Edition 108
January 2013

Mysore Chapter

eMagazine

Know your boss!

CSR: Voluntary to Mandatory

Demystifying P-Notes

Accountability & Remuneration

For Private Circulation Only

E- Magazine from
The Mysore Chapter of the
Institute of Company Secretaries of India

-: Editorial Team :-

CS. Dattatri H M
CS. Sarina C H
CS. Omkar N G
CS. Rashmi M R
CS. Abhishek Bharadwaj A B

Support Team:

CS. Ravishankar Kandhi
CS. Ajay Madaiah

Join
2500+ members' strong
"CSMysore" eParivaar
@

http://www.groups.google.com/group/csmysore

Disclaimer

Message from Chairman

Dear Readers,

My Heartfelt new year Greetings to all of you!!

As the New Year begins, a new, fresh and young team is going to take over the mantle of this glorious Chapter. My wishes to the New Team and the Chapter and looking forward to many more laurels that the New Team can bring in for the Chapter.

Last month our Chapter has participated in the Education Fair "Margadarshi" organized jointly by Rotary Mysore and Vijaya Vittala Vidyashala. The response was very positive and many students and parents had visited our stall to have firsthand knowledge about the profession.

In the coming month, the annual event "Umang 2013" will be conducted by our students. I wish the students to participate in large number and utilize the opportunity to enhance their organising and academic skills.

The exams conducted by the institute in the month of December 2012 are over and students are eagerly waiting for the result. My best wishes for their success.

For a shorter term, as a chairman of this Chapter I tried my level best to discharge my duties with the support of all my Team members, staff and students. My sincere thanks to each one of them for the support and cooperation extended to me during my short tenure. As a Chairman, this is my last interaction with you through this newsletter. Hope to meet all the members and students frequently at the Chapter premises.

Yours in CS fraternity,
CS. S Badrinarayanan

Inside

Articles:

Columns:

STUDY CIRCLE MEETINGS



Student Study Circle Meeting was organized by the students on 2nd December 2012. During the meet, students discussed on sources of capital and share capital structures of the company. CS. Ajay Madaiah moderated the discussions and explained the concepts. CS Harish B.N. guided the students with regard to practical issues related to the matter and explained the students importance of discussions related to the subject matter at study circles.

Second Study circle of students was on 9th December 2012. Students took up the topics from Tax Laws. They interacted with the resource person CA. Kumarpal who was present during the discussion and explained various aspects pertaining to the Tax Deduction at Source.

Students had organized Study Circle Meeting on 16th December 2012 at the Chapter premises and discussed certain aspects of Securities Market. Mr. Manjunath had taken the session and briefed the students about the concepts in practice in the securities market.

On 23rd December 2012, fourth Study Circle Meeting was held at the Mysore Chapter. Session was on the selected topics of General & Commercial Laws. Mrs. Metrani was the faculty. Mrs. Metrani explained the perceived tough topics from General and Commercial Laws and shared various techniques to study the subject. Many students who were present during the session clarified their doubts and were benefited from it.

Fifth Student Study Circle Meeting was held on 30th December 2012. Topics from the subject Economic and Labour Laws, Minimum Wages and Workmen Compensation Acts were discussed during the session. Case laws from the previous question papers were solved. CS. Ajay Madaiah moderated the discussions.

Education Fair:

Margadarshi - a full day Education fair was jointly organized by Rotary Mysore and Vijaya Vittala Vidyashala for students at the Vidyashala premises in Mysore on 23rd December 2012. Fair was inaugurated by the Dr. Ajay Nagabhushan, CEO of the Zilla Panchayat. Mysore Chapter of ICSI had participated in the fair in which Students and parents in large number had visited the ICSI space and obtained details about the course.

Students' Events Coming up.....

Umang In Mysore

Milaap in Bangalore

GET READY!

Know your boss!

Getting an understanding boss or understanding the boss can solve half of employees' problems at workplace

M.S. Sridhar
AGM-HR, Manipal Global Education-Bangalore
sridhar.ms@manipalglobal.com

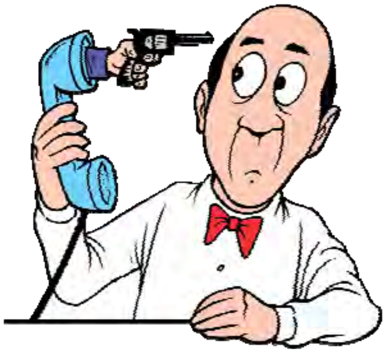
Bosses can make or mar one's career. A good boss could send the career graph zooming while a bad one could ruin it. And the efficiency or qualifications may have nothing to do with the career graph. No matter what is your designation, you are likely to have a boss. Understanding the human face, which lies behind the mask, is essential if you want to have an efficient working relationship.

Bosses are human beings. More often than not, the boss is just passing down a bit of the bitter medicine that he has received from the top.

BOSS VARIETIES: Just as there are several types of subordinates, there are different types of bosses like Democratic, Autocratic, Workaholic, Perfectionist, Weak, Indulgent, Bullying and Perfect Boss.

THE DEMOCRATIC BOSS: a democratic boss is a pleasant boss. He is the one who believes in involving his subordinates in the process of decision-making. He gives a fair hearing to everyone and welcomes suggestions. He may even go to the extent of changing the decision if he feels that it is not acceptable to everyone. He respects the self-respect of his subordinates and generally avoids ticking them off in public.

The democratic boss is an easy boss to handle. He does not need any special handling. But a democratic boss does not encourage inefficiency. If you are a lethargic worker, you are likely to be ticked off, anyway. Democratic system of man-management draws the line at indulgence.



THE AUTOCRATIC BOSS: although one may feel that his boss is an autocrat just because the boss likes to have his way, this is not the definition of an autocratic boss. An autocratic boss goes much beyond the limitation of enforcing his ideas.

He is totally disrespectful of his subordinate's intelligence. He does not care for the ideas of others. Cohesive working is not his cup of tea. His channel of communication is one, which travels downward only. He does not believe in checking back on the facts before he fires his subordinates.

The only way to deal with an autocratic boss is to let him have his way and to look for another job if you can't do so. It does not pay to cross swords with him or argue with him. You will have to accept his decisions and carry them out to perfection.

THE WORKAHOLIC BOSS – a workaholic boss works like a tireless horse. He does not wear a watch nor does he keep a clock on his table. To him, the setting of the sun does not bring a message. He is wedded to his profession and knows nothing of the world beyond the confines of this cabin walls. He expects his subordinates to leave after he leaves the office. Working late hours is a habit and an addiction with him. Most often, he has no family life and has scant respect for that of others.

Handling a workaholic boss can be quite tricky. Forget about your wife and children or the appointment you made with your girlfriend. In fact, forget everything except your work and your boss if you want to be in the good books of your boss. A workaholic boss does not mean a heartless boss. He has his own moods and flashes of benevolence. He will reward you with a promotion or a holiday if he feels that you have earned it. He will give you everything except time off from work.

THE PERFECTIONIST BOSS – God help you if you have this type of boss. He is a boss who will not accept anything but the best. He is nitpicking type. Nothing pleases him. He is a tough taskmaster who demands a lot from himself as well as his subordinates. Whether it is reporting time at work or the neatness or the quantum, he is a pusher all the way. He drives himself as well as others, forcefully.

If you are not able to do a job well, you better look out for another job. There is no place for substandard work as far as this boss is concerned. Work well and you will surely be rewarded handsomely. Try not to fake or fool the boss. A perfectionist is too smart to be fooled.

THE WEAK BOSS – One important thing to remember about weak bosses is that they don't like confident and super-efficient subordinates. It is mainly to do with their feeling of inadequacy. A weak boss can sabotage the career in a very effective manner. They are basically insecure and fearful about their own career. His insecurity does not allow them to accept the confidence of their subordinates. They will pass the buck when something goes wrong and swallow all the credit when things are going well. It is best to be discreet when dealing with a weak boss. Work in tandem with them at the speed and pace set by them. Keep yourself in the sideline, especially when the top bosses are in town. If your weak boss gets a threat perception, he is surely going to nip your career in the budding stage.

THE INDULGENT BOSS – An indulgent boss likes to treat his subordinates like children. He does not entrust or delegate. He likes to do all the important jobs himself, allotting piece-meal work to others. He is considerate, kind and understanding. He can handle the failures in a realistic manner and generally takes the blame for the disasters. He is efficient and quick. He is liberal with the praises and extremely genial by nature.

You are lucky if you have an indulgent boss. The only problem is that you may not make swift progress in your career because you don't get enough chances to prove yourself. The policy to follow is to wait and watch. Handled right, the indulgent boss can be made to bend his rules and pass on some responsibilities.

Count your blessings and work towards establishing the faith required for him to delegate. Make yourself indispensable.

THE BULLYING BOSS – A bullying boss is aggressive in nature. The tough boss allows no room for error. He has a strong need to control and intimidate others. He is a highly emotional person. He is not likely to allow anyone to have his say and explain. He issues threats and fires the subordinates in public. He is like a drill sergeant in his approach and his is a management style, which thrives on terror and submission. His angry outbursts may not be justified, at times. He believes that intimidation is the best way to get the work done.

Tackling a bullying boss can be an extremely tricky affair. One way to deal with the situation is to pay back in the same coin. It is the risky but it is an alternative. Most often than not, these kinds of people tend to suppress those who do not retaliate. Showing a bit of spirit could cow them down, sometimes. Be tactful and diplomatic but convey the message that you are not likely to take it lying down.

But before you do that, you have to see that you are indispensable and your work is totally flawless. Good luck!

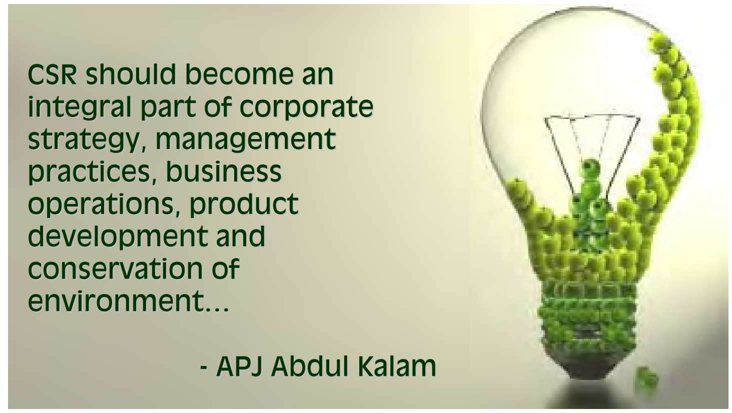
THE PERFECT BOSS – These kinds of bosses are rare. There was a time when there were no business schools and there were no management degrees but there were good managers. The perfect boss did exist then and some still exist but they are getting rarer and rarer just like the perfect employee.

A perfect boss is sensitive but has his emotions under control. He is willing to coordinate plans and programs with his subordinates. He guides them with a paternal attitude and has consideration for their feelings and limitations. A perfect boss lends psychological support to his subordinates and prizes the individual's talents as well as abilities. He is able to read his subordinates, gauge their strengths and weaknesses and allots them the slots after careful scrutiny. He will never chastise scrutiny. He will never chastise anyone in public and will always give due respect to everyone.

How blessed are we, if we have all the good characteristics under each style and make both organization and people happy in our current competitive global environment.

CSR: Voluntary to Mandatory

Bhuvanesh Sharma
VP- Corporate Affairs & Company Secretary
HOV Services Limited, Pune
bhuvanesh.sharma@hovsltd.com



The Corporate Social Responsibility (CSR) is not a new concept in India. Ever since the inception, corporates like Bharat Petroleum; Birla Group; Hindustan Unilever, Indian Oil, Tata Group to name a few have been involved in serving the community. Through donations and charity events, many other organizations have been doing their part for the society. On the other hand, the CSR programs of corporations like GlaxoSmithKline and a few others focus on the health aspect of the community. They set up health camps in tribal villages which offer medical check-ups and treatment and undertake health awareness programs.

CSR is the integration of business operations and values, whereby the interests of all stakeholders including investors, customers, employees, the community and the environment is reflected in the company's policies and actions. "CSR if it is implemented with sustainability as a focus, then it enhances business sustainability, provides new opportunities, develops customer loyalty and improves stakeholder relationship," said the former President Abdul Kalam on December 20, 2012 at an award function organized by industry body the Associated Chamber of Commerce (ASSOCHAM). "It should become an integral part of corporate strategy, management practices, business operations, product development and conservation of environment" he added.

A traditional view of the corporation suggests that its primary, if not sole, responsibility is to its owners, or stockholders. However, CSR requires organizations to adopt a broader view of its responsibilities that includes not only stockholders, but many other constituencies as well, including employees, suppliers, customers, the local community, state, and federal governments, environmental groups, and other special interest groups. CSR is People, Planet, and Profit.

CSR is slowly evolving and developed countries having established standards for CSR. Many European countries have specified that companies must include CSR information in their annual report.

In India the evolution of CSR refer to the changes over time in cultural norms of corporations' engagement and the way business managed to develop positive impacts on communities, cultures, societies, and environment in which those corporations operated. Over the time way back from 1850 during industrialization, the charity and philanthropy were main matter of CSR. CSR motives changed during independence movement in India to more of social reforms to encourage empowerment of women and rural development. Then came era of globalization and economic liberalization where due to increased growth momentum, Indian companies grew rapidly and therefore, they showed more interest and were able to contribute towards growth of society and for social cause.

In earlier days till today also, Indian companies were spending on philanthropic activities and whether such activities be construed as CSR activates, the new regulation is not clear. Moreover, the amended provisions view the CSR spending as individual company rather than from group perspective. This will adversely affect the promoters having various group companies and have consolidation presentation of their financial statements. For example if there are 10 companies in group making profits, it implies 20% will be set aside, which can be used for repayment of capital finance, if any, or in new business development. Further the law is not clear on whether the CSR spending will 100% tax exemption.

This will defiantly effect the sentiments of companies indulge in philanthropic activities keeping the view of government plan to make CSR activities mandatory and with penal provisions for not complying with. Important for government to ensure that it role does not create extreme situation where its role becomes interventionist.

The whole world is watching India Inc; will Indian companies be required mandatorily by law to contribute a certain percentage of net profits to CSR activities?

CSR is not a new concept in India but has been now discussed and talked upon with more gravity by India Inc due to recent proposed amendments by Government of India in Companies Bill 2012 providing for all companies to set aside 2% of net profit for CSR activities. The CSR clause in Companies Bill 2012 covers all companies that have either net worth in excess of Rs 500 crore or turnover of Rs 1,000 crore or more or net profit of Rs 5 crore or more. They have to set aside 2% of the average net profit of the preceding three years for CSR activities.

From view of the Indian companies, meaning of CSR activities could be different from one company to another. For some companies it means providing lunch to its employee and to other it could be about tackling global warming, environmental issues. Indian companies have a tradition of philanthropy but CSR is totally different. CSR must relate to conducting the business but not as to giving to the local communities in which business operation are conducted. Corporate philanthropy and CSR are two different disciplines, but the difference gets indistinct. There is a perceptible changeover from giving as an obligation or charity to giving as a strategy or responsibility.

It is imperative upon the companies as how to view the government mandate as tax or as an investment. If the money is spent on philanthropic projects unrelated to the business, then it is just like social tax on profits. However, if companies can use the 2 percent for philanthropic and shared value projects that create new business opportunities, reduce costs, or strengthen their industry cluster, then the same expenditures would take route of an investment that bring fruits back to the company.

In addition to 2% setting aside, the regulatory had required “business responsibility reporting” as a non-financial reporting which should include environmental, social and governance initiatives, outlined as per National Voluntary Guidelines (NVG) that have been formulated by the Ministry of Corporate Affairs. The mandatory requirement is for top 100 listing companies and these companies are required to submit this reporting along with their annual report for the fiscal year ending on or after December 31, 2012.

However, majority of the top 100 companies do not seem to be prepared yet in formulating their responsibility reports. A recent study conducted by Carbon Masters, a consulting agency in the field of sustainability, to find the preparedness levels of top BSE-100 companies, indicated that 64% of the top affected companies are not prepared to submit SEBI's prerequisite Business Responsibility (BR) report.

From decades, India business sector generated wealth for shareholders; however the country continues to grapple with problems of poverty, unemployment, illiteracy and malnutrition. Corporate Growth is sometimes seen, by regulatory as widening the gap between India and Bharat (rural India) through its income-skewing competence. The consensus of all the discussion upon CSR happening in corners of India Inc leads that India needs a new approach to solve social problems and foster growth; Companies have important role to play; and the government intends to build companies capacity to do so.

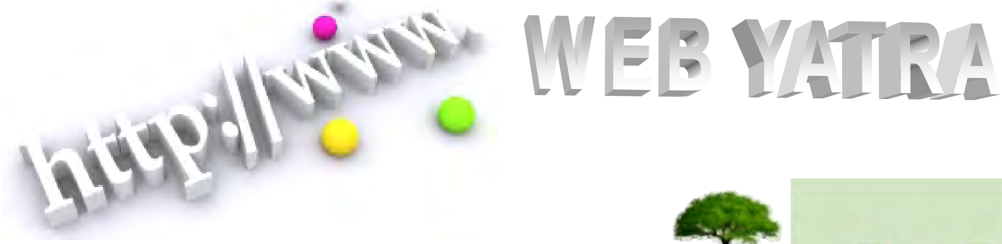
The basic objective of CSR is to maximize the company's overall impact on the society and stakeholders keeping in consideration of the following:

Environment: Businesses have a role to play in preserving natural resources and biodiversity while combating pollution and climate change. We are committed to minimizing our main impacts on the environment - energy use, business travel and waste management;

Community: Companies need to develop a long tradition of engaging with the communities in which we work by aligning our community involvement with our business activities and client relationships to ensure maximum impact; and
Sustainability: In wider sense sustainability includes both corporate social responsibility and environmental responsibility.

CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes. A growing number of corporate feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness.

The government mantra is that corporate have equal right and duties towards citizens for social upbringing and therefore “Corporate Social responsibility” and “business responsibility reporting” are approaching its way through the Companies Bill 2012.



Top Environmental Issues

Nowadays there is a growing concern towards global environmental problems. Due to industrial revolution and globalization in 19th and 20th centuries we have left behind the concept of environmental conservation. As we all know, 'If No Environment, No Mankind.' It is important that we all know how to protect environment and avoid pollution. One such source is www.topenvironmentalissues.com

Shruthi K.
CS Professional Student,
Mysore
shruthikundur@gmail.com

This site provides large array of articles concerning the top environmental issues like Reasons for pollution, Consequences of pollution, Facts of pollution, Initiatives to be taken, Agencies working for reducing pollution, Impact of pollution on bio-diversity and Environment pollution and health.

This Site enlightens us on facts about environment and pollution. To save the globe- senseless poisoning of the earth, air and water, and destruction of forests that man is meting out from years, has to be stopped and it is high time that we preserved and restored the Nature's balance. **Nurture The Nature.**

Indian Army Day

Army Day is celebrated on 15 January every year in India, in recognition of Lieutenant General (later Field Marshal) K. M. Cariappa's taking over as the first Commander-in-Chief of the Indian Army from Sir Francis Butcher, the last British commander, in 1948. The day is celebrated in the form of parades and other military shows in national capital as well as all 6 Army Command headquarters.

The Indian Army fights adversities on borders as well as with natural calamities. The major feature of this army is that it combats in hot, chilly, temperate, forestry, terrain. One best example is the Siachen glacier where the Indian soldiers guard the border at minus 80 degree Celsius. The Army works with true dedication and spirit of the motto 'fight to win'.

The Army rededicates itself to become a part of the 'War Winning Team' on this day. The day begins with paying homage to the martyred soldiers at the Amar Jawan Jyoti at the India Gate, New Delhi. It is followed by parades and many military shows which feature the technology and achievements in Army which is held at the Delhi Cantonment every year. Unit credentials and Sena Medals are also presented for gallantry on the occasion.




Demystifying Participatory Notes

Participatory Notes have been accounting for mostly 15-20 per cent of total FII holdings in India since 2009, while it was in the range of 25-40 per cent in 2008. Further it was as high as over 50% at the peak of Indian stock market bull-run during 2007.

CS. Amar Kakaria ACS, ACA, ACWA

Director, Fusion Advisors Pvt Ltd, Mumbai
amar@fusionadvisors.in

Being a growth economy, India has always attracted plenty of investors of different sizes across the world. To invest in capital markets in India, an investor has to fill up plenty of forms and submit different documents to meet KYC norms. There are numerous regulations that one has to adhere to, in order to be registered with the Securities and Exchange Board of India (SEBI) to invest in the Indian securities and further, he is always under constant scrutiny of the regulators. While large investors can set-up funds and get themselves registered with SEBI, small investors do not have such opportunity and they have to rely on other alternatives.

Participatory notes (commonly known as P-notes) are instruments used by foreign funds and investors who are not registered with the SEBI but are interested in taking exposure in Indian securities. Participatory notes are generally issued overseas by the associates of India-based foreign brokerages and domestic institutional brokerages. They are, in fact, offshore derivative instruments issued by foreign institutional investors and their sub-accounts against underlying Indian securities. Participatory notes are issued where the underlying assets are securities listed on the Indian bourses.

Foreign institutional investors (FII) who do not wish to register with the SEBI but would like to take exposure in Indian securities also use participatory notes. Brokers buy or sell securities on behalf of their clients on their proprietary account and issue such notes in favour of such foreign investors.

P-Notes have been accounting for mostly 15-20 per cent of total FII holdings in India since 2009, while it used to be in the range of 25-40 per cent in 2008 and it was as high as over 50% at the peak of Indian stock market bull-run during 2007.

Overseas entities have been aggressively investing in the Indian capital markets over past few months on fresh initiatives taken by the government on policy reforms. According to the latest data released by the SEBI, total value of P-Note investments in Indian markets (equity, debt and derivatives) at the end of October rose to Rs 1,75,829 crore (about $32 billion), the highest level in the current fiscal year. Further, value of P-Notes issued with derivatives as underlying was at Rs 95,536 crore at the end of October 2012. The quantum of FII investments through these P-Notes also rose to 14.4 per cent, the highest since 15 per cent in March this year.

Participatory notes have attracted significant market attention recently because of huge inflow of foreign funds into Indian stock markets through this route. Since the ultimate beneficiary of transactions carried out using participatory notes is not known to the market regulator and the tax authorities, there is scope for misuse and tax avoidance. Moreover, these participatory notes do not attract an attention of the market regulators of the countries in which they are issued, the entities holding participatory notes virtually go unregulated.

From more than 50% of total FII investments, share of P-Notes has fallen considerably over last few years after SEBI tightened its disclosure and other regulations for such investments. According to a circular issued in June 2012, SEBI said foreign institutional investors (FIIs) will have to report monthly details of transactions done through P-notes within 10 days. Earlier, FIIs had a window of six months to report these transactions.

P-Note investments were on a steep uptrend this year till mid-March, but started declining sharply after the government in its Union Budget proposed new taxation regime of General Anti-Avoidance Rule (GAAR) and certain retrospective amendments for taxing offshore transactions.

The SEBI is set to further tighten its foreign institutional investors' regulations to ensure that participatory notes are not misused by non-resident Indians, overseas corporate bodies controlled by Indians or by Indian promoters.

Accountability and Remuneration

Financial Stability Board had brought out a set of principles on sound compensation practices in 2009. Reserve Bank of India has issued guidelines on Compensation for private sector and foreign banks.

Priti Astarag Pattnaik ***(ACS, LLB)***
Company Secretary, KBS Local Area Bank Ltd.
Mahabubnagar, Andhra Pradesh
papatnaik@gmail.com

By the end of 2008 the global economy melted down. One of the biggest reasons triggering the phenomenon was USA sub-prime loan bubble. The US banks pumped capital to the sub-prime loan market without prudent risk analysis. The decision makers ignored the risk parameters in view of the higher short term profit and the incidental increased performance incentive (payable to them for achieving targets). The housing market soon got saturated resulting in falling demand and plummeted value of house. Many home owners who had taken out sub-prime loans found themselves unable to meet their repayments.

With a large number of borrowers defaulting on loans, banks were faced with a situation where the repossessed house and land was worth less in the market than the bank had loaned out originally. The banks had a liquidity crisis on their hands, and giving and obtaining loans became increasingly difficult as the fallout from the sub-prime lending bubble burst. This is commonly referred to as the credit crunch. The government of affected countries declared bailout packages to save their banks, insurance companies and financial institutions. In USA Congress passed the Troubled Asset Relief Program or "TARP", funded at $700 billion. The bailout phenomenon is not new- it had happened in case of Irish Banks during 2008 to 2011 and Swedish banks in 1991 to 1992. Whatever may be cause of bailout, it has always been out of the innocent taxpayers' treasury.

The Lesson and Corrections: The whole drama was driven by a simple reason – booking of higher short term profit for getting high performance bonus/pay at the cost of high risk to the bank. The world learnt a lesson.

In order to address the issues in a coordinated manner across jurisdictions, the Financial Stability Board (FSB) brought out a set of principles and implementation standards on sound compensation practices in April and September 2009.

The principles are intended to reduce incentives towards excessive risk taking that may arise from the structure of compensation schemes. The principles call for effective governance of compensation, alignment of compensation with prudent risk taking, effective supervisory oversight and engagement by stakeholders.

FSB-Who is it: *Financial Stability Board* is an international forum consisting of national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The G20 Countries are members in FSB. FSB develops and promotes the implementation of effective regulatory, supervisory and other financial sector policies. RBI along with Ministry of Finance is a member in FSB.

India effect: The principles laid down by the FSB are under implementation across jurisdictions. Reserve bank of India has issued guidelines on Compensation for private sector and foreign banks. The banks have been advised to formulate their compensation policies on the lines of the guidelines. The guideline covers the compensation package of all categories of employees with greater importance to the compensation package of the decision makers and risk takers in top level management level like Whole Time Directors / Chief Executive

Officers. The directives are aimed at preventing greed from destabilizing the institution.

What Guidelines say: The guidelines requires that the compensation of the Whole Time Directors / Chief Executive Officers could be mix of cash, equity and other payouts, but it should be adjusted for all types of risk to ensure that it is symmetric with risk outcomes in a way to be sensitive to the time horizon of the risks.

The remuneration should have proper balance between fixed and variable component; variable pay should not exceed 70% of fixed pay. The compensation package should provide for deferral of the variable pay preferably for a period of three years. And the payment should be made on prorate basis. In case of deterioration in the financial performance the variable pay should be adjusted/ reduced. However here the variable pay refers to the performance based incentives which are paid in addition to the remuneration.

The guidelines also mandates for a mechanism whereby the incumbent undertakes/agrees to return the previously paid or vested remuneration to the bank under certain circumstances or which vest a legal right on the bank to prevent payment of all or part of the amount of a deferred remuneration on happening of certain event pertaining to the decision made by the incumbent which had resulted in loss to the bank.

Apart from this, the remuneration structure should be framed, reviewed and implemented by the remuneration committee of the board. The Remuneration committee should also include at least one member from the Risk Management committee of the board. The idea behind this common membership of committees is to ensure effective alignment between compensation and risk.

The regulator: Reserve Bank of India, the utmost authority regulating and controlling the Indian financial and banking sector, has always been well recognized as a bench mark regulator in south East Asia and African countries. Banking industry is the back bone of any country's economy. Banking is a business for profit and at the same time it plays a major role in economic development. No one should be allowed to take the undue advantage of the position for enriching personal interest by putting the organisation at risk.

Hence the regulation must be stricter than other sectors. Corporate governance and compliances to the prescribed standards are the effective tools for accomplishment of the goal of steady economic growth.

Impacts and Applicability : The guidelines though have come bit late, have now been put in place; Private sector and foreign banks have been asked to frame the policies by March 2012 and implement the same from 2012-2013. Still a doubt persists about its actual applicability to small private banks.

- The small private banks where the portfolio is very less compared to big players, the guidelines may cause bottleneck to the flow of efficient professional in the top level management positions like MD/WTD/CEO. If the compensation of MD/WTD/CEO is modified as an effect of the guidelines the package would definitely lose its glamour to attract professional bankers for heading small banks. The real picture is that in small banks, the so called incentive in the compensation structure is either nil or of the nature that forms part of the agreed salary. If the bank is compelled to change the structure and defer the payment of variable payment for more than three years with an ambiguity like contraction of the payment or refund of the salary after the incumbent had left, it would definitely affect the bank as good professional bankers may not be anymore attracted for the positions heading the bank.

- If the incumbent can be held responsible for the financial performance of the bank after he has left the bank (if the declined performance of the bank in some way can be related to the decision taken by him), then why not the same employee be entitled for a share in the better performance of the bank, after he has left, as such performance of the bank in some way might be related to the decision taken by the employee during his period.

- It is a fact that the risk management policy, procedure and framework of many small banks are not sufficient and improved as in case of bigger size banks/financial organizations either due to lack of money to engage efficient professionals or soft ware or due to the fact that risk analysis is not of that much importance keeping in view the size of the institution or nature of business or the risk parameters cannot be established depending on the situations prevalent in the geographic location of the operational area etc. In the absence of proper parameter to analyze and evaluate the risk, the effort to link the remuneration of the MD/WTD/CEO to the risk seems meaningless.

Not concluded: There may be so many questions that could be raised and may never be answered. Still the fact remains that the compensation must be justified and the receiver of the same must be accountable for his acts.

Living Room.....

DON'T QUIT. KEEP PLAYING...!

Wishing to encourage her young son's progress on the piano, a mother took her boy to a Paderewski concert. After they were seated, the mother spotted a friend in the audience and walked down the aisle to greet her.

Seizing the opportunity to explore the wonders of the concert hall, the little boy rose and eventually explored his way through a door marked "NO ADMITTANCE." When the house lights dimmed and the concert was about to begin, the mother returned to her seat and discovered that the child was missing.

Suddenly, the curtains parted and spotlights focused on the impressive Steinway on stage. In horror, the mother saw her little boy sitting at the keyboard, innocently picking out "Twinkle, Twinkle Little Star."

At that moment, the great piano master made his entrance, quickly moved to the piano, and whispered in the boy's ear, ***"Don't quit. Keep playing."***

Then leaning over, Paderewski reached down with his left hand and began filling in a bass part. Soon his right arm reached around to the other side of the child and he added a running obbligato. Together, the old master and the young novice transformed a frightening situation into a wonderfully creative experience. The audience was mesmerized.

That's the way it is in life. What we can accomplish on our own is hardly noteworthy. We try our best, but the results aren't exactly graceful flowing music. But when we trust in the hands of a Greater Power, our life's work truly can be beautiful. Next time you set out to accomplish great feats, listen carefully. You can hear the voice of the Master, whispering in your ear, "Don't quit. Keep playing."

(12th January, the birth day of Swamy Vivekananda is celebrated as National Youth Day)

"We are responsible for what we are, and whatever we wish ourselves to be, we have the power to make ourselves. If what we are now has been the result of our own past actions, it certainly follows that whatever we wish to be in future can be produced by our present actions; so we have to know how to act."

"Take up one idea. Make that one idea your life - think of it, dream of it, live on that idea. Let the brain, muscles, nerves, every part of your body, be full of that idea, and just leave every other idea alone. This is the way to success, that is way great spiritual giants are produced."

- Swamy Vivekananda

Compilation:
CS. Ajay Madaiah, Mysore

Spectrum Space

Learners' Corner

White Label ATMs in India

At present only banks are permitted by Reserve Bank of India (RBI) to set up Automated Teller Machines (ATMs) as extended delivery channels. The investments in ATMs have been leveraged for delivery of a wide variety of banking services to customers across the banking industry and expanded the scope of banking to anytime, anywhere banking through interoperable platforms provided by the authorised shared ATM Network Operators / Card Payment Network Operators.

Although there has been nearly 23-25% year-on-year growth in the number of ATMs (90,000+ presently), their deployment has been predominantly in Tier I & II cities. There is a need to expand the reach of ATMs in Tier III to VI centers. In spite of the banks' pioneering efforts in this direction, much needs to be done. Accordingly, it has been decided to permit non-bank entities incorporated in India under the Companies Act, 1956, to set up, own and operate ATMs in India. Non-bank entities that intend setting up, owning and operating ATMs, would be christened "White Label ATM Operators" (WLAO) and such ATMs would be called "White Label ATMs" (WLAs). They will provide the banking services to the customers of banks in India, based on the cards (debit/credit/prepaid) issued by banks. The WLAO's role would be confined to acquisition of transactions of all banks' customers and hence they would need to establish technical connectivity with the existing authorised shared ATM Network Operators / Card Payment Network Operators.

Non-bank entities would be permitted to set up WLAs in India, after obtaining authorisation from RBI under the Payment and Settlement Systems (PSS) Act 2007. The general guidelines for any non-bank entity to seek authorisation under the PSS Act for operating a payment system are available at http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/86707.pdf.

Non-bank entities intending to set up WLAs under these guidelines may approach RBI for seeking specific authorisation, within four months from the date of issuance of these guidelines, beyond which the authorisation seeking window will be closed. Such non-bank entities should have a minimum net worth of Rs 100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times. (RBI Notification: DPSS.CO.PD. No. 2298/02.10.002/2011-2012)

Did you know?

Online Dispute Resolution

ODR is a concept of using internet for legal proceedings.

ODR is the online equivalent of ADR. ODR can also augment traditional means of resolving disputes by applying innovative techniques and online technologies to the process. ODR is a being a wide field, which may be applied to a range of disputes; from interpersonal disputes including consumer disputes or marital separation; to court disputes and interstate conflicts. It is believed that efficient mechanisms to resolve online disputes will impact in the development of e-commerce.

While the application of ODR is not limited to disputes arising out of business to consumer online transactions, it seems to be particularly apt for these disputes, since it is logical to use the same medium (the internet) for the resolution of e-commerce disputes when parties are frequently located far from one another.

Pick of the month

Can a LLC become partner of a partnership firm?

Yes, A Company Being a Juristic person is capable of contracting in its own name. Only doubt that arises is that the liability of a partner being unlimited, can a limited liability company become partner?
Yes, It is the liability of the members of a limited liability company which is limited and not the company itself. Thus there should be no objection to a limited liability company becoming a partner of a partnership firm. However, the Department of Company affairs has opined that the objects clause must contain a facilitating provision in this regard.

Compiled by:
CS. Abhishek Bharadwaj A.B.
Bangalore

CA. Ashit Shah, Mumbai | **Team Genicon, Chennai** | **CS. Kasturi S., Bangalore**

CUSTOMS & FTP

Notifications/ Circulars

The number of Appreciation Certificates awarded in one year shall not exceed thirty five, but if the President considers that special circumstances in any one year justify the award of the Appreciation Certificates in excess of the thirty five, the number shall not exceed forty.

Notn No. 2/2013- Customs (N.T.) – Dated 14th January, 2013

Import of crude petroleum oils and oils obtained from bituminous minerals from Brunei Darussalam are exempted from Basic Customs duty. However, the import of such crude petroleum is subject to production of certificate of the origin from Brunei Darussalam.

(Notification No. 63/2012-Custom, dated 31.12.2012)

Provisional safeguard duty on imports of Hot rolled flat products of stainless Steel 304 grade(up to a max width of 1605 mm) into India from China

Notification No. 1/2013-Customs (SG) New Delhi, the 4th January, 2013 G.S.R. 15 (E).

Effective 01.01.2013, DGOV has been vested with functional control of SVB activities. Hitherto, they were under the jurisdiction of the Commissioners of Customs. Further, it is provided that the officers posted in SVBs will not be given any additional responsibilities other than SVB investigations and related issues. DGOV will closely monitor pending files, approval for initiation of SVB inquiries and supervise the investigations. However, matters relating to review, appeal and other legal matters arising out of investigations and orders passed by SVB shall continue to be handled by the jurisdictional Commissioners of Customs. *(Circular No. 29/2012-Custom, dated 07.12.2012)*

The Central Government has provided exemption from payment of customs and excise duties for certain mega and ultra-mega power projects respectively (under Notification No.12/2012-Cus (Sl. No. 507) and 12/2012-Central Excise (Sl. No. 337 and 338), both dated 17-03-2012). This exemption was hitherto subject to the condition that the importer / project developer provides a Bank Guarantee. It is now provided that the importer/project developer may furnish a security in the form of a Fixed Deposit Receipt (FDR) or Bank Guarantee from a Scheduled Bank (w.e.f. 27.06.2012). Further, it is clarified that the importer/ project developers are allowed to replace the Bank Guarantees with FDR's provided prior to 27.062012.

(Circular No. 2/2013-Customs, dated 01.01.2013)

The CBEC has introduced a new scheme to incentivize incremental exports. An Import Export Code holder would be entitled for duty credit scrip at rate of 2% on the incremental growth in exports. The incremental growth shall be determined during the period 01.01.2013 to 31.3.2013 compared to the period from 01.01.2012 to 31.3.2012 on the FOB value of exports. The scheme is region specific and will cover exports to USA, Europe and Asian countries only. Such duty credit scrip will be freely transferable and shall also be eligible for domestic sourcing of goods.

(Notification No. 27(RE 2012)/2009-14, dated 28.12.2012)

Case Law

The Madras High Court has held that interest is payable for delay I refund of bank guarantee encashed earlier. The court held that interest is not payable under section 27A of the customs Act, 1962, but the assessee was entitled to interest considering the Supreme Court judgment in the case of Sandvik Asia. Earlier, the department had denied interest on the ground that section 27A would apply only when the refund was payable under section 27 and that since section 27 was not applicable for refund of bank guarantee already enforced, section 27A would not be applicable

Areva T&D India Ltd. V. Commissioner – 2012 TIOL 1045 HC-MAD-Cus

CESTAT Mumbai has held that CVD on import of torches for undertaking the activity of packing/re-packing & labeling which amounts to manufacture under Act, shall not be payable on MRP basis.

Starlite Components Ltd. Vs. Commissioner – 2012(286) E.LT 43 (Tri-Mumbai)

CESTAT, Bangalore has held that refund claim filed by CHA who was duly authorised by the importer, even though the same is not in proper format, is valid.

P S Tech Com Pvt. Ltd. V. Commissioner – 2012 TIOL 1843 – CESTAT-Bang)

Additional duty on high speed diesel payable under Section 116 of Finance Act, 1999 was demanded on the ground that the same was demanded on the ground that the same was not specifically exempted under Notification 52/2003-Cus.

Comr V. STI India Limited – 2012-TIOL-1867—CESTAT-Del.

Relying on the definition of defaulter in Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 199, the Delhi High Court has held that the director and the company are separate juristic persons and therefore dues recoverable from the company cannot be recovered from former director.

Anita Grover V. Commissioner – 2012-TIOL-1049-HC-DEL-CUS

CENVAT

Notifications/ Circulars

New guidelines for initiating recovery proceedings by the Revenue Department have been issued by CBE&C. The Circular pertains to recovery in cases where the stay application is pending or where no stay application or appeal has been filed against the order confirming the demand of tax/duty. *No. 967/1/2013-CX, dated 1-1-2013*

Case Law

The Delhi High Court has held that neither the Assistant Commissioner nor UOI can question the order passed in revision under Section 35EE of the Central Excise Act, 1944 by the CG as no writ can be filed by a Government functionary questioning the decision of the Government itself and the UOI cannot also question its own order.

Union of India V. Ind Metal Extrusions Pvt. Ltd. 2-1-2013 in WP(C) 504/2010.

CESTAT, Delhi has held that when the goods are cleared to both related and unrelated buyers, then valuation of such goods should be made under Rule 4 of the Rule.

Oswal Woolen Mills V. Commissioner – 2012 TIOL-1963-CESTAT DEL

The Bombay High Court has held that authorization to search is not valid in a case where the first authority competent to search had not said anything but had merely placed the file for approval before higher authorities namely Additional Director who also only suggested to grant of permission to search.

Samadhan Steel Traders V. Union of India – 2012 (286) ELT 343 (Bom)

Service Tax

Notifications/ Circulars

The Central Government has granted an exemption from payment of service tax on services of life insurance business provided under Janashree Bima Yojana and Aam Adami Bima Yojana schemes.

(Notification No.49/2012 - Service Tax, dated 24.12.2012)

Life Insurance Companies had sought a clarification from CBEC in respect of applicability of Point of Taxation Rules, 2011 when they issue notice / reminder letters / intimations to policy holders to pay renewal premiums. Clarification had been desired whether service tax needs to be paid on the basis of such reminders. It has been clarified that under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. *[Circular No. 166/1/2013 – ST dated 1st January 2013]*

It is clarified by Board that service of transportation of milk by Indian Railways, would be exempted under serial number 20(i) of the exemption Notification No. 22/2012 dated 20-06-2012. It further clarifies that expression "food stuff" appearing at serial no. 20(i) of the notification includes "milk". Accordingly, no service tax would be leviable on transportation of milk by rail or a vessel from one place in India to another.

[Circular No. 167/2/2013 – ST dated 1st January 2013]

Board has issued a circular by rescinding seven previous circulars in the recovery and stay application matter. As per this circular, when the stay application are not disposed of by appellate authorities (Commissioner of Appeals or CESTAT) within a period of 30 days of filing of stay application, recovery proceedings has to initiated by the department. In case of Stay application before High Court or Supreme Court, recovery has to be initiated immediately after the orders, if there is no stay. This circular is issued on the bases of Supreme Courts observation in the matter of Krishna Sales (P) Ltd. [1994 (73) ELT 519] that "As is well known, mere filing of an appeal does not operate as a stay or suppression of the Order appealed against". Accordingly, directions are issued for initiating recovery of the confirmed demands.

[Circular No. 967/01/2013 – CX dated 1st January 2013]

Case Law

Revenue was in appeal against the order passed by the Hon'ble Tribunal wherein respondent had reversed the entire Cenvat credit attributable to the credit taken which were utilized in exempted products. Hon'ble Karnataka High Court had an occasion an occasion to consider the said question in the case of Bill Forge (P.) Ltd. [2012] 34 STT 92 wherein it was held, interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is on the actual amount, which is withheld and the extent of delay in paying the tax from the due date. The interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly. Since, respondent had reversed the credit before utilizing the same, no interest can be payable.

[Pearl Insulation Ltd. CEA No. 33 of 2011 dt 02-03-12]

Revenue was in appeal being aggrieved by the order of the Tribunal holding that the assessee is entitled to avail Cenvat credit on the Service tax paid on the transportation services provided by the assessee to their staff for pick up and drop from the residence to the factory and vice-versa.

Respondent was availing Cenvat and utilizing input tax credit relating to transportation services (Rent-a-Cab Service)Hon'ble Karnataka High Court held that if the credit is availed by manufacturer then the question is what are the ingredients that are to be satisfied for availing such a credit. That the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacturer directly or indirectly in or in relation to the manufacturer of final products or used in relation to activities relating to business. If any of the test is satisfied then the service falls under input service and the manufacturer is eligible to avail Cenvat credit and the Service tax paid on such credit.

[Tata Auto Comp Systems Ltd. – CEA No. 132 of 2009]

VAT, Sales Tax and Entry Tax

Notifications/Circulars

Requirement of submission of details of invoice and Goods Receipt Note, in respect of all goods purchased/ received as stock transfer from outside Delhi, in Form T2 has been postponed from 1-1-2013 to 1-2-2013.

Notification No. F 7 (433)/Policy-II/VAT/2012/1079-1090) dated 3-1-2013

The rate of VAT payable by a dealer under Tamil Nadu Value Added Tax Act, 2005, on the sale of generating sets used for producing electricity, has been reduced from 14.5% to 5%.

Notification GOM No. 154, dated 8-12-2012

Tamil Nadu has exempted importers from payment of entry tax in respect of entry of cars and two wheelers into the local area for sale thereon to embassies or consulates and its diplomatic officers, in case of specified countries, for their official and personal use under reciprocal arrangements with India.

Notification GOM No. 153, dated 8-12-2012

Case Laws

The Kerala High Court has held that transfer of right to use a trademark is 'sale' as defined under Kerala Value Added Tax Act, 2003. The petitioner, sole proprietor of a trademark and engaged in the business of marketing, trading, export and import of jewellary etc.,

Malabar Gold Private Limited V. Commercial Tax Officer – 2012-VIL-112-Ker

FEMA & RBI

Notifications/Circulars

As per the revised procedure, a software exporter either under STPIs or SEZs/EPZs/100%EOU/DTA, whose annual turnover is at least Rs.1000 crore or who files at least 600 SOFTEX forms annually on all India basis, will be eligible to submit statements in revised excel format sheets as per enclosed Annexures A & B. All other terms and conditions mentioned in the A.P. (DIR Series) Circular No.80 dated February 15, 2012 applicable to exporters of software situated in STPIs would remain unchanged.

RBI/2012-13/359 A.P. (DIR Series) Circular No. 66 January 1, 2013

On a review, it has been decided to enhance the ECB limit for NBFC-IFCs under the automatic route from 50 % of their owned funds to 75 % of their owned funds, including the outstanding ECBs. NBFC-IFCs desirous of availing ECBs beyond 75 % of their owned funds would require the approval of the Reserve Bank and will, therefore, be considered under the approval route.

RBI/2012-13/367 A.P. (DIR Series) Circular No. 69 January 07, 2013

Government of India has decided to widen the scheme to include certain items covering the Engineering Sectors. The Scheme will be made available to the Engineering Sector on pre and post shipment export credit on the same terms and conditions as available to other sectors.

A list of 134tariff lines of Engineering products approved for inclusion in Interest Subvention for the period January 1, 2013 to March 31, 2013 is enclosed to this circular

RBI/2012-13/376 DBOD.Dir.(Exp)BC.No.70/04.02.001/2012-13 Jan 14, 2013

NEWS Room

Compilation by:
CS. Chakri Hegde,

Company Secretary,
Synova Innovative Technologies Pvt Ltd,
Bangalore
chakrih@synovaindia.com

"Almost half of the world's food thrown away"

Figures from the Institution of Mechanical Engineers show as much as 2bn tonnes of food never makes it on to a plate. The UK's Institution of Mechanical Engineers (IMechE) blames the "staggering" new figures in its analysis on unnecessarily strict sell-by dates, buy-one-get-one free and Western consumer demand for cosmetically perfect food, along with "poor engineering and agricultural practices", inadequate infrastructure and poor storage facilities.

In the face of UN predictions that there could be about an extra 3 billion people to feed by the end of the century and growing pressure on the resources needed to produce food, including land, water and energy, the IMechE is calling for urgent action to tackle this waste. In order to prevent further waste, governments, development agencies and organisation like the UN "must work together to help change people's mindsets on waste and discourage wasteful practices by farmers, food producers, supermarkets and consumers," the IMechE said. (http://www.guardian.co.uk/environment/2013/jan/10/half-world-food-waste)

Fast Track Courts for sexual assault cases

Union Law Ministry said that the states to set up Fast Track Courts (FTCs) for conducting expeditious trial in cases involving sexual assault on women. For establishment of FTCs, the Law Ministry had given a proposal to the states to permit use of funds earmarked for the morning, evening and special courts.

Canada green energy scheme broke trade rules: WTO

The WTO backed complaints from Japan and the European Union that the scheme set up by the Canadian province of Ontario discriminated unfairly against foreign companies.

CCI approves merger of DHFL

Competition Commission of India (CCI) has approved the merger of Dewan Housing Finance Corp's two arms DHFL Holdings and First Blue Home Finance with the parent company. DHFL and First Blue Home Finance are into business of housing finance while DHFL Holdings is an investment firm.

India slams US trade policy at WTO meet

New Delhi urged the US to deliver on the Doha Development Round. India highlighted the fact that the US decision to substantially increase H1B and L1 visa fees for firms under the 50:50 rule would adversely affect Indian IT companies based in the US, preventing more investments and scaling up

AP HC Judge files PIL against Telugu

The Andhra Pradesh High Court expressed its anger at Andhra Jyothi Telugu daily for writing inappropriate articles against Judge Narasimha Reddy. The judge, who filed a Public Interest Litigation (PIL) against the Telugu daily for publishing an article which manipulated facts by showing him in bad light, requested the High Court to treat the case as contempt of court.

RBI asks Union Govt to revisit fiscal measures to reduce gold import

RBI says that the gold import should be moderated in view of its serious impact on the current account deficit. The draft report of the working group released by RBI in its website also sought banks to design innovative financial instruments that can provide real returns to investors.

Consumer Forum slaps Rs 25,000 fine on Sapt Rishi Ayurveda Institute

District Consumer Forum Solan slapped a fine of Rs 25,000 on Sapt Rishi Auyrveda Institute after finding it guilty of immoral trade practice on the basis of a complaint for selling defective 'Sandhi Sudha' massage oil product being advertised through sensational TV shows featuring prominent Bollywood stars.

India opts out of WTO talks on FDI and visa regimes in service sectors

India has decided to opt out of negotiations for agreements between selected WTO member countries for liberalizing FDI and visa regimes in service sectors and for lowering import duty on 357 information technology products and 54 environmental goods, saying the talks were against its interests.