



Mysore Chapter

June 2009

Newsletter - 65

For Private Circulation Only

*Eternal journey towards
professional perfection*



Articles

- Powers of High Courts under Sec. 482 of CrPC...4
- Take Over Code Amendments in 2009...6
- Charter Documents for a corporate entity...7
- Review of recent SEBI & RBI notifications...8
- Amendments to AS 11...10
- Getting ready for IFRS...11
- Tax Saving Instruments...12
- Adhering to non-mandatory Secretarial Standards?...13

Columns:

- Living Room: Intuitive Management ...3
- Book Review: Book on M&As ...5
- Investor Secretary...5
- Web Yaatra: NSDL-TIN...8
- Observer: Like to blame Indian Bureaucracy?...9
- IT for Corp Professionals: WinRAR...12
- IPR News...12
- Legal Roundup...14
- Spectrum Space: Exams Over! What Next?...15
 - Did You Know?...15
 - Pick of the month...15
 - Lessons forever...15



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CS. Anshuman A.S.
Chairman, ICSI Mysore Chapter

Dear Readers,

The number of registered students in Mysore Chapter has grown to 995 including 766 students who have joined the course since the present managing committee took over in 2007. We do have 361 foundation students and 573 executive program students at our chapter.

We are witnessing good increase in executive program admissions which is noteworthy. The foundation program students join the course mainly because of career guidance initiatives, whereas, the decision of the executive program students to join is generally a more well thought of and measured decision. Many of our new students are post graduates in management and law. We also have a good number of practicing advocates, CAs and CA articles. We are glad that the course has caught the fancy of the younger generation who want to excel professionally.

With greater numbers come greater responsibilities. Your management committee is fully geared up and committed to ensure that the students of Mysore become the best professionals. We request the members to contribute their best to help the chapter achieve its goals..

* * *

For your notice...

You may find all past editions of this eNewsletter at <http://www.icsi.edu/mysore> and also at <http://www.esnips.com/web/icsimysore>

Mysore Chapter has its eParivaar "CSMysore". This is dedicated to the overall growth of the professionalism through sharing of knowledge. Its home page is <http://www.groups.google.com/group/csmysore>
You are welcome to join the eParivaar.

Words worth Millions

"The important thing about a problem is not its solution, but the strength we gain in finding the solution"

- Anonymous

Broadcasting of Interview with President, ICSI



A 14 minute interview on 'Scope of CS as an International Profession' with President of the Institute, CS. Datla Hanumanta Raju was broadcast by ALL INDIA RADIO Mysore Station on 15th May 2009 @ 9:16pm.

TALK ON COMPLIANCE CERTIFICATES: CS. Parvati K.R. lead this talk on 3rd May, 2009. She explained in detail the requirement of the statutes regarding Compliance Certificates and the expectation of statutory authorities in this regard from Company Secretaries.

COMPANY LAW QUIZ: Date: 3rd May, 2009 The students formed into 2 teams. Ms. Reshma Anwar, winner of the National level Quiz Competition of ICSI in 2008 was the Quiz Master. The team 'A' was led by Ms. Kavitha Rao D. B. & team 'B' was led by Mr. B. B. Nagasubramanya. Team 'A' won the competition.

TALK ON "MEETINGS": Date: 10th May, 2009. The speaker was Ms. Bhagya M.G., who spoke eloquently on this topic. It was an interactive session. A number of students from all stages attended the seminar.

Intuitive management

An executive will necessarily have to depend upon something other than facts and circumstances to make effective decisions and that something can be called intuition. Intuition is the driving force behind thought and feelings, but itself neither of them. While logic and analysis in business decision making concentrate on just meeting the business objectives, intuition goes beyond this limited purpose and takes into account the well-being of those beyond the organisation like the society, nation and humanity at large. This is equally so in the case of personal decisions.

There are some pre-requisites and processes to cultivate intuition. Ranking first among all the pre-requisites is purity of heart and an altruistic attitude. Watch out for those occasional moments when suddenly some thought arises in your deeper mind dissuading you from proceeding with your proposed action or persuading you to initiate some action. Slightest sign of ignoring it, it disappears from the scene and leaves you to exercise your free will to your own peril. Intuition needs to be recognised and nourished over a period of time. The more its advice is heeded to, the more it will grow and assist you.

The process to cultivate intuition is simple, though rarely followed. Get into silence. Pray and meditate. Allow your inner voice to become audible and freely express itself. Trust your intuition and you will never have to regret for it. Of course, this has to be done after you have made all your efforts and only after making sure that it is not a pseudo-intuition.

If managerial effectiveness is all about taking crucial and timely decisions intuition is an important element in achieving this. Intuition is not a substitute for reasoning based on simple comprehension, logic and analysis. In fact, it should never be used for problems which these tools can easily solve.

Living intuitively may not change the real world outside you; adversities and difficulties continue to confront you. But, your attitude towards and the technique of handling them change dramatically.

ELOCUTION COMPETITION: The chapter organized an elocution competition on 'is non alignment the best policy with our troubled countries' on 10th May, 2009. The participants talked both in favour and against the topic brining forth a variety of views. Mr. Abhishek Bharadwaj A. B. and Ms. Bhagya M. G. were the judges for the event.

TALK ON IFRS: CA. Akshay, Financial Manager, Sagas Autotec Pvt. Ltd. was the guest speaker on 17th May 2009. The session very much appreciated for his lucid style and depth of knowledge.

PICK AND SPEAK COMPETITION: The monthly pick and speak competition was arranged by Chapter on 17th May, 2009 at the Chapter premises. The students spoke very well on the picked topic. Ms. Jhanki. R. V., an executive program student was declared winner of the competition. Vice-Chairperson of the Chapter, CS. Sarina Chouta Harish K. coordinated the event.

TALK ON FBT: CS. Anshuman A.S spoke on Fringe Benefit Tax – Practical Aspects of Valuation at the Chapter on 24th May 2009 He detailed the legal provisions and elucidated the difference between other taxation statutes and FBT in its structure, deeming provisions and valuation rules.

Living Room



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What you are reading now is an extract from an interesting article "In admiration of Intuitive management" by Mr. AVR Rao. For complete article click here:

www.esnips.com/web/icsimysore



Powers of High Courts under Sec 482 of the CrPC

K Vijayshyam Acharya, B Com, LLB, ACS, CA, Bangalore

It is but natural that, upon initiation of a criminal proceeding, the person accused therein would, under given circumstances, direct all possible effort and resources to get absolved, preferably at the initial stage itself. More so, when there is a probability that the accused may get arrested. More rightly so, when such criminal proceedings are not genuine and the accused is put to hardship for vexatious purposes. All the more so, when Directors or other officials of a Company are accused in dishonestly initiated criminal proceedings, in connection with any transaction or dealing pertaining to the Company.

The usual and first resort, in such situations, is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C'). Yes, the powers vested under the said section are sweeping powers entitling the Hon'ble High Courts to quash criminal proceedings against the accused. Thousands of such petitions are filed every year, especially for offenses where provisions for anticipatory bail do not exist.

However, it cannot be assumed by the accused that merely by being well represented, relief is guaranteed.

The Hon'ble Supreme Court has, in a plethora of decisions, criticized that High Courts tend to exercise their powers under this section in a routine manner without justification. When exercising jurisdiction under Section 482 of the Cr.P.C, the High Court is not expected to conduct a meticulous analysis or an inquiry into the accusation, as it is the function of the trial Judge to do so. Exercise of such inherent power by the High Court is not the rule but an exception which should be applied only when grave miscarriage of justice would be committed, or where the accused would be harassed unnecessarily, or when prima facie it appears to the High Court that the trial is likely to end in acquittal. Such powers are to be invoked by the High Court either to prevent abuse of process of any Court or otherwise to ensure justice.

The Supreme Court has repeatedly warned that the inherent power of quashing a criminal proceeding should be exercised by High Courts very sparingly and with circumspection and that too in rare cases. In the case of

Kurukshetra University v. State of Haryana AIR 1977 SC 2229, the Supreme Court expressed surprise that the High Court thought that in the exercise of its inherent powers under Section 482 of the Cr.P.C, it could quash a first information report. The police had not even commenced investigation into the complaint filed and no proceeding at all was pending in any court in pursuance of the FIR. Section 482 does not confer an arbitrary jurisdiction on the High Court to act whimsically. Few other decisions in this regard are -State of Haryana and Ors. v. Bhajan Lal and Ors.

1992 Supp. (1) SCC 335, State of Bihar v. Murad Ali Khan AIR 1989 SC 1 and State of Bihar v. J.A.C. Saldanha AIR 1980 SC 326, SCC p. 574. While the exercise of the power under Section 482 is not impermissible, it should not lead to scuttle justice at the threshold.

In the case of U.P. Pollution Control Board vs Dr. Bhupendra Kumar Modi & Anr, the Court recognized that it is neither possible nor desirable to lay down any inflexible rule to determine when High Courts should exercise their powers under this Section. However, it was held that there are three circumstances under which the said inherent jurisdiction may be exercised -

- (a) to give effect to an order of the Court;
- (b) to prevent abuse of the process of the Court;
- (c) to otherwise secure the ends of justice.

It has been held, more often than not, that Directors or other Officials of a company, when accused, cannot seek quashing of criminal proceedings under Section 482, only on grounds that they are pre-occupied and too busy to attend Court hearings. They are expected to facilitate the progress of a fair trial. Mere attendance at Court proceedings on being so summoned cannot be held as a justification for quashing criminal proceedings, more so considering the basic tenet under criminal law that unless guilt is proven, the accused is deemed to be innocent.

To conclude, relief under Section 482 of the Cr.P.C cannot be presumed to be available either as a matter of right, or merely upon filing a petition procedurally.

The powers under section 482 entitle the Hon'ble High Courts to quash criminal proceedings against the accused. The Supreme Court has repeatedly warned that the inherent power of quashing a criminal proceeding should be exercised by High Courts very sparingly and with circumspection and that too in rare cases.



Book on M&As

Book Review

Venkatesh Prasad CS. CA (Inter), B.Com



Publisher : Snow White
Author : K R Sampath, Advocate & Solicitor
Price : Rs.1995/-

Today, "Corporate Restructuring" - is the buzzword across professionals / students. Here's a book which can pull out the basic principles of law and procedures involved in corporate restructuring. The Book titled - **Mergers, Amalgamations, Takeovers & Corporate Restructure** is a one stop solution for all the clarifications in this regard.

Contents to look forward to . . .

Procedural aspects of the different corporate restructuring, Draft resolutions, schemes for ESOP, amalgamation, demerger, agreement for purchase of share of a company and valuation report. Additionally it has separate chapters on ESOP, BPOs, JVs, buyback, Valuation of shares and goodwill, due diligence and rehabilitation of sick industrial company.

Why this Book?

This book makes an attempt to bring under one umbrella the different forms of corporate restructuring both organic and non organic forms. Further, the latest case laws, illustrations and citations arranged subject wise, enables easy reference. The synopsis at the end of every chapter provides bird's eye view and enables the reader to go through any particular topic without wasting much time.

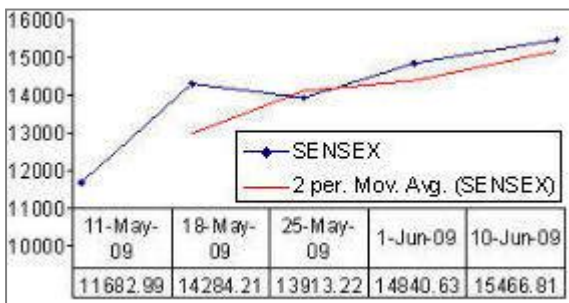
CS. Sreeraj M PCS, Bangalore
<http://works.bepress.com/sreerajm/>

Investor Secretary - 19



Dear All,

May was indeed a magical month for the bourses. When the S&P 500 index was struggling with its 200 days moving average, SENSEX seemed trading comfortably above the average. This seems like the SENSEX is no longer taking cues from U.S.markets. FII activity also showed heightened activism. Indian bourses reacted positively to the second term of the UPA government. Optimism was seen amongst all the facets of the investor community.



Indian Economy grew by about 5.8% in the first three months of the year which is unexpectedly strong when compared to other economies of the world. Some of the sectors showing an improvement are Farm Output,

Construction and the manufacturing sector. As on 10th June 2009, the SENSEX ended with 15466.81 and the NIFTY with 4655.25 points.

Sectoral Analysis				
SI	Sectoral Indices - BSE	Month Ago 08.05.09	Now 10.06.09	% Change
1	Auto	3,652.02	4977.10	36.28%
2	Health Care	3,122.72	3704.96	18.65%
3	Power	2,176.34	3069.45	41.04%
4	Oil & Gas	8,469.43	10539.83	24.45%
5	Consumer Durables	1,948.49	3100.98	59.15%
6	PSU	6,098.49	8610.71	41.19%
7	Metal	7,949.87	11644.89	46.48%
8	Capital Goods	8,507.29	13466.82	58.30%
9	IT	2,725.35	3392.92	24.49%
10	TEC k	2,226.61	2758.32	23.88%
11	FMCG	2,093.46	2271.21	8.49%
12	Bankex	6007.47	8240.65	37.17%
13	Realty	2,355.61	3786.47	60.74%

So far 2009 had been positive for the markets with SENSEX gaining by around 60%. The Budget will play a crucial role in driving the sentiment further. The markets are expected to enter the consolidation phase from these levels. It may swing within 5% gain or loss levels. I do not feel this as the juncture to pool in all your resources rather wait for the budget to zero in on the sectors to be positively affected by it.

<<Disclaimer: The author is not responsible for profit or loss incurred by anybody. Please do your home work before investing.>>



Take-Over Code Amendments in 2009 – Part 2

CS. PR. Ramanathan, M.Com, B.G.L, DTL, DFM, PGDFTM, FCS, Chennai

In the last edition:

Introduction: The SEBI has amended the takeover code twice in the year 2009 to deal with abnormal cases like massive accounting frauds. Amendments empower SEBI to grant exemptions to companies in distress from compliance of stringent disclosure requirements.

1st Amendment in disclosure of Pledged Shares

To raise personal loans, promoters or promoters' groups often resort to pledge their equity shares without disclosing the details of pledge. The promoters may resort to inflate the share prices both at top and bottom lines, which ultimately lead to a situation of an increase in stock prices and they would use it to their advantage for raising loans. When the promoters are unable to garner additional funds to repay the loan, the lender would start selling the pledged shares to recover the money advanced. This starts a chain reaction and the stock prices of such companies in the market would fall. This would heighten the risk of small investors.

In order to plug such loophole, a new regulation No.8A was inserted after regulation No.8 in the Takeover Code effective from 28-January-2009. So, SEBI has taken a step in the right direction by forcing companies to make such information public through stock exchanges.

Now let us review second amendment

Exemption from Compliances of Public Offer

Second amendment empowers SEBI to exempt the provisions of Regulation 10 to 29A – crucial disclosure requirements, when an application is made by Target Company. Regulation 10 to 29A of SEBI (Substantial Acquisition and Takeover) Regulations, 1997 provide for the provisions of disclosure on crossing the prescribed limits of 15% to 55% or 75% by making a public offer of shares after complying with prescribed norms.

The amendment was to facilitate the smooth takeover of a target company in a particularly difficult circumstance like Satyam. Regulation 29A was inserted after regulation 29 which authorizes SEBI board, on an application made by a target company, relax any or more of the provisions of the chapter III, subject to such conditions as it may deem fit, and if it is satisfied that:

- the central government or state government or any other regulatory authority has removed the board of directors of the target company and has appointed other persons to hold office as directors thereof under any law for the time being in force for orderly conduct of the affairs of the target company;
- such directors have devised a plan which provides for transparent, open, and competitive process for continued operation of the target company in the interests of all stakeholders in the target company and such plan does not further the interests of any particular acquirer;
- the conditions and requirements of the competitive process are reasonable and fair;
- the process provides for details, including the time when the public offer would be made, completed and the manner in which the change in control would be effected;
- the provisions of this chapter are likely to act as impediment to implementation of the plan of the target company and relaxation from one or more of such provisions is in public interest, the interest of investors and the securities market.

The second amendment was to facilitate the smooth takeover of a target company in a particularly difficult circumstance like Satyam.

Relaxation is given with regard to competitive bidding and public announcement.

Further, after such exemption is granted by SEBI and publicly announced by the Acquirer, no competitive bidding is allowed. SEBI amended regulation 25 Takeovers Regulations, 1997, wherein, after sub-

regulation (2A) the following sub-regulation was inserted.

(2B) No public announcement for a competitive bid shall be made after an acquirer has already made the public announcement pursuant to relaxation granted by the Board in terms of regulation 29A.

Conclusion

Legal experts and market players feel that SEBI's decision of compulsory disclosure of pledged shares by promoters or promoters' group is certainly a welcome step. On the basis of such disclosures, the investors can able to decide whether to hold or stay away from companies, whose promoters are known to have pledged their shares. The SEBI's power of granting exemption to company which is in distress from crucial disclosure requirements of Takeover Code is also a right step to rectify the misdeed of such companies.



Charter Documents for a Corporate Entity

Ms. Jayashri Murali, Director- Lex Valorem India Pvt. Ltd., www.lexvalorem.com

A Corporate entity is incorporated under the Companies Act, 1956 (Act) and is governed by the provisions of the Act. Notwithstanding the binding force of the Act, every corporate entity be it private limited company, public limited company or the recently introduced Limited Liability Partnership (LLP), the business, management, shareholder rights etc. are governed by specific MoA and AoA which are the Charter Documents of the corporate entity.

Memorandum of Association (MoA):

The MoA of a corporate entity provides the entire business structure for the corporate entity as relating to the scope of business activities, the related activities that can be undertaken by the corporate entity to achieve its core business and the maximum amount the corporate entity can raise by way of share capital. The MoA of a corporate entity is divided into sections detailing in each section the name of the corporate entity, the situation of the registered office, the main business objects to be pursued by the corporate entity on incorporation, the ancillary objects of the corporate entity to attain the main objects, the other objects enabling the corporate entity to undertake any other business other than its core business and the authorized share capital of the corporate entity.

Articles of Association (AoA):

The AoA provides for the management and terms and conditions of shareholding in the corporate entity. The AoA of a corporate entity generally incorporates the provisions for transfer of shares, composition of the Board of Directors, management of the corporate entity, the powers of the Board of Directors etc. amongst others. The AoA is the basis for the functioning of the corporate entity including the terms of shareholding and therefore becomes a binding contract between the members/shareholders and the corporate entity. A member being a shareholder of a corporate entity can enforce the Articles against the corporate entity and vice versa. The contractual force of the Articles is however limited to matters arising out of the

relationship of the members with the corporate entity and vice versa and does not extend beyond the membership in the corporate entity. The MoA and AoA when registered binds the corporate entity and its members to the same extent as if they respectively had been signed by each member and the corporate entity (Section 36 of the Act).

Shareholders' Agreement :

In the absence of any shareholders' agreement especially with regard to private limited companies the provisions relating to shares, transfer of shares, shareholding rights and obligations of shareholders etc. as contained in the AoA would be binding and enforceable. The Supreme Court in

V. B. Rangaraj vs R. Gopalakrishna (1991-6CLA 211) has held that it is a general principle that effect cannot be given to any Shareholders' Agreement unless the agreement has been incorporated in the company's AoA. It is precisely for the above mentioned reason the drafting of the MoA and AoA of a corporate entity becomes a crucial exercise to be undertaken. A detailed discussion with the subscribers to the MoA and AoA, the parties forming the corporate entity should be had to finalise the terms and conditions of the association to be reflected in the

AoA of the corporate entity. In the event of any existing Shareholders Agreement the same must be examined carefully for the purpose of incorporating the relevant provisions in the AoA to ensure enforceability of the agreement. There have been cases where the shareholders agreement has been nullified only on the ground that the AoA did not provide the terms of the agreement or was diagonally opposite of the agreed terms between the parties suiting one of the parties better. **In any conflict between the provisions of the AoA and a Shareholders Agreement, the provisions of the AoA would prevail.** Therefore it is advisable not to blindly follow/copy the AoA of another corporate entity merely for purposes of incorporating the corporate entity. A careful drafting of the MoA and AoA of a corporate entity shall ensure proper governance and management of the corporate entity without conflicts between the shareholders and the management of the corporate entity.

The MoA provides the entire business structure. AoA provides for the management of the corporate entity.

Supreme Court has held that effect cannot be given to any Shareholders' Agreement unless the agreement has been incorporated in the company's Articles of Association.



Review of recent SEBI and RBI notifications

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Securities and Exchange Board of India (SEBI) vide SEBI/CFD/DIL/LA/1/2009/24/04 dated April 24, 2009 has made amendments to the 'Listing Agreement':

1. SEBI asks companies to declare dividend on a per share basis only. (Insertion of clause 20A)

Impact: A company having shares of face value Rs 2, and declaring a dividend of Rs 2, will have to say that it has declared a dividend of Rs 2 per share and *not a dividend of 100%*. Face value of shares differs from company to company and the company announcement saying 'dividend declared at 100%' does not exactly give a clear picture of the amount of the dividend to the shareholder. This Order will surely help in removing the confusions among the shareholder. It may be inconvenient to companies declaring dividend as where the face value of their shares is Re.1 and they declare Re. 0.50 it will not give exact indication on sharing profitability (return), which is 50% as compared to declaration when made on percentage basis.

2. SEBI reduces the timelines: Amendments to Clause 16 and Clause 19 - The notice period for record date has been reduced to 7 working days and for board meeting has been reduced to 2 working days.

Impact: It is very beneficial for all the stakeholders including the companies & shareholders. It will mitigate the chances of manipulation in share prices by providing less time to the concerned elements. For companies, it will help in reducing the chances of insider trading and provide flexibility in terms of time for taking internal decisions. The

closure time for trading window under insider trading regulations will also get reduced. This will ensure faster dividend and bonus share delivery to the shareholders.

RBI Circulars:

1. Payment of interest on 'daily basis' by banks on savings back account (RBI/2008-09/45, DBOD. No. Dir. BC.128/13.03.00/2008-09, 24.04.09)

Impact: From April 1, 2010, the interest will be paid on the savings account on the daily minimum balance. At present, the interest (3.5 per cent per annum) is calculated on the minimum balance held in the account from the 10th of each month to the last day of that month. So, if a bank customer has Rs 1 lakh in his savings account one day and then Rs 100 another day, the minimum balance taken for calculation of interest in the period would be Rs 100. The Circular is in the best interest of bank account holders and would like to term it as 'path-breaking'. Customers were at loss due to the previous method of calculation of interest.

2. Banking Companies (Nomination) Rules, 1985 amended Acknowledgement of Nomination and indicating the Name of the Nominee in Pass Books / Fixed Deposit Receipts (RBI/2008-09/477, RPCD.CO.RRB.BC.No.103/03.05.28-A/2008-09, 13.04.09)

Impact: This is yet another investor friendly order from the RBI. This will ensure security and record keeping for the customer. This will also ensure that banks also do not get into unnecessary formalities at the time of maturity or premature withdrawal, since the nominee details will be available with both - the bank and the customer.



In today's Electronic Era, it is E-shopping, E-payment and E-tax everywhere. Income Tax is no exception to this. Gone are those days, where you need to visit the Income Tax Department to file returns and the like. The portal www.tin-nsdl.com enables you to file returns, applications, get PAN or TAN. This is a one stop solution for all our income tax problems. It also enables the viewing of Tax Credit. It facilitates the Assessee to view its annual tax statements & it contains even the following data:

- Details of tax deducted on behalf of the taxpayer by deductors

Web Yaatra

Venkatesh Prasad CS. CA (Inter), B.Com



- Details of tax collected on behalf of the taxpayer by collectors
- Advance tax/self assessment tax/regular assessment tax, etc. deposited by the taxpayers (PAN holders / Assessee)

Procedure: Go to view tax credit>register your PAN>pay nominal fees>after 5 days you will be able to view all transactions with the IT Department. TIN - NSDL also has another segment pertaining to publication. This gives access to the recent changes that have taken place just at a click of the mouse.



Like to blame Indian bureaucracy?

CS. H M Dattatri,

Chief Manager - Legal & Company Secretary, Essilor India Private Limited, Bangalore

Recently there was a news report with caption **"Indian bureaucracy is worst in Asia: Study"**. This result was arrived at based on a poll participated by 1,274 expatriates working in 12 north and south Asian nations who were asked to rate the efficiency of bureaucrats in those countries. Study was conducted by a Hong Kong-based Political & Economic Risk Consultancy. They had given a list: 1 Singapore, 2 Hong Kong, 3 Thailand, 4 South Korea, 5 Japan, 6 Malaysia, 7 Taiwan, 8 Vietnam, 9 China, 10 Philippines, 11 Indonesia, 12 India.

May be at once you directly agree to this and start firing the *babus* and *netas*. **Wait a minute!** First of all, concluding on status based on such a small sample it self is questionable. Any ways, let us get into little bit of reality check.

Fact 1: China - a communist country, which hangs the corrupt officials is in the 9th place. Communism and Iron hands could not eradicate corruption.

Fact 2: Except for China, all other countries in the list are much smaller than India in terms of population, area and diversity. It is easy to manage small family, small organization and small country. When it grows, there will be new processes to be established, new systems are to be brought in and as a result, decision making and implementing grows more and more complex. That is what we brand as **"red tape"**. You might have seen this in your own organization. India, a massive country with infinite diversity can not be an exception.

Fact 3: India is the largest democracy. Any one can become head of government bodies and departments. He can boss over the bureaucrats with out having any knowledge on what he is speaking about. Day in and day out educated officials have to listen to them and OBEY them. According to 'unofficial' sources, periodically, each department is expected to remit certain fixed amount to the *meta* heading the department.

Fact 4: Indian Election process is most praised one in the world. It is entirely run by same government officials and



babus. It is proved - give them free hands, they will tame politicians.

Fact 5: Under RTI Act within a short time span, *babus* have shown the capability of giving you the information and statistics sought. Can a large public / private / multinational company give so many data about any one in the company and on any aspect of the company

within such a short span - even if it is for their own shareholders?

Now, I should make one thing clear. I hate corruption. However, I am only trying to focus on unseen part of the issue. Let us check what **"non-babus"** are feeling about corruption and inefficiencies. Remember, all these are actually heard and not fictitious.

Talk 1: Little bit of corruption is always good. See, who can always act as per law? If these officials strictly go according to law, big part of our population will always be behind bars.

Talk 2: *Being in practice, I need to deliver results. All businessmen are not honest. They are ready to pay price for getting the things done. Now, for my success, I need to depend on these babus for getting the work done. If they act strictly as per law, why am I required?* An 'SSLC pass' candidate is good enough for all filings etc.



Talk 3: Cost of compliances are high (!) and unnecessary burden to the business. Manage whoever comes - any way it is a cost to company which will be much less than cost of compliances.

Talk 4: We want to comply and be honest. But these *babus* will find some or the other mistake which no one can comply and fine us for non-compliance. Better is to pay some amount so that there is no headache.

Talk 5: Government people particularly, the police, work under high pressure for a pittance. So there is no reason to yell if they make little money out in this way! This is the attitude of general public. Both hands are required for clapping... the noise that you are hearing is from this clapping!

Are you still in a position to spit fire at the babus?

Amendments to AS -11

CS. Sampath Kumar H R, sampath@acedesigners.co.in

Contours of a Layman's understanding of the amendment to NACAS Accounting Standard AS-11, carried out vide Notification No. GSR 225(E) issued by the Ministry of Corporate Affairs, Government of India, on 31-3-2009.

1. Adoption of this Notification by Companies is optional and not mandatory.
2. If adopted, it becomes effective retrospectively, i.e, for the Accounting periods commencing on or 7-12-2006 and
3. Once it is adopted, it is irrevocable.

Prior to the issuance of the subject Notification, there was no distinction between Long term and Short-term Monetary Items. There were only Monetary and Non-Monetary items. Monetary Items are foreign currency notes, balances in bank accounts denominated in a foreign currency, receivables, payables and loans denominated in a foreign currency. **Non-monetary items** are assets and liabilities other than monetary items e.g Fixed Assets, inventories, investments in equity shares etc

The AS-11 does not anywhere use the words " Realised or Unrealised", Only for the sake of clarity, I HAVE used them to mean realized= received or paid during the Accounting year; Unrealized = Year end translational difference.

To understand the amendment made by the Notification dated 31-3-2009 clearly, the reader is presumed to have understood the pre-amended AS-11. If it is so, it could become little easier to understand the requirements of the present amendment.

A. Accounting Treatment in the year Financial Year 2008-09 for transactions of F Y 2008-09 , if the amended NACAS AS-11 is adopted:

1. **Realised Foreign Exchange** Gains or Loss on Long term Monetary Items, which were being earlier charged to or credited to the P&L Account as income or expense continue to be charged to or Credited to P&L Account.
2. **Unrealised Foreign Exchange** Gains or Loss on Long term Monetary Items, which were being charged to or credited to the P&L Account as income or expense **CAN BE now accumulated** in "Foreign Currency Monetary ITEMS translation Difference Account. The

amount so accumulated should be amortized to or Credited to P & L Account over the balance period of the relevant Long-term Monetary item, but however, not beyond 31-3-2011.

3. **Foreign Exchange** Gains or Loss realized on Long-Monetary Items relating to Fixed Assets, which were being earlier charged to or Credited to the P & L Account as Income or expense continue to be charged to or Credited to P & L Account.
4. **Foreign Exchange** Gains or Loss unrealized on Long term Monetary Items relating to Fixed Assets which were being earlier Charged to or Credited to the P & L Account as Income or expense **CAN BE** now added to or deducted from the net book value of the Asset to be depreciated over the balance useful life of the Asset.

B. ACCOUNTING FOR RETROSPECTIVE EFFECT :

(i.e. for the Accounting periods commencing on or after 7-12-2006, but before 31-3-2009, as for FY 2008-09, (A) above would apply)

1. **Realised Foreign Exchange** Gains or Loss on Long term Monetary Items which occurred in those relevant Financial years and, which had been earlier charged to or

credited the P&L Accounts of those respective years as income or expense do not undergo any change now.

2. **Unrealised Foreign Exchange** Gains or Loss on Long term Monetary Items which had been transferred earlier to the P & L Account as Income or expense **CAN BE now reversed to the debit or credit of the** "Foreign Currency Monetary ITEMS translation Difference Account with a corresponding debit or credit to the opening General Reserve of FY 2008-09.
3. **Realised Foreign Exchange** Gains or Loss on Long-Monetary Items relating to Fixed Assets which had been earlier charged to or credited to the P & L Account as income or expense do not undergo any change now.
4. **Unrealised Foreign Exchange** Gains or Loss on Long term Monetary Items relating to Fixed Assets which had been transferred earlier to the P & L Account as income or expense of those respective years **CAN BE** now added to or deducted from the net Books Value of the Asset with a corresponding debit or credit to the Opening General Reserve of 2008-09.

Recently National Advisory Committee on Accounting Standards (NACAS) amended the Accounting Standard 11. Many are not convinced. Here is an effort by the author to track the impact of the amendments in the books of accounts.



Getting Ready for IFRS - 2

CS. Rambabu B ACA ACS

Manager - Accounts, Essilor India Private Limited, Bangalore



So far...

For a globalised economy to flourish, globalised financial standards are a must. More than 100 countries in the world including India have decided to adopt International Financial Reporting Standards (IFRS). These Standards are issued by International Financial Reporting Standards Boards. In India Accounting Standards Board of ICAI formulates Accounting Standards based on IFRS. It is agreed that all nations shall converge with IFRS by following dates:

April 1, 2010 to March 31, 2011 Comparative period
April 1, 2011 to March 31, 2012 First IFRS Financial reporting

Some of the Indian Companies like Infosys, Wipro, NIIT, M &M, Tata Motors, Bombay Deying have already started implementing in the current year itself.

... let us proceed

International Accounting Standards Board (IASB)

IASB comprises of fourteen members who are appointed by the Trustees representing different regions - six from North America, six from Europe, Six from Asia and four from any area. This shall reflect the diversity of geographical and professional background.

Objective of IASB

- Develop the single set of high quality, understandable and enforceable accounting standards in the public interest.
- Promote the use and rigorous application of those standards
- Bring about convergence of national and international accounting standards

Procedure for issuing of IFRS:-

- **Setting the Agenda:-**Taking the needs of users of financial statements

- **Project Planning:-**After considering the requirements a working group would be formed and the project, alone or jointly with any other standard setter would be taken up.
- **Development and publication of a discussion paper:-** Publishes a discussion paper as its first publication on any new topic. Discussion paper included overview of the issue, approaching the issue, preliminary review of authors or IASB.
- **Development and publication of an exposure draft: -** Development of Exposure draft done Based on staff research and recommendations, comments received and suggestions made by SAC, working groups and accounting standards setters, public education sessions. It sets out a specific proposal.
- **Development and Publication of IFRS:-**Development of IFRS is carried out during IASB meetings. Any changes are posted in the website. When the IASB is satisfied that it has reached a conclusion on the issues arising from exposure draft, it instructs the staff to draft IFRS. This draft is subject to review by IFRIC.
- **Procedure after an IFRS is issued:-**After the issue of Standard, Staff and IASB membership hold regular meetings with interested parties, to understand unanticipated issues relating to practical implementation and potential impact of its proposal. Also take into consideration, comments by SAC (Standards Advisory Council), IFRIC (International Financial Reporting Interpretations committee) and other standard setters which may be added to the IASB agenda.

Basic Literature of IFRS:

1. International Accounting Standards (IAS) 1-41* - Main Stds (issued till 2001)
2. International Reporting Standards (IFRS) 1 - 8 - Main Stds
3. Standard Interpretation Committee (SIC) - 1-32** - Interpretations (issued till 2002)
4. Intl Financial Reporting Interpretations (IFRIC) 1-14 - Interpretations.

*IAS are replaced by IFRS

**SIC Replaced by IFRIC

Next Month: Categories of adoption of IFRS in India



IT For Professionals

Amitkumar Hegde, B.Com, MCA



Backing up your data is always very important as sometimes even a bad shutdown can cause serious data loss. But don't you think it would be better if data could be compressed while backing up? It is similar to stacking all your shirts neatly folded instead of hanging them to a bunch of hangers in your wardrobe.

There are a bunch of Data compression utilities of which my favorite is WinRAR. It stores the compressed file with the file extension .rar. Once installed WinRAR gets integrated to windows shell so that right clicking on any folder/file will show menu elements such as "Add to Archive". The process of compressing data is popularly known as archiving.

You can directly right click on any folder or file that you want to compress and click on "Add to Archive". WinRAR opens a small dialog box where you can make various settings. Firstly you can select the Compression Method to be 'Best' or 'Fastest'. Best will take more time to compress and Fastest is the opposite. You can select various other archiving options such as 'Delete file after Archiving', 'Create a self extractor (SFX)' etc. If you select 'Lock archive', you can't modify the archive alter on by adding or deleting files. Selecting 'Create solid archive' combines all the similar files in the folder while compressing and there by gives maximum compression. You can split the archive in to multiple files also if you want it more portable. In the 'Advanced' tab you can set a password to an archive. In the 'Files' tab select 'put each file to separate archive' if you are selecting a set of files or folders. There are many other settings which you can explore.

I have been using this software since half a decade and found it to be really good. The compression method .rar gives best compression compared to other methods like .zip. So download this software today and add it to your tools collection.

Download WinRAR from <http://www.rarlab.com/download.htm>

IPR news highlights

India may take drug seizure issue to WTO

<http://timesofindia.indiatimes.com> 12 Jun 2009

After voicing its concerns with EU and WHO separately, India is considering taking the issue of seizures of drug consignments by European customs to the dispute settlement body (DSB) of the World Trade Organisation. This comes in the wake of drug seizures continuing unabated at European ports with 16 consignments of

domestic generics held up at the Dutch port alone over last year, on grounds of suspected trademark infringement. Sources said that India intervened and raised its protest strongly at the TRIPS (Trade-related aspects of Intellectual Property Rights) council meeting held in Geneva last week amongst WTO member countries, saying that EC regulations were being misused to create non-tariff barriers to trade and block generics being exported to developing countries.

Tax Saving Investments - A discussion Part 1

No Taxing talk!

CS. Priti Astarag Patnaik



Generally the salaried employees and Professionals every year try to find out the answer to a traditional long drawn question while thinking about Personal Tax Planning. Where should I invest my funds? Which is the best option? Every investment plan is associated with two aspect: Risk and Return. The criterion for each investor is to get *the best return at the minimum risk*.

There are some **risks free investment options** like Public Provident Fund (PPF), National Saving Certificate (NSC) and Tax shield Bank fixed Deposits. In the **Risky category** we can take the investment options like tax saving Mutual funds and Unit Linked Insurance Plans. Let us discuss these options in this space. To start with let us pick up PPF, a risk free instrument.

The Interest rate on PPF account is 8% annually, compounded yearly. Both the Principal and interest earned there on is tax free. Loan is available against the principal and interest there on. Maturity value paid back after 15 years, so the lock in period is 15 years, Although Partial withdrawal is permissible from sixth year onwards.

In the next edition let us know other types of investments.



Adhering to Non-Mandatory Secretarial Standards?

CS. U Padma Shenoy

Company Secretary, Totem Infrastructure Limited, Hyderabad

Secretarial Standards - recommendatory but not mandatory!!! This in itself provides adequate reason and scope for non-adherence to Secretarial Standards. And this is the common scenario in almost every company today where in the Executive Management decides to cut-down costs by doing away with the 'recommendatory' Secretarial Standards. However, Accounting Standards are followed to the point because these are 'mandatory'.

In such situations, what should be the ideal response from a Company Secretary - to invoke legal parameters or implement ideal practices? The best-suited response should be a combination of both.

The Companies Act and rules are procedural legislations, which provide the following framework:

- What a company can do??
- How the same can be done?
- What is not allowed?

This has paved way for the emergence of a "technical solution", which is a viable solution within the framework of the prevailing law and then may add what would be a prudent corporate practice in line with the high professional standards, ethics, and the Secretarial Standards.

The Company Secretary should be more of a Conscious Keeper of Corporate Standards than being an intelligent and glorified clerk who keeps an account of legal compliance technically. The role of a Company Secretary is to find out the best possible procedure to cater to the requirements of the company all the while being within the framework of the Companies Act. A balancing act between rules, regulations, laws and Secretarial Standards is the prominent role of a Company Secretary in today's corporate world.

Most of the practices outlined in Secretarial Standards such as approving the accounts by Circular Resolution, are "legal but not ethical". However, after the extensive deliberations, the consensus is in favour of giving the legal/technical solutions coupled with what should be prudent corporate/good governance practice.

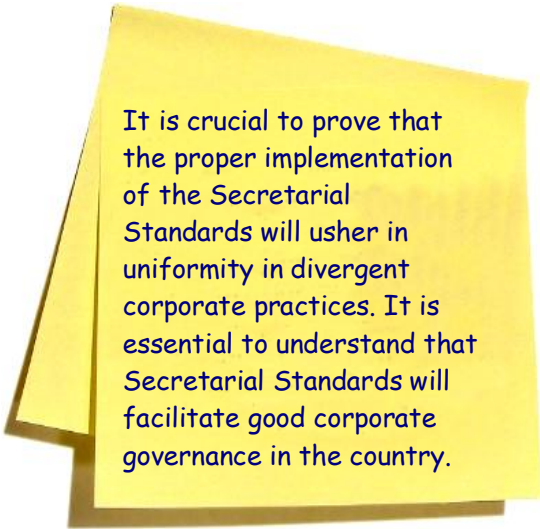
In the Indian corporate sector, the unspoken word from the Company Management to the Company Secretary is observing law is your job; earning profit is our job. In such situations, the right course of action for the Company Secretary would be to provide a legal solution and depending on the counter-party's inclination, advising on the applicable prudent practice would be the right decision.

However, the crux of the job is to justify the need for implementation of the Secretarial Standards initiated for the first time by the ICSI. It is crucial to prove that the proper implementation of the Secretarial Standards will usher in uniformity in divergent corporate practices. It is essential to understand that Secretarial Standards will facilitate good corporate governance in the country. Further, it is critical to convince that adherence to the Secretarial Standards will elevate the company's reputation in the corporate sector.

In the era where Corporate Governance is the buzzword in the corporate sector, it is not difficult to convince the managements about the utility and results of adopting the Secretarial Standards in the functioning of the company. If the Company Secretary profession is to grow, have a respectable place in the corporate world then one has to follow legal jurisprudence. The Profession of Company Secretaryship has grown from Government Diploma to a full-fledged course and professional membership.

The onus is on the Company Secretaries to establish the Secretarial Standards as not only a pioneering movement, but also a noble endeavor. Standardization of practices is the need of the hour to establish a professional outlook about the Indian Corporate Secretary in the global economy. The progressive Corporate Houses in the country tend to make special efforts to show that they practice good corporate governance and implementing the Secretarial Standards has been one of the significant components of these efforts.

With more and more companies opting to implement Secretarial Standards, it should be easier for ICSI to convince the regulators to take into consideration the real practices in the sphere and give statutory mandate for the same.



It is crucial to prove that the proper implementation of the Secretarial Standards will usher in uniformity in divergent corporate practices. It is essential to understand that Secretarial Standards will facilitate good corporate governance in the country.



Customs

Notifications/Circulars

India Singapore Trade Agreement Notified

(Customs Notification No. 50/2009, dated 12/05/2009)

Duty Free Tariff Preference Scheme Extended to Sudan

(Customs Notification No. 45/2009 dated 04/05/09)

Clarification - Levy of interest for delayed payment of duty: The CBEC has issued a detailed circular clarifying the legal position regarding levy of interest for delayed payment of duty under Section 47(2) of the Customs Act, 1962 (CA).

(Customs Circular No. 15/2009 dated 12/05/2009)

Case Law - Valuation

Transaction Value for the imported goods holds good for Customs Valuation.

Great Offshore Ltd. Vs. CC (2009 (237) ELT 142)

Non applicability of Customs Valuation (Determination of Price of Imported goods) Rules 1988 in certain cases - in the absence of a challenge to the correctness of the TV of imported goods.

Pallav Enterprises Vs. CC (2009 (237) ELT 298)

Authenticity of foreign Chartered Engineer's Certificate in case of Second hand goods imported: The Tribunal, has held that the declared TV of second hand imported goods based on a Certificate from a foreign Chartered Engineer cannot be rejected in the absence of any evidence of malafide act on the part of the importer.

Bosch Limited Vs. CC (2009 (236) ELT 275)

Foreign Trade Policy (FTP)

Notifications/ Circulars

Documentation for obtaining IEC: The Central Government has clarified that in future all applications for grant of fresh Importer Exporter Code (IEC) as well as for modification of the old IEC

should be submitted together with bank certificates indicating the name and designation of the persons who have signed these applications and whose photographs are being attested.

(Zonal Jt. DGFT Mumbai, Trade Notice No. 2/ AM.10, dated 20/04/2009)

Case laws

Exemption for 100% EOU on duty payable resulting from sale of Capital Goods which were procured duty free, in the event the depreciated value of capital goods is NIL as per Notification No.52/2003-Cus dated 31/03/2003.

Lens Master International Vs. CC & CE (2009 (92) RLT 294)

Usage of duty paid goods with partial conversion of a DTA Unit to a 100% EOU: The Tribunal has held that in the event of partial conversion of a DTA unit into a 100% EOU, duty paid goods can be used commonly across the 100% EOU and the DTA units.

Titan Energy Systems Ltd. Vs. CCE (2009 (236) ELT 705)

CENVAT

Duty not to be paid on assembly and installation of office furniture where the goods were cleared in a knocked down condition from the factory after payment of appropriate duty: The Delhi High Court.

CCE Vs. Blow Plast Ltd (2009 (236) ELT 631)

Relevant date for determining the admissibility of CENVAT Credit: The Tribunal has held that the date of receipt of capital goods in the factory is relevant for determining the admissibility of CENVAT credit and if the final product was exempt on that date, no credit is admissible on such goods.

Ruchi Credit Corporation Ltd. Vs. CCE (2009 (92) RLT 258)

Service Tax

Notifications/ Circulars

Exemption not applicable to services provided by the DTA to developers/ SEZ: The Central Government has issued a notification amending the earlier notification No. 9/2009 dated

March 03, 2009, providing an unconditional exemption from service tax to services consumed wholly within the SEZ. This will not apply however to services provided by the DTA to developers/ units in SEZ.

(Notification No. 15/2009 dated 20.05.2009),

Case Law

Cost of SIM cards supplied by service providers forms part of the value of taxable service - The Kerala High Court.

CCE Vs. Idea Mobile Communications Ltd. [2009 (20) STT 19]

Service Tax not chargeable on training institutes availing exemption under IT Act: The Tribunal has held that training institutions registered under the Societies Registration Act and exempted from Income Tax are non commercial establishments and hence their activities are not chargeable to service tax as commercial coaching or training services.

Administrative Staff College of India Vs. CCE [2009 (14) STR 341]

Sales Tax

Non submission of Form F by assessee is not at fault in certain cases - SC: if the authorities in the other State do not issue the F forms on time. The Assessing Officer is required to complete the assessment on its own merits after examining the underlying transactions.

M/s Subh Udyog Vs. State of U.P & Others [VSTI (2009) B-311 (SC)]

Mere stock transfer cannot be treated as an interstate sale in certain cases: The Madras High Court has held that a stock transfer cannot be treated as an interstate sale merely on the ground that the goods were not unloaded at the receiving depot of the dealer and that after taking possession of the delivery receipts from the depot, the transporter proceeded further to deliver the goods to the purchasing dealer.

Associated Cement Companies Limited Vs. Assistant Commissioner and Others [2009-VIL-25-HC-MAD]

Exams Over! What next?

Exams are over! Now time to relax, relax until the results! Relaxation to professionals should mean 'change in work'. So, here's some interesting ways of relaxing:

1. Try teaching your friends whatever you have learnt for your exam. This has dual benefit; firstly, the entire syllabus gets revised in an interesting manner. Secondly, your friends will help you to realize the various ways of interpreting/ looking at a particular aspect.
2. Make use of the time at your disposal to prepare for various National Level Competitions organized annually by our Institute.
3. Get your hand on Student Company Secretary/ Chartered Secretary regularly to ensure you are in touch with the happenings in the Corporate World.
4. Associate yourself with the Chapter activities which will enable you to enlarge your professional circle.
5. Ensure you cover the aspects which were unread for exams, for when you are a professional; there is no question of out of syllabus or not knowing how to handle a particular situation.
6. Plan your activities for the next session of exam/ next stage of the course, because "An act well begun is half done."
7. Ensure you read newspapers/ novels to make sure your vocabulary and language gets the much needed polishing and improvement.

Always remember, '**Learning is Eternal**' and, '**Time waits for none**' and you will realize the value of '**Relaxing**' in the true sense!!!

Lessons forever...

Don't compare your life to others'. You have no idea what their journey is all about.

When in doubt, just take the next small step.

Always choose life.



Did U Know?

General Motors Corp., files for Bankruptcy!!

- GM, the 101- year old company has 463 subsidiaries including its Subsidiary in India, namely General Motors India Pvt Ltd, and presence in over 34 countries
- It has filed under Chapter 11 of Bankruptcy Code; which permits the debtor to continue its normal business activities and simultaneously re-organizing its financial structure to fund its obligations towards employees, creditors and stock holders. This chapter is based on the principle that the ongoing business is of greater value than if it is foreclosed and the assets are liquidated. It permits the companies to be in business without the threat of creditor lawsuits.
- Many large investors of GM are insured by virtue of 'Credit Default Swaps', accordingly the investor (purchaser) receives credit protection and the seller guarantees the credit worthiness of the product.

Chrysler LLC, Visteon Corp, GM Corp....., What is next?

Pick of the month

A private company became a subsidiary of a Public Company, has only two directors. Is there a contravention of Section 252 which specifies the minimum number of Directors?

Section 3(1) (iv) provides that a private company which is a subsidiary of a company which is not private company is a 'Public Company'. Further, Section 252 provides that every public company (other than companies under Section 43A - this has been made inoperative) shall have atleast three directors. Apart from the aforesaid exception, all public companies must have atleast three directors. Since, the aforesaid provision is mandatory, in the present case, a third director has to be inducted to ensure that business conducted by the company is held valid.