

eMagazine



Secretarial Audit

**Statement on
Annual Return by CS**



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

-: Editorial Team :-

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

Support Team:

CS. Ravishankar Kandhi
CS. Ajay Madaiah

**Join
2950+ members' strong
"CSMysore" eParivaar**

@

<http://www.groups.google.com/group/csmysore>

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter.
All rights are reserved.

Message from Chairman



Dear Readers,

On behalf of Mysore Chapter of ICSI, I wish you all a happy and prosperous Navarathri and Vijayadashami.

The September month was really exciting, memorable for us. The three days workshop went on really well and the delegates from different parts of the country attended the workshop and made it a huge success. 5 technical sessions and a special floor discussion session were organized and the delegates' participation was commendable and all appreciated the speakers' interactions. My profuse thanks to the speakers.

Our special thanks to the Managing Committee of the Bangalore Chapter for their support in reaching out to a larger number of delegates from Bangalore. I would like to thank each and every individual who helped us in organizing this mega event and supported us in different parts of the organizing this event.

Draft rules of New Companies Act, 2013 are up and lots of reviews and suggestions are running in different professional forums and platforms, I request each CS/CA/CMA and other stakeholders to take active participation in review and suggestion in these platforms and ensure that each of you submit your suggestions to the MCA and make sure that the best possible law is enacted and the well deserved position is ensured under the new law.

Enjoy the festival and holidays.

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

Articles:

Statement on Annual Return by CS...4
Secretarial Audit...5
Regulation of Banking Companies Part 2...7

Columns:

Activity Report...3
Web Yatra:
Consultancy Development Center...8
Tech Views: Broadway or Broadband?...8
Living Room: Nurturing by Eagles...9
Pictures Worth Millions...9
Spectrum Space...10
Legal Roundup ... 11
Regulatory Updates...13
News Room...14

Inside



Three days workshop on **Good Governance:** **The Supreme Mantra for Multi-Skilled Professional**

By ICSI Mysore Chapter jointly with SDM Institute for Management Development, on 20th, 21st and 22nd September, 2013 at Mysore

The Workshop was inaugurated by the Chief Guest Mr. S Nagarajan, AVP & Head of Infosys Mysore Centre, and Special invitee Dr. N. R. Parashuram, Director, SDMIMD, Mysore, and CS. M.C. Bhansali Past Chairman of Mysore Chapter of ICSI, CS. Ajay Madaiah B.B., Vice-Chairman, and CS. V.J. Balakrishnan Treasure of Mysore Chapter were present during the occasion. Ms. Kavitha Rao DB performed the anchoring.



Eminent professionals from various fields CS. Dhanpal S, CS. Smita Chirimar, CA. Rajesh Kumar T.R, Dr. Kalyan C, CA. Ramanujan S and CS. Pratap Giri deliberated on following topics:



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

The workshop was well attended by 100 participants including, Company Secretaries from Different parts of southern India, Chartered Accountants, Corporate delegates and CS students.



Career Guidance Program

The Chapter had arranged Career Awareness Program on 3rd September 2013 at Mallmma Marimallappa Arts & Science Women's College, Mysore During the program the students were addressed by CS. Pracheta M. and given an insight to the Company Secretaries Course and the Career Prospects for CS. Details about the Course were distributed to the participants. Around 150 students were present during this program.



The Chapter had arranged Career Awareness Program on 3rd September 2013 at Mallmma Marimallappa Arts & Science Women's College, Mysore During the program the students were addressed by CS. Pracheta M. and given an insight to the Company Secretaries Course and the Career Prospects for CS. Details about the Course were distributed to the participants. Around 150 students were present during this program.

Statement on Annual Return by CS



CS. Aishwarya Mohan Gahrana,
B.Sc.,LL.B., A.C.S., A.I.I.I.,
Aishwarya M Gahrana & Associates,
Company Secretaries, New Delhi
aishwaryam_gahrana@yahoo.com

Under Section 92 of the Companies Act, 2013, every company shall prepare annual return in the prescribed form and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice. The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

Under this Section a company secretary shall make a statement about the correctness, adequacy of disclosure in annual return and compliance of the Companies Act, 2013 made by the company.

Draft rule suggest that the annual return, filed by a listed company or a company having paid-up share capital of five crore rupees or more and turnover of twenty five crore rupees or more, shall be certified by a Company Secretary in practice.

Proposed blank form annual return runs to nearly 40 pages and statement of company secretary runs to three pages. You may have gone through these forms and may

agree with me that these two forms are going to be a serious assignment.

Same time, this is very good provision that profession of company Secretary is defined as expert. Clause (38) say that “expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

Companies Act 2013 has made the certification of Annual Return a serious business indeed!

For certain errors / presumably misstatements in the certification, a Company Secretary may have to face class action suit as well!

Related provisions suggest that this assignment cannot be taken lightly. This communication must also reach all our clients.

Clause (g) of sub – section (1) of Section 245 Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (3) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for

seeking to claim damages or compensation or demand any other suitable action from or against:

- (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

Article is continued on page...6



Secretarial Audit



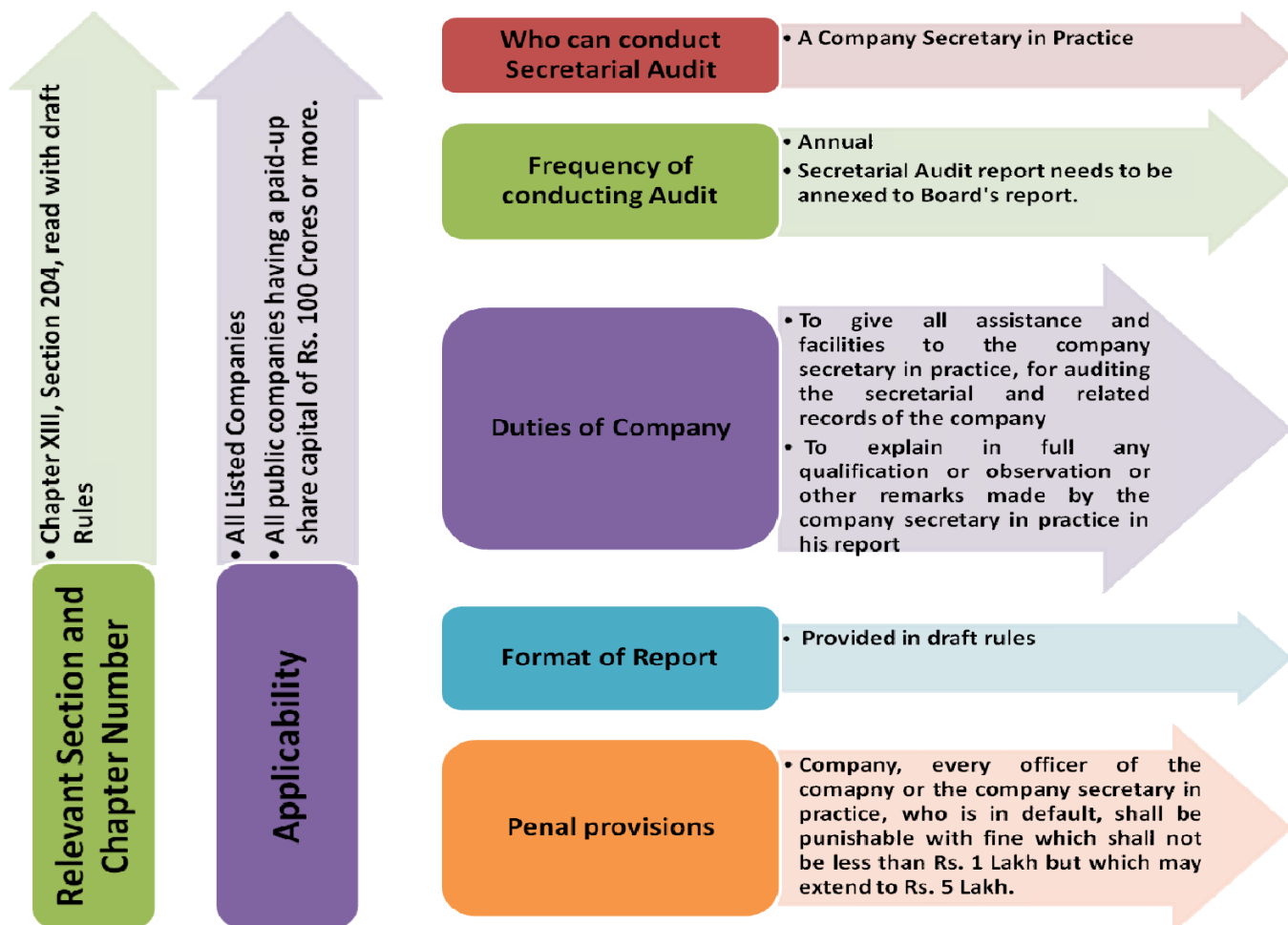
CS. S Dhanapal B.Com, B.A.B.L., F.C.S
 Sr. Partner, S Dhanapal & Associates
 Practising Company Secretaries, Chennai
csdhanapal@gmail.com

Secretarial Audit has been a matter of discussion for a long time. In the year 2009, MCA had released "Corporate Governance Voluntary Guidelines 2009". The Guidelines, amongst other things, recommended the introduction of Secretarial Audit. Pursuant to these guidelines, The Institute of Company Secretaries of India had issued a "Referencer on Secretarial Audit". This referencer not only provided the scope and usefulness of secretarial audit, but also provided a detailed format of the Secretarial Audit Report. However, these guidelines being voluntary in nature could not make its mark.

Companies Act, 2013, for the first time, make secretarial audit mandatory. Section 204 of the CA, 2013 contains that all listed

companies and other class of companies as may be prescribed need to obtain a secretarial audit report from a practising company secretary and annex it to the Board's report.

Secretarial Audit aims at an audit of the various records and documents of the company to ensure compliance with all applicable laws and provisions. This audit will be in addition to the Statutory Audit, Internal Audit and Cost Audit prescribed under the Act. In the present article, a snap shot of the provisions relating to Secretarial Audit as contained in the Companies Act, 2013 and under the draft Rules is presented for quick and easy reference of the readers.



Powers and Duties of PCS Conducting Secretarial Audit

Sub-section 14 of Section 143, which section deals with the “powers and duties of auditors”, places the Secretarial Auditor on par with the statutory auditor of the company. It says that *the provisions of this section shall mutatis mutandis apply to—*

(a) the cost accountant in practice conducting cost audit under Section 148; or

(b) the company secretary in practice conducting secretarial audit under section 204.

From the above, it can be construed that a Practising Company Secretary conducting secretarial audit has same powers and duties as that given to the Statutory Auditor under the Act.

Duty to disclose fraud [Section 143(12)]

If the PCS, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

WRAP UP:

After long wait, secretarial audit has finally found its place in the periphery of Company Law as the same has been prescribed as a mandatory audit in the Companies Act, 2013. However, at the moment, going by the Act and the draft rules, the audit will be applicable to only very big sized companies and thus it may not be able to achieve the objective for which it has been recommended over the years as very few companies will fall within the ambit of Secretarial Audit.

Statement on Annual Return by CS

Article is continued from page 4

- (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
- (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

Further, Sub – section (2) of Section 245 Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

Accordingly, Auditor, expert, advisor, consultant or any other person may face a class action suit for incorrect or improper or misleading statement. Company Secretary in practice making statement on annual return is a person who may face class action suit.

Section 448 deals with punishment for false statement, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or

for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement:

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under Section 447.

Section 447 has provision for punishment with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

These provisions simply suggest that no company secretary in practice should treat making statement on annual return as a routine matter but a serious assignment. There is an urgent need to communicate to all clients about seriousness of this assignment under the Companies Act, 2013.

Author’s blog on Corporate Law, Governance and Responsibilities at <http://aishmghrana.me/> was recently included in the list of best Indian blogs on Law in India.

Regulation of Banking Companies

(Part 2 of 2)



N. Sreeram, M.Com. F.C.M.A. F.C.S.,
Assistant Professor (Senior Grade)
Manipal University Bangalore Campus, Yelahanka
sreeramnsr@rediffmail.com

Recap: Banking Companies Act was passed in 1944. Subsequently it was changed to Banking Regulation Act 1949 w.e.f. 01.03.1966. The Chief Regulator for banks and banking activities in India is “The Reserve Bank of India” (RBI). Starting a banking business needs license from RBI. Sec 5(b) of the Banking Regulation Act 1949 defines banking: “Banking means the accepting for the purpose of lending or investment of deposits, money from the public, repayable on demand or otherwise and withdrawal by cheque, draft or otherwise”. As per Sec 616 of the Companies Act, the provisions of Banking Company Regulation Act shall prevail over companies Act where there are contrary provisions on the same issue. The Sections under the Companies Act which specifically exempts/modifies its application to Banking Companies were listed out.

Overriding Provisions under Banking Regulation Act:

Sec 616 of the Companies Act and Sec 2 of the Banking Regulation Act 1949 as explained, sets a clear tone that Banking Companies will be governed by Banking Regulation Act. The two sections clearly puts forward the intention of the regulators that compliance with Companies Act is only complementary to Banking Regulation Act, under circumstances when the later Act is silent or contrary provisions are seen in the two Acts.

Certain Sections of the Banking Regulation Act 1949 are exemptions to the omnibus Section 2, to mean, notwithstanding anything contained in any other Act, Law or contract, these Sections shall be abided by Banking Companies. Such sections are listed out below:

Sl. No.	Sections that Prevail over other legislations	Particulars in brief about the exemption or modification.
01	Sec 10A	Banking Company shall have certain experienced and professional personnel on the Board. This is in supersession of any or all sections of the Companies Act.
02	Sec 10B	One of the Board of Directors will have to be appointed as Chairman of its Board on Whole time or part time basis. However, appointment of chairman on part time basis, shall be only with the approval of Reserve Bank of India. This appointment is also subject to other terms and conditions.
03	Sec 10BB	RBI can appoint a Chairman in case the post of Chairman is vacant and if it considers, necessary to appoint in the interest of the Banking Company.
04	Sec 11	Notwithstanding anything contained in Sec 149 of the Companies Act, this Section stipulates that Banking Companies should have prescribed paid up share capital as stipulated by Reserve Bank of India.
05	Sec 16	A banking Company shall not have as director who is director of another banking company incorporated in India. This section is subject to other rules as specified.
06	Sec 17	A Banking company shall transfer to reserve 20% of the profits as disclosed under the P&L A/c prepared under Sec 29 of the Companies Act, before declaring dividend.
07	Sec 49	Sec 90, Sec 165, Sec 182, Sec204, Sec255, Sec293 (1) (a) and (b) Sec300, Sec388A, Sec416 The exemptions given to a Private Company under the above Sections of Companies Act 1956, shall not operate in favour of companies licensed under Banking Regulation Act 1949.
08	Sec 49B & 49C	This section stipulates that any application made for change of name or alteration of Memorandum of banking company to RoC shall have NOC from RBI.



Consultancy Development Centre
Autonomous Institution of DSIR, Ministry of Science & Technology

"If You Have Knowledge, Let Others Light Their Candle In It." Knowledge is having familiarity with someone or something, which can include facts, information, descriptions, or skills acquired through experience or education. *Repository* commonly refers to a location for storage, often for safety or preservation. In simple sense *Knowledge Repository* refers to the storage location of theoretical or practical understanding of a subject. It can be implicit or explicit, it can be more or less formal or systematic.

Dear friends, I found the Storage place of knowledge called <http://www.knowledgerepository.org.in>, relating to the science and technology. It is helpful to various science and technology related companies, engineers and developers, etc. This site is newly introduced by the Ministry of science and technology, Government of India. This <http://www.knowledgerepository.org.in> consists of the following:

- ❖ News / Announcements
- ❖ Document resources
- ❖ Guidelines
- ❖ Sectors
- ❖ News letter
- ❖ Directory service etc.,

To access more option in this site, register with simple log in and you will have encyclopedia of science and technology. Do let me know how useful this site is to you!

Tech Views

Broadway or Broadband?

The UK government is making "a strategic mistake" investing billions of pounds into railways rather than broadband, according to a senior Microsoft executive Stephen McGibbon.

"Work is something you do, not somewhere you go." Governments shall invest into the technologies needed to make mobile working a reality for more, instead sticking with the traditional investments for the commute to work.

"The one negative fact about the future is the current and previous governments think we need to build railways instead of broadband infrastructure and networks," he said.

<http://www.computerweekly.com/news/2240207096/Building-railways-not-broadband-is-a-strategic-mistake>



Nurturing by Eagles

Living Room

When ready to lay eggs, the female and male eagle identify a place very high on a cliff where no predators can reach. The male flies to earth and picks thorns and lays them on the crevice of the cliff, then flies to earth again to collect twigs which he lays in the intended nest. He flies back to earth and picks thorns laying them on top of the twigs. He flies back to earth and picks soft grass to cover the thorns. When this first layering is complete the male eagle runs back to earth and picks more thorns, lays them on the nest; runs back to get grass it on top of the thorns, then plucks his feathers to complete the nest. The thorns on the outside of the nest protect it from possible intruders. Both male and female eagles participate in raising the eagle family. She lays the eggs and protects them; he builds the nest and hunts. During the time of training the young ones to fly, the mother eagle throws the eaglets out of the nest. Because they are scared, they jump into the nest again.

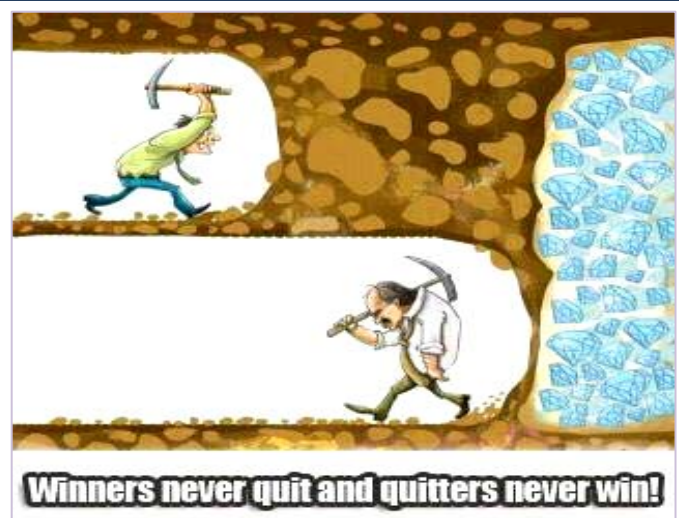
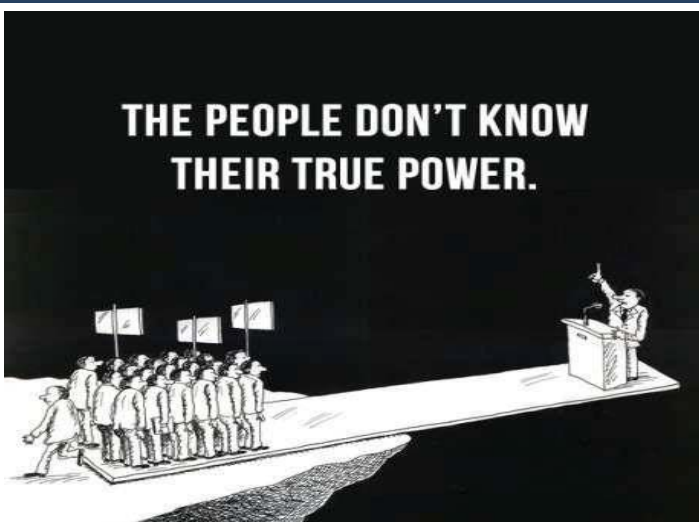
Next, she throws them out and then takes off the soft layers of the nest, leaving the thorns bare. When the scared eaglets again jump into the nest, they are pricked by thorns. Shrieking and bleeding they jump out again this time wondering why the mother and father who love them so much are torturing them. Next, mother eagle pushes them off the cliff into the air. As they shriek in fear, father eagle flies out and catches them up on his back before they fall and brings them back to the cliff. This goes on for sometime until they start flapping their wings. They get excited at this newfound knowledge that they can fly.



The preparation of the nest teaches us to prepare for changes; The preparation for the family teaches us that active participation of both partners leads to success; The being pricked by the thorns tells us that sometimes being too comfortable where we are may result into our not experiencing life, not progressing and not learning at all. The thorns of life come to teach us that we need to grow, get out of the nest and live on. We may not know it but the seemingly comfortable and safe haven may have thorns.

The people who love us do not let us languish in sloth but push us hard to grow and prosper. Even in their seemingly bad actions they have good intentions for us.

Pictures worth millions





Compilation:
CS. Ajaḡ Madaiah, Mysore

D&R in Banking Technology

Institute for Development and Research in Banking Technology (IDRBT), was established by the Reserve Bank of India. The Institute provides the key thrust to the development and implementation of technology for improving the functioning of the Indian Banking and Financial Sector through a series of techno-initiatives. IDRBT is engaged in a number of Research Projects to improve the standard of Banking Technology in India. The focal areas of research in the Institute are Financial Networks and Applications; Electronic Payments and Settlement Systems; Security Technologies for the Financial Sector; Technology Based Education, Training and Development; and Financial Information Systems and Business Intelligence.

The Institute set up the INdian Financial NETwork [INFINET], the nationwide Closed User Group Communication Backbone for the Indian Banking and Financial Sector on June 19, 1999. Presently, the network

consists of over 1800 VSATs located in 300 cities of the country and a seamlessly integrated Leased Line Network (LLN) connecting 22 major cities. Various inter-bank and intra-bank applications ranging from Simple Messaging to Real Time Gross Settlement System are being implemented using the INFINET

IDRBT provided a major boost to electronic communications in the Indian Banking and Financial Sector by PKI-enabling various applications and through its Certifying Authority Services. With the Digital Certificates issued by IDRBT, Banks and Financial Institutions are building-in full-fledged security in their electronic communications, intra-bank and inter-bank applications and messaging, thereby facilitating speedy, secure and cost-effective financial transactions and improving customer service and satisfaction.

Did you know?

Nobel Peace Prize to OPCW

The Organisation for the Prohibition of Chemical Weapons is the implementing body of the Chemical Weapons Convention (CWC), which entered into force in 1997. As of today the OPCW has 189 Member States, who are working together to achieve a world free from chemical weapons. They share the collective goal of preventing chemistry from ever again being used for warfare, thereby strengthening international security.

The little-known Den Haag-based organization, has already verified the destruction of more than 80% of chemical weapons declared by its members. This works out to a staggering 58,000 tonnes of chemical agents and nearly 5 million items of munitions and containers—the biggest disarmament achievement of any weapons of mass destruction regime.

No wonder it won the 2013 Nobel Peace Prize for its contribution to the world peace. At present the global chemical weapons watchdog working to eliminate chemical arms stockpiles around the battlefields of Syria's civil war.



Pick of the month

Entrenchment

Entrenchment provision means a provision to the effect that certain provision of the article of association can only be amended if and only if certain procedure are followed which are more restrictive than a special resolution. This new concept is introduced in the new Companies Act, 2013, under Section 5(3).

The provision to be made - either on formation of a company or by an amendment in the articles agreed to by all the members of the company in the case of a private company or by a special resolution in the case of a public company. The company shall give notice to the RoC of such provisions in such form and manner as prescribed.



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



Service Tax Updates
CA. Ashit Shah,
Mumbai



FEMA Updates
Team Genicon,
Chennai



CUSTOMS & FTP

Notifications/ Circulars

Using emergency powers under Section 8A(1) of the Customs Tariff Act, 1975 the Central Government increased customs duty on import of articles of gold, silver and platinum jewellery and parts thereof and articles of goldsmiths' or silversmiths' wares and parts thereof to 15% from existing 10%.

No. 44/2013-Cus. Dated September 17, 2013

Amends number of notifications to provide that in case of default in fulfilling export obligation, if duty is paid to regularise such default, amount of interest paid by importer shall not exceed amount of duty.

No. 46/2013-Cus. Dated September 26, 2013

Clarifies that no export consignment packed with raw or solid wood packaging material shall be allowed clearance which are found deficient on meeting International Standards for Phytosanitary Measures.

Instruction F. No. 450/19/2005-Cus. IV dated Sept 16, 2013

Lays down guidelines for exercising power to arrest and grant bail by customs officers for offences under the Customs Act, 1962 ("the Customs Act").

No. 38/2013-Cus. Dated September 17, 2013

Notifies procedure for import of gold and gold dore bars by agencies notified by the Director General of Foreign Trade in supersession of Circular No. 28/2009-Cus. Dt October 14, 2009.

No. 34/2013-Cus. dated September 4, 2013

Clarifies that Bluetooth Wireless headsets for mobile phones / cell phones is correctly classifiable under Tariff Heading 8517/subheading 8517 62 of the Customs Tariff Act, 1975.

No. 36/2013-Cus. Dated September 05, 2013

Amends the Central Excise Duties and Service Tax Drawback Rules, 1995 ("the Drawback Rules") w.e.f September 21, 2013 so as to allow drawback on some dairy products not hitherto covered by drawback scheme.

No. 97/2013-Cus. (NT) dated September 14, 2013

New rates of drawback under the Drawback Rules is notified.

No. 98/2013-Cus. (NT) dated September 14, 2013

Case Law

The High Court of Delhi held that where goods are released on provisional assessment followed by final assessment, application

seeking refund of special additional duty can be made within a period of one year or six months, as the case may be, of final assessment in terms of Explanation II to Section 27 of the Customs Act, 1962 or within one year from date of provisional release.

Pioneer India Electronics (P) Ltd. Vs. Union of India & Anr [2013-TIOL-731-HC-DEL-CUS]

The High Court of Kerala held that there is no vested right with department to take over any of the properties which are in the name of dependents of defaulter. There is no power conferred on the officer to adjudicate on ownership of a property held by another, deeming it to be ostensible ownership.

DCC Vs. Ayesha AV [2013-TIOL-729-HC-KERALACUS]

FEMA/RBI/SEBI

Notifications/Circulars/News

The RBI has been decided to permit the eligible borrowers to avail ECB under the approval route from their foreign equity shareholder for general corporate purposes with minimum avg. maturity of 7 years subject to fulfillment of certain conditions.

AP DIR Circular no. 31 dated September 04, 2013

Recently the limit under LRS scheme has been reduced to USD 75,000 per year, in the light of above, the RBI have given clarification to various stakeholders queries.

The RBI has enhanced the limit from Rs.7,500/- per person to Rs. 10,000/- per person to the resident individuals who are travelling abroad and also resident individuals allowed to bring back to India at the time of return.

A.P. (DIR Series) Circular No. 39 dated September 06, 2013

The RBI has replaced common forms EDF for exports of goods from non-EDI port and a common SOFTEX for single as well bulk software exports instead of GR/PP/SDF/SOFTEX/Bulk SOFTEX forms.

A.P. (DIR Series) Circular No.43 dated September 13, 2013

The RBI has been decided to amend the term control as under; Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

AP DIR Circular No.44 dated September 13, 2013

The RBI has decided to allow companies in all sectors to avail trade credit not exceeding USD 20 million up to a maximum period of five years for import of capital goods as classified by DGFT. All other aspects of Trade Credit policy will remain unchanged and should be complied with.

A.P.(DIR Series) Circular No.53 dated September 24, 2013

As you aware that the all in cost limit for availing ECB for avg. maturity period of 3 - 5 years is 6 months LIBOR + 350 bps and more than 5 years is 6 months LIBOR + 500 bps. The RBI decided to extent the same all in cost ceiling limit for ECB till March 31, 2014.

A.P. (DIR Series) Circular No. 56 & 58 dated September 30, 2013

The RBI has decided to discontinue this facility allowing eligible borrowers to raise ECB at a higher all-in-cost to refinance / reschedule an existing ECB with effect from October 01, 2013. The scheme of refinance of existing ECB by raising fresh ECB at lower all-in-cost, subject to the condition that the outstanding maturity of the original ECB is either maintained or extended, will continue as hitherto under the automatic route or approval route.

A.P. (DIR Series) Circular No. 59 dated September 30, 2013

Excise & CENVAT

Notifications/ Circulars

Amends Notification No. 12/2012-CE dated March 17, 2012 to provide for exemption from payment of excise duty to specified goods used in manufacture of rotor blades and intermediates, and parts thereof for wind operated electricity generators subject to conditions prescribed therein.

No. 27/2013-CX, dated September 12, 2013

Clarifies that clearance of goods by debiting duty credit scrips in terms of exemption Notifications No. 29/2012-CE, 30/2012-CE and 31/2012-CE, 32/2012-CE and 33/2012-CE all dated July 9, 2012 shall not be treated as clearance of exempted goods. Instead, it is to be treated as payment of duty for the purpose of applicability of Rule 6 of the Cenvat Credit Rules, 2004.

No. 973/07/2013-CX dated September 04, 2013

Amends the Cenvat Credit Rules, 2004 to prescribe guidelines for reversal of Cenvat credit taken on capital goods removed after being used.

No. 12/2013-CE (NT), dated September 27, 2013

Lays down procedure and guidelines to be followed in respect of arrest and bail for offences under the Central Excise Act, 1944.

No. 974/08/2013-CX dated September 17, 2013

e-Magazine from ICSI – Mysore Chapter | Edition – 117 | October 2013

VAT, Sales Tax and Entry Tax

Case Law

The Supreme Court affirmed the view taken by it in K. Raheja Development Corporation Vs. State of Karnataka [2005 (5) SCC 162] and held:

For levying tax on goods sold in execution of a works contract, three conditions must be fulfilled - (1) there must be a works contract, (2) goods should be involved in execution of works contract, property in goods must be transferred.

- In a construction contract, above three conditions are fully met. Where a contract comprises of both works contract and a transfer of immovable property, such contract does not denude it of its character as works contract.
- Building contracts are species of works contract. In a composite contract of work and labor and a contract for sale, distinction between contract for sale of goods and contract for work is virtually diminished.
- Even if dominant intention of contract is not to transfer property in goods and ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax. Even in a single and indivisible works contract, there is a deemed sale of goods which are involved in the execution of works contract.
- Expression "tax on the sale or purchase of goods" includes a tax on transfer of property in goods whether as goods or in form other than goods involved in the execution of works contract.

Larsen & Toubro Limited & Anr Vs. State of Karnataka & Anr [2013-VIL-03-SC-LB]

The High Court of Madras held that knitted towel is an exempted commodity falling under item 2(iii) of Part A of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959.

Kwality Textiles Vs. State of Tamil Nadu [2013-VIL-78-MAD]

The Government of India in its revised draft of the Constitution (One Hundred Fifteenth Amendment) Bill 2011 regarding GST, has proposed insertion of a new sub-clause in clause-IV of Article 279A to provide for special provisions with respect to Jammu and Kashmir and North Eastern states of India.

Special provision for J&K and North East inserted in GST Bill [Kashmir Reader, September 20, 2013]

Service Tax

Notifications/ Circulars/News

The next time you are at a restaurant and you get the bill, check what you have been charged for soft drinks, bottled water and branded ice cream. All you have to pay for these items is the maximum retail price (MRP) marked on the product and nothing more - these products have been exempted from a 4.94 per cent service tax imposed by the Central government.

Circular No. 173/8/2013 - dated 07-10-2013

It is clarified by Board that by virtue of the entry in the negative list and by virtue of the portion of the exemption

notification, it will be clear that all services relating to education and auxiliary education services are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school, hostels, housekeeping, security services, canteen, etc. are exempt by virtue of the exemption notification.

Circular No. 172/7/2013 - dated 19-09-2013

At present refund applications have to be processed within 90 days pursuant to Section 11BB of Central Excise Act, 1944 and this 90 days period is outer limit after which interest becomes payable. There is nothing to prohibit processing & disposal of claims much earlier. It is now directed that all efforts should be made to ensure that the claims of rebate are disposed of within 30 days from the date of receipt of the claim complete in all respect, except those requiring pre-deposit. Further claims requiring pre-audit may also be proposed expeditiously.

F. No. 267/39/13 - CX 8 dated 01-10-2013

Exempts services by way of renting of room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes and services provided in relation to serving of food or beverages by a restaurant, eating joint or mess in the State of Uttarakhand from whole of service Tax leviable thereon during period September 17, 2013 to March 31, 2014.

Ad-hoc exemption Order No. 1/1/2013 dated Sept 17, 2013

Lays down guidelines for arrest and bail in relation to offences punishable under Chapter V of the Finance Act

No. 171/6/2013-ST dated September 17, 2013

Clarifies that by virtue of clause (i) of section 66D of the Finance Act, 1994 and serial No. 9 of Notification No.25/2012-ST dated June 2012, all services relating to education are exempt from payment of service tax

No.172/7/2013-ST dated September 19, 2013

Amends Notification No. 25/2012-ST dated June 20, 2012 to exempt services from payment of service tax provided by National Skill Development Corporation ("the NSDC") set up by

the Government of India, a Sector Skill Council ("the SSC") approved by the NSDC, an assessment agency approved by the SSC or the NSDC and a training partner approved by the NSDC or the SSC in relation to National Skill Development Programme implemented by the NSDC or a vocational skill development course under National Skill Certification and Monetary Reward Scheme any other Scheme implemented by the NSDC.

No. 13/2013-ST dated September 10, 2013

Case Law

Hon'ble Allahbad High Court has held that when the liability of service tax is admitted and application has been made under the VCES scheme, then no recovery proceedings could be taken until the application is disposed of. Moreover Section 107 permits the defaulter to deposit tax in two installments i.e. to pay 50% by 31st December, 2013 and remaining 50% by 30th June, 2014.

[Anand Caterers V/s Union of India - AIT 2013 162 HC]

The High Court of Madras held that declaration of assessee as a sick company by the Board of Financial and Industrial Companies is a sufficient cause under Section 80 of Chapter V of the Finance Act, 1994 for waiver of penalties imposed under Section 76 thereof for failure to pay service tax.

CCE Vs. Ramanasekar Steels Ltd. [2013 TIOL-662-HC-MAD-ST]

The High Court of Rajasthan held that when purchase bills and invoices produced by assessee are found genuine, simply because proper description of goods has not been given in bills would not be a good reason for imposing penalty under Section 76 of the Rajasthan Value Added Tax Act, 2003.

Fashion Suitings Pvt. Ltd. Vs. ACTO, Anti Evasion [2013-VIL-72-RAJ]

The High Court of Himachal Pradesh held that irrigation sprinkler is not an agricultural implement nor it is driven manually by animals. Therefore, it is not exempted from payment of VAT under Schedule B of the Himachal Pradesh Value Added Tax Act 2005.

Harvel Agua India Private Limited Vs. State of Himachal Pradesh & Others [2013 74-HP]

Regulatory Updates

Finance Ministry detects about Rs 1,000 cr customs, excise duty evasion

(Economic Times)

The Finance Ministry has detected customs and excise duty evasion of at least Rs 1,000 crore between January and July.

As many as 229 cases of customs duty evasion and 255 cases of excise duty evasion were detected by economic intelligence officials during the period. The amount of excise duty evasion was about Rs 982 crore and that of customs was at least Rs 100 crore, a Finance Ministry official said. A scrutiny of customs duty evasion cases revealed that mis-declaration and undervaluation of imported goods were the common modus operandi followed by fraudsters in order to cheat the exchequer, the official said.

The misuse of Indo-Thailand Free Trade Agreement for importing gold bars, evasions of duty in import of liquor, external or portable data storage drives and excess quantity of Chinese cigarettes and mis-declaration of Chinese batteries and Ammonium Chloride were detected in these cases. The officials also detected undervaluation in import of fingerprint identification and card based security systems by undervaluation and evasion of import duty by incorrect classification of tablet PCs.

BRICS meet to provide thrust for India's competition laws: CCI

A BRICS nations conference on international competition here next month will provide renewed focus and thrust on India's competition laws, according to CCI Chairman Ashok Chawla. Authorities and experts from across the world are expected to attend the third BRICS International Competition Conference scheduled in the national capital from November 20-22.

India ready to sign FTA with ASEAN

Aiming to give fillip to India's Look East policy, Prime Minister Manmohan Singh is expected to announce new initiatives to take forward ties with the ASEAN by setting up a mission and appointing an ambassador for the 10-member grouping. Mr Singh said that India was ready to sign an FTA with ASEAN on services and investment to boost their bilateral trade to \$100 billion by 2015, from \$76 billion last year. Unveiling a roadmap to boost economic ties, the government on Thursday pledged to sign a pact with the 10-member Association of South East Asian Nations (ASEAN) bloc on services and investment by the end of this year. Singh, will attend the 11th India-ASEAN Summit and the 8th East Asian Summit in Brunei on 17th October 2013. **During the visit, India will also sign an inter-governmental agreement with six East Asian nations on Nalanda University.**

WTO ministerial conference: India softens stand

Commerce and industry minister Anand Sharma has indicated India's willingness to discuss trade facilitation at the World Trade Organization ministerial meeting in Bali without tying it down to a debate on food security. India is leading the G-33, a grouping of developing nations, which is seeking amendments to the WTO agreement on agriculture to allow government procurement from marginal and subsistence farmers for public stockholding. It is also pressing for easy market access for so-called least developed countries (LDCs).

WTO is worried about impact of India's food bill on global markets

Ahead of WTO ministerial meet at Bali, the organisation's new chief Roberto Azevedo said India's food security law will raise subsidy levels and the issue needs to be addressed in a positive manner. Some members of the WTO, especially developed nations that are big commodity exporters, have raised concerns

that its large stocks of wheat and rice could lead India to dump those on global markets. Also, according to them, the food law that guarantees grains to nearly 70% of the country's more than 1.2 billion people at nearly throwaway prices would artificially lower local prices and damp demand for their products in one of world's largest markets. India is also keen to win legitimacy for its ambitious food security law that promises highly subsidized food grain to the poor from the WTO and is open to the issue being discussed at the Bali meeting in December.

Oil spill: Show-cause notice to ONGC

There were leakages from pipelines in ONGC's installation off the Uran Coast on Sunday. An ONGC official said action was taken immediately and the leakages were capped. The loss of fuel, according to reports, would be about 5,000 litres, but the ONGC official put it close to 1,000 litres. The company is expected to clean the spots in the next five days. ONGC officials maintained that the spill had not affected the local fisherman and there were no ecological concerns either.

The Ministry of Environment & Forests has issued a show-cause notice to ONGC on the oil spill in the west coast near Mumbai. Ministry has also constituted a team and has asked to submit its report by October 14.

IIM Ahmedabad 39th in Economist's MBA school ranking

IIM-A is the only Indian B-school which is getting ranked in The Economist full-time MBA programmes ranking since the last four years. This year, Indian Institute of Management, Ahmedabad is 17 places higher in The Economists' ranking of top 100 management schools, compared to its position in 2012. Its ranking was 56th last year. Further, in the Asia and Australasia 2013 rankings, Indian Institute of Management, Ahmedabad moved up one place from fifth position last year to fourth position in 2013.

Arundhati Bhattacharya is SBI's first woman head

Oct 07, 2013, Monday was a historic day for the country's largest lender State Bank of India (SBI) that boasts a 207-year history. For, Arundhati Bhattacharya, 57, its CFO and the youngest of the bank's four MDs, took charge as the first-ever woman chairperson. Unlike other public sector banks (PSBs) that have a combined post of CMD, SBI has a chairman/chairperson and four MDs.