eMagazine

100th Edition

May 2012

For Private Circulation Only

E- Newsletter from The Mysore Chapter of the Institute of Company Secretaries of India

-: Editorial Team :-

CS. Dattatri H M,
CS. Sarina C H,
CS. Omkar N G,
CS. Rashmi M R

Support Team:

CS. Ravishankar Kandhi,
CS. Abhishek Bharadwaj,
CS. Ajay Madaiah

For past editions of eNewsletter:

http://www.icsi.edu/mysore

Join 2100+ 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.

From Chairperson's Desk

Dear Members and Students of CS fraternity,

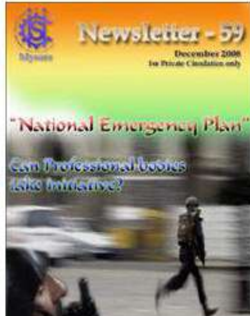
I'm proud to present before you the **Centenary Edition** of the Mysore Chapter's e-Newsletter. I'm indeed privileged and honored to pen down a few words addressing you all in this landmark edition and I would like to take this opportunity to acknowledge the effort of our Editorial Team whose unmatched enthusiasm and zeal through the past eight years has made us reach this important milestone.

What started as a means of formal communication in December 2003 under the Name – "The New Horizon" among the members of Mysore Chapter, has grown to be a most Welcomed e-Magazine by over 35,000 inboxes of professionals all over India. Most importantly, the Newsletter has been a brand ambassador of Mysore Chapter and throughout its journey till the 99th edition of the Newsletter, the Mysore Chapter has earned the encouragement and support of thousands well wishers among the CS fraternity as well as other professional communities.

On behalf of the Members and Students of the Mysore Chapter I thank all of you for making this achievement possible.

Yours in CS fraternity,
CS. Srilatha T G

The New Horizon



Newsletter - 11

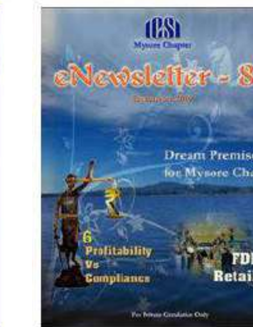
Newsletter - 60

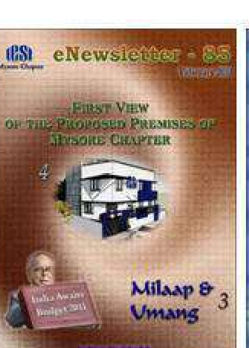
milaap 2009

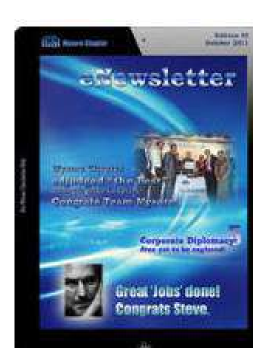
Newsletter-33

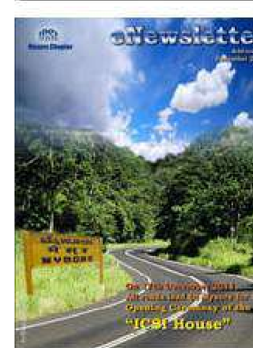
Newsletter - 64

"A Re-look at Corporate Governance"









CS. C K Sabareeshan
Past Chairman, ICSI Mysore Chapter
Past Chairman, CII, Mysore Zone
shivakrupa@sancharnet.in

Greetings to you all on this auspiscous New Year day when "Nandanam" begins as per the solar calendar.

Hearty congratulations on the momentous occasion of our chapter's 100th e-Newsletter!

This is indeed a commendable land mark! We can take pride in bringing in the green initiative much before our institute or for that matter even the Government brought this in! This in my view is "Proactive Leadership"

I wish the team greater success going forward in growing our e-community exponentially"

CS. DD Bhat
Past Chairman, ICSI, Mysore Chapter
Chairman, NIPM, Mysore Chapter
ddbhat@vtp.jkmail.com

I note with immense pleasure that the e-Newsletter of May 2012 would be the 100th edition!

The e-Newsletter of Mysore Chapter of ICSI, has created its own space and has set a high standard. The Editorial Team and the contributors have made the e-Newsletter a collector's item. The seed planted little over 6 years back has grown in to a huge tree! It now deserves to be called a magazine or a digest.

Kudos to TEAM E-Newsletter!!

CS. Sudhir Babu
Council Member, ICSI
sudhirinc@yahoo.com

It is indeed heartening to note that the Mysore Chapter is all set to roll out the 100th edition of eNewsletter. It has been a long journey for the Mysore Chapter since eight years to reach this milestone.

It is a pride moment not only for the Mysore Chapter but also to the ICSI that you have successfully completed 99 editions so far and would release 100th edition in the month of May, 2012. This speaks volumes of dedication and commitment of the Team – Mysore Chapter.

Congratulations to you and deserve appreciation by one and all!!!

CS. R. Sridharan
Council Member, ICSI
srivani1959@gmail.com

I am happy to note that the Mysore Chapter is bringing out its 100th Edition of the e-Newsletter. I am one of the keen readers of the newsletter and over the years, the content, format and style have all undergone tremendous changes. The number of e-mail deliveries has also increased exponentially over the years, which only clarifies the popularity of the e-Newsletter beyond the confines of Mysore.

Successive Chairmen and other members of the Mysore Chapter Managing Committee have contributed in their own way in making this e-Newsletter a powerful medium of knowledge and happenings. Mysore Chapter is always been in the forefront and the members have exhibited their talents and passion in various activities of the Chapter and real testimony to this e-Newsletter and the elegant building of the Mysore Chapter.

My suggestion is that apart from regularly publishing the e-Newsletter every month, the chapter could bring out an Annual Number with various inputs, which the recipients like me, would like to preserve in hard copy form.

My congratulations to all the members and students of the Mysore Chapter.

CS. B. Narasimhan
Council Member, ICSI
narasimhan.b8@gmail.com

I am glad to know that Mysore Chapter is coming out with its 100th edition of E Newsletter in the month of May, 2012. I am one of those privileged recipients of this E Newsletter which is very informative for all the professionals and in particular CS professionals both in practice and in employment.

I wish to compliment the team in Mysore for their untiring efforts and managing to reach the milestone of 100th edition of E Newsletter. I wish the Team Members at Mysore all success.

CS. Atul Mehta
Council Member, ICSI
atul@mehta-mehta.com

I am happy to note that Mysore Chapter is coming out with 100th edition of chapter's newsletter. I compliment team Mysore on this occasion and I am sure that under your leadership Mysore Chapter will grow and will make new milestones.

Dr.Baiju Ramachandran
Secretary, ICSI-SIRC, Chennai
baiju@bracs.co.in

I was astounded to know that, Mysore Chapter of The Institute of Company Secretaries of India has published 99 e-Newsletters till date and is ready to publish its 100th edition in May, 2012.

Mysore chapter has always fuelled and stimulated the inherent desire to achieve, and still continues to hold up throughout in the journey towards the pinnacle of excellence. This is a significant accomplishment that undoubtedly required the dedication and cooperation of the whole team twinned with fortitude and perseverance

During this occasion I would like to congratulate the entire team for their colossal support and the team spirit, without which this triumph wouldn't have been possible.

LONG WAY TO GO! NEW HEIGHTS TO REACH!!

The Pristine City of Mysore has been a seat of Art, Culture and Education from the days of yore. Mysore, the princely city, attracts students from various parts of the Country and the World. In a recent survey, Mysore was rated the second cleanest city in India. Further, it has the repute of being the Second best Yoga City in India. ICSI could not have chosen a better place to house its Chapter, in this City of Learning. The success story of the Mysore Chapter, spanning 33 years, has been a roller coaster ride. The industrial growth in Mysore, however, did not spur much; this spells less or no opportunities for our young professionals. Hence, the number of Company Secretaries residing in Mysore has not grown beyond 25, for many years. But our sustained career awareness programs, has seen the students' number grow from 100 to over 2500.

In 2003, the outcome of our passion to connect meaningfully to our professional fraternity led us to the Electronic newsletter. The advantages of this E Media are:

1. We need not cut trees for this purpose – nature friendly!
2. Pages can be colourful and dynamic!
3. Creation of newsletter can be done at any convenient time!
4. It can be circulated with lot of ease – over mail!
5. Readers can respond easily!
6. Readers can save the file without worrying about space constraint!
7. Readers can read it any time at their convenience!
8. Newsletter can even be read on mobile phones these days!

Ms. Preeti Malhotra, President ICSI year 2007 Releasing 48th edition of the Newsletter

We agree there are certain disadvantages as well. Like:

1. We can not touch and feel electronic magazine.
2. We can not read it sitting back / laying on bed with relaxed mood.
3. Those who do not have an email id will not receive it.
4. Those who do not browse internet can not read it.

Let s realize that there is so much of leaning on E governance these days – from E mails to E filing. E Newsletter also affords you a print in an instant.

We recall the encouragement of our then Chapter Chairman C.K. Sabareeshan, who immensely supported our thoughts and E initiative.

The Journey thus began with a single member eNewsletter team of CS Dattatri H M. The first ever single page edition in December 2003 reached about 18 Company Secretaries in Mysore. As months rolled, the pages increased, contents improved, number of recipients became manifold, the members and students

Mr. Anil Murarka, President ICSI year 2011 Releasing Flash Bulletin of the Newsletter

from Mysore joined hands in building the network, and we are proud to say that we reach more than 35000 mailboxes bang on the 15th of each month. Three special editions of the eNewsletter completely devoted to Environment, Health and Safety in March 2008, October 2008 and March 2009 were brought forth. What an incredible journey! This has not been without obstacles; on two occasions in the past, we nearly stopped the publications for various reasons. It was CS Sabareeshan, who gave us the moral support to sustain. The other chairmen -CS DD Bhat has been encouraging enough; CS Anshuman arduously streamlined the administration at the Chapter.

We are grateful to our professional friends for contributing their time, knowledge and expertise in the form of articles to the eNewsletter, making it absolutely useful to the readers. Month after month, for nearly 20 days, the Editorial team put their best efforts along with our columnists to bring out the edition at the strike of 15th.

Here is a brief introduction to the seven member editorial team, with an earnest acknowledgement of several other invisible hands that are supporting the team:

1. **CS. Dattatri H M** is playing the role of lead editor- he consolidates and designs the magazine to make it most eye catching.
2. **CS. Sarina Chouta Harish** with a keen sense of the language and grammer edits the articles meticulously to heighten its presentability
3. **CS. Omkar N G.** - "Om" are the letters that invoke all mantras. He sends out alerts and is a time keeper, reminding the rest, of the timelines for receiving the columns.
4. **CS. Rashmi M R** brims with ideas. She has a keen eye for errors and omissions.
5. **CS. Ravishankar Kandhi** is the owner of "Spectrum Space" – a special corner exclusively for the students. Ravi is very quality conscious.
6. **CS. Abhishek Bharadwaj** is the compiler of legal updates, one of the front runners in the success of the eNewsletter.
7. **CS. Ajay Madaiah**, is a recent member of our team...he adds a dash of colour and life to the magazine.

In this fast paced life, every professional is running out of his time to know more. Many a times, we do not take the time out for "sharpening our axe" – that is the knowledge quotient. The e newsletter is a step in the direction of bringing you a capsule of news and updates by way of our columns 'Living Room', 'IT For Corporate Professionals', 'Web Yatra' and 'News Room' apart from articles and legal round up. Of course, it gives the editorial team an opportunity to upgrade itself and also to grow together.

Our efforts to give the best is driven by an intellectual intent and not by a commercial intent.

In appreciation of our efforts to present a resourceful newsletter, many of our readers have advised us to christen the publication "E Magazine". So, on reaching the 100th milestone, we shall call it "E Magazine".

We would love to have your feedback and suggestions.....any time! **Let us grow together!!**

Table of Contents

Articles:

1. *CS Benevolent Fund* P-10
2. *Fund Flow With Less Compliance In Private Company* P-11
3. *Professional judgement Enhances board Oversight* P-13
4. *Living Room – The Ripples* P-15
5. *Education Growth in India* P-16
6. *CSR in everyday life* P-18
7. *CSR: Company Secretarial Responsibility* P-19
8. *Workplace Diversity* P-20
9. *GAAR: Adverse Impacts on Foreign Equity Investors* P-22
10. *A Company, neither Public nor Private !!* P-24
11. *The role of a CS in the Companies Bill 2011* P-25
12. *FDI Schema in India* P-26
13. *Sweat Equity* P-28
14. *Is clarity so difficult?* P-30
15. *Non-Admitted Insurance* P-31
16. *Aha! Great moments in creativity* P-34
17. *Nexus between IPR and Competition Law* P-37
18. *SICA: Outmoded remedies and long wait rehabilitation!* P-38
19. *Institutional Placement Program - A basic analysis* P-40
20. *The Plan 'B'ack up – Corporate Debt Restructuring* P-42
21. *RBI cuts Repo rate by 50 bps to 8%, loans may get cheaper* P-44
22. *Goodwill* P-46
23. *Preferential allotment of securities by unlisted public companies* P-48
24. *Share application Money pending Allotment* P-50
25. *Independent Director, Guardian or burden?* P-52

News Room P-21

Web Yatra: *Info please* P-53

IT for Corporate Professionals!: *Smart App Protector* P-54

Spectrum Space P-55

Legal Update P-56

CS Benevolent Fund

The main object of the Fund is to provide assistance for education / medical purposes. The membership of the Fund shall be open to those who are Members of the ICSI.

Contribution to the Fund qualify for the deduction under section 80-G of the Income Tax Act, 1961.

Chandrika S.
Management Trainee - MSPL Limited,
Hospet - 582 203
chandrika@mspllimited.com

Benevolent Fund of the Institute of Company Secretaries was formally registered on 17th November, 1976 under the Societies Registration Act, XXI of 1860 as "I.C.S.I. Members Benevolent Fund" and subsequently changed to "Company Secretaries Benevolent Fund" (the Fund) with effect from 5th December, 1984.

Thus, the effective gamuts of the Fund are explained hereunder:

MEMBERSHIP: The membership of the Fund shall be open to those who are Members of the Institute of Company Secretaries of India.

An application for enrollment as a member of the Fund shall be in Form 'A' and the Members shall have to pay an amount of Rs. 7,500/- with effective from 01.04.2012 (previously Rs. 5,000/-) as a one time contribution for life membership.

OBJECT: The main object of the Fund is to provide assistance for education/medical or for any other similar purpose in deserving cases to the

- Members of the ICSI
- Spouse and Children of the deceased members.

ADMINISTRATION: Management of the Fund is administered by the Management Committee consisting of not less than 5 but not exceeding 15 Members. One-third of the total elected members of the committee will be liable for retirement every year and shall be eligible for re-election. President, Vice President and Secretary of the ICSI are ex-officio members of the Managing Committee of the Fund. The Committee shall meet at least twice a year.

ELIGIBILITY FOR MEMBERSHIP OF MANAGING COMMITTEE:

A person who is a life member and a nomination notice signed by at least two members of the Fund received 15 days before the date of election must be lodged at the registered office of the Fund.

DISQUALIFICATION OF MEMBER OF THE MANAGING COMMITTEE:

- If he is declared an insolvent by a competent court; or
- If he compounds with his creditors; or
- If he ceases to be a Member of the ICSI or of the Fund; or
- If he absents himself from three consecutive meetings of the Committee without leave of absence previously obtained from the Committee.

FINANCIAL ASSISTANCE AND INSURANCE BENEFIT:

- Upto Rs. 60,000 is provided to the members for medical expenses for self, spouse or dependents in deserving cases on receipt of request.

(Contd in page 15)

FUND FLOW WITH LESS COMPLIANCE IN PRIVATE COMPANY

The provisions of Section 69(4) of the Companies Act, shall not apply to Private Company. They can take advantage of the same and retain the share application money for unlimited period. Private Companies can accept deposits from other companies and there is no restriction under the Companies Act, but will get attracted by Section 2(22) (e) of IT Act, by calling it as Deemed Dividend.

R. Ramela
Company Secretary in Practice, Coimbatore
rum_jai@yahoo.com

Fund Flow with less compliance and limitations, into a private company, can be in the form of share application, unsecured loan and deposits in addition to minimum share capital.

Share Application Money: Share Application money is the money received by a company for a subscription of shares or stock and will be shown as a current liability until such time as the stock is issued, then it will be considered as part of equity.

How long the said amount can be kept by the company as Share Application?

The provisions of Section 69(4) of the Companies Act, which speak about deposit of the application money up to the period prescribed therein. These provisions shall not apply to Private Company. Therefore there is no time limit to retain the said money. But indirectly Section 205C read with Investor Education and Protection Fund (awareness and protection of investors) Rules, states that application money received by Companies for allotment of securities and *due for refund* and interest accrued on it and not claimed for a period of seven years from the date they become *due for payment* should be transferred to the said fund. This provision is applicable to all companies. The question of *the date of refund or payment* will arise only when the company mentions those dates in any of its application at the time of receipt of funds or thereafter. In case, the company does not mention those dates, then the Private Company can take advantage of the same and retain the share application money for unlimited period.

Whether the quantum of share application money with or without paid up share capital can be more than the authorized share capital?

This is no restriction under the Companies Act, 1956. As though granted, by practice, the companies used to retain the share application money without making allotment of shares over and above the authorized share capital. Shareholders, who aware of their legal rights may force the company to make allotment of shares or to refund their fund. It is at this point of time, the question of oppression and mismanagement started and the shareholders approached the concerned Registrar of Companies / Company Law Board to redress their grievances. In order to protect the public, the Registrar of Companies empowered by Section 614 of the Companies Act, 1956 may direct the Companies to make allotment of shares or to refund the amount. Again here some companies may record the receipt of share application money and provide assurance to the applicants by recording the same in the board meeting minutes. These Companies will also submit the same assurance in form of undertaking to the Registrar and may postpone the event for some time. This may give way for the companies to hold the unexplained money. Section 68 of the Income Tax Act, will attack such unexplained money. Therefore Companies has to maintain proper records of this share application money to show

explanation in form of nature and source to the Income Tax Department.

Further, companies receiving application money under Foreign Direct Investment should be through proper channel and has to reported through its Authorized Dealers to Reserve Bank of India (RBI) within 30 days from the date of its receipt and has to make an allotment within 180 days from the date of receipt. Incase of non-allotment, it has to refunded through proper channel and allotment if made, has to be reported to RBI within 30 days. This provision is applicable in case of all companies. Non compliance of those provisions is treated as compoundable offence.

What is meant by share application money pending for allotment?

The old Schedule VI of the Companies Act, 1956 does not specifically provide for share application moneys or calls received in advance. So they are shown in the balance sheet under a separate heading, between "Share Capital" and Reserves & Surplus". But now the Ministry of Corporate Affairs has come with the revised Schedule VI, which gives space for share application money pending allotment. Again the same is divided into two parts - Money for which shares will be allotted (ie.,allotment is pending) and the Money which is due for refund. Share application money (Only the amount which is not due for refund) pending allotment has to be shown as a separate category on the face of the balance sheet but is not to be presented within 'shareholders' funds'. The amount which is due for refund should be shown under "other Current Liabilities" along with interest accrued thereon. Moreover, as per ICAI guidance note on Schedule VI, directs to give some disclosures in respect of each of the said amounts.

Unsecured Loan: A loan that is issued and supported only by the borrower's creditworthiness, rather than by some sort of collateral. Generally, a borrower must have a high credit rating to receive an unsecured loan. Under Old Schedule VI of the Companies Act, 1956, Fixed Deposits accepted by the company, Loans and advances from subsidiaries, Short Term Loans and Advances are covered under the head Unsecured Loan.

What is the limit for the quantum of acceptance and time limit for retaining the amount as unsecured amount by the company?

As per Section 3(1)(iii)(d), Private Companies are strictly prohibited from accepting of deposits from persons other than Directors, members and their relatives. Whereas Public Companies are, by virtue of Section 58A, 58AA, 58AAA, 58B and 59 read with Companies (Acceptance of Deposits) Rules, 1975 (Rules), restricted to accept deposits and up to time, quantum and rate of interest prescribed under the said Rules. Apart from these, Public Company can accept loan from Directors (which is not a deposit) subject to declaration from them as stated under Rule 2(b)(ix) of the said Rules. Rule 2 (b) of Companies (Acceptance of Deposits) Rules, 1975, defines Deposit. Deposit means any deposit of money and includes *any amoun*t borrowed by company but does not include the items specified under the said rule. So any amount other than those items listed under the said rule is treated as Deposits. As per Rule 2 (b) (ix) of said Rules, Private Companies can accept money from Directors, members and their relatives subject to declaration received from them as stated under the said Rule. Apart from the above, there are well decided cases, which states that an amount received by the company if not in compliance of any of the conditions mentioned under the said rule; the amount will be treated as loan and not as deposits. Girija Smelters Ltd. V Saraswathi Finance Corpn. (2003) 52 CLA 98; (2002) 40 SCL 720; (2004) 119 Com Case 592 (CLB – Chennai) and also in V. Srinivas V Machines & Machine Tools (P.) Ltd. (2002) 110 CompCas 55 CLB – southern. Therefore Private Companies can take advantage of these decided cases till otherwise decided.

Whether Money can be accepted by a company from another Company – Inter Corporate Deposits?

Yes, as per the said Rule 2(1)(iv)- Restrictions are only for the lending Public Company [if falls within the category of Section 295(1)]. The said section shall not apply to the Private Company (whether it is lending or accepting loan). In case of Private Company, there is no restriction under the Companies Act, but will get attracted by Section 2(22) (e) of IT Act, by calling it as Deemed Dividend.

How the amount accepted as deposit or unsecured loan are classified?

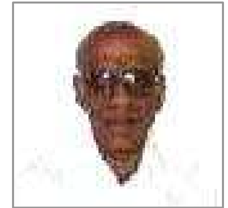
Under revised Schedule VI, liabilities are to be classified as current when it satisfies any of the Conditions - (a) it is expected to be settled in the company's normal operating cycle; (b) it is held primarily for the purpose of being traded; (c) it is due to be settled within twelve months after the reporting date; or (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. All other liabilities shall be classified as non-current.

So those items relating to unsecured loan found place under both the head Current and Non- current separately depending upon the above conditions via Deposits, loan and advances from related parties, other loan and advances. Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each is required to be disclosed. Terms of repayment of loans and interest as on the date of Balance sheet is required to be disclosed separately for each case.

PROFESSIONAL JUDGEMENT ENHANCES BOARD OVERSIGHT

One of the most common judgment traps that individuals and groups fall into is the tendency to want to immediately solve a problem, to appear decisive by making a quick judgment.

By consistently following a sound judgment process, directors can improve their oversight and monitoring of the organization's strategies and risks, including the risk of fraud.



CA Ramachandran M
Partner, Suresh & Co. Chartered Accountants, Bangalore
ramachandran.mahadevan@gmail.com

The challenge for board members is both to effectively challenge the judgments of corporate officers and enhance the quality of their own judgments. These two aspects of professional judgment are essential to organizational performance and the effective oversight of enterprise-wide risk.

The judgment process is based on KPMG's Professional Judgment Framework, developed in collaboration with Glover and Prawitt. *Judgment* is the process of reaching a decision or drawing a conclusion when there are a number of possible alternative solutions.

An effective judgment process will be logical, flexible, unbiased, objective, and consistent. It will utilize an appropriate amount of relevant information, and it will properly balance experience, knowledge, intuition, and emotion.

The framework, among other things, enables individuals to identify where and when the quality of judgments tends to be threatened by predictable, systematic judgment traps and biases. Awareness of such traps and biases can enable directors to improve the consistency and quality of their own judgments and enable them, in their oversight role, to constructively improve the judgments of management.

The growing complexities of the global business environment and demands for effective corporate governance and oversight have placed a premium on sound judgment and decision making.
PROFESSIONAL JUDGMENT PROCESS CONSISTS OF THE FOLLOWING FIVE STEPS: Defining the problem and identifying fundamental objectives (step 1) is crucial in setting the stage for high-quality judgments. Skipping this step can result in time wasted solving the wrong problem, and it can severely limit the set of alternatives available for consideration. It is important to consider alternatives (step 2) because our judgment can only be as good as the best alternative considered. , Decision makers often skip step 1 and consider an artificially constrained set of alternatives because they are influenced by a judgment trigger, which masquerades as a valid problem definition. Gathering and evaluating appropriate amounts and types of information, as indicated in step 3, is a critical step in coming to an informed conclusion, which is step 4. Finally, step 5 involves articulating and documenting the rationale for the conclusion, which provides the decision maker(s) an important opportunity to reflect on the rationale for a judgment and on whether a sound professional judgment process was followed.

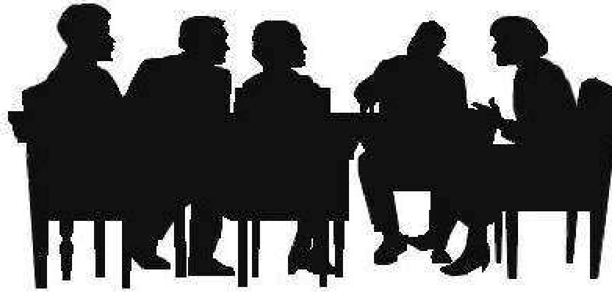
One of the most common judgment traps that individuals and groups fall into is the tendency to want to immediately solve a problem, to appear decisive by making a quick judgment. In a group setting, this *rush to solve* is often manifested as a tendency to strive toward quick compromise and early consensus.

A judgment trigger is another common judgment trap and can often be recognized when a problem definition is stated in the form of an alternative. Four common, bias-inducing tendencies that can predictably lead even the brightest people to make suboptimal judgments are as follows:

Overconfidence is the tendency for decision makers to overestimate their own abilities to perform tasks or to make accurate assessments of risks or other judgments and decisions.

Confirmation which is the tendency for decision makers to seek—and put more weight on—information that is consistent with their initial beliefs or preferences ,

Anchoring is the tendency to make assessments by starting from an initial numerical value and then adjusting insufficiently away from that initial value in forming a final judgment



Availability is the tendency for decision makers to consider information that is easily retrievable from memory as being more likely, more relevant, and more important for a judgment.

CONCLUSION: By consistently following a sound judgment process, understanding where directors and management are vulnerable to predictable traps, and appropriately challenging their own judgments and the judgments of those they are charged with overseeing, directors can improve their oversight and monitoring of the organization's strategies and risks, including the risk of fraud. (Excerpts from Document Published In March 2012 by The Committee of Sponsoring Organizations of the Treadway Commission (COSO).supported by the Institute of Internal Auditors (IIA), the American Accounting Association (AAA), the American Institute of Certified Public Accountants (AICPA), Financial Executives International (FEI), and the Institute of Management Accountants (IMA). And link for the full document as follows – http://www.coso.org/documents/COSO-EnhancingBoardOversight_r8_Web-ready%20(2).pdf)

MITIGATING TRAPS AND BIASES Once we are aware of the traps and biases, we can take steps to mitigate their effects, as provided below:

Overconfidence Tendency Be aware Challenge expert's or adviser's estimates —Potential causes of unexpected outcomes —Estimates of unexpected outcomes Challenge extremely high or low estimates Challenge underlying assumptions

Confirmation Tendency Be aware Make the opposing case and consider alternative explanations Seek and consider disconfirming or conflicting information

Anchoring Tendency Be aware Make an independent judgment or estimate Consider relevant alternative anchors Solicit input from others

Availability Tendency Be aware Consider why something comes to mind (for example, vividness and/or recent events) Make the opposing case Consult with others Obtain and consider objective data

---

Article on CSBF Continued from page number 11…

- For education at the rate of Rs. 10,000/- per child (subject to maximum of two children) in deserving cases is provided to the family of the deceased members.
- A member of the Fund upto the age of 60 years it covers the member's future through the Group Life Insurance Policy for a sum of Rs. 2,00,000/-.
- In addition to this additional financial assistance of Rs. 3,00,000/- (w.e.f. 1st October, 2010) is provided to the family of the deceased member of the Fund from the CSBF.
- The widow /dependents of the deceased member above 60 years of age may be provided financial assistance upto Rs. 2,00,000/- from the fund depending upon the merit of the case.

RECOGNITIONS:

- The Fund is recognized under section 12A of the Income tax Act 1961.
- Contribution to the Fund qualify for the deduction under section 80-G of the said Act.

OTHER CRITERIA OF THE FUND:

- The transactions of business are carried out by circulation of resolution (without prejudice to Management of the Fund).
- No allowances for members attending meetings.
- The Annual Accounts of the Fund are audited by Chartered Accountants every year on honorary basis
- All provisions of the Societies Registration Act (XXI of 1860) as extended to the Union Territory of Delhi will apply to the Fund.

Members who are joining the Funds would get comfort and security for them from CSBF.

The Ripples

A man was sitting by a lake. He was throwing small pebbles into it from time to time. A young boy happened to cross by. He was intrigued to see that after every few minutes or so, the man would toss a pebble into the lake. The boy went up to the man and said, "Good pastime, this stone throwing, huh?" "Hmmm," said the man. He seemed to be deep in thought and obviously did not wish to be disturbed.

Sometime later, the man said softly, "Look at the water, it is absolutely still." The boy said, "Yeah, it is."

The man tossed a pebble into the water and continued, "Only till I toss a pebble into it now do you see the ripples?" "Yeah," said the boy, "they spread further and further." "And soon, the water is still again," offered the man. The boy said, "Sure, it becomes quiet, after a while."

The man continued, "What if we want to stop the ripples? The root cause of the ripples is the stone. Let's take the stone out. Go ahead and look for it." The boy put his hand into the water and tried to take the stone out. But he only succeeded in making more ripples. He was able to take the stone out, but the number of ripples that were made in the process were a lot more than before.

The wise man said, "It is not possible to stop the movement of the water once a pebble has been thrown into it. But if we can stop ourselves from throwing the pebble in the first place, the ripples can be avoided altogether! So too, it is with our minds. If a thought enters into it, it creates ripples. The only way to save the mind from getting disturbed is to block and ban the entry of every superfluous thought that could be a potential cause for disturbance. If a disturbance has entered the mind, it will take its own time to die down. Too many conflicting thoughts just cause more and more disturbances. Once the disturbance has been caused it takes time to ebb out. Even trying to forcibly remove the thought may further increase the turmoil in the mind. Time surely is a great healer, but prevention is always better than cure."

Before you allow a thought or a piece of information to enter your mind, put it through the triple filter test of authenticity, goodness and value.

If you wish to achieve worthwhile things in your personal and career life, you must become a worthwhile person in your own self-development.

- Brian Tracy

"Professionalism: It's NOT the job you DO, It's HOW you DO the job."

"Fine" is a tax for doing wrong things. . where as, "Tax" is a fine for doing right things.

– Anonymous

Education Growth in India:

Challenges of Regulatory Compliance and Quality Resources

M.S. Sridhar
Head-HR, Manipal University-Bangalore
sridhar.ms@manipalglobal.com

Restriction on FDI in higher education is biased against economically weaker students, who cannot afford to go abroad and acquire foreign degrees. Entry of foreign universities into India should be allowed freely and placing restrictions only on universities and institutions based on religious affiliations.

The need is to establish a single window regulatory compliance authority for ensuring the quality of education.

India's growth story continues in the field of Education post its growth story in Manufacturing Sector, IT Sector and Telecom Sector. The entire world is looking at India for producing quality resource keeping in mind the "Advantage India" on demographic dividend. Before I proceed to share the prospects of Education Growth in India, I would like to bring in few facts and figures which are hindering factors to the growth in the field of Education.

Statistics of Education

It should be noted that Indians spend nearly $6 billion annually to send their children abroad for higher studies and technical training while there is no reason for India not emerging as a global hub for higher education and technical training. The real challenge therefore, is to expand capacities in higher education to keep ahead of the curve of rising domestic and global demand. However, this poses a well known policy dilemma. India has a huge population of uneducated children and the Constitution provides for free and compulsory education up to the age of 14. At the same time, India also has the distinction of highest illiteracy. Keeping apart the statistics on different levels of education, the main driver is higher education in India to compete with developed countries on providing quality education.

Currently, gross enrolment ratio is roughly at 9.80% and the country has a proposed plan to scale to 20% by 2020. One can imagine from the day we got independence we are 9.80% GER and India has to scale to 20% in the next 8 years.

That means, we need to double the capacity by creating infrastructure and providing other allied services, else think innovatively through technology to achieve this goal/vision.

Allowing foreign Universities into the Country

There is an effort on the part of the Government to block the entry of foreign universities into India. While Singapore, Dubai, Bahrain and China have already encouraged foreign universities to set up operations in their countries so that students can have easy access to degrees from those well recognized universities, there is a tendency to block such entry into India. There is a statutory requirement of partnership with Indian institutions, which curbs their autonomy and their standing or 'brand equity' in the market. Restriction on foreign investment in higher education is biased against economically weaker students, who cannot afford to go abroad and acquire foreign degrees.

Entry of foreign universities into India, like foreign investment, should be allowed freely, placing restrictions only on universities and institutions based on religious affiliations. We should welcome foreign universities to set up campuses, with or without their own investment, in India.

Definitely there is structural change required to allow for profit organizations to enter in this field. This would also make our universities and colleges more conscious of the current global competition.

Regulatory Framework in India

The current system is highly bureaucratic with multiple controls and regulations exercised by Central and State Governments, statutory bodies (UGC, AICTE and others), university administration and local management. Many Universities in order to evaluate performance of an institution and bring about a measure of accountability a mechanism of accreditation has been developed by UGC. This is an autonomous council under UGC called National Accreditation and Assessment Council (NAAC) with a purpose to carry out periodic assessment of universities and colleges.

Universities in India are set up either through state legislation or through the acquisition of a 'Deemed University' status through UGC. While a number of universities have Deemed University status, institutions offering traditional undergraduate degrees do not have this option open to them. In a Supreme Court judgement in the Chattisgarh case, the Court had decreed that each University set up should not only conform to the UGC norms but also be created through a legislation. This makes setting up of universities not only a long and tedious process but also a costly one. In a similar way, AICTE used to collect a deposit per course of up to Rs 50 lakh, which was held in a joint account for 10 years. Such measures increase the cost of setting up institutions.

To me, there is no question of non-compliance either for regulatory compliance or degrading the standards of education. The government should come up and establish a single window regulatory compliance authority wherein it approves, controls, manages and monitors the quality of education so that all the stake holders viz. Universities, Students, Employers, etc. are benefited without any pain point to follow the process. To make this happen, all bodies like UGC, AICTE or even MCI (Medical Council of India) for that matter should come under one roof. This will improve the efficiency as also speed in according approvals, etc.

Availability of Quality Resource

The way the education space is growing, one should clearly think of backward integration in education space also similar to the one industries practice. To quote an example ICICI as a part of backward integration for quality resources for first-day-first-hour productive concept, have partnered with Manipal Group to get trained resources. Similarly Education Institutes should explore and innovate to develop quality talent pool in the area of teaching and training. This will not happen unless and until hype or traction is created for the aspirants as education space is less glamorous especially for teachers unlike other sectors like IT/BT, Biotech, etc.. Therefore, there should be a multi fold approach to acquire young and quality faculties by balancing their aspirations both in terms of tangible and intangible requirements. This will help to flood the market and create quality resource/teachers/trainers available.

Acceptance of new way of teaching

Teaching is no longer remains the same what we used to learn 2 decades back. There is lot of innovation both in terms of teaching methodology i.e. Pedagogy as also in the tools used by the teachers to deliver a lecture. Even the word "teaching" has been replaced by the word "facilitator". Therefore, in the knowledge economy, today the teacher will not teach but he/she will facilitate learning by way or various approaches viz. workshop method, simulation method or even more interactive methods by creating interests in the minds of the young learners. While Universities and Colleges adopt new way of teaching, the onus also lies in the hands of employers to accept.

With various changes in the Education Space, it is evident that there is lot of innovation expected to happen both in terms of Regulatory aspect as also in the teaching/training fields to make this field more attractive.

In fact,

When the NASDAQ stock exchange began trading on February 8, 1971, it was the world's first electronic stock market. At first, it was merely a computer bulletin board system and did not actually connect buyers and sellers. The NASDAQ helped lower the spread (the difference between the bid price and the ask price of the stock) but somewhat paradoxically was unpopular among brokerages because they made much of their money on the spread.

CSR in everyday life

Suresh S Anandham, B.Sc., AICWA, ACS, CPA (USA), CGA (Canada)
Corporate Controller,
Arctern Consulting Private Limited, Bangalore
sursail@yahoo.ca

CSR is about conducting business in an ethical way and in the interests of the wider community which goes beyond employees, consumers and stakeholders.

Business and industry is driven by the profit motive.

But it is essential that we strike a fine balance between the drive for profit and conservation of natural resources.

The scorching days of summer are upon us, and water scarcity has become as rampant as the soaring temperatures. Not only that: water today comes at a price. Denizens of our increasingly cramped and crowded cities who could afford to buy this precious resource should consider themselves fortunate. But spare a thought for millions of fellow citizens for whom water has become a mirage.

That brings me to the subject of Corporate Social Responsibility, or CSR. Is there a link between CSR and the rapid depletion in supply of a natural resource like water? Yes, there is. Let me explain. The key idea that underpins the concept of CSR is that businesses can no longer function as isolated economic entities distanced or detached from the broader society. CSR is about conducting business in an ethical way and in the interests of the wider community which goes beyond employees, consumers and stakeholders. It is equally about responding positively to emerging social concerns and expectations and managing business processes in a manner that it impacts society in a positive way.

While CSR applies to all companies, it is of particular relevance to those who consume finite natural resources – all natural resources are seen as raw materials for industry - to produce a variety of products for our consumption. Of course, this fuels economic growth but the cost at which this comes is stupendous. The rate at which we are going, we are consuming more natural resources than what the planet Earth can naturally generate. And if we keep using them recklessly, there can be only one result: one day they will simply run out. And that day does not seem too far. Certainly this is not the legacy that we would want to leave for the next generation. Even viewed from the perspective of self interest, companies - be they in the manufacturing sector or in services industry - should be more judicious in their use of natural resources. Otherwise, they are headed for self destruction.

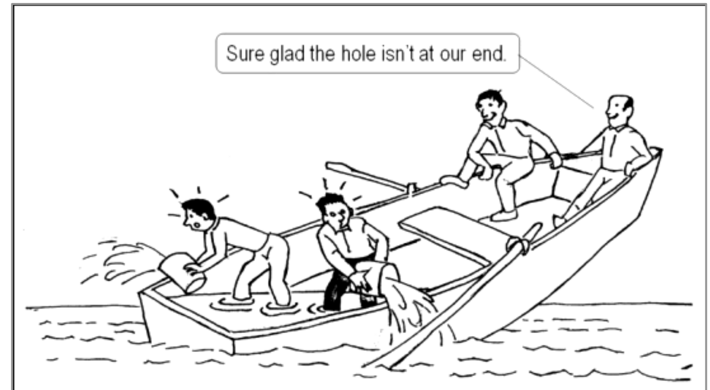
Coming to the issue of water conservation in the Indian context, well, the impact of various initiatives -- whether undertaken by local civic bodies or at the state level – to reuse/recycle water has thus far been minimal. And that is unfortunate. For water conservation to have real meaning there should first be the realization among all stake holders – individuals, corporates, various government and non-government agencies – that water is scarce resource and if we use it unwisely our future generations will suffer. While sustained awareness campaigns on water conservation can help the cause but only to a degree. What needs to be done in parallel is making the rule of law – and its implementation – stricter when it comes to adoption of water saving technology in homes (rain-water harvesting), agriculture irrigation, and in manufacturing. In India we have laws and rules for everything but implementation is badly wanting.

In summary, business and industry is driven by the profit motive. And there is nothing wrong with that. But it is essential that we strike a fine balance between the drive for profit and conservation of natural resources. As for the corporate sector, CSR initiatives are much needed in India considering the sheer size and population of the country – and increasing consumption of natural resources as we accelerate the pace of our economic development.

Judicious use of natural resources, including water, applies to individuals as well.

CSR: Company Secretarial Responsibility

Aishwarya Mohan Gahrana, B.Sc., LL.B., A.C.S., A.I.I.I.,
Director, Sun Legal and Management Services Pvt. Ltd.
aishwaryam_gahrana@yahoo.com



In one programme on Corporate Social Responsibility organised by some Chamber, one renowned Company Secretary claimed that Corporate Social Responsibilities are primary responsibility of a Company Secretary. Within no time, some other members negated this fresh liability with "we have enough" attitude.

The basis definition of CSR says "doing business responsibly".

The question is "For Whom"; for benefit of Society, for growth of society, for reducing social cost.

The question again is "How"; by complying with Laws, natural justice and ethics.

The Question again is "Who"; By the Company Secretary.

I again, again and once again read; http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf.

It is basically all about laws, simple laws with no rocket science. For a nation gifted with the Vedas, Vedanta, Mahabharata and Ramayana, it is already imbibed in our ethos. As a Company Secretary, you know the law of this land or the other. So it should be a matter of guiding the Management on the lines of these laws.

Post Strip:
One of my friend have great objection on this claim that company secretary can guide management on these bloody Social Responsibility.
(Shocked)

He points, "Charity begin from home so the social responsibility.
And who we Company Secretaries are??
Be fair, we hide dirt... and do dirt at home...
What we do??
We work for promoters not for stake holders.
We do check – list job.
We pre – certify forms without checking backgrounds.
We issue Compliance Certificate and Claims Company has maintained all record and registers which even we have not seen.
We compromise for job and assignment.
We draft and only draft whistle blowing policies.
We demand Secretarial Audit but do not list social benefits of such extra cost to stakeholders.
We compare ourselves with Personal secretary of our Managing Directors not Secretary General of United Nations."
(Period)

Post – Post Strip:
"In Dream begins Responsibilites"
William Butler Yeats, epigram to the book Responsibilities (1914), later used as the title of the story "In Dreams Begin Responsibilities" (1937) by Delmore Schwartz

Change your Circumstances

You have a choice in life to accept your position or change it. If you choose to plug along in life hoping that something will change for the better, you will not get very far. Always remember that when it comes to changing your circumstances, you can – you have that power.

- Harish Machaiah Kodendera

WORKPLACE DIVERSITY

CS. U Padma Shenoy
Company Secretary, Hyderabad
upadmashenoy@gmail.com

Diversity includes including people from various walks of life such as women, People with Disabilities (PWDs), racial diversity, geographical diversity, ethnicity and all other such aspects of our society.

"One size does not fit all" as every organization is placed differently in the market and has its own dynamics to implement diversification at work place.

Diversity and Inclusion is the new *mantra* in today's corporate world. Again, "Diversity" is often misunderstood as "promoting women in the workplace", which defeats the complete ideology of the Diversity mantra.

Diversity includes including people from various walks of life such as women, People with Disabilities (PWDs), racial diversity, geographical diversity, ethnicity and all other such aspects of our society. The concept in itself is a broad term towards making every corporate a socially-viable organization that believes in talent rather than background.

True gender diversity at workplace today has gone a long way in getting past the stereotypical views of male and female gender roles and communication styles. The new term is not about gender discrimination but gender inclusion and this also extends to including transgender, gays and lesbians into the workplace providing them a platform to prove talent. The Human resource (HR) policies contending with fair and equal treatment regardless of race, ethnicity, age and gender have been amended recently in certain countries to include the transgender status as well.

It is crucial to accept that in the process of bringing about a truly diversified workplace, one has to accept that gender roles are not always one and the same. One has to learn to accept and value the human colleagues based on performance and personality as opposed to perceived gender characteristics.

These aspects have a great bearing on the performance of the company in financial terms also. A gender diversified workplace is predominantly seen as an important strategy to achieve competitive advantage. The Management is also made responsible to link their performance, goals and objectives with the gender diversification.

In such scenario, the role of HR has assumed great importance to foster an all-inclusive knowledge based environment where every employee gets to learn and grow meaningfully in order to contribute to the success story of the organization.

"Diversity represents a company's fundamental attitude that it not only respects and values the individuality of its employees but also understands how to tap the potentially significant contributions inherent in diversity."
Alexandra Groess- Allianz Group's International Diversity Project

All said and done, one should accept that "One size does not fit all" as every organization is placed differently in the market and has its own dynamics to implement diversification at work place.

In business parlance, increasingly, the diversity is applied to the composition of the Board of Directors, implementing the Corporate Governance and encompassing the

workforce and the like. But the need of the hour is not just the leadership at the apex of the organizational hierarchy; organizations want a wider range of leadership skills, perspectives, expertise and working styles.

However, workplace diversity is not free from challenges and can be considered within three interrelated aspects of 1) attracting and retaining the talent 2) greater diversity amongst employees and 3) training.

At workplace, the least spoken about minority group is the people with different abilities. In a study, it is revealed that people with different abilities constitute less than 10% of the total workforce.

It is suggested that the top management set an example to recruit and retain qualified individuals with disabilities as their staff. Through training, HR can ensure that the other employees develop sensitivity towards the employees with disabilities.

Another overlooked area in retention terms, especially in Indian workplace is the cross cultural competence. This can be addressed with proper organizational training. Racial and cultural diversity in fact has a positive effect on overall performance in companies that use diversity as a resource for innovation and learning.

Conclusion:

Diversity at Workplace is not all about gender diversity alone, it includes people with cross-cultural habits, recruiting people with different abilities and sexual preferences.

The top management has to set an example in ensuring that the diversification flows down the organization and is not restricted to one area alone. The challenges faced in maintaining workplace diversity includes attracting & retaining, training and greater diversity amongst employees.

India to take US visa complaint to WTO

India proposes to take the US to WTO against the latter's visa fee hike, which discriminates Indian software companies from American firms.

"Department of Commerce proposes to seek consultations with the USA under the Dispute Settlement Understanding of WTO," Minister of State for Commerce and Industry Jyotiraditya Scinida said in a written reply to the Rajya Sabha.

India objects to being put on US IPR watch list

India has protested being placed once again in the US priority watch list of countries with insufficient intellectual property protection and has said its regime is completely compliant with all WTO regulations, including the Trips Agreement.
Commerce and Industry Minister Anand Sharma has shot off a letter to US trade representative Ron Kirk describing the US measure as unfortunate and unjustified. "I would like to mention that India has been found to be compliant with all WTO regulations, including the TRIPS Agreement, in the recent review of India's trade policy carried out in the WTO," Sharma said in his letter.

S'pore, India look for 'new areas of cooperation'

India and Singapore expressed satisfaction on their bilateral ties. Foreign Minister K. Shanmugam, who is on his first official visit to India, held talks with his Indian counterpart S.M. Krishna. He also met Law Minister Salman Khurshid.

Talks between the foreign ministers touched on coming up with an agreement on vocational training for India, a country where 70 percent of the population is under the age of 35.

Singapore is India's largest trade and investment partner in ASEAN, with trade touching US$17.44 billion in 2010-11, according to official Indian statistics. More than 80 financial institutions based in Singapore are registered with the Securities and Exchange Board.

GAAR: Adverse Impacts on Foreign Equity Investors

GAAR empowers the Government to deny tax benefits to foreign investors on their investments in India.

Companies which attempt to avoid tax by carrying out structured transactions will face new challenges in future with the government empowering the Income Tax Authorities to deny tax benefits to companies if they are convinced that such transactions were aimed at dodging tax in India.

CS. Amar Kakaria
ACS, ACA, ACWA

Owner and Director,
Fusion Advisors Private Limited, Mumbai
amar.kakaria@gmail.com

Anti Avoidance rules can be broadly classified into following 3 stages:

1. Measures based on general principles in the law:
- Refers to principles which are not codified in legislation (non-statutory).
- Includes a range of philosophies and approaches including "substance over form", "abuse of law", etc.
2. General Anti Avoidance Rules:
- Has same meaning as "anti avoidance rules based on general principles in law" except that it is codified and included in the legislation.
3. Specific Anti Avoidance Rules:
- Definite anti avoidance rules which apply to specific situations. E.g. Exit Tax, etc.

'General Anti-Avoidance Rules' also known as GAAR was unveiled by the Finance Minister during the Union Budget 2012-13 and is now deferred to be applicable from April 1, 2013. By introducing GAAR, India has moved from first stage to second stage. GAAR primarily deal with avoidance as well as evasion of tax liability.

- Avoidance – An attempt to reduce tax liability through legal means, i.e. to carry out business affairs in such a way that minimum tax would be imposed by the Act as opposed to the maximum. Example:– Mr X forms a company to sell his products. The company pays 15% tax by taking benefit of tax-holidays, but if Mr X himself sells the products, he would pay 30% tax.

- Evasion – Use of illegal means to reduce tax liabilities, i.e. falsification of books, under-statement of income, over-statement of deductions, etc. Example:– Mr Y sells his products for cash. However, Mr Y neither accounts for it nor deposits the proceeds in bank account.

Expected Provisions of GAAR

By introduction of GAAR, Income Tax Authorities would be empowered to declare an arrangement as an Impermissible Avoidance Arrangement if:
- The whole, a step or a part of the arrangement has been entered with the objective of obtaining tax benefit, and
- The arrangement:
  - Creates rights and obligations not normally created in arm's length transactions, or
  - Results in direct or indirect misuse or abuse of the provisions of the code, or
  - Lacks commercial substance in whole or part, or
  - Is not bonafide.

Companies which attempt to avoid tax by carrying out structured transactions will face new challenges in future

with the government empowering the Income Tax Authorities to deny tax benefits to companies if they are convinced that such transactions were aimed at dodging tax in India.

"Lacking commercial substance" can include situations where there is a:

- Significant tax benefits without a significant effect upon business risk or net cash flows
- Legal substance or effect differs from legal form
- It involves or includes:
  - Round trip financing
  - An accommodating or tax indifferent party
  - Any element that has the effect of offsetting or canceling each other
  - A transaction which is conducted through one or more persons and disguises the nature, location, source, ownership or control of funds

The presumption applies even if the main / overall purpose of the arrangement is not to obtain a tax benefit and only if a part of the arrangement is to obtain a benefit. The onus of proving that the purpose of a transaction is not to avoid taxes is likely to be on the assessee. The GAAR can be invoked as an alternative to or in addition to any other basis of making an assessment.

New Hurdles for Foreign Equity Investors

The proposals in the Finance Bill 2012 related to taxation of indirect transfers of assets and GAAR have created serious concerns among the foreign investors. GAAR empowers the Government to deny tax benefits to foreign investors on their investments in India. For instance, if local investors form entities in Mauritius with the sole intention of claiming exemption from capital gains tax, Indian Tax Authorities have the right to deny their claim for exemption provided under the India-Mauritius Treaty. Similar treatment will also be applicable for entities in Cayman Islands, Panama, etc.

Recently, the Asia Securities Industry & Financial Markets Association (ASIFMA) along with Securities Industry and Financial Markets Association (SIFMA) had written to the Finance Ministry contending that "such onerous taxation or even the risk of such taxation could threaten this important source of capital for India's businesses". Noting that FIIs are carefully evaluating these new tax risks, the communication also said that the proposals are too broadly worded. Further, there is also ambiguity in respect of tax structure for investments made under Participatory Notes (P-Notes) mechanism by the Foreign Institutional Investors (FIIs).

Finance Ministry recently announced that persons investing in stock markets through P-Notes will not have to pay taxes in India. It also clarified that Indian Tax Authority would not go beyond FIIs to check details about the P-Note holders. Accordingly, a question of liability for tax in India of the P-Note holder would not arise.

FIIs have assets under custody of more than Rs 10 lakh crore or 17 per cent of the capitalisation of India's equity markets. Further, many of these entities also regularly invest in Indian Government and corporate debt instruments. Moreover, several private equity and venture capital funds have significant exposure to India.

The Government needs to be very cautious while introducing and implementing measures like GAAR in order to protect interests of foreign investors or else it can have catastrophic impact on the future foreign equity investments in the economy. Needless to mention, other emerging countries will not miss such a golden opportunity to present themselves as an alternative to India for preferred investment destination by foreign investors.

In fact,

The Dutch East India Company undertook the world's first IPO in the year 1602 and therefore, became the first public company to issue stock. The Dutch East India Company was formed in 1602 by a royal charter granting a 20-year monopoly on trade with the East Indies and sovereign rights in any newly discovered territories. The Company existed for almost 200 years.

Source: http://www.investopedia.com/ask/answers/08/first-company-issue-stock-dutch-east-india.asp#ixzz1uYfmKGsz

Private companies which are subsidiaries of Public companies (PCSPC) are by definition 'public companies' however by nature of operations, they are definitely private companies.

There are many instances for which there are no direct answers. The law is also unclear.

A Company, neither Public nor Private !!

Rashmi M R
Company Secretary
Vikram Hospitals Pvt Ltd, Bangalore

Companies can be classified based on the structure either as Public or Private. However, on careful reading of Sec 3(1)(iv), we notice that there is a third category of companies ie. Private Companies which are Subsidiary of Public Companies (PCSPC). Such companies are by definition 'public companies' however by nature of operations, they are definitely private companies. This causes the confusion and there is lot of complexities and difficulties involved when it comes to interpretation of several provisions of the Act.

1. Since such companies are public by definition – can they accept deposits from public which is not permitted to Private Companies? The answer is definitely 'No'.

2. Suppose, a private company having two directors acquires PCSPC status, whether it needs to increase its number of directors to at least 3 in compliance of Sec 252?
   There are both opinions, however as a measure of abundant caution, it is suggested that it should be increased to minimum of 3 directors in compliance of these provisions.

3. By virtue of Sec 170, private companies enjoy certain exemptions pertaining to Sections 171 - 186. When such a company acquires the PCSPC status, does it automatically become ineligible to claim these benefits? Whether Articles of these companies need to be changed to give effect to this?
   The law overrides the Articles. Accordingly, these provisions will automatically become effective irrespective of what is stated in the Articles of the company and no amendment is necessary to make it effective.

4. Provisions of Sec 269 pertaining to managerial remuneration are not applicable to Private companies. However, on acquiring this status, whether it is necessary that the existing remuneration to managerial personnel have to be regularized as per these provisions? On one instance, a PCSPC had filed Form 25C to regularize compliance of these provisions, however on MCA 21, the form could not be processed with remarks that 'the company is not a subsidiary of a public company'. Subsequently, a ticket had to be raised to clarify the matter and subsequently the form was approved.

5. Further with respect to payment of managerial remuneration on scale as provided in Part II of Schedule XIII, a remuneration committee consisting of independent directors need to be constituted. However, the term 'independent directors' are not defined in the Act. Thus, 'independence' becomes very subjective.

There are many such instances for which the law is also unclear. Further, the specific mention of 'private companies which are subsidiaries of public companies' only in certain sections like 293 further adds to the confusion. It becomes unclear as to whether all provisions applicable to public companies are not applicable to such companies, unless it is stated specifically. Also, as it stands, there is no mode in which a company can intimate the RoC of the change in its status from typical private company to being a subsidiary of a public company. The only known mode is in the annual return where the shareholding pattern of the company is provided. There is definitely a need for the MCA to bring in some clarity in this area and enable the corporates and professionals to comply with all provisions applicable to such companies.

The role of a CS in the Companies Bill 2011

D.S. Mahajani, M.Com, ACS
Vadodara, Gujarat
dsmahajani@yahoo.com

The Bill would give expanded role and also opens up new vistas for Company Secretary as a profession.

'Company Secretary' is included in the definition of 'Key Managerial Personnel '.

It is expected that the Standing Committee of the Parliament shall gives its report and comments on the Companies Bill 2011 ("the Bill) in next one or two week's time to the Central Government. Post discussion on that in the Parliament, the Bill would (hopefully!!) be passed so as to enact the Companies Act, 2012 for corporate India Inc.

As we all know the role of the Company Secretary would be very crucial in the new corporate regime. The Bill would give expanded role and also opens up new vistas for Company Secretary as a profession. The gist of the role of the Company Secretary in new scenario is explained for the knowledge of the professional fraternity.

1. **Key Managerial Personnel (KMP).**
   As per the Clause 2 (51), key managerial personnel, in relation to a company, means - (i) the CEO or the MD or the Manager;
   (ii) the Company Secretary;
   (iii) the CFO, if the Board of Directors appoints him; and
   (iv) such other officer as may be prescribed;

   The Clause 203 of the Bill stipulates that every company belonging to such class or classes of companies as may be prescribed shall have MD, or CEO or Manager and in their absence WTD and Company Secretary. Every Whole-time KMP of a company shall be appointed by means of a Board resolution and the office of any whole-time KMP if vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

2. **Secretarial audit report (Clause 204)**
   Every listed company and companies belonging to prescribed class or classes of companies shall annex a secretarial audit report given by a Company Secretary in practice with its Board's report. The Board in its report shall explain any qualifications or other remarks made by the Company Secretary in practice.

3. **Functions of the Company Secretary (Clause 205)**
   This Clause provides the functions of company secretary appointed by the company. The functions are inclusive in nature and inter alia provides for ensuring compliance with the applicable secretarial standards.

4. **Expert in Serious Fraud Investigation Office (SFIO).**
   As per the Bill, "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.

   The Central Government may appoint such experts in the SIFO as it considers necessary for the efficient discharge of its functions under this Act. (Clause 211)

5. **The Company Secretary as an expert can assist an administrator to take over the assets or management of the company. (Clause 259)**

6. **The Company Secretary as an expert can also be on Mediation Panel for mediation between parties during the pendency of any proceedings before the Central Government or Tribunal. (Clause 442).**

FDI Schema in India

A.N.S. Vijay
Director, Lawlabz & Learnlabz
Author, OnlyThisMuch books for CS Students
thisisvj@gmail.com

FOREIGN INVESTMENTS — CAN BE → Portfolio investments; Venture Capital Investment

FOREIGN DIRECT INVESTMENTS *(has lasting interest in the company)*

As: Non Repatriable / Repatriable (returns can be Taken out of India)

UNDER: AUTOMATIC ROUTE; APPROVAL ROUTE

by:

- Person Resident Outside India(PROI) [Not in India for 182d In Previous Year & check the Intention of stay in/out India]
- Non Resident Indians (NRI) or Person of Indian Origin (PIO) [is/was/through spouse, parents or grandparents, a Indian Citizen]

Restricts →

- •Not by Pakistanis/entities
- •Only with Government approval for Bangladeshis
- •Only by Inward remittance for Nepalese

Can Be ← Company, LLP/ Firm, Association, Individual

Trusts & Non-Profit Organizations are **excluded** & Regulated by Foreign Contribution Regulation Act, 2010

The Regulators

1. Government of India through Notifications & Rules by publishing in Official Gazette
2. Ministry of Commerce (has Department of Industrial Policy & Promotion which specifies Sectoral Caps through FDI Policy – released on April 2012 & will be revised on April 2013)
3. Reserve Bank of India (through Regulations & Master Circulars gives procedures on Foreign Investments, released on July every year)
4. Ministry of Finance (has Foreign Investment Promotion Board for Government approvals & Directorate of Enforcement for investigations)

INVEST IN

- In Indian Company or In Indian Company & its Subsidiary (called Indirect Foreign Investment)
  - Dealt as under: Report to Secretariat of Industrial Assistance within 30 days
- As Foreign Company (not by Foreign Firm or Proprietary) ((Governed under Part XI of Companies Act))
  - Project Office: Under Automatic route if a Project is secured to be executed in India
  - Branch Office: Can engage in activity of parent company but NOT for manufacturing or retailing
  - Liaison Office: Can be a channel Of communication, conduct market research & cannot earn income in India
  - •Under RBI Approval Route: where 100%Auto Route is allowed
  - •Under Govt Approval Route: where 100%Auto Route is NOT allowed or is Govt Bodies, Non Profit Organisations
  - •With Profit Record for 5/3years & a Networth of USD 1 lakh or 50,000 respectively
- In Limited Liability Partnerships (LLP) (& not its subsidiaries)
  - • Under Approval Route
  - • Where 100% Auto Route is allowed without Conditions
  - •LLP's designated partner can be a Company (NOT a Trust or LLP)
  - NOTE:
  - 1.NO ECB can be raised
  - 2.Procedure for FDI is yet to be notified.
- In Partnerships or Proprietary concerns
  - • Only by NRI/PIO by inward remittance or debit to A/c.
  - • On non-repatriable basis (returns cannot be taken out)
  - • Personal Resident Outside India with prior RBI approval
  - • Not in Agricultural, Plantation, real estate, print media

EXISTING entities / NEW entities

- •By Transfer of shares (file FC-TRS within 60 days of transfer with DCF Value as base price; when transferee is Non resident & DCF Value as ceiling price if transferee is Resident)
- •By Rights Issue
- •By change in Ownership or Control or Share swaps (require FIPB)
- •By ADR/GDR (30 day & quarterly reporting)
- •By Merger (file the scheme)
- •Conversion of ECB, Royalty, Import of equipments (not being a second hand) or Reimbursement of expenses (intimate purpose within 180 days of inward remittance)

1.Term Sheet in the form of Memorandum of Understanding (MoU)
2.Share Subscription Agreement with Valuation & Indemnity
3.Shareholders Agreement with Rights, transfer restrictions, Board controls & other clauses. Most of the essential clauses to be made enforceable, it shall be included in the Articles of Association of the Company which shall be registered with Registrar of Companies.

Documentation & Articles of Association

FDI In Indian Company

PROHIBITED SECTORS:
1.Retail Trading
2.Lottery & Gambling
3.Chit Funds & Nidhi Co.
4.TDR, Real estate
5.Cigar or Tobacco
6.Atomic Energy & Rails

Main objects/Activities in Memorandum

Manufacturing | Services | Trading

Micro OR Small Enterprise (MSE) (UPTO Rs.5 crores in Plant & machinery)

100% Automatic route in most cases & as per FDI Policy

Medium OR Large Enterprise (More than 5 crores In Plant & Mach)

Manufacturing items reserved for MSE reserved items like Wood/Steel Furniture, Paper, Match, Fireworks, Bread, etc… can invest UPTO 24% under Automatic route & FIPB route with Industrial licensing beyond the limits.

Whole sale: Cash & Carry Trading:100% is permitted under Automatic Route

Single Brand Product Retailing: 100% Under Appraoval Route with Condns

1. Conditions:
2. To be sold in single brand
3. SAME BRAND internationally
4. Branded during Manufacture
5. Investor to be the OWNER
6. Mandatory sourcing of 30% of products from Small Industries With investment in Plant & Mach UPTO 1 million USD or with a Capital investment UPTO Rs.1 lakh (for rural industries) or Rs.1.5 lakh (for hill industries) or its ancillaries

The percentage mentioned here are investments in Equity Shares or Compulsorily Fully Convertible Debenture or Preference Shares (issue of warrants/partly paid shares requires Government approval) of a Company registered in India under Companies Act, 1956

LESS THAN 100% AS JOINT VENTURES
- Automatic route
  - With Conditions
  - W/O. Conditions
- Approval route
  - With Conditions
  - W/O. Conditions

If **Repatriable**, make 30 day reporting, 60 day allot (for Public Co.) or 180 day allot(for Pvt) & then file FC-GPR within 30 days

Non-repatriable By NRI/PIO if out of domestic Rupee accounts in India (no reporting)

100% AS WHOLLY OWNED SUBSIDIARY
- Automatic route
  - With Conditions
  - W/O. Conditions
- Approval route
  - With Conditions
  - W/O. Conditions

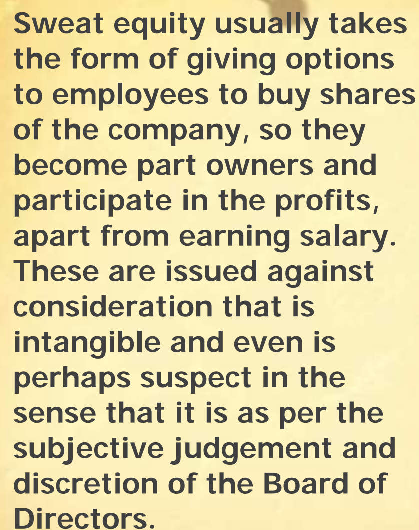
•Purpose in FIRC should be shares (as above)
•Any other shares or others will be treated as External Commercial Borrowings (ECB) & respective compliances be made.

SNAPSHOT OF SECTORAL CAPS FROM FDI POLICY

A. Agricultural & animal husbandry's	
i. Floriculture, Horticulture and cultivation of vegetables, mushrooms under controlled conditions; ii. Animal husbandry (including breeding of Dogs), pisciculture,aqua-culture under controlled conditions; iii. Development and production of seeds and planting material; iv. Services related to agro and allied sectors; NOTE : Beside the above FDI is not allowed in any other activity.	100 % (automatic)
v. Tea sector, including tea plantations Compulsory divestment of 26% equity of the company has to be done in favor of the Indian partner / Indian within the period of five years. NOTE : Beside the above FDI is not allowed in any other plantation / sector activity.	100 % (FIPB)
B. Manufacturing Sector: Most of the manufacturing carried out by Medium or Large enterprise is under Automatic route UNLESS they are manufacturing SME RESERVED ITEMS (where Government approval is required when investments exceed 24% of Capital)	
C. Civil aviation sector	
Airports	
a. Greenfield Projects (New Projects)	100 % (automatic)
b. Brownfield Projects (Existing projects)	100% (automatic – UPTO 74%) (FIPB – beyond 74 %)
D. Industrial Parks: Both setting up and already established industrial parks.	100 % (automatic)
E. Insurance is subject to licensing with insurance Regulatory & Development Authority.	26 % (automatic)
15.Infrastructure companies in securities markets namely, Stock Exchanges, Depositories and Clearing corporations. Note : FII can invest only through purchase in the secondary market	49% (FIPB) (FDI + FII) FDI-26% FII-23%

Sweat Equity

Aashish Jain
CS Trainee @ J. Sundharesan and Associates
aashish@jsundharesan.com



Sweat equity shares are equity shares issued by a company to its employees or directors at a discount, or as a consideration for providing know-how or a similar value to the company.

Section 79A of the Companies Act lays down conditions for the issue of sweat equity shares. A company may issue sweat equity shares of a class of shares already issued through a Special Resolution at General Meeting with 75% members approving it, specifying the number of shares, current market price, consideration, if any, and the section of directors /employees to whom they are to be issued As on the date of issue, a year should have elapsed since the company was entitled to commence business. Listed Companies shall follow SEBI guidelines.

In the case of unlisted companies, sweat equity shares cannot be issued before one year of commencement of operations. Moreover, there is a cap of 15 percent on the number of sweat equity shares that can be issued without a specific central government approval.

If the sweat equity is being issued for consideration other than cash, an independent valuer has to carry out an assessment and submit a valuation report.

Sweat equity shares are no different from employee stock options with a one year vesting period. It is essential when a company is formed, to assure the financial investors that the knowhow providers will stay on, or for a start-up with limited resources to attract highly-qualified professionals to join the team as long-term stakeholders.

These shares are given to a company's employees on favourable terms, in recognition of their work. Sweat equity usually takes the form of giving options to employees to buy shares of the company, so they become part owners and participate in the profits, apart from earning salary.

The company should also give 'justification for the issue of sweat equity shares for consideration other than cash, which should form a part of the notice sent for the general meeting'.

Recently, SEBI has notified Regulations for issuance of sweat equity shares by listed companies. These Regulations come after a delay of full 4 years since the Companies Act, 1956, was amended by insertion of the new Section 79A which enabled issue of such Sweat Equity Shares. To its credit, SEBI has introduced several safeguards to prevent misuse of this instrument though, as will be seen later, the whole scheme and its restrictions and conditions are capable of being simply avoided and circumvented. But, before we go into the Regulations, let us refresh our memory on the basic concept of Sweat Equity Shares as generally understood and as promulgated under Section 79A of the Companies Act, 1956.

Sweat equity shares are often misunderstood as another form of ESOPs since there is a superficial similarity. For example, both are usually issued to employees and directors. Sweat Equity Shares are however issued for something done in the past or something being done and further, they are issued for consideration other than cash and normally intangible assets. If one goes by the classic understanding of this term, it is that ownership ("equity") that is created through the efforts ("sweat") of the employees and directors. Issuance of Sweat Equity Shares is recognisance and reward of this toil. While there is some further resemblance with ESOPs in the sense that Sweat Equity Shares also create a sense of ownership and loyalty for the Company, the basic structure is often different. Sweat Equity Shares are also very useful for financial

structuring when some owners are unable to bring in cash but are able to bring in or create intangible assets.

Let us also further try to understand the term under Section 79A of the Companies Act, 1956. This Section defines Sweat Equity Shares as "equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions by whatever name called." Thus, the essence is that the consideration for the issuance is providing value addition (whatever that means!) in various forms but usually in the form of intangible assets. The issue can be at a discount and hence it is an exception to the provisions of Section 79 that prohibits issue of shares at a discount.

Section 79A lays down certain preconditions for issuance of Sweat Equity Shares. The important ones are as follows- The issue can only be of equity shares. The issue should be authorised by a special resolution. Certain disclosures would have to be made in the notice seeking approval for issue of such shares. The issue, as the definition stated above highlights can only be to employees and directors. At least one year should have passed from the day when the Company was entitled to commence business. There is one glaring lacuna that should be removed if we go back to the concept and nature of such shares.

These are issued against consideration that is intangible and even is perhaps suspect in the sense that it is as per the subjective judgement and discretion of the Board of Directors. It is a fundamental principle of the concept of a limited company that the share capital that is contributed should be valuable and full. For that very reason, reduction of share capital is allowed only after detailed scrutiny by court and after taking approval of the creditors.

For that very reason, shares are not allowed to be issued at a discount. Even where the shares are issued against valuable consideration in kind, for the life of the company, this fact has to be disclosed with the quantity of shares and their amount. In this background, it is strange that there is no safeguard against misuse of the provision to inflate the share capital in the Act and minimal protection in the Regulations. As will be seen later, some indirect protection is provided in the Regulation by requiring proper accounting and valuation, but, there too, the focus is not on the creditors who are to be protected but on the shareholders. I submit that there should be detailed and lifetime disclosure in the accounts of the fact of issue of Sweat Equity Shares, the nature of consideration received, their amount, the persons to whom the Sweat Equity Shares are issued, etc. so that creditors and other persons are warned against possible scope of misuse of this instrument.

Interestingly, unlike ESOPs, which cannot be issued to Promoters, Sweat Equity Shares can be issued to Promoters without any limit.

SEBI has recently issued the Regulations to which let us now turn. The Regulations start with 16 definitions, many of which are superfluous in the sense that they are not even applied anywhere in the Regulations. A good example is "ESOS" meaning the Employees Stock Option Scheme under the SEBI ESOPs Guidelines. Apart from superfluous definitions, certain Regulations themselves are also equally redundant.

Regulation 4, for example, states that a listed company intending to issue Sweat Equity Shares should comply with Section 79A and can issue such Sweat Equity Shares only to employees and directors. Compliance with Section 79A is a statutory obligation of a limited company and hence there is no need for a Regulation to state this. Section 79A provides that Sweat Equity Shares can be issued to employees and directors only and thus the later part of the Regulation also is unnecessary.

Then certain additional disclosures are required in the notice of the general meeting where approval for issue of Sweat Equity Shares is sought. Interestingly, the names of the employees/ directors/ Promoters who are to be issued Sweat Equity Shares have to be stated in the notice.

The concept of sweat equity is very popular amongst leading corporations in the western countries. At present, in India, IT companies have taken the lead in issuing sweat equity.

Is clarity so difficult?

K Vijayshyam Acharya, B Com, LLB, ACS, CA.
Bangalore
vijayshyam@yahoo.com

Traditional theory states that there are two main drivers for anything significant – ability and willingness. Ability without willingness is unused potential; willingness without ability, though comparatively better, does not give enduring results.

True, the attractiveness of an investment destination is not merely due to absence of taxes. But absence of clarity can certainly create aversion.

If one were to review the economic policy and stand taken by India during the past few months, only one thing seems clear – that clarity is missing.

Why so? Deficit Trust? Political equations? Coalition complexities? Leftist influence? Global economic uncertainties? Recessionary trends?

Well, all these could be contributory factors. But they are not insurmountable. Traditional theory states that there are two main drivers for anything significant – ability and willingness. Ability in this context is the leadership trait. Willingness translates to commitment. Ability without willingness is unused potential; willingness without ability, though comparatively better, does not give enduring results. Probably, the lack of clarity we are talking about is the result of either of these. Which one?
Not clear.

To Illustrate: After doing whatever was required to bring the national airline to this state of affairs, the powers that we are talking of not letting down a particular airline which is backed by a politically well connected promoter. Why not talk of the industry in general? About the high fuel costs, which contribute to nearly half of an airline's operating costs? About permission to operate in routes considering profitability? With all these accumulated losses, unpaid dues, tax defaults and near 'sick company' status, is it not the average tax payer who is ultimately burdened?

From the happenings post the decision of the Hon'ble Supreme Court in the Vodafone case, it apparently seems that the clarity provided by the Hon'ble Supreme Court by going into the depths of detail, was not the clarity which was always clear to the Legislature since the present Income Tax Act came to force. But, though the intention of the Legislature was always clear, be it different from what the Apex Court held it to be, further clarity was sought to be brought on board, hence clarificatory amendments in the Budget. True, the attractiveness of an investment destination is not merely due to absence of taxes. But absence of clarity can certainly create aversion.
Think of lack of clarity in personal insurance. Without getting into details, it is astonishing, to say the least, that the sector is not growing, as per desired expectations, in a country which otherwise has the right elements for success – huge population, low penetration of insurance products, good disposable income, and so on.

Lastly let us come to FDI in retail. For whatever reason, FDI in multi-brand retail, after so much of noise, is silent. Or unclear, to be more specific. While a host of foreign retailers hope to cash in on the opportunity provided in single brand retail, we seem to have passed on to them, our clarity, or the lack of it. For example, a minimum percentage of sourcing from small and medium enterprises is an interesting proposition. What is the justification behind the exact percentage prescribed? Is it based on empirical study of industry trends? Seems not. Be that as it may, is mere self-certification sufficient to ensure compliance? If not complied with, what will be the implications? Not clear, again.

But, to conclude, Indian retail in general seems to be a sector where foreign investment is impatiently eager to enter, in spite of lack of clarity. And why not? With projected annual growth exceeding 15% in many categories, it is only natural that a lot of money is waiting to be made. Or, to clarify, lot of money is expected to be made.

Non-Admitted Insurance

K. Sarina Chouta Harish
Company secretary & Manager – Costing & Legal
Meritor HVS (India) Limited
Sarina.choutaharish@Meritor.com

Non-admitted insurance is a policy issued in one country to insure exposures in other countries. It is typically arranged in one country, often the domicile of the parent organization.

Often, no local policy is issued, essentially freeing the insured from paying local premium and commensurate taxes. Instead, risk transfer is arranged in another country.

Structuring an efficient, cost-effective multinational insurance program requires a close understanding of the evolving regulatory environment. Traditionally, risk managers have focused on whether a local jurisdiction permits insurance from unlicensed insurers to insure local risks, i.e., non-admitted insurance. These regulatory developments are not limited to increased scrutiny of insurance companies; they encompass both local insurance brokers and the local operations of parent company insureds. Many multinational companies are potentially unaware that their global insurance programs may be subject to compliance challenges in certain jurisdictions, and the unanticipated reputational, tax and other financial repercussions this may cause.

The purpose of a multinational insurance program is to maximize global insurance capacity and minimize cost, while maintaining centralized control over risk management and risk transfer practices. Given the competitive nature of the global insurance business, the use of non-admitted insurance in a global insurance program presents a cost-effective alternative to local coverage. In structuring the program, global risk managers generally ascertain whether or not non-admitted insurance is permitted in countries in which it has insurable interests, e.g., a subsidiary, affiliate or joint venture.

Many regulators across the world are beginning to view multinational insurance programs from the perspective of the local affiliated entity over which they have direct supervision, in addition to the local broker intermediating on behalf of this affiliate. This change in posture is based on a desire to enforce local insurance laws, as well as to increase taxable sources of government income, with the local affiliate of foreign companies in the cross-hairs. Since these intensifying regulatory pressures make it progressively more difficult to insure global risks in a consistent and cost-effective manner, while raising the stakes of a costly regulatory infraction and the reputational harm that may accrue, global risk managers must enhance their due diligence prior to structuring a multinational insurance program. In the past, merely determining if non-admitted insurance was permitted in a country was considered appropriate due diligence.

Non-Admitted Insurance:

Non-admitted insurance is a policy issued in one country to insure exposures in other countries. It is typically arranged in one country, often the domicile of the parent organization. Often, no local policy is issued, essentially freeing the insured from paying local premium and commensurate taxes. Instead, risk transfer is arranged in another country. Non-admitted insurance may be 'standalone' (e. g., a single policy covering worldwide) or it may be part of a program. The legal status of non-admitted insurance varies by country, so in some countries:

- Non-admitted insurance is permitted
- Non-admitted insurance is prohibited

Non-admitted insurance is permitted, subject to certain conditions (e.g., if prior approval is obtained from the regulator) Non-admitted insurance is permitted, but requires specific registration of the existence of such cover and the payment of insurance premium taxes (e.g., Puerto Rico).

Some countries allow non-admitted insurance; others do not. In between are countries with regulations that allow the use of non-admitted insurance but subject it to certain conditions, such as prior approval from regulators, a

specific registration of the existence of the insurance, and the payment of insurance premium taxes locally. An important question arises: will a local subsidiary that is not involved in arranging non-admitted coverage (i.e., no role in the marketing, no local decision to purchase, no local premium contribution) violate local laws? The answer varies case-by-case, country-by-country, as each situation is assessed by local authorities. Some countries (e. g., Switzerland, India) assert that the mere existence of the offshore coverage violates local laws.

ANY EXEMPT LINES OF COVERAGE?: Once again there is no single answer applicable to all countries. However, as a general rule, limited classes of insurance can be exempt from non-admitted insurance rules and regulations. Typically, these exempt lines involve risks that by their very nature cross several borders, e.g., Marine Cargo or Business Travel insurance. Additionally, some countries provide exemption for specialist lines of coverage (such as Professional Indemnity) that are not available in their domestic markets.

THE TAX ENVIRONMENT

It's fair to say that governments everywhere are looking to maximize any available tax revenues. This appears to make subsidiaries of foreign companies attractive targets of potential revenue enhancement. This may mean that foreign subsidiaries have a higher risk of scrutiny by the local tax authorities, who normally look closely at transfer pricing, but also seek any sources of additional tax revenue. As a result, potential tax liabilities are an important risk for buyers of non- admitted insurance.

In many countries, non-admitted insurance is prohibited, and the payment of any premium tax would signal that the insured or insurer intends for an 'illegal' insurance to be in effect. In certain countries the insurance and tax regulations may appear to be at odds. It may be that non-admitted insurance is not permitted, yet the tax authorities will treat it as equivalent to admitted insurance so long as they receive the premium taxes. In the remaining countries the situation is not clear-cut because the insurance and tax regulations appear to be silent on the issues of non-admitted insurance and insurance premium tax liability.

CLAIM ISSUES: Historically, in typical international coverage situations, claims were paid under a local policy with any payments from the "master" policy being channeled through the local policy. Today, however, as the master policy contains coverage on a non-admitted basis, complications arise due to the absence of any local documentation. The main issues can be summarized as follows:

ADJUSTING THE LOSS: Adjusters can be appointed on an international or local level or both to investigate and help mitigate the loss. Such appointments may be organized prior to the loss occurring in order to better respond to any incident.

CLAIM PAYMENTS An insurer may elect to pay a non-admitted claim either directly into the country in question or in the country (e.g., the U.S.) where the master policy is issued. If local payments are detected and the non-admitted insurance was arranged in violation of the law, then the claim payment may be subject to tax assessment, and fines and penalties may be imposed. If a claim payment made in the U.S. relates to an overseas operation, then the IRS may assess the payment as income subject to tax and the corporate rate would be applied. It is therefore important to ensure that appropriate tax liability clauses and limits are included in any master policy wording where non-admitted insurance is anticipated. Since most policies will not pay for fines and penalties, meeting the tax liability on a substantial claim payment may alleviate a lot of suffering on the part of the insurance buyer. When a claim payment is received in the home country, getting the funds to the country in question may be challenging or impossible. Insureds need to evaluate the most appropriate and effective solution. This may take many forms, from recapitalizing the subsidiary to an inter-company loan.

IN PRACTICE: Given the increasing importance of corporate governance, it is crucial that a well considered strategy be developed for all global program coverages (from D&O to Pollution to Umbrella to Employee Benefits policies). Such a strategy should identify the insured's international issues and contemplate a solution to as many of these as possible.

Regulators are scrutinizing intra-company premium allocations more closely, with an understanding that transfer pricing rules generally require premiums to be allocated on an arm's-length basis in accordance with the

location of the risk. In many countries, parent corporations generally can't deduct premiums allocable to foreign subsidiaries. Insureds need to consider carefully whether or not they will be allocating premiums internally, and to which countries.

Given the diverse nature of the topic, no single solution appears to be appropriate for all. The combination of perfect compliance and efficient and effective program structure is not really possible due to the uncertainties of local regulations. At one extreme, one can choose to have all local policies to full limits, where necessary, and pay all local taxes. That results in perfect compliance but less cover and likely higher costs. In order to gain efficiency and the benefit of higher limits, what is best is a patchwork of partial solutions.

If non-admitted insurance is elected for some or all territories (e.g., in cases where companies choose not to publish details of their D&O program), greater care needs to be exercised. For example, premiums should not be cross-charged to the local operations, and insureds exclude their local management from any of the communication flow relating to the non-admitted coverages and so on.

Financial interest clauses in the master policy may be required to make it clear that the local subsidiary (in India, for example) is specifically not being covered by the non-admitted portion of the program. Such clauses make it explicit that the subsidiary is not involved at all in any part of the transaction or in any subsequent activity related to the master policy.

Global insurers are far from unanimous in their treatment of tax liability clauses for coverages where non-admitted insurance is likely. Some view the financial interest clauses as a legal solution to the often contradictory regulations that exist around the world – one that enables them to provide comprehensive, competitive and compliant coverage to their global clients. Others disagree, either seeing no need or doubting the effectiveness of such clauses. The onus remains on the insured to decide the best way forward.

Many global carriers insist on paying local IPT amounts when they are aware of a program with foreign risks insured, but there remain significant differences in how taxes are administered and in how insurers envision the non-admitted portion of coverage to apply.

As global pressure in compliance continues to increase, it is likely that insurer practices will converge as they already have within the EU. But for the time being, there is no single clear answer to the need for optimization of the legal, fiscal and regulatory challenges.

<u>Non-admitted insurance is not permitted in India.</u>

As per Section 25 of General Insurance Business (Nationalization) Act, 1972

- "No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government".

- If any person contravenes any provision of sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both".

As per Section 3 of Foreign Exchange Management Act (FEMA) Regulations, 2000

- "Save as otherwise provided in the Act, rules or regulations made or orders or directions issued under the Act, no person resident in India shall take any general or Life Insurance policy issued by an insurer outside India".

- Provided further that the prohibition against taking general insurance policy issued by an insurer outside India shall not apply to a unit located in **Special Economic Zone**". It is required that the premium for such general insurance policy is paid by the units out of their foreign exchange balances.

Other Non-admitted Implications in India

- The non-admitted insurance company may not defend you locally nor adjust claim locally.

- Non-admitted insurance can create difficulties in providing evidence of local insurance to satisfy contractual or licensing obligations. Financing agreements from lenders and financial partners as well as leases, vending agreements with suppliers, engagement contracts and other contracts may oblige you to show evidence of insurance from a locally admitted carrier. The non-admitted insurer may be unwilling to provide evidence of insurance or such evidence, if provided, may create legal complications.

It is suggested that insureds also seek advice from internal and/or external tax specialists.

In summary, the dual topics of non-admitted insurance and insurance premium tax liability remain as complex as ever, if not more so.

AHA!
GREAT MOMENTS IN CREATIVITY

Harish Machia Kodandera
Personality Development Trainer, Mysore
harishkodandera@yahoo.co.in

Is it that some people are "gifted"? Or are there other factors at work – factors that we (the people) have more control over than we might think?

It is sustained and focused effort towards a specific goal – not luck, not wishing, not caffeine – that ultimately prepares the ground for great creative insights.

What is it that enables some people to get big creative breakthroughs while others only get big not-so-creative breakdowns – alternately blaming themselves, society, their boss, and their increasingly suspect astrological configurations? Is it that some people are "gifted"? Or are there other factors at work – factors that we (the people) have more control over than we might think?

While nobody can deny the fact that some people seem to be blessed with particular creative leanings like Mozart, research has shown that anyone can increase their chances of coming up with new and original ideas – even have the much sought after **AHA**! experience – that is, IF they would only immerse themselves in the little understood process of creation. It's the old Thomas Edison thing about "discovery being 99 percent perspiration and 1 percent inspiration". Time and again, the literature bears this out: great creative breakthroughs usually happen only after intense periods of struggle – even madness. It is sustained and focused effort towards a specific goal – not luck, not wishing, not caffeine – that ultimately prepares the ground for great creative insights.

Of course, this kind of perseverance does not always generate immediate results, a fact that not only separates the wheat from the chaff, the innovators from the enervators, but also leads some people to conclude that it's just not in the cards for them. "Maybe I should have gone to medical school like my mother wanted", they wonder when the breakthrough is nowhere to be found. Alas, one forgets during their inevitable encounters with self-doubt, that the BIG AHA! is never far away. Indeed, it can happen at any time, any place, under any condition. Indeed, it's happened to more people than you could shake a therapist at – famous people, infamous people, not so famous people.

Anyone and everyone. As long as they stay in the game…

RENE DESCARTES

Recognized as the "father of modern science," Rene Descartes offers a very interesting footnote to the history of "creative breakthrough." An exceptionally gifted student in 17th century France, young Rene dropped out of school at the age of 17 upon realizing that the only thing he had learned was that he was completely ignorant. Law school proved no better, nor did a brief stint in the military, or an aborted career as a gambler. Frustrated with the choices available to him, Descartes simply decided to retire at the ripe old age of 20. While his parents, teachers, and friends pleaded with him to change his mind, young Rene was adamant, and for the next two years did little else but stay in bed, read, think, dream, and write.

Curiously, one night in the second year of his retreat, Descartes had a dream in which the essence of what we now know as the "scientific method" was revealed to him. In time, his discovery was shared with the scientific community and Western science had a new hero. Ah, but the paradox of it all! While scientists far and wide heralded Descartes for his contribution to Western, rational science, no one (in their right mind) would acknowledge that the root of Descartes' discovery (and indeed, the root of what most scientists today base their knowledge on) came to

him in a dream – a non-rational, non-linear, altered state of consciousness in the mind of a total dropout!

Descartes story is not at all uncommon. The truth, the breakthrough, the AHA! came to him only after years of intense conscious effort. Like ripe fruit, the answer made its appearance at the right time – a time when he wasn't trying, but had let himself be receptive to the promptings of his own subconscious mind.

ELIAS HOWE

Elias Howe had struggled for years in his attempt to invent a lockstitch sewing machine. His early designs, though inspired, were flawed. Indeed, the needle he designed had a hole in the middle of the shank, which simply didn't work. Then, one night, depressed at how slowly things were going, Howe dreamed he was captured by a bunch of savages who took him prisoner before the King. "Elias Howe," screamed the monarch, "I command you upon the pain of death to finish this machine at once!" Try as he might, however, Howe still could not find the solution. The King, making good on his word, immediately ordered his troops to take Howe to the place of "execution" (dream pun intended), As Howe was being led away, he looked up and noticed that the spears the savages were carrying had eye-shaped holes near the top! Voila! In a flash, Howe awoke, jumped out of bed, and spent the rest of the night whittling a model of the new, improved needle – the design breakthrough that quickly brought his experiments to a successful conclusion.

RICHARD WAGNER

At the age of 40, Richard Wagner was going through a serious mid-life crisis. His artistic career was stalled, his marriage was falling apart, and his finances were in shambles. Desperate, he decided to travel, hoping to find some inspiration. Traveling, however, only tired him. Then, one morning, just at the moment when he finally gave up on his frantic effort to invoke his muse, Wagner heard a musical theme in a dream –one that was about to change his life and the history of music.

Explained Wagner, "After a night spent in fever and sleeplessness, I forced myself to take a long walk through the country. It looked dreary and desolate. Upon my return, I lay down on a hard couch. Sleep would not come, but I sank into a kind of somnambulance, in which I suddenly felt as though I were sinking in swiftly flowing water. The rushing noise formed itself into a musical sound, the chord of E flat major, whence developed melodic passages of increasing motion. I awoke in sudden terror, recognizing that the orchestral prelude to Das Rheingold, which must have lain long latent within me, had at last been revealed to me. I decided to return to Zurich at once and begin the composition of my great poem."

MOZART

A prodigy? Yes. Gifted? Yes. Unusually receptive? Yes. But also very tuned in to the state of mind that preceded great creative breakthroughs: Explained Mozart, "When I am, as it were, completely myself, entirely alone, and of good cheer – say traveling in a carriage or walking after a good meal, or during the night when I cannot sleep; it is on such occasions that my ideas flow best and most abundantly. Whence and how they come, I know not, nor can I force them. Those pleasures that please me, I retain in memory, and am accustomed... to hum them to myself. If I continue in this way, it soon occurs to me how I may turn this or that morsel to account, so as to make a good dish of it....agreeably to the rules of counterpoint, and to the peculiarities of the various instruments. All this fires my soul, and provided I am not disturbed, my subject enlarges itself, becomes methodized and defined, and the whole, though it be long, stands almost complete and finished in my mind, so that I can survey it, like a fine picture or a beautiful statue, at a glance. Nor do I hear in my imagination the parts successively, but I hear them.....all at once. What a delight I cannot tell! All this inventing, this producing, takes place in a pleasing lively dream...."

RUDYARD KIPLING

Many people who experience supernormal moments of great creativity report a willingness to let themselves be open to the non-logical, non-linear, and unexplainable promptings of an inner voice. Maybe you call it a "hunch" or "intuition," but whatever you call it, know that paying attention to it is often the key to manifesting your vision or idea. Rudyard Kipling, the English writer, was very much in touch with this faculty. "Most men," wrote Kipling, "keep their personal Daemon (guardian spirit) under an alias which varies with their literary or scientific attainments. Mine came to me early when I sat bewildered among other notions. 'Take me and no other,' it said. I obeyed and was rewarded. After that, I learned to lean upon him and recognize the sign of his approach. If ever I held back anything of myself (even though I had to throw it out afterwards), I paid for it by missing what I knew the tale lacked.....I took good care to walk delicately, lest my Daemon should withdraw. I know that he did not, because when my books were finished they said so themselves with almost the water-hammer click of a tap turned off........'Note here.' When your Daemon is in charge, do not try to think consciously. Drift, wait, and obey...."

KEKULE

It is not only writers and composers that have creative breakthroughs. Molecular scientists do, too. Notes the

Flemish scientist, Kekule: "One fine evening I was returning by the last bus through the deserted streets of the metropolis, which are at other times so full of life. I fell into a reverie, and lo! the atoms were gamboling before my eyes. Whenever those diminutive beings had appeared to me before, they had always been in motion, but I had never been able to discern the nature of their motion. Now, however, I saw how frequently, how smaller atoms united to form a pair; how a larger one embraced two smaller ones; how still larger ones kept hold of three or even four of the smaller, while the whole kept whirring in a giddy dance. I saw how the larger ones formed a chain....I spent part of the night putting on paper at least a sketch of these dream forms."

Then, years later, the big illumination: "I turned my chair to the fire and dozed. Again the atoms were gamboling before my eyes. This time the smaller groups kept modestly in the background. My mental eye, rendered more acute by repeated visions of this kind, could now distinguish larger structures....long rows, sometimes more closely fitted together; all twining and twisting and snakelike motion. But look! What was that? One of the snakes had seized hold of its own tail, and the form whirled mockingly before my eyes! As if by a flash of lightening I awoke. Let us learn to dream, gentlemen." Kekule had made a most remarkable discovery – that benzene is a cyclic or ring structure and the carbon chain at the molecular core of the compound does indeed form a chain that "swallows its own tail".

TCHAIKOVSKY

OK, all you aspiring creators, how about a tip from the man who composed the Nutcracker Suite? "Generally, the germ of a future composition comes suddenly and unexpectedly...It takes root with extraordinary force and rapidity, shoots up through the earth, puts forth branches and leaves, and finally blossoms....I forget everything and behave like a mad man. Everything within me starts pulsing and quivering. Hardly have I begun the sketch, before one thought follows another. In the midst of this magic process, it frequently happens that some external interruption awakes me from my somnambulistic state....Dreadful indeed are such interruptions....They break the thread of the inspiration."

WHAT, IF ANYTHING, IS IN THE WAY OF YOU HAVING AN AHA?

WHAT CAN YOU DO TO ATTRACT AN AHA! EXPERIENCE?

WHAT RECENT AHA OF YOURS DO YOU NEED TO ACT ON?

Tips to Success by Harish Machia Kodandera

Don't Look Back

Everyone has failures or mistakes from the past. To have success, you need to learn from your past and value those difficult lessons but do not always dwell on the past. Simply move forward and make better, more educated decisions from the lessons learned. Remember, as a paradox, the past is not always an indicator of the future!!

Dare to Dream

To succeed, you need to have dreams and aspirations. Be honest with yourself as to what you want out of life and what you want to give of your life. Allow your mind to dream and think big.

Realize your Potential

In order to succeed at anything, you need to see that you have the potential to reach your goals. For example, if you want to be a recording artist but have no singing ability, having success in this field is not likely. However, if you love working on cars and have a real talent for fixing engines and transmissions, and to you, success would mean working for NASCAR, you have potential to learn and achieve that success. So, what is required is **SMART** working meaning having plans that are **S**pecific, **M**easurable, **A**chievable, **R**elated to and **T**ime bound

Stop the Complaining

You might think there is no correlation between complaining and success when in fact there is a connection. When you are spending time complaining about the obstacles you are facing, you are wasting so much time being negative that you are actually losing chances to move forward. Instead of thinking of challenges as problems, think of them as opportunities. A new word now---PROBORTUNITY!!!

Few more tips in page.... 39

NEXUS BETWEEN

IPR AND COMPETITION LAW

Viral Shrinath Tripathi ACS, LL.M (IPR), PGDIRPM & B.COM
Company Secretary – Netafim Irrigation India Pvt Ltd
viralstripathi@gmail.com

IPR owners are granted statutory rights to control access and charge monopoly rents to others for use of their rights. Competition law, on the other hand, is directed at curtailing such market power which may prove harmful to economic welfare.
However, IP laws and competition laws can also be seen as complementary rather than antagonistic.

The interaction of Intellectual Property Rights (IPR) with competition law is a complex and contentious issue. At first glance, the goals of intellectual property law and competition law might appear to conflict.

IPR owners are granted statutory rights to control access and charge monopoly rents to others for use of their rights. IPR owners may also use terms of IPR licenses to regulate downstream activities of their distributors, such as imposing exclusivity, territorial restraints and price restraints.

Competition law, on the other hand, is directed at curtailing such market power which may prove harmful to economic welfare. However, IP laws and competition laws can also be seen as complementary rather than antagonistic.

Both laws share the same fundamental goals of enhancing consumer welfare and promoting innovation.

"Competition laws protect robust competition in the marketplace, while intellectual property laws protect the ability to earn a return on the investments necessary to innovate. Both spur competition among rivals to be the first to enter the marketplace with a desirable technology, product, or service."

While an IPR may confer a "legal monopoly" over a product, process or work, it does not necessarily confer an "economic monopoly". Further, while an IP license may well confer restraints on licensees (such as territorial restraints) with respect to a specific product, process or work, there may be sufficient actual or potential close substitutes that constrain the exercise of market power by the IPR owner. Despite the view that the goals of IP and competition laws are complementary, difficult questions can arise when competition law is applied to specific activities involving IPRs

NEXUS BETWEEN IPR AND COMPETITION LAW

Our Intellectual Property (IP) laws may provide inventors, creators, IP owners and undertakings with market power over a newly created product, process, work, mark or design during which the IP can be exclusively exploited. For example, Patents Act, 1970 provides for a 20-year period from the date of filing for the patent holder to exclude others from making, using or selling his patented invention.

The objective of the IP laws is to provide greater incentive for innovation and to allow an efficient transfer of that knowledge to others. Intellectual property rights (IPR) allow the inventor or creator to recover the resources and investments made while developing the IP. For some types of IPR, the grant of the right is given in exchange for making the innovation public. For example, a patent holder discloses his know-how in the patented invention publicly, and the invention is free for all to use and build upon once the patent period expires. Without IP laws, many new inventions would not be disclosed, let alone invented. The pharmaceutical industry is a good example of how IP laws can encourage the discovery of new medicines.

SICA:

Outmoded remedies and long wait for new rehabilitation!

Omkar Nagesh Gayatri B.Com, LLB, ACS, PGDHRM & DISM
Bangalore
omkargayatri@gmail.com

Main objective of SICA is to determine sickness and expedite the revival of potentially viable units or closure of unviable units. In the Companies Bill, 2011, Determination of sickness has been shifted from mathematical rule of erosion of net worth to cash flows and the creditors are allowed to make application if company fails to repay the debt within 30 days of notice.

Heavy industrial sickness during 1970's which continued in 1980's forced the Government of India [GOI] to formulate law on sick industries. Tiwari Committee, formed in 1981, in its report to the Government suggested for special legislation and formation of exclusive quasi-judicial body. This caused birth of the Sick Industrial Companies (Special Provisions) Act, 1985 [SICA]and the Board for Industrial and Financial Reconstruction [BIFR].

What we should know in SICA?

I. Provisions are applicable to both private and public limited companies owning industrial undertaking.

II. Sick Industrial Company:

- **Meaning:** a company in existence for not less than five years **and** has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.
- **Report** by way of reference to the BIFR about sickness of the company within 60 days from the date of finalization of audited accounts.
- Even before finalizing accounts if Board of directors have sufficient reason for sickness, reference **shall** be made within 60 days from forming such opinion.

III. POTENTIALLY SICK INDUSTRIAL COMPANY:

- **Meaning:** The accumulated losses as at the end of any financial year have resulted in erosion of fifty per cent, or more of its peak net worth during the immediately preceding four financial years.
- Within 60 days from the date of finalization of audited accounts - [a]. Report the fact of such erosion to the BIFR **and** [b]. Hold general meeting of shareholders for considering such erosion.

IV. Consequence of non-compliance: Directors and Officers who are in default **shall** be punishable with **imprisonment** which may extend to three years **and** shall also liable to fine.

Intention and Reality:

Main objective of SICA is to determine sickness and expedite the revival of potentially viable units or closure of unviable units. But, proceedings at BIFR were very sluggish followed by poor enforcement mechanism which defeated the legislative intent. Also, it became a shelter for companies to get protection from the lenders due to overriding provisions of the SICA over all other laws [except FEMA and Urban Land Ceiling and Regulation Act]and take benefit from Government authorities through sanctioned Scheme.

Now SICA has celebrated 'Silver Jubilee' with above limitations and even without major amendments to keep pace with the industrial needs and challenges of LPG [Liberalization, Privatization and Globalisation]. It was inevitable for GOI to rehabilitate 'SICA' itself during 2000.Wide the Companies (2nd Amendment) Act, 2002, Part VIA was introduced in the Companies Act, 1956 for 'Revival and Rehabilitation of Sick Industrial Companies' and SICA was proposed to be repealed. However, these provisions are still not made operative. It is pertinent to note that measures proposed in this amendment are also not in pace with the industry need.

Determination of sickness of a company under SICA/Part VIA of the Companies Act, 1956 is purely mathematical which is correlated to net worth and loss only. In many large group of companies, few subsidiaries may be 'sick' as per this mathematical rule of erosion of networth. But considering one's ability (forecast and also strength of the group) to meet repayment obligations and so long as it withstands the confidence of creditors, they shall not come under the scanner of SICA.

A welcome initiative from GOI to bridge this gap was proposed 3 years back in the Companies Bill, 2009 by framing new provisions on revival and rehabilitation of sick companies in line with global bankruptcy laws. Same has been retained in the Companies Bill, 2011 as well which is placed before the Parliament on 14-12-2011. Determination of sickness has been shifted from mathematical rule of erosion of networth to cash flows and the creditors are allowed to make application if company fails to repay the debt within 30 days of notice.

Apart from this, following are the major changes on sick companies in the Companies Bill, 2011 from SICA, 1985:

- ♣ Any company and not only industrial company can be declared as sick company.
- ♣ The criteria of erosion of the networth for declaring the company as sick has been dispensed.
- ♣ National Company Law Tribunal to adjudicate. No separate quasi-judicial body unlike BIFR under SICA.
- ♣ New concept of Interim Administrator and Committee of Creditors introduced.
- ♣ Specific guidelines for sanction and implementation of the Scheme of revival and rehabilitation.

Let us hope [pray!] that the Companies Bill 2011 is passed by the Parliament soon not only in the interest of sick companies but also to the cause of better corporate governance, investor protection and corporate social responsibility.

Few More Tips to Success by Harish Machia Kodandera

(Continued from page 36)

Don't Give Up

To reach success, you have to persevere. Even Thomas Edison had to learn this. When he was creating the incandescent light bulb, it took him more than 10,000 times to get it right. Keep striving even when it becomes challenging

Have an Unstoppable Attitude

You need to have determination. With good intentions, there may be a close friend or family member that feels it would be better if you focused your attention in another direction. Uphold your unstoppable attitude, determined to succeed.

Focus on something you like

To increase your chance of succeeding, you should concentrate your efforts on something you enjoy. When you start out, make a list of everything you find interesting. Then in a second column, write down the skills you have in relation to each of those items. This will help you narrow choices down based on interest and skill, which gets you started in the right direction for success.

Change your Circumstances

You have a choice in life to accept your position or change it. If you choose to plug along in life hoping that something will change for the better, you will not get very far. Always remember that when it comes to changing your circumstances, you can – you have that power. As an example, women who are in abusive situations often feel controlled and powerless to get out of the situation. They have the same choice of changing their circumstances as you do. If your circumstances lower the chances of success, you need to change them.

Have a Plan

Even if it is flimsy to begin with, you should construct a plan to include goal, milestones, deliverables such as contracts, business plans, etc., and accomplishments. This will provide you with a visual as to what you are working for, what milestones you have successfully met, and where you need to do better.

Institutional Placement Program
A basic analysis

Madhwesh K
Company Secretary
Bangalore
madhwesh2005@gmail.com

Listing of shares primarily implies making shares available to large public base. Without involvement of larger public in the shareholding structure of the company, one will not achieve the true objective of listing and even will not reap the full benefit of listing. Having public shareholding is also necessary for better float in secondary market.

This concept was codified in Securities Contracts (Regulation) Rules, 1957 ("Rules"). Now "25%" is the minimum limit for public shareholding in a listed company. If this threshold limit is breached, the company has two options: delist the company or raise the public shareholding. Public shareholding can be raised by fresh issue to public and / or divesting promoter's stake to public.

As of now there are number of companies having public shareholding below the minimum limit.

Even the companies compliant today, may breach the limit. There are many reasons for breaching the said threshold limit, some being: preferential issue to promoter; market purchase by promoter; compulsory acquisition to be made by promoter under Takeover Regulation; re-categorisation of public shareholder as promoter shareholder…etc. Any of these instances may be a cause of genuine business requirement or ignorance or deliberate action. Nevertheless, due to these instances the company is forced for either delisting or fresh issue to public or divestment from promoter.

SEBI had issued SEBI (Delisting of Securities) Guidelines 2003, laying down requirement for delisting. But till recent past there was no specific regulatory frame work for such fresh issue or divestment. These fresh issues had to go through preferential allotment route under ICDR. On the other hand divestment had to go through Offer for Sale route under ICDR, since bulk market sale by promoter(s) causes speculation.

Vide SEBI (ICDR) (Amendment) Regulation 2012, SEBI inserted Chapter VII-A providing for Institutional Placement Program (IPP). Brief provisions are set out in the following table, in comparison with Preferential Issue and QIP:

Particulars	IPP	Preferential Issue	Qualified Institutional Placement (QIP)
Objective	A listed entity which is intending to achieve minimum public shareholding may allot shares to Qualified Institutional Buyers (QIBs). This route is not available to such companies which are already compliant with minimum public shareholding criteria and still wish to increase the % of public shareholding.	Further issue of shares of the company (to any person, including promoters) without going for (follow on) public issue or rights issue	Further issue only to Qualified Institutional Buyers

Particulars	IPP	Preferential Issue	Qualified Institutional Placement (QIP)
Promoter's offer	Promoter(s) of such company may also offer their shares to QIB	This is issue by the company	This is issue by the company
Shareholder's approval	Approval u/s 81(1A) of Companies Act 1956 shall be obtained from existing shareholders	Approval u/s 81(1A) of Companies Act 1956 shall be obtained from existing shareholders	Approval u/s 81(1A) of Companies Act 1956 shall be obtained from existing shareholders
Merchant Banker	IPP shall be managed by Merchant Banker	Not required	Required
Offer document	IPP shall be made on the basis of offer document	Not required	Required
Pricing	The issuer company / divesting promoter have flexibility to fix the price	Price have to be calculated as per the given parameters	Price have to be calculated as per the given parameters
Condition on promoter's transactions	The promoters should not have dealt in the securities of the company 12 months prior to the offer and shall not deal in the securities of the company for 2 weeks after the offer	Similar restriction	No such restriction
Allocation criteria in allotment	To be followed	No such restriction	To be followed
No. of allottees	10 minimum	No such restriction	10 minimum
Lock in period	1 year	3 years / 1 year	None
Ceiling on the issue	Aggregate of all tranches of institutional placement programme shall not result in increase in public shareholding by more than 10% or such lesser % as is required to reach minimum public shareholding	No such restriction	No such restriction

The amendment offers many advantages:

- If the company is not compliant with minimum public shareholding requirement, it cannot opt for QIP in the first place. IPP now allows such companies to access QIBs.
- If the company had to raise the share capital by preferential issue route, then there are pricing restrictions, lock-in of existing shareholding of promoters, lock-in of 20% of capital for further 3 years…etc. In the case of IPP these restrictions are done away with.
- Further IPP gives an opportunity to the promoters to offload their investment without going through the process of "open offer" under Takeover Regulations, wherein there are other restrictions including pricing.

However IPP also involves certain limitations:

- Unlike preferential issue, IPP should be managed by Merchant Banker, coupled with issuance of offer document, which increases the cost of transaction.
- Further the allotment under IPP is subject to lock-in period of one year, which could have been avoided, since the allottees are only QIBs. This would have made the deal more attractive to QIBs since there is ready liquidity to their investments. In QIP, such lock in period has not been imposed.

Practically IPP seems to benefit the promoters and management more than the issuer company. Nevertheless, SEBI has opened up a new route to those companies who wish to increase their public shareholding mostly for the purpose of complying with the Rules.

Recently Godrej Properties Limited issued the first IPP in India, which received bids for 18% more than the shares on offer. This IPP has got off to a decent and confident start , we will have to wait and see the market's response for the same in near future.

The Plan 'B'ack up - Corporate Debt Restructuring

Priti Astarag Patnaik (ACS, LLB)
Company Secretary, BASIX Group
Hyderabad
papatnaik@gmail.com

Sometimes due to factors beyond control relating to economic environment or industry or internal reasons such as improper management, lack of vision, inadequate resources, many Companies fail to maintain the going concern while serving the debt capital. Corporate Debt restructuring is a backup plan when the business plan fails.

There are several types of restructuring. Mergers, Amalgamations, takeovers, Absorption, Demerger- spin off, split off, split up, sale off, Reverse Merger. Sometimes Buy-back and subdivision of shares is also used as restructuring strategy in order to increase the EPS and Market price of the shares of the company. The restructuring in whatsoever way may be; it has always the objective of strengthening the position of the existing company. In some cases it results in formation of new company(s) and in other cases the capital base of the existing company is restructured for revival/sustaining of the going concern. Debt restructuring is another method of restructuring.

Sometimes due to factors beyond control relating to economic environment or industry or internal reasons such as improper management, lack of vision, inadequate resources, many companies fail to maintain the going concern while serving the debt capital. For such corporate in order to sustain their revival and also the safety of the money lent by the banks and financial institutions, timely support through debt restructuring is called for. It is a backup plan when the business plan fails.

Indo-origin: CDR system in India originated subsequent to detailed guidelines issued by Reserve bank of India on August 23, 2001.

Base Documents: The legal basis to the CDR System is provided by two agreements

(1) Debtor-Creditor Agreement (DCA) – Between the company and the Creditors (banks and financial institutions). One of the important features of DCA is 'stand still' agreement binding for 90/180 days whereby both the debtor and creditor(s) agree to 'stand still' and commit themselves not to take recourse to any legal action during the period to ensure implementation of the CDR without legal intervention. The company also undertakes that the directors would not resign during the period.

(2) Inter-Creditor Agreement (ICA) –between all banks and financial institutions having stake in the company .One of the important provisions of ICA is: if 75% of creditors (by value) agree to a debt restructuring package, the same would be binding on the remaining creditors.

Authority: The CDR mechanism operates through three tier authority: CDR Standing Forum, Empowered Group and the CDR Cell.

CDR Standing Forum: is a representative general body of all Financial Institutions and Banks participating in CDR system comprising of Chief Executives of Financial institutions and Scheduled Banks and excludes Regional Rural Banks, co-operative banks, and Non-Banking Finance Companies. The highest authority is responsible for laying down the policies and guidelines for CDR, ensuring adherence there to, monitoring the progress to ensure completion of process within the prescribed time limit.

Empowered Group: Comprises of Executive Director (ED) level representatives of Industrial Development Bank of

India Ltd., ICICI Bank Ltd., and State Bank of India as standing members, in addition to ED level representatives of financial institutions (FIs) and banks which have an exposure to the concerned company. The group deals with individual cases of CDR.

CDR Cell: The third tier of the CDR Mechanism, it assists the CDR Standing Forum and the CDR Empowered Group in all their functions. All references for corporate debt restructuring by lenders/borrowers are made to the CDR Cell. The preliminary restructuring plan is submitted by the lead institution/major stakeholder with the CDR Cell.

Process:

1. A preliminary restructuring plan is worked out by the lead institution/major stakeholder in consultation with other stakeholders and submitted to CDR Cell.
2. The CDR Cell makes initial scrutiny of the proposals received from the lenders/borrowers, in terms of the general policies and guidelines approved by the CDR Standing Forum
3. Within 30 days, findings are placed (called the flash report) before the CDR empowered group for consideration to decide whether restructuring is prima facie feasible.
4. If the company is found to be revivable through debt restructuring as per the policies and guidelines (prescribed by the standing forum) the referring institution/bank prepares a detailed restructuring plan with the help of other lenders, in conjunction with CDR Cell.
5. If restructuring is not found prima facie feasible, the lenders start action for immediate recovery of their dues or may opt for liquidation or winding up of the company.
6. The final decision for restructuring is taken by the Empowered group after examining the viability of the company within 90 day or maximum within 180 days in case of genuine reason for delay e.g. modification of the plan by empowered committee, for from the date of reference to CDR cell.
7. After the empowered group decides for restructuring of the company it simultaneously approves and confirms the final restructuring plan (refer point 4) prepared by the referring institution and other lenders in consultation with the CDR cell.
8. On such approval the CDR cell issues the Letter of Approval for the restructuring package to the individual lenders requiring the lenders to issue the package within 45 days from the date of issue of the letter. The rehabilitation package is implemented within next 45 days.
9. The implementation of the package is closely monitored by the Empowered group and Standing Committee of Core Group Member Banks constituted by the Empowered Group.
10. Monitoring for proper implementation of the package is carried out by (i) Monitoring Institution (referring institution); (ii) Monitoring Committee (formed by the EG) and (iii) external agencies of repute.
11. The monitoring institution submits a consolidated report on the status of sanction and implementation of the approved package to CDR Cell every month.
12. Upon implementation all proposals for expansion, diversification, mergers/demergers, one time settlements, partial pre-payment to CDR members/non-CDR lenders equity raising etc., by the company are referred to the Monitoring Committee for due scrutiny and recommendation to Empowered Group for taking appropriate decision.

Conclusion:

The CDR system mandates for immediate action within a maximum period of 180 days. It has been observed that referring to the CDR cell at the right time plays a vital factor in deciding the revivable of the company through CDR. CDR Mechanism works like a life saving instrument for the survival and rehabilitation of sick corporates.

It pours the new blood in a corporate in the form of new fund infusion and structuring of the balance sheet.

The close monitoring of the progress of restructuring package implementation enhances the chance for revival of the enterprise.

Timely address to the issue through corporate debt restructuring could ensure the survival and rehabilitation of the company.

So it could be said there is always a plan B.

RBI cuts repo rate by 50 bps to 8%, loans may get cheaper

S. Ashray
Team Finance
AT&S India Pvt. Ltd. Nanjangud
s.ashray@in.ats.net

The reduction in the repo rate at which RBI lends to banks, has been prompted by deceleration in growth and softening of inflation.

The decision is likely to prompt the banks to cut lending rates for home, auto and corporate loans.

The RBI on 17th April'12 cut the repo rate by 50 bps to 8%. Loans are likely to get cheaper. The RBI has cut the rates for the first time in three years to revive sagging growth, though inflation pressures and a heavy fiscal deficit are of concern. Let us know first of all, what is Repo rate? & Reverse Repo rate?

Repo Rate: The rate at which the RBI lends money to commercial banks is called repo rate. It is an instrument of monetary policy. Whenever banks have any shortage of funds they can borrow from the RBI. A reduction in the repo rate helps banks get money at a cheaper rate and vice versa. The repo rate in India is similar to the discount rate in the US.

Reverse Repo rate: Reverse Repo rate is the rate at which the RBI borrows money from commercial banks. Banks are always happy to lend money to the RBI since their money is in safe hands with a good interest. An increase in reverse repo rate can prompt banks to park more funds with the RBI to earn higher returns on idle cash. It is also a tool which can be used by the RBI to drain excess money out of the banking system.

The reduction in the repo rate at which **RBI** lends to banks, has been prompted by deceleration in growth and softening of **inflation**. The cut is aimed at spurring growth to 9 per cent levels, seen before the global financial crisis that began in 2008. The reduction in the repo rate is based on an assessment of growth having slowed below its post-crisis trend rate, which, in turn, is contributing to the moderation in core inflation. The deviation of growth from trend is modest. At the same time, upside risks to inflation persist. These considerations inherently limit the space for further reduction in policy rates.

In order to ease tight liquidity situation, RBI announced doubling the borrowing under the Marginal Standing Facility for banks to 2 per cent of their deposits with immediate effect. It also permitted banks to borrow under the MSF even if they have excess government securities holdings. On the growth front, RBI expects FY'13 to be moderately better than the fiscal gone by. It has pegged GDP growth at 7.3%, which is 0.3% lower than the government projection for 2012-13. Growth in 2011-12 is seen at a 3-year low of 6.9 per cent. Even though spurring growth has taken the priority at the Mint Road, RBI continues to be worried about the inflation scenario, calling it as "challenging" due to the sharp spikes in crude prices and food articles in the recent months.

Inflation was the key driver that guided the RBI to tighten money supply, and later hold rates during the past 36 months. The period also saw it inflicting 13 simultaneous hikes, by 3.75% in repo rates over the 19-month period, making it one of the most aggressive central banks in the world. Apart from hurting investment activity, the rate hikes severely hurt the retail borrowers as higher loan repayments put household budgets for a toss.

RBI made a conscious effort at placating this class by reiterating that banks should not charge prepayment penalties from home loan borrowers. It also announced to set up a working group to assess the possibility of having long-term fixed interest products which will not be exposed to interest rate changes. The decision is likely to prompt the banks to cut lending rates for home, auto and corporate loans. RBI has raised lending rates 13 times between March 2010 and October 2011 to contain inflation that had been hovering near double-digit.

To sum up, reduction in the Repo rate & Reverse repo rate will result in reduction in the lending rates of Home, Auto & Corporate loans, prompting commercial banks to borrow more funds from RBI leading to the growth of the economy.

GOODWILL

Nethra Sridhar
CS Professional Student, Bangalore
nethracs1@yahoo.co.in

As per AS 26 on Intangible Assets, internally generated goodwill should not be recognized as an asset in the books of accounts.

According to AS 10 on Accounting for Fixed Assets, only purchased goodwill should be recognized in the accounts.

The fixed assets of a business concern are classified as tangible fixed assets and intangible fixed assets. Goodwill is the most permanent intangible fixed asset. It is easy to describe but difficult to define the term Goodwill. It arises from business connections, trade name or reputation of an enterprise or from other intangible benefits enjoyed by the enterprises.

SSAP – 22, UK Accounting Standard defines the term Goodwill as "the difference between the value of a business as a whole and the aggregate of the fair values of its separable assets".

Separable Asset: - An asset which has a separate identity and can be sold/discharged separately without necessarily disposing off the business as a whole.

Fair Value: - Arm's length price for which an asset (or liability) could be exchanged.

Net Assets = Total Assets – External Liabilities

Nature of Goodwill: The value of a business as a whole differs from the value of its net separable assets. This difference is described as Goodwill. The main characteristics of goodwill are:-

1. It is the super profit earning capacity of a business.
2. The value of goodwill has no reliable or predictable relationship with any costs incurred.
3. The assessment of the value of goodwill is a management oriented topic and is highly subjective.
4. The factors contributing to goodwill cannot be valued individually or separately.
5. The valuation of goodwill is relevant only at the point of time of valuation. This is because there may be wide fluctuations in the value of goodwill over a very short period of time due to internal and external factors.

Types of Goodwill

1. **Purchased Goodwill**: - It may be acquired while purchasing another concern.

   Purchased Goodwill = Fair value of Purchase Consideration – Fair value of the separable net assets acquired.

2. **Non-Purchased Goodwill / Inherent Goodwill / Goodwill generated internally**: - It is any goodwill other than the purchased goodwill. It is generated internally over a period of time.

Valuation of Goodwill

As per Accounting Standard (AS) 26 on Intangible Assets, internally generated goodwill should not be recognized as an asset in the books of accounts. According to AS 10 on Accounting for Fixed Assets, only purchased goodwill should be recognized in the accounts. Hence, the question of valuation arises only in the case of purchased Goodwill. In the case of Amalgamation in the nature of Purchase:

Goodwill = Purchase consideration – Net Assets taken over

In the case of Consolidation of final accounts of the Holding company with its Subsidiary:

Goodwill = Cost of Investment in Subsidiary less the parent's share in subsidiary's equity on the date of acquisition

In the above circumstances, the value of goodwill is the resultant figure derived from purchase consideration or cost of acquisition. For the purpose of management information Goodwill may be valued by using any of the following three methods:

1. Capitalization Method
2. Super Profit Method
3. Annuity Method

Factors affecting valuation of Goodwill:

1. ***Future Maintainable Profit (FMP)***: Operating profits expected to be earned in the future from the normal business activities carried on by the entity.
2. ***Capital Employed (CE)***: - It is the money invested in the business. In other words, it is the value of net assets at current market price, used in the business for earning FMP.
3. ***Normal Rate of Return (NRR)***: - Rate of return expected to be earned from industry to which the entity belongs to.

   NRR = Risk Free Return + Risk Premium

Methods of Valuation of Goodwill:

1. ***Capitalisation Method***: - Goodwill is the excess of normal capital employed over the actual capital employed. Normal capital employed is the capitalized value of FMP at NRR. Thus,

Normal Capital Employed = FMP/NRR
Goodwill = Normal Capital Employed – Actual Closing Capital Employed OR
Value of Business – Actual Closing Capital Employed

2. ***Super Profit Method***: - Under this method, Goodwill is taken as the aggregate super profits of the future years for which the super profit is expected to be maintained. Super profit is the excess of FMP over the normal profit.

Normal Profit = Actual Capital Employed * NRR
Super Profit = FMP – Normal Profit
Goodwill = Super Profit * No. of years for which super profit can be maintained.

3. ***Annuity Method***: - It is the refinement of Super Profit method. In this method time value of money is considered. The value of Goodwill is calculated by discounting the value of super profit by using appropriate discounting factor. For example, if the super profit of A Ltd. is Rs.80,000/- p.a. and it are expected to be maintained for 5 years. Rate of Discount is 15%. Then:

Goodwill = Rs.80,000 * 3.352 = Rs.2,68,160/-

Treatment of Goodwill in case of Valuation of Shares:
For the purpose of valuation of shares based on Net Assets Method/Intrinsic Value Method, goodwill shown in the balance sheet has to be completely ignored and a separate valuation of it has to be made. Since it is related to business, all non-trade investments and income thereon should be excluded while valuing the goodwill.

Amortisation of Value of Goodwill:

It is very difficult to estimate the useful life of Goodwill of a business concern. Therefore, such estimation is made on a prudent basis. As per Accounting Standard 14 on Accounting for Amalgamations, it is considered appropriate to amortise goodwill over a period not exceeding five years unless such a longer period is justified.

Goodwill under the Income Tax Act:

Cost of Acquisition - Section 55 of the Income Tax Act:

a. ***Purchased Goodwill:***

Cost of acquisition of a purchased goodwill is the purchase price paid to the previous owner to acquire it.

b. ***Self-generated Goodwill:***

Even though it is a capital asset, it is very difficult to ascertain the cost of acquisition of a self generated goodwill. In ***CIT vs. B.C. SrinivasShetty*** it was held by the Supreme Court that in the case of a self generated goodwill the cost can not be ascertained. When the cost of acquisition can not be ascertained correctly, it is not possible to apply the provisions of Section 48 relating to mode of computation of Capital Gain. Once Section 48 can not be applied, the income thereon can not be taxed.

To supersede the above decision, Section 55 was amended. Accordingly, the cost of acquisition of self generated goodwill of a business shall be nil and the income thereon can not be taxed.

It is important to note that this amendment does not cover goodwill of a profession. The decision in the case of B.C.SrinivasShetty still applies to self-generated goodwill of a profession.

Cost of improvement of goodwill of a business shall be taken to be nil.

This is how the Goodwill, the first item under the head Intangible Fixed Assets in the Balance Sheet as prescribed in revised Schedule VI to the Companies Act is to be looked into.

PREFERENTIAL ALLOTMENT OF SECURITIES
BY UNLISTED PUBLIC COMPANIES

Lalitha Kini
Company Secretary, Prestige Estates Projects Ltd., Bangalore
lalitha@prestigeconstructions.com | lalithakini@gmail.com

The Rules has restricted the number of persons to whom the offer on preferential basis can be made and at the same time has imposed strict timelines within which the allotment process should be achieved.

It discourages diverting of funds by Companies in the manner of share/ debenture application money to its related body corporates without specific terms and returns.

The Government has recently amended **Unlisted Public Companies (Preferential Allotment) Rules, 2003** which governs the issue of instruments by unlisted Public Companies on the preferential basis under Section 81(1A) of the Companies Act, 1956. The amendment has widened the applicability of Rules so that even fully/partly convertible debentures and hybrid instruments are included in the definition of preferential allotment.

The Rules has restricted the number of persons to whom the offer on preferential basis can be made and at the same time has imposed strict timelines within which the allotment process should be achieved.

Purpose of statute and in-built controls & checks:
It appears that the purpose of the amendment is to check the flow of black money and arrest the money laundering business. It discourages diverting of funds by Companies in the manner of share/ debenture application money to its related body corporates without specific terms and returns.

The Rules allows the Company to avail the mechanism of preferential allotment only if it is authorised by the Articles of Association and is duly approved by the Members of the Company. A third party check on the adherence to the Rules, by way certification from Statutory Auditor/ Practicing Company Secretary has been retained in the amended Rules.

Non-compliance of Rules:
The stringency in the application of Rules can be sensed vide Clause 8(2) of the amended Rules, wherein it categorically provides that non-compliance of the Rules shall be treated as public offer and provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall become applicable.

Unlisted Public Companies (Preferential Allotment) Rules – a snap shot

The provisions of Unlisted Public Companies (Preferential Allotment) Rules, 2003 and Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011 are summarized as below:

Applicability: The Rules applies to the issue of –
- Preferential issue of equity shares
- Fully / Partly convertible debentures
- Any other financial instruments including hybrid instruments

Special provisions to be noted:

- No of persons to whom the Preferential Offer is made – cannot exceed 49
- Allottees should be identified and related details need to be provided to the members in General Meeting
- The Preferential issue is authorized by Articles of Association and approved by the members. Validity of members' approval shall be 12 months
- Funds against the subscription should be remitted through cheque or demand draft or other banking channels but not cash
- Certification from Statutory auditor/ Practicing Co. Secretary that issue is being made in accordance with the Rules – to be laid before the members in General Meeting

- The securities should be allotted within 60 days from the date of receipt of share application money by the Company
- Otherwise, share application money should be refunded within 15 days thereafter. If not, interest at 12% should be paid.
- Share application money should be kept in a separate account and can be used only for adjustment against allotment of securities or repayment of application money in case Company is unable to allot securities
- If securities are allotted in violation of these Rules, shall be treated as Public Issue and Company needs to comply with SEBI guidelines.

Procedure in brief:

- Convene a Board meeting approving preferential allotment of instruments and determine the date, time and venue of General Meeting of Members
- Arrange certificate from Statutory auditor/ Practicing company secretary certifying that the issue of instruments is being made in accordance with these Rules.
- Send detailed Notice of General Meeting to Members along with explanatory statement elucidating purpose of issue, price, details of allottee, pre & post shareholding pattern etc. along with the above certificate.
- Convene General Meeting of Members and get the approval of members and act on it within 12 months.
- Allot the shares within 60 days of receipt of share application money
- File all relevant ROC forms and issue share/debenture certificate to the investor.

Drawback of the Rules:

- The closely held Public companies wherein public participation is negligent, are burdened with the stringent compliances.
- The flexibility of funding by the Holding company to its subsidiary company is affected.
- It seems to be a prolonged procedure and unwarranted involvement of members to meet the regular fund requirements of the Company

Tar the roads, not your lungs

31st May: World No Tobacco Day.

World No Tobacco Day (WNTD) is observed around the world every year on May 31. It is meant to encourage a 24-hour period of abstinence from all forms of tobacco consumption across the globe.

The day is further intended to draw global attention to the widespread prevalence of tobacco use and to negative health effects, which currently lead to 5.4 million deaths worldwide annually.

The member states of the World Health Organization (WHO) created World No Tobacco Day in 1987.

In the past twenty years, the day has been met with both enthusiasm and resistance across the globe from governments, public health organizations, smokers, growers, and the tobacco industry.

Courtesy Wikipedia,

SHARE APPLICATION MONEY PENDING ALLOTMENT

Before this amendment there was no provision regarding the receipt, purpose for utilization and time period for conversion into share capital, of share application money in its Balance Sheet, company Law was silent.

After the Notification, allotment of securities shall be completed within sixty days (60 days) from the receipt of share application money.

CS. JYOTI MISHRA
Company Secretary
Amtek Group, New Delhi - 110001
jyotimishra.cs@gmail.com

The ministry of corporate affairs vide its notification dated December 14, 2011, has introduced one of the most relevant amendment to the Unlisted Public Companies (Preferential Allotment) Rules, 2003.

The objective of the said amendment is the regulation of acceptance of share application money in an unlisted public company. This amendment is a major amendment introduced in the recent past and impact of this amendment is quite big so it should be taken note off.

The areas which are regulated regarding Share Application Money through this change are as follows:

1. Time Limit within which Allotment of security should be done against the receipt of application money.
2. Time Limit within which Application Money should be refunded in case of failure to allot security within 60 days of receipt of application money.
3. Penal provisions i.e. charging of interest on application money @ 12% p.a., in case fail to repay the same within prescribed time limit.
4. Restriction on use of application money.

Situation in Unlisted Public Companies before Amendment:

Before this amendment there was no provision regarding the receipt, purpose for utilization and time period for conversion into share capital, of share application money in its Balance Sheet, company Law was silent. Practically, speaking allotment of shares cannot be kept pending indefinitely. It would also not be proper for the company to indefinitely hold up allotment of shares. However as per practice and keeping in view the Reporting of FDI provisions in FEMA, professionals used to allot share with 6 months (180 days) of the receipt of application money.

Situation in Unlisted Public Companies after Amendment:

But after the above said amendment allotment of securities shall be completed within sixty days (60 days) from the receipt of share application money. In case company fails to allot securities against the share application money within the period of 60 days, it shall repay the application money within 15 days thereafter without interest. However if the company fail to repay the un-utilized share application money within the prescribed item limit of 15 days fixed for repayment of un-utilized application money, it will be required to be re-paid with interest at the rate of 12% per annum.

Position in Private Company

In case of a Private Company the above rules are not applicable. Hence position in case of a private company shall remain same as it was applicable to a Public company before the above mentioned amendment.

Can a Private Company disclose share application money pending in Balance Sheet for an Indefinite period?

Because of no specific requirement in the companies act regarding share application money pending allotment in case of Private Companies, many private companies have started taking advantage of the loophole. Many companies are showing money received from related parties like shareholders, directors, promoters, employees as share application money pending allotment even after the Authorized share capital has been issued and fully paid up, instead of showing it as ‘unsecured loans’.

Some of the suggested answers to the question are as follows:

- There is no time limit under the Co. Act, 1956 for an unquoted company. However, the laws of contract, Contract Act, 1872, can be invoked by the aggrieved party, i.e., lender if the shares are not allotted even after a reasonable time. The auditors can also question the reason for non allotment, so can the ITO. After all it depends on the internal agreement between the company and the applicant. If relations go sour, the applicant can demand and even use section 433 for winding up, if the company has used the funds and has no cash to refund and has not allotted shares too.
- There is no statutory time lime in between submission of application and actual allotment. However if a company not allotting shares within *reasonable period*, the application money lying with the Company may be considered as trust money under the concept of constructive trust.
- Further, practically ROC / Income tax department asking for justification in case generally it is pending for more than 2 years. If you mark, in form 23AC/ACA there are separate items for share application money.
- Also note that if investment is coming from outside India then it should not be kept for more than 180 days.

Accounting treatment and Secretarial Practice to be followed:

Share application money is not a part of share capital because it is only application money and is not share capital. It becomes share capital only after allotment of security. In view of this, share application money pending allotment for an unreasonable period should be treated as current liability in books of accounts and should be disclosed as a current liability in books of accounts and not as share capital.

As a matter of good secretarial practice, receipt of share application money should be acknowledged in the Board Meeting through a board resolution.

It is very much advisable to collect the share application form from the proposed allotted for your record and future reference.

Updates from ICSI

Waiver of Transaction Charges for Online Payments to the Institute

As you are aware, the Institute in its endeavour to provide instant services to the members, has already introduced various online services through the Institute's websites www.icsi.edu / www.icsi.in

As a welcome gesture to the ever increasing number of members availing the online services at www.icsi.in, **it has been decided to waive the transaction charges of 2% presently being charged from the stakeholders while remitting the payments online henceforth**. Members will now have to remit the actual amount of fee only whereas transaction charges will be met by the Institute. The waiver of transaction charges will be applicable for all types of payments to be made by the members like Annual fee, Certificate of Practice fee, CSBF and other fee or charges.

The annual membership fee / certificate of practice fee for the year 2012-13 has become due for payment w.e.f. 1st April, 2012. The members are requested to utilise the online services for remittance of the same.

Independent Director
Guardian or burden?

In well-managed companies, independent directors are viewed as partners of management and as outside guardians whose job is to make sure that management stays focused on delivering shareholder value.

Other companies, however, might consider independent directors to be a burden that has to be borne mainly to satisfy regulatory rules for compliance.

Ashok Kumar Sahoo
Essilor India Private Limited, Bangalore
ashokorissa@gmail.com

Clause 49 of the Listing Agreements defines Independent Director and it is mandatory for all the listed companies to comply. The definition stipulates some conditions for appointment of an Independent Director of the Company, which is basically keeping in mind the transparency on the management of the Company. But practically, how many companies in India follow the intention of the law?

Many Indian companies with a few exceptions are owned or controlled by business families. This poses a special challenge for corporate governance. A crucial issue in this approach is that the family member who heads the company holds the position of Independent Director. In well-managed companies, independent directors are viewed as partners of management and as outside guardians whose job is to make sure that management stays focused on delivering shareholder value. Other companies, however, might consider independent directors to be a burden that has to be borne mainly to satisfy regulatory rules for compliance.

Independent directors are meant to serve the company's shareholders. They are not antagonists; they are not there to upset the apple cart. It will take some time for some family executives to learn to appreciate the value that independent directors bring.

Historically, Board was there to monitor and ensure that the management stayed focused on returning value to investors. Board has the legal responsibility to protect investors' holdings.

Even before Clause 49 came along, people like Rahul Bajaj or Kumar Mangalam Birla were working with organizations like SEBI (Securities and Exchange Board of India) or the Confederation of Indian Industry to create corporate governance codes. Have these made any difference to governance in Indian companies, or have these reports just been sitting on shelves, gathering dust?

What was interesting is that a series of reports, over the last decade, have been urging greater transparency, participation and independent outside directors on the board, and these are changes in the right direction. The actual change in behavior is the next level after that, and it will take time. But on regulatory efforts -- the normative side of corporate governance in India -- SEBI has done a very good job.

It can be most effective sometimes by putting aside your executive hat so that you are not really the key decision maker, although you can be. You almost have to hold your own thinking in abeyance. Some of the most effective directors, just ask the right questions and then sit back and let the management shape the course. The idea is to help management make the best possible decision, using the input in the boardroom.

Independent Directors in the Board can counterbalance management weaknesses in a company, ensure legal and ethical behaviour at the company, while strengthening accounting controls, extend the “reach” of a company through contacts, expertise, and access to debt and equity capital, be a source of well-conceived, binding, long-term decisions for a company and help a company survive, grow, and prosper over time through improved succession planning through membership in the nomination committee etc.

Independent Director is a guardian rather than burden.

Shruthi K
CS Professional, Mysore
shruthikundur@gamil.com

Let me share with you an informative website www.infoplease.com.

Please do take time off to browse the wide range of information made available on this site.

Let me hint you on the information available on this portal:-

- ✓ World & Ethics :- Information on the different countries of the world
- ✓ History & Government:- Information about the history and type of government in different countries
- ✓ Biography :- Biographies of great personalities on the earth
- ✓ Sports:- Different types of sports and chronological achievements of sportsmen
- ✓ Arts & Entertainment: It is about music, movies, awards, drawings, mythology, photography and so on
- ✓ Business:- It is all about consumer resources, personal finance, economy, taxes and so on
- ✓ Calendar & Holidays:- Perpetual calendar, major holidays in a year(country wise), seasons months and days
- ✓ Health & Science:- Science & invention, math & money, computer & Internet, health, weather, space, astronomy, aviation

If you thought it was all about that, Wait! Let me add a few more to the list above:-

- ✓ Atlas
- ✓ Encyclopedia
- ✓ Dictionary
- ✓ Thesaurus

It is a 'One Stop Shop'!

IT for Corporate Professionals!

“Smart App Protector” to protect your applications on Android phones

Amitkumar Hegde, B.Com, MCA,
Bangalore
amits.hegde@gmail.com

We have been addicted to smartphones for quite some time. We have been using it for entertainment to send receive emails and occasionally to access our bank accounts also.

Since phone is something that we keep with us all the time, others can get an access to it very easily and sneak on personal/professional information. Do you consider your phone can land you in trouble for not being careful? Then this small Android application can come for your rescue.

Smart App Protector helps you protect your installed apps using a pattern or a password. Install the application from Google Play using following link: http://goo.gl/SnnSi

Once installed, open up the application, configure the settings as needed which are very simple. Add the applications such as gTalk, email client, which need to be protected and define a pattern to access the applications.

Once done, if you enable the App Protector, all the applications which are added need the pattern to be provided to open up. The app comes with nice features such as auto restart if force closed, backup the protected app list and so on. However the basic features should be good enough to start off.

You can also keep a small widget on the page which you can use to enable the protector before handing over the mobile to someone else.

I have seen friends who lost their smartphones and had to go through lot of trouble since they had all their online identity configured on the mobile.

So I believe if you use a smartphone, it is right time to get an application like this on your phone to protect yourself from prying eyes.

Compilation:
CS. Ajay Madaiah, Mysore

BASEL III Norms

BASEL III is a global regulatory standard on Bank capital adequacy, stress testing and market liquidity risk agreed upon by the members of the Basel Committee on Banking Supervision in 2010-11.

This Basel Accords was developed in response to the deficiencies in financial regulation revealed by the late 2000s financial crisis. Basel III strengthens bank capital requirements and introduces new regulatory requirements on bank liquidity and bank leverage. For instance, the change in the calculation of loan risk in Basel II which some consider a causal factor in the credit bubble prior to the 2007-08 collapse: in Basel II one of the principal factors of financial risk management was out-sourced to companies that were not subject to supervision: credit rating agencies. Ratings of creditworthiness and of bonds, financial bundles and various other financial instruments were conducted without supervision by official agencies, leading to AAA ratings on mortgage-backed securities, credit default swaps and other instruments that proved in practice to be extremely bad credit risks. In Basel III a more formal scenario analysis is applied.

Did you Know?

GAAR

(General Anti Avoidance Rules)

We have come across several instances wherein companies resort to tax avoidance and evasions though overseas transactions. To address the same the government has proposed to bring in GAAR provisions.

Through these provisions tax authorities will be able to curb such practices by checking the fairness of the transactions by applying the tests provided in the GAAR provisions.

There are four tests that will apply, including main purpose test and abnormality test. At least one out of four tests needs to be satisfied for applicability of GAAR. It will be invoked only if a transaction fails the main purpose test, after which the I-T department will have to prove one of the other.

The department will have to prove Commercial purpose test, bonafide purpose test, misuse & abuse test and abnormality test. However there are concerns among the Corporates & FII's regarding the clarity and fairness of the said provisions.

Pick of the Month

Company passing resolution to buy back - Company did not implement the resolution - Whether company is bound to implement the resolution of buy back?

In the case: D-LINK (INDIA) LTD. v. SEBI [(2008) 85 SCL 385 (SAT)] N.K. Sodhi (PO), Arun Bhargava & Utpal Bhattacharya, (M) [Decided on 14.07.2008]

Held, No. It was held that in the provisions of the section 77A it is clear that a company is under no obligation to buyback its securities even if its shareholders have passed a special resolution authorizing it to buy back. The passing of the Special Resolution is the first step by which they authorize the company to Buy back by making offer to its shareholders.

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

CA. Ashit Shah, Mumbai
Team Genicon, Chennai
CS. Kasturi S., Bangalore

CUSTOMS & International Trade

Notifications/ Circulars

Standard rates of customs duty per 100 kwh of electrical energy removed from Domestic Tariff Area or non- processing areas of Special Economic Zone rationalized.

No.26/2012-Cus dated April 18, 2012

Updated ITC (HS), 2012 notified by the DGFT after harmonizing it with both the Harmonized System 2012 of World Customs Organization and the Customs Tariff.

No.111(RE-2010)/ 2009-14 dated April 18, 2012.

The new scheme providing for exemption from SAD to import specified goods, as proposed to be introduced by Notification No. 21/2012-Cus, has been postponed by one month.

No. 29/2012-Cus, dated 31.04.2012

Case Law

Commissioner rejected exporter request to convert free shipping bill to Duty Entitlement Passbook ("DEPB") shipping bill, stating that Directorate General of Foreign Trade ("the DGFT") Public Notice dated August 21, 1998 ("the Public Notice") which allows such conversion was not in existence at the time of export of goods. The Customs, Excise and Service Tax Appellate Tribunal ("the CESTAT") allowed conversion of the shipping bill, observing that the Public Notice states that it retrospectively covers shipments made from April 1, 1997 to April, 14, 1998; if conversion is not allowed on the hyper-technical ground that public notice was not in existence at the time of shipment, the very purpose of the Public Notice would be defeated.

Sree Rayalaseema Dutch Kassenbouw Ltd Vs. CC [2012-TIOL-428-CESTATMAD]

The CESTAT holds that imported old and used tyres need to be checked and certified by the Pollution Control Board whether they are hazardous waste or not. If such tyres are found to be hazardous waste, the same are to be re-exported on payment of fine and penalty; if not found to be hazardous waste, may be cleared on value determined by the customs authorities.

Mass Trading Co. Vs. CC [2012-TIOL-451-CESTAT-MAD]

Transfer of right to use would be sufficient to constitute a sale for the purpose of the Notification No. 102/2207-Cus. Pertaining to refund of SAD paid at the time of import. CESTAT, Delhi has held that though the word 'sale' has not been defined in the notification, it must be construed in the sense in which it has been defined under the sales tax/VAT laws.

Commissioner V. Reliance Communications Infrastructure Ltd., 2012-TIOL-499-Tri Del

The duty liability arising out of any short levy/non levy may be demanded from the 100% EOU unit as well as the financial institution jointly and severally.

Sundaram Finance Ltd. Vs. Commissioner – 2012-TIOL-360-CESTAT-MAD

Interest would be payable if payment was not made within 3 months from filing of the refund application irrespective of when the order of refund was actually passed.

RK Chemicals Vs. Commissioner-2012-TIOL-395-Tri-Mum

Regulatory Developments

Notifications/ Circulars

The Chairman of Empowered Committee of State Finance Ministers ("Empowered Committee"), Mr. Sushil Modi said that the Government is targeting April 1, 2013 for introducing GST. The Empowered Committee will submit its report after May 24, 2012 which is likely to be tabled in the winter session of the Parliament. If the constitution amendment is passed in winter session of parliament then half of States will have to ratify this. Goods and Services Tax Network will be used for VAT purposes for the time being: Sushil Modi (The Economic Times, April 18, 2012) The Goods and Service Tax Network (GSTN), IT platform for roll out of GST will be used by the States for collection of VAT till the time GST comes into effect. The Chairman of Empowered Committee, Mr. Sushil Modi said that "it will help in checking tax evasion".

GST likely to be introduced on April 1, 2013: Sushil Modi (www.moneycontrol.com, April 18, 2012)

TRAI has released the Reporting System on Accounting Separation Regulations, 2012 to rationalises and standardizes the reporting system & strengthens audit & accountability provisions. These shall apply to all service providers having aggregate turnover of not less than Rs. 100 cr.

No. 16-07/2010-FA Dated 10.04.2012 Reporting System on Accounting Separation Regulations, 2012

Based on analysis of the comments received from the stakeholders on the draft response paper and its own analysis,

TRAI has finalised its recommendations on Exit-Policy for various telecom licences for the Licensees who want to exit from the provisioning of telecom services under a licence.

Press Release No. 76/2012 Dated 17.04.2012 Mobile Banking (Quality of Service) Regulations, 2012

DIPP has released the Consolidated FDI Policy superseding all Press Notes/Press releases/Clarifications/ Circulars issued, which were in force as on April 09, 2012, and reflects the FDI Policy as on April 10, 2012. *Circ No. 1 of 2012 Dt 10.04.2012 Consolidated FDI Policy- Effective from April 10, 2012*

Ishikawajima Harima no more good law in view of Vodafone International? Off-shore supply of goods to India under composite contract also taxable. if the tender invited is for supply erection and commissioning, the contract entered into can only be for that. It cannot split up the contract or agree to its being split up at the instance of the bidder so as to affect the object of the tender or the terms of the tender notification. So, a separate payment schedule, if any, agreed to, cannot alter the terms of the tender."

AAR No. 977/2010 (decision dated 07.05.2012)

CENVAT

Notifications/ Circulars

Manufacturers solely manufacturing goods to which merit rate of duty of 1% or 2% applies are to file returns on a quarterly basis. *Notn..23/2012-CE (N.T.) dated April 18, 2012*

CBEC has clarified that the exemption period of ten years is to be computed from the date of publication of the notification when a new unit commences commercial production or an existing unit undertakes substantial expansion and commences commercial production from such expanded capacity during the period from 14.06.2002 to 14.11.2002. However, if a new unit commences commercial production or an existing unit undertakes substantial expansion and commences commercial production from such expanded capacity after the date of publication of the notification, i.e., 14.11.2002, the ten year exemption period is to be computed from the date of commencement of commercial production in the case of new units and from the date of commencement of commercial production from the expanded capacity in the case of existing units. *No. 965/08/2012-CX Dt 17.04.2012 Clarification regarding admissibility of exemption under area-based Notn. 56/2002-CE dt 14.11.2002*

Case Law

The CESTAT held that Rule 15 of the CENVAT Credit Rules, 2004 ("the Credit Rules") does not require any mens rea to be established by the department for imposing penalty and therefore penalty imposable so long as there is contravention.

Vijayanagar Food Products (P) Ltd. Vs. CCE [2012-TIOL-465-CESTAT-BANG]

Inputs lying in stock on date on which notification exempting the final product was issued. The High Court held that right to take Cenvat/ Modvat credit accrued to the assessee on the date on when they paid tax on raw materials or inputs. Even though final product may later be exempted from payment of excise duty, assessee cannot be asked to reverse the Modvat credit already taken.

Ranbaxy Laboratories Ltd. Vs. CCE [2012-TIOL-281-HC-HP-CX]

Warehouses hired in USA, and Cenvat credit of service tax paid on warehousing service was taken. The CESTAT held that no service tax is payable but having paid the same, and taken credit, Cenvat credit thereof cannot be denied.

Sundaram Clayton Ltd. Vs. CCE [2012-TIOL-459-CESTAT-MAD]

Service Tax

Notifications/ Circulars

It was clarified that Rule 4 of the Point of Taxation Rules 2011 deals with the situations of change in effective rate of tax. In case of airline industry, the ticket so issued in any form is recognised as an invoice by virtue of proviso to Rule 4A of Service Tax Rules 1994. Usually in case of online ticketing and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket. Rule 4(b)(ii) of the Point of Taxation Rules 2011 addresses such situations and accordingly the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier.

[Circular No. 155/6/2012 - ST dated 9th April 2012]

Services provided by APMC Board do not cover within the definition of "Business Support Services". The distinction between BSS and BAS is explained in the instructions dated 28.02.2006 issued from F.No.334/4/2006-TRU. In the light of the above instruction, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'. Hence, APMC cannot be said to be rendering 'business support service' to the licensees.

[Circular No. 157/8/2012 - ST dated 27th April 2012]

Draft circular containing details of proposed amendments to harmonize the ER-1, ER-3 and ST-3 returns so that a single common return can be prescribed instead of these three returns as measure of simplification of the Business Processes in respect of filing the Return by assesses. The draft is being placed in public domain for widest possible circulation and an extensive debate from all stakeholders in trade and industry as also from all the field formations of the department. All suggestions and feedback from Trade as well as Field formations, may please be emailed at dircx1@nic.in or at vp60singh@gmail.com latest by 15th May 2012.

[F. No. 201/05/2011 – CX 6 dated 13th April 2012]

Case Law

Service provider engaged in processing applications for shares and dispatch of letters for service recipient and incurring expenses on postage stamps. The CESTAT held that prima facie service provider not liable to pay service tax on postage charges as he acts as pure agent of the principal.

Datamatics Financial Service Ltd Vs. CST [2012-TIOL-461-CESTAT-MUM]

Activity in organizing short term courses on the subject relating to the Forestry, Water Resources Management, Environment, for the officers of Indian Forest Service and other organizations i.e. improving the skills and knowledge level of the persons of various organizations attending the courses and as such, there is no activity of the appellant, which can be called rendering advice, directly or indirectly, in connection with management of any organization. Just imparting training in certain areas to the Officers of certain organizations does not amount to rendering the service of Management Consultancy either directly or indirectly to that organization.

[Indian Institute of Forest Management - 2012 (25) STR 245 (Tri-Del)]

It was held that Section 65(105) of Finance Act, 1994, defines taxable services including service to be provided and Rule 6 of Service Tax Rules prescribes payment of tax on consideration received during the calendar month without any reference to actual providing of service. This explanation says that the service provider needs to pay tax only on that portion of value for which service tax has been provided.

[Vigyan Gurukul – 2012 (25) STR 459 (Tri - Del)]

input credit of service tax can be taken only if the output service is taxable or the goods are liable to excise duty and that since immovable property is neither service nor goods, input credit would not be available in respect of commercial or industrial construction service or works contract service availed for construction of an immovable property, the industrial or commercial construction service is an integral part of the services required for setting up of the factory and the same is covered by the definition of 'input service'

Suzuki Motor Cycle (I) P. Ltd. – 2012 (25) STR 403 (Tri – Del)

Imposing Penalty pursuant to section 78 for "willful suppression of value of taxable services", first of all there should be allegation of such suppression and it should be stated as to how much of the taxable value was suppressed, in the Show Cause Notice (SCN). The show-cause notice also did not allege any of the other ingredients of the proviso to Section 73(1) of the Act for invoking the extended period of limitation. In this scenario, it can hardly be inferred that the show-cause notice invoked the proviso to Section 73(1) of the Act. Mere mention of the proviso to Section 73(1) of the Act in the operative part of the show-cause notice would not suffice. It has, therefore, to be held that the proviso was not invoked by the department. Consequently the appellant's prayer for imposing penalty on the respondent under Section 78 is not acceptable.

Gowri Computers (P) Ltd. – 2012 (25) STR 380 (Tri – Bang)

When the entry has been reversed before utilization, the same amounts to not taking credit. In the circumstances, where CENVAT credit is taken wrongly, but reversed before the same is utilized, it amounts to not taking credit. Accordingly, when no credit is taken, the provisions of Rule 14 of the Rules would not be attracted. *Dynaflex P. Ltd. – 2012 (25) STR 277 (Guj)*

VAT, Sales Tax and Entry Tax

Notifications/Circulars

The West Bengal Tax on Entry of Goods into Local Areas Act, 2012 has come into force with effect from 01st April 2012 read with Notification No. 457-L dated 31.03.2012 read with Notification No. 451-FT and 452-FT dated 31.03.2012, provides the rate of tax as 1% for specified goods, to be paid by the dealer or importer other than the dealer. The rate of VAT on goods falling under Schedule B, Part II Of the Orissa VAT Act, 2004 has been increased from 4% to 5% with effect from 01.04.2012.

SRO No. 126/2012, 12277-FIN-CT1-TAX-0025/2012, dated 30.03.2012

The rate of TDS in case of Works contract awarded to unregistered dealers has been increased from 4% to 5% with effect from 01.04.2012

JC(HQ) 1/VAT/2005/97 dated 04.04.2012

The rate of reversal of input tax in case of stock transfer of goods outside Maharashtra has been increased from 2% to 4% with effect from 01.04.2012

VAT 1512/ CR 43/Taxation - 1 dated 31.03.2012

Case Law

Sales Tax arrears cannot be collected from purchaser of property from original debtor.

TCS V. Commercial Tax Officer, Chennai – 2012-VIL-31-MAD

Octroi not applicable on aircrafts entering municipal limits and leaving after fuelling.

Jet Airways (India) Ltd. V. Municipal Corporation of Greater Mumbai 2012-VIL-30-BOM

FEMA, SEBI & RBI

Notifications/Circulars

Indian companies in the power sector will be allowed to utilise 40 per cent of the fresh ECB raised towards refinancing of the Rupee loans availed by them from the domestic banking system, under the approval route, subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilised for fresh capital expenditure for infrastructure projects.

A.P.Dir Circular No. 111 dated 20th April, 2012.

Now, ECBs is allowed for capital expenditure under the automatic route for the purpose of maintenance and operations of toll systems for roads and highways.

A.P. DIR Circular No. 111 dated 20th April, 2012.

RBI has been decided to allow the fresh ECB at a higher all-in-cost/reschedule towards refinancing the existing ECB availed under the approval route subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling.

A.P. DIR Circular No. 112 dated 20th April, 2012.

The RBI has decided to allow ECB for working capital as a permissible end-use, under the approval route, subject to certain terms and conditions.

A.P.DIR Circular No. 113 dated 24th April, 2012

The Company cannot issue equity shares/ preference shares towards conversion of import of second hand machineries.

A.P.Dir Circular No. 120 dated 08th May, 2012.

50% of the balances in the EEFC accounts should be converted forthwith into rupee balances and credited to the rupee accounts as per the directions of the account holder. In respect of all future forex earnings, an exchange earner is eligible to retain 50% (as against the previous limit of 100%) in non-interest bearing EEFC accounts. The balance 50% shall be surrendered for conversion to rupee balances. The facility of EEFC scheme is intended to enable exchange earners to save on conversion/transaction costs while undertaking forex transactions in future.

A. P. (DIR Series) Circular No. 124 dated May 10, 2012

SEBI has released the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2012 to omit "Schedule IV" and modify regulation 28(2) of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

No. LAD-NRO/GN/2011-12/40/7335 Dated 29.03.2012
Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2012