



Newsletter-21

Mysore Chapter

August 2005

From Chairman's desk...

Dear Friends,

Warm Greetings to you all !



Happy Independence Day

The students of Mysore Chapter were invited by the SIRC to make presentation on "Company Secretary- Integrated Business Manager" at the Southern Regional students' conference held at Chennai on 29th & 30th July 2005.

After interacting with the SIRC it was decided to depute 2 teams for making presentations. The team comprising Ms. Prachetha & Ms. Pavithra made a presentation on "Company Secretary- Integrated Business Manager". The other Team comprising of Mr. Omkar & Mr. Madhvesh made a presentation on "Patents". Both the presentations were not only well received but also highly appreciated & applauded by all the participants including the

National President, who chaired that session. Three Cheers to the students



Members are aware that a mega program on SEBI Guidelines had been originally planned for August, 2005 in association with Bangalore Chapter. However, considering the Southern Regional Students Conference held in the last week of July and the programs lined up by Bangalore Chapter in 1st week of September, it was decided to reschedule the mega event in November/ December 2005 in consultation with the Bangalore Chapter.

I request, once again, the members to subscribe to the Journal "Chartered Secretary" and also to get subscriptions from their friends and colleagues. The members are also requested to subscribe to the "Company Secretaries Benevolent Fund" if not already subscribed.

With warm Regards,

D D Bhat

Chairman- Mysore chapter
Mysore
13th August, 2005.



Mysore Students at SIRC Student Conference

A two day Student's Conference was held on 29th and 30th of July 2005 in Chennai by SIRC of ICSI

The Program was conducted for the participation of students all over South India. Main participation was from the students of Chennai, Mysore, Bangalore, Hyderabad and Cochin.

The first day programs included Mock AGM, Corporate vision of students etc.,

The second day started with the paper presentation on Independent Directors followed by presentation by students of Mysore chapter. The presentations were on

1. Company Secretary- Integrated Business Manager - Pavithra.p and Prachetha .M
2. Patents Law and Emerging issues - Madhwesh. K. and Omkar

Both the presentations came out in a professional way. The interaction from the delegates made the session very interesting.

Prof. B. Ravi, FCS who chaired the presentations by the students of Mysore Chapter applauded the Mysore Chapter Students by stating that

PAT - deserved a PAT on their back
E - Excellent performance
N - Non compatible
T - Total presentation

The Conference included finals of All India Moot Court Competition

The event gave a great exposure to the students of the Mysore Chapter, ICSI. An increased the visibility of the chapter.



By Pavithra.P, Madhwesh. K, Prachetha .M and Omkar

Secretarial Standards - An overview

Article by Ms. Srilatha T G, Automotive Axles Limited

Secretarial Standards prescribed by the Institute of Company Secretaries of India provide a guideline for proper conduct of secretarial business by companies as well as by secretarial professionals. Though these standards are not mandatory, their recommendatory nature does not make them any less important. Perhaps, ICSI is the unique body in the world, which has felt the need for the formulation, issue and administration of Secretarial Standards (SS).

ICSI has set up a Secretarial Standards Board (SSB) to cogitate and prescribe SS a few years ago. The SSB comprises of senior members of the secretarial profession and other persons connected with the working of the corporate sector.

For a corporate entity, compliance of the Companies Act, 1956, is the first and foremost requirement. In addition, many other laws and bye-laws, Rules, Regulations, Guidelines etc, become applicable in various situations. To ensure proper compliance, need was felt for some standard sets of practices which could assure the companies that nothing has been missed out.

...learning standards serve as frameworks...

Another reason was to bring uniformity in corporate secretarial practice in the similar matters. In addition, certain matters are neither specifically provided in the Act, nor under any Guidelines or Regulations. For example, what period of notice should be given before a Board Meeting is not specified under the Act. In such cases, some companies have a practice of giving

ten days notice while others think it is appropriate to give three days notice only. It is in these types of cases the secretarial standards have their role to play. Uniformity is brought in the practice as the SS helps in integrating and harmonizing the diverse secretarial practice.

The scope of the secretarial standards can be presented through the following words.

"The secretarial standards do not seek to substitute or supplant any existing laws or the Rules & Regulations framed there under, but in fact, seek to supplement such laws, Rules & Regulations"

Hence, the Secretarial Standards are prepared as policy documents relating to various aspects of secretarial practices in corporate sectors. Some standard guidelines are specified for ensuring easy secretarial practice.

The following is the procedure followed by ICSI for issuing Secretarial Standards.

- a. SSB shall determine the areas under which the Secretarial Standards are required to be prescribed and at the same time, decide the priority in selection of the areas.
- b. Preliminary drafts of the proposed SS would be prepared. For providing assistance, working groups may be constituted.
- c. The preliminary draft so prepared shall be circulated amongst the members of SSB for discussion thereon and to carryout modifications if any, wherever required.
- d. The preliminary draft shall also be sent to ICSI, ICAI, Chambers of Commerce and other professional bodies and to Government regulatory authorities, SEBI etc... As may be decided by SSB.
- e. Then the preliminary draft updated with the appropriate suggestions by various bodies, shall be published in the journal of ICSI and on its website inviting comments from members and public at large.

- f. After considering the comments so received, the draft of the proposed SS will be finalized by SSB and submitted to the council of the ICSI.
- g. The council, after considering the final draft, finalizes the SS in constitution with SSB. The secretarial Standards on the relevant topic will be issued under the authority of the council.

Till now, ICSI has issued three secretarial standards. Viz -

SS-1 on meetings of the Board of Directors
SS-2 on General Meetings
SS-3 on payment of Dividend.

In addition to the aforesaid, a draft of SS-4 relating to Registers and Returns has also been issued by SSB to ICSI.

Though in the initial years, the Secretarial Standards will remain recommendatory in nature, they will be made mandatory in the forthcoming period depending upon the general acceptance and support from the government.

Secretarial Standards issued so far:

a. SS - 1 on Meetings of the Board of Directors.

SS-1 was issued on 13.12.2001 at the National Convention of Company Secretaries held at Bangalore. This standard seeks to prescribe a set of principles of convening and conducting Board Meetings and matters related thereto. The standard will equally be applicable to the meetings of the Committees of the Board.

This standard covers the following areas:

- Convening of meetings and related aspects like notice, length of notice, agenda, notes on Agenda, etc,
- Frequency of the meeting and time interval between two meetings
- Quorum required for the valid meeting.
- Attendance
- Chairman of the Meeting and his powers
- Passing of resolution by circulation
- Minutes and related aspects
- Illustrative list of items to be transacted at the meeting.

b. SS-2 on General Meetings:

SS-2 seeks to prescribe principles for convening and holding of General Meetings and related matters. It came into force on 01.05.2002. Like SS-1, this standard also recommendatory in nature. The scope of this standard is stated in the following terms -

“The principles enunciated in this standard for general meeting may also be applicable to the class meetings of the members, debenture holders and creditors. However, these principles may not be applicable to any meeting convened on the directions of the Court or the Company Law Board or any other prescribed authority unless the directions themselves so provide.”

Coverage of the standard extends to the following:

- Convening of the meeting
- Notice, length of the notice, authority issuing the notice
- Quorum of the meeting
- Proxies, chairman, poll, minutes and recording therein

c. SS-3 on dividends:

SS-3 became effective from 22.05.2003. This standard seeks to prescribe a set of principles in relation to the declaration and payment of dividend and matters incidental thereto or connected therewith.

Points covered under this standard include:

- Ascertainment of Profit.
- Declaration of Dividend
- Entitlement thereto
- Payment of dividend
- Unpaid dividend
- Revocation of Dividend
- Revalidation
- Dividend warrants
- Registers required to be maintained
- Disclosures required while declaring and paying dividend



Compliance with Accounting Standards under Companies Act 1956

Article by *Raghuveer* ACS Student

Accounting is the language of the business, which communicates the financial results of an enterprise to the various interested parties by means of financial statements which have to exhibit a true and fair view of its state of affairs. In order that the methods and principles adopted by various enterprises are coherent, not misleading and to the extent possible are uniform and comparable Accounting Standards are evolved.

The standard provides a frame work for an accounting policy to be adopted by the enterprise or a group of enterprise so that the financial statements presented to the users is in compliance with the prescribed code. This enhances the utility of such financial statements to the investors both present & potential, creditors Government, lenders and the public. This also eliminates variations in the treatment of several accounting aspects and brings about uniformity in presentation.

Due to the following advantages of the Accounting standards Section 211 (3A) of the Companies Act 1956 specifies that the profit & loss account and Balance sheet of the Company shall comply with the Accounting Standards.

Section 211 (3B) specifies that where the Profit & Loss account of the Company does not Comply with the Accounting Standards the Company in its Profit & Loss Account & Balance Sheet disclose in its Balance sheet the following:

1. Deviation from the Accounting Standards
2. Reasons for such deviation
3. Financial effect, if any, arising from such a deviation

Section 210A has been inserted in the Companies Act 1956 by the Companies Amendment Act 1999 which empowers the Central Government to Constitute National Advisory Committee on accounting standards. This committee has been entrusted with the responsibility of advising the

Central Government on formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies.

Section 211(3C) defines "Accounting Standards" as the accounting standards recommended by the Institute of Chartered Accountants of India and as may be prescribed by the Central Government in Consultation with the National Advisory Committee on accounting standards.

However the Central Government has not specified the accounting standards under section 211(3C). Until the Central Government specifies accounting standards under this Section the standards recommended by the Institute of Chartered Accountants of India is deemed to be the Accounting Standards recommended by the central government.

The Institute of Chartered Accountants of India has prescribed 29 Accounting Standards till date.

The Directors in their Directors Responsibility statement under section 217(2AA) of the companies Act 1956 has to state that in preparation of the annual accounts the applicable accounting standards had been followed along with proper explanation relating the material departure form the accounting standards.

Under section 227(3) (d) of the Companies Act 1956 the auditor of the Company in his audit report has to express an opinion whether in his opinion the profit& loss account and balance sheet comply with the accounting standards as prescribed in section 211(3C) of the Companies Act 1956.

Thus the Companies Act makes it mandatory for the companies to comply with accounting standards while preparing its financial statements.



Legal Roundup

Income Tax

NO EXEMPTION FOR SEZ CORPORATIONS FROM FBT

Corporate entities in the SEZ will have no exemption from the FBT although they are exempt from several other central taxes and levies. The recently passed SEZ Act, 2005 does not provide the units in such zones exemption from the levy introduced in Budget 2005-06. As per the budget provisions, the tax has to be paid by all business enterprises that employ at least one person and extends any of the amenities or facilities that are considered as fringe benefit. Developers of SEZ would also have to pay FBT for facilities extended to employees even though they are entitled to a 10-year tax holiday otherwise.

The Economic Times, New Delhi, July 20, 2005

It was held that amendment to section 43B permitting PF/ESI payments upto due date for filing return is retrospective in nature and applies to all pending cases.

275-ITR 81 Addl. CIT vs. Vestas RRB India Ltd (ITAT Delhi Bench)

The court held that, commission paid by the assessee to property agent is not deductible in computing income under head 'Income from house property'

F.No.385/35/2005-IT (B) dated:17-06-05

Customs

Case Law

The Tribunal has held that parts of a machine which do not have their own independent function and which cannot be further disassembled are classifiable as parts of the main machine.

CC. Vs. Modicom Network Pvt. Ltd. (2005 (185) ELT 333)

Circulars/Public Notices

The Central Government has issued a circular clarifying that second hand capital goods of Indian

origin shall not be permitted for import under the Export Promotion Capital Goods (EPCG) Scheme.

(Policy Circular No.16/2005-2009 dt 15/07/05)

The Central Government has clarified that the education cess paid together with excise duty would also be reimbursed in the form of drawback and terminal excise duty in the case of deemed exports with effect from 18th January 2005, subject to fulfillment of conditions.

(Policy Circular No.15/2005-2009 dt 04/07/05)

Antidumping Duty

Notifications

Antidumping duty has been imposed on the following:

- hexamine, originating in or exported from Iraq (*Notification No.58/2005 dt 30/06/05*)
- paracetamol, originating in or exported from People's Republic of China.

(Notification No.67/2005 dt 19/07/05)

Excise

Notifications /Circulars / Trade Notices

Various Commissionerates have issued Trade Notices requiring assesseees to submit weekly online information regarding production, clearances, exports, revenue liability etc. The information is required to be submitted by those assesseees who have paid more than Rs 1 crore as revenue from the PLA in the preceding financial year.

(Madurai Commissionerate Trade Notice No. 28/2005 dt 29/6/05)

The Government has prescribed detailed guidelines for enabling online payment of excise duties through five designated banks. The salient features of the guidelines are:



- The facility is available on a 24 X 7 basis
- Challans for payment of taxes can be filed on line
- All payments made upto 8 P.M. will be accounted for on the same day
- Instant receipts for payments made can be printed out
- Copy of receipt of payment will be delivered at door step
- The service is free of charge
- The designated banks are Union Bank of India, ICICI Bank, IDBI, HDFC Bank and UTI Bank.

(Mumbai Commissionerate Trade Notice no. 23/2005 dt
3/6/05)

Manufacture/ Dutiability

The Supreme Court has held that the marketability of goods is established by means of evidence which demonstrates that goods are capable of being brought to the market to be sold thereat and are known in the market as such. Marketability is not established by mere furnishing of test reports evidencing stability and adequate shelf life of goods.

Gujarat Narmada Valley Fertilizer Co. Ltd Vs. CCE (2005
(124) ECR 257)

The Tribunal has held that the conversion of medicine from powder to tablet form does not amount to manufacture within the meaning of Section 2(f) of the Central Excise Act.

American Remedy Vs. CCE (2005 (124) ECR 192)

The Tribunal has held that in the absence of any supervision and control over the job worker, the principal is not the manufacturer under excise law.

Dolphin Laboratories Ltd Vs. CCE (2005 (185) ELT 206)

Service Tax

The Tribunal, in CCE Vs. Larsen & Toubro Ltd. (2005 (69) RLT 62), has held that works contracts executed on a turnkey basis cannot be vivisected for the purpose of levy of service tax on a portion thereof.

Sales Tax

The Orissa High Court has held that circumstances relating to public policy can constitute valid grounds justifying the withdrawal of sales tax incentives, before their expiry, and that promissory estoppel will not apply to such situations.

Shree Jagannath Packers Vs. State of Orissa [(2005) 141
STC 26]

FEMA

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Fourth Amendment) Regulations, 2005

The Reserve Bank of India, vide this notification, has further amended Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 to bring fore the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2005. Amendments in Regulation 10 relate to RBI approval for transfer of any security, by way of gift. These regulations shall come into force from the date of their publication in the Official Gazette.

Notification No. GSR504 (E) Dated 22.07.2005

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Fifth Amendment) Regulations, 2005

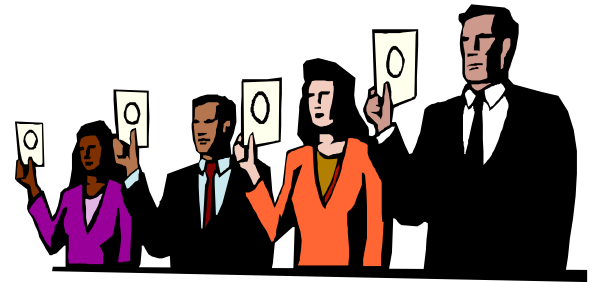
The Reserve Bank of India, vide this notification, has made the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Fifth Amendment) Regulations, 2005, further to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000. Amendments were made in sub -regulation (2), (3) and (5) of Regulation 5. These regulations shall come into force from the date of their publication in the Official Gazette.

Notification No. GSR505 (E) Dated 22.07.2005

A cup of Water...

A group of alumnae, presently working in various positions, visited their University lecturer. The lecturer was happy to see them.

Conversation soon turned into complaints about stress in work and life.



The Lecturer just smiled and went to the kitchen to get an assortment of cups - some porcelain, some in plastic, some in glass, some plain looking and some looked rather expensive and exquisite.

The Lecturer offered his former students the cups to get drinks for themselves.

When all the students had a cup in hand with water, the Lecturer spoke:



"If you noticed, all the nice looking, expensive cups were taken up, leaving behind the plain and cheap ones.

While it is normal that you only want the best for yourselves, that is the source of your problems and stress. What all you wanted was water, not the cup, but we unconsciously went for the better cups."



"Just like in life, if Life is Water, then the jobs, money and position in society are the cups. They are just tools to hold/maintain Life, but the quality of Life doesn't change."

"If we only concentrate on the cup, we won't have time to enjoy/taste the water in it."

