iComply

Editorial

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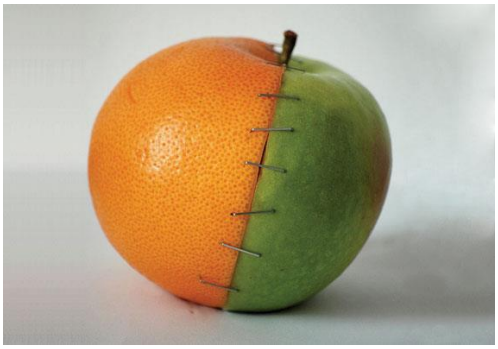
   Legal and Regulatory Compliances have always been a top concern for the Board Members over the years. Read more…

Compliance calendar



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

Preference Shares: The Birth of a Hybrid that straddles both Equity and Debt instrument



By Shankar Jaganathan

Context:

Preference shares is a financial instrument that answers a specific need of companies trying to raise finance but cannot or does not want to do it in the conventional way. Read more…

Gist of Regulatory Changes in Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 in the month of August, 2017



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

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Editorial

On September 3rd, we turned 3. As I reflect on the three years, the first thought that strikes me is that life in a start-up is like an emotional roller coaster ride. Almost every day and with every event, you can be lifted up or pushed down. The only thing certain is that you won't know what to expect. In the three years, the three creations we are satisfied with are:

- The strong eco-system to nourish CimplyFive of investors, partner organizations, marquee clients and committed team members,
- CimplyFive as a brand, with our free to use website CAIRR and our research reports,
- BLISS, our cloud hosted software that has 400+ companies registered in it.

On the flip side we could definitely have accelerated the product development cycle, got more client inputs earlier into feature building and experimented more on the commercial pricing models. As we look back, we have built a strong foundation for us to march ahead in the months, years and decades to come.

Turning to this issue of iComply, we have **interviewed** CA Deepjee Singhal and CA Manish Pipalia**,** the founders of Sama Audit Systems & Software Private Limited, a company focused on providing software solutions to Indian Corporates for their internal audit and compliance needs. Given their twenty-five year experience in dealing with technology for Indian corporates we have sought their insights on the patterns they see in technology adoption and the imperatives for corporates to use technology in meeting their compliance needs to reduce, if not eliminate non-compliance risks.

Continuing our series in the **First of Firsts**, this month we trace the origin of preference shares to the 17th century in England where infrastructure companies use it for the first time to meet new emerging needs. From there, we have analysed the rationale for their current usage. Our other regular features –**Gist of Changes in the Companies Act** and the **Statutory Compliance 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 and as ever strive to improve the quality of everything we do.

Happy reading,

Shankar Jaganathan
Editor of iComply
September 5, 2017

Interview with CA Deepjee Singhal and CA Manish Pipalia, founders of Sama Audit Systems & Software Private Limited

1. **As experts in the field of internal audit with over twenty-five year specialization, how do you see the importance given to legal and regulatory compliances change over the years and why?**

   Legal and Regulatory Compliances have always been a top concern for the Board Members over the years. While a general assurance was acceptable earlier, there has been an increased emphasis over the years on legal and regulatory compliances. This has meant a more specific law based assurance. Non Compliances are being viewed seriously. While Compliance certificates are being obtained, there is a desire to understand more about the process behind the certification and its robustness.

2. **In the sphere of compliance audits, how do you determine the relative importance given to different laws like labour laws, environmental laws, customer protection acts, commercial laws and the Companies Act? Are there any obvious criteria you use to determine the relative focus in audit?**

   The relative importance while doing compliance audit is given to Commercial Laws, Labour Laws and the Companies Act. For Environmental Laws, unless specifically expected by the management that a technical review be done, compliance to filing of returns and audits as required are reviewed. Compliance to Customer Protection Acts are reviewed as a part of the Marketing and Sales audits and more specifically related to Grievance Handling processes.

   We look for the tone at the top for compliances. Generally where the management seek to adopt

aggressive interpretations of the law, organisations have a strong monitoring mechanism for compliances. The audit approach is to provide an assurance that the mechanisms are working as designed.

Where management seeks to adopt a zero tolerance to non compliances, a more rigorous and transaction oriented approach at providing assurances is followed. Timeliness of returns filing, adequacy of record maintenance particularly the evidences in support of the compliances like Challan, Registers, Signed Statements, Online confirmation of representations made and accuracy of calculations for the payments made are some of the specifics reviewed.

3. **Use of technology in the world of Internal Audit is wide spread now. Can you name a few prominent technologies that are used in internal audit and what were the triggers that prompted technology adoption over the years?**

While in the age of Main Frames, prioritising Internal Audit requirements was always difficult. To obtain relative independence from the IT, Desktop based Data Analysis Software like IDEA (Interactive Data Extraction and Analysis) was developed. Its adoption was largely in Government Sector and private companies with large volumes of Data. In the last 20 years there has been an extensive automation of business activities and explosion of Data as well. This has driven the extensive use of Data Analytics to perform audit on the entire population as compared to sampling.

The need for identifying control deviations near to real time is felt by a number of large organisations more so in the field of Banking. Continuous Auditing or Continuous Control Monitoring provides an ongoing insight into performance of controls using automated routines run at specified time intervals, generating exceptions that require to be reviewed and acted upon, escalating the exceptions not acted upon within defined cycle times and all of this available for review in Dashboards and reports.

Automation of the Audit Process Management including repository of work done, Issues reported and compliance of the recommendations with clear identification of the auditor and the reviewer. The key triggers for this has been stringent provisions of Companies Act, 2013 with respect to Audit, Internal Control and Fraud and Standards for Internal Audit as published by the Institute of Chartered Accountants of India and International Professional Practices Framework of the Institute of Internal Auditors, Inc., Florida, USA.

4. **Do you see any triggers or trends emerging in the sphere of technology usage for managing regulatory compliances in corporate India?**

In Corporate India, Boards and Management are seeking to ensure that there are no surprises on regulatory compliances while they are focusing on business. They are therefore looking at investing in Compliance Management Solutions which gives them the regulatory compliance status on a Dashboard as well an escalation mechanism to take corrective actions where required. Such Solutions are being implemented within the organisation but a number of organisations are also having the solutions on the Cloud. It is a big practice area for consulting and law firms who have inhouse developed solutions with elaborate checklists that are used to provide a compliance status to organisations. Such solutions are also offered to organisation for ongoing use by the Compliance team within the organisation.

5. **Can you name the top 3 best practices followed by companies that have effectively adopted new technologies?**

i. Timely intervention and corrective and preventive actions taken by the officials responsible directly based on exceptions identified.

ii. Use of Data Analytics for analysing compliance trends and identifying areas of strengths and weaknesses.

iii. Creating an elaborate repository of checklists updated by the officials directly responsible for complying with the regulatory provisions while performing their duties with supporting evidences and an electronic sign off.

Preference Shares: The Birth of a Hybrid that straddles both Equity and Debt instrument

By Shankar Jaganathan

Context:

Preference shares is a financial instrument that answers a specific need of companies trying to raise finance but cannot or does not want to do it in the conventional way. The conventional method for a company to raise finance is by issuing equity shares that requires the investor to participate in the risk-reward variances or by resorting to borrowing by providing the lenders the safety cushion of investors' capital.

The Concept

Preference shares is a hybrid instrument that contains both the risk-bearing element of an equity instruments and at the same time enjoy the safety cushion offered for a debt instrument. In the process of fusing these two elements, certain other features available in a pure equity instrument like unrestricted returns or in debt instruments like security is lost, a conscious decision considering the overall benefits obtained which is substantial.

Preference shares are treated like equity instruments by the regulators as they are legally a residual liability, i.e. the holders of preference shares are only entitled to a share in the residue left after paying off all the fixed liabilities like borrowings and creditors. At the same time equity shareholders treat preference shares as a debt-like instrument as they have limited participation in decision making and do not share in the gains of the company beyond their contracted return.

The First of First

The challenge in accurately estimating cost of large infrastructure projects is not new and has existed since beginning. Canal construction and railway companies, the first of large infrastructure projects undertaken by commercial financers faced this problem. Companies they floated in the 17th and 18th century in England ran out of funds due to unforeseen engineering complications. Where initial capital raised was often exhausted without completing the project, their promoters faced the challenge of mobilizing additional finance, as new equity investors did not want to be placed on par with the existing equity shareholders as took on higher risk by coming in at a later point of time. The second alternative of raising money though borrowing was legally not permitted as companies of that period could not borrow more than 1/3 of their equity capital.

The need to limit borrowings by companies that enjoyed limited liability was a measure introduced to protect the interest of lenders to companies that was introduced in the 1690s in England.

With the conventional options to raise finance blocked ingenious promoters of canal and railway companies invented preference shares that overcame this limitation. Preference shares appear as capital to the regulators as they are residual liability bearing the risk and reward of the company. But for the investors, preference shares take the nature of debt instruments as they are paid in full prior to the equity investors getting even a rupee back.

Rationale for Preference Shares

1. Preference shares are primarily used in capital intensive industries like banks and non-banking finance companies, where legal provisions are in place to limit the extent of debt that these companies can take. In banks these limits are called capital adequacy norms.
2. Preference shares are also used where investors are not directly involved in running the business and want the primary decision makers to hold equity shares thereby providing a level of safety net for their investment.

Companies Act, 2013

Section 43 of the Act defines a preference share as shares issued by a company that has the first right to receive either dividend and/or repayment of capital on liquidation before the equity shareholders. The Act also provides for preference shares both with fixed return or preference shares with variable returns colloquially called participating preference shares.

Preference shares are financial instruments used to meet temporary needs of a company and have fixed tenure with a defined redemption date. This is the reason that section 55 of the Act does not permit issue of irredeemable preference shares. Further section 55

also limits the duration of redeemable presence shares issued to less than 20 years.

As redemption of preference shares will result in dilution of security for lenders due to reduction in net-worth, the Act specifically provides for redemption of preference shares only from the proceeds of fresh issue of shares or out of the profits of the company. If the profits of the company are used to redeem the preference shares, an amount equal to the value of shares is required to be transferred to Capital Redemption Reserve, which has the effect of retaining the net-worth without any erosion.

Current Usage

Preference shares can take many forms–redeemable and irredeemable preference shares, convertible and non-convertible preference shares and participating and non-participating preference shares. Irredeemable preference shares is not permitted by law, while all other forms of preference shares can be used today.

Preference shares are today used to meet the debt-equity requirements stipulated by the regulators, also called capital adequacy norm in banking and financial services industry. Further, Compulsorily Convertible Preference shares are today used by angel investors and venture capitalists to bridge valuation differences by linking the conversion value to a future realized financial matrix like revenue multiple, EBIDTA multiple or Profit multiple.

Compliance Calendar

September 1st to 5th	GSTR-1 for July, 2017
September 6th to 10th	GSTR-2 for July, 2017
September 7th	TDS return for August, 2017.
September 11th to 15th	GSTR-2 for July, 2017
September 15th	Pay PF contribution for August, 2017
September 16th to 20th	GSTR-1 for August
September 20th	Professional Tax payment
	GSTR 3B for August, 2017
September 21st	ESIC monthly deposit
September 21st to 25th	GSTR-2 for August, 2017
September 25th	PF Return for August, 2017
September 26th to 30th	GSTR-3 for August, 2017

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

- **16.08.2017**
  - Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017

    Insertion of Regulation 9A - This regulation provides the manner, in which the creditors not covered under regulations 7 (operational creditors), 8 (financial creditors) and 9 (workmen and employees) may submit the proof of claim as creditor in Form F to the interim resolution professional or resolution professional in person, by post or by electronic means.
    Their claims can be substantiated by records in an information utility or documentary evidence demanding satisfaction of claim or bank statements of the creditor showing non-satisfaction of claim or an order of court or tribunal that has adjudicated upon non-satisfaction of claim.
    Substitution in Form A of the Schedule - the amendment requires the financial creditors to submit their proof of claims by electronic means only but permits all other creditors to submit the proof of claims in person, by post or by electronic means.
    Addition of new Form F – this form shall be filed for submission of proof of claim by creditors (other than financial creditors and operational creditors) under Regulation 9A.

  - Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017
    Regulation 9A, revision to Form A and addition of Form F is added to the Fast Track Insolvency process as is the case in normal process detailed above.

- **23.08.2017**
  The National Company Law Appellate Tribunal (Amendment) Rules, 2017

  MCA vide notification has added sub rule (2) and (3) to Rule 63 of NCLAT by virtue of which the Central Government, the Regional Director or the

Registrar of Companies or Official Liquidator can authorize an officer or an advocate not below the rank of Junior Time Scale or company prosecutor to represent their interest.

- **24.08.2017**
  - Commencement of provisions of sub-section (8), (9) and (10) of Section 212 of the Companies Act, 2013

    Effective date for the commencement of sub-sections (8) (9) and (10) of section 212 of the Companies Act, 2013 is notified as August 24th, 2017.

  - The Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017

    The rules for arrests in connection with investigation by SFIO is detailed in the new rules prescribed and notified with effect from 24th August 2017.

  - The Insolvency and Bankruptcy Board of India (Employees' Service) Regulations, 2017

    This regulation relates to Employees of Insolvency and Bankruptcy Board that details the process of appointment, probation, termination of service, record of service, seniority, promotion, pay and allowances and such other relevant provisions for the employees of the Insolvency and Bankruptcy Board of India, and is notified with effect from 24th August 2017.

- **31.08.2017**

  Designation of Special Court for the State of Bihar

  The Central Government with the consent of the High Court of Patna has designated the Court of Additional District and Sessions Judge, Patna as the Special Court for the State of Bihar to ensure speedy disposal of trials in cases where the offence is punishable with imprisonment of more than two years.

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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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