



# eMagazine



## Cloud Computing as a Tool to Enable and Enhance Compliance

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Dear Readers,

Warm greetings from the Mysore Chapter of ICSI!

My heartiest greetings to all the readers and wish you all a very happy & prosperous New Year. The Calendar year 2015 has come to an end and the New Year 2016 is born with great expectations.

During the year, the Chapter conducted various seminars, student events, study circles and career awareness programs. I thank all the committee members, staff and students for their active participation in the activities conducted by the Chapter during the year. It is time for the New Managing Committee to take over the reins of the Chapter Activities. The new, fresh & talented committee is expected to take over the affairs of the Chapter from 19th January 2016. I extend my best wishes to the new team. The Chapter has also planned a seminar on 23rd of January, 2016, the topics and details of the program will be communicated shortly.

Through the e-Magazine, I convey my sincere thanks to all the Members, students, Professional Colleagues for their co-operation during my tenure as the Chairman of the Mysore Chapter.

**Wish you all a Happy Sankranthi!**

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# ‘Cloud Computing’ as a Tool to Enable and Enhance Compliance

Cloud computing is one of the most strategic technologies for companies today.<sup>1</sup> Cloud adoption has accelerated dramatically in 2015 and will continue to do so in 2016.

Within that context, this is the first in a series of three articles entitled “**Cloud Computing as a Tool to Enable and Enhance Compliance.**”

This first article is entitled “**What is Cloud Computing and Why Should Compliance Professionals Care?**” It describes what the cloud is, including the benefits and some of the challenges.

The second one is entitled “**Tips on How to Assess and Choose a Cloud Service Provider.**” In that article, we will explore a framework to evaluate a cloud service provider based on the vendor practices on security, privacy, compliance, and transparency.

Finally, the third article is called “The Cloud as a Tool for Legal Compliance in India.”

***Please provide us with feedback as we publish these articles.***

<sup>1</sup> See KPMG’s 2014 Cloud Survey Report, which mentions the article “Gartner Identifies the Top 10 Strategic Technology Trend for 2015, October 8, 2014.” Gartner, Inc. named cloud as one of the top 10 strategic technology trends for 2015 that would have a significant impact on organizations during the next three years. You can find it here: <http://bit.ly/1nmlc3d>

# What is Cloud Computing and Why Should Compliance Professionals Care?

Cloud computing is hot! All one has to do is examine one's daily practices to see how prevalent the cloud is. Do you check your email on your smartphone throughout the day? That data is probably stored in the cloud. Do you take pictures of your kids and then share them with others via social media? The data is being shared and stored in the cloud. Do you use your smartphone to access weather and news sites to know what are the latest developments? You are using the power of the cloud.

Another way to see the importance of the cloud is to peruse technology reports by top analysts. Goldman Sachs has stated that spending on cloud solutions is expected to grow 30% percent from 2013 to 2018, compared with 5% overall growth for enterprise IT.<sup>2</sup> KPMG, in its 2014 Cloud Survey Report, mentioned Forrester's estimate, which is even more bullish. Forrester predicts that spend on the public cloud will go from US\$58 billion in 2013 to US\$191 billion in 2020.<sup>3</sup>

So, what exactly is this cloud and what does adoption of the cloud entail in practical terms? Cloud computing can be summarized as "computing as a service" provided over the Internet. But what does that really mean? The definition of cloud computing by the National Institute of Standards and Technology becomes very helpful in enabling our understanding. In that definition, cloud computing is about "network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction." So, the adoption of cloud computing by an enterprise is basically about leveraging a cloud service provider with its IT core expertise and investments in data centers, hardware, software, and labor (particularly expertise in IT management to handle patching, upgrades, security, etc.), to take on IT responsibilities that have historically been historically handled begrudgingly by customers. And with this engagement of the cloud service provider comes the transfer of customer data to the cloud service provider's data centers.

Cloud services typically fit into one of the following three categories:

1. Software-as-a-Service or "SaaS" – These are applications running on the cloud. Examples of SaaS include email such as Exchange Online (part of Office365) or Gmail.
  2. Platform-as-a-Service or "PaaS" – These provide an environment for businesses to develop their own applications. In particular, these include the operating system and the virtual machines.
  3. Infrastructure-as-a-Service or "IaaS" – These provide the networking and storage, for example.
- For IT, there are basically three main benefits that flow from these cloud attributes:

**The cloud is "elastic," so it enables scalability and business agility.** One can scale up or down quickly and there are no limits on the supply. Think about retail in India. Most sales are done close to Diwali. Many companies have to set up and maintain a huge infrastructure just to cover the peak in sales they will have during a few weeks a year. Or



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<sup>2</sup> See the Goldman Sachs data as mentioned in Forbes article found in the link <http://onforb.es/1mZobOw> entitled "Roundup Of Cloud Computing Forecasts And Market Estimates, 2015" published on January 24, 2015.

<sup>3</sup> See *supra* 1, which mentions Forrester's "The Public Cloud Market Is Now In Hypergrowth: Sizing The Public Cloud Market, 2014 To 2020" (Forrester Research, April 24, 2014).

think about a startup. They don't have an IT department and they don't know how much demand there will be. They can innovate quickly by tapping into the cloud for their needs. Gigaom Research, a US company that focuses on emerging technologies, has stated that while cost reduction is still a top priority, scalability and business agility have stepped to the forefront for IT decision makers.

**The cloud allows you to pay as you go (or Metered service) and to tap into a pool resources, so it results in savings** – On the one hand, one only pays for what one uses. So there is no waste of resources. On the other hand, there is the ability of tapping into a pool of resources, so large capital expenditures that can significantly impact cash flow for assets that will probably be underutilized is no longer needed. This quality of the cloud also results in business agility. By paying a cloud provider solely for what the customer needs as its needs arise, the customer can free valuable skilled labor for, and redirect capital to, its core business.

**The cloud enables self-service**— The cloud simplifies IT. It enables customers and their customers to access more IT resources and services via self-service.

However, with the benefits of the cloud come also risks that need to be evaluated and addressed. And ultimately, the cloud can even enhance one's risk profile. Security and privacy practices both must be evaluated. So, please join us for our second article entitled "Tips on How to Assess and Choose a Cloud Service Provider." In that article we will explore a framework to evaluate a cloud service provider based on the vendor practices on security, privacy, compliance, and transparency.

>>>>> **Next in series: "Tips on How to assess and choose a Cloud Service Provider."**

# Career Awareness Programs

## Chapter Activities

Mysore Chapter of ICSI conducted 5 Career Awareness Programmes in Mandya District through Counsellor Mr. Ravikumar S during the month:

Sl.	Name of the college at Mandya District	Students Participated	Date
1	SCMMPU College, Maddur Taluk	70	14.12.2015
2	Government PU College, Bharathi Nagar,	99	14.12.2015
3	Government PU College, Maddur	64	14.12.2015
4	Government PU College, Mandya	108	15.12.2015
5	Government PU College, Kodiyala Srirangapatna Taluk, Mandya District	84	21.12.2015

Counsellor Mr. Ravikumar S highlighted the importance of making the right career choice so as to be successful in life. Then he spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. Various doubts and issues raised by the participants were clarified.



# Secretarial Audit for Health Care Industry

Last month we discussed on the background and issues in the Health Care Industry. We observed that despite many legislatures including state legislatures and many central laws enacted for regulating the Health Care Industry the general perception is current regulatory process for health care providers in India is inadequate or not responsive to ensure health care services of acceptable quality and prevention of negligence. However, The Indian Healthcare sector is emerging as one of the fast-growing service sectors in India, contributing 6 – 7 percent to the country's Growth Domestic Product (GDP). We listed out types of Health Care Industry and understood that this sector has to comply with plethora of acts & Licenses.



Secretarial Audit' is a process to check compliances made by the Company under Corporate Law & other laws, rules, regulations, procedures etc. Let us look at the legislations that are applicable to this industry.

SI #	LEGAL PROCESS & DOCUMENTATION	AUDIT REQUIREMENTS - RELEVANT PROVISIONS
1	PAN (Permanent Account #)	PAN Details - Income Tax Act
2	TAN (Tax Deduction Account #)	Income Tax Act
3	Lease Agreement for the Office Premises & register the same with stamp duty	May be own hospital premises OR Leased accommodation to verify relevant documents like lease agreements, Ownership Certificates, Stamp Duty Paid, Registered documents- Contract Act & Registration Act
4	Registration under the Shops & Commercial Establishments Act	Shops & Commercial Establishments Act, (may differ with each state) examine the certificates, annual returns filed under the act, Male, Female classification of employees, Number of employees, latest fee paid details
5	Registration under the Professional Tax Act	The Tax on Professions, Trades, Callings and Employment Act, (state specific) fees paid, registration certificates, Employee professional tax paid details, Annual Returns
6	Registration under the Provident Fund & Miscellaneous Provisions Act.	Employees Provident Fund and Miscellaneous Provisions Act 1952, Certificate of registration, Number of employees, PF Paid details, dates on which paid, Returns filed, Exemptions claimed if any with adequate proof
7	License under The Contract Labour (Regulation & Abolition) Act, 1970.	The Contract Labour (Regulation & Abolition) Act, 1970. Number of contract employees, names of the contractors, licenses of the contractors, ESI, PF paid details of the

		employees, salary sheets etc... to be verified
8	Registration under The Employees State Insurance Act	The Employees State Insurance Act (ESI), fees paid, certificates details, ESI paid details, ESI Cards for each employee, Hospital details where the employees may avail medical facilities, Returns Filed
9	Service Tax registration	Service Tax Act, applicability, ST Paid details, and returns filed. We may rely on the Internal OR Statutory auditor certificates in this regard
10	Registration under Karnataka Value Added Tax Act	Value Added Tax Act applicability, VAT Paid details, and returns filed. We may rely on the Internal OR Statutory auditor certificates in this regard
11	Registration under Pollution Control Laws	Pollution Control Act – Water, Air & Operating Licenses, effluent discharge, possible violations if any, consent orders, ETP Plants installations if required etc...
12	Registrations under Central Excise	Central Excise Act applicability, Tax Paid details, and returns filed. We may rely on the Internal OR Statutory auditor certificates in this regard
13	Registration under Narcotics & Psychotropic substances Act	License verification, compliance with the terms of the license, proper storage of Narcotic Substances, authorized purchase & usage etc..
14	Retail Drugs Licenses	Drugs & Cosmetics Act & Rules, proper licenses for running a Hospital Medical Store, appointment of a qualified pharmacists (diploma holder), proper storage of schedule H Drugs, proper compliance with the terms of the license, billings & issue of medicines, maintenance of registers under the Act, Medical store lease agreement if any
15	AERB - X-Ray, CT- Scan and other similar equipment.	Atomic Energy Act & Department of Atomic Energy. This required certain specific compliance and registrations
16.	Bio Medical Waste & Hazardous Storage Rules etc.. Authorization for operation of a facility for generation, collection, reception, storage, transportation, treatment and disposal of bio-medical wastes under Bio-Medical Waste (Management and Handling) Rules, 1998 of the Environmental Protection Act 1986 from the Pollution Control Board and corresponding compliances;	To dispose the water to proper & licensed contractors, to examine the licenses, agreements, discharge methods etc.
17	Labour Laws – Child Labour, Maternity Benefits, etc...	Child Labour must not be employed, We can take declaration from the management in this regard, Maternity benefits as per act, maintenance of all registers under the Act
18	Medical Termination of Pregnancies Act	Proper Licenses to be obtained, the doctors must not perform any abortions or pregnancy terminations without license
19	Explosives Act – For storage of Oxygen etc.	Examine the license, & place of storage. Must not be stored in the basements

20	Ministry of Health & Family Welfare	Registrations
21	Central Drugs Standard Control Organization (CDSCO) Narcotic Controls Bureau	Registrations
22	Fire safety Approvals;	Registrations
23	Municipal Trade license ( State Specific);	Registrations
24	Registration of facility with State Government / Authority as a private medical establishment (State Specific);	License verify
25	Registration under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and corresponding registration of ultrasound machine with appropriate authority under the Act;	License, Requirements, compliance with the terms of the license. Prohibition of Sex determination test etc.
26	Approval from State Food and Drug Administration to obtain and possess certain category of drugs for use on patients;	Especially Anesthetics, antibiotics, narcotics etc...
27	License to operate a blood bank from State Food and Drug Administration for procession of whole human Blood for preparation for sale or distribution of its components;	License to be examined
28	Permit for the purchase and possession of denatured spirit;	As this contains alcohol & spirits it falls under the state excise, license must be verified & examined under the act
29	Essential Commodities Act	Registration
30	IEC Code for Imports & Exports	If any equipments are to be imported

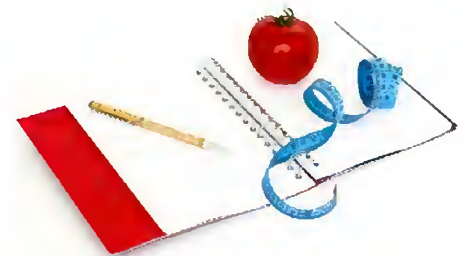
Major issues that can seriously impact functioning of the hospital are non-compliance with Preconception and Pre-Natal Diagnostic Techniques Act, 2003; Medical Termination of Pregnancy Act, 1971; Biomedical Waste Disposal, Drugs and Cosmetic Acts for pharmacy, Atomic Energy Regulatory Board and other environmental consent/s.

Healthcare sector is highly regulated in India. It is governed by various acts that cover establishment of hospitals, various services offered, medical professionals rendering services in the hospital as well as additional service offered by the hospital like cafeteria, pharmacy, ambulance etc.,

The company has to further comply with Companies Act, Secretarial Standards & Foreign Exchange Management Act for Influx of equity and funding options, SEBI Regulations & Listing Requirements & Securities Contract Regulation Act, Depositories Act etc.,

Health Care is a complex industry. Since Secretarial Audit is a huge responsibility of the Company Secretary in Practice, he must take the following precautions:

1. Obtain proper Information about the company
2. Understand the Business Model of the Company
3. Analyse the applicability of various laws
4. Have proper qualified man power
5. Make a through due diligence of the company
6. Obtain Management Representation from the company wherever required
7. Obtain Professional Indemnity Insurance
8. Take adequate precautions while conducting the Audit
9. Competency & Capacity Building







## Evolution and impact of differentiated bank licensing Payment & Small Finance Banks

In the first part of the article, we had discussed genesis of banking and its business viability under different economic scenarios. We also observed that with the many statutory restrictions, increasing requirement of capital, growing NPAs and increasing competition, the Central Government and RBI agenda of Financial Inclusion was getting stuck, which paved way to the bringing of Payment License and Small Bank Licenses. RBI has put certain conditions with respect to the **scope of activities, deployment of funds, capital requirement, promoter's contribution and foreign shareholding**. So far RBI has provided in-principle approval for 11 entities in India on 18<sup>th</sup> of August 2015 out of 42 applications received. In the second part of the article, we learnt various terms and conditions applicable for running small finance banks.

The Reserve Bank of India (RBI) has granted “in-principle” approval on September 16, 2015 to the following 10 applicants to set up small finance banks under the “[Guidelines for Licensing of Small Finance Banks in the private sector](#)” (Guidelines) issued on November 27, 2014.

Names of selected applicants:

1. Au Financiers (India) Ltd., Jaipur
2. Capital Local Area Bank Ltd., Jalandhar
3. Disha Microfin Private Ltd., Ahmedabad
4. Equitas Holdings P Limited, Chennai
5. ESAF Microfinance and Investments Private Ltd., Chennai
6. Janalakshmi Financial Services Private Limited, Bengaluru
7. RGVN (North East) Microfinance Limited, Guwahati
8. Suryoday Micro Finance Private Ltd., Navi Mumbai
9. Ujjivan Financial Services Private Ltd., Bengaluru
10. Utkarsh Micro Finance Private Ltd., Varanasi



The “in-principle” approval granted will be valid for 18 months to enable the applicants to comply with the requirements under the Guidelines and fulfil other conditions as may be stipulated by the RBI. On being satisfied that the applicants have complied with the requisite conditions laid down by it as part of “in-principle” approval, the RBI would consider granting them a licence for commencement of banking business under Section 22(1) of the Banking Regulation Act, 1949.

Reserve Bank of India, Governor Mr.Raghuram Rajan has categorically stated that the Payment Banks and Small Banks will be feeders for full-fledged banks. Payment Banks by their nature has the capacity to open Current Account, Savings Account and accept Fixed Deposits for a maximum amount of up to Rs.1.00 Lac. With 125,000 Post Offices spread across India, India Post, one of the Payment Bank Licensee, can vest its tentacles all through India, urban and rural. The nearest competitor for the number of branches is SBI which along with its associates has about 26,500 branches.

The payment License mandates the licensees to start within 18 months their operations. Post office, capacity to mobilise money is of very high potential both from the rural and urban areas. One of the conditions imposed on the incumbent payment banks is that they will have to maintain 75% of the mobilization in Government Securities as SLR and the balance 25% as Deposits with Scheduled banks. One very important fact to note is that these payment banks will mobilise deposits from rural areas where scheduled/Commercial banks foot print is not there and provide the same as deposits to these scheduled banks. Hence, the comments of RBI Governor, Mr. Raghuram Rajan that these banks will be feeders to main Commercial and Scheduled banks and will complete the last line of circuit holds good. The traditional banking system of canvassing for deposits will henceforth be to a great extent taken care by the Payment and Small Banks. However in spite of the scheduled/commercial banks sales effort for deposits, coming down the amount of deposits will not come down as 25% of deposits from the payment banks will be kept as deposits as per the statutory mandatory requirement. . So the payment banks by virtue of the outreach will spread their tentacles to untapped markets and not eat away the current available market, and feed the regular scheduled banks, by placing deposits mobilized from untapped regions.

Another important aspect of payment banks is that they will not be lending, and hence the nag of Non-Performing Assets and inadequacy of capital to absorb the risks of NPA's does not pinch these banks.

RBI also intends to reduce, the Cost of Banking. It is a well-known economic principle that there is bound to be reduction in costs, with higher scales of economic activity. With the reach of mobilization of deposits, penetrating the unseen markets, it is bound that, they would reduce the interest rates of lending, due to more availability of money and increased liquidity thereby reducing costs naturally, without the artificial means of injecting liquidity through rate cuts. Another point which is noteworthy is that Reserve Bank of India need not take pains to enforce passing on of benefit of rate cuts to customers by individual banks. Banks to sustain will automatically pass it to customers due to competition in place.

With the competition intensifying, and many players entering banking business, it is likely that if the banks do not maintain themselves fit, there is seen to be reduction in profits. Banks which are not that huge, with wide presence, may also see an eventual closure.

Monetization of Gold Scheme which is likely to hit, the markets shortly will provide, an additional line item of revenue. This will to some extent assuage the most likely loss of revenue from sale of Third Party Products like insurance and mutual funds. Banks like Development Credit Bank etc., which are having smaller branch network, may find it difficult to sustain, the onslaught of 21 new differentiated license banks. With the development of, Differentiated Banking Licenses, the banks have realized that the third party sales commission forming part of other income is likely to dwindle, and hence have started selling their stakes in insurance subsidiaries to others. HDFC Bank has sold over 9% stake in HDFC Life for over Rs.1700/- Crores.

(Source: <http://www.dnaindia.com/money/report-hdfc-bank-to-sell-9-stake-in-hdfc-life-for-over-rs-1700-crore-2114585>)

The intention of RBI is to achieve, a banking environment which is customer friendly, without compromising on quality and standards, as well as provide the banks with adequate means to earn profits by providing potential avenues on two fronts, namely increasing the revenue and secondly decreasing the costs.

### **Conclusion:**

Reserve Bank of India has many great ambitions to churn out an excellent banking system in India conducive to its environment. The tool unwrapped by RBI to meet this requirement is differentiated licensing regime, aiming at balancing the need to reduce cost of borrowing, as well as maximizing profits and leveraging the untapped banking potential, without injuring the current banking system. In the light of the above discussions, the outcome of the desired results in introducing differentiated bank licensing and the Central Banks hand in monitoring and guiding the banking system is an eager point of watch.



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## Web Yatra



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Science is the intellectual and practical activity encompassing the systematic study of the structure and behaviour of the physical and natural world through observation and experiment and Technology is the application of scientific knowledge for practical purposes, especially in industry. Science and Technology is the combination of intellectual knowledge and application of the same.

I am excited to share with you that I came upon a website called <http://scitechdaily.com/>, one of the richest sites ever containing information relating to research and development in the world of science and technology. For professionals such as me “Master of One and Jack of all”, it would be really interesting to embark on upgradation of knowledge in a different domain such as Science and Technology. The site is updated with news and information on a daily basis, with some highly acclaimed articles written by profound authors.

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## Amendments to the Bonus Act

The Payment of Bonus Act, 1965 has been amended vide a Gazette Notification dated 01/01/2016. The column analyses the changes brought through the amendment Act.

### Key features:

- **Eligibility Criteria:** Employees whose basic salary per month is equal to or less than **Rs.21, 000/-** shall be entitled to statutory bonus. Hitherto it was **Rs.10, 000/- pm**.
- **Salary definition for Bonus purposes:** Basic+DA+VDA+Any other allowance which is not defined **PLUS** if the minimum wages of the respective States include any other component as part of its wages such as HRA etc. then such component, which is in vogue in such states.
- **Basic Salary limit for computation purposes:** Basic salary upon which statutory bonus is computed is pegged at Rs.7000/- pm or the Minimum Wages fixed for that category of scheduled employment **“WHICH EVER IS HIGHER”**. Hitherto it was fixed at Rs. 3500/- pm subject to minimum of 8.33% on Rs.3500/- or Rs.100/- **“WHICH EVER IS HIGHER”**.

**When is the change effective from?** This change has a retrospective effect. It is effective from **1<sup>st</sup> April 2014**.

**What has not changed?** The minimum rate of bonus payable @ 8.33% & maximum rate at 20%

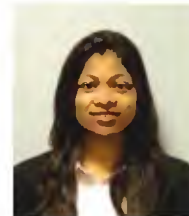
### What are the implications of the amendment / Change?

- All those employees whose Basic Salary (inclusive of DA) was above Rs. 10,000/- p.m. but equal to or less than Rs. 21000/- p.m. from 01st April 2014 would also be eligible for statutory Bonus. They would have to be paid Bonus for the years 2014-15 and 2015-16 accordingly, with retrospective effect.
- The Bonus that would be computed in respect of these employees would now be capped on a maximum Basic Salary (inclusive of DA) earned up to Rs.7000/- pm. or the minimum wage for that category of employment, **whichever is higher**.
- All Employees who were paid Bonus for the years 2014-15 and 2015-16 calculated with a capped wage of Rs. 3500/- pm, even though their Basic Salary (inclusive of DA) was over Rs. 3500/- pm. would now have to pay the difference of Bonus following the enhancement of the capped wages to Rs. 7000/- pm. or the minimum wage for that category of employment, whichever is higher.

### What are the key concerns?

- It has immediate financial impact on the earnings of the Company
- Scope of basic salary has been widened by bringing into ambit minimum wages component criteria which is varying across various States.
- As per one of the ruling given by **Apex Court in Remington Rand of India Vs. Workmen, AIR 1970 SC 1421** – payment of bonus cannot have retrospective operations. In the said case, workmen had demanded payment of bonus for the year 1963-64, but the Court held that it would not apply from retrospective effect.

With all these areas of concerns, still the given amendment is definitely a welcome move from employees stand point considering the ever rising inflation resulting in increased cost in terms of standard of living.



# Retrospective effect of the NI (Amendment) Act, 2015 from 15-06-2015

The Bill has received assent of the President on 26th December, 2015 and it has become now **the Negotiable Instruments (Amendment) Act, 2015**, which is effective from 15<sup>th</sup> day of June, 2015; Gazetted on 29<sup>th</sup> December 2015.

## Why this amendment?

On 1st August 2014, the Supreme Court had settled the issue of territorial jurisdiction in cases under Section 138 of the Negotiable Instruments Act (cheque bouncing cases) bringing uniformity and certainty on the issue where such cases can be filed in *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129. The Apex Court had said in this case that the territorial jurisdiction is restricted only to the Court within whose local jurisdiction the offence was committed, which is where the cheque is dishonoured by the bank on which it is drawn. Many people had raised difficulties about this judgment because the payee of the cheque had to file the case at the place where the drawer of the cheque has a bank account. The legal position was completely changed with promulgation of the Negotiable Instruments (Amendment) Ordinance, 2015, which came into force with effect from 15 June 2015 as below:

- i. A cheque bouncing case could be filed only in the court at the place where the bank in which the payee has account is located.
- ii. Once the cheque bounce case is filed in one particular court at a place in this manner, subsequently if there is any other cheque of the same party (drawer) which has also bounced, then all such subsequent cheque bounce cases against the same drawer would also have to be filed in the same court (even if payee presents them in some bank in some other city or area)
- iii. All cheque bounce cases which were pending as on 15 June 2015 in different courts, were required to be transferred to the court which had jurisdiction to try such case in the manner mentioned above as per the Ordinance.

The above Ordinance has lapsed on 31st August 2015 and the Government of India re-promulgated the same again on 25<sup>th</sup> September 2015 with retrospective effect clearing uncertainty of jurisdiction in cheque bouncing cases in-between when ordinance was not in force.

## What is inside new amendment Act?

With the NI (Amendment) Act, 2015 becoming retrospectively effective from 15<sup>th</sup> day of June, 2015, now the jurisdiction issue is settled as below:

- a. if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
- b. if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

- c. Also, explanation to Section 142(2) added in the amendment Act 2015 provides that where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account. This explanation clarifies the issue of jurisdiction in case of multi-city cheques.
- d. New Section 142A mandates centralisation of cases in one court where first case is filed against the same drawer irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

This amendment has clarified on jurisdiction ambiguity and is expected to help the **trade and commerce** in general and allow the lending institution, including bank, to continue to extend financing to the productive sectors of economy.



## Concentration...

While in America, Swami Vivekananda was watching some boys. They were standing on the bridge trying to shoot at egg-shells that were floating on the river, but they always missed the target. Swamiji took the gun and aimed at the shells. He fired twelve times and every time he hit an egg-shell. The boys asked Swamiji: 'Well Mister, how did you do it?'

Swamiji said 'Whatever you are doing, put your whole mind on it. If you are shooting, your mind should be only on the target. Then you will never miss. If you are learning your lessons, think only of the lesson. In my country boys are taught to do this.'

### Words Worth Millions

**“DARE TO BE FREE,  
DARE TO GO AS FAR AS  
YOUR THOUGHT LEADS,  
AND DARE TO CARRY THAT  
OUT IN YOUR LIFE.**

**- VIVEKANANDA.**





# News Room



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## NEWS EXPRESS

- ✓ India to stay at top in growth: World Bank Report
- ✓ Government sets up a mechanism to support startup businesses known as SETU
- ✓ Afghanistan wins approval to join WTO and has to ratify the Agreement until June 30, to become full member of the Organization.
- ✓ Digital India effect: E-governance transactions double in 2015
- ✓ India IT firms may raise their client fees to counter dearer US visas
- ✓ India set to push for liberalization of services trade at WTO Geneva talks
- ✓ Telangana becomes first State to make gender education compulsory at graduate level
- ✓ Central Govt notifies stricter standards for Coal based Thermal power plants.
- ✓ Government to shut 3 unviable HMT units
- ✓ Centre invites suggestions for proposed amendt., to the Prevention of Damage to Public Property (PDPP) Act, 1984.
- ✓ Government approves conversion of MUDRA Ltd, an NBFC, into MUDRA Bank
- ✓ End of arbitrary names: Airport naming policy on anvil
- ✓ Competition Commission streamlines, simplifies norms for M&A filings.

## Government nod to stand up plan for SC, ST and women entrepreneurs

In a bid to create jobs and promote entrepreneurship, the Cabinet approved Rs.8,000 crore funds that will stand guarantee for loans to new ventures and also announced 'Stand up India' scheme for credit facilities to SC, ST and women entrepreneurs at lower rates.

## SEBI mulls steps to reduce mutual fund's exposure in corporate bonds

SEBI is mulling urgent steps to safeguard investors' interest against any over-exposure of mutual funds to riskier corporate bonds, while measures are also underway to allow sale of funds on e-commerce platforms to provide an easy and cost-effective channel.

## Government to create gas-based economy, focus on environment

India, the fourth-largest consumer of petroleum products, has proven natural gas reserves of 47 trln cu ft and estimated shale gas reserves of 96 trln cu ft. India currently imports nearly 79% of its petroleum needs. Natural gas currently accounts for just around 7% of total energy consumption in India. The government is working to create a natural gas-based economy to ensure India is able to meet its commitment towards reducing emissions and target of reducing imports of crude oil, Oil Minister Dharmendra Pradhan said in the ministry's monthly newsletter.

## UG's move to leapfrog to Euro VI emissions standards in 2020

Centre for Science and Environment (CSE) has welcomed the landmark decision of the Union government to skip Euro V emissions standards and leapfrog to Euro VI standards in 2020. With this, India will take the first step towards fuel-neutral standards that will lower the gap between emissions standards for diesel and petrol vehicles.

- Diesel car emissions will be reduced to the level of petrol emissions; diesel particulate levels from diesel cars, buses and trucks will come down drastically
- Biggest gains: reduced toxicity, health benefits



## CEOC International

International Confederation of Inspection and Certification Organisations widely known as CEOC International is a not-for-profit organisation that represents 29 independent inspection and certification organisations in 22 countries. Having a mission of promoting safety, quality and the environment through independent inspection and certification, it aims at promoting safety and reducing accidents through independent conformity assessment, representing the common interests international organisations and associations dealing with directives, regulations, standards and accreditation, keeping its members informed of significant matters and establish CEOC International positions for them to follow and addressing concerns related to safety, quality and environment. CEOC International's main decision making body is the General Assembly and its Board of Directors ensure its management. The technical works are carried out by 8 technical commissions in the fields of assessment conformity, electro technology, inspection, machines lifts and cranes, non-destructive testing, occupational health, pressure equipment, energy and environment, communication experts and Joint Eurolab. Under this organisation comes the Indian wing – Quality Council of India.

Quality Council of India (QCI) is the national level body responsible for formulating the strategy, general policy, constitution and monitoring of various components of QCI including the accreditation boards to ensure an effective accreditation system, monitoring the progress of activities & appeal mechanisms set by the respective boards. Quality Council of India, (QCI) is registered as an autonomous society and is a joint initiative of Government of India and the Indian Industry represented by the three prime industry associations, ASSOCHAM, CII and FICCI.

Did  
You  
Know?

### ‘Shall’ versus ‘May’

The words ‘May’ and ‘Shall’ are always used interchangeably in layman’s language but in legal drafting; the two words always imply different meanings. The word ‘May’ is construed as an optional obligation, where as the word ‘Shall’ implies a complete obligation. For eg.: In the statement “The Company may apply to the following proposals”, the company has an option to apply to the list of proposals given below and it is also under an obligation to select only among the proposals under the list but not outside the list. In the above example if the word may is replaced with the word shall, then the company is under the obligation to apply to all the proposals listed therein. However, in the case of AstraZeneca UK Ltd -v- IBM Corporation [2011], the word May has been interpreted as an Obligation.

## Stamp duty payable on premium also?

The explanation clause to Article 16 of Schedule 1 of the Karnataka Stamp Act, 1957 reads as For the purpose of this Article, the value of the share, scrip or stock includes the amount of premium, if any. By the virtue of this provision, the stamp duty on allotment of shares to be calculated on the amount of Nominal Value of the share and also on the premium paid thereon. In case of transfers, the stamp duty is calculated on the ad valorem basis on the consideration for such transfers.

Pick of  
the  
month



# Regulatory Updates

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## CUSTOMS & FTP

### Notifications/Circulars/News

The Central Government has notified Village Janoli-Bhagola, Tehsil Palwal, in the State of Haryana as Inland Container Depot for the purpose of unloading of imported goods and loading of export goods.

*No. 137/2015-Customs (N.T.) dated 7 December, 2015*

The Central Government has issued instruction for withdrawal of appeals pending before Tribunal/ High Court on the basis of earlier Supreme Court's decision on identical matter, which has been accepted by Department.

*No. F. No. 390/Misc./167/2014-JC, dated 18 December, 2015*

The Central Government has issued instructions in order to reduce Government litigation by providing revised monetary limits as mentioned in the table below, for filing appeals by the department before Tribunal, High Courts and Supreme Court.

Sr. No.	Appellate Forum	Monetary Limit
1	CESTAT	10,00,000/-
2	HighCourt	15,00,000/-
3	SupremeCourt	25,00,000/-

*No. F. No. 390/Misc./163/2010-JC, dated 17 December, 2015*

The Central Government has amended guidelines for appointment of common adjudication authority to the effect that following cases initiated by Directorate of Revenue Intelligence (DRI) shall be assigned to Additional Director General (Adjudication) -DRI:

- Cases involving duty of INR 50 million and above;
- Group of cases on identical issues involving aggregate duty of INR 50 million or more;
- Cases involving seizure value of INR 250 million or more;
- Cases involving wrong availmentof export incentives INR 50 million or more;
- Group of cases on identical issues involving wrong availmentof export incentives aggregating to INR 50 million or more;
- Cases involving over-valuation of INR 250 million or more; and
- Existing DRI cases with erstwhile Commissioner (Adjudication).

*No. 30/2015-Customs, dated 4 December, 2015*

The Central Government has amended Standard Input Output Norm A1663, for export of all types of truck tyres (tube type).

*Notice No. 49/2015-20, dated 17 December, 2015*

The Central Government has freely allowed import of reconditioned/ second hand aircraft parts falling under CTH 8803.

*No. 27/2015-20 dated 16 December, 2015*

The Central Government has clarified that Interest Equalisation Scheme of Pre and Post Shipment Rupee Export Credit is applicable from 1 April, 2015. Accordingly all eligible exporters who have availed credit facility post 1 April, 2015 can contact their bank for this benefit.

*Notice No. 09/2015, dated 08 December, 2015*

## Case Law

The Delhi Tribunal held that parts of LCD comprising of driver, circuit, backlight and inverter would be classifiable under CTH 9013 (i.e. Liquid crystal devices not constituting articles provided for more specifically in other headings) instead of CTH 8529 (i.e. Parts suitable for use solely or principally with apparatus of headings 8525 to 8528).

*Samsung India Electronics Pvt. Ltd. v. CC (2015 (326) ELT 161)*

The Bangalore Tribunal held that invoice value declared based on agreement entered with foreign supplier, could not be re-determined in the absence of cogent reason for rejection of invoice value.

*Suvee Impex Pvt. Ltd. v. CC (2015-TIOL-2611-CESTAT-BANG)*

The Mumbai Tribunal held that the imported goods were not comparable, if they were not "identical goods" or "similar goods" to goods imported by other importers. In the present case tissue paper of 18 GSM was not considered identical/ similar to tissue paper of 14 or 16 GSM.

*Moti Polymers v. CC (2015-TIOL-2545-CESTAT-MUM)*

The Mumbai Tribunal held that royalty related to spare parts manufactured in India had no relation with imported parts and hence would not be included in assessable value of imported parts.

*Mahindra Renault Pvt. Ltd. v. CC (2015-TIOL-2486-CESTAT-MUM)*

The Supreme Court held that the Notification No. 25/2010-Customs, dated 27 February 2010, was ultra vires to section 30 of the SEZ Act and Article 265 of the Constitution of India. Accordingly, no duty would be payable on electricity energy transferred from Special Economic Zone to Domestic Tariff Area.

*UIO & ORS v. Adani Power Ltd(2015-TIOL-281-SC)*

The Delhi High Court, held that SCN under section 110(2) of the Customs Act, 1962, served on Custom House Agent did not meet the requirement of law, since service of agents was completely done away under customs law and notice issued was required to be served on the person for whom it was intended.

*Santosh Handloom v. CC (2015-TIOL-2661-HC-DEL)*

The Mumbai Tribunal held that Special Additional Duty refund amount shown as receivable in balance sheet was sufficient proof that burden had not been passed on and test of unjust enrichment was clear, where Chartered Accountant certificate indicate that duty burden had not been passed on.

*Automark Industries (I) Pvt. Ltd. v. CC (2015-TIOL-2564-CESTAT-MUM)*

The Chennai Tribunal held that Extra Duty Deposit could not be increased from 1% to 5%, when in the past years Special Valuation Branch section had accepted the transaction value of imported goods specifically, when importer was co-operating with Authority.

*Doosan Infracore India Pvt. Ltd. v. CC (2015-TIOL-2475-CESTAT-MAD)*

The Gujarat High Court held that provisions of pre-deposit would not apply in case a separate appeal was filed for a Customs matter which had already been included in an Excise appeal. Further, provisions of section 129E of Customs Act, 1962 warrants mandatory deposit of 7.5% of duty demanded would not be applicable, since matter related to period governed by older provision.

*Roshanlal Gupta And Sons Pvt. Ltd. v. UOI (2015-TOIL-2822-HC-AHM)*

The Kolkata Tribunal held that prohibition/ restriction under any other law on the movement of goods within India could not be made ground for confiscation of such goods under Customs Act, 1962.

*MD Raju Hussain v. CC (2015-TIOL-2539-CESTAT-KOL)*

The Delhi Tribunal held that benefit under EPCG scheme could be allowed on the basis of actual user condition. However, capital goods could be used for the purpose, other than for condition specified in EPCG licence.

*Hotel Excelsior Ltd. v. CC (2015-TIOL-2661-CESTAT-DEL)*

## Ministry of Corporate Affairs

### Notifications/Circulars/News

In the Companies (Audit and Auditors) Rules, 2014 (hereinafter referred to as the principal rules),- (i) For rule 13, the following rule shall be substituted, namely:- "13. Reporting of frauds by auditor and other matters: (1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

- The rules has specified the contents of the report to be filed by the auditor with the Central Government
- In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud
- The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.

*Companies (Audit and auditors) Amendment Rules ,2015 dated 14th December 2015*

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the conditions specified in the amendment rules.

*Companies (Meetings of board and its powers) second amendment rules, 2015 dated 14<sup>th</sup> December 2015*

Relaxation of additional fees and extension of last date of filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- State of Tamil Nadu and UT of Puducherry.

*General Circular 16/2015 dated 31st December 2015*

In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013) the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Delhi, Ahmedabad, Hyderabad and Shillong, the power vested in it under section 208 of the said Act for receiving the

report from the Registrar (having jurisdiction over the place of registered office of the company concerned) or from the Inspector where such report recommends action for violation of offences under the said Act for which imprisonment of less than two years is provided, (except for violation of offences under Chapter III, IV section 127,177 and 178 for which the report shall be received Government)

*S.O.(E) dated 31st December 2015*

## CENVAT

### Notifications/Circulars/News

The Central Government has issued instruction for withdrawal of appeals pending before Tribunal/ High Court on the basis of earlier Supreme Court's decision on identical matter, which has been accepted by Department.

*No. F. No. 390/Misc.167/2014-JC, dated 18 December, 2015*

### Case Law

The Mumbai Tribunal held that even putting a tag on parts of automobile parts will amount to labelling of goods and hence will amount to 'manufacture' under section 2(f)(iii).

*Larsen and Toubro Ltd and Ors v. CCE (2015-TIOL-2561-CESTAT-MUM)*

The Delhi Tribunal held that the activity of installation and commissioning of switching system along with power plant and inverter did not amount to manufacture.

*Bharat Sanchar Nigam Ltd v. CCE & ST (2015-TIOL-2332-CESTAT-DEL)*

The Delhi Tribunal held that cutting of marble blocks into marble slabs did not amount to manufacture.

*Aravali Marbles v.CCE & ST (2015-TIOL-2321-CESTAT-DEL)*

The Supreme Court held that expenses incurred by dealers on their own account towards the pre-delivery inspection charges and after sales service charges were not includible in the assessable value.

*CCE v.TVS Motors Company Ltd (2015-TIOL-299-SC-CX)*

The Mumbai Tribunal held that charges collected towards training provided to the customer's staff, being optional and at the request of customers, was not includible in the assessable value.

*Aquarius Technologies Pvt Ltd v.CCE (2015-TIOL-2567-CESTAT-MUM)*

The Chennai Tribunal held that CENVAT credit was admissible on inputs used for running the Sewage Treatment Plant (STP) since setting up of such STP was a requirement of Pollution Control Board for eradication of water pollution and therefore, it could not be said that STP was not an integral part of the factory as well manufacturing activity.

*DCW v.CCE (2015-TIOL-2533-CESTAT-MAD)*

The Chennai Tribunal held that credit was admissible on steel plates/ angles used for fabrication of plant and machinery.

*Dalmia Cement (Bharat) Ltd v.CCE (2015-TIOL-2420-CESTAT-MAD)*

The Mumbai Tribunal held that demand for reversal of credit under Rule 6(3) was not sustainable when exempted byproducts emerged unintentionally during the manufacture of dutiable final products.

*JSW Steel Ltd v.CCE (2015-TIOL-2432-CESTAT-MUM)*

The Delhi Tribunal held that jumbo electric/ battery operated platform truck, hot metal transport vehicle, trailer assembly and ladle transfer car specially designed for operational use inside the assessee's factory was eligible for credit as capital goods.

*Jindal Steel and Power Ltd v. CCE (2015-TIOL-2376-CESTAT-DEL)*

The Mumbai Tribunal held that credit on inputs used in export goods could not be denied on the ground that final products was exported directly from the job worker's premises.

*Jayaswals Neco Ltd v. CCE (2015-TIOL-2388-CESTAT-MUM)*

The Delhi Tribunal held that once the recipient had received the goods on payment of duty, the CENVAT credit could not be denied on the ground that the supplier of the inputs was not required to pay excise duty on the goods supplied.

*Bhavnish Metal v. CCE (2015-TIOL-2393-CESTAT-DEL)*

## GST (VAT, Sales Tax and Entry Tax)

### Case Laws

The Punjab High Court, relying upon the decision of the Supreme Court in the case of State of Punjab and others v. Nokia India Private Ltd, held that the mobile battery charger was not a part of mobile phone but an accessory and accordingly the same would be taxed at the rate applicable on accessories of mobile phones.

*Samsung India Electronics Pvt. Ltd. v. State of Punjab and Another [2015-TIOL-2720-HC-P&H-VAT]*

The Delhi High Court held that the sale of repossessed cars by the bank through auction in order to realise its dues, was incidental or ancillary to its main banking business and qualifies as "Business" under Delhi Sales Tax Act. Therefore, the same was liable to sales tax.

*Citi Bank v. Commissioner of Sales tax [2015-TIOL-2842-HC-DEL-CT]*

## Service Tax

### Case Laws

The Mumbai Tribunal held that the appellant was an association formed by the members only for the purpose of the mutual benefit of the members in regard to mining/ trade of minerals. There was a mutuality of interest of the members and the association and therefore, the service provider and service recipient concept did not exist in this case. Accordingly, the membership fees collected by the association prior to 1 July, 2012 would not be subject to service tax under the category 'Club or Association services.'

*Goa Mineral Ore Exporter's Association v. Commissioner of Central excise, Goa (2015-TIOL-2670-CESTAT-MUM)*

The Mumbai Tribunal held that recovery of costs for deputation of manpower to its sister concern would not be subject to service tax under the category 'Manpower Recruitment or Supply Agency services'. Further, since no show cause notice was issued to the appellant to tax these services under the category 'Manpower Recruitment and Supply Agency services', the order of the first appellate authority taxing the services under this category was liable to be set aside on this ground itself.

*Larsen and Toubro Ltd v. Commissioner of Service Tax, Mumbai - II (2015-TIOL-2719-CESTAT-MUM)*

The Mumbai High Court held that unless the tax demand was determined pursuant to an adjudication order, recovery proceedings could not be initiated.

*Quality Fabricators and Erectors v. The Deputy Director, DGCEI Zonal Unit, Mumbai and Others (2015-TIOL-2710-HC-MUM-ST)*

The Delhi High Court held that the option to pay the reduced penalty under section 78(1) of the Finance Act, 1994 could not be given to an assessee at the appellate stage i.e. the CESTAT did not have the authority to permit the assessee to pay the reduced penalty under section 78(1). Such option was available to the assessee at the adjudication stage only.

*PR Commissioner of Service Tax, Delhi -II v. Tops Security Limited (2015-TIOL-2751-HC-DEL-ST)*

## SEBI/FEMA/RBI

### Notifications/Circulars/News

Prior to April 01, 2014, offers of securities - shares and debentures - by companies to more than 49 persons were deemed to be public offers. SEBI has initiated penal action on receipt of specific complaints against the companies offering such securities without complying with the relevant provisions of the Companies Act, 1956 and applicable SEBI Guidelines / Regulations governing a public issue. Under the new Companies Act, 2013, post April 01, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees / allottees exceeds 200 persons in a financial year, excluding certain class of subscribers.

Considering the higher cap for private placement provided in the Companies Act, 2013, it has now been decided that in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.

*CIR/CFD/DIL3/18/2015 dated December 31, 2015*

## Recommended Articles for your reading:

### Will Wi-Fi First Really Disrupt the Mobile Industry?

In the Wi-Fi First model, mobile devices rely primarily on Wi-Fi for data and voice services, and cellular merely provides backup. For Wi-Fi First's backers, the increasing availability of Wi-Fi—and its ability to piggyback on existing fixed-broadband networks—makes the model a viable, lower-cost alternative to traditional cellular plans.

<https://www.bcgperspectives.com/content/articles/telecommunications-will-wi-fi-first-really-disrupt-mobile-industry/>