



Volume - 4 (July, 2011)

Knowledge Connect

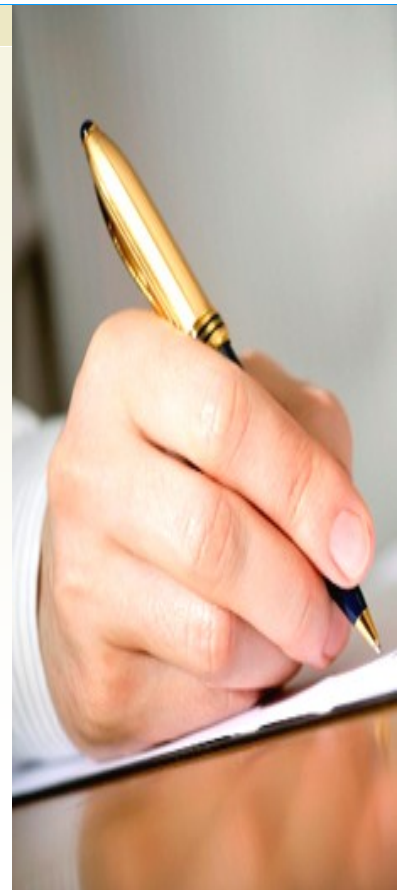
Monthly Newsletter

Editor's Column

The changes in economic scenario after liberalization and the economic growth have raised the interest of Indian as well as Foreign Institutional Investors(FII's) in the Indian capital market.

Though the Government has been liberalizing the Indian economy but the inflation bug seems to have hit the Indian currency too. The finance ministry has decided that with effect from 30th June this year, coins of 25 paise denomination will not be accepted in transactions and will go into history. This has joined the league of coins of 1, 2, 3, 5 and 10 paise denomination, that have disappeared from circulation, surviving only in numismatic collections.

The Master Circulars by Reserve Bank of India are a one-point reference of instructions issued by the Reserve Bank of India on a particular subject. These are issued on July 1st every year and automatically expire on 30th June of the succeeding year. The topics covered in the Master Circular on Foreign Exchange are Foreign Investment in India, Investment in Joint Ventures and Wholly owned subsidiaries abroad, Import and export of Goods and Services etc. The liberalization initiatives taken by the Reserve Bank and the Central Government have resulted in the



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gradual integration of the Indian economy with the global economy which is its main emerging feature. RBI signaled further liberalization through its recent circular wherein it has permitted the issue and allotment of shares for consideration other than cash to a person resident outside India upon certain terms and conditions, buyback/ prepayment of FCCB's by Indian Companies etc. Also, this is the first time that RBI has introduced the requirement of filing Annual Return on Foreign Liabilities and Assets by the Companies discontinuing Part B of FCGPR.

As we all know that most of the countries of the world which embark on the path to economic development have to depend on foreign capital to some extent. In spite of the potential savings in a developing economy like India, foreign capital helps in speeding up economic activity at every stage of development. Foreign capital brings with it other scarce productive factors, such as technical knowhow, business experience and knowledge which are equally essential for economic development. The Governments initiative to liberalise the inflow of investment in the country, widen the class of foreign investors in India and give more depth to equity markets in the country will undoubtedly speed up the process of economic development.

Apart from a number of Green Initiatives taken by the Ministry of Corporate affairs, the initiative taken by the Ministry for appointing a Regional Director for South East Region Directorate Headquartered is commendable. The Regional Director for South East Region Directorate Headquartered at Hyderabad covers the state of Karnataka, Kerala, Andhra Pradesh and Union Territory of Lakshdweep. The major powers delegated to the RD will cover rectification of name, approval for contracts under Section 297, appointment of statutory auditors under certain clauses of Section 224 of the Companies Act, 1956 etc. The office of Regional Director, Ministry of Corporate Affairs has already started functioning in Hyderabad.

Hope that the Government takes many more initiatives that promote growth as the growth of a nation is ultimately the growth of its individual citizens.

With best regards,

Bhavani

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4th July, 2011

Compliance Calendar by CS. Naresh & CS Khusboo

Listed below are the Compliances for the period 25th May to 25th June

S. No.	Compliance	Form to be filed	Relevant Law	Due date
1.	Excise Duty payment	GAR 7	Central Excise Rules, 2002,	15th July
2.	Payment of service tax collected to the department	GAR 7	Service Tax Rules, 1994	5th July
3.	Quarterly Return	Form XXVII	AP Shops and Establishments Rules 1990	10th July
4.	Profession Tax Monthly Return	Form V	Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987.	15th July
5.	Submission of VAT return along with the Payment due for the previous month after considering input credit	VAT 200 & CST VI	AP VAT Rules	15th July
6.	Return of Employees	Form 5	Employees' Provident Fund Scheme, 1952	15th July
7.	ESI monthly deposit	ESI Challan	Employees State Insurance Act, 1948	21st July
8.	EPF Monthly remittance	EPF Challan	Employees' Provident Fund Scheme, 1952	25th July
9.	Consolidated Statement of dues & Remittances	Form 12A	Employees' Provident Fund Scheme, 1952	25th July
10	Return of Members leaving the organization	Form 10	Employees' Provident Fund Scheme, 1952	25th July

COMPLIANCE CALENDAR

for Listed companies for the quarter ended on 30th June, 2011

S. No.	Activities	Sections /Rules / Clauses,etc.	Acts / Regulations, etc.	Compliance Due Date
1.	Compliance Certificate on Corporate Governance	Clause 49	Listing Agreement	15th July
2.	Shareholding Pattern	Clause 35	Listing Agreement	21st July
3.	Intimation for holding of Board Meeting for taking on record the un-audited financial results for the quarter ended.	Clause 41	Listing Agreement	9 (Nine) days in advance of the Board Meeting
4.	Newspaper Advertisement about Board Meeting to consider quarterly results	Clause 41	Listing Agreement	9 (Nine) days in advance of the Board Meeting
5.	Announcement of Quarterly Results by fax: (Simultaneously courier them to Stock Exchanges and display and upload the results on the website of the Company)	Clause 41	Listing Agreement	Within 15 minutes of the Closure of the Board meeting
6.	Publication of Quarterly Financial Results in Newspapers	Clause 41	Listing Agreement	Within 48 hours of the conclusion of the Board Meeting
7.	Disclosure about the utilization of Issue Proceeds with the Notes to quarterly results (depending on the issues)	Clause 41 & 43	Listing Agreement	As a note to point no. 6
8.	Disclosure of Investor Complaints	Clause 41	Listing Agreement	As a note to Point No. 6.
9.	Limited Review Report (If company is publishing Un-audited Financial Results)	Clause 41	Listing Agreement	14th August, 2011
10	Submission of Reconciliation of Share Capital Audit (Formerly Known as Secretarial Audit Report)	SEBI Circular, D&CC/FIT TC/C R – 16/2002 And Regulation 55A	SEBI (Depositories & Participants) Regulations, 1996	30th July , 2011

Compliance Calendar as per RBI

S. No.	Particulars	Act, Rules and Circulars	Applicability	Due Date
1.	Annual Return on Foreign liabilities & Assets	A.P. (DIR Series) Circular No.45 dated March 15, 2011	Companies having foreign Investment	15th July
2.	Quarterly return	DNBS.PD/ CC.No.130 / 03.05.002 /2008-09	NBFC (non-deposit taking NBFCs with asset size of Rs 50 crore and above but less than Rs 100 crore)	30th July
3.	Statutory Auditors Certificate	RBI/2010-11/295 DNBS.PD/ CC.No. 204 / 03.05.002/2010-11	NBFC Companies (Both Deposit accepting & Non Accepting Companies)	30th July

Updates / Amendments by CS. Ritesh & CS. Parul

A) MINISTRY OF CORPORATE AFFAIRS

1. Disposing of Pending Forms with Registrar of Companies: MCA vide [Circular No. 40/2011 dated 23rd June, 2011](#) has advised to all the ROCs to review all the pending forms which were filed prior to 15th February, 2009. The pending forms have been placed in the category “Held in abeyance”(HIAB) and the ROCs have been asked to dispose all such forms by 7th July, 2011. Hence, MCA has requested to all the stakeholders to track the forms filed by them and contact the concerned ROC's for clearing the pending forms.

2. Green Initiative – Issue of Certificates by Digital Signature: MCA vide its circular No. 29/2011 had taken another step towards “Green Initiative” in Corporate Governance by notifying that all certificates and standard letters will be issued electronically under the Digital Signature of the Registrar of Companies. In this regard, 13 (Thirteen) certificates have already been developed and implemented by the Ministry as per [Circular No. 39/2011 dated 21st June, 2011](#). The remaining certificates notified in the circular may be implemented and issued from 3rd July, 2011.

3. Clarification on proper Corporate Governance and Compliance of provisions of Companies Act, 1956: Ministry of Corporate Affairs vide [General Circular No. 38/2011 dated 20th June, 2011](#) has clarified about Circular No. 33/2011 dated 1st June, 2011, wherein it was informed that no request, whether oral, or in writing or through e-forms, for recording any event based information/changes filed to the Registrar of Companies (ROC) will be accepted from defaulting companies, unless they file their updated Balance Sheet and Profit & Loss Accounts and Annual Return. MCA vide the present circular has clarified that the said circular shall be applicable to those defaulting companies which have not filed their Annual Filings for the Financial Year 2006-07, 2007-08, 2008-09 and 2009-10 with the ROC.

4. Filing of Annual Accounts in eXtensible Business Reporting Language (XBRL) mode: MCA had mandated certain class of companies to file Balance Sheet and Profit & Loss Account along with Director's Report and Auditor's Report for the Financial Year 2010 – 2011 by using XBRL Taxonomy. MCA has prepared and hosted the Taxonomy Business Rules, Validity tools etc., required for the preparation of the above documents in XBLR format on the website of the

ministry at www.mca.gov.in. The Frequently Asked Questions (FAQs) about XBRL have been framed by MCA for the information and easy understanding of the stakeholders and enclosed as Annexure –I to the [General Circular No. 37/2011 dated 7th June, 2011](#). To enable filing on XBRL by stakeholders, MCA-21 portal will have XBRL filing module by July, 2011.

[\(a\) Click here to Download Final Taxonomy issued by MCA.](#)

[\(b\) Click here to Download Final Business Rules issued by MCA.](#)

- 5. Guidelines for Fast Track Exit mode for defunct companies:** MCA has come back with another opportunity for fast track exit (FTE) by a defunct company by issuing new guidelines for Fast Track Exit (FTE) vide [General Circular No. 36/2011 dated 7th June, 2011](#). The conditions under which a company will be called as “defunct company” for the purpose of these guidelines has been specified. Also, those Companies which cannot get its name struck off from the register of companies under the fast track exit mode are also specified in the circular. In general, Companies with Nil asset and liability and not having any business activity either since incorporation or not carrying over any business activity or operation for last one year before making application are eligible under this mode. Companies willing to avail the Fast Track Exit mode are required to file Form FTE along with the filing fees of Rs. 5,000/-.

The new guidelines are effective from 03rd July, 2011.

- 6. Clarification regarding participation by shareholders or directors in meetings through electronic mode:** MCA had issued a General circular in May, 2011 clarifying participation of Director's and Shareholder's in the Board Meetings and Shareholders Meetings, respectively. The MCA has now issued clarifications vide its [Circular No. 35/2011 dated 6th June, 2011](#) for better understanding of the earlier circular. MCA has clarified that video conferencing facility shall be mandatory in case of Listed Companies for all shareholders meeting held after F.Y. 2011 – 2012. The MCA entrusts the Chairman of the Meeting and Company Secretary of the Company with the responsibility of ensuring proper equipments and facilities for effective participation in the meeting. MCA also clarifies that, presently, National Security Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) are the authorized agencies for providing the platform for e-voting.
- 7. Companies (Amendment) Regulations, 2011:** MCA issued a [Notification no. GSF 453 dated 14th June, 2011](#) amending the Companies Regulations, 1956 by re-classifying the jurisdictional region of RD's from four to six by inserting two new regions i.e. Eastern & North Eastern Region and South East Region Directorate

Headquarter at Hyderabad. These new Regulations will be known as Companies (Amendment) Regulations, 2011.

8. Notification for insertion of new PFIs: MCA vide its notification [dated 10th June, 2011](#), has amended the provisions of Section 4A of the Companies Act, 1956 and inserted four more companies in the list of the Public Financial Institutions (PFIs) which will be known as PFIs.

9. Companies (Cost Audit Report) Rules, 2011: MCA vide notification no. [GSR 430 \(E\) dated 3rd June, 2011](#), revised Cost Audit Report rules and issued new Companies (Cost Audit Report) Rule, 2011. The said rules shall be applicable to every Company in respect of which an audit of the cost records has been ordered by the Central Government under sub-section (1) of Section 233B of the Companies Act, 1956.

10. Companies (Cost Accounting Records) Rules, 2011: MCA vide notification no. [GSR 429 \(E\) dated 3rd June, 2011](#), has revised and issued new Companies (Cost Accounting Records) Rules, 2011. The Company's to which these rules apply has to obtain a Compliance Report, in each of its financial year commencing on or after 1st April, 2011 duly certified by a Cost Accountant and submit the same to the Central Government within 180 days of the close of the Company's Financial Year to which the report relates.

11. MCA vide [Notification dated 2nd June, 2011](#), has amended the Director Identification Number Rules and issued Companies Director Identification Number (Second Amendment) Rules, 2011.

12. Settlement of prosecutions cases: MCA vide [Letter No. F. No. 3/57/2011-CL.II dated 3rd June, 2011](#) has initiated a new process of "Lok Adalats" to review and ascertain the legal cases where the companies and their officers in default are inclined to get the offences compounded. MCA has asked all the ROC's and Regional Director's (RD) to organize Lok Adalats headed by RD's in the office of concerned ROC's. The stakeholders have to approach the Lok Adalats, where the prosecution case will be heard and issued orders immediately.

13. Payment of MCA 21 Fees / ROC fees Via NEFT: MCA has taken another initiative in order to eliminate the inconvenience caused due to payment processing delays by introducing payment of MCA filing fees via National Electronic Fund Transfer (NEFT) mode, in addition to the existing payment methods i.e. Credit Card, Internet Banking & Physical Challan (for payments in excess of Rs. 50,000/-). Please [click here for NEFT payment user guide](#).

14. Dematerialization of Share Certificate by Public Companies: MCA vide [letter no. 17/143/2011-CL.V](#) issued draft Companies

(Dematerialization of Certificates) Rules, 2011, so that Public Companies and their subsidiaries which have raised money by issue of shares, debentures, accepting public deposits, stock, bond or any other financial instruments from public, other than from directors of the company, shall be required to issue and keep such share certificates, debenture certificates and certificates issued for receipt of deposits, stock, bond or any other financial instruments in dematerialized form only.

B) SECURITIES AND EXCHANGE BOARD OF INDIA

1. Dematerialization of Promoter's Share: Securities and Exchange Board of India (SEBI) vide [Cir/ISD/ 3/2011 dated 17th June, 2011](#) has made dematerialization of Promoter's shares in all the listed companies mandatory, in order to improve transparency in the dealings of shares by promoters including pledge / usage as collateral. In order to trade the Companies Securities in normal segment, all the listed Companies have to achieve 100% dematerialization of promoter's and promoter group's shareholding latest by the quarter ended September, 2011.

C) RESERVE BANK OF INDIA

1. Reserve Bank of India (RBI) vide [A.P. \(DIR Series\) Circular No. 73 dated 29th June, 2011](#) Liberalized Overseas Direct Investment provisions relating to transfer by way

of sale of shares of a joint venture or wholly owned subsidiary (JV or WOS) outside India with and without write off upon fulfillment of certain conditions.

- 2. Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI Scheme allowed under the Government route:** RBI vide [A. P. \(DIR Series\) Circular No. 74 dated 30th June, 2011](#) specified the issue equity, preference shares under the government route of the foreign direct investment scheme for specified categories and payments shall be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI.
- 3. RBI** has issued the updated Master Circulars on 1st July, 2011. Full text of the Master Circulars can be checked on the website of Reserve Bank of India. [Please Click here to view the list of Master Circulars in all categories issued by RBI.](#)

CASE LAWS

by CS. Vanaja & CS. J. Smita

COMPANIES ACT, 1956

1 **CLB cannot order to defer the holding of Extra-Ordinary General Meeting on the requisition made by a shareholder (Company – IFCI) on the ground that specific authorization/board resolution is not enclosed to file such requisition by the Company Secretary**

Case Law : IFCI LTD v. TFCI LTD [DELHI HIGH COURT]
(Sections 169,398, 402 of Companies Act, 1956)

Decided on : 16/05/2011

The appellant company (hereinafter referred to as 'IFCI') holding 37.85% of shares of respondent company (hereinafter referred to as "TFCI") made a requisition duly signed by Company Secretary to TFCI to convene an Extra Ordinary General Meeting (EOGM). However, TFCI questioned the validity of the requisition saying that specific authorization/board resolution to file such requisition had not been annexed. So, TFCI requested IFCI to send the said board resolution within a period of one week but did not receive the same. So, TFCI decided not to convene its EOGM.

IFCI initiated the process under Section 169(6) of the Act for convening an EOGM and filed Company Petition under Sections 398 and 402 of the Companies Act, 1956 before the CLB. The CLB ordered to defer the holding of the EOGM. This order of the CLB was impugned before the High Court. The High Court set aside the CLB Order and has allowed to convene the EOGM as scheduled on the following grounds:

- The mere fact that IFCI did not reply to TFCI's letter does not mean that the requisition was not authorized by the Board and/or the Company Secretary of IFCI did not have the authority to requisition the EOGM.
- The fact is that the Board of IFCI has vide its resolution dated 29th November, 2001 given specific authority to its Company Secretary to sign all legal documents and documents under Section 2(15) including a requisition.

Further, High Court has stated that the decisions taken by EOGM would not be given effect to, till the CLB decides the petition finally.

2) Non-disclosure of facts of Inspection made under Section 209(A) of the Companies Act, 1956 in Explanatory Statement of EGM Notice will not affect the approved scheme of Amalgamation, if the scheme drafted is bonafide and in goodfaith and is not prejudicial to the interest of the minority or public at large.

Case Law : Sesa Industries Ltd. Vs. Krishna H. Bajaj and others (Respondent 1), Supreme Court (Section 209A of Companies Act, 1956)

Decided on : 7th February, 2011

Sesa Goa Ltd (SGL) is the holding company of the appellant Sesa Industries Ltd (SIL).Both decided to amalgamate and the Bombay High court gave approval to hold General Body Meeting in spite of the objection by the Respondent No. 1 holder of 0.29% of the shares in SIL stating that investigations are pending against the companies. Accordingly meeting was held and proposal for amalgamation was approved with 99% majority. Later, SIL & SGL filed petitions in the High Court for approval of the Amalgamation Scheme and they have obtained the same on 18th December, 2008. Aggrieved, respondent No.1 preferred an intra-court appeal before a Division Bench of the Court to revoke the sanction of scheme of amalgamation and consequently the division bench set aside the order of the High Court stating the reasons for the same. Consequently, SIL appealed to the Supreme Court to restore the order of the Company Judge i.e., High Court.

The Supreme Court has allowed the appeal made by SIL stating the following:

- The Court should before according sanction to scheme of amalgamation see that the provisions of the Act have been duly complied with, the statutory majority has been acting bonafide and in good faith and are not coercing the minority in order to promote any interest adverse to that of the latter.
- Further, in the present case, the Affidavit of the Registrar is absolutely noncommittal. In the affidavit of the Official Liquidator, he has mentioned that the affairs of the company are not being conducted in a manner prejudicial to the interests of its members or to public interest.
- However, it is made clear that the scheme of amalgamation will not come in the way of any civil or criminal proceedings which may arise pursuant to the action initiated under section 209A or 235 of the Act, or any criminal proceedings filed by Respondent No. 1

3) Professional Misconduct doesn't arise when statutory auditor is a director of a holding company

Case Law : Yogeshwari Kumari Vs. Institute Of Chartered Accountants Of India & Anr. Sections 226(3)(B), 397, 398 Of Companies Act, 1956 read with Section 21 of The Chartered Accountants Act, 1949

Decided on : 13.09.2010

The appellant (Yogeshwari Kumari) is a shareholder in Lake Palace Hotels and Motels Pvt. Ltd. (LPHM, a subsidiary of LSPH) and Lake Shore Palace Hotels Pvt. Ltd. (LSPH) and claims to be interested in the affairs and management of both the companies.

The appellant filed a complaint under Section 21 of the Chartered Accountants Act, 1949 and vide circular No.14/51/62-PR to the Department of Company Affairs against the respondent no. 2, a Chartered Accountant, auditor of the LPHM before the Council of ICAI on the contention that a professional misconduct has taken place because a partnership firm of respondent no. 2 was the statutory auditor of LPHM and respondent no.2 acted as a director of LSPH, which is a holding company of LPHM.

The ICAI invited comments from the respondent no.2 for the complaint filed and in its meeting the institute has expressed the prima facie opinion that the respondent no.2 was not guilty of professional or other misconduct.

The appellant appealed to the Division bench under Letters Patent and the same was dismissed due to the following reasons:

- (i) The above referred circular clearly expresses that a practicing Chartered Accountant who is connected with the management of a particular company or acts as an auditor of the company should not be employed as a tax or financial advisor of a company in the same group.
- (ii) Further, the same matter of controversy is pending for adjudication before the High Court of Rajasthan, hence disqualification in terms of Sections 226(3) and 226(4) of the 1956 Act would depend upon the decision of the Rajasthan High Court.

Legal Jargons by CS. Naresh

Word : Ceteris Paribus

Meaning: Ceteris Paribus is derived from a Latin word which basically means "*all other things being equal*" or "*with other things the same,*"

It is an example of an ablative absolute and is commonly rendered in English as "all other things being equal." A prediction, or a statement about causal or logical connections between two states of affairs, is qualified by ceteris paribus in order to acknowledge, and to rule out, the possibility of other factors that could override the relationship between the antecedent and the consequent.

Example: During 2010, the price of gold was touching new heights, where as other metals being Ceteris Paribus

Pronunciation:

Ceteris - 'set-er-is'

Paribus - 'par-uh-buhs'

Word : Res Judicata

Meaning : **Res Judicata** also known as **claim preclusion**, is the Latin term for "a matter [already] judged", and may refer to two things: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal and the term is also used to refer to the legal doctrine meant to bar (or preclude) continued litigation of such cases between the same parties, which is different between the two legal systems. In this latter usage, the term is synonymous with "preclusion".

Example: The High Court of Mumbai has decided the case based on the Res Judicata by the Supreme Court.

Pronunciation:

'res- ju-di-ca-ta'

Articles of the Month

Storage of Registers in the Electronic format by CS. Prashant

- Legal Background

Can Storage of Registers be in Electronic format, A big Dilemma! Let us analyse it.

Two things which have to be first answered are:-

1. Does the Companies Act, 1956 allow storage of Registers in the Electronic format?
2. Does the Companies Act, 1956 allow Maintenance of Registers at the place other than the Registered Office of the Company?

Primarily we need to first examine the provisions of the Companies Act, 1956, Information Technology Act, 2000, Indian Evidence Act to answer the aforesaid questions.

Companies Act, 1956

Under the Companies Act, 1956, a company is required to maintain certain registers and records. There are some other registers and records, the maintenance of which is not statutorily required but is essential for the smooth, efficient and systematic functioning of the company.

Some of the registers and records are required to be kept open by a company for inspection by directors and members of the company and by other persons, including creditors of the company. The right to inspect such registers and records is an enforceable right. Companies are also required to furnish extracts from certain documents, registers and records and to allow copies of certain documents, registers and records on demand by a member or by any other specified person. Government authorities have the right of access to all registers and records. Non-compliance with the provisions relating to maintenance, preservation and inspection of registers and records, to the extent they are statutory, creates punishable offences and leads to various penalties on the company, the directors and every officer in default.

The term record of register is not defined in the Companies Act, 1956. Pursuant to Section 2 of the Companies Act, reference can be made to the Depositories Act, 1956 for words and expression not

defined in the Companies Act, 1956. Section 2(1)(i) of the Depositories Act, 1956 define term “ record” to include the records maintained in the form of books or stored in a computer or in such other form as may be determined. Thus preliminary investigation reveals that record can be kept in the electronic format unless otherwise required under the Companies Act, 1956.

Information Technology Act, 2000

Now we move on to the Information Technology Act, 2000. This act permits the maintenance of registers and records in electronic mode. Such registers and records should be maintained in accordance with the provisions of the said Act.

The Information Technology Act, 2000 (the IT Act) was passed interalia to provide for electronic governance. Section 3 of the Act provides for authentication of electronic records. It says that any electronic record can be authenticated by a person by affixing his digital signature. This section also provides for the minimum technology required of the digital signature. The electronic record would be converted in to a message digest, by using ‘hash function’ which is intended to ensure the integrity of the communication of the electronic record

Section 4 of the IT Act says that any information or other matter required by any law to be in writing can be in electronic form. Section 5 says that where any law requires any information or other matter to be authenticated by the signature of any person, when such requirement shall be deemed to be satisfied, if such information or matter is authenticated by means of digital signature affixed in the manner provided by the Rules.

Now coming to the provisions of Section 7 of the Information Technology Act, 2000 which provides for retention of electronic records. The said section reads as under

“(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if –

- (a) the information contained therein remains accessible so as to be usable for a subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

- (c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

- (2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.”

It has to be further noted that the section 9 of the of the Information Technology Act, 2000 inter alia provides that section 7 does not confer any right upon any person to insist that any Government Ministry or Department or statutory authority should accept any document in the form of electronic records.

The Indian Evidence Act, 1872

Now we move on to the questions of admission of electronic records and transmissions in the law of evidence. Law presumes paper-based documents as proof of transactions. Difficulties arise when records are kept in the electronic forms. Law of Evidence has to ensure that electronic transmissions and electronic records will have the same value as paper based documents and digital signature would be equally legal as a manual signature. The Indian Evidence Act, 1872 revolves around two types of evidence – oral evidence and documentary evidence. Documentary evidence is of two types – primary evidence and secondary evidence. Primary evidence is where the original self is available. Secondary evidence is where the contents of the original will have to be proved by leading in further evidence. Electronic records challenge this very assumption since every electronic record is an original as well as in duplicate. In other words it is primary as well as secondary evidence at the same time. To get over this complex situation special provisions (Sections 65A and 65 B) have been incorporated in the India Evidence Act, 1872 through the Second Schedule of the Information Technology Act, 2000. The said Sections provide for proving the contents of electronic records.

It is pertinent to note that the MCA has inserted section 610C, 610D and 610E in the Companies Act, 1956 so as to make provision for electronic filing system and for payment of fees through electronic form

The substance of the above discussion is that if the Companies Act, 1956 do not provide expressly for maintenance of electronic register & records by the Companies, the Companies would be

automatically entitled to maintain the records electronically subject to the conditions laid down in section 7(1) of the IT Act, 2000.

Now we move on to the question of maintaining the registers at the place other than the registered office of the company. Attention is invited to Section 163 of the Companies Act which provides for maintenance of Register and Index of members / Register and Index of Debenture holder at the registered office of the company. However the said section permits the company to keep the aforesaid registers at the place other than the registered office of the company within the same city or town provided the same is authorized by a special resolution of members.

The strict legal interpretation of the above suggest that though the company can maintain the registers in the electronic format but not all registers can be kept at the place other the registered office of the company.

Software

Software available in the market for maintenance of register as required under the Companies Act 1956 is not many. The following software are available in the market for the proposed usage.

1. Archimedes - <http://www.archimedestechlaw.com>
2. iPro ver -7.5.1- <http://www.delve.co.in>
3. 'Secretarial Organizer' - www.probitoutourcing.com
4. iPro - <http://www.sinewave.co.in>

Neuroplasticity by CS. Bhavani

In this column I wish to explain something about Neuroplasticity. Though this is related to science, the editors interest is to strengthen the Luminosity of an individual. Well, Luminosity means the quality of being intellectually brilliant, enlightened, inspired, etc. I hope every one would have a dream that they are sharp at every aspect to create visibility for oneself during their professional or business career. Here are some facts which are results out of series of experiments. A brief is given hereunder:

Neuroplasticity is a science is a non-specific neuroscience term referring to the ability of the brain and nervous system in all species to change structurally and functionally as a result of input from the environment. Plasticity means flexibility.

During most of the 20th century, the general consensus among neuroscientists was that brain structure is relatively immutable after early childhood. This belief has been challenged by new findings, revealing that many aspects of the brain remain plastic even into adulthood. In other words, researchers have discovered that the brain can fundamentally reorganize itself when confronted with new challenges, and that this can occur regardless of age. Evidence suggests that the brain, when given the right exercise, can actually reshape itself to become more efficient. This ability, known by scientists as "neuroplasticity," has far-reaching consequences. Neuroscientists and researchers are continuously discovering new ways for leveraging neuroplasticity to improve the brain's health and performance.

Some of the important findings to sharpen, focus, enhance creativity (including speed, memory, attention, flexibility and problem) our brains are meditation, fitness and exercise etc.

So, it is a request to the readers of different age groups to find out the suitable modalities to maintain and enhance Neuroplasticity throughout their life.

More information is available @ <http://en.wikipedia.org/wiki/Neuroplasticity>.

Demystify Law by CS. Prashant & CS. Vaishali

The Legal Metrology Act, 2009

Legal Metrology means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements.

The Central Government has appointed 1st April, 2011 as the date from which the Legal Metrology Act, 2009 and all the Rules made there under, will come into effect. Gazette Notifications in this respect have been published. The Central Government has also notified the following Rules made under the Act.

- The Legal Metrology (National Standards) Rules, 2011
- The Legal Metrology (Numeration) Rules, 2011
- The Legal Metrology (Approval of Models) Rules, 2011
- The Indian Institute of Legal Metrology Rules, 2011
- The Legal Metrology (Packaged Commodities) Rules, 2011
- The Legal Metrology (General) Rules, 2011

The Legal Metrology Act, 2009 replaces the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985.

The Central Government has also circulated the draft model State Enforcement Rules. The Rules will be adopted and notified by all State Governments and UTs for enforcement with effect from the 1st April, 2011. However, some States may take further time before notifying the Rules and will continue to enforce the previous Acts and Rules.

Legal Metrology Act, 2009 (Act I of 2010)

The new features of the Act are:

- Appointment of Government approved Test Centers for verification of weights and measures.
- Allowing the companies to nominate a person who will be held responsible for breach of provisions of the Act.
- Simplified definition of Packaged Commodity and more stringent punishment for violation of provisions.
- All restrictions on Inter-State trade and commerce of weights and measures are removed
- Companies are required to nominate a director who will be held responsible for any act of violation of provisions of the Act.
- No verification of weights and measures will be required for using them for production in an industry.
- Manufacturers and importers are required to seek approval of model of the weight or measure even if it is meant for domestic uses. Moreover, State Government is no longer competent to grant model approval.

Amendment to the LM (Packaged Commodities) Rules, 2011

A sub-rule (6) has been added to Rule 6 which reads as follows: "Any packaging material or wrapper which could not be exhausted by the manufacturer or packer, may be used for packing of the material up to 30th September, 2011 or till such date the packaging material or wrapper is exhausted, whichever is earlier, after making corrections required under these rules by way of stamping, or putting sticker or on-line printing, as the case may be". The sub-rule has been added vide notification no. GSR 318(E) dated 13.04.2011.

The Legal Metrology (Packaged Commodities) Rules, 2011

The Legal Metrology (Packaged Commodities) Rules, 2011, framed under section 52(3) of the Act will come into force from 1st April, 2011.

This is mostly an edited version of the previous Packaged Commodities Rules of 1977, corrected up to 1.1.2007, by updating of provisions, rearrangement of clauses and inclusion of provisions made through different amendment notifications. But, there are also a few modifications and fresh inclusions as well.

Legal Metrology (General) Rules, 2011.

The Legal Metrology (General) Rules has been notified. It repeals the SoWM (General) rules of 1987 and will come into force with effect from the 1st April, 2011

Important additions /Deletions

- Periodical interval for re-verification of weights and measures is included under Rule 27. Earlier, this item was included in the State Enforcement Rules. It will be two years for all weights, capacity measures, length measures, tape, beam scale, counter machine. Five years for storage tanks and one year for all others.
- Qualification of Legal Metrology Officers has been prescribed under Rule 28. An LMO cannot be given posting unless he successfully completes the basic training course at the IILM, Ranchi.
- Items mentioned under Heading A of Schedule VII and Schedule IX have been omitted from the new schedules

Model Legal Metrology (Enforcement) Rules, 2011 for States

The Government of India has circulated the model draft Legal Metrology (Enforcement) Rules, 2011 for States/UTs. Meanwhile, most of the State Governments have published draft notification in the State Gazette, inviting objection, if any, to be submitted within 30 days of the publication.

Salient Features

- License for manufacturing, dealership or repairing will remain valid for one to five years. The license or renewal fee will be Rs. 500 per year for manufacturer, and Rs. 200 per year for others.
- Every licensee will have to furnish a security deposit of Rs 200 for each license.
- Issue of Verification Certificate and display thereof, omitted in the main act, has been reintroduced.
- There is a provision for issuing a duplicate verification certificate on payment of a fee of Rs.10.
- LMO is authorized to recover expenses incurred for visiting a premises for verification, including costs of transporting and handling Working Standards and other equipment at minimum of Rs. 100

- Paper Seal/Sticker may be used for affixing verification stamp, design of which will be approved by the Controller.
- There will be a uniform rate for compounding of an offense.

Synopsis of the new act and the rules made there under:

Definition of Pre-packaged commodities

The significant changes that are discernible between the earlier and the new leaner version of the legislation include pre-packaged commodities being defined in the Act itself rather than in the rules, and the same now being linked with the quantity rather than the value.

Appointment of Controller and Other Officers of Legal Metrology

Officers will be appointed by the State Government under Section 14(1) but their qualification will be prescribed by the Central Government under Section 52(2)(h)

Declaration on Pre-packaged commodities

Manufacturing, packing, selling or importing any pre-packaged commodity is prohibited unless it is in a standard quantity and carries all prescribed declarations and penal provision is also there. Any advertisement mentioning retail price of packaged commodity shall also contain the net quantity thereof. If the net quantity in a pre-packaged commodity is short or excess beyond the prescribed MPE, the offence will be punishable.

Approval of Model

All weights or measures, except cast iron, brass, bullion or carat weight, beam scales, length measure (but not measuring tape) and capacity measures up to 20 litre capacity, will require approval of model before manufacturing or importing and the penal provision is also mentioned under this Act.

License

No person shall manufacture, sell or repair any weight or measure without obtaining a license from the Controller of Legal Metrology. A licensee is required to maintain records and registers as prescribed. He is also required to produce the records and registers at the time of inspection.

Verification of Weights and Measures

Every weight or measure are required to be get verified before putting them into use in any transaction. The Central Government may prescribe the kinds of weights and measures which will be verified by the Government Approved Test Centres. The Test Centres will be notified by the Central/State Governments. The test centres will verify weights and measures made in India as well as imported ones. A wrongful reporting by such centres will attract a penalty under the Act.

Compounding of Offenses

Some of the offenses may be compounded before or after the institution of a prosecution on payment of a prescribed sum. The Director may compound certain offences under 25, 27-39 and Rules under S. 52(3). The Controller may compound certain offences under 25, 27-31, 33-37, 45-47 and Rules made under S. 52(3). No offense can be compounded if the same or similar offense was committed earlier by the person within three years of date of first offense which was compounded.

Offences by Companies

A company may nominate a person who will be responsible for the conduct of the company. Such nomination should be communicated to the Director of Legal Metrology or the concerned Controller. The nominated person and the company itself will be held responsible for violation of provisions of the Act. When no person is nominated, the person who is in charge or responsible to the company will be held responsible. Even if a person is nominated, any other person responsible to the company and due to whose consent or negligence led to the violation will also be held liable for any offence committed. When a company is convicted, the Court may direct the company to publish its name and the offence committed by it in the newspapers at the cost of the company.

Appeal

Every decision or order of an officer of Legal Metrology will be appealable to the next higher authority within 60 days of passing the order or decision. The Central or the State Government may call for records from its officer for examination and passing appropriate orders.

Conclusion: In present day Scenario, the role of metrology is very important and need also. This Act may protect and promote the consumers in every aspect of life. The stringent penal provisions provided may be enforced and no unfair practices may occur in future.

Source: <http://metrologycentre.com/>

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