

CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

No. 05/04

15th June, 2004

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COMPANY LAW

I. Guidance Note on CARO

The institute of Chartered Accountants of India has issued a Guidance Note on Companies (Auditor's Report) Order, 2003 (CARO) titled 'Statement on the Companies (Auditor's Report) Order, 2003. The book provides detailed and extensive guidance on all the clauses of CARO and is available at various sales outlets of the Institute including Institute's headquarters, Office of the Regional Councils and the branches of the Institute in various cities.

List of Sales outlets, address and contact number can also be accessed at the Institute's website <http://www.icai.org>

II. Delhi High Court has struck down Circular no-35/2003 dated 11.12.2003 issued by the Department of Company Affairs regarding Compliance Certificate

Proviso to section 383A (1) of the Companies Act, 1956 inter-alia provides that every company not required to employ a whole-time secretary under sub-section (1) of section 383A and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole time practice as to whether the company has complied with all the provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.

As against the above statutory provision, the Department of Company Affairs clarified in the above circular that a company which is not required under law to employ a whole-time secretary, but has nevertheless

employed a whole-time Company Secretary voluntarily is not required to obtain a compliance certificate from a Company Secretary in practice. The implication of the above circular was that no company employing a full time Company Secretary would be required to obtain a compliance certificate from a Company Secretary in practice. The said Circular has been held to be null and void by the Delhi High Court on January 14, 2004 as it was found to be against the substantive provisions of Section 383A(1) of the Act and therefore all such companies are required to furnish the Compliance Certificate as per proviso to section 383A (1).

III. SEBI lays down conditions for change of name by listed companies

As per the previous regulations of SEBI, the Companies which change their names suggesting any new line of business, had to disclose their turnover and income from new activities separately in the quarterly/ annual results, and those Companies which have changed their names after January 1, 1998 shall make such disclosures and shall continue to make such disclosures for a period of 3 years from the date of change in the name.

In a recent circular [NO. MRD/ POLICY/AT/CIR-20/2004 Dated April 30, 2004], SEBI has decided that all listed Companies, which decide to change their names, shall be required to comply with certain conditions. Some of the major

conditions are as under:

- a) A time period of atleast one year should have elapsed from the last name change.
- b) At least 50% of its total revenue in the preceding one-year period should have been accounted for by the new activity suggested by the new name.
- c) The new name alongwith the old name shall be disclosed through the websites of the respective stock exchanges where the company is listed and also through the Electronic Data Information Filing AND Retrieval System (EDIFAR) website for a continuous period of one year, from the date of last name change.

IV. Constitution of National Company Law Tribunal (NCLT)

The Companies (Second Amendment) Act, 2002 contains certain provisions for the constitution of the NCLT. This was done with the idea of transferring the existing powers of the Company Law Board, BIFR and also those exercised by High Court in respect of winding up of Companies, amalgamation and merger, rehabilitation and revival of sick industrial companies, reduction in share capital etc to the NCLT.

The constitution of NCLT was challenged in Madras High Court.

While the High Court has held that the creation of National Company Law Tribunal and Appellate Tribunals are not unconstitutional, the High Court has found that certain provisions made in Part 1B and 1C of the Companies Act, as introduced by

the Companies (Second Amendment) Act, 2002, which inter alia, contain certain regulations on tenure of the President/members of NCLT, the qualification prescribed for members, have been held to be defective. The High Court has, therefore, held, that unless such provisions are duly amended by removing the defects as pointed out by the High Court, it would be unconstitutional to constitute the NCLT or the Appellate Tribunal to exercise the jurisdiction now exercised by the High Courts or the Company Law Board.

It is leant that the matter has been carried in appeal by the Govt. to the Supreme Court and the verdict of the Supreme Court is awaited.

The implication of the above judgment is that in for the present the Company Law Board, BIFR the High Courts continue to exercise the jurisdiction as before.

SERVICE TAX

Application of Service Tax on activities of erection & commissioning

The Central Board of Excise & Customs has issued circular no. 79/9/2004 ST on 13.05.2004. This Circular clarifies that charges for erection, installation and commissioning are not covered under the category of Consulting Engineer Services and

commissioning and installation services will be subject to service tax only w.e.f. 1.7.2003. A copy of the said circular is reproduced below, for necessary information and guidance.

**Circular No. 79/9/2004-ST
13th May 2004**

**F.NO.137/38/2003-CX.4
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)**

To

**All Chief Commissioners of Central Excise & Customs,
Director General of Service Tax, Mumbai
Director General of Central Excise Intelligence, New Delhi
All Commissioners of Central Excise
All Commissioners of Central Excise (Appeals)
webmaster@cbec.gov.in**

Subject: Application of Service Tax on activities of Erection and Commissioning

I am directed to draw attention to the Circular No. 49/11/2002-ST dated 18.12.2002, whereby it was clarified that the work of Erection and Commissioning is in the nature of services provided by a "Consulting Engineer" and hence taxable under Service Tax. Also in the year 2003, Service Tax was imposed on Commissioning and Installation Service, effective from 1st July 2003. In terms of Circular No. 59/8/2003 dated 20

June 2003, issued from File no. B-3/7/2003-TRU, it was clarified that charges for erection of plant would not be covered under the Commissioning and Installation services.

In the light of above conflicting views, several representations have been received in the Board for clarification as to whether

- the charges for erection would be covered under Service Tax or not?
- the Commissioning or Installation service would be covered under Service Tax under Consulting Engineer service effective from 7.7.1997?

The issue has been examined by the Board in consultation with the Ministry of Law and Justice and in this regard I am directed to say that charges for erection, installation & commissioning are not covered under the category of Consulting Engineer Services. Commissioning or Installation service will be separately taxable under relevant entry and are not chargeable under Consulting Engineer Services. Accordingly, the clarification issued vide the Circular No. 49/11/2002-ST dated 18.12.2002 stands modified to this extent.

2. Suitable trade notice may be issued.
3. Hindi version will follow.

MANISH MOHAN
Under Secretary to the Government of India
Phone No: 23094558

DATES TO REMEMBER

1. For corporate assesses, the first installment of advance tax for the financial year 2004-05 is due to be deposited on or before 15th June, 2004.
2. The last date for filing of annual TDS returns relating to financial year 2003-04 in Form no. 26 & 24 is 30th June, 2004.
3. The last date for, filing of income tax return for financial year 2003-04, in respect of persons other than those mentioned below is 31st July, 2004.
 - a. A Company
 - b. A Person whose accounts are required to be audited.
 - c. A working partner of a firm whose accounts are required to be audited.

In respect of the above three categories, the last date for filing the returns will be 31st October, 2004.

ANNOUNCEMENT

4th STUDY CIRCLE MEETING ON
FEMA – RECENT AMENDMENTS

It is our pleasure to invite you to the Fourth Meeting of our Study Circle, the details are given below: -

- Day & Date : Wednesday, 30th June, 2004
- Time : 2.30 PM – 6.00 PM
- Venue : Shriram Hall
PHD Chamber of Commerce and Industry
PHD House, 4/2. Siri Institutional Area
August Kranti Marg
New Delhi – 110 016
- Guest Speakers : 1. Mr. Vikas Vig
Chartered Accountant
2. Ms. Nidhi Goyal
Chartered Accountant
- Fee for this Meeting : Rs.200/- for members and Rs.300/- for non-members

Please make it convenient to attend the meeting. You are requested to make your valuable contribution on the subject. Please confirm your participation at the earliest possible date.

Please make the payment at the earliest. The payment may be made by cash/cheque/draft.

We have proposed to charge annual membership fee of Rs.1250/- for the Calendar year 2004 from those who would like to become member of this Study Circle w.e.f July 2004.

We inform you that we are approaching the Institute of Chartered Accountants of India for allowing 3 CPE credit hours for this meeting.