CimplyFive's Monthly Newsletter

iComply

June 2022

Editorial

A big heartfelt thanks to all our patrons. We are pleased to share that our free to use website www.ca2013.com touched 20 million page views on 1st June 2022. To celebrate this joyous occasion, we are launching a new interview series titled **Discovering Gilt Edged Corporate Governance Practices**. In the first interview of this series, we have Mr. Alok Misra, Chief Operating Officer for India, General Atlantic, the global growth equity firm providing capital and strategic support to growth companies.

In the third editor of our **"CCG -Cusps in Corporate Governance"** series, we have traced the advent of one-share-one-vote concept that replaced one shareholder one vote, thereby ushering in corporate plutocracy that prevails today in the corporate world.

All our other regular features like –Gist of Changes in the Companies Act, 2013, SEBI's LODR, 2015 and IB Code, 2016 and Statutory Compliance Calendar are also included in this Issue.

Please share your feedback on this newsletter with us at contact@cimplyfive.com, we eagerly look forward to it.

Happy reading,
Shankar Jaganathan
Editor of iComply
June 3, 2022

Discovering Gilt Edged Corporate Governance Practices - 01

Interview with Mr. Alok Misra, Chief Operating Officer for India, General Atlantic



CimplyFive: What is your definition of Good Corporate Governance? Are there any quick indicators for it?

Mr. Alok Misra: I see good corporate governance as actions initiated from within, is voluntary and stems from the belief that it is for the benefit of the entire organization. **Read more…**

What's more in this month's Issue

- What is Hot in Company Law?
- Cusps in Corporate Governance
- BLISS Tips for the Month
- Compliance Calendar
- Regulatory Changes in the Month

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Discovering Gilt Edged Corporate Governance Practices – 01

Interview with Mr. Alok Misra, Chief Operating Officer for India, General Atlantic

1. **CimplyFive: What is your definition of Good Corporate Governance? Are there any quick indicators for it?**

Mr. Alok Misra: I see good corporate governance as actions initiated from within, is voluntary and stems from the belief that it is for the benefit of the entire organization. It manifests itself in compliance with the spirt of the law and not just the letter of the law. Just as what you do at a traffic light that is red, driving a car at 1 am, speaks about the individual's ethics, corporate behavior when there is no regulation to restrict corporate action is what defines good corporate governance.

The foremost indicator of good corporate governance is the tone at the top. This is what sets the standard for the rest of the organization and manifests itself as the corporate culture that is visible to the stakeholders.

2. **CimplyFive: How do you measure the effectiveness of Corporate Secretarial function? Is it linked to prompt board meeting /general meeting schedules, or nil penalties or late payment fees or any other elements?**

Mr. Alok Misra: Just as quality is measured by defects, an effective compliance function is measured by its unobtrusiveness. In essence, the compliance function should exist, but no one should feel its presence. Timelines are met for the value they bring and not prompted by the penalties. This happens when the culture of the organization has imbibed the value of the compliance function such that it becomes the second nature for the team. All other parameters like promptness of meetings or penalties paid are only lag indicators reflecting the intrinsic culture in the organization.

3. **CimplyFive: How do you measure the efficiency of Corporate Secretarial function? Do you relate it to cost, team size or use of technology? Please elaborate why and what measure you use.**

Mr. Alok Misra: I believe functions should be measured by their outcome and not by the inputs. People and technology are only means to achieve the desired outcome. While both are essential, they are not the sole measures. The efficiency of any function should be measured neither by the input nor the output but by the outcome or end results achieved. It's the process that runs on either or both which is paramount. The key measure for me is, 'Does it work unobtrusively as mentioned earlier and yet achieves the desired end results? If yes, the function is efficient and effective.

4. **CimplyFive: What are the top 3 regulatory changes you would like to see that will promote good corporate governance?**

Mr. Alok Misra: I would like to see the following three changes brought into the regulatory framework:

i. Requirement to have independent directors in all companies, including private limited companies that have raised more than a certain amount of capital. While some of these may be private investments, the ultimate source of the funds may be public. Like in cricket where the host country is assigned neutral umpires by the ICC, a neutral body should assign independent directors to companies based on the expertise and experience profile outlined by them. This will ensure 'true" independence.

ii. To attract quality talent to take up independent directorship, independent directors should be exempt or insulated from prosecution unless they are directly complicit or personally benefiting from the decisions.

iii. For good governance we need to specify shorter timelines for publication of audited accounts depending on the size and nature of the company. Setting aside extraneous issues like COVID, providing six months for companies to hold their AGM is too long. We need to have a graded scale based on their paid-up capital,

number of shareholders or borrowings in/by the company which could vary from 3 months to 6 months.

5. CimplyFive: What new initiatives can CimplyFive take to promote good corporate governance?

Mr. Alok Misra:

i. Facilitating any of the points listed in the response to question 4 would be a great start.

ii. Developing a "scorecard" for pubic / listed companies based on both objective and subjective criteria, as governance is more an art than a science, like credit rating scores – to be published. This could be done in conjunction with the various proxy advisory firms.

Disclaimer: The views expressed in this interview are the personal views of the author and do not necessarily reflect the views of General Atlantic. The statements being made herein are as of the date hereof, and neither the author nor General Atlantic undertake any responsibility to advise you of any changes in the views expressed herein. This commentary does not constitute an offer to sell any securities or the solicitation of an offer to purchase any securities. This commentary discusses broad market, industry or sector trends, or other general economic, market or political conditions and should not be construed as research, investment advice, or any investment recommendation. Past performance is not necessarily indicative of future performance. Investment concepts mentioned in this commentary may be unsuitable for investors depending on their specific investment objectives and financial position.

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OPINION:

What is Hot in Company Law?

Our free to use website www.ca2013.com has the unique distinction of providing an integrated view of the Companies Act, LODR and IB code. Our site crossed **20 million page-views** on June 1, 2022 and it attracts over 6000 users accessing over 22,000 pages a day. Listing of the most viewed sections in the Companies Act, LODR and IB Code in the month of May 2022 here is based on visitors to our site.

For the Month of May 2022

Top 5 Chartbusters in the Companies Act, 2013

Rank in April	Change in Rank	Rank in May	Section reference	Section title
3	↑	**1**	**179**	Powers of Board
1	↓	**2**	**135**	Corporate Social Responsibility
2	↓	**3**	**188**	Related party transactions
5	↑	**4**	**134**	Financial statement, Board's Report etc.
N	↑	**5**	**186**	Loan and Investment by Company

Section 186 has displaced section 149 in the top 5 Ranking.

LODR Top 5 Chartbuster Regulations

Rank in April	Change in Rank	Rank in May	Regulation reference	Regulation Title
N	↑	**1**	30	Disclosure of Events or Information
1	↓	**2**	17	Board of Directors
2	↓	**3**	23	Related Party Transactions
N	↑	**4**	33	Financial Results
N	↑	**5**	34	Annual Report

Regulation 30, 33 and 34 have replaced Regulation 7, 40 and 30 in the top 5 Ranking**.**

IB Code Top 5 Chartbusters

Rank in April	Change in Rank	Rank In May	Section reference	Section Title
2	↑	1	5	Definitions
N	↑	2	53	Distribution of Assets
N	↑	3	29	Preparation of Information Memorandum
3	↓	4	3	Definitions
4	↓	5	7	Initiation of corporate insolvency process by financial creditor

Section 53 and 29 have replaced sections 6 and 4 in the top 5 Ranking.

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CCG - Cusps in Corporate Governance

CCG-3: Corporate Decision-making: From Democracy to Corporate Plutocracy

The idea 'necessity is the mother of invention' holds true in most situations, and the field of corporate governance is no exception. Analysis of the corporate history over last 500 years reveals that most good governance practices are triggered by regulators in the aftermath of a corporate fraud or a scandal mandating the voluntary practice of a pioneer, to reduce if not prevent such frauds or scandals. This series traces key episodes of such change.

The birth of human civilization can be linked to reason replacing force in collective decision making. The right of all participants to have a say in the decision is based on the belief collective wisdom is superior to individual intelligence. Vote as an instrument of collective decision making to identify collective wisdom promoted human collaboration across all fields, and commerce is no exception. The birth of corporate entities where hundreds if not thousands of individuals contribute capital to run commercial ventures is a standing testimony to this innovation.

Corporate decision making at the shareholder level accepts the concept of 'one share one vote', which in is plutocracy in operation. However, this was not aways the case. In the first two centuries, corporates followed the system of 'one shareholder one vote' to take decisions which embeds the concept of true democracy. The advent of 'one share one vote' followed an interesting intrigue that has deep links to India. Since its advent, corporate democracy quietly gave way to corporate plutocracy which holds its sway even today in the guise of corporate democracy.

The Trigger

Corporations or companies from the earliest time had provided for one vote to each shareholder for taking decisions in the Shareholder meetings. This practice prevailed till the second half of the 18th century, when it was misused, thereby exposing its limitations. Modification arising from this misuse led to the adoption of the current practice where one share has one vote, with a shareholder having as many votes as the number of shares they own.

To illustrate how one share one vote works, if there are ten shareholders in a company with nine shareholders holding five shares each and the tenth shareholder holding 55 shares, the vote of the tenth shareholder would out-weight the vote of the other nine. However, if one shareholder one vote system was in place the collective 'will' of any six of the nine shareholders would have prevailed.

The Pioneer

After battle of Plassey in 1757 CE, fought by Siraj-ud-daula against Mir Jafar and the East India Company, Mir Jafar was installed as the Nawab of Bengal by the company officials led by Robert Clive. The Company for supporting Mir Jafar got financial compensation for providing the British army and navy for the battle. In addition, Robert Clive for his pivotal role was given the title of Nawab, and he privately negotiated a *jagir* giving him an income of £30,000 annually.

Around the same time, East India Company leadership in London was troubled by the wide-spread corruption among the company officials in India. Laurence Sullivan, the Chairman of the company decided to act against it, by stopping the payment of the privately negotiated *jagir* of £30,000 to Robert Clive in 1763 CE as unjustified. This decision sparked a boardroom tussle between Robert Clive and Laurence Sullivan for the control of the company.

In the shareholder meeting that followed, where shareholders holding a minimum of £500 face value of shares were eligible to vote, Robert Clive divided his holding among 220 individual shareholders with eligibility to vote. Not to be outdone, Sullivan too replicated the strategy. In the March 1763 shareholders meeting, 1400 shareholders, which was about three time the shareholders who voted in the earlier 1758 meeting participated. Robert Clive was defeated in the battle of the 'Proxy war'.

The advent of 'proxy' shareholders exposed the futility of one shareholder one vote, resulting in the advent of the current system of providing one shareholder one vote. This system was justified as higher investment

would automatically translate to more thought and care or higher diligence resulting in better decisions. Further as the most visible cost of a wrong decision by the shareholders is loss of capital, it was logical that the shareholders who had the maximum to lose would have the loudest voice in shareholder decisions.

The Spread

Section 47 of the Indian Companies Act, 2013 is the operating section today that mandates one-share, one-vote today. However, this system of one-share, one-vote is modified by permitting companies to have shares with variable votes subject to specific conditions. Section 43 of the Act permits a company to have shares with or without voting rights and to have differential voting rights. Companies to be eligible to issue shares with differential voting rights should have a consistent track record of profit, should not have defaulted in payment of loans, interest, or dividend on preference shares in addition to being authorized to issue shares with differential voting rights by their Articles of Association and by their shareholders in a meeting. Further the quantum of shares with differential voting rights should be less than 26% of their paid up capital including the shares with differential voting rights.

Practice Today

The concept of one share one vote is now further modified in start-up companies funded by Angel Investors and Venture Capitalists in the form of veto rights, euphemistically called Affirmative rights, on specified critical decisions. In consideration of investments made at substantial premium, entrepreneurs enter into Shareholders Agreements with their VC/PE investors containing clauses that give the investors the right to overrule decisions of the majority shareholders. This in a way goes beyond the concept of one share one vote by considering the share premium paid by the investor in granting them their veto rights.

BLISS Tips for the Month

#222: One-point Store for all Your Past Secretarial Records

#223: BLISS provides Action Tracker for Event based & Calendar based Actions

#224: With BLISS Create Agenda, Minutes & Circular Resolutions in Your Corporate Style Guide Formats

#225: Automate your Board Evaluation Process with CIMPLYBEST

#226: Create the Complete AGM Notice Using BLISS

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Board Leaders Integrated Software Solutions



BLISSPLUS

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 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 CompaniesAct,2013

BLISSPLUS is an advanced variant of BLISS with multiple premium features like Directors view, facility to store past Secretarial records, automated compliance tracker for size-based compliance under the Companies Act,2013

BLISS LISTED

BLISSLISTED 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 including past secretarial records.

BLISSGLOBAL

BLISSGLOBAL is a cloud hosted key document management solution with Action Tracker that provides master data capture of the entity, e- repository for document management, Automated Tracker for managing event based and calendar-based activities.

BLISSDOCS

BLISSDOCS is an Android/IOS based Board app for Directors which provides secure access to Board documents on Tablets/mobile phones, enhancing Directors productivity and making the Board meetings efficient & effective

CIMPLYBEST

CimplyBest is a tailormade software for Indian Corporates in conducting Corporate Board Evaluation which will optimize Board's Time & Effort with confidentiality assured.

BLISSTAT

BLISSTAT is a cloud hosted custom built software to automate Direct Tax assessment processes and provide a comprehensive action tracker enabling workflow automation with a e-repository for storing all tax assessment records.

CAIRR LODR Integrated

CAIRR is a free to use website from CimplyFive that provides at your fingertips, an integrated view of the Companies Act, 2013, IB Code, 2016 and LODR, 2015. The site and app is updated every business day by 11 AM for changes in the Act & Regulations. For more details, please visit www.ca2013.com

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Compliance Calendar

June 7th	TDS payment for May
June 15th	Pay PF contribution for May
	ESIC payment for May
June 20th, 22nd, 24th	GSTR 3 B (based on turnover and principal place of business)
June 25th	PF Return for May

Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of May, 2022

- **04.05.2022**

Revision of SH-4 (Securities Transfer Form) format under Companies Act, 2013

MCA now requires a declaration from the Transferee in the SH-4 document on applicability for obtaining approval from the Government under FEMA (Non-debt Instruments) Rules, 2019, prior to transfer of shares. If applicable, such approval shall be enclosed with SH-4.

- **05.05.2022**

AGMs and EGMs under Companies Act, 2013 can be conducted through Video Conferencing till 31/12/2022

MCA has extended the relaxation to conduct Extra-Ordinary General Meetings ('EGMs') and Annual General Meeting ('AGM') due to be held in the year 2022, through VC/OAVM till 31st December, 2022 (as against the earlier deadline of 30/06/2022). MCA has clearly indicated that this circular doesn't confer any extension of time to hold AGMs by the Companies under the Companies Act, 2013. (Read more)

Requirement for Government Approval for invitation to specified persons for Private Placement under Companies Act, 2013

No offer or invitation of any securities for Private Placement shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the FEMA (Non-debt Instruments) Rules, 2019 and encloses the same with the private placement offer letter (PAS-4). A declaration to this effect has to be provided in PAS-4 and its format has been revised, henceforth.

- **13.05.2022**

Relaxation from sending hardcopies of Annual Reports to shareholders under SEBI Regulations.

In line with relaxation granted by MCA vide its circular dated 05/05/2022 with respect to holding EGMs and AGMs through VC or Other Audio Visual Means (OAVM) till 31/12/2022, SEBI has now dispensed with the requirement for the listed entities to send the following till 31/12/2022: -

- physical copies of annual report to shareholders, except for those who request the same and
- proxy forms for general meetings held through electronic mode only.

- **19.05.2022**

Revision in timeline w.r.t Rights Issue under LODR regulations.

Through this circular, SEBI has revised the minimum time period between the closure of trading in Right Entitlements (REs) on stock exchanges and closure of the Rights Issue to 3 working days (as against the earlier requirement of 4 days), to accommodate trading holidays. This circular shall be applicable for all Rights/Fast Track Rights Issues with immediate effect.

Revision to security cover certificate format, covenant monitoring guidelines and filing timelines under LODR Regulations.

SEBI vide its circulars dated 12/11/2020 and 11/10/2020 specified format of security cover certificate, periodical monitoring and disclosures by Debenture Trustee(s) and the requirement of creation of "Recovery Expense Fund" (REF), which was applicable to issuers of Non-Convertible Securities (NCS), Securitised Debt Instruments, Security Receipts, Municipal Debt Securities or Commercial Papers, the Debenture Trustees (DTs) and the Stock Exchanges.

SEBI has now amended certain provisions under these circulars. Key highlights of this circular are as follows:

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A. Security Cover Certificate - Format and Guidelines for Preparation:

1. Format of Security Cover certificate is revised w.e.f 01/10/2022 to provide a holistic picture of all the borrowings and the status of encumbrance on the assets of the listed entity.

2. Statutory auditor of the listed entity shall certify the book values of the assets in the security cover certificate, along with the Unique Document Identification Number(UDIN) generated in the manner prescribed by the relevant regulatory authority. The same shall be applicable to the certificates issued by the empanelled independent CAs engaged by the DT.

3. Where there is no regulatory guideline on the frequency of valuation of a specific asset class, it shall be carried out on a quarterly basis.

4. Detailed guidelines are provided w.r.t. obligations of listed entity in cases where third party/ subsidiary/ group/ holding company assets being offered as underlying security.

B. Monitoring of Covenants by DTs w.e.f 01/10/2022.

1. Listed entity shall furnish the compliance status with respect to financial covenants of the listed debt securities certified by statutory auditor of listed entity, on a quarterly basis to DTs.

2. DTs to establish board approved internal policies with respect to proactive and effective monitoring of breach of covenants. Guidance note on list of covenants to be monitored is annexed to this circular.

3. DTs shall independently monitor any breach of covenants from continuous monitoring of any public disclosure on Stock Exchange(s), company filings, news articles in electronic/ print media or any information publicly available apart from the information submitted by the issuer company.

C. Revision in timelines of Stock Exchange filings by DTs

1. To file the security cover certificate, make website disclosure of the same and file the quarterly compliance report within 75 days from the end of each quarter except last quarter of FY, which has to be filed within 90 days from the end of FY (as against the earlier requirement to submit within 60 days from the end of each quarter).

2. To file the valuation report and title search report to the Stock Exchange(s) once in three years within 75 days from the end of the financial year, as against the earlier requirement to submit within 75 days from the end of each FY.

3. Half- yearly compliance report and details of other activities carried out by DTs to be filed within 60 days (instead of 30 days) from the end of each half year.

4. DTs to notify stock exchanges within 48 hours of issuance of No-objection Certificate (NOC)/no-dues certificate/consent/permission to the listed entity w.r.t debt securities or further borrowings and in case of breach of minimum-security cover maintained by the listed entity.

D. Clarification on the scope of Recovery Expense Fund (REF):

1. It is clarified that the purpose of the creation of REF is to enable DTs initiate legal proceedings against the defaulting issuer and is, therefore, applicable for both secured as well as unsecured issuances.

2. DTs shall take confirmation from Designated Stock Exchange(s) or any other independent source in writing regarding the creation of REF by the listed entity and shall not rely solely upon the communication by the listed entity.

- **20.05.2022**

MCA revises the formats of Forms INC-9 and SPICe+ INC-32 for Incorporation under the Companies Act, 2013 w.e.f 01/06/2022.

1. MCA prescribes the revised format for the declaration by Subscriber / First Director of a company in form INC-9 which is to be filed electronically as opposed to attaching it as a document along with form SPICe INC-32.

2. A new declaration is inserted in the form SPICe+ INC-32 confirming that: Person(s) seeking appointment as first director(s) who are nationals of a country sharing its borders with India have obtained necessary security clearance from the Ministry of Home Affairs.

- **31.05.2022**

  Extension of the deadline for filing of Form CSR-2 under Companies Act, 2013

  MCA has extended the deadline for filing of form CSR- 2 for the preceding financial year (2020-2021) to 30/06/2022 (as against the earlier extended deadline of 31/05/2022).

  Further, MCA now requires that Form CSR-2 shall be filed separately on or before 31/03/2023, for the FY 2021-22, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be and not as an addendum, which was originally stipulated by MCA vide its notification dated 11/02/2022.

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



To view the previous issues of *iComply* click here