



MYSORE CHAPTER

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Edition 122

March 2014

Growing importance of IPR in Asia

Why software per se is not patentable

CSR Provision as notified on 27.02.14

Intro: Contract Labour (R&A) Act, 1970

**Web Yatra, eTools, Legal Roundup,
News Room, Spectrum Space, Living Room**



Dear Readers,

Here's wishing a Hearty Congratulations to those of you who have succeeded in the recently announced results. For those, who are yet to make it, I would like to recall the words of the legendary Dhirubhai Ambani "If you don't build your dream, someone else will hire you to help them build theirs." So, I would urge you to go after it and come out in flying colours in the successive attempt of the examination.

I take this opportunity to thank the delegates of our 2 -day Seminar on 1st and 2nd March 2014 at Mysore Chapter of ICSI. We also had the opportunity of hosting our President CS R Sridharan on this occasion and providing the Students an interactive session with him.

Some interesting events are lined up this month, starting with **UMANG 14** on 16th March, to celebrate foundation day of the Chapter. A Two day national level seminar is organised in association with Basudev Somani College on **financial Inclusion** on 28th & 29th and a **Two day seminar along with SIRC of ICSI on 29th & 30th at the Mysore Chapter on "Emerging laws : Aspirations, Opportunities & Challenges"**.

A warm invitation to you all for all the scheduled events.



Message from Chairman

CS Ajay Madaiah B.B.

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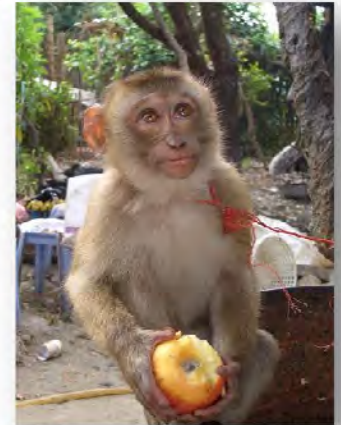


The Monkey with the Wooden Apples

There once was a happy monkey wandering the jungle, eating delicious fruit when hungry, and resting when tired. One day he came upon a house, where he saw a bowl of the most beautiful apples. He took one in each hand and ran back into the forest.

He sniffed the apples and smelled nothing. He tried to eat them, but hurt his teeth. They were made of wood, but they were beautiful, and when the other monkeys saw them, he held onto them even tighter. He admired his new possessions proudly as he wandered the jungle. They glistened red in the sun, and seemed perfect to him. He became so attached to them, that he didn't even notice his hunger at first.

A fruit tree reminded him, but he felt the apples in his hands. He couldn't bear to set them down to reach for the fruit. In fact, he couldn't relax, either, if he was to defend his apples. A proud, but less happy monkey continued to walk along the forest trails.



Words worth Millions

Imagine If Trees Gave Off
Wifi Signals, We Would
Be Planting So Many Trees
And We'd Probably Save
The Planet Too.



Too Bad They
Only Produce The
Oxygen We
Breathe.

The apples became heavier, and the poor little monkey thought about leaving them behind. He was tired, hungry, and he couldn't climb trees or collect fruit with his hands full. What if he just let go?

Letting go of such valuable things seemed crazy, but what else could he do? He was so tired. Seeing the next fruit tree, and smelling its fruit was enough. He dropped the wooden apples and reached up for his meal. He was happy again.

Like that little monkey, we sometimes carry things that seem too valuable to let go. A man carries an image of himself as "productive" - carries it like a shiny wooden apple. But in reality, his busyness leaves him tired, and hungry for a better life. Still, letting go seems crazy. Even his worries are sacred apples - they prove he's "doing everything he can." He holds onto them compulsively.



Letters from Readers!



I must appreciate the efforts being made in providing this great eMagazine which touches upon the various good professional articles in a very impressive manner. In January and February 2014 edition, I want to especially appreciate the article on “Kyoto Protocol, Carbon Credit Trading”. It’s a tough subject which was expressed in a very easy and impressive manner that the writer made is so easy to understand for even a layman.

Keep doing the good work.

CS. Anupriya Garg, Gurgaon, Haryana

13th Student Induction Program

The Thirteenth Student Induction Program was conducted by the Mysore Chapter from 15th February 2014 to 21st February 2014 at the Chapter Premises. 33 students participated in this 7 Day training program which consisted of 28 Technical Sessions.

In the Valedictory session on 21st February 2014, Mr. Rathan Das and Ms. Harshitha P H were adjudged as Best Participants. CS Ajay Madaiah B.B., Chairman, Mysore Chapter of ICSI, Prof. Vijay Simha were present during the occasion.

Activity at Mysore Chapter



Growing importance of IPR in Asia



Column on Intellectual Properties

Further to the update last month highlighting the growing relevance of IPR in the manufacturing sector, focusing on the manufacturing power house of the world - China, and the challenges there, let us continue our IPR journey to understand the growing importance of IPR in other parts of Asia.

In Malaysia, the Industrial Designs (Amendment) Act, 2013 came into force recently in 2013. This new law is more in tandem with international standards. Registered designs are recognized as personal property and may be assigned, transmitted or be offered as security. Further, holders of registered designs shall have valid rights therein for a total of twenty five years. An application under the new law could be rejected if any opposing party is able to produce proof of existing IPR on the same subject (commonly known as prior art, in IPR terminology) not merely within Malaysia but also from outside, subject to specified limitations.

In Philippines, the Trademark Regulations now provide that registration of a trademark in the country shall be withheld until it is shown that the said mark has been registered in the country of the applicant.

Singapore continues to be a trendsetter on IPR matters. Recently, the Intellectual Property Office of Singapore (IPOS) signed a Memorandum of Understanding with the German Patent and Trademark Office where under both offices will collaborate to develop, amongst others, a patent prosecution highway program and further training and development of staff, to improve patent granting and dispute resolution procedures. The IPOS also signed an MOU with the Mexican Institute of Industrial Property for a similar program to allow sharing of patent search and examination reports between the two countries to avoid duplication and to speed up registration for applicants in the two countries. Further, the IPOS signed up with the State Intellectual Property Office of China to exchange IP

information and patent data so that Singapore based businesses have more certainty when they enter the Chinese market that their products and services do not infringe existing Chinese IPR.

All this undoubtedly points out to one observation – countries are increasing moving towards internationally compatible IPR regulations, with greater emphasis on transparency and knowledge sharing across countries, with an objective to reduce redundancy and duplication of effort, thereby leading to quicker turnaround times, faster resolution and improved predictability of IPR registration, prosecution and litigation. All this will certainly help global companies looking to IPR protection across multiple jurisdictions, in a business environment which is less country specific and more multinational.



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While more countries,

including India, will follow suit, this will also mean that –

- Defaults, non-compliances and infringements will also face quicker and greater prosecution;
- Scope of negotiation with local authorities will be reduced;
- Diplomatic pressure by stronger nations on their not-so-strong counterparts will increase, whether through multilateral forums like WTO or through bilateral negotiations.

To conclude, focus on a strong IPR framework will not only become desirable but also critical for individual businesses.

Why software per se is not patentable

In a world surrounded by technology which makes our communication and life a lot easier, it might look odd that software which forms the heart of these technologies is not patentable. Under the Patents Act, 1970 which governs grant of patents on inventions, one should understand that every invention is not patentable unless such invention qualifies to be a subject matter for which the said law enables grant of patent even before it can be seen whether the same would satisfy the strict definition of invention under the said Act. Hence an invention will not automatically qualify for grant of patent.

The Patents Act, 1970 defines an invention to mean a new product or process, involving an inventive step, capable of industrial application. An inventive step is defined to mean an invention involving a technical advance as compared to the existing knowledge or economic significance or both and which should not be obvious to a person skilled in the art. Section 3 of the said Act provides a list of subjects which are not inventions within the meaning of the said Act and hence are per se not patentable. One such subject listed under Section 3(k) is "a mathematical or business method or a computer program per se or algorithms". The reason being that mathematical or business method or a computer program is an abstract idea and they by themselves do not produce any technical effect. It should be understood that a software or an algorithm per se does not produce a technical advance or an effect unless the same works in tandem with a hardware. Hence a software per se does not qualify to be a product or a process for grant of patent. However, if a software coupled with hardware satisfying the test of novelty, utility and non-obviousness test can qualify for grant of patent.

The European Patent Office's (EPO) position is similar to India, which bars grant of patent to a software or an algorithm per se

and hence is not patentable subject matter. The EPO also applies similar tests as in India, that to enable grant of patent to a software, it has to qualify the tests of inventive step, non-obviousness coupled with producing a technical effect.

The United States Patents & Trademarks Office (USPTO) however adopts a bit

liberal approach by enabling grant of patent to a software, if it can transform an article to a

different state. In *Diamond v. Diehr* (450 U.S. 175 (1981)), the US Supreme Court reiterated that mathematical formulas are abstract ideas and are not eligible for patent protection, but a physical machine or process which makes use of a mathematical algorithm is different from an invention which claims the algorithm per se, in the abstract. Thus, if the invention as a whole meets the requirements of patentability that is, it involves "transforming or reducing an article to a different state or thing" it is patent-eligible, even if it includes a software component or program.

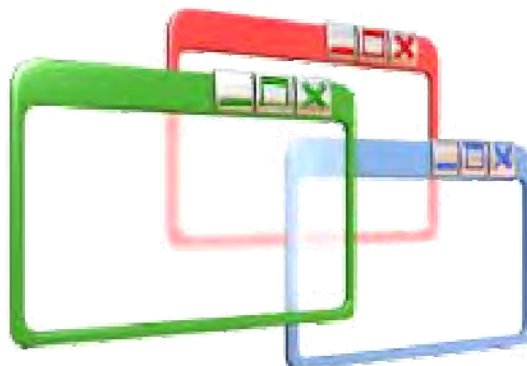
Thus for the first time a software per se was granted patent in the US and the applicable test for such grant came to be called the "Machine or Transformation Test". However in *Bilski v. Kappos* (545 F.3d 943 (2010)) the US

Supreme Court ruled that the Machine or Transformation Test cannot be a sole test for grant of patents to software processes but it can only be an important clue in the examination for grant.



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Continued in page No 9



TOURING INTERNET

Economic & Consumer Credit Analytics
www.economy.com

WEB YATRA



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An economy or economic system consists of the production, distribution or trade, and consumption of limited goods and services by different industries in a given geographical location. In the past, economic activity was theorized to be bounded by natural resources, labor, and capital. This view ignores the value of technology and creativity, especially which produces intellectual property. Economic analysis is most important in every state as well as in every Industry. Here I came across a web site <https://www.economy.com/> which helps to handle capital markets and credit risk in evolving marketplace with confidence. This site also provides unique tools and best practices for measuring and managing risk through expertise and experience in credit analysis, economic research and financial risk management, by providing advisory services and research.

This is one of the best sites which provides the economic news and statistical data from all over the world.



eTOOLS FOR THE PROFESSIONALS



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ANDROPEN OFFICE: This is an open office application for mobile devices with complete six built in programs: Writer [word processor], Calc [spreadsheet], Impress [presentation], Draw[drawing], Math[equation editor] and Base [Data base]. AndrOpen Office can open a wide range of formats like Word (DOC/ DOCX), Excel (XLS/ XLT/ XLSX/ XLTX), PowerPoint (PPT/ POT/ PPTX/ POTX), and Open Document (ODT/ ODS/ ODP/ ODG/ ODF), Photoshop (PSD) and many others (RTF, CSV, SVG, EMF/ WMF, TIFF and more). We can view, edit, export office documents in a range of formats, including PDF. However, it is possible to export as PDF, but not to import.

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2. View and edit documents as well as export them as PDF files.
3. Availability of multiple languages.
4. Own shortcuts to perform common actions.

Specification:

1. Price- Free.
2. Required Android- Version 2.3 or more.



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Contract Labour (R&A) Act, 1970

The Contract labour constitutes a vast multitude of unorganized labour and denotes the practice of employing labour through contractors and other agencies. The aim was to avoid the direct nexus of employer and their workers. The practice was as common as sometimes the entire factories were formed out to contractors. In the case of **Standard Vacuum Refining Co. of India Ltd. Vs Workman**, the Hon'ble Supreme Court of India upheld the right of workman to seek abolition of contract labour. Thus the Contract Labour (Regulation and Abolition) Act, 1970 was enacted in the year 1970 and came in to force on 10th February'1971.

Object:

- Regulation of conditions of service of the workmen employed by contractor, who is engaged by the principal employer; and
- Abolition of contract labour by appropriate Government in certain notified processes.

Contractor: Sec.2(c)

A person who undertakes to produce a given result for the establishment, **other than a mere supply of goods or articles of manufacture to such establishment**, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

Contract Labour: Sec.2 (b)

A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment **where he is hired** in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Here it may be noted that, the Contract Labour (Regulation and Abolition) Act, 1970 comes into play only when such Contract Labour **is engaged in the premises** of the principal employer's establishment.

Principal Employer: Sec.2(c)

In relation to,

- Office or department of Government or any local authority – Head of such office, department or authority
- Factory – Occupier or Owner or Factory Manager
- Mine – Owner or Agent of the mine or Manager
- In any other Establishment – Person responsible for overall control and supervision

Penal Provisions: Sec.22 to 27

- Imprisonment ranging from 03 to 06 Months or Fine of Rs.500/- or both
- Risk of co-employment – (As on date it is very minimal due to judicial activism in Contract labour arena)

Must know here...

- Every employer engaging 20 or more workman through contractor needs to obtain Contract Labour Registration Certificate.*
- The obligation of having **Registration Certificate (RC)** arises, if 20 or more contract labours are engaged even for a single day during immediately preceding 12 months by the principal employer.*
- Such 20 or more contract labours need not be supplied to principal employer establishment by single contractor. It can be through multiple contractors. Even then the obligation of having Registration Certificate (RC) arises.*
- Every contractor engaging 20 or more workmen on contract on any day of the preceding 12 months needs to have **contract labour license** specific to such establishment.*

- *Contract Labour (Regulation and Abolition) Act, 1970 comes into play only when the contractor supplies or engages contract labour in the premises of the principal employer establishment.*
- *The principal employer may engage contract labour in any core activity if there is any sudden increase of volume of work in the core activity which*

needs to be accomplished in a specified time. This requires prior approval of the concerned authority and cannot be on continuous basis.

- *In states like Andhra Pradesh, there is a clear demarcation of what are core and non-core activities on which one should engage contract labour. In such circumstances, one cannot engage contract labour on core activities.*

Take a Guess....

1. What is the maximum bonus payable under the Payment of Bonus Act, 1965?

- i) 8.33% ii) 10% iii) 20% iv) Don't know

2. Can both Central and State Government make law on the same labour matter?

- i) Yes ii) No iii) Don't Know

3. Whether setting up of Internal Complaints Committee in an establishment is mandatory?

- i) Yes ii) No iii) Don't Know

4. Principal Employer needs to obtain which of the following under the Contract Labour (R&A) Act, 1970?

- i) Registration Certificate ii) License iii) both i and ii iv) none

5. The first case of Industrial unrest came to force at Empress Mills, Nagpur in the year?

- i) 1857 ii) 1867 iii) 1877 iv) 1887

Answers are elsewhere in the same edition...

IP Now! **Why software per se is not patentable**

continued from page no. 6

Hence in the said case, the US Supreme Court rejected the grant of patent for a business method using a software for hedging losses in one segment of the energy industry by making investments in other segments of that industry, on the basis that the abstract investment strategy set forth in the application was regarded simply not a patentable subject matter.

More recently in the year 2011 in India, the Intellectual Property Appellate Board (IPAB) refused to grant patent to Yahoo Inc for a business method titled "A method of operating a computer network search apparatus." The IPAB while ruling so noted that Section 3(k) of the Patents Act, 1970 excluded business methods, computer program per se and algorithms from patentable subject matter. Yahoo claimed that it has been granted patents in the US for a number of business methods. Justice Prabha Sridevan and D.P.S Parmar noted that "There are huge

innovations in the computers themselves, but the invention claimed is not for the machine but for the method. From whichever point of time we look at it, it still looks to be a business method" and hence they ruled the subject matter not patentable.

Thus, to be eligible for grant of patent in India, a computer program in addition to being satisfying the novelty, utility and non-obviousness test should demonstrate a marked technical effect by being part of a hardware. While USPTO may grant a patent for a process achieved by application of software, the India Patent Office need not. Thus grant of patent in one jurisdiction does not guarantee grant of patent in another jurisdiction. Even as per recommendations of TRIPS, software needs to be treated as a literary work and is entitled only for copyright protection. The Copyright Act, 1957 hence rightly seeks to protect software as a literary work in India.

CSR PROVISIONS

NOTIFIED ON 27.02.2014



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Effective Date for CSR Applicability: Sec 135 of the Companies Act 2013, Schedule VII and the Companies (Corporate Social Responsibility Policy) Rules, 2014 have been notified to be effective from **01st April 2014** vide MCA notification dated 27.02.2014.

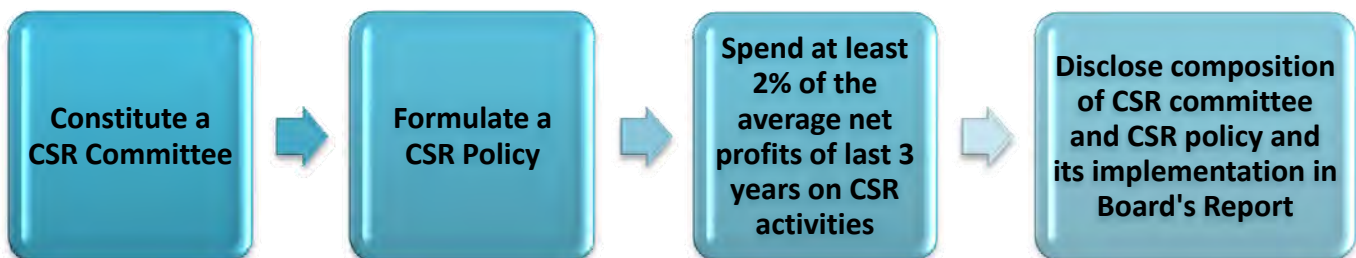
- ❖ **Amendment to Schedule VII** - Schedule VII which contains list of activities which can be undertaken by a company as part of its CSR initiatives has been amended vide this notification and companies must refer to the new list for undertaking qualified CSR activities.
- ❖ **Changes in CSR Rules** - There are many welcome changes in the CSR Rules which have been notified now as compared to the draft rules which were issued for public comments previously. Many of the ambiguities in the Section and the draft rules have been addressed in the final notified rules.
- ❖ **CSR Applicability** - Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act **having its branch** office or project office in India, which fulfills the criteria given in the box:

Net worth of Rs. 500 crore or more, or

Turnover of Rs. 1000 crore or more, or

Net Profit of Rs. 5 crore or more

CSR Mandate - What should the above companies do?



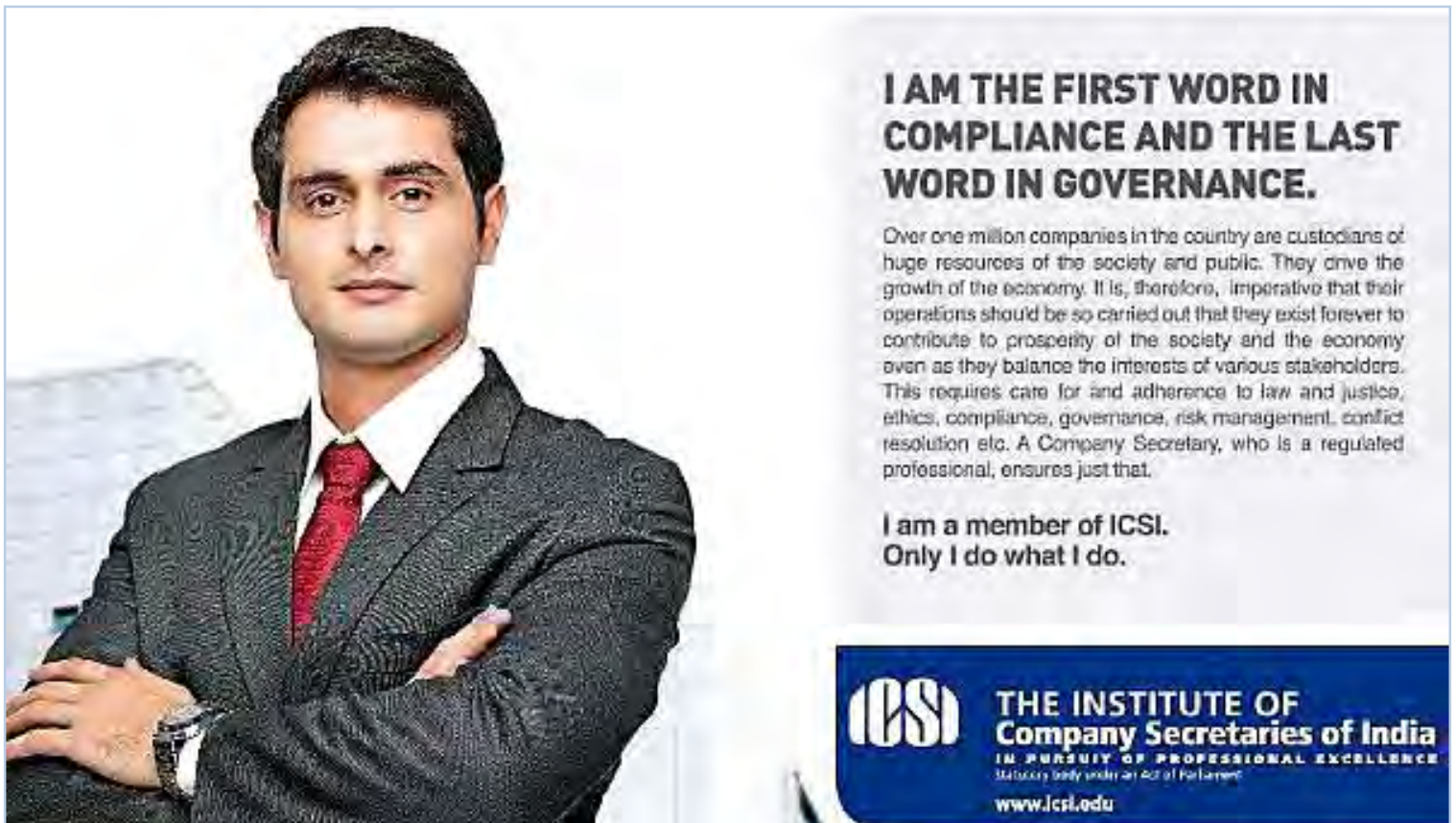
IMPORTANT CLARIFICATIONS INTRODUCED VIA RULES

- **Meaning of Net Profit for CSR Purpose** - "Net profit" means the net profit of a company as per its financial statement.

- **Requirement of at least 1 independent director in CSR Committee** – Unlisted public companies and private companies which are not required to appoint an independent director shall have its CSR Committee without such director
- **Requirement of atleast 3 directors in CSR Committee** – a private company having only two directors on its Board shall constitute its CSR Committee with two such directors
- **CSR Expenditure:**
 - Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.
 - Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies but such expenditure shall not exceed 5% of total CSR expenditure of the company in one financial year.
- **CSR Implementation through Trust/Society-** The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise.
- **Non applicability in subsequent years** – Once a company falls within the ambit of CSR applicability, it has to comply with all the CSR provisions until the completion of 3 consecutive years for which CSR applicability does not arise.

Still Guessing answers for I&E Law Cafe questions?

Answers: 1. (iii), 2. (i), 3(i) if there are 10 or more employees, 4.(i) & 5(iii).



I AM THE FIRST WORD IN COMPLIANCE AND THE LAST WORD IN GOVERNANCE.

Over one million companies in the country are custodians of huge resources of the society and public. They drive the growth of the economy. It is, therefore, imperative that their operations should be so carried out that they exist forever to contribute to prosperity of the society and the economy even as they balance the interests of various stakeholders. This requires care for and adherence to law and justice, ethics, compliance, governance, risk management, conflict resolution etc. A Company Secretary, who is a regulated professional, ensures just that.

**I am a member of ICSI.
Only I do what I do.**

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Parliament nod to whistleblowers' protection bill

A bill to provide for setting up a regular mechanism to encourage persons to disclose information on corruption or willful misuse of power by public servants, including ministers, was passed by Parliament on 28th Feb 2014. The Whistleblowers' protection Bill also seeks to provide "adequate protection to persons reporting corruption or willful misuse of discretion which causes demonstrable loss to the government or commission of a criminal offence by a public servant. While the measures set out the procedure to inquire into the disclosure and provides adequate safeguards against victimization of the whistleblower, it also seeks to provide punishment for false or frivolous complaints. The legislation is expected to supplement the RTI Act in checking corruption.

India Sun mission being planned before 2020

This is set to put the country in top league as far as space exploration is concerned. India Sun mission being planned before 2020 @ \$20 million cost. This seems to be the biggest and most important Indian exploit in the space. ISRO is gearing up to its biggest test yet. India will send a multi-million dollar mission to probe the Sun by 2020, as reported by a space official. This maiden mission to the sun is titled Aditya-1.

New SEBI norms makes 97 independent directors to resign

As per the new corporate governance norms cleared by SEBI, a person can serve as an independent director on boards of a maximum seven listed companies. Besides, if an individual is a whole-time director in a listed firm, he can serve as an independent director in a maximum of three companies. Regarding tenure, SEBI has mandated that an independent director cannot serve on a company's board for more than two successive terms of five years each. A total of 97 persons would have to resign from 283 independent directorship positions in [NSE](#)-listed companies by October 1, 2014, according to data

Bullet News →

- **Vodafone accused of secretly sharing data with British agency by Home Ministry**
- **CCI slaps Hiranandani Hospital with Rs.3.81 cr.(4% of turnover) fine for stem cell anti competitive Agreement**
- **SEBI is likely to tighten norms on capital utilisation by the listed companies.**
- **RBI extends deadline for pre-2005 currency notes exchange to January 1, 2015**
- **Supreme Court upholds Competition Commission of India order to penalise film bodies**

compiled by indianboards.Com, a website created by Prime Database in association with the NSE.

India to block US trade probes, ready for fight at WTO

India has decided to block investigations by USA into its trade policies and patent laws, and prepare for a battle at WTO, a move that could escalate already-strained tension between the two countries. The Central Government is furious about a threat of trade sanctions made by the U.S. Trade Representative's (USTR) office over its protection of intellectual property rights (IPR), preference for domestic producers and non-trade barriers.

MCA seek views from Law Ministry, SEBI on FTIL action

The MCA has sought clarifications from the Law Ministry & SEBI and Forward Markets Commission to finalise action against "gross violations" by Financial Technologies and related entities. An inspection of NSEL books under Sec 209A, had found that the exchange's board failed to perform its duties towards shareholders in violation of regulations, including lack of transparency, integrity, compliance and ethics.



Chartered Institute of Arbitrators (CI Arb)

CI Arb is a not-for-profit, UK registered charity working in the public interest through an international network of branches. It has a global membership of around 12,500 individuals who have professional training or experience in alternative dispute resolution (ADR). Web link: <http://www.ciarb.org>



This institute is for the global promotion, facilitation and development of all forms of private dispute resolution to maximise the contribution that dispute resolution practitioners make.

In addition to providing education and training for arbitrators, mediators and adjudicators, they act as an international centre for practitioners, policy makers, academics and those in business concerned with the cost-effective and early settlement of disputes. This gives users confidence that the very best people are helping to resolve their dispute.

For members, and where appropriate, non-members, CI Arb offers a range of resources. It provides tools, support, advice, networking and promotional opportunities as well as facilities by acting as a highly sought after central London Bloomsbury Centre venue for hearings, meetings and other events.

Did You Know?

Reverse domain name hijacking

Reverse domain name hijacking (also known as reverse cybersquatting), occurs where a trademark owner attempts to secure a domain name by making false cybersquatting claims against a domain name's rightful owner. This often intimidates domain name owners into transferring ownership of their domain names to trademark owners to avoid legal action, particularly when the domain names belong to smaller organizations or individuals. Reverse domain name hijacking is most commonly perpetrated by larger corporations and famous individuals



Pick of the month

Can qualification for the promotion to next cadre be introduced as a fresh requirement ?

Ans : No, Supreme Court of India in the case – Bihar state Text Book workers' union V/s State of Bihar & Anr. Held that, Qualifications for promotion to next higher cadre cannot be introduced as a fresh requirement, if already not prescribed in relevant rules, statute, regulations or resolutions passed by the Management.





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Service Tax Updates
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FEMA Updates
Team Genicon,
Chennai



CUSTOMS & FTP Notifications/ Circulars

Notifies that w.e.f. March 1, 2014, declaration relating to customs hitherto being made by incoming passengers in arrival card notified by Ministry of Home Affairs will be dispensed with and all incoming international passengers will have to declare content of their baggage in India Customs Declaration Form prescribed under the Customs Baggage Declaration Regulation, 2013.

No. 05/2014-Cus dated February 27, 2014

Case Law

The Tribunal held that amount paid by assessee during investigation is liable to be refunded as show cause notice issued in 2009 is still under adjudication and as of date no amount is outstanding against it.

Raymond Ltd. Vs. Commissioner of Customs (Airport), Mumbai [2014 (300) ELT 523 Tri-Mumbai]

The Kerala High Court held that under Section 28 of the Customs Act, 1962 duty can be demanded only from a person chargeable to duty, and therefore, notice issued to a dealer in smuggled goods under Section 28 thereof who is neither importer nor owner of imported goods is not sustainable.

Commissioner of Customs, Bangalore Vs. Dinesh Chajer [2014 (300) ELT 498 (Kar.)]

The High Court of Gujarat held that para 8.3.6 of the Handbook of Procedures ("the Handbook") that laid down that Customs and Central Excise Duty Drawback Rules, 1995 shall apply mutatis mutandis to deemed exports ultra vires the Foreign Trade (Development and Regulation) Act, 1992 ("the FTDR Act") because no such power has been conferred on the Director General of Foreign Trade who notified the Handbook. Such power being in the nature of rule making is exercisable only by the Central Government under Section 19 of the FTDR Act.

Alstom India Ltd. Vs. UOI [2014-TIOL-223-HC-AHM-EXIM]

Regulatory Development Notifications/Circulars/News

Corporate Social Responsibilities (CSR): Under the Companies Act, 2013 Corporate Social Responsibility (CSR) spending is mandated to certain Companies. In this regard, the MCA had

issued a draft rules "the Companies (Corporate Social Responsibilities Policy) Rules, 2013 for stakeholders comment. After considering the stakeholders comment, the MCA has notified Section 135 of the Companies Act, 2013 and amended the Companies (Corporate Social Responsibilities Policy) Rules, 2014 on February 27, 2014. Added to this, there have been certain small changes in the Schedule VII relating to list of activities. CSR shall be applicable with effective from 1st April 2014.

Using National in the names of Companies or LLPs: The Ministry vide circular no.2/2014 has strictly intimated that no company shall be allowed to use the word "National" in their names unless the company is a government Company and it must be enforced by all the Registrar of Companies. It also clarified that to use the word "Bank" and "Stock Exchange / Exchange", the promoters have to produce NOC which was obtained from RBI and SEBI respectively.

Applicability of Section 372A of Companies Act, 1956 for providing guarantee or security by Holding Companies:

The Ministry vide General Circular No.03/2014 dated 14/02/2014 given clarification that any guarantee and/or any security provided by holding Company to its wholly owned subsidiary is out of preview of Section 185 of the Companies Act, 2013 and Section 372A (8) (d) of Companies Act, 1956 is applicable in that regard. In other words, the holding Company shall be allowed to provide guarantee and/or security to its wholly owned Subsidiary.

Government notifies incentive for raw sugar exports

The Government notified an incentive of Rs. 3,300 per tone for production of raw sugar for exports as the world's second biggest producer of the sweetener tries to bring down its stockpile by promoting exports. A cabinet committee on economic affairs last month approved the proposal and mills had been awaiting the notification. Indian mills traditionally produce white sugar but a global glut has made exports difficult. Exports of raws from the South Asian Nation will eat into the share of top suppliers Brazil and Thailand.

FEMA/RBI/SEBI
Notifications/Circulars/News

Amendment to Form FCGPR:

Pursuant to Clause 7.2.2 of consolidated FDI Circular, an Indian Company receiving Foreign Investment, has to report to RBI within 30 days of allotment of shares, in form FC-GPR. RBI Vide A.P. (DIR Series) Circular No. 102 dated February 11, 2014 has amended the FC-GPR form. With a view to enhance the disclosure with regard to Greenfield (first time investment) and Brownfield (further investment) projects, the same has been included in the FC-GPR form. Also the date of incorporation of the Investee Company and also the location of the project (in detail) are required to be disclosed under the new form.

Amendment to Form ECB 2: Residents, who have acquired any category or any amount of loan in Foreign Exchange, need to submit a monthly return in Form ECB 2 within 7 working days from the close of the month. With an intent to capture the details of the financial hedges contracted by corporate, of their foreign currency exposure relating to ECB and their foreign currency earnings and expenditure, the RBI vide A. P. (DIR Series) Circular No. 105, dated February 17, 2014 modified the format of ECB-2 Return. The new format will be applicable from the month of April 2014.

Issue of Capital and Disclosure Requirements (Amendment) Regulations, 2014 - New format of Statement of Assets and Liabilities. SEBI vide notification dated on 4th February, 2014 made changes in regulation 26(7) that an issuer making an initial public offer may obtain grading for such offer from one or more credit rating agencies registered with the Board and also in sub-para (IX), in clause (B), in sub-clause (9), in item (f), SEBI has prescribed the new format of statement of assets and liabilities.

Prior RBI Approval for Establishment of Liaison Office/ Branch Office/ Project Office in India By Foreign Entities

Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No.93 dated January 15, 2014 has modified the Regulation 4 of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000. RBI has now clarified that the provisions of the Regulation 4 shall extend to and applicable for the entities from Hong Kong and Macau as well. Therefore, from now onwards prior approval from RBI shall be required for establishment of Liaison/ Branch/ Project Offices or any other place of business by whatever name called by the entities registered in / resident of Hong Kong and Macau.

RBI sets out rules to revitalise distressed assets

The Reserve Bank of India, has issued guidelines for revitalizing distressed assets by forming Joint Lenders' Forum (JLF) and adoption of Corrective Action Plan (CAP) for operationalising the framework. With this in view and also to ensure more 'skin in the game' of promoters, RBI suggested JLF to consider several options, including the possibility of transferring equity of the company by the promoters to the lenders "to compensate for their sacrifices" when a loan is restructured. The RBI suggested infusion of more equity into their companies by promoters and transfer of their holdings to a security trustee or an escrow arrangement till the turnaround of the company.

RBI allows foreign money transfer directly into beneficiaries' bank accounts

RBI has decided to allow foreign inward remittances received under money transfer service scheme (MTSS) directly into the bank account of the beneficiary through electronic modes such as national electronic funds transfer (NEFT) and immediate payment service (IMPS). However, the RBI said that the recipient bank would credit the amount transferred by the partner bank only to KYC (know-your-customer) compliant bank accounts. The RBI also instructed that the partner bank should appropriately mark the direct-to-account remittances to indicate to the recipient bank that it is a foreign inward remittance.

CENVAT Notifications/ Circulars

Rescinds Notification No. 17/2013-CE (NT) dated December 13, 2013 to provide that importer issuing Cenvatable invoices is not required to obtain registration with effect from March 1, 2014.

No. 06/2014-CE (NT) dated February 26, 2014

The Department of Revenue vide Notification No. 05/2014 - Central Excise (N.T.) dated 24th February, 2014 has made the following amendments to CENVAT Credit Rules. These rules may be called the CENVAT Credit (Third Amendment) Rules, 2014. They shall come into force on the 1st day of April, 2014.

No. 05/2014 - Central Excise (N.T.) dated 24th February, 2014

The slab for imposing the excise duty on cigarette is increased from 60 mm to 65 mm at the same rate of duty. In addition to the above, ad valorem duty is chargeable @ 10% on 50% Retail sale Price only when the slab exceeds 65 mm.

No. 981/5/2014-CX

Case Law

The Tribunal held that decision of Supreme Court in the case of CCE, Ahmedabad Vs. Kumar Cotton Mills Pvt. Ltd. [2005 (180) ELT 434 (SC)] wherein it has been held that the Tribunal has power to extend stay beyond specified period of 180 days applies even after insertion of third proviso to subsection (2A) of Section 35C of the Central Excise Act, 1994 ("the Excise Act") which provides that in case appeal is not disposed of within total period of 365 days, stay order shall stand vacated.

M/s PCS Technology Ltd. Vs. CCE, Puducherry [2014-TIOL-308-CESTAT-MAD]

The Tribunal held that when goods are sold ex-factory but delivered at customer's premises at his request against recovery of freight and insurance charges for such delivery, freight and insurance charges cannot be included in assessable value by invoking Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods), Rules 2000.

CCE Vs. General Metallisers Ltd. [2014(300) ELT 534(Tri.-Mumbai)]

The High Court of Allahabad held that service of decisions, orders and summons by registered post and speed post are same under Section 37C of the Excise Act.

Mirzapur Electrical Industries Ltd. Vs. CCE [2014(300) ELT 496(AII)]

The Tribunal held that there is no requirement to file original TR- 6 challan for refund claim. Attested xerox copy of TR - 6 challan is sufficient.

Exide Industries Ltd. Vs. CCE [2014 -TIOL-296-CESTAT-MUM]

VAT, Sales Tax and Entry Tax

Case Law

The High Court of Allahabad held that when right to use trademark has been permitted to different companies at the same time, the same can be treated as only licence to use trademark and not as transfer of right to use trademark.

Commissioner of Commercial Tax Vs. Seagram India Pvt. Ltd. [2014-VIL-30-ALH]

The High Court of Andhra Pradesh held that revenue is entitled to have precedence over secured debt taken by assessee from bank. The High Court relied on Section 16C of the Andhra Pradesh General Sales Tax Act, 1957 which provides that any amount of tax, penalty, interest or any other sum payable by a dealer shall be the first charge on the property of dealer.

State Bank of India Vs. Deputy Commercial Tax Officer [2014-VIL-32-AP]

Dispute before the High Court of Allahabad was whether any element of sale is involved when a stent or valve is implanted in the course of a surgical procedure. The High Court held that the fact that Hospital charges towards drugs and other consumables would not render the transaction of implantation of a stent or valve a 'sale' within the meaning of Section 2(ac) of the Uttar Pradesh Value Added Tax Act, 2008. The High Court also observed that instant case does not involve application of one of the sub-clauses of Article 366(29A) of the Constitution of India.

International Hospital Pvt. Ltd. Vs. State of Uttar Pradesh and Others [2014-VIL-48-ALH]

The High Court of Karnataka held that process wherein an assessee receives copper wire from customer and uses enamel, fiberglass yarn and paper and converts it into insulated copper wire and delivers finished product to customer involves sale of enamel, fiberglass yarn and paper and not copper wire. Accordingly, residuary rate of VAT would be applicable on sale of enamel, fiberglass yarn and paper.

SCR Wire Products Vs. Commissioner of Commercial taxes, Bangalore [2014-VIL-46-KAR]

Service Tax

Notifications/ Circulars/News

Exempts forward contract services provided by authorised person or sub-broker to members of recognised association/registered association from payment of service tax during the period September 10, 2004 to June 30, 2012.

No. 3/2014 - ST., dated February 03, 2014

Case Law

The Bombay High Court held that recovery proceeding initiated before expiry of time to appeal is highhanded, inasmuch as the statute provides a period of three months to an assessee to file appeal before appellate authority and obtain stay.

Tata Teleservices Limited Vs. The MoF and Others

The Tribunal held that merely because service recipient did not pay service tax amount to service provider that would not take away liability of service provider to discharge service tax. The Tribunal also observed that if this plea is accepted, it would make the taxable event as receipt of service tax from recipient of service which is not the law.

Avtar Company Vs. CCE [2014-TIOL-287-CESTAT-MUM]

The Tribunal held that Cenvat Credit cannot be denied on the ground that document/invoices on the strength of which credit has been taken by assessee is not in their name as the invoices are in the name of the head office and services are availed by different divisions of the same assessee.

Emco Ltd. Vs. CCE [2014-TIOL-301-CESTAT-MUM]

The rate of service tax payable would be at the rate prevailing on the day of rendering service and not when the payment has been received for such rendering of service.

Ratan Singh Builders (P) Ltd 2014(33) STR 242 (Delhi)

Direct Tax

Notifications/ Circulars/News

CBDT clarifies TDS applicability u/s. 195 only on portion of foreign remittances representing sum "chargeable to tax" in India, as against whole sum of remittances; CBDT clarifies Sec. 195 applicability in light of SC rulings in GE India Technology Pvt. Ltd. and Transmission Corporation of AP Ltd. and Madras HC ruling in Chennai Metropolitan Water Tax Cases; In absence of application by assessee u/s. 195(2), Revenue to determine appropriate portion of sum chargeable to tax in India u/s. 195(1); Appropriate portion of sum shall depend on facts and circumstances of each case taking into account nature of remittances, income component therein and other relevant factors; Payer to be deemed 'assessee-in-default' for not withholding tax on such appropriate portion determined by Revenue.

Instruction No. 2/2014

Case Law

Payment to non-resident vendor for machinery erection/installation charges, forming integral part of purchase price of machinery, not subject to TDS; Machinery, being complex in nature, could not be installed by any ordinary person other than vendor; Installation/erection being ancillary and subsidiary, was inextricably and essentially linked to supply/sale of machinery; Such installation charges whether embedded in purchase price of machinery or charged separately, immaterial; Relies on Calcutta HC ruling in Andrew Yule & Co. Ltd, Andhra Pradesh HC ruling in Sundwiger EMFG & Co. and Mumbai ITAT ruling in Dodsai (P.) Ltd. : Pune ITAT

Mahindra Forgings Ltd [TS-138-ITAT-2014(PUN)]

Delhi ITAT rules that taxability of interest paid by Bharti Airtel under a financing arrangement should be examined in hands of beneficial owners of interest i.e. original lenders and not in hands of facilitator, ABN Amro Bank - Sweden (ABN-S), through whom interest was paid;

Interest received by ABN-S, not entirely in its own right, but merely as a conduit for making onward payments to original lenders in transparent manner and therefore, ABN-S not a beneficial owner of such interest; Article 11 contemplates taxation of interest in hands of beneficial owners, taxability to be examined as per provisions of DTAA's that India has with jurisdictions in which original lenders are resident in; Also rejects applicability of India-Sweden DTAA to ABN-S, being an integral part of ABN Bank, Netherlands and having no locality related attachment in Sweden; Relies on co-ordinate bench ruling in General Electric Co Plc : Delhi ITAT

Bharti Airtel Limited [TS-141-ITAT-2014(DEL)]