

eMagazine

A hand holding a wooden gavel on a wooden surface, with two gold wedding rings in the foreground.

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Dear Professional Colleagues & Students,

Greetings from Mysore Chapter of ICSI!!

The month of May is very crucial for those of the CS students preparing for their forthcoming exams in June. During April, Chapter conducted two career awareness programs and celebrated Earth Day through planting saplings around the Chapter premises. During the month, the Chapter also conducted first batch of 2 days' induction program.

ICSI-Mysore Chapter and ICSI-CCGRT is jointly organizing a “Two Day Research Symposium on Indian Companies Act – Decoding Unsolved Mysteries and Impact of Companies Amendment Bill, 2016”, on 17th and 18th of June 2016. I invite all members to attend this research symposium and make it a great success. The details of the program will be sent shortly.

Further, I wish the best to the CS students, who are all set to write their exams.

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Session on “Intellectual Property Rights”

On 11th April 2016, ICSI-Mysore Chapter organized a Special Lecture on “Intellectual Property Rights” especially for the Executive Students. Ms Vijaya Rao M, Member of Mysore Chapter was the speaker for the program. Mysore Chapter Oral Coaching students attended the session. The speaker explained the various aspects of IPR in detail. The students also mentioned the session was very useful for them to prepare for the upcoming examinations.

Career Awareness Program at Maharani PG College

On 12.04.2016, ICSI-Mysore Chapter organised a Career Counselling Programme at Maharani College for Women, Mysore. Around 50 students from M.Com attended the programme.



CS Manjunath S, Member, Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. He also highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario.

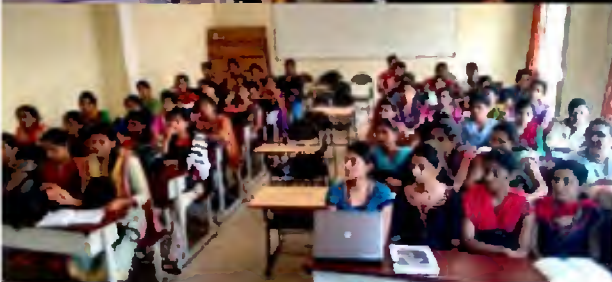
Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. CS Manjunath S also clarified the various doubts and issues that were raised by the participants and thanked the management for providing the Institute this opportunity.

Career Awareness Program at MICA College



On 13.04.2016, ICSI-Mysore Chapter organised a Career Counselling Programme at Mysore Institute of Commerce & Arts College, Mysore. Around 60 students from B.Com stream attended the programme. CS Manjunath S, Member, Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc.

He also highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario.



Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. CS Manjunath S also clarified the various doubts and issues that were raised by the participants and thanked the management for providing the Institute this opportunity.



Companies Amendment Bill, 2016

Proposed amendments in 'Meetings' related provisions in Companies Act, 2013

Introduction:

With an objective of addressing and resolving the 'shoe-pinching' issues in Companies Act, 2013 ('the Act'), the Government on June 4, 2015, constituted 8 member Company Law Committee. The said Committee was headed by Secretary, Ministry of Corporate Affairs. On February 1, 2016, Committee submitted a 138-page detailed Report and suggested 100+ amendments to the Act. Based on the Report, Government drafted the Companies (Amendment) Bill, 2016 ('Amendment Bill') and presented the same in Lok Sabha on March 16, 2016. The Bill has suggested 87 amendments to the Companies Act, 2013. Such suggestions are in addition to the already issued clarifications, circulars, notifications, amendment in Company Rules, removal of difficulty orders and the Companies Amendment Act, 2015. This article is a compilation and analysis of the proposed amendments in the provisions relating to the meetings (board meeting and general meeting) in the Act.

Meetings of Board of Directors:

Sub-Section (2) of Section 173 of the Act states that the participation of directors in board meeting may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Proviso to sub-section (2) of Section 173 of the Act and Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014 states certain matters cannot be dealt with in a meeting through video conferencing or other audio visual means, which includes: (i) Approval of annual financial statements, (ii) Approval of the Board's report, (iii) Approval of the prospectus, (iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, and (v) Approval of matter relating to amalgamation, merger, demerger, acquisition and takeover.

Vide the Amendment Bill, 2016, the Govt. proposes to introduce a proviso, that creates an exception to the sub-section (2) of Section 173 of the Act and Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014, wherein the above said matters can be discussed through video conferencing or other audio visual means if there is quorum in the board meeting through physical presence of directors. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

AGM of an unlisted company at any place in India:

Section 96 of the Act relates 'Annual General Meeting' ('AGM') and sub-section (2) states that every AGM shall be called during business hours, i.e. between 9 a.m. and 6 p.m. on any day that is not National Holiday and shall be held either at company's registered office or at some other place within the city, town or village in which the company's registered office is situated.

The Amendment Bill proposes to introduce a proviso to sub-section (2) of Section 96, wherein the AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. It is noteworthy that the proposed amendment is applicable to only AGMs (and not other general meetings) of private company and unlisted public company. It is also noteworthy that the consent of all members is required in advance. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

EGM of certain companies at any place in India:

Sub-section (1) of Section 100 of the Act states that the board of directors of the company may, whenever it deems fit, call an extraordinary general meeting ('EGM') of the company.

Vide the Amendment Bill, it is proposed to insert a proviso whereby the EGM of the company, other than of wholly owned subsidiary of company incorporated outside India, shall be held at a place within India. Therefore, it is proposed that EGM of any company can be held at any place in India and the EGM of wholly owned subsidiary of company incorporated outside India can be held any place outside India. However, it is noteworthy that the EGMs of only wholly owned subsidiary (i.e. 100% holding and not subsidiary company) of company incorporated outside India can be held any place outside India. It equally important to note that such 'wholly owned subsidiary' can be private company or public company under the Companies Act. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

Calling of General Meetings on shorter notice:

Pursuant to the provisions of Section 101(1) of the Act, the company's general meeting may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed. The proviso to Section 101(1) states that the general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting. Vide the Amendment Bill, it is proposed that the proviso is to be substituted.

The proposed amendment in the Amendment Bill, 2016 states that the general meeting may be called after giving shorter notice than (i.e. less than 21 days) if consent, in writing or by electronic mode, is accorded thereto, for following meetings:

- (i) In the case of AGM, by not less than 95% of the members entitled to vote thereat; and
- (ii) In the case of any other general meeting, by members of the company:
 - a) Holding, if the company has a share capital, not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
 - b) Having, if the company has no share capital, not less than 95% of the total voting power exercisable at that meeting.

The Amendment Bill also proposes another proviso, pursuant to which any member of a company is entitled to vote only on some resolution(s) to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of Sec. 101(1) in respect of the former resolution(s) and not in respect of the latter.

The amendment proposed in the Amendment Bill, 2016 is discussed in the Companies Law Committee Report.

Postal Ballot:

Section 110 of Act relates to 'Postal Ballot', whereby the company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot. Rule 22(16) of Companies (Management and Administration) Rules, 2014, prescribes following items of business that shall be transacted only by means of voting through a postal ballot:

(Continued in page 7)



Juvenile Justice (Care and Protection of Children) Act, 2015

The Act aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults.



The 2012 Delhi gang rape case (popularly known as ‘Nirbhaya Case’) involved a rape and fatal assault on 23 years young lady in a moving bus by six men in the bus including the driver on December 16, 2012. Thirteen days after the assault, she was transferred to a hospital in Singapore for emergency treatment, but succumbed to her injuries two days later. It was found that one of the accused was a few months away from attaining the age of majority. Hence, he was tried in a juvenile court. This was highly criticized by general public and on July 31, 2013. Mr. Subramanian Swamy, filed a Public Interest Litigation in the Supreme Court of India seeking that the boy be tried as an adult in a court. The Court asked the juvenile court to delay its verdict.

After the Supreme Court allowed the juvenile court to give its verdict, the boy was sentenced to three years in a reform home on August 31, 2013. The victim’s mother criticized the verdict and said that by not punishing the juvenile the court was encouraging other teenagers to commit similar crimes.

In July 2014, the Minister for Women and Child Development, Ms. Maneka Gandhi said that they were preparing a new law which will allow 16-year-olds to be tried as an adult. She said that 50% of juvenile crimes were committed by teenagers who know that they get away with it. She added that changing the law, which will allow them to be tried for murder and rape as adults, will scare them. The bill was introduced in the Parliament by Ms. Maneka Gandhi on August 12, 2014. On April 22, 2015, the Cabinet cleared the final version after some changes. It was passed on May 07, 2015 by the Lok Sabha amidst intense protest by several Members of Parliament. It was passed on December 22, 2015 by the Rajya Sabha. On January 15, 2016 the Juvenile Justice (Care and Protection of Children) Act (‘the Act’) was enforced.

The Act aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults.

Key highlights of the Act:

- The Act allows for juveniles 16 years or older to be tried as adults for heinous offences like rape and murder. Heinous offences are those which are punishable with imprisonment of seven years or more.
- The Act mandates setting up Juvenile Justice Boards and Child Welfare Committees in every district. Both must have at least one woman member each.
- The decision to try a juvenile 16 years or older as an adult will be taken by the Juvenile Justice Board, which will have a Metropolitan Magistrate or Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate and two social workers as members. If the board decides against it, the juvenile will be sent for rehabilitation (Section 4).

- The Child Welfare Committees will look at institutional care for children in their respective districts. Each committee will have a chairperson and four other members, all specialists in matters relating to children (Section 27).
- The Act aims to "consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child friendly approach."
- The Act also aims at adjudicating and disposing cases dealing with juveniles keeping in mind "the best interest of the children and their rehabilitation."
- The Act also deals with adoption of children and lays down the eligibility criteria for adoptive parents. A central adoptive resource agency will frame the rules for adoption, which will be implemented by state and district level agencies.

Conclusion

Juvenile justice system is a vehicle to protect the public by providing a system that responds to children who are maturing into adulthood. States recognize that children who commit crimes are different from adults: as a class, they are less blameworthy, and they have a greater capacity for change. This Act is a forward-looking and comprehensive enactment that provides for dealing with children in conflict with the law and those requiring care and protection. However, child welfare activists have been saying there is no need to carve out an exception for children in a particular age group solely based on the perceived heinousness of the offence. The division into two groups — one below 16 and another above 16 — goes against the core principle that all children should be treated as such till the age of 18. This age has been fixed based on studies in child behaviour and the U.N. Convention of the Rights of the Child.

Companies Amendment Bill, 2016 Continued from page 5

- a) Alteration of objects clause of memorandum,
- b) Alteration of Articles of association in relation to insertion or removal of provisions which, u/s 2(68), are required to be included in the Articles of a company in order to constitute it a private company;
- c) Change in place of registered office outside the local limits of any city, town or village as specified in Sec 5(12);
- d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised u/s 13(8);
- e) Issue of shares with differential rights as to voting or dividend or otherwise under Sec 43 (a) (ii);
- f) Variation in the rights attached to a class of shares or debentures or other securities as specified u/s 48;
- g) Buy-back of shares by a company u/s 68(1);
- h) Election of a director u/s 151;
- i) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of Section 180(1);
- j) Giving loans or extending guarantee or providing security in excess of the limit specified u/s 186(3).

The Companies Amendment Bill, 2016 proposes to include a proviso to Section 110(1), whereby any item of business required to be transacted by means of postal ballot (as discussed above), may be transacted at a general meeting (AGM or EGM) by a company which is required to provide the electronic voting facility to members under Section 108 of the Companies Act, 2013. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

Conclusion: The above proposed amendments relate to the meetings of the Board of Directors and General meetings. The same will have corresponding impact on the Secretarial Standards. In the ensuing Parliament session, it is proposed that the Companies (Amendment) Bill, 2016 will be passed in both Houses. 87 amendments proposed by the Amendment Bill in the Companies Act, 2013, is to some extent, a great relief to corporates and compliance officers.



Prenuptial Agreements:

Are they valid and enforceable in India? [Part 1]



It was a beautiful Monday Morning, business was as usual, while I was sipping a hot mug of coffee two young individuals entered my chambers & we sat down for a discussion on prenuptial agreement.

Rahul runs a successful family-owned business, while Nitu is the head of human resources at a software firm. Both of them are in their late 30s and are doing well in their respective fields. They have been dating for two years and have now decided to tie the knot. However, before doing so, they wanted to take a decision on the fate of their finances & assets in case the marriage does not last and ends up in a divorce. How should they do it correctly, yet discretely was the focal point of discussion.

Most people do not think of divorce at the time of solemnising a marriage. However, if two individual consenting adults want to have control over their finances after an 'unlikely' divorce, it is critical that they discuss a prenuptial agreement before planning their wedding.

While I was discussing the pros & cons of a prenuptial agreement, I honestly did not know whether it would be valid in India & stand the test of Law, and how to go about drafting one. I for sure knew that a prenuptial agreement was a legal contract between spouse before marriage to outline plans for division of property and finances in case of a divorce.

After brain storming research on the subject we have now come to the following understanding on prenuptial agreements, which I would like to share:

What is a Prenuptial Agreement?

A prenuptial agreement is a contract between two individuals who are about to get married, outlining the state of finances and personal liabilities in case the marriage fails. Though it is not popular in India, the instrument helps avoid financial disputes and trauma at the time of separation.

In India, prenuptial agreements are neither legal, nor valid under the marriage laws because they do not consider marriage as a contract. A marriage is treated as a religious bond between husband and wife and prenuptial agreements don't find social acceptance. However, these are governed by the Indian Contract Act and have as much sanctity as any other contract, oral or written.

The Indian courts take cognisance of a prenuptial agreement if both the parties mutually agree to it and sign it voluntarily, without any undue influence, force or threat. Besides, the agreement should be fair, clearly stating the division of property, personal possessions and financial assets of the parties, and should be certified by a separate lawyer for each. For a prenuptial agreement to be successful, both parties have to be willing to participate in it and

have to be completely honest about their individual assets and liabilities. The contract also has to be in place before the wedding takes place.

A prenuptial agreement, antenuptial agreement, or premarital agreement, commonly abbreviated to prenup or prenupt, is a contract entered into prior to marriage, civil union or any other agreement prior to the main agreement by the people intending to marry or contract with each other. The content of a prenuptial agreement can vary widely, but commonly includes provisions for division of property and spousal support in the event of divorce or breakup of marriage. They may also include terms for the forfeiture of assets as a result of divorce on the grounds of adultery; further conditions of guardianship may be included as well. It should not be confused with the historic marriage settlement which was concerned not primarily with the effects of divorce but with the establishment and maintaining of dynastic families.

A big advantage of having a prenuptial agreement is that it forces couples to have a financial discussion before marriage. The issues that can be efficiently dealt with through such a contract include protecting both the parties from each other's debts, preventing a division of the family businesses and disputes regarding separate and shared assets, as well as dealing with the issue of children's custody after the dissolution of a marriage. So, essentially, the agreement helps decide who gets what at the time of divorce.

Prenuptial Agreements in other countries

In some countries, including Belgium and the Netherlands, the prenuptial agreement not only provides for the event of a divorce, but also to protect some property during the marriage, for instance in case of a bankruptcy. Many countries, including Canada, France, Italy, and Germany, have matrimonial regimes, in addition to, or some cases, in lieu of prenuptial agreements. Prenuptial agreements are recognised in Australia by the Family Law Act 1975 (Commonwealth). Prenuptial agreements have historically not been considered legally valid in the United Kingdom. This is still generally the case, although a 2010 Supreme court test case between the German heiress **Katrin Radmacher and Nicolas Granatino**, indicated that such agreements can "in the right case" have decisive weight in a divorce settlement. The Law Commission is to consider whether a change should be made to the letter of the law, recognizing prenupts in a more general way. In the United States Currently, prenuptial agreements are recognized, although they may not always be enforced. Both parties should have lawyers represent them to ensure that the agreement is enforceable. In some cases, the parties retain a private judge to be present during the signing, to be sure that neither party has been coerced/ forced into the agreement. Some attorneys recommend videotaping the signing, although this is optional. Some states such as California require that the parties be represented by counsel if spousal support (alimony) is limited by the agreement. Prenuptial agreements are recognised as valid legal documents in several Western countries, but they have no validity in India.

The Indian Scenario

Prenuptial agreement may be useful in India to at least check some false prosecutions by unscrupulous Women, who are misusing Section 498A or Domestic Violence Act of IPC for blackmail and Extortion of money. That means, if the both parties are genuine, transparent and do not have any pre-planned ill mind, will accept the terms of the agreement before marriage itself. if the prenuptial agreement are signed, and in case of a divorce if the magistrate feels that some clauses in the agreement are unfair then he can dismiss the case, but once the magistrate has accepted the prenuptial agreement then for demanding extra money or anything beyond the prenuptial agreement the onus is on the other party to prove additional circumstances.

In Islam, the prenuptial contract, *Katb el-Kitab*, has long been established as an integral part of the Islamic marriage, and is signed at the marriage ceremony. Similar to Judaism, it outlines the rights and responsibilities of the groom and bride or other parties involved in marriage proceedings, the agreement is recognized & valid.

Marriage under the India law:

Section 2 [1] of the Hindu Marriage Act, 1955 says:

1. This Act applies - a.to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva,

- a. Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- b. to any person who is a Buddhist, Jain or Sikh by religion; and
- c. to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

According to Hinduism, marriage is a sacred relationship. In some Hindu systems of marriage, there is no role for the state as marriage remained a private affair within the social realm. Within this traditional framework reference, marriage is undoubtedly the most important transitional point in a Hindu's life and the most important of all the Hindu "sanskaras" (life-cycle rituals). Therefore there was fierce religious opposition to enacting such laws for marriage, succession and adoption. Some have argued that Hindu marriage cannot be subjected to legislative intervention. According to Hindu Marriage Act, a marriage can take place between the two consenting individuals of opposite sex, who are of sound mind and the bride is more than eighteen years of age and the groom is more than twenty-one years of age.

One must also know that even if the marriage takes place between a girl and a boy who have not attained the requisite age, the marriage remains valid. However, it may lead to some penal provisions under the Hindu Marriage Act.

Generally, a couple shall be said to be married if they have completed the Saptpadi. "Saptpadi" refers to completing the seven steps around the holy fire. Merely exchanging garlands shall not amount to marriage. In cases, where the customs provide for different ceremonies, the couple shall be said to be married if they perform those ceremonies. If a spouse leaves other without just or reasonable cause, the other spouse can move to the court for restitution of conjugal rights. This is provided under Section 9 of the Hindu Marriage Act. We must also know that once a decree under section 9 is passed, it is obligatory for the spouse to come back to other and if the spouse fails to do so even after one year of the decree, it becomes a ground for divorce for other spouse.

The Supreme Court of India exercised its powers under Article 142 of the Constitution of India and ruled in August 2012 that marriages can be ended by mutual consent before expiry of the cooling period of six months stipulated in the Hindu Marriage Act, 1955. Section 13-B of the Hindu Marriage Act provides for the couple seeking divorce through mutual consent to wait for a period of six months after making first joint application for divorce. It is only after the expiry of the six months that the couple can move second application for the dissolution of their marriage.

A growing number of Indian elites – typically from business families – are now choosing to sign prenups before tying the knot, but in case of a divorce, these pacts would mean nothing in a court of law in India.

In India, prenuptial agreements are very rare and do not have any governing laws. However, with rising divorce rates people are showing increasing interest in prenups. Some lawyers are of the opinion that prenups don't have legal sanctity in India. However, some form of contract is signed in some cases, usually among affluent citizens. But, the agreements need to be reasonable and not violate pre-existing laws like the Hindu Marriage Act. Indian courts allow a memorandum of settlement to be signed during divorces. But, no court has yet been asked to enforce a prenup agreement.

These agreements may come under the Indian Contract Act 1872. The Section 10 of the Indian Contract Act states that agreements are to be considered contracts if they are made by the free consent of the parties. However, the Section 23 of the same act states that a contract may be void if they are immoral or against public policy. Goa is the only Indian state where a prenuptial is legally enforceable, as it follows the Portuguese Civil Code, 1867. A prenuptial agreement may be signed between the two parties at the time of marriage, stating the regime of ownership. If a prenuptial has not been signed, then the marital property is simply divided equally between the husband and wife.

Are prenuptial agreements valid and enforceable in India?... To be continued in the next edition

Can you sleep when the wind blows?



Years ago, a farmer owned land along the Atlantic seacoast. He constantly advertised for hired hands. Most people were reluctant to work on farms along the Atlantic. They dreaded the awful storms that raged across the Atlantic, wreaking havoc on the buildings and crops. As the farmer interviewed applicants for the job, he received a steady stream of refusals. Finally, a short, thin man, well past middle age, approached the farmer. 'Are you a good farm hand?' the farmer asked him.

'Well, I can sleep when the wind blows,' answered the little man. Although puzzled by this answer, the farmer, desperate for help, hired him. The little man worked well around the farm, busy from dawn to dusk, and the farmer felt satisfied with the man's work.

Then one night the wind howled loudly in from offshore.

Jumping out of bed, the farmer grabbed a lantern and rushed next door to the hired hand's sleeping quarters. He shook the little man and yelled, 'Get up! A storm is coming! Tie things down before they blow away!' The little man rolled over in bed and said firmly, 'No sir. I told you, I can sleep when the wind blows.'

Enraged by the response, the farmer was tempted to fire him on the spot. Instead, he hurried outside to prepare for the storm. To his amazement, he discovered that all of the haystacks had been covered with tarpaulins. The cows were in the barn, the chickens were in the coops, and the doors were barred. The shutters were tightly secured. Everything was tied down. Nothing could blow away. The farmer then understood what his hired hand meant, so he returned to his bed to also sleep while the wind blew.

When you're prepared, spiritually, mentally, and physically, you have nothing to fear. Can you sleep when the wind blows through your life?

Words worth Millions

“No one can make you feel inferior without your consent.”

Eleanor Roosevelt in 'This is My Story'





Age limit increased for EPS Scheme

The Employees' Pension Scheme, 1995 has been amended w.e.f., 25th April 2016 w.r.t., enhancement of the pensionable contribution age from 58 years to 60 years as an option for members who desire to draw pension later than 58 years, but not beyond 60 years.

What does this amendment mean?

1. As per the existing provisions of Employees Pension Scheme, 1995, an employee can contribute to pension scheme only till the age of 58 years.
2. Upon completion of 58 years, he/she will receive the pension under the existing Scheme.
3. If in case, employee still continues to work beyond 58 years, then as per the existing provisions, the contribution to pension account is diverted to provident fund account.
4. Employee will start receiving the pension from 59th year.
5. With this new amendment, an employee can opt to contribute to pension fund till he attains the age of 60 years but not beyond that.
6. This will enable an employee to get higher pension – the rate will be 04% increase for every completed year of service till the age of 60 years.
7. If in case, such employee demises, then his / her dependent will get the pension following the date of the death of the employee as if the employee had started receiving the pension from the date of the death.
8. It can be specifically noted that this option of contributing to Pension Scheme beyond 58 years is **“VOLUNTARY”** and has to be opted explicitly. If not, by default, the existing provision would apply and pension will be paid from 59th year.

EPF & MP Act, 1952 Contribution Distribution: Monthly

1. Account No.1 – Employees Provident Fund (EPF) Account – 12 % of Employees Contribution & out of 12% Employer Contribution, 3.67% to EPF Account totaling to 15.67% on Basic Wages.
2. Account No. 2 – Administration Charges on EPF Account – 0.85% of Basic Wages by Employer.
3. Account No.10 – Employees' Pension Scheme (EPS) Account – out of 12% Employer Contribution, 8.33% of Employers contribution on Basic Wages.
4. Account No.21 – Employees Deposit Linked Insurance (EDLI) – 0.50% of Basic Wages by Employer.
5. Account No. 22 – Inspection charges on EDLI Account – 0.01% on Basic Wages with minimum Rs.200/- by Employer for functional establishments & for non-functional establishments Rs.25/-

Please follow the link <http://www.egazette.nic.in/WriteReadData/2016/169249.pdf> to download the full text of the Employees' Pension (Second Amendment) Scheme, 2016 published in Gazette Notification dated 25th April 2016.



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e-Tools for the Professionals

Lawyers Case Diary

An Android application for Smart Phones and Tabs

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Specification:

1. Price- Free
2. Required Android- 2.3 and up

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This time I have come up with one good website to learn a foreign languages in a short span of time. The site <https://www.duolingo.com/> provides a platform to learn more than 15 foreign languages.

Unfortunately, learning a language is expensive and inaccessible to most. But Duolingo gives an opportunity to learn it for free. Duolingo is one of the best sites to learn a new foreign language.

<https://www.duolingo.com> also provides a platform to discuss the doubts and clarify the same with the help of experts.

Duolingo is the world's largest online language learning platform and the most downloaded education app in the world for both Android and iOS devices. It has over 100 million users, is completely science and data-based and has elements that make learning more fun.

Do not miss an opportunity to learn the other language, it is available at your door step. You need a simple sign-up procedure to have the complete access to the site.





News Room



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NEWS EXPRESS

- RBI proposes relaxation of bank Licence requirements to boost the banking sector
- SC asks Central Govt to set up special force to tackle drought and directed to create a disaster mitigation fund
- Sajjan Jindal-led JSW Steel in the fray to acquire Tata Steel UK
- Sterlite Technologies wins Jaipur and Gandhi Nagar smart city project
- General anti-avoidance rule (GAAR) to override bilateral tax treaty provisions in case of conflicts: Finance Ministry
- India ratifies WTO trade facilitation agreement
- India to tax capital gains on investments from Mauritius starting in 2017
- Supreme Court struck down the TRAI regulation on Call Drops

Cabinet approves country's first IPR policy

<http://economictimes.indiatimes.com/news/economy/policy/cabinet-approves-countrys-first-ipr-policy/articleshow/52253095.cms>

All you need to know about the new IPR Policy:

<http://www.thehindu.com/business/all-you-need-to-know-about-the-intellectual-property-rights-policy/article8600530.ece>

Govt. drops cap gains tax on startup shares held for 2 Years

In a fresh boost to startups, the government has inserted an amendment to the Finance Bill to provide for capital gains tax exemption if shares of an unlisted company were held for more than two years. Presently shares of unlisted entities face capital gains tax of 20% even after three years.

Government fixes ceiling price of 54 drug formulations

Pharma prices regulator NPPA has fixed ceiling price of 54 drug formulations used for treatment of cancer, diabetes rheumatoid arthritis, bacterial infections and hypertension. It has also fixed the retail price of 11 drugs.

Reliance Defense gets 16 more manufacturing licenses

-to manufacture an array of hardware ranging from small arms, heavy weapons, ammunition and explosives to electronic warfare systems, missiles, unmanned vehicles and laser systems for all defence platforms.

Walmart sues Visa for resisting use of PIN-based transactions

Walmart Stores Inc filed a lawsuit against Visa Inc, saying the payments network operator was resisting the use of personal identification numbers (PINs) by customers for purchases made on debit cards at its stores.

CCI curtailing elected persons tenure ultra vires: Compat

The Competition Appellate Tribunal (Compat) made the observations while delivering a judgement on a plea by an individual in the case related to Alkem Laboratories. "If we were to hold that wide and open-ended language used in Section 27(g) (of Competition Act) empowers the Commission to issue a direction which interferes with the rights of the elected representatives of an association, then the results would be catastrophic," the tribunal said.



Phantom Stock

Phantom Stocks also known as 'Shadow stock' is a type of stock plan that pays a cash award to an employee that equals a set number or fraction of company shares, times the current share price. The amount of the award is usually tracked in the form of hypothetical units (known as "phantom" shares) which is equal to the price of the stock. There are two main types of phantom stock plans.

1. "Appreciation only" plans do not include the value of the actual underlying shares themselves, and may only pay out the value of any increase in the company stock price over a certain period of time that begins on the date the plan is granted. 2. "Full value" plans pay both the value of the underlying stock as well as any appreciation.

Phantom stock plans frequently contain vesting schedules that are based on either tenure or the accomplishment of certain goals or tasks as covered in the plan charter. This document also dictates whether participants will receive cash equivalents that match dividends or any type of voting rights. Some plans also convert their phantom units into actual stock shares at the time of pay-out in order to avoid paying the employee in cash. Unlike other types of stock plans, phantom stock plans do not have an exercise feature, per se; they only grant the participant into the plan according to its terms and then confer either the cash or an equivalent amount into actual stock when vesting is complete.

Did
You
Know?

Top-Level Domains

We come across various website addresses with different suffixes .com, .net, .org etc. These are basically known and called as Top-Level Domains (TLDs). These Top-level domains are managed by the Internet Assigned Numbers Authority (IANA), which is run by the Internet Corporation for Assigned Names and Numbers (ICANN). The most common top-level domains are .com, .net, and .org. Originally, each had a unique purpose .com: Commercial (for-profit) websites, .net: Network-related domains, .org: Non-profit organizations. However, these top-level domains all offer open registration – anyone can register a .com, .net, or .org domain for a website (for a fee). In contrast to the above top-level domains, which are "open" in that they allow anyone to register a domain without meeting any qualifications, many TLDs are "closed." For example, to register .museum, .aero, or .travel domain, one must verify that they are a legitimate museum, air-travel, or tourism-related entity. TLDs like .in, .uk, .ca are country specific TLDs some of which are are closed and only allow citizens and businesses in the country to register, while some allow open registration for everyone to register.

Status of a Managing Director/ Whole Time Director once he attains the age of 70 years

As per Section 196 read with Schedule V of the Companies Act 2013, a person who is appointed as Managing Director/ Whole Time Director shall cease to have position once he / she attains the age of 70 years subject to passing of the special resolution for his appointment. However it may be noted that he / she shall cease to be a Managing Director/ Whole Time Director only but shall continue to act as Non-Executive Director of the Company. The limitation of maximum age is applicable for the appointment of Managing Director/ Whole Time Director only and not for other Non-Executive Director.

Pick of
the
month

Regulatory Updates

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CUSTOMS & FTP

Notifications/Circulars/News

The Central Government has increased the tariff concessions in respect of specified goods imported under the India-Japan Comprehensive Economic Partnership Agreement w.e.f. 1 April, 2016. - *No. 28/2016-Customs, dt. 31 March, 2016*

The Central Government has simplified the procedure for import of parts and testing equipment at concessional rate, required by units engaged in Maintenance, Repairs and Overhaul of aircraft.
No. 29/2016-Customs, dt. 26 April, 2016

The Central Government has notified Kakrawah, Siddharthnagar District, in the State of Uttar Pradesh as land customs station for the purpose of clearance of baggage, passenger vehicles and tourist vehicles.
No. 42/2016-Customs (N.T.) dt. 29 March, 2016

The Central Government has issued instructions to field formations on requirements under newly introduced "Integrated Declaration" System at bill of entry level, invoice level and item level. - *F. No. 450/ 147/ 2015-Cus-IV, dt. 31 March, 2016*

Case Law

The Chennai Tribunal held that imported software was classifiable under Customs Tariff Heading (CTH) 8524 as "Information Technology Software" since it qualified the definition of "Information Technology Software" given in the exemption notn., - *MRF Ltd v CC (2016-TIOL-828-CESTAT-MAD)*

The Mumbai Tribunal held that the sole distribution rights fee paid to foreign supplier on an annual basis could not be included in assessable value of imported consignment of promotional materials since such fees did not relate to imported goods.
Volkswagen Group Sales India Pvt Ltd v CC (2016 (334) ELT 69)

The Mumbai Tribunal held that royalty was not a condition of sale when importer had an option to purchase raw material from other suppliers.
CC v Bekaert Industries Pvt Ltd (2016-TIOL-996-CESTAT-MUM),

The Delhi High Court held that a claim for refund had to be entertained by Customs Authorities even when order for assessment had not been modified or reviewed in terms of Section 27 of Customs Act post its amendment on 8 April, 2011.
Micromax Informatics Limited v Uol & Ors (WP (C) 523/2016)

The Gujarat High Court held that if the exporter had obtained Export Obligation Discharge Certificate (EODC) by misrepresentation of facts, due to which goods were seized by the Customs Authorities, the same could be released provisionally in case the importer was in a position to fulfil the export obligation within the period still pending in terms of the FTP provisions.
Printwell Offset v Uol (2016-TIOL-633-HC-AHM-CUS)

The Delhi High Court held that the adjudicating authority could not pass an order without considering the fact that the assessee had fulfilled the Export Obligation and applied for issuance of
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EODC, but the Directorate General of Foreign Trade had not issued the EODC.
Lifelong India Pvt.Ltd. v Union of India (2016 (334) ELT 410)

The Delhi High Court held that Circulars issued by Central Board of Excise & Customs could not impose an additional restriction for availing benefits of exemption notification issued under the Act, as such Circulars were ultra vires the Act and were not legally sustainable.
Allen Diesels India Pvt.Ltd. v Union of India (2016 (334) ELT 624)

The Ahmedabad Tribunal held that Special Additional Duty of Customs would not apply to goods cleared by an Export Oriented Unit to a sister unit in Domestic Tariff Area on stock transfer basis. - *Jindal Saw Ltd. v CCE (2016 (334) ELT 172)*

The Mumbai High Court held that Central Government could not, in the name of 'greater scrutiny', restrict the benefit under Incremental Export Incentivisation Scheme, since such an amendment was arbitrary and against the objective of the policy.
JSW Steel Ltd. v Uol (2016 (334) ELT 222)

Ministry of Corporate Affairs

Notifications/Circulars/News

Stakeholders have sought clarifications with regard to the accounting period for which the accounts would need to be prepared using the Accounting Standards, as amended through the Companies (Accounting Standards) Amendment Rules, 2016. The matter has been examined in the Ministry and it is hereby clarified that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification.
No. 04/2016 dt. 27th April 2016

In exercise of the powers conferred by sub-section (1) of section 458 of the Companies Act (18 of 2013), the Central Government being satisfied that circumstances warrant, hereby delegates the powers to appoint Inspectors for inspection of books and papers of a company under sub-section (5) of section 206 as ordered by Central Government, to the Regional Directors.
F.No.3/516/2015-CL.II dt. 29th April 2016

CENVAT

Notifications/Circulars

The CBEC has clarified that bagasse, dross and skimmings of non-ferrous metals or any such by-product or waste are not excisable goods even after insertion of Explanation to Section 2(d) of the Central Excise Act, 1944. However, if such waste is cleared for a consideration from the factory, then proportionate credit on inputs and input services should be reversed in terms of Rule 6 of the CENVAT Credit Rules, 2004.
No. 1027/15/2016 -CX dt. 25/04/2016

Case Law

The Delhi Tribunal held that the process of conversion of semi-finished/incomplete batteries into complete batteries amounted to 'manufacture'. - *Exide Industries Ltd. v CCE (2016 (333) ELT 101)*
A larger Bench of the Chennai Tribunal held that for computing the cost of production of packing material (final products), the

value of intermediate goods received from sister unit would be the actual cost of production, and not 110% of the cost of production of such goods. - *ITC vCCE (2016 (333) ELT 287)*

The Ahmedabad Tribunal held that valuation under Rule 10A for job worker cannot be applied unless there was predominant supply of inputs or goods free of charge to the assessee. It was further held that monitoring and supervision of manufacturing activities undertaken only to sustain timely supply and maintain quality could not be treated as job work under Rule 10A of the Valuation Rules. - *Symphony Comfort Systems Ltd. vCCE & ST*

The Delhi Tribunal held that input credit was admissible on TMT bars, shapes, angles and channels, used for manufacture of moulds for steel ingots/ casting.

SrinathjilspatLtd. vCCE & ST (2016 (333) ELT 454),

The Delhi Tribunal held that steel items used for fabrication of conveyor system for handling of material were eligible for input credit. - *Euro Containers vCCE (2015 (327) ELT 303)*

The Mumbai Tribunal held that capital goods credit was admissible on corrugated aluminum and cement sheets used for providing cover to the machinery and its moving parts in order to protect them from dust particles, etc., and to maintain temperature for good quality of output.

MukandLtd. vCCE (2016 (333) ELT 479)

The Delhi Tribunal held that iron ore fine emerged as a waste material during the manufacture of sponge iron, and there was no requirement to pay 10% of value of such iron ore under rule 6.

CCE vArtiSponge and Power Ltd. (2016 (333) ELT 415)

The Delhi Tribunal held that a supplementary invoice issued on account of finalization of provisional assessment was an eligible document for credit, and that the exception provided in Rule 7(1)(b) to restrict credit in case of suppression / misstatement of facts was not applicable in such cases.

Jagatjit Industries Ltd. vCCE (2015 (327) ELT 364)

The Gujarat High Court held that the time limit for refund claim had to be computed from the date of filing of the original claim, and not from the date of resubmission of claim after removal of defects. *AparIndustries (Polymer Division) vUOI*

GST (VAT, Sales Tax and Entry Tax)

Case Laws

The Supreme Court (SC) held that the movement of goods by way of imports was in pursuance of the conditions and/ or as an incident of the contract between the importer and ultimate customer in India. Hence, sale by importer to ultimate customer in India should qualify as 'sale in the course of import'. The SC, relying on the decision in the case of *M/s. K.G. Khosla & Co. vDeputy Commissioner of Commercial Taxes, Madras [(1966) 3 SCR 352]*, further held that privity of contract between the foreign supplier and the ultimate consumer in India was not mandatory to qualify as sale in the course of import.

In Commissioner, Delhi VAT vM/s. ABB Ltd [TS-155-SC-2016-VAT]

The Madras High Court held that DEPB licences qualified as 'goods'. Further, input tax credit was available only for goods falling under the first schedule of Tamil Nadu VAT Act and DEPB licences were not included in first schedule of Tamil Nadu VAT law. Therefore, credit of VAT paid on purchase of such DEPB licences was not available. - *In M/s Shah Khantilal Jayantilal vThe State of Tamil Nadu [2016-TIOL-812-MAD-VAT]*

Service Tax

Notifications/Circulars

The Point of Taxation Rules have been amended to provide that in cases where there is a change in liability or extent of liability of person liable to pay service tax under reverse charge, the point of taxation would be date of issue of invoice, if the service has been provided and the invoice for such services is issued before the effective date of such change.

No. 21/2016-Service Tax dt. 30 March, 2016

Notification no. 25/2012-ST has been amended to exempt various services provided by the Government.

No. 22/2016-Service Tax dt. 13 April, 2016

The Service Tax Valuation Rules have been amended to provide for levy of service tax on interest chargeable on deferred payment, where payment for services provided by Government is allowed to be deferred on payment of interest or any other consideration. - *No. 23/2016-Service Tax dt. 13 April, 2016*

The Point of Taxation Rules have been amended to provide that in case of services provided by the Government to any business entity, the point of taxation would be the earlier of the date on which any payment becomes due as specified in the invoice, bill, challan or any other document issued by the government, or the date of actual payment. *No. 24/2016-ST dt. 13 April, 2016*

The CENVAT Credit Rules have been amended to provide that CENVAT credit of service tax paid on one-time charges payable upfront or in instalments, for assignment of the right to use natural resources shall be spread equally over a period of three years, instead of being spread over the period for which the rights were assigned as per the previous provision. The time limit of one year for availing of CENVAT credit is not applicable to CENVAT credit of service tax paid on assignment of right to use any natural resource. - *No. 24/2016-CE-NT dt. 13/4/ 2016*

The CBEC has issued a circular clarifying various aspects of levy of service tax on the services provided by the Government.

No. 192/02/2016-ST dt. 13 April, 2016

Case Laws

The Chennai Tribunal held that CENVAT credit of service tax paid on health insurance of the employees in factory was available even after 1 April, 2011. *FIEM Industries Ltd vCCE*

The Bangalore Tribunal held that CENVAT credit of services received by head office in respect of divestments undertaken was available, as such services were received for raising finance.

HindujaGlobal Solutions Ltd. v Commissioner

The Mumbai Tribunal held that the time limit for filing refund claim of accumulated CENVAT credit by an exporter was one year from the end of the period for which refund claim is filed.

IndagovCST (TS-128-CESTAT-2016-MUM),

The Mumbai Tribunal held that CENVAT credit of services received at port of clearance was available to a manufacturer exporter. However, CENVAT credit of services received at destination was not admissible. - *Khanna International Pipes Pvt.Ltd. vCCE(2016-TIOL-961-CESTAT-MUM)*

The Advance Ruling Authority held that when a foreign C & F agent raised a composite invoice, including freight and insurance etc., the Indian service recipient was liable to pay service tax on the value of invoice excluding expenditure or costs incurred by C & F agent as a pure agent, if the conditions enumerated in Rule 5 of the Service Tax Valuation Rules were complied with.

Berco Undercarriages (India) Pvt.Ltd. (TS-145-AAR-2016-ST