CimplyFive's Monthly Newsletter

iComply

September, 2022

Editorial

'Come September' in addition to being a popular romantic comedy with a catchy title song is also the time of the year when businesses can pause to stock-take their performance as they near the half-year mark. At CimplyFive, our year could not have been better: not only our client acquisition has ramped up significantly, the lead time for sales conversion has also significantly shortened. Could this be reflection of our value-add? I believe and pray that it is. Wanting this trend to continue.

In the sixth edition of our series **"CCG -Cusps in Corporate Governance"**, we have traced the advent of regulations against insider trading and the benefits obtained, both by the company and the stock market, by eliminating trades by insiders with non-public price sensitive information.

In the third interview of our new series titled **Discovering Gilt-Edged Corporate Governance Practices** we have featured **Mr. Anil Rego, Founder & CEO of Right Horizons Group**, a leading wealth management company who is sharing his professional insights on corporate governance and the parameters used for measuring corporate secretarial 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
September 5, 2022

Discovering Gilt Edged Corporate Governance Practices – 04

Interview with Mr.Anil Rego – Founder & CEO – Right Horizons Financial Services Pvt Ltd.



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

Mr. Anil Rego: I would like to restrict my response to Corporate Governance. Good Corporate Governance is about setting up the system, processes, and policies in an organization to be a good corporate citizen. Read more…

What's more in this month's Issue

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

Discovering Gilt Edged Corporate Governance Practices – 04

Interview with Mr.Anil Rego – Founder & CEO – Right Horizons Financial Services Pvt Ltd.

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

Mr. Anil Rego: I would like to restrict my response to Corporate Governance. Good Corporate Governance is about setting up the system, processes, and policies in an organization to be a good corporate citizen. Good corporate governance would mean transparency to the external world, ethics in functioning and accountability of the operating team.

Good corporate governance ensures that the interests of all the stakeholders are safeguarded. This would include clients, employees, creditors, suppliers, lenders/bankers, shareholders, government, and society at large.

Good Corporate Governance is difficult to measure because it goes beyond numbers. One can attempt to measure it with

(a) a combination of factors that would result in good governance like capture of Mission/Vision/Values, high employee engagement satisfaction scores, community engagement, effective escalation of stake holder concerns.

(b) factors that lead to good governance like board diversity, internal and external audit report gaps, role clarity and KPIs of senior management, Financial and Non-Financial Reporting and Statutory Compliance.

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?**

Mr. Anil Rego: I would not like to look at Corporate Secretarial function, just from a perspective of compliance. It is bigger than that. The Corporate Secretarial fund should be able to maintain records of key business activities, create a framework for implementing the decisions of the board of directors, timely compliance /regulatory filings and provide advice to the management/ board of directors. Thus, effectiveness for me is about being able to achieve success in each of these areas.

At the same time, a dashboard to track these compliances are important as they at times get lost out in the day-to-day activities of the management team. Further, the function should look to proactively address gaps in systems and processes that become evident. It is my perspective that and compliance is best achieved when it is integrated into the operating processes of the organization.

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?**

Mr. Anil Rego: Efficiency to me is about being able to complete the task at hand with ease and being able to look at compliance across multiple companies of ours in one snapshot, especially when one does not have a full time Company Secretary internally. Technology helps improve bandwidth of people and provides an easily accessible repository. The ability to search online across multiple years, does result in significant efficiency. Technology adoption is an important part of having an efficient Corporate Secretarial function.

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

Mr. Anil Rego: As in most other functions, technology is disrupting the way we do business. I remember the registers and the records that we used to fill out earlier. This has completely transformed. The regulators are themselves embracing technology to record and oversee compliance. Hence, I see the role of technology only increasing over the years.

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?**

Mr. Anil Rego: CimplyFive is today playing a very pivotal role in promoting good corporate governance

and compliance at Right Horizons. We were early adopters of the CimplyFive's BLISS Software and it brought in a lot of discipline into our Corporate Compliance matters.

The simple dashboard across companies, is to me the "wow" feature in the BLISS software. There are other features that we love including the repository that it provides, its simplicity and the alerts that you can trigger. We moved from another external company secretary to the CimplyFive team to provide an integrated solution for Right Horizons. We as promoters now have a Bliss*full* sleep!

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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 **21 million page-views** in July, 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 August 2022 here is based on visitors to our site.

For the Month of August 2022

Top 5 Chartbusters in the Companies Act, 2013

Rank in July	Change in Rank	Rank in August	Section reference	Section title
N	↑	**1**	**134**	Financial statement, Board's report etc.
2	↔	**2**	**188**	Related party transactions
4	↑	**3**	**139**	Appointment of Auditors
3	↓	**4**	**135**	Corporate Social Responsibility
5	↔	**5**	**179**	Powers of Board

Section 134 has displaced sections 129 in the top 5 Ranking.

LODR Top 5 Chartbuster Regulations

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

Regulation 33 has replaced Regulation 46 in the top 5 Ranking.

IB Code Top 5 Chartbusters

Rank in July	Change in Rank	Rank In August	Section reference	Section Title
1	↔	**1**	59	Voluntary liquidation of corporate persons
N	↑	**2**	21	Committee of creditors
N	↑	**3**	10	Application for initiation of corporate insolvency resolution process by operational creditors
N	↑	**4**	33	Initiation of liquidation
4	↓	**5**	3	Definitions

Section 21, 10 and 33 have replaced sections 7, 5 and 20 in the top 5 Ranking.

CCG - Cusps in Corporate Governance

CCG-6: Regulating Insider Trading to Enhance Shareholder Value by Enabling Fair Price for Shares

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.

Corporates with their distinct entity, separate from that of their shareholders, is a key concept that enables the corporates to raise money from large number of investors. By ensuring that the shares of the company can be traded without adversely affecting the business of corporate entity, shareholders are provided liquidity without impacting the business of the company. Hence shareholders can sell their shares to other investors or shareholders based on the business value of the company as it prevails on that date.

To ensure share prices trade at fair value, a key requirement is for the company to ensure that business information of the company is available to all shareholders and investors is the same, with no one group or sub-group being placed at an advantage. Companies that provided this assurance to their investors attract larger number of buyers as they are assured of a fair price when they choose to exit. This not only ensures higher liquidity for trading but also fair price based on the information availability.

The Trigger

The stock market crash of 1929 in the US, more popularly known as the Great Crash triggered a severe and prolonged economic depression in the country. US GDP contracted by 46%, from $103.8 billion in 1929 to $56.4 billion in 1933. In addition, one in four workers in the US was unemployed. To revive the economy number of steps were taken by the government including the one to build investor confidence by enacting the Securities Exchange Act 1934 that established the Securities Exchange Commission to enforce the Securities Exchange Act, 1933.

Securities Exchange Act, 1933, was established for the primary purpose of ensuring and maintaining fair and honest market, which among other things prohibited insider trading. Section 16 (b) of the Act, provided for recovery of profits earned by an officer or director of the company who unfairly used information by trading in the shares of the company. Within a few years in 1942, a new rule 10b-5 was enacted that made insider trading a prosecutable offense.

The Pioneer

Prior to 20th century, availability of corporate information to potential investors was not the norm. Hence, "insiders" with privy to price sensitive information were at an advantage and made large profits that was not possible for "outside" shareholders. Price sensitive information in the early 20th century mainly pertained to dividend declaration or companies acquiring new businesses. The malady was so widespread that many saw the profits available through trading with inside information as a perquisite for holding key positions in the company like directors or corporate leaders.

One of the earliest proponents of regulating insider trading was Elbert Gary the first Chairman of US Streel Corporation, the first company with billion dollar market capitalization. Gary shocked his directors when at the end of the first year of operations, he proposed that the company release their financial statement to shareholders at the same time they were made available to directors, in the late afternoon after the stock markets were closed. He believed that directors should have "no better opportunity on the market than the public at large." Commenting on his proposal he added:

> I always thought this use of inside information by directors—very common at the time—was akin to robbery of their own stockholders, and I had no hesitation in making my disapproval of it so clear that everybody on the board would understand. . . . It was wrong in principle and it set a bad example. How could we expect our officers and employees not to speculate if the members of the board did.

While this thought "using inside information is akin to robbery of shareholder" emerged in the first decade of

the 20th century, it was more an exception than the rule. With time many good companies prevented their officers and directors from trading in their own stock to provide outside shareholders a level playing field for their trades. It would take a few more decades before this exception became the rule mandated in law, initially in the US followed by other geographies across the world. The basis for regulating insider trading is the principle of 'Abstain or Disclose', a concept that emerged from the **Strong vs. Repide** case in 1909 CE, where the US court upheld the principle that directors with knowledge that affects the share price cannot trade with investors who does not have this information, thereby establishing the concept of 'Abstain or Disclose", i.e. abstain from trading or publicly disclose the information to public and then trade.

The Spread

In the second half of the 20th century as US markets gained prominence and attracted investors from world over, other countries too followed the US lead and enacted similar securities laws to create a fair and efficient stock markets to attract capital to galvanize their own economic growth. India too followed suite in 1992 with the creation of SEBI on lines similar to the SEC of the United States.

Practice Today

The need to eliminate insider-trading for a thriving capital market is a universally accepted belief today. It is also increasing clear that the ability to criminally prosecute an insider for their trading based on inside information is quite cumbersome and often fails to obtain conviction due to lack of prosecutable evidence. It is in this context that the approach to inside trading has moved away from **punitive measures to preventive measures,** where detailed procedures are prescribed for eliminating insider trading. Initially it started with defining trading window closures for insiders, during period where there is presumption of inside information, before moving on to define individuals who are designated as insiders based on their position in the company, to now in India where the insiders' demat accounts are frozen for the period of trading window closures to prevent insider trading.

With these preventive measures in place, the burden of proof required by the prosecutor to prove insider training is minimized, as it is easier to establish violation of the defined procedures for preventing regulating insider trading, prominent among which are -process to identify and track insiders or designated individuals, the requirement to have a Structured Database of price sensitive information and individuals who have access to it, trading window closures, banning contra trades among others.

In the current context of preventive measures used to eliminate insider trading, conviction for insider trading is obtained primarily for violation of the detailed preventive measures prescribed to regulate insider trading where in addition to penalties specified for breach of these procedures, the gains from insider trading are also required to be disgorged. Visible prosecution of insider trading acts as a major deterrent for others with inside information from trading.

BLISS Tips for the Month

#234: With BLISS Secure Your Past Records in the E-repository and prevent it from being tampered
#235: With BLISS update and generate reports from Your Dividend and Auditor Masters.
#236: BLISS enhanced to record Extensions Provided by MCA/ SEBI in Tracking Due dates
#237: With BLISS Track Compliance Based on the Nature of the Company -Private or Public
#238: With BLISS Provide User Departments with Access to Resolutions Initiated by them

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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

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Compliance Calendar

September 7th	TDS payment for August
September 10th	GSTR 8 (Return filed by e-commerce operators)
	GSTR 7 (Monthly return filed by the persons required to deduct TDS)
September 11th	GSTR 1 (Turnover exceeding 5 crore or opted for monthly Return)
September 15th	Pay PF contribution for August
	ESIC payment for August
September 20th	Professional Tax payment
September 20th, 22nd, 24th	GSTR 3B (based on turnover and principal place of business)
September 25th	PF Return for August

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

- **01.08.2022**

Use of Digital Signature Certificate (DSCs) is made mandatory for filing of intimations by listed companies with effect from 01/09/2022

In the light of Covid- 19 pandemic, SEBI had permitted listed companies to use DSCs for authentication/certification of filings/submissions made to the stock exchanges under the LODR regulations for all filings until December 31, 2021.

Considering the advantages of using DSCs, BSE and NSE have now notified that the authentication using DSC is mandatory with respect to intimations/announcements filed under various SEBI Regulations except for following disclosures/events, with effect from 01/09/2022:

1. Outcome of Board meeting which includes only financial results.
2. Any disclosure in which document(s) issued by entity/ies other than listed company is/are included (For e.g., Auditors certificate, NCLT / other court's order, Credit Rating, etc.).
3. Newspaper advertisement.
4. Any other disclosure as specified by Stock Exchanges from time to time. Read more...

- **05.08.2022**

SEBI issues Circular for Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") – Framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level

In furtherance to the provisions of Clause 4 (1) of Schedule B read with Regulation 9 of PIT Regulations, regarding restriction of trading in securities of a Listed Company by Designated persons and their immediate relatives during trading window closure, SEBI vide its circular dated 05/08/2022 has decided to develop a system to improve ease of doing business and preventing inadvertent non-compliance of the provisions of PIT Regulations by DPs.

Key highlights of the circular are:

1. This circular shall be applicable to declaration of financial results of the listed company that is or was a part of NIFTY 50 and SENSEX from the date of implementation of this circular.
2. Restriction of trading shall be for on-market transactions, off market transfers and creation of pledge in equity shares and equity derivatives contracts (i.e., Futures and Options) of such listed companies.
3. Listed Company shall update/ confirm the PAN of DPs to be frozen and Commencement date and End date of Trading Window Closure.
4. Trading window closure 'Commencement Date' shall be the 1st day (T-Day) immediately after the end of every quarter for which financial results are to be announced and 'Trading Window Closure End date' shall be 48 hours post disclosure of financial results.
5. Depositories and stock exchanges shall restrict trading of DP from T-day, till end of trading window closure period.

6. The details of DP and dates of Trading window closure shall be made available/ confirmed to the Designated Depository at least 2 trading days prior to the commencement of Trading Window Closure.

7. Any addition/deletion/updation pertaining to the details of DP shall be affected within 2 trading days of receipt of intimation from the listed company and the procedure specified in terms of SEBI Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 09, 2020, shall be followed.

8. Procedure for implementation of the system is in **Annexure – A** to the Circular**.**

9. In case of any discrepancy, the issue shall be resolved by the Depositories, in coordination with Stock Exchanges and listed company.

This circular shall come into force with effect from the quarter ending **September 30, 2022.**

- **18.08.2022**

MCA notifies procedure for Verification of Registered Office of the Company under Companies (Incorporation) Rules, 2014

As per Rule 25 B, the Registrar shall visit the registered office of the company to physically verify its address if it has reasonable cause to believe that the company is not carrying on any business or operations

The verification shall take place in the following manner:

1. In presence of two independent witness of the locality in which the registered office is situated
2. With documents as filed on MCA 21 in support of this address, duly authenticated by the occupant.
3. By taking a photograph of the registered office

On completion of verification, a report shall be prepared in a format prescribed in the notification containing basic information about the Company, details of the Registrar visit and about witnesses to the verification.

- **24.08.2022**

MCA amend formats of notices with respect to Removal of Names of Companies from the Register of Companies

MCA had recently notified the procedure for Verification of Registered Office of the Company, where the Registrar has reasonable cause to believe that the company is not carrying on any business or operations.

In this connection, MCA has now amended the formats of the following notices, to include that *'the Company(ies) has/have not been carrying on any business or operations, as revealed after the physical verification'* as a reason for removal of the name(s) from the Register of Companies:

1. STK-1 (Notice by Registrar for removal of a name of the Company from the register of companies)
2. STK-5/5A (Public Notice notifying the names of the companies that are removed)

- **29.08.2022**

MCA issues Notification to amend Companies (Registration of Charges) Rules, 2014

MCA has issued Companies (Registration of Charges) Second Amendment Rules, 2022 to further amend Companies (Registration of Charges) Rules, 2014.

Key highlights of the Notification are:

1. The Form CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator of companies under resolution or liquidation, as the case may be and filed with the Registrar.

2. Form CHG-1, CHG-4, CHG-6, CHG-8, CHG-9 shall be substituted with the forms annexed to the said Notification.

MCA issues Notification to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014

MCA has issued Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 to further amend Companies (Appointment and Qualification of Directors) Rules, 2014 substituting e-form DIR-3-KYC and web-form DIR-3-KYC-WEB with the forms annexed to the said Notification.

MCA issues Notification rules to further amend the Companies (Acceptance of Deposits) Rules, 2014

MCA has issued Companies (Acceptance of Deposits) Amendment Rules, 2022 to further amend Companies (Acceptance of Deposits) Rules, 2014.

Key highlights of the Notification are as follows:

1. Pursuant to the provisions of Rule 16 of the said Rules, every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and a declaration to that effect shall be submitted by the Auditor in Form DPT-3.

2. Form DPT-3 and DPT-4 shall be substituted with the forms annexed to the said Notification.

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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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