

Editorial

All good things come to an end, and as an optimist I believe it paves way for the best. After 8+ years, I am moving out of CimplyFive effective March 31, 2023. CimplyFive is in safe hands to continue its journey to be the best corporate secretarial software in India.

I thank each one of you; to list chronologically —my co-founders, our investors, well-wishers, team members, vendor-partners, and last but not the least our clients who reposed their faith in BLISS, a pioneering idea that has bloomed today. I wish you all the very best in your continuing journey, as I step-off. My mobile number remains the same and my email-id is shankar.jaganathan@gmail.com.

Turning to this newsletter, in the twelfth edition of our series **"CCG -Cusps in Corporate Governance"**, we have identified the trigger for companies to issue Earnings Guidance in promoting good governance in the corporate world and trace the reason why within a decade this 'good' governance practice was discarded.

In the tenth interview of our new series titled "**Discovering Gilt Edged Corporate Governance Practices**" the last for this year and the last one with me in CimplyFive, at the request of our team, I have shared my thoughts 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
March 6, 2023

Discovering Gilt Edged Corporate Governance Practices – 10

Interview with Mr. Shankar Jaganathan, Founder & Chief Executive, CimplyFive.



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

Mr. Shankar Jaganathan: Good governance is needed whenever decision making is separated from the beneficiaries of those decisions, as in public life where elected representatives are the decision makers and electorate are the beneficiaries. **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 – 10

Interview with Mr. Shankar Jaganathan, Founder & Chief Executive, CimplyFive.

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

   Mr. Shankar Jaganathan: Good governance is needed whenever decision making is separated from the beneficiaries of those decisions, as in public life where elected representatives are the decision makers and electorate are the beneficiaries. In corporate world, good governance is needed as the Board of Directors and the management take the decisions while the beneficiaries of the corporate decisions are the shareholders and other stakeholders. My idea of good corporate governance is where the Board and the Management retain the trust of the stakeholders, especially when taking unpopular decisions.

   Good governance can be measured by the level of trust the stakeholders have in their Board and Management, which comes to the forefront when they share negative news; 'Do they place the interest of their stakeholders before their own interest?', is the key question to be answered for all decisions made, which is highlighted in the timing of sharing negative news.

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. Shankar Jaganathan: The need to ensure timely compliance and eliminate payment of penalties or late fees is the base level of effectiveness. At a higher level, the effectiveness of corporate secretarial function is in transmitting the benefits of compliance not just with the letter of law but also the spirit of law to help the management and the Board always earn and retain the 'trust' of their stakeholders. This could often result in voluntary disclosure practices that go beyond what is mandated by law.

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. Shankar Jaganathan: At the base level, efficiency is measured by the relationship between input and output, with lower input for the same output reflecting higher efficiency. Given the need to maintain secretarial records for the life of the company starting from its date of incorporation, a more comprehensive measure of efficiency for the corporate secretarial function will be in

   - establishing a corporate memory that is available for decades if not for centuries,
   - reducing person dependencies by creating standard practices and processes that evolve with time, and
   - enriching the work of the corporate secretarial team by eliminating clerical work.

   Realizing this requires an ideal blend of technology and a team that is not only competent but also passionate about good governance. T he results of corporate secretarial activity will be tested and known many years later, only when corporate actions like an IPO or an acquisition take place where the level of scrutiny will be higher, and the cost of gaps not identified in time will be much more.

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

   Mr. Shankar Jaganathan: In the 21st century, technology has entered all elements of corporate life and corporate secretarial function is not an exception. Technology has a key role in ensuring good governance as seen across its multiple facets- tracking the ever-evolving mandates, standardising practices, processes, storing and retrieving compliance records for quick and effective communication with stakeholders, including the regulators.

5. **CimplyFive: What is that one 'wow' feature you would like to see in BLISS software that you think will ease Chief Compliance Officers into their roles?**

   Mr. Shankar Jaganathan: As the Founder & Chief Executive of CimplyFive, our ability to convert the potential of technology into ensuring good corporate governance is only partially realised due to a combination of limiting factors like availability of resources, our ability to accelerate the pace of our experimentation and learning and finally our imagination.

   My vision is for CimplyFive to create an Enterprise Risk Management Software that is not only comprehensive covering all laws, but also complete in tracking, automating, and storing all the compliance evidence required for audits, with a simple and informative dashboard that is used by both compliance professionals and the Board of Directors.

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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 **27 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 February 2023 here is based on visitors to our site.

For the Month of February 2023
Top 5 Chartbusters in the Companies Act, 2013

Rank in January	Change in Rank	Rank in February	Section reference	Section title
2	↑	**1**	**62**	Further issue of Share Capital
1	↓	**2**	**135**	Corporate Social Responsibility
4	↑	**3**	**179**	Powers of Board
3	↓	**4**	**188**	Related party transactions
5	↔	**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 January	Change in Rank	Rank in February	Regulation reference	Regulation Title
2	↑	**1**	30	Disclosure of Events or Information
1	↓	**2**	17	Board of Directors
3	↔	**3**	23	Related Party Transactions
N	↑	**4**	46	Website
N	↑	**5**	33	Financial Results

Regulations 33 and 46 have replaced Regulations 15 and 29 in the top 5 Ranking**.**

IB Code Top 5 Chartbusters

Rank in January	Change in Rank	Rank In February	Section reference	Section Title
1	↔	**1**	59	Voluntary liquidation of corporate persons
N	↑	**2**	7	Initiation of corporate insolvency resolution process by financial creditors
2	↓	**3**	5	Definitions
N	↑	**4**	3	Definitions
N	↑	**5**	29	Preparation of Information Memorandum

Section 3, 7 and 29 have replaced sections 6, 30 and 33 in the top 5 Ranking.

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CCG - Cusps in Corporate Governance

CCG-12: Role of Earnings Guidance in 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 reveal that most good governance practices are mandated by regulators in the aftermath of a corporate fraud or a scandal, identifying the voluntary practice of a pioneer, to reduce if not prevent such frauds or scandals.

This series traces key episodes of such changes.

A basic belief is that good governance practices are "eternal" and stand the test of time. However, a good governance practice that gained widespread adoption in late 1990s was soon discarded in the following decade and is now seen to be harming the company's value creation potential rather than contributing to it.

The Practice

In later half of 1990s, rapidly growing tech & dotcom companies listed in the stock markets, with revenue growth rates often in excess of 50% p.a. began the practice of providing management guidance on results for the next period, i.e., the succeeding quarter or the succeeding year. Management's earning guidance was provided for the subsequent period along with the announcement of results for the quarter or the year and contained an EPS (Earnings Per Share) forecast for the succeeding quarter or year. This forecast took the form of an exact number as in the case of companies like CISCO, an early and prominent practitioner of earnings guidance, or a defined range in many other cases. Further some companies instead of providing guidance on EPS, gave their revenue forecast. One of the key objectives of providing the EPS or revenue guidance was to ensure that the equity analysts did not overestimate the company's earning potential, which in turn could lead to overvaluation of the companies' share price in the period leading up to the announcement of results and disappointing the stock market resulting in share price correction as it finds its fair value.

Given that the intent of providing earnings guidance was to reduce information asymmetry between the company's management and the external investors and analysts, by sharing information, it was seen as a practice promoting good governance, especially among high growth, publicly listed tech companies. Following the telecom and doc.com burst in the year 2000, this practice came under increasing scrutiny and was ultimately discarded due to the incentive provided to the company management to prioritize short team gains at the cost of foregoing significant long-term benefits by cutting back on investments in R&D or marketing expenses and/or providing conservative estimates leading to not realizing the potential available.

Today, in the third decade of the third millennium, most companies have moved away from providing earnings or revenue guidance, as it is seen to hurt the company's value creation efforts more than contribute to good governance by reducing information asymmetry.

The Trigger

To prevent frivolous securities litigation that was widespread during this period when a company's share price had a sharp fall, the US enacted a Federal law, the Private Securities Litigation Reforms Act, 1995. This law was to curb abusive litigation against issues of securities whenever there was a sharp fall in share prices, with the intent of getting an out-of-court settlement from the company issuing the shares to avoid expensive litigation. The Act deterred frivolous litigation by requiring the litigants to show higher degree of details by identifying specific false statement made by the company and to show a strong inference that the statement was known to be false at the time it was made.

Further the Act provided companies intending to make a forecast of future event based on their belief and expectation, with a safe harbour clause in the form of a publishing a Forward-Looking Statement that warned the user of the document that these statements were only forecasts made or management's expectation which was believed to be to be true on the date of making that statement. High growth tech companies by using safety provided by the forward-looking statement started to provide earnings guidance of EPS or revenue for the next quarter or year along with their result announcement. The intent was to reduce information asymmetry between management and investors, especially the institutional and the retail investor class.

In this era, the second half of 1990s, companies providing earnings guidance were seen to be the having a more predictable business model and practitioners of good governance. Cisco Systems in 1990s, set a record by beating their earnings guidance for 43 quarters in a row thereby becoming a trendsetter for other tech companies to follow.

The Reversal

The dot.com burst in March 2000 combined with the series of accounting scandals involving companies like Enron, Global Crossing, and WorldCom in the period that followed led to re-validation of many of the practices followed by high-growth tech companies with Earning Guidance and ESOP accounting being amongst the prominent ones. After re-validation, earning guidance was no longer seen as a good governance practice but was seen as a practice prioritizing short-term results at the cost of foregoing long term potential. The tipping point was the Lehman Brothers collapse in 2008, which recalibrated many 'good' governance practices, of which earnings guidance was one, which is best illustrated by events in the United Kingdom.

In 2007, the year before Lehman Brothers' collapse, the United Kingdom started a reporting experiment requiring mandatory quarterly reporting for public companies. However, in 2014, the United Kingdom outlined a plan to eliminate quarterly reporting to overcome the alleged short-termism resulting from the quarterly reporting requirement. It subsequently dropped the quarterly reporting requirement "to reduce pressures that induce short-term decision making by corporate executives."

In India

In India the importance given to earnings guidance was not high compared to the US markets. Only a few companies listed globally and/or with FIIs like Wipro, Infosys and L&T adopted earnings guidance in the early 2000s and have continued the practice till date. The benefit of reducing information asymmetry between the management and investors is visible and as long as it does not result in sacrificing long term growth benefits for meeting short term guidance targets, its continued use can be considered a good governance practice.

BLISS Tips for the Month

#258: With BLISS Email Facility Create an Institutional Memory of Mails for Audit & Due Diligence
#259: Automate Your Board Sub-committees in BLISS
#260: Single Click Migration of all Your Statutory Registers to Electronic Form in BLISS
#261: With BLISS, Generate MIS Report to Take-Stock of Annual Compliances

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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

March 7th	TDS payment for February.
March 13th	GSTR 1 (Feb'23)-Optional for those opted quarterly filing as per QRMP scheme.
March 15th	Pay PF contribution for February
	ESIC payment for February
March 18th	CMP-08 – A special statement - cum challan filed by Composition Dealer
March 20th	Professional Tax payment
March 20th, 22nd ,24th	GSTR 3B (based on turnover and principal place of business)
March 25th	PF Return for February

Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of February 2023

- **07-02-2023**

NSE issues a circular to clarify FAQs regarding filing of announcements in XBRL format on NSE Electronic Application Processing System (NEAPS) platform

Key Highlights:

1. The Listed companies are required to file both PDF and XBRL submission for the events under Regulation 29 and 30 of SEBI (LODR) Regulations, 2015 as mentioned in the NSE and BSE Circular dated 27/01/2023. The XBRL filing is required to be done within 24 hours of PDF submission.
2. The XBRL facilities have been jointly developed by NSE and BSE and hence, the XML file generated can be uploaded at both the Exchanges.
3. The terms 'New', 'Update', 'Original' and 'Revision' w.r.t. filing of intimations have been clarified.
4. For addition of any new agenda item to a Board Meeting for which an intimation is already submitted, the intimation shall be submitted as a new disclosure in both PDF and XBRL format.
5. Personal details of the KMP/ Director/ Auditor/ RTA like PAN/ Email ID/ Mobile number will not be disseminated on the Exchange's website.

- **15-02-2023**

SEBI issues circular for introduction of Issue Summary Document ("ISD") and dissemination of issue advertisement

SEBI has designed an Issue Summary Document ("ISD") to make relevant information available at the Stock Exchanges and Depositories in a structured manner and facilitate consumption of data by stakeholders. The Submitting Entity is required to file the prescribed details with the Stock Exchange where the securities of the entity are listed or proposed to be listed. The ISD is introduced in XBRL format for the following in three phases:

1. First phase w.e.f. 01/03/2023:
   - Public issue of specified securities
2. Second phase w.e.f. 03/04/2023:
   - Further issue, Rights issue, issue of American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and Foreign Currency Convertible Bonds (FCCBs)
3. Third phase w.e.f. 02/05/2023:
   - Buy-back of equity shares.
   - Open offer under SAST Regulations
   - Voluntary delisting of equity shares where exit opportunity is required under SEBI Delisting Regulations

Further, the Lead Managers to the public issue are required to disseminate advertisements of the public issue under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in PDF format on the website of the stock exchanges from 01/03/2023.

The circular also provides for the format of the ISD.

- **16-02-2023**

SEBI notifies a Master Circular for procedures and formats under the Takeover Regulations whereby the related standalone circulars stand rescinded

Key highlights of the circular:

1. The Circular details the disclosures and reports that are required to be submitted with the Stock

Exchange, SEBI or the Target Company in case of acquisitions that trigger an open offer, those that are exempt from the obligation to make an open offer, about acquisitions made by the acquirer / persons acting in concert (PACs) during the Offer Period, disposal of shares; encumbrance of shares, any invocation / release of such encumbrances to the Stock Exchanges.

2. The following provisions already in effect from July 1, 2022 have also been included:

- All encumbrances on shares of the target company shall necessarily be recorded in the depository system
- All disclosures for the transactions undertaken in the depository system when any acquirer, together with persons acting in concert with him, acquiring shares or voting rights in a target company

Only following transactions may be filed manually with the Depositories:

- Triggering of disclosure requirement due to acquisition or disposal of the shares (aggregates to 5 % or more of the shares/voting rights of the target company), by the acquirer together with PACs
- Triggering of disclosure requirement as above in case the shares are held in physical form by the acquirer and/or PACs
- Listed companies who have not provided PAN of promoter(s) including member(s) of the promoter group to the designated depository or companies which have not appointed any depository as their designated depository

3. In case an acquirer or any PAC with the acquirer under the offer is not eligible to acquire shares through stock exchange due to operation of any other law, such offers would follow the existing "tender offer method"

4. The circular also details the facility for acquisition of shares through Stock Exchange mechanism pursuant to offer, the basis of acceptance by the Stock Exchanges and exemption for cases involving Trust as Acquirer.

5. Additional disclosures required in Detailed Public Statement, Letter of Offer for Takeover Regulations are:

- Name and address of the stockbroker appointed by the Acquirer/Company;
- Name of the Recognised Stock Exchanges with nationwide trading terminals where the Acquisition Window shall be available including the name of the Designated Stock Exchange.
- Methodology for placement of orders, acceptances and settlement of shares held in dematerialised form and physical form.
- Details of the special account opened with Clearing Corporation

6. Documents like public announcement, detailed public statement, draft letter of offer, letter of offer shall be filed by the Merchant Bankers through online mode only through SEBI Intermediary Portal.

7. The formats for the following have been notified:

- Public Announcement, Detailed Public Statement, Letter of Offer, Pre-Offer Advertisement, Post Offer Advertisement, Recommendations of the Committee of Independent Directors, Post-Open Offer Report, Disclosure by acquirer for shares/ voting rights acquired during the offer period
- Standard format for filing of application to SEBI seeking exemption by the acquirer from the obligation to make an open offer
- Reporting related to encumbrance of shares
- Other Disclosure on acquisitions and disposals by acquirer and PAC

- **24-02-2023**

Filing of Related Party Transactions (RPT) and Business Responsibility and Sustainability Report (BRSR) on the NEAPS (NSE Electronic Application Processing System) platform

With an aim to bring all filings under one single portal, it has been decided that in addition to filing of Equity Announcements and Financial Results on NEAPS platform, filing of Related Party Transactions (RPT) and Business Responsibility and Sustainability Report (BRSR) is also made available on the platform w.e.f. 25/02/2023. The filing path for the submission is available in the circular.

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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