

eMagazine



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Vision

"To be a global leader in promoting good corporate governance"

Motto

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Mission

"To develop high calibre professionals facilitating good corporate governance"

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Dear Professional Colleagues,

I wish you a very happy, prosperous and healthy new year ahead.

It is with immense pride and satisfaction I write this message to you, as I handover the baton to my successor. The past year has been very successful for the chapter and we were able to accomplish as a team many targets set. I place on record my sincere thanks to all the members of the Managing Committee, members of the Chapter, students, SIRC and ICSI HQ, officials of the other institutes, supporting members from other Chapters and to my beloved chapter staff for extending their wholehearted support and co-operation.

It is time for the New Managing Committee to take over the reins of the Chapter Activities. The new, fresh & talented committee is expected to take over the affairs of the Chapter from 19th January 2018. I extend my best wishes to the new team.

Wish you a very happy Sankranti.

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Chapter Activities

During the month of December 2017, Chapter conducted 2 Career Awareness Program & Investor Awareness Program. The details are as follows.

INVESTOR AWARENESS PROGRAM

S No.	Date	Venue	Topic	Speaker(s)	No. of Participants
1	06.12.2017	VTU Regional Centre	An Overview of Capital Market Instruments	CS Manjunath S.,	102
2	09.12.2017	GSSSIETW	Basic Investment Strategies	CS Manjunath S., Prof. Ramacharan	76

CAREER AWARENESS PROGRAM

S No.	Date	Venue	Speaker(s)	No. of Participants
1	06.12.2017	VTU Regional Centre, Mysore	CS Manjunath S.,	102
2	09.12.2017	GSSSIETW, Mysore	CS Manjunath S.,	76





Analysis of Companies (Amendment) Act, 2017 with respect to Loans to Directors

Section 185 of the Companies Act 2013 deals with giving loans, guarantees and security to directors and to entities in which directors are interested.

The Companies (Amendment) Act, 2017 has substituted section 185 of the Companies Act 2013. Major changes in the substituted section are discussed below.

Section 185

The Companies (Amendment) Act has substituted section 185. New Section is as below:

Section 185 (1)

No Company shall directly or indirectly, advance any loan, including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by:

- a) Any director of the Company, or of a Company which is its holding company or any partner or relative of any such director or
- b) any firm in which any such director or relative is a partner

Section 185 (2)

A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the directors of the Company is interested subject to following conditions:

- a) A special resolution is passed by the Company in General meeting. An explanatory statement to the notice for the general meeting shall disclose the following:
 - i) Full particulars of the loan given or guarantee given or security provided

- ii) Purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security
- iii) Any other relevant fact
- b) The loans are utilised by the borrowing company for its principal business activities

For the purpose of this sub-section, the expression "any person in whom any of the directors of the Company is interested" means

- a) Any private company of which any such director is a director or member
- b) Any body corporate at a general meeting of which at least 25% of the total voting power may be exercised or controlled by any such director or two or more such directors together or
- c) Any body corporate, the Board of directors, managing director or manager whereof is accustomed to act in accordance with the directions or instructions of the Board or of any director or directors, of the lending company

Section 185 (3)

Nothing contained in sub-section (1) and (2) shall apply to

- a) Giving of any loan to a Managing or whole time director-
 - i) As a part of the conditions of service extended by the company to all its employees or
 - ii) Pursuant to any scheme approved by the members by a special resolution
- b) A Company which in the ordinary course of its business provides loans or give guarantees or securities for the due

repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year government security closest to the tenor of the loan; or

- c) Any loan made or guarantee given or security provided by a holding company to its wholly owned subsidiary company
- d) Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company

Provided that the loans made under clause (c) and (d) are utilised by the subsidiary company for its principal business activities

Section 185 (4)

If a loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section

- a) Company will be punishable with fine which shall not be less than 5 lakhs but which may extend to twenty five lakh rupees
- b) Any director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or fine which shall not be less than five lakhs but which may extend to twenty five lakh rupees or with both.

Effect of this amendment to section 185 of the Companies Act 2013

- a) The section now divides the lending of loan etc into three categories:

Prohibited transactions	Restricted Transactions	Exempted Transactions
<ul style="list-style-type: none"> a) Loan/Guarantee/Security to Director of a Company b) Loan/Guarantee/Security to Director of a Holding Company c) Loan/Guarantee/Security/ to Partner of the Director d) Loan/Guarantee/Security to Relative of Director e) Loan/Guarantee/Security to any firm in which the Director is partner f) Loan/Guarantee/Security to any firm in which the relative of the Director is partner 	<ul style="list-style-type: none"> a) Loan/guarantee/security to a person with whom the director is interested 	<ul style="list-style-type: none"> a) Loan given to managing director or whole time director as a part of the conditions of services extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution b) A Company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan c) Loan/Security/Guarantee given by a holding Company to its wholly owned subsidiary Company d) Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company

- b) A Company may advance any loan, or give guarantee or provide security to Body corporates covered under section 185(2) by passing a special resolution provided that

such loans are utilised by the borrowing company for its principal business activities. This is not allowed in the existing Section 185 of the Companies Act 2013.

- c) Exemption from Section 185 under Notification dated 5th June 2015 was available to only private limited companies. Now Public companies also can also give loan, guarantee or security to certain entities in which directors are interested by complying with the conditions mentioned in section 185(2)
- d) Existing Section 185 provided that Company which in the ordinary course of its business provides loans or gives guarantees or securities for due repayment of any loan and in respect of such loan interest is charged at a rate not less than the bank rate declared by the Reserve bank of India. New Section 185 provides that on such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan.
- e) Exemption was provided to private limited companies if the borrowings of such company from banks or financial institutions or any body corporate is less than the twice of its paid up share capital or fifty crores rupees, whichever is lower and such company has no default in repayment of such borrowings subsisting at the time if making transaction under this section. These exemptions are taken away and private companies have to comply with the new provisions of Section 185(2), until and unless the Government comes out with fresh notification.

In a nutshell, it can be said that the provision of section 185 has been liberalised which will result in ease of doing business.

Words Worth Million

It is the same India which has withstood the shocks of centuries, of hundreds of foreign invasions of hundreds of upheavals of manners and customs. It is the same land which stands firmer than any rock in the world, with its undying vigour, indestructible life. Its life is of the same nature as the soul, without beginning and without end, immortal; and we are the children of such a country.

-Swami Vivekananda





How to write a Vision and Mission Statement

A carefully crafted vision statement is the heart of every successful business. This statement clearly and concisely communicates your overall business goals, and can serve as a tool for strategic decision-making across the company. A vision statement can be as simple as a single sentence or can be in a short paragraph. Regardless of the individual details and nuances, all effective vision statements define the core ideals that give a business shape and direction. Given the impact that a vision statement can have on a company's long-term success, it's worth taking time to craft a statement that synthesizes your ambition and mobilizes your staff.

Vision statement vs. Mission statement

Before determining what your vision statement is going to be, you need to understand what it is not. It should not be confused with a mission statement. Mission statements are those statements that are goals for the present and designed to convey why the company exists, to both members of the company and the external community. Vision statements are future-based and are meant to inspire and give direction to the employees of the company, rather than to customers. A mission statement answers the question, "Why does my business exist?" while a vision statement answers the question, "Where do I see my business going?" **"A vision is aspiration. A mission is action."** The vision statement should be thought of as part of your strategic plan "It is an internal communications tool that helps align and inspire your team to reach the company's goals." As such, vision statements should be viewed as living documents that will be revisited and revised.

How to write a vision statement

Writing your vision statement is a time for creativity, ambition and fun, but the task should be approached seriously. "There is a process to this, and it's not usually quick or simple. "The best way to begin is to reflect on some of the most significant events or ideas that have impacted the company." A vision statement should also be concise, no longer than a sentence or a few paragraphs. You want your entire team and organization to be able to quickly repeat it back and more importantly understand it.

First identify core values of the organization when drafting your vision statement. Then, ask yourself, "What do we do right now that aligns with these values? Where are we not aligned with these values? How can we stay aligned with these values as we grow over the next five years, 10 years?" Those questions address your current situation and help identify the bigger-picture vision – Next, ask yourself what problems your company hopes to solve in the next few years. What does your company hope to achieve? Who is your target customer base, and what do you want to do for them? "Based on your responses to these questions, ask yourself what success will look like if you accomplish those things.

When you're crafting your vision statement, dream big. Don't worry about practicality for now — what initially looks impossible could be achieved down the road with the right team and technologies. Work on shaping a vision statement that reflects the specific nature of your business. Shockley noted that there is nothing wrong with a vision statement being a little daring, distinct or even disagreeable.

Tips for crafting your vision statement

Vision statements should stretch the imagination while providing direction and clarity. A good vision statement will help inform direction and set priorities while challenging employees to grow. Project five to 10 years in the future. Dream big, and focus on success. Use the present tense. Use clear, concise language. Infuse your vision statement with passion and emotion. Paint a graphic mental picture of the business you want. Have a plan to communicate your vision statement to your employees. Be prepared to commit time and resources to the vision you establish –

- A typical corporate or company vision statement will be brief and succinct; it will say a lot in just a few words, so those words must be very carefully chosen.
- The key to a good vision statement is to think of things in a long-term, broad sense, without sounding generic.

Writing a good vision statement isn't difficult. Think about what your business does and what, in an

ideal world, you would like it to do and how you would like to appear to the outside world. Consider the services and attributes that your company provides, then imagine how it would be if you provided the very best version of them possible. List those visions, and incorporate them into a brief statement that gives a good overview of the kind of image you want to represent.

How to write a Mission Statement

Your company's mission statement is your opportunity to define the company's goals, ethics, culture, and norms for decision-making. The best mission statements define a company's goals in at least three dimensions: what the company does for its customers, what it does for its employees, and what it does for its owners. Some of the best mission statements also extend themselves to include fourth and fifth dimensions: what the company does for its community, and for the world. A well-developed mission statement is a great tool for understanding, developing, and communicating fundamental business objectives, and should be expressed in just a paragraph or two. If you read it out loud, it should take about 30 seconds. And it should answer questions people have about your business, like:

- Who is your company?
- What do you do? What do you stand for? And why do you do it?
- What markets are you serving, and what benefits do you offer them?
- Do you solve a problem for your customers?
- What kind of internal work environment do you want for your employees?

Start with a market-defining story. You don't have to actually write the story—it's definitely not included in the mission statement—but do think it through: Imagine a real person making the actual decision to buy what you sell. Use your imagination to see why she wants it, how she finds you, and what buying from you does for her. The more concrete the story, the better. (And keep that in mind for the actual mission statement wording: "The more concrete, the better.")

A really good market-defining story explains the need, or the want, or—if you like jargon—the so-called "why to buy." It defines the target customer, or "buyer persona." And it defines how your

business is different from most others, or even unique. It simplifies thinking about what a business isn't, what it doesn't do. This isn't literally part of the mission statement. Rather, it's an important thing to have in your head while you write the mission statement. It's in the background, between the words. Define how your customer's life is better because your business exists. Start your mission statement with the good you do. Use your market-defining story to serve out whatever it is that makes your business special for your target customer. Consider what your business does for employees. These days, good businesses want to be good for their employees. If you're "hard numbers"-oriented, keeping employees is better than turnover. And if you're interested in culture and employee happiness, then defining what your business offers its employees is an obvious part of your strategy. Qualities like fairness, diversity, respect for ideas and creativity, training, tools, empowerment, and the like, actually really matter. However, since every business in existence at least says that it prioritizes those things, strive for a **differentiator** and a way to make the general goals feel more concrete and specific. If you have a special view on your relationship with employees, write it into the mission statement.

Discuss, digest, cut, polish, review, revise

Good mission statements serve multiple functions, define objectives, and live for a long time. **So, edit.** This step is worth it. As you edit, keep a sharp eye out for the buzzwords and hype that everybody claims. Cut as much as you can that isn't unique to your business, except for those special elements that—unique or not—can serve as long-term rules and reminders. Read other companies' mission statements, but write a statement that is about you and not some other company. Make sure you actually believe in what you're writing—your customers and your employees will soon spot a lie. Then, listen. Show drafts to others, ask their opinions, and really listen. Don't argue, don't convince them, just listen. And then edit again. And, for the rest of your business's life, review and revise it as needed. As with everything in a business plan, your mission statement should never get written in stone, and, much less, stashed in a drawer. Use it or lose it. Review and revise as necessary, because change is constant.



Digitalization

Who is a company secretary? A qualified secretary has to put on many hats to perform a variety of jobs in company. As a KMP it is their primary responsibility to ensure compliance under the Companies Act 2013.

In this era of digitalization, there are some benefits that can be drawn from utilizing latest developments in audio and video recordings / tele-media services. This can go a long way in ensuring highly effective corporate governance and higher compliance levels.

Prime Minister Modi launched "Digital India" campaign amidst much fanfare. The plan is to make the whole country digitally empowered. Various schemes worth more than 1 lakh crore have been unveiled in this direction, such as Digital Locker, e-health, e-education, national scholarship porta, e-sign etc. it is incumbent upon us company secretaries to make sure that our domain of work gets as much benefit as possible from the digitalization of our processes and institutions that govern us.

In this article, I would like to focus on a very important task conducted by company secretaries which has been misunderstood for a clerical job and at times has been reduced to just notes taking in various meetings that get conducted throughout the organization. As company secretaries, we all understand the importance of MoMs (Minutes of Meeting). We are responsible for understanding the business and related compliances, give meaningful inputs during various meetings and later record minutes of these meetings. Taking notes in all

meetings has become so important that a company secretary is always worried about missing an important point. A company secretary just can't afford to take a break in any meeting of such importance.

Board meetings are of great importance. A company secretary is to attend these to make sure that meeting is convened as per secretarial standards of the Companies Act 2013. At times, company secretary's responsibility is shifted from ensuring compliance to event management of a board meeting.

We need a more efficient way to record minutes of all meetings where we intend to provide constructive input ensuring compliance. We need to use digitalization and start recording our meetings. So that a company secretary could focus on content of the meeting than worrying about notes and minutes. **In cases where a business context is missing, we can go back gather context and then come again to recordings, so that our notes and minutes make more sense and become a step towards success of our respective organizations.**

I would love to hear back your feedback and if your organization has implement such a measure for all or some of their meetings. Evolution is a key; we will survive as long as we can learn new tricks and be better at our jobs each day compared to the previous day. I believe a step towards recording our meetings will go a long way in improving our understanding of business and ensuring a higher quality of recording minutes.



Janda Ooncha Rahe Hamara

The Conference Hall was packed with all the junior and senior management staff of the Company.

The air was filled with excitement, and for an acceptable reason. The Company had earned a name in the sales and service of imported and sophisticated and popular medical and clinical diagnostic equipment in India and several Asian countries. One of the manufacturers was an American unit, whose products had gained a name. In recent times similar products from China were trying to gain a market share by selling at a slightly cheaper price. The American company, therefore, finalized a collaboration agreement with Indian the Indian company. As against the target of eight months, the new project had commenced production in 6 months. A grand launch programme in 10 days and today's meeting was to review and finalized.

The Managing Director and the Technical Director entered the hall amidst a thunderous ovation .The M D thanked all the employees and the T D for the excellent performance. The honorable minister for Health would preside over the function and the Consul General of U S A in the city, would be the chief guest. The T D appreciated the employees for comprehending the technical data and for introducing adaptation to suit tropical weather and conditions like voltage fluctuations and frequent power cut. He also complemented the Materials Management team for scouting around and sourcing alternate materials locally, which considerably reduced the cost of production. Amidst heavy clapping, the M D announced the marketing department had already obtained orders for 4 instruments, one from a Cairo hospital. While the CC would handover one instrument to the Minister, as a donation from the Company to the Government Hospital; and the other 4 would be received by their buyers. The Manager of the advertising agency who was present presented two specimen cartons for the instruments. It was noticed by everyone that they were not of the routine mundane type and was attractive, colorful

and lightweight. However, on one side of the carton the flags of USA and India were illustrated to indicate the bond of collaboration. The Company Secretary was somewhat surprised when he saw the illustrations of the flags. In one carton, both the flags were meshed and in the other, both the flags were shown fluttering from the same pole – the US flag being on top of the Indian flag.

The Company Secretary remarked, "A reading of the Flag Code of India 2002, along with the following two Acts, i.e., Emblems and Names (Prevention of Improper Use) Act 1950, and Prevention of Insults to National Honour Act 1971, is relevant in this matter.

Strict rules about the usage of the National Flag are prescribed and they wouldn't permit meshing together of our flag with any other nation's flag. Similarly, the depiction of two flags fluttering from the same pole is not in order.

In any case, use of the national flag is prohibited for commercial purposes except with prior approval of the Central Government. You may have to decide to discard the proposal to use the flags to signify the collaboration."

The entire audience fell silent hearing the objections raised by the Company Secretary. The MD smiled and said, "That settles it. We cannot violate the Flag Code which will be dishonoring the dignity and honor of the Nation itself. So, I'm requesting the advertising agency to remove the illustration of the flags and substitute them with some other mode to indicate US-Indo collaboration. Also, I request the Company Secretary to make printouts of the Flag Code and distribute it amongst the senior managers so that they can read it and spread the rules around to all the members of the staff."

The Manager of the advertising agency also thanked the Company Secretary and requested for a copy of the Flag Code. He said it will be his bounden duty to spread the awareness on this important subject so that we are always able to **ENSURE THAT OUR NATIONAL FLAG ALWAYS FLUTTERS HIGH AND ON THE TOP.**



Commentary on Additional Director – Series- 2

Provisions:

Section 161(1)

The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold the office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Table F Regulation 66

- i. Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.
- ii. Such a person shall hold the office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

Commentary

- 1 Applicability: Applicable to all types of companies i.e. Private Company, Public company and One Person Company.
- 2 Provision in the AOA: If authorized by articles, an additional director may be appointed, otherwise articles needs to be amended suitably.
- 3 Authority: Only Board of Directors can appoint an additional director. Managing director or committees of Directors or WTD

do not have the power to appoint an additional director.

- 4 Resolution: Appointment of an additional director may be passed either at the Board Meeting or by resolution by Circulation.
- 5 Meaning of any Person: Person refers to individual only as individuals alone are eligible to become directors of the company as per Sec.149(1) r/w Sec.153.
- 6 Person not eligible: The person who fails to get appointed as director in general meeting cannot be appointed as an additional director of the company.
- 7 Tenure:
 - a. An additional director vacates his office on the last day on which AGM could have been called as required u/s 96 and he cannot continue thereafter on ground that meeting was not held or could be not called within the due date.
 - b. Dept clarification: Expression 'up to' the commencement of the meeting: An additional director ceases to hold office at the commencement of the next annual general meeting of the company. For ex: If AGM is held at 10.00 A.M. then he holds the directorship up to 9.59 A.M.
 - c. Wording is Annual General Meeting; Question arises whether the company can reappoint an additional director in an EGM prior to AGM of the company. The word 'up to' indicates maximum tenure. Hence there is no bar on regularizing additional director at EGM before next AGM.
- 8 Section 152 applicability: An Additional director is not a retiring director. If an

- additional director reappointed at AGM as regular director requires compliance of Section 152. Further in ascertaining the number of directors to rotational or non-rotational directors at an AGM, the number of additional directors is to be excluded even though their inclusion in number of non-rotational directors may contravene section 152(6).
- 9 Appointment of an Additional Director as Managing Director – Dept Clarification: In case an Additional director appointed as Managing Director, the tenure of Managing director will come to an end when tenure of an Additional director comes to an end and if he is appointed
 - 10 as regular director at the AGM and thereby he continues as director of the company, he shall continue as a MD also for the period for which he is so elected by the AGM and for the period for which his appointment has been approved as per Sec.269 of the Companies Act 1956. We can rely on same MCA clarification.
 - 11 Appointment of an additional director in Special Cases: In case minimum number of directors falls below minimum quorum, board meeting may be called for appointment of an additional director to the extent required for quorum and not for any other purpose in line with Section 174(2).
 - 12 Appointment in General meeting: Power given to the Board by AOA did not take away the inherent power of the company in GM to appoint directors.
 - 13 Explanatory Statement u/s 102: MCA clarified that regularization of additional director would constitute an item of ordinary business and therefore no explanatory statement need to be attached to the notice of the meeting.
 - 14 Bona fide: Power should be exercised bone fide in the interest of the company and not on any extraneous considerations such as strengthening the position of a majority in the Board.
 - 15 Position: Additional directors do have same rights, Powers, duties as other directors.
 - 16 An additional director may be appointed as a women director or an independent director in line with Sec.149.
 - 17 Forms: Within 30days of his appointment, the company needs to file Form DIR 12 along with the consent letter in Form DIR 2. In case of regularization, again Form DIR 12 needs to be filed for change in the designation.
 - 18 An Additional director has to disclose his interest in Form MBP 1 within 30days of his appointment in line with Sec.184 and the company need to update the relevant Statutory Registers.
 - 19 My suggestion is that on MCA21 portal, there should be a facility that such appointment should be shown as “Additional Director till” showing the date on which Annual General Meeting should have been held and their name should be removed without any further filing of form/document in absence of form/document for reappointment.





CamCard

"A business "network" isn't about how many people know your name; it's about how many will send you customers or help you advance your career", according to [Joanne Black](#), author of the bestseller *No More Cold Calling*.

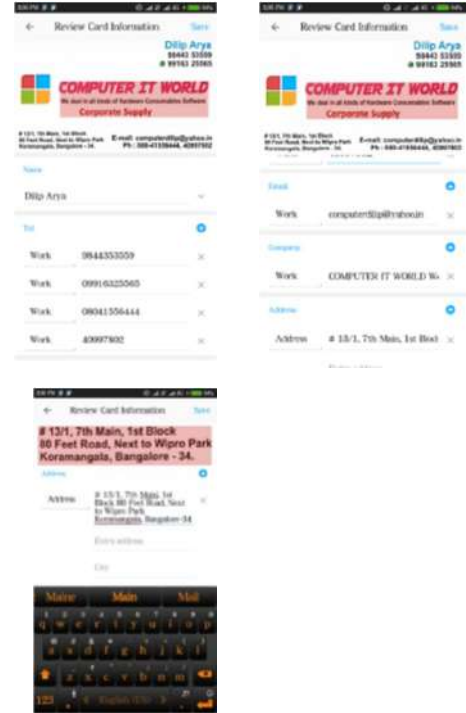
We build contacts with the outside world in many ways. In business we share our contact information mainly through visiting cards or business cards. But, storing the physical business cards is a cumbersome job. Well, now it is not a problem, because in this article you are going to get a digital, Smartphone friendly solution for this problem.

"**CamCard**", is an app which lets you to store business cards in your smart phone. Well, apart from storing, it also lets you share your business card digitally, which by the way helps to save a little cost too. This app is available both on *ios* and *Google play store*. And all you need is a Smartphone to make use of this app.

Camcard, lets you to scan the business card and sync the same with your backup account and the phone in which you are using the app. Which you scan the business cards, the app automatically resizes' the card and detects the name of the person, contact number, organization's name, email details etc... and you can save the same in your contact details.

When you scan any business card the storing system in the app will be like the following:

Punith Ravindra
M.com, CS Professional
Apprentice Trainee
D Venkateswaralu PCS
Koramangala, Bangalore
Email:Punithravindra@gmail.com



The app also lets you edit the information before saving the same to your contacts. However in some instances the app may fail to recognize the words that are in calligraphy style.

The app also has feature of designing e-cards which can be shared over to other users of Camcard. The information is stored in your system only so there is no fear of app being hacked and your information is stolen.



XYZ Ltd., a Manufacturing company registered under GST, executes large turn-key projects. Part of their business, as per the contractual obligation they issue a Performance Bank guarantee [PBG] to their customer. XYZ Ltd., recognizes Interest income on receipt basis in their books. When the PBG is closed corresponding Fixed Deposit is cancelled. Can this practice of Booking Interest Income, be questioned by GST authorities for improper compliance and would there be any implication of Interest income from the GST compliance perspective

Please send your opinion to, enewsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts to consider

- Person has registered himself under composition scheme
- Part of his business he lets his property for usage by other Persons
- Assuming the property has been let out for commercial purpose
- Person has made a proper disclosure of above rental activity at the time of obtaining registration for composition
- Person draws Interest free deposit from the Tenants towards the property let out on rental basis
- Assuming that the above Person, is going to refund back the above Interest free deposit to the tenant at the time of termination of the contract
- Assumption that the Person seeking for Registration is not drawing the Interest free deposit from any of the Related Party

Relevant provisions

Section 2(78): Non-Taxable supply: Means a supply of goods or services or both which is **not leviable to tax** under this Act or under the Integrated Goods and Services Tax Act

Definition of "**Consideration**" includes–

(31) "Consideration" in relation to the supply of goods or services or both. Provided that a **deposit given in respect of the supply of goods or services** or both **shall not be considered** as payment made for such supply **unless** the supplier applies such deposit as consideration for the said supply;

Section 10 (2) of CGST Act, 2017

(a) He is **not engaged** in the **supply of services** other than supplies referred to in clause (b) of paragraph 6 of Schedule II

(b) He is **not engaged** in making any supply of goods which are **not leviable to tax** under this Act; Entry 12 of Notification 12/2017 CTR dtd: 28.06.2017 towards exemption provided for Residential dwelling for use as residence. Reference to schedule III: Activities or Transactions Which Shall Be treated neither as a Supply of Goods nor as a Supply of Services. Reference to Press Release of GST 23rd council meet towards permission for Supply of services by Composition Tax payer upto Rs.5 lakh will be allowed per annum for exemption yet to be notified by the Government

Conclusion

- Renting activity of Immovable property is a Taxable activity irrespective of its end

usage. Exemption provided for such activity if used for Residence purpose

- Renting activity doesn't fit into Schedule III of CGST Act, 2017
- Interest free deposit claimed by the Person seeking for Registration is not considered to be a consideration for Supply of service as per the definition of Consideration
- Reference to Section 7 towards "Scope of Supply", relevance & existence of a Consideration in the course of furtherance of business is relevant
- Tax officer may not permit the Registration under Composition scheme of the Person, who has Service Income in violation of conditions as per Section 10. However, since the above said person is not having any consideration in relation to a supply of Service related activity or an Exempted

activity there exists no violation of conditions laid out in section 10 and accordingly, the person is right to get the entitlement for Registration under Composition scheme.

There could be litigation possible at a future date for the above said transaction. To overcome the hurdles of litigation, it is suggested to give a proper intimation in writing to the concerned authority sanctioning the registration towards such receipts and seek for their objections if any in writing

Disclaimer

The above views expressed are as per the understanding of the present GST provision by the author. Any corrections or suggestions may be sent to praveen@gella.in

Being Optimistic

Priscilla Shereen

Optimism means to be hopeful and confident about future. Many a times being optimistic is a challenging task especially when situations are bleak and hopeless. To bring out optimism in such situations a lot of inner strength and the will to say "everything will be alright" is needed. It is important to train us to see, hear, do and talk that which is possible even in unfavorable situations. We should learn to choose good over bad, see the best in others and have a never dying spirit that says "there is a way".





Registration and Licensing of a Factory

The first step in the establishment of a factory where persons are employed is registration under the Factories Act, 1948. Registration is a process that must begin even before the factory physically comes up.

Every manufacturing unit where ten or more workers are working is considered to be a "Factory" under Section 2(m) of the Factories Act. This not only includes workers who are directly employed by the employer but also includes those who are employed by contractors or agents with or without the knowledge of the principal employer.

Section 6 of the Factories Act, empowers the respective State Governments to frame rules regarding approval, registration and licensing of factories. We may refer to the Delhi Factories Rules, 1950 which is illustrative and the template therein has been followed by various other states in the country with minor changes.

Rule 3 of the Delhi Factories Rules requires that a plan, drawn to scale, showing the following details be furnished to the Chief Inspector:

- (i) The site of the factory and immediate surroundings including adjacent buildings and other structures, road, drains, etc.
- (ii) the plan, elevation and necessary cross-sections of the factory buildings indicating all relevant details relating to natural lighting, ventilation and means of escape in case of fire, and the position of the plant and machinery, aisles and passageways; and

Further a flowchart showing the work processes is also required to be submitted. The Chief Inspector may then approve the plan or seek further particulars.

When such an application is made, and no order is communicated to the applicant within a span of three months from the date of the application, the grant of permission may be presumed. But failure to make the application is viewed as a serious contravention which is punishable by imprisonment up to two years or fine of up to one lakh rupees in terms of Section 92 of the Act.

If however, the application of the applicant is rejected, the applicant can prefer an appeal to the Central Government.

Once a factory is set up after due approval and registration, the occupier of the factory is required to apply for a license in terms of Rule 4 of the Delhi Factories Rules. The "Occupier" may be one of the directors of the company or one of the partners in a partnership firm.

The license can be granted for one year or five years as the case may be and the license fees are fixed as per a schedule and vary depending on the number of workers to be employed in such factory. The Rules also provide for renewal and amendment of the license. Amendment of the license may become necessary in case of modification of the factory or employment of more persons than permitted under the license. Further the license can also be transferred to another person if required.

Fifteen days before the factory is occupied, the occupier is required to issue a notice to the Chief Inspector informing him of the name and location of the factory, name and address of the occupier, name and address of the owner, and the nature of the manufacturing process.

Upon the license being granted, the factory can commence operations.



EXPRESS NEWS

- LIC sells over 2% stake in Merck Ltd; stock surges over 19%
- India-Israel-US strengthen trilateral ties at Nasscom's Tech Triangle Summit
- Job market sees 10 per cent growth in Dec 2017 hiring
- International termination fee cut may not hit telecom companies much
- Unexplained deposits in focus, taxmen ordered to go all out in the next three months
- Larsen & Toubro wins Rs 1,310 crore contracts

Bank of India postpones Rs 3,000 crore QIP plan

State-owned Bank of India (BoI) has deferred the Rs 3,000-crore capital raising plan through private placement of equity shares after the government's move to infuse Rs 2,257 crore capital into it, a top official said.

Vodafone, Idea may start joint operations from April with 400 mn customers

The National Company Law Tribunal green-lighted the proposed merger between Idea Cellular and Vodafone on 12th January, a move that brought both the companies closer to culminating the deal.

India Inc presses for rate cut as inflation cools

As wholesale inflation eased to 3.58 per cent in December, India Inc today urged the Reserve Bank to reduce key policy rates to augment investments and boost economic growth.

TCS bags M&S deal to help drive it become a digital-first business

The largest software exporter TCS has expanded its relationship with British retailer Marks & Spencer (M&S) to enable it become a digital-first business.

India, Israel to enhance agriculture, S&T, security cooperation

India and Israel have agreed to enhance cooperation in the areas of agriculture, science and technology and security, Prime Minister Narendra Modi said on Monday.

PE investments jump 55% to all-time high of USD 24 billion in 2017

Private equity firms invested USD 23.8 billion across 591 deals in 2017, making it the biggest year for PE investments in India, says a report.



Regulatory Updates

Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (cost records and audit) Rules, 2014 which is to be known as companies (cost records and audit) second Amendment Rules, 2017.

In rule 2 clause (aa) the following clause shall be substituted, Customs Tariff Act Heading" means the heading as referred to in the Additional Notes in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)"

In rule 3 of principle rules, the words "Customs Tariff Act Heading" shall be substituted for the words "Central Excise Tariff Act Heading".

In the principle rules, in the annexure, in Form CRA-2, Form CRA-3 and Form.CRA -4, for the words CETA heading Heading", wherever it occurs, the words "CTA Heading" shall be substituted

Above stated Substitutions shall be deemed to be in effect from 1st day of July, 2017.

companies (cost records and audit) second Amendment Rules, 2017, 20th December, 2017.

Circulars

MCA has introduced "Condonation of Delay Scheme 2018", which shall come into force with effect from 1st day of January 2018. The scheme shall be applicable to all defaulting companies except the companies which have been struck off or whose

name have been removed from the register of companies under section 248(5) of the companies Act 2013.

A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017. **Form e-CODS 2018** is required to be filed to seek condonation of delay under this scheme.

General circular No. 16/2017, dated 29th December, 2017.

AS Companies (Cost Records and Audit) Amendment Rules, 2017 has been introduced; MCA has given relaxation for additional fees and extended the last date for filing Form CRA-4. Last date for filing form CRA-4 for the financial year 2016-17 without additional fee is 31st December, 2017.

General Circular 15/2017, dated 4th December, 2017.

Notifications

MCA has designated LIX Additional City Civil and Sessions Judge, Bengaluru City, state of Karnataka as special courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more.

S.O.3804 (E), dated 4th December, 2017.

