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Editorial

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Interview with CS V. Karthick, Partner, JKS & Co., Company Secretaries



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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…

Ease of Doing Business: A Cultural Change Needed

By Shankar Jaganathan



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



There are no regulatory changes in the Companies Act, 2013 in the month of February. Is this the lull before the storm?

Editorial

Dear Reader,

The last day of February is the day for Indian Union Budget, which crowds out all other financial and corporate events by occupying the center stage. And rightly so, for it sets the pace for the forthcoming financial year.

This year too is no different. Even as the tough global economic environment was acknowledged, optimism stemming from the rich demographics, digital initiatives and the need to transform rural India prevailed. The Union Budget ushered in debate on taxing the super-rich, vision of doubling farmers' income and single minded focus on promoting ease of doing business in India.

In this issue, considering the budget environment we have a short article on what it could take to realize ease of doing business in India. We have interviewed CS V. Karthick, who has willingly shared with us his views on the Company Law amendment that have been suggested. This month for the first time, our regular feature Regulatory Gist has no content, as the Companies Act, 2013 did not undergo any change. Is this the lull before the storm?

We are happy to share with you that our free to use website www.ca2013.com (CAIRR), that provides updated and integrated Company law, crossed 50,000 page views on February 29th. We thank you for our support and trust it will cross 100,000 page views by June 2016. Our research on Secretarial Audit Report of S&P BSE 500 Companies is underway. Initial findings are quite interesting and informative. We plan to release the report in March 2016.

We are eager to know what you think of iComply Please do share your thoughts with us at contact@cimplyfive.com.

Happy reading,
Shankar Jaganathan
Editor

Interview with CS V. Karthick, Partner, JKS & Co., Company Secretaries

1. **What do you see as the top 2 changes being considered in the Companies Act currently under consideration?**

   The Company Law Committee has recommended several amendments such as the ones in basic definitions, procedural ease in incorporation, doing away with continuing disclosures of changes in shares held by promoters and top ten shareholders under section 93, etc. If you want me just to list out the top two amendments, then it would be:

   a. CLC's recommendation of doing away with Private Placement Letter of Offer for Private Companies, in PAS-4, followed by PAS-5. If this is implemented, which I hope will come through, all the Start-ups will benefit. This will simplify the allotment process for all private Companies, particularly Start-ups, who would like to quickly draw the money and use it for business.
   b. CLC's recommendation to ease out payment of managerial remuneration without Central Government's approval would be a welcome change. Due procedure should be followed. It should be left to businesses to decide the managerial remuneration.

2. **Can dilution of regulations and good governance co-exist or do you see one being sacrificed for the other?**

   Good governance cannot be sacrificed for anything. Ease of doing business is equally important, but not at the cost of good governance. So, in my view, a balance should be maintained. Let me give the example of approval by the central government for managerial remuneration. Such approvals should not be a pre-requisite for private companies operating wholly on their own funds and for professional directors (having no equity stake) in the case of Public Companies and its subsidiaries. In the case of Public Listed Companies, CG approval

should be required only beyond stipulated limits. That's the differentiator.

3. **Where do you stand on the debate that a Secretarial Audit needs to consider all acts as opposed to considering only the major acts?**

   ICSI has already clarified that all Acts means all Acts and not just the major Acts. Hence, I place on record that we are recommending to check the compliance with all the Acts. Having said that, I believe the debate is not over yet. Clearly lot more thinking has to go into this. There are divergent practices. Let me substantiate. In the published Secretarial Audit Reports, we have seen a Report where compliance of about 260 enactments are listed out, whereas in the Report a larger diversified Company, it is reported that 'there are no laws, which are specifically applicable to the Company'. To me, these two are extreme cases, both cannot co-exist and some introspection is expected. In the times to come, I am sure the Ministry, ICSI & Chambers of Commerce may discuss and arrive at consensus on this.

4. **Should private companies be exempt from the application of Secretarial Standards? If not, why not?**

   Not necessarily. I understand that these Standards are recommended to bring about uniform practices on the one hand and to remove ambiguities. In cases of disputes due to oppression and mismanagement, I have seen in the Company Law Board, disputing parties question holding of the board meeting itself. In one case, I have seen the two opposite parties bring two different Minutes Book, each one claiming his record as original. Hence, the Standard seeks to prevent such cases by the process of serial numbering, etc. Private Companies cannot be exempt from these Standards. Further, I don't think the mandate to exempt any Company from the Standards vests with SSB or ICSI. The mandate vests only with the Act.

5. **In the context of growing regulations, what role do you see technology play?**
   Big role. Surely we need technology support to cope up with the growing regulations. Technology can help standardizing certain repetitive compliances. It can also help organizing paperwork and input material for meetings, etc. Large Companies need some kind of ERP system to take on the complex compliances. Mid-level and SMEs have their own requirement. Documentation, Security and related issues can be streamlined easily with technology support. I see a strong necessity to have tailor made packages to suit various business. Such packages must be flexible where we may add/ delete more regulations or perhaps even edit the contents.

6. **If the technology fairy appeared before you and offered you a wish to ease the job of Company Secretaries, what would be your wish?**

   I believe most of our requirements are more or less available. We do not have systems in place to adapt and implement the technology already available. Our areas of concern are Database management system, Database Security, Duplication of work, Workflow and Process flow automation from end-to-end, i.e., from prospecting stage to billing and Customer Relationship Management thereafter.

   I wish the technology fairy helps us not only in identifying the right tools for us, but also implementing the same with proper follow ups.

   Disclaimer: "Views expressed in this Interview are of the individual and not of JKS & Co.,"

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

There are no regulatory change in the Companies Act, 2013 in the month of February. Is this the lull before the storm?

Compliance Calendar

March 5, Saturday	Physical payment of Excise duty, Non SSI for the month of January,2016
	Physical Service tax payment
March 6, Sunday	E-payment of Excise duty, Non SSI for the month of January,2016
	E-payment of Service Tax
March 7, Monday	Pay Tax Deducted at Source(TDS) for Tax Deducted in January,2016
March 15, Tuesday	Pay PF contribution for January,2016
	Advance Tax Payment for Corporate and Non-Corporate Assesses
March 20, Sunday	Submission of VAT return along with the Payment due for the previous month after considering input credit
	Professional Tax payment
March 21, Monday	ESIC monthly deposit
March 25, Friday	PF return Filing-Monthly
March 31, Thursday	Excise payment for the month of March,2016
	Service Tax payment for the month of March,2016

Ease of Doing Business: A Cultural Change Needed

By Shankar Jaganathan[1]

India lags behind in the Ease of Doing Business rankings is not only very visible but painful given the fact that the efforts taken to rectify this situation is very sincere and commendable. Given this, a right question to ask is what could change the equation and make India climb the rankings rapidly.

The crux of Doing Business is in the interface between the business and the bureaucracy and the culture that is imbedded in these exchanges. While the word culture may have different definitions with subtle nuances, broadly it means a way of life, the set of beliefs, values and behavior that is not only accepted but also expected. Given this, could Ease of Doing Business have less to do with the laws, rules and regulations and more to do with the work culture of our bureaucracy?

India has implemented multiple digital initiatives that address a lot of core issues to do with Ease of Doing Business. Prominent amongst them are the Aadhar Card for Identification, Driving License and Passport for address proof, PAN for Income Tax, DIN for Directors and CIN for Companies. All these if properly used by the bureaucracy could promote Ease of Doing Business, but in reality they do not.

In various regulatory interfaces, applications are required to be accompanied by one or more of these identifications which is provided by one or the other arm of the government. Rather than just providing the number the applicant is required to provide a photocopy of the document, with the only grace being it can be self-certified. Would it not be a lot easier, if the applicant is only required to give the number and the regulator could check the veracity of the document by accessing the database of the issuing government department?

[1]Shankar Jaganathan is the Founder & Chief Executive of CimplyFive Corporate Secretarial Services Private Limited

Here is where I think culture plays a role. What is the belief, values and behavior that is expected in the business-bureaucracy interface? Among the top 3 beliefs would be

1. Businesses prioritize only profits
2. The job of bureaucracy is to only regulate
3. Businesses need to prove to the bureaucrat that they are compliant on paper.

Given this belief-set, it is logical to expect the business to produce all the documents for the bureaucrat in one place so that they can 'adjudicate' and dispose it off as appropriate.

If for a moment we assume that this belief-set is the problem, how could we change the work culture and promote Ease of Doing Business in India? At the cost of being simplistic, we could consider a twin point solution:

1. Adequate IT infrastructure with internet access is to be provided to the bureaucracy to enable them to verify all documents at the issuing department. This in turn will remove the need to provide copies of documents, self-attested or otherwise.

2. Professionals like CS, CA and Lawyers to play the role of quasi-business, quasi-regulator. The work by professionals to be taken at face value for approval as is the case with forms filed with MCA. The regulators can do a post-mortem for validation. If professionals are found to have erred or wrongly exercised their discretion, they can be appropriately dealt with.

If we go this path, we don't need more legislation but only a change in work culture. As the mice found, easy solutions have a big problem of execution: *who will bell the cat?*

Shankar Jaganathan, Founder and Chief Executive of CimplyFive, amongst the top 50 Indian Management Thinker for the year

Thinkers50 India has released the definitive list of most influential management thinkers from India for the year 2015. The list seeks to honor and celebrate the best management thinkers from India. The Thinkers50 India management thinkers were selected based on their work in the domains of management, leadership, business marketing, finance, people management and corporate strategy. The basis of selection in the elite group is on the timely relevance and presentation of ideas, rigor of research, international outlook, originality and impact of ideas, business sense and power to inspire change.



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

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

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

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CAIRR

