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Mysore Chapter

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THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

MYSORE
CHAPTER

CS M C Bhansali

Chairman,

Mysore Chapter

Warm greetings from the ICSI-Mysore Chapter!

My heartiest greetings to all the readers and wish you all a very happy & prosperous new year. The dawn of 2017 has brought in new hopes and great expectations and we look forward for a promising New year.
CS Sivakumar P, Chairman-SIRC visited Mysore Chapter last month and I interacted with the Members & Students.

During the year, the Chapter conducted various seminars, student events, study circle meetings and career awareness programs. It is time for the New Managing Committee to take over the reins of the Chapter. The talented new committee is expected to take over the affairs of the Chapter from 19th January 2017. I extend my best wishes to the new team. Through the e-Magazine, I convey my sincere thanks to all the Members, students, Professional Colleagues for their co-operation during my tenure as the Chairman of the Mysore Chapter.

Wish You All A Happy Sankranthi

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Disclaimer

Special Thanks to:

CS Dattatri H M

CS Omkar Gayatri

CS Sarina C H

CS Vijay Shyam Acharya

Join
5100+ members' strong
"CSMysore" eParivaar
http://www.groups.google.com/group/csmysore

1. Seminar on GST

in association with The Federation of Karnataka Chamber of Commerce and Industry (FKCCI), Mysore Chamber of Commerce and Industry(MCCI) and Confederation of Indian Industry (CII)

2. Session on Foreign exchange Management Act

The ICSI-Mysore Chapter had organised a seminar on FEMA at chapter premises on 02nd December 2016. The session was handled by CS Seckar R V., FCS, Chennai. In his speech, he explained about the compliance for Investment made by NRI and Foreign Entities and Transfers part under FEMA.

3. INTERACTION MEET WITH CHAIRMAN-SIRC

On 02nd December, 2016 CS Sivakumar P, Chairman-SIRC visited Mysore Chapter. He emphasized that, it is imperative for students to ensure that they build a strong foundation to become a good company secretary. In his address to the members, he advocated the need to ensure professionalism in discharge of duties.

4. STUDY CIRCLE MEETING

On 18.12.2016, Mysore Chapter organized study circle meeting on Exposure Drafts on Secretarial Standard on Boards Report. The draft report issued by the institute was discussed in detail and the suggestions were forwarded to the institute.

5. <u>Career Awareness Programme Held at Rotary PU College</u>

ICSI-Mysore Chapter organised a Career Counselling Programme at Rotary PU College, Mysore. Around 50 students from various colleges attended the programme. CS Ajay Madaiah B B, Member, Mysore Chapter explained in detail. He also highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario.

Article

Peer Mehboob
ACS, LLB, M.Com
Mirha Group, Leading Export Group

REMOVAL OF CHAIRMAN UNDER COMPANIES ACT, 2013-TATA SONS CASE

On 24th October 2016, Cyrus Mistry was removed as the chairman of Tata Sons and replaced by Mr. Ratan Tata, who has been appointed as an "interim chairman" for four months. The grounds for removal and Cyrus Mistry's own defence are not discussed here. For our perspective, the manner in which this move was carried out, and the subsequent turn of events raises many points for insight, such as:

- **Procedure for removal of a chairman**
- **Remedies available to a chairman removed in such a manner if he or she considers it was unfair**
- **Legal mechanisms for the company to protect its interest against future risks and retaliation by the chairman**

Before delving in the saddle of such questions let's look at the corporate structure of Tata Sons. It is the holding company of the Tata group. Tata Sons Limited is an unlisted, closely-held company with about 65% of shares held by two Tata Trusts, i.e. Sir Dorabji Tata Trust and Sir Ratan Tata Trusts and 18.5% of the company's shares are held by the single largest shareholder, i.e., Shapoorji Pallonji Mistry group to which Cyrus Mistry belongs. Remaining as much as 12% is held by various Tata companies and about 3% is held by individuals.
Let's answer the above questions by critically analysing the Tata Sons Case.

How can a chairman be removed?
The pivotal point one needs to understand is, who is the chairman of the company, is it the director or a key managerial personnel (KMP)? Or an entirely different person. Interestingly, Companies Act, 2013 does not define the term "Chairman".

The person who leads the board of directors is known as the chairman. This person has the authority to call and lead meetings, sign documents and represent the company in public. He is generally a director of a company but he may or may not be a KMP. He can be an executive or non-executive director or even an independent director.

In the instant case, Tata Sons' board has only replaced Mr. Cyrus Mistry as the "chairman", while he continues to be a director of the company but he has been re-designated as 'non-executive director'. However, he still continues to be Chairman and non-executive director of various group companies in which Tata Sons doesn't hold majority.

A non-executive director is a member of a company's board of directors who is not part of the executive team. A non-executive director typically does not engage in the day-to-day management of the organisation, but is involved in policy making and planning exercises.
Although the Act envisages roles and functions for a chairman of a company, it does not stipulate a precise mechanism for appointment and removal of a chairman. Companies through their own Articles of Association (**AoA**) sets down the procedure for appointment and removal of chairman.

The removal process relating to a chairman is typically governed either by the AoA of a company or the terms of the contract by virtue of which he is appointed. The board has unfettered power to remove the chairman by passing a resolution backed by a majority vote unless the articles provide otherwise. Further, the board is under no statutory obligation to provide any reason at the time of removal of the chairman.

While press reports state that sufficient advance notice was not given to Mr. Mistry and this item was listed in the agenda for the board meeting as part of "other items".

What disclosure norms Tata Sons should have been adhered for the removal of Cyrus Mistry?
Incidentally, Tata Sons is an unlisted public company, which enabled it to act without complying with the highest levels of corporate governance practices applicable to listed companies. As per such practices, the board should discuss the matter and provide the reason for removal and give necessary opportunity to the chairman to represent his case.

For private companies and unlisted public companies, the chairman does not have any statutory right to represent his case before the board or to assert a defence. Since Tata Sons is an unlisted company, it does not require to adhere to a slew of corporate governance norms or SEBI regulations.

What are the remedies available to a Chairman who is removed in this manner?
A decision of removal can be challenged if it is not in consonance with terms of his appointment contract or if it violates the provisions of AoA.

Secondly, an action can be brought for oppression and mismanagement under section 241- 246 of the Companies Act, 2013. Any shareholder holding 10% of the shares of a company (in this case the Shapoorji Pallonji Mistry group satisfies the requirement) can bring an action before the National Company Law Tribunal (NCLT) on the ground that the affairs of the company are being conducted in a manner "prejudicial or oppressive" to a shareholder, or that a material change has taken place in the management or control of a company, which is likely to cause prejudice to shareholders. The NCLT possesses wide-range of powers to pass various kinds of orders in an action involving oppression and mismanagement.

Thirdly, by the virtue of being an unlisted company the Tata Sons does not attract the principles of corporate governance prima-facie but nonetheless, the fact that it is a holding company to a large number of listed companies within its fold . So it no longer remains the matter only about Tata Sons but involves the interest of every stakeholder of all the listed companies falling within its umbrella. Therefore, the conduct of affairs by the Tata Sons board has a massive impact on the governance of all of those listed companies. Keeping this in mind, even if the board of Tata Sons legally replaced the chairman, the manner in which this was achieved is certainly not in consonance with basic principles of corporate governance.

However, even if, in the instant case, there is a strong ground that proper procedures were not followed while dislodging him as Chairman, challenging that will not serve any purpose. The Courts could rule in his favour and reinstate him as Chairman but it will not help so far as the next time round Tata sons board would follow procedures and oust him.

Caveat (as a tool for litigation strategy)
In the instant case, the Tata Sons have filed three caveats in Supreme Court, Bombay High Court, and NCLT. A caveat is filed under Section 148A of Civil Procedure Code. If someone apprehends that a legal proceeding may be filed against him or her, filing a caveat ensures that no temporary measure will be granted by the court without giving him or her a notice. Once such a petition is filed, the caveator (the one who files the caveat) is sent a notice of the day of hearing of the application. The time period of validity of such petition is 90 days only. In the absence of a caveat, there is a risk that a third party may initiate a proceeding and claim an *ex parte* interim relief (i.e. without an opportunity to present their case) against him or her.

Conclusion:
There is no specific legal provision under the Companies Act, 2013 for removal of Chairman of the Board. The removal process relating to Chairman is governed either by Articles of Association of the Company or the terms of the contract by virtue of which he is appointed. The board has power to remove the Chairman by passing a resolution if Articles of Company does not provide otherwise.

At last, For General knowledge, an interesting fact to know.:
The first Director Identification Number (DIN) was allotted to Mr. Ratan Tata and his DIN is 00000001.

Web Yatra

Utkarsha Jagdale, B.Com, L.L.B, C.S (Professional)
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Train your mind.....!!!

The next best thing to knowing something is knowing where to find it **.. Samuel Johnson**

So let's know the new website here www.trainingindustry.com which will give us spotlight on the latest news, articles, case studies and best practices within the industry and even they train professionals to get the information, insight and tools needed to more effectively manage the business of learning.

Website under which topic includes leadership, e-learning, out sourcing, workforce development as well as professional education and many more. Training industries online publication a platform for training leaders to explore what's trending in training and update and enhanced knowledge by accessing most up-to-date information in the training industry by referring magazines.

Whereas it also provides various topics to support the exchange of information for the benefit of training leader, it can be both way our own resources and member submitted articles, case studies, white papers and even a research paper. Webinar features give us insight of top leaders thought and even we can utilize new tips, tricks, solutions and resources to improve our skill as well as for companies benefit.

Websites gives us knowledge platform as it provides courses like **Certified Professional in Training Management (CPTM)** a course which provides specialized credential focused on the role of the business leader and the skills needed to manage business and training performance.

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Confederation of Indian Industry

ICSI-MYSORE CHAPTER & CII-MYSORE

Jointly welcome you for the Two Days' Seminar On

GUARDIANS OF GOVERNANCE – THE BOARD AND KMPs

Date: 03rd & 04th February, 2017

Time: 9.30 a.m. to 5.00 p.m.

Venue: Hotel Rio Meridian, New Sayyaji Rao Road, Mysore

Registration Fees
(Including Service Tax)

Members of ICSI & CII: Rs.3,500/-
Students of ICSI: Rs. 2,500/-
Corporate Delegates: Rs.3,500/-

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Account No.: 64090481215
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Bank Name: State Bank of Mysore
Branch: Metagalli Industrial Area Branch

Covering

Rights and Duties of Directors, Raising of funds, Borrowings, Board Evaluation etc.

MEMBERS
PCH - 08

STUDENTS
PDP - 16

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Living Room…

Sharing and caring

Once there was a business man who used to go for a walk by the lake. There was an elderly woman who would sit there with a metal cage. In the cage, there were few turtles. He was so curious about what she does with them. One day he went to ask her about the turtles. He saw, three turtles in the cage and one was on her lap. She was scrubbing that with a spongy brush.

So he asked her what she was doing. She said as these turtles are in the water all the time there will be algae and scum on their shell and so she is cleaning them. Also she said this was her way of relaxing and making difference for those little guys.

He said, " don't you think that it does not make a difference to them as they live in the water all the time You could have spent your time differently where it makes difference".

So she replied," may be if these turtles can speak they would have told you that I just made all the difference in the world".

So the moral is, ***you can change the world, may not be all at once but one person, one animal, and one good deed at a time. Wake up every morning and try to do one good deed. It surely makes a difference***

Words worth million

The Man, who works for others, without any selfish motive, really does good to himself

Ramakrishna Paramahamsa

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e-Tools for the Professionals

iAnnotate – IOS application for Smart Phones and Tabs:

iAnnotate is a PDF reader and annotation tool that provides more power than most annotation application in IOS platform. This application is useful who want to go paperless because it makes it easy to open documents from email, fill out forms, sign contracts, make notes and mark documents through highlighting or underlining. Application gives option of Undo, Redo or Erase. This application can import Word and PowerPoint documents and it can convert websites into PDF documents. Application supports major of the documents types like PDF, DOC, XLS, PPT, IMAGE and Web as well. We can access the documents through iCloud Drive, Dropbox, Google Drive, One Drive, Box etc by using this application.

Specification:

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2. Required IOS- 6.0 and up
3. Current version – Version 4

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Brainy Bits

GST is payable at the time of receiving advance for Goods or Services. The exception to this rule is given in the definition of consideration u/s 2(28) of Draft Central Goods and Services Tax Act. The proviso to that section is as under:

"Provided that a deposit, whether refundable or not, given in respect of the supply of goods or services, shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply."

Let us take an example. A takes on rent the premises of B for a rent of Rs. 1,00,000 per month by paying a refundable deposit of Rs. 20,00,000 on 1st April 2017. On the request of A, B applies the deposit to the extent of Rs. 1, 00,000 on 30th September 2017 towards rent due for the month of September 2017.

The question is, what will be the effective date on which GST is payable by B? Is it 1st April 2017 when he had received the 'deposit ' or 30th September 2017 when 'applied ' the deposit towards rent ?

Your responses with reason should reach us by before the end of this month.

I&E Law Café – 35

Sharath Mahendra Kumar B.Com, MBA, LLB MPhil, PGDMM. (ACS, LLM) Bangalore

Termination on the grounds of non –performance! its tenability

An Organization's success depends on wide variety of factors such as its products & services, technology, brand, its reach to targeted customers, ability to forecast future business trend, capacity to ward-off hostile competitors, potential to create value to its stakeholders in the form of wealth maximization etc. All these factors to get transformed into reality needs one important input i.e. "Highly Energetic, Motivated & Performing Employees".

Needless to say that high performing organization only survive in the stiff competitive business world but at the same time it throws up the challenge of having performing employees & if in case an employee is found to be non-performing, how do we handle such situations?. Whether to retain such employee or give him chance for improvement or to terminate his services, what if the decision is to terminate the services, will such move by the Organization tenable in the eyes of law etc.

To amplify these factors, as icing on the cake, the recent judgment of the Madras Labour Court ordering for reinstatement of an HCL Software Engineer with full back wages whose services were terminated on the grounds of non-performance by the Company treating the said engineer as "Workman" has really made the IT / ITES / Technology based Companies to revisit their employee performance appraisal system & its feedback documentation mechanism.

With these dilemmas, the questions which spring up in the mind of any HR professional or for that matter any Organization are;

1. Can an employee's service be terminated on the grounds of non-performance?
2. What if an employee gets qualified as "Workman" under Section 2(s) of the Industrial Disputes Act, 1947?
3. Will non-performance be treated as "Misconduct", if no, under what scenarios, can the non-performance be treated as "Misconduct"?
4. Is there a need to conduct a "Domestic Enquiry" before terminating the services of an employee on the ground of non-performance?
5. Will the termination on the ground of non-performance be treated as "Retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947?
6. What are relevant provisions of the applicable law which can be invoked in these scenarios?
7. What should be the ideal process to be followed for termination of the services on the grounds of non-performance – be it "Workman" or "Managerial or Supervisory" category of employees?

Here comes the need for understanding with certainty the process to be followed & factors to be mindful of while terminating the services of an employee on the ground of non-performance.

"It is an inherent legal right of a Master (Employer) to employ a Servant (Employee) who Performs up to his expectations; As such, he is at liberty to terminate the services of non-performing servant subject to conformity with the terms of the contract".

Must Know!

1. Evaluation of the term "Performance" is highly subjective.
2. Non-performance by an employee is not a "Misconduct" unless it is deliberate.
3. Non-performance is not one of the matters that is provided under the model standing orders under the provisions of the Industrial Employment (Standing Orders) Act, 1948. Hence, Non-Performance cannot be treated as "Misconduct" unless it is deliberate & done in a concerted manner.
4. Effort shall be made to evaluate the "Performance" as objective as possible.
5. Expectation in the form of performance objectives should be set at the commencement of the year.
6. Interim responses on performance should be given. (Email or hardcopy).
7. Fair opportunity with genuine intent to improve, to be offered to non-performing employee.

Categorization of Employee:

For the purposes of termination on non-performance grounds, employees can be grouped under two categories:

1. Managerial & Superintending Staff (M&SS):

An M&SS employee is the one who basically works in managerial & supervisory functions and does not fall under the category of workman as defined under Section 2(s) of the Industrial Disputes Act, 1947.

2. Workman:

A Workman is one who is as defined under Section 2(S) of the Industrial Disputes Act, 1947 and who is not presently performing the role of M & SS.

A. Process of Termination for M & SS:

- Appraisal of employee performance as per set standards of the Company.
- Interim performance feedback – ideally to be on email or in hardcopy in writing & duly acknowledged.
- Communicating clearly about areas where performance is not matching objectives set.
- Opportunity for performance improvement extended in the form of Performance Improvement Plan (PIP).
- PIP document to clearly describe the objectives set, performance delivered, shortcomings identified & reasonable timeline within which performance needs to be improved.
- PIP document to be in hardcopy duly signed by both Employer & Employee or an e-copy duly acknowledged.
- In all stages, ensure without any exceptions that employee under question has duly acknowledged all the communication.
- If no improvements shown, record the same in writing after due evaluation of performance & communicate to the employee who has to acknowledge the same.

Now, Employer has two options:

1. Terminate the service with attaching stigma of non-performance. There should be a memorandum of performance assessment which captures the details of the non-performance annexed to the letter of termination.

2. Termination by invoking the principle of "Termination Simpliciter" – as per the provisions of the Indian Contract Act, 1872 without attaching the stigma of non-performance.

Note:

1. *In either of the scenario referred i. & ii above, notice or notice in lieu of pay should be extended unless there is a clause in the letter of appointment that states "Services can be terminated without any notice or pay in-lieu thereof, if the performance is found to be unsatisfactory".*
2. *No need to conduct domestic inquiry.*
3. *Termination of an M&SS category employee on the grounds of non-performance will not attract the provision of Section 2(oo) & 25H of the ID Act, 1947 as the said category of employees are not "Workman" under Section 2(s) of the said Act.*

B. Process of Termination for Workman:

- Reference shall be made to certify SO's, if there is a clause on "Non-Performance".
- If yes, under what circumstances a "Non – Performance" is construed as "Misconduct'.

a. Deliberate Non-Performance:

If the Management is convinced that such non-performance was deliberate amounting to "Misconduct", then,

- Supervisor or concerned Manager of such workman to submit a report of non-performance to HR Manager.
- Issue show cause cum charge sheet to the workman under question.
- If the cause shown is acceptable, charges may be exonerated with warning.
- If the cause shown is non-satisfactory – domestic enquiry to follow.
- Principle of "Audi Alteram Partem" (Hear the other side) & Natural Justice shall not be compromised under any circumstances.
- Termination of the services with formal letter of discharge with intimation to Trade Union, if existing.

b. Non-Performance: when not deliberate:

- Follow the process laid down for M &SS and
- Retrenchment compensation should be paid as laid down under Section 25F of the Industrial Disputes Act, 1947 – Case Law: State Bank of India Vs. Shri N.Sundra Money – 1976 – SCR (3) 160

A flawless understanding of the above discussion, will not only ensure that the process of termination on the ground of non-performance is compliant in all respects but also assures that the Company is not put into an embarrassing situations as witnessed in the M/s.HCL Technologies case.

Would be glad to take any questions or clarifications that may be needed on this writeup. Author can be reached at,

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News Room

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EXPRESS NEWS

- ✓ SEBI allows celebrity endorsements in MFs; issues new advertisement code
- ✓ FM likely to unveil GST timeline, State compensation corpus on Feb 1
- ✓ TCS boss N Chandrasekaran is the new Tata Sons Chairman
- ✓ Bharti Airtel to spend $441 million to set up payments bank
- ✓ Creator of Android Andy Rubin to come up with a new phone
- ✓ Modi unveils schemes for Housing Loans, Farmers & Pregnant Women

Bajaj Auto achieves BS-IV compliance for bikes, three wheelers

Bajaj Auto said its entire product portfolio meant for domestic sales, including motorcycles and three wheelers, now conform to BS-IV emission (the standards instituted by the Government of India to regulate the output of air pollutants.)

SEBI to allow mutual funds to invest in REITs, InvITs

In a move aimed at boosting investor interest in alternative investments mutual funds will be allowed to invest in real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) with a cap of not more than 5 per cent of its net asset value in units of a single issue of REIT or InvITs

WhatsApp denies encrypted messages can be intercepted

WhatsApp has denied reports that encrypted messages on its platform can be read or intercepted, saying that since April 2016, WhatsApp messages and calls are end-to-end encrypted by default. Mukesh Ambani to invest Rs 30,000 crore in Reliance Jio Reliance Industries will spend another Rs 30,000 crore to enhance the network coverage and capacity of Reliance Jio Infocomm, taking the total investment in the telecoms venture to more than Rs 2 lakh crore. The company will raise the funds through a rights issue of optionally convertible preference shares

In a first, Air India to reserve 6 seats for women on domestic flights

In a first-of-its-kind move in the aviation industry, national carrier Air India will reserve six seats for women on its flights operating on domestic routes from next week.

Modi government s new power plan: Heavy electricity users will now pay lower tariffs

In India, power consumers have always been paying higher bills for higher consumption. Now It s time the country doles out incentives for high power consumption, a committee constituted to advise the government on ways to increase electricity demand.

Regulatory Updates

Compiled by:

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CUSTOMS & FTP

Notifications/Circulars/News

Rate of exchange of conversion of foreign currency WEF 04th November, 2016 notified vide Notification No.136/2016-Customs (N.T.)

No.136/2016-Customs (N.T.) dated 03/11/2016

CBEC notifies importers who can pay deferred payment of import duty

No. 135/2016-Customs (N.T.) dated 02/11/2016

CG notifies Deferred Payment of Import Duty Rules, 2016

No. 134/2016-Customs (N.T.) dated 02/11/2016

CBEC amends Custom, Excise & Service Tax Drawback Rules WEF 15.11.2016

No. 132/2016 - Customs (N.T.) dated 31/10/2016

Revised procedure for clearance of imported metal scrap

No. 48/2016-Customs dated 26/10/2016

Rebate of State Levies on Export of Garments

No. 47/2016 Customs dated 20/10/2016

Case Law

Simultaneous penalty on firm & partners restricted to abetment

M/s. Amritlakshmi Machine Works Vs The Commissioner of Customs (Import) (Bombay High Court)

Charges having no nexus with import not includible in AV of imported goods

M/s Schwing Stetter (India) Private Limited Vs Commissioner of Customs (Imports) (CESTAT Chennai)

Ministry of Corporate Affairs

Notifications/Circulars/News

Removal of names of companies from the Register of Companies- clarification regarding availability of Form STX on MCA-21 portal

General Circular 16/2016 dated 26.12.2016

Relaxation of additional Fees and extension of last date for filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 eforms under the Companies Act, 2013 till 29th November 2016.

General Circular 12/2016 dated 27.10.2016

In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 33, for sub-rule (2), the following shall be substituted, namely:- (2) subject to the provision of sub-rule (1), for effecting the conversion of a public company into a private company, a copy of order of the Tribunal approving the alteration, shall be filed with the Registrar in Form No.INC-27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal . 3. In the principal rules, after rule 37, the following rule shall be inserted, with effect from 2nd October 2016, namely:- 38. Simplified Proforma for Incorporating Company Electronically (SPICE) (1) The simplified integrated process for incorporation of a company in Form No. INC-32 alongwith e-Memorandum of Association in Form No. INC-33 and e-Articles of Association in Form No. INC-34. (2) The provisions of sub-rule (2) to sub-rule (13) of rule 36 shall apply

mutatis mutandis for incorporation under this rule. Provided that for the purposes of references to form numbers INC-29, INC-30 and INC-31 in rule 36 with Form No. INC-32, Form no. INC-33 and Form No. INC-34 shall be substituted respectively. 4. In the principal rules, after rule 38 as so inserted these rules, the following rule shall be inserted with effect from 1 st November, 2016, namely:- 39. Conversion of a company limited by guarantee into a company limited by shares (1) A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares. (2) The company seeking conversion shall have a share capital equivalent to the guarantee amount. (3) A special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.

Companies (Incorporation) fourth Amendment Rules, 2016 dated 01.10.2016

In exercise of the powers conferred by sub-section (1) of section 210A of the Companies Act, 1956, (1 of 1956), the Central Government hereby constitutes an Advisory Committee to be called the National Advisory Committee on Accounting Standards, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the said Act or the Companies Act, 2013 (18 of 2013) as the case may be

S.O. 3118(E) dated 03.10.2016

CENVAT

In view of impending implementation of Goods & Service Tax (GST), CBEC has decided that Annual Return for CE & ST assessees for the year 2015-16, due on 30.11.2016, shall not be required to be filed.

Circular No. 1050/38/2016-CX dated 08/11/2016

Case Law

Activities relating to spectacles, frames & tagging of jewellery does not amount to manufacture

M/s Amazon Seller Services Private Limited, Bangalore (Authority For Advance Rulings)

Tax Laws passed by Legislature not open to judicial review

Amin Merchant V/S Chairman, Central Board Of Excise & Revenue & Ors. (Supreme Court of India)

Activity of mere Loading software in a device does not amount to manufacture

Re. M/s. Nucleus Software Exports Ltd. (Authority For Advance Rulings-Central Excise, Customs and Service Tax)

Mere Crushing of Coal does not amount to manufacture

Re. M/s. Dhunseri Petrochem. Ltd. (Authority For Advance Rulings - Central Excise, Customs & Service Tax)

Processing of steel scrap into blended steel scrap amounts to manufacture

Re T.T. Recycling Management India Private Limited (Authority for Advance Rulings)

GST (VAT, Sales Tax and Entry Tax)

The Central Government hereby appoints the 16th day of September, 2016 as the date on which the provisions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20 of the said Act, shall come into force

S.O. 2986(E). - (16/09/2016)

In exercise of the powers conferred by article 279A of the Constitution, the President hereby constitutes the Goods and Services Tax Council

S.O. 2957(E) - (15/09/2016)

Goods and Services Tax Council provisions notified wef 12.09.2016

S.O. 2915(E) - (10/09/2016)

Service Tax

Notifications/Circulars

Seeks to amend Service Tax Rules, 1994 so as to prescribe that the person located in non-taxable territory providing online information and database access or retrieval services to `non-assesse online recipient', as defined therein, is liable to pay service tax and the procedure for payment of service tax.

No. 49/2016-Service Tax dated 09/11/2016

Withdrawal of ST Exemption on online information & database access or retrieval services

No. 47/2016-Service Tax dated 09/11/2016

The Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994 but for the said practice, on the service of transportation, by educational institutions as defined in clause (1) of section 66 D of the Finance Act, 1994(32 of 1994) during the said period, to students, faculty and staff of such institutions, shall not be required to be paid.

No. 45/2016-Service Tax dated 30/09/2016

CBEC amends Service Tax Return Form ST-3

No. 43/2016-Service Tax dated 28/09/2016

The Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994, on the service by way of advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961 (43 of 1961) in the said period, but for the said practice, shall not be required to be paid.

No. 42/2016-Service Tax dated 26/09/2016

ST Exemption on one time upfront amount to State Govt Industrial Development Undertakings

No. 41/2016-Service Tax dated 22/09/2016

Case Laws

Honorable Delhi High Court has Declared Rule 5A(2) of the Service Tax Rules, as amended, to the extent that it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand, as ultra vires the Finance Act and, therefore, struck it down to that extent.

Mega Cabs Pvt. Ltd. Vs. Union Of India & Ors. dated 03.06.2016

The assessee cannot be forced to pay entire disputed amount when the assessment proceedings are pending. The department can only take action to ensure compliance of order passed by the Court.

Prosper Build Home Pvt. Ltd. V/s. Union Of India

Service Tax on manufacture of alcoholic liquor for human consumption on job work basis with effect from 1st June 2015 is Constitutionally Valid

Carlsberg India Private Limited Vs. Union Of India & Ors.

The Court (i) upholds the constitutional validity of Section 65 (105)(zzzzv) read with Section 66E (i), Section 65 (22) of the Finance Act 1994 as well as Rule 2C of the Service Tax (Determination of Value) Rules, 2006; (ii) strikes down Section 65 (105) (zzzzw) of the Finance Act 1994 pertaining to levy of service tax on the provision of short-term accommodation and the corresponding instructions/circulars seeking to operationalise the levy as unconstitutional and invalid.

Federation Of Hotels And Restaurants Association Of India And Ors. Vs. Union of India And Ors.

Service Tax Excess payment can be adjusted in Subsequent months not restricted to succeeding month only

M/s. Schwing Stetter (India) Pvt Ltd Vs Commissioner of Central Excise, LTU

It was held that a revenue sharing arrangement by creating a partnering person shall be liable to service tax if the partners are providing taxable service to one another in execution of partnering purpose even if the purpose of creating partnering person is non-taxable.

Re M/s Choice Estates and Constructions Ltd (Authority for

Article

CS. RAVISHANKAR S

Practicing Company Secretary, ASR & Co.,
Lead Advisor (Corporate Laws), Jayanth Pattanshetti Associates - Advocates

Continued from Nov 16 Edition

EMPLOYEMENT LAWS AND DATA PROTECTION – A GLOBAL PERSPECTIVE

On account of wide spread use of the Social Media by the employers & employees community in India, it becomes important to understand how social media could be us in a manner serving the best interest of the employers and at the same time not attract any legal consequences. The primary focus of this article would be to understa the attitudes of the global employers towards the use of employee Data collected through the social media & otherwise, legal pitfalls in their use and the internatio practises

Employee relationships & DATA Protection in India when compared with Singapore, US & the UK

INDIA	SINGAPORE	US	UK
DATA Protection: An employer is required to obtain employee consent prior to collection of SPDI (Sensitive Personnel Data and information). Employees have the right to withdraw such consent at any point in time and require that the SPDI be returned or destroyed. Employees shall also have the right to review the information provided and ensure that any personal information, SPDI or other information found to be inaccurate or deficient is	The PDPA (Personal Data Protection Act) requires organisations to notify the employee of the purposes for which it intends to collect, use or disclose personal data and obtain the consent of the employee for the same. However, some exceptions to this requirement are available, for example, where the collection, use or disclosure of an individual's personal data is: (i) necessary for `evaluative purposes' (i.e. determining the	Employee data protection laws in other countries are often much more restrictive, though the U.S. is trending toward more data protection obligations with an assortment of data protection laws that regulate the collection, use and transfer of employees' personally identifiable information (PII) and personal health information (PHI). These laws are not limited to protecting active employee information, so employers'	Employers must comply with the Protection Act 1998 (DPA) processing employee data. In part data must be processed fairly lawfully, for specified and purposes, and adequate s measures must be in place. The restrictions on transferring data c the EEA. The Information Commis can impose fines of up to £500,0

corrected.	suitability, eligibility or qualifications of the individual for employment; promotion or continuance in employment; or removal from employment); or (ii) reasonable for managing or terminating the employment relationship. An employer which has sufficiently provided a general notification to employees on the purposes for which their personal data may be collected, used and disclosed need not notify employees of the same purpose prior to each time that it engages in such activities. Employees may request access to their personal data that is under the employer's possession or control (access request). An employer need not provide the requested personal data if it is in respect of one of the exceptions in the Fifth Schedule of the PDPA (e.g. it is opinion data kept solely for an evaluative purpose). In addition, an employer shall not provide access where the provision of such data could reasonably be expected, amongst others, to threaten the safety or health of another individual, cause harm to the safety or health of the requestor, or to reveal personal data about another individual.	obligations extend to former employees, job applicants, independent contractors and other non-employee groups whose personal information they may obtain (such as customers). There are five primary federal data protection laws that impact the employment relationship: the Health Insurance Portability and Accountability Act (HIPAA), which dictates under what circumstances and to whom PHI may be released; the Genetic Information Nondiscrimination Act (GINA), which covers genetic information; the Americans with Disabilities Act (ADA), which limits when an employer may obtain medical information, how such information may be used, and disclosure of such information; the National Labor Relations Act (NLRA), which prohibits employers from interfering with workers' rights to engage in concerted activity, including such activity through social media, and the Fair Credit Reporting Act (FCRA), which applies to those who use consumer reports, including background checks conducted on applicants and employees. Another federal law, the Privacy Act, limits the type of information that federal government employers may keep on their employees. Additionally, most U.S. states have enacted some form of data protection legislation that often impacts the employment relationship, though these states impose a wide range of requirements. Almost all states have enacted laws requiring notification of security breaches involving PII and many have enacted laws requiring companies to destroy, dispose, or otherwise make PII unreadable or	serious breaches of the DPA. Emp are entitled to make a subject request (subject to payment of fee). Employers then have 40 days the employee whether their pe data is being processed, the purpo which data is processed and to whc disclosed, and to provide a copy personal data that is held unles would involve "disproportionate eff

		undecipherable. Some states have laws providing expanded protections to PHI. More recently, a significant number of states have enacted employee social media privacy laws.	
Pre-Employment Checks: There is no restriction upon the employer to carry out pre-employment checks. In case the employer collects employee's SPDI, (SENSITIVE PERSONNEL DATA & INFORMATION) the requirements of the Data Protection Rules need to be complied with which is clear that unless such information is required for a lawful purpose connected with a function or activity it cannot be collected. While dealing with the SPDI it becomes necessary for the employer to obtain the prior written consent of the employee, allow the employee to review & correct the information and maintain reasonable	An employer may collect, use or disclose the personal data of a prospective employee for the purposes of carrying out pre-employment checks, if the prospective employee is notified of such a purpose on or before such collection, use or disclosure, and gives his consent for the employer to do so. Alternatively, if the collection, use or disclosure of personal data for the purpose of conducting pre-employment checks falls within any of the exceptions under the Second, Third or Fourth Schedule to the PDPA (as applicable), or if the information is publicly available, the prospective employee's consent need not be obtained. In particular, the collection, use or disclosure of such personal data may be regarded as necessary for evaluative purposes.	There is no federal law requiring current or former employees' access to their personnel records. There are, however, federal laws regulating employee access to medical records, records of exposure to hazardous substances, and consumer reports. The Occupational Safety & Health Act (OSHA) authorizes employees who may have experienced workplace exposure to a toxic substance or harmful physical agent access to their medical records and records of such exposure. The Fair Credit Reporting Act (FCRA) grants applicants and employees access to their consumer reports, which is defined to include background check reports. Employee access rights to their personnel and medical records are guided by state law, and vary widely from state to state. In some states, employees have no legal right to these records. Many states, however, have some type of law authorising access to personnel and/or medical records and outlining the terms of such access, though various federal and state laws regulate the process for conducting such checks and how they may be used. A federal law, the Fair Credit Reporting Act (FCRA), requires employers to obtain written consent from applicants or employees before obtaining background reports from any company in the business of compiling background information. If an employer thinks it might	Employers can carry out pre-emplo checks, but it is good practice to lin to checking information provided candidate. More detailed vetting n appropriate where the role entails r the employer, clients, custome others. Criminal records checks c made through the Criminal R Bureau. Different levels of disclosu available depending on the nature job applied for, with more d disclosures available where canc will be working with childre vulnerable adults.

		take an adverse action against an applicant or employee because of something in a background report, it must give the applicant or employee a copy of the report and a notice of FCRA rights. Some states and even localities have their own laws that offer protections for screening applicants and employees similar to, or even greater than, those afforded by the FCRA. Various federal and state anti-discrimination laws prohibit checking the background of applicants or employees or using background report information when that decision is based on a person's protected status, such as race, national origin, color, sex, religion, disability, genetic information, age, or other characteristics protected under state law. An employer's neutral practice of disqualifying applicants or employees based on criminal or credit history may disproportionately impact minorities, and therefore violate these anti-discrimination laws if not job related and consistent with business necessity. Beyond this general anti-discrimination rule, the law varies by state on whether, and to what extent, employers may consider background check information especially criminal or credit histories in making employment decisions. Some states impose very few restrictions on inquiries into and use of an applicant's criminal or credit history, while others take a much more restrictive position. For example, in some states, employers are prohibited from checking applicant credit reports altogether or may be allowed to do so only for certain types of jobs. Some states prohibit employers from	

		asking about arrests, convictions that occurred beyond a certain time period, juvenile crimes, or sealed records. Some states permit employers to consider convictions only if the crime is job related, and others allow employers to consider criminal history only for certain types of jobs.	
Privacy During Employment: Indian law does not envisage any restriction on the employer's right to monitor employee emails, telephone calls or use of computer systems. As a best practice, surveillance rights and procedures are ordinarily built into the employee handbook/policy manual, to mitigate any privacy claims. While use of social media provides many benefits to employers, employers must be cautious of certain risk associated with this approach. Employers may have to think more strategically about the entire recruitment process & the DATA Collection and the employee's private life. Information that is feely available and acceeable in public domain or furnished under the Right to Information Act, 2005 is excluded from the ambit of SPDI. To that extent the employer is free to collect & use the information during & post-employment. As per Article 14 of the India Constitution, a citizen shall not be ineligible for or discriminated against in respect of employment on any grounds like religion, caste, race, sex etc... In addition to this article the Equal Remuneration Act , 1976 (ERA) prohibits discrimination on the basis of sex in matters relating to employment, hence care should be taken to ensure that use of information during employment obtained from social media for the purpose of hiring does not	Generally, an employer is entitled to monitor an employee's emails, telephone calls or use of the employer's computer system, insofar as the employee is notified of and consents to the purpose(s) of such collection of his personal data. Further, it may not be necessary to obtain the employee's consent before such monitoring, if this is for the purpose of managing or terminating an employment relationship, or necessary for any investigation or proceedings. The PDPA does not specifically allow or restrict the ability of an employer to control an employee's use of social media in or outside the workplace. However, the employer may control an employee's use of social media contractually, such as by providing for a social media policy which the employee is bound to abide by under the contract of employment Moreover, an employee would remain bound by a number of Singapore laws and regulations in relation to his use of social media, whether in or outside the workplace. These could include, amongst others: the laws of intellectual property and/or confidentiality; defamation; harassment; and internet content regulation.	Generally, employer are allowed to monitor e mails of the employees, with some exceptions. An employer is usually entitled to monitor employees' use of its email and computer system if it owns the devices and runs the network. Employee monitoring has, however, become more complicated by the surge of employees utilising personal devices for work activities. Various federal and state laws prohibit unauthorised access to employees' personal electronic devices and personal email even when accessed on the employer's device and network. Generally speaking, a broad workplace usage policy (particularly one that speaks specifically to these Bring Your Own Device and personal email issues) serves to protect an employer's right to monitor activity on its network. An employer planning to monitor should maintain such a policy and obtain employee acknowledgments that they do not have a reasonable expectation of privacy when using the employer's devices and network. Some employees may have additional protection from email and computer monitoring, such as those in the public sector who may have constitutional privacy rights and those subject to union contracts that may restrict the	Monitoring may be permissible if t a good reason for it and it proportionate response to the prob seeks to address. An employe normally need to conduct an i assessment, weighing up the purp monitoring against the adverse imp employees or others, to judge w monitoring is justified. If ele communications are being inter the employer will also need to mak that it complies with the Regulat Investigatory Powers Act. Misuse of social media in or outsi workplace may amount to misco which an employer can deal with normal way through its disci procedure. Whether a dismissal will depend on the damage or po damage to the employer s repu whether the employer has a clear on the issue, and whether dismi proportionate (as well as whether procedure has been followed).

lead to violation of ERA.		employer's right to monitor. An employer's right to monitor employee telephone calls is more limited. Under federal law, employers may monitor employee calls made in the ordinary course of business, but cannot listen to or record calls it knows are of a personal nature. Some states have additional restrictions on monitoring employee telephone calls, such as requiring employers to inform the parties to the call that the conversation is being recorded or monitored. Generally speaking, an employer may limit employees' use of social media during working hours and how employees use social media regarding the employer's business. For example, an employer usually has the right to discipline an employee who violates company policy by harassing other employees on social media or disclosing company proprietary information on social media. But, an employer's control over an employee's use of social media is limited. Many state and local laws prohibit employers from disciplining employees based on lawful, off-duty activity on social networking sites unless the activity implicates the employer's legitimate business interest. Additionally, the National Labor Relations Act (NLRA) protects employees' rights to engage in concerted activity, which includes such activity on social media. The NLRA applies to union and non-union employers alike, so all U.S. employers must be mindful of their social media policies and practices so as to not infringe upon these NLRA rights. Employer access to private social media content is also limited. Federal law prohibits	

		employer access to private social media accounts without consent from the employee or applicant. Many states have password privacy laws that prohibit employers from even requesting social media user name and password information from employees and applicants. These laws usually provide exceptions for employers when investigating workplace misconduct or complying with applicable law.	
The laws are silent on the employer's ability to control an employee's use of social media in or outside the workplace. That said, social media policies are gaining popularity and are being included as a part of employee handbooks/policy manuals.			
DATA Protection Post-Employment As per the Data Protection Rules, any SPDI so collected can be retained & used no longer than it is required for the purpose for which it was collected or as may be prescribed under the Law. It is also a good practise to conduct an Audit of the employee data at the time of exit to determine what data would be legitimately required and what data needs to be expunged. In case the data is required after the employee's exit then the employer must justify its requirement & its usefulness & also take the employee consent to retain & use such data.	Under Singapore law, restrictive covenants post-employment are prima facie void unless: (i) there is a legitimate interest that the employer seeks to protect; and (ii) they are reasonable in the interests of the parties and in the interests of the public. Restrictive covenants should be no wider than necessary to protect the legitimate interests of the employer & employee.	Most states follow the general rule that restrictive covenants are enforceable, provided they are necessary to protect a legitimate interest of the employer and are reasonably limited in duration, geographic scope, and the restrictions placed on the employee in pursuing his or her profession. The minority position held most notably by California prohibits the use of restrictive covenants in virtually all circumstances.	Employers will only be able to e covenants if they can show that the a legitimate business interest to p (such as confidential informati customer connections) and tha covenant goes no further than reas necessary to protect that interest. covenant is too wide in its sco duration, it will not enforceable. Restrictions usuall between three and twelve m depending on the seniority o employee and the nature of the ir to be protected.

[1] http://www.statista.com/stastictics/278407/number-of-social-network-uesrs-in- India/
http://blog.digitalinsights.in SPDI Rules
Information technology act & rules Equal Remuneration Act, 1976