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Editorial

September 30th marks the end of the statutory deadline for holding AGM for companies, an event that marks the completion of a year in the life of a company that triggers the need to file the Annual Returns. Read more…

A CALL FOR CHANGE:

Diluting or Strengthening the Regulations? The Issue of Due Dates and Extensions



We saw significant changes in the corporate regulatory environment in the past few months.
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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, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of September, 2018

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

What's New in BLISS?

1. Autofill of Register of Members
2. Permanent Invitee module
3. Replicate entire Agenda for a meeting
4. Change in Registered Office
5. Removal of captcha.

Read more…

FIRST OF FIRST:

The Four Stages of Evolution in Equity Share Valuation: 2. Book Value Method- The Concept, Trigger and Limitations

By Shankar Jaganathan

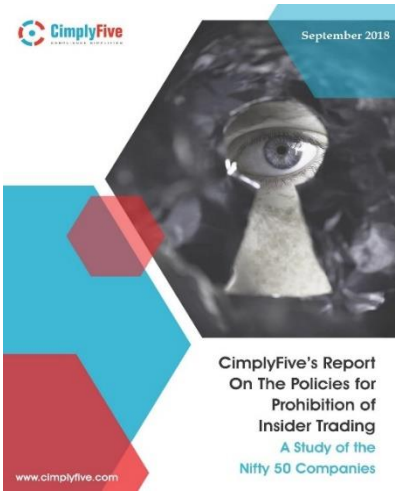


Large businesses and business intending to be large are organized as companies for they provide the triple advantage. Read more…

BUT: BLISS Useful Tips for the Month

BUT#39: BLISS provides an option to ascertain Directors availability for Scheduling Meeting
BUT#40: Convey Board Meeting with a Single Click
BUT#41: Update your Register of Members with a single click
BUT#42: Add Permanent Invitees for the Board/Sub-committee meeting

CimplyFive's Release



CimplyFive released its report on The Policies for Prohibition of Insider Trading.
Read more…

Editorial

September 30th marks the end of the statutory deadline for holding AGM for companies, an event that marks the completion of a year in the life of a company that triggers the need to file the Annual Returns. For the reflective company secretary, this is also an occasion to take stock of their compliances and identify their strengths and improvement areas. We wish all the company secretaries a compliant and stress-free year ahead, where they can invest adequate time to enhancing their company's profitability and sustainability.

A law is only as good as its enforcement. In our series **CALL FOR CHANGE,** we examine the impact of diluting penalties and extending due dates for statutory compliances on the regulatory environment in the country, as any extension of due dates or diluting penalties rewards the errant elements and penalize the law-abiding citizen and what could be done to strengthen the regulatory environment.

In our series the **First of First,** this month we have the second of our four-part article on the evolution of share valuation. In this article we describe the trigger, concept and limitations of the Book Value based valuation method. In the next two issues, we will cover Price Earnings multiples and valuing loss-making enterprises with potential to complete the four-part particle.

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 on 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
October 5, 2018

A CALL FOR CHANGE:
Diluting or Strengthening the Regulations? The Issue of Due Dates and Extensions

BACKGROUND

We saw significant changes in the corporate regulatory environment in the past few months. To name two of them:

- June 6 saw the introduction of BEN-1, a form to be filed with the company by individuals holding beneficial interest of 25% or more, and individuals exercising significant influence or control.
- July 5th saw the introduction of KYC-3 for Directors requiring all DIN holders to file a form with specific information which among others required the individual to authenticate their email ids and mobile numbers by receiving OTPs.

Both these regulatory measures were significant reforms introduced with the aim of preventing money laundering and promoting transparency in company administration thereby ushering in good corporate governance.

Despite its vital importance, in the both the cases, the initial due date for complying with these provisions were extended- in one case by a month and in another case indefinitely. This triggers a moot question -Are due date extensions a regulatory strengthening measure or do due date extensions dilute the regulatory environment?

ISSUE

In Indian corporate law, extension of due dates for compliance that have stiff penalties is more the norm, than an exception. Most years we see the due date for filing annual returns by companies extended, to the extent that this is seen as a routine feature and often planned for, leading to bunching up of returns around the due date resulting in the infrastructure limitations of the regulator being exposed.

In addition to penalizing the law-abiding citizen by getting them to defer their revenue generating activities and disclose their critical business details to their rivals earlier, back of envelop quantifications

show that the penalties the State forego by extension of due dates run to thousands of crores.

In the case of KYC-3, when it was initially announced on July 5th, August 31, 2018 was the due date for filing KYC-3 and a penalty of Rs.5000 was to be levied for filing this form after its due date. However, on August 21, i.e. 10 days before the due date for filing the form, this due date was extended to September 15th without any payment of penalty. Further this date has been extended to October 5th with payment of reduced penalty of Rs.500/-, i.e. 10% of the original penalty.

On September 16, reports from MCA indicate that 21 lakh DIN holders had not filed their KYC-3. At the initially mandated penalty of Rs.5000 for delayed filing, the nominal penalty foregone is Rs.1050 crores (21 lakhs x Rs.5000). Further, the cost incurred by the law-abiding citizens, who in this case number 12 lakhs who complied with the original mandate as specified, is ignored, if not taken for granted.

CONCEPT

A law is only as good as its enforcement. In law enforcement, the sanctity attached to due dates and penalties is an indicator of whether the regulatory environment is strengthened or diluted.

Discretion with the regulator for reducing penalties and extending due dates penalise the law-abiding citizens who take extra efforts to comply with law when it is announced, often at great cost to themselves and their business. Further, given that businesses are competitive, reducing penalties and extending due dates rewards the procrastinators, who get additional time to comply without paying the initially announced penalties and thereby penalizes the law-abiding citizen who dutifully complies and imposes a cost on their business for being compliant.

SUGGESTION

We believe ease of doing business is only the other side of the coin of having a strong regulatory mechanism for enforcing mandates. One cannot exist without the other. In a strong regulatory environment, law abiding citizens need to be rewarded for compliant behaviour and the errant elements penalized. Extension of due dates and dilution of penalties reward the errant elements and punish the law-abiding citizens. To promote a stronger regulatory environment, we suggest that extension of due dates and dilution of penalties be done only after giving the reasons for the same which should include the following:

- Reason for deferment (could be anyone of the three below)
    1. Due to natural disasters (like Chennai floods, Kerala floods etc.)
    2. Due to the inability to provide infrastructure / forms
    3. Any other, specify
- Penalty foregone by the deferment

This will not only ensure that compliant behaviour is rewarded but also promote a stronger compliance environment thereby paving the way for lesser regulations and promoting ease of doing business.

THE FIRST OF FIRST:

The Four Stages of Evolution in Equity Share Valuation: 2. Book Value Method- The Concept, Trigger and Limitations

By Shankar Jaganathan

Large businesses and business intending to be large are organized as companies for they provide the triple advantage of

- 'Existence at will' for they survive till their shareholders decide to dissolve them
- Limited liability enabling many unrelated investors to collaborate, and
- Transferable shares, providing liquidity to their shareholders without impairing the liquidity of the Company

A key ingredient that ensured the growing success of companies is the evolution in valuation of shares that permitted shareholders to sell and investors to buy shares without diluting any of the economic advantages of ownership.

The evolution of share valuation is episodic, marked by stock market bubbles and often a major scandal that highlighted the limitation of the valuation method used which burst the bubble. The first of the four methods is the Dividend Capitalization method that evolved in the 18th century, followed by the Book Value method of the 19th century and the Price

Earning Ratio of the 20th century. The 21st century saw the advent of dotcom/internet companies with long gestation periods that gave rise to the technique of valuing even loss-making entities with potential.

This is the second article in this series that captures the concept, the trigger and the limitations of the book value method. In the next two articles, the concept, trigger and limitations of the other two valuation methods that followed the book value method will be described.

The Concept

Equity shares represent ownership in the company and hence the value of all the equity shares issued by the company in equal to the value of all assets owned by the company less the liabilities owed by the company. Given this understanding, the value of a single equity share is equal to the net worth of the company divided by the number of equity shares. In cases where the company has issued preference shares, the net worth of the company should be reduced by the value of the preference shares issued to get the net worth that belongs to all the equity shareholders. Using this principle, the value of one equity shares is arrived at by dividing the net worth that belongs to all the equity shareholders by the number of equity shares outstanding.

The First of First

The advent of railways in 1840s was seen as a major technological revolution that would accelerate the pace of economic growth thereby ushering in a new era of prosperity. For the first time railway companies were actively traded in the US and London stock market with their share prices going up sharply. The fact that railway companies had a gestation period of few years before they generate revenue and profits posed a challenge to the investors who could not value its shares based on dividend capitalization method.

Some investors saw the equity shares of railway companies as a secured debt instrument, backed by the security of net assets owned by the company after its liability was paid-off. These investors compared the price at which equity shares of the railway companies traded with the book value per share of the company to conclude:

- if the share price was equal to the book value per share, the share is fairly valued,
- If the share price was less than the book value per share, the share was undervalued and a signal to buy, and
- If the share price was higher than the book value per share, the share was overvalued and a signal to sell.

As the book value method of valuation gained acceptance, a few promoters of railway companies misused it by having their company buy assets at inflated prices and diverting the padded price of assets to their own pocket Investor who blindly went by book value method to buy shares in these companies lost their money as the inflated assets did not deliver profits in line with their investment, thereby exposing its fallacy.

The deceitful methods used by promoters to inflate asset value had its inspiration in a similar practice followed in cattle trade in the US called the watered stock. In this scheme, rangers going to market to sell would feed their cattle with salt the previous day and deprive it of water. In the morning before going to market where the cattle were valued for their weight, the rangers would let the cattle drink water thereby increasing their weight and benefit from it at the buyers' cost.

Lessons Learnt

For companies that do not have a dividend payment track record, book value valuation is a good method, however it could be misused by unscrupulous promoters like in cattle trade by watering their stocks. Hence while using book value method, there is a need to supplement it with external validation of the asset values to arrive at fair value.

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

October 7th	TDS payment for September
October 15th	Pay PF contribution for September, 2018
	ESIC payment for September.
October 18th	GSTR-4 (Jul-Sep, 2018)
October 20th	GST Payment for September 2018 - GSTR 3B
	Professional Tax payment
October 25th	PF Return for month of September
October 31st	***Quarterly return for registered persons with aggregate turnover up to Rs. 1.50 Crores:*** GSTR-1 (Jul-Sep'17, Oct-Dec'17, Jan-Mar'18, Apr-Jun'18, Jul-Sep'18)
	Turnover exceeding Rs. 1.50 Crores or opted to file monthly Return: GSTR-1 (Jul, 2017 to Sep, 2018)

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

- **06.09.2018**

General Circular No. 07/2018

MCA vide a General Circular has fixed the due date for filing form BEN-2 within 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal or 30 days from the date of receipt of declarations, whichever is late. No additional fee will be levied if the same is filed within 30 days from the date of deployment of the form, even if the date of filing is beyond 30 days of receipt of declaration.

- **10.09.2018**
  - **The Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 effective from 02/10/2018**

Insertion of Rule 9A

MCA has made it mandatory for all Unlisted Public Companies to issue the securities only in dematerialised form and to facilitate dematerialisation of all its existing securities

Every such company should ensure:

- Entire holding of securities of its promoters, directors, key managerial personals has been dematerialised before issue of any securities.
- The Shareholder of such companies would be able to transfer his shares only in the dematerialised form on or after 02-10-2018.
- To make timely payment of fees to Depository, Registrar and Share Transfer Agent
- Audit report on reconciliation of share capital be submitted by all such unlisted public company on a half-yearly basis to the Registrar.

  - **Clarification in filing BEN-1 wide General Circular No. 08/2018**

MCA has decided to issue the revised Form No. BEN-1. The due date of 10th September, 2018 for filing of Form BEN-1 declaration would be revised and a revised BEN-1 form would be notified shortly.

- **12.09.2018**
  - **Commencement Notification**

MCA has notified 12th September, 2018 as an effective date for the commencement of provisions of sections 66 to 70 of the Companies Amendment Act, 2017. These sections pertain to Appointment and Remuneration of Managerial Personnel.

  - **The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 20 18 vide notification**
    - MCA has removed the requirement to make Application to the Central Government for Remuneration of Managerial Personnel. The Parameters for consideration of remuneration are now to be considered only by the company.
    - Where the appointment of Managing Director who has attained the age of 70 years is put up as a special resolution, despite the special resolution being rejected, if the majority of shareholders approve the resolution and on a application made to it, the Central Government is satisfied that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years can be made.
    - Further, e-form MR 2 has also been revised, removing the provision of making application to

Central Government for managerial remuneration. Now the said form only covers application for approval of appointment of Managing Director or Whole Time Director or Manager.

- **Amendment notification to Schedule V of the Companies Act, 2013**

- Eligibility criteria for appointment of Managing or Whole-time Director or a Manager of the company has been tightened to include conviction or penalty levied under the provisions of Insolvency and Bankruptcy Code, 2016, Goods and Services Tax Act,2017 (12 of 2017) and Fugitive Economic Offenders Act, 2018. In addition to other acts, persons sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the above-mentioned Acts will not be eligible for appointment.
- Regarding the notification on removal of Central Government's Approval for managerial remuneration, companies having no profit or inadequate profit, remuneration to a managerial personnel can now be paid in excess of the prescribed limits, provided a special resolution is passed by the shareholders of the company. Earlier remuneration up to double the prescribed limit was permitted.

- **14.09.2018**

  IBBI Circular- Voting in the Committee of Creditors

  IBBI has issued a clarification with regard to Voting in the Committee of Creditors. It is clarified that a person who is not a member of the Committee, does not have voting right in the Committee and he cannot be regarded as one who has voted against a resolution plan or abstained from voting. Only creditors whose financial claims are accepted can be a member of the Committee of Creditors

- **20.09.2018**

  - **The Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018**
  - **The Companies (Registration Offices and fees) Fifth Amendment Rules, 2018 dated 20/09/2018**

MCA has further extended filing of eform DIR 3 KYC till 5th October, 2018 with a late fee of Rs. 500.Any such form filed after 5th October will attract a late fee of Rs. 5000.

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

Central Government in consultation with National Advisory Committee on Accounting Standards has amended the following Indian Accounting Standards (Ind AS):

- Ind AS 20 - Accounting for Government Grants and Disclosure of Government Assistance
- Ind AS 12 - Income Taxes
- Ind AS 16 - Property, Plant and Equipment
- Ind AS 38 - Intangible Asset

All the amendments made through this Amendment Rules is integrated with the Companies Act, 2013 and is available in our site CAIRR (www.ca2013.com).

- **25.09.2018**

  The Companies (Registered valuers and Valuation) Third Amendment Rules, 2018

  MCA has amended Rule 11 to further extend the time from 30.09.2018 to 31.01.2019 during which a person shall be allowed to render the valuation services without Registration Certificate. It is also provided that where a company appoints an unregistered Valuer before 31.01.2019 then the valuation or part of it, if pending on such date should be completed within three months thereafter.

  Rule 14 is amended to extend the time from one year from the date of commencement of these rules to two years, within which the registered valuers organisation shall be converted or be registered as section 8 Company. This is one of the conditions subject to which recognition is granted to the registered valuers organisation.

What's New in BLISS?

1. **Autofill of Register of Members:** The user can fill the data at the time of creation of Agenda for allotment of shares and these details will be Auto-filled in the Register. This feature enhances productivity of the Secretarial team.
2. **Permanent Invitee module:** This would enable the user to make a one-time addition of the list of Permanent Invitees to the Board /Sub-committee meetings for it to auto populate for these meeting. This feature enhances productivity of the Secretarial team.
3. **Replicate entire Agenda for a meeting:** Now the user can replicate the entire agenda for a meeting by a click of button both for the same company and from one company to another. This feature enhances productivity of the Secretarial team.
4. **Change in Registered Office:** The user can update the new registered office address in the master with an effective date. Based on the date of change for all documents regenerated by the system prior to that date, the earlier registered office will be printed and for documents dated subsequently the new registered office will be printed. This feature makes BLISS more compliant by eliminating procedural non-compliance.
5. **Removal of captcha:** We have removed the captcha option, as with the introduction of second factor authentication i.e OTP, captcha has become redundant.

CimplyFive's Report on The Policies for Prohibition of Insider Trading

Only when there is fair play, markets are an effective instrument and sustainable means to promote trade. A critical element of fair play involves providing a level playing field to all buyers and sellers. If any one category of buyer or seller gains at the cost of the other, the market itself becomes unsustainable and fails. To revitalize markets, an external intervention is required in the form of regulations that is enforced. Prohibition of insider trading is a regulation introduced to revitalize stock markets and create a fair playing field. When enforced, it results in reduced cost of equity that spurs market activities. In fact, one multi-country research report that spans multi-decades has quantified reduction in cost of equity by about 5%, if the insider trading laws are strictly enforced.

For the regulators, enforcing prohibition of insider trading regulations is a tough task as circumstantial evidence alone is not enough to get conviction and they need more definitive proofs. Given the fact that stock markets become more attractive when the regulations are enforced, and its enforcement is tough, the behavior of market participants, especially the companies who are the source of insider information is very critical.

Given this criticality, we have analysed the Policy on Prohibition of Insider Trading and the Code of Fair Disclosure of UPSI (Unpublished Price Sensitive Information) as formulated and disclosed by the Nifty 50 companies in their website.

Click here to download full report.

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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