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Editorial

Dear Reader,

April 2017 was another eventful months for us in CimplyFive. On April 17, we integrated Insolvency and Bankruptcy Code 2016 with the Companies Act 2013 in our free to use website www.ca2013.com. With 71 sections in the Companies Act, affected by the IB code, it was imperative to integrate the two to present a comprehensive and lucid point of view to the reader.

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Interview with CS Sivaram Nair, Executive Vice President, Company Secretary, General Counsel & Ethics Officer, Mphasis



1. As a Company Secretary with over two decades of experience, how do you see the role of CS evolve over the last two decades? What are the new qualities required now that were not so critical in the earlier decades?

The Company Secretary's role has evolved drastically in the last 10 plus years. From a mere witness in the Board Meetings, he has become a participant.
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Compliance calendar



Due dates for Income tax, Professional tax, Service tax, Companies Act, 2013 among others has been captured for your ready reference. View the list…

Gist of Regulatory Changes in Companies Act, 2013 in the month of April, 2017



Five Regulatory changes in Companies Act, 2013 was made in the month of April.
View the list…

Are Private Companies Promoters' Private Affair?~ By Shankar Jaganathan



Revenue Secretary Hasmukh Adhia on April 29th brought into public domain something that is well known to the corporate professionals, 8-9 lakhs of the 15 lakh registered companies in India do not file their annual return with the Ministry of Company Affairs.
Read more…

What's New in CAIRR?



CAIRR- Companies Act Integrated Ready Reckoner, our free to use website on Companies Act, 2013 now integrated with **Insolvency & Bankruptcy Code, 2016** as well.

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Dear Reader,

April 2017 was another eventful month for us in CimplyFive. On April 17, we integrated Insolvency and Bankruptcy Code 2016 with the Companies Act 2013 in our free to use website www.ca2013.com. With 71 sections in the Companies Act, affected by the IB code, it was imperative to integrate the two to present a comprehensive and lucid point of view to the reader.

Of the 71 affected Company law sections sections:

- 40 related to omission of either the entire section or clauses in sections,
- 23 were substitutions of sections with provisions in the IB code, and in
- 8 sections new insertions were made to provide reference to specific provisions of the IB code.

In this issue we have invited CS Sivaram Nair, EVP, Company Secretary, General Counsel, Global Ethics & Compliance Officer at Mphasis the leading IT Services company based in Bangalore to share his views on the changing role of Company Secretaries, challenges in a listed company and the use of technology in the CS profession.

On April 29, Revenue Secretary of India, Hasmukh Adhia shared with the public what was known to the CS profession; about 8-9 lakh companies out of the 15 lakh companies registered in India do not file their annual returns, which is mandated in law. Given the magnitude of this non-compliance we have taken stock of the possible reasons for this non-compliance and shared the obvious solution. In addition to these two, our other regular features: Compliance calendar and Gist of changes in Company law during the month of April is also included.

We at CimplyFive are extremely thankful to you and are greatly enthused by your words. Please do share your feedback on this issue of ***icomply***. You can share your thoughts with us at contact@cimplyfive.com.

Happy reading,
Shankar Jaganathan
Editor
May 5, 2017

Interview with CS Sivaram Nair, Executive Vice President, Company Secretary, General Counsel & Ethics Officer, Mphasis

1. **As a Company Secretary with over two decades of experience, how do you see the role of CS evolve over the last two decades? What are the new qualities required now that were not so critical in the earlier decades?**

   The Company Secretary's role has evolved drastically in the last 10 plus years. From a mere witness in the Board Meetings, he has become a participant. From a mere conductor of meetings of the Committees, Board and Shareholders' meetings, his views are today sought in major decisions like expansion, diversification, acquisition, buy-back, bonus issue and change of composition of Committees and Board. The Board expects the Company Secretary to be the conscience keeper, ensuring that the decisions are compliant and there is no conflict of interest.
   Apart from being a good communicator and having drafting skills, the Company Secretary should understand the business of the Company and also engage with other functional leaders more, as he is expected to ensure that decisions are ultimately fulfilled by the respective stakeholders. In my view, to be successful, he should be abreast with the changes happening in corporate laws. For this, regular reading of business newspapers, journals and net-working with co-professionals become important.

2. **What are the new challenges that a Company Secretary in a listed company faces compared to an unlisted company? How can young Company Secretaries prepare for their role in listed companies?**

   The challenge becomes more in a listed company as the Company Secretary over and above ensuring compliance of Companies Act has to ensure that SEBI (Listing Obligations and Disclosure Requirements) Regulations (LODR) and other SEBI Regulations are also taken care of. If there are contradictions between SEBI Regulations and

Companies Act, the stringent one needs to be adhered to. The CS has to be updated of the frequent change in laws and also ensure implementation in their company. Ensuring SEBI (Prohibition of Insider Trading) Regulations are implemented becomes an added responsibility to a Company Secretary in a listed company.

The following would help the young Company Secretaries to be ready for a role in listed companies:

a. Thorough reading and understanding of LODR and Prohibition of Insider trading regulations over and above Companies Act.
b. Prepare checklist of compliance
c. If possible, do your training in a listed company
d. Do not miss reading articles reported of listed companies
e. Attend study circle meetings where such topics are discussed
f. Network with CS friends in listed companies.

3. Given that Investor relations and Investor communications have traditionally been the forte of CFOs, what can Company Secretaries do to play a larger role in Investor relations?

Yes, largely it is CFO's who takes care of Investor Relations and communication with them. This is to do with understanding and interpreting the financials, understanding the business better and the strategy being pursued. The Company Secretary ensures that the communication and discussions are within the framework of the law and also compliance ensured in case of unpublished price sensitive information. In my opinion, this role played by CFO can be undertaken by CS, if he has an aptitude for understanding financials and also has good knowledge of the business. There are many CS' who are part of the Executive Council of the Management having access to the strategy and important decisions of the Company and such CS' should be able to play this role easily.

4. Company Secretaries are now the chief compliance officers of their companies. Given this big responsibility, what are the few trends that are visible in how company secretaries are coping with this new role?

Yes, in many companies CS' are the Chief Compliance Officer. This is a natural extension of role for a CS as he has capability of understanding and interpreting the law and knows which Act or Regulation to be referred. His main role as a Compliance Officer would be to ensure that compliance is taken care of by all functions. He has to make everybody aware of the compliances and monitor the fulfilment of the same. This is not practically possible without a tool which maps the laws applicable to the company and mapping the doable steps to a stakeholder, which then needs to be monitored through a dash board. The content needs to be updated as and when changes happen in law. There are enough tools available in the market which takes care of the above. In my experience, to be successful on the role of Chief Compliance Officer, one has to regularly communicate with other stakeholders and also engage with them.

5. What role do you see technology play in Company Secretaries discharging their responsibilities?

CS' have to leverage technology for speed, accuracy and consistency. The chances of missing a compliance is high, if left completely to humans. Technology allows to go completely digital and have seamless interaction with directors thereby saving paper, preserving confidentiality and having access to data without intervention of humans. It is advisable to invest in a tool which provides access for directors to past Board information, forthcoming meetings with agenda and notes and also a compliance dashboard. As regards CS', once uploaded in the tool and compliance ensured, he is not required to interact individually with the directors and answer their queries regarding Board matters. The CS can invest the time saved in understanding the business, engaging with other stakeholders and strategizing on doing things better.

Are Private Companies Promoters' Private Affair?

By Shankar Jaganathan

Revenue Secretary Hasmukh Adhia on April 29th brought into public domain something that is well known to the corporate professionals, 8-9 lakhs of the 15 lakh registered companies in India do not file their annual return with the Ministry of Company Affairs.

A brief review and enquiry for this wide-spread non-compliance reveals three specific reasons, which is listed in the ascending order of its prevalence:

- **It is arduous and time consuming to file the annual return:** A possible reason for this is the need to fill in more than 500 data points in Annual Return.
- **Companies that do not file annual returns are not penalized**: Companies and the officers of companies that fail to file annual returns are liable to penalty. The penalty ranges from a minimum of Rs.1 lakh to Rs.10 lakh. However in reality, these penalties remain only on paper and have not been levied. The result, non-compliant company do not pay a price for their non-compliance.
- **Private companies are private affairs and there is no need to make private information public**

What's more, these reasons are not just prevalent among the lay public and uninformed company promoters, but large section of the corporate professionals too believe in one or more of these reasons. The belief that private limited companies are private affairs and do not have any duty to disclose any of their information to the public is the most dominant one. Given this wide-spread non-compliance in India, the question –'Are Private companies, promoters' private affairs?' need a fresh evaluation.

Given the socially accepted view that private affairs need not be publicly disclosed, we need to see when private affairs become public? A logical point at which private affairs become public is when a private individual voluntarily becomes a public figure like a politician or a celebrity and needs fame and recognition to be successful in their public life. By selectively sharing their private life with the public when it is beneficial to them, they often lose the right to retain their privacy on other matters that are inconvenient to them.

Another aspect that makes a private affair public is when special benefits are provided to an entity that is denied to a private person. Companies including private companies are entities that enjoy special benefits of limited liability that is denied to a private entity like an individual or a partnership. Further companies are also taxed as a distinct entity, which is a special privilege provided by the society though its legislation. While these are the benefits enjoyed by the company, the society also pay a cost for providing these benefits, which increases disproportionately when a company becomes non-compliant.

Our revenue secretary was viewing one element of this disproportionate cost when he spoke of non-compliant companies being vehicles of money laundering. There are other elements of cost too –the prominent two being: taxes legitimately 'evaded' or planned which is politically the right term when company structure is used in inheritance tax/ estate duty[1] planning, or income structuring or wealth management to reduce the incidence of inheritance tax, wealth tax or income tax on individuals. However, the price paid for according limited liability to private companies is the most expensive cost socially, as the more vulnerable sections of the society –employees, small suppliers and service providers are the one who bear the brunt, having their legitimate dues unpaid. The only protection offered in law is the liberal disclosures provided to all stakeholders on the Company's financial state of affairs. This would provide a warning to the stakeholders dealing with the company.

While partnership deed and its financial statements are private documents, as they are concerned with the private affairs of their partners, the Memorandum of Association, Articles of Association and the corporate financial statements are public documents by virtue of the special privileges provided to the company. Given this, all companies, both private company and public company are public affairs, and a company and its directors have both a social and a legal duty to

[1] Please note Estate Duty was abolished in India in 1985. However fear of its reintroduction influences many tax planning structures in India even today, after three decades of abolition.

disclosure all information to public starting with the annual return.

Given this, we believe the only way to ensure corporate compliance is for non-compliant companies to be penalized by enforcing the prevailing law. By doing this, government would not only realize valuable resources for its social programs by collecting penalty from non-compliant companies but also create a conductive climate for a less restrictive regulatory regime that promotes ease of doing business in India. For, as Lord Shang the 3rd century BC Chinese political commentator noted it is certainty of law enforcement that nips non-compliance in its bud and creates a compliant society.

Compliance Calendar

May 5, Friday	Physical payment of Excise duty, Non-SSI for the month of April, 2017
	Physical payment of Service Tax.
May 6, Saturday	E-payment of Excise duty, Non-SSI for the month of April, 2017
	E-payment of Service Tax.
May 7, Sunday	TDS return for April, 2017.
May 15, Monday	Pay PF contribution for April, 2017
May 20, Saturday	Professional Tax payment
May 21, Sunday	ESIC monthly deposit
May 25, Thursday	PF Return for April, 2017

Gist of regulatory changes in Companies Ac, 2013 in the month of April, 2017

- **07.04.2017**
  Companies (Registration of Charges) Amendment Rules, 2017
  Forms CHG-1, CHG-4 and CHG-9 were revised w. e. f. 10th April, 2017 wherein certain declarations and field level changes have been incorporated to capture details like (i) ranking of charges, (ii) particulars of the principal terms and conditions of the charge, (iii) particulars of the property or asset(s) charged (including complete address and location of the property), (iv) description of document by which the borrower/third party acquired the title etc.

- **12.04.2017**
  Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017
  MCA vide its notification has issued a Form- STK 5A for Publication of Notice of Striking Off a Company's name from the Register of Companies.

- **13.04.2017**
  - Commencement of section 234 of Companies Act 2013
  - Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017

  MCA has notified section 234 of the Companies Act, 2013 which deals with Merger and Amalgamation of an Indian Company with Foreign Company owing to which a new rule has been inserted vide Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 which provide for Merger or Amalgamation of a Foreign company with an Indian Company and vice versa.

- **20.04.2017**
  General Circular 02/2017
  MCA has issued Clarification regarding online generation of Challans for Offline payment to Investor Education and Protection Fund (IEPF) that any transfer to IEPF can be made only through Challans generated on MCA 21 portal.

- **27.04.2017**
  General Circular 03/2017
  MCA has issued a Circular clarifying the issues relating to the Transfer of shares to IEPF Authority. The IEPF Authority has now decided to open a special demat account with NSDL and all the companies shall now transfer such shares, whether held in dematerialised form or physical form to the demat account of IEPF authority by way of corporate action.

About us

CimplyFive Corporate Secretarial Services Pvt Ltd

Vision:
Leverage research and technology to eliminate procedural non-compliance risk for entities regulated by the 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:

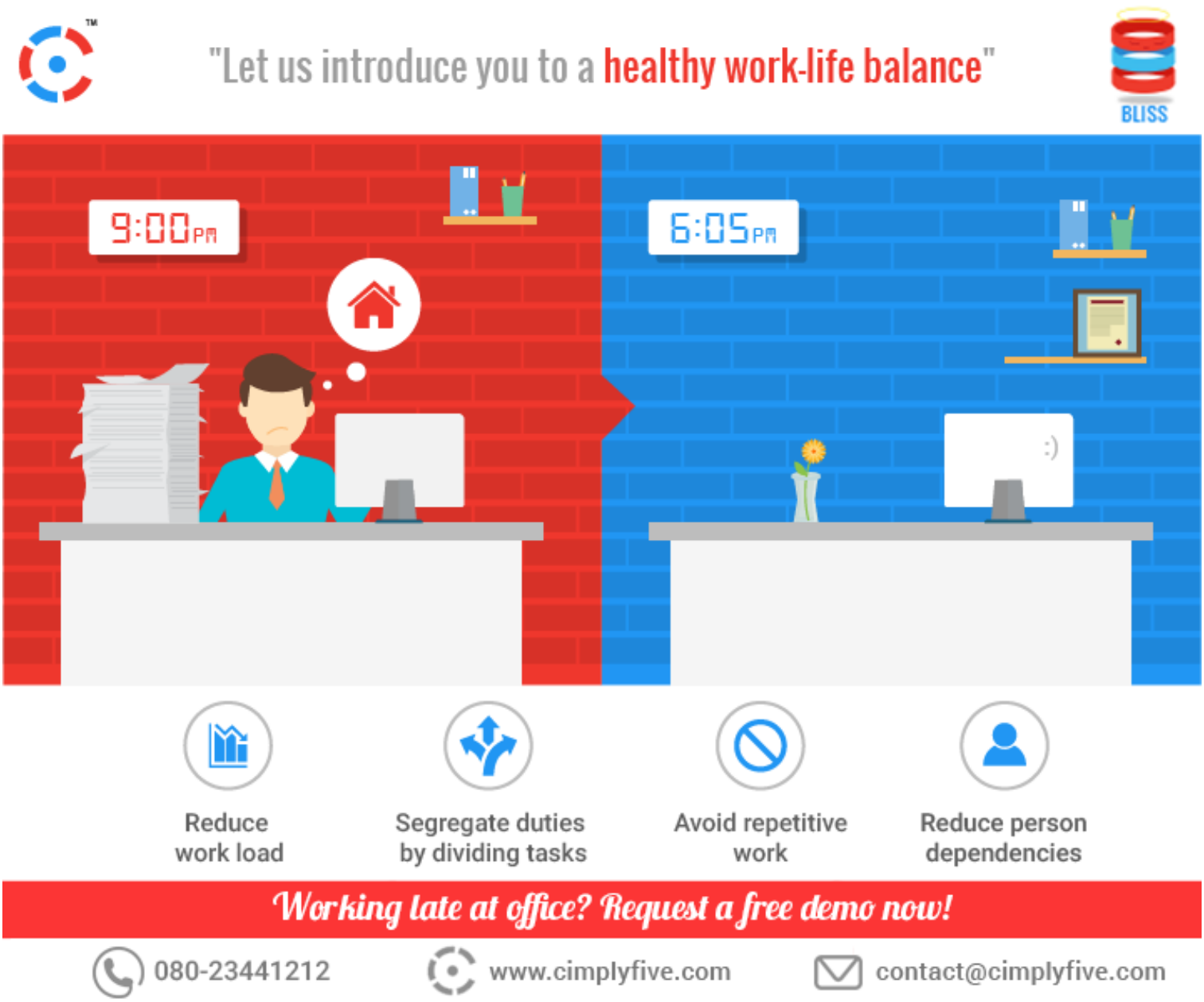
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CAIRR



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