iComply

Editorial

June 2018 saw us cross a critical milestone. Our free to use website www.ca2013.com that provides an integrated view of the Companies Act, 2013, IB Code and LODR crossed 2500 subscribers who have signed up to receive updates and 2 million pages views since its launch. Read more…

A CALL FOR CHANGE:

Filling Forms, No Longer Just A Clerical Task: Who Should Prepare MBP-1 for Directors?



While a task can be delegated, the responsibility or consequence arising from that task can never be, as the delegator pays the price for its non-performance or wrong-performance. 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…

Gist of Regulatory Changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of June, 2018

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

FIRST OF FIRST:

The Need for Cash Flow Statements: Demystifying the Profit & Loss Account



By Shankar Jaganathan

(*this article is the third and final part of a trilogy that traces the origin of the three elements of financial statements- the balance sheet, the profit and loss account and the cash flow statement)*

Financial Statements consisting of the three- Balance Sheet, Profit and Loss Account and the Cash Flow Statements, form the core segment of corporate communication to stakeholders with financial interests. Read more…

BUT: BLISS Useful Tips for the Month

BUT#26: **BLISS provides ready to use meeting agenda notice**

BUT#27: **BLISS allows creation of user-defined, customized agenda items**

BUT#28: **All your secretarial records mailed to you at the click of a mouse**

BUT#29: **Know the Details of Returns filed with MCA in the previous Financial Year**

What's New in BLISS?

1. Introduction of a new module in BLISS for entities which are not registered under the Companies Act, 2013
2. Enhancement in Circular Resolution module
3. Maintain proof of delivery for mails sent from BLISS to recipients in the CC list
4. Get alert while sending Agenda notice using BLISS e-mails

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June 2018 saw us cross a critical milestone. Our free to use website www.ca2013.com that provides an integrated view of the Companies Act, 2013, IB Code and LODR crossed 2500 subscribers who have signed up to receive updates and 2 million pages viewed since its launch. It took us 776 days to reach the first million pages view and only another 220 days to reach the second million.

With your continuing patronage and advocacy of this site, I am hopeful that we will reach the third million within 100 days. But our goal is much more. We want to have more than 10,000 subscribers and 10,000 page views a day. To realize it we are initiating a survey to seek your feedback and help us make www.ca2013.com more useful and productive to you.

In our series the **First of First** we have captured how cash flow statements, the third of the three parts in a financial statement emerged in 1860s to measure the quality of profits as the profit and loss account only measures the quantity of profit.

Continuing our series **CALL FOR CHANGE,** in this issue we address the need for having MBP-1 prepared by the Directors themselves, with company secretaries only assisting them in the process and having a process of certification by the Directors to ensure that this change is implemented. This we believe will go a long way in protecting the interests of both the Directors concerned and their Company. 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
July 5, 2018

A CALL FOR CHANGE:

Filling Forms, No Longer Just A Clerical Task: Who Should Prepare MBP-1 for Directors?

While a task can be delegated, the responsibility or consequence arising from that task can never be, as the delegator pays the price for its non-performance or wrong-performance. This point needs reiteration especially in the case of MBP-1, where Directors give the details of the companies and firms in which they are interested-in for it to be recognized as a related party. Given the current climate of stringent regulatory enforcement in corporate law today, any company or firm that is missed out in this form has major implications, as it will result in violation of sections 184 and 188.

For the Director who signs an incomplete or incorrect statement, the penalty as per provisions of section 184 (4) is imprisonment which may be extended to one year or with fine which may be extended to Rs.1 lakhs or both. Further under section 188 the Company is also subject to penalties for violation of related party transactions specified in Section 188 of the Companies Act, 2013 which deals with related party transaction. This stringent penal provisions for violation, is as detailed here:

1. For unlisted companies -fine of a minimum of Rs.25,000 which may extend to a maximum of Rs.5 lakhs,
2. For listed companies- Imprisonment for a term which may extend to one year or monetary penalty which is the same as for an unlisted entity, or with both

ISSUE

More by convention, many Company Secretaries in filling up MBP-1, a form that lists out all the entities in which the director has an interest have been performing the job of a personal secretary as it requires complete knowledge of all the activities of the director. Despite their good intent and desire to help, they could be causing serious problems to the individual director and the company due to their knowledge being incomplete or not up to date.

Added to this, when a competent person presents a document for review and signature, the director may also not be giving it the attention it requires resulting in incomplete statements being filed with the company, with a great cost to both the company and the individual director.

SOLUTION

Taking a cue from the CEO and CFO Certification of the financial statements required for a listed entity, the director signing MBP-1 form, could be required to give an undertaking containing the following assertions:

'I, (name of the director) hereby certify that

1. I have reviewed all the information contained in this form and confirm that it is updated reflecting all my investments and appointments, and
2. That there is no information that is missing which is required to be included in this form.'

Finally, a change in law will remain only on paper if behaviors do not change. The place where the behavior needs to start changing is that of the company secretaries who need to start acting as professional company secretaries and not as an extension of personal secretaries of their Directors.

THE FIRST OF FIRST:

The Need for Cash Flow Statements: Demystifying the Profit & Loss Account

(*this article is the third and final part of a trilogy that traces the origin of the three elements of financial statements- the balance sheet, the profit and loss account and the cash flow statement)*

Financial Statements consisting of the three- Balance Sheet, Profit and Loss Account and the Cash Flow Statements, form the core segment of corporate communication to stakeholders with financial interests. The three can be compared to a still photograph, a video film and a slow-motion replay of the video film.

Like a still photograph, the balance sheet is at a point of time, on a given date. On the other hand, the profit and loss account and the cash flow statements, like video films are for a given duration, which can be for a month, a quarter or a year. When the action is very fast and rapid, as in a fight or dance sequence, a good director shows it in slow motion for the audience to appreciate the nuances. Likewise, the Cash Flow statement is the profit and loss account played in slow motion shorn of all special effects or judgement. It helps a stakeholder appreciate the true business performance shorn of the accountants' judgement.

Like in the world of photography, the three came chronologically one after another- Balance Sheet the first, followed by the Profit and loss account and finally the Cash flow statement.

THE CONCEPT

Profit is not only the primary goal for a business but also an indicator of its sustainability. As business models evolved with higher investments in fixed assets, longer business cycles and trade based on credit, the presence of profit did not translate to the business generating surplus cash or liquidity in business.

While depreciation is a cost considered in profit and loss account that does not involve cash outflow, credit sales and unrealized income are counted as profits even though cash is not received for it. This mismatch can lead to serious business challenges even resulting in bankruptcy in extreme cases. Cash flow Statement is the instrument to explain the gap between profits and cash available in a business, thereby providing stakeholders with information on health of the business.

THE FIRST OF FIRST

Dowalis Iron Company was established about two hundred and fifty years ago in 1759 as a partnership with a capital of £4,000. Located in Glamorgan, South Wales, it had eight partners contributing its initial capital. A hundred years later the company faced fluctuating fortunes. In the face of economic recession, the company's profits swung from £30,882 in 1860 to a low of £3,059 in 1862, before bouncing back by earning a record profit of £36,572 in 1863.

The Factory manager happy with the record profits, was keen to further expand by investing in a blast furnace. To his shock, he found that the profit reported in the profit and loss account was not available in his bank account or his cash box. He was puzzled by this paradox of record profit earned and cash crunch faced. Investigating further into the matter, he prepared a 'Comparison Balance sheet' to find an answer to his

questions 'Where are the profits? Is the surplus in cash, or how does it appear?'

Comparing the yearend position of the two years 1862 and 1863, he discovered that the assets had increased by £81,814. A similar comparison of liabilities revealed that the liabilities had only gone up by £45,242. The gap of £36,572 was the same amount as profit. As he further analysed, he found the profit that he was searching for was not in the form of bank balance or cash, but it was an increase in finished goods. He realized that this would get converted into cash only when he delivered finished goods to his customers and they paid cash for it.

This Factory manager discovered the value of Cash flow statement by preparing 'Comparative Balance Sheet'. Around the same time in the United States, Illinois Central Railroad Company was also using the Cash flow statement to build confidence in its stakeholder.

This railroad company had a large constituency of multiple stakeholders, which included shareholders and bondholders located in both United States and Europe. Perhaps to communicate the effectiveness of their financial performance they began to include a summary of Cash transactions in the Annual report from 1857.

It took more than a hundred years for the US to mandate cash flow statement in 1971. But soon thereafter, the value of a cash flow statement was recognized when a profitable company went bankrupt; not any small company, but a billion-dollar giant, growing rapidly, which was the second largest retailer in the United States; the Wal-Mart of the 70s: W T Grant.

Profitability of WT Grant seen in its profit and loss statement was not reflected in its cash flow statement that reflected negative cash from its operations, a reflection of increasing credit sales and bloating inventory that reduced cost of purchase due to volume discounts obtained. Soon mandating cash flow statements spread to other parts of the world, with India mandating cash flow statement for listed companies only from the financial years commencing on or after April 1, 2001. It is only the Companies Act, 2013 that mandated cash flow statement for all companies other than one-person company, small company and dormant company.

COMPANIES ACT, 2013

Section 129 of the Act requires every company to place before its shareholders each year financial statements, which consists of a balance sheet as at end of that financial year, a profit and loss account and a cash flow statement for the financial year. Further, Schedule III of the Act specifies the format in which this statement is to be presented.

Among the general investing public, Cash flow statement is among the least used part of the financial statement as it neither reflects the wealth owned by the company or the quantum of profits earned. However, for the discerning investor, cash flow statement reflects the quality of profits. Where the quantum of profits is matched by operating cash inflows, profit is undiluted. But where the quality of profits is higher than operating cash inflow, the profit stands diluted with the gap reflecting the extent of dilution.

Cimplyfive's Offerings



BLISS is a Cloud hosted software that automates the routines, provides an e-repository, timely alerts and a real-time dashboard, all aimed at ensuring compliance and good corporate governance. By doing so, it also provides complete peace of mind to the Board of Directors and assurance to professionals by providing them with real-time compliance status with respect to the Companies Act, 2013.

BLISSPLUS

An advanced variant of BLISS with multiple premium features like Directors view page, Past records, Automated compliance tracker under the Companies Act, 2013.

BLISS LISTED

An advanced variant of BLISSPLUS for Listed Companies with Companies Act, 2013 and SEBI's LODR 2015 compliances integrated to provide a single point compliance automation, risk manager & e-repository for secretarial records.

BLISSDOCS

An Android/IOS Board app for Directors which provides secure access to Board documents on tablets/mobile phones, facilitates enhanced productivity making the Board meetings more efficient & effective.

CAIRR

CAIRR is a free to use website from CimplyFive that provides at your fingertips, an integrated view of the Companies Act, 2013 & SEBI Regulations. The site is updated daily at 10AM for changes in the Act & Regulations. For more details, visit www.ca2013.com.



Compliance Calendar

July 7th	TDS payment for June
July 10th	GSTR-1 (June 2018): Turnover exceeding Rs. 1.5 Crores or opted to file monthly Return
July 15th	Pay PF contribution for June, 2018
	ESIC payment for June.
	Annual statement of Assets and Liabilities for fy 2017-18 with RBI (applicable in case of company having foreign investment) i.e. FLA Return
	Filing of Quarterly Corporate Governance Report with Stock Exchanges
July 18th	GSTR-4 (Apr-Jun, 2018)
July 20th	GST Payment for June 2018 - GSTR 3B
	GSTR-5 (Jun 2018): Return for Non-Resident foreign taxable person
	GSTR-5A (Jun 2018): Return to be furnished by Online Information and Database Access or Retrieval (OIDAR) services provider to un-registered person or customers, on the GST Portal for the services provided from a place outside India to a person in India, other than a registered person
	Professional Tax payment
July 21st	Filing of Quarterly Shareholding Pattern with Stock Exchanges
	Filing of Statement of Investor complaints with Stock Exchanges
July 25th	PF Return for month of June
July 31st	GSTR-1 (Apr-Jun, 2018): Quarterly return for registered persons with aggregate turnover up to Rs. 1.50 Crores
	GSTR-6 (Jul'17 - Jun'18)
	Income Tax Return for the Assessment Year 2018-19

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

- **01.06.2018**

  The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2018

  Insolvency code is defined as the Insolvency and Bankruptcy Code, 2016.

  Regulation 15(2A) and (2B) is inserted: This regulation pertaining to Board of Directors and Committees of Board shall not apply to a company during the insolvency resolution process provided the role and responsibilities of the board of directors is fulfilled by the interim resolution professional (IRP) or resolution professional (RP).

  Proviso to Regulation 23(4) is inserted: The requirement for shareholders' approval and interested shareholders' abstaining themselves from voting on related party transactions shall not apply in case of approved resolution plan provided that the event is disclosed to the Stock exchanges within one day of its approval.

  Insertion in Regulation 24(5): A listed entity need not take a special resolution of its shareholders for disposing of its shares by which its cease to exercise control over the subsidiary under an approved resolution plan, provided the event is disclosed to the Stock exchanges within one day of the resolution plan being approved.

  Insertion in Regulation 24(6): A listed entity need not take a special resolution of its shareholders for selling, disposing or leasing more than 20 % of the assets of its material subsidiary under an approved resolution plan, provided that the event is disclosed to the Stock exchanges within one day of resolution plan being approved.

  Regulation 31A(9) is inserted: The provision for disclosure of re-classification of shareholders shall not apply to re-classification of existing promoter or promoter group of the listed entity which is as per the approved resolution plan subject to the

condition that the existing promoter and promoter group seeking re-classification does not remain in control of the listed entity. The details of re-classification along with the underlying rationale shall be disclosed to the Stock exchanges within one day of resolution plan being approved.

Regulation 37(7) is inserted: The provisions of regulation 37 and 94 pertaining to a draft scheme of Arrangement and scheme of Arrangement shall not apply to a restructuring proposal approved as part of a resolution plan by the Tribunal, subject to details being disclosed to the Stock exchanges within one day of resolution plan being approved.

Sub-Clause 16 is inserted in Schedule III: All the events related to CIRP of a listed corporate debtor under the Insolvency Code should be disclosed to the Stock Exchanges.

- **03.06.2018**
  Extension of one month for Steering Committee to submit its report
  Pursuant to request received from the Convener of Steering Committee on Corporate Social Responsibility (CSR), MCA has extended the date of submission of its report on review of CSR functioning and recommendations for uniform approach for CSR enforcement by one month w.e.f., 3 June 2018.

- **06.06.2018**
  - **NSE Circular on Compliance and Disclosure Requirements for Listed Companies undergoing Corporate Insolvency Resolution Process (CIRP)**
    Listed companies undergoing insolvency procedures are required to promptly inform the stock exchanges regarding events pertaining to Insolvency Resolution Plan (IRP) Process.

    All participants including the companies, Resolution professionals (RPs), Committee of Creditors and any other entities who may have access to and acquired any unpublished price sensitive information (UPSI) in the course of Insolvency proceedings shall maintain confidentiality of such information.

  - **The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018**
    The ordinance is passed to amend Insolvency and Bankruptcy Code, 2016 in order to balance the interest of various stakeholders in the Code, especially the interests of home buyers and micro, small and medium enterprises, promoting resolution over liquidation of corporate debtor by lowering the voting threshold of the creditors committee and streamlining provisions relating to eligibility of resolution applicant.

    All the 39 amendments made in the ordinance is integrated with the IB Code and is available in our site CAIRR (www.ca2013.com).

  - **Expression of Interest to be in the Panel under Insolvency Professionals (IP) to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018**
    The guideline invites expression of interest (EOI) from the IPs in Form A on or before 15.06.2018 for consideration of their names in Panel of Insolvency Professionals formed by the Board for appointment of IPs as Interim Resolution Professional (IRP) or Liquidator. The EOI received post due date will be summarily rejected.

- **12.06.2018**
  - **Circular on fee and other Expenses incurred for Corporate Insolvency Resolution Process (CIRP) vide Circular No. IBBI/IP/013/2018**
    Through this Circular, Insolvency Board clarifies the expenses that shall not be included under insolvency resolution process cost (IRPC) by Insolvency Professional (IP).

    The IP is directed to disclose fee and other expense for concluded CIRPs by July 15, 2018 and for ongoing and subsequent CIRPs within 7 days of demitting office to the Insolvency Professional Agency of which he is a member.

  - **Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018**
    MCA has revised Form DIR 3 (Application for Allotment of DIN) and Form DIR 6 (Intimation of change in particulars of Directors) to include process of availing DPIN for Designated Partners of LLP. Now DPIN can be obtained by filing Form DIR 3 and intimation of change in particulars of Designated Partner can be made by filling Form DIR 6.

- **13.06.2018**
  - **Commencement Notification**
    Central Government notified commencement of 5 sections that were amended by the Companies (Amendment) Act, 2017 with effect from 13/06/2018.

  - **The Companies (Management and Administration) Second Amendment Rules, 2018**
    Rule 13 is omitted. This eliminates the requirement for filing form MGT-10 which is filed for disclosing either increase or decrease of two percent or more in the shareholding position of promoters and top ten shareholders of the company.
    Rule 15(6) related to provision for filing special resolution passed with the registrar for approval to keep statutory registers and annual returns in a place other than Registered office of the Company is omitted.
    Explanation to Rule 18(3) which declares that the Extra ordinary general meeting shall be held at a place within India is omitted.

  - **The Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018**
    Rule 19(2)(h) is inserted to provide that the "Committee to advise on valuation matters" will also comprise of, the Presidents of the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.

  - **The Companies (Significant Beneficial Owners) Rules, 2018**
    This rule is notified to give effect to the amendments made by the Companies (Amendment) Act, 2017 pertaining to provisions of significant beneficial ownership and its declarations by such shareholders to the respective companies in which they are significant beneficial owners and further filing of such disclosures by the company to the Registrar in prescribed forms.
    The Company on receipt of above said declarations shall maintain details in register of significant beneficial owners in Form No. BEN-3.
    An application may be made by companies to the tribunal for restricting shares of such significant beneficial owner from being transferred, to suspend dividend and voting rights on such shares.
    These rules are not made applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alterative Investment Funds (AIFs), Real Estate Investment Trusts (REIT's) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

  - **Corrigendum to Commencement Notification No. S.O. 2422(E)**
    This corrigendum is issued to the commencement notification dated 13/06/2018 to provide that Clause (iii) of Section 21 of the Companies (Amendment) Act, 2017 pertaining to 'Declaration in respect of beneficial interest in any share', shall also be effective from 13/06/2018.

- **20.06.2018**
  SEBI vide circular dated June 20, 2018 has issued following directions for Listed companies and their Nomination and Remuneration Committees

  I. While considering a person for appointment as a Director, the Listed Company shall verify that the said person is not debarred from holding the office of Director pursuant to any SEBI order.

  II. While making Corporate Announcement, the Listed Company shall ensure that the Director being appointed is not debarred from holding the office of Director by virtue of any SEBI order or any other such authority.

  III. In case an existing Director is restrained from acting as a Director by virtue of any SEBI order or any other such authority, the Director shall voluntarily resign with immediate effect, failing which the listed entity shall initiate the process of removal of such Director.

- **28.06.2018**
  Establishment of the National Company Law Tribunal, Jaipur Bench at Jaipur vide Notification No. S.O. 3145(E)
  This notification amends the notification no. S.O. 1935 (E) dated the 01.06.2016, to shift the jurisdiction over State of Rajasthan from National Company Law Tribunal, Principal Bench and National Company Law Tribunal, New Delhi Bench which is located in New Delhi to Jaipur by establishment of a separate National Company Law Tribunal, Jaipur Bench at Jaipur with exclusive territorial jurisdiction over State of Rajasthan.

What's New in BLISS?

1. **Introduction of a new module in BLISS for entities which are not registered under the Companies Act, 2013:** This module will enable the user to store master information of the entity and store records financial year wise under different section heads. This module makes BLISS more comprehensive in its coverage.
2. **Enhancement in Circular Resolution module:** The user can use BLISS to mail Circular resolutions to their Directors for approval and also take extracts of the Circulation resolution either in Word or in Pdf format. This feature enhances the productivity of the Secretarial team.
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4. **Get alert while sending Agenda notice using BLISS e-mails:** BLISS alerts you when the date of notice and the date of sending e-mail is different, especially when the notice period is less than 7 days from the date of meeting. This feature makes BLISS more compliant by eliminating procedural non-compliance.

About CimplyFive

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



CAIRR

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