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ONLINE CONVEYANCING

by *Santanu Roy*.¹

India yet to step in Online Conveyancing

Laws: In India conveyancing has still not reached the benchmark of effectiveness, that is why we have not achieved customary checks on competence and compression required for drafting conveyances to meet the challenges of life. Moreover, legal education in India is still cramped mostly to the study of substantive law and personal law governing Hindus, Muslims and others. Even today in the 21st century we still have a class of people in India known as *Deed Writers* who hold themselves out as conveyancing experts.

UK Online Conveyancing Laws: In the United Kingdom a new property Act came into

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force on 13th October, 2003, named the Land Registration Act 2002 (**LRA**). The LRA sets out new procedures and has changed the way conveyancing is done. LRA also offers a framework for online/electronic conveyancing. LRA seeks to improve and update the existing law as because the existing UK Act (1925!) is out of date. At the same time online/electronic conveyancing may be way off, as there are issues with the legitimacy of signatures to documents and e-mails and with the method of being able to transfer money at precisely the same time, the LRA provides the framework for e-conveyancing without the need to provide the details until the technology is in place.

LRA Concepts: The basis of online/electronic conveyancing which are key concepts for LRA are as follows:

- (1) a paperless system,
- (2) documents to be signed electronically by solicitors for their clients,
- (3) chain transparency (as all solicitors will be on the system) so you will be able to tell who is holding up the chain and
- (4) all parties to complete at the same time so that all keys are released at the same time so no one is left waiting for keys to be released.

LRA Benefits: The benefits of online/electronic conveyancing will be at its peak if:

- (1) technology can be designed to provide electronic signatures and
- (2) a way of delivering all money to all parties at the same time is made possible.

India may step ahead: No More Deeds shall be required to be registered by way of physical/actual stamping and engrossing from the Office of the Registrar, this is because if India adopts provisions of the LRA, we will no longer require Land or Charge or Occupancy Certificates which have been necessary up to now to prove that you owned the property. This will be somewhat of a culture shock to solicitors, lenders and clients alike – **No More Deeds!**

No IGRs: The future Indian land registration Act may not require issuance of I.G.R. from the Office of the Registrar. This is because after registration through a modified LRA online/electronic system, you will get a print copy of the title as a **Title Information Document (TID)**. The TID is not only proof of title but confirm that registration has been completed.

Electronic Records: The Office of the Registrar will keep all title documents electronically, including all copies of transfers and other items referred to in the title. This is to aid electronic conveyancing when it becomes a reality, as solicitors will need to check and possibly amend titles electronically with the Land Registry.

Geared for implementation: The Land Registry will keep documents it has already

registered until 2010 or till a date agreed. After this it will destroy documents it considers unnecessary to keep, or once it has made a copy of the document. So in future after your purchase has been completed, do not be surprised if you get a letter from your advocate/solicitor enclosing old deeds and documents which no body wants anymore as they will soon be of historical interest only. Until these are in place we will have to content ourselves with the other modernizing aspects that the LRA has to offer.

End.

DRAFT NATIONAL HOUSING AND HABITAT POLICY, 2005

by *David Douglas Robert*²

Fraudulent property transactions might soon be a thing of the past. The draft National Housing and Habitat Policy 2005 (**NHHP**) has made a strong pitch for the introduction of title insurance in the country, to prevent fraudulent transactions. The draft suggests that in the event of property purchased by the weaker sections and in rural areas, the insurance premium could be shared by the government and the lending institution.

Title insurance which is available in many countries provides cover to the buyer against any loss arising out of possible unclear titles to the property that is purchased, against a one time premium, the insurer agrees to pay a specific amount for any possible loss caused by defects of title on real estate in which the insured has an interest as a purchaser, a mortgagee, or otherwise. Property experts point out that introduction of title insurance could provide a massive boost to housing activity. It is felt that, this could also result in a major increase in foreign direct investment (FDI) in the sector, since unclear titles often keep prospective investors away.

Unless there is a proper system of title insurance in place, it would be difficult to attract FDI in the housing sector. Only if foreign companies are sure of acquiring clear titles would they be willing to take risks in Indian property market.

Top insurers admit that the introduction of title insurance is not yet on top of their agenda, as there has been no discussion on the introduction of such a cover, though they are open to introduction of innovative products in the future.

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Currently the title search undertaken by lawyers at offices that keep public records is not considered fool proof and comes with limitations. Insurance companies would still require the help of lawyers for verifying titles prior to extending the cover.

Experts believe that title insurance schemes could have their own set of problems, since land and property records are not fully computerized and laws across the country differs.

The **NHHP** has also proposed to bring down stamp duties on residential properties to 2-3 percent in all States. At present, stamp duties are as high as 10-13 percent in certain States. To promote investment in housing, the draft policy also proposes to accord infrastructure status to housing for funding and concessions. The Ministry of Urban Employment and Poverty Alleviation is piloting the draft policy.

States will be strongly advised to bring down and rationalise the scale of stamp duty. While maintaining some difference between residential and non-residential properties, States would be advised to bring down the stamp duty on the former to about 2-3 per cent. Provisions in the Indian Stamp Duty Act 1899, would be made accordingly and Government orders, directions, circulars and rules framed by respective State Governments would be reviewed within a specific timeframe.

A new Land Policy has also been mooted for easier acquisition of land for use by private developers. Considering the specific requirements of housing and urban infrastructure projects, both in public and private sectors, a land policy would be drawn up. Even though a provision has been made in the Land Acquisition Act 1894, to acquire land for private companies, the provision has not been used so far in the interest of the real estate developer.

The land policy is expected to provide statutory support for land assembly, pooling and sharing arrangements. The draft also suggests strengthening of the foreclosure laws in the country. It is imperative to amend foreclosure laws in the country for speedy foreclosure procedures in case of defaults. The National Housing Bank Act and Transfer of Property Act would be amended, if necessary. The draft also calls for re-hauling the existing registration procedures by States to make it simpler, and moots rationalisation of property tax system. Loopholes would be plugged to remove the discretionary assessment so that collection of property tax would be enhanced. With housing activities in large towns and cities increasingly taking the form of apartments and condominiums, the States would be persuaded to enact Apartment Ownership Legislations.

A cess on construction sector projects has been proposed for the benefit of construction workers across the country. The **NHHP**, has proposed that such a cess should be considered for upgrading the skills of construction workers. A training and education cess would be levied on all construction projects except those being done on a self-help basis. This amount could be spent on training and imparting new skills to the construction workers. The draft, however, does not indicate any specifics of the proposed cess. The panel that had prepared the draft has justified the proposal for the cess by pointing out that construction workers need to be trained to keep up with the technological advancement in this sector.

The draft **NHHP**, has also proposed that the various schemes in operation for the training and skill enhancement of workers could be clubbed to make the process more focused. There are several Government schemes for imparting training and skill enhancement. These schemes could be easily converged to integrate efforts in this direction.

According to the draft, which is in the process of being finalised, private players may soon get to play a major role in group housing projects. The **NHHP** wants a leading role for the private sector in the construction of group housing on a large scale for various sections of society. In view of the government agencies' failure to cope with the ever-increasing demand for houses, the draft policy has strongly recommended that the private building industry and cooperative societies be given preference in allotment of land and residential sites to encourage their participation in group housing.

To protect the interests of the weaker sections, this move will be subject to the condition that, private builders reserve a certain percentage of dwelling units in each housing project for home-seekers from the low-income group. The policy has been drawn up on the basis of the report of a task force set up by the Ministry of Urban Employment and Poverty Alleviation to review the earlier housing and habitat policy. After being sent to the state governments to elicit their views on it, the draft policy will be put up for the Cabinet's approval. According to the draft document, the state governments and their housing boards, corporations and development authorities will be asked to promote the private and cooperative sectors by forging "partnerships" with them and reducing their own dependence on budgetary support in a phased manner. Official sources said the underlying idea was that the government must reduce its involvement.

According to statistics put out in the report, the building sector provides employment to 16 per cent of the workforce and growth @ 7 percent a year. Nearly 55 percent of the workers in the housing sector are unskilled. Skill up-gradation would result in higher income for the workers. The construction sector is the largest employer of women workers who are often exploited through the disparity in

wages. The solution lies in skill up-gradation and induction of women at supervisory levels and also encouraging women as contractors. Public agencies would like to take a lead in this. All training institutions must enroll women on a preferential basis.

End.

A DOCUMENTARY ON THE MAJOR ISSUES RELATING TO THE CONCEPT OF STAKEHOLDER AND THE EFFECT THIS HAS ON THE DEVELOPMENT OF GOVERNANCE IN THE UNITED STATES AND JAPAN.

Roy Santanu³

Continued from Issue 09...

Role of Non-statutory codes (soft laws) in the governance structure of U.S. and Japan.

Audit committees are frequently referred to as one of the reasons for the success of corporate governance in a particular economy. A good audit committee can be demanding and challenging equipped with modern principles of governance. Audit committee originated in the USA some 60 years ago, through the Securities Exchange Commission (**SEC**) 1940. By 1977 a list of Audit committees were introduced in US companies. In 1987 the Treadway Report⁴ (Report of the National Commission of Fraudulent Financial Reporting) listed eleven recommendations to improve the efficiency of audit committees, which were to be the future foundation for corporate governance in USA and worldwide. The guidelines proposed were as follows:

1. Adequate resources and authority to discharge their responsibilities.
2. Auditors should be informed, vigilant and securitization of the company's financial reporting process and internal process systems.
3. A review of the management's evaluation of the independence of the company's public accounts.

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⁴ Vinten G. (Associate Dean and Professor of Management, Southampton Business School), "Corporate governance: an international state of the art" (1998) 13(7) *Managerial Auditing Journal* 422-424.

4. A close watch at the quarterly and annual reporting process.
5. SEC to mandate establishment of an Audit committee in all public companies.
6. SEC to command audit committees to maintain annual report stating responsibilities and activities during a year.
7. A written charter to be developed for the committees.
8. Every year the committee should review management plans and services.
9. Communication between management and committee on accounting issues.
10. To ensure that internal auditing in the financial report is appropriate and for effective co-ordination with independent public accountant.
11. A review of managements' program as regards future business strategies and company's code of ethics.

With the above issues impacting on the financial markets and globalisation of businesses, corporate governance system a mechanism virtually unknown 30 years ago, has now stretched its roots in the world parlance. In 1992 Committee Of Sponsoring Organisations' (COSO) report on *internal control – an integrated approach*, presents the definition of management, audit committee, internal auditors, independent accountants, legislators and regulators.⁵ In the U.K., however audit committees have received wide spread support and their institutions (Audit committee) were brought into use by the publication of the *Code of Best Practice* by the Cadbury Committee in 1992.⁶ The Hampel Report recommends that the audit committee should keep the nature and extent of non-audit services under review.⁷

The audit committees also serve a number of purposes which are advantageous for a better governance. The committee provide assistance to the board to perform duties and can improve the objectivity and credibility of financial reporting. The audit committee have independent control to stop Executive Directors getting involved in illegal acts. The committee also acts as a bridge of communication between the different patterns of management control to improve accounting functions.⁸ The audit committee should be aware of their actions, as because their actions should not encourage division of the board of directors. They should

⁵ *ibid*.

⁶ Masters C. (Business Finance Faculty, Southampton Institute of Higher Education), "Audit Committees, the Cadbury Code and Audit fees" (March 21-22, 1997) *Seventh National Auditing Conference*, Canfield, U.K.

⁷ Keasey K. *et al* (eds.), *Corporate governance: economic management and financial issues* (1997, Oxford University Press, Oxford).

⁸ Forker J, "Corporate Governance and Disclosure Quality" (1992) 22(86) *Accounting and Business Research* 111-124.

also keep a close contact with the management but that doesn't mean that, they will encroach on management responsibilities and become a cause of the conflict. Even though audit committees are costly and time consuming with no power to report their recommendation to shareholders, still they have changed governance practices from good in the 90s to better in the present scenario.⁹

In Japan the annual general meeting and even the board of directors are regarded as ceremonial, with more than 99% of the companies unquoted and few executive directors. This system of mutual shareholdings with unclear accountability and chaotic hero's and anti-hero's, gives more stress on employees and customers (Even though coupled with companies having no corporate ethics and no customer satisfaction schemes) rather than on shareholders.¹⁰ Such a system of governance is due to the reason that Japan has stable shareholdings, which indicates that management do not have to be so seriously concerned. This feature is an opposite contrast of the USA model of corporate governance.

An interesting development in Japan is in its organization of the board of directors. Now-a-days Japanese board of directors consists of outside directors (who are not executives or employees). Also, we find that a majority of the board of directors should be comprised of outside directors [Principle 3].¹¹ Japan needs to encourage corporations' corporate governance (which is based on the availability of suitable management, directors, shareholder and stakeholder information) for a secured Japanese economy in the future years to come.

The increasing number of financial scandals in USA (Enron, WorldCom, Xerox, etc.) and the pressure of executive payments structure in UK during 2002, makes path for the non-executive directors (NEDs) to be considered – Lord Young of Graffham *considers it to be not a lot*. It is time now to reflect the role of NEDs according to the Department of Trade and Industry (DTI) review on the role and effectiveness of the NEDs by Darek Higgs¹² (2002). The Higgs Report deals with the approaches to harnessing NEDs, director's obligation towards targets, etc. The new Combined Code was issued by the Financial Reporting Council on 23rd July, 2003, which all listed

⁹ Cadbury, Sir A. (Chairman), *Report of the Committee of the Financial Aspects of Corporate Governance* (1992, Financial Reporting Council, London Stock Exchange, London).

¹⁰ Kim E. H. *et al* (eds.), "EVA and shareholder value in Japan" (Winter 1997) 9(4) *Journal of Applied Corporate Finance* (USA) 94-114.

¹¹ "Revised Corporate Governance Principles" (October 26th, 2001) *Japan Corporate Governance Committee – Japan Corporate Governance Forum* – Web-link: http://www.ecgi.org/codes/country_documents/japan/revised_corporate_governance_principles.pdf

¹² Higgs D, *Review of the role and effectiveness of non-executive directors* (2002, DTI Publications).

companies of UK must comply with. The minutes of the code are as follows:¹³

- Increase in the number of independent non-executives.
- Chairman's role has been increased particularly to include leadership, communication with shareholders and contribution to constructive relation executive and non-executive directors.
- Board to appoint one independent non-executive as senior independent director.
- NEDs greater time commitment.
- Increased responsibilities of the NEDs.

Globalisation creates economic development or interests for powerful nations

Globalisation can be understood as '*the process of economic, political and social change that occurs when all agents in a system have access to a common pool of resources*'.¹⁴ It is the connection of one company in a state owning another company in a different country or operating in another nation. Also globalisation is the engagement in an action at a distance. This space/gap of distance makes a distinction between practices of governance in different organizations. Hence geographical presence of a business at a particular place creates diversity in corporate governance (For example the system of corporate governance in the United States of America and Japan). Business ethics when becomes institutionalised, regular and rule-based then ethical thought and imagination becomes smooth, structured and broad.¹⁵

Modern technology is also another important aspect for developing the study of business ethics in a globalised economy. That's the reason why Intel Corporation is still the world leader of Pentium Chip manufacturing in America, and Tokyo Tsushin Kogyo (Sony) the reputed brand globally for colour televisions [Japan]. Globalisation is a borderless world,¹⁶ where internationalization of knowledge and technology, production and

¹³ Mayo Charles, "Higgs files" (August 2003) – Web-link: <http://www.elixica.com> Also see: <http://www.frc.org.uk>

¹⁴ Veseth M, *Selling globalization: the myth of the global economy* (1998, Lynne Rienner Publishers, London).

¹⁵ Petersen V.C, 'Habits of the heart: agreements for an ineffable social grammar' (2000) ISBEE World Congress Sao Paulo; also see: McPhail Ken, "The ethical challenges of globalisation: Critical reflections on the ISBEE 2nd World Congress in Sao Paulo, Brazil" (January 2001) 10(1) *Business Ethics: A European Review* 78-82.

¹⁶ Ohmae K, *The borderless world: power and strategy in the interlinked economy* (1990, HarperPerennial, New York).

consumption spell the end of democracy,¹⁷ and where enriching multiplicity is in danger of extinction, even ruined, by Disney and McDonald.

Globalization opens intellectual enhancement and public skylight of the world by offering right of entry to the wide ocean of cultural and social resource. New style of living, knowledge, entertainment and correspondence affects established cultural traditions and mind-set. Product standardization and the domination of American society products are the most noticeable global developments. Obscure are the challenges to gender discrimination in Japanese companies' worldwide.¹⁸

The awful examples of negative globalisation are multinational companies to patent genetic components of plants,¹⁹ animals²⁰ and even the human umbilical cord,²¹ thereby putting a stop to companies in poor countries from using these to manufacture medicines, cosmetics and foodstuffs and forcing them to purchase extravagantly from the multinationals. Right to use global wealth is managed by markets (Capital, Financial, Goods, etc.). A valid rationale for sluggish globalisation is because markets do not work smoothly²² (Dominant nations/corporations check the powerless form entering the market or they enforce conditions on them).

The global world order is being performed by international institutions like the IMF, the World Bank and WTO who are under imminent pressure from the welfare of powerful nations.²³ Worldwide we must trust the global associations with the mission of regulating

¹⁷ Thurow L, *The future of capitalism: how today's forces shape tomorrow's world* (1996, William Morrow, New York).

¹⁸ "U.N. Panel Urges Japan To Keep Up With West On Women's Rights" (July 9th, 2003) *United Nations Foundation [UN Wire]* – Web-link: http://www.unwire.org/UNWire/20030709/449_6375.asp

¹⁹ Khor Martin (Director), "A Worldwide fight against biopiracy and patents on life" *Third World Network (TWN)* – Web-link: <http://www.twinside.org.sg/tile/pat-ch.htm>

²⁰ "Clash Over Canadian Refusal to Patent GE Animals Heads to Court" (May 20th, 2002) *The International Foundation for the Conservation of Natural Resources (Biotech Website)* – Web-link: <http://biotech.ifcnr.com/article.cfm?NewsID=276>

²¹ Butler Declan, "Patent on umbilical-cord cells is rejected in Europe" (June 17th, 1999) *nature [World Conference on Science – UNESCO/IGSU]* – Web-link: <http://www.nature.com/wcs/b48.html>

²² Collier J, "Editorial: Globalization and ethical global business" (April 2000) 9(2) *Business Ethics: A European Review* 71-75.

²³ Sutherland P, "Global independence, the corporation and the changing world" (1999) 10(3) *Business Strategy Review* 47-55.

markets, curtailing the interests of the powerful players through a stakeholder outlook.

Conclusion:

United States of America had rapid improvements in its economy after a hasty phase of takeovers and downsizing. AMEX proclaimed on 13th September, 2002, its future changes in the new corporate governance rules.²⁴ The rule change was needed to increase disclosure requirements, strengthen board oversight and audit committee responsibility and provide for increased shareholder rights for AMEX-listed companies.

In Japan the outcome of restructuring corporations and market situation has opened opportunities for foreign corporations. The ending of the old stakeholder relationships have unwrapped a market for foreign investment banks to put forward their services as outside intermediaries with deep market knowledge. Foreign suppliers are entering corporate network of Japan as suppliers. Moreover due to the devaluation of old stakeholder values asset prices have become again competitive. Unfortunately, these changes will still need some time until they can work in concert and create wonders for Japan.

To conclude, it is perhaps useful to recall that the bank-centered system of Japanese corporate governance emerged during the 1950s as the outcome of the economic environment of the early post-war era. It seems that new institutions, which are most suitable to the present economic environment, are emerging. Yet in the long run, the new methods of corporate governance are likely to help the Japanese economy recover from the slow-down and maintain global competitiveness of Japanese companies.

Therefore global regulation followed by a firm enforcement is not a practicable approach. Apart from its restrictions, international law can control future corporate misconduct by posing the real threat of costly legal action, high resolution costs, lower stock prices and reduced access to capital break-up. Building conscientiousness among the general public, creating a corporate culture towards reliability, improving monitoring and compliance reviews, broaden sanction of major instruments and encouragement of greater opinionated will are all necessary stepladder towards higher standards of corporate governance.

End.

²⁴ Akin Gump Strauss Hauer & Feld LLP (Attorneys of Law) "Corporate Governance Alert: AMEX approves proposed changes to corporate governance rules" (October 25th, 2002) – Web-link: http://www.marindale.com/xp/Marindale/Legal_Articles/article_abstract.xml?artid=477EB7EE1F&searchaop=728&industry=728&grptype=&STYPE=AB&LNAME=&FNAME=&FN=&STS=&CRY=&CP=1&RR=&asc ope=&keyword=&orgid=&hp=1&searchid=20040302118055828107&lastxmonths=&lastxdays=&PRV=LL2&nomodify=&attid=&lid=&gpid=

Legal Services - Should You Outsource ?

If yes then why India?

Education

The vast resources of educated, English speaking skilled professionals in India has ensured that there has been a healthy growth in the number of India's professionals over the last decade. From 2000 knowledge workers in 1986, the number increased to 222,090 in early 2002 and continues to show a healthy growth pattern.

Language

English-speaking professionals. Most Indians are fluent in the English language.

Participation

India is one of the world's largest centers for offshore services and currently processes 70% of global outsourcing.

Incentives

The Indian Government offers attractive incentives for companies in the offshore services arena which can be passed off to clients in the form of cost savings.

Manpower

Being the world's second highly populated country, human resources are a boon by itself. India is proud of the abundance and easy availability of its highly qualified and technically skilled English speaking professionals.

Connectivity

The Internet has come of age in the Indian sub-continent and now offers comparable and yet cost effective solutions for the use of high-bandwidth Internet and related facilities. These include Voice-Over-IP, Telnet, FTP, Web, Hosting, Leased-Lines, to name a few.

Telecom

Excellent telecom, ISP and cellular networks are available in all cities and towns in India. Reliable satellite and submarine communication links that facilitate good band connectivity with the rest of the world are easily available. Thus companies engaged in outsourcing to India can be in touch with the vendors without any connection hurdles. This plays a significant role in determining the success of offshore outsourcing to India.

Infrastructure

Technology, manpower, utilities, real estate, transport, finance and other requisite infrastructure are readily available at highly competitive pricing.

Technology

Being one of the worlds leading offshore services centers, India now boasts of having cutting-edge technology in terms of equipment, software, resources and manpower.

Saha & Ray LPO Team.