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## WORDS OF WISDOM

*“Your reach must always exceed your grasp. That is heaven on earth. Ultimately, your only competition is yourself.”*

*“Don't wait for extraordinary opportunities. Seize common occasions and make them great. Weak men wait for opportunities; strong men make them.” -*

*Orison Swett Marden*

### IMPORTANCE OF TIME MANAGEMENT TO CHARTERED ACCOUNTANTS

Time management is supposed to be an activity which every one of us learn while preparing for the CA exams as out of compulsion we have to learn this technique to get through the exams with flying colors. Hence once a student clears the final examination he is already suppose to be good in time management technique.

But the fact is that the same time management which we apply at the time of exams for our studies; we often don't apply the same in our work after becoming a member. For example many times we are late in submitting the Income Tax returns of our client, this may be due to improper time management and because of this our client suffers by paying fine or penalty. Hence we should also use the time management technique in our work also after becoming a CA to complete the work at its best and gain perfection in it.

Time consciousness & management are the good habits, which once cultivated will automatically continue. We are the trendsetters of the Chartered Accountancy Profession i.e. our future members will walk on the same path which will be constructed by us. Chartered Accountants are the torchbearers, the trendsetters of this profession. Thus being the trendsetters and future leaders it is very important that we as the members must realize the importance of time.

Chartered accountancy Profession holds a high Public-Esteem. By using the science of accountancy and under the spell of its art, a dynamic pattern that assists the business in planning its future is woven by the Chartered Accountant out of the inert Mass of Silent Figures.

Time management is a necessity for a successful Chartered Accountant. He has to allocate the available time between his work & his personal life. He must divide his time into the following areas -

- Planning his work
- Delegating work
- Listening to subordinates
- Discussing with the Seniors
- Outside visits to client's place, IT department etc.
- Attending seminars and conferences
- Reading Business journals
- Monitoring staff
- Time for family
- Social calls
- Entertainment

## FEW THOUGHTS

"MANAGE YOUR TIME AS YOU MANAGE YOUR MONEY."

"ONLY A BUSY PERSON CAN ENJOY LEISURE."

"YOU WILL ALWAYS FIND TIME TO DO THE THINGS YOU WANT TO DO."

"YOUR TIME IS LIMITED, BUT YOUR IMAGINATION IS NOT."

"TAKE CARE OF THE MINUTE, FOR THE HOURS WILL TAKE CARE OF  
THEMSELVES."

"THERE IS NEVER ENOUGH TIME UNLESS YOU USE IT."

"THE SCARCEST RESOURCE WE HAVE IS OUR OWN TIME."

"WE ALL HAVE ONE THING IN COMMON A 24 HOUR DAY. It's HOW WE USE  
OUR TIME THAT MAKES THE DIFFERENCE."

"TOMORROW IS OFTEN THE BUSIEST DAY OF THE WEEK."

"WASTE NO TIME IN VAIN REGRETS."

"A MAN THAT IS YOUNG IN YEARS MAY BE OLD IN HOURS, IF HE HAS LOST  
NO TIME."

"TO KILL TIME IS AS CULPABLE AS TO COMMIT SUICIDE."

"TIME DOES NOT COME WITH BUY-BACK FACILITY."

"TAKE TIME TO LIVE: IT IS THE SECRET OF SUCCESS."

"TAKE TIME TO THINK: IT IS THE SOURCE OF POWER."

"TAKE TIME TO LOVE: IT IS THE PRIVILEGE OF THE GOOD."

"TAKE TIME TO WORK: IT IS THE PRICE OF THE SUCCESS."

"TAKE TIME FOR GOD: IT IS LIFE'S ONLY LASTING INVESTMENT."

"TIME IS WHAT WE WANT MOST, BUT WHAT, ALAS! WE USE WORST".

## “OUT-OF-THE-BOX THINKING”

The age-old proverb “Opportunity knocks only once” has become outdated in today’s fast changing environment. The World is moving at jet speed and you have to do the same to keep up. Opportunity does not come knocking on doors anymore, you have to get up from your seat and go searching for it. The good sense to recognize an opportunity when you see one can only be done by the power of lateral thinking as opposed to logical thinking.

Let us begin with a small story:

Many years ago in a small Indian village, a farmer had the misfortune of owing a large sum of money to a village moneylender. The moneylender, who was quite aged and an obnoxious man, fancied the farmer’s beautiful daughter. He saw this as a golden opportunity and proposed that he would forgo the farmer’s debt if he could marry his daughter. Both the farmer and his daughter were horrified by the proposal.

So the cunning money-lender suggested that they let Providence decide the matter. He told them that he would put a black Pebble and a white pebble into an empty money bag. Then the girl would have to pick one pebble from the bag.

1. If she picked the black pebble, she would become his wife and her father’s debt would be forgiven.
2. If she picked the white pebble she need not marry him and her father’s debt would still be forgiven.
3. But if she refused to pick a pebble, her father would be thrown into Jail.

They were standing on a pebble strewn path in the farmer's field. As they talked, the moneylender bent over to pick up two pebbles. As he picked them up, the sharp-eyed girl noticed that he had picked up two black pebbles and put them into the bag. He then asked the girl to pick a pebble from the bag.

Now, imagine that you were standing in the field. What would you have done if you were the girl? If you had to advise her, what would you have told her?

Careful analysis would produce three possibilities:

1. The girl should refuse to take a pebble.
2. The girl should show that there were two black pebbles in the bag and expose the money-lender as a cheat.
3. The girl should pick a black pebble and sacrifice herself in order to save her father from his debt and imprisonment.

Take a moment to ponder over the story. The above story is used with the hope that it will make us appreciate the difference between lateral and logical thinking.

The girl's dilemma cannot be solved with logical thinking. Think of the consequences if she chooses the above logical answers.

What would you recommend to the Girl to do?

Well, here is what she did ....

The girl put her hand into the moneybag and drew out a pebble. Without looking at it, she fumbled and let it fall onto the pebble-strewn path where it immediately became lost among all the other pebbles.

"Oh, how clumsy of me," she said. "But never mind, if you look into the bag for the one that is left, you will be able to tell which pebble I Picked."

Since the remaining pebble is black, it must be assumed that she had picked the white one. And since the money-lender dared not admit his dishonesty,

the girl changed what seemed an impossible situation into an extremely advantageous one.

**MORAL OF THE STORY:**

**Most complex problems do have a solution. It is only that we don't Attempt to think.**

## **INTERNATIONAL OPPORTUNITIES FOR CHARTERED ACCOUNTANTS**

The Chartered Accountancy profession is one of the most trusted and respected professions in the world. The profession has gained confidence of the society as well as the government, which is evident from the substantial responsibilities that they are entrusted with under various legislations. Such confidence and trust in the profession is a result of the various aspects of the professionals that include the professional skills and expert knowledge coupled with the high ethical standards that they maintain.

Established on 1 July 1949 as a statutory body under the Chartered Accountants Act, 1949, The Institute of Chartered Accountants of India (ICAI) is the regulator of the profession of Chartered Accountants in India. Headquartered at New Delhi, with 5 regional offices at Mumbai, Chennai, Kolkata, Kanpur, New Delhi, 146 branches in India the ICAI also has 23 overseas chapters and office in Dubai. During its 64 years of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The ICAI functions and is structured in the form of its Council of Members headed by its President. This structure includes Standing as well as Non-Standing committees focusing on various areas like Accountancy, Auditing, Economy and Taxation among others. The Board of Discipline and the Disciplinary Committee also form a part of this structure and are formed to

maintain the adherence to the professional ethics and standards set under which the Chartered Accountants function. The activities of ICAI include among other important activities the regulation of CA Profession, Setting Standards, Disciplinary Mechanism, Services to Government and Stakeholders, Education & Research and International initiatives. It offers inputs to Comptroller & Auditor General of India, Ministry of Corporate Affairs, Govt. of India, Reserve Bank of India, Securities and Exchange Board of India, Central Board of Direct Taxes, Insurance Regulatory and Development Authority and various government departments.

The Chartered Accountancy Profession in India is regulated by:

- The Chartered Accountants Act, 1949
- The Chartered Accountants Regulations, 1988
- The code of professional Ethics

The expertise and the skills that the Chartered Accountants possess are the outcome of the Chartered Accountancy course which is considered to be one of the rigorous professional courses in India. The Chartered Accountancy course is an optimum blend of practical and theoretical education consisting of three levels of examinations and three years of simultaneous practical training that ensure practical knowledge development at early stages. Currently around 8 lakh students are pursuing the CA Course.

In India, only a member of the Institute of Chartered Accountants of India (ICAI) is allowed to put his skills as a chartered accountant in practice. The membership of the ICAI stands at over 2.25 lakh. Associate members of the ICAI are entitled to use the prefix 'CA' to their name from 07-08-2009.

Further, members who are in full-time practice, and have completed 5 years of practice, can add 'FCA' as a prefix to their names.

It is impossible to list all the activities in which Chartered Accountants/ Certified Accountants/ Certified Public Accountants are involved throughout the globe. From public practice in Auditing and Assurance, Chartered Accountants as a clan have grown to provide a wide spectrum of financial services there clients have required. Chartered Accountants work in all fields of business and finance, including Financial Reporting, Auditing and Assurance, Economics, Taxation, Consulting, Cost Accounting, Management Accounting, Arbitration, Corporate Finance, Information System Audits. Apart from the field of professional practice, some CAs work in industry and commerce in financial and general management positions such as CFO and CEO.

Chartered Accountancy is a dynamic, challenging and rewarding profession. The highly specific set of skills that chartered accountants possess ensures that there are employment opportunities in all sectors across countries. Chartered Accountants have been and continue to play an important and influential role not only by being the backbone of organisations in finance and accounting but also as business advisors, strategists and forefront administrators.

## 1. INTERNATIONAL COMMERCIAL ARBITRATION

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time.” - Abraham Lincoln, Notes for a Law Lecture (1850)

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes arbitration, mediation, negotiation, and conciliation. The above four methods of redressal and resolution of a dispute are collectively called Alternative Dispute Resolution as these are usually considered to be alternative to litigation. The number of cases to be resolved is piling up at the courts in a maddening way. Besides, the constant rise in the costs of litigation coupled with time delays continues to plague the litigants. As a result of all this, the reliance on ADR methods is on the rise.

The two most common forms of ADR are arbitration and mediation. Arbitration is a simplified version of a trial involving no discovery and simplified rules of evidence. Either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third to comprise a panel. Arbitration hearings usually last only a few hours and the opinions are not public record. Arbitration has long been used in labor, construction, and securities regulation, but is now gaining popularity in other business disputes.

In litigation a dispute is referred to a court of Law. Litigation is expensive, time consuming and full of complexities. ADR is a system whereby disputants resolve their disputes with minimum outside help. The ADR procedure consists of four basic methods of dealing with disputes which are:—

1. Negotiation
2. Mediation
3. Conciliation
4. Arbitration

Arbitration is the settlement of a dispute by the decision not of a court of law but of one or more persons called arbitrators which is executable as a decree of the court. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. At its core, arbitration is a form of dispute resolution. Arbitration is the private, judicial determination of a dispute, by an independent third party.

Arbitration is the process by which parties voluntarily agree to refer a future or a present dispute to an individual or individuals who after hearing submissions from the parties will issue a legally binding decision determining the issues between the parties of liability and quantum of damages or giving other specific remedies.

Arbitration is also defined as the “reference of dispute or difference between not less than two parties for determination after hearing both sides in a

judicial manner by a person or persons other than a court of competent jurisdiction.

According to the Indian Arbitration and Conciliation Act, 1996, "Arbitration" means any arbitration whether or not administered by permanent arbitral institution.

### Services

- Drafting of Arbitration Agreement
- Representing either of the party (plainant /defendant) to the dispute in the arbitral proceedings
- Assisting Arbitrator in drafting arbitral award
- Assisting both parties to go to Court of Law
- Assisting in preparing submissions to arbitrator
- Member of Arbitral Tribunals
- Assisting Trade and Industry associations in setting up Alternate Dispute Redressal (ADR) mechanism.
- Acting as arbitrator where required. In some legislations, redressal of dispute or particular kind of disputes are mandatorily to be resolved through Arbitration.

### Acts Rules & Provisions applicable

- ✓ UNCITRAL Conciliation Rules in 1980
- ✓ Model Law on International Commercial Arbitration adopted by UNCITRAL in 1985
- ✓ United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 - ratified by more than 140 countries

## Major Institutions and Bodies

- ✓ International Chamber of Commerce (ICC)
- ✓ JAMS International
- ✓ British Columbia International Commercial Arbitration Centre (BCICAC, Canada)
- ✓ International Centre for Dispute Resolution (ICDR)
- ✓ International branch of the American Arbitration Association
- ✓ London Court of International Arbitration (LCIA)
- ✓ Hong Kong International Arbitration Centre
- ✓ Singapore International Arbitration Centre (SIAC)
- ✓ Specialist ADR bodies like World Intellectual Property Organisation (WIPO), which has an arbitration and mediation center and a panel of international neutrals specialising in intellectual property and technology related disputes
- ✓ International Arbitration Institute
- ✓ Association for International Arbitration (AIA)

## **KINDS OF ARBITRATION**

### **1. Adhoc arbitration:**

An ad hoc arbitration is one, which is not administered by an institution, and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, procedure for conducting the arbitration, etc. The arbitration agreement, whether arrived at before or after the dispute arises, might simply state that "disputes between the parties will be arbitrated", and if the place of arbitration is designated, that will suffice. If the parties cannot agree on arbitral detail, all unresolved problems and questions attending implementation of the arbitration, for

example "how the arbitral tribunal will be appointed", "how the proceedings will be conducted" or "how the award will be enforced" will be determined by the law of the place designated for the arbitration, i.e., the "seat" of the arbitration. Parties wishing to include an ad hoc arbitration clause in the principal contract between them, or seeking to arrive at terms of arbitration after a dispute has arisen, have the option of negotiating a complete set of rules, establishing procedures, which fit precisely their particular needs.

## **2. Institutional arbitration:**

An institutional arbitration is one in which a specialized institution with a permanent character, intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that institution. Often in such cases, the contract between the parties will contain an arbitration clause, which will designate an institution as the arbitration administrator.

In institutional arbitration, the first issue arising for agreement of the parties is choice of the institution, appropriate for the resolution of disputes, arising out of their contract. Whilst making such choice, there are various factors to be considered i.e. nature & commercial value of the dispute, rules of the institution as these rules differs, the past record and reputation of the institution and also that the institutional rules are in tune with the latest developments in international commercial arbitration practice. There are many institutional arbitration administrators, some of which are associated with a trade association and many of which are independent.

## **3. Contractual arbitration**

In the present scenario, where the numbers of commercial transactions as well as the number of disputes are increasing, the parties entering into a commercial transaction prefer to incorporate an arbitration clause in their agreement. The arbitration clause provides that if in future any dispute arises between the parties they will be referred to a named arbitrator/arbitrators.

#### **4. Statutory arbitration**

If by operation of law the court provides that the parties have to refer the matter to arbitration it is termed as statutory arbitration. In this kind of arbitration the consent of the parties is not required. It is more of a compulsory arbitration and it is binding on the parties as the law of the land.

#### **5. International Commercial Arbitration**

International commercial arbitration is the arbitration relating to disputes arising out of legal relationship, whether contractual or not, considered as commercial under the law in force in India where at least one of the parties is:

- An individual who is a national of or habitually resident in any country other than India.
- A body corporate which is incorporated in any country other than in India.
- A company or an association or a body of individuals whose central management and control is exercised in any country other than India.
- The government of a foreign country.

#### **6. Foreign Arbitration**

When arbitration proceedings are conducted in a place outside India and the Award is required to be enforced in India, it is termed as Foreign Arbitration.

## **ARBITRATION PROVISIONS**

### **UNCITRAL Model Law on International Commercial Arbitration**

The UNCITRAL Model Law on International Commercial Arbitration was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21st June, 1985 at the close of the Commission's 18th annual session. The General Assembly, in its resolution 40/72 of 11th December, 1985 recommended that "all states give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice".

The Model Law represents a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to all states of all regions and different legal or economic systems of the world.

The Model Law is designed to meet concerns relating to the current state of national laws on arbitration. The need for improvement and harmonization is based on findings that domestic laws are often inappropriate for international cases and that considerable disparity exists between them.

### **Difference between the UNCITRAL Model Law on International Commercial Arbitration (1985) and the UNCITRAL Arbitration Rules (1976)**

The UNCITRAL Model Law provides a pattern that law-makers in national governments can adopt as part of their domestic legislation on arbitration. The UNCITRAL Arbitration Rules, on the other hand, are selected by parties either as part of their contract, or after a dispute arises; to govern the conduct of arbitration intended to resolve a dispute or disputes between themselves. Put simply, the Model Law is directed at States, while the Arbitration Rules are directed at potential (or actual) parties to a dispute.

### **INTERNATIONAL CONVENTIONS AND TREATIES ON COMMERCIAL ARBITRATION**

There are several international treaties and conventions relating to commercial arbitration. Some of the important treaties are:

- 1923 Geneva Protocol on Arbitration Clauses
- 1927 Geneva Convention on the execution of Foreign Arbitral Awards
- 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
- 1961 European Convention on International Commercial Arbitration (Geneva Convention)
- 1962 Agreement Relating to Application of the European Convention on International Commercial Arbitration (Paris Agreement)
- 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington or ICSID Convention)
- 1966 Convention Providing a Uniform Law on Arbitration (Strasbourg Convention)
- 1972 Convention on the Settlement by Arbitration of Civil Law Disputes Resulting from Relations of Economic and Scientific-Technical Cooperation (Moscow Convention)
- 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention)

- 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention)
- 1985 UNCITRAL Model Law on International Commercial Arbitration
- 1987 Arab Convention on Commercial Arbitration
- 1993 OHADA Treaty on the Harmonization of Business Law in Africa (Port-Louis, Senegal)

## **ARBITRATION ORGANIZATIONS**

### **I. International Court of Arbitration**

<http://www.iccwbo.org/About-ICC/Organization/Dispute-Resolution-Services/ICC-International-Court-of-Arbitration/>

The International Court of Arbitration is an institution for the resolution of international commercial disputes. The International Court of Arbitration is part of the International Chamber of Commerce. The court comprises more than 100 members from about 90 countries. ICC headquarters is in Paris, France.

It is the world's leading body for the resolution of international disputes by arbitration.

This Court was established in the year 1923 as the arbitration body of International Chamber of Commerce (ICC). The Court handles more than 500 cases in a year. It is composed of members from several countries and every continent. The ICC Court as an arbitration body ensures the application of the Rules of Arbitration of the International Chamber of Commerce. The Court oversees the ICC arbitration process and is responsible for:

- Appointing arbitrators
- Confirming the arbitrators nominated by the parties

- Deciding upon challenging of arbitrators
- Scrutinizing and approving all arbitral awards
- Fixing arbitrator's fees

The Court is assisted by a Secretariat located at the ICC headquarters at Paris. The Secretariat closely follows all ICC cases and provides assistance and information in a wide range of languages. The ICC Court monitors the entire arbitral process i.e., right from the initial request to the final award. The court also regularly reviews the progress of all pending cases and in the process considers whether there are any measures that need to be taken.

## **II. American Arbitration Association**

[www.adr.org](http://www.adr.org)

The American Arbitration Association (AAA) is a not-for-profit organization in the field of alternative dispute resolution, providing services to individuals and organizations who wish to resolve conflicts out of court, and one of several arbitration organizations that administers arbitration proceedings. The AAA also administers mediation through and other forms of alternative dispute resolution. It is headquartered in New York City.

The AAA role in the dispute resolution process is to administer cases, from filing to closing. The AAA provides administrative services in the United States as well as abroad through its International Centre for Dispute Resolution (ICDR). The AAA's and ICDR's administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with information on dispute resolution options, including settlement through mediation. Ultimately, the AAA aims to move cases through arbitration or mediation in a fair and impartial manner until completion.

Other services of this association include the design and development of alternative dispute resolution (ADR) systems for corporations, unions, government agencies, law firms, and the courts. The Association also provides election services as well as education, training, and publications for those seeking a broader or deeper understanding of alternative dispute resolution.

### **III. International Centre for Settlement of Investment Disputes**

[https://icsid.worldbank.org/ICSID/ICSID/AboutICSID\\_Home.jsp](https://icsid.worldbank.org/ICSID/ICSID/AboutICSID_Home.jsp)

The International Centre for Settlement of Investment Disputes (ICSID) is an international arbitration institution which facilitates arbitration and conciliation of legal disputes between international investors. The ICSID is a member of the World Bank Group and is headquartered in Washington, D.C., United States. It was established in 1966 as a multilateral specialized dispute resolution institution to encourage international flow of investment and mitigate non-commercial risks. Although the ICSID is a member of the World Bank Group and receives its funding from the World Bank, it was established as an autonomous institution by a separate treaty drafted by the International Bank for Reconstruction and Development's executive directors and signed by member countries. The ICSID is contracted with and governed by its member countries, but has its own Secretariat which carry out its normal operations. The center facilitates arbitration and conciliation proceedings, allowing independent tribunals and arbitration mechanisms to hold proceedings under its rules, and all contracting member states agree to enforce and uphold arbitral awards in accordance with the ICSID Convention. The ICSID also helps administer dispute resolution proceedings under other treaties and for

alternative arbitration mechanisms. The center also performs advisory activities and maintains several publications.

The ICSID has 158 member states which have signed the center's convention. All ICSID contracting member states, whether or not they are parties to a given dispute, are required by the ICSID Convention to recognize and enforce ICSID arbitral awards.

The ICSID does not conduct arbitration or conciliation proceedings itself, but offers institutional and procedural support to conciliation commissions, tribunals, and other committees which conduct such matters. The center has two sets of rules that determine how cases will be initiated and conducted, either under the ICSID's Convention, Regulations and Rules or the ICSID's Additional Facility Rules.

#### **IV. International Council for Commercial Arbitration**

[www.arbitration-icca.org/](http://www.arbitration-icca.org/)

The International Council for Commercial Arbitration (ICCA) is a worldwide non-governmental organization (NGO) devoted to promoting the use and improving the processes of arbitration, conciliation and other forms of resolving international commercial disputes. Its activities include convening international arbitration congresses and conferences, sponsoring authoritative dispute resolution publications, and promoting the harmonization of arbitration and conciliation rules, laws, procedures and standards.

ICCA has official status as an NGO accredited by the United Nations. In that capacity, ICCA has participated actively in the preparation of the Arbitration Rules of the United Nations Commission on International Trade Law, the UNCITRAL Conciliation Rules, and the UNCITRAL Model Law on International Commercial Arbitration.

The ICCA NGO consists of Governing Board Members and Members. Governing Board Members are recognized specialists in the field of dispute resolution.

ICCA is not an arbitral institution: it does not administer arbitrations or act as appointing authority.

## 2. CORPORATE SOCIAL RESPONSIBILITY

“Social obligation is much bigger than supporting worthy causes. It includes anything that impacts people and the quality of their lives.” - William Ford Jr., Chairman, Ford Motor Co.

In recent years, increased attention has been given to the concept of Corporate Social Responsibility. It is based on the idea that not only public policy but companies, too, should take responsibility for social issues. The idea of being a socially responsible company means doing more than comply with the law when investing in human resources and the environment. In fact, the ultimate aim of Corporate Social Responsibility is to deliver a sustainable society in which business and its stakeholders can prosper in the long term. On the road to achieving this goal, India has become the first country in the world to legally mandate corporate spending on social welfare.

There is no dearth of CSR opportunities to address as the needs around the world are vast. New and emerging opportunities have arisen with regard to Corporate Social Responsibility due to various evolving provisions of CSR. Some of the opportunities for Chartered Accountants are listed below:

- Advisory and Consultancy Services to companies with regard to applicability of CSR.
- Implementation aspects of CSR for companies that have to compulsorily implement CSR.
- Compliance of CSR formalities under various regulations.
- Drafting of CSR Policies

- Advisory on aspects of CSR Expenditure.
- Advisory on the type of entity to undertake CSR activities for the entity.
- Assistance in reporting aspects of CSR.
- Conduct social audit to assess the performance of CSR of the entity.
- Advising on Non Profit Organisations' (NPO) Governance
- Grading/ Rating NPOs
- Integrated Reporting
- Social Audit

### **IMPLEMENTING CSR**

Implementation of CSR refers to the day-to-day decisions, processes, practices and activities that ensure the company meets the spirit and letter of its CSR commitments and thereby carries out its CSR strategy.

There are different ways of approaching CSR implementation. Given below is one of the appropriate ways of implementing a company's CSR commitments.

- Develop an integrated CSR decision-making structure
- Prepare and implement a CSR business plan
- Set measurable targets and identify performance measures
- Engage employees and others to whom CSR commitments apply
- Design and conduct CSR training
- Establish mechanisms for addressing problematic behaviour
- Create internal and external communications plans

It is essential that every company align its CSR goals and decision making with its overall goals and strategies, so that taking CSR considerations into account in corporate decision making becomes as natural as taking customer

perspectives into account. Some companies would prefer a centralized CSR decision-making structure, others a de-centralized one, while still others would want a hybrid, depending on their operating features and management style. There is no single way of organizing a firm's CSR decision making.

To ensure effective implementation, an entity should set measurable targets for the commitments. An entity's approach should be to set measurable environmental, economic and social targets and track its success in meeting them. A widely used approach to measuring success is to identify the objectives underlying a CSR commitment, develop key performance indicators, work out the measurement method and then measure the results. Regardless of the exact approach taken, it should follow the SMART guidelines:

- Simple
- Measurable
- Achievable
- Reliable
- Time-bound

Employees play a central role in CSR implementation. While overall CSR success depends first on senior leadership, ultimately, CSR implementation largely rests in the hands of employees. Hence it is vitally important that there be good communication between top management and employees about CSR strategy and commitment implementation.

## **INTEGRATED REPORTING**

The aim of the integrated report is to clearly and concisely tell the story of the company, who it is and what it does and how it creates value, its strategy,

opportunities and risks, its business model and governance, and the performance against its strategic objectives in a way that gives stakeholders a holistic view of the company and its future.

Financial reporting tells only a part of the story of any organisation. Integrated reporting aims to give a holistic view of the organisation by putting its performance, business model and strategy in the context of its material social and environmental issues – in other words, the business in its true reality! Importantly, integrated reporting includes forward-looking information to allow stakeholders to make a more informed assessment of the future value creation ability of the organisation.

The two essential concepts of integrated reporting are capitals and the value creation process. These are well explained by the following excerpt from the International Integrated Reporting Framework:

“An integrated report aims to provide insight about the resources and relationships used or affected by an organization – these are collectively referred to as the capitals in this Framework. It also seeks to explain how the organization interacts with the external environment and the capitals to create value over the short, medium and long term.

“The capitals are stores of value that are increased, decreased or transformed through the activities of the outputs of the organization. They are categorized in this Framework as financial, manufactured, intellectual, human, social and relationship, and natural capital, although organizations preparing an

integrated report are not required to adopt this categorization or to structure their report along the lines of the capitals.

“The ability of an organization to create value for itself enables financial returns to the providers of financial capital. This is interrelated with the value the organization creates for stakeholders and society at large through a wide range of activities, interactions and relationships. When these are material to the organization’s ability to create value for itself, they are included in the integrated report.”

How does the integrated report fit with other reports? It can be seen as the main report from which all other detailed information flows. A useful analogy is the octopus ... the head is the integrated report and each arm is a detailed report or detailed information set (e.g. annual financial statements, sustainability report, governance report etc).

The King III Code on Governance 2009 was one of the first major publications to highlight integrated reporting. It defines an integrated report as "a holistic and integrated representation of the company’s performance in terms of both its finance and its sustainability".

The International Integrated Reporting Council (IIRC) in its International Integrated Reporting Framework defines the integrated report as “a concise communication about how an organization’s strategy governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term”. Integrated

reporting is defined as “a process founded on integrated thinking that results in a periodic integrated report by an organization about value creation over time and related communications regarding aspects of value creation”.

The IIRC acknowledges that the integrated report and integrated reporting is very much based on integrated thinking. This is defined as “the active consideration by an organization of the relationship between its various operating and functional units and the capitals that the organization uses or affects. Integrated thinking leads to integrated decision-making and actions that consider the creation of value over the short, medium and long term”.

The King III Code on Governance (2009) defines an integrated report as "a holistic and integrated representation of the company's performance in terms of both its finance and its sustainability".

And says it should be:

- An annual report
- Statutory financial information and sustainability information should be integrated
- Should have sufficient information to record how the organisation has affected the economic life of the community - positively and negatively
- Should contain forward-looking information - on how the board feels it can enhance the positive aspects and negate the negative aspects
- Integrated reporting requires more than just an add-on of sustainability information - sustainability reporting should be integrated with other

aspects of the business process and managed throughout the year. Sustainability should be embedded in the organisation.

- Integrated reporting should focus on substance over form.
- The board's audit committee must establish a formal process of assurance on sustainability reporting. It should recommend to the board the need to engage an external assurance provider to provide assurance over material elements of the sustainability part of the integrated report. It should oversee sustainability issues in the integrated report; ensure the sustainability information is reliable, and that no conflicts or differences arise when compared to the financial results.

## **SUSTAINABLE REPORTING**

Global Reporting Initiative defines Sustainability Report as the practice of measuring, disclosing, and being accountable for organizational performance while working towards the goal of sustainable development. A sustainability report provides a balanced and reasonable representation of the sustainability performance of the reporting organization, including both positive and negative contributions.

Sustainability reporting is a form of value reporting where an organization publicly communicates their economic, environmental, and social performance.

Reporting on sustainability performance is an important way for organizations to manage their impact on sustainable development. The challenges of sustainable development are many, and it is widely accepted

that organizations have not only a responsibility but also a great ability to exert positive change on the state of the world's economy, and environmental and social conditions.

Reporting leads to improved sustainable development outcomes because it allows organizations to measure, track, and improve their performance on specific issues. Organizations are much more likely to effectively manage an issue that they can measure.

As well as helping organizations manage their impacts, sustainability reporting promotes transparency and accountability. This is because an organization discloses information in the public domain. In doing so, stakeholders (people affected by or interested in an organization's operations) can track an organization's performance on broad themes – such as environmental performance - or a particular issue - such as labor conditions in factories. Performance can be monitored year on year, or can be compared to other similar organizations.

Sustainability Reporting is a means to gain competitive advantage through informed decision-making and Sustainability Reports are seen by decision-makers as evidence of good corporate citizenship, and are increasingly used by financial institutions seeking more information to judge investment risk and opportunity.

Corporate Social Responsibility is a form of corporate self-regulation integrated into a business model. It is also referred to as corporate conscience,

corporate citizenship, social performance, or sustainable responsible business/ Responsible Business. The term, “corporate social responsibility” is used to envelop both social and environment issues. The fundamentals of CSR rest on the fact that not only public policy but even corporates should be responsible enough to address social issues.

### Services

- Consultancy in CSR
- Accounting for CSR
- Taxation for CSR
- Advising on Non Profit Organisations’ (NPO) Governance
- Grading/ Rating NPOs
- Complying with Standards
- Integrated Reporting
- Social Audit

### Acts Rules & Provisions applicable

- ✓ Global Reporting Initiative
- ✓ ISO 26000 - social responsibility
- ✓ ISO 14001 - Environmental management systems
- ✓ SA 8000 – by the Social Accountability International

### 3. INSOLVENCY LAWS

Insolvency regimes around the world have evolved in very different ways, with laws focusing on different strategies for dealing with the insolvent corporate. The outcome of an insolvent restructuring can be very different depending on the laws of the state in which the insolvency proceeding is run, and in many cases different stakeholders in a company may hold the advantage in different jurisdictions.

#### Major Institutions and Bodies

- ✓ American Bankruptcy Institute
- ✓ Association of Insolvency and Restructuring Advisors
- ✓ FTC - Bureau of Consumer Protection
- ✓ Global Insolvency - joint project of the American Bankruptcy Institute and INSOL International
- ✓ International Association of Insolvency Regulators (IAIR)
- ✓ International Association of Restructuring, Insolvency and Bankruptcy Professionals
- ✓ National Association of Credit Management

#### Acts Rules & Provisions applicable

Insolvency Regulations of respective countries. For eg.

- ✓ Corporations Act 2001 – Australia
- ✓ Canada – Bankruptcy and Insolvency Act
- ✓ Turkey - Enforcement And Bankruptcy Law
- ✓ United Kingdom - Insolvency Act 1986

Under the Constitution of India 'Bankruptcy & Insolvency' is Entry 9 in List III - Concurrent List, (Article 246 -Seventh Schedule to the Constitution) i.e. both Center and State Governments can make laws relating to this subject.

In India the process of winding up of companies is regulated by the Companies Act and is under the supervision of the court. Although article 19 (1)(g) of the Constitution of India gives freedom to practice any profession or to carry on any occupation, trade or business to the citizens of India, there are restrictions on closure of any industrial undertaking. Such restriction is justified on the ground that it is in public interest to prevent unemployment. As a result of such policy there is a freedom to undertake any industrial activity, but there is no freedom to exit.

### **Insolvency Laws for Individuals and Corporates**

In India the term insolvency has not been defined anywhere, but still the word is commonly used to describe the process of insolvency. The stream of insolvency laws in India can be segregated under three heads:

1. Pre-Insolvency Workouts: Pre-insolvency Work-out Schemes include:
  - Companies Act, 1956 (Sections 391 to 396)
  - The Sick Industrial Companies (Special Provisions) Act, 1985
  - Corporate Debt Restructuring Scheme
  - Asset Reconstruction under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)
  - RBI Guidelines on Special Mention Accounts.
  
2. Insolvency of individuals and unincorporated entities

This deals with individuals and partnership firms going insolvent. The consequence of this personal insolvency is declaration of insolvency and incapacity to contract. It is governed by Provincial Insolvency Act, 1920 and Presidency Towns Insolvency Act, 1909

### 3. Corporate Insolvency

This deals with corporates going insolvent. The consequence is usually winding up of the company under the Companies Act, 1956.

### 4. Insolvency of incorporated associations and other incorporated bodies

This deals with insolvency of bodies like co-operative societies and body corporates incorporated under certain legislations.

There are certain common principles to corporate as well as individual insolvency. In any insolvency it is a grounded principle that all creditors must be treated equally. The only exception to this rule is that – preferential creditors are paid out in preference to ordinary creditors and secured creditors get priority next to preferential creditors.

## **PROFESSIONAL OPPORTUNITIES**

Just like a person requires treatment to treat his disease, a sick company also requires some form of treatment to overcome its problem of debts. This treatment may be in the form of restructuring of a company.

Restructuring is the corporate management term for the act of reorganizing the legal, ownership, operational, or other structures of a company for the purpose of making it more profitable, or better organized for its present

needs. Alternate reasons for restructuring include a change of ownership or ownership structure, demerger, or a response to a crisis or major change in the business such as bankruptcy, repositioning, or buyout. Restructuring may also be described as corporate restructuring, debt restructuring and financial restructuring.

There are a broad range of opportunities that arise from corporate insolvency and financial restructurings.

- Spotting and evaluating distressed companies for restructuring and rescue planning.
- Reviewing the various risks involved in restructuring.
- Developing risk mitigation strategies.
- Working out a detailed bankable financial structure of the business.
- Working out a detailed plan for restructuring the business from all angles.
- Assessment of distressed assets, cash position, due diligence and turnaround feasibility.
- Advice on optimum utilization of resources.
- Drafting insolvency petitions.
- Representation and registration of sick companies with BIFR.
- Representation before the Debt Recovery Tribunals.
- Negotiating settlements.
- Identifying Areas of Opportunity for the company.
- Advisory in relation to a merger or acquisition or takeover.
- Advisory services to management on an ongoing basis.

## **INSOLVENCY REGULATORS AND ASSOCIATIONS**

**International Association of Insolvency Regulators (IAIR)**

[www.insolvencyreg.org](http://www.insolvencyreg.org)

The International Association of Insolvency Regulators (IAIR) is an international body that brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world.

Insolvency Regulators refer to government and public organizations with insolvency functions. Insolvency Regulation encompasses the regulation of private sector insolvency administrators and oversight of insolvencies administered by these administrators.

The idea of IAIR as a formal body arose from a meeting of government insolvency regulators arranged by the Insolvency & Trustee Service, Australia alongside a World Congress of INSOL International held in Melbourne, Australia in March 1993. IAIR was formally established at a meeting in Hong Kong in November 1995 and attended by representatives from Australia, Hong Kong, India, Jersey, Malaysia, New Zealand, Singapore, United Kingdom and United States of America. This core group became the founding members of IAIR.

Members recognized that effective and efficient procedures for dealing with financial failure are essential for maintaining confidence in financial markets, encouraging enterprise, underpinning investment and economic growth and supporting business and consumer credit; and that, increasingly, insolvencies extend beyond national jurisdictions through the continuing development of international trade and finance. IAIR aims to promote liaison and co-operation and provides a forum for discussion amongst insolvency regulators. The

Association thereby contributes to a wider understanding of insolvency issues, procedures and practices and the development of approaches that reflect the different legal, socio-economic, historical, cultural and institutional frameworks of the countries from which members come.

The IAIR Secretariat is situated at Canberra, Australia.

### **INSOL International - International Association of Restructuring, Insolvency**

#### **& Bankruptcy Professionals**

[www.insol.org](http://www.insol.org)

INSOL International is a world-wide federation of national associations for accountants and lawyers who specialize in turnaround and insolvency. There are currently 40 Member Associations world-wide with over 9,700 professionals participating as Members of INSOL International.

INSOL with its Member Associations will take the leadership role in international turnaround, insolvency and related credit issues; facilitate the exchange of information and ideas, encourage greater international co-operation and communication amongst the insolvency profession, credit community and related constituencies.

The office of INSOL International is situated at London, UK.

### **Global Insolvency**

GLOBAL Insolvency is a joint project of the American Bankruptcy Institute and INSOL International. It serves as a comprehensive source of information both on current issues in international insolvency and restructuring law and on the legal framework for insolvency and restructuring around the world. From current commentary and recent filings to international protocols and

bankruptcy statutes to advice on cross-border lending, it offers a wide range of information for insolvency practitioners, judges, accountants, trustees and others.

With 10,300 members, the American Bankruptcy Institute is the largest American multidisciplinary, non-partisan organization dedicated to research and education on matters related to insolvency. It is also the leading American provider of bankruptcy educational programs produces numerous publications and testifies before Congress. INSOL International is a world-wide federation of national associations for accountants and lawyers who specializes in turnaround and insolvency. There are currently 32 Member Associations world-wide with over 7,700 professionals participating as members of INSOL International.

### **Global Insolvency Law Database (GILD)**

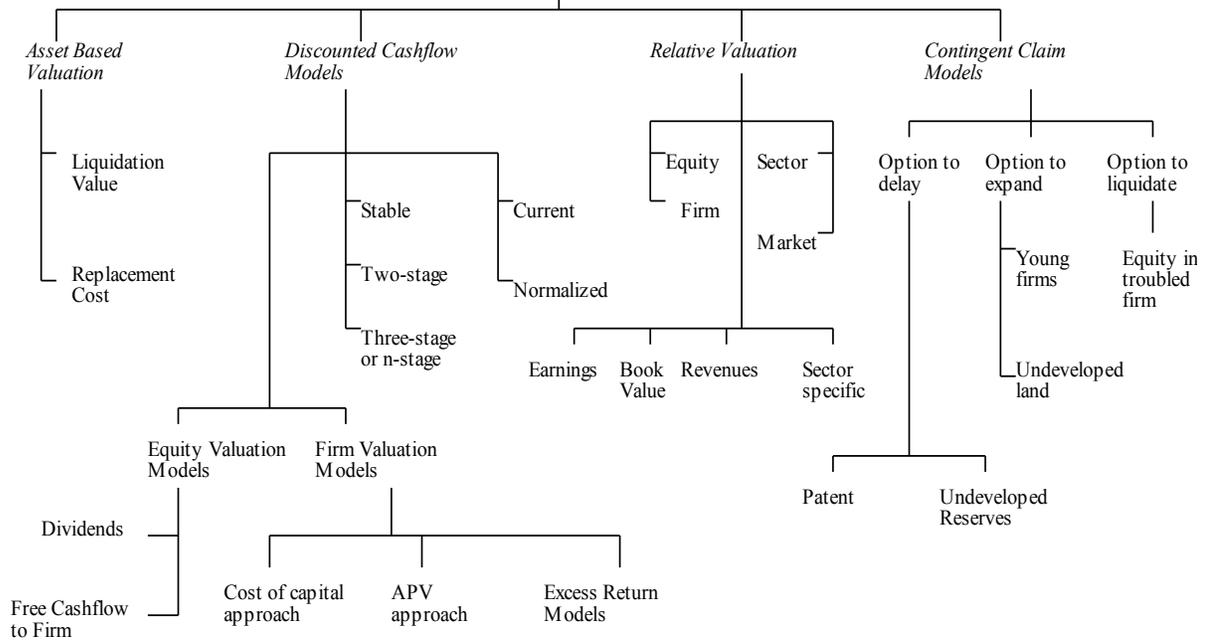
GILD, the Global Insolvency Law Database, is a resource dedicated to all aspects of credit and debt, including debtor and creditor rights, the creation and enforcement of security interests, corporate restructuring, bankruptcy, reorganization and liquidation. At the heart of the World Bank's Insolvency Initiative, GILD is designed to promote understanding and awareness of best practices by presenting information on the latest developments and systems adopted or proposed in countries and regions throughout the world. GILD contains reports on cutting edge innovations, the World Bank Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, explanatory overviews by experts in the field, and excerpts from relevant legislation.

## 4. BUSINESS VALUATION

Business Valuation is the process of determining how much a business is worth i.e determining the economic value of a business or company. Business valuation can be used to determine the fair value of a business for a variety of reasons, including sale value, establishing partner ownership and divorce proceedings. Often times, owners seek professional business valuation services for an objective estimate of the business value. Many different methods and approaches depending on the business entities are used for valuing businesses. Review of financial statements, discounting cash flow models, and similar company comparisons are a few methods to name. It can be for reasons stated here under:

- ✓ Sale of business or part interest
- ✓ Ownership Disputes
- ✓ Financing
- ✓ Life Insurance
- ✓ Buy-Sell Agreements
- ✓ Employee Stock Ownership Plans
- ✓ Condemnation
- ✓ Divorce
- ✓ Estate Planning
- ✓ Change of Business Structure
- ✓ Recapitalization

# Valuation Models



## 5. CLIMATE CHANGE MITIGATION

Climate change has emerged as a critical global environmental and socio-economic issue. A number of international bodies are considering measures for mitigating the effects of climate change.

Climate change impacts and regulations will increasingly be reflected in financial statements. Carbon taxes, regulatory emission intensity reduction targets, and emissions trading create transactions that need to be recognized in financial statements.

Companies need to be aware of and take concrete steps to address the impact of climate change and related regulations on the company's strategies, risks, opportunities, and financial performance. Chartered accountants, as company executives or as external auditors, will have important roles to play in these areas and in contributing to the reliability of information reported to governments and capital markets.

In order to achieve faster economic growth, countries are going in for rapid but unorganized industrialization. This has led to emission of green house gases (GHG) in the atmosphere resulting in pollution of environment. To control pollution, the concept of Carbon Credit or mitigation of Climate change has been introduced. The opportunities in this area can include Project Identification Project Management and providing advisory services.

Over a decade ago, most countries joined an international treaty to address the danger of global climate change. The United Nations Framework Convention on Climate Change (UNFCCC) is an international environmental treaty that sets 2 general goals and rules for confronting climate change. The UNFCCC provides the basis for concerted international action to mitigate

climate change and to adapt to its impacts. Its provisions are far-sighted, innovative and firmly embedded in the concept of sustainable development.

With 195 Parties, the United Nations Framework Convention on Climate Change (UNFCCC) has near universal membership and is the parent treaty of the 1997 Kyoto Protocol. The Kyoto Protocol, an addition to the UNFCCC treaty, has been ratified by 193 of the UNFCCC Parties. Under the Protocol, 37 States, consisting of highly industrialized countries and countries undergoing the process of transition to a market economy, have legally binding emission limitation and reduction commitments.

The ultimate objective of both treaties is to stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous human interference with the climate system.

The clean development mechanism (CDM) allows emission-reduction projects in developing countries to earn certified emission reductions (CERs), each equivalent to one tonne of CO<sub>2</sub>. CERs can be traded and sold, and used by industrialized countries to meet a part of their emission reduction targets under the Kyoto Protocol. With more than 4,500 registered projects in 75 developing countries, the CDM has proven to be a powerful mechanism to deliver finance for emission-reduction projects and contribute to sustainable development.

The greenhouse emission reduction credit or “carbon credit” market has become a multi-billion dollar industry for credits issued under the Kyoto Protocol internationally. India is being heralded as the next carbon credit

destination of the world. On 7th September 2012, the one billionth CER credit under the Kyoto Protocol's Clean Development Mechanism (CDM) was issued to a project at a manufacturing plant in India that has switched its fuel source from coal and oil to locally gathered biomass.

## **OPPORTUNITIES FOR PROFESSIONALS AND BUSINESS IN THE CLIMATE CHANGE INDUSTRY**

In today's increasingly challenging and volatile macro world, the role of the Chief Executive Officers (CEO's) and Chief Financial Officers (CFO's) of their companies has also evolved significantly. Their roles have expanded and evolved as strategic partners and advisors. The Key Personnel of an organization perform four main functions of Steering, Operating, Motivating and Planning, - they are in the best position to guide their organizations in shifting their business models towards adherence with the climate change agenda.

Organizations also stand to gain from environment protection and sustainable development. New business can be started as green businesses. Credits can be earned under the Clean Development Mechanism of the United Nations Framework Convention on Climate Change, thereby benefiting the Organisation and the Environment as a whole.

Professional Opportunities in the Climate Change industry include:

1. Conceptualizing the Clean Development Mechanism (CDM) project
2. Quantification of greenhouse gases (GHG) Carbon Footprint

3. Selection of Cleaner technologies for New projects
4. Project risk analysis
5. Registration of project - both national and international level
6. Obtaining Host country approval
7. Preparation of Project Concept Note
8. Preparation of Project Design Document
9. Selection of Methodologies and Baseline
10. Legal and regulatory advice during negotiations with host country Designated National Authority (DNA)
11. Advice on the appointment of independent validators
12. Assistance to achieve registration of the project by the CDM Executive Board
13. Assistance in getting verification done by Designated Operational Entity (DOE)
14. Ensure Compliances
15. Assisting various Ministries associated with National Action Plan on Climate Change (NAPCC)
16. Carbon Finance
17. Energy Audit under The Energy Conservation Act 2001
18. Advise on investment in carbon credit
19. Accounting advisory services
20. Taxation advisory services

Professional Opportunities in Environmental Laws and Green Sectors:

1. Professionals as consultants can obtain consents for establishment of a Unit under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

2. Before establishing an industrial unit a certificate from a professional about proposed Capital Investment or Gross capital investment (Land, building, plant and machinery) is required to be submitted along with the consent application for establishment of a Unit. This certificate is also known as Gross Block investment certificate. This certificate should include the cost of land, building, plant and machinery without depreciation.

3. Professionals as environment consultants can play an important role in obtaining environmental clearance under the Environment Impact Assessment Notification. The environmental consultant should be conversant with the existing legal and procedural requirements of obtaining environmental clearance for a proposed project. The consultant should guide the project proponent (i.e the person who is going to establish an industrial unit) through initial screening of the project and establish whether Environment Impact Assessment (EIA) studies are required to be conducted and if so finalise the scope of such study. The consultant should also be fully equipped with required instruments and infrastructure for conducting EIA studies. The environmental consultant is responsible for supplying all the environment-related information required by the State Pollution Control Board (SPCB) and Impact Assessment Agency (IAA) through the project proponent. The consultant is also required to justify the findings in the

Environment Impact Assessment and Environmental Management Plan (EMP) during the meeting with the expert groups at IAA.

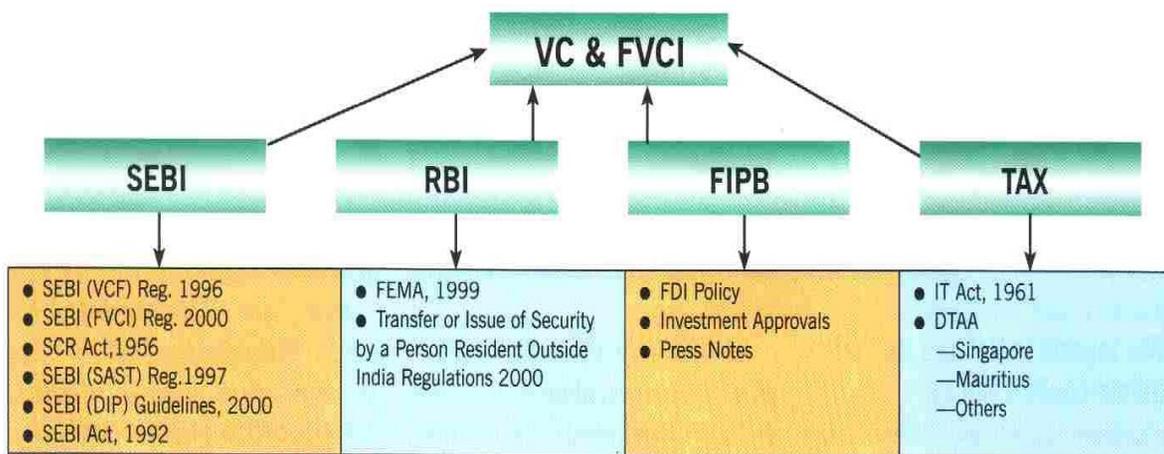
4. Professionals can also assist the Industrial Units in record keeping of various hazardous wastes, chemicals etc, as prescribed under the Hazardous Wastes (Management and Handling) Rules, 1989 and Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989.

5. Professionals can also provide information on the capital and recurring (O&M) expenditure on various aspects of environment protection such as effluent, emission, hazardous wastes, solid wastes, tree-plantation, monitoring, data acquisition etc. This is important information to be given in the application for consent to establish/operate/renewal of consent.

6. Status of compliance of Rules 5, 7, 10,11,12,13 and 18 under the Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989 need to be given in the application for consent to establish/operate/renewal of consent. This status of compliance can be given by a professional in the form of a certificate of compliance.

## 6. RAISING CAPITAL AND PRIVATE EQUITY

Private equity has existed since the 1980s and is now an important feature of most established market economies. Capital for private equity is raised from retail and institutional investors, and can be used to fund new technologies, expand working capital within an owned company, make acquisitions, or to strengthen a balance sheet. Private Equity is also playing an increasingly important role in many rapidly developing economies. It implies long term investment in private companies, where the investor provides capital and becomes a shareholder in the company in return for the money put in.



Private equity is medium to long-term finance provided in return for an equity stake in potentially high growth unquoted companies. The investors' returns are dependent on the growth and profitability of the business. Companies at various stages of development can avail of private equity to finance their plans. Private equity financing at the various stages of maturity of a company would be as follows:

- a) Seed stage Financing (provided to research, assess and develop an initial concept)
- b) Start Up Financing (for product development and initial marketing)
- c) Expansion stage Financing (for growth and expansion of a company which is breaking even or trading profitably)
- d) Replacement Capital Financing (for Purchase of shares from another investor or to reduce gearing via the refinancing of debt)
- e) Buyout financing (investing in more mature companies with established business plans to finance expansions, consolidations, turnarounds and sales, or spinouts of divisions or subsidiaries)

### **Stages in the Private Equity Investment Process**

Private equity investment is typically a transformational, value-added active investment strategy. It involves investing in securities through a negotiated process which may consist of the following stages:

1. Assessment of need for Fund
2. Approaching the Private Equity Fund/ Advisor
3. Initial Enquiries and Negotiations/ Selection of PE Fund Advisor
4. Business Valuation
5. Preparing a Business Plan
6. Due Diligence
7. Term Sheet
8. Shareholders Agreement
9. Structuring the Deal / Final Negotiation and Deal Completion/ Execution of Legal Documents

## 10. Exit Strategy

### **Important Documents Required in the Private Equity Process:**

1. Business Plan
2. Term Sheet
3. Warranties and Indemnities
4. Disclosure Letter
5. Shareholders' / Investors' Rights/ Subscription Agreement
6. Company's Memorandum and Articles of Association

### **Role of a Chartered Accountant (CA) in Private Equity Funding**

The CA can assist the company in the private equity process in the following ways:

1. Undertaking an Initial appraisal of Management's financing proposition
2. Preparation and advising on Business Plan
3. Business Valuation
4. Preparing financial model
5. Planning the capital/ funding structure
6. Review and appraisal of the terms of deal
7. Negotiation on terms of deal
8. Project management of transaction
9. Advising on the future plans/ exit route etc.
10. Due Diligence and reporting formally on the projections

11. Advice on tax matters
12. Advise on legal and Regulatory issues
13. Auditing
14. Risk Management
15. Assistance in documentation
16. Assistance in Mergers and Acquisitions

## **DUE DILIGENCE**

### **What is Due Diligence (DD)?**

- The idea of due diligence is derived from the practice of taking care and caution in entering into a new transaction
- Due Diligence is the process of evaluating a prospective business decision by getting information about the financial, legal, and other material (important) state of the other.

### **International History of DD**

- The term "due diligence" first came into common use as a result of the United States' Securities Act of 1933.
- The US Securities Act included a defense referred to in the Act as the "Due Diligence" defense which could be used by broker-dealers when accused of inadequate disclosure to investors of material information with respect to the purchase of securities

### **Due Diligence Cycle**

The due diligence as a process consists of five stages, they are as follows

- Pre - engagement
- Understanding
- Due Diligence Program
- Substantial Verification
- Reporting

### **Classification of Due Diligence**

Following are the different classifications of the due diligence process

- Classification by Function
- Classification by Process
- Classification by Transaction
- Classification by Scope
- Classification by Perspective

### **Classification by Function**

- Commercial Due Diligence
- Legal Due Diligence
- Operational Due Diligence
- Business Strategy/ Management Culture Due Diligence
- Environmental Due Diligence
- Human Resource Due Diligence
- Marketing Due Diligence
- Business Environment Due Diligence

### **Classification by Process**

- Initial/Preliminary Due Diligence
- Full Due Diligence
- Ongoing Due Diligence
- Cold Due Diligence
- Hot Due Diligence
- Quick/Fast Due Diligence

### **Classification by Transaction**

- Private Equity
- Mergers and Acquisitions
- Joint Ventures
- Venture Capital
- Purchase of Business
- Investment in Business
- Loans for Business
- Partnership in Business
- Substantial Supply to Business

### **Classification by Scope**

- Financial and Accounting
- Tax
- Information Technology
- Strategic and Commercial
- Legal
- Operational

## **Classification by Perspective**

- Investor Due Diligence
- Target Side Due Diligence

## **Due Diligence Process**

Due Diligence process consists of 3 important steps

- Step I: Requesting information.
- Step II: Gathering information.
- Step III: Reporting on information

## **Due Diligence Process Checklists**

### **I. Financial Information**

- Annual and quarterly financial information for the past three years
- Financial Projections
- Capital Structure
- Other financial information

### **II. Products**

- Description of each product
- Major customers and applications
- Historical and projected growth rates
- Market share
- Speed and nature of technological change
- Timing of new products, product enhancement
- Cost structure and profitability

### **III. Customer Information**

- List of top 15 customers for the past two fiscal years and current year-to-date by application
- List of strategic relationships
- Revenue by customer
- Brief description of any significant relationships severed within the last two years
- List of top 10 suppliers for the past two fiscal years and current year-to-date with contact information

#### **IV. Competition**

- Description of the competitive landscape within each market segment including:
- Market position and related strengths and weaknesses as perceived in the market place
- Basis of competition (e.g., price, service, technology, distribution)

#### **V. Marketing, Sales, and Distribution**

- Strategy and implementation
- Major Customers
- Principal avenues for generating new business
- Sales force productivity model
- Ability to implement marketing plan with current and projected budgets

#### **VI. Research and Development**

- Description of R&D organization
- New Product Pipeline

#### **VII. Management and Personnel**

- Organization Chart

- Historical and projected headcount by function and location
- Summary biographies of senior management, including employment history, age, service with the Company, years in current position
- Compensation arrangements
- Discussion of incentive stock plans
- Significant employee relations problems, past or present
- Personnel Turnover

### **VIII. Legal and Related Matters**

- Pending lawsuits against the Company
- Pending lawsuits initiated by Company
- Description of environmental and employee safety issues and liabilities
- List of material patents, copyrights, licenses, and trademarks
- Summary of insurance coverage/any material exposures
- Summary of material contacts
- History of SEC or other regulatory agency problem, if any

### **Professional Opportunities for Chartered Accountants**

#### **Consultancy**

- Growth in M&A and Private equity activity in India
- Quality due diligence specialists
- Other opportunities – bank funding, partnership, joint ventures
- IPO Candidates
- International Business Partners
- Strategic Alliance Partners
- Merger & Acquisition Targets Consultants and Representatives

- Franchisees
- Distributors, suppliers and vendors
- Patent Due Diligence in biotechnology transactions
- Licensing Due Diligence
- IT Due Diligence /Cyber Due Diligence Process
- Information Security Due Diligence Process
- Human Rights Due Diligence Process
- Customer Due Diligence Process
- International Trade Due Diligence
- Legal Due Diligence
- IPR Due Diligence
- Anti Money Laundering Due Diligence
- Tax Due Diligence

## **7. TREASURY MANAGEMENT**

Until a few years ago, no major efforts were made to manage cash. However, competitive business environment, tight money, escalating interest rate and economic volatility have necessitated specialized skill for treasury management.

Treasury management (or treasury operations) includes management of an enterprise's holdings, with the ultimate goal of maximizing the firm's liquidity and mitigating its operational, financial and reputational risk. Treasury Management includes a firm's collections, disbursements, concentration, investment and funding activities. In larger firms, it may also include trading in bonds, currencies, financial derivatives and the associated financial risk management. The terms Treasury Management and Cash Management are sometimes used interchangeably, while, in fact, the scope of treasury management is larger (and includes funding and investment activities mentioned above). In general, a company's treasury operations come under the control of the CFO, Vice-President / Director of Finance or Treasurer, and is handled on a day-to-day basis by the organization's treasury staff, controller, or comptroller.

## **8. FORENSIC ACCOUNTING/ AUDIT**

Forensic accountants utilize an understanding of business information and financial reporting systems, accounting and auditing standards and procedures, evidence gathering and investigative techniques, and litigation processes and procedures to perform their work. Forensic accountants are also increasingly playing more proactive risk reduction roles by designing and performing extended procedures as part of the statutory audit, acting as advisers to audit committees, fraud deterrence engagements, and assisting in investment analyst research.

Forensic accounting is still nascent in India. However, the nature of fraud in India has undergone a change. Reserve Bank of India has made forensic accounting audit compulsory for banks in India. However banks are hesitant in approaching certified fraud examiners, and are mostly dependent on their internal auditors.

In India the formation of Serious Fraud Investigation Office is the landmark creation for the Forensic Accountants. Growing cyber crimes, failure of regulators to track the security scams, series of co-operative banks bursting - all are pinpointing the need of forensic accounting, irrespective of whether we understand the need or not.

In the Indian context the Forensic Accountants are the most required in the wake of the growing frauds. After the Satyam scam, forensic auditors are much in demand as many companies want to understand what could be the

initial warning signals of a Satyam kind of fraud in other Indian companies. Even the government's Serious Fraud Investigation Office (SFIO) has sought the help of forensic accountants to get to the root of the financial fraud at Satyam.

Some places where one can study and/or obtain certifications as Forensic

- ✓ Accounting Professional are:
- ✓ Institute of Chartered Accountants of India, New Delhi
- ✓ Association of certified fraud examiners (ACFE), USA
- ✓ Indiana University, Bloomington, USA
- ✓ British Columbia Institute of Technology, Canada
- ✓ Charles Stuart University, New South Wales, Australia

Some forensic accountants take courses in:

- ✓ Sociology
- ✓ Psychology
- ✓ Law enforcement
- ✓ Criminal law
- ✓ Business law
- ✓ Business and finance
- ✓ Information systems
- ✓ Communication

Forensic accounting requires the most important quality a person can possess the ability to think. There is no book that tells you how to do a forensic investigation. It is about solving a puzzle or peeling an onion. It takes

creativity. All of the larger accounting firms, as well as many medium-sized and boutique firms have specialist forensic accounting departments. Within these groups, there may be further sub-specializations: some forensic accountants may, for example, just specialize in insurance claims, personal injury claims, fraud, construction, or royalty audits.

Forensic accountants may be involved in recovering proceeds of crime and in relation to confiscation proceedings concerning actual or assumed proceeds of crime or money laundering. In the United Kingdom, relevant legislation is contained in the Proceeds of Crime Act 2002. In India there is a separate breed of forensic accountants called Certified Forensic Accounting Professionals.

Some forensic accountants are also Certified Fraud Examiners, Certified Public Accountants, or Chartered Accountants. Forensic accountants utilize an understanding of business information and financial reporting systems, accounting and auditing standards and procedures, evidence gathering and investigative techniques, and litigation processes and procedures to perform their work. Forensic accountants are also increasingly playing more proactive risk reduction roles by designing and performing extended procedures as part of the statutory audit, acting as advisers to audit committees, fraud deterrence engagements, and assisting in investment analyst research.

The forensic Accountant is a bloodhound of Bookkeeping. These bloodhounds sniff out fraud and criminal transactions in bank, corporate entity or from any other organization's financial records. They hound for the conclusive evidences. External Auditors find out the deliberate misstatements only but

the Forensic Accountants find out the misstatements deliberately. External auditors look at the numbers but the forensic auditors look beyond the numbers. Forensic accountant takes a more proactive, skeptical approach in examining the books of Accounting. They make no assumption of management integrity (if they can assume so then there is no need for their appointment) show less concerns for the arithmetical accuracy have nothing to do with the Accounting or Assurance standards but are keen in exposing any possibility of fraud. In addition to the specialized knowledge about the techniques of finding out the frauds one needs patience and analytical mindset. One has to look beyond the numbers and grasp the substance of the situation. It is basically the work of the intelligent accountants. He needs to question seemingly benign document and look for inconsistencies. He searches for evidence of criminal conduct or assists in the determination of, or rebuttal of, claimed damages.

Forensic Accountants work in most major accounting firms and are needed for investigating mergers and acquisitions, and in tax investigations, economic crime investigations, all kinds of civil litigation support, specialized audits, and even in terrorist investigations. Forensic Accountants work throughout the business world, in public accounting, corporations, and in all branches of government.

Forensic accounting is still nascent in India. However, the nature of fraud in India has undergone a change. Reserve Bank of India has made forensic accounting audit compulsory for banks in India. However banks are hesitant

in approaching certified fraud examiners, and are mostly dependent on their internal auditors.

In India the formation of Serious Fraud Investigation Office is the landmark creation for the Forensic Accountants. Growing cyber crimes, failure of regulators to track the security scams, series of co-operative banks bursting – all are pinpointing the need of forensic accounting, irrespective of whether we understand the need or not.

In the Indian context the Forensic Accountants are the most required in the wake of the growing frauds. After the Satyam scam, forensic auditors are much in demand as many companies want to understand what could be the initial warning signals of a Satyam kind of fraud in other Indian companies. Even the government's Serious Fraud Investigation Office (SFIO) has sought the help of forensic accountants to get to the root of the financial fraud at Satyam.

## 9. INTERNATIONAL FINANCIAL REPORTING

The way financial statements are prepared varies from one country to the next. With the businesses expanding and operating internationally, the financial reporting is one aspect that is of much importance. Companies that have their securities listed on overseas exchanges have to report the financials in accordance with the regulations of the stock exchanges and the financial reporting framework of the respective countries.

International Financial Reporting Standards (IFRS) are designed as a common global language for business affairs so that company accounts are understandable and comparable across international boundaries. IFRS began as an attempt to harmonize accounting across the European Union but the value of harmonization quickly made the concept attractive around the world. They are a consequence of growing international shareholding and trade and are particularly important for companies that have dealings in several countries. They are progressively replacing the many different national accounting standards.

### **Broad Based Principles of IFRS**

#### **Substance over Form:**

IFRS gives the priority to the substance of the transaction rather than its legal form. Some of the instances of the transaction and events to support these would be:

- debt equity classification
- operating lease and finance lease demarcations

- sale contracts with rights to re-purchase
- sale with retention of risk and rewards

### **Fair Value Oriented**

IFRS includes a variable blend of both historic cost and fair value measurement. For example:

- HTM, Loans and Receivables assets and financial liabilities other than those measured at FVTPL are measured at amortized costs whereas financial assets and liabilities at FVTPL and available for sale financial assets are subsequently measured at amortized costs.
- Both cost and fair valuation approach are permitted for investment property, PPE and intangible assets.
- Biological assets are carried at fair value.
- Fair value model is also used in business combinations, employee benefits and some other standards.

### **Principle based not Rule based**

IFRS are basically principle based standards as it prescribes basic principles of accounting the transactions. There are many things which have been left to the judgment of the preparers. It also contains many subjective terms like 'significant', 'more than significant', 'impractical', 'reliably' etc. In absence of any specific guidance on the measurement of Fair value, the application of fair value method is also matter of subjectivity.

### **Predominance of Statement of Financial Position**

IFRSs are balance sheet predominant. In other words, more emphasis has been given to the entity's financial position at the end of the reporting period than the entity's performance during the year. This is evident by the fact that the income and expenses under the IFRS are recognised corresponding to increase or decrease in assets and liabilities which leads to increase/ decrease in the equity of the entity other than from contribution from the equity participant.

### **Resources for Understanding IFRS**

There is no denying to the fact that books are our best friends and can be most helpful in understanding the complex yet interesting principles for IFRS. Besides there are web sites like [www.ifrs.org](http://www.ifrs.org), <http://elearn.icai.org/>, [www.iasbplus.com](http://www.iasbplus.com), etc which provide very useful information on existing and prospective literature on IFRS. The study of IFRS compliant published Financial Statement can throw immense light on practical application of IFRS. Moreover, there are online and classroom courses on IFRSs which can be done for thorough understanding of IFRS.

### **Professional Opportunities in IFRS**

Convergence with IFRS has opened up a fairly new set of opportunities for Chartered Accountants. Listing them as follows

1. **Consultancy Service** – An in depth understanding of the concept of International Financial Reporting Standards is sure to offer a great deal of scope in offering consultancy services in accounting

2. **Advisory Roles** – Expertise in the field of IFRS accounting offers scope for senior advisory roles in organizations which are fairly new to the IFRS convergence in the first hand and compliance consequently
3. **Opinion** – Offering opinion on the concept and principles of Accounting under IFRS. Given the multifarious issues a discussed under IFRS, offering clarity on their application becomes as essential function
4. **Convergence** - While understanding and application of IFRS is seen as a big challenge, the first or baby step towards acceptance is convergence. Even though Indian Accounting Standards are based on IFRS, convergence points out to fairly clear acceptance of International standards adapted to Indian conditions.
5. **IFRS Compliance** – Compliance with IFRS standards becomes an essential requirement for organizations once the convergence begins in more countries. Be it adhering to the basic standards or application of complex principles for proper accounting, the key word is compliance.
6. **Preparation of Financial Statements** – Preparation of Financial Statements in tune with the IFRS requirement certainly poses a serious challenge and hence IFRS compliant accounting services gain momentum
7. **IFRS Updates** – Development of standards in a phased manner ensures every emerging issue is addressed to avoid ambiguities in compliance, which means newer standards and additional compliance. Hence it becomes critical important for a Chartered Accountant to keep himself abreast of the changes in IFRS standards and their compliance requirement.
8. **Training** – Having said IFRS compliance is a key requirement for better compliance, not only the auditors but even the preparers of accounts

should be aware of the IFRS requirements. Those who were hitherto experts in compliance of accounting standards have a need to update themselves with the latest requirements. Who can better train them, than the auditor himself? Training amounts to not just a professional opportunity, instead it also simplifies the process of compliance

## **10. LEGAL PROCESS OUTSOURCING AND DOCUMENTATION**

Legal outsourcing, also known as legal process outsourcing (LPO) refers to the practice of a law firm or corporation obtaining legal support services from an outside law firm or legal support services company (LPO provider). When the LPO provider is based in another country, the practice is called offshoring and involves the practice of outsourcing any activity except those where personal presence or contact is required, e.g. appearances in court and face-to-face negotiations. When the LPO provider is based in the same country, the practice of outsourcing includes agency work and other services requiring a physical presence, such as court appearances. The most commonly offered services are agency work, document review, legal research and writing, drafting of pleadings and briefs, and patent services.

A number of factors have fueled the legal process outsourcing trend, including:

- Globalization
  - Economic changes and the rising cost of legal services
  - The growth of the Internet
  - Increased automation of legal processes
  - Developments in data security
  - New technology tools
- Beyond cost savings, legal process outsourcing offers many advantages including access to outside talent, round-the-clock availability, and the ability to quickly scale up or cut back operations.

## 11. CORPORATE GOVERNANCE

Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.

Different Corporate Governance principles and frameworks are developed and adopted by many countries that are required to be applied and adopted and followed by businesses of diverse forms. Corporate governance became a pressing issue following the 2002 introduction of the Sarbanes-Oxley Act in the U.S., which was ushered in to restore public confidence in companies and markets after accounting fraud bankrupted high-profile companies such as Enron and WorldCom. Most companies strive to have a high level of corporate governance. These days, it is not enough for a company to merely be profitable; it also needs to demonstrate good corporate citizenship through environmental awareness, ethical behavior and sound corporate governance practices.

Chartered Accountants as professionals act as catalysts in applying good principles of Corporate Governance. Some of the key roles that they can play include:

a) Specialized guidance in designing Code of Corporate Governance

- b) Specialized guidance in designing Risk Management Framework
- c) Specialized guidance in designing Internal control framework
- d) Specialized guidance in designing Whistle blower policy
- e) Internal Audit & risk management framework
- f) Management Audit pertaining to various regulatory, statutory requirements
- g) listing requirements
- h) Effective role as chairman of audit committee
- i) Effective role as independent director
- j) Assessment of internal control function u/s V CEO/CFO Certification
- k) As a consultant giving specialized guidance to the management, regular and speedy updates on all applicable provisions, evaluating future growth potential and in taking proactive actions in the interests of the company.

## **12. LISTING ON OVERSEAS EXCHANGES**

More and more companies are trying to raise capital by listing their securities for sale on foreign exchanges. Cross listing of shares is when a firm lists its equity shares on one or more foreign stock exchange in addition to its domestic exchange. American Depositary Receipt (ADR), European Depositary Receipt (EDR), International Depositary Receipt (IDR) and Global Registered Shares (GRS) are a few examples. Generally such a company's primary listing is on a stock exchange in its country of incorporation, and its secondary listing(s) is on an exchange in another country. Cross-listing is especially common for companies that started out in a small market but grew into a larger market.

Data from the World Federation of Exchanges (WFE) shows that overseas listings are yet to gain traction globally and in India. According to WFE, a total of nearly 44,000 companies are listed on 55 of the leading exchanges of the world and only 2,418—less than 6%—of these entities are categorized as foreign. Only a few exchanges like Bermuda Stock Exchange, Singapore Exchange, Luxembourg Stock Exchange and New York Stock Exchange have a significant number of foreign companies listed on their platform.

The overseas listing of Indian companies through American Depositary Receipts (ADRs)/ Global Depositary Receipts (GDRs) is governed by the provisions of the FEMA read with Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme 1993 as amended by time to time (“FCCB Scheme”). The Indian Government, on 05 September 2005, amended FCCB Scheme whereby it prohibited the Indian companies from overseas listing unless prior or Simultaneous listing in the

Indian stock exchange is made. Essentially, this was done to give equal opportunities to the Indian investors.

In the end of 2013, the Indian government has again allowed Indian companies, for an initial period of two years, to raise capital abroad through ADR/GDR, without the requirement of prior or subsequent listing in India. The permission to list overseas without listing in the Indian stock exchange has been granted subject to certain conditions.

### **13. CONSULTING FOR INTERNATIONAL MERGERS AND ACQUISITIONS**

International mergers and acquisitions are growing day by day. These mergers and acquisitions refer to those mergers and acquisitions that are taking place beyond the boundaries of a particular country. International mergers and acquisitions are also termed as global mergers and acquisitions or cross-border mergers and acquisitions.

The opening up of the European countries to international mergers and acquisitions and the economic reforms in developing countries provided major boost to international mergers and acquisitions since the 1990s. The adoption of economic reforms in many countries in the last two decades of the 20th century opened up opportunities of international mergers and acquisitions. With different countries opening up their economies to foreign investors, international mergers and acquisitions has received. Regulations of different countries play an important role. In some countries certain sectors are prohibited from international mergers and acquisitions, while for some other sectors certain conditions need to be fulfilled. International mergers and acquisitions are among the key corporate strategies multinational corporations (MNCs) use to expand, diversify, or consolidate their businesses.

There are various benefits that accrue to firms that undertake international mergers and acquisitions. Cross border mergers and acquisitions are effective in boosting Foreign Direct Investment (FDI). For international investors, it is easier to invest through a merger or an acquisition. International mergers and

acquisitions provide access to infrastructure and customer base in a country which is quite difficult to build from the scratch. Moreover an existing brand name in a country provides strong business edge. Access to local markets of different countries is possible through international mergers and acquisitions.