



Mysore Chapter

Edition 116  
September 2013

# eMagazine

**Regulation of  
Banking Companies**



**One Person Company**



Three days workshop on

**Good Governance:**

**The Supreme Mantra for Multi-Skilled Professionals**

For Private Circulation Only



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

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# Message from Chairman



*Dear Readers,*

The August month was very exciting for the student fraternity as the ICSI results were announced and many students excelled in their result. I am sure some of you, who could not make it; can overcome the failure by putting your best possible efforts to succeed in the exam in the up coming session.

We have some more excitement coming up, this time for the Members; the Chapter is organizing a Three-day Joint Workshop at Mysore in association with SDM-IMD a B-School in Mysore on 20<sup>th</sup> 21<sup>st</sup> and 22<sup>nd</sup> September 2013. More details on this workshop are available elsewhere in this newsletter.

The workshop will see a host of current topics being discussed. Since the New Companies Act, 2013 and draft Companies Rules, 2013 have been turned over to the professional fraternity for their views, the Chapter wishes to capitalize on the workshop to elicit discussions on this New Act & Draft rules and forward the feedback of the participating Professionals to the ICSI HQ for submission before the MCA.

The workshop will be addressed by some of the highly talented speakers available in the Country. On behalf of the Mysore Chapter, I extend a warm welcome to all the professionals, who are participating and encourage the other readers, who are yet to make up their minds, to make us proud by your participation. I urge you not to miss this mega event.

Friends, please study the New Companies Act, 2013 and draft Companies Rules, 2013. It will be heartening to share your views and feedback with the ICSI/MCA in building a better legislation and to be receiving the deserved recognition for our profession.

*Yours in CS fraternity,  
CS. Sunil Kumar B G*

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**Inside**



**Three days workshop on**

# **Good Governance:**

## **The Supreme Mantra for Multi-Skilled Professional**

By ICSI Mysore Chapter jointly with SDM Institute for Management Development, a leading B- School

Dates: 20th, 21st and 22nd September, 2013 at Mysore

Major Topics being covered:

- ✚ *Directors - Role & Liabilities under the new regime*
- ✚ *Interactive Session on draft Company Rules, 2013*
- ✚ *Practical aspects of handling Service Tax Laws*
- ✚ *Business advantage from Intellectual Property*
- ✚ *Practical aspects of handling FEMA Laws*
- ✚ *Accounts, Audit and Valuation in Mergers & Acquisitions in New Companies Act*

The workshop is on non-residential basis. However, Chapter has negotiated with few lodges for special rates. Complementary visits to tourist places is also organized by the Chapter. This workshop will be attended by Company Secretaries, Chartered Accountants, Cost & Management Accountants, Directors, Senior Corporate Professionals, Academicians, Lawyers, Regulators, Bank Officials, and Financial Institutions.

To ensure that the workshop is interactive & effective, it is proposed to restrict participation to 200 delegates on a first come first serve basis. For Registrations mail to [mysore@icsi.edu](mailto:mysore@icsi.edu) or [mysore.icsi@outlook.com](mailto:mysore.icsi@outlook.com) No spot registrations please.

Visit <http://www.icsi.edu/Mysore> for more details.

**Chapter awaits to welcome you at Mysore..!!**

**Activities @ ICSI Mysore**

### **11<sup>th</sup> Student Induction Program**



The Eleventh Student Induction Program for Executive Program students of C.S. course was held by Mysore Chapter of ICSI from 20<sup>th</sup> August, 2013 to 26<sup>th</sup> August, 2013 at the Chapter premises. There were 50 students who had participated in this 7 Day training program which consisted of 28 Technical Sessions on various topics of academic interest, personality development, Soft Skills, etc.

In the Valedictory session on 26<sup>th</sup> August 2013, Mr. Sharath and Ms. Anitha were adjudged as Best Participant and Mr. Puneeth Singh was awarded the 'Best Participant' in the Group Discussions. CS. Sunil Kumar B.G., Chairman, CS. Ajay Madaiah B.B., Vice Chairman, CS. Raghavendra, Treasurer and CS Bhagya M.G. of Mysore Chapter of ICSI were present during the occasion.



# Regulation Of Banking Companies



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## Part 1 of 2

Banking Companies were initially governed by Companies Act. Specific provisions relating to Banking Companies were introduced in the Indian Companies Act 1913, for the first time in the year 1936. Realizing that unlike Companies Act, banking companies apart from protecting shareholders interests will also have to protect the interest of depositors, a separate legislation known as Banking Companies Act was passed in 1944. Subsequently it was changed to Banking Regulation Act 1949 w.e.f. 01.03.1966.

Commercial banks, Co-operative banks, financial institutions and non-banking financial companies (NBFCs) constitute the Indian financial System. Commercial banks are classified into Public Sector Banks, Private Sector Banks, and foreign banks depending on the ownership pattern.

### RBI – The Regulator:

The Chief Regulator for banks and banking activities in India is “The Reserve Bank of India” (RBI). The Banking Regulation Act 1949 contemplates regulatory and supervisory framework through regulating and supervising the following activities:

- Business of Banking Companies.
- Licensing of Banking Companies.
- Control over Management.
- Acquisition of banking companies in certain cases.
- Restructuring and Resolution including winding up.
- Penal Provisions for non-compliance.

Starting a banking business needs license under Sec 22 of the Banking Companies Act 1949, apart from obtaining Certificate of incorporation in case of Private Companies and Certificate of Commencement of Business in case of Public Companies under the Companies Act 1956.

### “Banking” under Banking Regulation Act 1949:

Sec 5(b) of the Banking Regulation Act 1949 defines banking: “Banking means the accepting for the purpose of lending or investment of deposits, money from the public, repayable on demand or otherwise and withdrawal by cheque, draft or otherwise”. Sec 5(c) states that Banking Company means “any company which transacts the business of banking”.

An explanation to Sec 5(c), states that any company which is engaged in the manufacture of goods or carries

on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as manufacturer or trader shall not be deemed to transact the business of banking. RBI grants licenses to Companies for starting banking business, subject to its independent valuation on the financial position including the Capital Adequacy of the Company.

RBI also considers the technical and managerial capabilities of the Management, and ensures that license if granted is not prejudicial to the interest of the country. RBI may impose additional conditions as it may deem fit before granting the license.

### Express Exemptions under Companies Act 1956:

Sec 616 of the Companies Act states that this Act shall be applicable to Banking Companies except insofar they are in consistent with the provisions of Banking Companies Act 1949. In other words the provisions of Banking Company Regulation Act shall prevail over companies Act where there are contrary provisions on the same issue. There are certain regulations in Companies Act which specifically exempts/modifies its application to Banking Companies. These regulations are brought out below:

**Banking Regulation Act 1944 aims at protecting interest of shareholders as well as depositors of Banking Companies Though Companies Act applies to Banking Companies, in case of conflicts, provisions of Banking Regulation Act prevails.**

Sl. No.	Sections Exempted/Modified for Banking Companies	Particulars in brief about the exemption or modification.
01	Sec 58 of Companies Act	This Section relating to acceptance of deposits is completely exempted.
02	Sec 211 of Companies Act	The format of Final Accounts prescribed by Companies Act shall not be applicable for Banking Company. Banking Companies has to present their financial as provided by Sec 29 of the Banking Company Regulation Act 1949.
03	Sec 211(5) of Companies Act	Banking Companies need not disclose information restricted to be disclosed by Banking Regulation Act 1949. Non-disclosure will not be considered as representing unfair view of state of affairs of the company.
04	Sec 215 of Companies Act	Authentication of Financial statements shall be as required under Sec 29 of Banking Regulation Act as against Sec215 of the Act.
05	Sec223 of Companies Act	Limited Banking Companies will have to publish a statement in the Form contained in Table F of Schedule I or in a Form as near thereto first Monday in February and first Monday in August. This is specific clause for adoption by Limited Banking Companies.
06	Sec224A of Companies Act	Auditor of a nationalized bank has to be appointed only by Special Resolution.
07	Sec 228 of Companies Act	In case of Banking Companies having, branch office outside India, if the books of accounts are audited by a person other than companies auditor, it shall be sufficient if the auditor is allowed access to such copies of and extract from the books and accounts of the branch as have been transmitted to the principal office of the company in India.
08	Sec 292 of Companies Act	Acceptance of deposits by banking Company in Ordinary Course of business withdrawable or payable by cheque /demand draft/ order, and borrowings by a banking company in the ordinary course of business from RBI, SBI and other banks established by or under any Act is exempted from requirement of Board Resolution.
09	Sec 295 of Companies Act	Central Government approval is not required for providing any loan, guarantee or security by a banking company as contemplated under the section.
10	Sec 301(3)A of Companies Act	Banking Company is not required to maintain register under Companies Act under sub section (1), (2) and (3) of Sec 301 for any contract or arrangement for collection of bills in ordinary course of business or any transaction referred to in Sec 297(2)C
11	Sec 370 of Companies Act	Regulatory restrictive provisions of this Section relating to any Loan, guarantee or security provided by banking Company to companies under same management is exempted.
12	Sec 372 of Companies Act	Restriction on purchase by Company of shares of other companies as contemplated by the said section is exempted for banking companies.
13	Sec372A of Companies Act	Provisions relating to inter corporate loans and investment as contemplated under the said section are completely exempted for a Banking Company.

Sec 2 of Banking Regulation Act 1949, states that, the provisions of the Act are in addition to and not in derogation of the Companies Act 1956, or any other law for time being in force.

Part 2 of this articles lists out Sections of the Banking Regulation Act 1949 that are exemptions to the omnibus Section 2, aforesaid, to mean, notwithstanding anything contained in any other Act, Law or contract, these Sections shall be abided by Banking Companies.



# One Person Company



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“One Person Company” is a new concept introduced by the Companies Act 2013. As the name suggests, a one person company is formed with only one person as its member. Since such companies have only one member, these companies enjoy certain privileges or exemptions as compared to other companies.

Section 2(62) defines a One Person Company as “One Person Company” means a company which has only one person as a member.

## Salient Features:

- ✚ A One Person Company can be incorporated as a private limited company only.
- ✚ It can have only one member at any point of time.
- ✚ It may have only one director.
- ✚ The words “One Person Company” must be mentioned in brackets below the name of the company.
- ✚ Exemption is available from holding Board Meetings (in case of only one director) and General Meetings.

## Special Provisions and Exemptions available to a One Person Company:

**Incorporation and related matters  
(Refer Sections 3, 4, 12)**

- ✚ A One Person company is incorporated as a private limited company with only one person as its member.
- ✚ The memorandum of One Person Company shall indicate the name of the other person, who shall, in the event of the subscriber’s death or his incapacity to contract become the member of the company.

**1. Whether only natural persons can become member of One Person Company?**

**2. What is the significance of general meetings for a one person company?**

**3. Will any concession in fees be given to a one person company?**

- ✚ Prior written consent from the other person should be obtained and the consent should be filed with Registrar of Companies at the time of incorporation along with the memorandum and Articles. Format of consent is yet to be prescribed.

- ✚ Person is entitled to withdraw his consent in the manner to be prescribed.

- ✚ Member of One Person Company may at any time change the name of such other person by indicating it in the memorandum or by giving notice in such manner as may

be prescribed. Such change should be intimated to the company by the member and the company in turn will intimate to the Registrar. The time and manner of intimation by member to company and by company to Registrar is yet to be prescribed.

- ✚ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ✚ The words “One Person Company” shall be mentioned in brackets below the name of such

company, wherever its name is printed, affixed or engraved.

### **Annual Return (Refer Section 92)**

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.

### **General Meetings (Refer Section 122)**

✚ The provisions of Section 98 and Sections 100 to 111 (both inclusive), more specifically given below, shall not apply to a One Person Company.

✚ Provisions regarding calling of an Extra-Ordinary General Meeting by the Board or Tribunal do not apply to a One Person Company.

✚ All provisions regarding annual general meetings like notice period, contents of notice, explanatory statement, quorum requirements, proxies, voting etc. do not apply to a One Person Company.

✚ It shall be sufficient compliance if all resolutions, ordinary or special, required to be passed by a One Person Company at any general meeting, are communicated by the member to the company and entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

### **Board of Directors and Board Meetings (Refer Sections 149, 152 and 173):**

✚ A One Person Company needs to have minimum of one director. It can have directors up to a maximum of fifteen which can also be increased by passing a special resolution as in case of any other company.

✚ If the Articles of Association do not contain the name of the first director, member of the one person company will be deemed to be the first director till the time director(s) is duly appointed by following provisions of law.

✚ 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 calendar year and the gap between the two meetings should not be less than ninety days.

### **Financial Statements (Refer Sections 134 and 137)**

✚ The financial statements of a one person company can be signed by one director alone.

✚ 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.

✚ Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. [Section 2(40)]

✚ 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.

### **Contract by a One Person Company (Refer Section 193):**

In case a One Person Company enters into any contract, not in the ordinary course of business, with its sole member who is also a director, then such contract must:

- either be in writing, or
- entered in the Memorandum, or
- recorded in the minutes of the meeting held for the first time after entering of the contract

Particulars of the said contract must be filed by the company with the Registrar within 15 days of the approval of the contract by the Board.



## Sakala: On time services from Government

A Bill has been passed by the Karnataka State Legislature to provide guarantee of services to citizens in the State of Karnataka within the stipulated time limit. This legislation is called the Karnataka Guarantee of Services to Citizens Act, 2011 ('Act').

Govt. of Karnataka came with website <http://sakala.kar.nic.in/> to educate on the Services covered under this Act and its timeline. This web site gives us information about 55 departments covered under this Act and services guaranteed in respective department. Site also provides procedure of application, maximum number of days for getting particular service and appellate authorities for each service. <http://sakala.kar.nic.in/> provides following options to us:

- Law
- FAQ's
- Departments
- Services
- Service Procedures
- Forms

The site provides ready links to various other official websites of different government departments. One could track status of his/her application online or by sending a mere SMS. For services/clarifications, Call Centre is in place to clear our queries. Know your rights and get the maximum benefits out of this unique initiative by our Government.

## Tech News Public cloud storage

The consumer cloud storage market is undergoing significant change, with Tencent currently offering up to 10TB of free storage, and other providers such as DropBox and Microsoft SkyDrive increasing the free space they offer their customers. In an article published in Computer weekly, following four alerts are given to be taken care before using cloud storage:

1. Start off by identifying the information you intend to place in cloud storage, the risks and impacts associated with a compromise of that information, and any legislation or regulation that applies to the information you wish to store in the cloud;
2. Understand who and what the cloud service provider is, where it is based and what it is offering (free isn't always free)
3. Read the contract. Free services come with fixed terms and conditions, set by the provider. You may discover rights allowing the provider to access your information, or that files will still be stored even though the user has deleted them, or that a different jurisdiction applies to the contract, rather than your organisation's home jurisdiction.
4. Users should be aware of how to use the storage and any apps or devices (eg smartphones and tablets) that can access the storage in a secure manner.

(For detailed reading click this link: <http://www.computerweekly.com/opinion/Security-Think-Tank-Four-steps-to-using-public-cloud-storage>)





# Two Castle Builders

# Living Room

Hot sun. Salty air. Rhythmic waves.

A little boy is on his knees scooping and packing the sand with plastic shovels into a bright blue bucket. Then he upends the bucket on the surface and lifts it. And, to the delight of the little architect, a castle tower is created.

All afternoon he will work. Spooning out the moat. Packing the walls. Bottle tops will be sentries. Popsicle sticks will be bridges. A sand-castle will be built. Big city. Busy streets. Rumbling traffic.



A man is in his office. At his desk he shuffles papers into stacks and delegates assignments. He cradles the phone on his shoulder and punches the keyboard with his fingers. Numbers are juggled and contracts are signed and much to the delight of the man, a profit is made. All his life he will work. Formulating the plans. Forecasting the future. Annuities will be sentries. Capital gains will be bridges. An empire will be built.

Two builders of two castles. They have much in common. They shape granules into grandeurs. They see nothing and make something. They are diligent and determined. And for both the tide will rise and the end will come.

Yet that is where the similarities cease. For the boy sees the end while the man ignores it. Watch the boy as the dusk approaches.

As the waves near, the wise child jumps to his feet and begins to clap. There is no sorrow. No fear. No regret. He knew this would happen. He is not surprised. And when the great breaker crashes into his castle and his masterpiece is sucked into the sea, he smiles. He smiles, picks up his tools, takes his father's hand, and goes home.

The grown-up, however, is not so wise. As the wave of years collapses on his castle he is terrified. He hovers over the sandy monument to protect it. He blocks the waves from the walls he has made. Salt-water soaked and shivering he snarls at the incoming tide.

"It's my castle," he defies. The ocean need not respond. Both know to whom the sand belongs...

I don't know much about sand-castles. But children do. Watch them and learn. Go ahead and build, but build with a child's heart. When the sun sets and the tides take – applaud. Salute the process of life!

## Words worth millions

**"Each child is an adventure into a better life - an opportunity to change the old pattern and make it new."**

- Hubert H. Humphrey



Compilation:  
CS. Ajaay Madaiah, Mysore

# Forward Markets Commission

The Forwards Markets Commission (FMC) is the chief regulator of forwards and futures markets in India. As of March 2009, it regulated Rs. 52 trillion worth of commodity trades in India. It is headquartered in Mumbai and this financial regulatory agency is overseen by the Ministry of Finance. Mr. Ramesh Abhishek replaced Mr. B.C. Khatua as the interim chairman of the commission in 2011.

Currently 5 national exchanges, viz. Multi Commodity Exchange, Mumbai; National Commodity and Derivatives Exchange, Mumbai; National Multi Commodity Exchange, Ahmedabad; Indian Commodity Exchange Ltd., Mumbai (ICEX) and ACE Derivatives and Commodity Exchange, regulate forward trading in 113 commodities. Besides, there are 16 Commodity specific exchanges

recognized for regulating trading in various commodities approved by the Commission under the Forward Contracts (Regulation) Act, 1952.

It may be mentioned that in the Commodity Futures Market, the only product traded currently is futures contract. "Options" have not been permitted. In order to ensure that the stakeholders have a proper understanding of the functioning of commodity markets, the Commission has undertaken various initiatives such as awareness programmes, capacity building programmes, internships and other activities for raising awareness about the commodity futures market build capacities among the stakeholders. However, the recent default/scam at the National Spot Exchange (NSEL) has raised concern over the functioning of the commodity exchanges in India.

## Did you know?

### New RBI Governor

**Raghuram Govinda Rajan** (born 3 February 1963) is the current and the 23rd Governor of the Reserve Bank of India, having taken charge of India's central banking institution on 5 September 2013, and succeeding Duvvuri Subbarao. Rajan was the chief economic adviser to India's Ministry of Finance during the previous year and chief economist at the International Monetary Fund from 2003 to 2007.

He was the youngest-ever Economic Counsellor and Director of Research (chief economist) at the International Monetary Fund (IMF) from October 2003 to December 2006. In 2003, he was also the inaugural recipient of the Fischer Black Prize awarded by the American Finance Association for contributions to the theory and practice of finance by an economist under age 40. The Centre for Financial Studies (CFS) has awarded the 5th Deutsche Bank Prize in Financial Economics to Raghuram G. Rajan for his highly influential contributions in a remarkably broad range of areas in financial economics.



## Pick of the month

**Does the mere publication of an examination report on the Trade Mark Registry's website amount to communication?**

Recently, the High Court of Bombay Held – No. The court noted that there was no express provision in the Trade Marks Act, 1999 and the Trade Mark Rules, 2002, therein that required the owners / proprietors of trademarks to inspect the website on a daily basis. Thus, it was held that the mere uploading of the examination report on the Trade Mark Registry's website would not amount to communication as contemplated under the Trade Marks Rules, 2002.



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Bangalore



Service Tax Updates  
CA. Ashit Shah,  
Mumbai

FEMA Updates  
Team Genicon,  
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## CUSTOMS & FTP

### Notifications/ Circulars

Seeks to impose anti dumping duty on imports of Zinc Oxide, originating in, or exported from, the People's Republic of China for a further period of five years

*21/2013 - Cus (ADD), dt 06-09-2013*

Seeks to levy anti-dumping duty on imports of Sodium Perchlorate, originating in, or exported from, People's Republic of China for a period of five years;

*20/2013 - Cus (ADD), dt 06-09-2013*

Extension of anti-dumping duty imposed vide Notification No. 8/2009-Customs, dated 22.1.2009 by one more year i.e. upto and inclusive of 22.7.2014.

*19/2013 - Cus (ADD), dt 29-08-2013*

Seeks to impose final safeguard duty @ 20% on imports of Hot rolled flat products of stainless Steel 304 grade( up to a max width of 1605 mm) into India from China from 4th January, 2013 to 22nd July, 2013 (both days inclusive)

*02/2013 - Cus. (SG), dt. 29-08-13*

Clarifies that goods required for development of facilities such as ash disposal system required for ultra-mega/ mega power projects are eligible for customs duty exemption, notwithstanding the fact that such facilities are set up inside or outside power plant's designated boundary.

*No 33/2013-Cus. Dated August 23, 2013*

Amends the Baggage Rules, 1998 to notify that flat panel (LCD/LED/Plasma) Television cannot be imported as part of free baggage allowance from August 26, 2013.

*No. 84/2013-Cus. (NT), dated August 19, 2013*

Speaker with USB port but without USB playback or FM radio is classifiable under Tariff Heading 8518 of the Customs Tariff Act, 1975 ("the Customs Tariff"); Speaker with USB Port having USB playback but without FM radio is classifiable under Tariff Sub-heading 8519 81 of the Customs Tariff; Speaker with USB port having FM radio but without USB playback is classifiable under Tariff Sub-heading 8527 99 of the Customs Tariff; and Speaker with FM, USB port and USB playback is classifiable under Tariff Sub-heading 8527 99 of the Customs Tariff.

*No. 27/2013-Cus. dated August 1, 2013*

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Clarifies that products like Cockroach Traps and Mosquito Repellent are classifiable under Tariff Item 3808 91 99 of the Customs Tariff.

*No. 28/2013-Cus. dated August 1, 2013*

In respect of provisional release of export goods that are detained or seized, the CBEC has re-iterated that there can be no justification to hold up export consignments for long periods unless export goods are prohibited under the Customs Act, 1962 or ITC (HS) Policy.

*No. 30/2013-Cus. dated August 5, 2013*

Clarifies that a purchase order containing essential ingredients of a valid contract under Section 10 of the Indian Contract Act, 1872 can be accepted as a deed of contract under Regulation 5 of the Project Import Regulations, 1986.

*No. 31/2013-Cus. dated August 6, 2013*

Amends Notification No. 12/2012-Cus. dated March 17, 2012 to increase custom duty inter alia on gold bars other than tola bars, silver in any form and platinum to 10%.

*No. 41/2013-Cus. dated August 13, 2013*

### Case Law

The High Court of Madras held that under the Foreign Trade Policy, norms that are applicable on the date on which a license is issued will be valid in respect of goods imported under that license.

*Hoewitzer Organic Chemical Ltd. Vs. DGFT [2013-TIOL-612-HC-MAD-CUS]*

## FEMA/RBI/SEBI

### Notifications/Circulars/News

Presently the Indian Company is permitted to make Overseas Direct Investment (ODI) upto 400% of its net worth under the automatic route. This limit has been reduced to 100% with effect from August 15, 2013. Any investment in excess of 100% will be considered under the approval route. Similarly, the limit has been reduced to 100% for investment in unincorporated entities in the energy and natural resource sectors. However there are no changes in ODI policy for investment by the Navaratna Public Sector Undertakings (PSUs), ONGC Videsh



Limited (OVL) and Oil India Ltd (OIL), in overseas unincorporated entities and the overseas incorporated entities in the oil sector (i.e., for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India. At present they are permitted to invest without any limit under the automatic route.

*AP DIR Circular No. 23 dated 14.08.2013*

#### **Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits:**

As per existing policy, interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits. However, in order to pass on the benefit of exemption provided on incremental NRE deposits with maturity of 3 years and above from CRR/ SLR requirements, it has been decided to give banks the freedom to offer interest rates on such deposits without any ceiling. However, the extant ceiling on NRO Accounts shall continue.

#### **Liberalised Remittance Scheme for Resident Individuals-Reduction of limit from USD 200,000 to USD 75,000:**

Remittance under the scheme has been reduced to USD 75,000 per financial year (April - March) from its present limit of USD 2,00,000 per financial year with effect from August 14, 2013. Also the following changes are made in the scheme : The scheme should not be used for acquisition of immovable property, directly or indirectly, outside India. Resident individuals have now been allowed to set up Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) outside India for bonafide business activities outside India within the limit of USD 75,000 with effect from August 5, 2013. The limit for gift and loans in Rupees by Resident Individuals to NRI close relatives shall be limited to USD 75,000 per financial year.

#### **Clarification on Multi Brand Retailing FDI Policy:**

At least 50% in the first tranche of USD 100 Million brought by the Foreign Investor shall be invested in backend infrastructure within 3 years and subsequent investments for backend infrastructure can be made by the multi brand retail trader (MBRT), if required.

The Retailer has to procure at least 30% of manufactured / processed from the Indian Micro, Small and Medium enterprises which have a total investment in P & M not exceeding USD 2 Million at the date of first purchase. Small industry status would be reckoned only at the time of first engagement. Subsequently, even after increase of investment in P & M, small industry status will continue for this purpose.

The sales outlets shall be set up only in cities with a population of more than 10 lakhs as per 2011 census or cities permitted by the State government and can be set up 10 kms around the municipal or urban limits.

#### **Clarification on filing of Compounding Application:**

The RBI vide circular dated June 28, 2010, has advised the applicants to ensure that application for compounding are submitted only after the transactions are complete and all the requisite approvals are in place. In practice, most of the compounding applications are made without obtaining approvals from the concerned authorities. In those cases or for any other reasons, the application is being returned to the applicant along with the application fee. In order to return the application fee, RBI vide its circular A.P. (DIR Series) Circular No. 20, dated

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August 12, 2013, has mandated all the applicants to provide details of their bank account as per the prescribed format so that the refund fee is credited to their respective banks through NEFT. Further, the reporting format relating to FDI, ECB, and ODI, branch office / liaison office have been modified to include the details of PAN and the activity as per NIC codes, 1987. The applicant has to communicate the changes in address / contact details, if any, to the compounding authority during the pendency of the compounding application with the Reserve Bank.

## **CENVAT**

### **Notifications/ Circulars**

Regarding reversal of amount under Rule 6(3) the CCR, 2004 on domestic clearances under Notification Nos.29/2012-CE, 30/2012-CE, 31/2012-CE, 32/2012-CE and 33/2012-CE all dated 9th July, 2012

*973/07/2013 dated 4.09.2013*

The Central Government has notified that if in respect of plastic containers and plastic bottles and packing material (specified in Notification No. 10/2013-CE (NT) dated August 2, 2013 ) manufactured by small scale manufacturer operating under Notification No. 8/2003-Central Excise dated March,1, 2003 ("the SSI Notification") by affixing them with brand name or a trade name of another person, he has not paid excise duty leviable thereon on the reasonable belief that he was entitled to the benefit of the SSI Notification, he shall not be required to pay excise duty for the period June 16, 2003 to February 26, 2010 in respect of such plastic containers/plastic bottles and June 16, 2003 to April 28, 2010 in respect of such packing material.

*No. 10/2013-CE (NT) dated August 2, 2013*

Exempts from registration, unregistered premises used solely for affixing a sticker or re-printing or re-labelling or re-packing of pharmaceutical products falling under Chapter 30 of the Central Excise Tariff Act, 1985 with lower ceiling price to comply with notifications issued by the National Pharmaceutical Pricing Authority under Drugs (Prices Control) Order, 2013 subject to conditions specified in the Notification No. 22/2013 - CE dated July 29, 2013.

*No. 11/2013-CE (NT) dated August 2, 2013*

Amends Notification No. 12/2012-CE dated March 17, 2012 to increase excise duty inter alia on gold bars, other than tola bars and silver dore bars to 9%.

*No. 25/2013-CE dated August 13, 2013*

### **Case Law**

In the context of Notification No. 1/93-CE dated February 28, 1993 ("the SSI Notification"), the Supreme Court held that once it is established that a specified good is a branded good, even if it is sold without any trade name on it or by another manufacturer, it does not cease to be a branded good of the first manufacturer. It is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods under the SSI Notification.

*CCE Vs. Australian Foods India (P) Ltd. [2013-TIOL-03-SC]*

The Supreme Court laid down rules for classification of a product as a medicament or cosmetic vide the order.

*Ciens Laboratories Vs. CCE [2013-TIOL-38-SC-CX]*

The Supreme Court held that it is only in those cases where buyer had purchased entire unit i.e. entire business itself, that he would be responsible to discharge liability of central excise as well. Otherwise, subsequent purchaser cannot be fastened with liability relating to dues of the Government unless there is a specific provision in the Statute, claiming "first charge for purchaser".

*Rana Girders Ltd. Vs. Union of India & Ors [2013-TIOL-39-SC-CX]*

## VAT, Sales Tax and Entry Tax

### Case Law

The High Court of Andhra Pradesh held that decision of Advance Ruling Authority cannot be binding on other dealers who have not asked for clarification. Therefore, assessment orders passed relying upon the decision of Advance Ruling Authority are liable to aside.

*Rak Ceramics (India) Private Limited Vs. Assistant Commissioner (Enforcement Wing) [2013-VIL-62-AP]*

The High Court of Madras held that mere claim of assessee that there is unfructified sale and that assessment would not include such turnover would not lead to automatic grant of refund. Claim of refund of assessee rests on proving of unfructified sale for which particulars are to be given in the form prescribed under the Tamil Nadu General Sales Tax Act, 1959 before assessment gets finalized.

*Godrej Industries Limited Vs. State of Tamil Nadu [2013-VIL-63-MAD]*

The High Court of Madras held that issue of time of passing of property and place of delivery are irrelevant for the purpose of sale of goods by transfer of documents of title during their movement from one State to another in terms of Section 3(b) of the Central Sales Tax Act, 1956.

*National Small industries Corporation Limited Vs. State of Tamil Nadu [2013 -VIL 65-MAD]*

The High Court of Madras held that when nature of work involved not only manufacture but also laying of pipes thereafter, the nature of contract is not one of sale but a composite contract.

*Amintiti Fibre Glass Industries India (P) Limited Vs. State of Tamil Nadu [2013 -VIL 68-MAD]*

The dispute before the High Court of Allahabad was whether assessee was liable to pay tax on Methanol at the rate of 7% plus 1% as an unclassified item or at the rate of 12% plus 1% applicable to Methyl Alcohol under the Uttar Pradesh Sales Tax Act, 1948. The High Court held that both on physical parameters as well as on the basis of chemical properties, Methanol and Methyl Alcohol are same commodity and are to be taxed at the rate of 12% plus 1%.

*Commissioner, Sales Tax Vs. Swadeshi Polytex Limited [2013-VIL-60-ALH]*

Naresh Agarwal, Samajwadi Party Member in Parliamentary Standing Committee on Finance has opposed GST on the ground that proposed GST legislation will infringe sovereignty of States.

*Samajwadi Party Opposes GST [Outlook, August 11, 2013]*

## Service Tax

### Notifications/ Circulars/News

### Rs 1.27 lakh crore indirect tax revenue stuck in litigations

A staggering Rs 1.27 lakh crore revenue as central excise and service tax remained unrealised due to appeals and litigations pending before authorities during the financial year 2011-12, says a CAG report. Of the total of Rs 1,27,897.39 crore pending demand, Rs 73,274.74 crore was for service tax and Rs 54,172.65 crore for excise duty.

### Film Producer Samir Karnik Arrested for Service Tax Evasion

Film producer and director Samir Karnik was arrested by the Service Tax Department for alleged tax evasion of Rs. 1.18 crore on provision of services of copyright services to a film distribution company in respect of the film "Yamla Pagla Deewana." and was later released on bail by a court.

### LIC Policies will be dearer from 1st October 2013

Insurance watchdog IRDA (Insurance Regulatory and Development Authority) mandated that service tax shall not be included in the contractual premium, but collected from policyholder separately. Accordingly, LIC which accounts for 83% of market share will levy service tax @ 3% upfront, on all non-unit linked products beginning from 1st October 2013.

Exemption granted to services provided by National Skill Development Corporation or its Affiliates (Sector Skill Council or Assessment Agency or Training Partner) in relation to approved programme / vocational courses, by inserting new sub clause 9A in Notification No. 25/2012 dated 20-06-2012. Courses run by an institute affiliated to the National Skill Development Corporation formed part of negative list u/s 66D(1)(iii) read with section 65B(11)(iii) until 9-5-2013. However, they were excluded from negative list and brought within the charge of service tax w.e.f. 10-5-2013. This exemption seeks to restore the non-taxability of these courses with detailed specifications of courses that would not be taxable. It is strange that exemptions are taken back and restored without reasoning.

*[Notification No. 13/2013 dated 10-09-2013]*

The CBEC has extended date of submission of ST-3 return for period October 1, 2012 to March 31, 2013, from August 31, 2012 to September 10, 2013 due to difficulties being faced by assessee in uploading offline utilities.

*No. 4/2013-ST dated August 30, 2013*

The CBEC has inter-alia clarified the following in respect of Service Tax Voluntary Compliance Encouragement Scheme, 2013 ("the Scheme"):

Assessee having two units with separate registrations is eligible for declaration under the Scheme where one of his units has received a show cause notice in respect of unit which has not received show cause notice.

Declaration can also be made under the Scheme in respect of Cenvat credit wrongly utilized for payment of service tax. Assessee against whom an inquiry, investigation or audit has been initiated after March 1, 2013 can make declaration under the Scheme. Issuance of show cause notice for period prior to October 2007 would not make assessee ineligible under the Scheme. Where assessee has been audited and an audit para has been issued, assessee can declare liability under the Scheme on an issue which is not part of audit para. A person who has made part payment of his 'tax dues' before the Scheme was notified and makes declaration under the Scheme for remaining part of 'tax dues' will not be entitled for benefit of non-payment of interest/ penalty on tax dues paid by him prior to the

notification of the Scheme. A declarant under the Scheme can amend declaration filed under the Scheme before December 31, 2013.

There cannot be an appeal against order for rejection of declaration under the Scheme. If the declarant fails to pay at least 50% of the declared tax dues by December 31, 2013, he would not be eligible to avail of the benefit of the scheme. Cenvat credit cannot be utilized for payment of tax dues under the Scheme.

*No. 170/5/2013 - ST dated August 08, 2013*

### Case Law

The Tribunal held that prior to May 01, 2011, service tax was leviable only on risk premium charges as far as life insurance is concerned. Accordingly, agency processing fees, lapse charges, back date alteration charges, and policy reinstatement fees are not includible in taxable value of Life Insurance Service for the purpose of charging service tax thereon.

*HDFC Standard Life Insurance Co. Ltd. Vs. Commissioner of Service Tax [2013-TIOL-1296-CESTAT-MUM]*

The Tribunal relied on the decision of the Supreme Court in the case of Union of India Vs. Martin Lottery Agencies Ltd. [2009 (14) STR 593 (SC)] and held that added in taxation statutes cause consequences to tax payers could have only prospective effect.

*Financial Software Systems Pvt. Ltd. Vs. Commissioner of Service Tax [2013 1281-CESTAT-MAD]*

The Tribunal held that key pre-requisite for a service to qualify as franchise service is that franchisee should have been granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be is involved.

*Global Transgene Ltd. Vs. CCE [2013 1259-CESTAT-MUM]*

## Regulatory Update

### Companies Bill Received President's Assent

The new Companies Act is enacted as the President of India has signed and assented to it on August 29, 2013. Now it's the Companies Act, 2013 (Act No. 18 of 2013) and the same is notified in Official Gazette on August 30, 2013.

### Draft Rules under Companies Act, 2013 Notified

The Ministry of Corporate Affairs has started to roll out the draft rules under the Companies Act 2013. The rules are being issued under different phases, in the 1st phase draft rules are issued on September 09, 2013 which covers only 16 chapters which are put for comments. The form relating to chapters will also be released shortly for public comments.

### MCA Notifies 98 Sections of Companies Act, 2013

The Ministry of Corporate Affairs showing its aggressiveness towards the implementation of the Companies Act 2013 has notified 98 sections of the Companies Act 2013 by way of notification dated 12th September 2013. These sections have come into immediate effect from 12th September 2013. Notification can be downloaded from [www.mca.gov.in](http://www.mca.gov.in)

### Clarifications on the implementation of Companies Act 2013

MCA issued clarifications vide General Circular No.15/2013 Dated 13.09.2013 on the notification dated 12.09.2013 stating as follows:

1. ROC can register companies which have filed MOA and AOA with erstwhile definition of "Private Company" if filed on or before 11.09.2013.
2. Statement annexed to the general meeting notices issued on or after 12.09.2013 shall comply with Section 102 of the Companies Act 2013
3. Until new Accounting Standards are notified under Companies Act 2013, existing Accounting Standards notified shall continue to apply.
4. Where general meeting notices are issued prior to 12.09.2013, if any resolutions are being passed as ordinary resolutions as per Companies Act 1956, even though Companies Act 2013 requires them to be special resolutions under Section 180, such ordinary resolutions shall remain valid.





## **US has imposed anti-dumping duty on Indian frozen shrimps**

The US has imposed anti-dumping duty on export of frozen shrimps from India and has also initiated countervailing duty investigations into such exports. US Department of Commerce had initiated countervailing duty (CVD) investigations into frozen shrimps exports from India and has preliminarily determined a cash deposit rate of 5.91 per cent for frozen shrimps exports from India

## **NSEL defaults for 4th time**

National Spot Exchange Ltd (NSEL) defaulted for the fourth consecutive week as it could pay only Rs 7.77 crore today to investors out of scheduled Rs 174.72 crore. The exchange had availed a bridge loan of Rs 177.23 crore from its promoter Financial Technologies (FTIL) to make payments on priority basis to small investors. NSEL was engulfed in a crisis when it stopped trading on all contracts on July 31 following government directives. It raised concerns about the possible default of Rs 5,500 crore to investors.

## **FIPB to consider Axis Bank, HCL Tech proposals next week**

The proposals of Axis Bank and HCL Technologies to raise foreign shareholding limit will be taken up for consideration by the Foreign Investment Promotion Board (FIPB) next week. Axis Bank had approached the FIPB last month soon after the Reserve Bank of India (RBI) said the limit of investments through Global Depository Receipts (GDRs), American Depository Receipts (ADRs), FDI, NRI, FIIs in the bank had breached the overall limit of 49 per cent of its paid-up capital. HCL Technologies has also approached the FIPB to seek nod for induction of foreign funds. The country's fourth largest software services exporter likes to raise investment limit for foreign institutional investors (FIIs) in the firm to 49% from 30%.

## **CRISIL trims GDP growth forecast to 4.8%**

Credit ratings agency CRISIL has cut India's economic growth estimate to 4.8% for the current fiscal year and said agriculture is the only hope for higher rate of expansion in this period of downturn. Its earlier GDP growth estimate for fiscal year 2013-14 (FY14) was at 5.5%. The agency also warned the government of overshooting the fiscal deficit target at 4.8% due to poor revenue growth and pegged it at 5.2% this fiscal year.

## **Jaiprakash to sell Gujarat cement unit to UltraTech**

Jaiprakash Associates Ltd has agreed to sell its cement plant in Gujarat to UltraTech Cement Ltd for around 38 billion rupees including debt. UltraTech, the country's largest cement maker by production capacity, will issue shares worth up to 1.5 billion rupees to Jaiprakash and assume debts of about 36.50 billion rupees. Jaiprakash Associates, which also has interests in power and infrastructure, has been trying to sell the plant for more than a year and was in talks with several potential buyers.

## **No car loan if annual income less than Rs. 6 lakh: State Bank of India**

Individuals with annual income of less than Rs. 6 lakh will not get a car loan from State Bank of India (SBI) as the bank has tightened eligibility conditions for its four-wheeler loan scheme with a view to minimising possible defaults. The eligibility limit for loan issuance to salaried individuals for car purchase has been raised from Rs. 2.5 lakh per annum to Rs. 6 lakh per annum, as per a recent circular by the bank. For SBI account holders, the limit has been raised to Rs. 4.5 lakh per annum.

## **India's maiden Mars mission**

India's maiden Mars mission is expected to cost the government Rs.450 crore (Rs.4.5 billion), including Rs.150 crore for the spacecraft, Rs.110 crore for the rocket and Rs.190 crore to augment ground stations for operations, including navigation and communications. The orbiter for Mars mission, in October-November, will take off from the spaceport at Sriharikota off the Bay of Bengal. India's tryst with the red planet comes five years after its maiden moon mission (Chandrayaan-1) in October 2008, which discovered water beneath lunar soil through one of its 11 instruments.

## **Damodaran Committee Submits Report to the Ministry of Corporate Affairs**

The Committee constituted by the MCA for Reforming the Regulatory Environment for doing Business in India, headed by M. Damodaran, presented its Report to the Ministry. The Committee has made a number of recommendations that can be classified as: legal reforms, regulatory architecture, boosting efficacy of regulatory process, enabling MSME's, and addressing State level issues. The recommendations of the Committee and the time frame for implementation are under consideration of MCA.