



# eMagazine



## Demonetisation

A Step towards abolition of **CORRUPTION**

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Dear Readers,

I am happy to interact with you again through the monthly e-Magazine.

A very strong and bold decision has been taken by our Prime Minister to curb black money and counterfeit notes. This is the time for us to support the decision taken by the government and show our unity.

Mysore Chapter conducted study circle meeting for its members, Career awareness program & special lecture on Capital Markets for the students of Maharani College during the month of October. Also the Chapter is planning to hold more programs during the upcoming months.

The MCA has already relaxed the time limit up to 29th November 2016 for filing of forms AOC-4 and AOC-4 XBRL. The members can plan well and utilize the time extension effectively.

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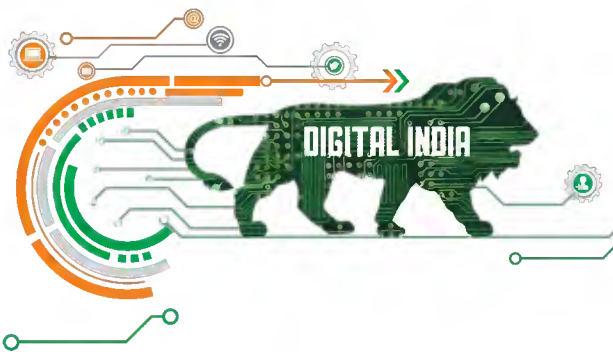
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# Digital India: Attending Board Meeting through Electronic Mode

With the advancement in Information Technology (IT), just about everything, is more accessible and conveniently available in almost all the sectors. Technological advancement helps people to perform tasks more efficiently and get better results. Employing IT in an organisation speeds up the process of sharing information within and outside the organisation. Therefore the Ministry of Corporate Affairs (MCA) had commenced Green Initiative in Corporate Governance by permitting participation of Directors of a Company in a meeting of Board/Committee of directors through electronic mode. This drive began in 2011 vide General Circular no 28/2011 dated 20.05.2011.



To sustain a similar essence, the Ministry of Corporate Affairs has incorporated similar provisions in the Companies Act, 2013 (“the Act”) as well. Let’s discuss the provisions of the Act. The Act has allowed meeting of Board to be held in person or through video conferencing or other audio visual (herein after referred as ‘Electronic Mode’ or ‘E-Mode’] or means which is capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Further, every Company is

required to comply with the procedure, for convening and conducting the Board meetings through Electronic Mode as prescribed in the Rules.

1. **Participation through Electronic mode (E-Mode):** The director of a company may participate in Board meetings through video conferencing or any other audio visual means or any other mode as may be prescribed by the Central Government. The Director intending to participate in the meeting through E-Mode may intimate his / her intention of participation through the E-Mode at the beginning of the calendar year and such declaration shall be valid for one calendar year. In absence of intimation, it is to be presumed that the director shall attend meeting in person. [Sec-173(2) of the Act read with Rule 3(c) to (f) of the Companies(Meetings of Board and its Powers) Rules, 2014]
2. **Quorum:** The Director attending meeting through E-Mode shall be counted as quorum unless the director is to be excluded for any items of business under any provisions of the Act or the rules [Sec-174(1) of the Act read with explanation to Rule 5(a) to Rule 3 of the Companies(Meetings of Board and its Powers) Rules, 2014]
3. **Venue of Meeting:** The scheduled venue of the meeting as mentioned in the notice convening the meeting shall be the place of the said meeting. Further, all recordings of the proceedings at the meeting shall be deemed to be made at such place. [Sub-Rule 6 of Rule 3 of the Companies(Meetings of Board and its Powers) Rules, 2014]

4. **Placing and Authorization of statutory registers:** The statutory register required to be placed in the Board meeting shall be placed at the scheduled venue of the meeting. Further, the same shall be deemed to be signed if the directors attending through e-mode give their consent.[Sub-Rule 7 of Rule 3 of the Companies(Meetings of Board and its Powers) Rules, 2014]

5. **Preservation of E-Mode recording:** Tape recording(s) or other electronic recording mechanism as part of the records of the company shall be preserved and kept safe at least before the time of completion of audit of that particular year. However it is suggested to keep records till the time of completion of Audit of that particular year. [Rule 3(2)(d) of the Companies(Meetings of Board and its Powers) Rules, 2014]

6. **Matters not to be dealt with in a meeting through video conferencing or other audio visual means:**

As per rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, the following matters are not to be dealt in a meeting through E-Mode:

- i. the approval of the annual financial statements;
- ii. the approval of the Board's report;
- iii. the approval of the prospectus;
- iv. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act; and
- v. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.



Important point to be noted here is that Secretarial Standards allow the directors to attend the meeting through E-Mode for the above referred matters with the permission of the Chairman.

However, it is well settled principle of statutory interpretation that a delegated legislation prescribed under the statute is within the prescribed limit of statute, it will be at par with the Act; however in case of conflicts of rule with the statutory provisions, the latter will prevail, i.e., statutory provision will succeed. Hence, in this case, the above referred matters are not to be dealt in a meeting through E-Mode.

7. **Who can participate in the meeting:**

- i. Chairperson
- ii. Directors
- iii. Company Secretary &
- iv. Any other person whose presence is required by the Board

8. **Responsibilities:** The Chairperson of the meeting and the company secretary is responsible for the smooth, effective conduct and safeguarding the integrity of the meeting. Further they are also responsible for matters as specified in rule 3(2) of Companies(Meetings of Board and its Powers) Rules, 2014

9. **Other important matters:** Notice, Attendance register and Minutes shall also contain requisite details about participation of Directors via E-Mode as prescribed in the rules

10. **Procedure:** Requisite procedure for holding meeting through E-Mode is also required to be followed as prescribed in the rules.



# EMPLOYMENT LAWS AND DATA PROTECTION - A GLOBAL PERSPECTIVE

On account of the wide spread use of Social Media by the employers & employees community in India, it becomes important to understand how social media could be best used to serve the interest of the employers and at the same time not attract any legal consequences. The primary focus of this article would be to understand the attitudes of the global employers towards the use of employee Data collected through social media & otherwise, legal pitfalls in their use and the international practices.

Social Media is gaining popularity and immense significance in India for conducting business, these social media serves as a main platform for socialising with friends, family and also play a major role in promotion of business. Use of social Media for personal & business is so entangled that it is difficult to identify of the applicability of laws relating to social media & how and what would amount to illegal usage.

While presently there is no specific statute which governs DATA privacy in India, the protection in this regard is largely based on the constitutionally guaranteed “Right to privacy”. Although the concepts of “privacy”, “sensitivity”, “personnel information” and “anti-discrimination” are recognised in India, the laws pertaining to social media is still in its infancy & emerging phase. Therefore, we have to be guided by the international development in this regard.

Right to life and personnel liberty are fundamental rights guaranteed by **Article 21** of the Indian Constitution as decided by the supreme court in the case of *Kharak Singh Vs. the state of UP (Air, 1963 SC 1295)*, however the jurisprudence of this revolves around rights of citizens against illegal invasion of privacy by the government agencies and not by private organisations, hence the invasion of privacy on social media sites, and the risk associated with accessing publically available information is tricky & risky.

According to statistics the total number of social networks users in India is expected to be around 145.6 Million by end of the year and about 224.2 Million by the end of 2018, Facebook is estimate to have around 100 million monthly active users out of which 80% use it through their mobile phones, twitter is estimated to have around 33 million monthly users and LinkedIn around 26 million users and finally Pinterest around 5.5 million users.

The use of social media by employers in India therefore raises questions as to what laws & rules will apply for workplace confidentiality, loyalty, and how are they balanced against the “freedom of expression” guaranteed by the Constitution.

Article 19 (1) (a) & 21 of the constitution does not patently grant right of privacy, but courts in India on many occasions have held that the right to privacy is a part of the fundamental rights of every citizen along with freedom of speech and expression, but this right is enforceable only against government agencies and bodies and not against private violations and invasions, non-state invasions have to necessarily be governed by the general laws of torts such as defamations, breach of confidentiality and so on and so forth. Currently the only relevant law in India concerning DATA Protection is the Information Technology Law (IT Act 2000) read with the “Reasonable Practise

and Procedures and Sensitive Personal Data or information Rules, 2011 (Data Protection Rules), the India Contract Act, 1872 and the general principals of Law of Torts. The IT Act is the only act which addresses the Data Protection & privacy. Section 43A of the IT Act, states that **“when a corporate body is negligent in implementing and maintaining reasonable security practises and procedures in relation to any sensitive personnel data information that it possesses and such negligence causes wrongful loss or wrongful gain to any person, the entity will be liable to pay damages by way of compensation to such affected person”**.

Similarly, an employer who fails to properly implement security practises, resulting in wrongful loss or wrongful gains to any person could be liable to pay compensation to the aggrieved person, the adjudicating office appointed under the IT Act is empowered to award compensation up to INR 5 crores.

*Continued in the next edition....*

***The Employer- Employee relationships & DATA Protection in India when compared with Singapore US & the UK***

## Chapter Activities

### **STUDY CIRCLE MEETING ON COMPANIES ACT, 2013**

On 15.10.2016, Mysore Chapter organized study circle meeting on Companies Act 2013 in Chapter Premises. The discussion was moderated by CS Sabareeshan C K, Past Chairman, Mysore Chapter. The session was well attended by Members & Students of Mysore Chapter.



### **SPECIAL LECTURE ON CAPITAL MARKETS & CAREER COUNSELLING PROGRAM**

On 26th October 2016, Mysore Chapter had organized a Special Lecture on Capital Markets & Career Awareness program on Company Secretary Course for the MBA & M.Com students of Maharani Women's PG College, Mysore. Mysore Chapter Chairmen CS Bhansali M C, explained about the Capital Markets structure in India & other related things. CS Ajay Madaiah B B, Member of Mysore Chapter Managing Committee explained about the opportunities for CS and the way to become company secretary. Prof. Manjunath, Lecturer in Maharani PG College delivered the welcome & thanking address.





## #Start\_A\_New\_Life

I have always been scared. Although a part of me always wanted to be bold, valiant and a savior of the mankind. Like many of us I dreamt with open eyes about days when humanity will be under duress and I would sweep out the fear from minds of ordinary beings and help them have faith in a higher being. I dreamt of coming out as a hero who everyone would like, but would not care for publicity or attention. The fear in my heart, I feel, was the outcome of my upbringing. I, like many others, was brought up to be fearful of thugs, thieves, rowdies, police, lawyers, animals, teachers, law, crazy aunts and uncles, unknown, unseen bad spirits, omens, gods and demons alike.

I am generally a law abiding citizen and a god fearing individual. That on the one hand gave some peace of mind to my parents knowing that I would always refrain from getting involved in any type of mess and may be it did. But this world is not fair and square as all of us want it to be. There are people who feed on your fear. They try to take advantage of every situation where you get drowned in your own fear and decide not to fight for yourself. On the one hand where this fear kept me away from all the trouble, it made me doubt myself, every single time I did not stand up to defend myself. I always found a thousand smart and aggressive responses to the situation in my head but I never used them and decided to walk away meekly. But one day, I had to realize that enough was enough. Better today, that I get rid of my fears than live in fear for the rest of my life and pass on the same fear to the next generation. It is such a pity that we are not taught to be fearless since our childhood.

It took me almost 30 years of my life to convince myself that I can get over my fears. I decided that I will teach myself to be fearless in situations, which I dreaded to be in, earlier. For example, even if I had all documents for my car, I would still fear a traffic cop stopping me. I would become extra polite and then feel bad about it later. But I have learnt to look in to their eyes now and pass without a hiccup. There are many such situations which require just a little bit of courage for them to pass by, I am teaching myself to stand my ground. I am not scared anymore and I will never fear anything. I will follow my heart and abide by the law. I will not fear my god, for he is mine and he is supposed to be on my side. I will not fear law, for when I abide by it, it is supposed to protect me.

At the end no matter what, life or death, success or failure if I can't live fearless, then what's the point of life anyway? It was yesterday that I should have started all this, but today is not too late to **#StartA NewLife**.

- CS Monika Sharma

## How Money works?

One day a tourist comes to the only hotel in a debt ridden town in Kenya. He lays a 100 dollar note on the table & goes to inspect the rooms. Hotel owner takes the note & rushes to pay his debt to the butcher. Butcher runs to pay the pig farmer. Pig farmer runs to pay the feed supplier. Supplier runs to pay the maid, who in these hard times gave her services on credit. Maid then runs to pay off her debt to the hotel owner whom she borrowed from in these hard times. Hotel owner then lays the 100 dollar note back on the counter. The tourist comes down, takes his money & leaves as he did not like the rooms.

No one earned anything, no value created, wealth redistribution was on paper, yet that entire group of people is now out of debt & looks to the future with a lot of optimism.

That is how the world is doing business today! Worth a read...!!!

Courtesy: Anonymous

Collection : CS C K Sabareesan



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## Domestic Enquiry Vs. Ombudsman Investigation

Discipline and Integrity coupled with impeccable confidence portrayed by the human resources engaged by any Organization is the bedrock up on which its success and sustainable growth rests. Any instances which dent this premise will amount to misdemeanor which in human resource management is termed as “Misconduct” on the part of the employee who is alleged to have caused it. Such alleged “Misconduct” has to be verified before initiating any corrective action in the form of remedying the mischief committed. This is where the concept of “Domestic Enquiry” and “Ombudsman Investigation” take its stage.

Domestic Enquiry typically is a process to search for facts, truths or circumstances concerning a charge alleged against an employee by his employer. It is called as “Domestic” since the process of finding and proving the act of misconduct is conducted by an employer against his own employee within his own organization. Usually, the domestic enquiry follows the procedure of issue of Charge Sheet cum Show Cause Notice to an employee against whom the charges are leveled. If the cause extended is satisfactory, then the alleged misconduct is squashed or viewed with reasonable justification.



On the other hand if the cause expressed is not justified then the due process of inquiry is followed where a reasonable opportunity is extended to the alleged employee to disprove the allegation made by way of framing charges, examination of witness, taking evidence, cross examination and finally arriving at conclusion of whether the alleged charge stands proved or disproved.

The term “Ombudsman” is of a Swedish origin and the Ombudsman institution was in fact first established in Sweden in 1809. The term “Ombudsman” is an English translation of the Swedish word “umbuds man” from the Old Norse “umboosmaor”, meaning “Representative”.

The concept of Ombudsman was initially used in public sector for investigating the charge of maladministration or violation of right by a public advocate conferred with power and independence representing the public interest.

Off-late this concept is extended in Corporate Sector particularly in MNC’s where any person who witness or apprehends any instances of acts violating its policy of integrity can raise concern with our without disclosing his identity before the Ombudsman who in-turn undertakes a discreet investigation to ascertain the factualness of the concerns raised. If the concern found to be genuine, corrective action is initiated.



### **Conflict of Domestic Enquiry with Ombudsman Investigation:**

Although both the concepts aim at addressing the mischief which may dent the ethical business practices promoted with indiscipline behaviour, yet they fundamentally differ in following aspects:

1. Domestic Enquiry is conducted when a charge has been alleged against an employee by his employer. Here Employer assumes the position of the State and Employee assumes the position of Accused as it is understood under the criminal law. In case of Ombudsman Investigation, the charge of maladministration which may be alleged either directly or by implication against any person or institution is investigated by a public advocate or an ombudsman in corporate sector to find out whether there is prima-facie case to address.
2. Domestic Enquiry strictly adheres to the principles of “Audi Alteram Partem” i.e. hear the other party by extending reasonable opportunity of being heard. In case of Ombudsman investigation, if there is a prima facie case, it has to follow the process of domestic enquiry failing which the investigation will suffer from technical flaws.
3. Domestic Enquiry follows the due process of conduction of trial even though it is not required to adhere to the strict principles of criminal law or the law of evidence. But Ombudsman Investigation will be considered as one sided if the corrective actions are based on prima facie report of the investigator.
4. Legislation source of reference to the domestic enquiry can be drawn from Industrial Employment (Standing Orders) Act, 1946. On the contrary, Ombudsman concept is yet to find its place in industrial or general penal laws or code of procedures.

### **Implication of Ombudsman Investigation**

It is a normal practice in many Organizations to take actions against an employee in question on the basis of Ombudsman Investigation report where the decision is based on the conclusion arrived therein without extending a reasonable opportunity of being heard to the said employee. In such situation, an employee is put under a pressure either to resign on his own accord or will be dismissed. Succumbing to the pressure, employee resigns. An informed employee can in such time sue the Organization for having forced him to resign resulting in tortious liability and mental agony notwithstanding claim made for re-instatement and compensation.

#### **Some of the implications are:**

1. Ombudsman Investigation conducted without adhering to the principles of natural justice may not give right platform to take corrective actions.
2. Disciplinary actions initiated against any employee basis Ombudsman investigation report conclusion will be tenable only when the employee in question was given reasonable opportunity of being heard.
3. Actions initiated on the basis of Ombudsman investigation report may also not be tenable in the courts of law if challenged by the affected employee as it fails to recognize the principle of natural justice.
4. Any action of dismissal or discharge from the employment or any penal actions in the form of suspension or any other punishments to an employee basis Ombudsman Investigation report may also give raise the claim of tortious liability against the employer in the civil court.

In a nutshell, any effort to find the truth in the allegation made against its employee by any Organization should be in the light of extracting factual position by applying the principles of natural justice failing which will only have adverse impact on the Organization working and the Human Resource Management Policy is viewed with an element of suspicion, thereby losing trust and confidence reposed by its employees. Organization may also be perceived as following Unfair Labour Practices.

# e-Tools for the Professionals



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## System App Remover (Root) application For Smart Phones and Tabs



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## Web Yatra

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**“Inside each of us are two separate personas. There’s the leader/planner/manager who plans to change his or her ways. And there’s the follower/doer/employee who must execute the plan.” - Dr. Marshall Goldsmith**

## MARSHALL GOLDSMITH

Beloved professionals, I would like to introduce to you a world-renowned business educator and coach, Dr. Marshall Goldsmith, who is the leading expert in delivering leadership speeches, training and coaching for CEOs, professionals and top executives in various field, by providing highly motivational speech and extensive training classes.

Catch him up at <https://www.marshallgoldsmith.com>

This website provides us with access to ‘Library’ section containing columns authored by Dr. Marshall, even inspirational ‘Videos’ of him which were delivered in leadership classes and training, most important downloadable ‘Articles’ on topic of high relevance to leaders/aspirants, ‘Audio/Procasts’ of his interviews & key speeches among other things. ‘Translations’ of articles in other foreign language is also made available.

‘My Books’ section in the website provides list of books authored by Dr. Goldsmith with pre-phase narrating what is inside the book.

This website helps all of us to follow coaching/by introducing us to the vast collections of Dr. Goldsmith and preparing us to be successful future leaders, I am confident you may like to go right ahead and add Dr. Goldsmith’s website in your **BOOKMARKS** section because “Sometimes the smallest step in the right direction ends up being the biggest step of your life.” “Tip toe if you must, but take the step”.



# News Room



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## NEWS EXPRESS

- ✓ Demonetization: Withdrawal limit of 'current accounts' raised to Rs 50,000 and savings accounts to Rs. 24,000 per week
- ✓ Tata Sons unexpectedly Removes Cyrus Mistry as Chairman and nominates Ishaat Husain as interim chairman
- ✓ After demonetization, Govt eyes on Benami property holders and unaccounted gold deposits as the next target to curb black money
- ✓ ED makes Rs 1,700-crore fresh seizures in attachment of Vijay Mallya's assets in Money Laundering case.
- ✓ India cautioned other countries against using regional trade agreements to change the structure of multilateral trade pacts of the World Trade Organisation.

## PM Narendra Modi declares Rs 500, 1000 notes to be invalid

In a move to curb the black money menace in India, PM Narendra Modi declared that from midnight of 8 Nov 2016 currency notes of Rs 1000 and Rs 500 denomination will not be legal tender. People can deposit notes of Rs 1000 and Rs 500 in their banks from November 10 till December 30, 2016.

### 200% Penalty on Unexplained High Deposits

Subsequent to demonetization of Rs. 1000 & 500 currency notes, IT Department, now, may slap a hefty 200 % penalty on unexplained high cash deposits in banks even before annual tax returns are filed so as to prevent black money being converted into white during the 50-day window provided for exchange.

## Paytm hits record 5 Mn. transactions a day

Buoyed by a sudden surge in demand for digital transaction, India's largest mobile payments platform Paytm said it has touched a figure of five million payment transactions per day. According to senior executives at Paytm, company would be able to close the financial year with Rs 24,000 crore worth of transactions processed on the platform.

## ICJ rejects India's plea for change of arbitrator in Vodafone case

The Hague-based International Court of Justice has rejected India's plea for replacing the presiding judge of the arbitration panel, Sir Franklin Berman, looking into the Rs 22,100-crore retrospective tax case of Vodafone Group of UK, as he was a British national and faced conflict of interest as Vodafone is also a UK company.

## GST rate structure finalized, panel fixes rates at 5%, 12%, 18% & 28%

A 4-tier GST tax structure of 5, 12, 18 and 28 per cent, with lower rates for essential items and the highest for luxury and de-merits goods that would also attract an additional cess, was decided by the all- powerful GST Council. With a view to keeping inflation under check, essential items including food will be taxed at zero rate.



## Learners' Corner

# Demonetisation vis a vis Monetisation

**Demonetisation** is a radical monetary step in which a currency unit's status as a legal tender is declared invalid. This is usually done whenever there is a change of national currency, replacing the old unit with a new one.

Such a step, for example, was taken when the European Monetary Union nations decided to adopt Euro as their currency. However, the old currencies were allowed to convert into Euros for a period of time in order to ensure a smooth transition through demonetisation. Zimbabwe, Fiji, Singapore and Philippines were other countries to have opted for currency demonetisation.

On the other hand, **Monetisation** is the process of converting or establishing something into legal tender. While it usually refers to the coining of currency or the printing of banknotes by central banks, it may also take the form of a promissory currency. The term "monetisation" may also be used informally to refer to exchanging possessions for cash or cash equivalents, including selling a security interest, charging fees for something that used to be free, or attempting to make money on goods or services that were previously unprofitable or had been considered to have the potential to earn profits.

Did  
You  
Know?

## History of Demonetisation in INDIA

It is not the first time the Government of India has gone for the demonetisation of high-value currency. It was first implemented in 1946 when the Reserve Bank of India demonetised the then circulated Rs 1,000 and Rs 10,000 notes. The government then introduced higher denomination banknotes in Rs 1000, Rs 5000 and Rs 10000 in a fresh avatar eight years later in 1954 before the Morarji Desai government demonetised these notes in 1978. The government's move to demonetise, even then, was to tackle the issue of black money economy, which was quite substantial at that point of time. In January 1978, the Indian government demonetised Rs 1,000, Rs 5,000 and Rs 10,000 notes which was quite substantial at that point of time. The move was enacted under the High Denomination Bank Note (Demonetisation) Act, 1978. Under the law all "high denomination bank notes" ceased to be legal tender after January 16, 1978. People who possessed these notes were given till January 24 the same year — a week's time — to exchange any high denomination bank notes. The main difference between then and now is that currency of higher denomination was barely in circulation, unlike the Rs 500 and Rs 1000 note today.

## Whether Demonetisation is Legal?

The legal basis for the order demonetizing currency can be found in Section 26 of the Reserve Bank of India Act, 1934. sub-section (2) of Section 26 reads as **“(2) On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification”**. It is under this provisions, the Union Government is given the power to declare that any notes issue by the Reserve Bank will no longer be legal tender. The only procedural requirement is that the Board of the RBI recommends the same to the Union Government.

Pick of  
the  
Month

# Regulatory Updates

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## CUSTOMS & FTP

### Notifications/Circulars/News

Rate of exchange of conversion of foreign currency WEF 04th November, 2016 notified vide Notification No.136/2016-Customs (N.T.)

[No.136/2016-Customs \(N.T.\) dated 03/11/2016](#)

CBEC notifies importers who can pay deferred payment of import duty

[No. 135/2016-Customs \(N.T.\) dated 02/11/2016](#)

CG notifies Deferred Payment of Import Duty Rules, 2016

[No. 134/2016-Customs \(N.T.\) dated 02/11/2016](#)

CBEC amends Custom, Excise & Service Tax Drawback Rules WEF 15.11.2016

[No. 132/2016 - Customs \(N.T.\) dated 31/10/2016](#)

Revised procedure for clearance of imported metal scrap

[No. 48/2016-Customs dated 26/10/2016](#)

Rebate of State Levies on Export of Garments

[No. 47/2016-Customs dated 20/10/2016](#)

### Case Law:

Simultaneous penalty on firm & partners restricted to abatement.

[M/s. Amritlakshmi Machine Works Vs The Commissioner of Customs \(Import\) \(Bombay High Court\)](#)

Charges having no nexus with import not includible in AV of imported goods.

[rM/s Schwing Stetter \(India\) Private Limited Vs Commissioner of Customs \(Imports\) \(CESTAT Chennai\)](#)

## Ministry of Corporate Affairs

### Notifications/Circulars/News

Relaxation of additional Fees and extension of last date for filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 eforms under the Companies Act, 2013 till 29th November 2016.

[General Circular 12/2016 dated 27.10.2016](#)

In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 33, for sub-rule (2), the following shall be substituted, namely:- “(2) subject to the provision of sub-rule (1), for effecting the conversion of a public company into a private company, a copy of order of the Tribunal approving the alteration, shall be filed with the Registrar in Form No.INC-27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal”. 3. In the principal rules, after rule 37, the following rule shall be inserted, with effect from 2nd October 2016, namely:- “38. Simplified Proforma for Incorporating Company Electronically (SPICE) (1) The simplified integrated process for incorporation of a company in Form No. INC-32 alongwith e-Memorandum of Association in Form No. INC-33 and e-Articles of Association in Form No. INC-34. (2) The provisions of sub-rule (2) to sub-rule (13) of rule 36 shall apply mutatis mutandis for incorporation under this rule. Provided that for the purposes of references to form numbers INC-29, INC-30 and INC-31 in rule 36 with Form No. INC-32, Form no. INC-33 and Form No. INC-34 shall be substituted respectively. 4. In the principal rules, after rule 38 as so inserted these rules, the following rule shall be inserted with effect from 1 st November, 2016, namely:- “39. Conversion of a company limited by guarantee into a company limited by shares (1) A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares. (2) The company seeking conversion shall have a share capital equivalent to the guarantee amount. (3) A special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.

[Companies \(Incorporation\) fourth Amendment Rules, 2016 dated 01.10.2016](#)

In exercise of the powers conferred by sub-section (1) of section 210A of the Companies Act, 1956, (1 of 1956), the Central Government hereby constitutes an Advisory Committee to be called the National Advisory Committee on Accounting Standards, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the

said Act or the Companies Act, 2013 (18 of 2013) as the case may be  
*S.O. 3118(E) dated 03.10.2016*

## CENVAT

In view of impending implementation of Goods & Service Tax (GST), CBEC has decided that Annual Return for CE & ST assesseees for the year 2015-16, due on 30.11.2016, shall not be required to be filed.

*Circular No. 1050/38/2016-CX dated 08/11/2016*

### Case Law

Activities relating to spectacles, frames & tagging of jewellery does not amount to manufacture

*M/s Amazon Seller Services Private Limited, Bangalore  
(Authority For Advance Rulings)*

Tax Laws passed by Legislature not open to judicial review

*Amin Merchant V/S Chairman, Central Board Of Excise & Revenue & Ors. ( Supreme Court of India)*

Activity of mere Loading software in a device does not amount to manufacture

*Re. M/s. Nucleus Software Exports Ltd. (Authority For Advance Rulings-Central Excise, Customs and Service Tax)*

Mere Crushing of Coal does not amount to manufacture

*Re. M/s. Dhunseri Petrochem. Ltd. (Authority For Advance Rulings - Central Excise, Customs & Service Tax)*

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

The Central Government hereby appoints the 16th day of September, 2016 as the date on which the provisions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20 of the said Act, shall come into force

*S.O. 2986(E). - (16/09/2016)*

In exercise of the powers conferred by article 279A of the Constitution, the President hereby constitutes the Goods and Services Tax Council

*S.O. 2957(E) - (15/09/2016)*

Goods and Services Tax Council provisions notified wef 12.09.2016

*S.O. 2915(E) - (10/09/2016)*

## Service Tax

### Notifications/Circulars

Seeks to amend Service Tax Rules, 1994 so as to prescribe that the person located in non-taxable territory providing online information and database access or retrieval services to 'non-assessee online recipient', as defined therein, is liable to pay service tax and the procedure for payment of service tax.

*No. 49/2016-Service Tax dated 09/11/2016*

Withdrawal of ST Exemption on online information & database access or retrieval services

*No. 47/2016-Service Tax dated 09/11/2016*

The Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994 but for the said practice, on the service of transportation, by educational institutions as defined in clause (1) of section 66 D of the Finance Act, 1994(32 of 1994) during the said period, to students, faculty and staff of such institutions, shall not be required to be paid.

*No. 45/2016-Service Tax dated 30/09/2016*

CBEC amends Service Tax Return Form ST-3

*No. 43/2016-Service Tax dated 28/09/2016*

The Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994, on the service by way of advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961 (43 of 1961) in the said period, but for the said practice, shall not be required to be paid.

*No. 42/2016-Service Tax dated 26/09/2016*

ST Exemption on one time upfront amount to State Govt Industrial Development Undertakings

*No. 41/2016-Service Tax dated 22/09/2016*

### Case Laws

Honorable Delhi High Court has Declared Rule 5A(2) of the Service Tax Rules, as amended, to the extent that it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand, as ultra vires the Finance Act and, therefore, struck it down to that extent.

*Mega Cabs Pvt. Ltd. Vs. Union Of India & Ors. dated 03.06.2016*

Service Tax on manufacture of alcoholic liquor for human consumption on job work basis with effect from 1st June 2015 is Constitutionally Valid

*Carlsberg India Private Limited Vs. Union Of India & Ors. 14*