

IN PURSUIT OF PROFESSIONAL EXCELLED
Statutory body under an Act of Parliament

PPPDS/2016

20th October, 2016

Shri Sunil Kumar Singhal Advisor (B & CS) Telecom Regulatory Authority of India, Mahanagar Doorsanchar Bhawan Jawaharlal Nehru Marg New Delhi-110002

Sir,

Sub: Suggestions on Infrastructure sharing in broadcasting TV distribution sector.

The Institute of Company Secretaries of India (ICSI) is a premier professional body established under an Act of Parliament, i.e., The Company Secretaries Act, 1980. The ICSI has a nationwide presence having its headquarters at New Delhi, four Regional Offices at New Delhi, Chennai, Kolkata and Mumbai and 69 Chapters spread all over India. The ICSI has on its register over 47,000 members and around 4,50,000 students are pursuing the Company Secretaryship Course.

This is with reference to Consultation Paper on Infrastructure sharing in broadcasting TV distribution sector issued by the Telecom Regulatory Authority of India.

We wish to suggest as under w.r.t. Consultation Paper on Infrastructure sharing in broadcasting TV distribution sector:

Sl. No.	Consultation Paper on	Comments/Suggestions
	Infrastructure sharing in	
	broadcasting TV distribution sector	
1	ANNEXURE –III	Eligibility Criteria mentioned in the
		Guidelines for providing Headend-In-The-Sky
	GUIDELINES FOR PROVIDING	(HITS) broadcasting service in
	HEADEND-IN-THE-SKY (HITS)	India(Annexure III) may be modified and
	BROADCASTING SERVICE IN INDIA	Company Secretary in Practice be recognised
	*4	to certify the Net Worth and foreign
	1. ELIGIBILITY CRITERIA	investment in the company for more accuracy
		and authenticity of eligibility criteria.
	1.2 The Company should have a	, , , ,
	minimum Net worth of Rs Ten crores.	Certificate by the Company Secretary in
	The Net Worth shall be calculated as	Practice is, therefor s, an independent and
	per the proforma specified and shall	objective assurance intended to add value
	be certified by the Statutory Auditor	and give necessary comfort to the Regulator
	of the company.	(TRAI).
	· •	
	1.3 The total direct and indirect	Suggested Eligibility Criteria mentioned in
	foreign investment including portfolio	the Guidelines for providing Headend-In-The-
	and foreign direct investments into	Sky (HITS) broadcasting service in
	the company shall not exceed 74% at	India(Annexure III) may be read as under:



the time of application and during the permission. The currency of Methodology of calculation of the foreign direct and indirect Investments would be as per the extant policy of the Government. The company will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on yearly basis.

ANNEXURE -III

GUIDELINES FOR PROVIDING HEADEND-INTHE-SKY (HITS) BROADCASTING SERVICE IN INDIA

1. ELIGIBILITY CRITERIA

1.2 The Company should have a minimum Net worth of Rs Ten crores. The Net Worth shail be calculated as per the proforma specified and shall be certified by the Statutory Auditor of the company or by a Company Secretary in Practice.

1.3 The total direct and indirect foreign investment including portfolio and foreign direct investments into the company shall not exceed 74% at the time of application and during the currency of permission. The Methodology of calculation of the direct and indirect foreign Investments would be as per the extant policy of the Government. The company will be required to disclose the status of such foreign holding and *obtain a certificate* from a Company Secretary in Practice, certify that the foreign investment is within the ceiling of 74% on yearly basis.

Justification

Company Secretary as a competent professional existence after an exhaustive comes into exposure provided by the ICSI through compulsory coaching, examinations, rigorous and continuing professional training development programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980. The Company Secretaries in Practice have been recognized to conduct audit/appear as an authorized representative under a host of legislations including Central Excise Act, 1944; Customs Act, 1962; Service Tax; Income Tax Act, 1961; TRAI Act, 1997; Trade Marks Act, 1999; Companies Act, 2013; Competition Act, 2002; Special Economic Zones Act, 2005; SEBI Act, 1992 and State VAT legislations and are acting as extended arms of the regulatory mechanism.

The members of the Institute are actively



engaged in Trade and Industry and are rendering value added services to the business enterprises. A Company Secretary is a competent professional who understands legal, financial and compliance dimensions business entity comprehensively, including aspects relating to Corporate Laws, Labour Laws, Accountancy, Taxation, Insurance Laws, **Exchange** Banking Laws. Foreign Regulations made Management and thereunder, Intellectual Property Rights and Governance, Information Technology Act 2000, Cyber Laws, Management and Systems Audit, Management Information Systems Maintaining the documents in a Digital /Electronic manner. Further. Company Secretary and Company Secretary in Practice are authorized to issue various Certificates under various Regulations issued by the Reserve Bank of India under Foreign Exchange Management Act, 1999.

A brief description of recognitions for the members of ICSI is enumerated at **Annexure A**.

Company Secretary in Practice is authorized to Certificate of Compliance, to Secretarial Audit and Sign Annual Returns of the company under the Companies Act, 2013. Secretary Company in **Practice** conducting the Secretarial Audit under the Companies Act, 2013 needs to ensure that the company had complied with all laws, rules and regulations which are specifically applicable to the Company and report non-compliances, if any, in his report. Company Secretaries in Practice also ensure that, whether the company had filed necessary returns which are required filed under these laws, rules and to be regulations and report the non-compliance, if any, in the report so that the management and the concerned departments can take necessary action in this regard.

Further, Company Secretary in Practice is authorized under Master Direction - Reporting under Foreign Exchange Management Act 1999 for issuing the following Forms/Certificates:

1. Form FC-GPR- For allotment of securities to Foreign and NRI Investor by the company



- 2. Form FDI-LLP-(II)- Declaration regarding transfer of capital contribution/ profit shares of an Limited Liability Partnership from resident to non- resident / non-resident to resident.
- 3. Form-ECB 2 -Reporting of actual transactions of External Commercial Borrowings (ECB) under Foreign Exchange Management Act, 1999 (for all categories and any amount of loan).
- **4. Form-83** -Reporting Of Loan Agreement Details under Foreign Exchange Management Act, 1999.

Ministry of Information and Broadcasting -Directorate of Advertising and Visual Publicity Policy Guidelines for the Empanelment of Private FM Radio Stations and fixation of rates for Government Advertisements by DAVP -2016 dated 12/08/2016 authorizes Company Secretaries to Certify revenue details, latest profit & loss accounts, balance sheet and actual tax payment including service tax for previous financial year and the amount of advertisement revenue generated by the private FM Radio Stations during the previous financial Year preceding the date of Application for the purpose of Empanelment of Private FM Radio Stations and fixation of rates for Government Advertisements.

Ministry of Communication and Information Department Technology, Telecommunications (Access Service Cell) vide Notification No. 800-23/2011-VAS (Vol. II) dated 31st May, 2016 issued Guidelines for Grant of Unified License (Virtual Network Guidelines authorizes Operators). The **Company Secretary to certify** the Certificate of Registration along with Article of Association, Memorandum of Understanding, Details of Promoters/Partner/Shareholder, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified Network License (Virtual Operators)/Authorisation Additional for Services.



2

ANNEXURE -III

6. BASIC CONDITIONS AND OBLIGATIONS

6.1 The majority of Directors on the Board of the Company shall be Indian Citizens. The Company, Directors, Managing Director, Chief Executive Officer(CEO), and Chief Financial Officer (CFO) will be required to be security cleared from the Ministry of Home Affairs. The company shall give without fail intimation to Ministry of I & B regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place.

The members of the Institute are governed by the Code of Conduct contained in the Company Secretaries Act, 1980.

Basic Conditions and Obligations mentioned in the Annexure III may be modified and Company Secretary in Practice be authorised to certify change in the directorship, key executives or foreign direct investment in the company for authenticity of such change.

Certificate by the Company Secretary in Practice is, therefore, an independent and objective assurance intended to add value and give necessary comfort to the Regulator (TRAI).

Suggested Basic Condition and Obligation may be read as under:

6. BASIC CONDITIONS AND OBLIGATIONS

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Justification

Company Secretary as a competent professional comes into existence after an exhaustive exposure provided by the ICSI through compulsory coaching, examinations, rigorous training and continuing professional development programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980. The Company Secretaries in Practice have been recognized to conduct audit/appear as an authorized representative under a host of legislations including Central Excise Act, 1944; Customs Act, 1962; Service Tax; Income Tax Act, 1961; TRAI Act, 1997; Trade Marks Act, 1999; Companies Act, 2013;



Competition Act, 2002; Special Economic Zones Act, 2005; SEBI Act, 1992 and State VAT legislations and are acting as extended arms of the regulatory mechanism.

The members of the Institute are actively engaged in Trade and Industry and are rendering value added services to the business enterprises. A Company Secretary is a competent professional who understands legal, financial and compliance dimensions business entity comprehensively, including aspects relating to Corporate Laws, Labour Laws, Accountancy, Taxation, Insurance Laws, Foreign Exchange Banking Laws, Regulations made Management and thereunder, Intellectual Property Rights and Governance, Information Technology Act 2000, Cyber Laws, Management and Systems Audit, **Systems** and Management Information Maintaining the documents in a Digital /Electronic Further. Company manner. Secretary and Company Secretary in Practice are authorized to issue various Certificates under various Regulations issued by the Reserve Bank of India under Foreign Exchange Management Act, 1999.

A brief description of recognitions for the members of ICSI is enumerated at **Annexure A**.

Company Secretary in Practice is authorized to Issue Certificate of Compliance, to do Secretarial Audit and Sign Annual Returns of the company under the Companies Act, 2013. Secretary in **Practice** while Company conducting the Secretarial Audit under the Companies Act, 2013 needs to ensure that the company had complied with all laws, rules and regulations which are specifically applicable to the Company and report non-compliances, if any, in his report. Company Secretaries in Practice also ensure that, whether the company had filed necessary returns which are required to be filed under these laws, rules and regulations and report the non-compliance, if any, in the report so that the management and the concerned departments can take necessary action in this regard.

Under the Companies Act, 2013 and Limited Liability Partnership Act, 2008 respectively



Company Secretaries in Practice are authorized to file the respective E-Forms with their Certification regarding:-

- 1. Changes in Directors and Key Managerial Personnel of all companies which includes private and public companies under the Companies Act, 2013. (Form DIR-12)
- 2. Changes in Promoters and shareholders under the Companies Act, 2013 (Form-MGT-10).
- 3. Changes among partners of Limited Liability Partnership firms and their contributions under LLP Act 2008.

Further, Company Secretary in Practice is authorized under Master Direction – Reporting under Foreign Exchange Management Act 1999 for issuing the following Forms/Certificates:

- **5. Form FC-GPR-** For allotment of securities to Foreign and NRI Investor by the company
- 6. Form FDI-LLP-(II)- Declaration regarding transfer of capital contribution/ profit shares of an Limited Liability Partnership from resident to non- resident / non-resident to resident.
- 7. Form-ECB 2 -Reporting of actual transactions of External Commercial Borrowings (ECB) under Foreign Exchange Management Act, 1999 (for all categories and any amount of loan).
- Form-83 -Reporting Of Loan Agreement Details under Foreign Exchange Management Act, 1999.

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revenue generated by the private FM Radio Stations during the previous financial Year preceding the date of Application for the purpose of Empanelment of Private FM Radio Stations and fixation of rates for Government Advertisements.

Ministry of Communication and Information Technology, Department Telecommunications (Access Service Cell) vide Notification No. 800-23/2011-VAS (Vol. II) dated 31st May, 2016 issued Guidelines for Grant of Unified License (Virtual Network Guidelines authorizes Operators). The Company Secretary to certify the Certificate of Registration along with Article of Association, Memorandum of Understanding, Details of Promoters/Partner/Shareholder, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified (Virtual Network License Operators)/Authorisation for Additional Services.

The members of the Institute are governed by the Code of Conduct contained in the Company Secretaries Act, 1980.

In view of the above, we request that Eligibility Criteria and Basic Conditions and Obligations mentioned in the Annexure III may be modified and Company Secretary in Practice be thus, authorised to certify the net worth and foreign investment. Further, Company Secretary in Practice be authorised to certify change in the directorship, key executive or foreign direct investment in the company for accuracy of trunsactions and authenticity of such change.

We shall be pleased to offer any further information as may be desired by your good self. We also look forward to an opportunity for a personal meeting at any time and place convenient to your good self for explaining our submissions.

Thanking you

Vours sincerely

CS Mamta Binani President



Recognitions of the profession of Company Secretary

Principal Officer of the Company

Secretary of a company has been recognized as a principal officer of the company responsible for its affairs under host of legislations including Customs Act, 1962, Central Excise Act, 1944, etc.

Companies Act, 2013 has recognized the Company Secretary as one of the Key Managerial Personnel of the company.

To act as Authorised Representative under various laws and Rules

The Company Secretaries in Practice have been recognized to act as Authorised Representative before-

- 1. Securities Appellate Tribunal *vide* Section 15V of the SEBI Act, 1992
- 2. Central Electricity Regulatory Commission *vide* the Central Electricity Regulatory Commission (Miscellaneous Provisions) Order, 2016
- 3. Telecom Regulatory Appellate Tribunal *vide* the Telecom Regulatory Authority of India Act. 1997-Section 17
- 4. National Company Law Tribunal vide Section 10GD
- 5. Competition Commission of India vide Section 35(b) of Competition Act, 2002
- 6. Appellate Tribunal or the Regulatory Authority or the adjudicating officer *vide* Section 56 of the Real Estate (Regulation and Development) Act, 2016
- 7. The Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 [Section 146A (2) (d)] read with Customs (Appeals) Rules, 1982 [Rule 9(c)] and The Central Excise Act, 1944 [Section 35Q (2) (c)] read with Central Excise (Appeals) Rules, 2001[Rule12(c)].
- 8. Advance Ruling Authority in the matters relating to Service Tax *vide* Authority for Advance Ruling (Procedures) Rules, 2003-Rule 2(d)(i)
- 9. The Customs, Excise and Service Tax Appellate Tribunal in the matters relating to Service Tax *vide* section 83 of Chapter V of Finance Act, 1994.
- 10. Income Tax Appellate Tribunal *vide* Section 288(2)(v) of Income-Tax Act, 1961 read with Rule 50(2A) of the Income Tax Rules,1962

To act as Authorised Representative under various State VAT Laws

The Company Secretaries in Practice have been recognized to act as Λ uthorised Representative under -

- 1. Arunachal Pradesh Goods Tax Act, 2005- Section 83(1)(c) read with Rule 78(1)(a) of Arunachal Pradesh Goods Tax Rules, 2005
 - Bihar VAT Act, 2005 Section 87(d)
- 2. Daman & Diu VAT Regulation, 2005 Regulation 82(1)(b)
- 3. Delhi Value Added Tax Act, 2004- Section 82(1)(b)
- 4. Goa VAT Act, 2005 Section 82(1)(b)
- 5. Haryana VAT Act, 2003- Section 52(2) (iii) read with Section 288(2)(v) of Income-Tax Act, 1961 and Rule 50(2A) of the Income Tax Rules,1962
- 6. | Jharkhand VAT Rules, 2006- Rule 51 (1)(c)
- 7. Karnataka VAT Rules, 2005 Rule 34(1) read with Rule 168(2) (b)
- 8. Kerala VAT Act, 2003 Section 86(e)
- 9. Maharashtra VAT Act, 2002- Section 82(1)b
- 10. Meghalava VAT Rules, 2005- Rule (1)(f) (iv)
- 11. Rajasthan VAT Rules, 2006- Rule 62(b) read with Rule 50(2A) of the Income Tax
- 12. Uttar Pradesh VAT Rules, 2008- Rule 2 (e) read with Rule 73
- 13. West Bengal Value Added Tax Rules, 2005 Rule 2(1)(a)(iv)



To conduct VAT Audit

The Company Secretaries in Practice have also been recognized to conduct VAT Audit in following states:

- 1. Jharkhand VAT Act, 2005- section 2(i)
- 2. Karnataka VAT Rules, 2005- As a Tax Practitioner under Rule 34(1)
- 3. Gujarat VAT Act, 2005- As a Tax Practitioner under Rule 59(1)(a)

Certified Facilitation Centres vide MoU between CBEC and ICSI

Company secretaries in Practice are authorised for Setting up of Certific I Facilitation Centres under the Automation of Central Excise and Services Tax ("ACES") Project of CBEC to facilitate e-filing of returns and documents under Central Excise and Service Tax.

To appear before various Authorities under the Goods and Services Tax law

Clause 86(2)(c) of the Integrated GST Bill, 2016 provides that the Practising Company Secretary, is inter alia, entitled to appear before various authorities under the Goods and Services Tax law, first appellate authority and the appellate tribunal.

To conduct Internal Audit

As per section 138 of the Companies Act 2013 read with Rule 13 of Companies (Accounts) Rules, 2014, Company Secretaries are authorized to conduct Internal Audit of the Companies

To conduct Secretarial Audit

Section 204 of Companies Act, 2013 recognizes Company Secretaries to perform Secretarial Audit.

Company Secretary could be appointed as Judicial Member of NCLT

Section 409 of the Companies Act, 2013 prescribes that for appointment as Judicial Member of NCLT, the qualification includes at least 10 year practice as advocate of court. Whereas for appointment as technical member, both Company Secretary and Chartered Accountant in practice for at least 15 years are eligible.

Section 432 recognises all the three professionals to appear before NCLT and NCALT.

To issue Diligence Report and No Objection/Tax Clearance Certificate

- 1. The Reserve Bank of India *vide* its Circular No. DBOD NO. BP.BC. 46/08.12.001/2008-09 dated September 19, 2008 has advised all the Scheduled Commercial Banks to obtain **Diligence Report** by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions by the borrowers.
- 2. Under Master Direction Reporting under Foreign Exchange Management Act, 1999 issued by Reserve Bank of India vide RBI/FED/2015-16/13, FED Master Direction No. 18/2015-16 dated January 1, 2016{ Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000} Company Secretary in Practice authorised to issue No Objection/Tax Clearance Certificate regarding transfer of capital contribution/ profit shares of an Limited Liability Partnership from resident to non-resident / non-resident to resident.



To conduct Audit under SEBI Regulations

A. SEBI has authorized the Practising Company Secretaries, amongst others professionals to carry out complete **internal audit** of:

- 1. Stock Brokers / Trading Members / Clearing Members *vide* SEBI Circular MRD/DMS/Cir-29/2008 dated October 21, 2008.
- 2. Portfolio Managers *vide* SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003.
- 3. Credit Rating Agencies *Vide* SEBI Circular MRD/CRA/CIR-01/2010 dated January 06,2010
- B. SEBI has authorized the Practising Company Secretaries amongst other professionals to carry out **audit of Investment Advisors** on yearly basis under Regulation 19 (3) of the SEBI (Investment Advisers) Regulations, 2013.
- C. SEBI has authorized the Practising Company Secretaries to carry **out Annual Audit of Research Analyst** under Regulation 25 (3) of SEBI (Research Analysts) Regulations, 2014.

To be Appointed as Compliance Officer under SEBI (Listing Obliga*ions and Disclosure Requirements) Regulations, 2015

Under SEBI (LODR) Regulations, 2015, Company Secretaries are recognized:

- 1. To be appointed as the Compliance Officer. [Regulation 6 (1)]
- 2. To sign a compliance certificate as a Compliance Officer, to be submitted to the exchange, wherever applicable, certifying that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with SEBI. [Regulation 7 (3)]
- 3. To issue a certificate certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. [Regulation 40 (9)]
- 4. To issue a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed non convertible debt securities. [Regulation 56 (1) (d)]
- 5. To issue compliance certificate regarding compliance of conditions of corporate governance to be annexed with the directors' report. [Schedule V, Clause E]

To Conduct Internal/Concurrent Audit of Depository Participants

- 1. NSDL has authorised the Practising Company Secretaries to conduct internal audit of operations of the Depository Participants vide Circular No. NSDL/POLICY/2008/0072 dated October 17, 2008.
- 2. NSDL has also authorised the Practising Company Secretaries to conduct Concurrent Audit in case of Demat Account Opening, Control and Verification of Delivery Instruction Slips vide Circular No. NSDL/ POLICY/2006/0021 dated 24th June, 2006.
- 3. CDSL has authorised the Practising Company Secretaries to conduct internal audit of operations of the Depository Participants vide CDSL Bye Law 16.3.1

To issue Net Worth & Compliance Certificate for listing on BSE

To issue quarterly certificate under Regulation 55A of SEBI (Depositories and Participants Regulations, 1996)

Practising Company Secretaries are authorized to issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form.



To Conduct Internal Audit of Custodian Securities on quarterly basis under PFRDA

Company Secretaries in Practice are authorised to do Internal Audit of Custodian Securities on quarterly basis under PFRDA (Internal Audit of Custodian of Securities) Guidance Note-2015.

To issue Compliance Certificate under Insurance Regulatory and Development Authority of India

Insurance Regulatory and Development Authority of India (Registration of Indian Insurance Companies) (Seventh Amendment) Regulations, 2016 authorise Company Secretaries in Practice for certifying that all the requirements relating to registration fees, equity share capital, and other requirements of the Act have been complied with by the applicant.

To Certify Returns and issue Certificate with respect to Foreign Trade

1. Foreign Trade and Development Act, 1992 read with Foreign Trade Policy and Procedure 2015-2020 authorise the Company Secretaries in Practice to certify various returns pertaining to import and export by individuals and partnership firms as well as companies.

2. Company Secretaries are also authorised to issue certificate after examining the prescribed registers and the relevant records for issue of Export Promotion Capital Goods (EPCG) authorization and EPCG Redemption.

Recognition to Company Secretary for third party certification in Transparent Inspection Scheme, Government of Haryana

Department of Labour, Government of Haryana has brought out a new comprehensive transparent inspection policy, under which it recognizes Company Secretary to provide third party certification under the scheme.

To act as retirement adviser under PFRDA(Retirement Adviser) Regulation

Pension Fund Regulatory and Development Authority (Retirement Adviser) Regulations, 2016 authorize Company Secretary to act as retirement advisor.

Company Secretaries are authorised to certify the documents for Other Service Providers (OSP) Registration

Department of Telecommunications (Carrier Services Cell) vide No.18- 2/2008-CS-I under Revised "Terms and Conditions - Other Service Provider (OSP) Category, authorize Company Secretaries to certify the documents for Other Service Providers (OSP) Registration for the entities which propose to provide the services such as tele-banking, tele-medicine, tele-trading, e-commerce Call Centers, International and Domestic, Network Operation Centers and Vehicle Tracking Systems etc.

Company Secretary to certify the Certificate of Registration along with Articles of Association, Memorandum of Understanding, Details of Promoters / Partner/Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified License (Virtual Network Operators)/Authorisation for Additional Services.

Ministry of Communication and Information Technology, Department of Telecommunications (Access Service Cell) vide its notification No. 800-23/2011-VAS (Vol. II) dated 31st May, 2016 issued Guidelines for Grant of Unified License (Virtual Network Operators) and authorises Company Secretaries to certify the Certificate of Registration along with Articles of Association, Memorandum of Understanding, Details of Promoters / Partner/Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified License (Virtual Network Operators)/Authorisation for Additional Services.