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Editorial

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

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

East India Company, 1763 CE: The Birth of Corporate Plutocracy–From One Shareholder One Vote to One Share One Vote



By Shankar Jaganathan

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Press Release



PwC and CimplyFive to launch Secretarial Automation Tool, BLISS. Read more…

BLISS Enhanced

On November 4th, BLISS is enhanced by adding seven new features:

1. Migrate to India
2. Two Factor Authentication
3. Password reset reminder
4. Refined Directors View
5. Parameter based Company law compliances
6. Meeting Scheduler
7. Provision to create Calendar based Action tracker

Read more…

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Editorial

The festival of lights came early this year in October brightening our business prospects. Our traction with corporate subscribers increased significantly, even as our relationship with PwC took a firmer footing, as their press release got wide publicity providing us with a wider reach and strong endorsement.

The business environment is also turning more conducive to our business, with increased focus on compliance and governance dominating the headlines. On October 5th, the Uday Kotak Committee on Corporate Governance submitted its recommendations, which as it confessed is evolutionary in nature and not revolutionary. The new recommendations are more of detailing existing governance concepts rather than introducing new ones.

Given the widespread discussions and deliberations that these recommendations have evoked, we have in this issue interviewed Prof. Vasanthi Srinivasan, IIM Bangalore, who is a member of this committee to gain insights into the deliberations that went into their recommendations.

Continuing our series in the **First of First,** in this issue we have traced the origin of 'one share, one vote' and how it replaced the 'one-shareholder, one vote' the then prevailing practice. 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
November 4, 2017

Interview with Prof. Vasanthi Srinivasan, IIM, Bangalore and Member of Uday Kotak Committee

1. The Uday Kotak Committee on Corporate Governance has submitted its report on October 5th. As a member of this esteemed Committee, what are the 3 recommendations that you think will make the most dramatic change to Corporate Governance in India?

The three key recommendations that have the potential to change corporate governance scenario in India are:

i. Separating the role of the Chairman and Managing Director in listed companies thereby providing an inbuilt check and balance against concentration of power in the board room,
ii. Multiple recommendations to strengthening the institution of Independent Director, again a move to diffuse power and provide for participative decision-making, and
iii. Greater transparency in the working of the boards with disclosures about the number of meetings to be held and attendance requirements, defined induction process for directors and disclosing the Board skills matrix.

2. Given the large number of recommendations that the Committee has come up with, can you list a few recommendations that had unanimous support from the beginning and a few that required detailed deliberations before the unanimity was reached?

As you have rightly pointed out, the Committee had to deliberate on several issues for strengthening governance. Many topics were discussed over multiple meetings. We went back and revisited the group's views many times. The diverse representation on the Committee ensured that members could provide data to substantiate their viewpoint. Members who had been a part of critical events pertaining to different aspects of Governance in the recent past and their insights and experiences helped shape the final recommendations. There was enough opportunity for members to share their views and substantiate it at the next meeting by revisiting the issue. I think this process

enabled all of us to recalibrate our thought, gain more insights and make decisions that allowed multiple perspectives to be incorporated.

A highlight of this Committee was the role of Mr. Kotak. As Chairman, in the very first meeting he laid down the ground rules and finalized the meeting schedule enabling all the members to participate to the fullest. There was consensus that strengthening corporate governance in Indian listed companies is a long term agenda. Further, long term value creation and protection of shareholders were critical to build sustainable corporations.

3. The concept of having an explicit agreement to share unpublished price sensitive information between the company and certain promoters and significant shareholders is a novel concept. Can you please share if this concept was inspired by a precedent seen in some other country or is this an Indian innovation?

On this issue, the Committee deliberated at length since the business reality in India is so different from the rest of the world, as promoter/promoter groups have significant shareholding. This often blurs the lines of control and information flow in those companies. Our focus was on regulating this information flow and making it legitimate. We called it the "green channel" in the Report. The absence of such green channels to legitimately get information and the lack of a framework around it, has led to a "grey zone" that gets examined post-facto when something has gone wrong. The Committee's recommendations was to make the current informal practice more formal, transparent and well-regulated arrangement by imposing obligations on promoters to safely receive and hold the information. I think this is an innovation from the Committee.

4. While treating information provided by whistle blowers as confidential is understandable, what is the rationale for treating an applicant for leniency on par with a whistle blower when it comes to treating the information provided by them as confidential?

We have consistently observed in India that there are very few structural mechanisms for persons who are in the know of wrong doing to come forward and disclose. Drawing on the precedence of the Competition Commission India which has powers to grant leniency to cartel members if they disclose information, the Committee felt that such a leniency program would enable detection of violations and correcting the lacunae.

5. What would you say have been your key learnings being on this Committee, within the larger context of the work you do?

The complexity of the corporate landscape in India makes public policy decision making difficult. Our focus was on strengthening governance processes that would allow long term value creation for the firm and at the same time, ensure that shareholder interests are protected through diligence in the decision making process. Board diversity, strengthening the institution of independent directors, enhancing the scope of Board committees, expanding the disclosure norms and enabling the board to independently develop a long term strategic vision for the corporation were all intended to help the companies move in this direction.

However, the implications at a firm level will be different. Different companies will require to focus on different elements of the recommendations. A "One size fits all" approach does not work. Therefore there is a need for Board leaders in companies to possess a governance mind-set rather than a compliance mind-set.

6. How do you see the recommendations of this Committee implemented on the ground?

The biggest challenge in making a difference on the ground is in the quality of implementation. I had the privilege of doing a study on "Business Responsibility and Corporate Conduct" in the Health care and Pharmaceuticals sector in 2013. Being on this Committee, brought back to me quite clearly the challenges of policy implementation in India. Regulatory frameworks conceptualize a single India, but in terms of enforcement mechanisms there are wide differences across the country. The differences in the socio-cultural attitudes and perceptions of the promoters/professional managers in the different regions and across sectors on corporate governance is also varied.

Further, more questions need to be answered like, what is the minimal level of compliance that should be

prescribed as non-negotiable? How should enforcement institutions be strengthened to monitor and enforce the regulations? What would be the accountability structures of the different agencies to enforce this minimal regulatory requirement across different regions?

East India Company, 1763 CE: The Birth of Corporate Plutocracy–From One Shareholder One Vote to One Share One Vote

By Shankar Jaganathan

Context:

Voting as a desired decision making method in groups is unquestioned today. The right of all participants to have a say in the decision is based on the belief collective wisdom is superior to individual intelligence. However there are variations in voting system that can significantly alter this basic premise of superior collective wisdom like specifying eligibility criteria to vote and the weightage given to each participant's vote.

Initial voting systems were participative democracies where all the eligible voter had the right to cast their vote on all decisions and all their votes had equal weightage. Later the filter of eligibility criteria to voting in civic decisions based on property ownership was introduced on the belief property ownership gave the individual a higher 'stake' in the decision making by ensuring that they invest sufficient thought and care before casting their vote. While property ownership for voter eligibility looks ill-conceived and disrespectful of human dignity today, the idea that only stakeholders should cast their vote is firmly entrenched and uncontested. This is the logic why democracies all over the world give voting rights only to their citizens in electing their political representatives to legislatures, parliaments or senates.

In the corporate world too, collective decision making went through a similar thought process. All shareholders of a company were eligible to vote in the Shareholders meeting for taking collective decisions. Further to ensure sufficient thought and care was exercised by the shareholders in casting their vote, the requirement of minimum qualification shares was specified in the form of a specified 'face' or 'par' value of shares..

All the shareholders who held minimum qualifications shares were entitled to vote and all votes cast had equal weightage. For the first two hundred years of corporate history, this practice continued, till it was changed by weighting each vote cast by the number of shares held by the voter bring in the concept of one share, one vote.

The Concept

Corporations or companies from the earliest time had provided for one vote to each shareholder for taking decisions in the Shareholder meetings. This practice prevailed till the second half of the 18th century, when it was misused, thereby exposing its limitations. Modification arising from this misuse led to the adoption of the current practice where one share has one vote and a shareholder has as many votes as the number of shares they own.

To illustrate how one share one vote works, if there are ten shareholders in a company with nine shareholders holding five shares each and the tenth shareholder holding 55 shares, the vote of the tenth shareholder would out-weight the vote of the other nine. However, if one shareholder one vote system was in place the 'will' of the nine shareholders would have prevailed.

The First of First

After the battle of Plassey in 1757, fought by Siraj-ud-daula against Mir Jafar and the East India Company, Mir Jafar was installed as the Nawab of Bengal by the company officials led by Robert Clive. The Company for supporting Mir Jafar got financial compensation for providing the British army and navy for the battle. In addition Robert Clive for his pivotal role was given the title of Nawab, and he privately negotiated a *jagir* giving him an income of £30,000 annually.

Around the same time, the East India Company leadership in London was troubled by the wide spread corruption among the company officials in India. Laurence Sullivan, the Chairman of the company decided to act against it, by stopping the payment of the privately negotiated *jagir* of £30,000 to Robert Clive in 1763 as unjustified. This decision sparked a boardroom tussle between Robert Clive and Laurence Sullivan for the control of the company.

In the shareholder meeting that followed, where shareholders holding a minimum of £500 face value of shares were eligible to vote, Robert Clive divided his

holding among 220 individual shareholders with eligibility to vote. Not to be outdone, Sullivan too replicated the strategy. In the March 1763 shareholders meeting, 1400 shareholders, which was about three time the shareholders who voted in the earlier 1758 meeting participated. Robert Clive was defeated in the battle of the 'Proxy war'.

The advent of 'proxy' shareholders exposed the futility of one shareholder one vote, resulting in the current system of providing one shareholder one vote. What is more important, this concept of one-share one-vote has been further modified with a company having multiple classes of shareholders with varying degrees of participation in the decision making process of their company.

Rationale for One Share One Vote

The initial concept of one shareholder one vote was based on the principle collective wisdom is superior to individual intelligence. The concept of qualification shares as a criteria for voting in shareholder meetings was introduced on the belief higher investment in a company would translate to better decisions as higher thought and care is infused in the decision making process.

Once the concept of qualification share is accepted, the next logical step is one share one vote, as higher investment would automatically translate to more thought and care resulting in better decisions. Further as the most direct cost of a wrong decision by the shareholders is loss of capital, it was logical that the shareholders who had the maximum to lose should have the loudest voice in shareholder decisions.

Companies Act, 2013

Section 47 of the Act is the operating section that mandates one-share, one-vote today. However this system of one-share, one-vote is modified by permitting companies to have shares with variable votes subject to specific conditions.

Section 43 permits a company to have shares with or without voting rights and to have differential voting rights. Companies to be eligible to issue shares with differential voting rights should have a consistent track record of profit, should not have defaulted in payment of loans, interest or dividend on preference shares in addition to being authorized to issue shares with differential voting rights by their Articles of Association and by their shareholders in a meeting. Further the quantum of shares with differential voting rights should be less than 26% of their paid up capital including the shares with differential voting rights.

Current Usage

The concept of one share one vote is now further modified in start-up companies funded by Angel Investors and Venture Capitalists in the form of veto rights, euphemistically called Affirmative rights, on specified critical decisions. In consideration of investments made at substantial premium, entrepreneurs enter into Shareholders Agreements with their VC/PE investors containing clauses that give the investors the right to overrule decisions of the majority shareholders. This in a way goes beyond one share one vote by considering the share premium paid by the investor in granting them their veto rights.

Compliance Calendar

November 10th	GSTR-3 for July, 2017
November 7th	TDS Payment for October, 2017.
November 15th	Pay PF contribution for October, 2017
	ESIC monthly deposit
November 20th	Professional Tax payment
	GST Payment for October, 2017- GSTR 3B
November 25th	PF Return for October, 2017

Gist of regulatory changes in Companies Act, 2013 in the month of October, 2017

❖ **05.10.2017**

➢ The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017

Sub-Regulation 1A is inserted under Regulation 38: The Insolvency and Bankruptcy Board of India has inserted this sub-regulation to provide that the resolution plan under insolvency process of Corporate Persons shall include a statement regarding the manner of dealing with the interests

of all stakeholders, including financial creditors and operational creditors.

- The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017

  Sub-Regulation 1A is inserted under Regulation 37: This sub-regulation is inserted in the Fast Track Insolvency process as is the case in normal process detailed above.

❖ **13.10.2017**

The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017

Second proviso is substituted under rule 6(1): It provides that the shares of the companies on which dividend are unpaid or unclaimed for a period of seven consecutive years shall be transferred by October 31, 2017, if the seven-year period is complete or about to end during the period September 7, 2016 to October 31, 2017.

Third proviso is inserted under rule 6(1): It is clarified that the companies transferring shares to Investor Education and Protection Fund (IEPF) should follow the procedure for transmission of shares.

Clause (d) is substituted under rule 6(3): It provides that a new share certificate in accordance with Form No. SH-1 for each shareholder shall be issued in favor of IEPF.

Sub-rule 13 is inserted under rule 6: It provides that in case of delisting of shares, winding up or dividend due on shares, such amount shall be remitted to the specified account of IEPF Authority maintained in the Punjab National Bank.

Sub-rule 14 is inserted under rule 6: It provides that the IEPF Authority shall file report of non-compliance by companies with the Central Government.

Sub-rule 2A is inserted under rule 7: This rule requires the companies which have deposited the amount in IEPF to nominate a nodal officer to communicate with the IEPF Authority.

Proviso inserted under rule 7(3): IEPF Authority shall reject Form IEPF-5, used to claim shares transferred to IEPF, after giving a further period of 30 days to the claimant to furnish documents, if documents relating to claims from IEPF is not furnished within 90 days of filing IEPF-5.

Proviso inserted under rule 7(7): IEPF Authority shall reject Form IEPF-5 after giving an opportunity to the claimant to furnish rectified documents, if application for claiming from fund is incomplete or not approved and rectified document is not furnished within 90 days of such communication by the Authority.

❖ **16.10.2017**

Clarification on transfer of shares to Investor Education and Protection Fund (IEPF) Authority vide General Circular No. 12/2017

• MCA has clarified that October 31, 2017 shall be the due date for transferring the shares of the companies on which dividend are unpaid or unclaimed for a period of seven consecutive years, if the seven-year period is complete or about to end during the period September 7, 2016 to October 31, 2017.

• The DEMAT Account details of IEPF Authority opened with National Securities and Depository Limited (NSDL) and Central Depository Services Limited (CDSL) is provided.

• This circular requires the companies to provide NSDL and CDSL information of the shareholders whose shares are transferred to DEMAT Account of IEPF Authority.

• MCA has entered into a MOU with NSDL and CDSL by which the charges for maintaining and record keeping pertaining to the shares transferred to the DEMAT accounts of IEPF Authority are reduced.

• MCA further clarifies that no amount other than amount on delisting of shares, winding up or dividend due on shares shall be remitted to the bank account of IEPF Authority maintained in Punjab National Bank.

❖ **18.10.2017**

➢ The Companies (Registered Valuers and Valuation) Rules, 2017

The Rules relating to eligibility, qualifications, registration of Valuers, recognition of Registered Valuers Organisation and cancellation or suspension of certificate of registration or recognition is issued by MCA. These rules will be effective from the date of publication in the official gazette. As on date the rules have not been notified in the official gazette.

➢ Commencement notification of section 247 of the Companies Act, 2013

The provisions of section 247 relating to valuation by registered Valuers has been notified by MCA with effect from October 18, 2017.

❖ **23.10.2017**

➢ Delegation of powers and functions by Central Government to Insolvency and Bankruptcy Board of India (IBBI) vide Notification

By this notification the powers and functions vested in Central Government under section 247 of the Companies Act, 2013 is delegated to IBBI with respect to registration, recognition, cancellation or suspension of certificate of registration or recognition and other ancillary matters related to Valuers.

The notification also provides that the delegation of powers may be revoked if the Central Government is of the opinion that it is necessary to do so in the public interest.

➢ The provision of Section 247(1) is substituted vide the Companies (Removal of Difficulties) Second Order, 2017

This Order is issued to provide clarity and remove ambiguity by expanding the provisions of regulations overseeing the Valuers of different asset groups having separate set of Valuers including individual Valuers and Organizations.

❖ **25.10.2017**

Clarification regarding approval of resolution plans under section 30 and 31 of the Insolvency and Bankruptcy Code, 2016 vide General Circular No. IBC/01/2017

Answering specific queries from stakeholders the Insolvency and Bankruptcy Board of India has clarified the following:

- The resolution professional shall confirm under section 30(2)(e) that the resolution plan received from the resolution applicant is in confirmation with the provision of the law for the time being in force and if the plan is approved it can be implemented legally.
- There is no requirement to obtain approval of shareholders/members during the process of submission, approval and implementation of the resolution plan.
- The resolution plan approved by Adjudicating Authority under section 31(1) shall be binding on all the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

❖ **26.10.2017**

Relaxation of additional fee and extension of last date of filing E-Form AOC-4 XBRL vide General Circular No. 13/2017

By this Circular MCA has extended the last date for filing E-Form AOC-4 XBRL without payment of additional fee to March 31, 2018 for companies whose financial statements for FY 2016-17 are prepared either mandatorily or voluntarily in accordance with Indian Accounting Standards.

❖ **27.10.2017**

Relaxation of additional fee and extension of last date of filing E-Form AOC-4, AOC-4 XBRL and corresponding AOC-4-CFS vide General Circular no. 14/2017

By this Circular MCA has extended the last date for filing E-Forms AOC-4, AOC-4 (XBRL non-IndAS) and

corresponding AOC-4-CFS for the FY 2016-17 without payment of additional fee up to November 28, 2017.

BLISS Enhanced

On November 4th, BLISS is enhanced by adding seven new features:

1. **Migrate to India:** We are migrating BLISS from the U.S. to India. This will enable faster response from BLISS and increase your productivity.
2. **Two Factor Authentication:** We have introduced a two factor authentication, with a One Time Password (OTP) being sent to your registered email id for your enhanced security. This OTP will be valid for a period of 24 hours and you can use it repeatedly each time you log in within the 24 hours.
3. **Password reset reminder**: Every ninety days, your will get a mail reminding you to reset your password for enhanced security. Please note, this is only a reminder and it does not prevent you from using BLISS with your old password.
4. **Refined Directors View**: We have significantly refined the Directors View to enhance their productivity. Directors now will not have access to creating Agenda and Minutes sections but will be able to see all the records from the records page itself.
5. **Parameter based Company law compliances:** All the nineteen compliances for public companies and the nine compliances for private companies stipulated in the Companies Act, 2013 based on parameters of the company is now automated in BLISS for enhanced compliance by reflecting their compliance status in the Risk Management Dashboard.
6. **Meeting Scheduler:** We have introduced a module for Meeting Scheduler that enables the company to plan for board, shareholder and sub-committee meetings for the full year and promote increased participation.
7. **Provision to create Calendar based Action tracker:** Based on user requirements shared with us, we have created the new feature for users to create their own Action Tracker without linking it to any specific meeting or resolution. This would enhance utility of BLISS significantly.

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

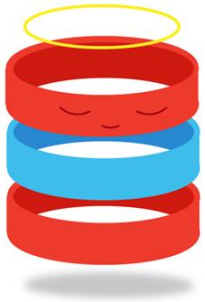
www.ca2013.com: Company law at your fingertips. A free to use website, integrating Companies Act with Rules, Notification, Orders and Circulars that is real time and online

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