



MYSORE CHAPTER

# eMagazine

Edition 123

April 2014



**Weapon of  
MASS DESTRUCTION**

**called**

**"AS MAY BE PRESCRIBED"**





Dear Readers,

During March 2014 the Mysore Chapter witnessed series of events for students and members. The Chapter had organised Two days' seminar on 1st and 2nd, Student Annual Event Umang'14 on 16th, National Seminar on Financial Inclusion 28th and 29th and Two days Seminar on 29th and 30th, which was well attended by members and students. I thank all the participants for making the events successful. Congratulations to the students for organising and presenting Umang'14 in its new avatar.

The Chapter is also organising group readings for members, regular study circles & student events.

We started this new financial year with the much awaited companies Act, 2013. It was not a good beginning with the newly notified rules, which diluted the Governance requirement for majority of the Companies. Management committee of Mysore Chapter expresses its concern over the new set of notified rules. With the uncertainties and concerns on the New companies Act, 2013 and with all the efforts of the Institute by its Executives & Council to address the concern & issues, we hope to see a positive development which would bring adequate governance in the corporate and enhanced contribution from our profession.



## Message from Chairman

CS Ajay Madaiah B.B.

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### Disclaimer

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## Finding Happiness

A group of 50 people were attending a seminar.

Suddenly the speaker stopped and started giving each person a balloon. Each one was asked to write his/her name on it using a marker pen. Then all the balloons were collected and put in another room.

Now these delegates were let in that room and asked to find the balloon which had their name written, within 5 minutes. Everyone was frantically searching for their name, pushing, colliding with each other, and there was utter chaos.

At the end of 5 minutes, no one could find their own balloon.

Now each one was asked to randomly collect a balloon and give it to the person whose name was written on it. Within minutes everyone had their own balloon.

The speaker began: This is exactly what is happening in our lives. Everyone is frantically looking for happiness all around, not knowing where it is. Our happiness lies in the happiness of other people.

Give them their happiness, you will get your own happiness. And this is the purpose of human life.



**Words worth  
Millions**

**No one can destroy iron but it's own rust can.  
Likewise, no one can destroy a person but his own mindset can.**

**- Ratan Tata**

**Two things define us.  
Our patience when we have nothing and our attitude when we  
have everything.**

## Two Days Seminar on Corporate Laws

The Mysore Chapter of ICSI conducted a Two Day Seminar on 01st & 02nd March 2014 in the Chapter



Premises. In the inaugural session CS Ajay Madaiah B B, Chairman, Mysore Chapter welcomed the delegates. CS Baiju Ramachandran, Chairman, ICSI-SIRC formally introduced CS R Sridharan, President ICSI & Mr. V.Srikantha, Chief Guest. In his Presidential Address CS R Sridharan explained the latest development activities in the CS profession. Mysore Chapter Secretary CS Raghavendra proposed the vote of thanks in the inaugural session. In the Two day seminar various topics were deliberated by the speakers, such as Valuation of Assets: New Avenues for Professionals by CS Ahalada Rao, Hyderabad, Related Party Transactions under Companies Act, 2013 by CS Dattatri H M, Bengaluru, FEMA Regulations Concerning FDI and ECB by CS R V Seekar, Kakinada and Corporate Restructuring by CA Chinmaya A M, Bengaluru.

## President Interaction with the Students & Press



On 01.03.2014 CS R Sridharan, President, ICSI had an interaction session with the students in the Chapter premises. A

large number of students participated and interacted with the President. In the afternoon a Press Meet was arranged in the Mysore Press Club addressed by CS R Sridharan, President, ICSI reported to the press members and explained the scope and opportunities of the CS course.

## Marathon & Walkathon organized by Mysore Chapter



On 02.03.2014 the Mysore Chapter of ICSI organized Marathon & Walkathon event with the theme "Pledge to Save Water" on the occasion of 10 years of successful journey of CS-Mysore e-parivar. The Marathon and Walkathon, which was flagged off by Deputy Mayor V.Shailendra. A large number of Public, students & members participated in the event. The event was well received and appreciated by the Senior members of the Institute, media and public.

## Umang 2014

The Mysore Chapter of ICSI celebrated its Annual Students event Umang'14 on 16.03.2014 at Rani Bahadur Auditorium. The programme was inaugurated by Chief Guest Sanjay Srinivasamurthy, AVP, Global IT Delivery, Software Paradigms Infotech Pvt. Ltd. Ponnamma, Principal, MICA College, Mysore was the guest of honour. CS Ajay Madaiah B B, Chairman, Mysore Chapter, CS V.J.Balakrishnan, Vice-Chairman and Raghavendra, Secretary were present.



topics in Rural Banking, Micro Finance & Investor Education. Speakers from Various colleges discussed the topics with the participants. Past SIRC Chairman SS Marthi deliberated on regulatory aspects of Micro finance. CS Sabareesan and SS Marthi were part of panel discussion on the topic of Investor Education session.

## Seminar on Aspirations, Challenges & Opportunities

Competitions like Cross Swords, Management Games, Quiz and cultural extravaganza were organised as part of the programme. The audience was thoroughly entertained by the students. The winners of the competitions were awarded at the valedictory session.

A two day joint seminar was organised by the Mysore Chapter of ICSI and SIRC of ICSI with the theme of Emerging Laws: Aspirations, Challenges & Opportunities on 29th and 30th March, 2014 for

## National Seminar on Financial Inclusion & Investor Awareness program



the Members and Students. Chairman of SIRC of ICSI CS Baiju Ramachandran was present in the inaugural session as chief guest and he lighted the Lamp & delivered his inaugural address. Guest of honour CS Marthi, Mysore Chapter Chairman CS Ajay Madaiah B.B, & Treasurer CS Bhagya were also present on the occasion.



On 28th & 29th March 2014 the Mysore Chapter of ICSI & Basudev Somani College had Jointly organised a Two Day National Seminar on Financial Inclusion. The two day seminar had the

Sessions on Labour law reforms by Mr. A.C. Narendra, Service Tax by Mr. B.C. Bhat, Companies Act, 2013, LLP compliance & tax benefits by Mr. Amithraj, a session on Sound Mind resonance by Mr. R. Raghavenra Pai, On companies Act 2013 by CS Marthi S.S. and CS Gopinath M.R. were held during the two days.



**Weapon of  
mass destruction  
called  
"AS MAY BE PRESCRIBED"!**

Substantive law is the 'legislated law' that defines the principles for a particular enactment. This is done by State Assemblies for states and Parliament for the Country. Procedural law is the "machinery" for enforcing the principles set under Substantive law. "Act" is the substantive law. "Rules" made there under is the procedural law.

Passing a new 'Act' or changing an existing 'Act' is a laborious process. However making Rules is an executive action by concerned department. Therefore it is relatively easy and less time consuming. While change in principles may be required rarely, change in the method of execution has to suit changing dynamic situations.

Appreciating this fact, while legislating FEMA, a small set of principles only were enacted in the form of Substantive Law and concerned departments were empowered to make rules as may be appropriate to implement the principles set under FEMA.

This was highly appreciated and all stakeholders cherished such a move. Thereafter, many new Acts followed this route. Here and there some ill effects

were observed where in the rules showed inconsistency with the substantive law. In some cases, concerned departments rectified the rules, while in some other cases rectification happened after courts ordered to do so.

Under much awaited Companies Act, 2013 also serious effort was made to define principles only in the Act and almost every section of the Companies Act has created an enabling sentence for executive action "as may be prescribed". It was expected that MCA is now empowered to play much better and dynamic role in responding to the needs of the corporate world and its stakeholders.

***But MCA using this power of making rules as a weapon of mass destruction was unexpected!***

Unfortunately this power used against the professionals who are supposed to be the corporate advisors and facilitators in implementing the new Companies Act, 2013. Irony? Much worse than that...

Ensuring compliance with law is the fundamental duty of the executive wing of democracy. For this, it

has to make rules and put in the mechanism to oversee the Compliance across the territory.

Advising, monitoring, prosecuting and punishing deviation cannot be entirely done by the State, given with the huge number of businesses in the country. That was the reason why professional bodies like ICSI, ICAI and ICAI (Cost Accountants) were established under the Acts of Parliament. These bodies were given with the mandate of creating professionals across the country for advising on legal, financial and cost norms and laws in force from time to time. Recognitions were given under various statutes for these bodies as a facilitation.

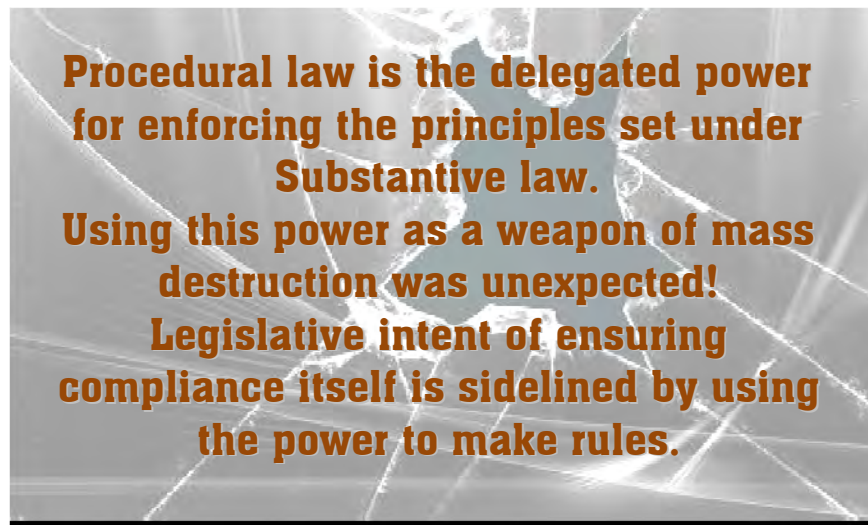
However the way new rules concerning KMPs are framed in complete deviation with the draft rules and the deceitful implementation of these rules - are giving an impression that the executive wing is set to defeat the legislative intentions of the substantive law i.e. the Companies Act 2013 by using the enormous power delegated by the Act to the executive wing.

*ICSI is not a private institute. It was formed under an Act of Parliament for enhancing corporate governance in the country.* With that intention the appointment of Company Secretary and certain certifications were made mandatory. It has got a complimentary role to play with MCA. Making ICSI ineffective is clearly going against the legislative intent.

*Normally, like in case of Service Tax/compulsory e filing of tax returns, new requirements are made mandatory for a smaller group of assesses/entities to start with and slowly it will be broad based. However in case of corporate governance it is going*

*other way round. Initially the applicability was for a large section of corporate and slowly the scope is reduced to just 3% of the companies!*

Every government department is making compliance more and more stringent and efficient. The Companies Act, 2013 also intended it to be so. It is evident from the fact that many concessions which existed for Private Companies are removed, punishments for non compliance was made very stringent and executive wing is empowered enormously for the proper administration of the Act. However, in contradiction, impact of these rules is cutting off the requirement of compliance officers itself from the corporate houses.



It is said that some of the officers of MCA were quoting the poor quality of CS certification as a reason for removing of certification requirement and secretarial audit requirement. *This is like cutting the nose off for avoiding cold.* We have been

experiencing lots of problems because of high instability in the MCA e-filing system. More than half of last year was eclipsed with inefficient running of MCA e-filing system. That could be a good reason for returning to physical filing mode. But, observe, no one demanded for that – everyone demanded restoring stability in MCA e-filing system. Further it is matter of everyone's knowledge that many corporate frauds go undiscovered because of audit inefficiencies. Whether anyone has demanded removing audit requirement itself because of this inefficiency? *When a problem is observed in a system, measures for rectification must be called for, not the removal of the system itself.*

MCA officials were heard saying that 'they are not there to ensure job for anyone'. Who has asked for

creation of ICSI? Who has asked for enhancement of corporate governance? Who mandated ICSI to propagate the course and develop Company Secretaries across the country? These are all in line with the legislative intent. A Government Department cannot go against the legislative intent and actions, jeopardizing the governance monitoring system as well as the lives of people who were developed for that purpose. If we see the statement with this context, we can only observe arrogance and not prudence.

There was also a rumour about the unrest between MCA officials and ICSI Council causing this overnight change in the notification. We trust that both MCA officials and ICSI Council members have got maturity enough not to play around with law in retaliation with each other. Wisdom shall prevail. Any kind of conflict can be resolved if common good is kept in

focus always. This is the duty of everyone, including ICSI Council and MCA.

There are other kind of rumours blaming lobbyists in the sister profession. However, in today's world everyone understands that any new weapon invented or abetted will boomerang one day or the other.

*Four and a half lakh people – members and students of ICSI - can find alternate ways for leading their life. In India no one is depending up on the Government. It's just a matter of time. However, the cost of losing a great system developed and managed with enormous commitment and sacrifices of thousands of individuals will be too huge. Rebuilding this system is a herculean task and loss to the nation. Better everyone concerned realize this soon.*

## **Golden Rule: Build Capacity & Diversify**

**CS has secured many recognitions already. Refer the links below.**

**Capacity building is the Mantra for brighter future.**

**“Please join hands – better late than never”**

<http://www.icsi.edu/CSPractice/RecognitionsCS.aspx>

<http://www.icsi.edu/CSPractice/csservices.aspx>

<http://www.icsi.edu/docs/webmodules/cp/servicecs.pdf>

<http://www.icsi.edu/Student/CareerAsCompanySecretary/tabid/1584/Default.aspx>



# Soft Targets



Column on Intellectual Properties



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After focusing on the manufacturing sector during the last few updates, let us shift our attention to the software and internet world. Further, we will move, from Asia to Europe.

It is not uncommon in Europe to have numerous disputes around intellectual property rights in software. Recently, two software developers sued none other than Microsoft for copyright infringement. France's highest appellate Court held that originality of the programming lines, code, preparatory design materials or the like will have to be established, failing which a copyright infringement claim in software cannot be upheld. Interestingly however, the Court held that though a copyright infringement claim did not hold water in the given case, a claim for unfair competition can be upheld. This is because unfair competition does not require intent; it only requires existence of tort. Thus, if the absence of authorization by designers of software is evident and known, any exploitation of such software can attract a claim for unfair competition. This ruling underlines the fact that if basic checks and procedures on intellectual property affairs are missing, there could be repercussions on multiple facets.

In another case relating to online copyright infringement, it was held that where professional bodies take action for injunctive relief against alleged copyright infringement over public communications networks, they are merely required to prove that the alleged offender is engaged in copyright infringement, without having to prove that the works in question are infringing. Thus, a website offering to display cinematic or audiovisual works without first seeking permission of the rights' owners, falls in this category, irrespective of whether the said works on such website are by themselves infringing in nature or not. Search engines are also subject to such injunctive action, since search engines act as intermediaries between websites and web users. This ruling again emphasizes the importance of adequate processes, checks and balances in place to ensure that copyright violations do not occur. In fact, the existence of such processes and checks can to a significant extent reduce penalty or punishment even if there are isolated instances of proven infringement, on the ground that the infringing content 'crept in' in spite of adequate measures and framework put in place by the offending website, and that the offending website had taken immediate action to block the infringing content.

## COUNTER VIEW?

***Is an agency providing web advertisement hosting services liable on complaints relating to the content in the advertisements?***

*This question came up before the Paris Court of Appeals. In a recent ruling, the Court held that if the hosting agency had not played any role in drafting the commercial message accompanying the advertising link or in the selection of keywords, both of which were done solely by the advertiser, then the agency cannot be held liable, even if the agency had contractually reserved the right of editorial control of such content. Merely claiming that the agency was aware of the messages in the advertisement link is not sufficient to deny the agency's limited liability status as a passive technical intermediary. It is for advertisers to make sure their messages are lawful.*

*The general principle remains - adequate systems, processes and checks should be established by anyone dealing with internet content. More often than not, lack of such precautions can render the concerned person or entity liable. However, there could be cases like the one explained above, where an intermediary could demonstrate genuine lack of control over such disputed content to save itself of onerous liability.*

# Atomic Energy Regulatory Board and Healthcare Industry [Part 1]

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Routine life of human being today is dependant on various kinds of energy. We are exerting continuous efforts in satisfying the future needs of these energies and a remarkable development in this regard is achieved by invention and development of Atomic energy, which is playing vital role in the field of defense, electricity, importantly in **healthcare** and so on.

The controlled and developmental use of radioactive substances and its radiations in the field of healthcare has lead to the invention of X-Ray, CT- Scan and other equipments. On the other hand, nuclear medicine and therapies are also put into use for curing various diseases.

However, these advantages come with the harm of damaging the health of persons getting excessive exposure to these radiations. In this direction, we have Atomic Energy Regulatory Body ['AERB'] regulating the usage of radiation and atomic energy in India. This article briefs the reader with information about applicability of the Atomic Energy Act, 1962, AERB, various approvals and registration requirements related to Healthcare Industry ['Industry/ Institute'], Safety guidelines and eLORA, an e-Governance initiative from AERB in limelight.

## The Atomic Energy Act, 1962 [the 'Act']:

The Act provides for development, control and use of atomic energy for the welfare of people and other peaceful uses. It provides the basic regulatory framework

for all the activities related to atomic energy program and use of ionising radiation in India.

Section 16 and 17 of the Act provides for the control over radioactive substance and special provisions for safety. Section 23 empowers AERB with administration of the Factories Act, 1948, including enforcement of its provisions, appointment of inspecting staff and making rules for the factories/units under the control of Department of Atomic Energy ['DAE']. It is interesting to note that jurisdictional Office of the Director of Factories in State will **not** have authority over factories/units of DAE.



## Atomic Energy Regulatory Board ['AERB']:

AERB was established on 15<sup>th</sup> November 1983 under the Act and designated by the Central Government as the 'Competent Authority' to carry out regulatory and safety functions under the Act including granting, renewal, withdrawal and revocation of consents for nuclear and radiation facilities. AERB also exercises control over nuclear installations and the use of radioactive substances and radiation generating plants outside such installations.

AERB is empowered to perform the functions under the Environmental Protection Act, 1986 with respect to radioactive substances and also is empowered to prescribe guidelines in relation with radioactive air pollution under the Air (Prevention and Control of Pollution) Act, 1981.

*Continued in page 14...*



## Metric Conversions.

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Metric conversion is difficult for many of us as different formula has to be applied for converting one measuring unit to another desired unit. Sometime it is so urgent that we do not have the time to find right formula and apply that for converting to get the right answer. Dear friends, now conversion is not at all a difficult task...!!! Thanks to <http://www.metric-conversions.org/> which is one of the best sites for Metric Conversions. This site provides following options and vise-versa in popular links category which are frequently used by many of us in our day today works:

- Kilometer to miles
- Celsius to Fahrenheit
- Kilograms to Pounds
- Meters to Feet
- Inches to Centimeters
- Inches to Feet
- Metric Converter
- Weight Converter
- Mile per hour to Kilometer per hour
- Millimeter to inches

This site not only gives the answer but also provides conversion table for each category like temperature, weight, length, speed, area, etc. Also this site has special options like online calculator and useful external links. Friends, we need not spend more time on conversion as it is just a click away, bookmark this webpage and take the maximum out of this site and let me know if any other interesting feature you came across.



## eTOOLS FOR THE PROFESSIONALS



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## Unit Converter: An Android application for mobile devises

Friends, in Web Yatra Mr. Guruprasad has introduced a nice webpage for metric conversion. How about having Unit Converter in your hand phone as well? Here is a fantastic application from Android, *Unit Converter*. This 'Unit Converter' application enables us to convert units from more than twenty types including length, weight, field, time, temperature, currency, density, area, speed, power, force, time, etc. Upgraded version of this converter i.e., *Unit Converter plus* provides options like download time calculator to estimate the time for particular file download, more than 165 countries currency conversion, search for unit by name, creation of custom units for every category and ability to search & filter in the drop-down list. Following are the key features:

1. Quick list view to glance all conversions;
2. Enables favorites list for given category;
3. Converts particular unit to all units in a given category; and
4. Provides filtering option for main list

Specification: Price: Free | Required Android: Version 2.2 or more

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## Paid Holiday on Polling Day!

In view of the upcoming Lok Sabha election which is scheduled on 17<sup>th</sup> April 2014 in Karnataka and on different days in other States, it becomes essential to know and understand the legal provisions connected with declaration of paid holiday on the date of polling. We often, find some sort of ambiguity among management as to whether we can direct employees to work on any of the weekends to compensate the holiday extended on polling day, can the employee be just given two or three hours' time to cast his vote & revert for working etc., In this article, we have tried answering such thoughts in the light of the applicable legislations.

**A. Governing Legislations:**

- Representation of People Act, 1951-Section 135B
- Karnataka Industrial Establishments (National & Festival Holidays) Act, 1963-Section 3A
- Notification released by Election Commission of India

**B. Whether Holiday needs be declared?**

- Yes, with one full day's wages
- No compensatory working on any other holiday/weekend for having declared holiday for voting
- Both Factories & Establishments come under the purview of the said provisions

**C. Who is entitled to such holiday?**

- In every employee constituency where the General Elections are held should be given a day's paid holiday to enable them to exercise their franchise
- If any of the employees have recently joined the Company and are from outside Karnataka whose name is not enrolled in the constituency in question, they may be directed to work like normal working day. However, such employees may avail paid leave when their respective constituency has elections

**D. Is there any category of employees who are only entitled for holiday?**

- No, all employees who are eligible for casting their vote are entitled

- Irrespective of Permanent, Contractual, Consultants, Trainees etc.

**E. What if, there are employees coming in shifts?**

- Only such shifts which is coming during the time slot fixed for casting vote will be declared holiday
- Other shifts will be of normal working shifts provided there is adequate time extended during the close of poll & commencement of the shifty duty

**F. What if the polling dates are not uniform across?**

- The day on which the polling is scheduled for a constituency in which the Industrial Establishments is situated – shall be declared holiday
- Any employee whose voting is not in such constituency and the polling is on a different date – then he will have to apply a reserve holiday on such different date – here if there is a possibility of such employee to work on the day on which the establishment had declared holiday, he can be asked to work – in such case, he is not required to apply a reserve holiday on the day of polling in his constituency but avail fully paid one day holiday.

**G. Is there any exceptions where an employee can be allowed to work?**

- Yes, only such employees whose presence is very much essential to maintain any exigent nature of job which has larger implication on the Establishment performance.
- Such employee should be paid double the rate of wages or one day compensatory of in lieu of double rate of wages at the option of such employee.

**H. What if holiday is not declared on a polling day?**

- Occupier will be subjected to prosecution and is punishable with the fine of Rs.500/- under Representation of Peoples Act, 1951
- Occupier is punishable with the fine of Rs.125/- for first offence & Rs.250/- for subsequent offences under the KIE(NFH)Act, 1963

# OPC - Silent Features



**CS. S Dhanapal** B.Com,B.A.B.L, F.C.S

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One person company, as we know, is a new concept introduced by the Companies Act, 2013. As the name suggests, such a company is formed only with one person as its member. With notification of Chapter II of the Companies Act, 2013 with effect from 01.04.2014, it is now permitted to incorporate a One Person Company under the provisions of the Companies Act, 2013.

The Final Version of Rules relating to One Person Company has also been notified. In this article, we present the salient features of a one person company highlighting the changes which have been introduced in the final version of the rules.

## SALIENT FEATURES OF OPC:

- A One Person Company is incorporated as a private limited company.
- It must have only one member at any point of time and may have only one director.
- The words "One Person Company" must be mentioned in brackets below the name of the company.
- The member and nominee should be natural persons, Indian Citizens and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
- One person cannot incorporate more than 1 OPC or become nominee in more than 1 OPC.
- If a Member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall be meet the eligibility criteria of being Member in one OPC.
- OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in 3 immediate preceding consecutive years.

- No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporates.
- No such company can convert voluntarily into any kind of company unless 2 years is expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into one person company by passing a special resolution in the general meeting.
- Penalty amount for contravention of any of the provisions of the Rules: If the One Person Company or any officer of the One Person Company contravenes the provisions of the rules, the company or any officer shall be punishable with fine which may extend to Rs. 10,000/- and with a further fine which may extend to Rs. 1000/- for every day after the first during which such contravention continues.

## BENEFITS AND PRIVILEGES AVAILABLE TO OPC

- Mandatory rotation of auditor after expiry of maximum term is not applicable.
- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.
- For the purposes of holding Board Meetings, in case of a one person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, atleast one Board Meeting must be held in each half of the calender year and the gap between the two meetings should not be less than 90 days.
- The financial statements of a one person company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company needs to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.
- Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

## AERB and Healthcare Industry

*Continued from page 10*

### Consents to be obtained from AERB:

Consents are granted in the form of license or authorisation or registration or approval and the type of consent depends upon the hazard potential associated with the different radiation sources.

License is applicable to highest hazard radiation sources and **registration** to lowest hazard sources, while devices having very small quantities of radioactive material are exempted from regulatory consent e.g., consumer products.

Consent for nuclear and radiation facilities is issued by AERB in 5 stages starting from Siting, Construction, Commissioning, Operation and Decommissioning.

### Who are required to take consents?

As per Rule 3 of the Atomic Energy (Radiation Protection) Rules, 2004 [the 'Rules'] any **individual** or company or association or body of individuals whether incorporated or not, or Central Government or a State Government handling atomic energy including radioactive material/installation in any form is required to take consent.

### Healthcare Equipments/facilities generally require following consents:

License	Authorization	Registration
1. Telegamma and accelerators used in radiotherapy 2. Computed Tomography (CT) unit 3. Interventional Radiological x-ray units	1. Brachy Therapy 2. Deep x-ray units, superficial and contact therapy x-ray units 3. Other nuclear medicine facilities	1. Medical diagnostic x-ray equipment including therapy simulator 2. analytical x-ray equipment 3. RIA Laboratories

*In the next edition, we will cover overview of registration process, safety requirements and eLORA, an e-Governance initiative from AERB.*



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### US wants India to submit National Food Security Act info to WTO

The United States has demanded India to submit information pertaining to its National Food Security Act to WTO and questioned its effectiveness as far as food security is concerned. As per WTO regulations, if the subsidies that affect trade relations are found to be breaching 10% of the production values, the country in question is liable to penalties.

### CCI: New amendments in Combination Regulations

The CCI has amended (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 ("Combination Regulations") with effect from March 28, 2013. Reflecting its much appreciated resolve to focus more on substance than on procedure, the commission has incorporated few new clauses whereby it has clarified that the requirement for the filing of a combination notification shall be determined by the substance/intent of the transaction and that a structure of a transaction which has the effect of avoiding a notification shall be disregarded. Hence, any structuring of a transaction will not allow the entities to escape the jurisdiction of the Commission and parties, which cross the applicable thresholds.

### RBI asks banks to make credit card interest payment easier for users

We might get more time to repay our credit card dues without having to pay any interest or fees. RBI has asked banks to make credit card charges "reasonable" and directed them not to levy interest on card dues till the next bill date even if payment is not made before the due date. This is the first time the regulator has addressed the issue of credit card charges and this follows RBI's recent instructions on waiver of pre-payment charges on floating-rate consumer loans and removal of penalty for non-maintenance of minimum balance in savings deposit accounts.

## Express News →

- Sun Pharama to acquire Ranbaxy for \$1 Billion to create India's largest pharmaceutical company and the world's fifth largest generics company
- SEBI likely to issue notice to Sun Pharma and Ranbaxy for insider trading, post their merger deal.
- Finance Ministry rejects SEBI's proposal to consider PSU banks as public shareholders
- RBI decided not to allow promoters to become CEOs of private banks
- RBI likely to give Banking License to Corporate, NBFC and Microfinance on case to case basis.
- FIIs cannot buy Govt Securities with maturity of less than 1 year: SEBI
- Nine Kingfisher trademarks put up for sale including Fly Kingfisher and Fly Kingfisher (Label)
- RBI to issue New Rs.10 bank notes with signature of Raghuram Rajan, new Rupee symbol and year 2014 printed.
- About 40% foodgrains to the tune of 35 million tonnes stored unprofessionally: ASSOCHAM

### Copyright law does not apply to autoparts

The Gujarat high court quashed an FIR registered by Naroda police for infringement of copyright while booking a person for sale of automobile spare parts. The court discarded the criminal complaint saying that automobile parts cannot be treated as works of art for which Copyright Act can be invoked. Last year, the Naroda police had registered an FIR against a shop owner who dealt in duplicate parts of Hyundai cars. The police booked him under sections 63 and 65 of the Copyright Act. The court cited provisions of the law and said that it is applied to works of art such as painting, sculpture, drawing, and photographs and on works of literature and not to autoparts.



## The International Trademark Association (INTA)

INTA is a global association of trademark owners and professionals dedicated to supporting trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce.

INTA's members are more than 6,600 organizations from 190 countries. The Association's member organizations represent some 30,000 trademark professionals and include brand owners from major corporations as well as small and medium-sized enterprises, law firms and nonprofits. There are also government agency members as well as individual professor and student members.

INTA undertakes advocacy work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its Headquarter is in New York City, INTA also has offices in Brussels and Washington D.C. and representatives in Geneva and Mumbai.

The not-for-profit Association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization "to protect and promote the rights of trademark owners, to secure useful legislation and to give aid and encouragement to all efforts for the advancement and observance of trademark rights."

### Did You Know?



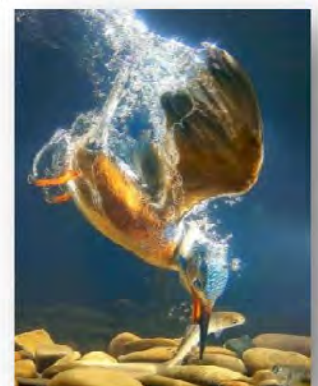
### India VIX

India VIX is a volatility index based on the NIFTY Index Option prices. From the best bid-ask prices of NIFTY Options contracts, a volatility figure (%) are calculated which indicates the expected market volatility over the next 30 calendar days. India VIX uses the computation methodology of CBOE, with suitable amendments to adapt to the NIFTY options order book using cubic splines, etc.

### Does goods purchased for commercial purpose falls under Consumer Protection Act?

In *Super Engineering Corporation Vs Sanjay Vinayak Pant & Anr* [1992 CPJ (1) 95 NC], The Hon'ble National Commission observed that the intention behind the amendment in the act by the Parliament is to deny the benefits of the Act to persons purchasing goods either for the purpose of resale or for the purpose of being used in profit making activity engaged on a large scale. Thus, the persons who purchase goods for consumption or use in the manufacture of goods or commodities on a large scale with a view to make profit, will all fall outside the scope of the definition of "consumer". However, courts have taken different view in few cases if the goods are used for the purpose of livelihood.

### Pick of the month







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



**Service Tax Updates**  
**CA. Ashit Shah,**  
Mumbai

**FEMA Updates**  
**Team Genicon,**  
Chennai



## CUSTOMS & FTP Notifications/ Circulars

Amends Notification No. 36/2001 (NT) dated August 3, 2001 to hike tariff value of gold, crude palm oil, RBD palm oil and reduces tariff value of Silver.

*No. 23/2014 - Cus. (NT) dated March 14, 2014*

In respect of import of Gold by 'eligible passengers' in terms of Notification No. 12.2012-Cus. Dated March 17, 2012 which provides that gold in the form of bars and ornaments is allowed to be imported upon payment of 10% customs duty, the CBEC has instructed as under:

- Engraved serial number of gold bars must be invariably mentioned in baggage receipt issued by Customs.
- In case of gold in any other form, including ornaments, eligible passenger must be asked to declare item wise inventory of ornaments being imported. This inventory duly signed and certified by 'eligible passenger' and assessing officer should be attached with baggage receipt.
- Wherever possible, field officer, may, inter alia, ascertain antecedents of such passengers.

*CBEC Circular No. 6/2014-Cus. dated March 6, 2014*

The CBEC has instructed that considering sensitive nature of import/export of Ammonium Nitrate guidelines contained in the Ammonium Nitrate Rules, 2012 for import/export of Ammonium Nitrate should be scrupulously followed by field formations.

*Circular F. No. 450/37/2014-Cus.IV dated March 5, 2014*

Seeks to levy definitive anti-dumping duty on imports of 'Red Phosphorous, excluding red phosphorous used in electronic applications', originating in, or exported from, the People's Republic of China for a period of five years.

*13/2014-Cus (ADD), dt. 19-03-2014*

Seeks to levy provisional anti-dumping duty on imports of 'Sodium Nitrate', originating in, or exported from, the European Union, the People's Republic of China, Ukraine and Korea RP, for a period of six months.

*14/2014-Cus (ADD), dt. 19-03-2014*

Seeks to levy provisional anti-dumping duty on imports of cast aluminium alloy wheels or alloy road wheels used in motor

vehicles when imported into India from People's Republic of China, Korea RP and Thailand for a period of 6 months.

*15/2014-Cus (ADD), dt. 11-04-2014*

### Case Law

The High Court of Madras relying on decision of the Supreme Court in the case of Ambica Industries Vs. CCE [2007-TIOL-97-SC-CX] held that cause of action and not location of the Tribunal determines the jurisdictional High Court.

*Zeenath International Supplies Vs. Commissioner of Customs [2014-TIOL-304-HC-MAD-CUS]*

The High Court of Delhi held that when goods are virtually abandoned by importer/purchaser, so long as ownership continues with supplier, his request for their return through re-export cannot be turned down.

*ZTE Corporation Vs. Commissioner of Customs [2014-TIOL-249-HC-DEL-CUS]*

## Regulatory Development Notifications/Circulars/News

**New Roll out plan:** Ministry of Corporate Affairs (MCA) has issued Public Notice No. MCA21/28/2014-eGov dated 11th April, 2014 informing stakeholders that the all E-Forms will be available for upload with effect from 28th April, 2014 instead of 14th April, 2014 as notified earlier on 28th March, 2014.

**Notification of Second Set of Sections and Rules under Companies Act, 2013:** MCA vide notification dated 26 March 2014 notified 183 Sections to be effective from 1 April 2014 in addition to already notified 99 Sections to be effective from 12 September 2013. At present out of 470 sections, 283 Sections are notified and 21 rules under 19 Chapters are made available in the Ministry of Corporate Affairs portal. The demo versions of forms under Companies Act, 2013 are also available for creating familiarity and the same will be available for uploading from 28 April 2014.

## FEMA/RBI/SEBI Notifications/Circulars/News

As per A. P. (DIR Series) Circular No. 113 dated April 24, 2012, ECB for working capital was allowed as a permissible end use in

civil aviation sector under approval route. In the said circular, it was stated that the said ECB has to be raised within a period of 12 months from the date of said circular.

Now, RBI vide A.P. (DIR Series) Circular No.113 dated March 26, 2014 has decided to extend the period of raising ECB under approval route by civil aviation sector for above said purpose till March 31, 2015. All other conditions stipulated in the aforesaid Circular dated April 24, 2012 shall remain unchanged.

## CENVAT

### Notifications/ Circulars

Notifies procedures, safeguards, conditions and limitations for grant of refund of Cenvat credit under Rule 5B of the Cenvat Credit Rules, 2004 ("the Credit Rules").

*No. 12/2014-CE (NT) dated March 03, 2014*

### Case Law

The High Court of Delhi held that endorsed gate passes can be considered as valid documents in terms of Rule 57G of the Central Excise Rules, 1944 for availing Cenvat credit.

*CCE Vs. Tayaal Strips (P) Ltd. [2014-TIOL-308-HC-DEL-CX]*

The Tribunal held that Cenvat credit would be admissible on part of input that is contained in any waste, refuse or by-product.

*Mararjee Brembana Vs. CCE [2014-TIOL-404-CESTAT-MUM]*

The Tribunal relied on decision of the High Court of Mumbai in the case of Larsen & Toubro Vs. CCE [2008-TIOL-141-HC-MUM-CX] and held that assessee was required to affix MRP on goods even if the said goods are meant for industrial or institutional consumers. Further, In respect of the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 ["the Retail Sale Price Rules"], the Tribunal observed that these rules are curative provisions to deal with situation where Retail Sale Price is not declared or tampered with. The Retail Sale Price Rules are entirely procedural in nature and therefore can be applied retrospectively to all proceedings pending or which arise after the Retail Sale Price Rules have been introduced.

*Schneider Electric India Ltd. Vs. CCE [2014-TIOL-337-CESTAT-MUM]*

The Tribunal held that if a process does not amount to manufacture but goods are cleared on payment of duty accepted by the Revenue then in such situation Cenvat credit cannot be denied.

*Vardhman Stampings Pvt. Ltd. Vs. CCE [2014-TIOL-396-CESTAT-MUM]*

## VAT, Sales Tax and Entry Tax

### Case Law

The High Court of Gujarat relied on decision in the case of State Gujarat Vs. Reliance Industries Ltd. [2013 (58) VST 376 (Guj.)] and held that reduction of tax credit under Section 11(3) of the Gujarat Value Added Tax Act, 2003 cannot exceed quantum of tax credit availed by dealer.

*State of Gujarat Vs. Veer Metal Industries (Pvt) Ltd. [2014- VIL-66-GUJ]*

The High Court of Andhra Pradesh relied on decision of the Supreme Court in the case of Ashok Leyland Vs. State of Tamil Nadu [2004 (134) STC 473] and held that assessing authorities cannot go behind declaration in Form 'F' in reassessment proceedings.

*State of Andhra Pradesh Vs. Sree Akkamamba Textiles Ltd. [2014- VIL-64-AP]*

The High Court of Delhi held that revenue is under an obligation to issue minimum notice and grant adequate time to make representation before conducting special audit under Section 58A of the Delhi Value Added Tax Act, 2004.

*Larsen & Toubro Ltd. Vs. Commissioner, Value Added Tax & Anr [2014-VIL-53-DEL]*

The High Court of Kerala held that detention of goods for non-surrendering of transit pass inadvertently is not sustainable.

*United Spirits Limited Vs. Commissioner of Commercial Taxes [2014 -VIL-59-KER]*

The High Court of Meghalaya held that since under the Build, Own, Operate and Transfer contract ("the BOOT Contract") assessee is still not only in control and possession of equipments imported but also are owners of the same, import of equipments to provide service under the Boot Contract cannot import of equipments to provide service under the Boot Contract cannot be said to be 'tax on sale or purchase of goods' as defined in Clause 29A of the Article 366 of the Constitution of India.

*Tata Consultancy Services Ltd. Vs. State of Meghalaya [2014-VIL-56-MEG]*

## Service Tax

### Case Law

The Supreme Court held that service tax is not chargeable on services rendered by foreman in a business of chit fund.

*Union of India & Anr Vs. Delhi Chit Fund Association [2014-TIOL-23-SC-ST]*

The High Court of Kolkata held that even if offence is alive after becoming non-bailable but was bailable when it was originated, bail can be granted.

*Sudip Das Vs. Union of India [2014-TIOL-314-HC-KOL-ST]*

The High Court of Delhi held that the term 'determination of any issue having relation to rate of duty or value' in Section 35L of the Central Excise Act, 1944 is broad enough to encompass the question whether or not an activity is a taxable service under the charging section. Therefore, in terms of combined reading of Section 35L of the Excise Act read with Section 83 of Chapter V of the Finance Act, 1994 appeal against order of the Tribunal on a

dispute regarding valuation of services under Section 67 the Finance Act or taxability of service will lie before the Supreme Court of India.

*Commissioner of Service Tax Vs. Ernst and Young Pvt. Ltd. [2014- TIOL-263-HC- DEL-ST]*

## Direct Tax

### Notification/news

SC: Admits Revenue's SLP on inland haulage inclusion as shipping income under treaty: SC admits Revenue's appeal against Bombay HC decision in Safmarine Container Lines,

Belgium (assessee) case; SLP admitted on issue of inclusion of income received from inland haulage within scope of income derived from "operation of ship in international traffic", under Article 8 of India-Belgium DTAA; Bombay HC had ruled that income received from inland haulage would be included within the ambit of income derived from operation of ship in international traffic under Article 8(2)(b)(ii) of India- Belgium DTAA, therefore, not taxable in India

### Case Law

**Sale of un-utilized FSI, mere 'land sale', not eligible for Sec 80-IB deduction:** HC reverses ITAT's order, denies Sec. 80IB(10) benefit [available to developer of housing projects] on profit earned from sale of un-utilized Floor Space Index ('FSI'); Not utilizing permissible FSI and passing it on to buyer is equivalent to sale of land, and not income derived from housing projects; Though Sec. 80IB(10) does not explicitly provide for 100% FSI utilization for claiming deduction, constructing on small portion of land and selling whole land including portion not constructed, could not be held to be 'development' of housing project; Profits from activity of 'development and construction' of residential units and from 'sale of unused FSI', are distinct and separate and rightly segregated by AO; Absent special grounds pointed out by assessee for considerable under-utilisation of FSI, Sec. 80IB(10) benefit denied : Gujarat HC

*Moon Star Developers [TS-196-HC-2014(GUJ)]*

Sec 158BD analogous to Sec 147; Upholds reassessment of 'undisclosed' income revealed during search: HC upholds

reassessment as valid even though basis for issuing Sec 148 notice was undisclosed income revealed during search conducted u/s 132 in case of third party; Rejects assessee's contention that AO has option to invoke only block assessment u/s 158BD under Chapter XIV-B and cannot proceed with reassessment u/s 147; Chapter XIV-B does not preclude AO to proceed against assessee by issuing Sec 148 reassessment notice, remedies available to AO under these provisions are independent of each other; Provisions being analogous, Legislature has given choice to AO to proceed either under Chapter XIV-B or u/s 148 against the assessee; Relies on Allahabad HC decision in *Abhyudaya Builders* : Karnataka HC

*Gudwill Housing Limited [TS-197-HC-2014(KAR)]*

**Rental income from industrial park letting, "Business Income"; Follows Velankani ruling:** HC upholds ITAT order directing taxation of income from letting out of building by Toyota Techno Park India (assessee) to tenants as "Business Income" and not "Income from House Property"; Follows co-ordinate bench ruling in *Velankani Information Systems*, wherein HC had held that if renting of building and provision of facilities are inseparable and intention is to carry on business of letting out commercial property, then rental income falls under head "Business Income"; Assessee engaged in business of developing, operating, maintaining industrial park and providing infrastructure facilities to different companies as its business, therefore, rental income to be taxed under head "Business Income" : Karnataka HC

*Toyota Techno Park India (P) Ltd. [TS-190-HC-2014(KAR)]*

# CCI Updates

## Google's failure to show cause to CCI costs Rs. 10 Million

CCI holds that Google USA and Google India failed to cooperate with Director General in relation to investigations. Adverse inference drawn against Google USA and Google India due to their failure to submit information despite sufficient time. Fine of Rs. 10 Million imposed on Google USA and Google India due to non-compliance with directions of Director General.

## Tribunal upholds commission judgment against gas cylinder manufacturers

On December 20 2013 the Competition Appellate Tribunal rejected appeals filed by 44 liquefied petroleum gas cylinder manufacturers against an order imposed by the Competition Commission claiming that they had indulged in cartelisation and manipulation of tenders floated by the Indian Oil Corporation. However, although the tribunal upheld the commission's order against the appellants, it remanded the matter to the commission to reconsider the penalties applied.

## Competition Commission penalises chemists and druggists association

On February 5 2014 the Competition Commission issued an order imposing a penalty of Rs5.542 million on the Chemists and Druggists Association of Ferozepur, Punjab (CDAF) and its office bearers. The commission concluded that the CDAF's acts were anti-competitive and that such conduct should be punished in order to deter any other association (or its office bearers) from engaging in such acts in future. The commission imposed a penalty on the association and its office bearers equal to 10% of its average income or receipts, and directed the CDAF and its office bearers to cease and desist from indulging in such anti-competitive practices. The commission also directed the CDAF to file undertakings to this effect within 30 days of receipt of the order.