CimplyFive's Monthly Newsletter

iComply

January, 2023

Happy New Year 2023

Editorial

Wish you all a very happy, prosperous, and healthy new year 2023. With every new year we realise that change is the only constant, more so in our professional life, where the business is in a constant state of flux driven by regulatory changes, emerging technologies, and economic outlook. Team CimplyFive is prepared to handle these changes as we strive to meet and exceed our client's expectation.

Turning to this newsletter, in the tenth edition of our series **"CCG -Cusps in Corporate Governance"**, we have traced the origin of Audit Committees and how they have come to occupy a prominent role in ensuring good governance in the corporate world by preventing mis-reporting and unfair related party transactions.

In the eighth interview of our new series titled **Discovering Gilt-Edged Corporate Governance Practices** we have featured **CS R Santhosh, Vice President Shared Services & Company Secretary, RMZ Group,** who shares his insights on corporate governance, measuring effectiveness and efficiency of compliance functions and the role of technology in compliance management.

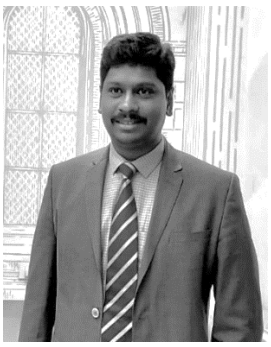
All our other regular features like –**Gist of Changes in the Companies Act, 2013, SEBI's LODR, 2015 and IB Code, 2016** and **Statutory Compliance Calendar** are also included in this Issue.

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
January 5, 2023

Discovering Gilt Edged Corporate Governance Practices – 08

Interview with CS R Santhosh, Vice President Shared Services & Company Secretary, RMZ Group



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

CS R Santhosh: The G referring to 'Governance', in ESG, is a buzz word in Investment houses and Corporates across the globe today. Governance is the system by which the corporate is directed and controlled. 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 – 08

Interview with CS R Santhosh, Vice President Shared Services & Company Secretary, RMZ Group

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

CS R Santhosh: The G referring to 'Governance', in ESG, is a buzz word in Investment houses and Corporates across the globe today. Governance is the system by which the corporate is directed and controlled. The objective as well as a challenge for any corporate today would be integrating the governance principles into business strategies.

The need for good corporate governance evokes multiple responses ranging from better access to external finance, higher firm valuation and share performance and/or lower cost of capital and lower interest rates on loans, or improved company performance leading to sustainability.

In simple terms, the quality of governance practices significantly influences a company's access to capital. Larger pool of investors, money managers and asset owners are now giving equal importance to both governance and business performance.

While there has been a continuing debate on how to measure good corporate governance among those who hold divergent positions on corporate governance practices, McKinsey, the international management consultant in a survey with sample size of 188 companies from 6 emerging markets (India, Malaysia, Mexico, South Korea, Taiwan and Turkey), found a strong correlation between good corporate governance and the market valuation of the company.

Identifying good corporate governance based on multiple factors like:

- Accountability: transparent ownership, board size, board accountability, ownership neutrality.
  - Disclosure and transparency of the board: timely and accurate disclosure, independent directors.
  - Shareholder equality: one share-one vote.

They concluded good corporate governance increases market valuation by:

- Increasing financial performance.
- Transparency of dealing, thereby reducing the risk that boards will serve their own self-interest.
- Increasing investor confidence.

They also found companies with good corporate governance practices have high price-to-book values, with investors willing to pay a premium for the shares of a well-managed and governed company, as much as 28%.

Companies in emerging markets often claim that Western corporate governance standards do not apply to them. However, this survey in the six emerging markets show that investors world-over look for high standards of good governance and are willing to pay a high premium for shares in companies that meet their standards of good corporate governance.

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?**

CS R Santhosh: Effectiveness of corporate secretarial function does not only limit itself to regulatory compliances of its core function but it also extends across to the whole gamut of 'Compliance' that applies to different spheres of the corporate entity as well. To illustrate, compliances of various critical contracts the company has entered with its strategic stakeholders like investors, creditors, statutory authorities and even certain vital vendors is covered. Default in any of those contracts will adversely affect performance of the Company. In my humble opinion, the onus of ensuring and reporting on the compliance with those critical contracts is also with Company Secretary who shall assume this responsibility and promptly report to the Board and Shareholders not only of its compliance but also of any potential non-compliance likely to occur along with suggested recourse of action to fix the gaps if any. I see this element as an essential part of not only compliance but risk management as well.

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?**

   CS R Santhosh: The extent of human intervention to supplement use of technology should be at the process level as well. Efficiency is reduction of time and efforts required to achieve the final result and is measured by the effectiveness in creation and implementation of the compliance system that delivers positive result as outcome of the governance practices.

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

   CS R Santhosh: As the scope of governance in my view is much broader, having a robust and effective framework to track, evaluate, and monitor the compliances and manage compliance risk is very essential. Automated compliance systems with effective tool / application that connects, the owners with their processes, and alerts them of impending compliances to help them create a repository of readily accessible compliance records will help us to get ourselves a notch above the challenge we have in hand.

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?**

   CS R Santhosh: We are very happy with the quality of software and the responsive services provided by CimplyFive team. From a relatively simple tool when we first adopted it a few years ago, now BLISS has evolved into a comprehensive secretarial automation software handling most of corporate law compliances.

   I would like to see CimplyFive evolve to provide a one stop solution for all our compliance needs across all domains; a software that is also customizable to the unique needs of our Company and the sector specific laws as applicable.

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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 **25 million page-views** as on date and attracts over 6000 users accessing around 25,000 pages a day. Listing of the most viewed sections in the Companies Act, LODR and IB Code in the month of December 2022 here is based on visitors to our site.

For the Month of December 2022
Top 5 Chartbusters in the Companies Act, 2013

Rank in November	Change in Rank	Rank in December	Section reference	Section title
5	↑	**1**	**179**	Powers of Board
2	↔	**2**	**135**	Corporate Social Responsibility
3	↔	**3**	**62**	Further issue of Share Capital
1	↓	**4**	**188**	Related party transactions
4	↓	**5**	**186**	Loan and investment by Company

All the top 5 sections remained the same as in earlier month; only their positions changed

LODR Top 5 Chartbuster Regulations

Rank in November	Change in Rank	Rank in December	Regulation reference	Regulation Title
1	↔	**1**	30	Disclosure of Events or Information
3	↑	**2**	17	Board of Directors
2	↓	**3**	23	Related Party Transactions
N	↑	**4**	29	Prior Intimations
N	↑	**5**	2	Definitions

Regulation 29 and 2 have replaced Regulations 52 and 33 in the top 5 Ranking.

IB Code Top 5 Chartbusters

Rank in November	Change in Rank	Rank In December	Section reference	Section Title
5	↑	**1**	5	Definitions
4	↑	**2**	3	Definitions
N	↑	**3**	30	Submission of Resolution Plan
N	↑	**4**	29	Preparation of Information Memorandum
N	↑	**5**	27	Replacement of resolution professional by committee of creditors

Section 30, 29 and 27 have replaced sections 59, 21 and 7 in the top 5 Ranking.

CCG - Cusps in Corporate Governance

CCG-10: Advent of Audit Committees

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 mandated by regulators in aftermath of a corporate fraud or a scandal, identifying a voluntary practice of a pioneer, to reduce if not prevent such frauds or scandals.

This series traces key episodes of such changes.

It would not be incorrect to identify Audit Committees as the brake pedal in the Good Corporate Governance vehicle to prevent mis-governance or financial scandals, as it has the power to recommend appointment of auditors, adoption of accounts and approval of related party transactions. Consistent with the basic theme of this series: necessity is the mother of invention, Audit Committees too is the result of a mandate by the regulators in response to financial scandals and misappropriation by the corporate management, to prevent such recurrence. Separated by five decades, two scandals one on either side of the Atlantic has given this prominent role to the Audit Committee. The first scandal was in the US in 1930s of McKesson & Robbins, and the later was in the UK in 1980s involving Bank of Credit & Commerce International and Maxwell Communications.

The Trigger

In 1930s, a major fraud was uncovered when $18 million or 20% of the assets in the balance sheet of McKesson & Robbins, a NYSE listed pharmaceutical company was found to be made up of fictious inventory and receivables of its International Division. Price Waterhouse, the Auditors appointed by the management did not audit the International Division of the Company, as it was excluded from the audit scope by the executive management who appointed them and defined the Audit scope. SEC (Securities Exchange Commission) which investigated this scandal that found the management defining the audit scope responded by including in their 1940 Accounting Series Release No.19, the recommendation for companies to have an Audit Committee consisting of non-executive directors to define the scope and interact with the auditors of the company. It would take another 40 years before the NYSE mandated their listed companies to have an Audit Committee in the year 1977.

Fifty years after the first scandal, a series of corporate scandals in UK involving companies like BCCI (Bank of Credit & Commerce International), Maxwell Communications, Coloroll, and Poly Peck led to the appointment of Cadbury's Committee by the consortium of Financial Reporting Council, London Stock Exchange, and the accounting profession. One of their four most impactful recommendations was the need to have an Audit Committee consisting of at least three non-executive directors. The other three recommendations were to separate the role of Chairman and Managing Director, have majority of non-executive directors on the board, and to have the remuneration committee of the board constituted with majority of non-executive directors.

The Pioneer

An interesting research article published[i] in 1979 by Thomas E McKee captures the background to one of the first Audit Committees formed in the US in the year 1870 CE. Tracing the minutes book and other public records of East Tennessee and Western North Carolina Railroad Company (ET&WNCRR) which was incorporated in 1866, the author captures the genesis for Audit Committee formation. This railroad company was incorporated to construct a 34 miles long railroad within five years along with the promise to start construction within 2 years of formation.

To promote railroad construction, the State Government permitted the company to raise a portion of the funds required by selling state bonds issued to them. As concerns arose on how the funds raised by sale of bonds were used, the Annual Shareholder Meeting in 1870 constituted a committee of non-executive directors to inspect the books of accounts and report their findings. The committee in its report identified $64,590 unaccounted for by the President, disallowed $5,643 which was paid for by its Treasurer and $1228 for which vouchers were not submitted. Analyzing the reasons for appointing a committee of non-executive directors to undertake this audit, the author notes the absence of qualified auditors in small towns, as in the year 1888 there were only 26 members in American Association of Public Accountants, the predecessor to

American Institute of CPAs, which required non-executive directors to play the role of auditors. With increase in the number of audit professionals, when the need arose, the role of Audit Committee changed from undertaking audit themselves to defining the scope of Audits and overseeing the role of auditors.

In India

Section 177 of the Companies Act, 2013 mandates every listed company and every public company with share capital of Rs.10 crores and more, or turnover of Rs.100 crores and more, or outstanding loans, debentures, and deposits of Rs.50 crores and more to constitute an Audit Committee. The audit committee among other things, is required to recommend appointment and remuneration of auditors, review and monitor auditor's independence, examine the financial statement and the connected audit reports, approve related party transactions and intercorporate loans and investments.

The responsibility of the members of Audit Committee is significant as they have the primary role of evaluating and recommending key decisions that reflect good corporate governance. This is reflected in the size of Audit Committees and the frequency of its committee meetings. As an illustration, Nifty 50 companies for the year 2021-22 had an average of eight members contrasted with the statutory minimum of 3 members and eight meetings as compared to four mandatory meetings.

The performance of Audit Committee is a key factor in preventing corporate scandals and mis-governance, thought by itself it cannot create a profitable and successful company.

BLISS Tips for the Month

#249: Significant Enhancement to BLISSGLOBAL, the DIY Compliance Framework
#250: BLISS auto triggers Registers, Returns and other Actions required for Agenda Items
#251: With BLISS generate and download Compliance MIS Reports in Excel/PDF format
#252: With BLISS Restrict the View of Confidential Agenda items for Select Users Like Invitees to Board Meeting

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Board Leaders Integrated Software Solutions



BLISSPLUS

BLISS LISTED

BLISSGLOBAL

BLISSDOCS

CIMPLYBEST

BLISSTAT

CAIRR LODR Integrated

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

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

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 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

January 7th	TDS payment for December.
January 13th	GSTR 1 (Oct-Dec,22)-Optional for those opted quarterly filing as per QRMP scheme.
January 15th	Pay PF contribution for December
	ESIC payment for December
January 18th	CMP 08-A special statement-cum-challan filed by Composition Dealer.
January 20th	Professional Tax payment
January 20th, 22nd ,24th	GSTR 3B (based on turnover and principal place of business)
January 25th	PF Return for December

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

- **05-12-2022**

Relaxation of SEBI rules for Central Government w.r.t Disinvestment in Public Sector Undertakings (PSUs)

In order to facilitate disinvestment of Central Government's stake in the listed PSUs, SEBI has notified that it may, after due consideration of the interest of the investors and the securities market and for the development of the securities market, relax the strict enforcement of any of the requirements of LODR regulations, if an application is made by the Central Government to this effect.

- **09-12-2022**

SEBI issues clarification w.r.t Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS)

SEBI has clarified that the provisions of its circular dated 17/11/2022, notifying the requirements to be adhered to by the entities which have listed its NCDs/NCS, shall not apply to a Scheme of Arrangement which solely provides for an arrangement between a debt listed entity and its unlisted wholly owned subsidiary. However, such debt listed entity shall file the draft Scheme of Arrangement with Stock Exchange(s) for the purpose of disclosure and the Stock Exchange(s) shall disseminate the scheme documents on their websites. BSE has also issued a circular to this effect. (Read more)

- **14-12-2022**

NSE issues a circular to clarify FAQs regarding filing Shareholding Pattern report as per Regulation 31 of SEBI LODR 2015

Key Highlights:

1. **In the event of demise of Promoter or Promoter Group shareholder** whose shares are not yet transmitted as on the end of the quarter, the company should disclose detailed notes for the same in the shareholding pattern. Upon transmission of the shares to the legal heir(s), the company can exclude names of the Late Promoter/Promoter Group(s) individual from the forthcoming shareholding pattern.

2. **If a Promoter / Promoter Group Company gets wound up or dissolved**, the Company should mention detailed note(s) while filing shareholding pattern from the forthcoming quarter.

3. Any shareholder falling under the definition of "promoter" or "promoter group" should only be disclosed in Table II of the prescribed format.

4. **If 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.

5. I**n case any shareholder category comprises of multiple sub-categories**, shareholding under each sub-category needs to be separately included under the respective sub-categories.

6. The name of the promoter can be removed only after seeking approval of Reclassification from the Exchange when these shares **are transferred/ sold.** Meanwhile, Companies are to show the promoters/promoter group with nil shareholding till the approval for Reclassification is granted from Exchange.

7. **If Company doesn't have Significant Beneficiary owner,** in the declaration sheet the Company needs to select No.

8. I**f the shareholder is a Trust or HUF,** the name of the Trust or HUF can be given as the shareholder generally. However, in case of Promoter's & Promoter's Group, the Company needs to also enter the name of Trustee or Karta respectively in the bracket.

- **15-12-2022**

NSE mandates filing of Financial Results only on NEAPS portal with effect from December 17, 2022 to bring all the filings under one single portal.

Key highlights of the Circular are-

- Filing under Quick Results Module–

1. For outcome of **board meeting with only financial results** as agenda item for Quarterly/Half yearly/Annual Financial results (PDF file) will have to be filed only under Quick Results module on NEAPS.
2. For outcome of **board meeting with multiple agenda items along with financial results** will have to filed under both Announcement and Quick result module on NEAPS.

- Filing of Full Results - XBRL submission for the Financial Results will have to be filed under Full Results module on NEAPS.

- **19-12-2022**

Clarification on Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS)

SEBI, vide its circular dated 17/11/2022, has laid down procedure on Scheme(s) of Arrangement by entities who have listed their NCDs/NCPRS under LODR Regulations, 2015.

In this connection, BSE and NSE have issued clarifications addressing various aspects towards its implementation. Key highlights of the clarificatory circulars are as follows:

1. **Applicability of SEBI's circular:** The circular shall be applicable to the Entity whose Board Meeting approving the Scheme of Arrangement was/is held after 14/11/2022, which was the date of amendment of LODR Regulations to this effect.
2. **Report of Complaints/ Comments received by the listed entity on the draft scheme of arrangement:** For Listed Entity having their specified securities as well as NCDs/NCRPS listed, the report on Complaints must be submitted to the Stock Exchanges within 7 days of expiry of 21 days from the date of hosting the draft scheme along with documents on the website of Stock Exchanges and the listed entity.
   For Listed Entity having only their NCDs /NCRPS listed, the report has to be submitted to the Stock Exchanges within 7 days of expiry of 10 days from the date of hosting the draft scheme along with documents on the websites of Stock Exchanges and the listed entity.

3. **Timelines for submission of Response to Stock Exchange by the listed entities that have listed only NCPRS/NCDs:** The entity shall submit their response to queries raised by the Stock Exchange within 7 working days of query being raised, to enable adherence to requirement of "maximum number of days for providing the 'No-Objection' Letter to SEBI shall not exceed thirty days from the date of receipt of the draft scheme of arrangement". It may be noted that submission of incomplete reply will be considered as non-submission.

4. **Number of applications:** For Listed Entity having their specified securities as well as NCDs/NCRPS listed, a single filing of the draft scheme of arrangement in terms of Regulations 37 and Regulation 59A of SEBI LODR Regulation 2015 shall be submitted under Regulation 37 wherein additional documents, as required for NCDs/NCRPS listed company shall also be attached.

5. **Disclosure pertaining to Exit offer to Dissenting NCDs/NCPRS holders:** The report issued by the Board of Directors recommending the draft scheme shall also contain their comments on the

Exit offer for the dissenting holders of NCDs/ NCRPS, who dissent the proposed scheme of arrangement. Further, if there are provisions related to exit offer, the same shall also be part of the scheme. To view the BSE Circular-**Click here.**

- **20-12-2022**

Revised Standard Operating Procedure (SOP) for application filed w.r.t. Scheme of Arrangements under Regulation 37 and 59A of LODR Regulations, 2015

Further to the recent amendments made to the provisions pertaining to draft scheme of arrangement filed with stock exchanges under Regulation 37 and 59A of LODR Regulations, 2015, NSE and BSE have issued revised SOPs to be followed by such listed entities.

Key highlights and timelines as per the revised SOP are as follows:

1. **Application for NOC:** The Scheme of Arrangement seeking Stock Exchange's NOC under LODR Regulations, 2015 shall be submitted to the Exchange along with all the documents as per the Exchange Checklist within 15 working days of board meeting approving such draft scheme of arrangement. In case the application is not submitted within 15 working days, the company shall take fresh approval from its board considering fresh financials, valuation report, etc.

2. **Period of Financials and Valuation Approach:** At the time of submission of the application to the Exchange(s) under the said regulations of SEBI LODR, the Audited Financials of last 3 years (financials not being older than 6 months) of unlisted company(ies) involved in the Scheme of Arrangement has to be submitted. Also, the aforesaid audited financials shall be considered for preparation of Valuation Report by the valuer under Income Approach. The audited financials considered for valuations, other than Income Approach, should not be older than 3 months. The board shall consider the scheme of arrangement within 7 working days of the issuance of valuation report.

3. **For Listed Entity having their specified securities as well as NCDs/NCRPS listed,** a single filing of the draft scheme of arrangement in terms of Regulations 37 and Regulation 59A of SEBI LODR Regulation 2015 shall be submitted under Regulation 37 wherein additional documents, as required for Debt Listed company shall also be attached.

4. **Response to queries raised by the Stock Exchanges:** Where the application is incomplete or any clarification needed or any material inadequacies/non-compliance with the SEBI Circulars are observed in the documents by the Exchange, the scheme shall be returned to the Company for necessary rectifications. The Company shall file its response within 7 working days from the receipt of such queries, failing which, any fees paid by the Company for processing of the application shall be forfeited by the Exchange/Regulator and the scheme documents shall be returned to the company.

   Where the applicant is a NCDs/NCRPS only listed entity, then it shall ensure that it submits its response at the earliest so that it meets the requirement of "maximum number of days for providing the 'No-Objection' Letter to SEBI shall not exceed thirty days from the date of receipt of the draft scheme of arrangement". To view BSE Circular- Click here

- **21-12-2022**

Proforma for reporting liquidator's decision(s) where it's different from that of the advice of Stakeholders' Consultation Committee (SCC) under IBBI (Liquidation Process) Regulations, 2016

Regulation 31A of Liquidation Process Regulations requires the liquidator to constitute a SCC to advise him/her on matters relating to remuneration of professionals, valuation, liquidator fees et., and such advise isn't binding on the liquidator. Where the liquidator takes a decision different from that of the SCC's advice, he/she shall furnish the reasons for taking such decision to the Adjudicating Authority and the Board, within 5 days of the said decision.

In this connection, the Board has made available an electronic platform at www.ibbi.gov.in, for reporting the liquidator's decisions different from that of the advice given by the SCC. The prescribed format of the reporting, which captures details including the voting statistics and justification of liquidator's decision, is annexed to the said circular.

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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



To view the previous issues of *iComply* click here

[i] Published in Accounting Historians Journal, Volume 6, Issue 2, Fall 1979, Article 5 "1870 Corporate Audit Committee"