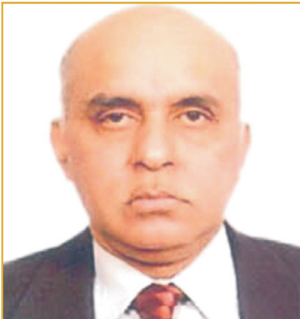




Monthly Newsletter

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Shri Naved Masood,
Secretary, MCA

From The Secretary's Desk

The Union Budget 2014-15, apart from restoring macroeconomic stabilization, seeks to bring back the economy on the high growth trajectory of 7 – 8% per annum in the medium term. The Government has affirmed its commitment to fiscal prudence norms by pegging the gross fiscal deficit target at 4.1% of GDP. Constitution of an

Expenditure Management Commission and a targeted subsidy regime are envisaged to rationalize government expenditure and unleash resources for growth-enhancing expenditure. To usher in a stable, predictable and investor-friendly taxation regime, the mechanism of a High level Committee is a welcome step to have a continuous dialogue with stakeholders.

To enhance foreign and domestic investment in infrastructure sector, the concept of Infrastructure Investment Trusts (InvITs) is a welcome innovation in the budget. FDI in Defence and Insurance Sectors have been liberalised, by raising the cap to 49 per cent.

Macroeconomic indicators have shown signs of recovery. The Index of Industrial Production (IIP) in May this year registered a 19-month high with a year-on-year growth of 4.7%. This was possible due to growth of 4.8% and 6.3% in the Manufacturing and Electricity sectors respectively. The Consumer Price Index has dipped by about 1 percentage point, following a fall in the prices of food articles in the month of June, 2014. WPI-based headline inflation too has fallen to 5.4%, in the month of June, 2014 compared to 6% in the previous month. Exports grew at 10.22% while imports registered a growth of 8.33% during June, 2014.

We are alive to the concerns of the stakeholders regarding practical difficulties concerning certain provisions of the Companies Act, 2013 and Rules made thereunder. The Ministry held an interactive session in New Delhi on 21st June, where useful exchange of views took place with the business community and the professionals on several significant issues such as financial reporting & auditing, related party transactions, Corporate Social Responsibility (CSR), independent directors, capital mobilization by corporates etc. I am glad to note that we have already issued clarifications on certain issues through Notifications and General Circulars, and hope

that these clarifications would bring ease and objectivity in the implementation of the new Companies Act, 2013.

I take this opportunity to assure the corporate community that the Ministry will take further steps towards a responsive administration and identify areas for simplification of rules, so that the ultimate goal of my Ministry, i.e., 'Corporate Growth With Enlightened Regulation' is achieved in letter and spirit.

The Union Budget

2014-15, apart from restoring macroeconomic stabilization, seeks to bring back the economy on the high growth trajectory of 7 – 8% per annum in the medium term 



Senior Level Appointments:

1. Shri Navrang Saini, Regional Director (Eastern Region), Kolkata assumed charge as Director of Investigation and Inspection (DII) at the headquarters, New Delhi with effect from 20.06.2014.
2. Shri N.K. Bhola, Director, Indian Corporate Law Service (ICLS) Academy, assumed charge as Regional Director (Eastern Region), Kolkata with effect from 20.06.2014.
3. Shri A.K. Chaturvedi, Regional Director (North Eastern Region), Shillong assumed charge as Regional Director (Northern Region), Noida with effect from 20.06.2014.
4. Shri Alok Samantrai, Director, Office of Directorate General Corporate Affairs (DGCA) with additional charge of Regional Director (Northern Region), assumed charge as Director, Indian Corporate Law Service (ICLS) Academy, with effect from 20.06.2014.

Interactive Session on Companies Act, 2013: As part of Ministry's initiative to reach out to various stakeholders and deliberate on issues raised by them relating to the Companies Act, 2013 an Interactive Session on 'Implementation of the Companies Act, 2013' was organized by National Foundation for Corporate Governance (NFCG) in New Delhi on 21.06.2014. The thematic issues discussed in the session pertained to provisions related to financial reporting & auditing, related party transactions, Corporate Social Responsibility (CSR), independent directors, capital mobilization by corporates, provisions concerning confidentiality of Board minutes etc.

The session was attended by corporates, professionals, lawyers, industry representatives including presidents of CII, FICCI, ASSOCHAM and PHDCCI and senior officers of the Ministry, and was presided over by Shri Naved Masood, Secretary, Ministry of Corporate Affairs. Acknowledging industry's concerns regarding implementation of the Companies Act, 2013, Shri Naved Masood assured that the Ministry will identify major areas of correction and review the Rules for smooth implementation of the new legislation.



Shri Chandrajit Banerjee, Managing Trustee, NFCG, addressing at the "Interactive Session on Implementation of the Companies Act, 2013" at New Delhi on 21.06.2014. Shri Naved Masood, Secretary and Shri M.J. Joseph, Additional Secretary of the Ministry are also seen in the picture.

Clarifications on Implementation of Companies Act, 2013 through Issue of Circulars and Notifications: The Ministry of Corporate Affairs has issued a series of General Circulars and Notifications to provide better guidance and clarity to the stakeholders in the implementation of the new Act. These are as follows:

1. **Appointment and Qualifications of Independent Directors:** The Ministry of Corporate Affairs has issued following clarifications with regard to appointment of Independent Directors (ID): i). Transaction entered into by an ID with a company, at par with any general public, will not said to have 'pecuniary relationship', ii). Receipts of remuneration by way of fee by an ID would not be considered as having pecuniary interest, iii). In case, a company would like to reappoint the existing ID, it should be done before 31.03.2015 subject to prescribed conditions iv). Appointment of the ID for a term of less than five years would be permissible, v). Appointment of ID would

need to be formalized through a letter of appointment (**General Circular No. 14/2014 dated 07.06.2014**).

2. **Maintaining Register in New Format:** As per Section 186(9) of the Companies Act, 2013 and rule 12(1) of the Companies (Meetings of Board and its Powers) Rules, 2014, every company giving loan or giving guarantee or providing security should maintain a register in Form MBP-2 as prescribed in Companies (Meetings of Board and its Powers) Rules, 2014. The Ministry has clarified that register of loan/guarantee/security maintained by companies as per Section 372A(5) of the Companies Act, 1956, may be continued. The new format prescribed vide Form MBP2 should be used for particulars entered in such registers on and from 01.04.2014 (**General Circular No. 15/2014 dated 10.06.2014**).
3. **Applicability of PAN requirement for foreign nationals:** In continuation of the General Circular No. 12/2014 dated 22.05.2014, it has been clarified that a foreign national being a subscriber/promoter, who does not possess Permanent Account Number (PAN), is required to furnish a declaration in the prescribed proforma as an attachment to the Incorporation Form (INC-7) (**General Circular No. 16/2014 dated 10.06.2014**).
4. **Filing of MGT-10:** E-form MGT-10 is used for filing of Return of Changes in shareholding position of promoters and top ten shareholder. The Ministry has clarified that unless e-Form MGT-10 made available online, stakeholders should file MGT-10 physically. It should be filed after it is duly signed/certified by a professional and enclosing all required attachments with the prescribed General e-Form No. GNL-2. This temporary arrangement will continue till an e-Form for MGT-10 is made available (**General Circular No. 17/2014 dated 10.06.2014**).
5. **Conversion of Company from Public Ltd. to Private Ltd:** It is clarified by the Ministry that as provisions related to conversion of company from Public Ltd. to Private Ltd under Section 14(1)&(2) of the Companies Act, 2013 have not been notified, therefore, corresponding provisions of the Companies Act, 1956 shall remain in force till corresponding provisions of the Companies Act, 2013 are notified. Applications for such conversion have to be filed and disposed as per the earlier provisions (**General Circular No. 18/2014 dated 11.06.2014**).
6. **Matters Relating to Share Capital and Debentures:** In view of prescription of new Securities Transfer Form as per Form SH-4 with effect from 01.04.2014, stakeholders sought clarification on validity of Share Transfer Forms executed before 01.04.2014 as per earlier Form 7B but which are yet to be accepted/registered by companies. It has been clarified by the Ministry that in case any such share transfer form is executed prior to 01.04.2014, and not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc. It has also been clarified that a committee of directors may issue duplicate share certificates, subject to regulation imposed by the Board in this regard (**General Circular No. 19/2014 dated 12.06.2014**).
7. **Voting through Electronic Means:** As per the Section 108 of the Companies Act, 2013, member of a company have the right to vote by electronic means. While corporates and stakeholders appreciating the new approach as it ensures wider shareholders participation in the decision making, they also expressed some practical difficulties in respect of general meeting to be held in the next few months. It is noticed that compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/postal ballot etc. will take some more time. Accordingly, it has been decided not to treat the relevant provisions as mandatory till 31.12.2014. Notification vide **G.S.R. 415(E) dated 18.06.2014**, has also been issued in this

regard (**General Circular No. 20/2014 dated 17.06.2014**).

- 8. Implementation of CSR Policy:** In view of representations received from stakeholders, the Ministry has issued a series of clarifications on the provisions under Section 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per schedule VII of the Companies Act, 2013. The clarifications are as follows: i). activities undertaken in pursuance of CSR Policy must be relatable to the Schedule VII and the said schedule must be interpreted liberally so as to capture the essence of the subject; ii). CSR activities should be undertaken in project/programme mode; iii). Expenses incurred for fulfillment of any Act/Statute of regulations would not count as CSR expenditure; iv). Salaries paid to CSR staff can be part of CSR expenditure; v). In eligibility criteria 'any financial year' means any of the three preceding financial year; vi). Expenditure incurred by foreign holding company through its Indian subsidiary on CSR activities in India will qualify as CSR spend; vii). where registration of Trust is not mandatory, Trusts registered under Income Tax Act, 1956 can undertake CSR activities; viii). Contribution to Corpus of a Trust/ society/ Section 8 companies etc. will qualify as CSR expenditure only when it is created exclusively for undertaking CSR activities or where the corpus is created for a purpose directly relatable to a subject covered in CSR activities (**General Circular No. 21/2014 dated 30.06.2014**).
- 9. Format of Annual Return for 2013-14:** The Ministry has received requests for clarification about the applicability of annual return form (MGT-7) prescribed under rule 11(1) of the Companies (Management and Administration) Rules, 2014 for financial year(s) commencing earlier than 01.04.2014. The matter has been examined in the light of provisions of section 92(1) of the Act which requires annual return to contain particulars as they stood on the close of the financial year. It is clarified that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 01.04.2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956. It is also clarified that until the fee is specified by companies for inspection of copies of the registers, the same should be made available to that company's by member etc. without charging any fee (**General Circular No. 22/2014 dated 25.06.2014**).
- 10. Incorporation of Companies Outside India:** Government has received references seeking clarity about the status of subsidiaries incorporated/to be incorporated by companies incorporated outside India. Attention has, in particular, been drawn to the absence of the deeming provision of Section 4(7) of the Companies Act, 1956 in the new Companies Act, 2013. The Ministry has clarified that there is no bar in the Companies Act, 2013 for a Company incorporated outside India to incorporate a subsidiary either as a public company or a private company (**General Circular No. 23/2014 dated 25.06.2014**).
- 11. Holding of Shares in a Fiduciary Capacity by Associate Company:** It has been clarified by the Ministry that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013 (**General Circular No. 24/2014 dated 25.06.2014**).
- 12. Applicability of Requirement for Resident Director:** Stakeholders sought clarification on applicability of Section 149(3) of the Companies Act, 2013, which mandates every company to have at least one director to stay in India for at least 182 days in a calendar year. It has been clarified by the Ministry that as 'residency requirement' is applicable from 01.04.2014, the first 'previous calendar year' would be 1st April to 31st December. Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed

136 days. It is also clarified in this Circular that companies incorporated between 01.04.2014 to 30.09.2014 should have a resident director either at the incorporation stage or within six months of incorporation (**General Circular No. 25/2014 dated 26.06.2014**).

- 13. Use of the Words "Commodity Exchange" in Company's Name:** It is clarified by the Ministry that word "Commodity Exchange" may be allowed only where a "no objection certificate" from the Forward Markets Commission (FMC) is furnished. It is also clarified that the certificate from FMC will also be required in cases of companies registered with the words "Commodity Exchange" before the issue of this circular (**General Circular No. 26/2014 dated 27.06.2014**).
- 14. Filing of Form DPT4:** As per 74(1)(a) of the Companies Act, 2013 companies are required to file a statement regarding deposits existing with the company as on date of commencement of the Act, within a period of three months from such commencement. The time for filing of said statement is expiring on 30.06.2014. Now it has been decided to grant extension of time for the period of two months i.e., up to 31.08.2014 without any additional fee. (**General Circular No. 27/2014 dated 30.06.2014**).

Notifications: The Ministry of Corporate Affairs has issued Several Notification during June, 2014 providing more clarity on provision of the Companies Act, 2013 and rules there under. They are as follows:

- 1. Companies (Removal of Difficulties) Second Order, 2014:** As per Section 73(4) of the Companies Act, 2013, depositors can approach NCLT when a company fails to repay the deposits. As per the Notification vide **S.O. 1428(E) dated 02.06.2014**, the Company Law Board (CLB) shall exercise the jurisdiction, powers, authority and functions under Section 73(4) of the Companies Act, 2013. [**S.O. 1428(E) dated 02.06.2014**]
- 2. Companies (Removal of Difficulties) Third Order, 2014:** First proviso to Section 2(41) of the Companies Act, 2013 mandates foreign holding or a subsidiary companies to approach NCLT for having financial year other than the common financial year '31st March to 1st April'. As per Notification vide **S.O. 1429(E) dated 02.06.2014**, issued by the Ministry, it is clarified that till the time National Company Law Tribunal (NCLT) is constituted, CLB will exercise the jurisdiction, powers, authority and functions under the first proviso to Section 2(41) of the Companies Act, 2013. [**S.O. 1429(E) dated 02.06.2014**]
- 3. Repayment of Deposits:** As per Section 74(2)&(3) of the Companies Act, 2013, companies which are facing difficulties in repaying deposits, interests etc., can approach NCLT for seeking extension in repaying the deposits, interests etc. Ministry has brought these provisions into force vide **S.O. 1459(E) dated 06.06.2014**. With issue of Companies (Removal of Difficulties) Fourth Order, 2014, vide **S.O. 1460(E) dated 06.06.2014**, the Government of India has clarified that till NCLT is constituted CLB shall exercise the jurisdiction, powers, authority and functions under Section 74(2) [**S.O. 1460(E) dated 06.06.2014**].
- 4. Amendment to the Companies (Acceptance of Deposits) Rules, 2014:** In the Companies (Acceptance of Deposits) Rules, 2014, in rule 5, in sub-rule (1), the following proviso shall be inserted, namely, "Provided that the companies may accept the deposits without deposit insurance contract till the 31st March, 2015." [**G.S.R. 386(E) dated 06.06.2014**]
- 5. Amendment to the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014:** As per the rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid-up share capital of ten crore rupees or more are mandated to have whole-time company secretary. As per the Amendment to the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, companies which have a paid up share capital of five crore rupees or more are mandated to have a

whole-time company secretary. This Notification came into force from 09.06.2014 [**G.S.R. 390(E) dated 09.06.2014**]

6. **RoC and OL for the State of Telangana:** Office of the Registrar of Companies (RoC) and Official Liquidators (OL) at Hyderabad will discharge the functions for State of Andhra Pradesh and Telangana. These Notifications came into force from 13.06.2014 [**S.O. 1524(E) and 1525(E) dated 13.06.2014**]
7. **Amendment to the Companies (Meetings and Powers of Board) Rules, 2014:** Rule 6 of the Companies (Meetings and Powers of Board) Rules, 2014 mandates certain class of companies to constitute an Audit Committee and a Nomination and Remuneration Committee of the Board. In amendment to these rules vide **G.S.R. 398(E) dated 12.06.2014**, following explanation is added. "Provided that public companies covered under this rule which were not required to constitute Audit Committee under section 292A of the Companies Act, 1956 (1 of 1956) shall constitute their Audit Committee within one year from the commencement of these rules or appointment of Independent Directors by them, whichever is earlier. Provided further that public companies covered under this rule shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of Independent Directors by them, whichever is earlier." [**G.S.R. 398(E) dated 12.06.2014**]
8. **Amendment to the Companies (Share Capital and Debentures) Rules, 2014:** The Companies (Share Capital and Debentures) Rules, 2014 amended to include following changes: i). equity shares with differential rights issued by any company under the provisions of the Companies Act, 1956, shall continue to be regulated under such provisions (explanation added to rule 4(6)); ii). till a registered valuer is appointed in accordance with the Companies Act, 2013, the valuation report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having a minimum experience of ten years (explanation added to rule 13(2)(j)); iii) a sub-rule (3) explanation regarding price of the share, was added in rule 13, iv) explanation is modified for rule 18 which deals with companies eligible for issuing secured debentures. This Notification came into force from 13.06.2014 [**G.S.R. 413(E) dated 18.06.2014**].
9. **Amendment to the Companies (Management and Administration) Rules, 2014:** As per rule 20(1) of the Companies (Management and Administration) Rules, 2014, every listed company or a company having not less than one thousand shareholders, will have to provide to its members facility to exercise their right to vote at general meetings by electronic means. Vide Notification **G.S.R. 415(E) dated 18.06.2014**, a sub rule 20(1)(i) is inserted to allow companies to provide such facility on or before the 01.01.2015 [**G.S.R. 415(E) dated 18.06.2014**].

Review of Corporate Sector:

- A. As on 30.06.2014, the number of companies registered under the Companies Act stood at 14.02 lakhs. Of these, 2.56 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 9.74 lakh active companies, including 1.17 lakh companies which were incorporated within the preceding eighteen months (not due for filing).
- B. A total of 4,801 companies were registered under the Companies Act, 2013 during June, 2014 with authorized capital of Rs. 715.18 crore. Of these 4,790 Companies (including 68 One Person Companies) were registered as Companies Limited

by Shares with authorized capital of Rs. 715.07 crore and 11 Companies Limited by Guarantees with authorized capital of Rs. 11 lakh during the month. Under the category of companies registered as limited by shares, Maharashtra had maximum number of registrations (715) followed by Delhi (700) and Uttar Pradesh (504). Economic activity-wise maximum number of companies (2022) were registered under Business Services (IT and R&D).

- C. For more statistical details about the growth of the corporate sector, the reader is invited to the Monthly Information Bulletin on Corporate Sector, at URL: mca.gov.in/MinistryV2/InformationBulletin.html

Major events at IICA:

1. **IICA signed a MoU with Grant Thornton:** The Indian Institute of Corporate Affairs (IICA) signed a Memorandum of Understanding with Grant Thornton India LLP to develop capacity of the Indian companies for effective implementation of the CSR Rules laid down as per Section 135 of the Companies Act 2013 on 03.06.2014 at New Delhi. The MoU was signed by Dr. Bhaskar Chatterjee, DG&CEO, IICA and Mr. Vikesh Harish Mehta, Partner, Grant Thornton India LLP. Speaking on the occasion, Dr. Chatterjee pointed out that with the notification of the rules, the agenda has been set for knowledge and awareness building and to show the corporates what they can do for national development.
2. **IICA organized a Residential Management Development Programme for the Indian Corporates on CSR:** IICA organised a two Day Residential Management Development Programme for the Indian Corporates on June 6-7, 2014 at Manesar. Participants included experts from sectors such as Steel, Power, Coal, Petroleum, Cement, FMCG, Banking and Educational Institutions and Consulting Organizations.
3. **ICP-CSR Review meeting with Partners:** IICA Certificate Programme on CSR (ICP-CSR) Review meeting with Pan India organizations was held at SCOPE Complex, New Delhi. In the meeting, each partner Institutions made power-point presentations to describe their approaches and strategies for marketing the ICP course. During the presentations, many new and innovative suggestions were given by the participants.
4. **Workshop-cum-Training Programme on the Companies Act, 2013, Rules and e-forms:** ICLS Academy organized a two days' Workshop-cum-Training Programme on the Companies Act, 2013, Rules and e-forms for about 225 ICLS Officers/ Officials of Ministry of Corporate Affairs working in the offices of Registrar of Companies (ROC) & Regional Director (RD) in India on June 9-10, 2014.

Major events at CCI:

1. Shri Ashok Chawla, Chairperson, Competition Commission of India (CCI) inaugurated a conference on 'Boosting Competition Compliance – Tackling Challenges organized by CII in Mumbai on 27.06.2014. Shri Augustine Peter, Member, CCI chaired a technical session on 'Merger Regulations' in the same conference.
2. Shri R.N. Sahay, Adviser (Economics) addressed members of ICAI-EIRC on 'Scope for Chartered Accountants under the Competition Act' at Kolkata on 7.06.2014.
3. Ms. Payal Malik, Adviser (Economics) and Ms. Sunita Anand, Deputy Director General (Law) participated in OECD-Korea Policy Center Workshop on 'Evidentiary Issues in Establishing Abuse of Dominance' during June, 3-5, 2014 in Jeju Island, Korea.
4. Shri Shivram Bairwa, Joint Director (Law) held a session on 'Competition Compliance' in ASSOCHAM Seminar on "Compliance & Complications under Companies Act, 2013, on 26.06.2014 in New Delhi.
5. Dr. Seema Gaur, Adviser (Economics), participated as member of Indian delegation in 5th Meeting of the Regional Comprehensive Economic Partnership (RCEP) Trade Negotiating Committee (TNC) during 23-27 June, 2014 in Singapore.