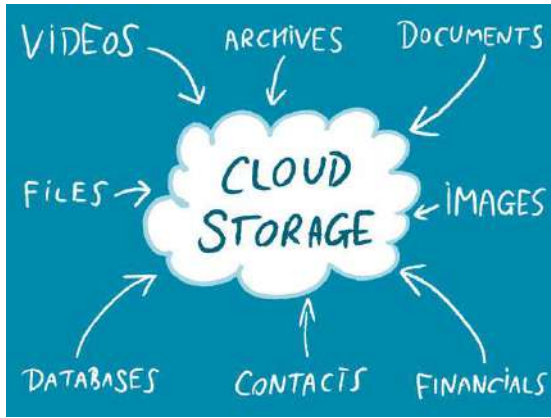
Now a days everyone is using these cloud storage facilities, have you ever wondered what are these cloud storage and how does it operate and what are the advantages and disadvantages of cloud storage.



First let us understand what cloud storage is: cloud storage is a type of storage where you can store your data and access those data even when you don't have your hard drive, or any other storage means because in cloud storage you store your data on internet through a computing who manages and operates data storage as a service. In laymen language you have stored your data on someone else's storage device through internet, for that service you are paying rent.

Next what is the benefit of using cloud storage: in cloud storage you are storing your data on someone else's server through internet. Hence there is no fear of losing data if you lose your device. As cloud storage is maintained by professionals particularly trained for those you do not have to worry for maintaining your storage devices or your own servers. And one major advantage about cloud storage is you can access your data through variety of devices through the login and password for the cloud storage which will be provided by the cloud storage service provider without worrying

about carrying your own storage devices. You can store any type of file in the cloud storage as you store in the physical storage devices.



Data on cloud storage is very safe though we are storing our data on other persons server or storage device. Every time if someone purchases a certain amount of cloud storage, he or she will get a login and password which they can change according to their wish and access their cloud storage without worrying about any data leakage or about privacy.

In future cloud storage will become cheap when compared to today as it provides variety of advantages and reliability to the users.

Let's see on the flip side of this cloud storage as the cloud servers are completely online if one wants to access their data, they have to make sure that they have a decent internet speed for accessing the data, when one does not have a good internet speed, they can't access data easily as one can use the data on their storage devices.

When compared to physical data storages devices, cloud storage are a bit costly and more over the service provider will charge for annual maintenance for the cloud storage.

Conclusion: we can use cloud storage as a backup data storage or if we want to send the data frequently one can upload the data to the cloud server and give access to a particular folder. But for the regular and fast usage of data physical storage devices like hard drives and SSDs are more suitable as accessing cloud storage is very slow when compared to physical storage devices. As to access cloud storage we need high speed internet which is currently not available everywhere.





BRAINY BITS...



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X, Y and Z three promoters come together to form XYZ Pvt. Ltd. None of the promoters has DIN nor the PAN. The promoters intend to remain subscribers and first shareholders of the company but do not intend to become Directors, instead they want to appoint third persons as Directors to separate management and ownership.

Question 1: Whether it is possible to form the company in the above scenario without keeping the promoters as Directors?

Question 2: Is it mandatory for the promoters to obtain both DIN or PAN or they still have an alternative?

Please send your answers to, enewsletter.icsimysore@gmail.com along with your name, qualification and designation. Name of the person with most appropriate answer with reasoning, shall be published in the next edition of eMagazine



Opinion to Last Month's Brainy Bits

X Pvt. Ltd. has to file form PMT-09 to transfer credit from one head to GST to another. Also, the company needs to adjust the turnover shown in form 3B in subsequent months unless the difference becomes zero.

The answers given above may have a scope for correction, we would be glad to learn from you if you have better answer.





Regulatory Updates



Compiled by:

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Companies Act, 2013

Updates on Circulars

MCA has amended Companies (Incorporation) Rules, 2014, which shall be known as Companies (Incorporation) Third Amendment Rules, 2020.

In the principal rules after rule 9, following rule shall be inserted with effect from 26th January, 2021.

“9A. Extension of reservation of name in certain cases

Upon payment of fees provided below through the web service available at www.mca.gov.in, the Registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

- a) forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9;
- b) sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days referred to in clause (a) above;
- c) sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9:

Companies (Incorporation) third amendment rules, 2020

MCA has amended Companies (Appointment and Qualification of Directors) Rules, 2014, which shall be known as Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020.

In the Principal rules, in rule 6 , sub-rule (4);

for the words “one year from” the words “two years from” shall be substituted;

for the first and second proviso, the following provisos shall be substituted, namely

An Individual who has served for a total period of not less than three years as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, shall be exempted from taking the online proficiency self-assessment test.

- a) listed public company; or
- b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

- c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or
- d) bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or
- e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or

2. Such individual is in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws; or

3. Such Individual is in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws

Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020



Delhi Diaries



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V. Padmakumar - a Blunt End to a Back and Forth Saga

In the October edition of this column, we had seen that the NCLAT had strangely referred a question for reconsideration when in fact the point already stood decided by a five judge bench. The issue in contention was whether a debt being denoted in the annual returns of a Company would amount to an acknowledgement for the purpose of Section 18 of the Limitation Act.

In an order of the 5 member bench dated 22nd December 2020 in *V. Padmakumar v. Asset Reconstruction Company India Limited*, the NCLAT held that the reference was made without competence and also made some scathing remarks about the referring bench which need not be asseverated here.

But first let us look at when and how judgments need to be reconsidered. More than half a century ago, a seven judge bench of the Supreme Court in *Keshav Mills Co. Ltd. v. CIT*, (1965) 2 SCR 908 held:-

“in a proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate.”

However, in *Pradip Chandra Parija & Ors. Vs. Pramod Chandra Patnaik*, (2002)1 SCC 1, it was held that when a bench of two judges concludes that an earlier judgment of a larger bench is “so very incorrect that in no circumstances can it be followed” then the matter would have to be referred for reconsideration.

Then in *Central Board of Dawoodi Bohra v. State of Maharashtra* (2005) 2 SCC 673 where the following procedure was laid down:-

A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

All these drastic measures are understandable when a larger principle of justice is involved. When a relatively technical issue as to whether entries in balance sheets constitute acknowledgement for the purpose of limitation is concerned, it is perhaps an issue on which there is a greater need for certainty and stability of law rather than any notion of perfect justice.

In this light the five judge bench held that it was not open to the referring bench of three judges to hold that the previous five judge bench was per incuriam and refer the question for reconsideration. To do so would be contrary to judicial discipline. From the perspective of lawyers and litigants, such flip flops in the law only cause uncertainty and cause hindrances in arranging the affairs of parties. It is hoped that this judgment brings a quietus to the issue at hand.





Commentary on Meetings of Board- Series 27

1. Provisions: Section 173 (2)

The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio-visual means in such meeting on any matter specified under the first proviso.

2. Rule 3-The Companies (Meeting of Board and its Powers) Rules,2014 - Meetings of Board through Video Conferencing or Other Audio Visual Means:

As per the Section, participation of directors in a meeting of the board may be either in person or through video conferencing or other audio-visual means which shall be as per Rule 3 of Companies (Meetings of Board and its Powers) Rules, 2014.

a) Before the meeting:

- The notice of the meeting **shall** be sent to all the directors as per the provisions of Section 173 (3) of the Act.
- The notice **shall** inform the directors of the option available to them to participate through video conferencing mode or audio-visual means.
- The notice shall provide all the necessary information to enable the directors to participate through VC mode.
- A director who intends to participate through audio visual means or video conferencing mode **shall** intimate in advance to the chairperson or the company secretary of the company so that they are able to make suitable arrangements in this behalf.

- Such an intimation made by the director for his participation can be done through electronic mode at the beginning of the calendar year and shall be valid for one calendar year.
- In case of absence of the intimation by director, it is assumed that he shall attend the meeting in person.
- Such declaration shall not debar him from participation in the meeting in person in which case, he shall intimate the company sufficiently in advance of his intention to participate in person.

b) During the meeting:

The chairperson of the meeting & company secretary, if any, shall take due reasonable care for the followings:

i. Roll Call:

At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio-visual means shall state, for the record, the following namely: -

- (a) Name.
 - (b) The location from where he is participating.
 - (c) That he has received the agenda and all the relevant material for the meeting; and
 - (d) That no one other than the concerned director is attending or having access to the proceedings of the meeting at the location.
- ii. After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.
 - iii. The Chairperson shall ensure that the required quorum is present throughout the meeting.
 - iv. A director participating in a meeting through video conferencing or other audio-visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules - Section 174(1) read with *para No.3.3- SS-1*.
 - v. At the end of discussion on each agenda item, the chairperson of the meeting shall announce the summary of the decision taken on such item along with the names of the directors, if any, who dissented from the decision taken.
 - vi. To ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio-visual means.
 - vii. To ensure availability of proper video conferencing or other audio-visual equipment or facility for proper communication and effective participation of directors at the Board Meeting.
 - viii. To ensure participants attending the meeting through audio visual means are able to hear & see the other participants clearly during the course of the meeting.
Provided that the person's differently abled, may make request to the board to allow a person to accompany him.
 - ix. Every participant shall identify himself for the record before speaking on any item of business on the agenda and if the statement of the director in the meeting through video conferencing or audio-

visual means is interrupted or garbled, the chairperson or the company secretary shall request for the repetition of the same.

- x. People to be present in the place: From the commencement of the meeting and until the conclusion of such meeting, no person other than the chairperson, directors, Company secretary and any other person whose presence is required by the board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the board.

c) **After the Meeting:**

- i. To record the proceedings and prepare the minutes.
ii. To store for safekeeping and marking the tape recording at least before the time of completion of audit of that particular year.

iii. Circulation of Minutes:

- Draft Minutes shall disclose the particulars of the directors who attended the meeting through VC mode.
- Draft minutes shall be circulated to all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the board.
- Confirmation to be given by directors along with their comments on draft minutes- within 7 days or some reasonable time as decided by the Board.
- Entering of Minutes in the minutes book- as specified under section 118 of the Act and signed by the Chairperson.

d) **General:**

- i. To safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.
- ii. Every Company shall make necessary arrangements to avoid failure of video or audio-visual connection.
- iii. Signing of Statutory Registers including Attendance Register:
- The Statutory Registers including attendance register is deemed to be signed by the director participating through electronic mode.
 - if they have given their consent to this effect and it is so recorded in the minutes of the meeting
 - Such participation is also recorded in the minutes.
 - Authenticated by Chairman or CS or any director authorized by Board.
- iv. Place of the meeting in case of meeting held through video conferencing or audio-visual mode:
The scheduled venue of the meeting shall be deemed to be place of the said meeting and all the recordings of the proceeding at the meeting shall be deemed to be made at such place.
Para No. 4.1.3 of SS-1-However, such proceedings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

3. Rule 4 of Companies (Meetings of Board & its Powers) Rules, 2014:

a) Matters Not To Be Dealt With In A Meeting Through Video Conferencing Or Other Audio Visual Means:

The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means:-

- i. The approval of the annual financial statements;
- ii. The approval of the Board's report;
- iii. The approval of the prospectus;
- iv. The Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of [section 134](#) of the Act; and
- v. The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

b) Exceptions:

- i. Where there is quorum presence in a meeting through physical presence of directors, any other director may participate conferencing through video or other audio visual means.
- ii. COVID 19 Relaxation: up to 30/06/2021, aforesaid matters can be held through video conferencing or other audio visual means also.

4. NCLT/NCLAT Case Law: The NCLT/NCLAT came to the conclusion that the provisions of Section 173 (2) of the New Act are mandatory. In other words, it's mandatory for the company to provide option VC and the companies cannot be permitted to make any deviations therefrom. (Achintya Kumar Barua vs Ranjit Barthkur)



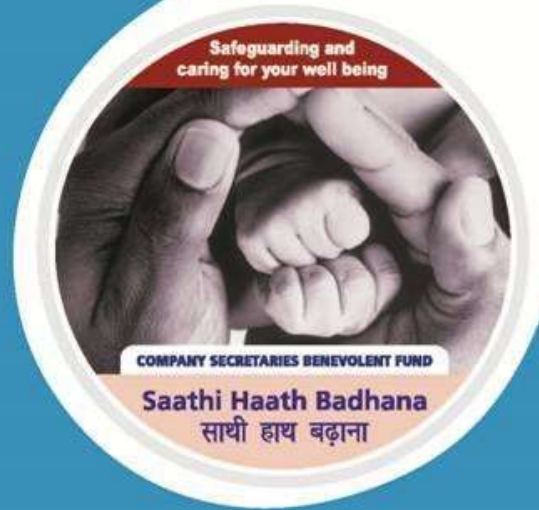


THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CSBF

COMPANY SECRETARIES BENEVOLENT FUND



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

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1

To ensure that your immediate family has some financial support in the event of your unfortunate demise

2

To finance your children's education and other needs

3

To ensure that you have extra resource during serious illness or accident

4

Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

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