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Editorial

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Interview with Mr. Jayachandran, Director-Technical of eSecurity Audit



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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…

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

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

Independent Directors on Corporate Boards: A concept that emerged as late as in 1990s



By Shankar Jaganathan

The concept of Independent Directors (IDs) on Corporate Boards is a novel concept that evolved in the mutual funds industry in 1940s and entered in the corporate world only in 1990s. Read more…

CAIRR- Join our Millionaire Club



CAIRR is a free to use website that provides real time updated Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 at your fingertips.
http://ca2013.com/

BUT: BLISS Useful Tips



BUT #1 A Stich In Time Saves Nine
BUT #2 Find A Needle In Your Haystack

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Editorial

It is December once again and New Year is just around the corner and with it we have seeded a new initiative, **BLISS User Tip** (**BUT**). Every Tuesday, we will publish a one pager containing one user tip that could significantly enhances BLISS users' productivity. **BUT** is intended to supplement our BLISS User Guide and help users leverage all BLISS features.

CAIRR, our free to use website providing integrated view of the Companies Act, 2013 that is updated every day at 10 AM has now moved into mainstream with over 1000+ users logging in each week day and with cumulative views crossing a million pages. We thank you all for using this site and recommending it to your professional colleagues. With your endorsement and recommendation, we hope to double our user base by March 2018.

Given the wide range of cloud based applications available and the deep-lying concerns about security among internet users of business application, we have in this issue interviewed Mr. Jayachandran, Director-Technical of eSecurity Audit, an information security consulting and audit firm to get his insights into the state of digital security, precautions to be taken by firms using cloud software applications and measures to be taken by SaaS (Software as a Service) service providers to assure their users on information security.

Continuing our series in the **First of First,** in this issue we have traced the origin of Independent Directors on the Corporate Boards and how it emerged as the holy grail of corporate governance. Our other regular features –**Gist of Changes in the Companies Act and IB Code** 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
December 5, 2017

Interview with Mr. Jayachandran, Director-Technical of eSecurity Audit

1. Every day we hear instances of digital assets coming under virus attacks and data being stolen. Over the last decade, has the digital world become safer or is it more dangerous?

Internet to the digital world is like globalization to humanity. Both have brought benefits to humanity that far exceed their costs. In the internet era, with passage of time, the digital world is increasingly becoming more dangerous due to attackers who have developed immense capability to lure the naïve or careless users to great harm. The flip side of this development is the rapid advance made in digital protection technologies. For the knowledgeable users who take adequate protection, all the benefits of the internet world is available at a minimum cost, which often is taking the trouble to follow basic instructions of do's and don'ts in their internet interactions.

2. Given the choice between using desktops/ laptops vs. Cloud to store files and data, which is a better options from the point of cost, data safety and data loss?

The rapid penetration and acceptance of cloud is primarily due to the tangible benefits that the users are realizing from using popular cloud based applications like Gmail, Facebook and Whatsapp among others. While there is no upfront investment required for using cloud based applications, users have to make a considered decision in their choice of cloud service providers after considering the security measures put in place by them.

3. How safe is the data stored on a cloud? What are the three signs that users should look out for that can make the data in a cloud more secure?

The Satyam, Shivam, Sundaram aspects for data storage in the Cloud world is Access monitoring, Authentication and Encryption. In layman terms it translates to who has access to your data on the cloud, how are they identified and for the unauthorized user the kind of puzzle they have to solve to get at the data is key. Fortunately development in cloud security on all the three fronts have kept pace with the skills of

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hackers keeping the data stored on the cloud reasonably safe.

4. **For a small to medium business, how profitable is it to use cloud vs. desktops and laptops? Does it change for a larger organization as compared to a smaller organization?**

   Cloud infrastructure is ideal for a small to medium business as they can save significant upfront investment in addition to eliminating the gestation period to start usage. Further they can access world class applications which otherwise may not be available to them. In contrast, a large business by virtue of its size and defined business processes may need customization that is expensive. Small to medium businesses by adapting their business processes a lot faster and more easily to the standard cloud application negate or blunt this limitation.

5. **SaaS as a business model for software applications is gaining momentum. What do you think SaaS providers have to do to win the confidence of their clients?**

   Satyam, Shivam, Sundaram is the answer, i.e effective Access Control, Authentication and Encryption. While the three are critical for all cloud applications, SaaS application providers have to demonstrate it to their client base. Access control by having the users set their own password, including resetting their password when they need to, Authentication by using two-factor authenticators like OTPs or biometric validation and using Industry standard Encryption systems appropriate to the criticality of the data stored are essential to win clients.
   Further, with large and multi-national companies security certifications like SOC (System and Organization Controls) provided by CPAs and ISO/IEC 27001 go a long way in winning client confidence.

Independent Directors in Corporate Boards: A concept that emerged as late as in 1990s

By Shankar Jaganathan

The concept of Independent Directors (IDs) on Corporate Boards is a novel concept that evolved in the mutual funds industry in 1940s and entered the corporate world only in 1990s. Considered lesser of the two evils, IDs were taken on the Corporate Board to strengthen corporate governance. Despite being the holy cow of corporate governance, this concept is yet to be proven in practice.

The Concept

Board of Directors have fiduciary powers that they exercise for the benefit of all shareholders. This exercise of fiduciary powers require an objective view of the issues to enable decision making keeping the interest of all shareholders. While the concept is clear in thought, this objectivity was often missing in practice, resulting in corporate scandals. To overcome this limitation, the concept of IDs, who do not have a beneficial interest in the company, was introduced to protect the interest of shareholders; an idea not dissimilar to the concept of appointing diabetes patients to work in a sweet shop to prevent consumption of sweets.

An ID is defined as one who does not have any:

- Shareholding in the company (with time it is changed to material shareholding in the company), or
- Deals with the company as a customer, supplier, lender or borrower,
- In both the above two cases, either-
  - Himself, or
  - Through any of his relatives, or
  - Through other legal entities in which they have a beneficial interest.

The First of Firsts

The seed for the concept of IDs, emerged in the aftermath of the 1929 US stock market crash, which is also called the Great Crash, when Dow Jones index fell from 381 in September 1929 to 41 in July 1932, a fall of 89%. In this crash, investors in mutual funds who had invested over $3 billion in the year 1929 itself, paid a massive price.

In a bid to review the stock market and protect the investors, the 1932 Security Exchange Act was passed, which is based on the principle of transparency, i.e. information flowing to the shareholders is the best protection that can be offered to an investor. However this principle did not meet the needs of Mutual Fund investors who were in the nature of a supplier to the Fund and not shareholders of the Mutual Fund which is owned and managed by Asset Management Companies.

Considering this reality, The Investment Companies Act, 1940 was enacted to regulate mutual funds. To protect mutual fund investors, the representation of affiliated parties, i.e. promoters of the Asset Management Companies in the Board of Mutual Funds was limited to less than 60%. The balance 40% would be made up of 'unaffiliated directors', i.e. unaffiliated to the promoters of the Asset Management Company.

Explaining the need for unaffiliated Directors the Act used the term independent for the first time with reference to Directors. While unaffiliated Director was not defined, the act defined its antonym, an affiliated Director. Affiliated directors were investment advisors or officers or employees of the Mutual Fund. It was only in 1970 the term ID was clearly defined.

The 1970 amendment to the Investment Companies Act, 1940, defined an interested person. An interested person was defined 'to include persons who have close family or substantial financial or professional relationship with the investment companies, their investment advisors, principal underwriters, officers and employees.' Anyone other than an interested person was an independent person who was qualified to become an independent Director.

The concept of IDs moved from mutual funds to the corporate boards over a 20 year period nudged on by corporate scandals that highlighted highly biased decisions against the interest of non-promoter shareholders in particular and all other stakeholders in general.

Late 1960s and early 70s saw a spate of corporate scandals in the United Kingdom that led to introspection to find solutions to improve corporate governance practices. Comparative studies of corporate governance practices in continental Europe, where corporate scandals were less evident, formed part of the alternatives considered. The committee appointed by the Confederation of British Industries under the Chairmanship of Lord Watkinson in 1973 recommend appointment of non-executive directors to the Corporate Boards.

In 1974, the Labor government appointed a committee under the leadership of Lord Bullock to inquire into the system of industrial democracy. In their review they found in about 25% of the companies there was not a single non-executive director, and in 39% of the companies there was only one non-executive director. In their report issued in 1977, Lord Bullock recommended the '2x+y' formula for board composition. This formula envisaged equal number of representatives from the shareholders and the employees each, and a smaller number of IDs to break any deadlock.

In 1980s as the Conservatives under the leadership of Margaret Thatcher assumed power in the UK. It is possible that the threat of mandated employee participation proposed by the earlier labor administration in the Corporate Boards prompted the formation of 'Promotion of Non-Executive Directors' (PRO-NED) initiative in 1982. The London Stock Exchange, Confederation of British Industries, the Bank of England, and other financial institutions jointed hands in the PRO-NED initiative to push the door open for non-executive directors to enter the Boardroom.

The landmark event that shifted the focus from Non-executive Directors to IDs was the recommendation of The Cadbury Committee in 1992, which was constituted triggered by a string of corporate scandals in UK involving among the other the bank, Poly Peck, Coloroll plc, Maxwell and Bank of Credit and Commerce International (BCCI).

The Cadbury Committee recommended the constitution of an Audit Committees of the Board of Directors with a minimum of three independent, non-executive directors to stem corporate scandals, thereby placing IDs in their Corporate Board chairs.

Rationale for IDs

As the Board of Directors have a fiduciary responsibility towards all shareholders, objectivity in decision making is essential. Hence the concept of IDs who have no beneficial interest in any decision taken by the company and therefore can be objective is the rationale for IDs on the corporate boards.

Companies Act, 2013

Section 149 of the Act requires all pubic companies with paid-up share capital of more than Rs.10 crores, or turnover of Rs.100 crores or borrowings in excess of Rs.50 crores to have a minimum of two IDs. In the case of listed public companies, one-third of the board shall consist of IDs.

Current Belief

IDs are seen to be the remedy for all corporate governance ills; higher the number of IDs on a Board, more assured is the cure. A belief yet to be proven!

Compliance Calendar

December 7th	TDS Payment for November, 2017.
December 15th	Pay PF contribution for November, 2017
	ESIC monthly deposit
December 20th	Professional Tax payment
	GST Payment for November, 2017- GSTR 3B
December 24th	GSTR-4 (Jul-Sep, 2017)
December 25th	PF Return for November, 2017
December 31st	GSTR-1 (Jul-Oct, 2017)

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

- **03.11.2017**

  Designation of Special Court for the state of Tamil Nadu

  The Central Government with the concurrence of the Chief Justice of the High Court of Judicature at Madras, the Additional Court and Additional Court of City Civil Court, Chennai is designated as special court for the state of Tamil Nadu except districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur to ensure speedy disposal of trials in cases where the offence is punishable with imprisonment of more than two years.

- **6.11.2017**

  The Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2017

  Annexure II A is inserted – A taxonomy for Companies that are preparing their financial statements in accordance with the Companies (Indian Accounting Standards) Rules, 2015.

  Annexure II – A taxonomy for Companies that are preparing their financial statements in accordance with the Companies (Accounting Standards) Rules, 2006.

  Further, Housing Finance Companies are exempt from filing financial statements in XBRL format, while companies engaged in power sector are now required to file financial statements in XBRL format.

  Form AOC-4 XBRL is substituted – The form is substituted to include details of Specified Bank Notes (SBN) held and transacted during the period from 8th November 2016 to 30th December 2016.

- **7.11.2017**

  - The Companies (Accounts) Amendment Rules, 2017

    This Rule substitutes the Form AOC-4 to include details of Specified Bank Notes (SBN) held and transacted during the period from 8th November 2016 to 30th December 2016

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

    Sub-regulation 3 is inserted under regulation 38 - It provides that the mandatory contents of the resolution plan should contain details of the resolution applicant and other connected persons.

    Sub-regulation 2 is substituted under regulation 39- It provides that the resolution professional shall submit to the committee of creditors all resolution plans which comply with the requirements of the Code and regulations

made thereunder and also to include details on preferential transactions, undervalued transactions, extortionate credit transactions, fraudulent transactions and the orders, if any, of the adjudicating authority in respect of such transactions.

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

Sub-regulation 3 is inserted under regulation 37 and sub-regulation 2 is substituted under regulation 38: This sub-regulation is inserted and substituted respectively in the Fast Track Insolvency process as is the case in normal process detailed above.

- **23.11.2017**

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017

On November 23, 2017 an ordinance to amend Insolvency and Bankruptcy Code, 2016 was passed to prevent unscrupulous persons from misusing or vitiating the provisions of the Code. The ordinance aims to strengthen Insolvency Resolution Process by prohibiting certain persons from submitting a resolution plan which might adversely impact the credibility of the Code.

Gist of amendments-

1. Definitions of 'Resolution Applicant' and 'Resolution Plan' is modified to provide more clarity.

2. Section 25(2)(h) of the Code is amended to enable the resolution professional to specify eligibility conditions while inviting resolution plans from prospective resolution applicants keeping in view the scale and complexity of operations of business of the corporate debtor to avoid frivolous applicants, with the approval of the Committee of Creditors.

3. Insertion of section 29A that makes certain persons ineligible to be a resolution applicant who are undischarged insolvents, willful defaulters, disqualified Directors.

4. Amendment of section 30 (4): The Committee of Creditors to approve a Resolution Plan after considering its feasibility and viability, and other requirements specified by IBBI.

5. A proviso is added in section 35 (1)(f) to restrict liquidator from selling immovable or movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.

6. Insertion of section 235A which provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

7. IBBI is empowered to make regulations with regard to provisions of section 25(2)(h) and section 30(4).

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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

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