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Editorial

Dear Reader,

September was a very eventful month at CimplyFive. We completed our second private placement of equity shares, expanded our Board of Directors and shifted to a larger office, fortunately for us in the very next building. We are now nicely poised to serve a larger subscriber base with whom we are keen to engage.

Read more…

Interview with CA P V Srinivasan



In your three decades of experience as a direct and indirect tax specialist, what are some of the interesting challenges you have come across pertaining to Company Law?

Challenges arise on account of procedures, which have not matured to meet the advancements in both Company law and Income-tax law. For example, most amalgamations come into force from a retrospective date, called the Appointed Date. If the sanction of the Court is not received well in time, the Company Law has provisions to defer the Annual General Meeting, adoption of accounts etc

Read more…

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…

The 'Relative' challenge in the Companies Act, 2013



By Shankar Jaganathan
Founder & Chief Executive, CimplyFive

Governance is needed when the decision makers do not pay the price for their decisions. Instead, someone else who has a lesser say in the decision making pays the price. In politics, governance is needed as elected representatives take decisions that may impose cost on their electorate. Likewise, in companies, governance is needed as decisions by the Boards of Directors can be at the cost of shareholders or other stakeholders.

Read more…

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



Eight Regulatory changes in Companies Act, 2013 in the month of September.

View the list…

Editorial

Dear Reader,

September was a very eventful month at CimplyFive. We completed our second private placement of equity shares, expanded our Board of Directors and shifted to a larger office, fortunately for us in the very next building. We are now nicely poised to serve a larger subscriber base with whom we are keen to engage.

On the client front, our expansion continues: BLISS is now being used in four cities− Bangalore, New Delhi, Mumbai and Chennai. September also saw us opening the account with the digital marketing channel, i.e. one subscriber who after seeing BLISS on the web has subscribed to it and in the case of another saw a skype demo before subscribing. Both these subscribers are corporates from Mumbai. Is this a sign of things to come? We hope that this is the beginning of a trend.

In this issue we have interviewed the well know direct and indirect tax expert CA P V Srinivasan, who is not only our investor but has also been elected to our Board in our 2nd AGM held on September 17th 2016. We welcome PV Srinivasan to our Board and look forward to his insights and advice to guide us in making BLISS the de-facto standard for secretarial practice in India.

In this issue we have an article comparing the definition of relatives in the Companies Act, 2013 in India with similar provisions in the UK and Irish companies act enacted in 2006 and 2014 respectively. Does this offer some scope for refinement in India? In addition to this, all our regular features−Gist of Regulatory Changes and Compliance Calendar are also available in this issue.

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
October 5, 2016

Interview with CA P V Srinivasan

1. In your three decades of experience as a direct and indirect tax specialist, what are some of the interesting challenges you have come across pertaining to Company Law?

Challenges arise on account of procedures, which have not matured to meet the advancements in both Company law and Income-tax law. For example, most amalgamations come into force from a retrospective date, called the Appointed Date. If the sanction of the Court is not received well in time, the Company Law has provisions to defer the Annual General Meeting, adoption of accounts etc. But, there is no provision to defer the filing of the tax returns. How would a company file its tax return when its financial statements are not even approved by its Board? The predicament is more explicit, if the Transferor Company has incurred business losses or has incentive deductions to be claimed. Once the sanction of the Court is received, there would be a hurry to revise the returns of both the Transferor and Transferee Companies. This may be an academic exercise, yet it is necessary. The more arduous part is to get the tax credits of the Transferor Company in the hands of the Transferee Company. The Tax Department, which has embraced technology commendably, should facilitate smooth transfer of credits.

Another challenge pertains to valuation under customs and excise laws in related party transactions, which is an age-old requirement. The Income-tax Act has transfer pricing provisions for almost 15 years now. "Arm's length basis" is a recent adoption under the Company Law. Hence this may be viewed as challenge or as an opportunity for professionals!

The third instance is of Company Law and Income-tax Law both moving away from 'Form' to 'Substance'. Corporate Governance has influenced the framing of Companies Act, 2013, while Income-tax, globally, has moved significantly towards "Substance" due to application of GAAR, whether judicial or statutory, which considers substance over form. Yet, the two operate in different

spheres and it is a routine challenge in decision making to factor in the requirements of both the fields.

2. Is there anything specific that a Company Secretary can do to make the job of tax payment and assessments easier for a company? If so, what are they?

The intersection points between the Company Secretary and the Tax Personnel arise more in business reorganizations where both need an understanding of the other domain. The scope of a scheme of arrangement under the Company Law is wide but a tax-free re-organization under tax laws has a narrower scope. A Company Secretary having a sound understanding would avoid a catastrophe of a scheme resulting in taxable transfers, when it is not so intended.

Another common confusion point is in deciphering Related Party Transactions (RTP). The Income-tax Law has a wider scope of RTP than the Company Law. Control systems usually meet compliances under the Company Law. This is understandable as RTP under the Company Law require prior consents at varying levels, with penalties visiting the defaulting directors / employees. A disallowance of expenditure for computing taxable income is not as serious an issue. But omission to report a transaction for compliances under transfer pricing regulations attracts penal consequences. A Company Secretary conscious of the differences in the requirements would establish control systems suitably to capture both.

Coming to decisions of the Board which are futuristic, the Company Secretary assisting the Board in many ways is the most valuable record keeper. Archiving and retrieval of records, is a thankless job, which is an onerous compliance requirement on Companies. An experienced Company Secretary could remove the tax assessment hurdles with his insights on transactions of the past. The Board and general meeting minutes and the documents capturing the proceedings hold enormous legal credibility. Such contemporaneous record would be far more valuable than voluminous commentaries on tax claims from tax experts.

Last but not the least, enterprises are not yet organized to meet the challenges on account of attrition of experienced personnel. With passage of time, difficulty is experienced in tax assessments to substantiate transactions with verifiable records. An affidavit issued by the Company Secretary based on his personal knowledge or other available records is reckoned to be admissible. With a labyrinthine litigation process in India, it is the Company Secretary who would determine outcomes in judgments.

3. How do you rate the prospects for technology use in compliance areas like Taxation and Corporate Secretarial automation? Where do you see the major benefits accruing to the users?

Use of computer and network is misunderstood as use of IT technology. Every regulator seeking the same data repeatedly is not helping the cause of Ease of Doing Business. Even under GST, which is proposed to be administered entirely through a common portal called GSTN, a PAN-India supplier of goods / services will need to make 36 payments every month. There are multiple identities allotted to a Company – CIN, PAN, TAN etc. I believe the regulators will have to first evolve a unified identity / registry for helping the assesse. Imagine a situation where upon filing of INC-28, the Registrar strikes off the name of the Transferor Company, the tax returns of the Transferor Company get aggregated with that of the Transferee Company, the Input Tax Credits available for the Transferor Company under Central and State Indirect Taxes get credited as Input Tax Credits of the Transferee Company. Technology can do all this. Let us hope we don't have to wait for the 22nd Century for all this to happen!

4. What is your advice to young professionals who are starting out on their career? Is there anything specific that they should focus on to ensure their success in professional life?

My work ethic is to avoid the ill-effects of **"rolling stone gathers no moss"**. A tax professional is the shield and the sword of an organization with a vision spanning three horizons - past, present and future. A lot of legacy matters would be in litigation before various appellate forums. The present would require adherence to a demanding

compliance routine and also keeping abreast with multitude of changes. Organizations have to be structured and geared up for meeting the future business needs. Complete ownership of the task is the essential attribute. It means a lot of hard work but there is no substitute for it. At least, I have not found one!

Compliance Calendar

October 5, Wednesday	Physical payment of Excise duty, Non SSI for the month of September, 2016
October 6, Thursday	E-payment of Excise duty, Non SSI for the month of September, 2016
	E-payment of Service Tax
October 7, Friday	TDS payment for the month of September
October 15, Saturday	Pay PF contribution for September,2016
	Regulation 27 (2) - Details of material related party transactions
October 20, Thursday	Professional Tax payment
October 21, Friday	ESIC monthly deposit
	Regulation 13 (3) - Statement of Investor Complaints
	Regulation 31 - Shareholding Pattern
October 25, Tuesday	PF return Filing-Monthly
October 30, Sunday	Reconciliation of Share Capital Audit Report
	Regulation 7 (3) – Compliance Certificate certifying maintaining physical & electronic transfer facility
	Regulation 40 (9) – Certificate from Practicing Company Secretary

The 'Relative' challenge in the Companies Act, 2013

By Shankar Jaganathan
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Governance is needed when the decision makers do not pay the price for their decisions. Instead, someone else who has a lesser say in the decision making pays the price. In politics, governance is needed as elected representatives take decisions that may impose cost on their electorate. Likewise, in companies, governance is needed as decisions by the Boards of Directors can be at the cost of shareholders or other stakeholders.

Last 500 years of corporate history has shown that bad corporate governance can take three forms:

1. Biased decision making-Decisions which favour a section at the cost of the company or other legitimate stakeholders. Current corporate practice is to avoid this by appointing independent directors.
2. Misuse of confidential information by corporate insiders to trade in stocks at the cost of unsuspecting investors. Since 1933, starting in USA it is now accepted across the rest of the world as an illegal practice. Stringent laws are enacted to prevent this practice, as its elimination is a basic sign of a vibrant stock market.
3. Diversion of corporate resources into private hands through inflated purchases, discounted sales or non-commercial loans and investments. This is sought to be prevented by regulating transactions between key decision makers of the company and the company on whose behalf they are taking decisions.

Regulating related party transactions is a key element of provisions enacted to promote good governance. These provisions identify Key Managerial Personnel, Directors and Shareholders holding stake beyond a specified level and the firms or companies that they control.

Conceptually, Indian corporate law is comparable and similar to the laws in most leading countries. However, when it comes to implementation, Indian corporate law is unique in one aspect that it takes a very broad definition of relatives of the key managerial personnel

to include them in the ambit of related parties with whom transactions with the company is regulated.

Section 2 (77) of the Companies Act, 2013 defines a relative as anyone of the three:

- Members of a HUF,
- Husband and wife, or
- 'One person is related to the other in such manner as may be prescribed.'

The concept of HUF being unique to India, it is quite logical that it does not find a comparable in other parts of the world. With regard to the second clause of husband and wife, the change is again keeping in line with the social norms prevailing in different countries. The equivalent for 'husband and wife' in the UK Companies Act, 2006 is 'spouse or civil partner' and 'any other person, whether of a different sex or of same sex, with whom the director lives as a partner in an enduring family relationship.

The innocuous open ended third clause is the one that expands the definition of a relative in India and is at variance with other countries. Rule 4 of the Companies (Specification of definitions details) Rules, 2014 includes eight relationships under its ambit consisting of father, mother, sons, daughters, son's wife, daughter's husband, brothers and sisters. In all these relationships, where relevant the step-relative is also expressly included as in step-father, step-mother, step-brothers, step-sisters and step-sons. The sole exception is the exclusion of step-daughter. Could this be an inadvertent omission, without any gender bias?

In contrast to the expansive definition of relatives in the Indian corporate law, English and Irish law are much narrower and restrict it to the child of the director, i.e. one who has not attained 18 years of age.

Given that India in the 21st Century has predominantly nuclear families, can we align the definition of relatives with the rest of the world by eliminating brother and sisters from the definition of relatives in the Companies Act, 2013 for the purpose of regulating related party transaction?

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

01.09.2016

Designation of Special Court

MCA designates Special Courts in the states of Chhattisgarh, Rajasthan, Punjab and Haryana, Madras and Manipur respective regions for the purpose of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013.

05.09.2016

a) **Notification: Sub-section (3) of section 1 of the Companies Act, 2013(18 of 2013)**
7th September, 2016 is notified as the effective date for administration of the Investor Education and Protection Fund identified in the provisions of section 124, sub-sections (1) to (4), (6) and (8) to (11) of section 125.

b) **Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016**
7th September, 2016 is notified as the effective date for the Investor Education and Protection Fund Authority (IEPFA) (Accounting, Audit, Transfer & Refund) Rules 2016.

c) **Investor Education and Protection Fund Authority (Appointment of Chairpersons and members, holdings for meeting and provisions for offices and officers) Amendment Rules, 2016**
Investor Education and Protection Fund Authority (Appointment of Chairpersons and members, holdings for meeting and provisions for offices and officers) Rules, 2016 is further amended to insert a new rule constituting it as a body corporate with power to acquire, hold and dispose of movable and immovable property, to contract and to sue or be sued.

09.09.2016

a) Commencement notification dated

9th September, 2016 was appointed as the date from which following provisions of the Companies Act, 2013 shall come into force:

- As per **section 227**, legal advisors and bankers are not required to disclose information shared with them by their clients in their capacity as legal counsel or the state of affairs of the clients in case of bankers to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government.
- Provisions of **section 242(1)(b) and (2) (c) & (g),** in respect of power of Tribunal to give just and equitable opinion with regard to winding up orders, purchase of its shares by the company consequent to reduction of share capital and fraudulent preference respectively.
- Provisions of **section 246 and section 337 to 341** to the extent of their applicability for section 246 with regard to application to Tribunal for prevention of oppression and mismanagement.

b) The Companies (Mediation and Conciliation) Rules, 2016

The Companies (Mediation and Conciliation) Rules, 2016 have been notified and came into force from the date of their publication in the Official Gazette. MCA has empowered the Regional Director to prepare and maintain/update the Mediation and Conciliation Panel of eligible experts.

12.09.2016

Notification for amendment to Schedule V of Companies Act, 2013

- For companies with inadequate profits, managerial remuneration limits doubled from Rs.30-60 lakhs range to Rs.60-120 lakhs range based on effective capital of the Company without the Central Government approval.
- With respect to managerial person who is functioning in a professional capacity, approval of Government is not required if:
  - Such person is not having any interest in the capital of the Company, its holding company or any of its subsidiary companies during last 2 years on or after date of appointment, except by way of ESOPs limited to 0.5% of the paid-up share capital and
  - Possesses graduate-level qualification and specialized knowledge in the field in which the Company operates.

23.09.2016

The Companies (Management and Administration) Amendment Rules, 2016

Companies (Management and Administration) Rules, 2014 amended to be called as the Companies (Management and Administration) Amendment Rules, 2016. Important changes include:

- For listed companies the provisions relating to filing of Form No. MGT.10, with respect to changes in the shareholding position of promoters and top ten shareholders of the company clarified and made more explicit.
- Form MGT-6 is now converted into e-form.

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

Contact:

contact@cimplyfive.com

Phone: 080-23441212

CAIRR

