



Judge 'meant'

Possibility of Proxy

Listing Agreement
- Amended



Events, Products and IP



Dear Readers,

Results of the Foundation Program, June - 2014 Session was announced during the month and I am pleased to congratulate *Mr. Prajwal Kumar M.N., foundation student of our Chapter, who has secured all India 23rd rank in the examination.* Best wishes to all other students who have cleared the exams.

During the month, Chapter had conducted a career awareness program and a session for discussion on draft Secretarial Standard for collecting views of the members. Chapter has planned to conduct seminars on the Companies Act, 2013 in the coming months.

39th Regional Conference of Company Secretaries is being held at Camelot Convention Centre Alleppy, Kerala on July 18-19, 2014. I join organizers in inviting all the members to participate in large number to make it memorable. For the month which was spent in following exiting football world cup matches, Congratulations to German Team on their winning the FIFA world cup!



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Leadership

Leadership has nothing to do with the title on your business card or the size of your office. It is not about how much money you make or the clothes you wear. Leadership is a philosophy. It's an attitude. It's a state of mind. And it's available to each one of us.

Here's an example. I spend a lot of my life on airplanes and traveling so I'm hard on my luggage. The handle on my carry-on luggage broke after my tour of Russia a few months ago (you have to put a visit to St. Petersburg on your list of places to visit before you die). Anyway, I take the piece in to Evex, a dealer in Toronto. The young man at the counter treated me wonderfully and within a few days, the handle was fixed. While in New York a week ago, the handle broke again. I assumed that I'd have to pay for the repair when I went back into Evex. Most business put clients through so many hurdles: if you haven't saved the receipt you are out of luck, if you don't know who did the initial repair we cannot help you etc etc. Well Evex is different. They just get it. They understand that without treating their customers well, there is no business.

When I explained that the handle broke again, the young woman at the counter – without a moment of hesitation – apologized for the problem I faced. She then said: "We will promise you that you will have your carry-on in perfect order within 3 days. And of course Sir, there will be no charge." No bureaucracy around needing the receipt from the previous repair. No hassles. No issues. Just great service, with a giant smile.

This woman showed leadership. She quickly diagnosed the problem, assumed personal responsibility and made the right decision. And she wowed her customer in the process.

What will you do to be the leader that you are destined to be, today?

Glass, Lake and Salt

The old Master instructed the unhappy young man to put a handful of salt in a glass of water and then to drink it. "How does it taste?" the Master asked. "Not good at all," spat the apprentice.

The Master chuckled and then asked the young man to take another handful of salt and put it in the lake. The two walked in silence to the nearby lake and when the apprentice swirled his handful of salt into the lake, the old man said, "Now drink from the lake."

As the water dripped down the young man's chin, the Master asked, "How does it taste?" "Good!" remarked the apprentice. "Do you taste the salt?" asked the Master. "No," said the young man.

The Master sat beside this troubled young man, took his hands, and said, *"The pain of life is pure salt; no more, no less. The amount of pain in life remains the same, exactly the same. But the amount we taste the 'pain' depends on the container we put it into. So when you are in pain, the only thing you can do is to enlarge your sense of things.... Stop being a glass. Become a lake!"*

Words Worth
Millions





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Judgment - Judge 'meant'

Directions from Apex Court to protect misuse of dowry law: Sec. 498-A of IPC

The Constitution of India has provided for separation of powers between legislature, executive and judiciary based on the object of its function. Judiciary has, time and again, delivered landmark judgments over different subject matters on constitutionality and fairness, be it on a legislation or on an executive act. Judges ensured protection of fundamental rights and human rights through their dynamic rulings and visionary thoughts. Judicial activism has helped to save millions from injustice being caused by legislative or executive actions.

On July 02, 2014, Hon'ble Judges of the Supreme Court, Shri. Chandramauli KR Prasad and Shri. Pinaki Chandra Ghose, while deciding **Arnesh Kumar V/S State of Bihar & Another** took an extra-mile and came-up with directions to save misuse of dowry law i.e., Sec. 498-A of Indian Penal Code 1860 ['IPC'] against husband and their relatives. The Judges have made an interesting note that the rate of charge-sheeting in cases under Section 498-A of IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads of Crime.

While deciding this matter, with an endeavour to ensure that police do not arrest accused unnecessarily and Magistrate do not authorise detention casually under Sec 498-A of IPC, Judges have provided eight directions [can be named as '***ashtha sootras***'] to protect against arbitrary act on the part of the Police and Magistrates.

Summary of eight directions are:

1. All State Governments to instruct police not to automatically arrest U/S. 498-A of the IPC and satisfy

themselves for necessity of arrest with parameters laid down in Sec 41 of Cr.PC;

2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) of Cr.PC;
3. The Police to forward the filled-in checklist while producing the accused before the Magistrate for further detention;
4. The Magistrate shall peruse the report furnished by the police and only after recording its satisfaction, authorize further detention;
5. The decision not to arrest an accused shall be forwarded to the Magistrate within two weeks from the date of filing of case and SP of the district can extend this time for the reasons to be recorded in writing;
6. Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks and SP of the district can extend this time for the reasons to be recorded in writing;
7. Failure to comply with these directions shall render the police liable for departmental action and also **to be punished for contempt of court** instituted before High Court having territorial jurisdiction; and
8. Authorising detention without recording reasons by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

With these strict directions from Hon'ble Supreme Court of India, let us hope the number of frivolous complaints for dowry harassment will get reduced! Click <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41736> to download full text of this judgment in pdf form.

You are welcome to share breakthrough, revolutionary and key judgments with beloved readers of the eMagazine.



Possibility of Proxy

Section 105(2) of the Companies Act 2013 states that in every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that member entitled to appoint a proxy and a proxy need not be a member. Prominent question on 'proxy' is where does the institution of proxies stands under new corporate law regime. According to first proviso to Section 105(1) a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. Unless there are poll, there will be no prominence for proxy like in the Companies Act, 1956. Section 107 says at any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands. Section 106(3) say, on a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

Section 108 empowers Central government to make Rules for electronic voting for passing of certain resolutions. Accordingly, Rule 20(1) enumerates companies where electronic voting shall take place. Every listed company or a company having not less than one thousand shareholders **shall** provide, to its members facility to exercise their right to vote at general meetings by electronic means. The term "shall" denote mandatory electronic voting in these companies. These companies shall use electronic voting for all kind of resolutions. These rules do not differentiate between ordinary or special business. The very nature of electronic voting facilitates a member of a company to vote on a resolution, to vote from anywhere. When a member can vote from anywhere, why will there be a need to appoint a proxy? Even though all companies need to permit appointment of proxies, members of companies under compulsory electronic voting, practically have no need to appoint.

Further, proviso to Rule 22(16) dealing with postal ballot under Section 110 of the Companies Act, 2013 suggest provisions relating to postal ballot shall apply to all companies having two hundred or more members. According to this Rule, postal ballot means voting by post or through electronic means.

As per Section 110 of the Act, every company shall transact businesses notified by Central Government through postal ballot only and not in general meeting. Companies may transact any business through postal ballot except:

- (i) ordinary business in an annual general meeting; and
- (ii) business in respect of which directors or auditors have a right to be heard at any meeting.

Rule 22(16) lists following item of businesses to be transacted only by means of voting through a postal ballot:

- a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
- b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
- c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
- d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;
- e) Issue of shares with differential rights as to voting or dividend or otherwise under sub clause (ii) of clause (a) of section 43;

- f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
- g) Buy-back of shares by a company under sub-section (1) of section 68;
- h) Election of a director under section 151 of the Act;
- i) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;
- j) Giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186.

Thus, combined reading of Section 110 of the Act and Rule 22 of the rules suggests that every company with two hundred or more shall transact certain items with postal ballot or through voting through electronic means and these company may transact all other special businesses also through postal ballot or through voting through electronic means. All other companies may also transact all its special businesses through postal ballot or electronic voting.

Section 110 of the Act specifically excludes all ordinary businesses and any business in respect of which directors or auditors have a right to be heard at any meeting form postal ballot or electronic voting in those companies. Section 108 being an independent provision does not

grant such an exception to listed companies and other companies with not less than one thousand members.

Combined reading of Section 108 and section 110 along with the rules suggests that only in following situations demand of poll may arise:

1. For all items of ordinary and special businesses to be transacted in general meeting of a company with less than two hundred members which has not opted for postal ballot or electronic voting;
2. Where a company with less than two hundred members, has selected some businesses to be transacted through postal ballot or electronic voting, in case of all remaining businesses, which are still being transacted in general meeting, demand for poll may arise; and
3. Where a company selected some businesses in addition to businesses listed in Rule 22(16), in case of all remaining businesses, which are still being transacted in general meeting, demand for poll may arise.
4. Any business in respect of which directors or auditors have a right to be heard at any meeting, whether or not such company has opted for postal ballot or electronic voting.

Career Awareness Program

Activities at Mysore Chapter

On 14.06.2014 Mysore Chapter of the ICSI organised a Career Awareness Programme at Mahajana PU College, Mysore. 180 students from various streams attended the programme. CS Pracheta M, Member of the Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. She also highlighted the importance of making the right career choice so as to be successful in life. Further, she explained on the role of a Company Secretary and importance of the profession of Company Secretaries in the changing economic scenario.

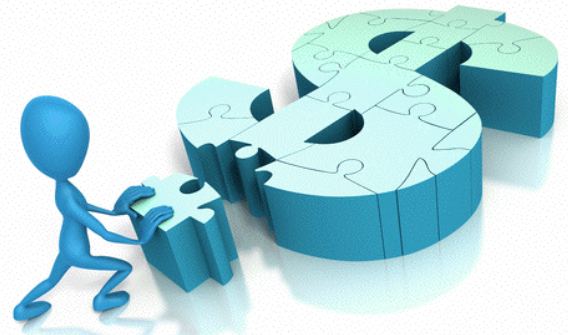
Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. CS Pracheta M also clarified the various doubts and issues that were raised by the participants and thanked the management for providing the Institute this opportunity. Program concluded with the vote of thanks by Mr. G Krishnaswamy, Principal, Mahajana PU College.





Strategic Cost Management

with reference to banking industry



Future plans

Looking to the future, more than three quarters of banking executives told us that they are not finished reducing their costs. At least 65 percent of bank executives said they will initiate further cost management actions—a level of cost reduction activity much higher than that of respondents from other industries. And going forward, nearly a majority of banking executives (49 percent) intends to reduce costs further by at least six percent, with some aiming for up to 20 percent or more in additional cost reductions. However, the motivation for upcoming cost management actions appears to be shifting: 70 percent of banking executives said that future cost reductions will be to enhance profitability. In contrast, respondents ranked “Survive Global Economic Downturn” as a rather distant third priority, possibly signaling renewed favor for long-term, strategic actions over short-term tactical maneuvers.

For most banks, return on equity in recent years has fallen from 25 percent to less than five percent. Institutions are now under severe liquidity pressures due to loan losses, often anemic organic growth, a tight credit environment and generally weak economy. High cost bases and inflexible, redundant operations are no longer acceptable.

To restore profitability as the economy rebounds, many banks recognize the need to be strategic with cost reduction efforts—and aggressive. By balancing short-term, tactical cost reduction initiatives with longer-term,

sustainable cost management programs, most banks can work to achieve cost reductions of 20 percent to 40 percent.

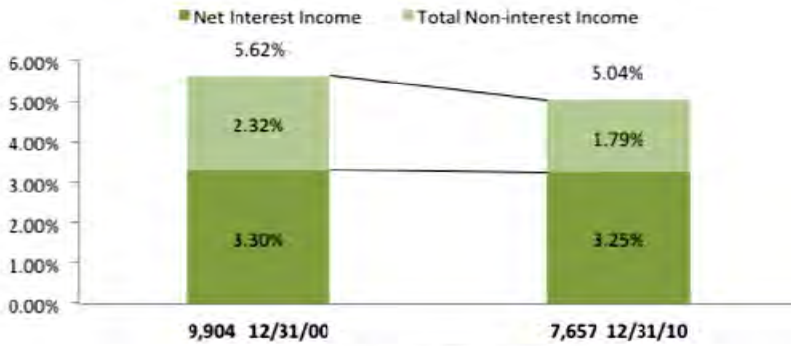
Unabated Pressure on Revenues:

Two data points do not a trend make. Nevertheless, the 10-year comparison of revenue as a percent of industry assets fairly reflects the continued overall decline in the industry’s ability to generate top line income. Using Federal Deposit Insurance Corporation, year-end Call Report data as a reference, a look at revenues finds top line revenues comprised of net interest income and non-interest income declined by 58 basis points compared to 2000 results. The 58 basis point decline is 10.3 percent of year 2000 revenues.

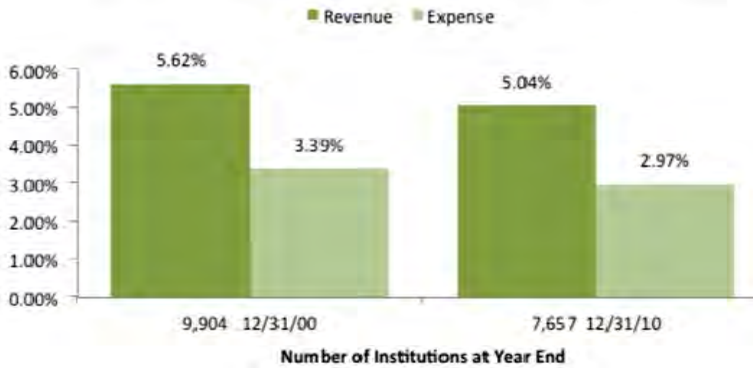
Myriad factors that unfavorably impact revenue have been discussed extensively and there is little to add to the ever-lengthening list of negative factors that have been impacting top-line income production. While the industry is working diligently to seek out new sources of revenue, there seems little doubt that overall revenue momentum is negative – and it is likely to stay that way, continuing the downward slide seen over the past 10 years.

The fundamental questions become: are the improvements that have been made adequate to offset future revenue pressure and, if not, what else can be done to improve efficiency?

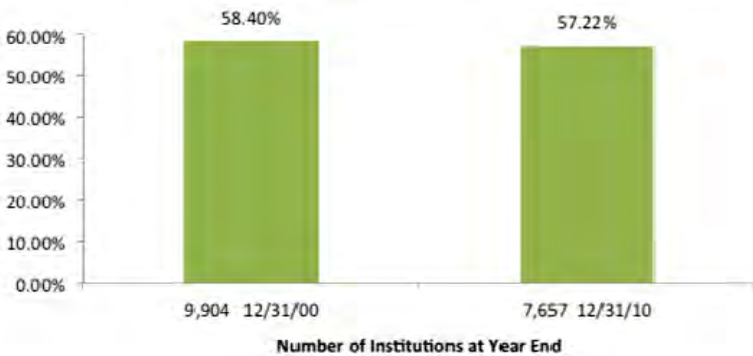
Revenue as Percent of Assets



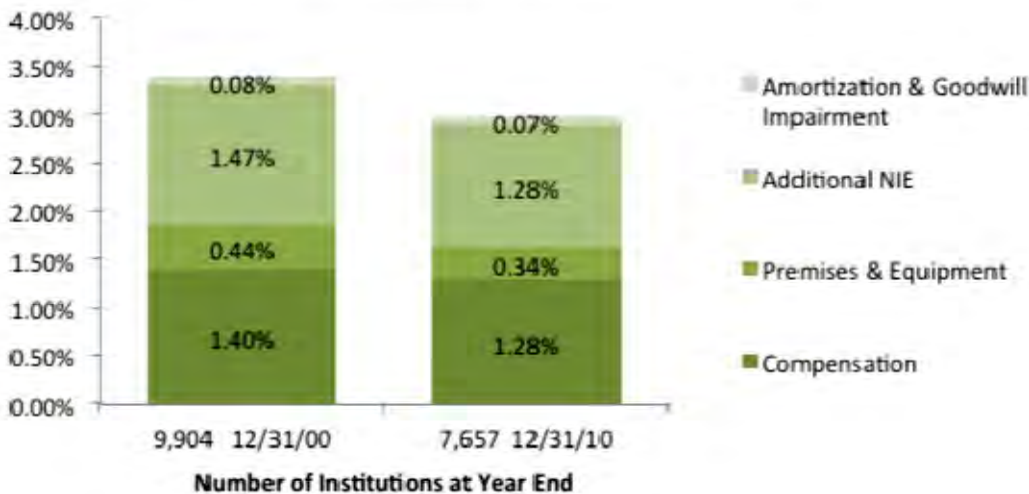
Revenue vs. Expense as a Percent of Assets 2000 vs. 2010



Efficiency Ratio All FDIC-Insured Financial Institutions



Non-Interest Expense as Percent of Assets



10 Years of Revenue and Expense Change:

If the past 10 years have proven anything besides how imperative sound credit policies and procedures are, it is the value of continuing to focus on cost control as a means of offsetting ongoing pressure on revenue. Were it not for reducing operating costs at a rate that outpaced revenue declines, profitability would have deteriorated even further than it did due to credit quality issues.

From a profit perspective, 2010 was another difficult year with industry return on assets (ROA) at just 0.66 percent. Had the industry not reduced operating costs at a pace nearly 20 percent greater than the decline in revenues, the year would have been even more difficult. Had expenses not declined by 42 basis points over the 10-year span, the industry's already depressed 2010 return on assets would have been cut by two-thirds.

Efficiency Ratio

The cost/income ratios for the two periods are seen in the following chart which shows a modest overall improvement in efficiency as operating costs shrank from \$58.40 per \$100.00 of revenue to \$57.22.

The largest percentage reductions from the year 2000 spending base, ranked in descending order, were:

Category	Reduction
Premises & Equipment	22.7%
Additional NIE	12.9%
Amortization & Impairment	12.5%
Compensation	8.6%

To be continued...



Events, Products and IP- II

The football mania continues, and that is why our IPR update continues to focus around football. Let us continue to see the issues that may surface while promoting online and offline products related to the frenzy surrounding the great event.

Many online gaming products which seek to capitalize on the opportunity of football attempt to obtain IP registration for the game programs. It is common for such gaming programs to seek patent protection; however, in India and few other countries, a computer program in itself may not get patent protection easily, since a mere computer program is nothing more than a set of machine readable instructions which accomplishes a particular task. Creative solutions may be looked at, to drastically improve the patentability of such game products. Some examples of such improvisation are:

- Create and describe the overall product as one which will result in a totally enhanced experience to the end user, by seamlessly combining specific hardware and software to result in an end product that is novel, exclusive and useful to such end-users.
- Create and describe the overall product to be more specific and more defined. The product should represent an inventive concept significantly more than the abstract idea and should not be merely a generic implementation of software codes on a computer.

Abstract ideas do not become patentable merely because they are implemented or implementable on a computer. To be patent eligible, the subject matter should not only be new and useful, but also be something real— it should either be a process, machine, manufacture, composition, or any such thing. The subject matter should be able to transform the abstract idea into a patent eligible application by virtue of being an inventive concept.

How do we use the aforesaid pointers to create, describe or present a product as being novel, useful and exclusive enough to merit patentability? Many corporations seem to be consistently successful in obtaining, defending and exploiting patents on apparently inconspicuous products

or product differentiations. But many a time, the learning here is that the apparent belief that the product is ordinary, changes once we get into details. For instance, there are many patented products which are different varieties of footballs!! Now, you may ask – how can a ball, foot or hand, being so ancient and known be patented? Yes, there lies the ideation, novelty, usefulness and exclusivity. Few examples of such patented footballs are:

- A football enclosing a bladder such that even a sharp kick will not deform the football into a banana like shape. The bladder with connected wiring can withstand forceful kicks and allow more stabilized functioning;
- A football with a casing which has enhanced visibility of colours and patterns and proposes that higher visibility leads to improved response of a player towards a moving ball, better estimation of its exact location, axis of rotation and speed;
- A football with the outer shell comprising of plurality of panels, which improves the aerodynamic properties of the ball, enhances precision, improves flight behavior of the ball;
- A football that captures information regarding a player's performance, ball possession, touches, passing the ball, distance covered by a player on the pitch etc., - Each ball is fixed with coils that generate a magnetic field and sensors, that enable connectivity between the boots of the player and the football.

Thus, this small round object called football has so many patents (leave aside other IP in trademarks, designs and copyrights). Add to it the IP in gloves, jerseys, socks, kneepads, shorts, boots – truly, there is no end to innovation!



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The Employees’ State Insurance Act, 1948:

The need for a legislation which could provide an integrated social insurance scheme covering Health, Maternity and Accident Insurance was made as reality by the enactment of Employees’ State Insurance Act, 1948. The said Act came in to force on 01.09.1948 with Chapters I, II and VIII applicable to all provinces and Sections 11, 45 and Chapter VII were brought into force on 01.04.1950 and Section 76(1), 77-79 and 81 of Chapter V came into force in whole of India except in the State of Jammu and Kashmir and Delhi and Kanpur (UP) on 01.09.1952.

Object:

- i. Provide for certain benefits to employees in case of sickness, maternity and “Employment Injury”
- ii. To make provisions for certain other matters in relation thereto.

Applicability:

- Extends to the whole of India
- Employee of every Factory, Mine, Oil-field, Plantation, Port, Railway Company
- Employee of every Shop or Commercial Establishment

- Any other establishment which the appropriate Government may specify in this behalf

Conditions for Coverage:

1. Every factory or establishment engaging 10 or more persons with the aid of power
2. Every factory or establishment engaging 20 or more persons without the aid of power.
3. For coverage purposes, even the Managing Director of the Company is considered; however, for payment of ESI contributions, only employee’s falling within the salary ceiling limit prescribed are covered.

Salary ceiling limit for ESI coverage:

Any employee drawing a gross wages of **Rs.15,000/-** per month are covered. Coverage should be from day one by generating insurance number online and issuing temporary insurance card which is valid for 90 days before which **ESI Pechan Card** to be issued.

What is Gross Wages?

The term wages is defined under section 2(22) of the ESI Act, 1948. Accordingly the term wages include and exclude the following:

Sl.No:	Gross Wages Include:	Gross Wages Exclude:
1.	Basic Pay	Contribution to ESI, EPF or any pension fund
2.	HRA	Special allowance to defray special expenses
3.	CCA & Overtime Wages	Gratuity payable on discharge
4.	Bonus other than statutory	Retrenchment Allowance
5.	Night shift allowance	Benefits paid under ESI scheme
6.	Heat, Gas & Dust Allowance	Leave encashment
7.	Layoff compensation	Payment of Inam
8.	Suspension allowance	Washing allowance
9.	Children education re-imburement	Conveyance amount towards reimbursement for duty related journey

Continued in page 16...



Recent Amendments in Listing Agreement

Consequent to the enactment of Companies Act, 2013, Securities and Exchange Board of India (SEBI) has announced some amendments in the listing agreement vide its [Circular Number CIR/CFD/POLICY CELL/2/2014 dated 17th April, 2014](#). More specifically, amendments have been made to Clause 35B and 49 of the listing agreement with the objective to align the listing agreement with the provisions of the Companies Act, 2013, to adopt best practices on corporate governance and to make the corporate governance framework more effective. In this article we have given a highlight of the changes made in the listing agreement vide the above SEBI circular and their impact on listed entities.

Highlights of Amendments Made in Clause 35B

Amended Clause 35B is applicable from the date of circular i.e. 17.04.2014

E-voting facility needs to be provided in respect of all shareholders' resolutions to be passed at General Meetings or through postal ballot.

E-voting facility shall be kept open for such period specified under the Companies (Management and Administration) Rules, 2014 i.e. minimum 1 day and maximum 3 days in case of general meeting. For Postal ballot share holders are required to communicate their assent or dissent within 30 days of dispatch of notice.

Companies need to continue to provide the facility of voting in writing on a postal ballot as per the provisions of the Companies (Management and Administration) Rules, 2014 to those shareholders who do not have access to e-voting facility.

Companies are required to utilize the service of any one of the agencies providing e-voting platform, which is in compliance with conditions specified by the Ministry of Corporate Affairs, Government of India, from time to time.

Companies are required to mention the Internet link of such e-voting platform in the notice to their shareholders

Highlights of Amendments Made in Clause 49

- The revised Clause 49 would be applicable to all listed companies with effect from **October 01, 2014**.
- The provisions of Clause 49(VI)(C) shall be applicable to top 100 listed companies by market capitalisation as at the end of the immediate previous financial year.
- The provisions of Clause 49(VII) shall be applicable to all prospective transactions. All existing material related party contracts or arrangements as on the date of this circular which are likely to continue beyond March 31, 2015 shall be placed for approval of the shareholders in the first General Meeting subsequent to October 01, 2014. However, a company may choose to get such contracts approved by the shareholders even before October 01, 2014.

Framework of revised Clause 49: The revised clause 49 is divided into 11 parts as depicted below.



Important Changes at a glance: As stated above, clause 49 lays down its provisions under 11 broad headings. The highlights of each of these headings are given below.

Objectives of Principles: The objectives of principles reflect the purpose which is sought to be achieved by means of compliance of the provisions stated in the Clause 49. In case of any ambiguity, the provisions shall be interpreted and applied in alignment with these principles. These principles are further sub-divided into four sub-headings as given below:

- ❖ The Rights of Shareholders
 - ❖ Role of stakeholders in Corporate Governance
 - ❖ Disclosure and transparency
 - ❖ Responsibilities of the Board
- **Board of Directors**
- ❖ The composition of the Board should provide for at least one women director.
 - ❖ Independent director: Changes made in qualification requirements: Person who neither himself nor any of his relatives —
- (a) (i) holds or has held the position of a key managerial personnel or is or has been employee of the

company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(b) is a Chief Executive or director, by whatever name called, of any non-profit organization that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two percent or more of the total voting power of the company

- ❖ Independent Directors - Limit on number of directorships
 - ❖ A person shall not serve as an independent director in more than seven listed companies.

- ❖ Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies.
- ❖ Independent Directors - Maximum tenure
 - An independent director shall hold office for a term up to five consecutive years on the Board of a company and shall be eligible for reappointment for another term of up to five consecutive years on passing of a special resolution by the company.
 - A person who has already served as an independent director for five years or more in a company as on October 1, 2014 shall be eligible for appointment, on completion of his present term, for one more term of up to five years only.
An independent director, who completes his above mentioned term shall be eligible for appointment as independent director in the company only after the expiration of three years of ceasing to be an independent director in the company.
- ❖ Independent Directors – Other important changes
 - Formal letter of appointment of independent director
 - Performance evaluation of independent director
 - The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors and the same to be laid down in annual report.
 - Separate meeting and training for independent director
 - The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting and the company shall provide suitable training to independent directors
- ❖ Whistle Blower policy: The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

➤ **Audit Committee**

Role of Audit Committee has been enhanced by specifying new roles like approval of any subsequent modification of transactions of the company with related parties, scrutiny of inter-corporate loans and investments, valuation of undertakings or assets of the company, wherever it is necessary, etc.

➤ **Nomination and remuneration committee**

- ❖ The company shall set up a nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.
- ❖ Role of committee has been specified.

➤ **Subsidiary Company**

Additional provisions specified in relation to subsidiary companies like no company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting; selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary shall require prior approval of shareholders by way of special resolution, etc.

➤ **Risk Management**

The provisions of amended clause 49 provide for constitution of a Risk Management Committee. It also contains that the Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

➤ **Related Party Transactions**

- ❖ Related party and related party transaction defined in detail.
- ❖ All Related Party Transactions shall require prior approval of the Audit Committee.
- ❖ All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.

➤ **Disclosures**

Disclosures requirements are specified under following sub-heads

- ❖ Related Party Transactions
- ❖ Disclosure of Accounting Treatment
- ❖ Remuneration of Directors
- ❖ Management
- ❖ Shareholders
- ❖ Disclosure of resignation of directors
- ❖ Disclosure of formal letter of appointment
- ❖ Disclosures in Annual report
- ❖ Proceeds from public issues, rights issue, preferential issues, etc.



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Finance Pooling for BRICS

In order to overcome a funding crisis arising from widening current account deficit (CAD) the BRICS have thought of setting up a US\$ 100 bn fund which will provide financial help its member countries facing CAD crisis. All member countries will contribute to this fund and financial support will be extended to any country which faces a liquidity issue. Creation of such a fund would reduce reliance on IMF and other funding institutions. Apart from setting up of this crisis fund, BRICS nations are also toying with the idea of establishing a common development bank. This bank would meet the funding needs of the member nations.

RBI directs banks to oppose loan waiver proposal by governments

The country's Central Bank is worried that a poor monsoon predicted this year will also ignite a demand for the loan waiver in many states, if demands of AP and Telangana are met. In absence of any clarity on the loan waiver scheme from the government, banks have begun slapping notices to farmers to repay the loans. Senior bank officials say the RBI were wary that assembly elections in two important states of Maharashtra and Haryana are due in late 2014. Thereafter states of Jharkhand and Jammu and Kashmir will go to polls in early 2015, followed by Bihar, one of the most backward states in India, in the second half of 2015.

India says no trade facilitation agreement if food security issue not resolved at WTO

India has toughened its stance at the World Trade Organization (WTO) over the slow progress of food security agreement reached at the Bali ministerial in December last year, making it clear at a crucial meeting in Geneva that the country will move forward on the trade facilitation agreement only when it is

Express News →

- CCI to put competition compliance norms in public domain
- US Export-Import Bank plans to finance coal-fired power plant in India
- SAT dismisses Reliance Industries' appeal for settlement with SEBI
- Gold jewellery exports may see continuous decline
- Foreign Trade Policy to offer more incentives to exporters
- Reliance Retail set to shut 100 Fresh stores
- India court says women 'misusing' dowry law
- Shariat Courts Have No Legal Sanction: Supreme Court
- Government to plan new Foreign Trade Policy aimed at minimum paperwork

assured that members will also engage to work out a permanent solution to provide food security.

In yet another bid to push forward its demand in World Trade Organization's (WTO) food stockholding program, India has refused to ratify the trade facilitation agreement (TFA) that was discussed during the ninth ministerial meeting in Bali, Indonesia.

During the Bali ministerial meeting, it was agreed that developing countries like India can continue to offer food subsidies in the form of minimum support price, which is otherwise not allowed under global trading rules.

Realty companies to move CCI against 'cartelisation' by cement makers

Real estate developers will move the Competition Commission of India against alleged Cartelisation by cement producers within two years of the CCI slapping a Rs 6,300 crore fine on 11 cement companies in June 2012, for allegedly colluding to keep prices high. Real estate grouping Credai, told that builders have

also joined hands to put pressure on cement manufacturers to immediately roll back price increases. Builders in many states across the country are going to join the "movement" against the alleged cartelisation, said Reddy. He said the committee may consider extending the purchase holiday indefinitely if the cement makers don't yield.

However, cement manufacturers deny charges of cartelisation.

SC orders reopening of some coal files

The Supreme Court has directed the CBI to reopen some of the irregular coal block allotment cases in which the agency had decided not to register FIRs after carrying out Preliminary Enquiries (PE). The Central Vigilance Commission (CVC) gave two reports to the SC after examining over 150 closed PEs and recommended reopening of probe into some of the cases, agreeing with the investigating officer that a formal case required to be lodged to conduct in-depth inquiry into some coal block allocations. The Court has asked the registry to forward the two CVC reports, one dated May 9 and the other July 2, to the CBI director and ordered, "The CBI director shall act according to the CVC reports." The Court also said that those cases where the CBI filed closure reports after registering FIR should be looked into by CVC or some expert. "If they feel that a charge-sheet should be filed, the CBI should do it" the bench said.

Defense projects near China border in fast lane

Environment ministry is working on a policy framework to fast-track green clearance processes for border roads and defence projects in the area up to 100 kms from the Line of Actual Control (LAC). This move could give a major boost to India's new Mountain Strike Corps against China — several elements of which are stuck due to pending environment clearances. Defence Ministry sources said that close to 80 critical border roads have been stuck for many years due to environmental hurdles. In all, around 6,000 kms of critical road stretches which were stuck can now be expedited. The Ministry has also been working on a legislation to ensure exemption of strategically significant projects — especially those along the LAC — from green regulations that may be hampering progress.

PM Modi asks Indian space scientists to develop SAARC satellite

Addressing Indian space scientists at the Satish Dhawan Space Centre in Sriharikota after the successful launch of PSLV C23 rocket, the Prime Minister said "You should develop a SAARC satellite, we should dedicate this satellite to our neighborhood as India's gift ... India is rooted in our age-old ethos of 'Vasudhaiva Kutumbakam'. Our space science reflects that" he said.

ESI Act 1948 Continued from Page 11

Note: Paying special allowance should be only on special nature of duty undertaken by an employee by virtue of the employment. It should not be paid as one of component of the total wages payable for an employee every month. This will amount to willful evading of the provisions of the ESI Act, 1948 and would attract the following penal provisions:

- A. Recovery **of both employer and employee contributions** as well on the such special allowance
- B. Levy of interest @ 18 to 21 % p.a on such dues
- C. Recovery with retrospective effect
- D. Prosecution of the Occupier which in your case would be the Managing Director of your Establishment
- E. **Fines with or without imprisonment which would range from 01 year to 05 years.**

Percentage of Contributions on Gross wages:

Employers: 4.75 % of Gross wages
Employees: 1.75% of Gross wages

Benefits Available:

- A. Medical Benefit
- B. Sickness Benefit
- C. Maternity Benefit : 12 weeks fully paid
- D. Disablement Benefit

- E. Dependent Benefit
- F. Funeral Expenses : Maximum of Rs.10,000/- to the eldest surviving member of the deceased member based on actuals

Remittance of contributions & Periods of Benefits: on or before 21st of the month of wage disbursement

<u>Contribution Periods:</u>	<u>Benefit Period:</u>
01 st Apr to 30 th Sept	01 st Jan to 30 th June
01 st Oct to 31 st Mar	01 st July to 31 st Dec

Jurisdiction: Any matter connected with ESI Act, 1948 shall be dealt by the **Employees Insurance Court** only – Sec.74 (1), 75, 75(2A), 76, & 77

Web links for more information:

<http://Labour.kar.nic.in> <http://Esic.nic.in> www.kar.nic.in

Penal Provision: Contravention of the various provisions will result in two types of penalties,

- A. Monetary – Up to Rs.5000/-
- B. Imprisonment – minimum of 06 months to 05 years



Technical Consultancy Services Organization of Karnataka (TECSOK)

Technical Consultancy Services Organization of Karnataka was established in the year 1976 by the Government of Karnataka. The primary objective of founding TECSOK was to provide reliable consultancy support for entrepreneurs to start up self employment ventures in Karnataka. TECSOK is a multidisciplinary management consultancy organization promoted by the Government of Karnataka to provide reliable consultancy services in India. TECSOK has its expertise in a wide range of services. The package of services includes feasibility studies, market research, valuation of assets, environment impact studies, energy management and audit, management studies like corporate plan, reorganization and restructuring of enterprises, man power planning, budgetary control systems, mergers and acquisitions, investment opportunities, technology transfers, diagnostic studies and also designing and organizing training programs in all related areas. Of late, TECSOK is also concentrating on studies relating to Cleaner Production technologies and methods.

TECSOK has been considered by the Government of Karnataka, Government of India, State & Central Financial Institutions, Commercial Banks, Asian Development Bank and a host of other institutions of the Government and Private as the recognized consultancy agency. It is also recognized as the State Nodal Agency by the Ministry of Food Processing Industries, Govt of India to operate the Ministry's Promotional Schemes in Karnataka

Did You Know?



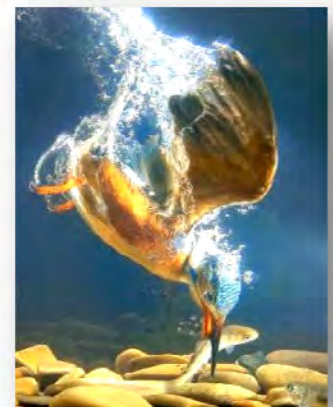
Goal Line Technologies (GLN) of Football matches

Goal control, as part of the technology, fourteen high resolution cameras will be deployed in Stadiums, seven on each goal post. Each of the cameras has an efficiency of recording 500 images per second. These snapshots recorded by the cameras from different positions when a football match is being played are then provided as input to a workstation. And as soon as a goal occurs in the match, the decision of whether the goal happened or not is taken by processing the images and conveying the same using satellite technology to the referee's special watch, referee's special watch then vibrates to indicate the occurrence of a goal. All of this happens fast, say, in the wink of the eye.

The Annual Return for the FY 2013-14 is to be filed in which form?

Ans: MCA vide General Circular dated 25th June, 2014 clarified that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956. Accordingly, the annual return in terms of section 92 of the Companies Act, 2013 in form MGT. 7 will be applicable for the financial years commencing on or after 1st April, 2014.

Pick of the month





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Service Tax Updates
CA. Ashit Shah,
Mumbai

FEMA Updates
Team Genicon,
Chennai



CUSTOMS & FTP

Case Law

The High court of Karnataka held that in terms of Section 129E of the Customs Act, 1962 ("the Customs Act"), it is not open to an appellant before the Tribunal to seek dispensation of pre-deposit of amount on merits of case without pleading that the pre-deposit of duty and interest demanded or penalty levied would cause 'undue hardship' to him. Discretion is conferred on the Tribunal to dispense with such deposit if it is likely to cause 'undue hardship' to such person.

RKS Agro Tech Ltd. Vs. Commr of Customs [2014-TIOL-942-HC-KAR-CUS]

Assessee produced certificate issued by CA certifying that excess duty paid did not form part of cost of production as pre-importation and post importation prices were the same. Further, excess duty paid has been shown as receivable in the balance sheet. In these circumstances, the Tribunal held that assessee has passed the bar of unjust enrichment and is entitled for refund under Section 27 of the Customs Act.

Garden Silk Mills Vs. Commr of Customs [2014-TIOL-1110-CESTAT-MUM]

The Tribunal held that when exemption/benefit depends on satisfaction of certain conditions, the same cannot be extended unless such conditions are complied with, even if they are only directory.

Om Udyog Vs. Commr of Customs [2014-TIOL-1062-CESTAT-DEL]

The Tribunal held that as per Section 129A of the Customs Act, the Tribunal has no power to entertain appeal where the Commissioner (Appeals) has passed orders in respect of goods imported or exported as baggage.

CCE Vs. Shri Ismail Usman [2014-TIOL-1076-CESTAT-MUM]

The Tribunal held that when an issue is not subject matter of show cause notice issued and was not agitated before the lower authorities, it has to be held that Revenue has no justification in agitating that issue before the Tribunal.

Commissioner of Customs Vs. Krishna Petrochemicals [2014-TIOL-1093-CESTAT-AHM]

The High Court of Gujarat held that when penalty imposed by the order-in-original was unconditionally stayed, it was no longer an amount payable by assessee to the department. Therefore, the Tribunal committed no error in allowing refund to assessee as

allowing department to adjust refund against the said liability would virtually nullify effect of stay.

Commissioner of Customs Vs. Varsha Polyproducts Pvt. Ltd. [2014-TIOL-928-HC-AHM-CUS]

The Tribunal held that an importer who has imported goods on which no anti-dumping was leviable cannot be saddled with the same by issuing a corrigendum retrospectively.

Act Shipping Ltd. Vs. Commissioner of Customs [2014-TIOL-971-CESTAT-AHM]

Ministry of Corporate Affairs

Notifications/Circulars/News

Clarification on the rules prescribed under the Companies Act 2013 with regard to matters relating to share capital and debentures. Any share transfer form executed before 01.04.2014 and submitted to the company concerned within the period prescribed under the 1956 Act needs to be accepted by companies for registration of transfers. Powers of the Board with respect to issue of duplicate share certificates can be exercised by a Committee of Directors, subject to any regulations imposed by the Board in this regard.

GCN 19/2014 dated 11.06.2014

Clarification on voting through electronic means Show of hands not allowed in case of e voting.

- A person who has voted through the e voting mechanism shall not be debarred from participation in the general meeting physically, though he shall not be allowed to cast his vote again.
- Transactions specified u/r 22(16) can be done only through postal ballot and not at a general meeting where e voting facility is available.
- Proportion Principle applied to companies having share capital (one share- one vote) unlike the one person-one vote principal.
- The provisions relating to demand for poll would not be relevant in case of companies covered u/s 108 read with Rule 20 of Companies (Management and Administration) Rules.

These provisions shall not be treated as mandatory till December 31st 2014. - *GCN 20/2014 dated 17.06.2014*

Clarifications with respect to CSR provisions under section 135 of the Companies Act 2013. The statutory provision and provisions of CSR Rules, 2014 should be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.

Should be undertaken by companies in project-program mode. One-off events (such as marathons) shall not be treated as CSR expenditure.

- Expenditure incurred in the fulfilment of any Act/Statute would not be treated as CSR expenditure.
- Salary paid to the CSR staff can be treated as CSR expenditure.
- FY referred under the said section, read with Rule 3(2) of the CSR Rules, 2014 implies any three preceding FYs.
- Expenses incurred by foreign holding company for CSR activities in India will qualify as CSR spend of the Indian subsidiary.
- Contribution to Corpus of trust/society/section 8 companies shall be treated as CSR expenditure if it is created solely for the purposes for undertaking CSR activities.

GCN 21/2014 dated 18.06.2014

Form of annual returns (Form MGT-7) shall not apply to annual returns in cases of companies whose FY ended on or before 01.04.2014, and for annual returns pertaining to previous years. Inspection of records could be allowed without a levy of fee, until the requisite fee is specified. *GCN 22/2014 dated 25.06.2014*

In the absence of the deeming provision of S. 4(7) of the 1956 Act in the new Act and with reference to Ss. 2(68), 2(71), 2(87) of the new Act it is clarified that a company incorporated outside India can incorporate a company in India, private or public. Existing subsidiaries of companies incorporated outside India, registered under the Companies Act 1956, shall continue to exist without any change in their incorporation status.

GCN 23/2014 dated 25.06.2014

Shares held by a company in another company in a 'fiduciary capacity' shall not be counted for determining the relationship of 'associate company' u/s 2(6) of the 2013 Act.

GCN 24/2014 dated 25.06.2014

For resident director (S.149) The first Previous Calendar Year for compliance purposes would be Calendar Year 2014, i.e. 01.04.2014 to 31.12.2014.

Therefore the number of days for which director would need to stay in India in CY 2014 would exceed 136 days. Newly incorporated companies (01.04.2014 to 30.09.2014) should have a resident director at the stage of incorporation or within six months of their incorporation. Companies incorporated after 30.09.2014 need not have a resident director from the date of incorporation itself.

GCN 25/2014 dated 26.06.2014

Filing of Form DPT4, regarding deposits existing as on date of commencement of the Act within three months, extended to 31.08.2014 from 30.06.2014. *GCN 27/2014 dated 30.06.2014*

Eform MGT 14 - All cases except for change of Name, change of object, resolution for further issue of capital and conversion of companies will be STP Mode.

GCN 27/2014 dated 09.07.2014

FEMA/RBI

Notifications/Circulars/News

ECB for Civil Aviation Sector: As per A. P. (DIR Series) Circular No. 113 dated April 24, 2012, ECB for working capital was allowed as a permissible end use in civil aviation sector under approval route. In the said circular, it was stated that the said ECB has to be raised within a period of 12 months from the date of said

circular. Now, RBI vide A.P. (DIR Series) Circular No.113 dated March 26, 2014 has decided to extend the period of raising ECB under approval route by civil aviation sector for above said purpose till March 31, 2015. All other conditions stipulated in the aforesaid Circular dated April 24, 2012 shall remain unchanged.

No Further Instruction By RBI on Tax Deduction At Source on Remittances to Non-Residents:

The RBI had issued A.P (DIR Series) Circular No. 56 dated November 26, 2002 and A.P. (DIR Series) Circular No. 3 dated July 19, 2007 regarding the procedure to be followed by the Authorized Dealers in respect of deduction of tax at source while allowing remittances to the nonresidents. The CBDT has revised the existing instructions to be followed by the Authorized Dealers while allowing remittances to the non-residents along with the required information under Section 195 (6) of the Income-tax Act, 1961, prescribed rules and forms. Now the RBI has reviewed the policy relating to issue of instructions under FEMA, clarifying tax issues and has decided that RBI will not issue any instructions under the FEMA, in this regard. It shall be mandatory on the part of Authorized Dealers to comply with the requirement of the tax laws, as applicable. The Authorized Dealers may also approach CBDT for any clarification in this regard.

(Circular No. 151 dated 30.06.2014)

CENVAT

Notifications/Circulars/News

The Central Government had granted a concession to the mean rate of excise duty of 12.36% for certain specified goods upto June 30, 2014. The same is now extended upto December 31, 2014. The original concession was granted vide Notification No.04/2014 CE dated 17.02.2014. This is applicable to the most goods classifiable under Chapters 84 and 85 (plant and machinery) and certain motor vehicles under Chapter 87.

(Notification No. 06/2014 dated 25.06.2014)

Amends Notification No. 12/2012-CE dated March 17, 2012 to extend excise duty relief for auto sector for six months.

No. 06/2014-CE dated June 25, 2014

Emphasising on observance of judicial discipline in adjudication proceedings, Circular dated June 26, 2014 clarifies that on the subject of consequential refund, where department has gone in appeal, Circular No. 695/11/2003- CX dated February 24, 2003 is binding on all field officers and if this circular was followed, unnecessary litigation could have been avoided. Circular dated June 26, 2014 also directs field officers to peruse judgments in the cases of Dupont India Pvt. Ltd. [2013-TIOL-1172-HC-AHM] and Union of India Vs. Kamalakshi Finance Corporation Ltd. [2002-TIOL-484-SC-CXLB] on the issue of judicial discipline.

The Central Board of Excise & Customs ("the CBEC") Circular F.No. 201/01/2014-CX.6 dated June 26, 2014 ("Circular dated June 26, 2014")

Case Law

The Tribunal held that requirement of affixing MRP under the Standards of Weights & Measures Act, 1976 read with the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 applies only to goods sold in India in retail and does not apply to goods exported. Therefore, exemption provided under Serial no. 18A of Notification No. 3/2006-CE dated March 1, 2006 applies only to biscuits sold in the domestic market and has no application whatsoever in respect of export products. Therefore,

there is no bar in availing the Cenvat credit on the inputs/input services used in or in relation to the manufacture of exported biscuits.

Modi Bakers Vs. CCE [2014-TIOL-1018-CESTAT-MUM]

VAT, Sales Tax and Entry Tax

Case Law

Rescinds Notification No S.O. 53/H.A.6/2003/S. 24/2003, dated April 7, 2013 and increases rate of tax deduction at source on works contract from 4% to 5% in the State of Haryana.

Haryana Government Notification No. S.O. 67/H.A. 6/2003/S. 24/2014. Dated June 20, 2014

The High Court of Madras held that when schedules specify rate of tax applicable to respective goods, the Commissioner, unless there is any specific provision, will not have any powers to issue any circular or clarification. The Commissioner cannot use circulars or clarifications to overcome the Statute. Any interpretation which was not intended by legislature also cannot be introduced by way of circulars or clarifications.

Vessons Energy Systems (P) Limited Vs. Commissioner of Commercial Taxes [2014-VIL-155-MAD]

The High Court of Madhya Pradesh held that without assessment of tax and computation process, issuing show-cause notice and recovery of tax by coercive method is unsustainable.

Birla Corporation Vs. State of Madhya Pradesh [2014-VIL-157-MP]

The High Court of Punjab and Haryana held that textile means any woven fabric and therefore fabric manufactured out of HDPE by warp and weft pattern is a textile falling within Entry 51 of Schedule B of the Haryana Value Added Tax Act, 2003 ("the Haryana VAT Act"). It will thus be a goods exempted from payment of tax. Entry 51 of Schedule B of the Haryana VAT Act is inclusive entry and it includes all varieties of cotton, woollen or silken textiles and also rayon, artificial silk or nylon. Thus, any textile - may be cotton, woollen or silk either from natural fibre or man-made fibre - falls within scope of exempted goods.

A.R Plastic Pvt. Ltd. Vs. State of Haryana [2014-VIL-164-P&H]

The High Court of Madras held that interest cannot be demanded for belated payment on additional sales tax, as there is no substantial provision in the Tamil Nadu Additional Sales Tax Act, 1970 itself and similarly, no penalty can be levied, as there is no charging Section thereunder to levy penalty for relevant assessment year.

S. Gurunathan Vs. Deputy CTO [2014-VIL-162-MAD]

The High Court of Madhya Pradesh held that assessee is entitled to deduction of discount allowed by them as a retailer based on ordinary trade practice by way of issuing credit note even without showing the same in the sale invoice or the bill.

BPL Limited Vs. Assistant Commr & Others [2014-VIL-146-MP]

The High Court of Kerala held that there is no bar against proposing or finalizing imposition of penalty, simultaneously with completion of assessment under Section 25(1) of the Kerala Value Added Tax Act, 2003, in case the authority becomes satisfied from evidence that there was wilful nondisclosure of assessable turnover. The High Court also observed that contention that only after finalisation of the assessment, assessing authority can arrive at a conclusion regarding wilful nondisclosure of assessable turnover, cannot be accepted.

Haleel Rahiman Vs. Commercial Tax Officer [2014-VIL-147-KER]

The High Court of Gujarat held that roadside metal crash barriers are integral part of road. The iron and metal barriers would have to be installed with cement concrete work. Installation of such barriers is basically in the nature of civil work of buildings which, in turn, is a part of construction of a road. Therefore, assessee is liable to pay composite tax @ of 2% under works contract.

State of Gujarat Vs. Kay Kay Equipments [2014-VIL-148-GUJ]

Service Tax

Case Law

Assessee entered into a composite contract with M/s NTPC and one of services to be provided by assessee was GTA service for transportation of goods from port to premises of NTPC. Assessee, instead of undertaking said services themselves further engaged M/s Lee & Muirhead Pvt. Ltd. for doing the job who in turn further engaged actual transporter M/s ESSEMM Logistics for transporting the goods. Consignments notes issued by actual transporter clearly reveal that consignee of the goods was M/s NTPC. The question arose whether assessee was liable to pay service tax under GTA service. The Tribunal held that assessee having neither actually provided GTA service nor having received the same, cannot be called upon to discharge any service tax liability as recipient of GTA service.

Larsen and Toubro Ltd. Vs. CCE [2014-TIOL-1112-CESTAT-DEL]

The Tribunal relied on the case of Precot Mills Ltd. [2006-TIOL-818-CESTAT-BANG] and held that service tax would not be leviable for rendering services by one to one's own divisions.

ITC Sonar Vs. Commissioner of Service Tax [2014-TIOL-1127-CESTAT-KOL]

The Tribunal held that penalties under Sections 77 & 78 of Chapter V of the Finance Act, 1994, also can be waived by invoking Section 80 thereof, which provides that no penalty shall be imposable on the assessee if the assessee proves that there was reasonable cause for the said failure.

Fouress Engineering India Ltd. Vs. Commissioner of Service Tax [2014-TIOL-1126-CESTAT-BANG]

The High Court of Kerala held that if appeal is not filed within specified period or extended period, then, assessee cannot invoke Article 226 of the Constitution of India to get over the statutory dictate.

Sony Rebeiro Vs. Commr of ST [2014-TIOL-951-HC-KERALA-ST]

The Tribunal relied on the decision in the case of Sobha Developers Ltd. Vs. CCE [2011-TIOL-1170-CESTAT-BANG] and held that service provided to Special Economic Zone Unit would not attract provisions of Rule 6(3) of the Cenvat Credit Rules, 2004.

Hewlett Packard India Sales Pvt. Ltd. Vs. CCE [2014-TIOL-1003-CESTAT-BANG]

Union Budget 2014 for Corporate

Key direct tax proposals

Tax rates: No change in corporate tax rate, including the surcharge and education cess.

Investment linked allowance

- Investment linked deduction of 15% was introduced by Finance Act 2013 for manufacturing companies if such companies' investment in fresh plant and machinery during FY 2013-14 and
- FY 2014-15 exceeds Rs 100 Crore (in aggregate).

- A similar, but new investment allowance has been proposed with a lower investment threshold Rs 25 Crore in new plant and machinery from 1 April 2014 upto 31 March 2017.
- This deduction is available on a year on year basis from 1 April 2014 upto 31 March 2017 if the investment threshold of Rs 25 Crore is met for each such year.

Deduction for capital expenditure on specified business

- Under the provisions of section 35AD, investment linked tax incentive is provided by way of allowing deduction in respect of the whole of any expenditure of a capital nature (other than
- Expenditure on land, goodwill and financial instrument) incurred wholly and exclusively for the purpose of the "specified business".
- It is proposed to include the setting up and operating a semiconductor wafer fabrication manufacturing unit which commences operations on or after 1 April 2014 (as notified by the Board) in the category of "specified business" for the purpose of aforesaid investment linked deduction.
- It has been further clarified that capital asset in respect of which deduction has been claimed and allowed has to be used
- For the purpose of "specified business" for a period of eight years beginning with the year in which the asset was acquired or constructed.
- Taxpayers eligible to claim aforesaid investment linked deduction will not be eligible to claim profit linked deduction
- Under the provisions of section 10AA as applicable to Units in SEZ.

Expenditure on Corporate Social Responsibility ("CSR")

- Under the Companies Act 2013, certain companies (which have Networth of Rs 500 Crore or more, or turnover of Rs 1000 Crore or more, or a net profit of Rs 5 Crore or more during any financial year) are mandatorily required to spend certain percentage of their profits on activities relating to CSR.
- It has been clarified that CSR expenditure would be deemed as not being incurred wholly and exclusively for the purpose of carrying on business as per provisions of section 37 and accordingly, will not be allowable as a deduction in computing the taxable income.
- CSR expenditure otherwise covered under section 30 to section 36 of the Act may however qualify for deduction subject to satisfaction of the prescribed conditions.
- The above amendment is effective from financial year 2014-15 onwards.

Disallowance of expenditure for non deduction of tax

- Hitherto, payments made to non-residents on which tax is deductible and tax is deposited in the subsequent financial year after expiry of prescribed due date, was allowed as a deduction in such subsequent financial year. It has now been proposed that where tax has been deducted and deposited in the subsequent financial year but before the due date for filing the return of income for the previous year, then the deduction for expenditure can be claimed in the year of deduction of tax.
- Hitherto, payments of specified expenses to resident (such as commission, rent, fees for professional services, etc) on which

tax is not deducted resulted in disallowance of the entire expenditure in the hands of payer. It has been proposed that disallowance for non deduction of tax would be limited to 30% of the relevant expenditure.

- It is also proposed to extend this disallowance provision to all resident payments on which tax is deductible such as salary payments, director fees, etc.
- The above amendments are effective from financial year 2014-15 onwards.

Dividend Taxation

- Dividends received by an Indian company from foreign companies on or before 31 March 2014, was subject to tax at a beneficial rate of 15%. It has been proposed to extend this beneficial tax regime without any sunset clause.
- Hitherto, dividends distributed by Indian company are subject to Dividend Distribution Tax ("DDT") in the hands of company and the same was exempt in the hands of shareholder. DDT was being computed with reference to net amount distributed to the shareholders.
- It is proposed that DDT has to be computed with reference to the gross amount of dividend distributable to the shareholders. The above amendment is effective from 1 October 2014.

Key Transfer Pricing proposals - Advance Pricing Arrangement ("APA")

- APA provisions were introduced by the Finance Act, 2012 to enable taxpayers to enter into an agreement with the Government for a prospective period upto a maximum of 5 consecutive years.
- With a view to reduce protracted transfer pricing litigation, it has been proposed to roll back the APA to international transactions entered into by a taxpayer during any prior periods (not exceeding 4 years) preceding the first year for which the prospective APA is applicable.
- The conditions, procedure and manner of covering the APA results for the prior periods under the roll-back mechanism is yet to be prescribed. This amendment is proposed to take effect from 1 October 2014.
- It is also proposed to strengthen the administrative set up of the APA program so as to expedite processing of the APA applications.

Deemed International Transaction

Under the existing provisions, a transaction entered into with an unrelated person shall be deemed to be an international transaction if there exists a prior agreement or the terms of the transaction are determined in substance between such unrelated person and the associated enterprise.

It was understood that a transaction between two or more enterprise may not qualify as international transaction (or deemed international transaction) if neither of them are non residents. It has been proposed that for the purpose of the above deeming provision, where either the enterprise or the associated enterprise or both of them are non residents, then such transaction shall be deemed to be an international transaction whether or not such other person is a non resident. The above amendment is effective from financial year 2014-15 onwards.

Determination of Arm's Length Price

- Under the current transfer pricing provisions, where more than one price is determined using the most appropriate method, the arm's length price shall be taken to be the Arithmetical Mean ("AM") of such prices. The provisions also provide a tolerance band as may be notified.
- It has been proposed that Transfer Pricing Rules would be amended to recognize use of the arm's length range in appropriate cases.
- The use of AM as a statistical tool would however continue where the number of comparable companies is inadequate. One would need to wait and watch as to how these would be incorporated in the Rules.

Use of Multiple Year Data

- Under the current transfer pricing provisions, only the relevant year data is allowed to be used for comparable analysis subject to certain exceptions.
- It is proposed to amend the Rules to allow use of multiple year data for comparability analysis. One would need to wait and watch as to how these would be incorporated in the Rules.

Key indirect tax proposals

Tax Rates

- The peak merit rates of Customs Duty, Central Excise Duty and Service Tax have been retained.
- Basic Customs Duty on specified telecommunication products (such as VoIP equipment, optical transport equipment, carrier ethernet switch, IP radios, etc.) not covered under the Information Technology Agreement has been increased from Nil to 10%.
- Basic Customs Duty on specified parts of LCD and LED TV panels (such as plate diffuser, film diffuser, etc) has been exempted.
- Basic Customs Duty on colour television picture tubes for use in the manufacture of cathode ray televisions has been exempted.
- Basic Customs Duty has been reduced from 7.5% to Nil on e-book readers.
- Basic Customs Duty on LCD and LED TV panels below 19 inches has been reduced from 10% to Nil.
- Special Additional Duty on inputs/components used in the manufacture of personal computers and tablet computers has been exempted.
- Exemption from education cess and secondary & higher education cess on Counter Veiling Duty is being withdrawn on certain electronic goods (such as line telephone sets, parts of electronic integrated circuits, etc).

CENVAT Credit

- Time limit introduced for avilment of CENVAT Credit - credit to be availed within 6 month from the date of receipt of input / date of receipt of input service invoice. This is effective from 1 September 2014.

- Credit for service tax paid under reverse charge (100% paid by service recipient) may be availed once the payment of service tax has been made (requirement to pay invoice value to service provider has been done away with). This is effective 1 September 2014.
- Discontinuance of transfer of credit by a large taxpayer from one unit to another. This is effective 11 July 2014.

Advance Ruling

- Advance ruling route under Customs, Excise and Service Tax would also be available to resident private limited company. This is effective 11 July 2014. Appellate Proceedings
- Mandatory pre-deposit of 7.5% of duty demanded / penalty imposed / both for filing appeal with the Commissioner (A) or Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. Pre-deposit payable would be subject to a ceiling of Rs 10 Crore. This is effective from the date to be notified post enactment of Finance Bill.
- Appeal against Tribunal orders in connection to disputes relating to taxability / excitability of goods or service would lie before the Supreme Court. This is effective from the date to be notified post enactment of Finance Bill.
- Under Excise & Customs, discretionary powers of the Tribunal to refuse admission of appeal from the existing Rs 50,000 to Rs 2 lakh. This is effective from the date to be notified post enactment of Finance Bill.

EOUs / SEZs

- Exemption from education & secondary higher education cess (customs component) for clearance of goods from EOU to DTA. This is effective from 11 July 2014.
- Procedural changes in connection to service tax exemption for SEZ units i.e. specific changes in the format of Form A-1 & A 2. This is effective from 11 July 2014.

Service Tax

- Change in interest rate for delay in payment of service tax - earlier rate of 18 % will be replaced with a graded system of interest rate linked to the extent of delay i.e. 18% for the first six months, followed by 24% for six months to a year and thereafter 30%. This is effective from 1 October 2014.
- In case of composite work contract (other than contract involving execution of original works), service tax has to be paid on the 70% of the total amount charged for the works contract.
- Currently in such cases service tax is payable on 60% of the total amount charged for the works contract. This is effective from 1 October 2014.
- Point of taxation for services under reverse charge mechanism would be date of payment or date immediately following the period of three months from the date of invoice which is earlier.
- Under the existing provision, point of taxation was payment of value of service subject to the payment being made within 6 months from the date of invoice.
- In case the payment is not made within 6 months then the date of invoice was considered as a point of taxation. This is effective from 1 October 2014.