CimplyFive's Monthly Newsletter

iComply

July,2022

Editorial

It takes two hands to clap and in the context of creating shareholder value, the two hands are strong business results and good corporate governance. While strong business results are easy to identify in growing profits and cash flows, good corporate governance is revealed only in its absence; absence of financial misreporting and frauds, absence of insider trading & questionable related party transactions.

Considering this, in the fourth editor of our **"CCG -Cusps in Corporate Governance"** series, we have traced the advent of how the regulators have approached Related Party Transactions (RPTs) in the last 170 years and their impetus for change in approach, which gives us a good idea of what to look for in RPTs in judging good corporate governance.

In the second interview of our new series titled **Discovering Gilt Edged Corporate Governance Practices** we have featured **Ms. Anshu Agarwal, Group Company Secretary, Borosil Group of Companies**, who shared her professional insights on corporate governance and measures for its effectiveness and efficiency.

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
July 5, 2022

Discovering Gilt Edged Corporate Governance Practices - 02

Interview with Ms. Anshu Agarwal, Group Company Secretary, Borosil Group of Companies



CimplyFive: What is your definition of Good Corporate Governance? How is it measured

Ms. Anshu Agarwal: I understand that Corporate Governance is beyond the realm of Law. It stems from the culture and mindset of management and cannot be regulated by legislation alone. 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

Discovering Gilt Edged Corporate Governance Practices – 02

Interview with Ms. Anshu Agarwal, Group Company Secretary, Borosil Group of Companies

1. **CimplyFive: What is your definition of Good Corporate Governance? How is it measured?**

   Ms. Anshu Agarwal: I understand that Corporate Governance is beyond the realm of Law. It stems from the culture and mindset of management and cannot be regulated by legislation alone. Corporate Governance is all about openness, integrity, and accountability. Corporate Governance helps in maximizing the long-term shareholder value.

   Corporate Governance can be measured by the accomplishment of the organization's objectives by bringing about a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

2. **CimplyFive: How do you measure the effectiveness of Corporate Secretarial function? Do you link it to scheduling secretarial activities like board meeting and general meetings, or ensuring complete compliance resulting in nil penalties or late payment fees or any other parameters that you use in your company?**

   Ms. Anshu Agarwal: A Company Secretary is the livewire of the company and ensures that the company is corporate governance compliant to foster good relationship amongst the company and stakeholders. Apart from secretarial activities, our Company Values of integrity, customer focus, respect, continual improvement, and accountability are other the parameters.

3. **CimplyFive: How do you measure the efficiency of the Corporate Secretarial function? Do you link it to use of technology, or number of team members or the ease with which you are able to complete the task on hand?**

   Ms. Anshu Agarwal: Although, ttechnology has revolutionized the way companies conduct business, ppeople are asset to an organization. People and technology both are essential to achieve the desired outcome. Using technology to keep your team connected just makes sense. Especially in recent Covid-19 times, with more remote employees taking over the workforce, having instant accessibility not only makes it easy to work together and collaborate, but is also an effective way to operate today.

4. **CimplyFive: What is the role you foresee of technology in ensuring compliance and good governance?**

   Ms. Anshu Agarwal: As regulatory changes happen at lightning-fast speed, the pressure on organizations to meet compliance-related requirements is quickly escalating. Technology can help standardize the compliance management process, storing, managing, and updating compliance data in a single place – and comply with all requirements with greater speed and precision.

5. **CimplyFive: What has been your experience with CimplyFive in seeing technology promote good governance? What is that one 'wow' feature you would like to see in BLISS software that will ease your role as the Chief Compliance Officer?**

   Ms. Anshu Agarwal: My experience with CimplyFive has so far been wonderful. Modern cloud-based Compliance Management solutions like CimplyFive help organizations in storing and monitoring all their regulatory and non-regulatory requirements – and ensure compliance 24×7. Acting as a one-stop solution for all compliance needs, such solutions help in accessing compliance-related information from anywhere, and make the right decisions, at the right time, and the right place.

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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 June 2022 here is based on visitors to our site.

For the Month of June 2022

Top 5 Chartbusters in the Companies Act, 2013

Rank in May	Change in Rank	Rank in June	Section reference	Section title
3	↑	**1**	**188**	Related party transactions
1	↓	**2**	**179**	Powers of Board
N	↑	**3**	**62**	Further issue of Share Capital
4	↔	**4**	**134**	Financial statement, Board's Report etc.
2	↓	**5**	**135**	Corporate Social Responsibility

Section 62 has replaced section 186 in the top 5 Ranking.

LODR Top 5 Chartbuster Regulations

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

Regulation 2 has replaced Regulation 33 in the top 5 Ranking.

IB Code Top 5 Chartbusters

Rank in May	Change in Rank	Rank In June	Section reference	Section Title
1	↔	**1**	5	Definitions
3	↑	**2**	29	Preparation of Information Memorandum
N	↑	**3**	33	Submission of resolution plan
N	↑	**4**	30	Initiation of liquidation
4	↓	**5**	3	Definitions

Sections 33 and 30 have replaced Sections 53 and 7 in the top 5 Ranking.

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CCG - Cusps in Corporate Governance

CCG-4: Related Party Transactions -Is this the Litmus test of Good Corporate Governance?

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 aftermath of a corporate fraud or a scandal, thus mandating the voluntary practice of a pioneer, to reduce, if not prevent such frauds or scandals. This series traces key episodes of such change.

"Sad, discreet and honest" were the qualifications prescribed for the directors of the first joint stock company, the Russian company or the Moscovy Company formed in the year 1553 CE. The last six centuries, has only seen these three qualities refined to strengthen good corporate governance, where 'sad' or satiated individuals are now seen in the concept of independent directors, 'discreet' translating to transparency in corporate reporting that prevents trading by individuals with non-public price sensitive information, and 'honest' evolving to absence of Related Party Transactions (RPTs) in the initial days, or those not on arms' length basis in later points of time.

The Trigger

In the initial days of corporate law, courts held transactions between a director and the company void. In 1854 CE, the House of Lords held the purchase of iron chairs by Aberdeen Railway Co, from Blaikie Bros, where its Chairman was the managing partner, void ruling that fairness of the contract is no defense. Two years later in 1856 CE, New York Supreme Court too held the contract between the Director and the company for sale of land void, even though the contract was approved by the shareholders in the meeting. The court held the approval of shareholders as ineffective considering them uninformed, and further held that for the shareholders' approval to be binding on the company the decision needs to be unanimous.

Viewed through a binary lens, the initial belief was that all related party transactions are not in the interest of the company due to conflict of interest between the directors and company and hence illegal. What made the corporate world take a re-look at this binary black and white view and treat them as shades of grey for the decision makers to decide?

The Pioneer

In the initial days of a company, till its reputation is established, it is the promoters and other related parties who support the company and transact with it when unrelated parties would either not transact or offer commercially less favorable terms. This is what probably led the business community in England to voice their opinion against the initial RPT court verdicts and, also the addition of a new clause to the Model Articles of Association in the Companies Act, 1856 that made transactions between the Company and its Directors void ab-initio.

As the Model Articles of Association was only recommendatory for the company to adopt, the promoters who were aware of the need for RPTs, deleted this clause while adopting the Model Articles of Association. By using this indirect approach to RPTs, both the objectives of the law makers and the business was simultaneously served. The law makers enacted a provision that made RPTs void-ab-initio, while giving the option to promoters for deletion of this recommendatory clause, thereby authorizing RPTs for companies that choose to delete this clause in their Articles of Association. Since then, it is a see-saw battle between stringent regulations for RPTs when corporate governance is in focus to relaxations for RPTs when ease of business and its growth take priority.

Most of the companies incorporated after the Companies Act, 1856, followed the practice of deleting the clause prohibiting transaction between directors and the company which led to widespread RPTs and in many instances, misuse of these transactions for defrauding other shareholders. Faced with the serious governance challenge of misuse of RPTs that surfaced in 1920s, the regulators had the choice of banning RPTs once again or prescribing a higher level of scrutiny in approving these transactions. The Companies Act, 1928, took the later path and mandated that all RPTs be brought to the notice of the Board of Directors for their approval. While the right forum for approval would be the ultimate owners of the company, i.e., shareholders in their General Meeting, it would take another forty years and a corporate scandal involving Pergamon and Leasco Data Processing Corporation, and the

Accounting Standard on RPTs to be formulated to provide shareholders with information on RPTs.

The Spread

The last few decades have seen back and forth movement in measures taken by the regulators to deal with RPTs. Even the Companies Act, 2013 started by prescribing stringent measure for approval of RPTs including the need for special resolution, which is 75% of votes in favour of approval and limiting the absolute value to Rs.100 crores or Rs.50 crores. For transactions above this limit, shareholder approvals were required. As Ease of Business and imperatives for economic growth assumed importance, both these approvals by shareholders were diluted, while more stringent approval processes are prescribed for Audit committee approvals and disclosure of RPTs in the Annual Report.

Practice Today

RPTs are an inevitable part of the corporate world. Hence the presence of RPTs by itself cannot be a ground for judging the quality of corporate governance of an entity. However, the nature of RPTs entered by the company, their quantum, and the information shared on the RPTs are some of the key indicators of the quality of good corporate governance.

BLISS Tips for the Month

#226: Create the Complete AGM Notice Using BLISS
#227: Generate pre-filled Declaration of Independence for Independent Directors
#228: With BLISS Get auto filled Annual Return (e-form MGT 7)
#229: Customize your signature with name and designation in the emails sent 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 Companies Act, 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

Compliance Calendar

July 7th	TDS payment for June
July 10th	GSTR 7 (Monthly return filed by the persons required to deduct TDS under the GST)
July 11th	GSTR 1 (Monthly or quarterly return filed by every registered GST taxpayer
July 15th	Pay PF contribution for June
	ESIC payment for June
July 18th	CMP 08 (special statement-cum-challan filed by a taxpayer who has opted for the composition scheme)
July 20th, 22nd, 24th	GSTR 3 B (based on turnover and principal place of business)
July 25th	PF Return for June
July 31st	GSTR 4 (filed by the taxpayers opting for Composition Scheme on an annual basis)

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

- **01.06.2022**

Security Clearance from the Government is a pre-requisite before appointment of a director in certain cases

Where the person seeking appointment as a director in an Indian Company is a national of a country which shares land border with India, he/she shall obtain the necessary security clearance from the Ministry of Home Affairs, Government of India. Declaration to this effect shall be provided in the consent letter (Form DIR-2) and in the application for DIN (Form DIR-3), and a copy of such clearance shall also be enclosed to these forms.

- **07.06.2022**

Disclosures pertaining to Corporate Insolvency Resolution Process (CIRP) and loans/ borrowings from banks/FIs to be filed in the new digital portal of NSE

NSE has notified that the necessary intimations w.r.t:

- the various stages of Corporate Insolvency Resolution Process (CIRP) such as Admission of CIRP, Approval of Resolution Plan etc. and
- any Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions including signing of Inter-Creditors Agreement (ICA) by lenders shall be uploaded in the designated subject provided under the new digital portal of the Exchange only.

- **09.06.2022**

Re-submission timelines w.r.t application filed for removal of name of company under Companies Act, 2013

A company which intends to have its name removed under Section 248(2) of the Companies Act, 2013 shall file the application in Form STK-2. MCA has now notified that if the Registrar finds the form to be defective or incomplete in any respect, he shall inform the applicant of the same and the rectified return has to be resubmitted within 15 days from the receipt of such intimation. If the applicant fails to do so, the Registrar shall treat the application as an invalid return.

If the Registrar finds the re-submitted return to be defective or incomplete, he shall again inform the applicant of the same. If the applicant fails to submit the revised return within 15 days of such intimation, the Registrar shall treat the application as an invalid return.

Further, the formats of notices in form STK-1, STK-5 and STK-5A have been revised to include the non-payment of subscription by the subscribers to the memorandum and failure to file a declaration to this effect, as a reason for striking off the name of the company.

- **10.06.2022**

Procedure for Restoration of Name in the Data Bank by the Independent Director under Companies Act, 2013

Any individual desirous of being appointed as an Independent Director is required to pass an online proficiency self-assessment test conducted by the Institute ('IICA') within a period of 2 years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the data bank of the IICA.

Where an individual's name has been removed from the databank, MCA now provides for restoration of his name by way of filing a restoration application along with the fee of Rs. 1,000/-. The Institute shall allow such restoration subject to the conditions that:

- The name of such applicant will be shown in a separate restored category for a period of 1 year from the date of restoration, within which, such individual shall be required to pass the online proficiency self-assessment test. The name shall be included in the data bank only upon passing the said online test, and the registration fee paid by him initially shall continue to remain valid for the period for which it was originally paid.

- If he fails to pass the test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh for inclusion of his name in the databank.

- **14.06.2022**

IBBI amends procedure for issuing of Record of Default under Information Utilities regulation

IBBI now requires the creditor to file the information of default with the information utility, prior to filing a CIRP application, so that the information utility shall process the information for issuing the record of default in Form D (as prescribed in the notification). Further, if the list of financial creditors comprises of the banks belonging to the second schedule of the Reserve Bank of India Act, 1934, then the authentication status shall be marked as RED if the Debtor confirms the information of default or it doesn't respond even after three reminders.

Also, any document containing the latest acknowledgment of debt by the debtor will be considered by the Information Utility as a valid proof of debt.

IBBI notifies stringent timelines for disposal of grievance and complaints by the Board/IPA

A stakeholder shall now file their grievance or complaint with the Board on its dedicated portal (www.ibbi.gov.in), as opposed to the existing facility to email/courier/hand deliver the complaint.

The aggrieved/complainant and the service provider shall submit the additional information sought by the Board within 7 days (as against 15 days).

IBBI has also provided for stringent timelines wherein it now requires the grievance closure/prima facie analysis (in case of a complaint) by the Board and redressal, if any, required to be carried out by the service provider, to be completed within 30 days (as against 45 days). If the complainant is not satisfied with the decision of the Board, he may request a review of such decision within 30 days.

If the grievance is against an Insolvency Professional (IP), then the Board may forward such grievance to the Insolvency Professional Agency (IPA) of which he is a member and the IPA shall dispose of this and intimate the Board within 30 days from the receipt of the grievance.

IBBI amends CIRP regulations

Key highlights of the amendment are as follows:

1. Record of debt/transaction/default by operational creditor (OC): OC shall, along with the application initiating CIRP, furnish copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under GST laws and the copy of e-way bill, if applicable. This applies to only those OCs who are required to register under GST.

2. Financial and Operational Creditors to furnish their PAN and email-ID when CIRP application is filed.

3. Any person or promoter of the Corporate Debtor (CD) and the Creditor shall furnish the necessary information, in such format and time, as sought by the Interim Resolution Professional (IRP) or RP, to assist him with the preparation of Information Memorandum (IM), ascertainment of value etc.

4. A third valuer for an asset class may be appointed when the proposal for such an appointment is received from committee of creditors (CoC); existing provision allows such appointment when the RP opines that the difference between the values arrived at by the two valuers is significantly different. Further, the term 'significantly different' is now quantified where the difference between two values is >= 25%.

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5. The creditors shall provide RP/IRP with the relevant extracts of the stock audits, forensic audits etc. and also the latest financial statements of the CD to assist him with determination of preferential or other transactions as per Regulation 35A and with preparation of IM.

6. The Resolution Plan shall provide for the manner in which proceedings in respect of avoidance transactions, fraudulent or wrongful trading under the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed. This shall not be applicable for resolution plans submitted to Adjudicating Authority on or before 14th June, 2022.

IBBI amends Inspection and Investigation regulations

Key highlights of the amendment are as follows:

1. Processing of a complaint or grievance or material available on record under the Grievance and Complaint Handling Procedure Regulations, 2017, shall mean investigation under this regulation and in such case the processing papers shall mean the investigation report under regulation 10. Further, the Board shall have powers to appoint an inspecting/ investigating authority in this regard.

2. If the Board is satisfied, based on the material available on records, that there is a prima facie violation of the provisions of the Code or its Rules/Regulations by the service provider, then the Board shall refer the matter to the Disciplinary Committee for an appropriate action. The Disciplinary Committee may pass an interim order with appropriate directions, which shall lapse on expiry of 90 days from the date of order.

3. The Show Cause Notice (SCN) shall be served in electronic form via email, with a copy sent through Registered post and it shall prescribe the manner in which the service provider shall respond and consequences of failing to respond to the notice. Further, notice shall provide at least 15 days (as against 21 days) to the noticee to make a written submission.

4. The Disciplinary Committee shall endeavour to dispose of the show-cause notice within a period of 35 days (as opposed to 180 days) of the date of the issuance of the SCN. The order thus passed shall be served upon the service provider in electronic form and if applicable, shall be sent to the IPA, of which he is a member. Where the service provider is an IP, the Board shall also intimate the order to all the members of CoC of the insolvency resolution processes in which he is acting as an IRP/RP, as the case may be, and to the Adjudicating Authority.

- **15.06.2022**

Procedural requirements to be adhered to by an Information Utility with respect to Corporate Insolvency Resolution Process

An Information Utility (IU), upon receipt of the CIRP application (whether filed by Financial Creditor/Operational Creditor/Corporate Debtor) from the Board, shall carry out the following activities:

a. intimate the other creditors of the Corporate Debtor by sharing the CIRP application;

b. issue notice to the applicant, requiring it to file 'information of default' in the specified format under IU Regulations; and

c. process the 'information of default' and shall issue the 'Record of Default' in the format prescribed under the IU Regulations.

- **30.06.2022**

SEBI amends disclosure format w.r.t public shareholding of specified securities w.e.f quarter ending 30/09/2022

Key Highlight of the revised format are as follows:

1. The names of the public shareholders holding 1% or more than 1% of shares of the listed entity should be disclosed in the prescribed format(as opposed to the existing requirement where only >1% is required to be disclosed).

2. The category 'Institutions' is split into two - Institutions (Domestic) and Institution (Foreign)

3. Few of the line items, which were earlier classified under Non-Institutions such as Overseas Depositories, NBFCs registered with RBI, have now been classified under Institutions (Domestic/Foreign).

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4. A new column 'Sub-categorization of shares' has been introduced, which shall be filled-in based on the shareholding (no. of shares) under the following sub-categories:

   (i) Shareholders who are represented by a nominee Director on the board of the listed entity or have the right to nominate a representative (i.e. Director) on the board of the listed entity.

   (ii) Shareholders who have entered into shareholder agreement with the listed entity.

   (iii) Shareholders acting as persons in concert with promoters.

5. Where a shareholder is falling under more than one category, then the same shall be classified in the category falling first in the order prescribed in the format. Shareholding under any of the categories shall be unique and shall not be duplicated under multiple categories.

Further, SEBI has notified that the disclosure w.r.t shareholding pattern of the Non-Promoter and Non Public shareholder should contain the names of the shareholders holding 1% or more than 1% of shares of the listed entity (as opposed to the existing requirement where only >1% is required to be disclosed).

SEBI has also prescribed the format for disclosing foreign ownership limits, requiring listed entities to disclose the board-approved limits and limit utilized at the end of a quarter.

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