iComply

Editorial

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Read more…

Interview with Shriram Subramanian, Managing Director, InGovern



1. The new 2017 AGM season has dawned? Are there any new trends you are seeing or is it a repeat of the earlier years?
In the previous years, the new Companies Act 2013 meant that there were newer proposals like Appointment of Independent Directors for a fixed term of 5-years or Ratification of remuneration paid to Cost Accountants. Read more…

Compliance calendar



Due dates for Income tax, Professional tax, Goods and 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 and Insolvency & Bankruptcy Code, 2016 in the month of July, 2017

Seven Regulatory changes in Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 was made in the month of July.
View the list…

The First Bonus Shares Issue: East India Company, 1682 CE – Origin and Rationale for this practice



By Shankar Jaganathan

On December 31, 1600, East India Company was formed by the grant of a charter by the English Parliament. Read more…

Whats new in BLISS?

- Timer to track the period for which the application is inactive.
- Enhanced Action Tracker.
- Replicate agenda item from one meeting to another or from one Company to another.
- Activity Log organised financial year wise.
- Register of Directors and Register of Members available as per the formats prescribed in the law.
- Subscribers can avail input credit by entering their GSTIN code. Read more…

CimplyFive's Release



CimplyFive's Report on Policy for Related Party Transactions released.

Click here to download the Report

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Editorial

Our first research report based webinar in July 2017 was well attended. With 62 people participating, we were pleasantly surprised by overseas attendees, including people from the USA. The response for ***CimplyFive's Report on The Policy of Dealing with Related Party Transactions, Analysis of Nifty 50 Companies***, released on July 20th, was very encouraging as many readers wrote to us commending our efforts and some offering their suggestions to improve it. Your positive response to our work motivates us to do more.

In this newsletter we are starting a new series titled the **First of Firsts**, where we track the first event of a corporate practice and how it has evolved over time and its current usage. In this issue we have picked the practice of Bonus Shares issued to reward shareholders. Please let us know what you think of this series. If there is any specific corporate practice you want us to cover in our **First of Firsts Series**, please do let us know and we will include it.

Turning to this issue of iComply, we have interviewed our Founder and Director **Shriram Subramanian,** who is also the Founder and Managing Director of InGovern, India's first proxy advisory services to seek his insights on the 2017 AGM season. As a keen observer and a student of corporate governance his insights are interesting and revealing. Our other regular features – Gist of changes in the Companies Act and the statutory calendar is also included in this issue.

Please feel free to share your feedback with us at contact@cimplyfive.com. We look forward to your feedback with interest. As ever strive to improve the quality of everything we do.

Happy reading,

Shankar Jaganathan
Editor of iComply
August 5, 2017

Interview with Shriram Subramanian, Managing Director, InGovern

1. The new 2017 AGM season has dawned. Are there any new trends you are seeing or is it a repeat of the earlier years?

In the previous years, the new Companies Act 2013 meant that there were newer proposals like Appointment of Independent Directors for a fixed term of 5-years or Ratification of remuneration paid to Cost Accountants. However, in the 2017 AGM season, which lasts till end-September, we have not seen any new types of proposals put to vote.

2. Can you name for us a few contentious issues that have come up in the 2017 season till now and what makes them debate worthy?

Till now, there have been a few contentious issues this season, to name them:

Alembic Limited: A first of its kind proposal to elect a small shareholder on the Board of the company was put forward by a group of 900+ small shareholders of the company, unifying under a portfolio manager Unifi Capital. However, due to lack of any precedent, there was ambiguity in effectiveness of this action. The company rejected the request pointing to a conflict of interest from Unifi Capital in facilitating the proposal. This issue brings to light the feasibility of small shareholders having a representation on the Board and also initiating discussions around the procedures, effectiveness and options available to shareholders if their request is rejected.

Hinduja Global Solutions: Here a proposal introducing an Employee Stock Appreciation Rights for Employees and Directors was tabled after due consideration from Nomination and Remuneration (N&R) Committee and the Board. which has three members of the promoters, Hinduja family. This proposal was rejected as 99.3% of the promoters voting voted against it in contrast to 90% of the voting public shareholders approving it. After the result were out, there is no explanation from the company as to why this proposal was rejected and neither has the N&R Committee nor the Board accepted any sorts of accountability over this failure.

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ITC: The proposal was for appointment and fixing of remuneration of the company's Non-Executive Chairman. The nominee was an Executive of the company for over 30 years, who retired during the year as the company's Executive Chairman. The compensation proposed for his role as the company's Non-Executive Chairman and a 'mentor' to the new CEO was similar to what he was being paid as an Executive Chairman. This compensation was also many times higher than the proposed compensation of the new CEO. This issue raises questions on the prevalent executive remuneration practices and its approval process.

Raymond: The proposal was for sale of a prime real-estate asset worth over Rs.700 crores to some promoters and their relatives, which is not at market price. The company explained that it was bound by an agreement entered into with the promoter group a decade ago. The audit committee and the Board placed the resolution for shareholders' approval with the comment that if the proposal is approved company will incur a loss. This issue raises questions regarding the fiduciary responsibilities and accountability of audit committee and the Board. This proposal was rejected by the shareholders.

3. **Provision for small shareholders' representation in the Boards is now legally provided for? How do you see it practiced?**

Section 151 and Rule 7 of the Companies Act, 2013 provide for small shareholders (those who hold shares whose nominal value is less than Rs.20,000) to elect a small shareholder representative on the Board of their company. It requires 10% or 1000 of such shareholders, whichever is less to come together and propose a consenting individual as their small shareholder director. In the absence of precedent, it is not clear as to how effective is this provision, as the law provides for the company to reject such valid proposals. Further, the law also provides for the company to appoint any individual on its own as a small shareholder director. On doing so, no proposal from small shareholder can be entertained. As it stands, these powers given to the companies completely dilutes the right provided to small shareholders to have their representation on the Board.

4. **Going forward what are the top 2/3 changes you would like to see in the company-shareholders interaction to improve corporate governance practices in India.**

- Where large shareholders are allowed access to the management to voice their concerns and suggestions, there should be a requirement that the gist of the discussion and its outcome should be disclosed to all shareholders as a good governance practice.

- Disclosures in the annual reports/ regulatory filings should be more meaningful and tailored to meet the requirements of a given company or situation. Boilerplate disclosures, especially in case of board evaluation, explanation for contentious issues/ proposals, etc., should be strongly discouraged.

- Institutional investors should be more assertive in exercising their rights and demanding that companies do the right thing, and be fair to all shareholders.

5. **Compared to the US and European markets, how is the Indian Corporate sector different when it comes to shareholder activism?**

India in contrast to the US and European markets, lacks Activist Investors, who seeks out opportunities for short-term activism and profit from it. An Activist Investor would actively seek out investment opportunities where they can unlock value by getting the company to take corporate action or adopt better corporate governance practices. Such Activist Investors would by nature be hostile to the incumbent management. India needs to create an environment where hostile activism and takeovers are viewed positively in promoting good corporate governance. For this other stakeholders like lenders and regulators have to be supportive of such action as it creates value.

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The First Bonus Shares Issue: East India Company, 1682 CE – Origin and Rationale for this practice

By Shankar Jaganathan

On December 31, 1600, East India Company was formed by the grant of a charter by the English Parliament. Though not the first joint stock company to be formed, it was perhaps the most influential company in the global corporate history, surviving for over 270 years before being liquidated on June 1, 1874. During this period, East India Company initiated many innovative practices that are prevalent in the corporate world even today. One among them is the practice of issuing Bonus Shares.

The Concept

Bonus shares is a method of rewarding shareholders. Rather than pay out cash to its shareholders, which is the normal form of rewarding shareholders by paying dividend, in Bonus shares, shareholders are given fully paid equity shares in the company. This ensures that the company rewards its shareholders without paying them cash, despite which shareholders can get cash if they so desire by selling their bonus shares received in the stock market.

The First of First

One of the earliest, if not the first recorded event of a bonus issue is in the year 1682, when East India Company doubled its share capital by issuing one share for every share held. It did this by extinguishing the liability of £50 per share that had not been called up by the company, by converting partly paid shares of £50 into fully paid shares of £100 each without receiving any money from its shareholders.

In the process it paid a 100% dividend (£50 dividend on a £50 pound share). A critical factor influencing this decision was that despite profits, liquidity was tight in the company with adequate surplus cash not being available to pay this dividend, even as the need to reward shareholders and retain their support remained high.[1]

The issue of Bonus shares by East India Company proved a success as the company was able to maintain or increase the dividend payments over the next ten year period on their increased capital base. This contributed to issue of bonus shares being seen as an additional avenue for rewarding shareholders, in addition to payment of annual dividend.

The other leading companies of that time too issued bonus shares making this practice firmly entrenched. They even went a step further when Hudson Bay Company in the year 1690 issued 2:1 bonus shares i.e. two shares for every one held, which was followed by the Royal African Company in the subsequent year, when it issued 3:1 bonus shares in 1691, resulting in establishing the use of bonus shares as an accepted practice to reward shareholders.

Rationale for Bonus Shares

1. In a jurisdiction where dividend is taxed either in the hands of the company declaring the dividend or in the hands of recipients, issue of bonus shares combined with buy-back of shares by the company can be an efficient tax planning device, especially if the sale of bonus shares are not taxed as long term capital gains or are taxed at concessional rates.
2. A company that is profitable and growing rapidly, which needs additional investment for growth in the form of fixed assets or working capital can use bonus shares to reward its shareholders without parting with liquid cash need for growing their business.
3. High share prices can psychologically deter investors from buying shares. Judicious use of bonus shares can reduce the share price without correspondingly reducing market capitalization, thereby making it attractive for investors to buy the shares.
4. Some companies have used periodic issue of bonus shares as a method to reward shareholders for a combination of reasons and the investor expectations also play a role in some bonus issues even though there may not be any economic rationale for it.

Companies Act, 2013

Section 63 of the Act permits a company to issue bonus shares by using its securities premium account, capital

[1] Robert Scott, W, *The Constitutions and Finance of English, Scottish and Irish Joint Stock Companies* Volume 1, Cambridge University Press, 1912, p 304

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redemption reserves and free reserves. However, a company is not permitted to issue bonus shares in lieu of dividend. Once a company has announced the decision of its Board to issue bonus shares, this decision cannot be withdrawn.

The Act also protects the interest of lenders and employees by permitting bonus shares to be issued only if the company is not in default of interest or principal repayments on its loans and payment of statutory dues pertaining to employees.

Current Usage (In 2017 till July)

Rewarding shareholders by issue of Bonus shares is a common practice today. Prominent issuers of bonus shares in 2017 include companies like Biocon, BPCL, HPCL, ICICI Bank, L&T and Wipro among other.

Compliance Calendar

August 7, Monday	TDS return for July, 2017.
August 15, Tuesday	Pay PF contribution for July, 2017
	Service Tax Return- April to June
August 20, Sunday	Professional Tax payment
	GSTR 3B
August 21, Monday	ESIC monthly deposit
August 25, Friday	PF Return for July, 2017

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

- **05.07.2017**

  Companies (Appointment and Qualification of Directors) Rules, 2017

  - Unlisted Public Company which is a Joint Venture, a Wholly owned subsidiary and a dormant company are not required to have Independent Directors.
  - Form DIR-5 (Application for surrender of Director Identification Number) has been introduced as an e-form.

  National Company Law Tribunal (Amendment) Rules, 2017

  MCA vide its notification has inserted Rule 87A for filing of appeal or applications with the Tribunal-

  - by any person aggrieved by an order of the Registrar or a company [Section 252(1)],
  - by any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies. [Section 252(3)]

  Amendment in Schedule IV of the Companies Act 2013

  - Period within which a company should appoint an independent director in place of an independent director who has resigned or has been removed from the Board of the Company has been substituted from 'one hundred and eighty days' to 'three months' from date of such resignation or removal.
  - Independent directors of the company shall hold at least one meeting in a financial year. This amendment substitutes the word 'financial year' for 'year' and provides the much needed clarity.

- **13.07.2017**

  Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017

  - This amendment explicitly permits a director to attend a meeting in person by giving notice of his intention to attend the meeting, who had earlier given notice to participate through the electronic mode.
  - This amendment requires the draft minutes circulated to the directors at the conclusion of the meeting to be preserved by the company till those minutes are confirmed by all the directors.
  - Rule 6 has been amended by making a reference to Rule 4 of Companies (Appointment and Qualifications of Directors) Rules, 2014. This makes the rule consistent by deleting the partial listing of criteria, which is already contained in Rule 4. By virtue of this a joint venture, a wholly owned subsidiary and a dormant company as defined under section 455 of the Act, are not require to have Audit Committee and Nomination and Remuneration Committee.

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- **12.06.2017**
  Exemption to Private Company (corrigendum) Notification
  MCA vide a corrigendum notification has amended earlier notification [GSR 583(E)] on applicability of exemption where the auditor need not comment on the Internal Financial Controls of the Company.
  Now this exemption is available only to a company which meets both these conditions, i.e. turnover less than Rs. 50 Crores and aggregate borrowings of less than Rs. 25 Crores. Earlier this exemption was available to a company if it met one of these two criteria.

- **25.07.2017**
  General Circular 08/2017
  MCA has clarified on the applicability of exemption to Private Companies on the auditors need to comment on Internal Financial Controls of the Company.
  This exemption is available to the audit reports signed on or after 25th July, 2017 for financial years commencing on or after 1st April, 2016.

- **27.07.2017**
  Companies (Incorporation) Second Amendment Rules, 2017
  MCA vide a notification has amended Rule 28 and Rule 30 of the Companies (Incorporation) Rules, 2014 regarding shifting of registered office to make it easier and less cumbersome.
  Rule 28 dealing with the application for 'shifting of Registered Office of the Company within the same state' is now modified, requiring the following:
  i. Copy of Board Resolution and Special Resolution.
  ii. Declaration from the KMP or any two directors authorized by the Board, saying that the Company has not defaulted in the payment of dues to workmen.
  iii. Declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending.
  iv. Acknowledged copy of intimation to the Chief Secretary of the state that the proposed shifting does not adversely affect the employees' interest.
  v. The requirement to publish a newspaper advertisement is no longer required if the change in registered office is within the state.

Rule 30 dealing with the application for 'shifting of registered office from one State or Union territory to another State' is now modified by:

- Reducing the number of documents required to be filed along with application.
- The requirement to publish an advertisement 14 days prior to the date of hearing is now modified and the advertisement can be published within 30 days of filing the application.
- Any counter-responses given by the company to the objections received by it upon publication of advertisement to form part of the application.
- Consequent to these changes, the Central Government is required to pass the order for shifting within sixty days of filing the application.

Following these changes form INC 23 and INC 26 are revised. Form INC 26 now permits persons affected by the proposed change of the registered office to file an investor complaint on MCA portal.

Whats new in BLISS?

1. **Timer:** Primary benefit: Productivity: Based on user needs we have introduced timer to track the period for which the application is inactive and to give a warning before it logs out. This will enable users to avoid entering data which cannot be saved.
2. **Action Tracker:** Primary benefit: Effective delegation: This feature is now enhanced to include an option to mark a task as Completed, Reassigned or Approved.
3. **Replicate:** Primary benefit: Reduce work: Search feature is enhanced whereby an Agenda item selected can be replicated from one meeting to another or from one Company to another.
4. **Activity Log**: Primary benefit: Save time: This feature is made user friendly by organizing the data Financial Year wise.
5. **Register of Directors and Register of Members:** Primary Benefit: Compliance: The format in which these registers are displayed and printed is as prescribed in the Rules.
6. **GST:** Primary benefit: Cost saving: Subscribers intending to avail input credit can now enter their GSTIN code in the 'Buy CIN' module and generate invoices based on which they can claim input credit.

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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

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