iComply

Editorial

Team CimplyFive wishes all its readers a BLISSFUL new year; a year filled with good health, prosperity and happiness. Read more…

OPINION:

What is Hot in Company Law?



List of the most viewed sections in the Companies Act for the month of December 2018 based on visitors to our free to use website www.ca2013.com.

Read more…

Compliance calendar



Due dates for Professional tax, Goods and Service Tax, Companies Act, 2013 among others ha 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 December, 2018

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

FIRST OF FIRST:

Buy-back of Shares: What was the trigger?



By Shankar Jaganathan

Buy-back of shares is an accepted practice in the corporate word today, a concept so wide-spread that in the calendar year 2018, the volume of buy-back by the US corporates is estimated at around $1 trillion.
Read more…

BUT: BLISS Useful Tips for the Month

BUT#49: Auto-filled ADT 1 form
BUT#50: Auto-filled Annual Return
BUT#51: Auto-filled CHG 1 form

What's New In BLISS?

1. Replicate entire Agenda for a meeting
2. Prefill Form CHG-1 and CHG-4 and auto fill the Register of Charges with one time data-entry
3. Send Agenda links in your e-mails
4. Provision to store signed documents in BLISS
5. Multiple attachment uploads for each agenda item

Read more…

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Editorial

Team CimplyFive wishes all its readers a BLISSFUL new year; a year filled with good health, prosperity and happiness. Transparency is one of the four core values of CimplyFive. We believe we are entitled to get only what we deserve, and our entitlement is directly related to our ability to create intrinsic value for our customers.

We are grateful to all our users for their trust placed in us. On December 31, 2018 the number of pageviews in our website www.ca2013.com crossed the 3million page-views. While our first million page-views took 776 days, the second million was reached in 220 days and the third million in just 187 days. With the 3 million-page views, we also have more than 3000 users who have registered their email ids with us for receiving updates on changes in the company law.

As the new year begins, Team CimplyFive rededicates itself to pursuit of intrinsic value by enhancing BLISS and its variants with new features and making our free-to-use website www.ca2013.com more useful to our users.

On the other elements in this issue, we continue our series started last month titled **What's Hot in Company Law**, Chartbusters in December 2018. In our series the **First of First** where we trace the evolution of new concepts in company law, this month we have covered buy-back of shares. Our other regular features –**Gist of Changes in the Companies Act** and **Statutory Compliance Calendar** are 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
January 4, 2019

OPINION:

What is Hot in Company Law?

As many of you may be aware, we provide a free-to-use website www.ca2013.com (CAIRR-Companies Act Integrated Ready Reckoner) that provides an integrated view of the Companies Act, LODR and IB code. Over the last three years, this site has generated good traction with 3000+ individuals registering for getting updates and attracts more than 1500 visitors who visit more than 4000 pages a day, every working day to be more precise. As professionals take a break during the weekend, the website viewership is also lower; more pronounced on Sundays, in comparison with Saturdays.

List of the most viewed sections in the Companies Act during the month of December 2018 based on visitors to our website www.ca2013.com.

Company Law Top 5 Chartbuster sections in December 2018

Rank this month	Change	Rank previous month	Section ref.	Section title
1	↑	-	42	Offer or Invitation for subscription of securities on private placement
2	↓	1	62	Further Issue of Share Capital
3	↓	2	186	Loans and Investments by Companies
4	↔	4	188	Related Party Transactions
5	↓	3	179	Powers of the Board

Section 92-Annual Returns that was Ranked #5 in November 2018 has dropped out of the top 5 ranks.

LODR Top 5 Chartbuster Regulations in December 2018

Rank this Month	Regulation ref.	Regulation Title
1	17	Board of Directors
2	30	Disclosure of Events or Information
3	19	Nomination & Remuneration Committee
4	25	Obligations with respect to Independent Directors
5	2	Definitions

THE FIRST OF FIRST:

Buy-back of Shares: What was the trigger?

By Shankar Jaganathan

Buy-back of shares is an accepted practice in the corporate word today, a concept so wide-spread that in the calendar year 2018, the volume of buy-back by the US corporates is estimated at around $1 trillion. However, buy-back of shares is a recently introduced concept with the US taking the lead in the second half of the 20th century which legitimized a concept that was for long frowned upon. A potent blend of economic beliefs, electoral promises and corporate interests provided the trigger for its inception that have over the last three decades become a wide-spread practice across all the major corporate jurisdictions, including India.

The Concept

Share prices changes are caused by a combination of fundamental and technical factors. While company performance is a key fundamental factor, market conditions influencing the demand for shares is the chief technical factor influencing investors.

Prior to the advent of buy-backs, companies only had an influence on the number of shares issued and the demand for their shares was generated by company performance. In this phase, increase in share price reflected rising corporate profits. With the advent of buy-backs, the influence of corporates extended beyond issue of shares to controlling the volume of shares available for trade, thereby influencing supply and bring into play a second lever for increasing share price of companies that had no co-relation to company profits.

The First of First

1960s saw sporadic buy-back of shares in the US driven by tax optimization. With dividend being taxed as ordinary income at tax rates going up to 77%, buy-back of shares in which shareholders selling their shares to the company was taxed as capital gains and taxed at much lower rate of 25% was financially a prudent decision. However, these buy-backs were only permitted though tender-offer of buying shares at a fixed price and were seen in negative light despite the tax benefit. All this changed in the 1980s with the advent of a new political era and the legitimization of open market share purchase instead of tender offering at a fixed price.

1980s saw the birth of a new political era of capitalism with the advent of Ronald Regan in the US and Margaret Thatcher in the UK. This new era was built on new age economics also known as Reganomics in the US, which rests on the four pillars of:

1. Reduced government spends,
2. Reduced income taxes,
3. Reduced regulations, and
4. Low inflation.

Implementing his poll promise, Ronald Regan appointed John Shad, a Wall Street executive as the Chief of SEC in 1981. In a move to de-regulate the stock markets and reduce government spending, SEC introduced the Rule 10b-18, a provision that popularised buy-back of shares by permitting open-market share purchase and provided protection to the corporates against insider trading if they met the four conditions for buy-back, namely manner, timing, price and volume of buy-backs.

The flexibility provided to the company by permitting open-market operations not only enhanced its use but also gave appreciable returns to the companies. In the eight-year period preceding the introduction of share buy-back, corporate profits grew by 13% with the share prices moving in tandem at 10.4%. The introduction of buy-backs in the US, saw a complete decoupling of movements between corporate profits and their share prices. In the eight years of Regan tenure that saw share buy-back legitimized, corporate profits grew by 3% compounded annually, while the S&P 500 index appreciated by 113%. This provided a perfect example for the Laws of Supply found in

economics text book, that all other things remaining the same, a reduction in supply of goods leads to an increase in its price.

Prior to the legitimization of buy-back, a company with surplus cash had only two options, one to reinvest it in business or to else to distribute it as dividend to their shareholders. Dividend distribution ensured that all shareholders got their share of rewards without any one section of shareholders benefitting. With share buy-back, the management of a company could increase its share price, if not prevent its decline by increasing the demand for shares by entering the market to buy the shares. As the US stock markets surged ahead, rest of the world took note of this visible prosperity and legitimized buy-back in their jurisdiction.

Shares buy-back in India

Section 77 of the Companies Act, 1956 prohibited buy-back of shares or financing anyone to buy-back its shares. However, section 100 to 104 of the same Act permitted reduction in share capital under certain specific circumstances with detailed approval processes required to be complied with.

In 1998, the Companies Act, 1956 was amended by introducing three new section-77A, 77AA and 77B to regulate the process of buy-back of shares that offered protection to creditors whose security was diluted.

The current provisions covering buyback of shares in the Companies Act, 2013 are sections 68, 69 and 70. For listed companies, in addition to the provisions of the Companies Act, 2013, they need to comply with SEBI's (Buy-back of Securities) Regulations 2018 as well.

Shares buy-back its Utility Today

In India, buyback is no longer an exception and has been mainstreamed. Among the listed companies, in December 2018 alone, 8 companies filed a Draft Letter of Offer with another 4 companies filling a Letter of Offer. The tax efficient nature of buy-back combined with the price support it provides in the stock markets makes it an efficient instrument and a viable alternative to dividend payment that entails dividend distribution tax.

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, facility to store Past Secretarial 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 marking 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, IB Code,2015 & LODR,2015. The Site and app is updated daily at 10 AM for charges in the Act & Regulations. For more details, please visit www.ca2013.com

Compliance Calendar

January 7th	TDS payment for December
January 15th	Pay PF contribution for December, 2018
	ESIC payment for December
January 18th	GSTR 4 (Oct-Dec, 2018)
January 20th	GST Payment for December 2018 - GSTR 3B
	Professional Tax payment
January 25th	PF Return for month of December
January 30th	GSTR 7 (Nov, 2018)
January 31st	GSTR1(Oct-Dec, 2018) Quarterly return for registered persons with aggregate turnover up to Rs. 1.50 Crores

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

- **03.12.2018**
  - **Notification in the Companies Act 2013 to amend the (cost records and audit) Rules, 2014**

The Central Government vide this notification had made amendments in Rule 3 of Companies (cost records and audit) Rules 2014,under the heading (B) Non-Regulated Sectors and had also inserted a new proviso in sub rule (6) in Rule 6 for extending the timing for filing of form CRA 4 for those companies which had got extension of time for holding the Annual General Meeting u/s 96 (i) of the Companies Act 2013, within the resultant extended period of filing financial statements under section 137 of the Companies Act,2013.

Further, in form CRA 1 Paragraph number 31 is inserted to define the Unit of Measurement, and in form CRA -3, a note on Unit of Measurement is added These rules may be called as the Companies (cost records and audit) Amendment Rules, 2018 and shall come into force on the date of their publication in the official Gazette.

  - **Transfer of securities only in demat form - Deadline extended till April 1, 2019**

SEBI has issued a clarification extending the deadline for transfer of Securities only in demat form from December 5,2018 to April 1,2019.

- **07.12.2018**

Circular on disclosure of Significant Beneficial Ownership in the Shareholding Pattern by listed entities w.e.f., 31/03/2019

In modification to the Circular No. CIR/CFD/CMD/13/2015dated November 30, 2015, SEBI has issued this circular in the interest of transparency to the investors in the securities market and has prescribed the format in which all Listed Entities shall disclose the details pertaining to significant beneficial ownership in the shareholding pattern which is to be submitted to the Stock exchange. The details to be shared includes the name of the beneficial owner, name of the registered owner, percentage of shareholding and date of creation of beneficial interest.

- **10.12.2018**

Circular on relaxation of additional fees and extension of last date of filing form CRA-4 (Cost Audit Report in XBRL format)

MCA has extended the time limit for filing form CRA-4 (Cost Audit Report in XBRL format) for the Financial year ended 31/03/2018 with the Registrar of Companies without paying additional fees up to 31/12/2018.

- **13.12.2018**

Circular issued by MCA on 13/12/2018 on extension of last date for filing of form NFRA -1

MCA has extended the time limit for filing form NFRA-1 by which the particulars of the auditor appointed by the company is required to be intimated within fifteen days of their appointment to the National Financial Reporting Authority (NFRA). This form is now required to be filed within 30 days from the date on which this form is deployed on the website of the Ministry of National Financial Reporting Authority for all bodies corporate governed by this rule (excluding companies as defined under subsection (20) of section 2 of the Companies Act,2013 which are not required to file this form).

- **18.12.2018**
  - **The Companies (Registration of Charges) Second Amendment Rules, 2018**

The Form CHG – 4, which is filed with the Registrar to intimate the satisfaction of charge is modified to state the reasons for delay in filing the form 'beyond 30 days but before 300 days from the date of charge satisfaction' and also provides for indicating if, the filing is delayed beyond 300 days from the date of charge satisfaction subject to extension approval from Central Government.

  - **The Companies (Incorporation) Fourth Amendment Rules, 2018**

The highlights of the amended rules are:

i. Sub-rule 23A is inserted: Form INC-20A is inserted which is the format for submitting declaration by Directors of the company to the effect that, 'every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration'.

ii. Sub-rule 40 is inserted: This provides the procedures for filing of application with Regional Director by a company or a body corporate, (i.e., by a holding company or a subsidiary or associate company of a company incorporated outside India) for seeking approval to follow a different Financial Year for consolidation of its accounts.

iii. Sub-rule 41 is inserted: This provides the procedures for filing application with Regional Director seeking approval to convert a Public Company into a Private Company.

  - **Delegation of powers and functions by Central Government to Regional Directors**

By this notification the powers and functions vested in Central Government under the first proviso to section 2 (41) and second proviso to section 14 (1) of the act is delegated to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong. These powers are pertaining to approving the applications for adopting a different financial year and conversion of a public company into a private company, respectively.

The notification also provides that the delegation of powers may be revoked if the Central Government is of the opinion that it is necessary to do so in the public interest.

What's New in BLISS?

1. **Replicate entire Agenda for a meeting:** The user can replicate the entire agenda for an earlier meeting by a click of button for the forthcoming meeting in the same company or in another company of the user. This feature *enhances the productivity* of the Secretarial team.

2. **Prefill Form CHG-1 and CHG-4 and auto fill the Register of charges with one-time data-entry:** The user can download pre-filled Form CHG-1 (Form for creation of charge) and CHG-4 (Form for satisfaction of charge) and get their Register of Charges (CHG-7) auto filled by triggering the details entered in the datasheet filled in at the time of creating an Agenda item in BLISS. This feature *reduces data entry errors* and *enhances the productivity* of the Secretarial team.

3. **Send Agenda links in mail:** The user can email agenda that exceed 10 mb file size by way of a link to the recipients. This provides *ease of use* to the BLISS users.

4. **Provision to store signed documents:** A provision to store signed agenda and minutes is provided in BLISS. This functionality provides *ease of access* to records.

5. **Multiple attachment uploads for each agenda item:** The User can now upload multiple attachments for each agenda item. This feature helps all users, especially the Directors to access individual attachments separately thereby *enhancing efficiency*.

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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