

PROFESSIONAL PROGRAMME

RESOLUTION OF CORPORATE DISPUTES

NON-COMPLIANCES & REMEDIES

The term Corporate disputes includes the disputes relating to Antitrust, Mala-Fidei, Breach of Contract, Breach of Fiduciary Duty, Business Torts, Class Actions, Debtor/Creditor, Employment and Labour, Fraud and Misrepresentation, Insurance Coverage, Intellectual Property and Patent Infringement, Board Member Disputes, Partnership Disputes, Privacy, Cyber security and Data Breach, Product Liability, Real Estate, Land Use and Environmental Litigation, Restrictive agreement, Securities Litigation, Shareholder Disputes and Derivative Actions, Tax Disputes, Trade Secret and Unfair Competition.

These commercial litigations are different from other civil litigations by virtue of the involvement of businesses rather than just individuals. Further, as the issues involved are very specialized and typically more complex, both factually and legally, the concept of the special court has been introduced in the Companies Act, 2013 to handle such matters in the speedy manner.

Several amendments have been brought in recent past to amend the Companies Act, 2013 and made penal provisions less onerous for procedural lapses and technical breaches, attract minimum non-compliance liability and where public interest is not involved resulting relieve the Special Courts from adjudicating of routine offences and also to de-clog the NCLT.

In the light of above discussion, this study material is published to aid the students in preparing for the paper "Resolution of Corporate Disputes, Non-Compliances & Remedies" for Professional Programme. It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, comprehending, integrating and advising to resolve complex issues, corporate disputes, case studies, problem solving and decision making company secretaryship being a professional course, the examination standards are set very high, with emphasis as expert of concepts, applications, procedures and case laws, for which sole reliance on the contents of the study material may not be enough. Besides Company Secretaries Regulations, 1982 requires the students to be conversant with the amendments to the laws made upto six months preceding the date of examination. This study material may therefore be regarded as basic information and must be read along with the respective amendments in the Act, Rules, Regulations, Order, Circulars, Clarification notified by the Central Government or issued by the respective Regulators.

The coverage of subject is "Hybrid" in nature which requires integrated application of several Core / Ancillary areas or references of the other subjects included in the ICSI Syllabus. This study material has covered such topics to a limited context. The students are advised to refer the relevant Bare Acts, Rules & Regulations and study material of the respective subjects and publications such as guidance note, referencer and alike published by the ICSI.

The amendments made up to July, 2021 have been incorporated in this study material. However, it may happen that some developments might have taken place during the printing of the study material and its supply to the students. The students are therefore advised to refer to the supplement uploaded on ICSI website from time to time and ICSI Journal Chartered Secretary and other publications for updation of study material. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

Although due care has been taken in publishing this study material yet the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged, if the same are brought to its notice for issue of corrigendum.

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Resolving of Corporate Disputes, requires the specialised skills and practical exposures in the person dealing with the disputes. However, the consensus-based alternatives under adjudication help in prevention, resolution, and reduction of the negative impact of corporate disputes and consequently contribute to improving companies performance, strengthening investor confidence, and supporting business continuity.

The corporate disputes involve the board's powers and actions or its failure or refusal to act. The conflicts may arise between the board and its shareholders or between directors and executive management. They may also involve issues among the directors themselves and between the board and other stakeholders.

The corporate disputes are different from the organisational internal disputes which are generally taken up by the management to resolve them. However, a corporate dispute makes company and/ or its promoters and/ or its officials as one of the party in case of litigations. Such matter includes disputes over a contract, a labour claim, or a commercial matters. Further, the Globalization and cross-border trade increase a company's risks that social, political, and cultural differences can create deep rifts between the company and its external constituencies. Reputational and operational risks can increase dramatically.

When disputes become public and are discussed in the press or trigger litigation, they indicate an important failure of governance in the company. They demonstrate a mismanagement of conflicts within the board or between the company and its stakeholders - mainly its shareholders, but sometimes also its suppliers, clients, creditors, and the communities in which the company operates. Corporate governance disputes reflect the inability of executive managers or directors to address major strategy issues and conflicts.

If disputes become unresolved and left to fester without being addressed quickly and effectively, disputes do not remain hidden for long, resulting the dispute will attract media coverage.

The study material cover the various methods for dealing with the corporate disputes by the professionals like Company Secretaries and the provision and procedure of the compounding, adjudication, investigations and remedies available to resolve the corporate disputes.

The students are advised to refer the latest newspaper articles, media coverage, blogs and action taken by the various regulators in on the disputes which are in the public domain.

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Acts/Regulations/Rules Covered in the Study

1. Companies Act, 2013 and Rules made thereunder
2. Securities Contracts (Regulation) Act, 1956 and Rules made thereunder
3. Securities and Exchange Board of India Act, 1992 and Regulations made thereunder
4. Depositories Act, 1996
5. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder (To the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings)
6. Code of Criminal Procedures, 1973
7. Code of Civil Procedures, 1908
8. Insolvency and Bankruptcy Code, 2016
9. NCLT Rules, 2016
10. NCLAT Rules, 2016
11. Securities Appellate Tribunal (Procedure) Rules, 2000
12. Securities Contracts (Regulations) (Appeal to Securities Appellate Tribunal) Rules, 2000
13. SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995
14. Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005
15. Depositories (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005
16. SEBI (Settlement Proceedings) Regulations, 2018
17. SEBI (Appeal to Central Government) Rules, 1993