



## Editorial

Dear Reader,

Partnering India's first proxy advisory firm InGovern Research Services, on May 30<sup>th</sup> we released our report [Board Evaluation Practices in India](#)

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## Interview with Srilakshmi, Partner, Guru & Jana, HR & Corporate Governance



Guru & Jana is a pioneer in technology adoption among CA firms in the country. Over the years you have been the first to adopt many new technologies and tools. What is your thinking behind this early adoption strategy?

Currently, we are a paperless office and have implemented over 15 technology tools.

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## Gist of Regulatory Changes in Companies Act, 2013 in the month of May 2016

Eight Regulatory changes in Companies Act, 2013 in the month of May

[View the list...](#)

## Guest Article by Gaurav Pingle: Related Party Transactions: What is the Role of a Company Secretary?



A critical test of good corporate governance for a company is how it deals with RPTs.

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## Compliance Calender

Due dates for Income tax, Professional tax, Service tax, Companies Act, 2013 etc has been captured for your ready reference.

[View the list...](#)

## Guest Article by Deepak Jain: FEMA Updates: Resolving a Catch 22 situation



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## Editorial

Dear Reader,

Partnering India's first proxy advisory firm InGovern Research Services, on May 30<sup>th</sup> we released our report [Board Evaluation Practices in India](#) where we rated the top 100 Companies in India using our proprietary 5-star model. This report was well received with all the major business dailies prominently covering it-Economic Times, Live Mint, Business Standard, The Hindu Business Line, among others.

We were pleasantly surprised with the international attention our report got: **James McRitchie**, the author of [www.CorpGov.net](http://www.CorpGov.net), a pioneer corporate governance portal of two decades vintage tweeted our report and carried it prominently on their portal. We believe we are on the right track to promoting good governance in India and hope to keep up our research initiatives.

Turning to this issue, we have interviewed **CA & CS Srilakshmi**, Partner, Guru & Jana, HR & Corporate Governance who is in charge of Corporate Governance practice. A tech savvy professional, we got her insights on technology adoption as Guru & Jana is a leader in use of technology. This issue we have two guest articles written by **CS Gaurav Pingle** on the contentious issue of monitoring Related Party Transaction and complying with the Companies Act and **CA Deepak Jain** on FEMA updates that resolved a Catch 22 situation. In addition, we also have our regular features of Gist of Regulatory Changes and Compliance Calendar in this issue.

We are eager to know what you think of **iComply** Please do share your thoughts with us at [contact@cimplyfive.com](mailto:contact@cimplyfive.com).

Happy reading,  
Shankar Jaganathan  
Editor  
June 6, 2016

## Interview with Srilakshmi, Partner, Guru & Jana, HR & Corporate Governance

- 1. Guru & Jana is a pioneer in technology adoption among CA firms in the country. Over the years you have been the first to adopt many new technologies and tools. What is your thinking behind this early adoption strategy?**

Currently, we are a paperless office and have implemented over 15 technology tools. Technology plays a very crucial role in delivery of services. The speed of rendering services can be faster if we are able to leverage technology.

Technology is here to stay and those who take to its adoption quicker are the more contemporary ones. We do not see it as an early adoption strategy. Instead our thought process when we are planning to adopt a new technology is, "is it making our work flow simpler?"

The ethos of our firm is to experiment and be different. Since we are open to change and have been doing it from many years now, it has become more a habit, than a conscious strategy. Therefore, the reason we adopt any new technology or tool is to make our workflow more effective and faster. Our perspective of seeing a problem as an opportunity has also made us more flexible. Further, today's technology is very fool-proof. Since we believe in transparency, the technology and tools are our partners in upholding the culture of our organization.

- 2. Based on your experience what are some of the routine challenges that you face when adopting a new technology or tool? Can you name the top 3 challenges and how you mitigate them?**

People resist change. They are used to a particular style of working. We have been very effective in our working style, deliverables and accountability. The routine challenge is that, people do not want to face the temporary imbalances. To get them to see the bigger picture or the end result and take a liking to

it depends on the way the Leaders are able to portray and motivate them.

The top 3 challenges and how we mitigate them:

- i. The time taken for implementation generally stops the existing workflow. People are not ready for this temporary disruption. Temporary pains would ultimately lead to permanent pleasures. We need to make them see the uses of the new tool very clearly. We move ahead with the consent of most of them by deliberating enough and seeking their acceptance. This would mitigate the challenge of our people resisting the usage of technology or tools.
- ii. The new Technology should show them progress to the next step in the ladder. Without this progress, we cannot answer "What's in it for me". The member of the organization needs to know that technology can help me to go to the next step in the ladder. The higher the step, the benefits are higher, be it in terms of remuneration or the role involved. We make sure to set deadlines for phase wise implementation, eliminate factors which would potentially hinder the implementation process.
- iii. The fear that the individuals would become redundant or their importance would come down, is one of the critical challenges. In order to avoid the seniors becoming a roadblock, we give the responsibility of implementation to the most popular person in the organization to whom people would listen and value. We also motivate the person who is implementing it and make him realize his importance in the project succeeding. We associate certain perks and monetary rewards if the technology is implemented satisfactorily. Invariably this brings an impetuous for the implementation to succeed.

Today an employee does not want routine. The employee needs to be challenged. Challenges bring the best out of them. Winning a challenge

would weigh more than an increment on many occasions. Winning a challenge is itself quite rewarding. To position technology change as a challenge and show them that they can win would be an important engagement.

**3. Typically what is the time frame in which you see the benefits of a new technology or tool? Does this period vary? If so what are the factors that cause its variance?**

The time frame would typically be 60 to 90 days. The period could be higher or lesser. Though the benefits of the tool is evaluated beforehand, the testing phase brings in a lot of practical difficulties to the fore-front. We have to work around those issues. Whatever can be changed will be changed, else we learn to adapt. Some of the factors which cause the variance:

- a. The ease of implementation of the tool. In case it is complicated and varies largely from the existing work flow, the time spent on understanding would be higher.
- b. Statutory deadlines around the corner will hamper the implementation flow.
- c. Bugs during the testing phase.
- d. Lack of customer support from the vendor.
- e. Lack of infrastructure.
- f. The management buy-in would determine every time frame. Implementation takes a toll if the Management is a mere by-stander.

**4. If there is a dream technology or tool that you want to have, but don't have as on date, what is it? How will this tool or technology benefit you?**

Currently, most of us are inevitably tied to - Social Media, Mobile and E-mail. A tool where I can have all the 3 integrated, and continue to perform my full day's work without distraction - would be the tool I would aspire for.

## Gist of regulatory changes in Companies Act, 2013 in the month of May, 2016

### 06.05.2016

#### **Companies (Registration Offices and Fees) Amendment Rules, 2016.**

Form GNL-1 (Form for Filing an application with ROC) and form GNL-4 (for filing addendum for rectification of defects or incompleteness) have been modified.

### 16.05.2016

#### **a) General Circular 05/2016**

MCA clarifies at the time of undertaking activities under CSR (Sec 135) companies should not contravene any laws prevailing in India

#### **b) General Circular 06/2016**

Extension of one time waiver of additional fees is applicable to all e-forms which are due for filing by companies between 25th March 2016 upto 31st May 2016 as well has extend the last date for filing such documents and availing the benefit of waiver till 10.06.2016

### 18.05.2016

a) MCA has designated Eight courts as special courts for the purposes of trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more in terms of section 435 of the Companies Act, 2013

b) MCA has notified 18th May 2016 as the day from which the following sections of the Companies Act, 2013 will come into force:

- i. Proviso of clause (iv) of sub section (29) of section 2
- ii. Sections 435 to 438 (both sections inclusive) and
- iii. Section 440

### 23.05.2016

#### **Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016**

Section 8 company, trust or society established by the Central/ State Government/ Act of Parliament/State Legislature are also now qualified to undertake CSR activities delegated by any company without a 3 year track record. This is in addition to the existing provision permitting company owned Section 8 Company / trust / society which do not require a track record. All other entities other than these two categories need to have a 3 year track record to become CSR-eligible.

### 31.05.2016

#### **a) Companies (Authorized to Register) Amendment Rules, 2016**

Under Authorized to Register Rules, 2016. MCA has amended Rule 1,2,3,4 and 5 by including Partnership and Firm as a category eligible under the definition of Company in Section 366

#### **b) General Circular 07/2017**

Extension of period for one time waiver of additional fees which is applicable to all e-forms which are due for filing by companies between 25.03.2016 to 30.06.2016 as well as extend the last date for filing such documents and availing the benefit of waiver to 10.07.2016

## Related Party Transactions: What is the Role of a Company Secretary?

**Gaurav Pingle**

Assistant Editor, [www.lawstreetindia.com](http://www.lawstreetindia.com)

A critical test of good corporate governance for a company is how it deals with Related Party Transactions (RPTs). While the Companies Act, 2013 has laid down what should be done, it is the job of the Company Secretary to ensure that it gets done. Conceptually the Companies Act, 2013 identifies four basic aspects in monitoring RPTs and getting it approved:

1. Who is a related party?
2. What is in the ordinary course of business?
3. What is the meaning of arm's length basis?
4. Who should approve the transaction?

### Related Party

The term related party is a subjective concept, which varies based on the nature of a company. While the definition of a related party is wide for public companies, the scope narrows when it comes to private companies. For instance, for a private company, holding company, subsidiary company, associate company and subsidiary of holding company to which it is also subsidiary company are not considered as related parties.

### Ordinary Course of Business

The Companies Act has not defined the phrase 'ordinary course of business.' Black's Law Dictionary, 8th Edition, defines 'ordinary course of business' as 'the normal routine in managing a trade or business' and terms it as 'regular course of business', 'ordinary course', or 'regular course'. Given this definition, one can say that ordinary course of business means a transaction where the goods and services transacted and the commercial terms and conditions are the same or similar to what the business transacts with its regular customers, vendors and suppliers.

### Arm's Length Basis

Explanation (b) to sub-section (1) of Section 188 defines the expression "arms' length transaction" as a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. However, it is noteworthy that Section 188(1) contemplates 'arm's length basis' and not 'arm's length pricing'. Therefore, if a company is compliant with Domestic Transfer Pricing or International Transfer Pricing provisions (under the Income Tax Act), it may not amount to complete compliance of Section 188, as the concept of 'arm's length basis' is much wider than 'arm's length pricing'.

### Approvals:

Pursuant to Section 177, Audit Committee is required to approve the RPTs, including subsequent modification in the RPTs. The Committee may also grant an omnibus approval for the RPTs on annual basis, subject to compliance of certain prescribed conditions. Shareholders' approval by ordinary resolution is required if the value of transaction(s) exceeds the prescribed monetary threshold.

Unlike public companies, where the related party is prevented from voting on RPT resolutions at the Members meeting, all members, including the related parties are eligible to vote on RPT resolution to approve the contract or arrangement which may be entered into by the private company.

Further, Shareholders approval is not required for transactions between a holding company and its 100% subsidiary. In addition, RPTs arising out of compromises, arrangements and amalgamations are dealt under the specific provisions of Companies Act and not under the specific requirements for RPTs.

### A Checklist Compliance for RPT provisions:

1. Compile a list of all Related Parties from the declaration made by the Directors to the Board

2. Circulate the list to all function heads who enter into commercial transactions on behalf of the company asking them to check with the Company Secretary before they enter into any transaction with these parties
3. Once a transaction with a related party is identified, check for the following:
  - a. Whether the transaction is in ordinary course of business,
  - b. Whether the transaction is at arm's length basis
4. If the transaction is in the ordinary course of business, is at arm's length basis and within the monetary limits specified in the Rules, no further action.
5. If the transaction is not in the ordinary course of business, or not on arm's length basis or exceeds the monetary limits specified in the Rules, then obtain approvals as required under the Act by
  - a. Including in the Board and Audit Committee's agenda the following information:
    - i. Name of the related party and nature of relationship;
    - ii. Nature, duration of contract and particulars of contract/ arrangement;
    - iii. Material terms of the contract/arrangement including the value if any;
    - iv. Any advance paid/ received for the contract or arrangement, if any;
    - v. Manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of contract;
  - vi. Whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
  - vii. Any other information relevant or important for the Board/ Committee to take a decision on the proposed transaction.
  - viii. Justification for entering into the transaction
- b. Where the company has an Audit Committee check if the transaction is of a routine nature, if yes an omnibus approval of the RPT can be obtained,
  - i. If omnibus approval of Audit Committee is granted, check whether the conditions / factors on which the approval is granted are satisfied ,
- c. If Board approval is required, ensure that the approval is given at the Board meeting and not by circular resolution,
- d. If RPT is beyond the monetary threshold, then the members' approval is required and it is necessary to ensure that in case of public company the member, who is the 'related party' does not vote on the said resolution.

## Compliance Calendar

<b>June 5, Sunday</b>	Physical payment of Excise duty, Non SSI for the month of March,2016
<b>June 6, Monday</b>	E-payment of Excise duty, Non SSI for the month of March,2016
<b>June 15, Wednesday</b>	Pay PF contribution for March,2016 Advance Tax payment for the Month of April-June
<b>June 20, Monday</b>	Professional Tax payment
<b>June 21, Tuesday</b>	ESIC monthly deposit
<b>June 25, Saturday</b>	PF return Filing-Monthly Service Tax Return for the period October 2015 to March 2016
<b>June30, Tuesday</b>	PF Return- Annual PT Payment- Annual

## FEMA Updates: Resolving a Catch 22 situation

**Deepak Jain**

**Director, Pozitiv Advisor Private Limited**

What happens if there is a conflict between two laws? Which one prevails? With the new Companies Act, 2013 coming into existence, Indian corporate world faced a dilemma, as one of its provision conflicted with the FEMA regulations.

The matter related to the eligibility requirement for a Director-nominee proposed by a member or by the nominee themselves. Section 160 of the Companies Act, 2013 requires the nominee to deposit a sum of Rs.1 lakh along with their nomination form. While compliance with this section is feasible when a resident Indian is involved, the company faces a problem where a non-resident is the nominee, as the company cannot accept deposits from a non-

resident as it is not permitted under Foreign Exchange Management (Deposit) Regulations, 2016.

On April 13, 2016, RBI issued a circular A.P. (DIR Series) Circular No.59, resolving this dilemma by expressly permitting Companies to receive deposit from person resident outside India for nomination as Director.

## CimplyFive in News



### Live Mint, May 30, 2016

At British bank Barclays, the board members wanted more time for "blue-sky discussion" on major risks the company could face. Similarly, at Anglo-Australian mining company BHP Billiton Ltd, board members agreed that they should focus on the willingness of board members to speak up, and develop effective working relationships, according to their 2015 annual reports.

Read more at:

<http://www.livemint.com/Companies/61oPoQwGfebqW7TKTIsR3K/Indian-board-evaluation-practices-fail-to-match-global-stand.html>

### Economic Times, May 30, 2016

Indicating that board evaluation exercises are still at a "nascent stage", just over 50 out of the top 100 NSE-listed entities have reported both the criteria and the process for such evaluations, says a study.

Read more at:

<http://economictimes.indiatimes.com/news/company/corporate-trends/for-india-inc-board-evaluation-still-at-nascent-stage-study/articleshow/52506115.cms>

## Business Line, May 30, 2016

India Inc. is far behind the best global corporations when it comes to evaluating the board of directors, according to a new study.

None of the 100 companies that make up the Nifty 50 and Nifty Next 50 disclose improvement areas or provide an action plan to improve the performance of their boards. Five companies provide only positive findings on board performance

Read more at:

<http://www.thehindubusinessline.com/companies/when-it-comes-to-board-exams-india-inc-pales-before-global-peers/article8668735.ece>

## Business Standard, May 30, 2016

Indicating that board evaluation exercises are still at a "nascent stage", just over 50 out of the top 100 NSE-listed entities have reported both the criteria and the process for such evaluations, says a study.

Under the Companies Act, 2013, listed and public firms with paid-up share capital of Rs 25 crore or more are required to conduct board evaluation exercise.

Read more at:

[http://www.business-standard.com/article/pti-stories/for-india-inc-board-evaluation-still-at-nascent-stage-study-116053001000\\_1.html](http://www.business-standard.com/article/pti-stories/for-india-inc-board-evaluation-still-at-nascent-stage-study-116053001000_1.html)

## Board Evaluation Practices in India

Board Evaluation Practices in India  
A Study of Top 100 Companies in 2015

"A Bud with the  
Potential to Bloom"



May 2016



Study of Top 100 Companies in 2015, an in-depth analysis of the Board Evaluation practice in India contrasted with global best practices to identify areas for improvement.

Highlights of the Top 100 Companies evaluation using our proprietary 5-star rating system are:

- 5 companies got 3-Star rating, the highest rating given to the select group of companies. These companies disclosed positive results of their evaluation in addition to the evaluation criteria and evaluation process
- 52 companies got 2-Star rating, as they reported both the evaluation criteria and the evaluation process
- 26 companies got 1-Star rating, as they reported either the evaluation criteria or the evaluation process

To read the Report

[Click Here](#)

[Supplementary Report 'Extract of Board Evaluation from the Directors' Report of 100 Companies](#)



**About us**

**CimplyFive Corporate Secretarial Services Pvt Ltd**

**Vision:**

Eliminate procedural non-compliance risk for entities incorporated under Indian Companies Act, 2013

**Mission:**

Provide a cost-effective, secure web-based, menu driven, subscription services that provides curated resolutions, timely alerts and ;informative dashboards to free the management bandwidth for pursuing business goals

[www.ca2013.com](http://www.ca2013.com): Company law at your fingertips. A free to use website, integrating Companies Act with Rules, Notification, Orders and Circulars that is real time and online

**BLISS**

**(Board Leaders Integrated Software Solution)**

Our product BLISS (Board Leaders Integrated Software Solutions)

- A digital productivity tool for Compliance with the Companies Act,2013
- Provides comprehensive coverage of Board meetings, Shareholder meetings and Sub-committee meetings
- Rich bank of curated but editable resolutions
- Fully integrated modules- Agenda, Minutes, Registers and Returns
- Timely alerts and reminders
- Rich and real-time dashboard

**Contact:**

[contact@cimplyfive.com](mailto:contact@cimplyfive.com)

**Phone:** 080-23441212

