iComply

Editorial

Wish you and your family a very happy and prosperous Diwali. On the professional front, may this festival of lights usher in an era of challenging assignments, satisfying performance and a desire to do more; Read more…

OPINION:

Defining A Desired level of Maintaining Secretarial Records in India



In the absence of a physical presence, the actions of a legal entity like Company is evidenced only their records
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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 October, 2018

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

FIRST OF FIRST:

The Four Stages of Evolution in Equity Share Valuation: 3. Price Earnings Multiple Method- The Concept, Trigger and Limitations

By Shankar Jaganathan



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. Read more…

BUT: BLISS Useful Tips for the Month

BUT#43: Replicate the Entire Agenda for a meeting from an earlier Agenda created with a SINGLE CLICK
BUT#44: Change the Registered Office Address of your company
BUT#45: BLISS tracks and prompts the Serial Numbers for all meetings
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BUT#47: With BLISS automate your Directors' Appointment

CAIRR updated for the changes effected by the Company Law Ordinance passed on November 2, 2018 www.ca2013.com

Editorial

Wish you and your family a very happy and prosperous Diwali. On the professional front, may this festival of lights usher in an era of challenging assignments, satisfying performance and a desire to do more; for the essence of a professional is to constant evolve by learning new skills and sharpening the intellect to contribute in building a fair and just society for all individuals to realize their potential.

November 2018 saw the Ordinance for refining the penal provisions of the Companies Act, 2013 getting the Presidents assent. In this context we examine the various levels at which secretarial records are maintained by companies in India and the optimal level at which it could be maintained. Our intent in bringing this topic up for discussion is to initiate a larger debate on the issue of professionals taking a proactive approach to compliance that can minimize the need for regulators to act in enforcing regulations.

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

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
November 5, 2018

OPINION:

Defining A Desired level of Maintaining Secretarial Records in India

In the absence of a physical presence, the actions of a legal entity like Company is evidenced only by their records. Considering the importance of records, there are extensive provisions made in the Companies Act, Rules and Mandatory Secretarial Standards on how to maintain Secretarial Records, with penalty for non-compliances. Given this importance, we have taken a leaf out of Software Engineering Institute –Capability Maturity Model to define Five-levels at which Secretarial Records can be maintained for a company to evaluate what is desirable. The Five-levels defined here go beyond theoretical concepts and are guided by concrete examples that I have personally observed in my interaction with over 300 Company Secretaries, both in practice and in employment in the last four years.

Possible reasons for varying levels at which secretarial records are maintained could be a result of one or more of the three factors in play:

1. A belief that private companies are private affairs and hence maintenance of secretarial records at the level mandated is seen as being onerous and not a necessity.
2. Amicable relations between the shareholders lulling the Board of Directors and the Company Secretary into believing that secretarial records are superfluous and an avoidable cost to be done away with.
3. Absence of Secretarial records scrutiny by the regulator and instances of defaulters not being punished for non-maintenance of proper secretarial records.

Given this ground reality, secretarial records maintained by a company can be categorized under five distinct levels based on their visibility to different stakeholders.

Maturity Standards for Company Secretarial Records Maintenance

Level	Compliance Level/ Stakeholders view	Compliance Status Visibility					
		Returns	Minutes	Agenda	Registers	Supporting Documents	Electronic Repository
1	Regulators	Visible	Visible	Not visible	Not visible	Not visible	Not visible
2	Directors	Visible	Visible	Visible	Not visible	Not visible	Not visible
3	Auditors (Statutory /Secretarial)	Visible	Visible	Visible	Visible	Not visible	Not visible
4	Due Diligence Ready	Visible	Visible	Visible	Visible	Visible	Not visible
5	Litigation Ready	Visible	Visible	Visible	Visible	Visible	Visible

1. **Regulator's view oriented:** At the most basic level, it is the desire to avoid penalty that drives the nature of secretarial records being maintained. These companies are characterized by all the directors being substantial shareholders and hence they may tend to evaluate compliance from a cost-benefit angle; more precisely the cost of compliance compared with the probability of being required to pay any penalties. In many cases, the board meetings too are 'paper' meetings. Hence only the records that are visible to the regulator is maintained, i.e. Returns field with RoC and documents essential for that, i.e. resolutions required for filing them.
2. **Directors View:** At the next level, Level 2, the presence of one or more non-shareholder directors moves the compliance needs to conduct formal board meetings resulting in formal Agenda being prepared and circulated and minutes being recorded after the board meetings for circulation.
3. **Auditors view:** At Level 3, borrowings from Banks or the presence of minority shareholders often triggers a company to move to the next level of compliance where Registers, especially the Register of Members, Register of Directors & KPM and Register of Charges that is required to be maintained are kept up to date.
4. **Due diligence view**: At Level 4, the Company is in a state of readiness for due diligence that an investor or a potential acquirer would undertake. In addition to agenda, minutes, registers and returns, the company also has all the supporting documents required like approved business plans, Auditors consent letter, Directors consent letter, Director's declaration of interest and contracts for related party transactions readily accessible.
5. **Litigation ready**: In Level 5 not only are all the secretarial records and their supporting documents available, but they are also readily accessible being stored in an easily accessible and indexed record room or stored in electronic form, from the date the company was incorporated. This helps a company not only to be litigation ready but also handle change in Company Secretaries smoothly.

Is Level 5 the desired level for maintaining Secretarial Records for all companies? I personally believe it is and think it is a question worthy of serious evaluation by every corporate board.

THE FIRST OF FIRST:

The Four Stages of Evolution in Equity Share Valuation: 3. Price Earnings Multiple Method- The Concept, Trigger and Limitations

By Shankar Jaganathan

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-Earnings Multiple 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 third article in this series that captures the concept, the trigger and the limitations of the Price Earnings Multiple method. In the next article, the concept, trigger and limitations of the valuing loss making entities with potential will be described.

The Concept

18th century saw the first phase where equity shares were valued based on past performance as reflected by their dividend paying track record. In the second phase of equity shares valuation in the 19th century, shares were valued using book value, reflecting their present liquidation value. 20th century saw the third phase, where the focus shifted from the past and present to the future, where equity shares valuation was linked to future profit earnings. Higher the growth in expected future profits, higher was the price paid for a companies' current earnings. Price Earnings Ratio reflected not just the relationship between price and earnings, but more important it reflects the future profit earning potential of the company.

The First of First

In 1906, Sears Roebuck & Co, wanted to raise capital for constructing a large mail order warehouse and working capital needs. They approached Goldman Sachs, who suggested an IPO for raising the capital. Goldman Sachs along with Lehman Brothers underwrote the $10 million stock issue, which consisted of preference shares of $5 million, that was backed by assets and another $5 million of equity shares that was backed only by goodwill. In those days, the preference shares were sold to public and the equity shares retained by the underwriters.

In the Sears Roebuck equity offering, Henry Goldman made a departure by offering the equity shares to the public and proposed the logic that 'the value of a retail business should be calculated based on the rate at which it turned over its inventory, or how rapidly it generated cash. This, not the value of its physical assets, would determine its ability to meet debt obligations and secure a profit.[i]" With this powerful logic, he outlined the rationale for valuing companies with low capital base and high profitability where profit earning ability of the company became the basis for valuing equity shares.

The advent of profit as a basis for valuing equity shares resulted in profit per share being computed. Profit per share or its American version EPS the acronym for earnings per share became the focal point for investors. With EPS as the denominator, Price Earnings ratio or PE ratio became the equity market valuation buzzword.

Lessons Learnt

A single number that tells a story has its value in mass communication, especially if the communication is of a technical nature. As with any summary, Price Earnings ratio too when used as a standalone measure for comparing companies has significant limitations as it masks the two vital elements:

- The quality of profits -while measuring the quantity of profits, it ignores the quality of profits-conservative accounting increases the quality of profits while aggressive accounting dilutes the quality.
- Quality of governance: good governance could temper the market expectations by providing more conservative growth estimates thereby dampening the market expectations.

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.



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Compliance Calendar

November 7th	TDS payment for October
November 15th	Pay PF contribution for October, 2018
	ESIC payment for October.
November 20th	GST Payment for October 2018 - GSTR 3B
	Professional Tax payment
November 25th	PF Return for month of October

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

- **01.10.2018**
  - Constitution of National Financial Reporting Authority vide notification
  - Commencement of provisions of sub-sections (1) and (12) of Section 132 of Companies Act, 2013

The Central Government has fixed 1st October 2018 as the date of constitution of National Financial Reporting Authority as a result of which provisions of sub-section (1) and (12) of section 132 regarding Constitution of National Financial Reporting Authority also became effective.

- **05.10.2018**
  - Circular on relaxation of additional fees and extension of last date to file e-Forms MGT-7 (Annual Return) and Aoc-4 (Financial statement) by companies having their registered office in State of Kerala

For companies having their registered office in the State of Kerala, MCA has extended the due date to file form AOC-4, AOC (CFS) AOC-4 XBRL and MGT-7 with the Registrar without paying additional fees up to 31.12.2018.

  - The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018

The highlights of amendment regulations are:

i. Definition of "dissenting financial creditor" is omitted.

ii. **Regulation 25(5) is Substituted**- it provides that the Resolution professional shall circulate the minutes of meeting not only to the members of the committee but also to the authorised representative, if any.

The authorised representative shall further circulate the minutes of the meeting received by him/her to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

iii**. Regulation 38(1) is Substituted**- It provides that the amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

iv. **Regulation 39(1)(b) is Omitted**- The prospective resolution applicant need not submit an undertaking to provide for the additional funds to the extent required to pay amounts due towards insolvency resolution process cost, to operational creditors and financial creditors.

v. **Regulation 39(3A) is Omitted**- The Resolution professional, while approving the Resolution plan need not specify the amounts payable from resources under the resolution plan towards insolvency resolution process cost, to operational creditors and financial creditors.

vi. **Regulation 39A is Inserted**- It provides that the interim resolution professional or the resolution professional shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies.

- **11.10.2018**
  - Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2018

The Insolvency and Bankruptcy Board of India had amended composition of the Governing Board of Information Utility

a. The Governing Board of an IPA shall consist of managing director, independent directors and

shareholder directors. The managing director shall not be considered either as an independent director or shareholder director. An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

b. Subject to the guidelines issued by the IBBI, Information Utility shall determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director.

- **Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies (Amendment) Regulations, 2018**

  The Insolvency and Bankruptcy Board of India had amended composition of the Governing Board of Insolvency Professional Agency. Similar provisions as explained above are made for Insolvency Professional Agencies.

- **Insolvency and Bankruptcy Board of India (Insolvency Professionals Agencies) (Amendment) Regulations, 2018**

  IBBI has amended eligibility for registration as an Insolvency Professional Agency that no person shall at anytime, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid-up equity share capital in an Insolvency Professional Agency. However, certain entities, namely, a Stock Exchange, Depository, Banking Company, Insurance Company, Public Financial Institution and Multilateral Financial Institution may, acquire or hold, either individually or together with persons acting in concert, up to fifteen per cent of the paid-up equity share capital of an IPA.

  Further, the Central Government, a State Government and statutory regulator may acquire or hold, directly or indirectly, up to one hundred percent of paid-up equity share capital of an IPA. The IPA, its promoters, its directors and its shareholders need to be fit and proper persons.

- **Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2018.**

  IBBI has amended fee for Insolvency Professionals:

  An insolvency professional shall pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year.

  An eligible person seeking recognition as an insolvency professional entity shall pay an application fee of fifty thousand rupees along with the application for recognition.

  When any individual ceases to be a director/partner or joins as its director/partner, insolvency professional entity shall inform the Board within seven days, along with a fee of two thousand rupees

  A delay in payment of fee by an insolvency professional or an insolvency professional entity will attract a simple interest at the rate of 12 percent per annum on the amount of fee unpaid.

- **Notification amending Schedule III of the Companies Act, 2013**

  Schedule III pertaining to general instructions to prepare Balance Sheet and Statement of Profit and Loss under this Act is amended by inserting "Division III" that provides instructions to prepare Financial Statements of a Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance with the Companies (Indian Accounting Standards) Rules, 2015.

- **Re-Constitution of High Level Committee on Corporate Social Responsibility (CSR) vide Office Order**

  In suppression of the Office Order dated 28.09.2018 pertaining to the constitution of a High Level Committee (HLC) on CSR, this order is issued to increase the number of members from 11 to 14 inclusive of Chairman and Member Convener.

- **17.10.2018**

  Circular on valuation under the Insolvency and Bankruptcy Code, 2016 vide Circular No. IBBI/RV/019/2018

  Through this Circular, IBBI has clarified that every valuation required under this Code or any of the regulations made thereunder shall be conducted only by a 'registered valuer' i.e., a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017.

  IBBI directs that with effect from 1st February 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any

valuation under the Code or any of the regulations made thereunder.

- **22.10.2018**
  - **The Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018**

    The IBBI (the Board) has notified this regulation to describes the mechanism that will be followed by the Board for the purpose of making and issuing regulations to carry out the provisions of the IB Code.

    The issue mechanism of regulations include Public Consultation, Economic Analysis, Amendment and Review of such regulations with provisions to make urgent regulations and also provide general or specific clarification or guidance.
  - **The Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2018**

    This regulation is amended to enable the liquidator to sell the business(s) of the corporate debtor as a going concern which was earlier restricted only to the sale of 'corporate debtor as going concern' and 'asset of the corporate debtor'.

    The regulation provides that the realisable value of the business and assets of corporate debtor which is to be sold shall be based on the estimates of realisable value submitted by two Registered Valuers appointed for the purpose, who shall not be a relative of the liquidator, related party of the corporate debtor, auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date and a partner or director of the insolvency professional entity of which the liquidator is a partner or director.
- **24.10.2018**

  Commencement notification on provisions of section 132 of the Companies Act, 2013

  The Central Government has fixed 24th October 2018 as the date for the commencement of the provisions of sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the companies act,2013 pertaining to functions, powers, appeals to Appellate Tribunal, meetings, accounts and annual report of National Financial Reporting Authority.
- **26.10.2018**
  - **Notification on establishment of the office of the Registrar of Companies cum Official Liquidator at Dehradun**

    Central Government has established the office of the Registrar of Companies cum Official Liquidator at Dehradun, having territorial jurisdiction in the whole State of Uttarakhand, and appoints the Registrar of Companies cum Official Liquidator at Dehradun for registration of companies and discharging the functions under this Act in the State of Uttarakhand.
  - **Notification on establishment of the office of the Registrar of Companies at Vijayawada**

    Central Government has established the office of the Registrar of Companies at Vijayawada, having territorial jurisdiction in the whole State of Andhra Pradesh, and appoints the Registrar of Companies, Vijayawada as Registrar of Companies for registration of companies and discharging the functions under this Act in the State of Andhra Pradesh.
  - **Amendment to notification number S.O.831 (E) dated 24th March 2015 vide notification**

    Through this notification the Central Government have amended the Notification no. S.O.831(E) dated 24.03.2015, pertaining to appointment of Registrar of companies as adjudicating officers indicating their respective territorial jurisdiction.

    The territorial jurisdiction for State of Uttarakhand is now shifted from "the Registrar of Companies cum Official Liquidator, Nanital" to "the Registrar of Companies cum Official Liquidator, Dehradun".

    The territorial jurisdiction for State of Andhra Pradesh is shifted from "the Registrar of Companies, Hyderabad" to "the Registrar of Companies, Vijaywada".
- **29.10.2018**

  Circular on relaxation of additional fees and extension of last date to file e-Forms MGT-7 (Annual Return) and Aoc-4 (Financial statement) vide General Circular

  MCA has extended the due date to December 31st to file with the Registrar forms AOC-4, AOC (CFS) AOC-4 XBRL and MGT-7 for financial year ended on 31.03.2018 without paying additional fees.

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



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