iComply

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Thirteen Regulatory changes in Companies Act, 2013, SEBI(LODR), 2015 and Insolvency & Bankruptcy Code, 2016 was made in the month of March. View the list…

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FIRST OF FIRST:

Prohibition of Insider Trading: Creation of a New Right in Society

By Shankar Jaganathan



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Companies Act, 2013 integrated with LODR in www.ca2013.com



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What's New in BLISS?

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Cimplyfive's Release

CimplyFive released its **3rd Secretarial Audit Report: Trends & Practices in 2017** on March 23, 2018. Read more…

Editorial

Come April, we eagerly look forward to the new financial year. As we turn four, our anticipation runs high with our expanded product range starting from **BLISS** (Board Leaders Integrated Software Solution) our initial version, to what we have today– **BLISSPLUS** for large companies with enhanced features, **BLISSLISTED** for listed companies with LODR compliances integrated, **BLISSDOCs** an app for directors to access board documents on mobile or tablet that is available both on Android and IOS.

We are happy to note that our extended product range is very well received by the corporates and professionals alike. We have every reason to believe that 2018-19 will be the year where large number of corporates will realize the benefits of BLISS.

March 2018, was also a month of significant developments. We integrated our free to use website www.ca2013.com with SEBI regulations like LODR, Takeover Code and Prohibition of Insider Trading Regulation. Within the first week of integration, we have seen increased traffic, which we believe can translate to greater traction with Corporates as they can see our demonstrated domain competence.

CimplyFive's 3rd Secretarial Audit Report, Trends & Practices in 2017 which was released on March 23rd, has received very good feedback from many readers. We are personally thankful to Mr. Balasubramanian, the former Chairman of Company Law Board and Dr.Mamta Binani, Past President of ICSI and other readers who wrote to us commending the report. Your encouraging words renews our energy and enthusiasm.

In our series the **First of First** we have captured the events that led to prohibition of insider trading which was a prominent feature of stock markets for centuries and how it shaped the investment climate by creating a level playing field for all investors by placing them on par with the promoters and management of the company.

Continuing our series **CALL FOR CHANGE,** in this issue we address the need for predictability in introduction of regulatory changes that can significantly promote the Ease of Doing Business in India by preparing business entities to anticipate and be prepared for change. Our other regular features –**Gist of Changes in the Companies Act** and **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
April 5, 2018

A CALL FOR CHANGE:

Making Regulatory Changes Predictable: Heralding A New Predictable Regulatory Change Era

Introduction:

Difficult, the opposite of easy, has many attributes of which unpredictability is one of them. The difficulty of company law in addition to being voluminous with 470 sections and 41 rules is also the pace at which it is rapidly changing. In the financial year 2017-18, company law not only underwent a substantial amendment, but there were 104 changes made consisting of clarifications, notifications and orders.

These changes were dispersed right though the year, with April and November seeing the least number of changes at six each and March seeing the largest number of changes at thirteen. While there were days in which multiple changes were effected, all the 104 changes were effected on 70 different days.

Can the changes in the company law and its related Act, Insolvency and Bankruptcy Code, be made more predictable? Will this make the already complex company law easy by having a predictability to the timing of these changes.

ISSUE

As already highlighted in the introduction, fiscal year 2017-18 saw 104 changes effected on 70 different days. These changes, to say the least, are not predictable as they are spread across all the months of the year, in addition to being dispersed across all days of the week, detailed in the table placed below:

Day of the week	% of changes made by Number	% of changes made by the day of issue
Monday	14%	15%
Tuesday	20%	17%
Wednesday	26%	26%
Thursday	22%	24%
Friday	14%	16%
Saturday	2%	1%
Sunday	2%	1%
Total	100%	100%

The unpredictability of the changes made in the company law, adding to the number of changes made, makes the already voluminous Act more difficult.

Solution

Given that most of the changes are not time sensitive, being in the nature of effective date announcement, extension of time for compliance or providing clarifications, can there be a fixed schedule where MCA announces changes on a predetermined day of the week to ensure that these changes made get the attention they deserve and save the time of professionals dealing with corporate law.

Like the Union Budget and the RBI's monetary policy that are announced on a predefined date each year, can MCA announce changes to the companies act on a predefined day of the week, say a Thursday or Friday, which gives enough time for the professionals to digest the change and make suitable provisions to effect it in their work.

Announcement of change by MCA on a pre-defined date of the week will ensure that the change gets adequate attention of all the stakeholders, including the financial media thereby making corporate law not only well communicated but also predictable, thereby easier to implement.

Prohibition of Insider Trading: Creation of a New Right in Society

In the twenty first century prohibition of insider trading is an accepted fact in corporate law, although it is enforced with varying effectiveness in different stock markets. However, this was not always the case. At the beginning of twentieth century, and in the first three decades that followed, insider trading was not only rampant but almost the norm in most stock markets.

The great crash of 1929 in the US stock markets and the resultant slump in the US economy led to introspection resulting in the prohibition of insider trading, using the principle of 'abstain or disclose'. A person with price sensitive information was required to abstain from trading or disclose the information to public before they could become eligible to trade in their stocks.

The Concept

Markets are an effective instrument and sustainable means to promote trade only when there is fair play. A critical element of fair play involves providing a level playing field for all buyers and sellers. If any one category of buyer or seller gains at the cost of others, the market itself becomes unsustainable and fails requiring external intervention in the form of regulations and rules that need enforcement.

As the unfair benefits of information asymmetry becomes evident in stock market, investors stay away leading to sustained depression and contraction of the economy. Private information held by a class of investors being prevented from trading in stock market created a new right for the uninformed investors by providing a level playing field as information is now made available to all investors who are interested and eligible to trade in a stock.

In the evolution of society prevention of private information from being used in share trade for the benefit of the uninformed investor is a major event as is the third category of rights to be protected by society globally. It follows the right to life, where no one in society is permitted to take the life of another and right to property, where stealing or robbing are punished.

The First of First

Until the Great Crash of 1929, insider trading was rampant in stock markets. One of the frequently quoted instance of insider trading relates to Robert Clive, the Chief of East India Company in India buying his company's stocks for £165 in April 1766 after his company got the right to collect revenue in Bengal following their victory in the Battle of Plassey. Within a year when the share price appreciated due to the public knowledge of the benefits derived by the company from this right, he sold his shares at £223 almost doubling his wealth.

However, it was only in 1930s the economic consequences of insider trading was recognized when the stock market crash of 1929 triggered a severe and prolonged economic depression. By 1933, the US GDP had contracted by 46%, from $103.8 billion in 1929 to $56.4 billion in 1933. In addition, one in four workers in the US was unemployed. To revive the economy number of steps were taken by the government including the one to build the confidence of investors. US enacted the Securities Exchange Act 1934 that established the Securities Exchange Commission to enforce the Securities Exchange Act, 1933.

Securities Exchange Act, 1933, was established for the primary purpose of insuring and maintaining fair and honest market, which among other things prohibited insider trading. Section 16 (b) of the Act, provided for recovery of profits earned by an officer or director of the company who unfairly used information by trading in the shares of the company. Within a few years in 1942, a new rule 10b-5 was enacted that made insider trading a prosecutable offense.

In the second half of the 20th century as US markets gained prominence and attracted investors from world over, other countries too followed the US lead and enacted similar securities laws to create a fair and efficient stock markets to attract capital and infuse capital into their economy to galvanize growth. India too followed suite in 1992 with the creation of SEBI.

Rationale for Prohibition of Insider Trading

A market is a place where buyers and sellers meet to discover and decide the price. With every change in demand and supply, the price changes. For commodities where no one individual controls the demand or supply, markets are an efficient price discovery mechanism. However, where share prices are concerned, the management team and promoter shareholders of the company have an unfair advantage as they have access to information that can influence the demand and supply of shares, thereby creating information asymmetry resulting in an unfair advantage which is at the cost of the uninformed investor.

Hence preventing any person with price sensitive information that is not publicly available from trading in stocks till such time the information is made publicly available creates a level playing field. This is called the principle of 'abstain or disclose'. With time, the essence of this principle evolved into its more positive interpretation as 'Fair Disclosure' thereby capturing the spirit behind the regulation of creating a level playing field.

Companies Act, 2013

Section 195 of the Act contained the provision pertaining to Prohibition of insider trading of securities. However, this section has been omitted by the Companies (Amendment) Act, 2017 that came into effect from February 9, 2018. In India Prohibition of Insider Trading is now regulated by SEBI (Prohibition of Insider Trading) Regulations, 2015.

Current Usage

As reported in SEBI's Handbook of Statistics 2016, between April 2010 and December 2016, a period of 81 months, SEBI took up 936 cases of investigation, of which 124 were cases of insider trading. It also reported that in 82% of insider trading cases the investigation was completed. However, the instances of successful prosecution and amount of penalties levied on insider trading cases was not reported.

On a different note, in the US, SEC reported for fiscal year 2015-16 548 cases of enforcement action across all aspects including Insider trading and it obtained judgement and orders totalling more than $4 billion in disgorgement and penalties.

Compliance Calendar

April 10th	GSTR-1 (Feb 2018): Monthly return for registered persons with aggregate turnover of more than Rs. 1.50 crores
April 15th	Pay PF contribution for March, 2018
	Submit Corporate Governance Report to the Stock Exchanges
April 20th	Professional Tax payment
	GST Payment for March 2018 - GSTR 3B
April 21st	ESIC monthly deposit
	Submit Shareholding Pattern with the Stock Exchanges
	Statement of Grievance Redressal Mechanism
April 25th	PF Annual Return
April 30th	Certificate from Practising Company Secretary under regulation 40 (9) of SEBI (LODR), 2015

	Fees and other charges to be paid to the recognized stock exchange(s)
	TDS Payment for March 2018.
	Professional Tax Annual Return

Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of February, 2018

- **08.03.2018**
  - The Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018

Sub-rule 2 and 3 is inserted to provide that, the companies that have filed their financial statements and other documents with the Registrar in XBRL format under this rules or the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, shall continue to file in the same format even if they are subsequently not falling under the classes of companies that are mandated to file in XBRL format.

- **21.03.2018**
  - The National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018

The Central Government has notified the rules relating to terms and conditions of service for the Chairperson and Members of National Financial Reporting Authority, encompassing details of composition of Authority, appointment, resignation, removal, inquiry procedure for misbehavior or incapacity, term of office, vacancy, salary and allowances and such other relevant provisions.

  - Enforcement notification

MCA has notified with effect from 21.03.2018, the provisions of section 132(3) and 132(11) of the Companies Act, 2013 pertaining to the constitution of National Financial Reporting Authority consisting of a Chairperson, members, secretary and employees.

- **23.03.2018**
  - The Companies (Incorporation) Second Amendment Rules, 2018

MCA has amended the rules relating to Reservation of name which is required to be made through the web service available at www.mca.gov.in by using form RUN (Reserve Unique Name), that may either be approved or rejected by them. By this amendment provision is now made where:

i. application can be made for two alternate names in a single form, and
ii. Re-submission of the name reservation application can be made within fifteen days after rectifying the defects if any in the earlier form submitted.

- **26.03.2018**
  - SEBI Circular on Investor grievance redress mechanism – new policy measures

SEBI is required to put in place a 'Complaint Review facility' under SEBI Complaints Redress System (SCORES) w.e.f., August 01, 2018, to enhance investor satisfaction by facilitating review of the compliant within 15 days from the closure of the compliant in SCORES, if the investor is not satisfied with the redressal.

  - Insolvency and Bankruptcy Board of India (Employees' Service) (Amendment) Regulations, 2018

IBBI has omitted Regulation 14 of the Insolvency and Bankruptcy Board of India (Employees' Service) Regulations, 2017 pertaining to the pay, allowances and other benefits to the employees of IBBI as employees on deputation or otherwise.

- **27.03.2018**
  - IBBI (Information Utilities) (Amendment) Regulations, 2018 w.e.f., 01.04.2018

IBBI has amended Regulation 42 to substitute the words National Company Law Tribunal Rules, 2016 with the words National Company Law Appellate

Tribunal Rules, 2016. Further, in Form A after item 5 PART II has been added.

- IBBI (Insolvency Professionals) (Amendment) Regulations, 2018 w.e.f., 01.04.2018:

a. Regulation 3(3) is substituted: It provides for the syllabus, format, qualifying marks and frequency of the Limited Insolvency Examination shall be published on the website of the Board at least three months prior to the examination.

b. Regulation 5 is substituted: The substituted provision provides for individuals with qualifications like completion of Limited Insolvency Examination, pre-registration educational course from Insolvency Professional Agency approved by the Board, successful completion of the National Insolvency Programme or the Graduate Insolvency Programme to be eligible for registration as Insolvency Professionals.

c. Regulation 7(2)(ba) and (bb) is inserted: It provides that registration as Insolvency Professional shall be subject to additional conditions such as completing continuing professional education and not to outsource any duties and responsibilities under the code, except those specifically permitted by the Board.

d. Regulation 12(1) is substituted: It provides for certain administrative, financial and functional criteria to be recognised as Insolvency Professional Entities.

e. First schedule pertaining to Code of conduct for the insolvency professionals and Form A in second schedule, which is an application for registration as an insolvency professional, are amended.

- IBBI (Liquidation Process) (Amendment) Regulations, 2018 w.e.f., 01.04.2018:

Regulation 2 (ea) is inserted: A new clause is inserted to expand the definition of Liquidation cost to include liquidators fee, fees paid to professionals appointed by liquidators, costs incurred to verify the claims from stakeholders and interest paid on interim finance.

Regulation 3(1) is amended: It provides that a person shall not be appointed as liquidator if he is the secretarial auditor of the corporate debtor.

Regulation 32(c) is inserted: The Liquidator is now allowed to sell a corporate debtor as a going concern.

- IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 w.e.f., 01.04.2018:

a. Explanation to regulation 33 is substituted: It provide an inclusive definition for the 'expenses' to includes the fees paid to interim resolution professional, Insolvency professional and other professionals and such other expenses incurred by interim resolution professional.

b. Explanation to regulation 34 is substituted: It provide an inclusive definition for the 'expenses' to includes the fees paid to resolution professional, Insolvency professional and other professionals and such other expenses incurred by resolution professional.

c. Regulation 34 A is inserted: It provides that the interim resolution professional or resolution professional shall disclose item wise cost incurred in the insolvency resolution process in the manner as required by the Board.

d. Regulation 35 A is inserted: It provides that the resolution professional shall identify the prospective resolution applicant within 105th day from the insolvency commencement date.

e. Form A for public announcement of the commencement of insolvency resolution process of a corporate debtor is amended by adding to new rows of information to be provided.

f. Form B (Proof of Claim by Operational creditors except workmen and employees), Form C (Proof of claim by financial creditors), Form D (Proof of claim by a workman or an employee) Form E (Proof of claim submitted by authorised representative of workman and employees), and Form F [Proof of claim by

creditors (Other than financial creditors and operational creditors) is substituted to provide that instead of affidavits and verification only a declaration and verification shall suffice.

- **28.03.2018**
  - The Companies (Indian Accounting Standards) Amendment Rules, 2018

The Central Government in consultation with National Advisory Committee on Accounting Standards have hereby amended 24 Indian Accounting Standards (Ind AS) in order to make it consistent with the International Financial Reporting Standards (IFRS) w.e.f., April 01, 2018.

  - Further extension of last date for filing E-form AOC-4 XBRL vide General Circular No. 01/2018

By this Circular MCA has further extended the last date for filing E-Form AOC-4 XBRL without payment of additional fee from March 31, 2018 to April 30, 2018 for companies whose financial statements for FY 2016-17 are prepared either mandatorily or voluntarily in accordance with the Companies (Indian Accounting Standards) Rules, 2015.

  - Further extension to the Condonation of Delay Scheme, 2018 vide General Circular No. 02/2018

By this Circular MCA has further extended the Condonation of Delay Scheme, 2018 from March 31, 2018 to April 30, 2018 for those companies that have defaulted in filing their financial statements or annual returns with the Registrar.

CimplyFive's 3rd Secretarial Audit Report: Trends & Practices in 2017



Secretarial Audit Report: Trends & Practices in 2017 carries an in-depth analysis of the Secretarial Audit Reports of companies that form part of S&P BSE 500 companies. The findings are reported under three major heads: findings on Secretarial Audit Reports, compensation of Company Secretaries and concentration of audits among Secretarial Auditors.

Some of the key findings in the report are:

- Of the 482 reports issued, 92 (19%) had qualifications with the balance 390 (81%) reports being clean reports. Compared to 2016, the percentage of clean reports remains same i.e., 81%. However, in absolute terms, the number of clean reports increased from 335 in 2015 to 387 in 2016 and in 2017 to 390 reports.
- In 2017, there is a marginal increase of 1% in average compensation paid to CS, from Rs.56.68 lakhs to Rs.57.30 lakhs. This is at variance with the substantial increase of 14% in average compensation observed in 2016 from Rs.49.61 lakhs in 2015 to Rs.56.68 lakhs. The highest compensation was of Rs. 1113.16 lakhs and the lowest was at Rs.3.00 lakhs.
- The top five ranked Secretarial Auditors conducted 78 audits as compared to 76 in 2016 and 72 audits in 2015. The top ranked Auditor, Ms. Parikh & Associates Mumbai, conducted 19 audits.

Click here to download the entire report.

What's New in BLISS?

BLISS (Board Leaders Integrated Software Solutions) is updated with six new features to enhance productivity, ease of use and enhanced security. The features added are:

1. Preview and Edit Function: Users will have the provision to see Agenda of Board meetings as a single document and make edits or comment on these documents, is put back into the database. The User can, at their option, create multiple versions of the document and have the benefit of viewing the changes made, with the option to either accept or reject the change.

2. Automated DIR-12 form filler for appointment of Directors: The details of a director being appointed is captured at the time of finalizing the Agenda itself, which will enable the following to be auto filled/generated:

- DIR-2 for generating the Consent Letter from the Director
- The Draft Appointment for the Appointment of Director to be auto generated
- Update the Register of Directors and KMP
- DIR-12 Form to be filed with the MCA for appointment

3. Search function optimized: The search function in our E-repository module is significantly enhanced by including in the purview of search the attachments to the Board Agenda and Minutes which are created using a word processor or spreadsheet or pdf files created using OCR based scanning.

4. Register of Members refined: Part B of the Register of Members auto programmed to display subscription/allotment/transfers in chronological order irrespective of the sequence in which it is entered.

5. Start-up Company: Based on the user identifying their company as a Start-up company in the master creation segment of BLISS, exemptions provided to the start-up company for compliance will be enabled to ensure their Dashboard indicators are in conformity with the prevailing relaxed regulations for start-ups.

6. Mail Delivery Notification: For Agenda and Minutes circulated using the email facility in BLISS, the mail delivery status for both successful delivery and delivery failure is prominently displayed now to indicate the status of mails sent. This would enable the user to resend the mails where a delivery failure is indicated.

Companies Act, 2013 integrated with LODR in www.ca2013.com

A two-way integration between the Companies Act, 2013 and SEBI regulations like Listing Obligations Disclosure Requirements (LODR) 2015, Prohibition of Insider Trading Regulations (PIT), 2015 and Takeover Code 2011 to our free-to-use Company law website www.ca2013.com. To view the website, Click Here

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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