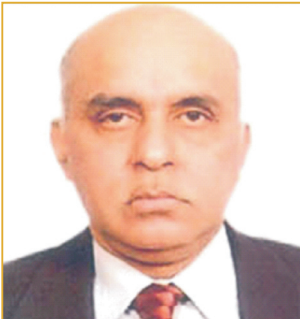




Monthly Newsletter

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Shri Naved Masood,
Secretary, MCA

From The Secretary's Desk

I am happy to announce that the Ministry of Corporate Affairs has started the process of implementing the Companies Act, 2013 through the notification of Section 135 and Rules relating to Corporate Social Responsibility (CSR). Substantial sections of the Companies Act, 2013 will also be notified before March 31, 2014.

I may also mention that the Securities and Exchange Board of India (SEBI) has taken decisions to amend norms relating to corporate governance in listed companies so as to align them with provisions of the Companies Act, 2013.

On the macro-economic front, there is some good news. A low Current Account Deficit (CAD) measured at 0.9% of GDP in the third quarter of this fiscal ensures a comfortable external balance. Headline inflation has fallen for the third consecutive month to at less than 4.7% in February, 2014. The Fiscal deficit for 2013-14 is projected at 4.6% of GDP, below 4.8% of GDP targeted for the year. The Interim Budget, 2014-15 indicates the Government's commitment to fiscal consolidation with the assertion to reduce fiscal deficit to 3% of GDP by 2016-17. The buoyance in FII inflow at more than ₹15,000 crores this month reassures investors' confidence in India's long term growth prospects.

The Public Enterprises Survey (2012-13) released by the Department of Public Enterprises has shown an improvement in the performance of Central Public Sector Enterprises (CPSEs) during 2012-13 compared to previous years. Total turnover of all CPSEs in 2012-13 increased by 6.79% and profits of profit making CPSEs grew by 14%. CPSEs, in 2012-13, have contributed ₹1,62,761 crore (about 1.6% of GDP) to the Central Exchequer by way of taxes, duties, interest on Central Government loans, and dividend.

The Government has projected an investment of ₹55,74,663 crores in infrastructure sectors during the 12th Five Year Plan. A slew

of measures to boost investment in infrastructure, especially through Public Private Partnership (PPP), has also been initiated. These are beginning to show results. During the last three years, about 40 infrastructure projects under PPP mode have been completed and around 195 projects are at various stages of implementation. I am confident that this would boost investment by the private sector.



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First Batch of Notifications under Companies

Act, 2013: The Ministry has, in its efforts to gradually implement the various sections of the new Companies Act, 2013, issued the first batch of notifications. Section 135 relating to Corporate Social Responsibility (CSR) to be adopted by companies has already been notified.

- (1) Vide **S.O. 582(E) dated 28.02.2014**, it has been declared that the provisions of Section 135 and Schedule VII of the Companies Act, 2013 would come into force with effect from 01.04.2014. Section 135 mandates the adoption of Corporate Social Responsibility Policy by certain companies crossing certain thresholds (net worth of rupees five hundred crore, or turnover of rupees one thousand crore or a net profit of rupees five crore), while Schedule VII gives an indicative list of activities which may be considered by companies in finalizing their Corporate Social Responsibility Policies.
- (2) The Central Government has notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 vide **G.S.R. 129(E) dated 28.02.2014**. These rules mandate, inter alia, that companies crossing the aforesaid thresholds will undertake activities in accordance with its stated CSR Policy covering the activities mentioned in Schedule VII. However activities undertaken in pursuance of its normal course of business will not count as CSR activities. The method of determining the net profit for the purpose of CSR have also been laid down. A format for the Annual Report on CSR activities to be included in the Board's Report has been prescribed, and foreign companies are required to furnish a report of CSR activities undertaken by them along with their Balance Sheets. Such companies are also required to disclose contents of such policy in the Board's report and the same shall be displayed on the company's website.
- (3) Schedule VII has been amended/substituted to enlarge the scope of the list of activities, vide **G.S.R. 130(E) dated 28.02.2014**.

Circulars: In its sustained efforts to simplify the administrative procedures and to make evidence-based decision-making easier, the Ministry has issued a series of Circulars. The circulars issued in February, 2014 lay down guidelines on choice of names by Companies/ Limited Liability Partnerships and for the treatment of loans made, guarantees given or security provided or any investment mode by a holding company to its wholly owned subsidiary.

- (1) Registrar of Companies and Registrar of Limited Liability Partnerships have been directed by **Circular No. 2/2014 dated 11.02.2014** (F.No.2/2/2014-CL-V) of the Ministry, not to Register Companies/ Limited Liability Partnerships with the word "National" appearing in their names, unless it is a government company and the Central / State government(s) has a stake in it. Similarly, the words "Bank" or "Stock Exchange"/"Exchange" should not be allowed in the names of an entity unless "No Objection Certificate" is produced from the RBI or SEBI, as the case may be.
- (2) The Ministry has clarified by **Circular No. 3/2014 dated 14.02.2014** (F.No.1/12/2013-CL-V) that the restrictions on loans made, guarantees given or security provided or any investment mode by a holding company to its wholly owned subsidiary as laid down in Section 372A of the Companies Act, 1956 (which has not been repealed yet) shall continue to operate subject to the exemptions given in clause (d) of sub-section (8) thereof, if such loan etc. are exclusively used by the subsidiary company for its principal business purposes. Under Section 372A(8)(d), guarantee given or any security provided by a holding company in respect of loan made to its wholly-owned subsidiary are exempted from the said restrictions. The restrictions imposed in Section 186 of the Companies Act, 2013 (which has not been enforced yet) shall apply upon the notification of its commencement.

SEBI amends Corporate Governance norms for listed companies:

The Securities and Exchange Board of India has amended the provisions relating to corporate governance in the Listing Agreement, with effect from 01.10.2014. The amendments are aimed at aligning provision of Clause 49 with the provisions of the newly enacted Companies Act, 2013 and to strengthen the corporate governance framework of listed companies in India. They, *inter alia*, include, the exclusion of 'Nominee Director' from the definition of 'Independent Director'; establishment of a Compulsory Whistle blower mechanism; prohibition of stock options to Independent Directors; prior approval of Audit Committee for all material Related Party Transactions; and inclusion of at least one Woman Director on the Board of prescribed class of companies. The maximum number of Boards an Independent Director and a whole time Director can serve on listed companies is restricted to seven and three respectively, with a further restriction that the total tenure of an Independent Director is limited to 2 terms of 5 years each. It may be mentioned that

under proviso to Section 165(1) of the companies Act, 2013, the maximum number of public limited companies on which a person can serve as Director is ten.

Agreement with NISG: An Agreement was signed between the MCA and the National Institute of Smart Governance (NISG) on 05.02.2014 for establishing Program Management Unit (PMU) services in MCA-21 Project for the period from 01.05.2014 to 31.10.2019. MCA-21 is a e-governance project that offers all regulatory services under the Companies Act and the Limited Liability Partnerships Act. Presently, Infosys is the service provider. For effective implementation of the MCA-21 project with regular measurement of MCA-21 portal's performance, a third-party monitoring of the operations and maintenance of the MCA-21 project is sought to be undertaken by the PMU. The PMU would also provide support for implementing global best practices in client satisfaction.



Shri Amardeep Singh Bhatia, Joint Secretary, Ministry of Corporate Affairs and Shri Sanjiv Mittal, CEO, NISG signed agreement for PMU services in MCA-21 Project.

MOU between SFIO and IICA: Keeping with the increased significance of corporate governance norms, especially, controlling corporate frauds in the light of enactment of specific provisions against serious frauds in the Companies Act, 2013, the Serious Fraud Investigation Office (SFIO) and the Indian Institute of Corporate Affairs (IICA), have signed a Memorandum of Understanding (MoU) on 10.02.2014 for capacity building in SFIO. The major objective of the collaboration is to educate the officers of SFIO about the parameters and nuances of fraud and identification of fraudulent activities. It is worth mentioning that the SFIO has been given statutory status and police powers in respect of corporate frauds, vide Sections 211-212 of the Companies Act, 2013 and the IICA serves as a 'Holistic Think-Tank', and a 'Capacity Building, Service Delivery Institution'

for the Ministry of Corporate Affairs to help corporate growth and reforms.

Investor Protection and Awareness:

1. In collaboration with the three Professional Institutes (i.e., Institute of Chartered Accountants of India, Institute of Company Secretaries of India, and Institute of Cost Accountants of India), 611 Investor Awareness Programmes were conducted in different towns/cities of the country during February, 2014.
2. Till the end of February, 2014, as many as 2213 companies have uploaded information about unpaid and unclaimed amounts of investors (share application moneys, dividends, debentures, deposits etc.) lying with them on the dedicated website (www.iepf.gov.in). This website has been set up for companies to file details of unpaid and unclaimed amounts of investors for the last seven years or less, which are yet to be transferred to the Investor Education and Protection Fund, so as to enable the investor to reclaim the said money from the company. The total amount reported by these companies by end February, 2014 amounts to Rs. 2523.09 crore.

Perspectives on the Changing Law: In a first-of-its kind initiative, the Regional Director, South Eastern Region enlisted the Institute of Company Secretaries of India-Hyderabad Chapter to organise a half-a day Seminar on "*Compounding of Offences under Companies Act, 1956 and the Companies Act, 2013*" on 22.02.2014 at Hyderabad.

Review of Corporate Sector: As on 28.02.2014, the number of companies registered under the Companies Act, 1956 stood at 13.85 lakhs. Of these, 2.69 lakh companies have been closed and 28,178 companies are in the process of being closed. As many as 1.42 lakh companies have not filed their Annual Returns/Balance Sheets (i.e., Annual Statutory Filings) for more than three consecutive years and, hence, are classified as 'dormant'. In other words, there are about 9.44 lakh active companies, including 1.40 lakh companies which were incorporated within the preceding eighteen months (not due for filing).

A total of 7,513 companies were registered under the Companies Act, 1956 during February, 2014 with authorized capital of Rs. 901.95 crore. Of these, 7,484 companies were registered as Companies Limited by Shares with an authorized capital of Rs. 901.90 crore and 29 Companies Limited by Guarantees with an authorised capital of Rs. 4 lakh. Under the category of companies registered as limited by shares, Maharashtra had maximum number of registrations

(1,365) followed by Delhi (1,330) and West Bengal (648). Economic activity-wise maximum number of companies (2,606) were registered under Business Services (IT and R&D).

During February, 2014, four State Level Public Enterprises (SLPEs) were registered under the Companies Act, 1956, with authorized capital of Rs. 104 crore. The SLPEs incorporated are: 1. Karnataka Vishwakarma Communities Development Corporation Limited 2. Singrauli Airport Corporation Limited, 3. Bihar Urban Transport Services Limited, and 4. Jammu and Kashmir International Trade Centre. Of these, first company is registered as private limited and other three are registered as public limited companies.

Major Events Attended by Senior Officials of the Ministry:

1. Shri M.J. Joseph, Additional Secretary presented the experiences of the MCA-21 Portal on the Theme of "Technology as an enabling factor to Combating Corruption" at the **National Seminar on Combating Corruption: Role of Accountability Institutions, Investigating Agencies, Civil Society and Media** organized by the Central Vigilance Commission on 12.02.2014 at Vigyan Bhawan, New Delhi.
2. Shri M.J. Joseph, Additional Secretary, graced the 'Global CSR Summit cum Excellence Awards' organized by ASSOCHAM as Guest of Honour on 24.02.2014 at New Delhi.
3. Shri M.J. Joseph, Additional Secretary, presented the Keynote address at the Seminar on 'Governance Reforms' organised by Confederation of Indian Industries (CII) on 28.02.2014 at New Delhi.

Major Events at IICA:

1. **IICA signs MoU with MPCON:** The Indian Institute of Corporate Affairs (IICA) signed an MoU with the M.P Consultancy Organisation Limited (MPCON Ltd.), a premier consulting organization, on 10.02.2014. Under the agreement, MPCON will set up and maintain a "CSR portal", hosted by the Ministry of Corporate Affairs in pursuance of Section 135 of the Companies Act, 2013. The MOU will also encompass collaboration on CSR activities, trainings and joint workshops, seminars and conferences.
2. **Two Day Residential National Research Workshop on 'Corporate Governance Practices in India: Retrospect and Prospects':** School of Corporate Governance and Public

Policy at Indian Institute of Corporate Affairs (IICA) organized a Two-Day Residential National Research Workshop on the theme 'Corporate Governance Practices in India: Retrospect and Prospects' on February 14-15, 2014 at IICA Manesar Campus, which brought together research scholars and faculties from across India and different institutions/ universities of interdisciplinary studies to deliberate on issues and themes related to corporate governance and corporate social responsibility. The National Research Workshop was conceived with the aim to engage with academia to identify new areas of research in corporate governance and discuss issues emerging in the current corporate scenario.

Events at Competition Commission of India:

1. Shri Ashok Chawla, Chairperson, Competition Commission of India (CCI), attended OECD Competition Committee meetings and Global Forum on Competition during February 24-28, 2014 in Paris, France.
2. A delegation from the American Bar Association (ABA) called on Shri Ashok Chawla, Chairperson, CCI and other members of CCI during their visit to the Commission on 13.02.2014.
3. Shri Justice S.N. Dhingra, Member, CCI delivered a key note address in the workshop on Competition Law, organized at the High Court of Kerala at Kochi on 13.02.2014. All the Hon'ble Judges of High Court of Kerala participated in the Workshop.
4. Shri P.K. Singh, Adviser (Law) participated in 2014 'Global Antitrust Colloquium for International Competition Agency Official' organized by George Mason University School of Law in cooperation with US Federal Trade Commission during February 13-14, 2014 in Virginia, USA.
5. Shri L. Rajashekar Reddy, Director General, CCI participated in 2014 ABA/IBA International Cartel Workshop during February 19-21, 2014 in Rome, Italy.
6. A Webcast on "Application of knowledge of Competition Law during Audit of Stakeholders" was organized in office of Comptroller and Auditor General of India, New Delhi on 13.02.2014. Shri S.L. Bunker, Member, CCI inaugurated the Webcast and Shri R.N. Sahay, Adviser (Economics) and Dr. Sadhna Shanker, Adviser (Law) gave their presentations and participated in interactive Question-Answer session.