SPECIAL FOCUS INSIDE

M J JOSEPH ON THE NEW COMPANIES ACT 2013

the MANAGEMENT ACCOUNTANT

THE JOURNAL FOR CMAs

NOVEMBER 2013 VOL 48 NO. 11 ₹60

Companies Act 2013

RULES MAY FORCE COs TO RETHINK CSR

Whether the CSR clause actually encourages more CSR spending or not, it will certainly force companies to seriously contemplate social responsibility

| CHANGING LANDSCAPE OF CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY | THE COMPANIES ACT, 2013 AND THE ROLE OF COST ACCOUNTANTS | ROLE OF THE DIRECTORS RE-LOOKED

The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

www.icmai.in

ICAI invites entries for participation in 11th National Award for Excellence in Cost Management-2013

Eligibility

All Companies (listed or Unlisted) are eligible to participate in 11th National Award for Excellence in Cost Management-2013 irrespective of applicability of Cost Accounting Records Rules (CARR) as prescribed in the Companies Act, 1956. However, a unit of a company can not participate separately.

Companies engaged in services like banking, construction, education, insurance, finance, healthcare, hospitality, etc. will be considered under the 'Service Sector' category.

Award Categories

i	Private Sector- Manufacturing- Large	ii)	Private Sector- Manufacturing- Medium	iii)	Private Sector- Manufacturing- Small
iv)	Public Sector- Manufacturing- Large	v)	Public Sector- Manufacturing- Medium	vi)	Public Sector- Manufacturing- Small
vii)	Service Sector-Large	viii)	Service Sector-Medium	x)	Service Sector-Small

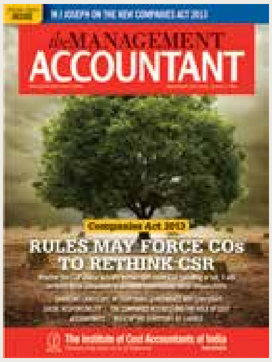
(Small - Turnover of less than Rs. 100 crore; Medium - Turnover between Rs 100 crore to Rs 1000 Crore; Large -Turnover more than Rs 1000 crore)

To Participate in award, one page simplified Questionnaire (Preliminary) along with Annual Report (2012-13) may please be sent to Mr. T.R. Abrol, Asstt. Director, The Institute of Cost Accountants of India, CMA Bhavan, 3, Institutional Area, Lodi Road, New Delhi-110003, latest by Monday the 18th November 2013.

The Questionnaire can be downloaded from Institute's website: **www.icmai.in**

Any queries relating to the Questionnaire/Cost Management Award 2013 may kindly be addressed to Mr. S.C. Gupta, Director. He can be contacted on telephone nos. (o) 011-24641230, 24622156-58, Fax: 011-43583642, Mobile: 09313375254 email : **admin.gupta@icmai.in**

Your company is invited to participate in 11th Edition of the National Award for Excellence in Cost Management. Share your success story with the world, and win the prestigious national recognition through the award.



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The Institute of Cost Accountants of India

The Institute of Cost Accountants of India (erstwhile The Institute of Cost and Works Accountants of India) was first established in 1944 as a registered company under the Companies Act with the objects of promoting, regulating and developing the profession of Cost Accountancy.

On 28 May 1959, the Institute was established by a special Act of Parliament, namely, the Cost and Works Accountants Act 1959 as a statutory professional body for the regulation of the profession of cost and management accountancy.

It has since been continuously contributing to the growth of the industrial and economic climate of the country.

The Institute of Cost Accountants of India is the only recognised statutory professional organisation and licensing body in India specialising exclusively in Cost and Management Accountancy.

MISSION STATEMENT

The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.

VISION STATEMENT

The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.

IDEALS THE INSTITUTE STANDS FOR

- to develop the Cost and Management Accountancy profession
- to develop the body of members and properly equip them for functions
- to ensure sound professional ethics
- to keep abreast of new developments

DISCLAIMER

The views expressed by the authors are personal and do not necessarily represent the views of the Institute and therefore should not be attributed to it.

Behind every successful business decision, there is always a CMA

FROM THE EDITOR'S DESK

Greetings!

Company legislation in India owes its origin to English company law. Companies acts passed from time to time in India have followed English companies acts with certain modifications to suit Indian conditions. The first legislation in India relating to companies was passed in the 1850 called the Joint Stock Companies Act 1850. The next, Companies Act 1857 came for the benefit of limited liability on the members of companies. This was followed by the Companies Act, 1866. After that, the Companies Act 1882 was enacted which was subsequently replaced by the Companies Act 1913. After the end of World War II, many changes had taken place in the organization and management of joint stock companies; so a further revision was inevitable. The Government of India passed the Companies Act of 1956 based on the recommendations of the Bhabha Committee. This Act contains 658 sections and 14 schedules. The Companies Act 1956 has been amended 24 times since then.

The Indian Parliament passed the Companies Bill, 2013 on 8 August 2013. The Bill has received the President's assent on 29 August 2013, making it a law, replacing the old regulations that govern the corporate sector in the country. It will come into force from date(s) that may be notified by the Central Government. The 2013 Act replaces the Companies Act 1956.

The Act, amongst other aspects, provides for business-friendly corporate regulation/pro-business initiatives, e-governance initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms, enhanced accountability of management, stricter enforcement, audit accountability, protection for minority shareholders, investor protection and activism and better framework for insolvency regulation and institutional structure. The objective behind the 2013 Act is lesser Government approvals and enhanced self-regulations coupled with emphasis on corporate democracy.

The followings are the highlights of the Companies Act, 2013:

- The Act has 470 clauses against 658 Sections in the existing Companies Act, 1956. The entire Act has been divided into 29 chapters.
- The Act prescribes 33 new definitions, including Auditing Standards, Associate Company, Chief Executive Officer, Chief Financial Officer, Company Liquidator, Global Depository Receipt, Independent Director, One Person Company, Related Party, Serious Fraud Investigation Office, Small Company, Unlimited Company, etc.
- The concept of the One-Person Company has been introduced.
- Every Annual Return shall contain additional information like particulars of its holding, subsidiary and associate companies, matters related to certification of compliances, disclosures for remuneration of directors and key managerial personnel, etc.
- The name of the National Advisory Committee on Accounting Standards has been changed to National Financial Reporting Authority.
- Along with financial statements, the consolidated financial statements of all subsidiaries and the company will be prepared and shall also be laid before Annual General Meetings.
- Every company with a net worth of Rs.500 crore or more, or turnover of Rs. 1,000 crore or more or a net profit Rs. 5 crore or more during any financial year shall constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Two percent of the average net profits of the last three years is to be mandatorily spent on CSR.

Cost auditing standards have been granted recognition for the first time under the new Act. This will provide a platform for CMAs to augment the quality of reporting that will benefit companies and ultimately the profession. New professional opportunities will be available to CMAs, not only in cost-related areas, but areas like internal audit, etc., where they can contribute enormously. For example, Section 138 of Companies Act, 2013 specifically requires prescribed classes of companies to conduct internal audits for their operations. In this case, the qualification of the internal auditor has been left open. CMAs have to play an important role to cater to the expectations of the stakeholders.

This issue has a quite a good number of relevant articles and interviews of eminent personalities on the newly introduced and much awaited 'Companies Act 2013'. A new section, 'Letters to the Editor' that started from the last few issues, continues. We look forward to feedback from our readers on the articles and overall development of the journal under this section. Please send your mails at editor@icmai.in. We thank all contributors for this important issue and hope our readers enjoy reading the articles.

SMEs need CMAs to devise business models to avoid problems in the future

CMA Suresh Chandra Mohanty
President, The Institute of Cost Accountants of India

Many people might say that your duty is morally wrong, according to their moral standards. Still that's your duty, remember. It's the action that keeps your mind pure - beyond likes and dislikes and other pairs of opposites. So don't give it up. – Bhagwad Gita

THE Indian market is growing and Indian industry is making progress in various sectors like Manufacturing, Precision Engineering, Food Processing, Pharmaceuticals, Textile & Garments, Retail, IT, Agro and Service sectors. SMEs are finding increasing opportunities to enhance their business activities in core sectors and playing a vital role for the growth of Indian economy by contributing significantly to the industrial output, exports and employment. As a result, SMEs are today exposed to greater opportunities for expansion and diversification across the sectors. On the other hand, the country is facing a lack of entrepreneurship talent these days. Only a small section of aspiring entrepreneurs of the country, who plan to start businesses, have access to formal or informal training to start a business. We CMAs have an opportunity to play a significant role in developing these skills in our countrymen especially in prospective entrepreneurs. In my view, any improvement in the situation will require joint efforts by policymakers, professionals and experts from the entrepreneurial community.

Some SMEs start their business in a proprietary form. This form of business has smallest compliance cost but it is riskier than any other form of business. A new format of business is the One Person Company created under the Companies Act, 2013. In this form of business entity, only one member is required to form one person company and avail the benefit of limited liability just like any other private limited company. The Limited Liability Partnership (LLP) firm is another form of business in which a partnership firm avails benefit of limited liability and has a partnership structure. The Private Limited Company helps SMEs to have a separate entity. As professionals, we need to devise a model of business for the SMEs to start with and also ascertain the cost associated with it so that the SMEs do not face any problem in future. We have to make them understand the pros and cons of every form of the business and advise them about the format best suited to their business.

CMAs should also advise SMEs on the improvement in performance, optimization of cost and minimization of wastages to help in improving the business environment of the country and promote more SMEs.

I had the opportunity to review the progress of construction work at the Navi Mumbai Center of Excellence and address the participants in the Valedictory session of the Seminar on Service Tax organized by the WIRC and reviewed the progress of renovation work of WIRC premises.

I also attended the 8th meeting of the Governing Council of National Foundation for Corporate Governance (NFCG) on 17th October 2013 at Mumbai under the Chairmanship of Hon'ble Minister(S) Ministry of Corporate Affairs.

I had the opportunity to inaugurate a one-day seminar on 'Internal Audit' jointly organized by SIRC of ICAI & IIA – Madras Chapter along with CMA M. Gopalakrishnan, CCM & Past President and CMA P. Raju Iyer, Chairman, SIRC and representatives IIA at Chennai on 19th October 2013.

I had the opportunity to attend the Students' Meet organized by SIRC on 19th October 2013 and address their different queries. I also visited M.O.P. Vaishnav College, Nungambakkam, Chennai and interacted with Dr. Mrs. Nirmala Prasad, Principal and HOD – Commerce and students. I had the opportunity to attend the valedictory session of the 'Certificate Course on Concurrent Audit of Banks' organized by the Committee on Internal Audit Standard Board of ICAI.

I had the opportunity to interact with representatives of CAT ROCCs and CMA Support Centres of Tamil Nadu and discussed about the Skill Development Initiatives of the Institute in Tamil Nadu with the support of the State Government. CMA M. Gopalakrishnan, CCM & Past President, CMA Amit A. Apte, CCM and CMA P. Raju Iyer, Chairman, SIRC also attended in the programme.

I attended the third Managing Committee meeting of ASSOCHAM on 25th October 2013 at New Delhi. The SME Excellence award jointly instituted by the Institute and ASSOCHAM will be presented in the Seminar on SME-The growth Drivers of the Economy to be organized on 6th December 2013 at New Delhi.

To apprise all the members of the activities / initiatives undertaken by the Departments/ Directorates of the Institute, I now present a brief summary of the activities.

Professional Development Directorate – Certificate in e-IFRS Course

The Institute under the aegis of ICWAI-MARF is running an e-learning IFRS course. The course is available for members and students of the Institute and other professionals. The course fee per learner is Rs. 5,000/- plus service tax. e-learning course is for 100+ hours, which can be accessed by learner for one year (365 days) from the date of registration of the course or 300 hours of e-Learning access whichever ends earlier. ICWAI-MARF has decided to award a certificate to learners after completion of this course after passing on-line Test conducted by an Independent Agency. The learners may check the detail in this respect from the Institute website.

Technical Directorate

I am happy to inform all the members that the Cost Accounting Standard on Research and Development Costs (CAS 18) has been approved by the council and the same is available on the Institute's website. In order to understand the practices of the neighboring countries on development of Cost Accounting Standards and to create awareness of Cost Accounting Standards developed by the Institute amongst the SAFA Countries, the Council of the Institute has approved seeking nominations to Cost Accounting Standards Board (CASB) as invitees from Sri Lanka, Pakistan and Bangladesh.

CPD Programmes Directorate

In view of the overwhelming response to the Institute's initiative for Capacity Building of CMA Professionals, interested CMAs are given opportunity to participate in the Webinar to share their expertise. The series of webinars on 'Cost Audit in Electricity Generation', 'Contemporary Issues in Indian Banking' and 'Companies Act 2013-Overview, New concepts and Role of Independent Directors' were well received by the members at large. The details may be viewed at the Institute's website.

The Institute joined with Institute of Directors as an 'Associate Partner' for the 13th International Conference on 'Corporate Governance & Sustainability' at London and also joined with Confederation of Indian Industry as an 'Institutional Partner & Documentation Sponsor' for the Conference on Dispute resolution at New Delhi.

I am proud to inform that during the month, our Regional Councils and Chapters actively organized many programmes, seminars and discussions for the members on the relevant subject matter such as on Companies Act 2013 and Draft Rules, Power Sector - A look at issues and challenges and role of CMAs, Transfer Pricing Prospective in Cost Management, Indirect Taxation, Recent Trends in Financial Management, Contracts and their Management and so on.

ICWAI MARF Programmes

• The fourth batch of IRAS International Training Programme for Ministry of Railways has been organized for the senior IRAS officers at New Delhi, London and Paris.

• The International Programme on 'Advanced Financial Management' was organized from 25th September, 2013 to 7th October, 2013 in New Delhi, London and Paris.

• A programme has been organized for NBCC on 'RISK MANAGEMENT' on 27th September,2013 at NBCC Bhawan, New Delhi.

• A programme was organized for DMDE Indian Navy, Hyderabad on 'Strategic Cost Analysis' from 27th to 28th September, 2013 in Hyderabad.

Meeting with auditors

A meeting of the Statutory Auditors of the HQ, Regional Councils, Internal Auditors of the HQ, Senior Officials of the Finance & Accountants Dept. of the Institute and Regional Councils was held on October 23, 2013 at Kolkata for the first time in the presence of Vice-President, CMA T.C.A. Srinivasa Prasad and CMA D.L.S. Shresti, Council Members. The requirements of ACT/Regulations and the modus operandi for compilation and audit of quarterly, half yearly and consolidation of Annual Accounts along with the time schedule was decided.

Membership Department

The membership fee for the year 2013-14 was due on 1st April 2013. Even after several reminders, many members are yet to make the payment of their membership fee within the last date for payment, that was 30th September 2013. A list containing the names of such members has been hosted under 'Updates for Members' on the Institute website for their information and necessary payment within the allowed time limit. I take this opportunity to request the members to please make the payment of their membership fees for 2013-14 immediately so as to avoid removal of their names from the Register of Members.

> THE COUNTRY IS FACING A LACK OF ENTREPRENEURSHIP TALENT THESE DAYS. ONLY A SMALL SECTION OF ASPIRING ENTREPRENEURS OF THE COUNTRY, WHO PLAN TO START BUSINESSES, HAVE ACCESS TO FORMAL OR INFORMAL TRAINING TO START A BUSINESS. WE CMAs HAVE AN OPPORTUNITY TO PLAY A SIGNIFICANT ROLE IN DEVELOPING THESE SKILLS IN OUR COUNTRYMEN ESPECIALLY IN PROSPECTIVE ENTREPRENEURS

Advanced Studies Department

The 6th meeting of the Board of Advanced Studies was held on the 4th October 2013 at Hyderabad. Board has approved introducing a Diploma courses in Business Valuation and Information System and the same will be launched by the Advanced Studies Department.

International affairs

I am happy to inform that the Institute is getting visibility in the international arena and its representation at the International Events is increasing day by day.

• The undersigned along with CMA Rakesh Singh, IPP, CMA Dr P.V.S.Jaganmohan Rao and CMA Sanjay Gupta, Council colleagues attended SAFA Board, Committee meetings and International Seminar organized by ICMAB, Bangaladesh during 10-11 October 2013 at Dhaka.

• United Nations Conference on Trade and Development (UNCTAD) is organizing an event to celebrate the thirtieth session of Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) at Geneva, Switzerland during 6-8 November 2013. I am happy to inform that the Institute will be properly represented in the event.

• The AGM of International Valuation Standards Council (IVSC) is being held at Tokyo, Japan during 8-9 November 2013. Institute, being an Institutional member of the IVSC, will be suitably represented during the event.

• The annual Board Meeting of IFAC is going to be held during 12-14 November 2013 at Seoul, Korea. The Institute will be suitably represented at Seoul meeting.

Examination Directorate

The Examination Directorate is engaged in the pre examination work for December 2013 term where the 2008 syllabus as well as 2012 syllabus examinations will be conducted. The Foundation Examination for the term December 2013 will be conducted through on-line mode on 28-12-2013 for 2008 syllabus and on 29-12-2013 for 2012 syllabus. To familiarize the students with the on line examination, a Mock Test has been uploaded in the Institute's Website on 30-10-2013. The Foundation Examination on on-line mode will be conducted four times in a year.

National Award for Excellence in Cost Management

The process for the 11th National Award for Excellence in Cost Management has been started based on two questionnaires. The preliminary questionnaire has been sent to the companies with the last date for the response on 18th November, 2013. The Final questionnaire will be dispatched to short listed Corporates during November, 2013.

I wish all the members and their family on the occasion of Kali Puja, Diwali, Bhai Duj, Kartik Purnima and Guru Nanak's Birthday.

With warm regards,

(CMA Suresh Chandra Mohanty)
1st November 2013

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PAPERS INVITED

Cover stories on the topics given below are invited for *The Management Accountant* for the forthcoming months of December 2013, January 2014, February 2014, and March 2014

Issue months	Themes	Subtopics
December 2013	Financial stability of Panchayati Raj Institutions (PRIs)	• Resource Mobilization by PRIs • Fiscal Accountability • Auditing of PRI Accounts • Benchmarking tools for PRIs • Challenges before the Finance Commission • Cost Management tools in PRIs
January 2014	Strategic Cost Management in Banking and Insurance	• Management of Risk • Mechanism of Corporate Debt Restructuring • NPA management • Cost Competitiveness • Strategic cost management as a driver of Efficiency and Profitability • Public vs. Private sector
February 2014	Economics of the Power Sector	• Microeconomics of power sector • Cost viability • Tariff mechanism • Subsidy mechanism • Funding of power infrastructure • PPP Model
March 2014	Strategic Cost Management in Transport and Logistics	• Ownership of Infrastructure • Freight transport and containerization • Multimodal transport operation • Cost efficiency • Transport costing • Transport economics and forecasting • PPP Model

The above subtopics are only suggestive and hence the articles may not be limited to them only.
Articles on the above topics are invited from readers and authors along with scanned copies of their recent passport-size photograph and scanned copy of declaration stating that the articles are their own original and have not been considered for publication anywhere else. Please send your articles by e-mail to editor@icmai.in by the 1st of the previous month.

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LETTERS TO THE EDITOR

Kudos to the Management Accountant of ICAI-CMA. It is my great pleasure to go through *The Management Accountant* within the eighth of every month and it is indeed a pleasure both in terms of quality of printing and paper. To bring about improvement is a continuous process and we must not be self-complacent at any time. *The Management Accountant* is the mirror of the Institute and we must not compromise with regard to quality of articles and printing. I congratulate the whole editorial team for taking the journal to such commendable heights of excellence. However I have the following suggestions:

1. *The Management Accountant* should be posted on the website on the first day of every month.
2. More researched articles in the fields of corporate finance, auditing, cost and management accounting, financial reporting, cost and management audit, strategic management, and case studies on various industries should get a room in the journal. *The Management Accountant* hardly publishes any article on financial reporting and information systems control and audit.
3. Publishing the names of candidates with prefix "Mr/Mrs" on admission to Associateship and advancement to Fellowship should be discontinued and the same should be prefixed with 'CMA' and be published as usual.

CMA Dr D. Mukhopadhyay
Jammu & Kashmir

It is very encouraging to see the huge qualitative jump in the design and layout of the journal.

It is nice and enlightening to read articles based on topics mainly related to our profession. However, I would also like to request the Editorial Board to publish articles which are of common interest and are of immense relevance today like articles on the international and national economy, the prolonged economic slump, the challenges before capitalism and so on which I think will help to broaden our knowledge base.

CMA Sankar Majumdar
Guwahati

Attention Members: Payment of membership dues

Members, please note that Regulations 7(6) & 7(7) of the Cost and Works Accountants Regulations, 1959 read:

Regulation 7(6) – For non-payment of annual membership fee within six months from the date on which it becomes due, the name of the defaulting member shall be removed from the Register of Members with a prior notice to the defaulting member clearly stipulating therein that his name will be removed from the Register of Members if he does not pay the fee within forty-five days of the receipt of that notice.

Regulation 7(7) – On removal of the name of a member under clause (6), he shall not be entitled to use the descriptive letters 'ACMA' or 'FCMA' as the case may be.

Members are therefore, requested to make payment of their membership fee for FY 2013-14 immediately.

ICAI-CMA SNAPSHOTS

1. CMA S.C. Mohanty, President of the Institute delivering a special address during the inaugural session of 10th International Tax Conference organized in partnership with Assocham in New Delhi on 21st to 22nd October, 2013.

2. Release of 10th International Conference Souvenir at the International tax conference. From L-R Shri M.Lakshminarayanan, Chairman, Assocham National Council on International Taxes, Shri D.S. Rawat, Secretary General, Assocham, Dr.Parthasarathi Shome, Adviser to Finance Minister and CMA S.C.Mohanty, President of the Institute.

3. National seminar on Service Tax, jointly organized by the Institute and Assocham in New Delhi on 18th July 2013. From L-R, Shri J K Mittal, Shri Ravindran Pranatharthy, Nihal Kothari, Prashant Deshpande, and Santosh Dalvi.

4. 15th Meeting of Quality Review Board (QRB) in Kolkata office on 23rd October 2013. Seen L-R : CMA V Kalyanaraman, CMA Kunal Banerjee, Members QRB, CMA R S Sharma, Chairman QRB, CMA A S Bagchi, Secretary QRB, Dr. Navrang Saini, Ms Nandana Munshi, Members QRB.

5. CMA S C Mohanty, the President of the Institute welcoming Shri Paul Druckman, CEO of the International Integrated Reporting Council (IIRC) at the summit. Others seen in the photo are CMA Sanjay Gupta, Council Member and Shri Shikhar Jain, Principal Counselor, CII-ITC Centre of Excellence for Sustainable Development.

ICAI-CMA SNAPSHOTS

6. CMA S C Mohanty, President of the Institute along with the SAFA delegates at the 28th SAFA Board meeting

7. CMA S C Mohanty, the President of the Institute addressing the gathering during a visit to SIRC, along with CMA M Gopalakrishnan past president of the Institute, CMA P. Raju Iyer, Chairman of SIRC on the dais

8. A seminar on CARR organized by Guwahati Chapter and FINER. From L-R CMA S.S Sonthalia, Practicing Cost Accountant, CMA Rakesh Singh, Immediate Past President of the Institute, CMA Rana Bose, Chairman of Guwahati Chapter, Shri S. C. Das, IAS, Additional Chief Secretary, Govt. of Assam, Shri R. S. Joshi, Chairman, FINER, CMA TCA Srinivasa Prasad, Council Member & A. S. Hopingson, IRAS, FA & CAO/WTS, N. F. Railways.

9. President CMA S.C. Mohanty and Vice-President CMA Dr. A.S. Durga Prasad welcoming Mr. M.J. Joseph Additional Secretary, MCA during his visit to Delhi office of the Institute on 8th October 2013

ICAI-CMA SNAPSHOTS


10


11


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10. CMA S C Mohanty, the President of the Institute in a discussion with Dr. Nirmala Prasad, Principal, MOP Vaishnav College for Women

11. Opening of Renovated Library for the Members & Students by Hon'ble Member of Parliament Ms. Kanimozhi Karunanidhi along with CMA P. Raju Iyer, Chairman of SIRC and other staff, students of the region.

12. Chief guest, Shri M. J. Joseph, ICAS, Additional Secretary to Ministry of Corporate Affairs, CMA Dr. Durga Prasad, Vice President of the Institute, CMA M Gopalakrishnan Past President and Council Member, along with other Council Members and Regional Council Members lighting the lamp at the seminar on Corporate Governance and Companies Act, 2013 on 15th September, 2013 in Bangalore.

13. At the 8th Sustainability Solutions Summit in Delhi on 14th-15th October, 2013. From L-R, Shikhar Jain, Principal Counselor, CII-ITC Centre of Excellence for Sustainable Development, Rajiv Mishra, Managing Director, CLP India, Paul Druckman, CEO, The International Integrated Reporting Council (IIRC), Shankar Venkateswaran, Director, Sustainability & Climate Change, PricewaterhouseCoopers, CMA Sanjay Gupta, Council Member of the Institute and Nishikant Ingle, General Manager-Sustainability, Kirloskar Brothers Ltd.

14. Visit by Hon'ble Chief Minister, Govt. of West Bengal Smt Mamata Banerjee at the stall arranged by EIRC in MSME Synergy 2013 at Milan Mela, Kolkata, during 16th – 21st September, 2013

ICAI-CMA SNAPSHOTS

15. CMA Sanjay Gupta, Chairman of International affairs Committee of the Institute along with Chairman, Secretary and other officials of Jodhpur Chapter of Cost Accountants

16. Shri Venkaiah Naidu (MP) lighting the lamp at the inauguration of a symposium on Cost Audit for Inclusive Growth held by the Institute at Mumbai on 25th October 2013. Also seen in the picture Shri Pawan Kumarji Ruia, CMA Dhananjay Joshi, CMA Ashish Thatte, CMA Neeraj Joshi and CMA Vijay Joshi

17. Shri Pawan Kumarji Ruia, Chairman, Ruia Group lighting the lamp at the inauguration of the symposium on Cost Audit for Inclusive Growth held by WIRC at Mumbai on 25th October 2013. Also seen in the picture Shri Venkaiah Naidu MP, CMA Dhananjay Joshi, CMA Ashish Thatte, CMA Neeraj Joshi and CMA Vijay Joshi

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

सत्यमेव जयते

DEAR CORPORATES,

TO AVOID LAST MINUTE RUSH AND SYSTEM CONGESTION IN MCA21 TOWARDS END OF OCTOBER AND NOVEMBER 2013, EXPEDITE FILING OF BALANCE SHEET AND ANNUAL RETURN WITHOUT WAITING FOR THE LAST DAYS OF THE MONTHS.

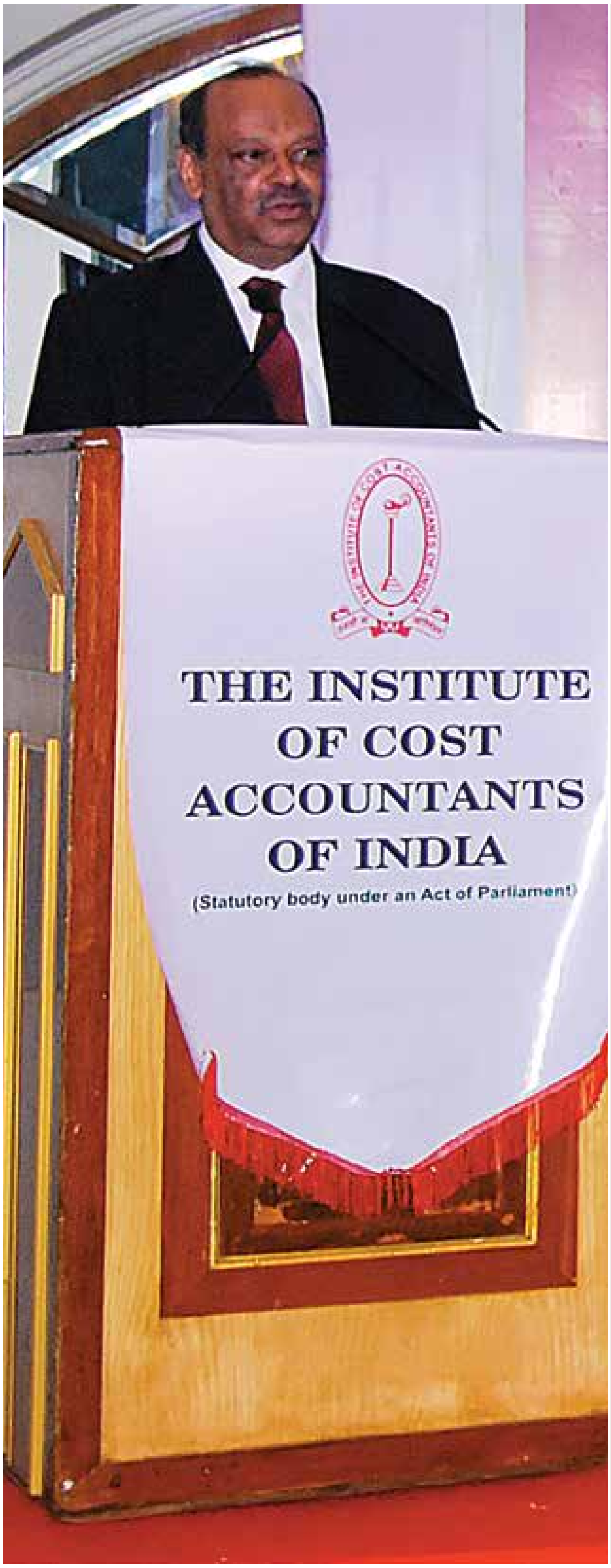
DURING OCTOBER AND NOVEMBER 2013 CORPORATE SEVA KENDRA / HELP DESKS (Ph. No. 0124-4832500) WOULD GIVE PRIORITY IN EFILING/ ANSWERING QUERIES OF COMPANIES FOR FILING BALANCE SHEET AND ANNUAL RETURN.

KINDLY PLAN YOUR FILING ACCORDINGLY.

MCA: Corporate Growth with Enlightened Regulation

"…The profession of Cost Accountancy is without doubt one of the most valuable contributions to the cause of industrial development made by modern methods of training… Cost Accountant is a friend, philosopher and guide of the management…"

– Shri Morarji Desai, former Prime Minister of India, Chief Guest, Convocation at Calcutta, 13 January 1958



'NEW PROFESSI

Interview of Shri M J Joseph, ICAS

MA We understand that one of the key concepts of the new Companies Act, 2013 is aimed at integrated governance. Can you enlighten us on that aspect and the role of professionals?

The focus of the Companies Act, 2013 is on promoting integrated and inclusive governance in corporates by providing a modern legal framework that is on par with those in developed nations. In the new scenario, professionals have a very important role to play, and their areas of responsibility have been widened to cover areas like financial audit, cost audit, secretarial audit, as experts, key managerial persons, etc. Also, checks and balances have been introduced to hold professionals accountable and responsible. They will play a key role in providing greater transparency of the business environment which would contribute to enhancing the trust of stakeholders in the company's management. I am sure that the three professional institutes will provide guidance to their members to meet the challenges ahead.

MA It is said the new provisions of domestic and cross-border mergers and acquisitions will ease the foreign investment climate in the country. Can you throw some light on this?

In the Companies Act, 2013, both in-bound and out-bound cross border mergers and acquisitions are allowed, between Indian and foreign companies, subject to RBI approval. This change is expected to have far-reaching impact on cross-border transactions, and facilitate development of corporate strategies on a global scale. This provision will allow Indian companies to internationalise their business for raising funds through listing or otherwise. Multi-nationals may also use it to invest more in India, or to consolidate their businesses in India.

MA The National Financial Reporting Authority

ONAL OPPORTUNITIES FOR CMAs'

, Additional Secretary to the Ministry of Corporate Affairs on the new Companies Act 2013

(NACAS) under the Companies Act substantially expands the role, which was played by NACAS under the earlier Act. In your view, in what manner has the breadth and depth of the scope expanded?

The National Financial Reporting Authority (NFRA) will replace the National Advisory Committee on Accounting Standards (NACAS), that acts as an advisor to the government on accounting policies and standards. Unlike NACAS, it will not merely be an advisory body but a regulatory authority for promoting and strengthening auditing, accounting and financial reporting. The role of the Authority has been extended to advice on matters related to Auditing Standards in addition to Accounting Standards, and also to act as a regulatory body for the accountancy profession. Compared to NACAS, NFRA will have powers to deal with professional misconduct. In addition to monitoring and ensuring compliance of accounting and auditing standards, NFRA will also oversee the quality of service of professionals and suggest measures required for further improvement. NFRA can also act suo moto or on a reference made to it by the Central government.

MA What is your message to cost and management accounting professionals on the cost audit and assurance mechanism as spelt out in the new Companies Act, 2013?

Cost auditing standards have been granted recognition for the first time under the Companies Act, 2013. This will provide a platform to CMAs to augment the quality of reporting that will benefit companies and ultimately the profession. New professional opportunities will be available to CMAs, not only in cost-related areas, but areas like internal audit, as experts etc. where they can contribute enormously. CMAs have to play an important role to cater to the expectations of stakeholders. I am sure that the Institute of Cost Accountants of India will provide necessary guidance to its members in further advancements to the profession.

MA How are the interests of minority shareholders protected in the new Companies Act?

The Companies Act, 2013 has effective provisions to protect the interests of minority shareholders. The Act has introduced the concept of a Director of the Board elected by small shareholders. As per Section 151, a listed company may have one Director representing small shareholders. Also, there are provisions for easy exit by small shareholders and class action suit. Now, small shareholders would be able to seek damages from the company and its Directors in default for any fraudulent, wrongful and unlawful act. Shareholders will also be able to seek damages from auditors and audit firms in case of mis-statement of facts or any other unlawful act. These steps will increase the confidence of small shareholders in business that their interests are protected.

MA It is said that the internal audit and control mechanism is veering towards evaluation of risk management and mitigation in an entity. In your view, in what way does the mandate for internal audit as provided in the Companies Act can be strengthened through suitable rules?

The Companies Act, 2013 provides for appointment of an internal auditor to conduct internal audit of the functions and activities of the company. Rules will prescribe such class or classes of companies. Draft rules for this purpose have already been exposed to the public for comments. The endeavour will be towards framing appropriate rules for implementing the legislative intent. MA

COMPANIES ACT 2013

ROLES AND RESPONSIBILITIES OF INDEPENDENT DIRECTORS

The body of knowledge of the management accounting professions makes CMAs uniquely capable of providing inputs in the areas of risk management and performance management. Their support to the Board will be inevitable and experienced CMAs are best placed to occupy the position of independent directors

CMA Prof. Asish K Bhattacharyya
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THE responsibility of the board of directors of a company (Board) is to provide direction to the company and oversee the executive management. It is now well accepted that the effectiveness of the Board depends on the effectiveness of independent directors, who bring diversity in the Board's composition in terms of knowledge and experience and also brings independent views and objectivity in Board deliberations. The primary responsibility of independent directors is to protect minority interest[1]. In family-managed businesses they play the role of friend, philosopher and guide. This role often assumes primacy over their oversight function.

The institution of independent directors emerged in India with the introduction of the Corporate Governance Code on 2002 by SEBI. How the independent directors performed during this period? The general perception is that they have not delivered as per expectations of shareholders and regulators. One of the reasons is that we expect too much from independent directors without appreciating the practical difficulties that they face in discharging their duties. The second reason is that we suspect the independence of independent directors because, de facto, in companies that have concentrated shareholding, the controlling shareholder group appoints them. The role of independent directors comes under scrutiny whenever a company fails or a management fraud comes to light. With hindsight we assess the performance of independent directors in failed companies or whenever a corporate fraud is detected and often come to the conclusion that independent directors had failed in their duty to protect minority shareholders. The government has endeavoured to address these concerns by incorporating new provisions in the Companies Act 2013[2] to enhance the accountability of key management personnel, independent directors and auditors.

The Act stipulates that an independent director is accountable for an omission or commission by the company if he/she had knowledge of that omission or commission through the board process or he/she had connived with the management and is a party to that omission or commission or the same has occurred because he/she had failed to act diligently. The Act also includes a Code For Independent Directors that explains the roles and duties of independent directors. Section 166 of the Act has delineated the duties of the directors. According to section 166 (7), if a director contravenes the provisions of section166, he/she shall be punishable with fine, which shall not be less than one lakh rupees but which may extend to five lakh rupees. These provisions are expected to bring clarity on the role and responsibilities of independent directors and will induce them to act diligently. These will also enforce accountability of independent directors.

One of the duties is that the director shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment. Roles and function as presented in The Code For Independent Directors, include safeguarding the interests of all stakeholders, particularly the minority shareholders, balancing the conflicting interest of the stakeholders, and moderating and arbitrating in the interest of the company as a whole, in situations of conflict between management and shareholder's interest. When we read the provisions in section 166 and the roles and functions of independent directors described in the Code, it appears that the fiduciary responsibilities of the Board has been expanded to employees and the community. Although, by using the words 'particularly the minority shareholders', the Act maintains the primacy of shareholders, this is a departure from the conventional position. Across the globe courts recognise the fiduciary relationship between the Board and shareholders. They are very reluctant to extend it even to debt holders even when the company is in distress. We are not sure whether the intention of the Act is to depart from this conventional position. In certain situations, directors, particularly, independent directors might find it very difficult to discharge the duty. In absence of clarification, independent directors will remain confused whether 'employees' include contract employees and employees

[1]In this article the term 'minority shareholders' is used to refer to 'non-controlling shareholders'.

[2]The Companies Act 2013 will be referred as the Act in this article.

It is clear that the responsibility of independent directors cannot stop at performance evaluation… It is expected that independent directors shall seriously review the strategy.

who are outsourced through a third party. If, 'employee' includes contract employees, the responsibility of independent directors shall not be limited to ensuring that their rights under the contracts and laws are protected. Balancing the conflicting interest of shareholders and contract employees will require application of the principles of equity and ethics. Similarly, the Act does not provide a clarification on what is the boundary of the community to which the directors are accountable. Section 135 of the Act, which deals with CSR, stipulates that a company covered by the provisions of the section "shall give preference to the local area and areas around it where it operates". Therefore, it may not be incorrect to assume that the term 'community' in the section 166 is used to mean the 'local community'.

One of the duties mentioned in the Code of Conduct for independent directors is:
"Where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting."

Usually Board strive to arrive at consensus on issues placed before it. Often, independent directors and other board members accept a decision even if all of their concerns are not resolved. They record the dissent only in rare situations when the concerns are so serious that they do not want to be a party to the decision. It appears that the Act does not intend to change this convention. However, it is important for independent directors to insist for recording, in the minutes, the rationale for a decision and the issues that were flagged and discussed, to put on record that the Board had acted diligently. In absence of the same, independent directors might face prosecution if a decision is challenged in the court. Every independent director should read the draft minutes diligently to ensure that the proceedings are recorded properly.

The Code for Independent directors states:
"The independent directors shall help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct."

The Code requires independent directors to provide significant inputs in formulation and execution of the corporate and other strategies, evaluating performance, managing risks, financing and allocating resources, appointing and setting ethical standards. The debate on the extent of involvement of independent directors in strategy formulation and execution is yet unsettled. However, it is clear that the responsibility of independent directors cannot stop at performance evaluation. At present, the executive management formulates strategies and explains independent directors about those strategies in an annual strategy retreat. But, in future that might not be adequate. It is expected that independent directors shall seriously review the strategy. This will require a clear understanding of the internal and external environment of the business. Independent directors should impress upon the executive management to arrange training to enable them to keep themselves updated on the changes occurring in the internal and external environments. Other responsibilities are also no less onerous. Independent directors must build their capabilities to carry out their responsibilities effectively.

The Code for independent directors requires separate meeting of independent directors, at least once in a year. The Code stipulates:
"The meeting shall:
(a) Review the performance of non-independent directors and the Board as a whole;
(b) Review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
(c) Assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties."

Separate meeting of independent directors is emerging as an important component of the corporate governance mechanism. Usually, one of the independent directors, who is designated as the lead independent director, chairs separate meetings of independent directors. The lead independent director plays an important role in communicating independent directors' concerns with the chairperson and CEO and in resolving conflicts between different stakeholder groups. The Act does not provide for the appointment of a lead independent director. However, the practice will evolve with the introduction of the concept of separate meeting of independent directors. The practice of formal and structured evaluation of the chairperson, Board, committees and individual directors, which is evolving in advanced economies, has been introduced for the first time in India. The concept is new and its effective implementation might take time.

The Companies Act 2013 has introduced number of best corporate governance practices that are evolving in advanced economies. It will serve the purpose of building confidence of foreign investors in the governance of Indian companies. However, it might not serve the objective of improving the average corporate governance standard in India immediately. The Act has focused on the monitoring role of independent directors. However, independent directors must remember that even through their advisory role they protect minority interest. Therefore, they should not over-emphasise the monitoring role, which might lead to antagonistic relationship with the executive management. Such a relationship will harm minority shareholders, rather than benefitting them.

Companies in which there is concentration of share-ownership dominate the Indian corporate sector. Most companies are managed by the dominating shareholder group. It appoints its nominees as directors. This situation is unlikely to change in the near future. Therefore, most of the corporate governance practices will remain on paper except in enlightened companies, which are few in number. It is too much to expect that the independent directors in a family-controlled business would objectively evaluate the performance of chairman and CEO, who is usually a family member. Promoter-mangers will prefer to appoint independent directors who will bring independent judgement in boardroom deliberations, but will not taking the monitoring role too seriously.

Although, the Act will create awareness of and will facilitate understanding global best practices, it is unlikely to bring radical changes in corporate culture and practices. However, with increased accountability of key management personnel, independent directors and auditors, incidence of corporate frauds might come down. If that happens, it in itself will be a great achievement.

The body of knowledge of the management accounting professions makes CMAs uniquely capable of providing inputs in the areas of risk management and performance management. Their support to the Board will be inevitable. Experienced CMAs are best placed to occupy the position of independent directors. The Act has opened up new opportunities for CMAs. CMAs should take advantage of them. MA

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CORPORATE GOVERNANCE IN THE CHANGED ENVIRONMENT

The present Act is a condensed and well thought-out version. It is a complex document that will affect practically every aspect of how a company is set up and operated

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THE Companies Act, 1956, after remaining in operation for about fifty-five years, has been replaced by the Companies Act, 2013. The Bill was welcomed by corporate managers, captains of industry and professional bodies. According to the President, FICCI, "this legislation is indeed a milestone in the history of company law and will revolutionize the administration and management of business in the times to come". There is no doubt that this historic legislation was long over-due. Why? Firstly, with the opening up of the economy mainly in 1991, it was imperative to revamp the existing Companies Act to make it in tune with the global environment to enhance the competitive advantage of the corporate enterprises in both public and private sectors. Secondly, making ad hoc changes by means of Ordinances from time to time served little purpose since whole lot of things were required to be updated and made internationally competitive. Thirdly, because of some corporate scams in India in recent decades, it was necessary to introduce stringent provisions in the corporate legislation for surveillance and control. In the US, after several scams during 2001-2002 (e.g. Xerox, Enron and WorldCom), the US Congress very quickly legislated Sarbanese and Oxley Act in 2002 for good governance and protection of investors' interest by strengthening the internal control system and improving the ethical behaviour of the management and others. For the first time in corporate history, the Act introduced multi-tier external control and oversight. It is expected that India was to follow suit. Economically, in 2020, India is predicted to be the third largest economy in the world after China and the US but ahead of Japan ((IMF: ET, 17.4.13, p.1). The ongoing shift of economic power from North America and Western Europe to China and India will have implications for global consumption, investment and environment. Corporate sector, one of the engines of growth in the economy, should also contribute its mite to the growth of the economy. Good governance of the companies and enhanced transparency, accountability and responsibility are since qua non in this context. Lastly, now India has the second largest accounting profession in the world, after that of the US but before the UK and Australia. The convergence of Indian Accounting Standards to International Financial Reporting Standards, which has been pending, requires some changes in the prevailing Companies Act to make convergence a reality. From all these counts, the new legislation is certainly a step in the right direction and will facilitate better governance of the corporate sector. Accordingly, the main objective of this paper is to deal very briefly with corporate governance in the changed environment and focus on the agenda ahead.

Condensed but broad-based

The present Act is a condensed and well thought-out version having 470 sections against 658 sections in the Act of 1956 (numerically 27% reduction in volume). It is a complex document that will affect practically every aspect how a company is set up and operated[1]. It contains many innovative aspects viz. introduction of small companies and one-person company, simplification of procedure for mergers and acquisitions, the new norms of independent directors as well as the heightened liability of independent directors, rotation of auditors, introduction of certain new disqualification clauses for auditors, putting bar on the maximum number of audits for an auditor, introducing electronic form in accounting and reporting, legal recognition of the Corporate Social Responsibility Reporting and prescribing a minimum amount to be spent, constituting National Company Law and Appellate Tribunals, making auditing standards mandatory, introducing secretarial standards, introducing Key Managerial Personnel and including whole-time directors as part of 'key managerial personnel', power for reopening books of account and recasting of financial statements under certain circumstances, introducing National Financial Reporting Agency (NFRA), power to audit the auditors, to mention a few among the important aspects of the Act.

Corporate Governance in the changed environment

(a) A brief conceptual underpinning

In the corporate world, corporate governance should receive the top priority given the magnitude, complexity and urgency of the challenges it faces. Corporate governance refers to a system of structuring, operation, and controlling a company to achieve the long-term strategic goals for satisfying its stakeholders. Chief among its goals are improving shareholder value and supporting a continuing commitment to growth. Adherence to the basic principles of management and accounting and finance, and compliance with the provisions of the Companies Act, in all aspects of management, and those of the SEBI guidelines are all aimed at good governance. When the adjective 'good' is used before the noun 'governance', it refers to quality, satisfactory and adequate governance for the welfare of "one and all". The desirable attributes are therefore fairness, transparency, accountability and responsibility.

Even Chanakay's *Arthashrastha*, written more than 2,000 years ago, deals systematically with the subject of effective governance. It says[2]:

The root of wealth is economic activity and lack of it brings material distress. In the absence of fruitful activity, both current prosperity and future growth are in danger of destruction.

The importance of corporate governance can hardly be over-emphasized. As recent corporate scandals have shown[3], and the current financial crisis reminds us, the efficacy of corporate decision making and our regularity systems directly affect our well-being. Sound corporate governance not only pays by adding value for all the stakeholders of the company but also, even more importantly, it is the right thing to do – for investors, other stakeholders and society at large. From this perspective, good corporate governance is also a moral imperative.

(b) Some important issues concerning corporate governance

There are many issues concerning corporate governance[4]. The success of corporate governance depends on how effectively we can deal with them. They have global appeal because in industrialized western countries, corporate governance is taken as a critical success factor for industrial growth. We briefly make a brief discussion on the following only for the sake of constraint of volume.

- Optimum board size
- Director independence
- Greater and more effective use of board committees
- Corporate governance report

Optimum board size: There has been much debate in recent years about the size of the board. Generally, smaller boards enjoy a number of operational advantages viz. easier to convene, requiring less effort to lead, and often a more relaxed and informal culture within the board. Smaller boards may therefore tend to be more effective. In reality, however, board size is influenced, within the legal parameter, by the skills required to perform, complexity of structures, extent of global interests or multinational operations, to mention a few. Today, the average Standard and Poor's 500 board has 11 directors compared to 18 directors about 28 years ago. But it is unlikely to shrink further as a result of new rules and proposals that require that the audit, nomination and compensation committees of boards in listed public sector companies be composed of independent directors only, in some cases, with specialized expertise (e.g. audit committee).

Director independence: In the U.S., the Sarbanese-Oxley Act of 2002, as well as the revised NYSE and NASDAQ listing Rules, as approved by the SEC, are all premised based on a hypothesis that director independence is essential to effective corporate governance. In the U.K., the Cadbury Commission's Report (The Code of Best Practice, 1990) recommended for having at least three non-executive directors on the board. In India, we also find reflection of such moves. Therefore, the proposition that boards should perform independently of management, through a thoughtful and diligent decision-making process, has been a major focus of corporate governance reforms in recent years.

The idea of an independent board is no doubt essential and very appealing the world over.

Director independence is generally construed as absence of any conflicts of interest through personal or professional ties with the company or its management. It aims at objectivity and a capacity to be impartial and

THE NEW LAW WILL ALLOW MERGER AND ACQUISITION BY AN INDIAN COMPANY WITH A FOREIGN COMPANY MAKING CROSS-BORDER MERGERS AND ACQUISITIONS EASIER

decisive and hence a strong fiduciary. Does this independence depend on only a sub-set of (outside) directors? Obviously the answer would be in the negative. In essence, it should depend on the independent behaviour of the board as a whole. The focus should be on promoting board independence as a behavioural norm, a psychological quality rather than compliance with legal or quasi-legal definitions of director independence.

Greater and more effective use of board committees: A greater and more effective use of various committees (some are mandatory and some are voluntary) also stands out as one of the key changes in board functioning over the last 50 years. Examples are the Audit Committee, the Nominating Committee, the Compensation (Remuneration) Committee, and many others like Shareholder Grievance Redressal Committee, Corporate Social Responsibility Committee, External Affairs Committee, Public Responsibilities Committee, etc. Provision for having several committees to perform can be looked from the point of view of division of work among the directors as part of basic management principles. Also, this facilitates respective board members to develop specialized knowledge on specific issues and ultimately to ensure effective corporate governance.

Corporate governance report: As we mentioned earlier, the desirable attributes are fairness, transparency, accountability and responsibility. While no one disputes them, corporate governance is about much more than the accuracy of the profit and loss statement, cash flow statement and the balance sheet. Compliance is no doubt a means to an end. The numbers contained in these statements merely summarize and reflect the full array of decisions – from strategy to structure to process – that guide a company. Encouraging responsible, responsive governance rather than mere compliance should be overriding goal and the principal focus of change or reform. Truly speaking, effective boards must grasp the strategic challenges faced by their companies and the role they play in arresting management in seizing competitive opportunities. In smaller companies, it is also the role of the board to alert management to opportunities for growth, assisting in raising capital from the right source at the right cost and also provide a direction to the management on issues of strategy, asset redeployment, and fiscal and legal matters. Although there is no critical shortage of qualified directors at this time, is it unreasonable to ask whether the new regulatory environment has made harder to attract the right talent to serve on board? It is therefore pertinent to raise some penetrating questions such as the following.

- Has the regulatory pendulum swung too far?
- Do more regulated boards produce greater value of the firm or vice versa?
- Could the additional regulatory burdens reduce business productivity and creativity, or even board assertiveness, especially in smaller companies?

Each of the above requires serious study for determining a direction in corporate governance practices. No doubt, they are country-specific but at the same time will have global appeal in view of importance of corporate governance.

(c) A brief overview of some recent legal changes

In the light of the above, some of the provisions of the Companies Act 2013 may be examined. It is common knowledge that for corporate governance, proper functioning of Board of Directors and Audit Committee, among others, is critical. There are provision for monitoring of composition of the Board, its functioning and also those of the Audit Committee.

The Act has defined Key Managerial Personnel which includes a whole-time director. Stock Option to independent directors as remuneration has been barred. Who are eligible to become independent directors has also been defined. The formation of the National Financial Reporting Agency (NFRA) (section 132), vesting it with all pervasive powers relating to scrutiny and compliance of accounting and auditing standards are examples of an additional oversight body being created. It will have wide powers including that of a civil court. NFRA has power to oversee quality of service of professionals and power to investigate and take actions. It can also debar an erring professional.

Regarding audit and auditors, many changes have been made to ensure independence of auditor and high quality of audit. Rotation of auditors (5 years for an individual and 10 years for a firm) is another example of creation of a new watchdog to look at the company's financials. The Act also permits shareholders to rotate an auditor partner and his team at such interval as may be considered by the shareholders. Audit Committee is to recommend the appointment of an auditor. In short, efforts have been made to strengthen both the internal and external control systems to ensure good governance.

The agenda ahead

The new law will allow merger and acquisition by an Indian company with a foreign company making cross-border mergers and acquisitions easier. Exercised strategically and judiciously, this may immensely benefit the economy. But other regulations such as FEMA and IT Act have to be in tune with this provision. Nevertheless, the Act poses a great challenge to the MCA in formulating Rules, understandably in consultation with the professional bodies and Associations of Industries, in respect of as many as 346 sections (74%) as against 108 Sections (16%) of the Companies Act, 1956. These Rules should provide clarity on the operative provisions in the Act. Secondly, the compliance of the various provisions of the Act is challenging and important. Corporates should have a positive attitude towards implementation. Law alone cannot do everything – it can provide a desirable working environment keeping in view the spirit of public welfare.

All said and done, changing the ethics of business behaviour and the "sociology" of the board room cannot be accomplished through structural changes alone. Instilling ethical behaviour and inculcating a value-creating orientation is fundamentally an internal process that can be successfully followed with support of management and directors. It requires openness to self-evaluation, a willingness to question individual and collective roles, to resolve to address issues of process, and a receptivity to change.

Changing the ethics of business behaviour and the "sociology" of the board room cannot be accomplished through structural changes alone. Instilling ethical behaviour and inculcating a value-creating orientation is fundamentally an internal process

In India, there are many good examples of corporate practices (such as providing depreciation), that influenced incorporation of suitable provisions in the Companies Act, 1956. Both CSR (in a modest form) and electronic accounting are being practised by many listed companies in India. They have now been given a legal shape. Research studies (based on Corporate Governance Index of 500 large companies for the period 2003-08; Indian Accounting Review, June, 2012) in India shows that there is a positive correlation between good performance and good governance and that good governance practices are rewarded by the market which provides an added incentive to companies to carry out governance reforms. It also gives an impetus to regulators as well to push for further reforms.

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NEW ACT MAY USHER IN A NEW ERA OF CORPORATE GOVERNANCE

The new Act seeks to usher in more transparency and governance in the corporate bodies besides creating the necessary environment for growth in the present global structure

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IF a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere." – Arthur Levitt (Former Chairperson: US Securities Exchange Commission)

Corporate or Enterprise governance as it may be aptly called is the buzzword in corporate, financial and regulatory circles all over the world. Corporate scandals, global competition, financial crisis and various domestic and international efforts have made corporate governance increasingly popular.

Corporate governance can also be termed as Enterprise governance because governance does not apply only to companies but it can be applied to other types of business organisations like partnership, limited liability partnership etc.

Corporate Governance is generally understood as the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations.

In a narrow sense, corporate governance involves a set of relationship amongst the company's management, its board of directors, shareholders and other stakeholders. These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.

In a broader sense, however, good corporate governance is the extent to which companies are run in an open and honest manner- is important for overall market confidence, the efficiency of international capital allocation, the renewal of countries' industrial bases, and ultimately the nations' overall wealth and welfare.

As a part of good Corporate Governance, companies need to understand and adopt an approach for conducting business that meets the needs of the enterprise and the stakeholders today while protecting, sustaining and enhancing the human and natural capital for the future.

In fact investors perceive corporate governance as a tool for extracting value for shareholders from underperforming and undervalued companies. Corporate governance can also be used to help restore investor

confidence in markets that have experienced financial crisis.

Why do we need Corporate / Enterprise Governance?

a) It lays down the framework for creating long-term trust between enterprises and the external providers of capital.

b) It improves strategic thinking at the top by inducting independent directors who bring a wealth of experience, and a host of new ideas.

c) It rationalizes the management and monitoring of risk that an enterprise faces globally.

d) It limits the liability of top management and directors, by carefully articulating the decision making process.

e) It has long term reputational effects among key stakeholders, both internally (employees) and externally (clients, communities, political/regulatory agents).

Corporate Governance in India

India has comprehensive laws governing corporate governance. The present Companies Act, 2013 which is in the process of replacing the 57 year old Companies Act of 1956 covers corporate governance widely through its various provisions such as inclusion of directors' responsibility statement in the directors' report under Section 217(2AA), constitution of audit committee under Section 292A, fixing maximum ceiling on remuneration that can be drawn by a director under Schedule XIII, and those relating to oppression, mismanagement, etc. Further, environmental and other pieces of legislation also protect different stakeholders' interest, ensuring, in the process, good corporate governance.

A PERSON CANNOT BECOME A DIRECTOR IN MORE THAN 20 COMPANIES... AND OUT OF THIS, A PERSON CANNOT BECOME A DIRECTOR IN MORE THAN 10 PUBLIC COMPANIES

Clause 49 of the listing agreement with stock exchanges provides the code of corporate governance prescribed by SEBI for listed Indian companies. With the introduction of clause 49, compliance with its requirements is mandatory for such companies. Apart from this, there is the Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs. Corporate Governance guidelines have also been issued for insurance companies. Guidelines on Corporate Governance for Central Public Sector Enterprises have also been issued on May 2010.

Corporate Governance under the Companies Act, 2013

The Companies Act, 2013 was passed by the Lok Sabha on 18th December, 2012 and by the Rajya Sabha on 8th August 2013 paving way for a new modern company law. The legislation replaces the existing Companies Act 1956, which was enacted 57 years ago. The Companies Act, 2013 received the assent of the president on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013. Towards the proper implementation of the Companies Act 2013, the first tranche of Draft Rules on 16 chapters have been placed on the website of the Ministry on 9th September, 2013 for inviting comments and objections/ suggestions from the general public/ stakeholders. The second tranche of draft rules on 9 chapters have also been placed on the website of the Ministry on 20th September, 2013 for inviting comments and objections/suggestions from the general public/stakeholders.

The Ministry of Corporate Affairs has also notified 98 sections for implementation of the provisions of the Companies Act, 2013 on 12th September, 2013. Rest of the provisions will come into force on such date as the Central Government may appoint by notification in the Official Gazette. At present the provisions relating to Corporate Governance has not yet been notified.

The new Act seeks to usher in more transparency and governance in the corporate bodies besides creating the necessary environment for growth in the present global structure. In 1956, there were just about a few thousand companies in the country. The number has now grown to more than a million now. Hence fewer regulations and self-regulation by the business houses was the need of the day.

The Companies Act of 2013 is divided into 29 chapters, 470 sections and 7 schedules

In the Companies Act 2013, various new provisions have been included (which were not provided for in the Companies Act, 1956) for better governance of the companies. Some of the new provisions in a nutshell are:

- Requirement to constitute Remuneration and Nomination Committee and Stakeholders relationship committee
- Granting of More powers to Audit Committee
- Specific section pertaining to duties of directors
- Mode of appointment of Independent Directors and their tenure
- Code of Conduct for Independent Directors
- Rotation of Auditors and restriction on Auditor's for providing non-audit services
- Enhancement of liability of Auditors
- Disclosure and approval of Related Party Transactions
- Mandatory Auditing Standards
- Enabling Shareholders Associations/ Group of Shareholders for taking class action suits and reimbursement of the expenses out of Investor Education and Protection Fund
- Constitution of National Financial Reporting Authority, an independent body to take action against the Auditors in case of professional misconduct
- Requirement to spend on Corporate Social Responsibility (CSR) activities

Detailed view of governance issues covered under the Companies Act, 2013

Board of Directors

The Act spells out the minimum number of directors on the board of directors for public and private companies. In case of a public company, there should be a minimum of three directors. For private companies, at least two members are mandatory. In certain classes of companies – which will be specified in the rules – at least one woman director will be mandatory.

A company can have a maximum number of 15 directors. However, a company may appoint more than 15 directors through a special resolution.

A person cannot become a director in more than 20 companies instead of 15 as provided in the Companies Act 1956 and out of this 20, he cannot be director of more than 10 public companies. For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company should be included. The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

Independent Directors

The Act enhances the role of independent directors, who will be required to provide independent judgment on issues of strategy, performance, risk management, resources, key appointments and standards of conduct. They will also be required to scrutinise management performance and must satisfy themselves on the integrity of financial information.

According to Section 149(6) of the Companies Act, 2013, an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) *(i)* who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

According to Section 149(4) of the Companies Act, 2013, every listed public company should have at least one-third of the total number of directors as independent directors and Central Government may prescribe the minimum number of independent directors in case of any class or classes of public company.

Every independent director should at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence.

Schedule IV of the Act provides for a Code for Independent Directors which is a guide to professional conduct for independent directors. It covers the following aspects:

- Professional Conduct
- Role & Functions
- Duties
- Manner of Appointment/Re-appointment
- Resignation/removal
- Separate meetings
- Evaluation mechanism

Committees

Every listed company and prescribed class or classes of companies, should constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half should be independent directors. The Nomination and Remuneration Committee should formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

Every company which consists of

more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year should constitute a Stakeholders Relationship Committee consisting of a chairperson who should be a non-executive director and such other members as may be decided by the Board. The Stakeholders Relationship Committee should consider and resolve the grievances of security holders of the company.

Audit Committee

According to Section 177 of the Companies Act, 2013, every Listed Company and such other company as may be prescribed should form an Audit Committee. The Audit Committee should comprise of minimum 3 directors with Independent Directors forming a majority. Majority of members of committee including its Chairperson should be persons with ability to read and understand the financial statement.

Auditors

Section 139 of the Companies Act of 2013 provides for compulsory rotation of individual auditors and of audit firm. No listed company or a company belonging to such class or classes of companies as may be prescribed, should appoint or re-appoint – (a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years. Also, enabling provisions for members to resolve rotation of audit partners and his team are provided in the Act. Section 141 of the Companies Act, 2013 provides for appointment of Limited Liability Partnerships as auditors. The limit in respect of maximum number of companies in which a person may be appointed as auditor has been capped at 20. This will be applicable for partners in case of a Firm.

According to Section 143(12) of the Act, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he should immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

The historic passing of the Companies Act, 2013 by the Parliament of India will usher hopefully a new era in Corporate Governance. Termed as the new modern legislation for growth and regulation of the corporate sector in India, the Act is likely to have a positive effect in view of the changing economic and commercial landscape

Conclusion

If *management is about running the business, governance is about seeing that it is run properly*. – R Tricker

The historic passing of the Companies Act, 2013 by the Parliament of India will usher hopefully a new era in Corporate Governance. Termed as the new modern legislation for growth and regulation of the corporate sector in India, the Act is likely to have a positive bearing in view of the changing economic and commercial landscape. MA

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Attention Members

In today's fast-paced world, with progress and development in the careers of members, it is obvious that their addresses change. This means that we need to continuously update the details of our Members. Members are therefore requested to view their profile by logging into the Institute website www.icmai.in and check the details for themselves, specially their residential/professional address. If there is any discrepancy, please bring it to our notice and mail the correct information at membership.rb@icmai.in with a copy marked to membership.address@icmai.in

CLASS ACTION SUIT AS GIVEN IN THE COMPANIES ACT, 2013

Class Action may become a reality in India if all the clauses in the new Companies Act are adopted. But the point to be pondered is whether shareholders of government-owned company can sue the Government for squashing minority interest

CS Mamta Binani
Past Chairperson of EIRC of The Institute of Company Secretaries of India and practising Company Secretary

CLASS Action refers to a law suit where a group of people collectively brings a suit against the defendant. It is also referred as Class Action Suit. The people bringing the suit are aggrieved due to some common cause, caused by the defendant, hence they collectively bring a claim to a Tribunal or where the defendant is being sued.

Advantages

- A number of individual claims into one representational suit
- Increase efficiency of legal process
- Reduce cost of litigation
- Avoids repetitions in case of questions of law and fact
- Overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights
- Class action cases may be brought to purposely change behavior of a class of which the defendant is a member
- In "limited fund" cases, a class action ensures that all plaintiffs receive relief and that early-filing plaintiffs do not raid the fund
- Avoids the situation where different court rulings could create "incompatible standards" of conduct for the defendant to follow

Criticisms

Class members often receive little or no benefit from class actions due to the following:-

- Large fees for attorneys
- Unjustified awards are made to some plaintiffs at the expense of other Class members
- Confused notice prevent the Class members from effectively exercising their rights

Class action under Companies Act, 2013

The concept of Class Action was formed in the US. European countries have also adopted it recently. In India, the concept of Class Action was not present till now. Companies Act, 2013 introduces Class Action in India. Section 245 of the Act states the provision relating to Class Action. These are stated as follows:

Eligibility: The requisite number of members or depositors eligible for filing a Class Action suit is as follows:

• In case of Companies having Share Capital:

i. not less than 100 members of the Company or not less than such percentage of the total number of its members as may be prescribed, whichever is less

ii. or any member or members holding not less than such percentage of the issued share capital of the Company as may be prescribed subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

As per the draft rules under Chapter XVI of the Companies Act 2013, the prescribed number is not less than 100 members of the Company or not less than 10% of the total number of its members, whichever is less, or any member or members singly or jointly holding not less than 10% of the issued share capital of the Company.

It is to be noted that the rules, as on today is still at a draft stage and is yet to be finalised.

- In case of Companies not having Share Capital:
  not less than one-fifth of the total number of its members.

- In case of depositors:

The requisite number of depositors shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the Company owes such percentage of total deposits of the Company as may be prescribed.

As per the draft rules under Chapter XVI of the Companies Act 2013, the prescribed number of depositors that may file an application for class action as provided in sub-section (1) of section 245 shall be not less than 100 depositors or not less than 10% of the total number of depositors, whichever is less or any depositor or depositors singly or jointly holding not less than 10% of the total value of outstanding deposits of the Company.

It is to be noted that the rules, as on today is still at a draft stage and is yet to be finalised.

Grounds

The eligible members and depositors or any class of them, if they are of the opinion that the management or conduct of the affairs of the Company are being conducted in a manner prejudicial to the interests of the Company or its members or depositors, file an application before the Tribunal.

Relief claimed

- to restrain the Company from committing an act which is ultra vires the Articles or Memorandum of the Company;
- to restrain the Company from committing breach of any provision of the Articles or Memorandum of the Company;
- to declare a resolution altering the Memorandum or Articles of the Company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- to restrain the Company and its directors from acting on such resolution;
- to restrain the Company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- to restrain the Company from taking action contrary to any resolution passed by the members;
- to claim damages or compensation or demand any other suitable action from or against the:

(i) Company or

(ii) Its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part; or

(iii) The auditor including audit firm of the Company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

(iv) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the Company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

- to seek any other remedy as the Tribunal may deem fit.

Duties of the tribunal

In considering an application, the Tribunal shall take into account, the following:

- whether the member or depositor is acting in good faith in making the application for seeking an order;
- any evidence before it as to the involvement of any person other than directors or officers of the Company on any other matter prescribed;
- whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
- any evidence before it as to the views of the members or depositors of the Company who have no personal interest, direct or indirect, in the matter being proceeded under this section;
- where the cause of action is an act or omission that is yet to occur;
- whether the act or omission could be, and in the circumstances would be likely to be–

(i) authorised by the Company before it occurs; or

(ii) ratified by the Company after it occurs;

- where the cause of action is an act or omission that has already occurred, then whether the act or omission could be, and in the circumstances would be likely to be, ratified by the Company.

If an application is admitted, the Tribunal shall have regard to the following:

- public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
- all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus,

the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
- two class action applications for the same cause of action shall not be allowed;
- the cost or expenses connected with the application for class action shall be defrayed by the Company or any other person responsible for any oppressive act.

As per the draft rules under Chapter XVI of the Companies Act 2013, the public notice needs to be published within 7 days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the state in which the registered office of the company is situated and circulating in that state and at least once in English in an English newspaper circulating in that State;

Further, the Tribunal shall require the Company to place the public notice on the website of such Company, if any, in addition to publication of such public notice in newspaper as mentioned above.

Such notice shall also be placed on the website of the Tribunal, if any; on the website of Ministry of Corporate Affairs; on the website, if any, of the concerned Registrar of Companies and in respect of a listed Company on the website of the concerned stock exchange(s) where the Company has any of its securities listed; until the application is disposed of by the Tribunal.

The draft rules also mentions that the date of issue of the newspaper in which such notice appears shall be taken as the date of serving the public notice to all the members of the class and that the public notice shall, inter alia, contain the following:

(i) name of the lead applicant;
(ii) brief particulars of the grounds of application;
(iii) relief sought by such application;
(iv) statement to the effect that application has been made by the requisite number of members/depositors;
(v) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and it is satisfied that the application may be admitted;
(vi) informing other members or depositors that they can also join the applicant, if they so wish;
(vii) date and time of the hearing of the said application;
(viii) time within which any representation may be filed with the Tribunal on the application; and
(ix) such other particulars as the Tribunal thinks fit.

The draft rules mentions that the cost or expenses connected with the publication of the public notice shall be borne by the applicant and shall be defrayed by the Company or any other person responsible for any oppressive act.

The draft rules mandates that the Tribunal shall give notice of every application made to it under section 245, to the Central Government and shall take into consideration the representations, if any, made to it by that Government before passing a final order under the said section.

Other mandates

- Any order passed by the Tribunal shall be binding on the Company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the Company.
- Any Company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than Rs.5.00 lakh but which may extend to Rs.25.00 lakh and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 3 years and with fine which shall not be less than Rs.25,000 but which may extend to Rs.1.00 lakh.
- Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding Rs.1.00 lakh, as may be specified in the order.
- Nothing contained in this section shall apply to a banking company.
- Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission.

Class action suits will of course be a weapon in the hands of investors to save their common interest. Satyam Computer Services, now known as Mahindra Satyam, paid $125 million to settle 'class-action' suits filed by shareholders in the US, where its shares were listed. Its auditors shelled out $25 million to do the same in the US. Indian shareholders did not receive a penny from any such settlement as India did not allow class-action suits. This can't happen in the future; the point to be pondered is whether shareholders of government-owned company can sue the Government for squashing minority interest. It is but important to stress on the fact that class action suits can be made against professionals too because section 2(38) of the Companies Act, 2013 defines experts to include an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. MA

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THE New Companies Act 2013 has substantially escalated the role, responsibilities and opportunities for the Cost Accountants. The members of the Institute need to gear up and leverage their professional edge to meet the challenges and opportunities and at the same time rise to the occasion. This article highlights the provisions of the Companies Act 2013 that are relevant to the Cost Accountants.''"

After several rounds of deliberations with various stakeholders, The Companies Bill was finally vetted by the Parliamentary panel and was passed by the Lok Sabha on 18th December 2012 and by the Rajya Sabha on 8th August 2013. The Bill received the assent of the Hon'ble President of India on 29th August 2013 and the notification was issued on 30th August 2013 notifying the Companies Act 2013 (Act 18 of 2013). The new Act replaces the erstwhile Companies Act 1956 and the new Act consist of 470 number sections and 7 Schedules.

It is indeed a historic journey that ultimately resulted in bringing in the new Companies Act 2013 to replace the existing Companies Act which was around 56 years old and a number of sections are were outdated and outlived with the passing of time. Piloting the companies Bill, the Hon'ble Union Minster (Corporate Affairs) Shri Sachin Pilot expressed his view that the new regime would seek to usher in more transparency and governance in the corporate bodies besides creating the necessary environment for growth in the present global structure. It is important to note here that in 1956, (when the erstwhile companies act was enacted), there were just about a few thousand companies in the country. The number had now grown to more than a million as on date demanding a new legislation to govern the corporates in India.

ROLE OF COST ACCOUNTANTS IN THE NEW ACT

The new Companies Act 2013 has brought a paradigm shift in Corporate Law legislation and widened the ambit and scope of the profession and also expanded the opportunities for the Cost Accountants

The objective of the new Act is to bring in transparency and governance in the corporate bodies and also to help small one-person companies to access facilities and credit, besides ensuring one minimum woman director in certain prescribed class of companies. The effort would also be to encourage these companies to give employment to all sections of society. The new Act would also provide accelerated speed in the process of liquidation, mergers and acquisitions of companies in India. This transition to the new Act also reflects in the change from the regime of control to that of liberalization and self regulation. To make the new Act more industry friendly and remain relevant across the time, the new Act now enables the authorities to make Rules through Subordinate Legislation, as and when required and needed keeping in view the changing economic environment. With this historic enactment, the Government demonstrated it's commitment to ushering into a new era of Corporate Regulation.

In the new Act, under section 2 (28) the 'Cost Accountant' as defined as "means a Cost Accountants as defined in clause (b) of sub section (I) of section 2 of the Cost and Works Accountants Act, 1959.

Indian Corporate Sector witnessed several severe frauds in recent past which inter-alia includes the land mark case of "Satyam". All such frauds were

basically an outcome / consequence of mismanagement and gross negligence on the part of the management in fulfilling the compliance needs, lapse in effective Internal Control system, ineffective internal audit mechanism and negligence attitude towards legal and compliance requirements that need to be fulfilled in accordance with the provisions of different statues. The effect of such fraud and fraudulent action has a double edged effect, in one side while all the stake holders of such corporate and the nation loses their interest in the organization, the corporate too loses it's credentiality and reputation. One of the significant reason for occurrence of such fraud is lack of Internal Control system and inadequate Internal Audit mechanism. Better Corporate Governance could only be ensured if the organization follows a well defined internal control and internal audit system. These could have been avoided easily, had the proper compliance procedures been followed strictly and proper due diligence was exercised by the relevant professionals associated with the corporate. This issue has been appreciated in the new Act by introducing new provisions relating to 'Internal Audit'. In the new Act, stringent provisions are kept to deal with such situation including the provision of " serious fraud investigation Office" with the objective to protect the interest of the shareholders as well as all the stakeholders. With the introduction of the new Act, it could now be expected that such fraudulent Acts could be prevented much before the same actually affect the stakeholders, and in this process, the professional accountant would play a very significant role.

The significant objectives of the New Companies Act 2013 could be illustrated as follows:

i) To accelerate the development of the economy by encouraging enterprise efficiency, flexibility in creation and simplicity in the formation and maintenance of Companies in India

ii) To bring in transparency in all operations, accountability and to ensure highest standards of Corporate Governance

iii) To protect the interest of all stakeholders, especially the small investors and at the same time introduction of new concepts and procedures to facilitate performing business comfortably

iv) To ensure stricter and stringent action against fraud, non-compliance, negligence in complying the provisions of Companies Law

v) Recognizing the role and responsibility of profession accountants/professionals and other experts and also to set up different institutional structure in the form of various authorities like statutory bodies, etc., for better administration of the new Act

vi) To emphasis on Internal Audit, Corporate Governance and similar issues relating to compliance requirement relevant in the present economic environment

vii) To encourage corporate social responsibilities

Role and opportunities of Cost Accountants

The ambit of the professional arena for the Cost Accountants has considerably been widened in the new Act. The new Act appreciates the fact that the role of Cost Accountants are not confined within the four walls of accounting and cost accounting, but spread across a wide area of legal and compliance-relatedfunctions. The Cost Accountants would now be able to demonstrate their professional expertise in the area of Cost Accounting records maintenance, Cost Audit, effective Cost management, Pricing, Valuation, Internal Audit, taxation and treasury functions, besides complying the statutory requirements of the Act. The Cost Accountants plays a significant role in ensuring reasonable pricing of any Goods & Services, based on which managerial decisions are taken. The Cost Accountants amidst a galaxy of responsibilities also act as a custodian of the Cost Accounting Standards and the Generally Accepted Cost Accounting practices. Analysis of Cost and Financial data and proper reconciliation thereof, provide the management the most desired information for taking any long term / short term strategic decision. Needless to mention here the extreme need of exhaustive Cost Audit in any manufacturing sector as well as in service sector, which are regularly been carried out by the Cost Accountants.

The new Act now incorporated an elaborated legal framework including the framework of internal Audit, which is based more on self regulation and at the same time coupled with accelerated responsibilities, accountability and disclosure requirement. Indian manufacturing as well as service sector would now be required to display more responsible auditing system, more defined cost accounting system, which necessitates the services of independent, competent, responsible and professionally motivated Cost Accountants. The new Act, expects the Cost Accountants to play a more vibrant role in terms of leading the Cost Audit and compliance related activities, Internal Audit functions and the new Act empowered the Cost Accountants to appear before the National Company Law Tribunal and also become Technical member of the Tribunal. While the role and opportunities of the Cost Accountants has been widened up in the new Act, responsibility on cost accountants for due compliance with the provisions of the Law has also been imposed. It may be noted here that, for non compliance of the provisions of the Law, the Cost accountants would also be liable according to the penal provisions of the Act.

Some of the significant areas that are contained in the new Act which would directly impact the role of the Cost Accountants in practice or in employment are elaborated below :

1. Role in the incorporation of a company

Section 7 of the new Act extends a statutory recognition to the profession of Cost Accountants. The said section provides that, while filing the memorandum and articles of the company at the office of the Registrar of Companies, duly signed by all the subscribers to the memorandum, along with a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, certifying that, all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.

This declaration / certification by the Cost Accountants in practice shall be to the effect that the company has complied with all the provisions of the Act relating to Incorporation. The Cost Accountants in Practice would definitely get a great opportunity in this regard.

2. Internal Audit and Cost Accountants

The new Act provides statutory recog-

> **THE ROLE OF CMAs ARE NOT CONFINED WITHIN THE FOUR WALLS OF ACCOUNTING AND COST ACCOUNTING, BUT SPREAD ACROSS A WIDE AREA OF LEGAL AND COMPLIANCE FUNCTIONS**

nition to the Cost Accountants to carry our Internal Audit in Corporates. Section 138 of the new Act makes it mandatory for such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall a professionals including a Cost Accountant to conduct internal audit of the functions and activities of the company. Further, The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an entity's operations. It helps an entity accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

In view of this statutory recognition, the Cost Accountants in practice would enter into a new regime with wide opportunities. In the era of different corporate scams and frauds, a more pro-active Internal Audit function would be of immense importance and the members of the Institute would play a yeomen role in this area. It is needless to mention that a number of Cost Accountants in practice had already executed several successful Internal Audit Assignments with prestigious corporate, both in private sector as well as in public sector and added value in those organizations by providing reasonable assurance that the risk management, control, and governance systems are functioning adequately and the reports risk management issues and internal controls deficiencies are reported properly. The management of those companies have been immensely benefitted with the valued recommendations made by the Cost Accountants in practice in framing a flawless Internal Audit system, risk reporting and risk management and to ensure better Corporate governance and compliance. However, with the statutory recognition in the new Act, the Cost Accountants would get more opportunities ahead.

3. Cost Accounting Records and Cost Audit

Section 148 of the new Act provide the opportunity for the Cost Accountants to carry out Cost Audit. A relevant extract from this provision is appended below:

"The Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies. Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

Further, If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered above and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

The audit under this section shall be conducted by a Cost Accountant. further that the auditor conducting the cost audit shall comply with the cost auditing standards"

It is very pertinent to note here that the provision of section 148 of the new Act widens up the ambit of Cost Audit to include "Companies engaged in….providing such services". In other words, the Service Sector of our

COST ACCOUNTANTS WOULD DEFINITELY PLAY A GREATER ROLE IN THE AREA OF INTERNAL AUDIT, COST AUDIT, STATUTORY COMPLIANCES AS WELL AS THEY WOULD BE ABLE TO ESTABLISH THEMSELVES AS A TECHNICAL MEMBER OF THE TRIBUNAL OR THE PRACTITIONER BEFORE THE TRIBUNAL

country might be covered under the requirement of "maintenance of Cost Accounting Records" and also "Cost Audit". Service Sector of our country, which contributes very significantly in Gross Domestic Product and Service Tax collection that increasing day by day resulting in increase in "tax to GDP ratio". With the introduction of statutory requirement of maintenance of Cost Accounting records and Cost Audit in this segment, the interest of all the Stakeholders would be protected and both GDP as well as 'tax to GDP ratio' would bound to increase. The Cost Accountants in practice would also get wide opportunities to scale a landmark for the profession.

4. Compliance to Tribunal (NCLT) Order for Compromise or arrangement

According to section 232 of the new Act, where an application is made to the national Company Law Tribunal (NCLT) under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons and the Tribunal awards an order thereof, every company in relation to which such order of compromise or arrangement is made by the Tribunal, shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a one or more professionals including a Cost Accountant in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

Introduction of this section invariably widens up the opportunity for the Cost Accountants. This provision casts an onerous responsibility on the Cost Accountants in certifying the compliance of the Tribunal's order.

5. Appointment as 'Official Liquidator'

Section 275 of the new Act cast an enormous opportunity for the Cost Accountants to be appointed as 'Official liquidator'. The relevant portion of the statute is reproduced below:

"275. (1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.

(2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters".

The inclusion of the Cost Accountants in the provision, who could be appointed as Official Liquidator by the Tribunal (NCLT), shows that the Government is committed to accelerate the liquidation process and also to ensure compliance of all statutory provisions relating to Liquidation process in a much better and greater manner. Needless to mention here that the Cost Accountants would definitely play a significant role in this field.

6. Professional assistance to Company Liquidator

With the approval / sanction of the Tribunal, the Company Liquidator may, appoint one or more professionals including a Cost Accountants to assist him in the performance of his duties and functions under the Act. The Cost Accountants would once again get greater role to play in assisting the Company Liquidator in complying all the provisions of the Act.

7. Appearance before the Tribunal

According to the provisions of Section 432 of the Act, any company / person to any proceeding or appeal before the Tribunal or the Appellate Tribunal, may authorize amongst other professionals a Cost Accountant, to appear and present a case before the Tribunal or the Appellate Tribunal, as the case may be.

The Cost Accountant in practice would definitely grab this opportunity to get the statutory recognition to appear before the Tribunal (NCLT) and present the case before the Tribunal.

8. Qualification of the Members of Tribunal

Section 409 of the new Act prescribes the qualification of the members of the Tribunal. The provisions of the new Act and the constitution of the National Company Law Tribunal offer opportunity to the Cost Accountants in practice to become a technical Member of the Tribunal. In view of the provisions of this section, a Cost Accountant in practice is eligible to become a technical member of the National Company Law Tribunal, if he is in practice for at least fifteen years.

9. Duty to report fraud

Cost Accountants conducting Cost Audit if while performing his duties has reason to believe that an offence involving fraud is being/has been committed against company by its officers/ employees, he shall immediately report it to Central Government. Non-compliance to the above requirement shall be punishable with fine between Rs. 1 lakh to Rs. 25 lakh.

10. Expert as defined in the new Act

Sub Section 38 to Section 2 of the Act, defines the terms "expert" to include an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

Further to the discussion above, the Cost Accountants can also play a key role in the fields of Valuation, Corporate Restructuring, winding up and in certification of areas of compliances as defined in different provisions of the Act

The provision of section 148 of the new Act widens up the ambit of Cost Audit to include "Companies engaged in….providing such services". In other words, the service sector of our country might be covered under the requirement of "maintenance of Cost Accounting Records" and also "Cost Audit"

Conclusion

The new Companies Act 2013 has brought a paradigm shift in Corporate Law legislation and widened the ambit and scope of the profession and also expanded the opportunities for the Cost Accountants. Due recognition to the profession of Cost Accountancy has also been extended to various new areas in the new Act. Cost Accountants would definitely play a very great role in the area of Internal Audit, Cost Audit, Statutory Compliances. They would be able to establish themselves as a Technical member of the Tribunal or the Practitioner before the Tribunal. The profession of the Cost Accountancy and the members would definitely be benefited in the new era and Cost Accountants would serve the nation in a much greater way for the broader interest of the public, for all stakeholders and also contribute substantially in promoting the culture of Good Corporate Governance in the country.

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(Views expressed herein above are exclusively that of the author and not necessarily that of the Institute.) MA

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COMPANIES ACT 2013

CHANGING LANDSCAPE OF CORPORATE GOVERNANCE AND CSR

Overall, the Companies Act 2013 is a positive and strong step towards corporate governance and CSR and will have far reaching implications

ACCOUNTING and reporting practices are always significantly influenced by the regulatory requirements of the country. In India we have multiple regulators and statutes which govern our companies. A comprehensive legal code, Companies Act is devised by Ministry of Corporate Affairs. The Ministry is concerned, with the administration of a wide range of statutes for the regulation of the corporate sector including the (i) The Companies Act, 1956, (ii) The Competition Act, 2002, (iii) The Limited Liability Partnership Act, 2008, (iv) The Chartered Accountants Act, 1949, (v) The Cost and Works Accountants Act, 1959 (vi) The Company Secretaries Act, 1980, (vii) The Partnership Act, 1932 (viii) The Societies Registration Ac t, 1860 (ix) The Companies (Donations to National Funds) Act, 1951. The government prescribes accounting standards in consultation with the National Advisory Committee on accounting standards (Narayanswamy 2011). The Financial sector is regulated by the Reserve bank of India, central Bank of our country. The Banking Regulation Act 1949 prescribes requirements pertaining to financial statements and reports of banking companies. The insurance sector is regulated by Insurance Regulatory and Development Authority IRDA. It prescribes the regulations pertaining to financial statements and reports of Insurance companies. "To protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters

connected therewith or incidental thereto", the Securities and Exchange Board of India was established on April 12, 1992 in accordance with the provisions of the Securities and Exchange Board of India Act, 1992, it plays a vital role in regulating and developing securities markets of India. Income tax Act, 1961 regulates the tax aspects of the companies registered in India. The legal and regulatory environment of India is very vast. Indian business environment is increasingly integrated with the global business system. It is essential to make revisions, changes in current statutes and acts, to keep pace with the changes in the business environment. The 1956 Act was amended 25 times but was still not perceived to be not in tune with the new corporate world.

There has been 100 years to the formation of Companies Act 1913. Companies Act 1913 comprised of 4 schedules and 290 sections. This Act was replaced by Companies Act 1956, subsequent to new legislation and English companies Act 1956. Companies Act 1956 comprised of 15 schedules, 658 sections and 13 parts. Over time there has been lot of amendments and developments that took place since Companies Act 1913. Last year on 18th December 2012 Lok sabha passed the much awaited Companies Bill 2012, and the same was passed by Rajya Sabha on August 8, 2013. It is now awaiting President's signature before getting notified. Post President's approval it will be publicised as the Companies Act, 2013, replacing the Companies Act, 1956. It comprise of 7 schedules, 470 clauses and 29 chapters.

There are several amendments and provisions in the Companies Act 2013; this paper focuses on the changes with respect to Corporate Governance and Corporate Social Responsibility. Before highlighting the changes with respect to corporate governance and CSR, an attempt is made to understand the meaning of the terms and the impact it has across society. Literature has been reviewed to study the impact of both corporate governance and CSR.

What is Corporate Governance and Corporate Social Responsibility and what role does it play

A. Corporate Governance meaning and Benefits

As defined by Shleifer and Vishny (1997), Corporate Governance "deals with the ways in which supplier of finance to corporations assure themselves of getting a return on their investment". This definition can be expanded to define corporate governance as being concerned with the resolution of collective action problems among dispersed investors and the reconciliation of conflicts of interest between various corporate claimholders.

A good corporate governance regime is central to the efficient use of corporate capital. Good corporate governance also helps to ensure that corporations take into account the interests of a wide range of constituencies, as well as of the communities within which they operate, and that their boards are accountable to the company and the shareholders. This, in turn, helps to assure that corporations operate for the benefit of society as a whole. It helps to maintain the confidence of investors - both foreign and domestic - and to attract more long-term capital. (OECD 1999)

The World Bank, in 1999, stated that corporate governance comprises two Mechanisms, internal and external corporate governance. Internal corporate Governance, giving priority to shareholders' interest, operates on the board of Directors to monitor top management. On the other hand, external corporate Governance monitors and controls managers' behaviours by means of external Regulations and force, in which many parties involved, such as suppliers, debtors (stakeholders), accountants, lawyers, providers of credit ratings and investment bank (professional institutions).

The most recent financial crisis has seen its share of corporate governance failures in financial institutions and corporations, leading to serious harm to the global economy, among other systemic consequences. In the aftermath of these events, economists, the corporate sector, and policymakers worldwide recognize the potential macroeconomic, distributional, and long-term consequences of weak corporate governance systems.

Good corporate Governance requires a complex system of checks and balances, directors play a vital role in conceptualising and executing such systems.

Since last couple of decades the concept of corporate governance is evolving and is addressing the rise of corporate social responsibility (CSR) and the more active participation of both shareholders and stakeholders in corporate decision making.

B. Corporate Social Responsibility Meaning and Benefits

Corporate Social Responsibility is defined as "development that meets the present needs without compromising the ability of future generations to meet their own needs", and generally it is focusing on how to achieve integration of economic, environmental, and social imperatives.

The great grandson of Henry Ford

AMERICA'S MOST SUCCESSFUL CEO'S VIEW ON ETHICS AND CORPORATE BOARDS

"A strong, independent, and knowledgeable board can make a significant difference in the performance of any company…our corporate governance guidelines emphasize "the qualities of strength of character, an inquiring and independent mind, practical wisdom and mature judgment …" It is no accident that we put "strength of character" first. Like any successful company, we must have directors who start with what is right, who do not have hidden agendas, and who strive to make judgments about what is best for the company, and not about what is best for themselves or some other constituency...

We look first and foremost for principle-centered leaders. That includes principle - centered directors. The second thing we look for are independent and inquiring minds. We are always thinking about the company's business and what we are trying to do … We want board members whose active participation improves the quality of our decisions.

Finally, we look for individuals who have mature judgment – individuals who are thoughtful and rigorous in what they say and decide. They should be people whom other directors and management will respect and listen to very carefully, and who can mentor CEOs and other senior mangers... The responsibility of our board – a responsibility which I expect them to fulfill – is to ensure legal and ethical conduct by the company and by everyone in the company. That requirement does not exist by happenstance. It is the most important thing we expect from board members...

What a CEO really expects from a board is good advice and counsel, both of which will make the company stronger and more successful; support for those investments and decisions that serve the interest of the company and its stakeholders; and warning in those cases in which investments and decisions are not beneficial to the company and its stake holders." – from *Monks*, R. and Minow, N. (2008), Corporate Governance, 4th ed., Wiley India Pvt Ltd., New Delhi once commented, "A good company delivers excellent product and services, and a great company does all that and strive to make the world a better place". This comment captures the true essence of CSR.

Wilson (2000), highlighted new rules of corporate conduct, wherein it was stated that, the corporation must be thought of, managed, and governed more as a community of stakeholders and less as the property of investors.

There have been vast amount of research across globe in the area of CSR, which clearly depicts how companies, society and countries benefit in longer run due to CSR activities.

Six Reasons why a company should embrace CSR, as identified by the CSR blog of Forbes (2012) are innovation, cost saving, brand differentiation, long term thinking, customer engagement and employee engagement.

Aguilera et al. (2007) opined that CSR meets the justice needs of employees thereby leading to lower turnover rates. Study by Galbreath (2009) explored the relationship between CSR and employee turnover, customer satisfaction, and firm reputation; the findings suggest that CSR is linked to all three dimensions. This study concluded that CSR offer valuable benefits; benefits beyond those that are associated with traditional, financial-based outcomes.

As per Fornell et al. (1996), CSR is expected to demonstrate equity or fairness towards customers, leading to higher satisfaction.

CSR activities have been seen as influencing the stakeholders of a firm (Zagenczyk, 2004). Internal stakeholders are the owners, managers, employees of a firm, who reside inside the boundary of the firm (Freeman, 1984; Polonsky, 1996). While the external stakeholders of a firm are the suppliers, customers, communities and government (Freeman, 1984; Hopkins, 2003). To sum it, CSR activities have positive implications on both the internal as well as external stakeholders.

Key changes in Corporate Governance & CSR in Companies Act 2013

1. Duties and liabilities of directors/ independent directors
2. Auditor rotation
3. Constitution of National Financial Reporting Authority (NFRA)
4. Corporate Social Responsibility (CSR)

1. Independent directors

Independent directors bring the expertise and knowledge to the board, which is of great value to companies. They are seminal to a company and give a fresh outlook, balanced approach in the board decisions, as said by Shri Sachin Pilot, minister of corporate affairs.

As per the companies Act 2013, every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director: Provided that an independent director shall not, during the aforesaid period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly. Any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149. The appointment has been made totally independent of the management of the company; it has to be approved at the shareholders' in the general meeting. Central Government having expertise in creation and maintenance of data bank of independent directors and put on their website for the use by the company making the appointment of such directors.

2. Auditor rotation

As per chapter X clause 139 (2) No listed company shall appoint or re-appoint— (a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that—

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date

of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years. This results in compulsorily rotation of auditors.

The New Act has also broadened the role and responsibility of auditors. Auditors need to report on adequacy of internal financial controls system and the operating effectiveness of such controls and be a whistleblower to Central Government, if becomes aware of any fraud.

3. Constitution of National Financial Reporting Authority (NFRA)

National Advisory Committee on Accounting Standards (NACAS) is a government body under Companies Act 1956, which advises the government on formulation of accounting standards. Under the Companies Act 2013, NACAS will be replaced by the NFRA. It is constituted to provide for matters relating to accounting and auditing standards under this Act.

It shall—

(a) Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(b) Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

(c) Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed.

It shall:

(a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949

(b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908,

4. Corporate Social Responsibility (CSR)

With regard to corporate social responsibility, the approach is to 'comply or explain'. Companies with a net worth of Rs.500 crore or more, or revenue of more than Rs.1,000 crore or more, or net profit of more than Rs.5 crore shall constitute a Corporate Social Responsibility Committee of the Board comprising of three or more directors, out of which at least one director shall be an independent director. The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities. The Board of every company shall ensure that the company spends in every financial year atleast 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy. Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending, making this provision de facto mandatory. This kind of provision doesn't exist in any country in the world. While non-compliance will not be penalized, companies will be required to disclose reasons for this, making this provision de facto mandatory.

Implications and conclusion

Unless there is crisis, the board is almost universally overlooked. Keeping in view the crisis that took place in past few decades, the changes with respect to appointment of directors is a welcome change. The independent directors have the duty to scrutinise the performance of the management, by asking uncomfortable questions to protect the interest of all the stakeholders of the company and accord priority to company's interest as a whole. In the companies Act 2013, for independent directors, there is an elaborate code of conduct. This conduct lays greater responsibility and accountability on independent directors. They have to satisfy themselves with regard to integrity of financial information, risk management and management control systems. In coming future, there shall be increase in demand of people with high calibre and integrity to become independent director. With at least one woman director on the board, the act brings positive news to women with competence.

The new act has boost the scope of auditors as given in clause 138 (1). The companies shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. By imposing civil liability, the new act necessitates the auditors to be vigilant, alert and watchful. By compulsorily rotating the auditors, the governance shall be improved, as in India maximum of family owned companies have old association with auditors, which they may be using for their own advantage and also the probability of overlooking increases with long association.

Augmenting the auditors' independence is a well accepted mechanism to promote better governance worldwide. NFRA will act as regulator for members registered under the CA Act working in companies as well as auditors. Therefore the members have to perform their duty with full integrity else an action can be initiated.

A growing number of researchers and scholars believe that the firm can no longer be seen purely as private institutions but instead as social institutions. The benefits flowing from the firms need to be shared collectively. Keeping this view, the new change is well supported by people who believe that businesses must give back to society. The companies shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities and this shall result in development in many ways in those areas.

The CSR clause of the Act will also impact the job market of India. The companies are expected to recruit executives to conceive, envisage, supervise, operationalise and monitor CSR drive. The executives working with the companies shall also look for understanding the newer norm for implementing it well.

Overall, the Companies Act 2013 is a positive and strong step towards corporate governance and CSR and will have far reaching implications.

There is more to CSR and Corporate Governance in Companies Act 2013 than what is covered in this paper and the full outcome is not clear at this stage. Many issues shall be covered by rules/circulars, which shall be issued in coming days.

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A RELOOK AT THE ROLE OF DIRECTORS UNDER NEW ACT

With the improved focus on corporate governance, the duties and responsibilities of directors have increased enormously under the new Companies Act and hence they should start trying to outfit themselves to meet up the new demands

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THE Companies Bill 2013 is a noteworthy step in escalating Corporate Governance. With introduction of key provisions around duties and liabilities of Directors / Independent directors, evaluation of performance of the Board of Director's, risk policies, etc. in the Director's report, role of the directors have been widened. The Ministry of Corporate Affairs (MCA) released the second set of draft rules to implement the new Companies Act, 2013. With the second set, draft rules for 24 chapters of the new legislation have been released. The Companies Act, 2013, has 470 sections spread across 29 chapters. There are 37 new definitions in the new Act when compared to the 1956 legislation.

With the renewed focus on corporate governance under Companies Act, 2013, the role of board of directors assumes greater significance as we know good governance is a decisive factor in investment decisions today. Considering the responsibility of the Board of Director's as an important body elected by the shareholders, thus to increase their accountability and responsibilities, significant changes are brought in the new act, which are discussed here.

Resident director

Under the new companies act, a new concept of resident director has been introduced. Each company should ensure that at least one director stays in India for at least 182 days in the previous calendar year [Section 149 (3)]. This applies to all companies- listed, unlisted, public and private limited companies. The definition of 'residency' is along the lines prescribed under the Income Tax Act and Foreign Exchange Management Act and the directors have been allowed to participate in board meetings through video-conferencing and other audio-visual means as well as the physical presence is also duly recognized.

Alternate director

There is a significant change with regard to the appointment of the alternate director. Under the Companies Act 1956, alternate director can be appointed only when the original director remains absent from India for three months or more and now, in addition, a person can be appointed as an alternate director for an independent director only if he / she meets the qualifications of independence prescribed under the new act.

Under Companies Act 1956, the alternate director was supposed to vacate office on the return of the original director to the state in which board meetings are ordinarily held. Under the new provisions, the concept of state has been done away with and the alternate director will vacate office on the return of the original director to India.

Independent director

Requirement as per the Companies Act, 1/3rd of total directors to be independent directors and it should be applicable to listed companies notified by Central Govt. i.e.as per draft rules:

(a) Public co's with paid up share capital in excess of INR

BY DEFINING RESPONSIBILITIES AND DUTIES IN A MANDATORY CODE OF CONDUCT, ONUS HAS BEEN PLACED ON INDEPENDENT DIRECTORS THEREBY REDUCING THEIR CHANCE OF GETTING THE 'BENEFIT OF DOUBT' IN CASE OF NON-COMPLIANCES

100 crores or,

(b) Public co's without standing loans/borrowings/debentures/deposits in excess of INR 200 crores.

Companies Act 2013 also requires that at least, 1 independent director in CSR (Corporate Social Responsibilities) Committees (applicable to co's with a net profit of more than Rs. 5crores or net worth of more than Rs.500 crores or turnover of more than Rs 1000 crores), majority of directors in audit committees to be independent directors (applicable to listed co's and co's prescribed by the Central Govt.) and half of directors in Nomination & Remuneration Committee to be independent directors (applicable to listed co. only). Foreign investment through Compulsorily Convertible Debentures (equity under Foreign Direct Investment Policy) will be treated as debt under the Companies Act, 2013 and INR 200 crores thresholds shall apply. Otherwise, thresholds may be linked to promoter shareholding or turn over of company or linked to requirement of independent directors in various committees.

Term of appointment for independent directors- 5years in original term plus 5years of additional term subject to a special resolution and after the expiry of the term, individual is eligible for re-appointment for 3 years and the tenure to be non-rotational.

Under Section 149 of the 2013 Act, there is a specific obligation on every listed public company that at least one-third of the board of directors should comprise of independent directors.This mirrors the requirement in Clause 49 of the listing agreement, and marks the first time that corporate governance norms have been recognized in company law in India. Under Section 173(3) of the 2013 Act states that any board meeting held at shorter notice (to transact urgent business) requires the presence of at least one independent director. If such a director is not present, the matter discussed at the board will be considered approved only once an independent director ratifies it. Additionally, Section 177(2) states that the majority of the members of an audit committee (in a listed company) must be comprised of independent directors.

Greater empowerment coupled with accountability of Independent Director is a step in the right direction; one which reflects the government's resolution to strengthen corporate governance. While earlier, the independent directors had their 'voice', in the new regime, they may now have their 'say'. In order to make their presence felt and make it matter. Independent Directors would need to be responsive, proactive, and equipped with industry insights. Under the new law, there is an elaborate code of conduct which independent directors are expected to abide by. The code lays down certain broad guidelines like upholding ethical standards of integrity, acting objectively and most importantly devoting sufficient time and attention for informed and balanced decision making.

By defining responsibilities and duties in a mandatory code of conduct, onus has been placed on independent directors thereby reducing their chance of getting the 'benefit of doubt' in case of non-compliances. This casts an important fiduciary responsibility on Independent Directors towards investor community and other stakeholders. Discharging this responsibility, would require orientation, knowledge and involvement. To be effective contributors, independent directors have to bring in knowledge, insight and skill, industry expertise; most importantly they have to remain connected.

The independent directors of the company would have to meet at least once in a year, without the presence of non-independent directors and members of management. Apart from reviewing the performance of chairperson of the company, the meeting shall review the performance of non-independent directors and the Board as a whole. The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. This report would form the basis of re-appointment. Independent directors are not liable to retire by rotation.

An attempt has been made to strike a fine balance by putting in place checks and balances to ensure that empowerment does not lead to candid power and authority is exercised with accountability. Nominee directors, despite not being considered as 'independent' under the new definition, would nevertheless be eligible for immunity, as long as they are non-executive.

Additional director

Section 161 permits appointment of a person as an additional director provided that the person has not failed to get appointment as a director in a general meeting. The board of directors can appoint additional directors provided such power is conferred on them by the A.o.A (Articles of Association). As per the new act, the board can not appoint a person as an additional director who failed to get appointed as a director at the General meeting of the company [Section 161(1)].

Small shareholders director

A listed company may appoint one director elected by small shareholders and as per the new rules; a listed company may suo moto or on the application of 500 small shareholders or 1/10th of total number of shareholders whichever is lower, may appoint a small shareholders director. The noteworthy feature is that he shall be considered as an independent director with tenure of three years. It is also stipulated that he cannot hold the directorship representing more than two companies. The selection procedure will be further prescribed. (Sec151).

Woman director

As per the new rules every listed company should have a woman director within one year and unlisted companies with paid up capital of INR 1000 million or more should have a woman director within three years from the date of notification through appropriate section (to be specified). If implemented, it will be a welcome approach through which the legislation should act as stimuli to women's empowerment.

Nominee director

The Board can appoint nominee directors, if its articles permit. Otherwise, it has to amend its articles for getting such power. It is usual for the financial institutions which lend money to the companies to impose a condition to the effect that it can appoint its nominee to be on the Board of the company. The term of office of such nominee director shall be decided by the institution only. [Section 161(3)].

Director's report

The Director's Report should now state that the directors have devised proper systems to ensure compliance with law and those are operating effectively and should also indicate the development and implementation of a risk management policy as well. The impact of disclosure under the new act is much greater and barring listed companies under clause 49 it will be applicable for all companies; unlisted public and private companies too.

Approval of related party transactions by Board of Directors at Board meeting, made mandatory. Related party transactions to be disclosed in the Director's report along with the justification thereof and henceforth, requirement of obtaining Central Government approval for related party transactions will not be required. Under the new act it is added that if a director is convicted of the offence for dealing with related party transactions at any time during the last five years, it becomes a disqualification for appointment [Section 164 (1) (g)].

For listed and large public companies, directors should report the manner in which the Board has formally evaluated its performance, committees and individual directors. From the new companies act it is clear that a number of disclosures earlier mandated elsewhere have been brought under the ambit of directors report and the objective is to bring to the notice of the directors of those important governance issues which may bring a sign of relief to the stakeholder at large and to the community as a whole.

In order to make directors accountable, the new Companies Bill mandates that every director shall register with the Government to obtain a DIN (Directors Identification Number) number which will enable the Government to monitor the number of directorships any person holds with his track record. Sections 153-159 deal with DIN number requirements. Every director shall apply for allotment of DIN and intimate to all companies in which he is a director or likely to be appointed as a director. Company is bound to intimate the same within fifteen days of intimation to the Registrar of Companies or to any authority as may be prescribed by the Government.

Number of directorships and participation in meetings

The new provisions include a limit on the number of directorships a person can hold in public companies, limitation of tenure to a maximum of two consecutive terms of five years, and need to give detailed reasons to the registrar of companies on resignations.

The maximum number of public companies in which a person can be appointed as a director cannot exceed 10. This will be within the overall limit of 20 companies in which a person can be a director at the same time.

While proposing the name of a director (other than the retiring director) for directorship, henceforth it is mandatory to deposit of Rs 1,00,000 either by the candidate or by the member proposing. Deposit shall be refunded in the event the candidate is elected or secures more than 25% of votes cast either by proxy or on poll. This increase from Rs. 500 is intended to eliminate frivolous applications [Section 160(1)].

There is tremendous emphasis on participation in board meetings. Every director has to attend at least one board meeting during a twelve month period and failing which there could be vacation of office. Further, the provision of escaping vacation of office through leave of absence has been removed.

Loans to directors

Section 185 prohibits loans including any loan represented by book debt to its directors or to any other person in whom the director is interested or give guarantee or security for a loan taken by them unless it is given to the managing director or whole-time director as per terms and conditions/ scheme applicable to all its employees. The scheme should be approved by a special resolution.

Restriction on non-cash transaction with directors

Section 192 prohibits purchase or sale of asset from/to the company's director or director of its holding company, subsidiary company or associate company unless it is approved by shareholders at general meeting.

Prohibition on forward dealings in securities of the company by the director and key managerial personnel

Section 194 prohibits a company's director and it's KMP (Key Managerial Personnel) to do forward trading in the company's securities.

The new law also permits reopening account books and voluntary revision of financial statements of the Director's Report with the approval of the NCLT (National Company Law Tribunal) if any fraud is suspected. If any financial restatement is detected due to fraud, any excess remuneration paid can be recovered from past or present managing director or whole time director, manager or chief executive officer, thus, there is now onerous responsibility on directors. Under the New Act, the Board's responsibility is not limited to setting up adequate controls and it extends to ensuring their operating effectiveness. The Board, management and statutory auditors would have to align their approaches while evaluating and testing the operating effectiveness of internal controls.

Section 192 prohibits purchase or sale of assets from/to the company's director or director of its holding company, subsidiary company or associate company unless it is approved by shareholders at a general meeting

Conclusion

From the new Act it is evident that a number of disclosures hitherto mandated elsewhere have been brought under the ambit of the director's report. Independent directors are empowered for evaluating the performance of other directors. The bill, after enactment will allow the country to have a modern legislation for regulation of the corporate sector in India. With the improved focus on corporate governance, the duties and responsibilities of directors have increased enormously under the new Companies Act and hence they should start trying to outfit themselves to meet up the new demands. Meantime, the Government in its implementation of the new Companies Act 2013 has moved ahead and issued the 3rd set of Draft Rules under Companies Act 2013.

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MERGERS, AMALGAMATIONS AND TAKEOVERS UNDER THE NEW COMPANIES ACT, 2013

The new law makes Amalgamations and Mergers easier. There is no need to refer to the jurisdictional High Court. The functions of the High Court will now vest with the National Company Law Tribunal

TCA Ramanujam
Chief Commissioner of Income Tax (retd.), Advocate High Court, Madras

TCA Sangeetha
Masters in Law

THE Companies Act, 1913 gives a brand new look to the Law on mergers and amalgamations. This has always been a complicated subject. The Act of 1956 had several provisions for mergers and amalgamations and compromise arrangements dealt with in Sections 390, 391, 392,393,394 and 394A of that Act. Radical changes have been effected in the new law.

The old law did not contain specific provisions to deal with cases of takeovers of companies. The law was not clear on the issue whether compromise or arrangements will include takeover offers. Sections 230 (11) of the Act of 2013 specifically lays down that any compromise or arrangements may include takeover offers made in such manner as may be prescribed. In the case of listed companies, the takeover offer would be governed by the regulations framed in this regard by the Securities and Exchange Board of India.

Buy-back of shares

The old law did not contain provisions with regard to buy-back of securities. 'Compromise or arrangements' contained no regulations with regard to buy-back of securities. On the other hand, the new law of 2013 contains provisions relating to such buy-backs. Section 68 enables a company to purchase its own shares out of its free reserves or securities premium account.' The Articles must authorize such buy-back and a special resolution must be passed at the general meeting of the company. These Rules will not apply to cases where the buy-back is 10% or less of the paid up equity capital and free reserves. If the requirements of Section 68 are satisfied, the Tribunal may sanction the compromise or arrangement of the company. Disclosure norms are tightened by way of affidavits before the National Company Law Tribunal.

Corporate restructuring

The terms 'compromise or arrangements' will also part take reduction of share capital. It will also include any scheme of corporate debt restructuring if it is agreed to by more than 75% of the secured creditors. Auditors have to certify that the fund requirements after restructuring shall confirm to the liquidity test as per the estimate of the Board of Directors. Restructuring has to be in conformity

"When we made you VP of Acquisitions, we assumed you would acquire more than pastures."

with the guidelines prescribed by the Reserve Bank of India. Objections to compromise or arrangements can be raised only by persons holding not less than 10% of the shareholding or persons having not less than 5% of the total outstanding debt. The Tribunal will not sanction compromise or arrangements if it is not in accordance with the accounting Standards specified under Section 133. The auditors have to certify in this regard.

Amalgamations and demergers

The old Act made no mention of division and demergers. On the other hand, Section 232 of the new Act specifically refers to division or demergers. This will apply where under the scheme, the undertaking, property and liabilities of the company come to be divided and transferred to two or more companies each of which is either an existing company or a new company.

ACCORDING TO THE NEW LAW, ANY CONTRACT OR ARRANGEMENT BETWEEN TWO OR MORE PERSONS ON TRANSFER OF SECURITIES SHALL BE ENFORCEABLE AS A CONTRACT

Listed companies and reverse mergers

Can a listed company merge with an unlisted one? The old law contained no provision to cover this situation. On the other hand, Section 232 (h) contains specific provisions in this regard. Where the transferor company is the listed company and the transferee is an unlisted company, the law declares that the transferee company shall remain an unlisted company until it became a listed company. The shareholder of the transferor company can opt out of the transferee company and provision will be made for payment of the value of shares held by them and other benefits in accordance with a pre determined price formula. Of course, here again SEBI guidelines will have to be observed. If the transferor company is dissolved, the fee paid by it on its authorized capital shall be set-off against any fee payable by the transferee company on its authorized capital subsequent to the Amalgamation. These provisions will ensure that hereafter there will be no scope for backdoor 'listing' through Reverse Mergers.

Cross-border mergers

Under the old law, only foreign companies were allowed to merge with Indian Companies. Section 234 of the Act of 2013 enables Merger or Amalgamation between companies Registered under the Act of 2013 and companies incorporated in other countries to be notified by the Central Government. A foreign company may merge into an Indian company or vice-a-versa and the terms and conditions of the scheme of merger may provide for payment of consideration to the shareholder of the merging company in cash or in depository receipts. This can have far reaching impact on corporate India. The merger of an Indian company with a foreign company will require synthesis of two corporate cultures. It will also require satisfactions or regulations under the Indian Income Tax Act 1961 and the Foreign Exchange Management Act. It is necessary that these enactments take into account Section 234 of the Companies Act, 2013 and make necessary changes in those laws.

Dissenting shareholders

According to the new law, any contract or arrangement between two or more persons on transfer of securities shall be enforceable as a contract. Minority shareholder's interests are protected thereby. Section 235 provides for time-bound disbursal of purchase consideration received by transferor company to its dissenting shareholders within 60 days. The old requirement about 75% shareholding stakes is dropped. 'Squeeze out' provisions are introduced in the new law to provide for purchase of minority shareholding.

Conclusion

The new law makes Amalgamations and Mergers easier. There is no need to refer to the jurisdictional High Court. The functions of the High Court will now vest with the National Company Law Tribunal. The Tribunal will have the power to supervise the implementation of the 'compromise' or 'arrangement' and give suitable directions. It may also order winding up of the company. These provisions will also apply to a company in respect of which an order has been made before the commencement of the new Act, sanctioning a compromise or an arrangement.

Far-reaching changes have been effected in the company law relating to mergers and amalgamations. Ultimately various economic laws like the Income Tax law, Foreign Exchange law and Company law will have to synchronize so that there is harmony in the working of the statutory provisions.

SERVICE TAX
Voluntary Compliance Encouragement Scheme
VCES – 2013

THE FINANCE ACT, 2013 (17 OF 2013)
CHAPTER VI

SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

Short title

104. This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Definitions

105. (1) In this Scheme, unless the context otherwise requires, -
(a) "Chapter" means Chapter V of the Finance Act, 1994;
(b) "declarant" means any person who makes a declaration under sub-section (1) of section 107;
(c) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
(d) "Prescribed" means prescribed by rules made under this Scheme;
(e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

(2) Words and expressions used herein and not defined but defined in the Chapter or the rules made there under shall have the meaning respectively assigned to them in the Chapter or the rules made there under.

Person who may make declaration of tax dues

106. (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013:

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return.

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom, -
(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of –
(i) search of premises under section 82 of the Chapter; or
(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or
(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made there under ; or
(b) an audit has been initiated,
And such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Procedure for making declaration and payment of tax dues

107 (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent, of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part there of remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

Immunity from penalty, interest and other proceeding

108. (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) or section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

No refund of amount paid under the Scheme

109. Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

Tax dues declared but not paid

110. Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Failure to make true declaration

111. (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

Removal of doubts

112. For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108.

Power to remove difficulties

113. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules

114. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and the manner in which a declaration may be made under subsection (1) of section 107;

(b) the form and the manner of acknowledging the declaration under sub-section (2) of section 107;

(c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 107;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may by after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Service Tax Voluntary Compliance Encouragement Rules, 2013

[Notification No. 10/2013 – ST dated 13/5/2013]

G. S. R…….. (E). – In exercise of the powers conferred by sub-sections (1) and (2) of section 114 of the Finance Act, 2013 (17 of 2013), the Central Government hereby makes the following rules regarding the form and manner of declaration, form and manner of acknowledgement of declaration, manner of payment of tax dues and form and manner of issuing acknowledgement of discharge of tax dues under the Service Tax Voluntary Compliance Encouragement Scheme, 2013, namely: -

1. Short title and commencement- (1) These rules may be called the Service Tax Voluntary Compliance Encouragement Rules, 2013.

(2) They shall come into force on the date of its publication in the Gazette of India.

2. Definitions. – (1) In these rules, unless the context otherwise requires, -

a) "Act" means the Finance Act, 2013;

b) "Form" means the Forms annexed to these rules.

c) "Scheme" means the Service Tax Voluntary Compliance Encouragement Scheme, 2013 as specified in the Act;

(2) Words and expressions used but not defined in these rules but defined in the Scheme shall have the meanings respectively assigned to them in the Scheme.

3. Registration. – Any person, who wishes to make a declaration under the Scheme, shall, if not already registered, take registration under rule 4 of the Service Tax Rules, 1994.

4. Form of declaration. – The declaration under sub-section (1) of section 107 of the Act, in respect of tax dues under the Scheme shall be made in Form VCES-1.

5. Form of acknowledgement of declaration. – The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES-2, within a period of seven working days from the date of receipt of the declaration.

6. Payment of tax dues. – (1) The tax dues payable under the Scheme along with interest, if any, under section 107 of the Act shall be paid to the credit of the Central Government in the manner prescribed for the payment of service tax under the Service Tax Rules, 1994.

(2) The CENVAT credit shall not be utilized for payment of tax dues under the Scheme.

7. Form of acknowledgement of discharge. – (1) The designated authority shall issue an acknowledgement of discharge under sub-section (7) of section 107 of the Act, in Form VCES-3.

(2) The acknowledgement of discharge shall be issued within a period of seven working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the declarant.

Source:

Central Board of Excise & Customs
Department of Revenue
Ministry of Finance
Government of India

For the "Forms" and "Frequently Asked Questions", please visit our website: www.icmai.in.

REGISTERED VALUER UNDER COMPANIES ACT 2013

The Government has recognized the expertise of Cost Accountants and provided another very bright chance to CMAs to act as Registered Valuers

CMA Amit Jain
Accounts Officer (SR), HMT Limited, Panchkula

THE valuation of any Asset or Liability is an integral part of any business organization. The Companies Act 1956 had not covered the provision of Registered Valuer. The need for a regulated body for valuation professionals was felt. MCA had also initiated steps towards formation of Forth Professional Body namely, Institute of Valuers of India. Though, it could not become reality till date.

For the first time ever the Provision of Registered Valuer has been introduced vide Chapter XVII of The Companies Act 2013.

Sub-section (1) of Section 247 of Companies Act provides that Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

Definition of Registered Valuer

As per draft Companies Rules, issued by MCA for public comments, 'Registered Valuer' means a person registered as a Valuer under Chapter XVII of the Act.

Administration and qualification of Registered Valuer

(1) For the purposes of sub-section (1) of section 247, the Central Government or any authority, institution or agency, as may be notified by the Central Government, shall maintain a register to be called as the Register of Valuers in which there shall be registered the names, address and other details of the persons registered as Valuers in pursuance of section 247.

(2) The following persons shall be eligible to apply for being registered as a valuer:

(a) a Chartered Accountant, Company Secretary or Cost Accountant who is in whole-time practice, or retired member of Indian Corporate Law Service or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognize by an order;

Provided that such foreign qualification acquired by Indian citizen.

(b) a Merchant Banker registered with the Securities and Exchange Board of India, and who has in his employment person(s) having qualifications prescribed under (a) above to carry out valuation by such qualified persons;

(c) Member of the Institute of Engineers and who is in whole-time practice;

(d) Member of the Institute of Architects and who is in whole-time practice;

(e) A person or entity possessing necessary competence and qualification as may be notified by the Central Government from time to time Provided that persons referred to in (a), (c) and (d) and qualified person in (b) above shall have not less than five years continuous experience after acquiring membership of respective institutions.

Provided further that, in the case of merchant banker, the Valuation Report shall be signed by the Qualified Person.

The Draft Rule also Provides that persons referred to in **(a) and (b)** shall be in respect of requirement for a "**financial valuation**" and the persons referred to in **(c) and (d)** shall be in respect of requirement for a "**technical valuation**" and a **person or a firm or Limited Liability Partnership or merchant banker possessing both the qualifications may act in dual capacity.**

Sub-section (2) of Section247 of the Act provides that the valuer appointed under sub-section (1) shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;

(b) exercise due diligence while performing the functions as valuer;

(c) make the valuation in accordance with such rules as may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

Removal and restoration of names of valuers from register

The Central Government or any authority, institution or agency, may remove by order the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit,—

(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(b) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Central Government or any authority, institution or agency, renders his name unfit to be kept in the register.

(2) The Central Government or any authority, institution or agency, may on application and on sufficient cause being shown and on being satisfied, restore in the register the name of any person removed there from.

(3) Without prejudice to the provisions of sub-rule (1) and (2), the Central Government or any authority, institution or agency, may review the performance of any registered valuer and order removal of the name of any person from the register of Valuers.

Appeal by an aggrieved Registered Valuer

A registered valuer aggrieved by an order passed under rule 17.4 (1) (a) or 17.4 (3) may prefer an appeal in accordance with the procedure laid down in the respective Acts, regulations or bye-laws governing the respective professional. An appeal against the order of the Central Government shall be preferred to the Tribunal.

Methods of valuation

Before adoption of the methods of valuation as detailed below, the registered valuer shall decide the approach to valuation based upon the purpose of valuation:

(a) Asset approach;

(b) Income approach;

(c) Market approach.

The valuer shall consider the following points while undertaking valuation:

(a)Nature of the business and the History of the Enterprise from its inception;

(b) Economic outlook in general and outlook of the specific industry in particular;

(c) Book value of the stock and the financial condition of the business;

(d) Earning capacity of the company;

(e) Dividend –paying capacity of the company;

(f) Goodwill or other intangible value;

(g) Sales of the stock and the size of the block of stock to be valued;

(h) Market prices of stock of corporations engaged in the same or a similar line of business;

(i) Contingent liabilities or substantial legal issues, within India or abroad, impacting the business;

(j) Nature of instrument proposed to be issued, and nature of transaction contemplated by the parties.

Contents of Valuation Report

The report of valuation by a registered valuer shall be as near to and shall contain such information as set out in Form No. 17.3.

Punishment

As per sub-section (3) of section 247, If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Also sub-section (4) states that where a valuer has been convicted under sub-section (3), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Conclusion

The provision of Registered Valuer is very significant improvement in Corporate Laws. This provision not only provides a big opportunity but also brings challenges. The Government has recognized the expertise of Cost Accountants and provided another very bright chance to CMAs to act as Registered Valuers. I am sure that CMAs as Registered Valuers will do the job ethically and competently.

References

1) Companies Act 2013, as published in the website of Ministry of Corporate Affairs: mca.gov.in.

2) Draft Companies Rules' 2013 as published in the website of Ministry of Corporate Affairs: mca.gov.in. MA

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‘Companies would need to ascertain their cost competitiveness for their survival’

Interview of Mr B B Chatterjee, Executive Vice President & Company Secretary of ITC Limited on the new Companies Act, 2013

MA How would the new Companies Act, 2013 protect the interests of minority stakeholders’?
The Companies Act, 2013 has some provisions which protect minority stakeholders’ interest. Section 245 of the Companies Act, 2013 empowers shareholders and depositors to file class action suits against companies and management in the event they are of the view that the affairs of the company are being mismanaged and the interest of the minority stakeholders are not being taken care of. However, at least 100 members / depositors or 10% of the total number of members/depositors whichever is less or members/depositors who hold not less than 10% of the total share capital or total outstanding deposits will need to support this initiative. Class action suits can be filed with the NCLT (National Company Law Tribunal).

Section 188 of the Companies Act, 2013 provides that related party transactions which are not in ordinary course of business or which are not on arm's length basis would require shareholders approval by way of special resolution. Where related party transactions which benefit only one of the parties is proposed to be entered, such interested party will not be permitted to vote when the special resolution is taken up at a general meeting. In other words 75% of the non-interested shareholders would need to approve the special resolution for the company to enter into such transaction. This provision in the new Companies Act also would protect minority interest in some measure.

In cases of mergers or amalgamations involving a listed company as the transferor company and an unlisted company as the transferee company, minority or dissenting shareholders will now be required to be given an exit opportunity at the fair value as provided in Section 232 of the Companies Act, 2013. The fair value will also need to be determined through a valuation exercise.

MA Would the new Companies Act facilitate domestic and cross-border Mergers and Acquisitions? Would it help the foreign investor?

Presently, in terms of Section 391 and 394 of the Companies Act, 1956, only foreign companies can merge with Indian companies. Now, Section 234 of the new Companies Act specifically permits mergers & amalgamations between Indian companies and foreign companies with the prior approval of the RBI; the procedure has also been simplified. Moreover, merger of holding company with its wholly owned subsidiaries, and between two or more small companies have also been simplified through confirmation by the Central Government. Such matters for other companies will require approval of the NCLT.

MA Would the revised accounting standards in the new Act give a true and fair view of business activities?

The revised accounting standards have not yet been prescribed. In the interim, the existing accounting standards will continue to apply.

The Companies Act, 2013 aims at disclosure of true and fair value of business affairs of a company through mandating preparation by holding companies of consolidated financial statements for all its subsidiaries, associates and joint-venture companies. The scope of disclosures in Directors' Report has also been enhanced.

MA Would 'The National Financial Reporting Authority' (NFRA) be the supreme authority in accounting standards and audit? What would be its jurisdiction?

The responsibility of NFRA (to be set up by MCA) in terms of Section 132 of the Companies Act, 2013, would be to lay down the accounting and auditing standards and policies in consultation with the Institute of Chartered Accountants of India. NFRA would oversee the quality of service of professionals associated with ensuring compliance with accounting and auditing standards. NFRA has also been empowered to investigate into complaints of professional misconduct committed by Chartered Accountants. Where NFRA steps in, no other institute or body is permitted to initiate or continue any separate proceedings. In terms of the draft Rules, NFRA may conduct investigation against (a) auditors conducting audit of 200 or more companies in a year or 20 or more Listed companies (b) companies having net worth / paid up capital of Rs 500 crores or more or turnover of Rs. 1000 crores or more, and (c) companies whose securities are listed outside India. Moreover, Section 132 of the Companies Act, 2013, empowers NFRA to impose penalties and debar Chartered Accountants for periods ranging between 6 months to 10 years, if found to be at fault.

MA When are the draft Rules expected to be published?

Four tranches of the draft Rules have already been put up on the MCA website for public comments. The last dates for the two of them are already over and for the other two the last dates for public comments are near. I expect the draft Rules to become applicable from April, 2014. Some Rules, however, may be made applicable even earlier; the same way 98 Sections were notified effective 12th September, 2013.

MA Would the scope of audit be enhanced in both the manufacturing and private sectors after the new Companies Act, 2013 comes into force?

Internal audit is getting mandated as per Section 138 of the Companies Act, 2013 which requires prescribed classes of companies to conduct internal audit of their operations. Further, with the mandatory requirement of rotation of auditors, the opportunities for other audit firms are expected to get enhanced.

MA Do you feel that enhancement in cost management techniques is the only solution for the Government, the economy and society?

In the competitive market scenario, the need for cost determination and cost management is imperative. The maintenance of Cost Accounting Records for most of the products and Cost Audit are being made mandatory. Besides, energy conservation and technology absorption are required to be reported in the Directors Report. Moreover, companies for their survival would need to ascertain their cost competitiveness vis-à-vis their peer group.

MA What is the benefit of the concept of the One-Person Company? Could you elaborate on this?

In line with global corporate laws, the Companies Act, 2013 has permitted One-Person Companies to be incorporated. In other words, a single person can now incorporate a company and take the benefit of limited liability. Besides, such a company will have a separate and distinct legal identity under the new Companies Act. There will be fewer regulatory compliances necessary for such companies and costs accordingly will also be lower. For example, a One-Person Company need not hold Board or Annual General Meetings. However there has to be one Subscriber and Director and the name of the successor has to be specifically stated in the Memorandum of Association of the One-Person Company.

MA Would the scope of Independent Director be enhanced after the implementation of the new Companies Act, 2013?

The scope of Independent Director will now become more focused under the Companies Act, 2013. Schedule IV specifically lays down a Code of Conduct for the Independent Directors which include the following:

Guidelines for Professional Conduct for Independent Directors

- Uphold ethical Standards of Integrity and Probity
- Work in a bona fide manner in interest of the company
- Devote sufficient time and attention
- Not abuse his position to the detriment of the company

Roles and Functions of Independent Directors

- The roles and functions are very specific and would include scrutiny of management performance vis-à-vis plans.
- Satisfy that the integrity of financial information, controls & systems of risk management are robust
- Balance conflicting interest of stakeholders.

The Duties of Independent Directors would envisage

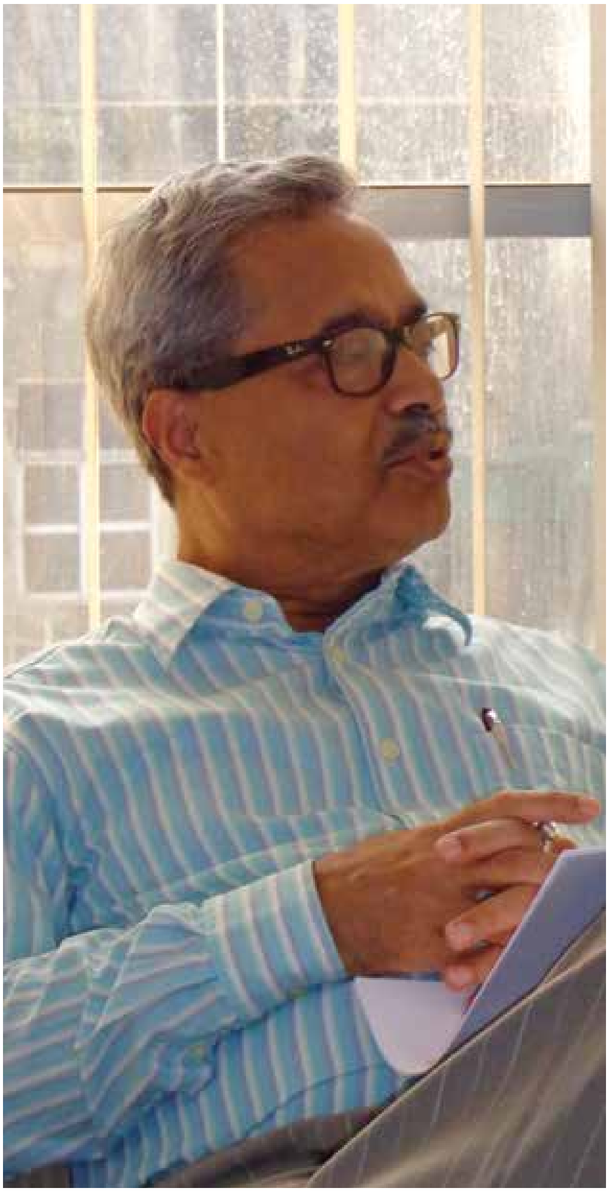
- Taking appropriate induction and refreshing skills
- Seeking clarification and professional advice as necessary
- Attending all meetings as far as possible and participating constructively and not unfairly obstructing functioning of the Board / Committees

Moreover, the duties of all categories of Directors have now been provided in the new Act itself as is evident from Section 166 of the Act. This is, however, in line with the UK Companies Act, 2006.

MA How does the new Companies Act, 2013 enhance the scope of function of the Cost Auditor?

'CORPORATE GOVERNANCE ENTAILS MANAGING THE BUSINESS OF THE COMPANY IN THE BEST INTERESTS OF THE COMPANY AND ITS STAKEHOLDERS. THE NEW ACT REINFORCES SHAREHOLDER DEMOCRACY, SEEKS GREATER TRANSPARENCY AND ENHANCED ACCOUNTABILITY TOWARDS STAKEHOLDERS, FOSTERS ENTREPRENEURSHIP AND GROWTH, FURTHERS E-GOVERNANCE AND IS EXPECTED TO ENCOURAGE SELF -REGULATION'

Section 138 of Companies Act, 2013 specifically requires prescribed classes of companies to conduct internal audit of their operations. In this case the qualification of the internal auditor has been left open. The areas of internal audit have also been widened to include operations, finance, cost, management, energy etc. depending on what the Board considers important for the company. The sectors where cost audit will be mandatory have not yet been put up in public domain. Cost audit was initially introduced by the Government for sectors which were provided with subsidies, for example, newsprint. However, cost determination, as I had said earlier, is becoming critical for companies to remain competitive. As a word of caution, the duties and responsibilities of statutory auditors will also be applicable to Cost Auditors.



MA The good news is that the new Companies Act, 2013 has made certain rules for certain companies on CSR spending. Do you think that this will help the growth of CSR or will it be perceived as an extra burden?

Companies with a net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or net profit of Rs. 5 crore or more will be mandatorily required to spend at least 2% of their average net profits (PBT) of preceding three financial years on CSR. Preference needs to be given to spends in and around local areas where the company operates and for causes like promotion of education, promotion of gender equality, empowering women, reduction of child mortality, improvement of maternal health, ensuring environmental sustainability. Considering the causes for which CSR spend is being mandated, in my view industry may not complaint about it. However, a mandated spend being akin to tax finds resistance, particularly since it is the primary responsibility of the Government to take care of well-being of its citizens. Again, one must not forget that the levy of Education Cess continues.

MA How would the new Companies Act, 2013 affect Corporate Governance?

Corporate Governance entails managing the business of the company in the best interests of the Company and its stakeholders. The new Act reinforces shareholder democracy, seeks greater transparency and enhanced accountability towards stakeholders, fosters entrepreneurship and growth, furthers e-governance and is expected to encourage self -regulation.

MA Any other relevant issues regarding the new Act, 2013?

Fairness and equity demand that when one seeks a poll at a general meeting or sends notice to a company for standing for directorship or objects to a merger or amalgamation, he or she should have a reasonable stake in the company. In other words, the person's interests or rights in some measure is expected to be affected for the person to seek such poll or send such a notice to the company. The new Act, keeping this basic principle in mind, has therefore enhanced the shareholding requirement for demanding a poll and the deposit for standing for directorship. Objections to mergers and amalgamations can now be made only by persons holding more than 10% shares or having an outstanding debt of more than 5% of the total debts of the company.

The criteria for determining sickness has also been changed to provide that a company will be classified as a sick company on its failure to pay more than 50% of its secured creditors, rather than erosion of its entire equity capital as provided in the Sick Industrial Companies (Special Provisions) Act, 1985.

The last area I would draw attention to would be to the definition of subsidiary company which requires holding of more than 50% of the total capital as against voting capital under the present Companies Act. To put simply, a company can keep on changing its subsidiary status if the provider of its preference capital (which is essentially loan funding) keeps on changing. MA

Robert J Shiller of Yale University, Lars Peter Hansen and Eugene F Fama of the University of Chicago

THE FINANCIAL CONTRADICTION: THE ECONOMICS NOBEL PRIZE FOR 2013

The prize committee did come to a joint decision about the most deserving candidates, but not surprisingly, two of the awardees maintain strictly different opinions on the subject they have been awarded the prize for!

Dr Saibal Kar
Centre for Studies in Social Sciences, Calcutta and Institute for the Study of Labor (IZA), Bonn, Germany

LIKE every year, the announcement of the Nobel Prize in Economics Science for 2013 enjoyed its share of suspense and thrill. So far, the usual predictions about who should receive the most prestigious (but fourth most valuable, at 8 million Swedish Krona or US$ 1.27 million presently, and lower than its earlier values owing to lower returns on the current position of the endowment left by Mr. Alfred Nobel) award, have been erratic. It regularly misses the actual recipient by several years forward. In fact, the repetitiveness of inaccurate predictions clearly suggest that leakage of inside information has been quite successfully averted, thus far (we wish the same thing could be said about financial trading, globally!). It seems that the predictors also play risk-averse and factor in 'popular expectations' about what direction economics as a science should take, despite the fact that they do not have much tangible losses to encounter – but of course, for the loss of credibility and consequently, endorsements that such groups generally receive. Regardless, the announcement for 2013 delivering the prize in the hands of three very celebrated financial economists was nobody's guess at a time when international finance as a whole is exposed to severe criticism globally. The award winners are Eugene F. Fama and Lars Peter Hansen of the University of Chicago and Robert J. Shiller of Yale University. In fact, Prof. Raj Chetty's comment in the *New York Times* that "if you ask three economists a question, you'll get three different answers", is a testimony to the fact that unanimity of decisions in economics and, in finance too, is clearly a random event – and yet, the prize committee did come to a joint decision about the most deserving candidates for 2013. Not surprisingly, therefore, two of the awardees maintain strictly different opinions on the subject they have been awarded the prize for! Robert J. Shiller of Yale and Eugene F. Fama of the University of Chicago, might be seen as having conflicting views about the workings of financial markets. At first blush, Mr. Shiller's thinking about the role of "irrational exuberance" in stock markets and housing markets appears to contradict Mr. Fama's work showing that such markets efficiently incorporate news into prices. The signal such prizes send to the rest of the world could therefore leave the general audience in a state of prolonged confusion – what science awards prizes simultaneously to the proponents of two conflicting views (in this case, on how the financial market behaves)?

Raj Chetty, however, suggests that this view is unfair and uninformed, typically because medicine, and practitioners of it in particular, are still unsure about which part of an egg is more harmful (or useful, diet-wise) for human consumption, for example. There are certainly many more conflicts of this nature that do not raise eyebrows unless it is about two economists contending on the same matter. Further, on a more general note in terms of common practices, have we resolved so far as to which side of the egg should we break first? Whichever side you prefer to beak first, it cannot be denied that the emerging body of scientific works using a large amount of empirical facts perhaps in quest of a unifying analysis has taken the subjects much ahead of what they were in the 1960s for instance. When Prof. Fama earlier wrote a number of papers in the area of predictability of stock prices using data in a similar vein as what a medical practitioner would also consider as the best available evidence, it was in the quest for such answers amenable to modifications and challenges sure to emerge in couple more decades. In fact, what good theory is not falsifiable?

The unavailability of certain information has continued to pose serious restraints for rendering economics and finance the wings that most science subjects have by now created for themselves. Evidently, when the nature and pattern of information depends largely on human behaviour, it becomes enormously difficult to make predictions based on it. For example, there should be little argument that there is no way to predict the price of stocks and bonds over the next few days or weeks. But it is quite possible to foresee the broad course of these prices over longer periods, such as the next three to five years. These findings, which might seem both surprising and contradictory, were made and analyzed by this year's Laureates, Eugene Fama, Lars Peter Hansen and Robert Shiller. In addition to the general difficulties associated with such predictions, the cross-hauling of information and the non-linearity associated with information generating functions could lead to multiple equilibria. One dominant form that has been duly discussed in the literature, and to which I refer to as a tool for explaining the directions that behavioural finance has taken lately, is the well known 'herd behaviour'. 'Herd behaviour' arises from an individual replicating or mimicking the actions of others by assuming that they have information to which the individual under consideration is not privy. In other words, the behaviour reflects a situation where everyone does what everyone else is doing, despite the possibility that the individuals' private information suggests doing something quite different. In the process, the individual seems to push her own information under the carpet leading to an absolute convergence to one particular choice or decision in the system. It also follows that an individual being less responsive to her own information will shrink the information set to an extent that is socially welfare reducing. In fact, Abhijit Banerjee in 1992 and later Robert Shiller in 1995 (in terms of interpersonal information transmission) suggest that in equilibrium, the society may gain by forcing some people to follow their 'own' information rather than following what others follow. A common outcome of such information convergence is the creation of a monopoly situation in the market, where for example, herd behaviour drives everybody to a particular restaurant in town despite availability of private information that the other restaurant in town is probably better. If some people standing ahead in a queue choose to enter one restaurant, those who stand behind them in the line are influenced by that decision

IF PRICES ARE NEARLY IMPOSSIBLE TO PREDICT OVER DAYS OR WEEKS, THEN SHOULDN'T THEY BE EVEN HARDER TO PREDICT OVER SEVERAL YEARS? THE ANSWER IS NO, AS SHILLER DISCOVERED

and overrule their private information, which should have sent them to the other restaurant. The 'herd (and negative) externality' that similar information blackout generates for the followers strips the system of alternative information and imparts cost even to the extent of a financial crisis as that experienced by the East Asian countries in 1997 and the Mexican Peso crisis in 1994. The literature on herding behaviour and its relation to financial crisis starts from a premise whereby the acquisition of information is costly for each firm. Consequently, the information frictions lead many of the firms to observe the actions of other firms instead of the costly verification of the fundamentals of the country they have invested in for the short-run and the long-run. Note that, the level of cross-border investments in each period as an important driver of international financial linkages, and the extraction of signals about the state of the economy are closely connected. Shiller, later (2000) would also predict the bubbles in the housing market of the developed countries suggesting a possible financial crisis when the bubbles burst clearly indicating that it might engender a big financial crisis for the global economy, characteristically different from the ones we have been discussing in the this section.

The "Irrational Exuberance" by Shiller (2000) bears all the signs of a doomsday announcement, discussing in detail the pitfalls associated with the enormous stock market boom that started around 1982 and picked up incredible speed after 1995. It is a great achievement on the part of the prize committee, on behalf of the international academia, to honour Shiller for what went unheeded for a long time. He made concrete suggestions in the book regarding policy changes that should be initiated in response to the said boom and against similar occurrences, globally. He argued that the boom represents a speculative bubble, not grounded in sensible economic fundamentals. More specifically, a list of twelve precipitating factors that appear to be its ultimate causes was given. Amplification mechanisms, naturally-occurring Ponzi processes that enlarge the effects of these precipitating factors, were described. Robert Shiller and George Akerlof, the later being the 2001 Nobel Laureate (sharing it with Michael Spence and Joseph Stiglitz) shared the idea of the new forms of animal spirit – something one does out of sheer animal instincts and not because one has invested in such decisions – in the line of good old Keynes. They reasserted the necessity of an active government role in economic policymaking by recovering the idea of animal spirits, a' la Keynes in his description of the behavioural collapse and despondence that led to the Great Depression of the 1930s and the changing psychology that accompanied later recovery. Like Keynes, Akerlof and Shiller, suggest that managing these animal spirits requires the steady hand of government, especially when the functioning of the markets have failed to plug many of the prevailing loopholes in the economic systems – simply because the market can often be manipulated. In rebuilding the case for a more robust, behaviourally informed Keynesianism, they detail the most pervasive effects of animal spirits in contemporary economic life. These include, confidence (consumer confidence index in the US is the highly used indicator for measuring health of the economy), fear, poor faith, endemic corruption, assumed criteria for fairness, and a comparison of the fabled 'isms' in economics that shaped the current global economy, for good or for the worse. Irrational Exuberance also discussed the psychological factors, mainly the psychological anchors for the market and herd behavior alongside a discussion of the attempts

Robert J Shiller of Yale University speaks at a Press conference on campus

to rationalize exuberance, namely, the efficient markets theory and theories that investors are learning.

Of these, the issue of efficient markets has already been beaten to death by Fama. Beginning in the 1960s, Eugene Fama and several collaborators demonstrated that stock prices are extremely difficult to predict in the short run, and that new information is very quickly incorporated into prices. These findings not only had a profound impact on subsequent research but also changed market practice. The emergence of so-called index funds in stock markets all over the world is pretty much the outcome of these findings. Now, the contradiction that we started out with begins to take shape. If prices are nearly impossible to predict over days or weeks, then shouldn't they be even harder to predict over several years? The answer is no, as Robert Shiller discovered in the early 1980s. He found that stock prices fluctuate much more than corporate dividends, and that the ratio of prices to dividends tends to fall when it is high, and to increase when it is low. This pattern holds not only for stocks, but also for bonds and other assets. One approach interprets these findings in terms of the response by rational in-

ARE WE ADEQUATELY CONFIDENT THAT THE SUB-PRIME MELTDOWN AND THE FINANCIAL CRISIS THAT BEGAN IN SEPTEMBER 2008 COULD ACTUALLY BE RESPONSIBLE FOR A NOBEL PRIZE IN 2013?

vestors to uncertainty in prices. High future returns are then viewed as compensation for holding risky assets during unusually risky times. Lars Peter Hansen developed a statistical method that is particularly well suited to testing rational theories of asset pricing. Using this method, Hansen and other researchers have found that modifications of these theories go a long way toward explaining asset prices.

Another approach focuses on departures from rational investor behaviour. The so-called behavioural finance takes into account institutional restrictions, such as borrowing limits, which prevent smart investors from trading against any mispricing in the market. The role of risk attitudes are often subtly and many a time explicitly dealt with in these exemplifications, where the utility functions display the observed behaviour of the major agents in the financial markets. Essentially, these also owe a lot to the questions about the evolution of financial system architecture in both developed and developing countries. In the early 80s, Greenwood and Smith had discussed how the production technologies and the risk-aversion among producers and consumers would determine the form and depth of financial intermediation in a country. This would go even deeper in predicting the emergence of a bank-based financial system vis-à-vis a stock market based financial system. The evolution would depend crucially on risk and risk attitudes, and in part on behavioural biases and market frictions.

Where does the efficient market hypothesis of Eugene Fama fit into this discussion? Allow me to elaborate on this briefly, before I conclude. The hypothesis, which states that stock prices fully reflect the most complete and best information available, has been a stubborn obstacle for active investors determined to find ways to beat the market. If the market is efficient, the rule for investors is simple: One can't beat consistently a simple index of stock prices. In an interview published by the Booth School of Business, University of Chiacgo, a number of issues on the pricey question of efficient market has been taken up for discussion. In recent times, a new school of investing called behavioural finance has become popular with professional and amateur investors alike and has challenged the foundations of the efficient market hypothesis. Led by Fama's colleague and fellow Chicago researcher Richard Thaler, behavioural finance theorists claim that one can, in fact, beat the market. By carefully studying investor behaviour, active money managers can identify profitable clues about what stocks to buy and when. Backed by compelling evidence from cognitive psychology, the new school believes that investors often make predictable, systematic mistakes when processing information about the stock market. These, it is often argued are the outcome of investor overconfidence, greed, or fear and the same psychological tenets that Shiller and others have deployed to predict functioning of the market or the failure of it. The game seems to depend on the observation of bad judgments made by people and using Bayesian learning to avoid repetition of mistakes. This is herd behaviour with a positive externality on the society.

However, Prof. Fama did not appear convinced. In his recent paper "Market Efficiency, Long-term Returns, and Behavioural Finance," he defends the theory of efficient markets by dismantling the opposing arguments one by one. "There is a developing literature that challenges the efficient market hypothesis, and argues that stock prices adjust slowly to information, so one must examine returns over long horizons to get a full view of market inefficiency," says Fama. "If one accepts their stated conclusions, many of the recent studies on long-term returns suggest market inefficiency, specifically, long-term investor under reaction or overreaction to information. It is time, however, to ask whether this literature, viewed as a whole, suggests that efficiency should be discarded. My answer is a solid no." "The granddaddy of under-reaction events is the evidence that stock prices seem to respond to earnings for about a year after they are announced," says Fama. Supporters of behavioural finance say that evidence of investor overreaction and under-reaction signals an inefficient market, yet Fama believes they have not made a case strong enough to replace the efficient market theory.

In other words, investor biases such as investor overreaction and under-reaction are short-lived and random occurrences that can be effectively explained within the traditional theory of market efficiency. He rejects recent long-term return studies for two main reasons. First, according to Fama, an efficient market generates "categories of events" that individually suggest that prices overreact to information. But in an efficient market, apparent under-reaction will be about as frequent as overreaction. If anomalies split randomly between under-reaction and overreaction, they are consistent with market efficiency. Second, and more important, "If the long-term return anomalies are so large they cannot be attributed to chance, then an even split between over- and under-reaction is a Pyrrhic victory for market efficiency." He found, however, that the long-term return anomalies are sensitive to methodology. They tend to become marginal or disappear when exposed to different models for expected returns or when different statistical approaches are used to measure them. Thus, even viewed one-by-one, says Fama, "most long-term anomalies can be reasonably attributed to chance."

Notwithstanding these rich debates, are we adequately confident that the sub-prime meltdown and the financial crisis that began in September 2008 could actually be responsible for a Nobel Prize in 2013? One has to revert back to Shiller to find an answer to that. In his very recent (2012) book Robert Shiller does not blame the financial industry for thrusting a grave crisis on the world economy. He argues that, rather than condemning finance, we need to reclaim it for the common good. He makes a powerful case for recognizing that finance, far from being a parasite on society, is one of the most powerful tools we have for solving our common problems and increasing the general well-being. We need more financial innovation, as opposed to the popular vote asking for lesser numbers of it, and allow these newer instruments to play a larger role in helping society achieve its goals. Challenging the public and its leaders to rethink finance and its role in society, Shiller argues that finance should be defined not merely as the manipulation of money or the management of risk but as the stewardship of society's assets. He explains how people in financial careers can and manage, protect, and increase these assets. It is not to deny that one of the earliest forms of financial innovations in the world economic events was the advent of insurance companies in the Roman civilizations, wherein the merchant vessels purchased insurance from the brokers located in the cities of Genoa or Venice. One wishes that the Merchant of Venice had also bought one for himself, so that the dues of Shylock could be paid up with ducats instead of with a pound of flesh. Evidently, there are stayers and movers in this game also, as in any other that the current state of economic logic complies with. It seems that while finance shall continue to innovate and spread its influence in several areas already accounted for or not accounted for, the government cannot possibly shun the role of the crisis monitor completely. Is that something very new for a society that claims to have been practicing economics as a science for almost 250 years now? MA

Led by Fama's colleague and fellow Chicago researcher Richard Thaler, behavioural finance theorists claim that one can, in fact, beat the market. By carefully studying investor behaviour, active money managers can identify profitable clues about what stocks to buy and when

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Report on Symposium on Cost Audit for Inclusive Growth held on Friday 25th October 2013 at Y B Chavan Auditorium in Mumbai

Shri Venkaiah Naidu, Rajya Sabha member, speaking at the symposium

The Institute of Cost Accountants of India, Western India Regional Council organized the symposium to understand the views of the various stakeholders of the economy on the Cost Audit mechanism in India. Those invited were national leaders, leaders from industry, industry associations, revenue departments of the Government, banks and financial institutions, regulators, consumer forums, stock exchange authorities, social economists, etc. The programme was attended by around 600 delegates from all over India.

Excerpts from the speech of Shri Venkaiah Naidu, MP, Rajya Sabha

There should be transparency in the system. How do you get transparency? You must know the Cost of Product. Then only you will know that the price of the product offered to you is reasonable or not.

People should have the right to know the Cost of the product or Service.

First of all, we should have the facts and figures of cost of production, margin and the profit.

Cost accounting plays a very important role in bringing transparency to the system.

Secondly, as the role of Competition Commission of India is expanding in today's economy, Costing will be one of the crucial pillars which will ensure that the monopolies do not get created and the interests of the Government as well as the consumer are taken care of.

The Producer's interest and the consumer's interest have to be taken care of. Cost and Management Accounting plays important role in balancing interest of the Producers as well as consumers.

With the advent of modern technology, Enterprise's resources, planning system and Cost and Management Accounting can be more process and technology driven. Although profit is good profiteering is not. Cost and Management Accounting can aid various regulators in carrying out their functions more effectively. We need to proceed with caution, so that the various interests are not compromised and competition does not misuse the tremendous data flow which would be prevalent in the system.

Cost Accountants have got a very big role. Independent, honest & judicious actions of the Institute Members can help bringing out reality to the world, curb profiteering & better Tax Compliance. All the three will benefit Common Man. Cost Accountants are there to strengthen the system to make it more transparent and to make the people understand what is the Cost of Production and then what is the cost being sold to you. This is what the Cost Accountants are doing the noble profession according to me.

The point I am making today is a new point in the politics of India is that, there has to be Cost Accountancy in the political party as far as their manifestoes are concerned.

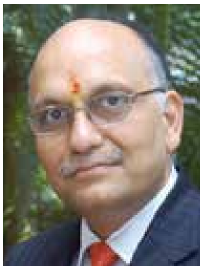
There has to be Cost Accountancy in the Political System and also in public life so that people understand whether this particular promise is feasible or not or it is only populistic.

This profession which was established in 1944 as The Institute of Cost And Works Accountants of India as a registered company under Registrar of Companies, subsequently in 1959 established by Special Act of Parliament namely Cost and Works Accountants Act of 1959 during the period of Shri T. T. Krishnamachari , a great economist and great visionary .

Today I saw an open letter to the Government of India from ASSOCHAM mentioning – "The job of the Government is not only to regulate but also to facilitate the enterprises". This only will bring efficiency and sense of participation among the bureaucrats and even among the Ministers in our common pursuit of Nation Building. Every citizen in democracy has the right to influence Government decision but, should it be pursued as a mala fide act of criminality? Let us all join together towards inclusive growth making democracy really meaningful and making "Swaraj" into "Su-Rajya". That should be our goal and I hope I am confident that with all the capacities indifferent people and different walks of life in the country India has still the potential to become a super economic power irrespective of politics. Political idea can be separate but people's talent, people's capacity and knowledge that make really India a strong Nation. Talent is inherent in this land. We have the talent, we have the culture, we have the heritage. We should join together and work towards really bringing an inclusive growth and making India strong Nation.

Friends, I am happy to come to you today. I thought I should share some of my perceptions about your profession and I definitely feel that you have a greater role because every thing depends on cost. We have to bring in transparency in the system and to bring transparency your role is very important. I am told there are around 63000 Cost Accountants professional in the country, but only some 2000 around are in practice and remaining are working in Industries, but I feel that more and more people should join the practice and guide the society and the system. MA

21st Century will belong to Cost and Management Accountants, says Mr Pawan Ruia, Chairman, Ruia Group



Excerpts from the speech by Mr Pawan Kumar Ruia, Chairman of the Ruia Group:

The Cost Accounting profession is the most important body of functional knowledge in the economic process. Cost Audit mechanism will increasingly contribute towards the progress and prosperity of the Indian economy aligned with the objective of inclusive growth.

It is without any doubt that maintenance of appropriate cost accounting records by firms and effective cost audit will contribute to improving the competitiveness of the Indian industry.

I think Cost audit should be viewed as an instrument for continuous improvement. Cost audit must aim to provide an assurance to the management and the Government that the company is maintaining appropriate cost records as prescribed by law and to identify waste of resources, if any. Thus, it identifies processes and activities where improvements are necessary to optimise the productivity of resources.

Value is defined as benefits relative to cost, not just benefit alone. Value creation is an idea that has long been recognized where profit is revenues earned from customers minus the cost incurred. The value creation links companies operations with supply and demand chain management. Competitiveness involves operating at a lower cost where invaluable inputs from cost auditing could build the business model of a value chain where companies and societies are mutually benefited.

The role of Cost Audit shall not only be confined to routine audits as prescribed under General Accepted Accounting Principles by Institute of Cost Accountants of India but also get into the area of internal control systems, modifying / improving production and business processes, supply and demand chain management. The Cost Audit should also address and examine the business intelligence system and inject cost analysis information and data for effective cost controls.

Friends, it is easier said than done. And, the key to this tectonic shift is in our mind. We have to tell ourselves that we are not mere cogs in the wheel doing our bit, but are the life force that drives the wheel forward.

On this note, I would like to make two appeals to the competent authorities from this esteemed forum:

- Make Cost Audit mandatory, across the board, just like Financial Audit and make it a part of the Annual Report to be approved by the Shareholders as a Statutory compliance. Even if this is at the cost of competitiveness and price sensitivity, it should be allowed for the sake of Inclusive Growth.
- In the fast flattening world of globalization I will urge you to work towards a regime of uniformity and synergies in Costing and Cost Auditing across countries and regions.

In the context I must appreciate the tremendous amount of good work that is being done by the Institute. Over the years, the Institute has significantly contributed towards growth of the industrial and economic climate of the country, and has played a key role in developing the Cost and Management Accountancy function as a powerful tool of management control in all spheres of economic activities.

Cost Audit, as I mentioned earlier is the main driver of the economic process but is yet to get the recognition it deserves.

Friends, costing is like a mother in more ways than one. She knows that the onion prices are shooting through the roof much before the father sees it on television news. She knows the exact amount of the school fees, tuition fees and bus fees of the children and remembers the payment schedules. She knows how many subsidized gas cylinders have been consumed this year and exactly how many are due. She keenly watches the health of the family elders and knows if it is time to consult an expert. The options are innumerable – the permutations and combinations mind boggling and cost consciousness is ingrained in everything she does. She is not swayed by the motive of profitability and does everything with the achievement of the greatest common good being the prime mover. And, the result? The father is considered a super-success in managing the family when the mother assumes her role to perfection. But isn't it time to acknowledge the larger role a mother instead of restraining her to the precincts of a homemaker? Costing deserves that acknowledgement.

Friends, I am also a member of other Institutes, just like I am a member of yours. I say this because I want to share a vision with you today. As I stand here, I see a future world order where Costing will play the role of pre-eminence in man's quest for economic development. All of you are aware of the epoch making changes that our discipline is going through and I will not waste your time elaborating on them. Suffice to say, Cost Accountancy as a calling, as a profession is set to emerge as the most potent tool in the hands of economic man – if the 19th century belonged to free enterprise led by the faculty of management and the 20th century to our brothers, the Chartered Accountants who built on the foundation created by our forefathers, the 21st century is certain to belong to us as we help the world, grappling with finite resources and infinite demand to rationalize its production processes, armed with the knowledge of costing. That is why at the very outset I announced that the 21st century belongs to the Cost and Management Accountants.

On that note of optimism, let each one of us take the vow to go back and do our little bits to ensure that the writing on the wall is crystal clear: Cost Rules. MA

REVERSE CHARGE UNDER SERVICE TAX

The provisions under reverse charge, particularly partial payment by service recipient, explained

CMA Sanjay R Bhargave
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UNDER Service Tax, normally liability to pay service tax is on service provider. Section 68(1) of Finance Act,1994 provides that every person providing taxable service shall pay service tax at the prescribed rate specified in section 66B of the Act.

However, Section 68(2) of the Act provides that person other than service provider can be made liable to pay service tax by issuing notification. Further, proviso to Section 68(2) of the Act, provides that the notification can prescribe that part of the service tax to be paid by service provider and balance by the other person.

Thus, the powers to decide who should pay service tax are delegated to Central Government. Under the said powers, in certain cases service receiver is made liable to pay service tax.

The provision that service receiver is liable to pay service tax is termed as "Reverse Charge" or "Tax Shift".

Notification No. 30/2012-ST Dt. 20.06.2012 has been issued effective from 01.07.2012, wherein certain cases the liability to pay service tax is shifted to recipient of service. Parallel provisions have also been made in Rule 2(d) of Service Tax Rules,1994.

The following is the analysis of the relevant provisions.

1. Applicability of Reverse Charge

Notification No.30/2012-ST provides for reverse charge in following cases.

a) Services provided by Insurance Agent:- In the case of services provided by insurance agents, service tax is payable by insurance company.

b) Services provided by Goods Transport Agency: As per Sec 65B(26) of Finance Act, Goods Transport Agency means a person who provides service in relation to transport of goods by road and issues consignment note , by whatever name called.

Consigner or consignee, who is liable to pay freight either himself or through his agent for transportation of such goods in goods carriage, and falls under any of the following categories is liable to pay service tax.

- any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- any co-operative society established by or under any law;
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- any body corporate established, by or under any law; or
- any partnership firm whether registered or not under any law including association of persons;

Service Tax is payable on 25% of value if Cenvat credit has not been availed by service provider. Therefore a certificate from the service provider needs to be obtained confirming that he has not availed Cenvat credit on inputs, input services and capital goods. Otherwise, the service receiver will have to pay service tax on entire 100% value of services.

If service recipient is located in taxable territory, he is liable to pay service tax. However, if service recipient is located in non taxable territory, Goods transport Agency i.e service provider is liable to pay service tax.

If the transportation of goods by road services are provided by a person who does not issue consignment note, then the service will not be GTA services and it will fall under negative list.

c) Sponsorship service:- Any body corporate or partnership firm located in the taxable territory , as a receiver of services is liable to pay service tax. However, if service recipient is located in non taxable territory, service provider is liable to pay service tax.

d) Services by Arbitral Tribunal:- Any business entity located in the taxable territory , as a receiver of services is liable to pay service tax.

e) Legal Services of Advocate or Advocate Firms:- In case of services provided by individual advocate or firm of advocates, the business entity who receives such services, located in taxable territory and having turnover exceeding Rs 10 Lacs per annum is liable to pay service tax.

f) Services by Director to Company:- Any company registered under Companies Act or any other special Act, who receives services from independent or nominee directors, non executive directors is liable to pay service tax. In the case of executive directors where there is an employer-employee relationship between company and director, no service tax is payable as it will be outside the scope of service as per sec 65B(44) of the Act.

g) Support Services by Government or local authority excluding renting of immovable property and following specified services in Sec 66D of the Act.

- Services by Department of posts by way of speed post, express parcel post , life insurance and agency services provided to person other than government.
- Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.
- Transport of goods or passengers

In the case of abovementioned services, business entity located in taxable territory and receives services is liable to pay service tax.

h) Renting or hiring of motor vehicle designed to carry passengers to any person who is not in similar line:- Service tax is payable by the recipient of services if Service Provider is an individual, HUF or partnership firm, AOP located in taxable territory and Services are received by Business Entity who is a body corporate located in taxable territory.

Service receiver is liable to pay service tax only on 40% value of the taxable services. If service provider does not avail Cenvat credit, no tax is payable by him. However, if service provider intends to avail Cenvat credit , he has to pay balance 60% tax.

i) Supply of Manpower for any purpose or security services:- 75% of Service tax is payable by the recipient of services if Service Provider is an individual, HUF or partnership firm, AOP located in taxable territory and Services are received by Business Entity who is a body corporate located in taxable territory. Balance 25% tax is payable by service provider.

j) Service Portion in Works Contract:- 50% of Service tax is payable by the recipient of services if Service Provider is an individual, HUF or partnership firm, AOP located in taxable territory and Services are received by Business Entity who is a body corporate located in taxable territory. Balance 50% tax is payable by service provider.

As explained above, in the case of works contract services, the service receiver can workout liability independently and choose the valuation which is beneficial to him.

k) Services received from non taxable territory:- Where service provider is located in non taxable territory and service recipient is located in taxable territory, entire service tax is payable by receiver of services.

2. Registration by service recipient

Where service tax is payable by the receiver of services, he has to obtain registration under service tax to this effect and file ST 3 Returns periodically.

3. Small Service Provider Exemption is not available to service receiver

As per Notification No. 33/2012-ST dt.20.06.2012, the small service providers are entitled for exemption upto Rs.10 Lacs turnover of taxable services. However, in the case of reverse charge, when service receiver is made liable to pay service tax, he is not entitled to the exemption which is available to service provider. Therefore, the service receiver is liable to pay service tax even on the small value of service received by him. Even if service provider does not charge service tax in his invoice, the service receiver is liable to pay his part of service tax.

4. Service Tax is payable on gross amount paid to service provider

Under reverse charge , the service receiver is discharging the liability of service provider. Therefore, in my opinion, service receiver cannot treat the amount payable/ paid to service provider as "inclusive of service tax" as service provider would have paid service tax on the gross amount charged in his invoice.

5. Point of Taxation in case of Reverse Charge.

As per Rule 7 of Point of Taxation Rules, where service tax is payable under reverse charge, the point of taxation shall be the date on which payment is made to service provider, if the payment for such service is made within six months from the date of invoice. However, if the payment for such service is not made within six months from the date of invoice, the point of taxation will be the date of invoice issued by the service provider. In such cases, interest on delayed payment will be applicable as point of taxation will shift to earlier date.

6. Cenvat Credit cannot be utilized for paying service tax under Reverse Charge

As per explanation to Rule 3(4) of the Cenvat Credit Rules, 2004, Cenvat credit cannot be used for payment of service tax in respect of services where the person is liable to pay tax is the service recipient.

In view of the this specific explanation, Cenvat credit cannot be utilized for payment of service tax by recipient when tax is payable under reverse charge

7. Cenvat credit can be availed by service recipient, if otherwise admissible

As per Rule 9(1)(e) of Cenvat Credit Rules, 2004, the manufacturer or the provider of Output services or the input service distributor, as the case may be, can take Cenvat credit on the basis of challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax.

While taking Cenvat credit, it is important to note that Rule 2 (l) of the Cenvat Credit Rules has put restrictions in the definition of input services on following services.

- Service Portion in the execution of works contract and construction services used for construction of a building or civil structure or part thereof or laying foundation or making of structures for support of capital goods.
- Renting of a motor vehicle for passenger transport.
- General insurance, servicing, repair and maintenance, in so far they relate to a motor vehicle which is not a capital goods as per Cenvat credit rules.
- Outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation, when such services are used primarily for personal use or consumption of any employee.
- Outward GTA and Insurance service after place of removal.
- Services which are not used by service provider for providing output services.
- Services used by manufacturer after clearance of final products from place of removal.
- Services not used by manufacturer , whether directly or indirectly , in or in relation to manufacture of final products.

In other words, even if service recipient has paid service tax under reverse charge on abovementioned services, he cannot take Cenvat credit of the same.

As per proviso to Rule 4(7) of the Cenvat Credit Rules, 2004, in case of an input service where the service tax is paid on reverse charge by the recipient of the service, the Cenvat Credit in respect of such input service can be taken or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill to the service provider.

8. Invoicing by service provider

As clarified in para 10.1.2 in An Education Guide by CBE & C, The service provider should charge service tax on to the extent it is payable by him and indicate that balance is payable by the service recipient.

It is further clarified in para 10.1.3 that even if service provider does not charge service tax in his invoice, the service receiver is still liable to pay his part of service tax.

9. Valuation of service by service provider and service receiver is independent.

Para 10.1.8 of CBE&C's "Taxation of Services: An Education Guide" clarifies that since the liability of service provider and service recipient are different and independent of each other, the service recipient can independently avail or forgo abatement or choose a valuation option depending upon the case, date available and economics.

Thus, particularly in the case of works contract services, the service receiver can workout liability independently and choose the valuation which is beneficial to him. This can be used as a technique of tax planning as in the case of works contract services, Cenvat credit may not be available to service recipient.

10. Reverse Charge when service is received prior to introduction of reverse charge.

Since amendment to Sec 68(2) of Finance Act and Notification No.30/2012-ST dt.20.06.2012, which provides for payment of service tax under partial reverse charge have been made effective from 01.07.2012, in my opinion, provisions of reverse charge will apply only when service is provided on or after 01.07.2012.

Similarly, in case of import of services, as clarified by CBE & C, service tax would be payable only w.e.f.18.04.2006.

11. Precautions

In the case of reverse charge, due to lack of awareness, there are chances of short payment, non payment or non compliances. To avoid this, following steps may be taken by the service recipient.

1. Creating suitable account codes in books of account for proper accounting of transactions under reverse charge.
2. Educating service providers to raise proper invoices to minimize cases of wrong payment, double payment etc.
3. Educating executives in accounts, purchase, marketing , materials department to issue correct purchase orders, work orders specifying person liable to pay service tax and quantum thereof and to make payment correctly.

Since the provisions under reverse charge, particularly partial payment by service recipient are complicated, a Desk Review or Special Audit by the professionals, before December 2013 is also advisable so that if there is short payment, non payment etc, benefit of the Voluntary Compliance Scheme under Service Tax can be taken to save interest, penalty, prosecution or any penal action under Service Tax. MA

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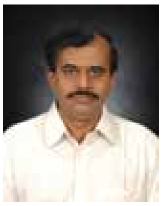
UNPAID 'SELF-ASSESSED' TAX: RECOVERY WITHOUT DUE PROCESS

In reality, the shift from official assessment to self-assessment can be likened to a fall from the frying pan into the fire



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THERE are curious provisions in the Law relating to Central Excise and Service tax which empower the administration to make the recovery of the self-assessed tax without having to follow the mandatory due process – issue of show cause notice, inviting defense, fixing a personal hearing and then passing a speaking order. If that would surprise purists in the jurisprudence of taxation, then consider that these provisions have been placed on the legal back-burner, so to say, the Rules which are instruments of subordinate legislation. The absence of these draconian provisions in the main Acts has served to obscure the unwelcome impact caused by these provisions. In other words, the power not to follow natural justice as an essential cornerstone of recovery imbued with due process is not bestowed by an act of parliament, but has been assumed and placed out of popular scrutiny by being set innocuously in the subordinate legislation. In this context, we might just as well remember what the quintessential constitutional mandate on taxation, Article 265, states. It is that "No tax may be levied or collected without the authority of law". It is now axiomatic that 'law' for this purpose should be just, fair and reasonable. Rules are part of the law but are secondary to the law in the main Act of the legislature which is concerned with thee objectives and the policy while the machinery of implementation is left to the Rules. In Indirect tax systems in India, more especially in the Central Excise and Service tax systems, mismatch between Act and Rules (when policy is set in the Rules without sanction in the main Act) is a common sight. The Cenvat Credit Rules are perhaps a classic example of a jumbled network of policy and procedure without any whiff of a policy provision and direction in the main Acts. In this article, let us examine two such instances in the Service tax and the Central Excise areas.

The onerous gift

The introduction of self-assessment in Central Excise and Service tax has come as a kind of Greek gift to the tax payers. The concept of self assessment was billed as a liberation of the tax payers from the procedural hassles of official assessment and a symbol of their empowerment in the hands of the 'trusting' tax administration. In reality however, the shift from official assessment to self assessment can be likened to a fall from the frying pan into the fire. It will be no exaggeration to mention that the self assessment is usually cold-shouldered by the Field & Audit and gets a lip service in the respective statutes. Nevertheless, the Statutes of the subordinate legislation in the Service tax and Central Excise arenas have picked off this gift of self assessment to put in place provisions which to put it mildly are truly tough. The Rules seem to caution that since the tax payers is trusted with self-assessment, any non-payment will not be tolerated irrespective of any mitigating circumstances. The problem is that in a real world there is not only white and black, but shades of grey as well. The Rules have compounded the business misery by failing to make any distinction between genuine cases of difficulty and deliberate non-payment.

The Service Tax taskmaster – Rule 6(6A) of Service Tax Rules, 1994

This provision is reproduced from the statute for easy reference and understanding as follows:

" Where an amount of Service tax payable has been self-assessed under sub-section (1) of Section 70 of the Act, but not paid, either in full or part, the same shall be recoverable along with interest in the manner prescribed under section 87 of the Act".

Section 70 (1) lays down the onerous duty of self assessment in the following terms:

"Furnishing of Returns: - (1) Every person liable to pay the service tax **shall himself assess the tax due** on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.(Emphasis added).

Now the issue arises. Suppose an assessee is genuinely out of funds or short of funds and despite billing the clients he has not received any money. He has dutifully reported the transactions in his service tax Returns, though. He will nonetheless face the heat of Rule 6(6A) despite the 'gift' of self-assessment he got in section 70 of the Act. He cannot look forward to the usual safeguards of due process – Show cause notice, Rejoinder, Personal Hearing and a 'speaking order'. His self-assessed tax amounts are adjudged as dues in the Rule itself and he is liable for draconian recovery action in Section 87 of the Finance Act, 1994. The pillars of section 87 are the following:

"Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:-

(a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;

(b) (i) ***the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;***

(ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;

(c) the Central Excise Officer may, on an authorization by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue."

The preference of the Service tax department for seizing the moneys owed to the 'defaulting' service tax assessee by third parties such as banks and client companies is well-known. The Rule 6(6A) does not set any timelimit for its action to begin. It could be as soon as the self assessment being declared in the Returns and remaining unpaid. In point of law and fact, it is a questionable power on several counts, since Section 73 of the Act mandates the statutory duty of the department to issue a show cause notice for any service tax which is not paid, or short-paid, or which is not levied or short levied or erroneously refunded. Therefore, there is no question of self-assessed tax dues being subject to recovery without the due process clearly envisaged in section 73 which includes all kinds of dues that may arise including from self-assessment. There could be defendable reasons for a tax payer as to why he could not yet make the payment or why it is not payable in the first place. Even a 'self assessed' tax may emanate from a mistake of law or fact. If the tax payer chooses not to recover from the client on that basis and applies for a refund for example, then the Department of Service if it objects to the interpretation of the tax payer must comply with the due process enshrined in section 73 before contemplating drastic recovery under section 87. Such bona fide possibilities could see the light of the day only through recourse to the due process enshrined in section 73 of the Act. By denying in blanket manner a statutory due process in the Act, the Rule compounds its own invalidity. The denial of due process by means of a subordinate rule appears unfair when section 70 or any other provision in the Act does not contemplate such a draconian design of taking the tax.

In this context, a judicial development in the above scenario in the form of GSP INFRATECH DEVELOPMENTLTD Vs UNION OF INDIA - 2013-TIOL-399-HC-KAR-ST is interesting. The Karnataka High Court had to deal with a case where the Service tax department had instructed a bank to freeze and withhold from releasing moneys in an account held by a purported tax defaulter, using its preferred power under section 87 (b) (i) of the Act. But a spanner in the works for the department was that they had also issued a tax notice under section 73 of the Act and the proceedings were pending. The Court had no hesitation in quashing the garnishee order issued to the bank in view of the pending proceedings under section 73 (1). The High Court observed rather pointedly:

"The contention that Section 87(b) (iii) of the Act is applicable, in my considered opinion, is without merit, since it applies only after a proceeding under Section 73 is concluded by an order determining the amount due and payable by the petitioner. Such a situation having not arisen as there is no conclusion of the proceeding, Section 87 is inapplicable."

The reasoning of the case can just be extended to any case to which section 73 (1) is applicable and until there is a confirmation of the taxability and a determination of the tax amount by following the due process written into section 73, there can be no recourse to section 87 of the Act. Thus the Rule 6 (6A) appears unreasonable and even ultra vires as it seeks to thwart the due process clause of a substantive provision contained in the Act.

Rule 8(3A) of Central Excise Rules, 2002 – against natural justice and due process

The Central Excise Act has a due process provision in section 11A very similar to the section 73 of the Finance Act 1994. The natural justice scope of this provision is thwarted by the provisions of Rule 8 of the Central Excise Rules which is extracted here for ready reference:

"(3A) If the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub-rule (1), then notwithstanding anything contained in said sub-rule (1) and sub-rule (4) of rule 3 of CENVAT Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon; and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

(4) The provisions of section 11 of the Act shall be applicable for recovery of the duty as assessed under rule 6 and the interest under sub-rule (3) in the same manner as they are applicable for recovery of any duty or other sums payable to the Central Government."

This requirement of a penal nature in the central excise law is no less onerous than the recovery contemplated in the service tax law examined above. In fact, a manufacturer who is left without funds due to some emergency or calamity and has outstanding tax dues will be without any recourse to due process in facing the rigour of the Rule 8. He has to suffer a freezing of his cenvat credit account, pay the excise duty in cash and pay it every time he dispatched the goods instead of the usual monthly payment, during the period when he is supposedly in 'default'. Otherwise, his goods are liable for seizure in the hands of the officials. The prospect of undergoing this ordeal may unnerve businesses. This entire penalty is self-policing and no order from the department is required to be made. The draconian measure denies the substantive due process for recovery of any excise duty contemplated in section 11A of the Act which covers any case of non-payment or short-payment of excise duty.

Conclusion

While the government has a legitimate interest in ensuring a steady, unhindered collection of tax revenues, it must also be recognized that businesses often run up against unforeseen difficulties in their environment that may force them to delay their tax remittances. In such circumstances where it could be clearly established that the assessee is not in deliberate default, the draconian law must step back and refrain from unwittingly harming the economic interests of businesses. Not all business circumstances should be tarred with the same black brush. It is the not the case here that the government should not attempt to recover the delayed tax. But it should be done in a manner that does not deny due process and which considers the bona fide circumstances for tax mitigation. Wholesale provisions such as Rule 6 (6A) of the Service tax Rules and Rule 8(3A) of Central Excise Rules that cut across the board need reform and intelligent, fair differentiation of genuine tax delays and deliberate tax defaults. MA

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TAX TITBITS

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1. Transfer pricing – Safe harbour rules

The only safe harbour rule in vogue was one which prescribed the tolerance limit of 5% under specified circumstances vide Notification No. 1871(E) dated 17th August, 2012. There has been a further notification dated 18th September, 2013, which may be summarised in the following chart:

Sl.No.	Relevant Rule	Description of service	Eligible benchmark
1.	10TC (i)	Software development service	20% or more
2.	10TC (ii)	Information Technology Enabled Services (ITES)	- do -
3.	10TC (iii)	Knowledge process outsourcing service	30% or more
4&5	10TC (iv) & (v)	Intra-group loan below/ above loan amount of Rs. 50 crores	Base SBI rate plus 150/300 basis points as on 30th June of relevant previous year
6.	10TC(vi)	Corporate guarantee not exceeding Rs.100 crores	2% per annum of amount guaranteed
7 & 8.	10TC (vii) & (viii)	Contract Research: (i) Software development (ii) Pharmaceutical drugs	(i) 30% or more (ii) 29% or more of operating profit margin to operating expenses
9 & 10.		Export of auto components: (i) Core components (ii) Non-core components	(i) 12% or more (ii) 8.5% or more of operating profit margin to operating expenses

These international transactions which are within the benchmark prescribed under the above safe harbour rules would fall outside the purview of application of transfer pricing rules. Many of the transactions now covered would be safe from the rigours of these Rules, which are effective from 18th September, 2013, so that it should have application for all transactions covered by any transfer pricing certification and returns which fall due under section 139(1) beyond this date, unless there is a clarification otherwise. Hopefully, these benchmarks would be revised and the rules themselves will be extended to more industries. The larger question, however, is whether a similar rule for specified domestic transactions would be forthcoming. Presently, the only safe harbour rule is the basic exemption of Rs.5 crores provided under section 92BA. The benchmarks provided for international transactions should have persuasive value even for domestic transactions.

2. International Transactions and Specified Domestic Transactions – A comparison

A comparison of transfer pricing rules as between international transactions and specified domestic transactions is available in the following chart:

S.No.	Subject	International Transactions	Specified Domestic Transactions
1	Assessees, who are liable	All enterprises with international transactions	Transactions with related parties listed in section 40A(2)(b) of the Act.
2	Transactions, which are liable	All international transactions with associated enterprise as defined under section 92B	Transactions being expenditure or interest or allocation of any cost or expense referred in section 92(2A) and transactions listed under section 92BA
3	Whether compensatory adjustments are possible?	Compensatory adjustments consequent on arm's length price addition will not be available in the assessment of the other party to the transaction	Compensatory adjustments for arm's length addition in the assessment of the other party should be possible on revised agreement and on revised return filed within time.
4	Tax holiday benefits, whether available?	Tax holiday benefits are not generally available to non-residents, except where the relevant income is taxable as income of PE, if there is. Double Taxation Avoidance Agreement with anti-discrimination clause vide Rajeev Sureshbhai Gajwani v. ACIT (2011) 8 ITR (Trib) 616 (Ahd)[SB].	Base SBI rate plus 150/300 basis points as on 30th June of relevant previous year
5	Transfer Pricing Officer's power	Transfer Pricing Officer's power extends to international transactions, whether referred to him or not vide section 92CA(2).	2% per annum of amount guaranteed
6	Safe Harbour provisions	Tolerance limit of 5 per cent under Notification S.O.1871(E) dated 17.8.2012 and Notification dated 18.9.2013 as summarised above.	Basic exemption upto Rs. 5 crores is provided vide section 92BA.Ohter safe harbour rules notified on 18.9.2013 may have persuasive value for specified domestic transaction
7	Advance Pricing Agreement	Rules prescribed under section 92CC cover international transactions	Rules under section 92CC do not cover specified domestic transactions
8	Computation provisions	Section 92C providing for computation is common both for international and domestic transactions	
9	Maintenance, keeping information and documents	Section 92D is common both for international and domestic transactions	
10	Audit report	Section 92E is common both for international and domestic transactions	

3. Need for admission of new argument/ fresh evidence

New evidence or new argument, if any, should be filed only before the authorities or with the leave of the Tribunal before the Tribunal. The High Court would not admit any fresh evidence except where such evidence had been wrongly refused admission in which case the matter may be remanded. The Supreme Court in Tek Ram (Dead Through LRs) v. CIT [2013] 357 ITR 133 (SC) found that certain documents, which were filed before the High Court, should have been the subject matter of consideration, whether to be admitted or rejected. In fact, the documents had some relevance, so that the High Court was bound to have admitted the same. It, therefore, remanded the matter back to the High Court taking into consideration the documents, which were presented before it, and deal with the same. This unusual case indicates the concern of the Courts to have the matters before them decided with reference to all the relevant materials and not to shut out legitimate evidence on technical grounds to ensure unimpeachable justice.

4. Courier service is also a recognised mode of service

Order 41, Rule 23 of Code of Civil Procedure, 1908 prescribes the procedure of service of notice under civil law. It has generally been understood, that it has to be by "post" or "registered post". These are to be understood as generic words, so that other modes of services like ordinary post, speed post or by courier service cannot be treated as non-service. This would be the interpretation even for the mandatory service of notices referred in section 282 of the Income-tax Act, 1961. It is in this view, that courier service of notice under section 143(2) was held to be valid in Milan Poddar v. CIT [2013] 357 ITR 619 (Jharkhand). This is an important decision, because there is a general feeling that there is no substitute for registered post. MA

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REVERSAL OF CENVAT CREDIT

The provisions relating to reversal of credit are discussed in this article with reference to decided case laws

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REVERSAL of CENVAT credit means reversal of CENVAT credit already taken and/or utilized under CENVAT Credit Rules, 2004 ('Rules' for short). The provisions relating to reversal of credit are discussed in this article with reference to decided case laws.

Reversal for removal of capital goods

Rule 3(5) provides that when inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9. Such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service. Such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products.

Whether Rule 3(5) is applicable to input services also? No. In 'Seven Stars Limited V. Commissioner of Central Excise, Customs & Service Tax, BBSR-II' – (2013) 32 taxmann.com 186 (Kolkata) the appellant was engaged in the manufacture of sponge iron in their factory. The appellants procured iron ores (input) for which he paid service tax on GTA services. The Revenue alleged that instead of utilizing the entire quantity of the input as such and did not use the same in or in relation to the manufacture of the finished goods. Accordingly, the proportionate CENVAT credit of service tax paid on the GTA services in bringing the input was directed to be reversed being not used in the manufacture of the finished goods. In the appeal before the Tribunal, the Tribunal held that Rule 3(5) only talks about the CENVAT credit taken on inputs or capital goods. It does not refer to the CENVAT on input services. In other words there is no provision in Rule 3(5) of the CENVAT Credit Rules to reverse the credit of service tax availed in relation to inputs or capital goods when removed from the factory.

Rule 3(5A) was substituted with effect from 17.3.2012 which read as follows:

If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CEVAT Credit, namely:-

(a) for computers and computer peripherals :
for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @

1%
(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

If the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

Reversal for written off

With effect from 7.7.2009 Rule 3(5B) was substituted and the new section provides that if the value of any,
(i) input, or
(ii) capital goods before being put to use, on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

If the said input or capital goods is subsequently used in the manufacture of final products or the provision of output services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

If the manufacturer of goods or the provider of output service fails to pay the amount payable under this rule it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.

In 'Atul Limited V. Commissioner of Central Excise, Daman' – 2013 (292) ELT 390 (Tri. Ahmd) the Tribunal found that the provisions of Rule 3(5B) have been invoked by the authorities seeking the reversal of CENVAT credit on the inputs which were declared as absolete/inserviceable. The said Rule 3(5B) during the relevant period (2004-05 to 2008-09) when the show cause notice was issued, sought the reversal of CENVAT credit only if such inputs are declared as obsolete/unserviceable are fully written off. It is admitted fact that the appellant has not fully written off the value of such inputs which were obsolete or unserviceable. The amended sub rule (5B) of Rule 3 came into statute on 1.3.2011. The period involved in this case is prior to that, the Tribunal held that the appellant has made out a prima facie case for waiver of pre deposit.

Reversal for remission of duty

In 'Grasim Industries V Commissioner of Central Excise' – 2007 (208) ELT 396 (Tri. LB) it was held that where any finished goods lost/destroyed in fire or accident and remission of duty under Rule 21 of Central Excise Rules is claimed in respect of the said goods, CENVAT credit in respect of inputs is not required to be reversed.

With effect from 07.09.2007 Rule 3(5C) was inserted providing that when any goods manufactured are lost in fire/accident and remission of duty on the goods lost is claimed under Rule 21 of the Central Excise Rules, 2002, the CENVAT credit availed as the inputs used in or in relation to the manufacturing of such goods shall be reversed.

Rule 3(5C) does not require reversal of CENVAT credit availed on input services used in manufacture of destroyed goods, other than under Rule 21 of Central Excise Rules, 2002, on which duty has been ordered to be remitted. Therefore no reversal is required. Similarly no reversal is required of credit availed on capital goods used in manufacture of such destroyed goods.

In 'Commissioner of Central Excise, Ahamedabad- II V. Intas Pharmaceuticals Limited' – 2013 (289) ELT 256 (Guj) - prior to introduction of 3(5C) of CENVAT Credit Rules, 2004 there was no provision for reversal of credit lawfully taken and it could not be done either on equitable doctrine or double benefit accruing to the assessee. However after introduction of Rule 3(5C) ibid, legislature has made its intention clear and reversal of credit is required. It is a new right created in favor of the Revenue and in absence of any contrary intention, it operates prospectively. The plea that the amendment was clarificatory and hence retrospective is rejected in view of the facts on finished goods becoming unfit for human consumption, credit taken earlier to 7.9.2007 was not required to be reversed in absence of condition to that effect imposed for remission of duty in terms of Rule 21 of Central Excise Rules, 2002.

In 'Khandelwal Laminates Limited V. Commissioner of Central Excise, Ghaziabad' – 2013 (289) ELT 58 (Tri. Del) the goods were destroyed by fire while it was under superdnama of the appellant. These goods cannot get CENVAT credit as it is established principle of law that no one can enjoy at the cost of the Revenue since the appellant was granted relief of remission and exchequer has also sacrificed duty component. There is no logic to unduly enrich the appellant when the input of respective value was destroyed and remission was allowed. Therefore the order of reversal of CENVAT credit is justified in the eyes of law.

Treatment of finished goods & work-in-progress

Circular No. 907/27/2009-CX, dated 7.12.2009 gives clarification on the reversal of finished goods and work-in-progress under Rule 3(5B) and 3(5C). The para 2 of the said circular clarify in respect of finished goods, as follows:

Rule 3(5B) of the CENVAT Credit Rules, 2004, provides that if the value of any input on which CENVAT credit has been taken is written off fully in the books of accounts, then the manufacturer is required to reverse the credit taken on the said input. As far as finished goods in concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods.

Para 3 of the said circular clarify for the work-in-progress as below:

As regard writing off work in progress (WIP), it is stated that if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods, discussed in para2 above would apply. However, if the activity carried out on the WIP goods cannot be considered as amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable.

In 'Nectar Life Sciences Limited V. Commissioner of Central Excise, Chandigarh' – 2013 (293) ELT 247 (Tri.Del) it was held that the legal issue as regards reversal of credit is well settled. If the inputs on which the credit stand availed were issued for further manufacture of goods and goods are destroyed during the course of manufacture of the goods, no reversal of CENVAT credit is called for. In this case mostly the inputs are various chemicals which are consumed. The said goods were admittedly work-in-progress, in which case, no reversal of credit is justified. There is clearly no evidence on record to substantiate Revenue's allegations and findings that the destroyed goods were actually inputs, which were not issued for further manufacturing. The Tribunal set aside the order of Commissioner confirming reversal of credit and imposition of penalty.

Goods sent to job work

Rule 4(5)(a) provides that the CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

Reversal on non-payment of bill

The second proviso to Rule 4(7) provides that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

Reversal on getting refund

The third proviso to Rule 4(7) provides that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited.

Proportional reversal option

Rule 6(3A)(a) gives option to the assessee to avail proportional reversal option. If he avails the option he should intimate his intention to exercise his option to the Jurisdiction Superintendent giving the required details. Rule 6(3A)(a) contemplates provisional reversal of CENVAT credit availed in respect of exempt goods and services on monthly basis and final reversal on annual basis. The provisional reversal is to be done on the basis of preceding financial year's figures. The final reversal is to be done on the basis of figures for the financial year under consideration.

Individual, proprietary concerns and partnership firms are also required to follow reversal procedure on monthly basis irrespective of their payment due on quarterly basis. No reversal is required in respect of CENVAT on input services specified under Rule 6(5) of CCR. [Circular No. 868/6/2008-CX dated 09.05.2008]. List of services specified U/R 6(5) of CCR is given in Para 20.2. Rule 6(3A) applies only to inputs and input services, It does not apply to capital goods. Reversal of CENVAT on capital goods is not required. No reversal is required in respect of accumulated CENVAT credit balance as on 01.04.2008 as per Circular No.137/72/2008-CX 4 dated 21.11.2008.

If assessee did not manufacture dutiable goods or did not render taxable services in preceding financial year, he is not required to do provisional reversal on monthly basis as per [Rule 6(3A)(h).

Reversal for non-utilization of goods

In 'Lord Chloro Alkali Limited V. Commissioner of Central Excise, Jaipur' – 2013 (293) ELT 68 (Tri. Del) the Tribunal noted that an amount of Rs.2,74,718.70 stands confirmed by denying the credit of duty availed in respect of packing material. Such packing material was lying in the godown of the applicant and was not even issued for further use in the factory. As per the settled law, such credit in respect of raw material/packing materials which were not put to use or were not even issued for the use as is required to be reversed. The same has not been agitated by the appellant. The Tribunal confirmed the demand.

Reversal for inventory shortage

In 'Commissioner of Central Excise V. Greaves Cotton Limited' – 2008 (225) elt 158 (HC. Bom) it was held that it is a common scenario wherein a manufacturer finds difference between physical and book stocks of CENVAT taken on input/capital goods during annual stock taking or perpetual inventory. Since the basis condition of the CENVAT credit scheme is to use inputs or in relation to manufacture of dutiable goods, which does not get satisfied in the above said situation, the manufacturer has no other alternative but to reverse proportionate CENVAT credit attributable to the inventory shortages where the CENVAT credit availed.

Invoking the extended period of limitation

In 'Garryson Polypacks Private Limited V. Commissioner of Service Tax, Vadodara – II' – 2013 (292) ELT 513 (Tri. Ahmd) the Tribunal found that the appellant reversed the CENVAT credit on 4.9.2009 when second audit checking of the documents took place and before the issuance of show cause notice for the credit availed from April 2007 to June 2009. The first audit of the appellant took place on17th to 19th August 2009 and the audit party did not notice any thing wrong in the availment of CENVAT credit. On subsequent perusal of records and verification of the documents maintained by the appellants, it was noticed that the appellant availed excess credit. Show cause notice was issued in this case on 12.1.2010 along with the demand, for the interest and imposition of penalty. The Tribunal held that when the demand for extended period is not invocable, no demand for interest, imposition of penalty be sustained.

Once reversed, credit is not taken

In some cases the assessee could not able to ascertain the exact quantum of inputs which may be used in exempted goods. Only at the time of removal of the exempted goods he could able to calculate the exact CENVAT credit and reverse the same. In such a situation whether the reversal amounts to non availment of CENVAT credit.

In 'Vignahar SSK Limited V. Commissioner of Central Excise' – 2012 (275) ELT 108 (Tri) the CENVAT credit was reversed before the issue of show cause notice. The Tribunal held that it is settled law that once CENVAT credit taken is reversed, then it is considered to be as if no credit is taken.

Reversal on adjudication order

If an Adjudicating Authority passes an order with directions to reverse the credit wrongly taken/utilized the assessee has to comply with the direction of the order. He may file appeal against the order and may got the stay order. Unless otherwise he succeeds in the appeal he has to reverse the credit.

Availing credit on success in litigation

It is possible to reverse the credit in the course of audit or on the issue of show cause notice. If the assessee succeeds in the adjudication or in the appeal against the reversal, then he is eligible to avail the credit.

In 'Commissioner of Central Excise, Surat – II V. Vardhman Acrylics Limited' – 2013 (292) ELT 558 (Tri. Ahmd) the assessee reversed the CENVAT credit under protest. The appeal was filed on the issue before Commissioner of Central Excise (Appeals). The Commissioner (Appeals) allowed the appeal. The assessee suo motu availed the credit already reversed. The Tribunal found the action of the assessee is correct.

Forcible reversion

In 'Bodal Chemical Limited V. Commissioner of Central Excise, Ahmedabad' – 2013 (291) ELT 399 (Tri. Ahmd) the appellant had availed the CENVAT credit of the items like solvents, master-coat, MS bar, Angle beam, HR coils etc., These goods were in the manufacture of vessels which were further utilized for the manufacture of dye intermediaries. Such items were received by the factory premises by the appellant and consumed in the factory premises. Initially the Tribunal found that when the CERA Audit Officers directed the assessee to revise the amount of CENVAT credit the assessee did so but subsequently finding that these items on which credit was availed can also be considered as input as they have used the inputs for fabrication of machinery which is used in the manufacture of dye intermediaries they recredited the amount reversed. The Tribunal held that the action of CERA audit would amount to forcibly directing the appellant to reverse the CENVAT credit. The Tribunal held that the Adjudicating Authority has correctly dropped the proceedings initiated against the appellant and regularized the CENVAT credit.

In 'Akik Dyechem Private Limited V. Commissioner of Central Excise, Ahamedabad' – 2013 (294) ELT 273 (Tri. Ahmd) once there is no dispute as regards ineligible CENVAT credit availed by the manufacturers and manufacturing units and same being reversed on being pointed out, the penalties on the manufacturing units and manufacturers correctly fastened on them under Rule 15 of CENVAT credit Rules, 2004.

Unjust enrichment

In 'Asha Nitrochem Industries Limited V. Commissioner of Central Excise, Daman' – 2013 (289) ELT 360 (Tri. Ahmd) the appellant reversed the credit vide RG 23A – Part II on objection raised by Revenue regarding various items used in manufacture not being capital goods under Rule 57Q of erstwhile Central Excise Rules, 1944. The appellant filed refund claim after succeeding appeal before Commissioner of Central Excise (Appeals). The same was rejected for non production of copy of RG 23A – Part Ii as proof of reversal and on ground of unjust enrichment. The Tribunal held that-

- the proof of reversal is contained in original show cause notice admitting the reversal of credit;
- the department cannot take a stand after 12 years of continued adjudication process for production of documentary evidence;
- reversal was not necessary if debit of credit had not been undertaken till decision in adjudication process;
- appellant is eligible for suo motu credit after Tribunal's decision in their favor;
- no question of unjust enrichment in case of lawful availability of credit.

In 'Khurana Woolen Mills Private Limited V. Commissioner of Central Excise, Ludhiana' – 2013 (289) ELT 153 (P&H) the assessee has not received amount of CENVAT credit involved on inputs, as compensation from the insurance company. It means the assessee has borne loss of goods incident. It is undisputed fact that the appellant has paid duty on inputs at the time of purchase of goods. He took credit and utilized the same for the payment of duty or finished goods. There is no one-to-one co-relation between the inputs and finished goods. In the absence of the same, it is unjustified to ask the assessee to reverse the credit which has already been utilized for the payment of finished goods. The Tribunal is also of the opinion that if the finished product is subsequently exempted from duty, assessee is not required to reverse the credit availed on inputs which assessee was entitled at the time or purchases of the input.

Discharge of duty liability amounts to reversal

In 'Uniglore Packaging Private Limited V. Commissioner of Central Excise, Daman' – 2013 (294) ELT 136 (Tri. Ahmd) Rs.68,92,845/- was confirmed by the Adjudicating Authority as reversal of CENVAT credit availed by the appellant on the inputs which were, according to the Revenue, were used for not manufacturing of final product. It is undisputed that the appellant has paid approximately Rs.82 lakhs as duty on the final products cleared from their factory premises, the fact of which was not denied by the Adjudicating Authority. The Tribunal is of the opinion that the discharge of duty liability by the appellant company would amount to reversal of CENVAT credit, if any, as held by the Adjudicating Authority being ineligible to the appellant.

Other issues

- Reversal of CENVAT credit is not required if the same has not been availed by the assessee - Sourabh Organics P Limited V. Commissioner of Central Excise, Thane' – CESTAT Mumbai Bench, in A/639-641/2011-WZ-B/C-II(EB), dated 30.06.2011;
- In case of private use of goods in respect of which input credit was taken, department may seek reversal of credit;
- CENVAT credit is to be reversed if the assessee fails to account for utilization of inputs or in stock – CBE&C, Aurangabad V. Greaves Cotton Limited – 2008 (225) ELT 198 (Bom);
- Credit is not to be reversed when the inputs got damaged during the manufacturing process – Commissioner of Central Excise V. Okaya Industries – 2010 (250) ELT 404 (Tri. Del);
- Final product dutiable, subsequently exempted – credit taken on inputs in process of in final product is not reversible – HMT V. Commissioner of Central Excise – 2008 (232) ELT 216 (Tri. LB);
- Removal of capital goods after use does not call for reversal of credit availed – Golden tobacco Limited V. Commissioner of Central Excise, Mumbai – 2010 (259) ELT 269 (Tri. Mum).

Interest

Rule 14 makes it very clear that the interest shall be recovered in terms of Section 11A and 11B of the Central Excise Act, 1944. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. When the assessee reversed the credit wrongly taken/utilized it amounts to non payment of tax. Interest is payable on the tax from the date of due of payment at the rate prescribed by Government from time to time.

Penalties

If the CENVAT credit wrongly availed is not reversed the penal provisions will attract. Rule 15(1) provides that if any person, takes or utilizes CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.

Rule 15(2) provides that in a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made there under with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11ACof the Excise Act.

Rule 15(3) provides that in a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made there under with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in 78 of the Finance Act.

When penalty is not leviable in reversal cases?

The following case laws illustrate when penalty is not imposable in reversal cases:

In 'Rollwall forge Limited V. Commissioner of Central Excise, Rajkot' – 2013 (294) ELT (Tri. Ahmd) the Tribunal found that the assessee found out wrong availment of credit on their own and reversal in August 2006 and when audit party pointed out excess availment of credit in 2008 once again reversed the same apparently for getting the fact that the amount already had been reversed. This shows that there was no intention to evade payment of duty by suppressing facts or resorting to misdeclaration. The appellant also paid interest. Therefore the Tribunal held that imposition of penalty in this case is not warranted.

In 'Commissioner of Central Excise, Vapi V. Guarniflon India Private Limited' – 2013 (293) ELT 703 (Tri. Ahmd) it was held that once the wrongly taken credit along with interest was suo motu paid by the appellant and thereafter intimating the department, it cannot be said that the respondent had any intention to take wrong CENVAT credit by making mis-statement or suppressing facts. Under the circumstances the provisions of Sec. 11AC are not attracted in this case and no penalty under Section 11AC of the Central Excise Act, 1944 is imposable. The Tribunal dismissed the appeal.

In 'Commissioner of Central Excise V. Sharda Energy & Minerals Limited' – 2013 (291) ELT 404 (Tri. Del) the assessee availed CENVAT credit wrongly. The same was reverted on being point out by the Revenue, without being utilized. The Tribunal held that neither penalty nor interest is imposable.

In 'Castrol India Limited V. Commissioner of Central Excise, Vapi' – 2013 (291) ELT 409 (Tri. Ahmd) the Tribunal found that the appellant has taken credit correctly and where credit has been taken inadvertently or by mistake for housing colony they have promptly reversed the amount. Therefore availment of credit can be paid by mistake and therefore no penalty is imposable.

Conclusion

CENVAT Credit Rules, 2004 is beneficial to the assessee reducing the cascading effect of the tax. The provisions of the Rules are duly to be complied with. Even if credit is wrongly taken and utilized if it is reversed immediately then no proceedings will be initiated against the assessee. Therefore much care is to be taken in taking and utilizing the credit in consonance with the Rules. MA

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AT THE HELM

Congratulations to Mr A V V Krishnan, Associate Member of the Institute of Cost Accountants of India, for joining the Board of Engineering Projects (India) Limited (EPI) as Director (Finance) from 10 October 2013. Before this he was working as GGM (Finance) at Telecommunication Consultants (India) Limited (TCIL). He has more than 30 years of experience in the field of Finance/ Accounts/Auditing in India and abroad. Mr Krishnan was posted in various projects outside India and has experience in almost every spheres of finance: banking, insurance, foreign currency hedging, cost estimates, project monitoring, etc. He also has rich experience in secretarial and legal matters.

We wish Mr A V V Krishnan the very best in all his future endeavours.

STRUCTURE OF BANKING IN INDIA – THE WAY FORWARD

The overall thrust for reorientation is aimed at imparting dynamism and flexibility to the evolving banking structure while ensuring that the structure remains resilient and promotes financial stability. But will it work?

J D Sharma
President, Indian Overseas Bank Officers' Association
Joint General Secretary, All India Bank Officers' Confederation
Director, Indian Overseas Bank

THE monetary policy statement announced by Reserve Bank of India Governor on 3rd May 2013 in Mumbai stated that the guidelines on licensing of new banks in the Private Sector issued in February 2013 indicated that the Reserve Bank would prepare a policy discussion paper on the banking structure in India within two months keeping in view the recommendations of Committee on Banking Sector Reforms 1998 (Chairman: Shri M Narasimham), the Committee on Financial Sector Reforms 2008 (Chairman: Shri Raghauram Rajan) and other view points. The discussion paper was expected to cover issues such as consolidation of large-sized banks with a view to having a few global banks, desirability and practicability of having small, localized banks as preferred vehicles of Financial Inclusion, the need for having investment banks with differentiated licensing regime for domestic and foreign banks instead of granting of universal banking license, policy regarding presence of foreign banks in India, conversion of Urban Cooperative Banks into Commercial Banks and periodicity of licensing new banks whether on block or on tap.

The Reserve Bank of India released the much awaited discussion paper on banking structure in India on 27th August 2013. The discussion paper identified certain building blocks for the reorientation of the banking structure with a view to addressing various issues such as enhancing competition, financing higher growth, providing specialized services and furthering Financial Inclusion. The paper also emphasized the need to address the concerns arising out of such changes with a view to managing the trade off for ensuring financial stability. The envisaged policy will be required to be against the backdrop of strong regulatory and supervisory regime with increased intensity for supervision for the systemically important banks. The overall thrust for reorientation is aimed at imparting dynamism and flexibility to the evolving banking structure while ensuring that the structure remains resilient and promotes financial stability. So far so good; we wish that the ultimate objective was as noble as it is made out to appear!

Before dwelling on the issues covered in the discussion paper, it is important to have serious look at the efficacy of regulatory & monetary tools of the Central Bank to check the inflation and exchange rates in last few months. The untamed inflationary pressures have not only played havoc on the economy of the country but have also robbed the poor and not so rich of their purchasing power. The people living on fixed income are finding it difficult to arrange two square meals a day. The consequences of weakening rupee largely caused by the flight of foreign capital from the country on the rumors of tapering of stimulus package by the Federal Reserve/American government have been enormous. The outflow of foreign capital from India had double-edged effect on the country. It had created volatility in the currency market by surging demand for dollar and weakening local currency on one hand and widening the current account deficit on the other. It is the responsibility of the regulator and the government to ensure stability, growth & flexibility. There is need to create a resilient and robust regulatory framework to ensure that the economy is protected against the intermittent shocks of globalization.

In the above background, it is recollected that our financial sector was able to withstand the shocks of US Financial Crisis 2008, Public Debt Crisis of UAE, Eurozone Crisis of 2011-12 for the simple reason that the Trade Unions in the banking sector have resisted the unbridled changes on the part of government to hugely integrate various sectors of our economy with the global market, more particularly full Capital Account Convertibility. This positive role of Trade Unions was acknowledged by none other than the governor of RBI in 2008-09. There is need to strengthen the existing banking system and enhance its efficiency of operations rather than attempting large scale structural changes on experimental basis. Any failed experiment in banking sector will be disastrous as India does not have the financial power of America which could afford to provide capital support and other stimulus packages to the failing banks and other financial institutions on a long term basis in the aftermath of sub-prime mortgage financial crisis. The managers of Indian economy need to focus more on upliftment of poor sections of society through effective Financial Inclusion not by merely opening 'No Frills Accounts' and using such accounts for Direct Benefit Transfers but by building capabilities amongst the people in socially and economically neglected sectors to help them earn their livelihood to sustain their families. The country offers huge potential for development of infrastructure, reduction in corruption not only in government but also in its entities and private enterprises, providing health care & sanitation, efficient water management – both for drinking purposes and prevention of floods/draughts etc. The banking institutions in the present form can play significant role in pursuing such agenda of the government and hence must be so utilized keeping in view the objectives of nationalization of banks by earlier Congress governments.

Any significant tinkering of the existing banking structure by way of experiments either through mergers by reducing the number of competitors in the banking space which runs a counter to the current moves of RBI and government to increase the number of competitors by considering the applications for issuance of new banking licenses and also permitting liberal entry of foreign banks either through the branch licenses or through the subsidiary routes, is a completely unwise, untimely and premature.

RBI has released the following guidelines for licensing of new banks in the Private Sector:

(A) Eligible promoters

Entities/groups in the private sector that are 'owned and controlled by residents' and entities in public sector shall be eligible to promote a bank through a wholly-owned Non-Operative Financial Holding Company (NOFHC).

The guidelines are meant for licensing of new banks in the Private Sector but the eligible promoters include entities in Public Sector too. It is not clear that if the NOFHC contributes the entire capital of Rs.500 crore towards paid up voting equity capital of the new bank, how will that bank qualify to be Private Sector bank? The guidelines stipulate only initial minimum capital of 40% with no cap or ceiling/ maximum.

(B) Fit and proper criteria

The entities should have a past record of sound credentials and integrity, be financially sound with a successful track record of 10 years. RBI may seek feedback from other regulators and Enforcement & Investigative agencies.

(C) Corporate structure of the NOFHC

The NOFHC shall be wholly owned by the promoters/ promoter group and it shall hold the bank as well as all the other financial services entities of their group.

Such an arrangement may sometimes cause a serious impact on the assets of the bank if the other financial services entities under NOFHC suffer from contamination.

(D) Minimum voting equity capital requirement for banks and shareholding by NOFHC

The NOFHC shall initially hold a capital of Rs.500 crore and 40% of which shall be locked in for a period of 5 years with permission to bring it down to 15% within 12 years. The banks shall get shares listed in the stock exchanges within 3 years from the commencement of the business by the bank.

(E) Regulatory framework

The NOFHC shall be registered as NBFC with RBI and will be governed by a separate set of directions issued by RBI. However, the new banks will be governed by the provisions of the 11th Statutes and prudential regulations issued by RBI and other regulators. The prudential norms will be applied to NOFHC both on stand-alone as well as on a consolidated basis. Atleast 50% of the directors of NOFHC should be independent directors and this corporate structure should not impede effective supervision of the bank and the NOFHC.

Subjecting the new banks to multiple regulators is contrary to the considered view that duality of controls on the banking sector by RBI and Ministry of Finance (DFS) should be avoided and there should be only single regulator to exercise superintendence over the banks.

(F) Foreign shareholding in the Banks

The aggregate Non Resident Shareholding in the new banks shall not exceed 49% for the first 5 years after which it will be as per the extant policy.

It raises doubts about the ultimate intentions of the regulator to facilitate creeping take-over of new banks by foreign entities. Such uncontrolled route is fraught with more serious risk of vulnerability of public savings.

(G) Exposure norms

The NOFHC and the bank shall not have any exposure to the promoter group. The bank shall not be allowed to invest in the equity/debt capital instruments of any financial entities held by this NOFHC. It would call for a very effective and vigilant on-sight and off-sight regulations. The new banks shall be required to open 25% of their branches in unbanked rural centres having population upto 9,999. They will also have obligations to comply with the priority sector lending targets and sub targets as applicable to the existing domestic banks.

It is in this background that the Discussion Paper on "**Banking Structure in India – The Way Forward**" has been released by RBI on 27th August 2013 covering the following issues:

1) Small Banks Vs Large Banks
2) Universal Banking
3) Continuous Authorization
4) Conversion of UCBs into Commercial Banks
5) Consolidation
6) Presence of Foreign Banks in India
7) Indian Banks' presence overseas
8) Government ownership
9) Deposit Insurance and Resolution
10) Indicative reorientation of the banking structure

To have a better understanding of these issues and before examining and evaluating them critically, it is considered appropriate to examine the recommendations of the Narasimham Committee, Raghuram Rajan Committee and other viewpoints which incidentally also formed the basis of the RBI's Discussion Paper mentioned above.

The small banks Vs large banks theory recommended by Narasimham Committee more than two decades ago had not found favour with successive governments at Centre and the Central banking authority. The experiment with universal banking has resulted in Asset-Liability mismatches and increased NPAs of the commercial banks. Continuous authorization is as undesirable as the current attempts to increase the number of players in given banking space and thus reverting back to the banking era of pre-nationalization days. The move to convert Urban Cooperative Banks to Commercial Banks can be more purposeful if such banks are allowed to be taken over by the Public Sector Banks. The consolidation theory for Public Sector Banks is self deceptive since mere consolidation does not enhance the financial strength in true sense because the corresponding exposure also increases. The banking institutions in Public Sector have the potential to perform better if their Boards are strengthened and allowed independence & freedom to manage the banks in professional manner completely devoid of bureaucratic and political interference in the matters relating to Human Resources and lending operations. This experiment will prove to be safe and sound unlike the move to consolidate through mergers of Public Sector Banks. The government ownership of the banks has been serving its avowed objectives and there is still a large unfinished agenda. The government should focus on converting the Indian economy to a developed economy which calls for the active financial and policy role to be played by the government. Any weakening of either financial or policy role on the part of government will result into further procrastination of the fulfillment of the dream of alleviation of poverty from the country. The government must therefore continue to stay invested in the banking institutions of the country and there is a strong case to expand the size of Public Sector banking which is the lifeline of Indian economy.

Narasimham Committee recommendations heralded the financial sector reforms since the beginning of globalisation of our economy. Many of its recommendations were implemented and many were not as there was lack of acceptability of those by the government and the Regulator coupled with a strong opposition by the Trade Unions in the banking sector. But we must realize that the capitalist model of business world-over has been so powerful that it has almost uprooted the socialist model of business from the world. The determination on the part of the champions of capitalism has been so strong that it has been continuously finding more and more friends. The multinational agencies like International Monetary Fund, World Bank, GATT, UN & its Subsidiaries etc., have been acting as a breeding ground for the new generations of the promoters of capitalism. The domination of capitalist powers in such multinational bodies has been so strong that it has produced many Montek Singhs and Raghuram Rajans, to say the least. Hence the so called new generation reforms are strongly recommended and pursued by such new generation champions of privatization and capitalist model of economic development. If one has to discern the recommendations of Raghuram Rajan Committee on financial sector reforms, he would not

ANY SIGNIFICANT TINKERING OF THE EXISTING BANKING STRUCTURE BY WAY OF EXPERIMENTS EITHER THROUGH MERGERS BY REDUCING THE NUMBER OF COMPETITORS WILL BE UNWISE

discover anything different from what is aimed at by Narasimham Committee recommendations. The only difference between the recommendations of the two Committees being the road map to reach the destination as Narasimham Committee suggested the reforms in a crude manner and Raghuram Rajan Committee has suggested the sweet pills of milder potency with a longer period of experimentation. In his report – "A Hundred Small Steps" – Raghuram Rajan has made vide range of proposals with a suggested sequence to achieve the agenda of same reforms which were projected by Narasimham.

It would be interesting to learn that the Raghuram Rajan Committee on financial sector reforms was constituted by the Deputy Chairman of Planning Commission and not by the RBI or the government of India which exercise dual control over the banking sector and are accountable for its growth & development. The suggestion by the Raghuram Rajan Committee to privatize the Public Sector Banks or bring down the government equity below 50 per cent (33% to be précised) with still having control on shares and sell some of the smaller under-performing Public Sector Banks to Private or Foreign banks on an 'experimental basis' with the observation – '**if it succeeds it can be replicated and if it fails, sky is not going to fall**' is highly irresponsible as it undermines the seriousness of the issue that the hard earned savings of the people of the country are at stake. Raghuram Rajan cannot make light of such a serious issue as it is the faith of the people in Public Sector Banks that they have invested their money in and any irresponsible experiment of the suggested nature will result in avoidable & unwarranted financial disaster which will put a sudden extra burden on Deposit Insurance Corporation while increasing the accountability of RBI and the government in such an eventuality.

The very constitution of the Raghuram Rajan Committee on Financial Sector Reforms speaks volumes. A reading of the recommendations would reveal that they largely revolve around destroying the Public Sector character of our banking institutions. The committee of 12 members included K V Kamath from ICICI Bank and Uday Kotak of Kotak Mahindra Bank to represent the Private Sector Banks with about 22 per cent of business/market share whereas the Public Sector Banks having 70 per cent market shares were represented only by one representative viz., O P Bhatt of State Bank of India. At certain places it is stated in the report that there was no consensus in the committee but still it is desirable to carry out the proposals. The report is devoid of any disclosure about the weightage assigned to O P Bhatt who represented Public Sector Banks which were largely the targets for financial sector reforms. Another interesting aspect of the constitution of the committee is the non-inclusion of any representative from RBI, the Regulator. The seriousness of such omission gets further compounded by the fact that one of the terms of reference was "to identify changes in regulatory & supervisory infrastructure that can better allow the financial sector to play its role while ensuring that risks are contained". It is beyond comprehension that the Chairman of the committee who has been groomed in atmosphere of American economy was considered competent to suggest changes in the regulatory & supervisory infrastructure in Indian context without even being assisted by any representative from such Regulator.

Raghuram Rajan who was credited with forecasting the US Financial Crisis much before it erupted is also conscious of the fact that Sub-prime Crisis in America and high competitive price at home has deepened many people's suspicion that financial markets are merely glorified casinos manipulated by the speculators. Despite this, he courageously suggests serious business like finance against warehouse receipts to help banks achieve their targets for agricultural lending. It surprises us that instead of helping the poor farmers by ensuring provision of timely and cheaper credit, his prescription to finance against warehouse receipts is aimed at helping the rich traders indulge in hoarding of Agri-produce and build their capabilities to create artificial shortage of foodgrains in the country where the distribution chain suffers serious deficiencies. It would be interesting to see whether Raghuram Rajan now charged with the responsibility of containing the price rise and checking inflation will still promote such financing instruments which are detrimental to the core function of RBI, ie., to keep the inflation within manageable range. It would have served the interests of the country better if the committee has taken cognizance of rising incidents of frauds by the traders and business enterprises while borrowing from the banks. The complicity of warehouse keepers including those owned by the government in perpetrating frauds on banks in financing against warehouse receipts has been responsible for banks losing public money and being driven to avoidable litigations. The agencies suggested for certification of warehouse receipts cannot be taken on face value in view of the past experience of the banks not only in this area but also in the area of approved Lawyers and Valuers who have been giving false reports to the banks for petty considerations and thus exposing the public money to great risks. The major share of banks' NPAs is contributed by such loans & advances which are collateralized by such properties for which either the Lawyers have given wrong opinion or the Valuers have given inflated valuation.

The committee headed by Raghuram Rajan is under the illusion that the availability of cheaper credit is the remedy for all the ills of real sector of the economy. It could be so in American context in which the Chairman of the committee is groomed but in Indian context, it is more important to ensure round-the-clock power supply at fair price to avoid lay-offs and lock-outs for want of power, reduce the excise and other government taxes, eliminate the power brokers and corruption in high places etc. Many industrial Units become sick in India for want of regular power supply. It has driven many industrial houses to have their own captive power plants which have been vying for their share of natural resources like coal and thus giving rise to avoidable scams like 'coalgate'. If only the government had continued to carry out its responsibility of power generation & distribution at fair price, it would have served the Indian industrial sector a great deal better. The implications of the proposals of the committee are far reaching in many areas and a detailed dissertation of the recommendations will throw more light on the dangerously tending aspects of the report.

Macro economic framework

Raghuram Rajan Committee had identified three reasons for financial sector reforms –

(i) To include more Indians in growth process
(ii) To foster growth itself
(iii) To improve financial stability, flexibility and resilience with a view to protecting the economy against the kind of turbulence that had affected emerging markets in the past and affecting the industrial countries today.

The underlying theme behind all the proposals made by the committee is the need to enhance inclusion, growth and stability by strengthening the financial & regulatory infrastructure. Some of the measures suggested by the committee as 'small steps' are discussed hereunder:

(1) The need of a new paradigm in financial sector is to recognize that efficiency, innovation and value for money are as important for the poor as it is for Indian Multinational companies and it will come from deregulation, new entry and competition in banking space. The committee is of the view that the role of the government is not to take on the task that should be legitimately deregulated to the Private Sector but to create an enabling environment by building sound financial infrastructure. It is strange that the committee has attempted to equate deregulation of Telecom Sector with the deregulation of financial sector with a hope to reap similar beneficial results where rewards could be much more substantial. The committee is exhibiting oblivion to the fact that in Telecom Sector the experiment could be attempted as it did not involve the public savings. The Banking Sector enjoys the confidence of the people of the country who have placed their hard earned savings with the banks. It therefore becomes imperative for the banks specially the Public Sector Banks that their funds are not deployed in vulnerable and speculative sectors which constitute the larger financial market in the perception of the committee. The committee's observation that in this dynamic environment we will need skilled Regulators who encourage growth and innovation even while working harder to contain risks has come to such a stage where we have the chairman of the committee as a Super Regulator in his new role as Governor of Reserve bank. The amount of attention hitherto paid to issues like capital account convertibility, privatization etc., has led to emergence of divergent views and lack of consensus in the country on these issues and hence the committee is of the view that the steps to achieve these ends must be slow & steady with more focus on small steps to create the infrastructure and carry out the process. The suggestion of the committee that the credit to SME sector could be boosted enormously if the trade receivable claims they have on large firms could be converted to electronic format, accepted by the large firms and sold as Commercial Paper as is practiced in Mexico and could be handled through National Securities Depository Limited is quite similar to securitization of Sub-prime loans in the US which triggered the financial crisis infecting the entire world.

(2) The committee believes that the market and institutions do succumb occasionally to excesses which is why the Regulators have to vigilant, constantly finding the right balance between attenuating risk taking and inhibiting growth

wherein US clearly failed this time. It did not in the opinion of committee mean that the Regulator cannot find the right balance elsewhere and also the well functioning competitive market can reduce vulnerability. The members of the committee ought to have known that the Regulators like Monetary Authority of Singapore are quite vigilant and hence do not permit the banking institutions to take exposure in the firms whose native country has the potential of facing vulnerability. The committee also acknowledges that vulnerabilities may be building up in India and the under-developed market and strict regulation on participation are no guarantee that risks are contained; in fact they may create additional sources of risks, a fore warning of which may come from recent reports of substantial losses incurred by the firm on currency bets. It is beyond comprehension if strict regulation is not the guarantee for containing risks in the mist of vulnerabilities, then what else is the remedy? The risks can be better contained by strict regulations of the market and hence the committee falls short in suggesting appropriate solutions.

(3) The foreign capital and open financial markets are as destabilizing and prone to crisis as poor governance, poor risk management, Asset-Liability mismatches, inadequate disclosures, excessive related party transactions and murky bankruptcy loss. The country needs reforms to check and avert the crisis triggered by such factors. The suggestions by the committee to open up India's debt/bond market to foreign investors and release the investment of banking institutions in debt/bond market constitutes a perfect recipe to not only link but expose the well founded debt/bond market to global vulnerabilities. The observation of the committee that our macro economic framework needs to adjust more to a world of rapid capital inflows exposes them to the situations of recent outflows of foreign investment/capital which had a substantially destabilizing effect on our currency and markets. The more helpless argument advanced by the committee can be seen from its observation that it will be impossible to control capital flows in either direction which will create substantial uncertainty & volatility in the market and also the real exchange rate which is the key factor in determining India's competitiveness is influenced by the factors such as productivity, growth and demand-supply imbalances that are not changed by Central bank's intervention against the Dollar. In this context the committee felt that given that the real appreciation has to take place, the country has the Hobson's choice of taking it as inflation or an exchange rate appreciation. The committee further suggests that the Central bank can keep the market guessing about which option it will choose and it can hop between two options – take inflation or exchange rate appreciation. But creating such confusion will have adverse effects on the market. The inflation leads to higher interest rates which hurts the growth and in the opinion of the committee, the RBI should therefore concentrate on checking inflation and intervening in currency markets only to limit excessive volatility. The committee has shown ignorance about the possibility of pursuing middle path wherein the inflation and exchange rate management both need to be given adequate attention instead of treating them as Hobson's choice. The committee while suggesting the Central bank to concentrate on checking inflation as the poorer sections are least hedged against inflation, is undermining the fact that India with a negative balance of payment largely on account of crude oil import cost will end up paying more foreign exchange which will lead to not only increasing the cost of imports but also increasing the demand for foreign exchange with further resultant rise in exchange rate and such a vicious cycle will have significant impact on inflation. The focus of committee's discussion appears to be only on country's competitiveness in international market without any worry of domestic market competitiveness which offers huge potential for real and service sector owing to huge demographics. The committee argues that we should relieve pressures from inflows by becoming more liberal on outflows. As a counter measure, it has been suggested to encourage greater outward investments by Provident Funds and Insurance companies when inflows are high as such diversification will make these funds more stable. Hence the relevant constituencies need to be persuaded as by thus restricting their investment options to domestic government securities, they are generally limiting future returns and possibly increasing risks. It does not make any great sense to diversify across foreign government securities to offset foreign inflows into our government debt market with outflows into foreign government debt market without these forces driven into by RBI.

(4) The committee is of the view that strengthening, fiscal, financial and monetary institutions would reinforce each other for which the committee prescribes principal elements of framework as under:

(a) Government's fiscal discipline is as essential adjunct to the process of financial reforms. Higher public deficit financing soaks up capital and has serious consequences for macro economic development and also for the financial section.

(b) With more flexible exchange rate and more flexible capital account, fiscal policy has an important role to play as a short term demand management pool.

(c) Disciplined fiscal policy – lower levels of government deficit and declined ratio of public debt to GDP are necessary to free up the monetary policy to focus on its key objective of price stability.

(d) High budget deficit put a question mark on effectiveness, independence and credibility of monetary policy.

(5) Financial sector reforms also need to be accompanied by real sector reforms such as building out infrastructure, reforming the labour laws, improving the social safety net etc. The effects of the proposals made by this committee will be magnified if they can piggy-back on the real sector reforms.

Broadening access to finance

The committee has desired changes to the scheme of Financial Inclusion by suggesting the following measures:
(1) Instead of seeing the issue primarily as expanding credit – putting cart before the horse, committee urges a refocus to seeing it as expanding access to financial services such as payment services, saving products, insurance products, inflation-protected pension etc.
(2) Direct Benefit Transfer of government programmes to SB accounts of the poor to reduce leakage, help build savings histories with their banks which will then open the door to credit to poor. The committee therefore desired that 90% of household have access to deposit account and to the payment system for smooth implementation of various government schemes.
(3) Instead of forcing credit to the household and making them heavily indebted, the focus should be on making them creditworthy so that when opportunities & needs arise they have access to bank finance.
(4) To alter the emphasis somewhat from large-bank led, Public Sector dominated, mandate-ridden branch expansion to focused strategy for Financial Inclusion.
(5) The much needed efficiency, innovation and value for money can come from motivated financiers who have a low cost structure and thus see the poor as profitable, have capacity to make quick decisions and minimum paper work.

The committee suggests changed organizational structure to foster such deliveries of services to the poor. The committee seeks more liberal entry to private well governed deposit taking small finance banks offsetting their higher risks from being geographically focussed by requiring higher capital Adequacy norms, strict prohibition norms on related parties' transactions and lower concentration norms in the form of loan as a percentage of capital that can be lent to one party etc. This suggestion undermines the role of natural calamities like draught, floods, earthquakes, cyclone, tsunami, cloud bursts etc., in certain areas on a regular basis. The local area banks which could not sustain after implementation of Narasimham Committee cannot be expected to establish and sustain their business models despite stipulations of strict supervision and monitoring coupled with prompt corrective action. Though the committee recommends that these banks do not become the public charge, it is inevitable to so happen due to the factors mentioned above. In the era of advanced technology, the distance between the customer and the bank is immaterial for a speedy decision making. Hence the perception of the committee on this count is stale. The wishful thinking of seeing the local area banks eventually grow into large banks is completely untenable. The committee's observation that the failure of even few small banks will not have systemic consequences unlike the failure of large banks and hence we should experiment with licensing of small banks is not only completely absurd but is also demonstrative of the self inner contradiction as the same committee has elsewhere recommended consolidation of banks to create large-sized bank. It must be remembered that the small public savings of the customers constitute the funding of the banking institution and failure is certainly going to hit the customers who are not otherwise interested in systemic failure or protection. Their loss of money is what would hurt them and not the philosophy of the learned members of the committee.

The committee has recommended introduction of sale and purchase of Priority Sector Lending Certificates (PSLCs) towards fulfillment of priority sector obligations of those banks that undershoot their targets. The imposition of interest rate ceilings make priority sector lending unprofitable. Hence reluctance to lend to priority sector drives the poor to money lenders. The committee is of the opinion that liberalizing the interest rates while increasing the safeguards will help prevent exploitation. The implication of meeting the priority sector lending targets through the purchase of PSLCs as recommended by the committee will lead to lop-sided growth of priority sector lending only in the rich geographies thereby defeating the very purpose of the priority sector lending goals of equitable growth and development of hitherto neglected sectors of the society. Other suggestions by the committee as to what should be eligible for PSLCs and priority sector lending to the poor will be based on average interest on loans and the estimated cost of lending is impracticable apart from being prone to manipulations.

The committee has not visualized a situation where there are only buyers of PSLC in the market without there being any sellers; when the committee is of the view that the business of lending to priority sector is unprofitable, it is more likely that such situations may arise. The social objectives cannot be price-tagged as attempted by the committee.

Leveling the playing field

The committee is of the view that the banks are favored in certain ways and disfavored in other ways; the competition should result in resources bei9ng allocated efficiently and the society get maximum benefit out of its productive resources. The interests of consuming masses may be emphasized instead of privileged producers being protected. It states that

> **THE 4-TIER BANKING STRUCTURE SUGGESTED BY THE NARASIMHAM COMMITTEE... IS AN OFT-REPEATED PRESCRIPTION... BUT THERE ARE NO TAKERS FOR IT**

time has come to unwind the grand bargain underlying the treatment of banks in India whereby the banks get access to low cost deposits of the government in return for fulfilling certain social obligations such as lending to the priority sector, meeting prudential norms (SLR) that also have quasi-fiscal objective of funding the government requirements. In a competitive market the committee suggests that the government pay towards the social obligations more directly to the beneficiaries. The greatest source of uneven privileges stems from ownership but it is also a fact that while the PSBs enjoy the benefits, they also suffer constraints with later increasingly dominating. What ultimately matters is that how the ownership structure will affect the efficiency with which financial services are delivered. Much of the PSBs are falling behind in their ability to attract skilled people especially at the senior level and hence their inability to take advantage of the new technology, motivate the employees at lower level and also to innovate. Since all these abilities are needed in the emerging areas of opportunity, PSB's risk management capabilities being weaker could be destabilizing.

We are of the view that the ownership is important in developing economies as it helps in carrying out the development agenda of the government more smoothly. Sentiments of the people, public and political opinion and views of the trade unions are important and hence cannot be undermined. The issue of the ownership and consolidation of the banks has been debated even in the Parliament and it was dropped. It is also important to own the profitable business when the government suffers fiscal deficit. The alternatives suggested by the committee like reducing government share-holding to 33% or the concept of holding company structure to own the public sector banks or allowing large international banks to swallow Indian PSBs aim at serving the larger interests of global capitalist agenda without any reason or rhyme. Such attempts will also make the banking a costly proposition. It is desirable to enhance the level of the corporate governance and autonomy of the boards of the PSBs, improve technology to reduce time and transaction costs, take them out of CBI and CVC purview as the nature of the business is commercial and decisions are taken in the prevailing circumstances. The nature of commercial decision being discretionary is subjective to a great extent and the decision takers are invariable booked on the basis of hindsight. There urgent need to enhance the training capabilities and opportunities in PSBs to avert frauds. It needs to be understood that bankers are not super human beings to detect the fraudulent intentions of every fraudster. Hundreds of frauds averted go unnoticed and one failure is used to ruin and shatter the life and career of the officers. Rationalization accountability policy is considered a single most important reform to enhance the speed and efficiency of PSBs. It is important to remember that all the banks in private sector do not have the best levels of efficiency and even the new generation banks do not have exactly same levels of competitive strength. The thought of privatization to bring about efficiency and competitiveness is thus misplaced.

The perception of the committee that PSBs are not able to attract the best of the talents is far from the fact as elsewhere the committee itself observes that PSBs have historical ability to attract talent and many former officers of PSBs are holding high positions in Foreign and New Generation Private Banks. The negative opinion expressed by the committee can also be contrasted against the reality that even the recruitment of Probationary Officers to fill up about 52000 vacancies in the current year attracted more than 22,00,000 applications and the selected candidates included a majority of Engineering Graduates & Post Graduates, MBAs and possessing other higher and professional qualifications. There is also greater need to internalize the post of Executive Directors and Chairman and Managing Directors to avoid unhealthy practices pre and post selection apart from preventing the cultural invasion causing de-motivation among the top supporting management. Futility of dual control of the banks by the Government and RBI was also emphasized by Narasimham Committee too. But there were no takers then and there will be no takers even now.

The Government may probably be happy if RBI renounces its control on the banking system in favour of the Government. Will RBI Governor experiment in this field by sending some experts from RBI to strengthen the Government Control Mechanism?

After analyzing the relevant aspects of Narasimham and Raghuram Rajan Committees' recommendations, we now proceed to respond to the issues covered in RBI's Discussion Paper.

1. Small banks vs large banks (mergers and consolidation)

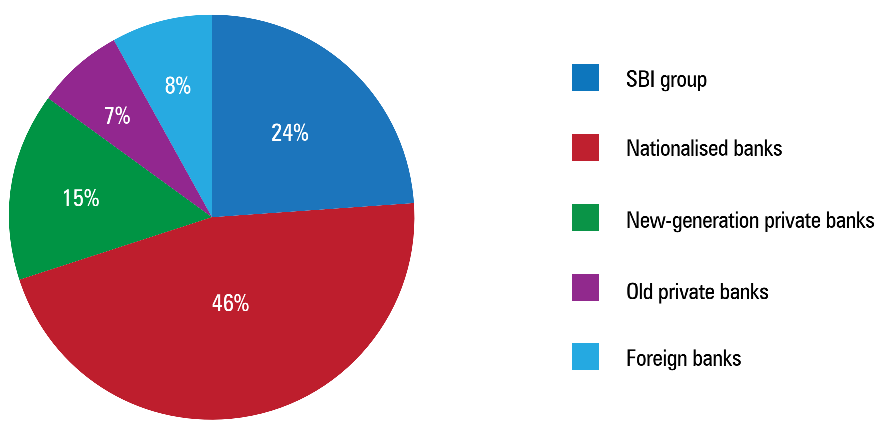
We have Regional Rural Banks and Urban Cooperative Banks at local level to cater to the banking needs of the people, Under the new liberalized branch licensing policy, the PSBs have opened large number of branches in rural, urban and unbanked centres. With the liberalization of branch licensing continuing and focus on financial inclusion further growing, we expect larger integration of rural economy in the mainstream economy of the country. That is what a developing economy needs. Raghuram Rajan Committee view the Indian Banks as relatively small vis-s-vis the international banks merely on the grounds that only one Indian Bank (SBI) finds a place in top 100 global banks and that too at 80th place. There is need to review such perception. The size of assets which is the basis of ranking the banking institutions is measured in terms of value in US Dollars. Here comes the role of exchange rates. If the currency of a country is weakening against US Dollar, the valuation of assets of the banks of the country will also deteriorate. That is what has been happening to the ranking of Indian banks internationally. Four Chinese Banks finding a place among top 30 banks is largely on account of appreciation of their currency against US Dollar and not because merger and consolidation in their banking sector. It is important to understand that the size of the business of banking is largely related to the size of economy of the country. In this context the Raghuram Rajan committee itself observes that the size of capital of 10 biggest Indian Banks to 10 biggest Indian Corporations is not disproportionate to the ratio elsewhere in the world. This ratio is 2.72 in India as against 2.45 in USA. As long as the banking institutions in the country are capable of meeting the credit needs of the economy, the size of the individual banks does not matter. There are huge sanctioned but unavailed credit facilities in the Indian banking system and it is a testimony to the capability of the Banks to meet the credit needs.

The thought to initiate any move to merge or consolidate Public Sector Banks is unwise and aims to benefit foreign banks through intended takeover of Indian Banks at a later stage as envisaged by Raghuram Rajan Committee.

2. Universal banking

Financial Sector in India till the advent of globalisation and financial sector reforms had Commercial Banks and also Development Financial Institutions to meet the credit needs of different segments of Industry. The Development Financial Institutions saw reverse mergers with their off-springs and started universal banking which later on spread to Commercial Banks too. It has created problems like liquidity, asset-liability mismatch on one hand and scarcity of trained personnel to handle long term/infrastructure financing on the other. The job-rotation policy, transfer policy etc. mandated by Ghosh Committee, CVC and the Government

Pie chart depicting market share of banks in India (2013)



even in the case of officers recruited in the specialized functions have only added to the woes of the bank managements in PSB. The awakening to have differentiated licensing particularly for infrastructure financing, wholesale banking and retail banking seems to be a belated thought when almost all the banks have exposure to infrastructure financing/long term project financing. Segregation will pose serious problems, which will need smart solutions. The differentiated licensing will help improve quality of credit as standard of appraisal will improve.

3. Continuation authorization

Commercial Banking is a sensitive sector as it involves financial intermediation. Dealing with public money calls for extra care. The role of the Regulator is also important. The present level of competition in Indian banking space seems to be quite adequate where various categories of the banks enjoy a fair market share as under:

SBI group	24%
Nationalized Banks	46%
New Generation Private Banks	15%
Old Private Banks	7%
Foreign Banks	8%

In such an environment there is no pressing need to allow licensing of new players either in the private sector or in foreign sector. The entry of foreign banks either through the branch licensing route or through the subsidiary licensing route may be evaluated on the reciprocal basis. But there is hardly any scope to permit more banks in private sector. The licensing in any case must be block licensing and not on tap licensing whenever there is a need to expand the sector on merits and in changed scenario.

4. Conversion of UCBs into commercial banks

The cooperative sector bank failures have been very common phenomenon in different parts of the country. In many cases the PSBs were directed to rescue the depositors by taking over the failed or failing cooperative banks. It would be worthwhile to explore the possibilities of take-over of UCBs by PSBs and free them from the local political interference and protect the public savings. The transfer of technology in such an eventuality will also improve the levels of efficiency of the branches and bring down the cost of operations.

5. Presence of foreign banks in India and Indian banks' presence overseas

The number of foreign banks having their presence in India is more than the number of public sector banks or private sector banks individually operating in the country. Hence there is no strong case for permitting liberal entry of more foreign banks into Indian banking space. It is however felt that as a global players India may adopt a balanced and reciprocal approach in deciding on this issue. Similarly the Indian Banks may be encouraged to expand overseas either by opening branches or by adoption of subsidiary route including joint ventures as done by three PSBs by incorporating India International Bank, Malaysia a couple of years ago.

6. Government ownership

RBI in its Discussion Paper has desired an optimal ownership mix in the banking sector to promote a balance between efficiency, equity and financial stability while observing that there is a better pay off in enabling PSBs to improve their performance. Simultaneous growth of Private Sector banks will instill a fair amount of competition in the banking sector. The argument of reduction in fiscal burden on account of recapitalization of PSBs does not sound logical as the government collects much more amount in the form of aggregate dividend from PSBs. If the PSBs are relieved of political and bureaucratic interference and larger autonomy is allowed to their Boards, the profitability of PSBs will increase. It will eventually bring down the demand for recapitalization by PSBs. The options from the menu of choices such as non-voting equity shares or differential voting equity shares or adopting holding company structure or diluting government stake in PSBs are unwarranted tinkering with the well settled capital structure of PSBs.

7. Indicative reorientation of the banking structure

The 4-tier banking structure suggested by Narasimham Committee and also by Raghuram Rajan Committee is an oft-repeated prescription available in the market for last two decades. But there are no takers for it which is an indication of its futility in a well-established Indian banking space. What is being suggested by the Discussion Paper released by RBI is largely description of the existing structure of banking in the country. Even today we have banks like the State Bank of India, Bank of Baroda, Bank of India and Indian Overseas Bank with a presence in various global geographies apart from their pan-India presence. The remaining PSBs have a presence in India but little or no presence internationally. They thus constitute the second tier. The third tier may comprise New-Gen Private Sector Banks leaving the Regional Rural Banks to constitute the fourth tier. It leaves us with Urban Cooperative banks and Old Private Sector banks which are good cases for nationalization or take-over by PSBs. Such a move will save the cooperative banks from interference by local politicians and Old Private Sector banks from exploitation and intermittent take-over bids by Private Business Houses. MA

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VALUE BASED PERFORMANCE INDICATORS VERSUS ACCOUNTING EARNINGS BASED PERFORMANCE INDICATORS – A CASE STUDY WITH REFERENCE TO ONGC

This paper attempts to examine the relationship between share price and market value added, economic value added and cash value added vis-à-vis accounting earning based measures like Return on Investment, Return of Net Worth and Earnings per share

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THE adaption of liberalization and privatization in 1991 changed the situation that the government started allowing the Indian gas and petroleum industries to go into private hands and entered into government and private joint ventures. The development in the Indian capital market, both in depth and breadth along with the increased awareness among the shareholders, has increased the pressure on the companies to consistently perform better. Investors, world over, are currently demanding more shareholder value than just high returns. Maximizing shareholders value has always been the ultimate aim of every company. Investors are very keen in assessing the corporate financial performance that correlate with shareholders wealth particularly the market price of a share. Traditional performance measures like return on investment, earnings per share, etc., have been used as the most important measure of shareholder value creation. However, more recently there has been a growing awareness that these conventional accounting measures are not reliably linked to increasing value of the company's shares. This occurs because earnings do not reflect changes in risk and inflation, nor do they take account of the cost of additional capital invested to finance growth.

There are number of other reasons also behind failure of accounting based earnings to measure changes in the economic value of the business, which are:

- Alternative accounting methods may be employed.
- Dividend policy is not considered.
- The time value of money is ignored.

The value of companies' shares will only increase if management can earn a rate of return on new investments, which is greater than the rate investors expect to earn by investing in alternative, equally risky companies.

Since the concept of "maximizing shareholder wealth" was developed in the 1970's, more and more enlightened managers are focusing on strategies, which maximize economic returns for shareholders, as measured by dividends plus the increase in the company's share price.

This insufficiency and somewhat irrelevancy of accounting based performance indicators have given rise to the need of alternative performance indicators. The value based performance indicators is an answer to the limitations of traditional accounting based performance indicators. In this paper, In the recent years, value based measures which measure performances in terms of change in value have received a lot of attention. There are several value-based measures such as Cash Flow Return on Investment (CFROI), Economic Value Added (EVA), Market Value Added (MVA) and Cash Value Added (CVA). This paper attempts to examine the relationship between share price and Market Value Added, Economic value added and cash value added vis-à-vis Accounting earning based measures like Return on Investment, Return of Net Worth and Earnings per share with particular reference to ONGC a BSE Sensex company.

Review of literature

Economic Value Analysis (EVA), developed by Stern Stewart & Co., New York and other challengers like Cash Value Added (CVA) developed by Ottoson and Weissenrieder (1996) and Cash Flow Return on Investment (CFROI) by Madden (1998) are number of Value Based Management Frameworks. A number of empirical research studies have been undertaken by researchers to explain the variations in shareholders' wealth through traditional performance measures as well as applying the newest evaluation metric, A brief overview of such studies and research papers is being presented below.

➔ **Biddle (1996)** tested assertions that Economic Value Added (EVA) is more highly associated with stock return and firm values than accrual earnings, and evaluated which components of EVA, if any, contribute to these associations. The study has used a sample of 6174 firm-years representing both adopters and non-adopters of EVA over the period 1984 to 1993. The correlation and regression test revealed that earnings were more highly associated with return and firm values than EVA, RI, or cash flow from operations.

➔ **Lehn and Makhija (1996)** examined the effectiveness of EVA and Market Value Added (MVA) as a measure of performance and as a signal of strategic change. The study has used the data of 241 large US companies for the period 1987-1996 and analyzed through descriptive statistics and multiple correlation. The results show that EVA and MVA effectively measured the quality of strategic decisions and served as signals of strategic change. They were found to be significantly correlated with stock price performance and inversely related to turnover.

➔ **O'Byrne (1996)** tested the explanatory power of capitalized EVA, Net operating profit after tax, free cash flows relative to market value divided by invested capital. The study has made two adjustments to the original model of Stern and Stewart for the period started from 1985 to 1993. The author used nine years of data and the total sample included 9000 largest publicly traded companies. The results were analyzed with the help of descriptive statistics and regression model. The findings showed NOPAT and EVA have almost the same explanatory power. He concluded that the EVA has correlation with the market value and acts as a powerful tool for understanding expectations of the investor.

➔ **Grand (1996)** studied the relationship between MVA and EVA. The study selected 983 companies from the Stern Stewart Performance 1000 for the years 1993 and 1994 in US. It also examined the effects of the economy and EVA on MVA with the help of multiple correlations. The results show that EVA and GDP significantly affect MVA and there was a high level of correlation between MVA and EVA for companies having positive EVA. The author found that the corporate profits should be measured in relation to the amount of capital invested in order to generate a particular level of profitability. His empirical study brought out that EVA has a significant impact on MVA of a company.

➔ **Milunovich and Tsuei (1996)** evaluated EVA in computer industry and determined which variable has best correlation with stock price. They also investigated the correlation between frequently used financial measures (including EPS, ROE, EVA) and the MVA of companies in the US Computer Technology Industry (so-called 'server-vendors') for the period 1990 to 1995. The study included top 11 computer companies of the U.S. The results showed the variability in correlation of different performance measures with MVA in computer industry. They concluded that EVA has the best correlation with MVA and stock price and primary determinant of changes in MVA.

➔ **Chen and Dodd (1997)** reviewed that EVA is the most recent and exciting innovation in company performance measures. The study examined the EVA performance of 656 US companies and compared the information usefulness of EVA with accounting earnings and residual income through co-efficient of correlation. The results show that EVA was more powerful than traditional measures of accounting profit in explaining stock return. They also found that Economic Value Added was not only similar to Residual Income in concept, but also empirically comparable.

➔ According to **Bhattacharyya** and **Phani (2004)**, India has found supporters for EVA. It has already earned favor with journalist and leaders in corporate reporting. However most of them do not calculate EVA rigorously, rather they take casual approach in calculating and reporting EVA. The authors also commented on the process of determining EVA by Infosys.

➔ **Anand et al. (1999)** have studied the relationship between the ranks given in KPMG-BS (1998) study and were of the view that EVA and MVA are better measures of business performance.

Objectives and hypothesis of the paper

- The central objective of the study is to determine the degree of association between market value of shares and value based measures vis-à-vis accounting earning based measures. More specifically, the major objectives of the study are:
  1. To identify the relationship between market value of shares and accounting earnings based measures
  2. To find out the relationship between accounting based measures and value-based measures
  3. To determine the degree of association between market value of shares and value based performance measures.
- Based on the objectives the hypothesis are
  1. Ho_1: no relationship between market value of shares and accounting earnings based measures
  2. Ho_2: no relationship between accounting based measures and value based measures
  3. Ho_3: no relationship between market value of shares and value based performance measures.

Data and methodology

The data for the period from 2000-01 to 2011-12 used in this study have been collected from the secondary sources i.e. published annual report of the selected company, various reputed journal, e-journal from UGC-Influent centre, various reputed books of finance, etc. prowess data base package has also been used for procuring data. The rationality behind selection of the sample period lies in the fact that there has been a radical transformation in the corporate financial reporting and disclosure practices resulting from promulgation of revised clause 49 on corporate governance. Besides, there has been an overwhelming change in the requirement of corporate disclosures by the enactment of Company's Amendment Act, 2000 and Company's Amendment Act, 2002 ; issue of about 17 new accounting standards by ICAI on or after 1.4.2000 and ICAI's all-out effort to converge the Indian accounting standards with the International Accounting Standards particularly from 2002. The sample period also covers the last two planning period years of the, 10th plan period and the 11th plan period of Govt. of India. Moreover, the annual reports of the financial year 2012- 13 are the latest available annual reports at the time of conducting this study and hence, they are easy to obtain. The data obtained from annual reports and prowess databases would be suitably processed by applying relevant statistical tools and financial tools in order to reach the conclusion. The statistical tools applied here is the multiple correlation analysis and simple linear regression model and the result is tested using the Students 't' test at 1% and 5% level of significance.

Company's profile and performance measurement variables

a. Company's profile

Oil and Natural Gas Corporation Limited (ONGC) is an Indian multinational oil and gas company headquartered in Dehradun, India. It is one of the largest Asia-based oil and gas exploration and production companies, and produces around 77% of India's crude oil (equivalent to around 30% of the country's total demand) and around 81% of its natural gas. It is one of the largest publicly traded companies by market capitalization in India. ONGC has been ranked 357th in the Fortune Global 500 list of the world's biggest corporations for the year 2012. It is also among the Top 250 Global Energy Company by Platts. ONGC was founded on 14 August 1956 by the Indian state, which currently holds a 74.14% equity stake. It is involved in exploring for and exploiting hydrocarbons in 26 sedimentary basins of India, and owns and operates over 11,000 kilometers of pipelines in the country. Its international subsidiary ONGC Videsh currently has projects in 15 countries. The company is state owned and listed both in BSE and NSE.

b. Share price = average of opening price , closing price, high price and low price

c. Accounting earning - based performance measurement metric

Traditionally the methods of measurement of corporate performance are many. In this chapter, we will concentrate only five different earning- based performance measurement systems. They are classified as

(i) Profitability ratio based on Assets/ Investments;

- **Return on capital employed (ROCE)**

- $\text{ROCE} = \dfrac{\text{Net Profit After tax}}{\text{(Average Capital Employed)}} \times 100$

(ii) Profitability from the point of view of Owners /Shareholders;

- **Earning Per Shares (EPS)**

- $\text{EPS} = \dfrac{\text{Net Profit-Pref Dividend}}{\text{Number of outstanding Equity Shares}}$

(iii) Profitability ratio in the context of managerial performance;

- **EBDITA Margin**

$$\frac{\text{Earning before Interest, Taxes, Depreciation, and Amortisation}}{\text{Net Sales}}$$

d. Value-based performance measurement metric

There are several value-based measures such as Cash Flow Return on Investment (CFROI), Economic Value Added (EVA), Market Value Added (MVA) and Cash Value Added

IN THIS INFORMATION ERA, IT IS THE RIGHT OF THE SHAREHOLDER TO KNOW THE VALUE ADDITION BY THE COMPANY ON THEIR INVESTMENT TO JUDGE THEIR PERFORMANCE AND THE SHARES

(CVA). This paper attempts to examine the relationship between share price and Market Value Added, Economic value added and cash value added

(i) Economic value added

Economic Value Added is a modified version of residual income or economic profit. The Economic Value Added (EVA) metric is a quantitative technique to evaluate a firm's financial performance. Any surplus generated from operating activities over and above the cost of capital is termed as Economic Value Added (EVA)

EVA = NOPAT – Capital Charge

NOPAT = PAT + Interest (1 – t)

Capital charge = cost of capital x capital employed

Cost of capital : k_d (proportion of debt) + k_e (proportion of equity)

Capital Employed: Capital employed is the total of networth and borrowings.

Interest and K_d: Since interest is not directly available form the prowess database, it has been calculated by dividing the interest as shown in the income statement with the total borrowings. Kd has been determined as net of tax (average tax rate).

Cost of Equity (K_e): K_e was calculated using the CAPM model. Return on the Nifty index was taken as the market return (R_m) and beta (β) from the Prowess database. The study used the book Debt Equity Ratio (DER) for calculating the K_e.

(ii) Market value Added

MVA as the excess of market value of capital (both debt and equity) over the book value of capital. If the MVA is positive, the company has created wealth for its shareholders.

Market Value Added = Company's total Market Value – Capital Invested

With the simplifying assumption that market and book value of debt are equal, this is the same as **Market Value Added = Market Value of equity – Book value of equity**

Book value of equity refers to all equity equivalent items like reserves, retained earnings and provisions. In other words, in this context, all the items that are not debt (interest bearing or non-interest bearing) are classified as equity.

Ehrhardt (2002) propose formula of MVA:

MVA = Total Market Value – Total Capital

= (MV of Stock + MV of Debt) – Total Capital

Where, MV of Stock = Market Capitalization = Shares Outstanding x Stock Price

MV of Debt = Book Value of Debt (as an estimate to the MV)

Total Capital = Total Book Value of Debt and Equity

(iii) Cash Value Added

CVA is Cash Value added as another indicator of company's performance in the context of value creation over the reporting period. Valuation based this concept reflects the real increase in company's value over reporting period in cash flow term. It has been developed by Boston Consulting Group. The model presented here is called the Cash Value Added (CVA) model and is, in its design, very simple. It includes only cash items, i.e. Earnings before Depreciation Interest and Tax (EBDITA), adjusted for non-cash charges), working capital movement and non-strategic investments. The sum of those three items is the Operating Cash Flow (OCF). The OCF is compared with a cash flow requirement, "the Operating Cash Flow Demand" (OCFD). This OCFD represents the cash flow needed to meet the investor's finan-

Oil and Natural Gas Corporation Limited (ONGC): Table 1								
Regression with share price and accounting earning- based performance indicators								
	R	R square	constant			Slope		
			value	t	Signi.	value	t	Signi.
EPS	0.842**	0.709	-216.87	-1.03	0.327	14.125	4.685	0.001
ROCE	0.362	0.131	-58.74	-0.087	0.932	21.6	1.164	0.274
EBDITM	0.047	0.002	181.80	0.13	0.899	12.36	0.642	0.537

Oil and Natural Gas Corporation Limited (ONGC) Correlation analysis: table 2						
	EPS	ROCE	EBDITM	EVA	CVA	MVA
EPS	1					
ROCE	0.651*	1				
EBDITM	0.039	0.038	1			
EVA	0.572	0.675*	0.307	1		
CVA	0.256	0.256	0.577	0.853**	1	
MVA	0.308	0.128	0.495	0.723*	0.893**	1
*Significant at 5% level, **Significant at 1% level						

Oil and Natural Gas Corporation Limited (ONGC) :Table 3								
Regression with share price and value based performance indicators								
	R	R square	constant	slope				
			value	t	Signi.	value	t	Signi.
EVA	0.602*	0.362	181.152	0.711	0.495	0.009	2.159	0.051
CVA	0.606*	0.367	295.55	1.139	0.284	0.004	1.761	0.050
MVA	0.697**	0.486	310.366	1.897	0.09	0.08	2.919	0.017

cial requirements on the company's strategic investments, i.e. the capital cost.

CVA = Gross Cash Flow- Economic Depreciation- Capital Charge

Economic Depreciation = [WACC/ $(1+\text{WACC})^n$ - 1]* Depreciable Assets

Gross Cash flow = Adjusted profit + interest expense + depreciation

The another variant of CVA is used here is as follows:

CVA = Gross Cash Flow – Capital Charge

Or, CVA = (NOPAT + Depreciation + Amortisation) – Finance Cost

Finance Cost = Average Capital employed **x cost of Capital**

Relationship between market value of shares and accounting earnings based measures

The objective of the test is to test the hypothesis that there is no significant linear relationship between market value of shares and traditional accounting earning- based performance measures such as EPS, ROCE and EBDITA Margin (EBDITM). The results are shown in **Table1**. The result indicated that all the earning- based performance measurement showing positive correlation with the share price. EPS is significantly correlated (.842) with the share price at 1% level of significance. The variation of share price can be explained by EPS 71% (R^2=.709) and the t test of the beta value (4.685) is significant at 1% level. Hence first sub null hypothesis is rejected at 99% confidence level showing that Share price has a meaningful relation with EPS. However, the other alternative hypothesis is accepted which indicates other earning-based indicators are not associated with value of shares of the company.

Relationship between accounting based measures and value-based measures

This paragraph would empirically examine the relationship between accounting based performance measures and value based performance measures with the help of multiple correlation analysis. The hypothesis of the study is to test the relation between value-based performance measures and traditional earning- based performance measures. The value-Based measures consider here are Economic value added(EVA), cash value added (CVA) and Market Value Added (MVA). The result indicates that EVA is not significantly as-

SEBI AND THE MCA SHOULD ISSUE SOME GUIDING PRINCIPLE FOR COMPUTATION OF EVA, CVA AND MVA AND ITS PRACTICE IN FINANCIAL REPORTING AND ACCOUNTING DISCLOSURES BY INDIAN CO.s

sociated with traditional earning based performance measures except ROCE having moderate correlation with 5% level of significance. CVA is not significantly associated with traditional earning based performance measures. The same result is reflected when we consider MVA. So our hypothesis is rejected and we can comment that value based performance tools have week relation with traditional earning based tools. The result due to the reason that accounting earning based measures ignores the cost of capital.

Association between market value of shares and value-based performance measures

The objective of the test is to test the hypothesis that there is no significant linear relationship between market value of shares and value-based performance measures such as Economic value added (EVA), cash value added (CVA) and Market Value Added (MVA). The result summarized in table no.3. The results of correlation matrix reveal that all the value based performance measurement showing positive correlation with the share price and the result is significant. The correlation between share price and value based performance indicators can be summarized as MVA > CVA > EVA. The result of the regression analysis reveals. The explanatory power ($R2= 70\%$) is high for MVA and the slope is significant which indicates MVA influences the share price value significantly. Hence, we reject the hypothesis and comment that share price having good association with value-based measure. The result indicates there is strong association between cost of capital, cash flow and value of shares.

Conclusion and suggestions

Summing up the conclusion drawn from the study is as follows. This study reveals that all the traditional earning- a based measure except EPS fails to capture the share price variation strongly. As an alternative, we introduced modern value-based performance measures like EVA, CVA, MVA and CFROI to judge the association with share price. The tools applied here to measure the performance of the company are not available in their annual report. They are computed based on the data available from the annual report of the company. Value-based measures have been obtained by adjusting accounting items and considering cost of capital. However, due to lack of information and for maintaining simplicity, the adjustments have been kept at a minimum level. The study shows if these value-based measures demonstrate an effective relationship with share price and could explain variations in share price significantly. If companies disclose this information in their annual report using standardized approach the effectiveness will be more to explain the share price variation. The moderate correlation between traditional earning-based measures and value-based measures force to conclude that disclosure of value-based measure is not supplementary to accounting earning-based measure rather complementary to each other. In this information era it is the right of the shareholder to know the value addition by the company on their investment to judge their performance and the shares accordingly.

Based on present study, the following suggestions with regard to new value-based performance measures and traditional performance measures are made which can go a long way to improve the financial performance measurement of Indian companies.

1. As per results of study, value-based measures like EVA, CVA and MVA have emerged as the effective performance measures along with the traditional measure, viz. EPS, ROCE, and EBITDA Margin. Considering the populari-

ty and the fundamental contribution of EVA and CVA in terms of its consideration of all the capital charges, including equity cost and real value addition measured by MVA, it should not be ignored by Indian companies as the use of these tools increases the awareness of capital cost of running a business.

2. SEBI and MCA (Ministry of Corporate Affairs) should issue some guiding principle for computation of EVA, CVA and MVA and its practice in financial reporting and accounting disclosures by the Indian companies. It should issue necessary guidelines making it mandatory for all the companies to disclose value-based performance measures in their financial statements.

3. As the traditional measures do not consider cost of capital employed, so it is better to disclose cost of equity , cost of borrowing and cost of capital employed in their annual report

4. Standardized norms should be recommended for calculation of traditional earning- based performance measurement like ROCE, ROA, ROE etc

Limitation of the study

1. The book value of capital invested was used as a measure of capital invested. Book value reflects accounting choices made over time and hence calculation may not be accurate.

2. For calculation of cost of capital, we have used the book value as weight instead of market value.

3. The study ignores the impact of inflation.

Maximizing shareholders value has always been the ultimate aim of every company. Investors are very keen in assessing the corporate financial performance that correlate with shareholders wealth particularly the market price of a share

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COMPENDIUM OF POST-INDEPENDENCE QUANTUM-LEAP ROLE OF FDI ON GDP – A CO-INTEGRATION ANALYSIS

The author's studies confirm and complement the findings of other studies where it has been found that cost-related factors, macro-economic factors and countries' profile of political risk index are the major determinants of inward FDI flows

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THE sacred flavour of quinquennium is FDI inclusion. FDI inclusion is prophecy, nourishing and sustainable connecting thread among dispersed third world to tame inane embed poverty among vulnerable. It supports and promotes a pro-culture of collaborations, integrations and inclusiveness in an agile economic environment. The surge, cope with and internalise the reaping philosophy of open economy is the invigorating outcome of soft and hard capital infusion in the form of foreign direct investment. Despite global economic meltdown discernible since 2008 and agile economic and political scenarios worldwide, demand for foreign capital has remained robust and it is a great challenge to us reaps it. Global economic recovery has been very gradual with the Eurozone volatility continuing during 2012-13, albeit at a lower intensity. The Eurozone countries continued to adopt austerity measures, as part of the fiscal adjustment. Global or International Economic and dynamic resource Integration plays an imperative role in sustainable Economic Development and impetus to cognitive savings and investment dissonance of any country. Foreign Direct Investment (FDI) is one and only major dynamic instrument of attracting Global Economic Integration in any economy. It serves as a liaison and link between investment and saving. Many developing countries like India, having savings crisis, are forwarding for Foreign Direct Investment in reducing the defect of BOP. The flow of foreign investment is a profit making industry like insurance, real estate and business services and serving as a catalyst for the growth of economy in India. It is argued in the existing literature that foreign direct investment (FDI) inflow positively influences economic growth through technology diffusion, human capital formation, etc., though a section of the literature do not find empirical support for this contention. Since the initiation of the economic reforms in India in 24th July, 1991, the role of foreign investment in the growth process has been acknowledged by the policy makers. Greater emphasis on FDI inflow has been laid in recent years by allowing 100 per cent FDI in various economic activities. In this background, the

Table1: Influx of Inward FDI as a Percentage of World GDP (UNCTAD[1]–2012)(Quick Estimate[2])												
Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
FDI(%) of GDP	9.729	10.4	9.9	10.3	10.5	11.5	13.1	15.0	19.0	22.7	23.29	23.6
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
FDI(%) of GDP	22.8	25.4	26.6	25.5	29.1	32.3	25.5	31.6	32.1	29.8	32.211	33.14[2]

present analysis attempts to understand the nexus between the investment and economic growth in India. A time series analysis is undertaken to analyse whether there exists any long-run relationship between FDI, domestic investment and economic growth, and if so, what is the direction of the relationship. While the long-run co-integrating relationship between FDI, gross fixed capital formation (GFCF) and gross domestic product (GDP) in India is confirmed by the empirical analysis, the findings that there is a unidirectional causality from India's economic growth to FDI and from FDI to domestic investment raises important policy implications. Higher FDI inflow in India in recent period can be argued to be facilitated by the relatively stable GDP growth rate, which in turn acted as a major boost towards a sustainable high domestic investment. The growth effects of the FDI on GDP in the short run are, however, less pronounced.

Definition of foreign direct investment

Foreign direct investment (FDI) is defined as "investment made to acquire lasting interest in enterprises operating outside of the economy of the investor". The FDI relationship consists of a parent enterprise and a foreign affiliate which together form a transnational corporation (TNC). In order to qualify as FDI the investment must afford the parent enterprise control over its foreign affiliate. The UN defines control in this case as owning 10% or more of the ordinary shares or voting power of an incorporated firm or its equivalent for an unincorporated firm.

Types of foreign direct investment

1. Inward foreign direct investment: This refers to long-term capital infusion into a country other than aid, portfolio investment or a repayable debt. It is done by an entity outside the host country in the home country.

2. Outward foreign direct investment: This refers to long-term capital outflow from a country other than aid, portfolio investment or a repayable debt. It is done by an entity outside the host country in the home country.

3. Horizontal foreign direct investment: This refers to a multi-plant firm producing the same line of goods from plants located in different countries.

4. Vertical foreign direct investment: If the production process is divided into upstream (parts and components) and downstream (assembly) stages, and only the latter stage transferred abroad, then the newly established assembly plant's demand for parts and components can be met by exports from home-country suppliers.

5. Greenfield foreign direct investment: Greenfield FDI is a form of investment where the MNC constructs new facilities in the host country.

6. Brownfield foreign direct investment: Brownfield FDI implies that the MNC or an affiliated of the MNC merges with or acquires an already existing firm in the host country resulting in a new MNC affiliate.

Global state of FDI: In the World Bank's ranking of countries on Ease of Doing Business, India ranks 132; and stands at 173 for the ease of starting a new business. Despite a 14.96% decline in the number of projects in Asia-Pacific in 2012, it was still the leading world region, attracting 3740 projects with a 31.72% global market share. As in 2011, China, India and Singapore were the three leading countries for inward FDI, attracting over half of all projects in Asia-Pacific. This was despite FDI in China and India falling sharply by 27.05% and 20% respectively. (FDI report-2103, Global Greenfield Investment Trends-2013 – see **Table1**)

FDI is a major source of external finance which means that countries with limited amounts of resources and capital can receive finance beyond national borders from wealthier countries. Exports and FDI have been the two key ingredients in China's rapid economic growth. According to the World Bank, FDI and small business growth are the two critical elements in developing the private sector in lower-income economies and reducing poverty. Over the past two decades, many countries around the world have experienced substantial growth in their economies, with even faster growth in international transactions, especially in the form of foreign direct investment (FDI). The share of net FDI in world GDP has grown five-fold through the eighties and the nineties, making the causes and consequences of FDI and economic growth a subject of ever-growing interest. This report attempts to make a contribution in this

Influx of Inward FDI as a Percentage of World GDP (UNCTAD[1]--2012)(Quick Estimate[2])

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
FDI(%) of GDP	9.729	10.4	9.9	10.3	10.5	11.5	13.1	15.0	19.0	22.7	23.29	23.6
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
FDI(%) of GDP	22.8	25.4	26.6	25.5	29.1	32.3	25.5	31.6	32.1	29.8	32.21[1]	33.14[2]

Table2: Influx of Inward FDI as a Percentage of Indian GDP (UNCTAD[1]–2012)(Quick Estimate[2])

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
FDI(%) of Indian GDP	0.51	0.61	0.71	0.89	1.11	1.50	2.11	2.51	3.31	3.32	3.49	4.07
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
FDI(%) of Indian GDP	5.11	5.50	5.32	5.16	7.47	8.77	9.67	12.83	12.25	10.88	12.181	12.24[2]

context, by analyzing the existence and nature of causalities, if any, between FDI and economic growth. It uses as its focal point India, where growth of economic activities and FDI has been one of the most pronounced.

Sad state of Indian FDI: At the time of independence, the attitude towards foreign capital was one of fear and suspicion. This was natural on account of the previous exploitative role played by it in 'draining away' resources from this country.

The suspicion and hostility found expression in the Industrial Policy of 1948 which, though recognizing the role of private foreign investment in the country emphasized that its regulation was necessary in the national interest. Because of this attitude expressed in the 1948 resolution, foreign capitalists got dissatisfied and as a result, the flow of imports of capital goods got obstructed (see **Table2**).

Review of literature in the global perspective

John H Dunning (1977, 1981) nicely observed and synthesised the "eclectic paradigm" theory of FDI and OLI (Ownership, Location and Internalisation) factors and its impact on growth and expansion of developing countries economy as well.

Mihir Desai, Foley and Antras (2007) in their study try to provide an integrated explanation for MNC activity and the means by which it is financed and way of obtaining external finance creates many frictions for the firms which further leads to multinational activity.

Solow R.M. (1956) observed in his study, the FDI-growth nexus is evidently identified by the neoclassical growth models. The neoclassical growth model considers technological progress and labour force as exogenous, and thus argues that FDI increases level of income only while it has no long run growth effect if it does not expand technology. Long run growth can only be increased through technological and population growth and if FDI positively influences technology, then it will be growth advancing.

Mihir Desai, Foley and Antras et. al.(2005) observed in a different study focuses on the impact of rising foreign investment on domestic activity. It is observed that firms whose foreign operations grow rapidly exhibit coincident rapid growth of domestic operation but this pattern is inconclusive as foreign and domestic business activities are jointly determined. Their study uses foreign GDP growth rates interacted with lagged firm specific geographic distributions of foreign investments to predict changes in foreign investment by a large number of American's firms. An estimate indicates that 10 percent greater foreign capital invested is associated with 2.2 percent greater domestic investment and 10 greater foreign employee compensation is associated with 4 percent greater domestic employee compensation. They find that the changes in foreign and domestic sales, assets, and number of employee are positively associated and also greater foreign investment is associated with additional domestic exports and R&D spending.

Review of literature in the Indian perspective

Chandra Mohan, N (2005) in his study on FDI in India is of the view that she failed to attract acceptable level of FDI both from government and individual level and also he argue that government must not consider foreign direct investment sacrosanct (very sacred=inviolable).

T.N Srinivasan (2001) in his study evaluates India's transition from an inward oriented development strategy to greater participation in the world economy. While tariff rates have decreased significantly over the past decade, he finds India still as one of the more autarkic countries. Despite improvement over the past in export performance, India still continues to lag behind its South and East Asian neighbours.

Significance of the study: With the effusion effect, India ranks 132; and stands at 173 for the ease of starting a new business of FDI, in the World Bank's ranking of countries on Ease of Doing Business. Despite a 14.96% decline in the number of projects in Asia-Pacific in 2012, it was still the leading world region, attracting 3740 projects with a 31.72% global market share. As in 2011, China, India and Singapore were the three leading countries for inward FDI, attracting over half of all projects in Asia-Pacific. This was despite FDI in China and India falling sharply by 27.05% and 20% respectively. (FDI report-2103, Global Greenfield Investment Trends-2013). It is widely known that soft and hard resource flows into third world economies have risen sharply in nineties and has, therefore, become a self-propelling and dynamic actor in the accelerated growth of the economies. This study focuses on FDI as a vector of Indian globalisation. Recently not only did India become a more frequent destination for FDI, but also many Indian firms have started investing abroad in a big way. Thus we find a surge in both inward and outward FDI flows. The impassioned advocacy of increased FDI flows (inward and outward) is based on the way worn arguments that FDI is a reach source of technology and knowhow; it can invigorate the labour oriented export industries of India, promote technological change in the industries and put India on higher growth path. This **exuberance** of FDI need to be based on analytical review of India's needs and requirements and her potential to participate in huge investment flows. Thus there is definite need to incorporate the various dimensions of FDI into a theory of Open economy development so as to explain in one integrated theoretical paradigm, the undercurrent of both inward and outward FDI flows.

Objectives of the study: India having 122 crores of population across south to north, endowed with soft –skill and labour force with huge plain land and many other historical business destinations in east to west, possesses a vast productive potential. The agglomerative force of FDI are discernible since 1980 with an

The main objective of the study is to examine country-wise comparative FDI scenario in Globe, and to evaluate the role and overall performance of FDI in India. Keeping the primary objectives in view, the study specially aims at:

1. To study the state of foreign direct investment exposure and level of sensitivity

2. To examine the standardised and unstandardised risk of foreign direct investment

3. To observe the effect of effusion of foreign direct investment on economic growth

4. To investigate the agglomeration effect of foreign direct investment on growth process

5. To percolate the information efficiency status of foreign direct investment

6. To explore the quantum-leap role of foreign direct investment

7. To explore inviolate able (kept sacred=not violate) component of foreign direct investment

8. To construct the FDI-Exogenous model

Methodology

Time frame: Using the time period of 34 years, 1979-80 to 2012-13 for India, this study aims to examine the long-run responsibility of exogenous vectors and causal dynamic relationships between the level of FDI flowing into India and economic growth (GDP). While assessing performance of India's FDI, total time period is divided in two groups; one is pre-reform period 1979-80 to 1990-91and other is post reform period of 1991-92 to 2012-13 for inter-period comparison and three periods for intra-state comparison from 1979-80 to 1990-91, 1991-92-2000-01 and 2001-02to 2012-13.

Tools and techniques: The study is both exploratory and empirical in nature. Appropriate accounting ratios and statistical tools have been used to analyze and interpret the collected and compiled data. The estimation methodology employed in this study is the descriptive statistics, risk exposure, information efficiency, effusiveness, co-integration and error correction modelling technique. The entire estimation procedure consists of three steps: first, unit root test; second, co-integration test; third, the error correction model estimation.

Materials and methods: To evaluate the Quantum-Leap Role (QLR) of FDI performance in India, a considerably long period of time extending over 34 years from 1979-80 to 2012-13 have been selected and relevant secondary data were collected from different sources like annual reports of UNCTAD; books, seminars papers and journals, web-sites, etc.

Econometric specification

Research propositions: The paper is based on the following five propositions for testing the long-run responsibility of exogenous vectors on GDP in India. (i) There is an agglomerative effect of FDI on GDP (ii) There is a Randomness effect of information efficiency of GDP and FDI (iii) The standardised risk of foreign direct investment and Gross Domestic Product is (iv) There exists a long run relationship between GDP and FDI in India (v) The central values, Random Walk and Interactive risk are invariant over.

Research hypothesis: The paper is based on the following five hypotheses for examining the extent of responsibility of exogenous vectors on GDP in India. (i) There is no significant effect of FDI on GDP (ii) The information efficiency of GDP and FDI is non-random (iii) The standardised risk of foreign direct investment and Gross Domestic Product is not significant (iv) There exists a long run relationship between GDP and FDI in India. (v) There are no shocks among central statistic.

Location-specific pull factors: As a general economic principle, the host countries that offer what foreign capitals are seeking, and/or host countries whose policies are most conducive to FDI activities stands a good chance of attracting FDI. The Six pull factors are discussed below:

1. Market pervasiveness: Market size is one of the most important considerations in making investment location decisions. The attractiveness of large markets is related to larger potential for local sales are most profitable than export sales especially in larger countries where economies of scale can be eventually reaped. The higher the GDP, the better is the nation's economic health and better are the prospects that the direct investment will be profitable. Thus GDP has a prophecies' influence on direct investment from abroad.

2. Worker's participation: The pervasiveness of rate of worker's participation conductively influences the investment environment of an economy. The wages paid to workers is considered as latent vector of workers productivity. Thus this proxy variable is responsible for affordable foreign investment environment.

3. Economic stability: Monetary and fiscal policies determines the parameters of economic stability such as tax rates, interest rates, state of external and budgetary balances, invested capital per unit of foreign direct investment that influences vehemently host countries investment shocks. Thus invested capitals per unit of foreign direct investment have a direct impact on capital infusion.

4. Infrastructure: The establishment of industry requires a highly developed infrastructure. The development of roads, rails, and electricity and communication system are important infrastructural facilities which are vital for the development of the industry. These factors are responsible for attraction of foreign direct investment and the lack of them becomes a hindrance.

5. Economic agglomeration: Agglomeration of economies arises from the presence of other firms, other industries, as well as from the availability of skilled labour force and spillovers from present state and lagged state. This gives rise to economies of scale, synergies, knowledge spillovers, intermediate inputs. Thus high FDI today implies high FDI tomorrow.

6. Cultural transformation: Transformation of culture, or cultural change, to the dynamic process whereby the living cultures of the world are changing and adapting to external or internal forces in terms of intensity of affluent segment's spending of travel. This process is occurring across the globe within Western culture as well as non-Western and indigenous cultures and cultures of the world. Forces which contribute to the cultural change is discernible through colonization, globalization, advances in communication, transport and infrastructure improvements, and military expansion. Thus how this systems of collective economic production and distribution invigorates host countries economy is, therefore, an indication of incidence of infusion of foreign capital per unit of foreign travel arrival

Model specification: For the purpose of the study, aggregate annual time series data at country level at factor cost is used. Aggregate data is normally very useful in establishing long-term econometric relationships between the variables. Considering the principal determinants of FDI inflows, the growth model for the study takes the following form:

$GDP_t = \alpha + \beta_1 IFDI_t + \beta_2 WTW_t + \beta_3 INFRA_t + \beta_4 EXPORT_t + \beta_5 AGGL_{t-1} + \beta_6 FDI/FTA_{t-1} + \varepsilon t$

Where,

GDP = Gross Domestic Product percentage at factor cost measured in current US $ million

IFDI = Foreign Direct Investment at current US $ million

WTW= Wages paid to Workers measured in Rs lakhs (latent variable of workers participation rate)

INFRA = Infrastructure proxies of energy use measured as kiloliter of oil equivalent per capita

EXPORT = Internal Economic Stability dummy of Invest-

Table3: Definition of Control Variables

Variable	Mnemonics	Variable Descriptions
Market Size	GDP%	Gross Domestic Product, GDP growth
Workers Participation	WTW	Wages to workers
Infrastructure	INFRA	Infrastructure proxies of energy use measured as kiloliter of oil equivalent per capita
Internal Economic Stability	EXPORT	Internal Economic Stability dummy of Investment Environment measured in Export in US $ million
Agglomeration	AGGLt-1	Pervasiveness effect measured by two years lag values of FDI inflows
Cultural Transformation	FDI/FTAt	Effect Foreign capital per unit of Foreign Travel Arrival measured as latent of cultural transformation

Table4: Foreign Direct Investment Exposure (% of GDP) and Sensitivity Level (Mean centred)						
Statistic \ Country	World	India	China	Sri Lanka	Pakistan	Nepal
Average	21.87125	5.48	11.69417	10.40583	9.263417	1.249833
Standard Deviation	8.467016	4.246766	3.388332	1.248003	3.221512	0.662615
Co-efficient of Variation	38.713%	77.4957%	28.9745%	11.9933%	34.7767%	53.0162%
Source: Compiled and Computed from Report UNCTAD—2012 and Quick Estimates						

Table5: Standardised and Unstandardised Risk of Foreign Direct Investment			
Risk Exposure	Standardised Risk	α level	Prophecy
GDP &FDI	0.343	0.05	Significant
GDP&WTW	0.404	0.05	Significant
GDP&INFRA	0.300	0.01	Insignificant
GDP&AGGLO	0.300	0.05&0.01	Insignificant
GDP& CULTURE	0.390	0.05	Significant
GDP&FDI/FTA	0.422	0.01&0.05	Significant
Source: Compiled and Computed from UNCTAD-2012,ESI-2012-13			

ment Environment measured in Export in US $ million
$AGGL_{t-1}$ = Pervasiveness effect measured by two years lag values of FDI inflows
FDI/FTA_{t-1} = Foreign capital per unit of Foreign Travel Arrival measured as latent of cultural transformation
εt = Strictly White Noise Term {IID (GPD) ~ N $(0,\delta^2)$}
α = Bureaucratic efficiency level of IFDI infrastructure, FDI institutions, Government policy, adoptive ability etc (see **Table3** and **Table4**).

Sensitivity level of FDI as a percentage of GDP is 77.49% registering a highest shock compared to global sensitivity of 38.71% while Sri Lanka achieving a lower sensitivity of 11.99% over 1990 to 2013 (see **Table5** above**, and Table6 and 7** on next page).

The Stationarity Test (Unit Root Test)

In the ordinary regression analysis it is assumed that the time series data contains time invariant parameters but in reality, a number of econometric issues can percolate the estimation of parameters. While regressing a time series variable on another time series variable using the Ordinary Least Squares (OLS) estimation can obtain a very high R2, although there is no meaningful relationship between the variables. This situation reflects the problem of spurious regression between totally unrelated variables generated by a non-stationary process. Therefore, prior to regression analysis, econometric methodology needs to examine the stationarity; for each individual time series, most macro-economic data are non stationary, i.e. they tend to exhibit a deterministic and/or stochastic trend. Therefore, it is recommended that a stationarity (unit root) test be carried out to test for the order of integration. A series is said to be stationary if the mean and variance are time-invariant. A non-stationary time series will have a time dependent mean or make sure that the variables are stationary, because if they are not, the standard assumptions for asymptotic analysis in the Granger test will not be valid. Therefore, a stochastic process that is said to be stationary simply implies that the mean [(E (Yt)] and the variance [Var (Yt)] of Y remain constant over time for all t, and the covariance [Co-variance (Yt, αYk)] and hence the correlation between any two values of Y taken from different time periods depends on the difference apart in time between the two values for all t≠k. Since standard regression analysis requires that data series be stationary, it is obviously important that we first test for this requirement to determine whether the series used in the regression process is a difference stationary or a trend stationary. The Augmented Dickey-Fuller (ADF) test is used. To test the stationary of variables, we use the Augmented Dickey Fuller (ADF) test which is mostly used to test for unit root. Following equation checks the stationarity of time series data used in the study:

$\Delta Yt = \beta_1 + \beta 1\, t + \delta Y_{t-1} + \Sigma \Delta Y_{t-1} + \varepsilon t$

Where, εt is Gaussian (strict) white nose error term in the model of unit root test, with a null hypothesis that variable has unit root. The ADF regression test for the existence of

Table6: Correlations									
		FDI(usm)	GDP%	WTW(lakh)	OIL USE(usm)	Agglome	FDI/FTA	Export(usm)
FDI (usm)	Pearson Correlation	1	.343*	.967**	.967**	.975**	.888**	.971**
	Sig. (2-tailed)		.047	.000	.000	.000	.000	.000
	N	34	34	34	34	34	34	34
GDP%	Pearson Correlation	.343*	1	.404*	.300	.300	.390*	.422*
	Sig. (2-tailed)	.047		.018	.085	.084	.022	.013
	N	34	34	34	34	34	34	34
WTW (lakh)	Pearson Correlation	.967**	.404*	1	.944**	.961**	.890**	.988**
	Sig. (2-tailed)	.000	.018		.000	.000	.000	.000
	N	34	34	34	34	34	34	34
OIL USE (usm)	Pearson Correlation	.967**	.300	.944**	1	.965**	.780**	.951**
	Sig. (2-tailed)	.000	.085	.000		.000	.000	.000
	N	34	34	34	34	34	34	34
Agglome	Pearson Correlation	.975**	.300	.961**	.965**	1	.827**	.963**
	Sig. (2-tailed)	.000	.084	.000	.000		.000	.000
	N	34	34	34	34	34	34	34
FDI/FTA	Pearson Correlation	.888**	.390*	.890**	.780**	.827**	1	.879**
	Sig. (2-tailed)	.000	.022	.000	.000	.000		.000
	N	34	34	34	34	34	34	34
Export (usm)	Pearson Correlation	.971**	.422*	.988**	.951**	.963**	.879**	1
	Sig. (2-tailed)	.000	.013	.000	.000	.000	.000	
	N	34	34	34	34	34	34	34

* Correlation is significant at the 0.05 level (2-tailed).
** Correlation is significant at the 0.01 level (2-tailed).

Table7: Information Efficiency Status (Forms) of Foreign Direct Investment			
Information (Median Centred)	No of Runs	Range	Soothsayingness
FDI (US$ million)	4	12.3748----236252	Chance, Randomness
GDP (%)	13	12.3748----236252	No Chance, Non-Random
WTW (Lakhs)	4	12.3748----236252	Chance, Randomness
INFRA (Energy use)	4	12.3748----236252	Chance, Randomness
Economic Stability	4	12.3748----236252	Chance, Randomness
Agglomeration	2	12.3748----236252	Chance, Randomness
FDI/FTA	14	11.9332---23.0268	No Chance, Non-Random

unit root of Y_t that represents all variables (in the natural logarithmic form) at time t. The test for a unit root is conducted on the coefficient of Y_{t-1} in the regression. If the coefficient is significantly different from zero (less than zero) then the hypothesis that y contains a unit root is rejected. The null and alternative hypothesis for the existence of unit root in variable Yt is H_0; $\delta = 0$ versus H_1: $\delta < 0$. Rejection of the null hypothesis denotes stationarity in the series. If the ADF test-statistic (t-statistic) is less (in the absolute value) than the Mackinnon critical t-values, the null hypothesis

Table8: Augmented Dickey Fuller Unit Root Test **Null Hypothesis:** FDI has a unit root **Exogenous: Constant** Lag Length: 7 (Automatic based on SIC, MAXLAG=8)		
	t-Statistic	Prob.*
Augmented Dickey-Fuller test statistic	1.678109	0.9993
Test critical values: 1% level 5% level 10% level	-3.711457 -2.981038 -2.629906	
*MacKinnon (1996) one-sided p-values.		

Augmented Dickey-Fuller Test Equation
Dependent Variable: D(FDI)
Method: Least Squares
Sample (adjusted): 9 34
Included observations: 26 after adjustments

Variable	Coefficient	Std. Error	t-Statistic	Prob.
FDI (-1)	0.939139	0.559642	1.678109	0.1116
D(FDI (-1))	-1.067649	0.734263	-1.454042	0.1641
D{FDI (-2)}	-1.049593	0.731262	-1.435318	0.1693
D{FDI (-3)}	-0.180123	0.765989	-0.235150	0.8169
D{FDI (-4)}	-2.168893	0.638030	-3.399358	0.0034
D{FDI (-5)}	0.122535	0.874207	0.140167	0.8902
D{FDI(-6)}	-2.215425	0.881835	-2.512290	0.0224
D{FDI (-7)}	1.909309	1.086617	1.757113	0.0969
C	-134.0370	721.2218	-0.185847	0.8548
R-squared	0.686969	Mean dependent var		1851.308
Adjusted R-squared	0.539661	S.D. dependent var		3897.916
S.E. of regression	2644.669	Akaike info criterion		18.86590
Sum squared resid	1.19E+08	Schwarz criterion		19.30140
Log likelihood	-236.2568	F-statistic		4.663475
Durbin-Watson stat	1.950805	Prob (F-statistic)		0.003699

of a unit root cannot be rejected for the time series and hence, one can conclude that the series is non-stationary at their levels. The unit root test tests for the existence of a unit root in two cases: with intercept only and with intercept and trend to take into the account the impact of the trend on the series. If the ADF test-statistic (t-statistic) is less (in the absolute value) than the Mackinnon critical t-values, the null hypothesis of a unit root cannot be rejected for the time series and hence, one can conclude that the series is non-stationary at their levels. The unit root test tests for the existence of a unit root in two cases: with intercept only and with intercept and trend to take into the account the impact of the trend on the series (**Table8**).

Unit Root Test results: Since the observed value of Augmented Dickey-Fuller test statistic of 1.678109 is more than critical value Mackinnon (1996) critical t-values at 1%, 5% and 10%, the null hypothesis (Ho) unit root is rejected supporting the FDI series contains random walk parameters with independent interactive risk.

Johansen Co-integration Test result: Sample (adjusted): 3 : 34, Included observations: 32 after adjustments, trend assumption: Linear deterministic trend, Series: GDP & FDI, Lags interval (in first differences): 1 to 1.Unrestricted Co-integration Rank Test (Trace), Hypothesized Trace--0.05 (see **Table9** on next page)

Ho:There is no Long-run equilibrium relationship between

Table9				
No of CE(s)	Eigen Value	Trace Statistics	Critical value	Probability**
None*	0.5813560	31.44789	15.49472	0.0001
At most 1	0.105958	3.584091	3.841466	0.0583
Trace test indicates 1 cointegrating eqn(s) at the 0.05 level * denotes rejection of the hypothesis at the 0.05 level **MacKinnon-Haug-Michelis (1999) p-values.				

GDP and FDI
H_1: There exists a Long-run equilibrium relationship between GDP and FDI
The absence of Long-run equilibrium relationship between GDP and FDI proposition have been rejected and there exists a long-run co-integration between GDP and FDI at 5% trace level with the help of MacKinnon-Haug-Michelis (1999) p-values.

Findings and conclusions

The above findings corroborates the theoretical prophecy emanating from recent propositions in the theory of international trade and are able to explain about 92.8 percent of variations in FDI in India. Sizes of the market proxies by GDP, labour participation measured by wages to workers, internal investors awareness and economic stability measured by invested capital per unit of FDI and INFRA is measured by energy use per kiloliter of oil use, agglomeration effect, effusion effect latent of change of FDI are found to be statistically significant and have proper sign.

Observed model: The FDI endogenous vector with six location specific exogenous pull factors model is developed with Gaussian noise surging host countries economy in the following way:

$Y_t\ (GDP_t) = \alpha + \beta_1 X_1\ (IFDIt) + \beta_2\ X1(WTWt) + \beta_3\ X_3\ (INFRA_t) + \beta_4\ X_4\ \ (EXPORT_t) + \beta_5\ X_5\ (AGGL_{t-1}) + \beta_6 X_6\ (FDI/FTA_{t-1}) + \varepsilon t$

$Y_t = 4.795 + 0.524\ X1(IFDIt) + 0.266\times\ X_2(WTWt)$ -- $0.832\times\ X_3(INFRA_t) + 1.955\times\ X_4\ (EXPORTt)$ -- $0.328\times\ X_5\ (AGGL_{t-1}) - 1.273\times\ X_6\ (FDI/FTA_{t-1})$

Impact of foreign direct investment: The FDI co-efficient is significant at 1%, 5% and 10% level. The unit change in FDI is responsible for 52.40 percent appreciation in Gross Domestic Product of host country.

Impact of worker's participation: The co-efficient worker's productivity is also significant at 1% and 5% significance level. The unit change in labour market economy is responsible for 26.6 percent appreciation in foreign direct investment in host country.

Impact of infrastructure facilities: The co-efficient energy consumption is also significant at 1%, 5% and 10% significance level. The unit change in infrastructure facility is responsible for 83.2 percent reduction in Gross Domestic Product of host country in an investment environment.

Impact of economic stability: The co-efficient internal economic environment is also significant at 1%, 5% and 10% significance level. The unit change in per unit of foreign tourists of internal invested capital is responsible for 195.5 percent appreciation in foreign direct investment in investment environment.

Impact of economic agglomeration: The co-efficient economic pervasiveness is also significant at 1%, 5% and 10% significance level. The unit change in economic agglomeration facility is responsible for 127.30 percent reduction in Gross Domestic Product of host country in an investment environment.

Impact of cultural transformation: The co-efficient sensitivity index is also significant at 1%, 5% and 10% significance level. The unit change in effusion economy is responsible for 32.80 percent appreciation in Gross Domestic Product of host country in an investment environment.

Serial correlation: In regression analysis auto-correlation is tested to make the results soothsaying and comparable with others. The test results exhibits the Durbin-Watson value of 2.274 under control invigorating the reliability of absence of high degree of interactions or interactive.

Degree of responsibility: The degree of responsibility of exogenous variables with shocks on dependent variable is 35.20 percent. With adjustment to its Gaussian noise the degree of responsibility is 20.80 percent. The standard error term of the estimates is 1.88205. The standardised risk of the estimate is 59.30 percent.

Bureaucratic efficiency: Bureaucratic efficiency is reflected in the perception drift level. The prophecy of bureaucratic shocks of IFDI infrastructure, FDI institutions, adop-

Table10: Model Summary[b]					
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.593a	.352	.208	1.88205	2.274

Table11: Coefficients[a]									
Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.	95.0% Confidence Interval for B		Collinearity Statistics	
	B	Std. Error	Beta			Lower Bound	Upper Bound	Tolerance	VIF
1 (Constant)	4.759	.729		6.531	.000	3.263	6.254		
FDI(usm)	7.857E-5	.000	.524	.406	.688	.000	.000	.014	69.431
WTW(lakh)	1.035E-7	.000	.266	.239	.813	.000	.000	.019	51.688
INFRA (usm)	-4.204E-5	.000	-.832	-.915	.369	.000	.000	.029	34.496
Agglomeration	.000	.000	-1.273	-1.513	.142	-.001	.000	.034	29.458
FDI/FTA	-.905	1.512	-.328	-.598	.555	-4.008	2.199	.080	12.498
Export(usm)	5.283E-5	.000	1.955	1.780	.086	.000	.000	.020	50.217
a. Dependent Variable: GDP%									

Table12: Residuals Statistics[a]					
	Minimum	Maximum	Mean	Std. Deviation	N
Predicted Value	4.9723	9.5091	6.2794	1.25427	34
Residual	-4.27672	4.57246	.00000	1.70237	34
Std. Predicted Value	-1.042	2.575	.000	1.000	34
Std. Residual	-2.272	2.430	.000	.905	34
a. Dependent Variable: GDP%					

tive ability, evolution of the economy, legislative changes, technological change and advancements, Government policy, Government Regulations, Opaque Information, Bureaucratic ability, ERM management policy, Dilution of Cultural value, Human skill availability and political turmoil inter alia etc is measured by individual drift of the model. The present model expresses the bureaucratic efficiency is 4.759.

The results both confirm and complement the findings of other studies where it has been found that cost-related factors, macro-economic factors and countries' profile of political risk index are the major determinants of inward FDI flows. (Markusen and Maskus, 1999; love and lage-Hidalgo, 2000; Lipsey, 2000; Moosa, 2002; Moore, 1993; Sayek Selin, 1999).

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INDEFEASIBLE RIGHT OF USE (IRU) FOR CAPACITY TRANSACTIONS IN TELECOM INDUSTRY

IRU arrangements are mutually beneficial to all players in the value chain including the end customer and creates a win-win situation for all parties in the telecom ecosystem

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THE telecom industry has witnessed robust growth and hyper competition in the past. The growth induced the operators to extend network coverage by investing in infrastructure. Hyper- competition resulted in reduction in tariffs. The requirement of investment in infrastructure, sky rocketing prices of spectrum and reduction in tariff have put tremendous pressure on margins and have bloated the balance sheets significantly. However as it is said that the innovation and new ideas are generated in the worst situations and the above mentioned factors resulted in operators to look for various ways to reduce and optimise cost to the extent that it does not affect customer but would result in capital saving. So even though the operators were fighting vehemently for market share and subscribers, that did not dither them from shaking hands with competitors for backend infrastructure and outsourcing of non-core activities. One such measure identified and mastered by the operators is sharing the excess and unused infrastructure/capacity with other operators by entering into an arrangement which is called as indefeasible right of use (IRU). IRU agreements are mainly entered for optic fibre capacity to reach last mile and also to leverage others network.

Meaning and definition

Indefeasible right of use (IRU) means the exclusive, unrestricted, and indefeasible right to use the relevant capacity (including equipment, fibers or capacity) for any legal purpose for an agreed period of time.

The right of use is indefeasible, so as the capacity purchased is also not returnable and maintenance cost incurred becomes payable and irrefusable. The contract entered for IRU is also non-cancellable during the specified time period.

Advantages of IRU arrangement

Benefits to provider / seller of IRU	Benefits to purchaser of IRU
Recover substantial amount of the cost of investments made for building network capacity	No need to make huge investment on building network capacity
Generate revenue out of surplus capacities being sold on IRU basis	Facilitates speedy roll out of services and achieve geographic presence
Get reimbursement for operation and maintenance cost of the capacity throughout the lease term	Obligation to pay only operation cost for maintaining the capacity and gets the uptime at desired level

THOUGH THE OPERATORS FOUGHT FOR MARKET SHARE AND SUBSCRIBERS, THEY TIED UP WITH COMPETITORS FOR BACKEND INFRASTRUCTURE AND OUTSOURCING OF NON-CORE ACTIVITIES

Determining whether the contract is a service contract or a lease

Determination of IRU contract as lease agreement or provision for service contract and accounting treatment thereof depends upon the facts and contents of individual contract.

When a network capacity contract conveys to the purchaser the right to operate specific identifiable asset / group of assets and the purchaser has physical control over the asset for a period of time, it may be concluded that such a contract meets the definition of a lease. If the network capacity contract does not meet the requirements of lease, then contract is termed as service contract. Though there is thin line between lease and service contract, facts and circumstances of individual contract needs to be analysed to make the decision.

Accounting Standard (AS) 19, Leases, defines a lease "as an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time."

For capacity contracts that meet the definition of a lease, the next significant accounting consideration is the determination of the appropriate lease classification. From lessor's perspective, there are two types of lease i.e., Finance Lease and Operating Lease. As per AS 19, finance lease is a lease where risks and rewards incidental to ownership of a leased asset is transferred from lessor to the lessee after the expiry of the lease period. Title may or may not be transferred.

Examples of risks borne by the lessee as indicator for a finance lease are given below:

a) Risk of performance – financial loss on account of site uptime/downtime or outage will be borne by lessee;

b) Risk of damages – cost of insurance will be borne by lessee / lessor will not provide alternate path for continuity of service in case of damage to leased asset;

c) Risk of technological obsolescence – replacement of electronics due to technology change is the responsibility of lessee.

A lease other than a finance lease is an operating lease. A lease is classified as an Operating lease if it does not transfer substantially all the risks and rewards incidental to the ownership of leased asset after the expiry of the lease period.

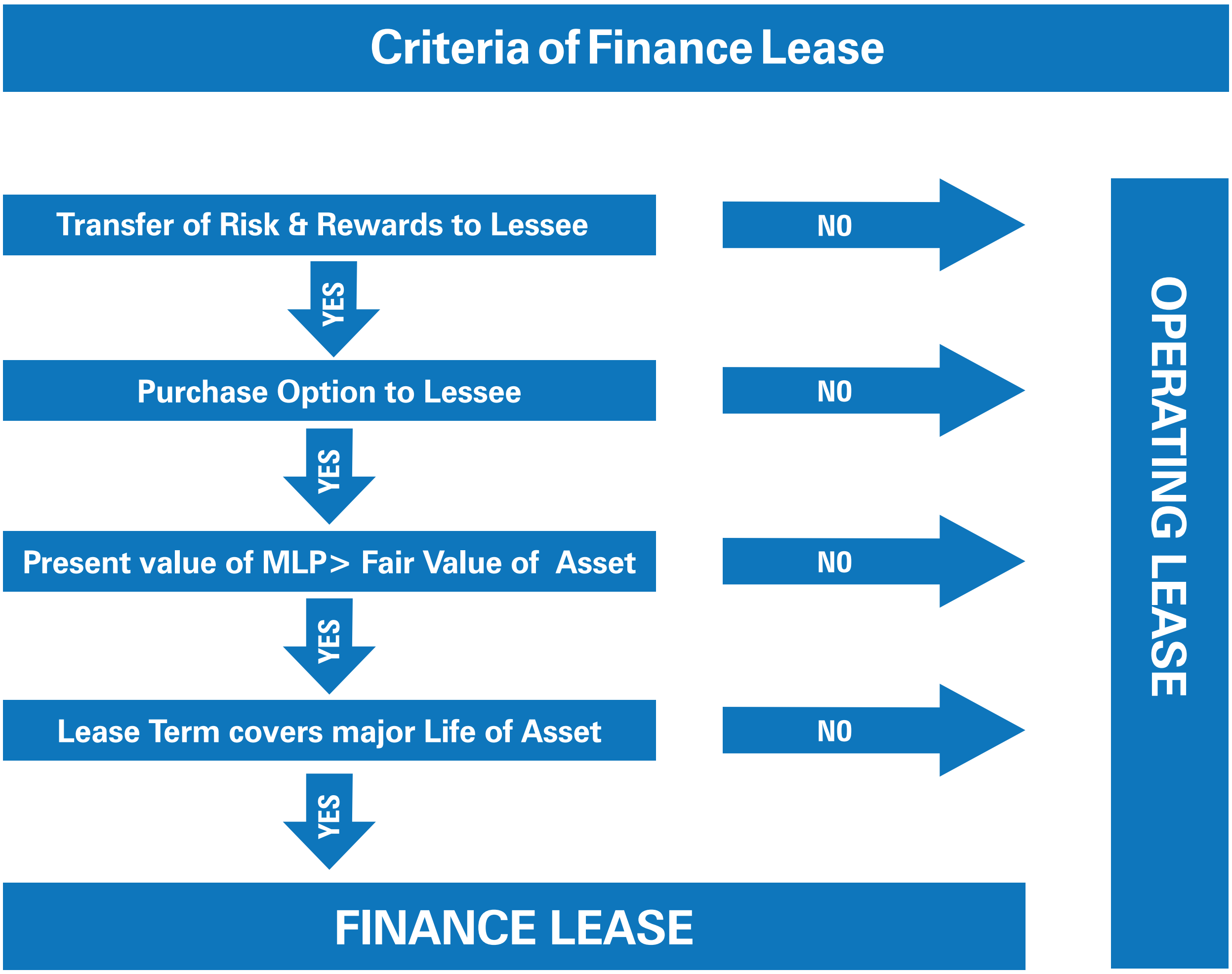
Whether a lease transaction should be classified as a finance lease or an operating lease depends on the substance of the transaction rather than its form.

The following chart (in next page) will further help to understand the nature of lease contract:

Accounting of lease

In case of finance lease, lessor will record receivables against the cost of leased assets and will recognize revenue towards finance charges over the lease term. Usually most of the IRU agreements have upfront payment obligation, which would result in neither receivable nor finance income to the lessor. Finance leases are accounted for by lessee as in-substance purchases (i.e. recognise the asset 'acquired' and the obligation to make lease payments – a liability)

Operating leases are accounted for as executory contacts whereby lessor continues to record the assets on its balance sheet and charges depreciation. The minimum lease payments (MLP) are recorded as revenue by lessor over the lease period. Lessee will charge the minimum lease payments as expenses. Therefore, accounting for operating lease is very similar to service contract. In case of long term IRU contract, when upfront lump sum payment is made by lessee, then in such cases, in the books of lessee, generally intangible asset is created for 'right to use'.



Capacity swaps

Telecom service providers often exchange their network capacity with or without exchange of payment. The main priniciple of accounting as given in paragraph 22 of Accounting Standard (AS) 10, Accounting for Fixed Assets, for exchange of such capacity is that when a fixed asset is acquired in exchange or in part exchange for another asset, the cost of the asset acquired should be recorded either at fair market value or at the net book value of the asset given up, adjusted for any balancing payment or receipt of cash or other consideration.

Conclusion

The above note provides guidance on concept and accounting of IRU arrangement. The IRU arrangements are contract specific; hence a detailed analysis of contracts and additional corroboration with network engineers will help to determine the correct accounting treatment. Such an arrangement is mutually beneficial for all players in the value chain including the end customer. In conclusion, IRU creates a win-win situation for all parties in the telecom ecosystem.

Note: The views expressed in this article are personal and can differ on account of interpretational issues. The authors have a long working experience with telecom industry.

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Eastern India Regional Council

EIRC participated in Synergy MSME 2013 organised by the Government of West Bengal from 16th September 2013 to 21st September 2013 at Milan Mela, Kolkata where the issues of the MSME sector such as growth and survival were deliberated on a case-to-case basis. Small entrepreneurs across the West Bengal participated in the event. Advisories on Cost and Performance Management, Financing, Tax Issues, and Project Reports were provided to many entrepreneurs by our members. Many training programmes were organised to train small entrepreneurs to earn high incomes and utilise scarce resources. EIRC highlighted the role of CMAs in the MSME sector and in its development. The Hon'ble Chief Minister, Government of West Bengal, Smt Mamata Banerjee visited our stall and encouraged us for participating in such type of a programme. Shri Rajiv Sinha, IAS, Principal Secretary, Department of MSME, Government of West Bengal also visited our stall. Other dignitaries like Shri R.N. Sen, Chairman, DVC visited our stall. The film prepared by EIRC was shown at the stall. The stall was inaugurated by CMA Chitra Agarwal, Chairperson EIRC in the presence of other council members.

In another event in the region, the Andaman extension counter started a student interaction programme for 1st year students of all streams of JNRM College from 22nd September 2013. The programme will be held on every Saturday for the next three week from 10.30 a.m. to 12 noon. The Principal of JNRM College, Dr. Iqbal, Head of the Department – Commerce, Dr. N Rajavel, and the Honorary Director, Andaman Extension Counter & CFO, ANNIDCO, Mr Arup Bagui, addressed all 1st year students of the Science stream and students of Political Science in the JNRM Auditorium.

Cuttack-Bhubaneswar Chapter of Cost Accountants

The Chapter had organized a quiz competition for its current batch of foundation students on 14th September, 2013 at its Conference hall. CMA Chhayakanta Biswal, Chairman, Coaching Committee coordinated the entire programme & CMA Soumya Ranjan Singh, Member of the Chapter conducted the programme in a nice manner as quiz master. On the 15th a similar quiz competition for its current batch of intermediate students was organized. CMA Shiba Prasad Padhi, Treasurer, EIRC conducted the quiz. President of the Institute CMA Suresh Chandra Mohanty visited to the Chapter on 17th September, 2013 and addressed to the students of the Chapter. The president delivered motivational talk to the students and he also advised to the students to maintain honesty, integrity and transparency both in the professional and personal life, which not only helps their professional career but also helps the growth of the state and country as a whole. He also assured to the students to create avenues for both members and students of the profession.

This Chapter organized one panel discussion amongst it practicing members on 18th September, 2013 on the topic 'Complexity in Return Filing & VCES'. CMA Shiba Prasad Padhi, Treasurer, EIRC moderated the panel discussion. The programme was attended by many practioners and members of the profession. The student felicitation function was arranged by the chapter on 22nd September. Shri Debendra Kumar Jena, OFS, Addl. Secretary to Govt. of Odisha, Finance Departments, Bhubaneswar and CMA Bibhu Prasad Mahapatra, Director (Finance), GRIDCO & OPTCL were the Chief Guest and Guest of Honours respectively on the occasion. They congratulated to the Successful Students of the Chapter and blessed them for their better professional career. All the successful students were felicitated and awarded with prizes and certificates of appreciation. Shri Saroj Kumar Mohapatra from boys section & Miss Saili Ray form girls section who became Cost and Management Accountants within twenty three years of age have been awarded with the 'Young Cost Accountant Award' for June-2013 term.

As per the circular of the Institute this Chapter has also conducted the practical training programme for the students who have enrolled their name under ICMAT-Training Scheme of the Institute for the period 03.10.13 to 06.10.13 at its conference hall. Total 24 ALH hour accumulated by the students by attending the programme. In total 32 numbers of the students attended the programme and the same was highly appreciated by the students.

Guwahati Chapter of Cost Accountants

The chapter organized a seminar on Companies (Cost Accounting Record) Rules,2011 and Companies (Cost Audit Report) Rules,2011 in association with the Federation of Industry and Commerce of the North Eastern Region (FINER) on the 21st day of September,2013 at Guwahati. The seminar was inaugurated by Shri Subhas Ch. Das, IAS, Addl. Chief Secretary to the Govt. of Assam, who was the Chief Guest for the said programme. Other dignitaries, such as, Shri R. S. Joshi, Chairman of the FINER, CMA Rakesh Singh Immediate Past President of the Institute, CMA TCA Srinivas Prasad, Council Member, Shri A.S. Hopingson, IRAS, FA & CAO, NF Rly and Shri P. K. Das, Advisor (Finance) to the Govt. of Assam. The Chief guest as well as the other dignitaries deliberated on the importance of Cost consciousness, Cost Competitiveness etc. for growth and success of any industry. Apart from acknowledging the importance of CARR and CAR, the dignitaries stressed on the role of the Institute of Cost Accountants of India for industrial and Economic development of the country. CMA Rakesh Singh deliberated on the very special role entrusted to our Institute by the Govt. of Kerala for educational development in the State in the area of Finance and Accounts. After the deliberations, four technical sessions followed and apart from the representatives of FINER, the seminar was attended by Corporate Delegates from various organizations, Practicing Cost Accountants, members of the Guwahati Chapter and Final students.

A two-days Soft Skill Training Programme was also organized by the chapter for its students. The speaker on the aforesaid occasion was Mr. Sanjay Kedia, who is a Lead Personality Consultant & Trainer, having an overall experience of 25 years in Behavioral Training, Profit Centre Operation and sales & Distribution Management. Audio/Video technology, mentoring sessions, role playing, case study, group working were the essential elements of this programme.

Northern India Regional Council

Chandigarh-Panchkula Chapter of Cost Accountants

The chapter had organized a seminar on 'The Companies Act, 2013' and 'Emerging Opportunities for Cost Accountants' on 15th September, 2013. The dignitaries on the dais were CMA. B M Sharma, Past President of the Institute, Chief Guest, Shri D.P. Ojha, official liquidator attached to Punjab & Haryana High Court as Guest of Honour, CS. Anil Aggarwal, Company Secretary & Corporate Lawyer a Key Note Speaker, CMA Sanjay Gupta, Council Member, CMA Balwinder Singh, Ex-Central Council Member, CMA. Rakesh Bhalla, Chairman NIRC, CMA. Vishal Walia, CMA. Mukesh Kumar Gupta, and CMA. Rahul Garg.

CMA B M Sharma, said that the new Companies Act is slim and some key unique social responsible measures have been incorporated in the new act. The major thrust in giving a new direction to Corporate Governance and the mandating the first step of CSR initiatives will lay down a strong foundation. Several key changes have been introduced to promote transparency in investments, strengthening the rights of minority shareholders, making it tough for companies to hide illegal transactions, and promoting gender equality on company boards. Similarly, CS. Anil Aggarwal, talked on the introduction of clauses to promote transparency in investments, strengthening the rights of minority shareholders, making it tough for companies to hide illegal transactions, and promoting gender equality on company boards. CMA Rakesh Bhalla deliberated on how the act empowers investors against any frauds committed by promoters, encourages companies to have women directors and seeks to bring in greater transparency in corporate governance matters.

Dehradun Chapter of Cost Accountants

The chapter organised a seminar on 'Service Tax- New Regime' on 4th October 2013. Eminent Speaker CA Vimal Kishore, stressed upon the participants to be aware of the recently introduced changes in the Reverse Charge Mechanism. Shri Anil Mittal, Director Finance of UPCL and PTCUL, and the Chief Guest of the evening, while inaugurating the seminar deliberated about the importance of correct payment of service Tax, as these taxes are the backbone of the Indian economy. Others present on the occasion were Shri Amitabha Maitra, Chairman, Amit Kansal, Vice Chairman, Rajeev Pahuja Secretary and Sanjay Gupta Treasurer of the chapter. The seminar was attended by 100 Employees of UPCL, PTCUL, GMVN, UJJWAL and ONGC.

Lucknow Chapter of Cost Accountants

The chapter and the Central Excise & Service Tax Department jointly organized a two-day workshop on 'How to scrutinize the financial records in context with Central Excise Audit'. The programme was guided by the President of the Institute and coordinated by CMA Hemendra Soni, Member, Lucknow Chapter and CMA S K Bhatt Regional Council Member, CMA Rakesh Bhalla, Chairman of NIRC, CMA Sunil Singh, Chairman Lucknow Chapter. This programme was organized for the officials of Central Excise & Service Tax Department on 24th and 25th September, 2013 at CMA Bhawan, Gomti Nagar, Lucknow. The Lucknow Chapter has taken initiatives to organize a workshop on the above topic to upgrade the knowledge of the officers of the department. All members of the management committee were present for the welcome of the Chief Guest and Guest of Honour.

The programme was inaugurated by the Shri Karan K Sharma Chief Commissioner Central Excise and Service Tax and CMA S C Mohanty President of the Institute, also joined by Shri Himanshu Gupta Commissioner Central Excise and Service Tax, Shri J P Mamgain Commissioner (Appeal), and by CMA Rakesh Bhalla and CMA Vijendra Sharma. Other speakers of this programme were CMA Chiranjib Das, CMA S K Bhatt, and CMA Navneet Jain who are the well-known in the field of indirect taxation.

Southern India Regional Council

Bangalore Chapter of Cost Accountants

A programme on Corporate Governance and Companies Act, 2013 was jointly organized by the chapter and SIRC. Mr. M. J. Joseph, Additional Secretary to the Ministry of Corporate Affairs was the Chief Guest. In his inaugural address, Mr. Joseph highlighted the key features of the new act, milestones and provisions for promoting the business friendly corporate regulations. The Additional Secretary detailed on the e-Governance initiatives of the Ministry and stated how good corporate governance and CSR has been enshrined in the Act. He stressed on the need of the professionals to raise to the occasions to facilitate the Ministry to achieve the required objectives.

CMA Dr. A.S. Durga Prasad, Vice President of Institute deliberated on the new opportunities for the Cost and Management Accountant that the Act provides and wished that the members would rise to the occasion in the matter of Audit, Compliance and other areas. CMA M. Gopalakrishnan, Past President of the Institute said that greater transparency has been introduced through Corporate Governance.

Cochin Chapter of Cost Accountants

The chapter conducted an evening programme on 'changing role of CMAs in the backdrop of the Companies Act 2013' on 24th September, 2013. CMA Dr. A. S. Durga Prasad, Vice President of the Institute was present at the occasion. The programme was presided over by CMA Santhosh Kumar V, Chairman, Cochin Chapter, CMA C. S. Padmanabhan, Vice Chairman, CMA P. Raju Iyer, Chairman, SIRC, and CMA H Padmanabhan, Vice Chairman, SIRC. The seminar was well attended by the members and final students.

Western India Regional Council

Pimpri-Chinchwad-Akurdi Chapter of Cost Accountants

The chapter had organized a seminar on 'Companies Act 2013' on September 25th 2013, at Chapter office, in Akurdi. CMA Laxman Pawar, Chairman of the Chapter presided over the function. The guest speaker was CS Makarand Lele, Practicing Company Secretary and Member, WIRC of ICSI. CMA Pawar gave a brief introduction of the speaker to the audience, and welcomed him by presenting him a bouquet and memento. In the technical session, CS Makarand Lele gave a brief overview of the major changes brought about by the new Act. The rules regarding Cost Audit was also covered in detail. The session was very interactive. It was well attended by members in practice and from industry. After the technical session, CMA Pradeep Deshpande, Secretary – PCA Chapter gave vote of thanks.

Surat South Gujarat Chapter of Cost Accountants

The chapter organized a seminar on "Companies Act 2013 And Draft Rules on 22nd September 2013. The seminar was very conducted by CMA Dr. PVS Jagan Mohan Rao Council Member and Chairman of Corporate and Allied Laws Committee of the Institute. In the inaugural function after lighting of the lamp Chairman of the Chapter CMA Biswadev Chanda welcomed the speaker, Members, Students and invitees. He also briefed about the progress of the Chapters activity. CMA Dr. Heena Oza, Immediate Past Chairperson of the Chapter discussed twin aims of organizing the seminar as to get familiar with the new Companies Act 2013 and to seek suggestions from members on Draft Rules of the said Act. The Companies Act 2013 and Draft Rules for Accounts and Corporate Social Responsibility under Companies Act 2013 were comprehensively covered by CMA Dr. PV S Jagan Mohan Rao in the four technical sessions.

The chapter also organized a debate competition for the students, conducted by CMA Dr. PVS Jagan Mohan Rao Council Member. In the second half of the session all the students were divided into 9 teams. The topic for the debate was 'Climatic Change and Role of CMA'. All the members of winning teams were given prizes in the seminar. Also certificates were given to all the participants. The whole programme was handled by CMA Dr Leena Painter.

Pune Chapter of Cost Accountants

The Chapter with the other three chapters of the Institute of Company Secretaries of Indiathe Institute of Chartered Accountants of India, Pune announced a free programme for all professionals in association with Ministry of Corporate Affairs on Limited Liability Partnerships formation and tax benefits. The basic idea behind the programme was to have an understanding about formation of Limited Liability Partnership Firms (LLPs), Advantages of LLPs, Taxation aspects of LLPs and views of the Regulators on the same. Eminent Faculties addressed the gathering and which was followed by open house question answer session with Regional Director and Registrar of Companies, and other officials in Pune.

Indore Dewas Chapter of Cost Accountants

A seminar on 'New Companies Act 2013' was jointly organized by WIRC and this chapter on 14th September, 2013. CMA Vijay P Joshi, Chairman PD Committee & Hon. Secretary of WIRC expressed the theme of seminar. CMA V. S. Datey & CS Dr. D. K. Jain were the resource persons for the seminar. Topics for discussion were linked with New Companies Act 2013. CMA Sunil Singh Chairman of the chapter welcomed the guests. Seminar was well attended by Members of ICMAI & ICSI and industry delegates from reputed companies.

The students of the chapter participated in 'Bharat Jago Daud' on 22nd September, 2013 organized at Indore. The event was conducted on commemoration of the 150th birth anniversary of Swami Vivekanand and his historic speech in Chicago. In this rally the students run together with representatives of prestigious educational, social, charitable and professional institutions.

MANAGEMENT ACCOUNTANCY EXAMINATION TIMETABLE & PROGRAMME – DECEMBER 2013

Tuesday	Tuesday	Wednesday	Wednesday	Thursday
10th December, 2013 09.30 A.M to 12.30 P.M	10th December, 2013 02.00 P.M to 05.00 P.M	11th December, 2013 09.30 A.M to 12.30 P.M	11th December, 2013 02.00 P.M to 05.00 P.M	12th December, 2013 09.30 A.M to 12.30 P.M
Management Accountancy	Advanced Management Techniques	Industrial Relations & Personnel Management	Marketing Organisation & Methods	Economic Planning & Development

Examination fees: Per Group Rs 2500/-

1. (a) Application Form for Management Accountancy Examination is available from Directorate of Advanced Studies, The Institute of Cost Accountants of India, Hyderabad Centre of Excellence, Plot No. 35, Financial District, Nanakramguda Village, Serilingampally Mandal, Gachibowli, Ranga Reddy District, Hyderabad on payment of Rs 50/- per form.
   (b) Students can also download the Examination Form from ICAI Website at www.icmai.in.

2. Last date for receipt of Examination Application Form without late fees is 10th October, 2013 and with late fees of Rs 300/- is 20th October,2013.

3. Examination fees to be paid through Bank Demand Draft of requisite fees drawn in favour of "The Institute of Cost Accountants of India" and payable at Kolkata.

4. Students may submit their Examination Application Form along with the fees at Directorate of Advanced Studies, The Institute of Cost Accountants of India, Hyderabad Centre of Excellence, Plot No. 35, Financial District, Nanakramguda Village, Serilingampally Mandal, Gachibowli, Ranga Reddy District, Hyderabad. Any query in this regard may be addressed to Directorate of Advanced Studies, Plot No. 35, Financial District, Nanakramguda Village, Serilingampally Mandal, Gachibowli, Ranga Reddy District, Hyderabad.

5. Examination Centres: Adipur-Kachchh(Gujarat), Agartala, Ahmedabad, Akurdi, Allahabad, Asansol, Aurangabad, Bangalore, Baroda, Berhampur(Ganjam), Bhilai, Bhilwara, Bhopal, Bhubaneswar, Bilaspur, Bokaro, Calicut, Chandigarh, Chennai, Coimbatore, Cuttack, Dehradun, Delhi, Dhanbad, Durgapur, Ernakulam, Faridabad, Ghaziabad, Guwahati, Hardwar, Howrah, Hyderabad, Indore, Jaipur, Jabbalpur, Jalandhar, Jammu, Jamshedpur, Jodhpur, Kalyan, Kannur, Kanpur, Kolhapur, Kolkata, Kota, Kottayam, Lucknow, Ludhiana, Madurai, Mangalore, Mumbai, Mysore, Nagpur, Naihati, Nasik, Nellore, Neyveli, Noida, Panaji (Goa), Patiala, Patna, Pondicherry, Pune, Rajahmundry, Ranchi, Rourkela, Salem, Sambalpur, Shillong, Siliguri, Solapur, Srinagar, Surat, Thrissur, Tiruchirapalli,Tirunelveli, Trivandrum, Udaipur, Vapi, Vashi, Vellore, Vijayawada, Vindhyanagar, Waltair and Overseas Centres at Bahrain, Dubai and Muscat.

6. A candidate who is completing all conditions will only be allowed to appear for examination.

Dr. P. S. S. Murthy
Director (Advanced Studies)

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

EXAMINATION TIMETABLE & PROGRAMME – DECEMBER 2013

PROGRAMME FOR SYLLABUS 2008			PROGRAMME FOR SYLLABUS 2012 (REVISED)	
Day, Date & Time	**Intermediate – 2008 9.30 a.m. to 12.30 p.m.**	**Final – 2008 2.00 P.M. to 5.00 P.M.**	**Intermediate – 2012 9.30 A.M. to 12.30 P.M.**	**Final – 2012 2.00 p.m. to 5.00 p.m.**
Tuesday 10 Dec 2013	-----	Capital Market Analysis & Corporate Laws	Financial Accounting	Corporate Laws and Compliance
Wednesday 11 Dec 2013	Financial Accounting	Financial Management & International Finance	Laws, Ethics and Governance	Advanced Financial Management
Thursday 12 Dec 2013	Commercial & Industrial Law & Auditing	Management Accounting – Strategic Management	Direct Taxation	Business Strategy & Strategic Cost Management
Friday 13 Dec 2013	Applied Direct Taxation	Indirect & Direct – Tax Management	Cost Accounting & Financial Management	Tax Management & Practice
Saturday 14 Dec 2013	Cost & Management Accounting	Management Accounting – Enterprise Performance Management	Operation Management and Information Systems	Strategic Performance Management
Sunday 15 Dec 2013	——	Advanced Financial Accounting & Reporting	Cost & Management Accountancy	Corporate Financial Reporting
Monday 16 Dec 2013	Operation Management & Information Systems	Cost Audit & Operational Audit	Indirect Taxation	Cost & Management Audit
Tuesday 17 Dec 2013	Applied Indirect Taxation	Business Valuation Management	Company Accounts and Audit	Financial Analysis & Business Valuation

EXAMINATION FEES		
Group (s)	Final Examination	Intermediate Examination
One Group (Inland Centres) (Overseas Centres)	₹1250/- US $ 100	₹1000/- US $ 90
Two Groups (Inland Centres) (Overseas Centres)	₹2250/- US $ 100	₹1600/- US $ 90

(a) Students can login to the website www.icmai.in and apply online through payment gateway by using Credit/Debit card.
(b) Application Forms for Intermediate and Final Examinations are available from Institute's Headquarters at 12, Sudder Street, Kolkata, Regional Councils and Chapters of the Institute on payment of Rs. 50/- per form. In case of overseas candidates, forms are available at Institute's Headquarters only on payment of US $ 10 per form.
(c) Students can also download the Examination Form from ICAI Website at www.icmai.in.
2. Last date for receipt of Examination Application Forms without late fees is 30th September, 2013 and with late fees of Rs. 300/- is 10th October, 2013. In case of online Examination Application with payment gateway by using Credit/Debit Card, the late fees of Rs. 00/- will be waived if applied within 10th October, 2013.
3. Examination fees to be paid through Bank Demand Draft of requisite fees drawn in favour of "The Institute of Cost Accountants of India" and payable at Kolkata.
4. Students may submit their Examination Application Forms along with the fees at ICAI, CMA Bhawan, 12 Sudder Street, Kolkata – 700016 or Regional Offices or Chapter Offices. Any query in this regard may be addressed to Examination Directorate at 12, Sudder Street, Kolkata – 700016.
5. Finance Act 2012, involving Assessment Year 2013-2014 will be applicable for the Subjects Applied Direct Taxation, Applied Indirect Taxation and Indirect & Direct Tax Management for Syllabus 2008 and Direct Taxation, Indirect Taxation and Tax Management & Practice for Revised Syllabus 2012 for the purpose of December 2013 term of Examination.
6. Examination Centres: Adipur-Kachchh(Gujarat), Agartala, Ahmedabad, Akurdi, Allahabad, Asansol, Aurangabad, Bangalore, Baroda, Berhampur(Ganjam), Bhilai, Bhilwara, Bhopal, Bhubaneswar, Bilaspur, Bokaro, Calicut, Chandigarh, Chennai, Coimbatore, Cuttack, Dehradun, Delhi, Dhanbad, Durgapur, Ernakulam, Faridabad, Ghaziabad, Guwahati, Hardwar, Howrah, Hyderabad, Indore, Jaipur, Jabbalpur, Jalandhar, Jammu, Jamshedpur, Jodhpur, Kalyan, Kannur, Kanpur, Kolhapur, Kolkata, Kota, Kottayam, Lucknow, Ludhiana, Madurai, Mangalore, Mumbai, Mysore, Nagpur, Naihati, Nasik, Nellore, Neyveli, Noida, Panaji (Goa), Patiala, Patna, Pondicherry, Pune, Rajahmundry, Ranchi, Rourkela, Salem, Sambalpur, Shillong, Siliguri, Solapur, Srinagar, Surat, Thrissur, Tiruchirapalli,Tirunelveli, Trivandrum, Udaipur, Vapi, Vashi, Vellore, Vijayawada, Vindhyanagar, Waltair and Overseas Centres at Bahrain, Dubai and Muscat.
7. A candidate who is completing all conditions will only be allowed to appear for examination.
8. Probable date of publication of result : Inter & Final – 21st February 2014.

A. Das
Director (Examination)

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)

EXAMINATION TIME TABLE & PROGRAMME – DECEMBER 2013

FOUNDATION COURSE EXAMINATION
(Multiple Choice Questions – Online Mode)

Day & Date	Foundation Course Examination	
	Syllabus-2008	
Saturday, 28th December, 2013.	Paper – 1 & 2 (100 Marks) Time : 10 A.M. to 12.00 Noon **Paper 1** : Organisation and Management Fundamentals (50 Marks) **Paper 2** : Accounting (50 Marks)	Paper – 3 & 4 (100 Marks) Time : 2 P.M. to 4.00 P.M. **Paper 3** : Economics and Business Fundamentals (50 Marks) **Paper 4** : Business Mathematics and Statistics Fundamentals (50 Marks)
	Syllabus-2012	
Sunday, 29th December, 2013.	Paper – 1 & 2 (100 Marks) Time : 10 A.M. to 12.00 Noon **Paper 1** : Fundamentals of Economics and Management (50 Marks) **Paper 2** : Fundamentals of Accounting (50 Marks)	Paper – 3 & 4 (100 Marks) Time : 2 P.M. to 4.00 P.M. **Paper 3** : Fundamentals of Laws & Ethics (50 Marks) **Paper 4** : Fundamentals of Business Mathematics and Statistics (50 Marks)

Examination Fees

Foundation Course Examination	**Inland Centres**	**₹ 1000/-**
	Overseas Centres	**US $ 60**

1. **The Foundation Examination in both syllabus (2008 & 2012) will be conducted in M. C. Q. Mode through Online only**.
2. Total Questions : 100 (Multiple Choice Questions), Maximum Marks : 100 (Each Question will carry 1 Mark). There will be no negative marking for wrong answers.
3. **(a) Students can login to the website www.icmai.in and apply online through payment gateway by using Credit/Debit card.**
   (b) Application Forms for Foundation Examination is available from Institute's Headquarters at 12, Sudder Street, Kolkata, Regional Councils and Chapters of the Institute on payment of ₹50/- per form. In case of overseas candidates, forms are available at Institute's Headquarters only on payment of US $ 10 per form.
   (c) Students can also download the Examination Form from ICAI Website at www.icmai.in.
4. **Last date for receipt of Examination Application Forms without late fees is 30th September, 2013 and with late fees of ₹300/- is 10th October, 2013. In case of online Examination Application with payment gateway by using Credit/Debit Card, the late fees of ₹300/- will be waived if applied within 10th October, 2013.**
5. Examination fees to be paid through **Bank Demand Draft** of requisite fees drawn in favour of "**The Institute of Cost Accountants of India**" and payable at Kolkata.
6. Students may submit their Examination Application Forms along with the fees at ICAI, CMA Bhawan, 12 Sudder Street, Kolkata – 700016 or Regional Offices or Chapter Offices. Any query in this regard may be addressed to Examination Directorate at 12, Sudder Street, Kolkata – 700016.
7. **Examination Centres**: Agartala, Ahmedabad, Akurdi, Allahabad, Asansol, Aurangabad, Bangalore, Baroda, Berhampur(Ganjam), Bhilai, Bhopal, Bhubaneswar, Bilaspur, Bokaro, Calicut, Chandigarh, Chennai, Coimbatore, Cuttack, Chittorgarh, Dehradun, Delhi, Dhanbad, Durgapur, Ernakulam, Faridabad, Gandhidham, Ghaziabad, Guwahati, Hardwar, Howrah, Hyderabad, Indore, Jaipur, Jabbalpur, Jalandhar, Jammu, Jamshedpur, Jodhpur, Kalyan, Kannur, Kanpur, Kolhapur, Kolkata, Kota, Kottayam, Lucknow, Ludhiana, Madurai, Mangalore, Mumbai, Mysore, Nagpur, Naihati, Nasik, Nellore, Neyveli, Noida, Panaji (Goa), Patiala, Patna, Pondicherry, **Port Blair**, Pune, Rajahmundry, Ranchi, Rourkela, Salem, Sambalpur, Shillong, Siliguri, Solapur, Srinagar, Surat, Thrissur, Tiruchirapalli, Tirunelveli, Trivandrum, Udaipur, Vapi, Vashi, Vellore, Vijayawada, Vindhyanagar, Waltair and Overseas Centres at Bahrain, Dubai and Muscat. **(If no examination centre is available at a particular location, examinees will be accommodated at the nearest Centre available)**
8. **A candidate who is completing all conditions will only be allowed to appear for examination.**
9. **Probable date of publication of result : Foundation – 15th January, 2014.**

A. Das
Director (Examination)

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