



eMagazine

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Regional Stock Exchanges: End of an Era



Strategic Cost Management

**WEAPON OF
MASS DESTRUCTION CALLED
'AS MAY BE PRESCRIBED'**

has gone back to the quiver.
Before it emerges out again,
ACT ON

Capacity Building

For Private Circulation Only





Dear Readers,

As the new government is in place with its new mission for the country to meet expectations of the people, let us hope to see the new positive developments in our profession. Institute has brought out guidelines for formation, recognition and functioning of study circle to provide continuing professional education, which is much appreciated. In line with Institutes efforts for capacity building and professional development, Chapter has scheduled Seminars on Companies Act and events for students for the coming months. I request members and students to actively participate and make the events successful.

With the Monsoon reaching southern coast offering relief to farmers for their summer crops, wish you all a very happy Monsoon season.



CS. Ajay Madaiah B.B.
Chairman,
Mysore Chapter

-: Editorial Team :-

CS. Dattatri H M
CS. Sarina C H
CS. Omkar Gayatri
CS. Rashmi M R
CS. Abhishek Bharadwaj A B

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Articles:

Regional Stock Exchanges: End of an Era...4
Strategic Cost Management ...6
Events, Products and IP...8
Serious Fraud Investigation Office...13

Columns:

Living Room...03
Words worth Millions...03
Activities at Mysore Chapter...05
Web Yatra: Management Paradise...09
eTools for Professionals: GDocs...09
I&E Law Café: The Payment of Gratuity Act,
1972...12
News Room...14
Spectrum Space...15
Legal Roundup ... 16

Inside

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Competition

I was jogging one day and I noticed a person in front of me, about 1/4 of mile. I could tell he was running a little slower than me and I thought, well, I shall try to catch him.

I had about a mile to go my path before I needed to turn off. So I started running faster and faster. Every block, I was gaining on him just a little bit. After just a few minutes I was only about 100 yards behind him, so I really picked up the pace and push myself. You would have thought I was running in the last leg of London Olympic competition. I was determined to catch him. Finally, I did it! I caught and passed him by. On the inside I felt so good.

"I beat him" of course, he didn't even know we were racing. After I passed him, I realized I had been so focused on competing against him that I had missed my turn. I had gone nearly six blocks past it. I had to turn around and go all back.

Isn't that what happens in life when we focus on competing with co-workers, neighbors, friends, family, trying to outdo them or trying to prove that we are more successful or more important?

There will always be somebody ahead of you, someone with better job, nicer car, more money in the bank, more education, better behaved children, etc.

We spend our time and energy running after them and we miss out on our own paths.

There's no competition in DESTINY, run your own RACE and wish others WELL!!!



Words Worth Millions



Eagles fly alone at high altitude and not with sparrows or other small birds. No other bird can go to the height of the eagle. Stay away from sparrows and ravens. Eagles fly with Eagles.

Attitude determines altitude

Regional Stock Exchanges: End of an Era



CS. Amar Kakaria ACS, ACA, ACWA
Director, Fusion Advisors Pvt Ltd, Mumbai
amar@fusionadvisors.in



Jagruti Mahida
Fusion Advisors Pvt Ltd, Mumbai
jagruti@fusionadvisors.in

If any of the regional stock exchange was not able to achieve the prescribed turnover of Rs 1000 Crore on continuous basis or did not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of SEBI circular dated May 30, 2012 i.e. 30th May 2014, SEBI would proceed with compulsory de-recognition.

Regional stock Exchanges (RSEs) have been in existence since 1894 in India when the first RSE at Ahmedabad was established. Up to early sixties, only few regional exchange were added, but the major growth in number came after the 1980s, when the Indian Government brought first reforms towards deregulation and delicensing of public undertakings. As many as 24 regulated stock exchanges were operating during the 1990's. RSEs helped the companies which had regional scale to raise equity from the entire country. However, with the National Level Exchanges extending their terminals across the country and the bigger companies moving to these hi-tech trading exchanges seeking more capital, regional stock exchanges saw their trading volume dwindling with every passing day. In fact, no trading had taken place in almost all the RSEs for more than five years.



SEBI has actively encouraged the RSEs to windup. SEBI vide circular dated May 30, 2012 (Exit Circular) had issued guidelines in respect of exit options to stock exchanges. In terms of these guidelines, if the stock exchange was not able to achieve the prescribed turnover of Rs 1000 Crore on continuous basis or did not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of SEBI circular dated May 30, 2012 i.e. 30th May 2014, SEBI would proceed with compulsory de-recognition and exit of the stock exchanges, in terms of the conditions as may be specified by SEBI. Several powerful RSEs including Hyderabad, Bangalore, Coimbatore, Kochi and Mangalore have already closed down leaving Madras stock exchange as the only RSE in South India. The fate of other RSEs like Delhi, Kolkata, Ahmedabad, Madhya Pradesh, Ludhiana, Jaipur, Pune, etc. would also be similar

and they would be getting derecognized due to non-compliance with SEBI's norms.

Thousands of small & medium sized companies are listed across the nation on different RSEs. Keeping in mind small shareholders' interests, SEBI has given following options to such companies:

1. The exclusively listed companies of such non-compliant stock exchanges may opt for listing in nation-wide exchanges after complying with listing norms of main board or the diluted listing norms, if any, on or before the exit of the exchange, either on voluntary or compulsory basis. SEBI has asked nation-wide stock exchanges to facilitate the listing of these companies on priority basis in a time bound manner. It has advised nation-wide stock exchanges to immediately create a separate dedicated cell to expedite processing the listing requests from such companies.
2. Such exclusively listed companies may also opt for voluntary delisting before the de-recognition of the stock exchanges by following the existing delisting norms of SEBI in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. SEBI has advised nation-wide stock exchanges to provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform.
3. With a view to facilitate voluntary delisting, if they so desire, it is clarified that for such companies, the requirements of 'Minimum Public Shareholding' prescribed in Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, shall not be applicable.

4. In case of companies exclusively listed in the non-operational stock exchanges that are not traceable or where the data available is more than three years old, the process of inclusion in list of companies identified as 'Vanishing Companies' may be initiated by the respective stock exchanges and necessary details to be shared with the Ministry of Corporate Affairs.
5. As per the 'Exit Circular' the exclusively listed companies, which fail to obtain listing on any other nation-wide stock exchange, which do not voluntary delist or which are not considered as 'Vanishing companies', will cease to be listed companies and will be moved to the dissemination board by the existing stock exchange. According to SEBI circular, it shall be the responsibility of the exchanges which are being derecognized either on voluntary or compulsory basis, to place their exclusively listed companies on the dissemination board. These exchanges shall ensure that the database of the exclusively listed company will be transferred to SEBI and to those stock exchanges on whose dissemination board, the shares of these companies would be available.

The countdown has already begun. Given the strict stand taken by the SEBI by refusing to extend lifeline for RSEs, there is a very high probability that all the RSEs will have to shut their shops in the days to come. With the closure of RSEs, the shareholders of RSE listed companies will have limited options to unlock their value due to no listing platform. Therefore, it is highly recommended to tap this final opportunity and get exclusively RSE listed companies migrated to nation-wide stock exchanges without any further delay. Markus Zusak has aptly said, "...one opportunity leads directly to another, just as risk leads to more risk, life to more life, and death to more death."

STUDY CIRCLE MEETING:



Chapter had conducted a study circle meeting on the topic fundamentals of Foreign Exchange Management Act (FEMA) on 11th May 2014 at the Chapter Premises.


Mr. Nithin, advocate had conducted the session in detail on the basics of FEMA. Good number of students had participated actively in the discussion on the topic and clarified their doubts.

Activities
at Mysore
Chapter



Strategic Cost Management

with reference to banking industry



Strategic Cost Management (SCM) deals with creating strategies for managing costs efficiently and effectively. It also aims at improving the profitability, of an organization. In other words, SCM is minimizing costs by effectively putting to use the resources to the maximum efficiency along with identification/elimination of wasteful and unorganized processes and activities. SCM includes creating a strategic plan, setting up priorities in operations and ensuring that the various functions/activities in a process, optimally use the limited resources available. SCM by its nature should twine through all the areas of the organization.

Three Steps for implementing SCM program:

First Step: The Function of SCM program framework runs through three components.

The first component identifies the core functions for which the business is laid down. The core function of a business can be identifying, and planning for the nature of business in which management would like to indulge in. Planning can include identifying the activities of business including production processes for manufacturing industry, servicing modalities for service industry.

The second component focuses on planning for complementary activities to the main area of activity like

servicing, technical support, marketing, sales, repair and maintenance.

The third component of the framework is the activities that support the core and complementary activities like IT, human resources, general administration, accounting and finance.

Second Step: Adopting appropriate strategies, for implementing the identified plans in each of the three stages is the crucial activity of SCM team. Steps for SCM implementation include preliminary review of the plan in discussions with floor level staff for understanding the practical requirements and changes needed to be made in the plans. Changes in plans as aforesaid can also result in reviewing the strategies of the business to develop a plan to encourage increased internal communication and identifying any performance gaps. Effective implementation of plans involves effective internal communication and coordinated efforts between various functional and nonfunctional departments of an organization.

Quantitative techniques of Program Evaluation and Review Technique and Critical Path Method are also used for strategic evaluation and laying down the flow of activities/process to maximize productivity at minimum costs.

Management should train team members to implement the strategic management plan. Adopting Strategic Management plan without effective implementation is like buying a car without radiator. Training should include educating on the skills, knowledge, nuances of execution, reasoning etc., to effectively implement the plan. During the process of implementation management should also involve in certain, additional fact finding mission by gathering data, interviewing employees, conducting surveys and developing benchmarks.

Third Step: The findings aforesaid during the implementation process, will also provide recommendations for changes to be made. If changes are necessary, an employee should be made accountable for overseeing each change with responsibilities clearly defined, as well as for making sure there is a system in place for continuous improvement. An Effective SCM Plan should have the following ingredients:

1. Full support of top management,
2. Integrated information systems.
3. Streamlined processes and effective cross-functional teams.

Management should understand the importance of the program and contribution of each employee to the success of the program and their value add. It is indeed important to understand the importance, which, otherwise may result in reluctance and uncooperative attitude among employees during the implementation and continuous improvement stages.

Information systems are used for quickly gathering and analyzing data, as well as for making sure that the right information gets to the right people in a timely manner.

Using cross-functional teams for implementation of Strategic Plan are beneficial when cost drivers affect more than one department, as these departments must work closely together to regulate them.

To assess the extent of SCM program a questionnaire can be developed with the following sample questions:

A sample survey questionnaire for SCM can include:

1. What action has your company taken in the past 12 months in regard to cost management?

2. Did your company achieve its business objectives with the cost management activities? What results have you already experienced?
3. What additional Cost Management activities, if any, are planned for the next 12 months?
4. What objectives does your company expect to meet with these future cost management activities?
5. Which business functions will be most strongly affected

Case study and findings of SCM initiated by banks in aftermath of 2008 downturn:

http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture_Banking_Cost_Management_Survey.pdf

Accenture a Multinational Consulting Company engaged in Consulting had conducted a survey of 1405, executives at large companies in the United States, Canada, France, Germany, Italy, Spain and the United Kingdom to understand their cost management experiences and plans in the aftermath of economic downturn in 2008.

The Cost Management Survey for banking executives aforesaid emphasizes on the importance of:

- ✓ Efficiently Managing the Strategies for Cost reduction plans.
- ✓ Implementing a sustainable Cost Reduction Plan.
- ✓ Understanding the Short and Long Term effects of the Cost Reduction Plans.

The majority of the more than 100 North American banking executives surveyed reported that through the year 2009, they had:

Reduced their overall expenses by at least six percent, with nearly half of respondents achieving reductions of 11 percent to 30 percent or more, a level higher than their counterparts in capital markets and insurance.

Targeted staff-related expenses: The most popular cost reduction tactics include making layoffs (67% of responses), eliminating jobs (66%), reducing employee compensation (55%) and cutting employee benefits (45%). For all but one of these categories (employee benefits), the percentage of reductions by those in the United States exceeded the amount of reductions by banks elsewhere by at least 11%. This is mainly to reduce operating expenses.

Reward for guessing: **1. i, 2. i, 3. ii, 4. i, 5. i.**

To be continued...



Events, Products and IP

Events like FIFA world cup provides opportunity to promote many products. in the rush to capture the market many businesses hastily roll out products only to find themselves in avoidable violation of certain IPR in the event. Forget about increase in profits, such violations may end up in wiping out past profits also!

Many of you who are football fans may be eagerly looking forward to the upcoming event at Brazil. The event is also an opportunity for many online and offline products that are promoted for the occasion and represents a significant business opportunity for many in the media, sports and related business. However, more often than not, in the rush to capture the market, and more so, considering the time-bound frenzy surrounding such events, many businesses hastily roll out products, services or advertising/ promotional material relating thereto, only to find themselves in avoidable violation of certain IPR in the event. Hence, let us look into a few, if not all, questions to be answered before developing any product, service or communication relating to such an international event.

Question: Does such an event inherently give rise to intellectual property rights and if yes, why?

Answer: An event like an international tournament of football is staged on a scale of spectacular proportions. It is probably the largest single sports event and most watched competition on earth. There is enormous cost of staging such an event. Therefore, the stakeholders funding such event are entitled, in return, for certain rights related to any commercial exploitation of the exclusive aspects of such an event, including in all official marks related to such event.

Question: What all kinds of intellectual property would vest in connection with such an event?

Answer: Trademark rights would lie in all logos, exclusive words, titles and symbols. Other event related items like official emblem, mascot, slogan, look elements, trophies, posters, etc., would be protected under respective copyright, trademark or other IP rights, including unfair competition or passing off. Unauthorized use of both identical reproductions and also confusingly similar variations and modifications would be punishable.

Question: Does it constitute infringement of any intellectual property rights if someone were to engage in providing event related news?

Answer: Mere dissemination of news related to the event does not by itself constitute any infringement. Legitimate editorial and information purposes constitute fair or incidental use, provided such news does not create or purport to establish any undue association between the tournament and the entity engaged in such activity of dissemination of news. In the Indian context, mere providing of factual post facto news is protected under Article 19 of the Constitution under right to freedom of speech and there cannot be any copyright either, in plain facts. For example, mere publishing of the match dates/ schedules, without commercial branding, is permissible.

Question: Is public broadcasting of the live event, in return for commercial gratification, freely permissible?

Answer: Strictly speaking, No.

Continued in page...11



WEB YATRA



Guruprasada Bhat
CS Professional Student, Mysore
guruprasadbhatcs@gmail.com

Friends, 'management' plays key role in any function or activity. Management comprises planning, organizing, staffing, leading or directing and controlling an organization or initiative to accomplish the goals. I came across <http://www.managementparadise.com/> (MP), one of the biggest online communities for Management students in India. It provides a quality platform for Management students to interact, share and gain knowledge in this domain. In this site, you can collaborate with likeminded individuals or groups of individuals who can help you accomplish your goals. <http://www.managementparadise.com/> broadly consists of following key features/options for us:

- ✓ Forums
- ✓ Projects
- ✓ Institute
- ✓ Articles
- ✓ Blogs
- ✓ Videos
- ✓ Communities
- ✓ Events
- ✓ Jobs

This site not only helps to gain/share knowledge on 'management' but also provides platform to build more contacts with management students and professionals. With a simple registration for sign-in, we can subscribe great newsletters and magazines. Do surf and let me know other interesting options in this website!



eTOOLS FOR THE PROFESSIONALS



Manjunath S. Bhat, M.Com, LLB
CS Professional Student, Bangalore
msbhat321@gmail.com

GDocs An Android application for mobiles.

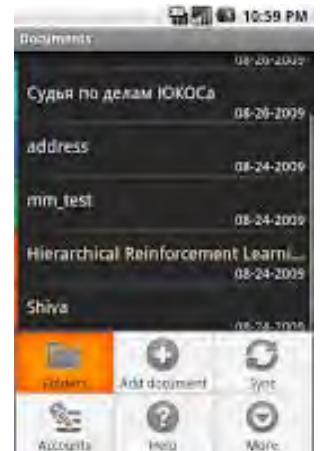
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Specification: 1. Price- Free
2. Required Android- Version 1.5 or more

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Sharath Mahendra Kumar

B.Com, MBA, LLB, MPhil, PGDMM. (ACS, LLM)
sharathm_kumar@yahoo.com

The Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 aims to provide retiring benefit to the workmen, who had rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer. It should be noted that the concept of GRATUITY, PENSION and PROVIDENT FUND are different from each other as was held by the Supreme Court in the case of Krishna Kumar and others Vs. Union of India in 1991. The Act came into operation on **16th September, 1972**.

Object:

- Provide payment of Gratuity to workmen who have rendered long and unblemished service.
- Regulate the payment and administration of payment of gratuity.

Applicability:

- Extends to the whole of India.
- Employee of every Factory, Mine, Oil-field, Plantation, Port, Railway Company.
- Employee of every Shop or Commercial Establishment in which 10 or more employees were or are employed, on any day of the preceding 12 months.

What is gratuity?

The term "Gratuity" is not defined in the Act. Gratuity is a retiral benefit. It is a lump sum payment that is given by the employer to an employee at the time of termination of his Service, in consideration of his **past long and unblemished service**.

When is gratuity payable? Sec.4

Payable when to an employee on the termination of his employment after he has rendered continuous service of not less than 05 years.

- On his superannuation, or
- On his retirement or resignation, or
- On his death or disablement due to accident or disease.

Note: Completion of continuous service of 05 years **is not necessary** where the termination is due to employee's death or disablement.

What is continuous service? Sec.2A (1)

- Uninterrupted service, including service, which may have been interrupted on account of sickness, accident, leave, absence from duty without leave, lay-off, strike or a lock out or cessation of work not due to any fault of the employee.
- Year means** : in case where 12 calendar months are considered – **240 days**

In case where 06 calendar months are considered: **120 days**

Note: *If an employee has completed 04 years and worked for 240 days in the 05th year, he gets entitled for Gratuity.*

Maximum Amount of Gratuity: Sec.4 (2)

Maximum ceiling limit up to which gratuity can be paid is = **Rs.10, 00,000/-** which is tax exempted.

Nothing prevents an employer from paying gratuity above Rs.10, 00,000/- which shall be considered as Ex-Gratia and Taxable.

How to compute Gratuity? Sec.7

Gratuity can be computed by using the formula: **TO BE PAID within 30 days from due date.**

$\frac{\{(Basic + DA) * 15 \text{ days salary}\}}{26 \text{ days}} \times \text{Completed year of service or part there in excess of 06 mths}$

Note: Service of 06 months and above should be rounded off as one year

When Gratuity can be forfeited?

Gratuity may be either wholly or partially forfeited under the following situations:

- A. Termination of services for an act of riotous or disorderly conduct or
- B. An act involving moral turpitude ;

After extending reasonable opportunity of being heard to an employee in question.

Nomination: Sec 6: For every employee who has completed 01 year of service in FORM-F. After marriage of an employee by default, **spouse** will be the nominee.

Failure to Comply Will attract penal interest @ 18% p.a on Gratuity besides attracting fine of Rs.20,000/- and Imprisonment up to 06 months.

Try / Guess:

1. Is formation of employees union a Constitutional right?

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

2. Whether Internal Complaints Committee under new POSH law in an establishment should have its chairperson as Women employee only?

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

3. Can a women employee be engaged in an establishment between 08p.m and 06a.m under Karnataka Shops and Commercial Establishment Act, 1961?

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

4. Sexual Harassment Prevention Committee before 2013 was the resultant of verdict given by Supreme Court of India in Vishaka and others Vs. State of Rajasthan and others in the year?

- i) 1997 ii) 1897 iii) 1987 iv) 2012

5. Equal pay for Equal work – is it mandated by the Indian Constitution?

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

Look out for answers somewhere in the same edition...

Events, Products and IP

continued from Page 8

In India, under the Copyright Act, 1957, broadcasting rights are separately recognized. Even otherwise, if the content to be broadcast, either audio, still pictures, or video, is the exclusive copyright of the organizers of the event, then it would not be proper for anybody else to freely broadcast the live event in return for commercial benefit.

Question: *What care should be exercised while naming websites/ URLs related to the event?*

Answer: Official marks or protected terms cannot be incorporated in domain names or URLs of websites with commercial content. Further, official marks cannot be

used as hyperlinks/ shortcuts, or as SMS, MMS or similar mobile services. And certainly not as mobile apps!

Last question: *How does an entity verify claims by a provider of content, that such content is officially licensed by the event owners?*

Answer: In addition to complying with the aforesaid safeguards, such entity should obtain a direct written confirmation from the event owners that such provider of content has been officially granted a license to do so. In any case, such entity should obtain an indemnity from such provider against any claim by the event organizers, their stakeholders/ financiers, the players, licensees or other such connected persons.



Serious Fraud Investigation Office Functions and Powers

Companies Act 2013 provides for establishment of a Serious Fraud Investigation Office (SFIO) to investigate into the affairs of the Company on an order by the Central Government and where any case has been assigned to the SFIO, no other investigating agency shall proceed with investigation in such case. The Investigating Officer of SFIO shall have all the powers of a civil court while trying a suit.

If the Director, Additional Director or Assistant Director of Serious Frauds Investigation Office authorised in this behalf by the Central Government has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred later in this write up as “cascading effect of Section 447, he may arrest such person present him before the Judicial Magistrate or a Metropolitan Magistrate within 24 hours.

Therefore under the provisions of Companies Act 2013, SFIO has got statutory status as specified therein. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Act which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant section of the Act. Stringent penalty provided for fraud related offences.

For this purpose the Central Government shall, by notification, establish an office to be called the Serious

Fraud Investigation Office to investigate frauds relating to a Company.

However, it is also provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.

It is also provided that when the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office-

- on receipt of a report of the Registrar or inspector under section 208;
- on intimation of a special resolution passed by a company that its affairs are required to be investigated;
- in the public interest; or
- on request from any Department of the Central Government or a State Government,



the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.



It is also provided that where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

It has also been prescribed in the Companies Act that where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order. In such case the Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

It is also mandated not only on part of the company but also its officers and employees, who are or have been in employment of the company to take responsibility to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

Among many other provisions in the Companies Act 2013, provisions of Section 212(6) of the Companies Act 2013 are most important and serious in nature which really going to impact and affect corporate and professionals as language of that Section itself starts as irrespective of anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection (1) of section 38, sub-sections (5) of section

46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section

(1) of section 251, sub-section (3) of section 339 **and section 448** which attract the punishment for fraud provided in section 447 of companies Act 2013 shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless-

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

however if any person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

It is also provided that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by-

- (i) the Director, Serious Fraud Investigation Office; or
- (ii) any officer of the Central Government authorized, by a general or special order in writing in this behalf by that Government.

The limitation on granting of bail specified above is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. Therefore seriousness and intention of introduction of in-depth criminal provisions into these provisions of Companies Act, 2013 go to prove that law makers decides to bring thought process into the mind of corporates and other stake holders that Companies Act will no longer be looked into as civil and regulatory kind of law rather they wanted corporate and stake holders to treat and understand it as more of criminal nature of law when corporate, professionals and stake holders fail to follow and comply with the provisions of the Companies Act 2013 in its true spirit.



CS. Chakri Hegde,

Company Secretary,
Synova Innovative Technologies Pvt Ltd,
Bangalore

chakrih@synovaindia.com

CS. Vijayalakshmi

Company Secretary
Hoysala Projects Pvt Ltd, Bangalore

vijayalakshmi.k@hoysalaprojects.com



COMPAT rejects DLF plea; upholds Rs.630 Cr CCI penalty

The Competition Appellate Tribunal has upheld a Rs. 630 crore penalty imposed on realty major DLF by the Competition Commission of India and emphasised that abuse of dominant position should be dealt with firmly. DLF said it would move the Supreme Court on the matter. In August 2011, CCI found DLF violating fair trade norms and imposed the fine on a complaint by Belaire Owners' Association. The Rs. 630 crore fine is equivalent to 7 per cent of DLF's turnover.

Tesla makes its technology available to everyone, for free, in a bold move for the planet

Noting that the global auto market is approaching 100 million vehicles annually and that, "It is impossible for Tesla to build electric cars fast enough to address the carbon crisis," CEO Elon Musk has announced that the automaker is making all of its patents freely available on a good-faith basis.

Overseas funds rushing to invest in India, over \$5 billion invested in last 8 months

At least three sovereign funds from West Asia have invested over \$5 billion in the past eight months and one global pension fund has committed to invest \$450 million. Two other funds are scouting for investments in India's real estate and infrastructure developers. Risk of returns is out of the way and these funds can invest capital for longer tenure" said head of the realty fund, which has received investments from two SWFs in West Asia

Two criminal cases await Ranbaxy in Kerala

One over tablets called amoxicillin that contained less of the ingredient than stated and another for selling an osteoporosis drug as a dietary supplement in state. The Supreme Court

Express News →

- BSE to cut holding in CDSL as per Sebi's ownership rules
- RBI removes restrictions on forex proprietary trades
- SEBI red card for brokers with bad record
- RBI withdraws sector-specific refinance for liquidity adjustment
- CCI again finds Coal India violating competition norms and has asked the coal miner to modify its fuel supply agreements.
- SEBI asks JSR Dairies to shut down its collective investment schemes
- Climate change threatens India's economy, food security: U.N. Intergovernmental Panel on Climate Change
- WTO upholds European Union's right to prohibit trade in the products of commercial seal hunts, Says Animal Welfare Counts
- India ranks second in global textile exports with China retaining top position
- Overseas funds rushing to invest in India, over \$5 billion invested in last 8 months
- RBI simplifies KYC norms for opening bank account

recently paved way for this when petitions filed by the company for quashing both the cases. The Kerala High Court has refused to stay the complaints in both the instances.

Green nod for radar station in Andamans

The project was pending for long despite repeated requests from the defence establishment which wanted to install the radar at the strategic location in view of suspected Chinese presence and "listening post" on nearby Coco Island. The green signal to the radar station comes after the environment ministry gave clearance to Phase-IIA expansion of the futuristic Karwar naval base in coastal Karnataka, which is designed to give India both strategic depth and operational flexibility on the western seaboard against Pakistan.



Learners' Corner

Exchange Earners' Foreign Currency Account (EEFC)

EEFC is an account maintained in foreign currency with an Authorised Dealer i.e. a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

All categories of foreign exchange earners, such as individuals, companies, etc. who are resident in India, may open EEFC accounts & can be held only in the form of a current account. No interest is payable on EEFC accounts. There is no restriction on withdrawal in Rupees of funds held in an EEFC account. However, the amount withdrawn in Rupees shall not be eligible for conversion into foreign currency and for re-credit to the account.

100% foreign exchange earnings can be credited to the EEFC account subject to the condition that the sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

Did You Know?



FIFA:

The Federation Internationale de Football Association is the international governing body of association football, futsal and beach soccer. Its membership comprises 209 national associations. FIFA was founded in Paris on 21 May 1904.

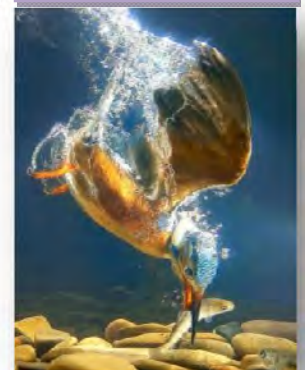
The first president of FIFA was Robert Guérin. The first tournament FIFA staged, the association football competition for the 1908 Olympics in London was more successful than its Olympic predecessors, despite the presence of professional footballers, contrary to the founding principles of FIFA.

Membership of FIFA expanded beyond Europe in 1908, Argentina and Chile in 1912, and Canada and the United States in 1913. The FIFA collection is held by the National Football Museum in England.

Whether Court order approving Scheme of amalgamation is liable to stamp duty?

The Delhi High Court relying on the judgment of the Apex Court in Hindustan Lever & Anr. vs. State of Maharashtra & Anr. (2004) 9 SCC 438 held that the foundation or the basis for passing an order of amalgamation is agreement between two or more companies. The scheme of amalgamation has its genesis in an agreement between the prescribed majority of shareholders and creditors of the transferor company with the prescribed majority of shareholders and creditors of the transferee company. The intended transfer is a voluntary act of the contracting parties. The transfer has all the trappings of a sale. The Court held that definition of 'conveyance' in the Act was an inclusive definition and includes within its ambit an order of the High court under section 394 of the Act. It is therefore subject to payment of stamp duty.

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

Case Law

The Tribunal held that since intention of the Government is not to export taxes but only goods, conversion of free shipping bills into drawback shipping bills needs to be allowed.

Essar Oil Ltd. Vs. Commissioner of Customs [2014-TIOL-754-CESTAT-AHM]

The Tribunal held that in the absence of any rule prescribing payment of interest, no interest is payable in case of refund of redemption fine. - *Vulcan Components India Pvt. Ltd. Vs. Commissioner of Customs [2014-TIOL-745-CESTAT-MUM]*

Ministry of Corporate Affairs

Notifications/Circulars/News

Public companies covered which were not required to constitute Audit Committee under sec 292A of the Companies Act, 1956 shall constitute their Audit Committee within one year from the commencement of new rules or appointment of independent directors by them, whichever is earlier : Provided further that public companies covered under this rule shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier.

Notification G.S.R. (E) dated 12.06.2014

The Ministry vide its notification has reduced the threshold limit for appointment of whole time company secretary i.e. paid up share capital of Rs 5 Cr and more will have to appoint a company secretary.

G.S.R. 390(E) dated 9th June 2014

With regard to maintenance of register of loans/guarantee/security/making acquisition in new format it is hereby clarified that registers maintained by companies pursuant to sub-section (5) of Section 372A of Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from 1.4.2014.

General Circular No. 15/2014 09/06/2014

Clarifications on pecuniary relationship for Independent Directors: Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned

at par with any member of the general public and at the same price as is payable/ paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter has been examined and it is hereby clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases. 'pecuniary relationship' provided in section 149(6)(c) of the Act does not include receipt of remuneration, from one or more companies, by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.- *General Circular No. 14/2014 09/06/2014*

Clarification on appointment of independent director: It would be necessary that if it is intended to appoint existing 'IDs' under the new Act, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions. It is clarified that section 149(10) of the Act provides for a term of "up to five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. Further it is clarified that in such a case the person completing 'consecutive terms of less than ten years' appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

General Circular No. 14/2014 09/06/2014

PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation. Otherwise it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned. -

General Circular No. 12/2014 22/05/2014

FEMA/RBI

Notifications/Circulars/News

Liberalised Remittance Scheme for resident individuals-Increase in limit from USD 75,000 to USD 125,000. As indicated in paragraph 13 of the Second Bi-Monthly Monetary Statement, 2014-15, it has now been decided to enhance the existing limit of USD 75,000 per financial year (April-March) to USD 125,000 with immediate effect. Accordingly, AD Category -I banks may now allow remittances up to USD 125,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both.

RBI/2013-14/624 A.P. (DIR Series) Circular No.138 June 3, 2014

With a view to providing importers with greater flexibility in hedging facility, it has been decided to allow importers to book forward contracts, under the past performance route, up to 50 per cent of the eligible limit. Importers who have already booked contracts up to previous limit of 25 per cent in the current financial year, shall be eligible for difference arising out of the enhanced limits.

RBI/2013-14/613 A.P.(DIR Series) Circular No.135 May 27, 2014

Prior approval of RBI is required in case of any takeover/acquisition of shares of an NBFC; or merger/amalgamation of an NBFC with another entity; or any merger/amalgamation of an entity with an NBFC, that would give the acquirer/ another entity control of the NBFC, or would result in acquisition/transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.- *RBI/2013-14/606 DNBS (PD) CC.No.376/03.10.001/2013-14 May 26, 2014*

On a review, it has been decided to notify a Limited Liability Partnership (LLP), registered under the LLP Act, 2008 (6 of 2009), as an "Indian Party" under clause (k) of Regulation 2 of the Notification *ibid*. Accordingly, an LLP, may henceforth undertake financial commitment to / on behalf of a JV / WOS abroad in terms of the extant FEMA provisions under Regulation 6 (and regulation 7, if applicable) of the Notification *ibid*.

RBI/2013-14/595 A.P. (DIR Series) Circular No.131 May 19, 2014

CENVAT

Items used neither for production nor for processing of any goods or bringing about any change in any substance for manufacture of final products are not capital goods

Upper Ganges Sugar & Industries Ltd. 2014 (1) ECS (27) (HC-AII)

The Assessee availed Cenvat credit on invoices issued by head office which was not registered as an input service distributor. Hence, such invoices not valid/ correct documents for availing Cenvat credit.

Cement Manufacturing Company Ltd. 2014j(1) ECS (178) (Tri-Kol)

The Supreme Court upheld High Court of Allahabad' s order that cenvat credit on inputs contained in scrap generated during manufacture of exempted goods is admissible as waste and scrap are final products.-*CCE Vs. Albert David Ltd. [2014-TIOL-36-SC-CX]*

In response to plea that Courts have granted unconditional stay on pre-deposit of duty in similar matters, the High Court of Punjab and Haryana held that in the matters of interlocutory orders, principles of binding precedents do not apply. - *Kandhari Beverages Vs. CCE [2014-TIOL-704-HC-P&H-ST]*

The Tribunal held that Cenvat credit on Ammonium Nitrate and detonators used in captive mines for blasting solid rocks outside

factory is allowed.- *Chettinad Cement Corporation Ltd. Vs. CCE [2014-TIOL-759-CESTAT-MAD]*

The Tribunal relied on the decision of High Court of Bombay in the case of Ultratech Cement Ltd. and held that Cenvat credit on input services used for guest house used and maintained in relation to business activities is admissible. - *CCE Vs. Mahindra and Mahindra Ltd. [2014-TIOL-746-CESTAT-MUM]*

The Tribunal held that assessee is eligible to avail Cenvat credit on 'life insurance policies premiums' paid in favour of factory workers.-*CCE Vs. TVS Srichakra Ltd. [2014-TIOL-719-CESTAT-MAD]*

The Tribunal held that conversion of retail packs of paints into bigger/bulk packs does not amount to manufacture as no evidence has been adduced to indicate that assessee has undertaken any reprocessing.

Varun Coatings Vs. CCE [2014-TIOL-706-CESTAT-MUM]

VAT, Sales Tax and Entry Tax

The High Court of Karnataka held that activity of sale of prospectus and application forms is eligible to VAT under Entry 71 of the Third Schedule of the Karnataka VAT Act, 2003.

Manipal University Vs. State of Karnataka [2014-VIL-124-KAR]

The Constitution Bench of the Supreme Court held that on application of dominant nature test, a contract of erection, installation and commissioning of lift at customer's premises constitutes 'sale' and not works contract. - *Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu and Ors. [2014-VIL-12-SC-CB]*

The High Court of Gujarat held that patasa, harada, sakaria and alchidana are covered within the meaning of term 'sugar' under Entry 86 of Schedule - I of the Gujarat Sales Tax Act, 1969 and are exempt from payment of tax.

State of Gujarat Vs. Virumal Santumal [2014-VIL-118-GUJ]

The High Court of Odisha held that bank is a dealer liable to pay VAT on transaction of sale of goods in auction conducted by it to recover loan dues. The Court also observed that there is no reason to exclude bank from the definition of term 'dealer' under the Orissa Value Added Tax Act, 2004 even in absence of express inclusion of 'bank' in the said definition.

State Bank of India Vs. State of Odisha [2014-VIL-117-ORI]

The High Court of Uttarakhand held that Zila Panchayat has no authority under the law to impose, levy or collect tax from any industry or person within the area of municipality, town area, notified area or SIDCUL area.

Revati Print O Pack Vs. State of Uttarakhand [2014-VIL-116-UTR]

Service Tax

The High Court of Ahmedabad held that in exercise of writ jurisdiction, the High Court does not have power to waive or relax the condition of depositing 50% of tax dues by December 31, 2013 under the Service Tax Voluntary Compliance Encouragement Scheme, 2013. - *Ramilaben Bharatbhai Patel Vs. Union of India [2014-TIOL-678-HC-AHM-ST]*

It was held by the Hon'ble CESTAT, Delhi that Business Auxiliary Service rendered by the assessee to its Foreign Principals for marketing their product in India qualify as an export of service under the provisions of the Export Rules.

Commissioner of Service Tax, Delhi Vs. Menon Associates [2014-TIOL-885-CESTAT-DE]